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EGYPT AND THE 1990 CONVENTION ON THE PROTECTION OF MIGRANT WORKERS

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CARIM
Euro-Mediterranean Consortium
for Applied Research on International Migration

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of Migrant Workers

Egypt

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

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

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The CARIM carries out the following activities:

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

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

Results of the above activities are made available for public consultation through the website of the project: www.carim.org

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Abstract

In 2006, Egypt submitted a report to the United Nations Committee on the Rights of All Migrant Workers and Members of their Families. This paper is a reaction to Egypt's report to the Committee; it provides some recommendations for improving Egyptian laws in order to ensure the government's compliance with its obligations under the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. The paper will demonstrate that the government generally respects its obligations under the Convention. However, there remain some areas where more scrutiny is needed, chief among which are the rights to education and social security. The paper also provides some explanations of current laws and provides recommendations for their improvement so that compliance with modern human rights standards is ensured.

Résumé

En 2006, l'Égypte a présenté son rapport au Comité des Nations unies pour la protection des droits de tous les travailleurs migrants. Cette contribution est, en quelque sorte, une réaction à ce rapport et suggère diverses pistes en vue d'améliorer le cadre législatif égyptien dans le sens d'une plus grande convergence avec les dispositions de la Convention relative à la protection des droits de tous les travailleurs migrants et des membres de leur famille. On y constatera que de manière générale, les autorités égyptiennes respectent les engagements qu'ils ont pris au regard de cet instrument. Cependant, certaines questions méritent une attention particulière, principalement, celles de l'accès à l'éducation et à la sécurité sociale. Les dispositions législatives pertinentes sont analysées et commentées, des changements sont suggérés en vue de leur adéquation avec les standards actuels en termes de respect des droits fondamentaux.

Introduction

This report examines Egypt's compliance with the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (the CMW) and the gaps that exist between the requirements of the CMW and what usually takes place in practice. Given that Egypt submitted a report (Egypt's report) to the United Nations Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (the Committee) in 2006,¹ a large part of this paper will represent a reaction to Egypt's report. I submitted a similar note to the Committee in April 2007 following the request of the Committee's secretariat. Considering that few changes have taken place in Egyptian laws since 2007, this paper will be an edited version of my earlier note to the Committee.

The paper also provides brief comments on some articles of the CMW in light of the context in which the CMW is applied in Egypt. The CMW is generally upheld in Egypt. Therefore, I shall only comment on the articles that raise some questions with regards to their application and respect in Egypt.

The information provided by the Egyptian government demonstrates a great understanding of the problems faced by non-Egyptians. Yet, as I expressed in my 2007 note, it is unfortunate that the data gathered by the Egyptian government is not shared with human rights advocates or those who are most concerned by the CMW. This can be overcome if the government organizes an annual meeting with all the parties concerned by the rights of migrant workers where relevant issues are discussed and information about the latest developments in the field is shared.

It is equally important to mention that my area of expertise lies mainly in refugee law; my knowledge of the laws relating to migrant workers was acquired through research and observation based on personal interest. As I expressed in my 2007 note, the information I have is primarily based on my consultation of the different legal codes. As such, some gaps in this paper may be found. Moreover, as I expressed in the 2007 note, I believe that Egypt's report to the Committee is adequate, yet incomplete. Accordingly, some points raised by the governmental report will have to be clarified, if not refuted.

Finally, it is important to consider the context in which the CMW was ratified by Egypt. The CMW came into force on 1 July 2003. It was ratified by Egypt on 19 February 1993 and took the force of law after the fulfilment of the domestic legislative requirements. Egypt found it appropriate to ratify the CMW for the following reasons. First, the CMW explicitly precludes the extension of its benefits to asylum-seekers and refugees which guarantees that refugees in Egypt, whose numbers are on the rise, would not be covered by the CMW. Such refugees will only be protected by conventions that provide fewer rights to those who benefit from them.² Secondly, and most importantly, the coming into force of the CMW grants protection and more rights to the thousands of Egyptians living and working illegally abroad. Since the 1970s, there has been a surge of Egyptians working in the Gulf region. Most of the workers were highly skilled professionals. The late nineties, however, witnessed a rise of illegal and unskilled Egyptian workers who arrived in Europe often with the assistance of human smugglers. When Egypt ratified the CMW, the Egyptian government did not conceive that, one day, it would violate the CMW. The majority of foreigners living in Egypt were either refugees or rich businessmen from Western states whose presence on Egyptian soil was encouraged. The turning point came in 1995 when the numbers of applications for asylum increased following the severance of ties between Egypt and Sudan and the intensification of the activity of smugglers and human traffickers. This also led to an increase in the numbers of failed asylum-seekers whose presence is not wanted by the government, but who are also not covered by any refugee convention and are as such, protected by the CMW.³

¹ <http://tb.ohchr.org/default.aspx?country=eg>.

