



Rising Challenges in the Area of Asylum and International Protection in the Rabat Process Region

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INTRODUCTION

The *Rome Declaration* (2014) constitutes the new strategic framework of the fourth phase of the Rabat Process (2015-2017). It highlights the importance of this dialogue to cope with new circumstances and new priorities.

With this in mind, **International Protection** was made the fourth pillar of the Rabat Process. In this respect, the Rome Programme for the 2015-2017 period specifies that the “respect for access to international protection and the principle of non-refoulement of asylum seekers (...) and refugees also constitute a priority objective”¹. International Protection concerns primarily refugees and asylum seekers, as well as unaccompanied minors, if applicable. It includes also other vulnerable populations such as victims of human trafficking and smuggling, etc.

Initially, International Protection was not a priority issue. It has become so in the current context, characterised by the rise in mixed migration flows, in particular via the central Mediterranean Sea. A significant portion of persons in transit in Libya are eligible for refugee status from which they were not able to benefit closer to their country of origin, including in sub-Saharan Africa.

Faced with these new realities, it is a question of developing asylum management capacities on the entire African continent, not for disengaging from international solidarity but for making it more operational and more effective. National asylum systems allow ensuring a faster and safer access to effective protection for the concerned persons. This prevents them from taking substantial risks such as resorting to smuggling networks or moving to other places where they hope to find protection.

Within this context, the document presented here offers an assessment of the migration dynamics related to asylum in the countries of the Rabat Process (1), a brief presentation of international national, and regional legal frameworks (2), an identification of general issues in the area of asylum and International Protection (3), as well as a report on the current solutions and those to be promoted (4).

¹ Annex to the Rome Declaration: the Rome Programme for 2015-2017, section IV.





1. Refugees and displaced persons in the countries of the Process of Rabat

According to the United Nations High Commission for Refugees (UNHCR)

- in 2013, developing countries received 86 % of the global refugees.
- in 2014, the number of forcibly displaced persons worldwide was estimated at 51.2 million refugees².

1.1. Five countries of the Rabat Process are among the top ten African host countries (The annotated maps can be found in the Annex).

1.2. The European Union (EU) recorded an increase of 43 % in asylum applications between 2013 and 2014

In 2014, the 28 Member States of the EU recorded 626,065 asylum applications, an increase of 43.9 % compared to 2013.

73 % of these applications were filed in only five Member States:

- Germany, 173,070 applications,
- Sweden, 75,090 applications,
- Italy, 63,660 applications,
- France, 59,030 applications,
- Hungary, 41,370 applications².

Between 2013 and 2014, the number of asylum seekers from the Middle East, North and Sub-Saharan Africa increased significantly. This increase reached records for the following nationals: Syrians (143.5 %), Eritreans (143.3 %), **Mali**ans (94.5 %), Sudanese (91.2 %) and Iraqis (90.4 %).

2. The legal context at international, regional and national level

International asylum and refugee protection law, recognised by the countries involved in the Rabat Process, and rules pertaining to refugee protection can be found foremost in the *1951 Convention Relating to the Status of Refugees and its Protocol from 1967*.

These two documents constitute the founding principles of the European and African asylum system.

The main legal instruments of the international refugee protection regime are briefly presented in the following.

2.1. The 1951 Convention Relating to the Status of Refugees and its Protocol from 1967

The *1951 Convention Relating to the Status of Refugees and its Protocol from 1967* are the main international instruments concerning the protection of refugees. The Convention provides a definition for the term “refugee” and establishes rights and obligations of states vis-à-vis persons defined as such. The Protocol lifted the temporal and geographical

² Source: UNHCR, Global Trends 2013.



restrictions originally limiting the Convention's application. The fundamental nature of these two instruments has been largely recognised, both internationally and locally.

Almost all countries of the Rabat Process are party to the Convention and most sub-Saharan African countries acceded these two instruments just after gaining independence.

