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# IRREGULAR MIGRATION INTO AND THROUGH SOUTHERN AND EASTERN MEDITERRANEAN COUNTRIES: LEGAL PERSPECTIVES

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**CARIM Analytic and Synthetic Notes 2009/01**

*Legal Module*

**Cooperation project on the social integration  
of immigrants, migration, and the movement  
of persons**

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**CARIM**  
**Euro-Mediterranean Consortium**  
**for Applied Research on International Migration**

**Analytic and Synthetic Notes – Irregular Migration Series**  
**Legal Module**

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**Irregular Migration into and through Southern and  
Eastern Mediterranean Countries: Legal Perspectives\***

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This publication is part of a series of papers on the theme of Irregular Migration written in the framework of the CARIM project and presented at a meeting organised by CARIM in Florence: "Irregular Migration into and through Southern and Eastern Mediterranean Countries" (6 - 8 July 2008).

These papers will also be discussed in another meeting between Policy Makers and Experts on the same topic (25 - 27 January 2009). The results of these discussions will be published separately. The entire set of papers on Irregular Migration are available at the following address: <http://www.carim.org/ql/IrregularMigration>.

\*Any opinions expressed in this paper are solely those of the authors and do not necessarily reflect the views of IOM. The report is a revised version of the paper presented at the researchers' workshop at the European University Institute in Florence on 7-8 July 2008 and the workshop involving policymakers on 26-27 January 2009, and takes account of the discussions at these workshops as well as the subsequent provision of more complete information in the finalization of individual country papers.

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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).

CARIM is composed of a coordinating unit established at the Robert Schuman Centre for Advanced Studies (RSCAS) of the European University Institute (EUI, Florence), and a network of scientific correspondents based in the 12 countries observed by CARIM: Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestine, Syria, Tunisia, Turkey and, since February 2007, also Libya and Mauritania. All are studied as origin, transit and immigration countries. External experts from the European Union and countries of the Region also contribute to CARIM activities.

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.

Results of the above activities are made available for public consultation through the website of the project: [www.carim.org](http://www.carim.org)

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## **Abstract**

This synthesis report aims to provide an overview of the national legal frameworks of 11 Southern and Eastern Mediterranean countries addressing irregular migration taking place to and from their territories. The countries under examination are Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Mauritania, Morocco, Syria, Tunisia, and Turkey. The unique position in the Occupied Palestinian Territories (OPT) is also analyzed. The irregular migration flows into and out of these countries are complex. Most of the countries in question are, to a certain degree, countries of origin, transit *and* destination. In some instances, irregular migration flows are intertwined with refugee movements, especially from Iraq and sub-Saharan Africa. The legal status of asylum seekers and refugees is far from transparent in a number of these countries and consequently they are often considered to be in an irregular situation. Their status is also bound up with the presence of a large number of Palestinian and Iraqi refugees, especially in Egypt, Jordan, Lebanon and Syria. The residence status of Palestinians in the OPT is also unstable. It is worthy to underline that a number of countries in the region have relatively complex and restrictive provisions regarding the access of foreign nationals to the labour market, with the result that migrants are at greater risk of irregularity.

## **Résumé**

Ce rapport de synthèse offre un aperçu des cadres législatifs nationaux pertinents en matière de migration irrégulière en vigueur dans 11 pays du Sud et de l'Est de la Méditerranée. Les pays analysés sont l'Algérie, l'Égypte, Israël, la Jordanie, le Liban, la Libye, la Mauritanie, le Maroc, la Syrie, la Tunisie et la Turquie.<sup>1</sup> La situation très spécifique des Territoires occupés palestiniens est également envisagée. Les flux migratoires au départ et à travers cette région sont complexes. La plupart de ces pays sont, à des degrés divers, à la fois des pays d'origine, de transit et de destination. Dans certains cas, les flux de migrations irrégulières sont mixtes, c'est-à-dire également composés de mouvements de réfugiés, principalement en provenance d'Irak et d'Afrique sub-saharienne. Dans les divers pays d'accueil, le statut légal de ces réfugiés est loin d'être transparent de telle sorte qu'ils sont souvent considérés comme des migrants en situation irrégulière. Leur situation est également influencée par la présence numériquement importante de réfugiés palestiniens et irakiens, principalement en Égypte, en Jordanie, au Liban et en Syrie. Le titre de séjour des Palestiniens dans les Territoires occupés est également précaire. Il faut par ailleurs souligner que la complexité et la sévérité des législations relatives à l'accès au marché du travail d'un certain nombre de pays couverts par le rapport concourent à l'accroissement des situations d'irrégularité.

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<sup>1</sup> Il faut noter qu'aucun rapport national n'a été transmis pour l'Algérie et la Libye.

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## 1. Introduction

This synthesis report aims to provide an overview of the national legal frameworks of 11 Southern and Eastern Mediterranean countries addressing irregular migration to and from their territories. The countries examined are Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Mauritania, Morocco, Syria, Tunisia, Turkey,<sup>2</sup> and the unique situation in the Occupied Palestinian Territories (OPT) is also analyzed. The irregular migratory flows into and out of these countries are complex. Most of the countries in question are, to a certain degree, countries of origin, transit *and* destination. In some instances, irregular migration flows are intertwined with refugee movements, especially from Iraq and sub-Saharan Africa. The legal status of asylum seekers and refugees is far from transparent in a number of these countries and consequently they are often considered to be in an irregular situation. Their status is bound up too with the presence of a large number of Palestinian and Iraqi refugees, especially in Egypt, Jordan, Lebanon and Syria. The residence status of Palestinians in the OPT is also unstable.

In this synthesis report, the international legal framework is of particular relevance in the protection of the rights of irregular migrants. All of these countries have ratified the core international human rights instruments.<sup>3</sup> Crucially, seven of the countries under examination have ratified the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (see Annex). Part III of this Convention is devoted to the protection of *all* migrant workers, including irregular or undocumented migrants, and Part VI focuses on cooperation among State parties to ensure that the international migration of workers and members of their families takes place in sound, equitable, humane and lawful conditions. In this context, Part VI of the Convention clearly identifies irregular migration as a negative phenomenon and obliges State parties to prevent and eliminate it, including the imposition of sanctions on those who facilitate the movement and employment of irregular migrants, such as human traffickers, smugglers, private recruitment agencies and employers. In this regard, the two Protocols supplementing the 2000 United Nations Convention against Transnational Organized Crime outlawing trafficking in persons and smuggling in migrants are also pertinent and have been ratified by the majority of countries in the region (see Annex). However, it should be remembered that ratification is only a first step and that effective implementation is the key to the realization of these standards in national law and administrative practice. Consequently, this report also attempts to assess the level of implementation in the countries under discussion.

This synthesis report is organized largely in accordance with the questions raised in the CARIM paper describing the thematic session. Information relating to the quantitative aspects of irregular migration flows can be found in the synthesis report on the demographic and economic module.<sup>4</sup> The report provides first an overview of the general legal frameworks governing entry into, transit, residence and exit from the territory in the countries covered largely on the basis of the information provided. Second it discusses the various categories of irregular migrants identified in the country papers. It distinguishes between clandestine entrants and those who enter under lawful conditions, but then stay in the country beyond the period permitted or take up employment without authorization. The special position of asylum seekers and refugees and their brushes with irregularity are also

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<sup>2</sup> At the time of writing the report, no information on the national legal framework addressing irregular migration in Libya was made available to the authors, although some information on Libya has been drawn from existing information on the CARIM website at <http://www.carim.org>. Meanwhile a national report on Libya on Irregular Migration has been published on the Carim website.

<sup>3</sup> The Occupied Palestinian Territories is not a state as Israel exercises *de facto* authority over the OPT and is thus responsible for the application of the international human rights law that it has accepted. See the Advisory Opinion of the International Court of Justice (ICJ) of 9 July 2004 on the “Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory” (available from the ICJ website at <http://www.icj-cij.org/docket/files/131/1671.pdf>) with reference to the application of international humanitarian law in the OPT.

<sup>4</sup> See the CARIM website at [www.carim.org](http://www.carim.org).

considered, as well as the situation of particularly vulnerable groups, such as children, female domestic workers and victims of trafficking. Third, the synthesis report examines the legal consequences of irregularity in the countries concerned in terms of the various sanctions that may be imposed on the different categories of irregular migrants as well as those who facilitate their unauthorized movement or employment. The national legal provisions or administrative practices allowing for the detention of irregular migrants as well as their expulsion/removal are also examined. Of particular interest is how these sanctions are applied in practice and whether the presence of any particular group of irregular migrants is in effect “tolerated” in the country. The fourth section of the report considers whether any of the countries in question have embarked on regularization or legalization programmes, either for all irregular migrants resident within the territory or for specific irregular migrant groups. The fifth section looks at the fundamental rights irregular migrants enjoy in the countries concerned, particularly the right to equal working conditions with regular migrants and nationals and social rights such as education for their children and health care. The access of particularly vulnerable groups to these rights, groups such as asylum seekers, children, domestic workers and victims of trafficking is of special interest. The sixth section in the report considers the various types of inter-state cooperation mechanisms applicable in the case of irregular migration. These may include legally binding commitments in the form of readmission agreements with neighbouring countries or countries further afield to take back their own nationals or third-country nationals on a reciprocal basis if there is evidence demonstrating that the latter have passed through the territory of the concerned party. However, inter-state cooperation may also comprise arrangements by which access to the labour market of the destination country is facilitated in return for improved cooperation on the prevention of irregular migration as well as the potential participation in regional integration regimes, such as the Arab Maghreb Union (*L’Union du Maghreb Arabe* – UMA) or the Community of Sahel-Saharan States (*Communauté des Etats sahélo-sahariens* – CEN-SAD), or neighbouring regional integration regimes which clearly have an impact on the development of national rules, such as the European Union (EU) in the case of Turkey or the Economic Community of West African States (ECOWAS) in the case of Mauritania which is a former ECOWAS member. The final section of the synthesis report offers some broad conclusions with regard to the state of national laws regarding irregular migration in the countries under examination with a particular focus on their conformity to the international standards to which the governments concerned have committed and the tension that exists between the principle of State sovereignty and the protection of individual rights. This tension is particularly acute in those national legal frameworks in the region that operate in a strict security context.

## **2. General Legal Frameworks Governing Entry into, Transit, Residence and Exit from the Territory**

The general legal frameworks governing entry into, transit, residence and exit from the territory of the countries examined in this synthesis report contain complex measures as indeed is the case in many other countries in the world. These complexities mean that foreigners not complying with the provisions are at risk of irregular status. In most cases, a visa is needed to enter, although in some countries special rules on visa-free entry apply to nationals from Arab countries or nationals from other parts of the Maghreb (e.g. Syria and Libya respectively), and in other countries it is possible for nationals of certain states to obtain a visa at the border (e.g. Turkey) and there is also considerable discretion to waive the visa requirement (e.g. Jordan). Registration with the authorities after entry is necessary in a number of cases and residence permits are normally required to reside lawfully on the territory of the country in question.<sup>5</sup> However, in most instances the right to work is further regulated

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<sup>5</sup> This section only provides examples of the general legal frameworks in seven countries: Egypt, Israel, Jordan, Lebanon, Libya, Syria and Turkey. More complete information is available from the papers and legislation on the CARIM website at <http://www.carim.org/>.



by the issue of work permits, which is discussed in more detail in Section 3.1 below. Breach of the rules relating to entry and residence (including overstaying) usually results in sanctions which can vary significantly. In some countries, entry is only permitted through official border posts, while in others sanctions are imposed not only for irregular entry, but also for irregular exit (see Section 4 below for a full discussion of sanctions related to irregular entry, residence, exit or unauthorized employment).

In **Lebanon** the entry of non-Lebanese nationals is only permitted through one of the official border posts with the necessary documentation – a transit visa is valid for 15 days. A visa can be valid for one or more stays, but the maximum period is six months. The authorities may issue residence permits for one year or for a longer period of three years. Irregular migration is not defined specifically in the law, but any person not following the rules on entry, transit and stay is considered irregular. For nationalities other than the Palestinians (see below), and notably for domestic workers, the Ministry of Labour is the competent authority for issuing residence permits. If the permit expires or the foreign national violates its conditions by working, this results in the loss of that individual's right to reside and s/he will be instructed to leave the country.

The legal regulations concerning entry into and exit from **Turkey** are found in the Passport Law No. 5682 of 1950 (as amended), which stipulates that all travellers require a valid passport or travel document whenever they leave or enter the country. Foreign nationals, as well as Turkish nationals, may enter and exit Turkey only through crossing points determined by the Council of Ministers upon a proposal of the Ministry of the Interior. A visa is needed for entry with some exceptions. For nationals of certain countries, it is possible to obtain visas (i.e. visa stickers) at border posts. Residence permits are regulated by the Law No. 5683 of 1998 on Residence and Travel of Foreign Nationals. Foreigners wishing to live in Turkey have to make an application to the local police authorities within three months of their arrival and, in any case, before taking up employment. However, this "ninety days" clause is subject to the visa period. If the visa expires before ninety days, the person is required to apply for a residence permit before the expiry of the visa. The maximum duration of residence permits is, in principle, five years and no visa is needed for persons with residence permits who left Turkey and wish to re-enter while their permit is still valid.

In **Jordan**, by virtue of the Law No. 24 of 1973 on Residence and Foreigners' Affairs, a foreign national can only be granted entry if s/he is in possession of a valid passport or travel document with an entry visa duly endorsed on this passport or travel document by a Jordanian diplomatic or consular representative. In some cases, the visa requirement is substituted by an entry permit. However, the Ministry of the Interior may exempt any foreign national from the requirement that s/he should obtain a visa or bear a passport on entering the Kingdom. Entry into the country should be via Jordanian borders and crossing points, but may occur elsewhere due to *force majeure*. A foreign national may not be employed in Jordan unless s/he has a permit to reside in the country, but here too the requirement may be waived in certain cases. A foreign national staying or wishing to stay in the country must obtain a residence permit and is required to leave the territory upon expiry of his or her residence permit unless it is renewed. The Minister may either grant or refuse an application for a residence permit or cancel a residence permit already granted and order departure from the Kingdom *without* specifying the reasons for the decision.

In **Egypt**, according to Law 89/1960, foreigners who wish to enter Egypt must have a valid travel document represented in a passport, or its equivalent, and a visa specifying the purpose of entry. Citizens of some countries are either exempt from obtaining tourist visas or are allowed to apply for them at any Egyptian point of entry. Law 89/1960 also recognizes three types of residence permits (special,<sup>6</sup> normal,<sup>7</sup> and temporary<sup>8</sup>). In addition to these categories, the Minister of Interior's Decree

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<sup>6</sup> Law 89/1960, Article 18. The special residence permit is granted to foreign nationals born in Egypt before the publication of Decree 74/1952 and who remained in Egypt until Law 89/1960 was passed; to foreign nationals who have lived in Egypt for over 20 consecutive years provided that they entered Egypt lawfully; and to foreign scientists, intellectuals,

8180/1996 enables investors and refugees to obtain residence permits for periods that range between three and five years. In practice, Geneva Convention refugees receive a residence permit for six months, which can be renewed. A special residence permit is renewed automatically upon request. Normal and temporary permits, however, can only be renewed if the Minister of the Interior agrees. It is also necessary to obtain authorization of the Egyptian authorities to exit the territory, which causes a serious problem for asylum seekers or refugees fleeing for Israel or Libya.

In **Israel**, the Entry into Israel Law (5712-1952) sets out five types of visas and residence permits which may be issued to non-Israeli citizens wishing to enter and reside in Israel. Criminal penalties are set out in case of irregular entry. Temporary restrictive measures have also been adopted in respect of Palestinians of a certain age (i.e. men over 35 or women over 25) resident in Judea, Samaria and the Gaza strip. Members of this group are unable to obtain a license or permit to reside in Israel for a period of more than six months unless they are reuniting with a lawfully resident partner or parent, obtaining medical care or taking up employment).<sup>9</sup>

In **Syria**, foreign nationals are subject to a visa obligation for entry and exit. Both irregular entry and exit are subject to imprisonment and administrative fines.<sup>10</sup> Special rules, however, apply to non-Syrian Arab nationals who do not need a visa to enter the country (although in October 2007 the visa requirement was reinstated for Iraqi refugees – see Section 3.2 below) and who can stay for a period of three months after which registration is necessary. In order to take up employment, however, they need to obtain special permission.