² Such as the Convention Relating to the Status of Refugees to which Egypt made several reservations.

³ According to Article 3(d) of the CMW, refugees are not to enjoy the protection of the CMW.

Reservations

Egypt made reservations to Articles 4⁴ and 18(6)⁵ of the CMW on the meaning of family and compensation for miscarriage of justice respectively. Although the first reservation is understandable in light of domestic public order and the influences of Islamic law and morals on Egyptian society, the second reservation seems devoid of any legal foundation. A possible explanation can be found in the fact that the measures stipulated in Article 18(6) are not offered to Egyptians and, therefore, should not be given to foreigners. Ideally, instead of making a reservation to Article 18(6) of the CMW, it would have been more appropriate if the Egyptian legislature amended domestic law to allow for the compensation of victims of miscarriages of justice.

National Implementation of International Law

Egypt's report refers to several articles of the Egyptian Constitution. The Constitution was amended in 2007. However, the amendments had no effect on Article 151,⁶ which governs the process of national codification and implementation of international law. The Supreme State Security Court clearly explained the mechanisms needed for the implementation of international treaties in domestic law when it stated that

The national judge does not apply an international treaty based on the fact that his country committed itself to upholding it in international law. He applies the treaty to the extent that it constitutes part of domestic law in accordance with the procedures required for its domestic implementation...following Article 151 of the Constitution of Egypt.⁷

This mechanism is explained in paragraphs 12-14 and 23 of Egypt's report.

Egypt's report also indicates that several institutions have been created in order to monitor the human rights situation in Egypt. Unfortunately, in practice, these institutions rarely assist non-Egyptians; exceptions may be found on rare occasions. For instance, the National Council for Maternal and Child Welfare and Africa and Middle East Refugee Assistance (AMERA-Egypt)⁸ cooperate to assist non-Egyptian unaccompanied minors. Such cooperation is usually conducted on a case by case basis and does not reflect the existence of an organized assistance program for non-Egyptian children.

The other governmental bodies (such as the Directorate for Human Rights Affairs and International Social and Humanitarian Issues of the Ministry of Foreign Affairs, the Human Rights Affairs Department of the Ministry of Justice, the Human Rights Committee of the Ministry of Social Affairs, and the Human Rights Committee of the People's Assembly) are unknown to the public and foreign workers rarely resort to them. Reasons can vary from the migrants' lack of knowledge of the existence of such bodies to their lack of faith in their efficiency. Furthermore, bureaucracy deters potential

⁴ Article 4 "For the purposes of the present Convention the term 'members of the family' refers to persons married to migrant workers or having with them a relationship that, according to applicable law, produces effects equivalent to marriage, as well as their dependent children and other dependent persons who are recognized as members of the family by applicable legislation or applicable bilateral or multilateral agreements between the States concerned".

⁵ Article 18(6) "When a migrant worker or a member of his or her family has, by a final decision, been convicted of a criminal offence and when subsequently his or her conviction has been reversed or he or she has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partially attributable to that person".

⁶ Article 151 of the Egyptian Constitution: "The President of the Republic shall conclude treaties and communicate them to the People's Assembly, accompanied with suitable clarifications. They shall have the force of law after their conclusion, ratification, and publication according to established procedures...".

⁷ General Prosecution case number 4190, 1986. Judgment issued on 16 April 1987, [author's translation].

⁸ Information on this AMERA can be found on www.amera-uk.org.

plaintiffs from reporting to these institutions. As I indicated in the 2007 note, it is recommended that the media, whether private or state-sponsored, inform the public of the existence of these institutions, their roles and mandates, and how people can benefit from them.