2.1.1. The European asylum system

Since 1999, these founding texts have constituted the basis of the *Common European Asylum System (CEAS)*. Moreover, the *Charter of Fundamental Rights of the European Union* (2000), constitutes a set of personal, civil, political, economic and social rights of EU citizens and incorporates these into EU law. It has the same compulsory legal force as the EU treaties. Moreover, it includes a provision on the right to asylum (article 18).

The *Dublin Regulation* (2003) establishes the essential principle according to which the responsibility for review of an application falls first of all upon the Member State that played the main role for the asylum seeker in entering or residing within the territory of the Union. The criteria used in determining this responsibility follow a hierarchy ranging from family considerations to the recent possession of a visa or a residence permit in a Member State, and whether the applicant has entered the EU regularly or irregularly. The granting of the refugee or subsidiary protection status is accompanied by certain rights, such as the issuance of a residence permit or access to the labour market and health care (*Asylum Qualification Directive*, 2004).

The asylum application procedure is harmonised throughout the EU by a set of directives and regulations³.

2.1.2. The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (1969)

The *OAU Convention Governing the Specific Aspects of Refugee Problems in Africa* is instrumental in protecting refugees in the region.

In addition to the definition of the term "refugee" provided by the *1951 Convention* the *OAU Convention* applies the definition to mean "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

³ Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, OJ 2001 L212/12 ; Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, OJ 2003 L 31/18; Regulation 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, OJ 2003 L 50/1; Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, OJ 2004 304/12; Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, OJ 2005 L 326/13.

residence in order to seek refuge in another place outside his country of origin or nationality”⁴.

All the African countries of the Rabat Process have signed the *OAU Convention* and the majority has ratified it.

2.2. National legislations currently being reformed

Whereas all EU Member States have adopted asylum laws, the situation regarding African states is more heterogeneous. The need to protect refugees is included in the constitution of several countries, among these Algeria, Egypt, and Tunisia. Other countries refer to their national immigration legislation to resolve matters of refugee protection, especially the provisions relating to the issuance of residence permits for refugees.

Published in 2013, the *Très Hautes Orientations* of King Mohammed VI aim at the development of a new asylum and immigration policy in Morocco. They are in line with a regional trend: also Algeria, Mauritania and Tunisia have initiated a reform of their asylum legislation.

The appropriate response to the increasing challenges of asylum and international protection could hence be achieved through the development of efficient national asylum systems, accompanied by measures for persons who are refused asylum and for those who do not wish to apply for asylum (cf. assisted voluntary return programmes and reintegration assistance).

3. Contemporary causes of asylum: complex and multiple

Today, the refugee movements are the result of a complex mix of factors such as general violence, armed conflict, individual persecutions, bad governance, human rights abuses and in particular ethnic or sectarian tensions. These political crises are intensified by food insecurity, natural disasters and climate change.

Conflicts in several sub-Saharan African states (Central African Republic, Mali, Nigeria, etc.) as well as in Libya, Syria and Iraq lead to a constantly growing number of displaced persons and refugees in the countries of the Rabat Process. In this context, the precarious situation of refugees and migrants in Libya has driven many of them towards smuggling and trafficking networks. There is no doubt that the majority of persons who undertake the perilous crossing of the Mediterranean Sea to escape war, conflicts and persecution are in need of International Protection.

3.1. Continuing conflicts in several Western and Central African states

In Africa as elsewhere in the world, the majority of persons forced to leave their countries of origin try to find refuge in neighbouring countries rather than leave to countries that are further away.

⁴ Art. 1, § 2 of the OAU Convention Governing the Specific Problems of Refugees in Africa

Hence, in the context of the Rabat Process, three crises have led to significant internal and international displacements⁵ :

- **The Central African crisis : a conflict with regional repercussions**

Since December 2013, around one quarter of the Central African population has been displaced within the country.