Law No. 6 of 1987 on the admission and residence of foreign nationals, as amended *inter alia* in 2007, stipulates that a visa is required from all foreigners entering **Libya**, with the exception of nationals of the five Arab Maghreb Union countries. An exit visa for all persons, including citizens, is also needed. On entry, foreigners are required to register with the Passport Bureau. As discussed in Section 3.4 below, it is possible, however, to enter Libya to seek employment without the need to obtain work authorization beforehand.<sup>11</sup> Imprisonment and fines are also foreseen for irregular entry and stay.

### 3. Categories of Irregular Migrants

Conceptually, the three principal categories of irregular migrants identified in the region are migrant workers, refugees and asylum seekers, and transit migrants. However, the legal notion of an irregular migrant is often much broader because irregular status is defined by national law, a position confirmed by the ICRMW which defines an irregular or undocumented migrant essentially with reference to national law: “migrant workers and members of their families are considered as documented or in a regular situation if they are authorized to enter, to stay and to engage in a remunerated activity in the State of employment *pursuant to the law of that State* and to international agreements to which that State is a party”.<sup>12</sup> The legal categories of irregular migrants identified in the country reports include migrant workers and asylum seekers and refugees, but they also encompass victims of trafficking, the

(Contd.) \_\_\_\_\_

artists and business persons who have benefited the national economy or provided scientific, cultural or artistic services to Egypt.

<sup>7</sup> Ibid. Article 19. The normal residence permit is issued to foreign nationals who lived in Egypt for over 15 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 lawfully.

<sup>8</sup> Ibid. Article 20. The temporary residence permit is granted to all other foreign nationals.

<sup>9</sup> See the Citizenship and Entry into Israel Law (temporary provision) 5763-2003.

<sup>10</sup> Legislative Decree No. 29 of 15 January 1970 on the Entry and Exit of Aliens to and from the Syrian Arab Republic and their Residence therein.

<sup>11</sup> See D. PERRIN, “Aspects juridiques de la migration circulaire dans l’espace Euro-Méditerranéen. Le cas de la Libye”, *CARIM Analytical and Synthetic Notes (ASN)* 2008/23, [http://www.eui.eu/RSCAS/e-texts/CARIM\\_AS&N\\_2008\\_23.pdf](http://www.eui.eu/RSCAS/e-texts/CARIM_AS&N_2008_23.pdf).

<sup>12</sup> ICRMW, Article 5(a). Emphasis added.

specific situation of Palestinians resident in the Occupied Palestinian Territories and those living in Jerusalem, and, in some instances, family members and children. A specific legal conception of transit migrants is not evident in the countries of this region,<sup>13</sup> although irregular migrant workers may comprise both those who have “chosen” the country concerned as their destination or who may be in a situation of “protracted transit” to other destinations (i.e. Europe). It should also be underlined that some of the categories of “irregular migrants” identified in the individual country papers would not necessarily be viewed as “irregular” in other regional contexts, such as asylum seekers and those granted refugee status, Palestinian refugees and Palestinians resident in the Occupied Palestinian Territories and Jerusalem. However, the precarious status of these groups places persons belonging to them in a situation that is akin to irregular migration. Another frequently overlooked category of irregular migrants, which is only discussed in the paper on **Turkey**, concerns foreign students who work while studying, but without registering this work activity. These students appear to be *de facto* tolerated by the Turkish authorities but, *de jure*, they are working without authorization. Clearly, more research on the specific position of foreign students in the countries in question and their rights to employment while studying would be of value given that this is a group whose work and residence is often bound up with irregularity.

### 3.1 Migrant Workers

Specific legislation applicable to labour migration is in place in most countries in the region<sup>14</sup> and in some countries specialized legislation regarding certain groups of migrant workers has been adopted.<sup>15</sup> In this context, it is worth recalling the definition of migrant worker in the ICRMW, namely “a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national”.<sup>16</sup> From a legal point of view, this short but broadly applicable definition is important because it covers the whole migration process and underlines that legal liability in respect of migrant workers may be applicable to persons still in the country of origin and planning to migrate for employment as well as those who have returned. In this respect, migrants who have returned to their own country but who may have claims for unpaid wages for unauthorized work performed in the destination country remain “migrant workers” for the purpose of the ICRMW. This section contains an overview of the legal provisions relating to migrant workers in a number of countries in the region that appear to be most affected by irregular labour migration. It would appear that the complexity and strictness of some of these rules may well constitute contributory factors to irregularity. The following general features of procedures governing lawful access for foreigners to the labour market can be identified in the countries concerned: the need to possess a work permit even for recognized refugees (Egypt and most other countries); a requirement that potential migrant workers apply for a work permit before arrival (e.g. Turkey), although in some countries it is possible to apply after arrival (e.g. Libya); the existence of a labour market test (e.g. Egypt); the need for the work permit application to be made by the employer (e.g. Jordan); a reciprocity condition for the employment of foreign nationals (e.g. Egypt); restrictions on

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<sup>13</sup> There is no definition of “transit migrant” in the ICRMW either, although Article 6(c) defines a “State of transit” as “any State through which the person concerned passes on any journey to the State of employment or from the State of employment to the State of origin or the State of habitual residence”.

<sup>14</sup> All the countries concerned possess a Labour Code, with the exception of Israel, and a number of countries have specific legislation relating to the employment of foreigners. In Egypt, Morocco and Tunisia, there are specific chapters in the Labour Code devoted to the question of the work of foreigners.

<sup>15</sup> See also Section 6.3 below.

<sup>16</sup> ICRMW, Article 2(1). The definition of migrant worker in Article 11(1) of ILO Convention No. 97 (1949) is narrower: “a person who migrates from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant for employment”. A broader definition encompassing “past” employment and residence is provided for in Article 11(1) of ILO Convention No. 143 (1975): “a person who migrates or who has migrated from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant worker”.

foreigners' access to certain liberal professions or positions deemed to be connected with national security or defence (e.g. Egypt, Jordan, Libya, Turkey); a threshold on the number of foreigners as a percentage of a company's workforce who can be employed in the private sector (e.g. Egypt, Syria); and the imposition of fees on employers who wish to hire foreign workers (e.g. Egypt).

Under **Turkish** law, a foreign national wishing to work in Turkey must follow a three-stage procedure: (1) apply for a "work permit" through Turkish consulates abroad; (2) receive an "employment visa" from the Turkish consulate concerned; and (3) upon arrival in Turkey obtain a "residence permit" for employment purposes from the police authorities. However, it is not possible to obtain authorization to work in certain professions, which are subject to the nationality condition (see also the discussion below regarding the rules in Egypt and Jordan). In some cases, migrants travel to Turkey on tourist visas for a short-term visit, but then during that visit, which may last for several months, they work in Turkey without a valid work permit. This is the classic irregular migration category of "overstayers". Typically, irregular migrant workers are employed in domestic services as cleaners, housekeepers and caretakers. These groups of migrants usually find themselves on the margins of society because they are hired privately and their contact with members of the host society is consequently rather limited. These groups can also be found in most destination countries because they fill essential vacancies, i.e. the types of jobs that nationals no longer wish to do or are interested in doing.

According to **Egypt's** most recent Unified Labour Code (Law 12/2003), foreign nationals can only work in Egypt on the basis of reciprocity. In order to be employed in the country, they have to enter Egypt for the purpose of employment and obtain residence and work permits. According to the Government's 2007 initial report to the United Nations Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, 19,562 foreign nationals obtained work permits in Egypt in 2006.<sup>17</sup> This number is significantly lower than the estimated total number of foreign nationals in Egypt. For example, it is estimated that there were over 100,000 Iraqi residents in the country, less than 20 per cent of whom are recognized refugees; not to mention the thousands of failed asylum seekers of other nationalities. Given this context, it can be feasibly argued that all persons not holding a valid work permit are considered irregular migrant workers.<sup>18</sup> There are also additional obstacles to the employment of foreign nationals in Egypt.<sup>19</sup> For example, HIV-positive foreign nationals cannot be employed and are to be deported to their countries of origin within 72 hours of the notification of their infection (see also Section 6.2.1 below). Law 159/1981 on Companies stipulates that foreign nationals should not account for more than 10 per cent of a company's workforce and that their aggregate salaries should not exceed 20 per cent of the total payroll. Moreover, foreign nationals cannot obtain a work permit if they are considered to be in competition with Egyptian nationals. Non-Egyptians cannot practice liberal professions in Egypt, although there are exceptions *inter alia* for those considered experts in fields where local expertise is lacking (e.g. certain areas of medicine) or for nationals of certain countries regarding the practice of law. Employers wishing to hire foreign nationals must also pay employment fees amounting to LE 1,000.<sup>20</sup>

As is common in some other countries of the region, **Jordan** applies strict rules to the admission of non-nationals for the purpose of employment. Certain categories of employment involving the exercise of public functions or occupations connected with security or defense are reserved for Jordanian nationals. This is permissible under international human rights law, which reserves political

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<sup>17</sup> For a copy of Egypt's report, see the Migrant Workers Committee's web site at <http://www2.ohchr.org/english/bodies/cmw/>.

<sup>18</sup> The ICRMW excludes refugees and stateless persons from the scope of its application "unless such application is provided for in the relevant national legislation of, or international instruments in force for, the State Party concerned" (Article 3(d)).

<sup>19</sup> These limitations are 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.

<sup>20</sup> Employers of Greek, Italian, Palestinian and Sudanese citizens are exempted from this obligation.

rights, including access to public service, to citizens,<sup>21</sup> and similar measures are also in place in regions where the free movement of workers is guaranteed, for example in the European Union where certain jobs in public service can legitimately be limited to nationals.<sup>22</sup> In Jordan, the same is true for the so-called “free professions”: lawyers, doctors, dentists, etc. The employment of non-Jordanians is governed by the labour law according to which any recruitment of non-Jordanians requires the approval of the Ministry of Labour. This approval depends on a lack of relevant experience and ability among Jordanian workers, i.e. a demand-driven acceptance of certain categories of migrant workers. The employer of a non-Jordanian worker must also obtain a one-year renewable work permit from the Ministry of Labour prior to that worker’s recruitment.

A special situation exists **in Jordan** in respect of Iraqi nationals, a traditionally large group. In 2005, Jordan introduced restrictions on the entry and stay of Iraqis, and, since that time, the Jordanian authorities have turned away more Iraqis at the border and have issued visas that are only valid for a period of two or three days. The Jordanian authorities grant one-year renewable residence permits to Iraqi students, employees and investors; but renewal of such permits for Iraqis has become far more difficult. These new restrictive measures have resulted in an increase in the number of Iraqi nationals who reside or work irregularly in Jordan. As observed in Section 3.2 below, restrictions on the entry and stay of Iraqi nationals have also been introduced in **Syria**, and include the requirement to possess a visa for entry to the territory, which is not in place for nationals of other Arab countries.

Domestic workers constitute a large part of the foreign labour force in **Jordan**. Many are in a regular situation according to Jordanian law, but, until legislative amendments in July 2008, Jordanian labour and social security laws did not take foreign domestic workers into account. As a result of this precarious status as well as recruitment procedures, the rights of regular domestic workers are often violated in the same way as the rights of irregular foreign workers. For example, the simple claim by their employers that they are engaged in “immoral practices” or that they have committed crimes such as theft is a sufficient for an expulsion order. This is a reminder of the exclusive power that the employer holds over a domestic worker who may be isolated from the world outside her work environment. The terms and work conditions are governed by a two-year contract between the domestic worker and their employers. The employers pay the residence and work permit fees to the authorities in addition to the fees required by the private employment agencies through which foreign domestic workers are employed. In order for these contracts to take legal effect, they need to be endorsed by the Ministry of Labour. The approval of the embassy of a worker’s country of origin is also required for the endorsement of the contract. Currently, only workers from the Philippines may come to work without the permission of their embassy in Jordan. For Sri Lankan and Indonesian workers, this permission remains mandatory and the two countries in question retain the right to prevent their citizens from leaving the country without embassy endorsement. These programmes are aimed at preventing violations of the workers’ rights and are often accompanied by pre-departure training programmes in the country of origin. The Jordanian authorities are still studying new instructions governing the recruitment of domestic workers. Under the new regulations, it is expected that the Minister would be able to revoke the license of recruitment agencies that commit human rights violations. Employers who keep clean records would qualify for incentives, such as an exemption from the notary guarantee.

In **Algeria**, the restrictiveness of the conditions for issuing work permits in Decree No. 03-25 of 19 July 2003<sup>23</sup> means that at least 20,000 migrants from Mali and Niger working in jobs that nationals are not interested in performing (i.e. agriculture, domestic work and care of the elderly) in the southern part of the country are in an irregular status and therefore unable to regularize their situation. The

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<sup>21</sup> See e.g. International Covenant on Civil and Political Rights (ICCPR), Article 25.

<sup>22</sup> See Article 39(4) of the EC Treaty.

<sup>23</sup> Presidential Decree No. 03-251 of 19 July 2003 setting out the conditions and procedures for granting visas to foreigners wishing to travel to Algeria.

reluctance to treat this particular group of migrant workers more favourably is partly the result of the security situation in that part of the country where threats of terrorism, organized crime and high levels of general criminality are prevalent.

Finally, foreigners who wish to work in **Libya** normally need to possess an employment and health card in order to be issued with a work authorization in accordance with Order No. 238 of 1989 on the conditions of employment for foreign nationals in Libya. But foreigners can also enter Libya without a work contract for a period of up to three months to seek employment. In this regard, Government Decision No. 98 of 2007 on the regulations and mechanisms organizing the work and residence of foreigners enables them to be provided with a residence permit stating that they are looking for work (*carte rouge*). However, the hiring of migrant workers is subject to a labour market test (i.e. priority in employment is accorded to Libyan and Arab nationals) and has to be approved by the Central Employment Bureau. Moreover, it should be in accordance with a list of positions authorized for non-Libyans, and, as in the case of Egypt, foreign nationals cannot be issued a work contract and health card if the medical examination reveals they are HIV-positive.<sup>24</sup>

In conclusion, it is evident that a number of countries in the region have relatively complex and restrictive provisions regarding the access of foreign nationals to the labour market, with the result that migrants are at greater risk of irregularity. Algeria and Syria would seem to be the most “protectionist” in this respect, although in both countries there are specific groups of irregular migrant workers who are essentially tolerated by the authorities. A number of labour market mechanisms are also in place to protect national workers, such as the requirement that work permits are issued before arrival, labour market or resident worker tests and specific national safeguards for the liberal professions. An exception is Libya, where it is possible to enter the country to seek employment, although even here, as noted in Section 2 above, the rules have been tightened considerably in recent years with the requirement of entry (and exit) visas from foreigners with the exception of nationals of the other Maghreb countries. Consequently, such measures are likely to increase the incidences of irregularity among migrants from countries in sub-Saharan Africa in particular.

### 3.2 Asylum Seekers and Refugees

In countries of this region, there are large groups of foreign nationals present on their territories who are asylum seekers or refugees, including, as noted below, Palestinian refugees. But the legal recognition of their situation is lacking in many instances with the result that their position is in practice bound up with irregularity. This situation persists despite ratification by nine countries of either one or both of the main international or regional instruments applicable to the protection of this group of persons and that non-refoulement is also a recognized principle of customary international law, which has to be respected in all the countries concerned, including those that have not acceded to these two instruments. Eight countries in the region (see Annex) have ratified the 1951 Geneva Convention Relating to the Status of Refugees and the 1967 Protocol, which in Article 1(A)(2) defines “refugee” as any person who

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.

While this list of countries does not include Jordan and Lebanon, UNHCR is mandated to grant refugee status in accordance with Memoranda of Understanding (MoUs) concluded with the governments of the two countries. Moreover, all the African countries in this region (i.e. Algeria,

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<sup>24</sup> See PERRIN, n. 10 above, at p. 4.

Egypt, Libya, Morocco, Mauritania and Tunisia) have ratified the 1969 OAU<sup>25</sup> Convention Governing the Specific Aspects of Refugee Problems in Africa, which includes the above individualized definition of “refugee” but also extends protection *inter alia* to persons fleeing armed conflict and serious disturbances to public order.<sup>26</sup> These instruments oblige States parties to protect refugees from refoulement to countries where their life or freedom may be threatened and, with regard to the Geneva Convention in particular, to afford them a range of economic and social rights. Moreover, asylum seekers<sup>27</sup> have, or ought to have, a special status as foreign nationals at least until their status as refugees has been determined, and, if this determination process results in the granting of refugee status, protection should be afforded accordingly.