Emergency Law and Detention of Non-Egyptians

Article 16,

- 1. Migrant workers and members of their families shall have the right to liberty and security of person.*
- 2. Migrant workers and members of their families shall be entitled to effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions.*
- 3. Any verification by law enforcement officials of the identity of migrant workers or members of their families shall be carried out in accordance with procedure established by law.*
- 4. Migrant workers and members of their families shall not be subjected individually or collectively to arbitrary arrest or detention; they shall not be deprived of their liberty except on such grounds and in accordance with such procedures as are established by law.*
- 5. Migrant workers and members of their families who are arrested shall be informed at the time of arrest as far as possible in a language they understand of the reasons for their arrest and they shall be promptly informed in a language they understand of any charges against them.*
- 6. Migrant workers and members of their families who are arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that while awaiting trial they shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings and, should the occasion arise, for the execution of the judgement.*
- 7. When a migrant worker or a member of his or her family is arrested or committed to prison or custody pending trial or is detained in any other manner:*
 - a. The consular or diplomatic authorities of his or her State of origin or of a State representing the interests of that State shall, if he or she so requests, be informed without delay of his or her arrest or detention and of the reasons therefore;*
 - b. The person concerned shall have the right to communicate with the said authorities. Any communication by the person concerned to the said authorities shall be forwarded without delay, and he or she shall also have the right to receive communications sent by the said authorities without delay;*
 - c. The person concerned shall be informed without delay of this right and of rights deriving from relevant treaties, if any, applicable between the States concerned, to correspond and to meet with representatives of the said authorities and to make arrangements with them for his or her legal representation.*
- 8. Migrant workers and members of their families who are deprived of their liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of their detention and order their release if the detention is not lawful. When they attend such proceedings, they shall have the assistance, if necessary without cost to them, of an interpreter, if they cannot understand or speak the language used.*
- 9. Migrant workers and members of their families who have been victims of unlawful arrest or detention shall have an enforceable right to compensation.*

Egypt generally respects article 16 of the CMW. This being said, some violations can take place. Egypt's Emergency law authorizes the police to request that any individual identify himself at any time. Although such measure may be justified at times, there are reports of police abuse of power insofar as black Africans are concerned.⁹ Examples of abuse of power include arbitrary administrative detention and general harassment. Most Africans in Egypt are refugees. However, there is a large undocumented population of failed asylum-seekers (migrant workers) that is vulnerable to these abuses. Accordingly, they are at risk of detention and possible deportation for lack of valid residence permits. Migrant workers from Western states are rarely intercepted by the police.

If a non-Egyptian fails to produce a valid residence permit upon being intercepted by the police, he or she will be automatically taken to a police station where he or she will be held before his or her transfer to the department of immigration and passport control at the *Mugamma'* building. The non-Egyptian detainee is then referred to the office of state security for a security clearance.¹⁰ Once the clearance is issued, the detainee is referred back to the immigration department, followed by another transfer to the police station where he or she was first held before the final release could take place. This process usually takes a few days during which the migrant is at the mercy of the authorities. The process is tedious and may be replete with violations of the CMW and can only be described as arbitrary. The release eventually takes place when the migrant can demonstrate that he or she is legally present in the country. Absent valid residence permits, one of four scenarios can take place:

- a) Detainees can remain in detention until their Embassies provide them with travel documents, following which they will be deported.
- b) Detainees can be released following the issuance of a travel document from their embassies; then asked to leave the country by a certain date.
- c) If no travel document is issued, illegal residents risk remaining in detention for long periods of time without being formally charged of a crime. Alternatively, they can be charged of illegal entry. Their release following serving the sentence can be barred unless they decide to leave Egypt.
- d) They can be released without a charge or a fine.

It is possible that a police officer abuse his power by postponing the transfer of the detained foreigner to the immigration department. This constitutes a violation of Egyptian and international human rights law, which instruct that detainees are to be brought before a judicial body soon after their detention.