This conflict, a source of deep religious-ethnic divide in the country, has had regional repercussions: more than 190,000 Central Africans fled towards Cameroon, Chad the Democratic Republic of the Congo (DRC) and the Republic of the Congo.

In August 2014, UNHCR estimated that around 508,000 persons remained displaced in the Central African Republic (CAR). Conversely, the influx of refugees into bordering countries had stabilised. However, due to daily violent clashes, thousands of persons whose living conditions were already disastrous continue to be displaced.

Further, this crisis had an impact on the refugee communities within CAR, mainly on refugees from the DRC and Sudan. Around 6,000 Congolese refugees have therefore chosen to return to their country of origin.

- **The Malian crisis: recent displacements adding to previous refugees flows**

In May 2015 renewed fighting between armed groups in the regions of Gao, Mopti and Timbuktu in Northern Mali have driven around 57,000 persons to flee from their homes, according to the Malian authorities.

These newly displaced persons add to the more than 43,000 persons previously displaced throughout the country who have not yet returned to their homes since the 2012 conflict between government forces and rebel groups.

The total number of displaced persons within Mali now stands at just over 100,000, mainly in the northern part of the country.

Moreover, since January around 3,500 new refugees had left towards the neighbouring countries (Burkina Faso, Mauritania, Niger, etc.).

Overall, approximately 137,500 Malians are still as refugees in neighbouring countries. Of these 33,400 are in Burkina Faso, 52,000 in Mauritania and 50,000 in Niger.

- **The Nigerian crisis: displacements due to Boko Haram violence**

Since 2013 violent clashes between government forces and armed groups in Northern Nigeria have triggered large waves of displacements. More than half a million persons were displaced within the country. Others took refuge in Cameroon, Chad and Niger.

In total, more than 650,000 persons fled from North-East Nigeria between May 2013 and May 2014⁶.

⁵ The statistics used are those published by UNHCR in 2013, 2014 and 2015.

⁶ Source: Office for the Coordination of Humanitarian Affairs, OCHA).

Niger fears the enormous pressures on these flows of refugees pushing them into the Diffa region bordering Nigeria, a region already weakened by food insecurity and environmental degradation.

UNHCR states that there is no indication that the humanitarian crisis caused by this internal conflict will abate in 2015.

3.2. The humanitarian consequences of the conflict in Syria on the North African countries

The Syrian crisis had important consequences for the other countries of the Middle East, which had to cope with a massive exodus of refugees. Recently, the humanitarian consequences of the conflict in Syria have extended into North Africa. In 2014, 155,000 Syrians have found refuge there. Egypt alone hosts approximately 134,000 of them.

At the same time, the current conflict between rivaling armed groups in Libya has displaced more than 418,803 persons inside that country. Beyond the problems that this has brought to Libyan nationals, this situation afflicts refugees, asylum seekers and migrants transiting Libya. Of these many are natives of the Middle East and Sub-Saharan Africa.

As an example, out of the 850 passengers that embarked in Tripoli, Libya, on the boat that sank tragically in mid-April 2015 on the Mediterranean Sea, 350 were Eritreans, as well as Syrian, Somalian, **Sierra Leonean, Malian, Senegalese, Gambian, Ivorian** and Ethiopian nationals, according to survivors.

4. General Issues

Against this backdrop, the major general concerns in the area of International Protection that arise for the countries involved in the Rabat Process are the following:

- **The diversity and complexity of current displacements**

→ The global humanitarian system is under pressure

States and international organisations provide a wide range of services to the affected countries. Yet, the reception and provision of services essential for the well-being of refugees represent an important challenge, whereas options of durable solution still remain limited.

- **The spectrum of protecting mixed flows**

Current international migration is characterised by an increasing porosity between different categories of persons on the move: asylum seekers and refugees, economic migrants, stateless persons, trafficking victims or migrants subject to smuggling. While migrating, the statuses of potential emigrants may vary or the different statuses may even superpose. However, they share the same routes and take the same steps. Furthermore, the distinction between countries of origin, transit, or destination has become more blurred. Numerous countries hold alternatively or simultaneously one or another of these functions.