In addition to the two instruments cited above, general international human rights law may also afford protection to foreigners from non-refoulement if they are able to demonstrate a real risk of torture, inhuman or degrading treatment or punishment in the country to which they are being returned.<sup>28</sup> The region is also characterized by a large population of *de facto* refugees, namely groups of persons who may not qualify for formal legal protection under the international or regional instruments discussed above, but who nonetheless benefit from non-refoulement (e.g. non-European refugees in Turkey and Iraqi refugees in Jordan and Syria). The refugee situation is complicated by the fact that the very large group of Palestinian refugees present in this region are subject to the mandate of a separate UN agency, the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNWRA).<sup>29</sup> Finally, there may also be specific national measures providing for political asylum (e.g. Egypt).

As the **Israel** paper observes, the most important group of “unwanted” or “undesirables” is that of asylum seekers whose numbers have been continuously on the rise since approximately 2000. A small number of these asylum seekers are recognized as refugees who are fleeing several African regions. Others resort to the asylum avenue given the tight controls on the admission of migrant workers; their motivation being for the most part economic, which is however also connected to a desire to leave countries in which there are politically unstable regimes.

The asylum process in Israel is currently very slow, and, during the application period (which can last for up to two years), asylum seekers enjoy an ambiguous status. Given that many cross the border on foot, they are assigned the distinct and disadvantageous status of “infiltrators” (see Section 4 below). Some are detained; some work in agricultural villages and others make a living in the capital, Tel-Aviv. Occasionally, they are issued an unqualified work permit, at other times a conditional permit (e.g. for a specific employer or for a particular region of the country), and sometimes they are denied the right to take up employment altogether. There are also instances of granting collective permission for their residence that is not the same as granting asylum status. Hence, during this

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<sup>25</sup> Organisation of African Unity, superseded by the establishment of the African Union (AU) in 1999.

<sup>26</sup> See Article 1(2): “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 [or her] country of origin or nationality, is compelled to leave his [or her] place of habitual residence in order to seek refuge in another place outside his [or her] country of origin or nationality”.

<sup>27</sup> There is no definition of “asylum-seeker” in these instruments, but the following definition may be advanced: “A person who seeks safety from persecution or serious harm in a country other than his/her own and awaits a decision on the application for refugee status under relevant international and national instruments”. See the migration terminology section in IOM, *World Migration 2008: Managing Labour Mobility in the Evolving Global Economy* (Geneva: IOM, 2008) at p. 491.

<sup>28</sup> Convention against Torture (CAT), Article 3 and ICCPR, Article 7. This principle has been incorporated into Moroccan law. See also K. ELMADMAD, “La nouvelle loi marocaine du 11 novembre 2003 relative à l’entrée et au séjour des étrangers au Maroc, et à l’émigration et l’immigration irrégulières”, *CARIM ASN 2004/01*, [http://www.eui.eu/RSCAS/e-texts/CARIM-ASN04\\_01-Elmadmad.pdf](http://www.eui.eu/RSCAS/e-texts/CARIM-ASN04_01-Elmadmad.pdf).

<sup>29</sup> See the UNWRA web site at <http://www.un.org/unrwa/>, which provides comprehensive information on this refugee population.

lengthy waiting-period, asylum seekers are treated as “irregulars”, ranging from a status akin to that of “illegal presence” to a status similar to that of lawfully resident migrant workers.

**Turkey** recognizes the right to seek asylum as envisaged by Article 14 of the Universal Declaration of Human Rights (UDHR)<sup>30</sup> and is a party to the 1951 Geneva Convention Relating to the Status of Refugees and the 1967 Protocol (see Annex). Yet, Turkey maintains a geographical limitation reservation under which “it applies the Convention only to persons who have become refugees as a result of events occurring in Europe”. This means that Turkey’s Geneva Convention obligations are only towards persons uprooted by events in Europe and refugees from non-European countries are not recognized *de jure*. However, persons belonging to this group are granted a *de facto* status of asylum seekers and are provided with international protection. Consequently, the rights arising from the Geneva Convention and the non-refoulement principle are applied *de facto* to asylum seekers. Interestingly, persons who apply for asylum are required to live in Turkish cities specified by the Ministry of Interior. In line with international legal standards, irregular entry is *not* penalized in the case of asylum.<sup>31</sup> Moreover, it is observed that some asylum seekers who enter Turkey without authorization never register and attempt to leave Turkey again without authorization, while others make an application only after they are apprehended by the police.

In **Lebanon**, refugee status is granted by UNHCR and if this status is not granted the foreign national falls into an irregular situation if she or he remains. Due to the mass influx of Iraqi nationals, a result of the difficult situation in that country, in 2007 UNHCR granted collective refugee status to all Iraqi nationals from central and southern Iraq. Notwithstanding this, however, the Lebanese Government continues to consider these persons as irregular. Another special situation concerns Palestinian refugees in Lebanon. Around 500,000 Palestinians live in camps or other temporary shelters. In principle, they are registered with UNWRA and the Lebanese authorities: though some 35,000 are registered only with the Lebanese Government and are called “the non-registered”. A minority of approximately between 3,000 and 5,000 is not recognized by any body and is without documents, being viewed as irregular by the Lebanese Government. The majority of persons in this group arrived in Lebanon (or their parents did) before 1990 from Jordan, Egypt or Syria and not from Palestine in 1948. Some have documents from these former countries, which, however, refuse to renew or issue a return visa. They are *de facto* residents in Lebanon, but in an irregular situation.

A Memorandum of Understanding (MoU) between **Egypt** and UNHCR, as well as the reservations Egypt has made to the Geneva Refugee Convention reflect both the temporary nature of asylum in Egypt and the fact that humanitarian assistance depends on the limits of national resources. As noted in Section 2 above, three types of residence permits are recognized in Egypt (special, normal, and temporary) and, in addition, investors and refugees can obtain residence permits for periods that range between three and five years. In practice, Geneva Convention refugees receive a residence permit for six months, which can be renewed. There are different refugee categories in Egypt. On the one hand, Egypt recognizes refugees pursuant to the Geneva Refugee Convention Relating to the Status of Refugees and the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. Such refugees are granted asylum by UNHCR pursuant to the above-mentioned MoU. On the other hand, Egypt also has its own domestic asylum mechanism established under Article 53 of the Egyptian Constitution. Finally, a third category of refugees is granted residence on humanitarian grounds (e.g. Palestinians). Each category of refugees is bound by different rules with regard to employment, education, and naturalization. Failed asylum seekers, however, are technically considered irregular migrants unless their status is regularized. Refugees and failed asylum seekers are subject to the same restrictions applicable to other foreign nationals in the country, namely, their right to work is contingent on three criteria: (i) reciprocity, (ii) possession of a valid residence permit, and (iii)

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<sup>30</sup> The UDHR, as a declaration, is a non-binding instrument, though many of its provisions are now recognized as having binding force as principles of customary international law.

<sup>31</sup> Geneva Convention Relating to the Status of Refugees, Article 31.



possession of a valid work permit. This entails confusion for refugees recognized under the Geneva Convention Relating to the Status of Refugees. According to Article 17 of the Geneva Convention, refugees should be permitted to work in accordance with the most favourable treatment afforded foreign nationals, or if they have completed three years of residence in their country of asylum. Given that Egypt made no reservations to Article 17 of the Geneva Convention, refugees should technically be allowed to work in Egypt without a work permit.<sup>32</sup> Nonetheless, the Government maintains that refugees are “foreigners” and are subject to the requirements which other non-Egyptians must fulfill under the Unified Labour Code. According to the national rapporteur, such a position is legally ill-founded given that the Geneva Convention explicitly singles out refugees for privileged treatment insofar as access to employment is concerned. Accordingly, for a prohibition 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 lawfully residing in Egypt, but are working without authorization.

The lack of sustainable employment prospects, together with the absence of educational opportunities in Egypt, drives refugees to flee Egypt for neighbouring States in an attempt to find better socio-economic conditions. Short of any legal recourse other than a very restrictive resettlement programme, refugees and asylum seekers often find themselves compelled to leave Egypt for Israel or Libya. Given that unauthorized exit is penalized by law (see Section 4.1.1 below), those who fail to cross the border are arrested, detained, and then deported to their country of origin unless UNHCR succeeds in convincing the Egyptian authorities that they should be granted leave to remain. Those who cross into Israel or Libya are at the risk of arrest and detention followed by deportation to Egypt.

In **Jordan**, there is a MoU between the Government and UNHCR. According to this MoU, Jordan cannot request a refugee seeking asylum in Jordan to return to a country where his or her life or freedom could be threatened on account of race, religion, nationality, membership of a particular social group or political opinion (i.e. the same grounds of persecution as listed in the 1951 Geneva Convention). The MoU provides that the sojourn of UNHCR recognized refugees should not exceed six months, but Jordan has demonstrated flexibility in applying this provision because recognized refugees sometimes remain in the country for a long period of time without being resettled. Any time limit would, in any case, violate international obligations. While Jordan is not a party to the 1951 Geneva Convention or its 1967 Protocol, it is nevertheless bound by customary international law not to return refugees and asylum seekers to a place where their lives or liberties would be threatened. According to the MoU, Jordan agrees to admit asylum seekers, including undocumented entrants and to respect UNHCR refugee determination. In fact, the overwhelming majority of Iraqis residing in Jordan are not recognized as such by UNHCR, though they are offered the possibility of registering with the UN Refugee Agency. Iraqis who do so are issued asylum-seeker cards, but the Jordanian authorities give no weight to these documents for the purpose of residence. Instead, the authorities notify UNHCR in the case of the arrest or deportation of an asylum-seeker card-holder, and provide the Agency with access to the person to conduct refugee status determination. Jordan has always pledged to uphold its non-refoulement obligation and therefore Iraqis who are considered to be at risk of serious human rights violations in Iraq should not be forcibly returned from Jordan. Nevertheless, Jordan deports Iraqi nationals who have overstayed their visas whether registered with UNHCR or not, and, as observed above, it also increasingly refusing entry to Iraqi nationals at the border without giving them any opportunity to make asylum claims.

In **Jordan**, around 150,000 ex-residents of the Gaza Strip do not qualify for citizenship, and most of them are only given renewable two-year Jordanian passports, valid for the purpose of identification and for travel to the few countries which accept this document. The Jordanian passports Gazans hold are, in

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<sup>32</sup> Article 17(1) of the Geneva Convention reads: “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.

fact, no more than residence permit cards, and, therefore, they do not include a national identity number, which is ordinarily given to Jordanians by the Civil Status and Passport Department (CPSD).<sup>33</sup> They do not entitle their holders to the rights normally given to Jordanian citizens, such as the right to health care, education in public schools and universities, access to employment in the public sector, access to the “free professions” (e.g. doctors, lawyers, dentists, etc.) and other rights reserved exclusively for Jordanian citizens. Moreover, Jordanian women married to Gazans, as is also the case with any Jordanian woman married to a non-citizen, do not have the right to transmit their citizenship to their children. The Gazans reside in various parts of the Kingdom, but a considerable number of them live in camps run by UNRWA, and particularly in Jarash (also called “Gaza camp”) and the Hittin refugee camp. The Occupied West Bank residents are foreign nationals and, as such, have no right of entry into Jordan. From time to time, Jordan makes it more difficult for Palestinians, who were for decades granted free access to Jordan, to enter from the West Bank or to stay in the country.

In **Syria**, Palestinians have a special refugee status and those who do not enjoy this status are subject to the rules applying to other Arab migrants (see above). However, Iraqi refugees, unlike other Arab migrants, now need a visa to enter the country. It should be noted that the majority of Iraqis residing in Syria in an irregular manner do so because their visas have expired and they are tolerated by the Syrian authorities for humanitarian reasons. In **Mauritania**, depending on the situation they are fleeing, not all refugees are recognized *de jure*, but nonetheless benefit from *de facto* protection.

### 3.3 Victims of Trafficking

An interesting point about trafficking is that the victim is very often subject to a crime which should be punished by criminal law and not a human rights “crime”, which is traditionally understood as a violation that is committed by the state. But trafficking has nonetheless been accepted into the human rights regime.<sup>34</sup> The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, known as the Palermo Protocol,<sup>35</sup> supplementing the UN Convention against Transnational Organized Crime,<sup>36</sup> contains the most comprehensive legal definition of “human trafficking” under international law. Importantly, the Protocol is not a human rights instrument, but an instrument in the fight against international organized crime. It is, however, also of relevance for the protection of victims and thus for the respect of their human rights. The Protocol establishes that the crime of trafficking must be included in and be punishable under national law and foresees various measures for the protection of victims. Given that it was adopted in 2000, the Protocol is a relatively new instrument and this means that provisions on trafficking in national law are often rather recent.

An important distinction should be made between *smuggling* and *trafficking*. “Smuggling of migrants means “the procurement, in order to obtain, directly or indirectly, a *financial* or other *material benefit*, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident”,<sup>37</sup> whereas trafficking means: “the *recruitment*, transportation, transfer, harbouring or receipt of persons, *by means of* threat, use of force or other means of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the receiving or giving of payment... to a person having control over another person, *for the purpose of*

<sup>33</sup> See *Jordan Times*, 21 July 1999 and *Al-Sijil*, weekly newspaper, 7 August 2008.

<sup>34</sup> For a detailed discussion on this aspect of trafficking, see R. Piotrowicz, “Trafficking of Human Beings and Their Human Rights” in R. CHOLEWINSKI, R. PERRUCHOUD and E. MACDONALD (eds), *International Migration Law: Developing Paradigms and Key Challenges* (The Hague: Asser Press, 2007). On the human rights obligations of non-state actors, see A. CLAPHAM, *Human Rights Obligations of Non-State Actors* (Oxford: Oxford University Press, 2006).

<sup>35</sup> There were 127 States parties as of 24 March 2009.

<sup>36</sup> There were 147 States parties as of 24 March 2009.

<sup>37</sup> Protocol against the Smuggling of Migrants by Land, Sea and Air, Article 3. Emphasis added. The Smuggling Protocol has been ratified by 119 States parties as of 24 March 2009.

*exploitation*".<sup>38</sup> While eight and seven countries respectively in this region have ratified the Trafficking and Smuggling Protocols, the proper implementation of these two instruments in national law and practice remains to be completed. For example, there is still no formal distinction between trafficking and smuggling in **Algerian** law. This section discusses those country reports where information on trafficking and smuggling was provided and the state of national implementation of the two Protocols with a particular reference to the protection of victims of trafficking.

Until 2002, there was no direct reference to people smuggling and trafficking in the **Turkish** Criminal Code. However, in line with the EU *acquis communautaire* on asylum and immigration, a brand new Criminal Code was adopted in 2005 replacing the previous version. Article 79 of the Code, entitled "migrant smuggling", stipulates penalties of three to eight years imprisonment and significant monetary fines for migrant smugglers. If the crime is committed by members of an organization, the penalty to be imposed is increased by a half. Due to its unique geographical position, Turkey is a transit country between east and west with regard to human smuggling, but a destination country with regard to human trafficking. Victims of human trafficking originate mainly from the former Soviet republics and mostly suffer from sexual exploitation in Turkey. Humanitarian visas and short-term residence permits are issued to victims in order to enable them to stay lawfully in Turkey during their rehabilitation period and they also receive free medical treatment (see also Sections 5 and 6 below).

In **Israel**, trafficking operates on the margins of the labour market where women are trafficked and abused by the sex industry. While formally they are classified as having an "illegal presence", their situation may be treated with more empathy because of the coercive and abusive way that they were recruited. On the other hand, the perception that some may have entered or "infiltrated" (see Section 4 below), while being aware of the implications of their entry, coupled with the moral prejudice against their so-called "occupation", leads to a countervailing view that they are "corrupt". The difference between their status and that of irregular migrant workers is that there are special provisions for assisting them in the legal process against traffickers, as well as a one-year period of rehabilitation after they have been identified. Thus, their irregular status is, to a certain extent, mitigated by partial state-sponsored measures to aid them.

The law in **Mauritania** is criticized in the country paper for not being in conformity with the standards of the Palermo Protocol on certain important points: The definition does not include "slavery", it does not incriminate complicity or attempts to practice trafficking, and there is a lack of protection for victims and witnesses. Further, the law does not provide for a national action plan or structure to counter the phenomenon.