In paragraph 65 of Egypt's report, the government explained that "*an alien, regardless of the legal basis of his presence in the country, enjoys all aspects of the protection available under the law, whether he is the victim of a denial of rights or, conversely, is the object of criminal proceedings for an offence he is charged with having committed in violation of Egyptian law*". Despite the statement's truth in theory, practical considerations preclude undocumented migrants from reporting to the authorities. It is difficult for undocumented aliens to approach the authorities and complain about violations of their rights. The fact that many of these violations are at the hands of state officials makes the plights of migrant workers greater. During the reporting phase, complainants are usually asked about proof of their identity and, in the case of non-Egyptians, a residence permit. The absence of such permit may result in the arrest and/or deportation of those migrants. Ironically, the offences against the migrants will still be prosecuted given that they constitute violations of public law. The structure of the justice system therefore prevents victims from going forward with their complaints, which can lead to impunity and further harassment of migrants. This naturally puts restrictions on the right to litigate, which is enshrined in the Egyptian Constitution and confirmed by the Supreme Constitutional Court.¹¹ Violations of the rights of migrant workers are more common in the case of

⁹ Egyptian law does not explicitly criminalize racism. However, reference to equality between peoples can be found in the constitution and the relevant international human rights instruments to which Egypt is a party.

¹⁰ This is more of a practice in light of the state of emergency in Egypt rather than a legally stipulated procedure.

¹¹ Ruling in Case No.8, of judicial year 8, Session of 7 March 1992 mentioned in paragraph 131 of Egypt's report.

failed asylum-seekers from African states, who fear being deported to face what they view as persecutory treatment. Seeing the imperfect nature of the UNHCR refugee status determination system, there is a possibility that some of these failed asylum-seekers could be genuine refugees.

Conditions of Detention

Article 17. “(3) Any migrant worker or member of his or her family who is detained in a State of transit or in a State of employment for violation of provisions relating to migration shall be held, in so far as practicable, separately from convicted persons or persons detained pending trial”.

Police stations and detentions centres are overcrowded. It is common to hear of the arrest of foreigners for lack of valid documentation. Following their arrest, such migrants are usually taken to a police station where they are held in a cell along with common criminals until they are referred to a judicial body. During their detention, the migrants are often harassed and beaten at the hands of those detained on criminal charges without any attempts on the part of the police to intervene.¹²

Residence and Expulsion

Article 22.

1. *Migrant workers and members of their families shall not be subject to measures of collective expulsion. Each case of expulsion shall be examined and decided individually.*
2. *Migrant workers and members of their families may be expelled from the territory of a State Party only in pursuance of a decision taken by the competent authority in accordance with law.*
3. *The decision shall be communicated to them in a language they understand. Upon their request where not otherwise mandatory, the decision shall be communicated to them in writing and, save in exceptional circumstances on account of national security, the reasons for the decision likewise stated. The persons concerned shall be informed of these rights before or at the latest at the time the decision is rendered.*
4. *Except where a final decision is pronounced by a judicial authority, the person concerned shall have the right to submit the reason he or she should not be expelled and to have his or her case reviewed by the competent authority, unless compelling reasons of national security require otherwise. Pending such review, the person concerned shall have the right to seek a stay of the decision of expulsion.*
5. *If a decision of expulsion that has already been executed is subsequently annulled, the person concerned shall have the right to seek compensation according to law and the earlier decision shall not be used to prevent him or her from re-entering the State concerned.*
6. *In case of expulsion, the person concerned shall have a reasonable opportunity before or after departure to settle any claims for wages and other entitlements due to him or her and any pending liabilities.*
7. *Without prejudice to the execution of a decision of expulsion, a migrant worker or a member of his or her family who is subject to such a decision may seek entry into a State other than his or her State of origin.*

¹² There is a special detention center for foreigners at the *Mugamma'* building in Cairo. However, it is common for non-Egyptians to be held in police stations pending their transfer to the *Mugamma'*. Due to space constraints, foreign detainees are confined to cells along with common criminals where they could be at risk of danger. Foreigners serving a sentence following a court judgment are held in a prison for non-Egyptians (or part of a prison dedicated to non-Egyptians).

8. *In case of expulsion of a migrant worker or a member of his or her family the costs of expulsion shall not be borne by him or her. The person concerned may be required to pay his or her own travel costs.*
9. *Expulsion from the State of employment shall not in itself prejudice any rights of a migrant worker or a member of his or her family acquired in accordance with the law of that State, including the right to receive wages and other entitlements due to him or her”.*