These mixed flows meet ever fewer possibilities for legal immigration. This evolution has two major impacts:

1. Asylum seekers may be compelled resort to irregular immigration, an issue which is closely connected to criminal networks.
2. While protection gaps are growing bigger, protection areas are shrinking.

- **The evolution of the International Protection regime in light of current realities**

Established at the end of the Second World War, in particular by the adoption of the Convention Relating to the Status of Refugees in 1951, the International Protection regime was able to adapt to challenges arising due to other types of forced displacement, particularly in the context of armed conflicts or widespread violence. The Convention has proven itself as a living and dynamic instrument that is flexible enough to cover a large range of situations. The interpretation of provisions of the Convention in light of the present circumstances, or in light of the development of human rights and international jurisdiction, are important factors in this regard. A certain number of regional instruments completing the Convention of 1951 were created additionally, including the OAU Convention.

These problems are in fact more often linked to the difficulties states encounter when implementing their obligations under the Convention and other relevant instruments to which they are party, as well as to the lack of international solidarity in some circumstances.

However, the current context poses new challenges, particularly concerning:

- *The territoriality of asylum*

The recent crises have shown ~~the difficulties related when to~~ responding to forced population displacements depending on the territory upon which the concerned persons are ~~based on the fact that the concerned persons are on a certain territory~~. To apply for asylum, refugees are required to be physically present in the country for which they are seeking asylum. Furthermore, migration and border management policies render it increasingly difficult for them to access the territory on which they wish to file for asylum.

- *The duration of asylum and the level of guaranteed protection*

Today, the majority of refugees under the mandate of UNHCR find themselves in so-called protracted refugee situations, which means that they have been in a country of asylum for 5 or more years, without a real prospect of durable solutions. Today, this concerns around 6.3 million persons.⁷

- *Secondary movements*

Refugees and asylum seekers may find themselves in particularly precarious situations that have a tendency to be prolonged indefinitely due to a lack of rapidly accessible durable solutions or being refused their rights as laid out in the *1951 Convention*. This concerns in particular the recognition of a personal status that offers a legal existence to refugees on the territory on which they are as well as access to work, which would allow

⁷ Source: UNHCR, Global Trends 2014.





them to become economically independent and to cease to depend on assistance, or access to education for their children

In addition to this insecurity, refugees have great difficulty in accessing other mobility schemes or legal migration: They generally do not possess travel documents, and even if they do, they have little chance to obtain the visa needed to enter the preferred country. In this situation, many refugees choose to continue their journey to find refuge elsewhere and are ready to take considerable risks, as have shown the recent accidents on the Mediterranean Sea.

- **New forms of international cooperation for coping with the protection crisis**

- Supplement the current measures with new tools for development and mobility;
- Greater involvement of governments, international agencies, diasporas and the private sector.

5. Current solutions and “good solutions” to be prioritised

It is likely that 75% of the refugees worldwide have landed somewhere, which suggests that the traditional answers (local integration, resettlement and return) have their limits. This is why it is necessary to develop long-term solutions that fit each situation.

In light of this, refugees should be considered as potential (economic, social and cultural) development players in their host societies. This approach reconciles the refugees’ protection needs and development aspects in order to support the resilience, autonomy and temporary or permanent economic integration of refugees and asylum seekers.

The search for solutions should also foresee the participation of local communities in development, notably in the fields of employment and accommodation, knowing that refugees tend to head increasingly towards urban centres.