In **Jordan**, a number of foreign domestic workers and foreign workers in Qualified Industrial Zones (QIZs) are subject to forced labour conditions; which might be described as tantamount to human trafficking. These conditions include the non-payment of wages, unlawful withholding or impounding of passports – an unlawful act under Article 18 of the provisional Passports Law (Law No. 5 of 2003) – and physical or sexual abuse. Due to the highly secretive nature of human trafficking and smuggling, it is difficult to quantify the size and nature of this international and organized phenomenon in Jordan. Nevertheless, it seems that the country is witnessing a growing traffic in young women from eastern Europe and Morocco.<sup>39</sup> Jordan is also a destination and transit country for persons trafficked for the purpose of forced labour from South and Southeast Asia. Foreign female workers often enter Jordan with tourist visas, but ultimately find themselves working in sweatshops, nightclubs and bars, and are sometimes forced into prostitution. Jordan has not yet become party to the Trafficking Protocol. However, in order to comply with the minimum standards for the elimination of trafficking in persons provided in the Protocol, Jordanian authorities are considering incorporating the

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<sup>38</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Article 3. Emphasis added.

<sup>39</sup> Communication of the author of the country paper with government officials who estimate that about 12,000 Ukrainian women have entered the country since the beginning of 2008.

Protocol's anti-trafficking provisions into Jordanian law. This new law would criminalize and punish all forms of trafficking set forth in Article 3 of the Trafficking Protocol. It would further provide appropriate shelter for victims of trafficking in accordance with Article 6 of the Protocol. The proposed definition of trafficking in persons in the planned law is identical to that given in Article 3 of the Protocol. It is unfortunate, however, that this draft law does not include measures that would permit victims of trafficking to remain on Jordanian territory, temporarily or permanently, as is required in Article 7 of the Protocol. The fact remains that victims of trafficking are considered irregular migrants because of their unauthorized entry and residence, and can therefore be detained and deported. Consequently, some victims of trafficking can be held responsible and punished for acts committed as a result of their being trafficked.<sup>40</sup> Finally, the country paper notes that there is a need to expand the jurisdiction of labour inspectors in order to enable them to scrutinize violations by recruitment agencies and to reduce the dangers of exposing migrant workers to human trafficking.

### 3.4 The Unique Position of Palestinians residing in the Occupied Palestinian Territories and the Situation of Jerusalemites

A unique situation exists in the **Occupied Palestinian Territories (OPT)**. There is no such status as a Palestinian citizen because there is no proper Palestinian State. Most of Palestinians, therefore, including the residents of the West Bank and the Gaza Strip (WBGs), are stateless. The Palestinian Authority (PA) is not a sovereign entity and the "Autonomous Territories" (AT), falling under its jurisdiction,<sup>41</sup> did not change their legal status as part of the OPT. Importantly, this means that there is no clear-cut separation line between the different legal statuses: "citizen" or "resident" versus "foreigner", or "legal" versus "illegal", or "regular" versus "irregular". Moreover, Israel maintains control of the population registry and borders. A "foreigner" for Israel refers to any person who has no (or no longer has) an ID number issued by the Israeli Civil Administration in control of the population registry of the population of the "area" (i.e. WBGs). Palestinian nationals currently outside "historical Palestine" and without a WBGs ID number are not permitted to enter the OPT without Israeli authorization, which is often denied. In other words, WBGs residents are treated by the Israeli occupation as if they are "local foreigners".

This also means that holders of WBGs ID numbers are treated on external borders as if they are "citizens of WBGs"; however, their status under the occupation has nothing to do with citizenship as an entitlement to civil, political, social and economic rights. Rather it is a question of "residency" that entails certain conditions necessary to retaining their status and that is subject to Israeli restrictions.

The first Israeli census for the population of WBGs was conducted as early as September 1967. Only those who were counted were considered as "residents" of the "area".<sup>42</sup> Those who happened to be outside, or who were inside but for some reason were not counted, were simply denied the status of resident. Following the 1967 census, the term "resident" was used in many Israeli Military Orders to

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<sup>40</sup> U.S. Department of State, *Trafficking in Persons Report 2008*, available from the U.S. Department of State website at <http://www.state.gov/g/tip/rls/tiprpt/2008>.

<sup>41</sup> According to the division of the West Bank into Zones A, B, and C, Zone "A" falls under complete PA jurisdiction. The jurisdiction of the PA also extends to Zone "B" but security remains within the hands of Israeli forces, while Zone "C" remains under complete Israeli control. The AT is part of the so-called OPT, a term used since 1967 to refer to the West Bank (including East Jerusalem) and Gaza Strip, which fell under Israeli occupation. The OPT comprises the territorial claim for statehood of the Palestinian Liberation Organization (PLO).

<sup>42</sup> It should be noted that residency is often used with regard to foreign nationals who are temporarily present in a third country. By using the term "residents", Palestinians of WBGs were treated by Israeli occupation as foreign nationals and aliens, who happen to be present in the "area" which came under Israeli control in 1967; accordingly, residency is nothing more than an authorization of stay and work granted as a privilege by the Israeli administration; but, inversely, any violation of conditions imposed by successive (and continuously changing) Israel Military Orders results in the loss of "resident" status and related rights.

indicate those who are “legally” present in the “area” and have their permanent residence therein. While “legally” simply refers to those who were covered by the census, it made no difference whether they had lived for generations in “historical Palestine”, or whether they were refugees or internally displaced persons (IDPs).

Many of those present in the “area” who were not counted simply became “illegal” and now require, for the purpose of residence and indeed employment, a permit or an authorization issued by Israeli officials. Otherwise, these persons are subjected to various sanctions, which include a fine, imprisonment or deportation outside the “area”. In other words, those who remained in the “area” can stay there “legally” only if the conditions imposed by the occupiers are respected. Their legal status is, therefore, fragile and totally dependent on Israeli regulation.

An Israeli citizen or a foreign national lawfully staying in Israel are authorized to enter the “area” if they are over 16 years old unless prohibited to do so by an Israeli military commander or by an Israeli court. They have to possess the identification documents required for their stay in Israel. However, they are only permitted to enter the “area” using certain roads and during certain daytime hours unless otherwise authorized by a military commander; moreover, they are not entitled to enter refugee camps, military posts and closed areas. Those who transgress the authorization conditions may be punished with up to two years of imprisonment and a fine.

To work in Israel, permission must be obtained and quotas are unilaterally decided by the Israeli authorities. The Israeli-Palestinian agreements tackled the question of Palestinian workers in Israel; however, this did not preclude Israel from applying unilateral measures against Palestinian workers, as a “security measure” or “sanction” in response to what is perceived as “violence”. Even in those cases where permission for work is granted, it does not provide an entitlement to stay in Israel when the zone concerned is declared to be a closed area. Palestinian workers are dependent on the Israeli permit system and the regulation of entry, stay and work in the country is changed continuously through administrative acts. Those working without authorization in Israel are under the continuous threat of sanctions. Israeli law is very strict on this issue and Israeli citizens who hire irregular Palestinian workers can be held legally responsible. Therefore, for “legally non-existent workers”, rights are fragile and, in case of discrimination or violation of their rights, there is no access to the courts.

Another category of Palestinians to be distinguished from residents of WBGS concerns “Jerusalemites”. In 1948, when East Jerusalem was annexed, a census was carried out by the Israeli authorities immediately after the war. Those who were outside the city (abroad) or even in the “area” but not registered as resident of East Jerusalem lost their status as “residents” in Israel. Those Palestinians included in the census obtained an ID card that was different from the one granted to residents of WBGS. Those living in the West Bank had orange cards, those in the Gaza Strip obtained maroon ones and those from East Jerusalem carried blue cards. Later on, when the Palestinian Authority was established, green cards were issued by the Ministry of Interior to the residents of WBGS containing the ID number granted by the Israeli authorities who were in complete control of the Palestinian population registry.

The Palestinians of Jerusalem, at least those who are registered, enjoy certain rights related to their status, such as the right to work and the right of movement in Israel, not to mention the right to enjoy Israeli social security and medical services, which other Palestinians (from WBGS) cannot access. They are also treated differently when it comes to leaving the country and using the exit borders of Israel and the OPT. On the other hand, Jerusalemites are subject to a number of restrictive Israeli measures, especially in terms of obtaining permits for construction and in their right to choose their place of residence without having their ID number withdrawn.

WBGS Palestinians not registered in the population registry can acquire residency status, (i.e. be “regularized” in the OPT) only through a family unification procedure which is under the control of the Israeli authorities. This procedure is meant to include those persons who were not counted in the census: first-degree relatives of residents who became refugees following the 1967 war; Palestinians

whose residency was revoked following a prolonged stay abroad; and children born abroad, or whose mother was not a resident, and who were therefore not registered by Israel. However, the largest group in need of family unification comprises families wishing to live together in the OPT, where one of the spouses is not a resident.

For Israel, family unification is both a security and political issue;<sup>43</sup> accordingly, Israeli policy was clear in agreeing to unification only in exceptional cases where humanitarian arguments were overwhelming or where a positive decision was in Israel's interests.<sup>44</sup> The low number of approvals for family unification is significant<sup>45</sup> and the justification often provided by Israeli officials is the "fear of the demographic growth of the population in the territories". Israeli policy also demonstrates that the issue of family unification is not treated as a question of human rights. Rather, it is a privilege that can be granted for some and denied for (many) others. For Israel, family unification in the OPT is not a vested right, but a "special benevolent act of the Israeli authorities".<sup>46</sup>

### 3.5 Family Members

Family reunification is not a core issue for this study because the concept refers much more to procedures for regular migration grounded on the right to family life or national policy considerations for the integration of lawfully resident foreign nationals. While irregular migrants also have the right to family life, international jurisprudence considering the position of migrants in relation to family reunification has frequently found that there is no right to live as a family unit in the destination country if family life can be established elsewhere, a position that would generally apply to those migrants with an irregular immigration status. Nevertheless, in some cases, laws and regulations relating to family reunion may either be the only option to obtain a regular status, which is the case for WBGs Palestinians not registered in the population registry and who wish to live in the OPT (see Section 3.4 above), or contribute to irregular situations (see the discussion relating to Israel below).

In addition to the specific situation in the OPT discussed above, another unique set of circumstances related to family reunification is found in **Israel** where a particular division between Jews and non-Jews is made. There are several groups of persons who fall into this category. These groups include: (a) parents and close relatives of Jewish residents and citizens (who are not Jewish themselves); (b) non-Jewish foreign spouses of Jewish Israelis; and (c) foreign-Arab spouses of Arab citizens of Israel. The third group (c) has been the target of a contested law that prevented the entry of foreign Arabs (from the Palestinian Occupied Territories – see above – and from "enemy" states) who married Arabs of Israeli citizenship. The law was upheld by the Supreme Court on a narrow majority of 5 to 4; and afterwards the amendment was challenged in the courts again – the case is still pending. Common to the three groups, however, is a temporary (or indeed "permanent") resistance of the State to grant lawful status to individuals who are within the territory for reasons of family and kinship.

### 3.6 Children

While migrant children are not specifically subjects of this synthesis report, with the exception of the right to access education discussed in Section 6.2.2 below, the Algerian and Israeli reports refer to children as a specific category of irregular migrants. In **Algeria**, vulnerable groups of foreigners (because of their age, political status or ties with an Algerian family) may acquire a temporary

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<sup>43</sup> As recognized by Israeli Supreme Court (ISC) decision 90/1979. See SHAML, *Al-Nazehoun Al-Falesteneyyoun wal Mufawadat Al-Salam [Displaced Palestinians and Peace Negotiations]* (Ramallah, Palestine, 1996) at p. 102.

<sup>44</sup> As recognized by ISC decision 106/1986 (SHALM *ibid.* at p. 103).

<sup>45</sup> For figures since 1967, see the Palestinian legal report. A. KHALIL, "Irregular migration into and through the Occupied Palestinian Territories", *CARIM, ASN, 2008/79*.

<sup>46</sup> Citing the State Attorney's office in response to ISC decision 4494/91 of 18 November 1992 (Section 7).

residence status in the country provided that they are not considered a threat to the security of the state or to public order or morals or conduct themselves in a manner contrary to anti-drug legislation. In **Israel**, non-Jewish children, who were born of irregular migrant parents in Israel or who immigrated to Israel with their parents and grew up there, have no legal status in Israel. This is an unfortunate situation because such children risk being left in a legal limbo without access to basic rights, which may seriously hamper their development and violate the fundamental rights set out in the 1989 Convention on the Rights of the Child (CRC), which also emphasizes the right to a nationality and identity.<sup>47</sup>

The **Jordan** paper reports evidence of a high rate of child labour. With regard to domestic work, it is reported that minors (i.e. under 18 years of age) are brought into Jordan by means of falsified passports. This constitutes a violation of the CRC, the ILO Minimum Age Convention No. 138 (1973) and the ILO Worst Forms of Child Labour Convention No. 182 (1999), to which Jordan is a party.

## 4. Legal Consequences of Irregularity

As mentioned above, there may be differentiated treatment of irregular migrants according to their country of origin – for example, the facilitation of entry and stay of Arab foreign nationals in **Syria**. Furthermore, in Syria, Palestinians and Iraqi nationals enjoy a special position (see Section 3 above) which may not necessarily be to their advantage, especially in respect of Iraqi nationals, who after the latest mass influx into Syria, are subject to less favourable visa rules than other Arab citizens. In most cases, however, irregularity results in repressive measures: sanctions for irregular entry, residence and/or exit; detention; and expulsion/removal.

### 4.1 Sanctions

The sanctions for irregular entry and for irregular residence often differ, as is also noted in Section 2 above, and some countries impose sanctions on both irregular entry and exit. Furthermore different categories of persons may be subject to sanctions: the irregular migrant, the irregular migrant worker, the employer or others facilitating irregularity. In most cases, sanctions comprise fines and/or prison sentences, and can be very severe if they involve organized trafficking or smuggling, or if they result in injury or death to the migrant. This section describes in some detail the national legal frameworks in place in the region for addressing irregular entry, residence and/or exit as well as unauthorized employment.

#### 4.1.1 Sanctions related to irregular entry, residence and/or exit

In **Algeria**, irregular migrants are seen as victims and not subject to criminal penalties. They can only be detained and returned to the border (see Sections 4.2 and 4.3 below). Criminal sanctions are largely aimed at those who facilitate irregular entry and/or residence, such as human traffickers and migrant smugglers. For example, under Article 46 of the Law 08-11 of 25 June 2008 on the conditions of entry, stay and movement of foreigners to Algeria, those who facilitate, directly or indirectly, the irregular entry, stay, movement or exit of a foreigner are subject to imprisonment for a period of between two and five years and a fine of DA 60,000-200,000 (i.e. EUR 6,000-20,000). The crime of human smuggling is punished by similar terms of imprisonment and a fine of DA 30,000-100,000 (i.e. EUR 3,000-10,000). Aggravated offences that involve use of arms, collective transport and logistical equipment give rise to sanctions of between five and ten years of imprisonment and a fine of DA 100,000-200,000 (i.e. EUR 10,000-20,000). Activities which risk human dignity and life can result in terms of imprisonment of between 10 and 20 years and a fine of between DA 750,000 and one million (EUR 75,000-100,000). Airlines and shipping companies can also be fined up to DA 250,000 (EUR

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<sup>47</sup> CRC, Article 8.

25,000) for every undocumented passenger brought into the country. However, while irregular migrants *per se* are not subject to criminal penalties, fictitious or sham mixed marriages in Algeria do give rise to criminal penalties for the individuals involved, namely imprisonment of between two and five years and a fine of DA 50,000-500,000 (i.e. EUR 5,000-50,000). Such marriages are defined very broadly as all marriages not celebrated before a civil-state official, which is the case for a purely religious marriage such as a *fatiha* marriage under Muslim law between, for example, a Malian national and an Algerian woman. These marriages are subject to more severe criminal penalties of ten years of imprisonment and of between DA 500,000 and one million (i.e. EUR 50,000-200,000).