This article is not fully respected by the Egyptian government. There are three different types of renewable residence permits in Egypt (10 years, 5 years, and 1 year).¹³ In paragraph 69 Egypt’s report, the government wrongfully indicated that, prior to deportation, the case of a foreigner is submitted to a committee that examines deportation orders. The right to be heard by the deportation (quasi-judicial) committee as stipulated by article 29 of the Act concerning the Entry and Residence of Foreign Nationals (law No. 89 of 1960) is only offered to those who enjoy a 10 years residence permit. All other foreigners can be deported following an order of the Minister of Interior or whoever acts on his behalf (an executive decision, not a judicial one). No expulsion can take place without the requisite order by the Minister of Interior or whoever acts on his behalf. The order is arguably an irreversible “sovereign” decision which may not be appealed in court or challenged by the deportee. Accordingly, no compensation is offered in practice for “wrongful decisions” as no decision can be wrongful in theory bearing in mind the decision’s sovereign nature. However, I believe that orders of deportation to countries where foreigners risk torture should be appealed in court as Egypt is bound by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and that compensation should be ordered. The fact that the CAT was published in the Official Gazette on 7 January 1988 in accordance with Article 151 of the Constitution makes the CAT binding on domestic courts. The inclusion of the CAT in Egyptian law puts restrictions on the so-called “sovereign” right to deport or expel a foreigner. Accordingly, any deportation of a foreigner to a country where he or she risks torture should constitute a violation of Egyptian law and Egypt’s international obligations.¹⁴

Although expulsion orders are issued in Arabic, foreign detainees are generally informed of their deportation in a language they understand due to the involvement of their embassies in the deportation proceedings.¹⁵ Moreover, foreigners are usually expected to purchase their plane tickets and cover their travel expenses to their home states. This can only take place if deportees understood the consequences of their actions. When foreigners cannot purchase return tickets to their home states, their embassies are usually expected to cover their travel expenses. Exceptions can be found in cases of group deportations where the Egyptian government pays the fees related to expulsion.

Generally, expulsions of groups of foreigners do not take place in Egypt. Most of the government’s prior attempts to deport undocumented migrants were halted by the intervention of UNHCR and the members of civil society. Perhaps the most noticeable example is that of 635 failed asylum-seekers from Sudan who were scheduled for deportation in January 2006 following their arrest along with Sudanese refugees that had demonstrated in front of the UNHCR office in Cairo. Regrettably, it is reported that approximately 400 Eritrean migrants were deported to their country of origin in the summer of 2008. Their whereabouts are unknown to this day.

¹³ Article 17-20 of Law 89/1960 on the Entry and Residence of Foreigners in Egypt.

¹⁴ See *supra* note 7.

¹⁵ Embassies coordinate the deportation by confirming whether the persons against whom a deportation order is issued are nationals. Embassy officials often serve as interpreters and sometimes issue travel documents for their citizens for deportation purposes.

Slavery and slavery like conditions

Article 11.

1. *No migrant worker or member of his or her family shall be held in slavery or servitude.*
2. *No migrant worker or member of his or her family shall be required to perform forced or compulsory labour.*

Egyptian law criminalizes slavery and holding people in slavery like conditions.¹⁶ Regrettably, such practices exist in the area of domestic labour. Domestic workers do not enjoy the protection of Egypt's Unified Labour Code.¹⁷ Domestic workers are often failed asylum-seekers from African countries or citizens of Asian states. Given that much of this work is performed informally without the protection of the law, abuses can take place. Due to their lack of valid residence permits, illegal migrants that work as domestic workers often withhold from reporting the abuses to the authorities. The forms of abuses take several forms and can include sexual harassment which oftentimes amount to rape, forced confinement to the place of work, refusal to pay one's monthly wage, and being held in conditions that clearly amount to slavery. In many instances, employers of domestic workers confiscate the workers' passports or identity documents in order to prevent the workers from leaving them. Employers can also threaten to deport the migrant workers should the workers act in a way that is contrary to their wishes. Foreign domestic workers regularly complain about their employers who refuse to remunerate them for their services. They often comply with the wishes of their employers or leave without being remunerated.

Registration of Births

Article 29. *"Each child of a migrant worker shall have the right to a name, to registration of birth and to a nationality"*.

