Irregular Migration
The Case of Egypt

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CARIM

The Euro-Mediterranean Consortium for Applied Research on International Migration (CARIM) was created in February 2004 and has been financed by the European Commission. Until January 2007, it referred to part C - “cooperation related to the social integration of immigrants issue, migration and free circulation of persons” of the MEDA programme, i.e. the main financial instrument of the European Union to establish the Euro-Mediterranean Partnership. Since February 2007, CARIM has been funded as part of the AENEAS programme for technical and financial assistance to third countries in the areas of migration and asylum. The latter programme establishes a link between the external objectives of the European Union’s migration policy and its development policy. AENEAS aims at providing third countries with the assistance necessary to achieve, at different levels, a better management of migrant flows.

Within this framework, CARIM aims, in an academic perspective, to observe, analyse, and predict migration in the North African and the Eastern Mediterranean Region (hereafter Region).

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The CARIM carries out the following activities:

- Mediterranean migration database;
- Research and publications;
- Meetings of academics;
- Meetings between experts and policy makers;
- Early warning system.

The activities of CARIM cover three aspects of international migration in the Region: economic and demographic, legal, and socio-political.

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Abstract

Egypt hosts thousands of foreign nationals, a small percentage of whom are considered regular migrants or recognized refugees. This paper will outline the different legal tools that bind non-Egyptians and explore the problems that irregular migrant, including failed asylum-seekers face. It will also explain how the Minister of the Interior has absolute powers with regards to naturalization and deportations and propose an alternative mechanism that is fairer and more compliant with modern human rights standards.

Résumé

L’Égypte abrite des milliers d’étrangers sur son territoire, dont un faible pourcentage sont des migrants en situation régulière ou des réfugiés reconnus. Cette contribution explore les divers instruments juridiques qui s’adressent aux non Égyptiens et les difficultés juridiques et sociales rencontrées par les étrangers en situation irrégulière, en ce compris les demandeurs d’asile déboutés. En matière de naturalisation et d’expulsion, le Ministre égyptien de l’Intérieur exerce des pouvoirs discrétionnaires, l’auteur suggère une alternative qui favorise plus d’équité et de conformité aux standards internationaux de respect des droits humains.
Introduction

This paper should be read in conjunction with the article presented by Professor Howaida Roman in the framework of the CARIM collective publication on “Irregular Migration into and through Southern and Eastern Mediterranean Countries”. In her paper, Professor Roman presented a detailed account of the socio-political implications of irregular migration in, from, and through Egypt. A full understanding of the legal module of the 2008 CARIM report on irregular migration could only be complete after reading the socio-political report on the same topic. Accordingly, for reasons of consistency, I will adopt the same definition of irregular migration that Professor Roman provided in her socio-political report on irregular migration in Egypt. However, it is worth mentioning that I believe irregular migrants in Egypt fall into one of two categories: (i) those that do not have a valid residence permit, and (ii) those that have a valid residence permit, yet who violate the terms of their residence insofar as employment is concerned. This distinction is important for the issue that I will raise in this paper, that is, the legal situation of those who have the right to work in Egypt pursuant to international treaties, yet who are prevented form exercising such right by domestic legislation. A brief analysis of Egyptian law in light of Egypt’s international obligations will be conducted and the paper will explore the different legal tools that foreigners must abide by, or benefit from.

Entry, Exit, Residence and Naturalization

Entry and Exit:

According to Law 89/1960, foreigners who wish to enter Egypt must have valid documents represented in a passport, or its equivalent, and a visa specifying the purpose of entry. Citizens of some countries are either exempted from obtaining tourist visas or are allowed to apply for them at any Egyptian point of entry. Against this backdrop, those who attempt to enter Egypt without any of the relevant documents are liable to sanctions that could extend to prosecution and imprisonment. Moreover, citizens of some States are requested to report to the authorities within one week of their arrival.

Like entry, exit from Egypt is regulated by law. No person is allowed to leave Egypt without the approval of domestic authorities. Those who exit illegally are subject to prosecution, and possible deportation. This poses serious problems for refugees who attempt to flee to Israel or Libya in order to have a better life (see section on refugees). Asylum-seekers who enter illegally are not subject to the penalties imposed on other illegal migrants (Article 31 of the 1951 Convention Relating to the Status of Refugees). However, they can be imprisoned if they are tried by a military court should they be found in a military zone. Military court decisions cannot be appealed and sentences can reach up to imprisonment for a period of one year followed by expulsion. Although no exit visa is required from

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1 H. ROMAN “Irregular Migration of Egyptians”, Analytical and Synthesis Note, CARIM, 2008
2 Including failed asylum-seekers, people smuggled into Egypt, and those whose residence permits expired.
3 Such as refugees, tourists, and some students.
5 For a list of these countries see the website of the Egyptian Ministry of Interior, http://www.moiegypt.gov.eg/Arabic/Departments+Sites/Immigration/ForeignersServices/TasgeelAlAganeb/.
6 The asylum-seeker’s point of entry or the place of his/her apprehension will determine the type of court that will examine the case. Note that several points of entry are considered military zones.
Egyptian or foreigners (7 Egyptians of military age must seek a travel permit from the relevant military authorities. Such mechanism is meant to prevent possible desertion if a war involving Egypt erupts.