5.1. Searching for solutions

First of all, three traditional durable solutions should be kept in mind:

- **Voluntary return**

Voluntary return, that is the return of refugees to their country of origin on sufficiently safe and dignified terms and when the causes for the flight have ceased to exist, is generally considered as the “ideal” solution to the problems of refugees. In practice however, it occurs often that the conditions in the country of origin have not yet become good enough to allow for the return of the refugees. In this respect, the number of persons that were repatriated in 2014 has turned out to be the lowest since the 1980s.

- **Resettlement**

Resettlement, that is the transfer of a refugee from a country of asylum to another country in which he or she is supposed to settle permanently, represents another durable solution. Unfortunately the number of resettlement places that is available over a year is relatively limited, around 100,000 persons only. Resorting too often to





resettlement could also have a “magnetic effect” and to lead to an increase in the number of arriving asylum seekers. Under these circumstances, resettlement is an option that can only be available for a small number of persons whose protection needs are particularly high and who cannot stay in their country of asylum.

- **Local integration**

Another possible solution, particularly for long-term refugees, consists of progressively granting a certain number of rights to refugees in order to facilitate their integration and autonomy in the country of asylum. This process could ultimately lead to granting of nationality, although this is not strictly necessary. Temporary or permanent local integration often turns out to be an important solution in the African context.

- **Protection of cross-border refugees**

There has been progress in the area of *protection for cross-border refugees*, particularly in the case of the victims of widespread violence (OAU), the victims of violations of human rights (Cartagena Declaration), and displaced persons with the creation of the “*Guiding Principles on Internal Displacement*”.

To all these, the solution of **relocation** that was presented by the European Commission as one of the concrete measures to improve migration management and to cope with current challenges, particularly in the Central Mediterranean Sea. It is a mechanism of redistribution of asylum seekers and has been activated recently for the first time to support Italy and Greece. It forecasts 6,000 Euros per person being resettled to the territory of a Member State. The Commission states that it is ready to extend this initiative if other Member States face a sudden of migrant influx.⁸

The relevance of several initiatives that were developed at different levels deserves to be emphasised as well:

- **The Mobility Partnerships between the EU and African countries**

The *mobility partnerships* that were concluded between the EU and certain African countries (Cabo Verde, Morocco, Nigeria and Morocco) present an example of cooperation between countries of transit or first asylum and those of destination. It allows improving the terms and conditions of the protection of migrant populations, which are in extremely vulnerable situations.

- **The Italian “Praesidium” project**

This project *combines the various strengths and competencies of the different stakeholders* like UNHCR, IOM, and the Red Cross in responding to the different needs of persons seeking protection (refugees, asylum seekers, Internally Displaced Persons and stateless persons).

- **The European Asylum Support Office (EASO)**

⁸ Source: European Commission, Press release: “European Commission makes progress on Agenda on Migration”, 27 May 2015





The EASO is an EU agency that was set up in 2010. This initiative is presented as *a good practice in the area of early warning*. The EASO acts like a centre of expertise and supports the states whose asylum systems are under particular pressure. The methodology used is based on data collection from all EU Member States as well as from the four non-EU states taking part in the Schengen and Dublin systems (Iceland, Liechtenstein, Norway and Switzerland). It is complemented by information on asylum seekers retrieved from countries of origin, transit, and destination. This system contributes to facilitating a first analysis of asylum applications in emergency situations and to developing training on a European level for the authorities and courts in charge of asylum within the member states, and producing analyses of both long-term tendencies.

5.2. Towards improved refugee protection in the Rabat Process region

Progress could still be made in the following areas in order to improve refugee protection in the Rabat Process region:

- + Strengthening national asylum systems and legislation in compliance with international law.
- + Including protection issues within the national poverty reduction strategies.
- + Strengthening the links between International Protection and development. Particularly within the framework of regional protection schemes.
- + Strengthening asylum capacities in non-EU Member States.
- + Strengthening measures that aim at securing people in distress at sea (Search and Rescue, SAR).
- + Strengthening international solidarity, for example through an increase in resettlement places.
- + Organising information campaigns aiming at raising awareness at informing the concerned persons on the risks they would expose themselves to when taking irregular routes.
- + Developing legal alternatives to irregular migration that would allow persons in need of protection to seek asylum elsewhere without exposing themselves to all the dangers related to irregular movements. This concerns for example the issuance of humanitarian visas or the facilitation of family reunification.