**Jordan** imposes sanctions on any visitor who overstays his or her permitted period of residence with a fine of JD 1.5 (i.e. EUR 1.6) per day. This situation is especially relevant for Iraqi nationals who are often overstayers. As mentioned above, Jordan usually provides Iraqi irregular residents with a grace period to enable them to rectify their status and to become regular. However, it seems that the vast majority of Iraqi residents have not done so because they do not wish to present themselves to the Jordanian authorities and because of the financial constraints associated with the legalization of their status; their stay in the country therefore remains irregular. Nevertheless, Jordan has not used its intensive periodic inspection campaigns to ensure irregular Iraqi nationals abide by residency and labour laws in the same way as it does towards other non-citizens.

In **Lebanon**, irregular entry can be punished with imprisonment of between one month and three years and a fine of USD 200-800. The offender will then be expelled. Furthermore, those who do not leave the territory after having been refused an extension of their residence permit (i.e. overstayers), who do not obtain an exit visa when required or who do not use one of the formal border crossing points when leaving the territory can be subject to imprisonment for between one week and three months and/or a fine of USD 200-800.

Irregular entry in **Syria** may be punished with a fine and/or between three months and one year imprisonment, which increases to between two and five years imprisonment if the country of origin is at war with Syria. Moreover, the courts may decide to expel the irregular migrant. Refusal to conform to the expulsion order may result in imprisonment for a period of between three months and two years. Those residing without authorization in Syria can be imprisoned for a maximum period of three months and/or fined. The same sanctions are applied to anyone attempting to leave the territory in an irregular manner. In **Libya**, Decree No. 125 of 2005 amending Law No. 6 of 1987 on the admission and residence of foreign nationals strengthens the penalties for assisting unauthorized exit from the territory by adding imprisonment to the sanction of a fine which existed previously.<sup>48</sup>

According to Law 89/1960 as amended, foreign nationals 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 exempt from obtaining tourist visas or are allowed to apply for them at any Egyptian point of entry. Against this backdrop, those persons who attempt to enter Egypt without any of the relevant documents are liable to sanctions including prosecution and imprisonment. Moreover, some foreign nationals are requested to report to the authorities within one week of their arrival.<sup>49</sup> No person is allowed to *leave* Egypt without authorization. Those who exit in an irregular fashion are subject to prosecution and possible deportation. This poses serious problems for refugees who attempt to flee to Israel or Libya. Asylum-seekers who enter without authorization are not subject to the penalties imposed on other irregular migrants. However, they can be imprisoned if they are tried by a military court. Military court decisions are not subject to appeal.

In **Morocco**, Law 02-03 of 11 November 2003 on the entry and stay of foreigners in Morocco, and on emigration and immigration of irregular migrants imposes a severe regime of fines and

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<sup>48</sup> PERRIN, n. 10 above, at p. 8.

<sup>49</sup> For a list of the countries in question, see the website of the Egyptian Ministry of the Interior, <http://www.moiegypt.gov.eg/Arabic/Departments+Sites/Immegration/ForignersServices/TasgeelAlAganeb>.



imprisonment on migrants for irregular entry and stay, and on the facilitators of irregular migration.<sup>50</sup> Carriers of irregular migrants are also subject to penalties as is unauthorized or clandestine departure from the country. However, these sanctions are not applicable to persons entering the territory as refugees. A fine of MAD 2,000-20,000 (i.e. EUR 180-1,800) and/or imprisonment of between one to six months is foreseen for migrants who enter (or attempt to enter) the territory without valid travel documents or for those who stay on the territory beyond the period authorized by their visas. These penalties are doubled in the case of re-offending. Stay on the territory without one of the two required residence permits (*carte d'immatriculation/carte de residence*) is punishable by imprisonment of one to six months and a fine of MAD 5,000-30,000 (i.e. EUR 450-2,690), which is again doubled in the event of re-offending. Moreover, foreigners who do not renew their residence permits are subject to fines of MAD 3,000-10,000 (i.e. EUR 270-900) and imprisonment of between one month and one year. Persons assisting migrants to enter Morocco in an unauthorized manner are subject to sanctions of six months to three years imprisonment and fines of MAD 50,000-500,000 (i.e. EUR 4,480-44,800). If these offences are committed on a regular basis, the terms of imprisonment range from 10 to 15 years and the fine is MAD 50,000-100,000 (i.e. EUR 4,500-9,000). The imposition of such harsh sanctions for the provision of assistance to irregular migrants has resulted in worsening conditions for many sub-Saharan migrants because they are no longer able to rely on informal help from the host population.

Sanctions concerning unauthorized/clandestine departure from Morocco by land, sea or air range from a fine of MAD 3,000-10,000 (i.e. EUR 270-900) and/or a period of imprisonment of between one and six months. The organizations responsible and their employees involved in the transportation of irregular migrants are subject to sanctions of between two and five years of imprisonment and a fine of MAD 50,000-500,000 (i.e. EUR 4,480-44,800). Moreover, the vehicles used for unauthorized transportation are also confiscated. The permanent incapacity of persons as a result of clandestine migration or the death of such persons leads to harsher penalties of between 15 and 20 years of imprisonment or life imprisonment respectively.

Certain categories of foreigners cannot be expelled under Moroccan law, namely those foreigners who have lived in Morocco since the age of six; those who lived there for more than 15 years; those who have resided in the country on a regular basis over a period of 10 years (except for students); those who have been married to a Moroccan spouse for at least one year; a foreigner who is the father or mother of a child who has acquired Moroccan citizenship on condition that he or she has legal custody of the child or supports the child's needs; and a foreigner residing on a regular basis in Morocco who has not been subject to a term of imprisonment of at least one year. Finally, pregnant women or minor children cannot be deported regardless of their immigration status.

Irregularity in **Mauritania** can be punished with detention for a period of between one and ten days and/or a fine. Related to questions of entry and exit is the production and use of false documents which is punished in Mauritania with a term of imprisonment of between three months and two years. Measures to strengthen these sanctions are being taken in the formulation of a draft law.

In **Tunisia**, the situation is unique because all parties concerned with irregular migration are subject to criminal prosecution – those facilitating entry, hosting, transporting or in any other way aiding irregular migrants are all included, as are those persons who are members of organizations falling within the scope of “facilitating irregular migration”. Prison sentences vary from between three and 20 years. Furthermore, a failure to inform the authorities of any impugned activities may also be punished with a period of imprisonment for up to three months. The reference to both entry and exit in the law and the absence of a reference to nationality (including Tunisian nationals) is an attempt to address the transit migration occurring in the country.

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<sup>50</sup> For an overview of Law 02-03, see ELMADMAD, n. 27 above.

#### 4.1.2 Sanctions related to unauthorized employment

In **Turkey**, the law prescribes administrative penalties both for foreign nationals working without a work permit and for an employer who recruits them. In general, foreign workers do not possess adequate knowledge of either the Turkish language or Turkish legislation, and consequently it is argued by the country rapporteur that the new law aimed at providing legal protection for foreign nationals against exploitation in the labour market and extending legal and administrative safeguards to private services does not provide adequate protection.

Employment inspectors of the Turkish Ministry of Labour and Social Security and those of the Social Security Agency as well as the inspecting and supervisory staff of other public departments are authorized to examine whether employers hiring foreign nationals or the foreign nationals themselves are permitted to work lawfully. Apart from fulfilling the required conditions, there is also a duty to notify the relevant authorities with regard to the employment of foreign nationals. The law provides for administrative sanctions in order to discourage the unauthorized employment of foreigners. When the duty to notify the Ministry is breached, an administrative fine is imposed. The more foreign nationals employed without authorization increases the level of fines. In addition to the administrative fine, the employer and recruitment agents are obliged to cover the accommodation expenses of foreign nationals and those of any spouse and children, the expenditures they need to return to their home countries and, if necessary, their health expenses. When the notification duty or work permit regulations are breached repeatedly, fines can be doubled. Currently, the maximum fine to which employers are subject for employing irregular migrant workers is around EUR 1,500 per worker.

Any foreign national working irregularly without a work/residence permit in **Syria** can be imprisoned for a maximum of six months and/or fined. These sanctions are not applied to Arab nationals even if they are in an irregular work situation. In **Lebanon**, it is illegal to employ or host foreign nationals without informing the security services, and non-conformity with this rule may subject the persons concerned to prosecution.

In **Jordan**, an employer is subject to a minimum fine of JD 50 (i.e. EUR 53) and not more than JD 100 (i.e. EUR 106) (now JD 100 to JD 150 according to a new amendment passed in 2006) for every month or part thereof in respect of a non-Jordanian worker who is recruited in a manner violating the provisions of the law. Furthermore, such an employer is barred from hiring foreign workers in the future.

In **Mauritania**, the irregular migrant employee can be fined and/or imprisoned for a period of between two and six months, whereas the employer can be subject to a lesser fine and/or imprisoned for a period of between one and ten days. As of April 2008, a new law raises this penalty to imprisonment for a period of between 15 and 30 days and envisages a higher fine. But it is still noteworthy how the irregular migrant worker is subject to harsher sanctions than the employer.

Finally, an interesting peculiarity can be found in **Israel**, where it would be incorrect to associate all irregularity in the sense of unauthorized presence with informality in the labour market. Palestinians who work with a permit yet stay the night unlawfully in Israel or migrant workers who overstay their visa and continue to work are not wholly outside the formal labour market.

## 4.2 Detention

Detention is a common practice in relation to irregular migration. Irregular migrants are normally detained upon detection and/or prior to their removal. Such detention may not always be in conformity with international human rights obligations. Arbitrary detention is prohibited, there must be a way of challenging detention before a court and compensation has to be made available if the detention is deemed unlawful.<sup>51</sup> For those states which are party to the International Convention on the Protection

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<sup>51</sup> ICCPR, Art. 9.

of the Rights of All Migrant Workers and Members of their Families (ICRMW), the consular authorities of the state of origin, if the migrant so requests, are to be informed without delay, and there is also a right to prompt communication with the authorities.<sup>52</sup> Moreover, conditions in detention must be neither inhumane nor degrading.<sup>53</sup>

Reception centres have been established in **Algeria** to provide temporary accommodation for foreign nationals in an irregular situation. The purpose of these centres is to enable such persons to complete administrative formalities before they are taken to the border (*reconduite à la frontière*) or returned to their country of origin. Irregular migrants can only be held in these centres for a maximum of 60 days. On their face, therefore, these arrangements appear to conform to the international standards discussed above. In **Jordan**, after the inspection campaign mentioned in Section 5 below in relation to Egyptian migrant workers, approximately 6,500 irregular foreign workers (i.e. workers found in violation of labour and residency laws) were held in the detention centres of the Public Security Department, awaiting deportation to their home countries. Of the 2,000 irregular foreign workers deported, 80 per cent were Egyptians, 15 per cent were Syrians while the remaining five per cent comprised different nationalities. According to the country rapporteur, the conditions of detention often violate basic human rights and detention does not necessarily lead to deportation. A follow-up committee established by the Ministry of Labour deals with complaints filed by workers against the inspection teams, pays regular visits to detention centres and interviews workers in custody to check on their conditions and any claims of mistreatment. Decisions relating to the detention and deportation of irregular foreign workers can be annulled by the committee in specific instances for humanitarian reasons. These include cases of foreign workers married to Jordanian nationals, foreign patients undergoing hospital treatment and irregular migrant workers who have children enrolled in schools. Therefore, there is an element of administrative control over detention centres, but it is unclear whether redress is available in the courts and whether compensation is forthcoming when detention is deemed unlawful.

### 4.3 Expulsion/Removal

The expulsion or removal of irregular migrants can take a number of different forms. **Mauritania** distinguishes between four types of expulsion/removal: (1) turning a person back at the border, a measure taken by the police in respect of an attempt to enter the country without authorization; (2) accompanying a person to the border, an administrative measure which is taken if the person concerned is found in an irregular situation in the territory after entry; (3) prohibition of residence, a judicial measure taken after the foreign national has committed a crime; and (4) voluntary return. In general, however, the following categories of non-nationals cannot be expelled: minors, unless the expulsion is considered to constitute an imperative necessity for the security of the state or public order within the state; parents of a minor resident in Mauritania if they contribute to his/her maintenance and education; spouses of Mauritanian citizens; migrants resident for more than five years; regular residents of three years (these periods do not include periods of residence for the purpose of study); and beneficiaries of pensions derived from work injuries or illnesses. Persons in these categories may only be subject to expulsion when links can be established to terrorist activity. These strict limitations on the expulsion of specified groups of non-nationals are rather similar to those found, for example, in the European Union in respect of the expulsion of EU citizens resident and/or working in Member States other than their own and ECOWAS regional instruments. However, migration in Mauritania is not yet viewed as a central theme on the policy agenda and repression of irregularity remains low, partly because irregular work situations are in themselves not considered against the law and partly because of a general “laissez faire” attitude. The principal form of removal of foreigners in an irregular situation in **Algeria** is accompanying the migrant concerned to the border

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<sup>52</sup> ICRMW, Art. 16.

<sup>53</sup> ICCPR, Arts. 10 and 7 respectively.

(*reconduite à la frontière*), which is carried out after administrative formalities have been completed while the migrant is held in a reception centre, as discussed in Section 4.2 above.

In **Jordan**, the migrant worker who is in violation of the law will be deported, but at the expense of the employer, and will not be permitted to return until three years have passed from the date of the deportation. Foreign nationals may be expelled if they enter the country without authorization or if they are convicted of serious crimes while in the country. The decision to expel can also be taken to preserve the security of the state. According to the author of the paper on Jordan, the power of expulsion or deportation is not sufficiently regulated in Jordanian law. Reasonable grounds on which to base such an action and the procedural safeguards to be followed need to be specified by statute. This statute should stipulate precisely that the deportation order be in writing and that it be communicated to the persons to be expelled or deported. In most cases, deportation or expulsion orders are issued by the executive power (i.e. by the Ministry of the Interior or by the Ministry of Labour) and not by a court of law. It is contended in the paper that the right of appeal to an independent and impartial tribunal against deportation orders should be provided for in the relevant Jordanian law and regulations. Furthermore, in executing an expulsion or deportation order, Jordanian authorities should act in accordance with standards upholding human rights and human dignity.

The absolute power of the executive in Jordan to deport foreign nationals has negative consequences. For instance, foreign wives of Jordanian citizens are sometimes denied residence in the country, while the deportation of foreign nationals who are married to Jordanian women has adversely affected the lives of their Jordanian spouses and children. Foreign men (even if married to Jordanian women) are frequently deported if a court judgment has been made against them, irrespective of the type of offence. In 2005, about 24,000 foreign nationals were deported, but in 2006 this figure decreased to 10,625. Deportation procedures are very slow. A fine must first be levied on foreign nationals who exceed the term of their residence permit and the deportation order will be executed only after this fine has been paid or if the Ministry of the Interior issues an order exempting violators from payment. Otherwise, they are detained by the administrative authorities until the exemption decision has been issued. This process sometimes takes several months, which constitutes a flagrant infringement of their personal liberties. Expulsion or deportation decisions are administrative in nature and as such they are subject to judicial review before the High Court of Justice in accordance with Law No. 19 of 1992. Unfortunately, few deportees choose to challenge deportation and actions before the High Court against the decisions of the Ministry of the Interior in matters relating to residency have proved, as with applications for naturalization, to be of little use.

In **Lebanon**, migrants detained by the authorities for irregular entry will be repatriated and not permitted to re-enter the country for a period of five years or ten years if this entry constitutes a second offence. For an overstayer, the period of prohibition on re-entry is three and ten years, respectively. A special procedure takes effect when the individual in question is a Syrian citizen. A Syrian citizen will be delivered to the Syrian authorities and prohibited re-entry for one, five and ten years for, respectively, the first, second and third irregular entry. A Syrian citizen who has lost his/her identity documents, but who has entered the territory of Lebanon in a regular manner may return to Syria and regularize his/her situation within a period of 48 hours. If the individual still has his/her passport, departure is not necessary and if the individual is a Syrian woman married to a Lebanese man, who has verified the loss of documents, she will not be expelled.

With regard to the deportation of asylum seekers in **Turkey**, the general rule as provided by Law No. 5683 of 1998 on the residence and travel of foreign nationals applies: "Foreign nationals whose residence in the territory is deemed to be contrary to public order or political or administrative requirements shall be invited to leave Turkish territory by the Ministry of the Interior within a fixed period of time. Those who remain in Turkey beyond such a period may be deported". The action taken by the Ministry of the Interior is clearly an administrative one and can be challenged in the courts. An individual may also make an application to the European Court of Human Rights in respect of a decision of the national court.