Objectively speaking, Egypt is not considered a traditional country of permanent immigration and, subject to few exception, foreigners are generally welcomed on Egyptian soil provided their stay is temporary. This reflects the policy position of the government that the presence of foreigners on Egyptian territory should be allowed to the extent that it benefits Egypt, or for humanitarian or family-related grounds.8 On the last point, it is worth mentioning that the Memorandum of Understanding (MOU) between Egypt and UNHCR, and the reservations that Egypt made to the Refugee Convention both reflect the temporary nature of asylum in Egypt and that humanitarian assistance would be allowed to the extent that national resources permit. As such, one can confidently say that there is no permanent migration program in Egypt.

Law 89/1960 recognizes three types of residence permits (Special,9 normal,10 and temporary11). In addition to these categories, the Minister of Interior’s Decree 8180/1996 allows investors and refugees to obtain residence permits for periods that range between three and five years. In practice, Convention refugees receive a residence permit for six months, subject to renewal. A special residence permit is renewed automatically upon request. Normal and temporary permits, however, can only be renewed if the Minister of Interior agrees.

Deportation and Naturalization:

Deportation of foreigners is the prerogative of the Minister of Interior and, at times, the Director of the Passports, Immigration, and Citizenship Department. Those who benefit from special residence permits cannot be deported without the approval of a Deportation Committee (Art. 26 of Law 89/1960). I submit that the ratification of the Convention against Torture and Refugee Convention should extend this privilege to failed asylum-seekers and those who fear torture in their countries of origin. Regrettably, foreigners who fall in these two categories can still be deported at the Minister’s discretion. In fact, in June 2008, it is reported that hundreds of Eritrean citizens, many of whom were potential refugees, were forcibly deported to their country of origin where they risked persecution.

As far as naturalization is concerned, Law 26/1975 allows those who reside legally in Egypt for ten consecutive years to apply for Egyptian citizenship, provided they can speak Arabic, have a legitimate source of income, are of good health, and have no serious criminal record (Article 4 of Law 26/1975). The Minister of Interior has the right to oppose their request without providing a detailed justification for his decision. Most rejections are mainly for reasons of national security, yet frivolous reasons can also be behind the decision to deny a person Egyptian citizenship. The applicant can therefore appeal the decision at the Council of State (Administrative Court).

7 The exit approval takes place at the airport (or any point of exit) by the relevant representative of the Minister of Interior.
8 Such as the refugee systems under the constitution, the 1951 Refugee Convention and 1969 OAU Convention, as well as the facilitations made for spouses and family members of Egyptian citizens and residents of Egypt.
9 Granted to foreigners born in Egypt before the publication of Decree 74/1952 and who remained in Egypt until Law 89/1960 was passed, foreigners who lived in Egypt for over twenty consecutive years provided they entered Egypt legally, and to scientists, intellectuals, artists and businessmen who benefited the national economy or provided scientific, cultural or artistic services to Egypt (Art. 18).
10 Given to foreigners who lived in Egypt for over fifteen consecutive years prior to the publication of Decree 74/1952 and who remained in Egypt until Law 89/1960 was passed provided they entered Egypt legally (Art. 19).
11 Granted to all other foreigners (Art. 20).
In order to guarantee family unity and stability, foreign women married to Egyptian men can benefit from expedited naturalization procedures and obtain Egyptian citizenship two years following their application for naturalization. The application can be made the moment the marriage contract is notarized without irrespective of the time the couple spent living together prior to the application for naturalization. The law, however, does not provide for similar requirements for foreign men married to Egyptian women. Accordingly, such men must follow the general naturalization requirements under Article 4 of the law and live in Egypt for ten years prior to applying for Egyptian citizenship. The distinction between men and women in the area of naturalization has no justification in law or Islamic Sharia. Although such law could be challenged as unconstitutional, as it discriminates between men and women, the author is unaware of any constitutional challenge involving this law.

In light of the above, I believe that the laws dealing with foreigners and citizenship give too much power to the Minister of Interior. It is recommended that they be amended so that naturalization and the deportation of asylum-seekers and those who fear torture in their countries of origin can only take place following the consent of a special judicial committee in charge of authorizing deportation. This amendment will minimize the arbitrariness of deportation orders under the current order.