Registration at birth is another area where the rights of migrant workers can be violated. According to the Executive Charter of Law 12/1996 on the rights of the child, children born out of wedlock cannot obtain a birth certificate immediately following their birth. Children must have a birth certificate to be eligible for vaccination. The Executive Charter of Law 12/1996 as well as Law 143/1994 on Civil Status stipulate that the issuance of a birth certificate for a newborn is contingent upon the existence of a notarised marriage contract. Alternatively, the father of the newborn child could approach the relevant institution and claim paternity of the child. Absent a father, a notarised marriage contract needs to be provided for a birth certificate to be issued. This poses serious problems for children born out of wedlock whose fathers had "disappeared"¹⁸ as the children are denied the right to be vaccinated and to be provided with a birth certificate. Legal and regular migrant workers can approach their consulates for documentation and as a result obtain the requisite vaccinations and succeed to register their children in schools. However, failed female asylum-seekers are a particularly vulnerable category of migrant workers who can neither obtain documents for their children born out of wedlock nor approach their embassies for fear of being persecuted or of being perceived of having re-availed themselves of the protection of their states.¹⁹

¹⁶ The Egyptian criminal code does not explicitly criminalise slavery. However, the criminal nature of slavery can be inferred from article 280 of the Egyptian Criminal Code. Moreover, although Egypt has not yet ratified the Slavery Convention (Egypt signed it on 29 September 1954), the criminalisation of slavery has been recognized in customary law and constitutes a *jus cogens* norm.

¹⁷ Article 4 of the Unified Labour Code (Law 12/2003).

¹⁸ By running or passing away.

¹⁹ Article 1 C (1) of the Convention Relating to the Status of Refugees.

Freedom of Religion

Article 12.

1. *Migrant workers and members of their families shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of their choice and freedom either individually or in community with others and in public or private to manifest their religion or belief in worship, observance, practice and teaching.*
2. *Migrant workers and members of their families shall not be subject to coercion that would impair their freedom to have or to adopt a religion or belief of their choice.*
3. *Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.*

Freedom of religion is arguably respected in Egypt, *subject to the rules imposed by the Constitution*. The latest requirement poses problems from an objective standpoint. According to Article 2 of the Constitution, Islamic law is the primary source of legislation. As such, although not explicitly banned, conversions from Islam to any religion are not accepted. Similarly, marriages between Muslim women and non-Muslim men are void as they are deemed against public order. Although most laws in Egypt are secular, the Islamic religion plays an important role in determining that which constitutes public order. This explains why Egypt entered a reservation to Article 4 of the CMR for no form of union other than marriage can be recognized by the legislator. Common law partnerships and same-sex unions are deemed un-Islamic and are consequently against public order and morals.

Against this background, adepts of the Baha'i Faith find it particularly difficult to have their religion officially recognised in Egypt. There is an ongoing legal battle between the Baha'i Community and the Ministry of Interior (on behalf of the Egyptian government) with regard to the recognition of the Baha'i Faith in Egypt. A final ruling is yet to be issued.

Education

Article 30. "Each child of a migrant worker shall have the basic right of access to education on the basis of equality of treatment with nationals of the State concerned. Access to public pre-school educational institutions or schools shall not be refused or limited by reason of the irregular situation with respect to stay or employment of either parent or by reason of the irregularity of the child's stay in the State of employment"

The government of Egypt mentioned the Education Act (law 139/1981) and its application to non-Egyptians.²⁰ Unlike what is stated by the Egyptian government in the report, the application of the Education Act does not extend to non-Egyptians.²¹ This being said, non-Egyptians can benefit from the 1992 Minister of Education Decree (Decree 24/1992)²² subject to the restrictions imposed by the decree.

Unlike what the government of Egypt explained in its 2006 report to the Committee, the 1992 Ministerial Decree does not formulate "*the principle that children who are not Egyptian nationals may attend public and private schools under the same conditions as Egyptian nationals in terms of age and group*".²³ A careful reading of the decree indicates that non-Egyptians are to enrol in private schools

²⁰ Paragraphs 162-164 of Egypt's report

²¹ This can be inferred from the preamble of the Act.

²² The 1992 Decree was issued on 22 January 1992 and was published in the Egyptian Proceedings on 3 March 1992, Edition 54.

²³ See Paragraph 163 of Egypt's report.

only (Article 5 of the Decree). However, exceptions are made to some categories of non-Egyptians (Article 5).

Despite what is stated above, Egypt's ratification of the Convention on the Rights of the Child (CRC) should allow all non-Egyptian children, irrespective of their status in the country, to be treated like their Egyptian counterparts insofar as access to public education is concerned. Consequently, the distinction that Decree 24/1992 makes between Egyptian and non-Egyptian children should be repealed by the coming into force of the CRC in Egypt.²⁴ Nonetheless, in practice, non-Egyptians are still discriminated against in the area of access to public education; the most noticeable example is that of Iraqi children.²⁵

Social Security

Article 27.