In **Egypt**, the deportation of foreign nationals is the prerogative of the Minister of the Interior and, sometimes, the Director of the Passports, Immigration and Citizenship Department. But those foreign nationals benefiting from special residence permits cannot be deported without the approval of a Deportation Committee (Art. 26 of Law 89/1960). Ratification of the 1984 Convention against Torture and the 1951 Geneva Refugee Convention should extend this privilege to failed asylum seekers and those who fear torture in their countries of origin. Regrettably, foreign nationals who fall into these two categories can still be deported at the Minister's discretion. In June 2008, UNHCR expressed concerns about the forcible return of hundreds of Eritrean citizens, despite its appeal to the authorities to refrain from carrying out the removals until the agency could be provided with access to detention centres to determine the claims of asylum seekers and their possible rights to international protection.<sup>54</sup>

#### 4.4 Toleration of Irregular Status

In **Algeria**, as noted in Section 3.1 above, irregular migrant workers from Mali and Niger present in the south of country and performing jobs in which nationals are not interested are tolerated by the authorities to a certain degree, although it is impossible for them to regularize their status by obtaining work permits. In **Syria**, Iraqi nationals whose visas have expired are tolerated by the authorities and not removed for humanitarian reasons. Similarly, in **Jordan**, Iraqi nationals at risk of serious human rights violation are not forcibly returned, though those who have overstayed have their visas withdrawn irrespective of whether they are registered with UNHCR. In **Lebanon**, Article 3 of the Convention against Torture has been applied on two occasions by the courts to prevent the expulsion of an irregular Iraqi national and a Sudanese refugee.

As discussed in Section 4.1.1, irregularity and unauthorized employment are lesser crimes in **Mauritania** and are tolerated to a certain extent. The mechanisms to combat such irregularity are not particularly strong and a general "laissez faire" attitude prevails. As noted in Section 4.3 above, migration is not considered a particularly significant issue by the public. On the other hand, the falsification of documents, linked to irregular migration, is of greater concern to the authorities and the measures taken to address this problem are more stringent and give rise to harsher penalties.

### 5. Possibilities for Regularization

Regularization or legalization differs from toleration of irregular status because it implies legal provisions or the adoption of a larger scale programme authorized under the law enabling irregular migrants (or perhaps their employers) to regularize their status under defined conditions. Regularization, however, is not necessarily the same as access to secure residence status. Often, irregular migrant workers are regularized because they are deemed to perform useful employment activities, which means that if they lose their jobs they may drift out of regular status.

Basically, three forms of regularization are identifiable in those countries that have adopted measures in this area:<sup>55</sup> (1) larger scale regularization programmes aimed at irregular migrants as a generic category; (2) measures to regularize distinct and especially vulnerable categories of migrants, such as victims of trafficking and children; and (3) the existence of legal provisions enabling migrants to legalize their status on an individual basis.

Few reports refer to larger scale regularization programmes. In **Jordan**, in view of the increase in the number of Egyptian migrant workers in the country, particularly those arriving without

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<sup>54</sup> See "UNHCR alarmed over reports of forcible returns of Eritreans from Egypt", 19 June 2008, <http://www.unhcr.org/news/NEWS/485a52832.html>.

<sup>55</sup> Two papers do not discuss regularization, namely those relating to the Occupied Palestinian Territories and Syria.

authorization, and the problems and illegal activity arising from this phenomenon, the Ministry of Labour signed a Memorandum of Understanding with its Egyptian counterpart, the Ministry of Labour Force and Immigration. Starting from March 2007, the entry of Egyptian workers to Jordan has been regulated by this MoU,<sup>56</sup> and since this time hundreds of thousands of Egyptian workers have submitted job applications to the Jordanian Ministry of Labour electronically.<sup>57</sup>

The Ministry of Labour used to give irregular Egyptian migrants who were already in the country grace periods within which to regularize their employment and residence. During these periods of status correction, the Ministry of Labour, in coordination with the Ministry of the Interior, stopped tracking and prosecuting irregular migrant workers. Instead, its role was limited to guiding and urging them to correct their status, either by obtaining new permits or by switching to employment sectors in which they were authorized to work. As a result, thousands of work permits were issued to those who were able to regularize their residence status in the country. For those who were unable to do so during these grace periods, an alternative route to regularizing one's status in the Jordanian labour market was through sponsorship by the Egyptian embassy. The last grace period ended in mid-July 2007 and, subsequently, labour inspectors, in cooperation with the Ministry of the Interior and the Public Security Department, launched an inspection campaign to ensure that workers and employers were abiding by labour and residency laws. The inspection teams are not entitled to question foreign workers outside the workplace and they focus their inspections on employment sectors containing large numbers of foreign workers. Workers without valid residence and/or work permits are placed in custody pending deportation. The decision whether to deport the migrant is left to the Ministry of Labour if the worker is violating labour law. If the violation is related to residency law, the decision is taken by the administrative governor. About 80 per cent of apprehended workers were found to be in violation of the labour law and 20 per cent were not respecting the Residency Law.<sup>58</sup> During this campaign, approximately 6,500 irregular foreign workers found to be in violation of labour and residency laws were held in the detention centres of the Public Security Department awaiting deportation to their home countries. As noted above, out of the 2,000 irregular foreign workers deported, 80 per cent were Egyptians, 15 per cent were Syrians while the remaining five per cent comprised other nationalities.<sup>59</sup>

The MoU discussed above is also an interesting example of cooperation on irregular migration between a country of origin and destination in the context of measures promoting regular labour migration (see Section 8 below). Another regularization exercise in Jordan (which ended on 2 July 2008) concerned 6,000 Asian migrant workers in Qualified Industrial Zones (QIZs) whose work and residence permits had expired. This regularization exercise enabled these workers to renew their documents within a three-month period.

In **Lebanon**, the possibility of regularization for foreign nationals who have contravened their conditions of entry and stay is at the discretion of the Director General of Public Order with the result that every one or two years a defined period of time is established during which foreign nationals residing in Lebanon without authorization can present themselves at regional centres to regularize their situation and to obtain a one-year residence permit. Two such periods of between two and four months have come up over the course of the last three years, in 2006 (over a period of 4 months) and in 2007 (2 months). However, the number of undocumented foreign nationals who have attempted to regularize their situation and obtain a resident permit has been relatively small because of the excessive conditions applied, notably financial conditions, including the need to have a Lebanese

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<sup>56</sup> The MoU is available from the Jordan national page of the CARIM website at <http://www.carim.org>.

<sup>57</sup> See the Ministry of Labour's website at <http://www.mol.gov.jo>.

<sup>58</sup> See *The Jordan Times*, 4 December 2007.

<sup>59</sup> See *Al Rai Daily*, 3 September 2007; *The Jordan Times*, 16 November 2007 and 4 December 2007.

sponsor in order to obtain a work permit. Moreover, this situation is exacerbated because migrants risk arrest and expulsion on presenting themselves to the authorities.

**Israel** is an exemplar of how the existence of inflexible national legal provisions “creates” large numbers of irregular migrants. The argument that irregular migrants not only infringe on state sovereignty but also entail high costs and should therefore be removed is played upon by the authorities and reiterated by the courts. This argument serves as the grounds for limiting, *de facto*, judicial review over official decisions concerning immigration policy. An important derivative of the aforementioned principle is that despite the fact that an irregular presence does not necessarily deny the human rights of migrants altogether, it serves, in itself, as an obstacle to the legalization of irregular migrants. The general premise, therefore, is that irregularity constitutes an act violating state sovereignty and should be condemned rather than rewarded with legalization. Despite a Supreme Court judgment declaring, *inter alia*, that immediate irregularity on the termination of employment (regardless of the reason for termination) is unconstitutional,<sup>60</sup> it would appear that, formally at least, migrant workers who lose their job slide into irregularity and may only “regularize” their status by obtaining another job. Nevertheless, a number of policies have been pursued to normalize the status of this group of migrants, the most recent being that workers who have lost their employment, but who have made *bona fide* attempts to find another employer and whose presence in Israel does not exceed a period of 51 months may request an extension of their stay. There is also a close association in Israel between irregular labour migration and the asylum process. Despite adherence to the 1951 Geneva Convention Relating to the Status of Refugees and the 1967 Protocol (see Annex), the asylum system does not have the capacity to deal with the large number of refugees who have entered the country since 2007 with the result that irregular migrant workers often seek to “legalize” their situation through asylum even though many asylum seekers do not possess a regular status either.

With regard to the regularization of distinct categories of migrants, in **Turkey**, special measures have been put into place to assist the rehabilitation of victims of trafficking (see also Section 3.3 above). These are exempt from charges or penalties with regard to their entry and exit from the territory and are issued with humanitarian visas and short-term residence permits enabling them to stay lawfully in the country during the rehabilitation period. They also have access to free medical treatment. In **Israel**, the likelihood of rehabilitation is also a determining factor in the granting of a temporary residence status to victims of trafficking. Under current procedures, the Ministry of the Interior is able to grant victims of trafficking a maximum period of one year’s temporary stay because of hardship or humanitarian reasons. This period begins to run from the moment that they testify in court or from the time of application if they choose not to do so. This latter possibility is a positive development because it accords priority to the needs of the victim over law enforcement considerations. An exceptional procedure also exists in Israel for the regularization of children of irregular migrant workers, provided that these children have lived in the country for at least six years, that they speak Hebrew, that they are enrolled in a school and that their parents entered Israel with a valid permit.

Interestingly, the tension between national security and the granting of rights or residence status to irregular migrants is sharply evident in **Israel** where two categories of migrants cannot be regularized under any circumstances on the basis of security concerns, namely “infiltrators” (that is clandestine entrants) and Palestinians from the OPT.

Legal provisions exist in Egypt, Israel and Lebanon enabling foreign nationals to regularize their status on an individual basis. In **Egypt**, there are two legal tools that specific categories of non-Egyptians can resort to in order to regularize their stay in Egypt. First, asylum seekers can apply for refugee status with UNHCR and benefit from an amnesty with respect to their irregular entry or

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<sup>60</sup> This position conforms to a number of provisions found in the specific international instruments applicable to the protection of migrant workers, which hold that a migrant worker should not necessarily be deemed as irregular in all cases on mere loss or termination of his or her job. See ICRMW, Article 54(1)(2) and Convention No. 143, Article 8(1). Israel has not ratified these two instruments (see Annex).

overstay in conformity with Article 31 of the Geneva Convention. Second, Sudanese nationals who hold valid documents have had their status in Egypt regularized following the entry into force of the “Four Freedoms Agreement” between Egypt and Sudan. Aside from these two mechanisms, there are no other possibilities for a non-Egyptian to regularize his or her residence unless he or she is offered employment subject to the provisions of the Unified Labour Code and other relevant laws and decrees. In **Israel**, it is possible under the law for a foreign national to request regularization for exceptional humanitarian reasons, and an inter-ministerial committee has been established to review applications in response to a Supreme Court judgment requiring general principles of administrative law to be followed in such cases. To date, the courts have focused on procedural regularities in the review process rather than substantive issues. For example, the courts have found that the denial of status to a stateless person who could not be deported to another country was unlawful in the absence of procedures to address statelessness within the country. Separation from one’s family or family reunification can also constitute a humanitarian reason leading to individual regularization, though the courts have not interfered with the findings of the inter-ministerial committee in every such case. In **Lebanon**, the Law of 10 July 1962 regulating the entry, stay and departure of foreign nationals envisages political asylum for an individual pursued or sentenced for a political crime by non-Lebanese authorities where his or her life or freedom is threatened for political reasons in the country of origin or third country. However, this provision has been rarely resorted to and, indeed, has only been applied by the committee mandated to grant political asylum on one occasion in 1999, the case of a Japanese national from the red army faction “Okomoto” who had been resident in Lebanon without permission together with his comrades since the 1980s. While his application was successful and he was granted refugee status, his comrades were deported back to Japan.

In **Tunisia**, regularization is not envisaged in accordance with the strict control-based legislative framework that aims to punish migrants for irregular entry to and exit from the territory and which denies irregular migrants’ access to any social rights (see Section 6 below). In **Morocco**, the regularization of irregular migrants does not appear to be possible for the moment or in the near future for two reasons. First, most irregular sub-Saharan migrants in Morocco wish to move to Europe and have no intention of settling in the country on a permanent basis (including those who have been recognized as refugees). They view Morocco solely as a country of transit. Second, the competent Moroccan authorities avoid raising the question of regularization in the absence of an official regularization policy. While no regularization measures have been adopted in **Mauritania**, the general perception is that such measures are not really required given the significant flexibility in the application of the national legal instruments relating to migration as well as the ECOWAS free movement provisions, which are also applicable to the principal countries of origin of irregular migrants. Nonetheless, there does seem to be a need for more adequate migration legislation, particularly with a view to better protecting irregular migrant workers, including reducing the risks of exploitation by regularizing their status in accordance with the interests of the country.

## 6. Irregular Migrants and Access to Rights

The position of irregular migrants with regard to access to equal work conditions and social rights is particularly difficult in practice given their lack of a lawful immigration status. Even in those instances where irregular migrants might be permitted to claim such rights, the fear of apprehension and expulsion precludes them from doing so, a position worsened by the lack of concrete measures drawing a clear boundary between the enjoyment of fundamental rights and immigration enforcement. Nonetheless, the international legal framework is, in principle, relatively strong given that international human rights law applies to all human beings regardless of their nationality or immigration status.<sup>61</sup> However, only the ICRMW *explicitly* grants rights to undocumented or irregular

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<sup>61</sup> UN Economic and Social Council, Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, 55<sup>th</sup> Session, Item 5 of the Provisional Agenda, *The rights of non-citizens*, Final report of the Special



migrant workers.<sup>62</sup> As observed in the Introduction, all the countries under consideration<sup>63</sup> have ratified the core international human rights currently in force, with the exception of four countries (Israel, Jordan, Lebanon and Tunisia) which have not yet ratified the ICRMW. The sections below relating to the enjoyment of fundamental rights in the workplace as well as the enjoyment of social rights – health care and education – demonstrate, from the relatively limited information available, that much still remains to be done in the countries in question regarding application of the pertinent international standards to migrants and irregular migrants in particular.

It appears that irregular migrants as a general category have no access to employment and social rights in Jordan, Lebanon, Morocco, Syria and Tunisia despite the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) affording these rights to all persons<sup>64</sup> and despite the fact that the ICRMW reiterates these provisions,<sup>65</sup> albeit not always in the same comprehensive manner. In **Lebanon**, there is no explicit definition of “illegal migrant” in the law and in **Tunisia** irregular migrants have no recognition under the law.<sup>66</sup> Indeed, non-ratification of the ICRMW in Tunisia and the two specific ILO instruments protecting the rights of migrant workers, particularly Convention No. 143 (see Annex) which applies also to migrant workers in unauthorized employment, is attributed explicitly to an official reluctance to afford any rights to irregular migrants present in that country. In this regard, it is also worth mentioning that the Association Agreement concluded by Tunisia with the EU and its Member States<sup>67</sup> affirms, in the chapter on social and cultural cooperation, the principle of non-discrimination between Tunisian nationals and nationals of EU Member States.<sup>68</sup> However, lawful residence is required for the principles of equal treatment and social integration to apply.<sup>69</sup> Article 69 of the Agreement, though, envisages a dialogue in the social field, including migration, with a focus on the fight against irregular migration and the conditions of return of those in an irregular situation.<sup>70</sup> Moreover, the existence of broadly applicable sanctions (imprisonment for up to a period of three months and a fine of TND 500<sup>71</sup>) to persons who fail to provide the authorities with information about or knowledge of immigration offences in good time is unlikely to assist in the development of a framework of rights protection for irregular migrants. In **Morocco**, a number of sub-Saharan migrants transiting Morocco to seek employment in Europe appear to fulfill the conditions of the ICRMW for protection by the host country. But many of them live without any protection in the country and are subject to expulsion and sanctions. Certain migration officials in Morocco declared, on the basis of interviews conducted in 2005 and 2008 on the subject of this Convention, that most sub-Saharan migrants transiting the country are not migrant workers, that they only seek to access Europe in order to work there and that they have no interest in contacting the Moroccan authorities. A number of officials from the Ministry of Labour added that Morocco respects the rights of irregular migrant workers in conformity with national labour legislation, but that they will not actively seek out irregular migrant workers in order to protect them.