Employment

According to Egypt’s latest Unified Labour Code (Law 12/2003), foreigners can only work in Egypt on the basis of reciprocity (Article 27). Moreover, in order to be employed in Egypt, foreigners must seek a residence and work permits and enter Egypt for the purpose of employment (Article 28). According to the 2007 Governmental Report to the United Nations Committee on the Rights of Migrant Workers and Members of their families, in 2006, 19562 foreigners obtained work permits in Egypt. This number is significantly lower than the total number of foreigners in Egypt. For example, it is estimated that Iraqi citizens alone exceed 100,000 residents, less than 20 percent of whom are recognized refugees; not to mention the thousands of failed asylum seekers from other nationalities who are not considered refugees and hence, are protected by the United Nations Convention on the Rights of Migrant Workers and Members of their Families.

A thorough reading of the relevant laws and decrees leads to the conclusion that additional obstacles on the employment of foreigners exist. Examples of legal obstacles include:

- HIV positive foreigners cannot be employed in Egypt. They shall be deported to their countries of origin within 72 hours of the notification of their infection. Exceptions are made for certain categories of non-Egyptians including refugees.
- Law 159/1981 on Companies stipulates that foreigners should not account for more than 10% of a company’s workforce, and that their aggregate salaries not exceed 20% of the company’s total payroll.
- Foreigners cannot obtain a work permit if they are deemed in competition with Egyptians nationals.

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12 According to Article 2 of the Egyptian Constitution, Islamic Sharia is the main source of legislation.
13 Article 11 of the Egyptian Constitution guarantees equality between men and women subject to the limits of Sharia.
14 For a copy of Egypt’s report in Arabic see www.ohchr.org.
15 World Refugee Survey 2008- Egypt, Section I, A, p. 0.
16 Conclusion easily reached by reading Articles 1, 2, and 5 of the International Convention on the Rights of Migrant Workers and Members of their Families in conjunction with Article 3(d) of the same Convention.
17 These limitations can be found in Law 159/1981 on Companies, the Minister of Manpower and Migration’s Decrees 136/2003 and 357/2004, and the laws related to the practice of liberal professions.
• Non-Egyptians cannot practice liberal professions in Egypt, yet exceptions can be made, *inter alia*, to those who are considered experts in fields where local expertise is lacking (certain areas of medicine), or citizens of certain States (the practice of law).

• Those who wish to employ foreigners must pay employment fees that can reach up to 1000 LE.  

  Furthermore, the law explicitly excludes domestic workers from the benefits of the Unified Labour Code (Article 4(b)). Accordingly, labour workers are neither protected by the Unified Labour Code nor benefit from social security. This being said, foreigners still need a permit to work as domestic workers in Egypt. In theory, foreign domestic workers are only subject to the protection of contract law as well as international and domestic human rights standards. In practice, most foreign domestic workers, including refugees, work irregularly without a contract and are often subject to abuse and slavery-like conditions where their salaries are withheld in violation of Egyptian law. However, due to their fear of deportation, foreign domestic workers prefer to work in dismal conditions over complaining to the authorities.

### Social Rights

Although Egypt is bound by international treaties stipulating the obligation to provide free primary education to all children on its territory irrespective of their status, irregular migrants and undocumented asylum seekers have no access to educational institutions. This can be blamed on the requirement that all children must provide a valid residence permit as a precondition to their enrolment. Access to institutions of higher education is possible yet costly, and upon acceptance a student can apply for a student visa and reside in Egypt.

Moreover, primary healthcare is available to all and is not contingent on the validity of residence permits. However, more sophisticated medical interventions are costly and irregular migrants do not benefit from health insurance.

As far as property ownership is concerned, foreigners can own moveable property. Nevertheless, there are restrictions on their ownership of immovable property unless such property is used for the purpose of residence or investment.

### Refugees, de facto irregular workers

There are different categories of refugees in Egypt. On the one hand, Egypt recognizes refugees pursuant to the Refugee Convention and the Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Convention). Such refugees are granted asylum by UNHCR pursuant to the above-mentioned MOU. On the other hand, Egypt has its own domestic asylum mechanism established under Article 53 of the Egyptian Constitution. Finally, a third category of refugees is residence on humanitarian grounds (Palestinians). Each category of refugees is bound by different rules with regards to employment, education, and naturalization. What they share in common, however, is their automatic exclusion from the benefits of the Convention on the Rights of Migrant Workers (Article 3(d)). Failed-asylum seekers, on the other hand, are technically considered irregular migrants unless their status is regularized.