In this context it would be useful to

- + Break down the conceptual and institutional barriers between humanitarian aid and development, in such a way that both can contribute to a stronger protection. Thus, a new debate could be envisioned around the following issues: resettlement, humanitarian evacuation operations, flexible use of visa regimes and protected entry procedures. This debate should be supported by a large political consensus and prevent the creation of incentives for clandestine migration and recourse to criminal networks.
- + Facilitate the mobility of refugees and displaced persons in a manner so that they can
 - ensure their means of subsistence,





- access a wider range of rights than they can claim in the country of first asylum,
 - contribute temporarily or permanently to the development of the host countries and communities, as well as to that of their country of origin, if circumstances allow for it, and
 - develop circular mobility for refugees through the acquisition of migrant workers status; to avoid long-term displacement many people choose a work mobility strategy, which allows them to maintain their intention of return while staying safe in a neighbouring country.
- + Strengthen awareness-raising and information campaigns targeting the communities and populations in the host societies in order to promote their adherence to measures supporting refugees and displaced persons;
 - + Support the availability of statistical data on refugee flows and the stock of refugees and displaced persons for ensuring better national and international protection.

The necessity of a better cooperation between all stakeholders involved in International Protection is now recognised. Hence, the elaboration of sustainable solutions should be considered as a priority of the Rabat Process, based on a joint responsibility of African and European states.

Moreover, ensuring the appropriate level of protection for both migrants that are victims of transnational crime (e.g. trafficked persons) and other groups of vulnerable migrants (e.g. unaccompanied or separated minors; asylum seekers and refugees) should be among the top priorities of the Rabat Process countries. The migration flows depicted in the Annex should be approached holistically in a manner that combines migration management with state protection. It should take matters of state sovereignty into account and ensure fundamental human rights for migrants and refugees⁹.

In this spirit, states are looking for tools that could serve to assist the implementation of measures allowing the identification of migrants and refugees in urgent need of protection and aid, that facilitate their referral to the competent authorities. This must be a crucial step in the process preceding the provision of aid and protection.

In view of the scope and diversity of the current migration flows, this constitutes a real challenge. To respond to this, **preliminary identification**, promoted by the member states of the conference, seems to be one of the solutions to be further explored.

⁹ Diálogo Internacional sobre la Migración de 2008. Los retos de la migración irregular: Encarar los flujos migratorios mixtos. Note pour la discussion. MC/INF/294. Op. Cit., p.1.