(Contd.)

Rapporteur, Mr. David Weissbrodt, submitted in accordance with Sub-Commission Decision 2000/103, Commission Resolution 2000/104 and Economic and Social Council Decision 2000/283, Doc. E/CN.4/Sub.2/2003/23 (26 May 2003) p. 2 (Executive Summary).

<sup>62</sup> See Part III of the ICRMW.

<sup>63</sup> But excluding the OPT, n. 2 above.

<sup>64</sup> See ICESCR, Articles 7, 12 and 13, respectively

<sup>65</sup> See ICRMW, Articles 25, 28 and 30, respectively

<sup>66</sup> Indeed, this does not appear to sit at all favourably with the fundamental principle in international human rights law that everyone has the right to recognition everywhere as a person before the law. See UDHR, Article 6 and ICCPR, Article 16.

<sup>67</sup> Concluded on 17 July 1995 in Brussels and ratified by Law No. 96-49 of 20 June 1996 (*J.O.R.T* No. 51 of 25 June 1996). The Agreement entered into force on 3 March 1998.

<sup>68</sup> *Ibid.* Articles 64(1) and 65(1).

<sup>69</sup> *Ibid.* Article 66.

<sup>70</sup> *Ibid.* Article 69(b) and (c).

<sup>71</sup> Approximately EUR 268 at the exchange rate of 1.87 Tunisian Dinars to 1 Euro.

On the other hand, in **Turkey**, economic and social rights are guaranteed for every person regardless of nationality or immigration status, though information is absent about the actual application of these rights to irregular migrants. In **Mauritania**, the rights of irregular migrants only exist on paper. Although Mauritania acceded to the ICRMW in January 2007, its provisions have not yet been transposed into national law by measures affording equal rights to all migrants irrespective of their immigration status in the territory. Moreover, it is acknowledged that employers need to be encouraged to treat all migrant workers in conformity with the ICRMW's provisions, particularly those relating to the employment context (i.e. the establishment of and respect for minimum wages, maximum hours of work, provision of rest days and holidays, regular payment of salaries on a monthly basis, social security, etc.) and violations of the rights of migrant workers require the application of effective sanctions. Moreover, steps need to be taken to sensitize officials in the labour administration, police and judicial apparatus regarding their obligations to protect the rights of irregular migrant workers.

In **Syria**, irregular migrants are for the most part *de facto* refugees. This category includes Iraqi nationals who have been irregular since October 2007, which is when the authorities imposed strict conditions on their entry and residence in Syria. The majority of Iraqi nationals reside in Syria without authorization after the expiration of their visa and they are tolerated by the Syrian authorities for humanitarian reasons. But since Syria is traditionally a welcoming country, particularly towards the nationals of other Arab countries, Iraqi refugees generally enjoy all the services on offer in terms of education, healthcare, housing and employment. Moreover, they also enjoy the right of free movement within the country as well as access to the courts. These services are afforded on the basis of fraternal and neighbourly ties and in spite of limited material resources. With regard to employment, the residence authorization issued to Iraqi refugees does not give them the right to work in Syria. In order to work lawfully, they are required to obtain a work permit issued by the Ministry of Social Affairs and Employment. In practice, many Iraqi refugees work without authorization and the authorities tolerate this situation. However, a number of Iraqi refugees have acquired work permits.<sup>72</sup>

## 6.1 Employment Rights

Employment rights, such as the right to equitable working conditions and access to labour courts or tribunals, are to be enjoyed by all workers irrespective of their nationality or immigration status. This equality principle in the field of employment is clearly laid out in international human rights law<sup>73</sup> as well as in the general body of ILO international labour standards which are applicable to all persons in their working environment. Consequently, even though none of the countries under consideration have ratified the two ILO instruments specifically addressing the rights of migrant workers (see Annex), these countries are bound by other international labour standards applicable to all workers, as well as the principles flowing directly from the ILO Constitution.<sup>74</sup>

In reality, irregular migrants can only enjoy the right to equal treatment in the workplace if labour law protection is disconnected from immigration enforcement activities. In **Israel**, it would appear that

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<sup>72</sup> See the report of Amnesty International on the situation of Iraqi refugees in Syria, Doc. AI:MDE 14/036/2007, EFAI, 29 July 2007.

<sup>73</sup> ICESCR, Article 7.

<sup>74</sup> The fundamental labour rights concern protection from forced labour, elimination of child labour, non-discrimination and access to trade unions rights, i.e. the right to organize and to bargain collectively. See the 1998 ILO Declaration on Fundamental Principles and Rights at Work (<http://www-old.ilo.org/actrav/actrav-english/telearn/global/ilo/law/idec.htm>), which observes that ILO Member States are bound by virtue of their very membership in the ILO to respect, promote and to realize in good faith and in accordance with the ILO Constitution the principles outlined in the eight core ILO conventions addressing these fundamental rights despite non-ratification of the instrument or instruments. With the exception of the OPT, which is not a state (see n. 2 above), the remaining 11 countries are ILO Member States.

irregularity of stay “contaminates” the employment contract, though in practice the courts enforce such contracts. Nonetheless, this is an uncertain legal position and requires clarification. In general, employment contracts are respected and while courts will not require the contract to be continued in such circumstances, they do enforce back pay, all social benefits derived from statutory labour standards as well as contractual rights. These rights are afforded regardless of whether the employee remains in the country or has been deported. Consequently, a strong line is generally drawn between the protection of employment rights and immigration enforcement. However, it is clear that irregular migrant workers encounter greater obstacles in bringing complaints against their employer before the labour courts for fear of detection and expulsion, and the limited assistance available from the courts<sup>75</sup> is insufficient to overcome the barriers connected with claiming employment rights. In the case of payments by employers of national insurance fees to insure their workers, the Israeli Supreme Court has clarified that irregular migrant workers are covered with regard to the provision of benefits in kind (e.g. rehabilitation and medical treatment following a workplace accident).

Until very recently, migrants in agricultural and domestic work in **Jordan** were excluded from the personal scope of the Labour Law. But in the amendments to the law introduced at the end of July 2008, domestic and agricultural workers are now covered by its provisions. Following these amendments, it is expected that migrant workers, whether they are regular or irregular, will no longer encounter obstacles in lodging claims against their employers before the labour courts. However, migrant workers, whether regular or irregular, do not enjoy the right to equal working conditions despite the fact that Jordan is bound, due to its membership of the ILO, by the 1998 ILO Declaration of Fundamental Principles and Rights at Work.<sup>76</sup> For example, foreign nationals regardless of their immigration status continue to be barred from joining trade unions, even though this matter has recently been the subject of deliberations in the Jordanian Parliament.

In contrast to the recent changes in Jordan discussed above, in **Libya**, the Labour Code does not apply to agricultural work and domestic work, which is largely performed by foreign nationals. Moreover, concerns have been expressed by the ILO about the lack of equal treatment between nationals and migrants (whether regular or irregular) in the workplace, and in particular, the non-payment of wages of expelled irregular migrant workers.<sup>77</sup>

In **Lebanon**, as noted in Section 5 above, it is possible for irregular migrants to regularize their situation. On doing so, migrants receive a work authorization issued by the Ministry of Labour for a specific job. This authorization depends on a sponsor and on possession of an employment contract.<sup>78</sup> However, in practice, few irregular migrants present themselves for regularization. Sometimes, they are unable to find sponsors because their employers prefer that they work in the informal labour market. Often, they fear that the refusal to grant them a work authorization may be followed by an expulsion procedure. Moreover, the regularization process is costly.<sup>79</sup> As a general rule, therefore, irregular migrants cannot be said to have the right to work in Lebanon and, if they do work, it will be in the informal labour market.

In **Mauritania**, the Labour Code is aimed only at the protection of the rights of workers in a regular situation and states that foreign workers should obtain a work permit. Article 399 of the Code relating to the conditions of employment of the foreign labour force stipulates that all foreign nationals

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<sup>75</sup> The example of such judicial assistance provided in the paper on Israel refers to the collection of preliminary testimonies from the irregular migrant worker before his or her removal, which can hardly be an incentive to bring a complaint before the court in the first place.

<sup>76</sup> See n. 73 above.

<sup>77</sup> PERRIN, n. 10 above, at pp. 6-7.

<sup>78</sup> See the website of the Director General of Public Order at <http://www.general-security.gov.lb>.

<sup>79</sup> Human Rights Watch, *Dépérir ici ou mourir là-bas: Les choix désespérés des réfugiés irakiens au Liban* (November 2007) at p. 20 (<http://www.hrw.org/en/reports/2007/12/03/rot-here-or-die-there>).

who wish to take up salaried employment in Mauritanian territory are required first to obtain a work permit, the nature and conditions of which are fixed by government decree adopted after consultation with the national committee on employment, jobs and social security. Similarly, in **Algeria**, the laws are silent on the question of irregular migrant workers and in practice it is necessary to possess a work permit in order to claim employment rights.

## 6.2 Social Rights

Social rights are applicable to all persons regardless of their nationality or immigration status. This principle is underscored in the 1948 Universal Declaration of Human Rights and reiterated in the ICESCR, which all countries examined in this synthesis report have ratified. Moreover, as discussed earlier, the ICRMW stipulates in explicit terms in Part III that social rights apply to all migrant workers and members of their families, including irregular migrants, although the content of these rights (e.g. access to health care discussed below) has been diluted somewhat.

### 6.2.1 Access to health care

In **Israel**, life-saving emergency health care is afforded to irregular migrants under the Patients' Rights Law of 1996 and more extensive treatment can be accessed via the services of an NGO, Physicians for Human Rights, which is nonetheless supported to a certain degree by the State. Children of irregular migrants have been able to benefit from such voluntary health care arrangements since 2001. This position conforms to Article 28 of the ICRMW, which grants *all* migrant workers and their families access to urgent medical care on the basis of equality of treatment with nationals, despite the existence of a more holistic right that *everyone* should enjoy the highest attainable standard of physical and mental health in Article 12 of the ICESCR, which extends health care provision beyond mere urgent medical treatment to include, for example, preventive health care.

In **Egypt**, primary healthcare is available to all persons and is not dependent on the validity of residence permits. However, more sophisticated medical care is costly and irregular migrants cannot benefit from health insurance. With regard to other healthcare issues, and, as also noted in Section 3.1 above, there are very strict rules prohibiting the employment of HIV-positive foreign nationals (regardless of their legal status), rules that require their deportation within 72 hours after notification of their infection. Exceptions are made for certain categories of non-Egyptians, including refugees. This rule is a clear breach of the ILO Code of Practice on HIV-Aids and the World of Work, which prohibits discrimination against workers infected with the disease.<sup>80</sup>

Irregular migrants in **Jordan**, even if they are permitted to freely access the services of public hospitals, do not benefit in practice because of the fear of detention and expulsion. In **Lebanon**, migrants without a residence card are unable to access social protection. Irregular migrants, therefore, only have recourse to private healthcare. As far as the services of public hospitals are concerned, the Minister of Health only covers the cost of surgery carried out on Lebanese nationals.<sup>81</sup>

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<sup>80</sup> The Code of Practice is available from the ILO website at <http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/normativeinstrument/kd00015.pdf>. Non-discrimination is identified in the Code of Practice as a key principle (para. 4.2): "In the spirit of decent work and respect for the human rights and dignity of persons infected or affected by HIV/AIDS, there should be no discrimination against workers on the basis of real or perceived HIV status. Discrimination and stigmatization of people living with HIV/AIDS inhibits efforts aimed at promoting HIV/AIDS prevention".

<sup>81</sup> See NATOUR and YASSINE, *Aperçu de la situation juridique de la vie des réfugiés palestiniens au Liban, Voies d'Adaptation*, study undertaken for the Human Development Centre, 2006 (Arabic version published by the Palestinian Centre for Documentation and Information, Damascus, 2007) at pp. 89-90 concerning the right of access to healthcare in Lebanon.

In **Mauritania**, irregular migrants working in the unregulated and poorly protected informal labour market constitute a particularly vulnerable section of the labour force and do not enjoy any social protection (e.g. sickness insurance, pension benefits, social assistance, etc.). In this regard, they are in the same position as nationals working in the informal sector and experience the same problems in accessing their rights, even though they are able in principle to access public services such as education and health without restriction.

In **Syria**, Iraqi refugees can in principle access healthcare on an equal basis with Syrian citizens. Until the end of 2005, all Iraqi refugees in Syria enjoyed free access to public hospitals. However, they now have to pay for the costly treatment of certain illnesses, such as cancer or cardiac problems. On the other hand, public hospitals continue to treat all admitted patients in cases of emergency. UNHCR pays for 80 per cent of this treatment and the patient pays for the remaining 20 per cent.

### 6.2.2 Access to education

Where there are mandatory or compulsory education requirements applicable to all minors present within a country, schooling should not be denied regardless of the migratory status of the child. This position is confirmed by international human rights law which is applicable to everyone and, moreover, stipulates that primary education shall be compulsory and available free to *all*.<sup>82</sup> In **Israel**, compulsory education is applicable to all children (from the age of 5 to 16), including irregular children, as the pertinent law makes no reference to citizenship. Information on how these rules apply in practice is unavailable though: particularly the question of whether schools actually enroll the children of irregular migrants and, if so, the repercussions for parents if their child's unauthorized status is discovered through school enrollment. In **Egypt**, however, while the Government is bound by international instruments providing for the obligation to guarantee free primary education to all children on its territory irrespective of their immigration status, irregular migrants and undocumented asylum seekers have no access to educational institutions.<sup>83</sup> This is a consequence of the requirement that all children must provide a valid residence permit as a precondition to their enrollment. However, access to higher education, albeit expensive, is possible, and, upon acceptance, students can apply for a student visa and reside lawfully in Egypt. In **Jordan**, most migrants are nationals of Arab countries and therefore easily integrated, but because of its social and economic situation, Jordan is not in a position to offer social rights to hundreds of thousands of migrants. Moreover, there are fears that Iraqi nationals residing in the country could become, like the Palestinians before them, a permanent "refugee problem". School-age Iraqi children are though, as of the beginning of the 2007-2008 school year, permitted to enroll in both public and private schools regardless of their residency status.<sup>84</sup>

In **Lebanon**, the law limits admission to public schools to Lebanese nationals.<sup>85</sup> Nevertheless, it exceptionally authorizes the admission of foreign children on the condition that there are school places available.<sup>86</sup> Therefore, foreign children, including the children of Iraqi refugees, do have limited access to public education. In practice, however, the majority of children of irregular migrants are enrolled in private schools and financial support is provided by Lebanese NGOs to their families to help them pay the school fees.<sup>87</sup>

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<sup>82</sup> ICESCR, Article 13(2)(a).

<sup>83</sup> T. BADAUY, "Refugee Children in Egypt and the Right to Education: Examining the Gap between Theory and Practice" (2007) 95 *MJHR* 11.

<sup>84</sup> *The Jordan Times*, 26 August 2007 and 14 September 2007.

<sup>85</sup> Decree No. 820 of 5 September 1968, Article 3.

<sup>86</sup> *Ibid.* Article 102.

<sup>87</sup> NATOUR and YASSINE, n. 80 above, at p. 55.

Iraqi children in **Syria** go to school and benefit from free primary and secondary education in the same way as Syrian citizens. They are also exempt from the payment of school fees. In 2007, it was estimated that the number of Iraqi children in Syrian schools stood at approximately 33,000. And this figure increased considerably in 2008, because parents are enrolling their children in schools to obtain long-term residence permits in Syria. It is estimated that there are about 80,000 such children enrolled in Syrian schools. Iraqi refugees may also access higher education in Syria.

### 6.2.3 Other social rights: Housing and trade union rights

In **Israel**, the Foreign Workers Law of 1991 (5751-1991), as amended, partially provides for the right to housing which in principle should also be applicable to irregular migrants, a position that accords with international human rights law.<sup>88</sup> In **Syria**, Iraqi refugees are not given accommodation in refugee camps despite their very high numbers (approximately 1.5 million). In practice, these refugees are absorbed by host communities. It is noteworthy that numerous Iraqi refugees have purchased houses or apartments because Syrian law allows them to possess real estate. But the majority of Iraqi refugees live in rental accommodation. In **Algeria**, it is clear that irregular migrant workers cannot access social housing.