1. With respect to social security, migrant workers and members of their families shall enjoy in the State of employment the same treatment granted to nationals in so far as they fulfil the requirements provided for by the applicable legislation of that State and the applicable bilateral and multilateral treaties. The competent authorities of the State of origin and the State of employment can at any time establish the necessary arrangements to determine the modalities of application of this norm.
2. Where the applicable legislation does not allow migrant workers and members of their families a benefit, the States concerned shall examine the possibility of reimbursing interested persons the amount of contributions made by them with respect to that benefit on the basis of the treatment granted to nationals who are in similar circumstances”.

Despite Article 27 of the CMW, non-Egyptians cannot benefit from social security rights unless they work in Egypt for ten years. However, the ratification and publication of the CMW in accordance with article 151 of the Egyptian Constitution should repeal the old law; as such, foreigners should have access to social security in Egypt.

Sanctions

Article 68(2). “States of employment shall take all adequate and effective measures to eliminate employment in their territory of migrant workers in an irregular situation, including, whenever appropriate, sanctions on employers of such workers. The rights of migrant workers vis-a-vis their employer arising from employment shall not be impaired by these measures.”

According to Article 245 of the Unified Labour Code Law, anyone²⁶ who violates articles in the chapter dealing with the regulation of the work of foreigners shall be ordered to pay a fine that ranges from 500 to 5000 Egyptian pounds. The fine will be doubled in the case of recidivism. Also, as far as employers are concerned, the fine shall be increased by the same amount with each additional employee caught working illegally.

Illegal workers might be subject to deportation if they do not have a valid residence permit. Alternatively, they may also be deported for violating the terms of their residence.

²⁴ The CRC came into force in Egypt following its publication in the Official Gazette on 14 February 1991.

²⁵ See generally T. BADAWY, “Iraqi Refugees in Egypt”, *CARIM ASN/2008*, to be published on the Carim web site www.carim.org.

²⁶ The word is general to include employers and employees. However, I believe it mainly targets employers in practice.

This problem seldom arises in practice as most foreigners work in the informal sector where there is no monitoring by the authorities.²⁷

Conclusion

This paper examined the areas where Egypt's compliance with the CMW raises questions. The paper clarified that although Egypt generally complies with its obligations under the CMW, there are still areas where the CMW is not respected. For example, discrimination against non-Egyptians is most pronounced in the fields of education and social security. Such institutionalised discrimination can only be overcome by a change in the law, or rather, by recognising that the CMW has become part of domestic law by virtue of its publication in the Official Gazette.²⁸

In the same vein, the expulsion process may be replete with violations of the CMW. The "sovereign" and executive (as opposed to judicial) nature of deportation orders prevents foreigners from challenging the legality of their expulsion and from obtaining adequate compensation for abusive decisions. The role of civil society cannot be ignored in the process of legal change. For example, NGOs can contribute to the awareness raising process by pushing for a change in the current laws based on the obligations that the government undertook when it ratified international human rights treaties. Regrettably, civil society remains weak in Egypt, which means that legal change is most likely to come from the top. Unless the national leadership realises that the benefits of legal change outweigh its drawbacks, it is most likely that the status of Egyptians laws will remain unchanged for years to come.

In the end, it would be appropriate to state that little has been done in Egypt since the ratification of the CMW. The reasons are manifold, yet can be summarised in the following points; a. Egypt ratified the CMW for it to come into force, which would guarantee the protection of Egyptian migrants abroad; b. The prevalent perception is that most migrant workers in Egypt are skilled labour from Western states whose rights are seldom violated. For example, few if any Western nationals send their children to public schools, need governmental social security, or use public hospitals; c. Most workers from the developing world are either illegal migrants or refugees. The second category is explicitly excluded from the CMW. Members of the first category, on the other hand, work in the informal sector and seldom call for the respect of their rights under the CMW out of fear of being deported for being illegally present on Egyptian soil; and d. There is a lack of interest in the state of foreign migrants in Egypt, lest they be investors that are not covered by the CMW and who pump money into the Egyptian economy.

²⁷ Except for street vendors who can have their goods confiscated. Also, note that many foreigners work as domestic workers and are not covered by the Unified Labour Code (Art. 4) or by the CMW.

²⁸ See supra note 7.