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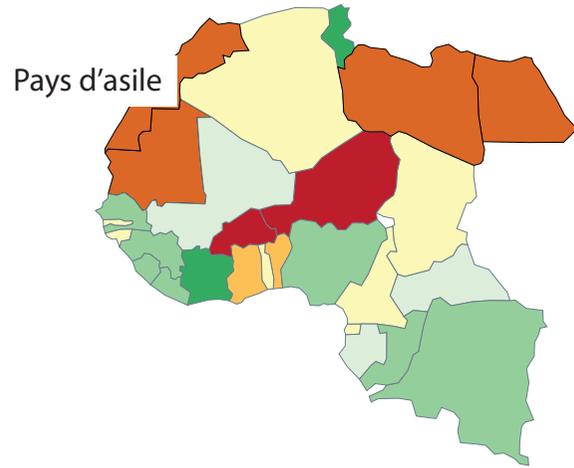
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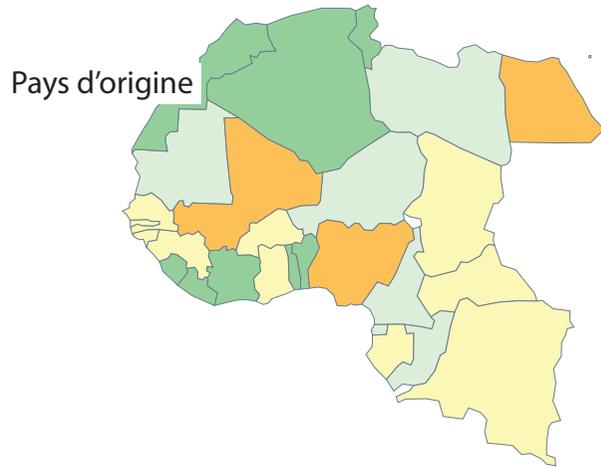
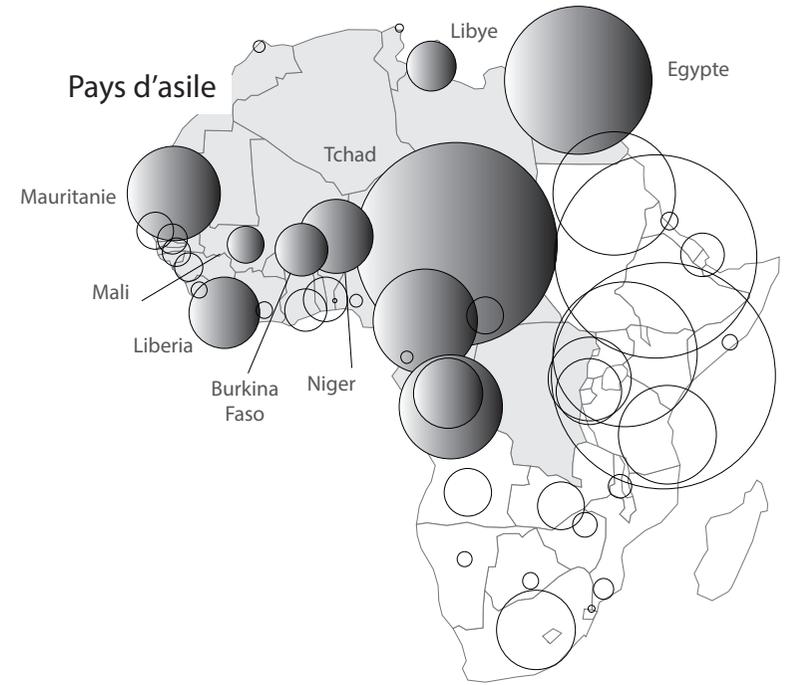
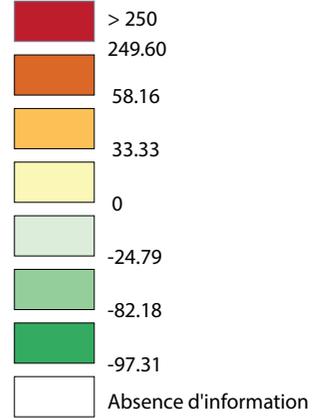
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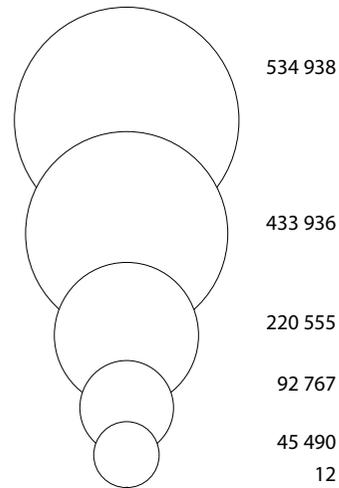
Evolution des réfugiés dans la région du Processus de Rabat entre 2011 et 2013 selon le pays d'asile ou d'origine



Taux d'évolution entre 2011 et 2013
(en %)



Effectif par pays



Pays du Processus de Rabat