There is little information available on the right of irregular migrants to belong to and participate in trade union activities, which are both important social and civil rights, and which are protected by international labour standards and international human rights law.<sup>89</sup> In **Jordan**, as observed in Section 6.1 above, and in **Libya**, foreign nationals, irrespective of their immigration status, are barred from joining trade unions.

## 6.3 Rights of Specific “Migrant” Groups: Domestic Workers

In **Israel**, domestic workers (including personal caregivers) are now authorized to stay in the country beyond the previously permitted maximum period of five years, though the new provisions are inapplicable to domestic workers in an irregular situation. Moreover, these provisions have not been adopted with a view to facilitating a secure residence status for the migrant workers, but on the grounds that the person cared for is dependant on their caregiver and cannot easily adapt to change.

In **Egypt**, the law explicitly excludes domestic workers from the benefits of the Unified Labour Code (Article 4(b)), which means that they are not protected by the Code nor can they benefit from social security. Nevertheless, foreign nationals still need to obtain a permit to work as domestic workers in Egypt. In theory, migrant domestic workers are only subject to the protection of contract law as well as international and national human rights standards. In practice, according to the country rapporteur, most foreign domestic workers, including refugees, work irregularly without a contract and are often subject to abuse and slave-like conditions, and their salaries are withheld in violation of Egyptian law. However, due to their fear of deportation, migrant domestic workers prefer to work in dismal conditions rather than to complain to the authorities.

As observed in Section 6.1 above, previously, domestic workers in **Jordan** were not protected by labour and social security laws, though their employment contract was endorsed by the Ministry of Labour with the result that it was legal and effective. In July 2008, however, Jordanian labour legislation was amended to apply to this category of workers. Nonetheless, this particular group of migrant workers holds a precarious status akin to being in an irregular situation: they can be deported

<sup>88</sup> See in particular ICESCR, Article 11(1) stipulating “the *right of everyone* to an adequate standard of living for himself and his family, including *adequate* food, clothing and *housing*”. Emphasis added. But see also ICCPR, Article 6: “*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment*”. Emphasis added. It is possible of course that particularly poor housing conditions may amount to “degrading treatment”.

<sup>89</sup> See, respectively, ILO Convention No. 98 (1949) concerning the Application of the Principles of the Right to Organize and to Bargain Collectively; ICESCR, Article 8; and ICCPR, Article 22.

summarily on the basis of (spurious) allegations by their employer that they have engaged in “immoral practices” or committed crimes such as theft.<sup>90</sup> Moreover, irregular migrant domestic workers may be detained in correction and rehabilitation centres for several months pending the completion of deportation procedures. On 30 July 2008, the number of such workers in administrative detention stood at 27 and some of them had been detained since 2007.<sup>91</sup> To avoid deportation, it is reported that, in December 2007, an Indonesian domestic helper killed her newborn baby. The defendant was married before she came to Jordan in March 2007 and was also pregnant when she arrived. She did not declare her pregnancy or that she was married because the Jordanian authorities would have refused to issue her a residence and work permit. The Criminal Court convicted her for the killing and sentenced her to seven and a half years imprisonment.<sup>92</sup>

## 7. Inter-state Cooperation

The forms of inter-state cooperation identified in the country papers range from cooperation on a bilateral level between countries in the form of binding return or readmission agreements or less binding arrangements aimed at facilitating regular labour migration, to cooperation on a regional level in the context of regional integration regimes, such as the Arab Maghreb Union (*L'Union du Maghreb Arabe – UMA*),<sup>93</sup> which encompasses the five Maghreb countries, or the Community of Sahel-Saharan States (*Communauté des Etats sahélo-sahariens – CEN-SAD*), a broader conglomeration of states, which includes five countries examined in this study, i.e. Egypt, Libya, Mauritania, Morocco and Tunisia.<sup>94</sup> Both of these regional regimes have free movement of persons, including for the purpose of employment, as one of their objectives. Neighbouring regional integration regimes, such as the Economic Community of West African States (ECOWAS) in the case of Libya and Mauritania<sup>95</sup> or the European Union in the case of Turkey, which aspires to EU membership, are also relevant. Further, the less formal inter-regional and intergovernmental consultative process involving the five countries on the northern shore of the western Mediterranean (i.e. France, Italy, Malta, Portugal and Spain) and the five Maghreb countries, which is known as the “5+5 Dialogue on Migration in the Western Mediterranean”, includes discussions on irregular migration and trafficking as well as the rights of migrants.<sup>96</sup> With the exception of Libya, however, there are no bilateral return or readmission agreements reported between the countries on the southern shore of the Mediterranean and sub-Saharan African countries, although negotiations are ongoing between **Algeria** and Mali and Niger.

**Turkey** readmits her own nationals in accordance with its Constitution and Passport Law. She also readmits aliens having valid Turkish residence permits. If it is proved that irregular third-country nationals have departed from Turkey, they will be readmitted if returned by the same or a subsequent flight in accordance with the International Civil Aviation Organization (ICAO) rules and practices. Readmission agreements are deemed to be effective instruments in addressing irregular migration and encouraging states to take serious measures in this regard. In this context, Turkey considers

<sup>90</sup> M.Y. OLWAN, “Circular and Permanent Migration: A Jordanian Perspective”, *CARIM ASN 2008/34*, [http://www.eui.eu/RSCAS/e-texts/CARIM\\_AS&N\\_2008\\_34.pdf](http://www.eui.eu/RSCAS/e-texts/CARIM_AS&N_2008_34.pdf).

<sup>91</sup> These figures were provided to UNHCR by officials of the Ministry of the Interior on 2 August 2008.

<sup>92</sup> *The Jordan Times*, 25 May 2008.

<sup>93</sup> See the UMA website at <http://www.maghrebarabe.org/en/>.

<sup>94</sup> There are 28 Member States in total. The other 23 Members are Benin, Burkina Faso, Central African Republic, Chad, Comoros, Côte d’Ivoire, Djibouti, Eritrea, The Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Sao Tome and Principe, Somalia, Sudan and Togo. See the CEN-SAD website at <http://www.cen-sad.org/>.

<sup>95</sup> Mauritania is no longer a Member State of ECOWAS, but it continues to be a party to the 1979 Protocol relating to Free Movement of Persons, Residence and Establishment.

<sup>96</sup> More information on this consultative process is available on IOM’s web site at <http://www.iom.int/jahia/Jahia/pid/860>.

readmission agreements with source countries as a priority issue and has signed such agreements with Greece, Kyrgyzstan, Romania, Syria and Ukraine, and is undertaking negotiations on readmission with Pakistan. Discussions on a Turkey-EU readmission agreement are ongoing; the first round of talks was held in Ankara on 17 October 2005.

**Mauritania** cooperates with Mediterranean countries in different contexts. Since 2003, there has existed a bilateral agreement with Spain on the regulation of migration flows between the two countries, which contains readmission obligations. This is the only readmission agreement to which Mauritania is a party. However, combating irregular migration in cooperation with other Mediterranean countries is becoming a priority, because increasing transit migration through the country towards the EU makes it appear a “weak link”. Consequently, growing pressure from destination countries to address such movements is sharpening the focus on irregular migration in Mauritania.

There is also a readmission agreement in place between Italy and **Tunisia**, which was signed in 1998 and that came into force in September 1999. The Italian Government provides resources and technology to Tunisia to combat irregular migration, as well as financial assistance for the establishment of centres to which migrants returning from Italy are temporarily placed. The agreement operates in tandem with the Italian annual labour migration quota which offers preferential treatment to Tunisian nationals on the labour market. This is another example of how measures facilitating lawful access to the labour market can be viewed as complementary to the problem of irregular migration. Section 6 above discussed the MoU between the Jordanian Ministry of Labour and the Egyptian Ministry of Labour Force and Immigration, which facilitates the access of Egyptian nationals to the former country’s labour market, but which also provides an opportunity for irregular Egyptian migrant workers in Jordan to regularize their status.

**Mauritania** has agreements on visa-waiver programmes with ECOWAS Member States and in **Turkey** EU asylum and immigration measures, including those on irregular migration, are already part of Turkish law and administrative practice since Turkey is currently negotiating membership with the EU. Consequently, Turkey finds itself in a special situation since it is obliged to implement the rules on migration which form part of the EU *acquis*. While these rules contain numerous measures addressing the prevention and/or elimination of irregular migration, no legally binding EU measures that explicitly protect the rights of irregular migrants have yet been adopted: and this may impede the development of the Turkish legal framework in this field despite the fact that Turkey has ratified the 1990 Migrant Workers Convention (see Annex). For the moment, however, no EU Member State has ratified this instrument and there is little prospect that this will occur in the near future.<sup>97</sup>

**Jordan** has entered into several agreements with countries of origin to facilitate the access of their nationals to the Jordanian labour market, and in some case these agreements also provide an opportunity for irregular migrant workers in Jordan to regularize their status. In particular, these agreements include a MoU with Indonesia (2 May 2001), a MoU between the Jordanian Ministry of Labour and the Egyptian Ministry of Labour Force and Immigration (29 March 2007), discussed above; a joint statement with Pakistan (8 January 2007); and a MoU with Sri Lanka (7 January 2007).<sup>98</sup> The last agreement in this category was that concluded with Syria on 29 December 2007.<sup>99</sup> Jordan is also working with the Iraqi authorities to facilitate the voluntary return to Iraq of Iraqi nationals residing in Jordan.

**Libya** has concluded a number of bilateral agreements relating to labour migration, social security and irregular migration (and especially return and readmission).<sup>100</sup> With regard to labour migration,

<sup>97</sup> In this regard, see E. MACDONALD and R. CHOLEWINSKI, *The Migrant Workers Convention in Europe* (Paris, UNESCO 2007) <http://unesdoc.unesco.org/images/0015/001525/152537E.pdf>.

<sup>98</sup> For these agreements, see the CARIM webpage at <http://www.carim.org>.

<sup>99</sup> *Al-Rai*, 30 December 2007.

<sup>100</sup> See PERRIN, n 10 above, at pp. 6-7.



these agreements principally concern skilled migrants, experts and technicians, and have been concluded with Algeria (1987), Niger (1988), Tunisia (1973) and Ukraine (2004). Social security agreements have also been concluded with Algeria, Morocco and Tunisia and more generally with all the Member States of the UMA in the context of the Maghreb Commission on Social Security, as well as with Pakistan (1981 and 1989), Sudan (1965) and Turkey (1976, 1984 and 1985),<sup>101</sup> although payment of benefits under these agreements is hindered by inefficient procedures. Finally, with regard to irregular migration, return and readmission, Libya concluded an agreement with Algeria (2006) combating terrorism and clandestine emigration, which was clearly adopted in a strong security context; an agreement with Italy (2004) on increased control of borders; return agreements with Algeria, Chad and Egypt; a treaty with Mali relating to transit for return migrants; and readmission agreements with Malta, Spain and Ukraine.

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<sup>101</sup> In the 1970s, social security agreements were also concluded with the following former communist countries of Central and Eastern Europe, although they are no longer operational: Poland (1975), Romania (1977) and former Yugoslavia (1974).

## 8. Conclusions

While it is difficult, owing to the availability of piecemeal information in specific areas, to provide a comprehensive and authoritative assessment of the present state of the legal frameworks, in terms of their content and implementation, which address irregular migration in the countries under examination, the following broad tentative conclusions can be drawn.

- The presence of irregular migrants in many countries of the region is partly a result of the existence of complex national legal provisions on the entry, residence and departure of foreign nationals, including those persons entering for the purpose of employment. Indeed, the rules in a few of the countries examined appear overly “protectionist” in their design and implementation. As is the case in a number of European countries on the northern shore of the Mediterranean, the legal measures in place do not enable the demand for labour in certain low-skilled sectors of the economy to be adequately met through legal channels with the result that these jobs, which are also frequently found in the informal sector, are performed by irregular migrants. This demand is manifested in the fact that the presence of irregular migrant workers is effectively tolerated in some countries.
- The boundaries between irregular migrants and asylum seekers and refugees in the countries examined are far from clear. Where the country in question has accepted its obligations under the 1951 Geneva Convention Relating to the Status of Refugees and the 1967 Protocol and/or the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, the status of refugees and asylum seekers may remain precarious, even in the case of refugees who have been recognized by UNHCR. Indeed, while UNHCR recognition as well as *de facto* recognition may (though not in all instances) afford the refugee protection against refoulement, it does not necessarily lead to the enjoyment of his or her economic and social rights, for example access to employment, health, education or shelter.
- The laws relating to the entry, residence and exit of foreign nationals in the countries of the region make increasingly broad provision for criminal and administrative sanctions in respect of unauthorized entry, stay and departure. With a few exceptions, irregular migrants are caught by these rules as well as those who facilitate their entry and transit, including human traffickers and migrant smugglers. However, little information is available on how these measures are actually enforced. Moreover, the criminalization of assistance to irregular migrants (including humanitarian assistance) impacts also on the extent to which (if at all) they can access social rights in the destination country.
- There is a clear relationship between irregular migration and national security in nearly all the countries under examination. National security, however, is a more important issue in some of these countries, such as in Israel, in respect of so-called “infiltrators” or clandestine entrants, who are considered to be a greater threat to national security than “overstayers”, as well as in respect of Palestinians. In Algeria, the reluctance to regularize irregular migrant workers from Mali and Niger present in the southern part of the country appears partly linked to existing security threats from terrorism, organized crime and high levels of criminality.
- In Jordan, Lebanon and Syria, it would seem that the legal and public debate on “irregular migration” is essentially focused on Palestinian and Iraqi refugees, which is hardly surprising given the large numbers involved. But this focus works probably to the detriment of other vulnerable groups of migrants such as women domestic workers, particularly in Jordan and Lebanon.
- On the basis of the relatively limited information available, it is possible to say that there is a wide gap between the commitments made by the countries concerned under international instruments (see Annex) and the effective implementation of these instruments in national law and administrative practice, particularly with respect to access to social rights. Indeed, such a gap is openly recognized in Algeria, Libya and Mauritania in respect of the 1990 Migrant

Workers Convention, which explicitly protects irregular migrant workers and members of their families and which these countries ratified in April 2005, June 2004 and January 2007 respectively. The need to build up capacity in these countries to develop national legislative frameworks that properly implement the ICRMW is seen as being particularly important.

- There also appears to be a discrepancy between the commitments made by a number of countries participating in regional integration systems (e.g. the Arab Maghreb Union and the Community of Sahel-Saharan States) in relation to free movement of persons and national law and practice.
- Limited information is available about the legal provisions (if any) addressing the plight of particularly vulnerable groups of irregular migrants, such as victims of trafficking and children. Indeed, more empirical research on the access of irregular migrants to social rights in both law and practice would be welcome.

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## ANNEX

## Ratification of the principal international instruments of relevance to irregular migration

	ICCPR	ICESCR	ICERD	CAT	CEDAW	CRC	ICRMW	C143	CTOC TP	CTOC SP	CRSR + Prot*	OAU Ref
Algeria	R	R	R	R	R	R	R		R	R	R	R
Egypt	R	R	R	R	R	R	R		R	R	R	R
Israel	R	R	R	R	R	R			R		R	
Jordan	R	R	R	R	R	R						
Lebanon	R	R	R	R	R	R			R	R		
Libya	R	R	R	R	R	R	R		R	R		R
Mauritania	R	R	R	R	R	R	R		R	R	R	R
Morocco	R	R	R	R	R	R	R				R	R
Syria	R	R	R	R	R	R	R		s	s		
Tunisia	R	R	R	R	R	R			R	R	R	R
Turkey	R	R	R	R	R	R	R		R	R	R**	

## Notes

R indicates ratification.

s indicates signature only.

\* As of 1 October 2008.

\*\*In ratifying the 1967 Protocol to the CRSR, Turkey expressly maintained its declaration of geographical limitation to events occurring in Europe.

ICCPR – International Covenant on Civil and Political Rights, 1966

ICESCR – International Covenant on Economic, Social and Cultural Rights, 1966

ICERD – International Convention on the Elimination of All Forms of Racial Discrimination, 1965

CAT – Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984

CEDAW – Convention on the Elimination of All Forms of Discrimination Against Women, 1979

CRC – Convention on the Rights of the Child, 1989

ICRMW – International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990

C143 – ILO Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, 1975

CTOC TP – Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000

CTOC SP – Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime, 2000

CRSR + Prot – Geneva Convention Relating to the Status of Refugees, 1951 and the 1967 Protocol

OAU Ref – OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969