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18 Employers of Greek, Italian, Palestinian, and Sudanese citizens are exempted from this obligation.


20 However, due to security reasons, there are restrictions on their ownership of ships and planes.
Regardless of their status with respect to the Convention on the Rights of Migrant Workers, refugees and failed asylum-seekers are subject to the same restrictions that other foreigners must meet. In other words, their work is contingent upon three criteria: (i) reciprocity, (ii) having a valid residence permit, and (iii) having a valid work permit (Articles 27 and 28 of the Unified Labour Code). This poses serious confusion for refugees recognized under the Refugee Convention. According to Article 17 of the Refugee Convention, refugees should have the right to work if nationals of third countries are given such privilege, or if they completed three years’ residence in their country of asylum. Given that Egypt made no reservations to Article 17 of the Refugee Convention, refugees should technically be able to work in Egypt without a work permit. However, the government maintains that refugees are “foreigners” and are subject to the requirements that other non-Egyptians must fulfil under the Unified Labour Code. Such position is legally ill-founded given that the Refugee Convention explicitly singles out refugees for privileged treatment insofar as employment is concerned. Accordingly, for a ban on the employment of refugees to be effective, it should have been explicitly stated in the Unified Labour Code. This anomalous situation results in refugees being de facto irregular migrants as they are validly residing in Egypt but are working without authorization. However, if caught, refugees do not risk deportation. Instead, their employers are liable to pecuniary sanctions in accordance with the Unified Labour Code (Article 245). In practice, this phenomenon seldom arises as refugees are employed mainly in the informal sector.

The lack of sustainable employment prospects, coupled with lack of educational opportunities in Egypt, drive refugees to flee Egypt to neighbouring States to attempt to find better socio-economic conditions. Absent any legal recourse other than a seriously constrained resettlement program, refugees and asylum-seekers often find themselves compelled to leave Egypt for Israel or Libya. Given that illegal exit is penalized by law, those who fail to cross the border are arrested, jailed, and then deported to their country of origin unless UNHCR succeeds in convincing the Egyptian government to grant them leave to remain. Those who cross into Israel or Libya are at risk of arrest and detention followed by deportation to Egypt. According to RSD Watch:

“In August 2007, Israel returned 48 African refugees, asylum-seekers and other migrants to Egypt, and their whereabouts have been unknown since. Media reports indicate than as many as 20 may have been deported to Sudan. In May Human Rights Watch reported that at least 11 more registered Sudanese asylum-seekers had been deported”.

Such deportation may have been avoided had deportation orders been the prerogative of a judicial committee and not the executive branch of the Egyptian government.

Regularization of residence

I am unaware of any law that explicitly provides for general regularization of the illegal status of foreigners in Egypt. This being said, there are two tools that special categories of non-Egyptians can use in order to legitimate their stay in Egypt. First, asylum seekers can apply for refugee status at UNHCR and benefit from amnesty with respect to their illegal entry or overstay (Article 31 of the Refugee Convention). Second, Sudanese citizens who hold valid documents have had their status in Egypt regularized following the coming into force of the Four Freedoms Agreement between Egypt and Sudan. According to Article 17(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”. [Emphasis added]. The Four Freedoms Agreement came into force in September 2004 and granted citizens of Sudan the right to work in Egypt without a permit. The benefits enjoyed by citizens of Sudan in Egypt should, according to Article 17 of the Refugee Convention, extend to all refugees.

http://www.rsdwatch.org/index_files/Page6580.htm
and Sudan. Other than these two mechanisms, there is no recourse for a non-Egyptian to regularize his stay unless he is offered employment subject to the provisions of the Unified Labour Code and the other relevant laws and decrees.

**Conclusion**

The preceding sections demonstrated that several areas need improvement so that irregular migrants and refugees to have their rights respected. First, in order for Egypt to act in accordance with its international obligations, the government must give refugees and irregular migrants access to some social rights, chief among which are the rights to education and healthcare. Second, as explored earlier, the powers of the Minister of Interior give him absolute discretion over deportation orders and naturalization requests subject to minimal judicial control. It is therefore recommended that the powers of the Special Deportation Committee established under Article 26 of Law 89/1960 be extended to include cases of deportation of refugees and those who risk torture in their countries of origin. In the same vein, the powers of the Minister of Interior with regards to naturalization should be reduced and subjected to stronger judicial supervision.

**List of relevant Laws**

**Entry, exit, residence, and registration:** Law 89/1960 (as amended by Law 49/1968 and Law 99/1960); Law 74/1952.

**Citizenship and naturalization:** Law 26/1975 (as amended by Law 154/2004); Decree 12025/2004.


**Emigration:** Law 111/1983; Minister of Manpower and Emigration Decree 14/1984.