



REPORT ON CIRCULAR MIGRATION IN EGYPT

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CARIM Analytic and Synthetic Notes 2008/46

Legal Module



CARIM
Euro-Mediterranean Consortium
for Applied Research on International Migration

Analytic and Synthetic Notes – Legal Module
CARIM-AS 2008/46

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CARIM

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

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

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The CARIM carries out the following activities:

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

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

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

This paper shows that the different migration policies reflect the national concern with alleviating the burden the increasing population imposes on national resources. On the one hand, Egyptian laws favor temporary labor migration as a labor distress mechanism and seek to create new opportunities via bilateral agreements. On the other hand, Egyptian laws reject the integration of non-nationals in Egypt and impose strict conditions regarding work and residency permits and naturalization. The paper assesses Egyptian migration laws dealing with migration, both into or out of Egypt, against the criteria of circular migration and shows that the existing framework currently enforces a quasi-circular migration at best.

In the examination of Egypt as a sending country, the paper shows that migration law does in fact provide a legal framework that meets most of the criteria favoring circular migration. Nevertheless, legislation suffers from shortcomings within the context of management, in terms of readmitting returned migrants or creating incentives for their return. The paper also points to discriminatory provisions regarding fundamental rights among the different groups of foreigners in Egypt, where the most disadvantaged are refugees and asylum seekers. The paper highlights the need for policies that improve the economic and social conditions of migrants, and to include refugees in circular migration programs as well as reduce the recourse to illegal migration among refugees and Egyptians alike.

Introduction

The policies relating to migration in Egypt are heavily influenced by the increasing local population and all the ensuing problems such as high unemployment rates. Accordingly, Egyptian legislation actively encourages emigration by facilitating migration among skilled persons and providing the opportunities and schemes that ensure migration's success. Such policy leads to the imposition of impediments to immigration to Egypt and the rights that naturally flow from it such as naturalization and access to socio-economic rights to non-nationals, including refugees, making their integration into Egyptian society virtually impossible.

This report describes how the strategic migration plans apprehend the general provisions of circular migration as foreseen by the EU communication; that is "...improving management of legal moments of people and ... making significant efforts to fight illegal migration ... while exploiting potential positive impacts of migration on development and responding to the needs of countries of origin in terms of skill transfers and mitigating the impact of brain drain".¹ The concept of circular migration thus offers an approach of mutual gains for countries taking part in circular migration agreements. The question to be addressed, however, is whether the existing legal framework in supporting approaches within the perspective of circular migration as conceived above is adequate. More particularly, what role it plays in Egypt's commitments regarding the fight against illegal migration and the readmission of returned migrants.

The paper is divided into two parts. The first part explores Egyptian emigration patterns and policies, and points to Egypt's attitude towards labor migration as a means to deal with the labor distress associated with the growing population. The second part examines the rights of foreigners and their means of integration in Egyptian society. The second part also points to a general governmental attitude against local integration of non-nationals in Egypt, within the same justification of avoiding exacerbating the burden of over-population.

Migration policies must acknowledge the impact of the full migration cycle of individuals while they are abroad and upon their return on national development. Whether dealing with mass returns or individual migration, policies are normally placed to facilitate legal migration and insure successful outcomes, which basically impact individual lives of migrants and their direct society. However, for migration to be considered circular, the same policies must enhance investment opportunities at the sending state, by offering attractive conditions to returned migrants, to invest financially or professionally.

For the purpose of this paper, we will use the definition of circular migration provided by the EU Communication: that is, "circular migration can be defined as a form of migration that is managed in a way allowing some degree of legal mobility back and forth between two countries."²

Furthermore, the paper makes use of the six criteria of circular migration (being temporary, renewable, circulatory, legal, respectful of rights of migrants and managed in a way that matches labor demand at both ends and within an objective of mutual gains) to a tool in assessing the pro-circularity of Egyptian national legal provisions that are relevant to migration, both as a sending country and as a receiving country.

¹COM(2007) 284 final

²COM(2007) 284 final

I. Egyptian Migration Abroad

Egyptian migration patterns

According to national estimates, the current total number of Egyptians abroad is approximately 5 million migrants. These migrants count for about 7% of the total population of Egypt.³ Two-thirds of Egyptian migration is temporary (to oil-rich Arab countries), while the other third is permanent (mainly to USA, Canada Australia and Europe).⁴

Temporary migratory flows started with cultural student expeditions in Europe dating back to the 19th century.⁵ Other migratory flows to Europe took place for political reasons and the economic pressure associated with the transition to socialism.⁶ The mid-1950s marked the first phase of Egyptian migration. Migration grew to be seen as a way to absorb the growing labor demand however restrictions were imposed on technicians and skilled workers.

In 1971, article 52 of the Egyptian constitution stated that ‘Citizens shall have the right to permanent or temporary emigration’, and hence eliminated all obstacles to migration. Egypt then entered the expansion phase starting after the war of 1973, which led to a large increase in oil prices. Egypt became a major labor exporter during the 1970s, exporting both educated and uneducated labor - with around 10% of the labor force working overseas at any point in time. Demand increased for teachers as well as professional from the health sector including doctors, veterinarians, pharmacists, and dentists. During this phase, migration was a top priority and many measures were taken to ease restrictions imposed on migration procedures. A sense of stability prevailed in relation to labor migration as a result of the existence of governmental agencies responsible for organizing labor migration. Egyptian outflows of workers slowed down in the 1980s when Asians increasingly replaced Arab workers in the Gulf region. The Egyptian government responded to migrant concerns with the promulgation of the Emigration and Sponsoring Egyptians abroad Law no. 111 in the year 1983. (Hereafter Emigration Law) Subsequently, the late 1980s witnessed a significant counter-flow of return migrants from the Gulf area to Egypt. Tens of thousands of Egyptians returned to Egypt after long periods of migration spent abroad. Also, during the period following the second Gulf war⁷, Egyptians faced further constraints due to a decline in contract renewing and to nationalization measures undertaken by the receiving countries. At this stage, receiving countries reconsidered the issue of immigration in order to minimize and control the number of immigrants, which has motivated labor-exporting countries to explore new job markets. As a result, presidential decree no. 31 of 1996 was issued with the aim of restructuring some ministries and transferred the competences of the Ministry of Emigration Affairs⁸ to the Ministry of manpower, re-named the Ministry of Manpower and Emigration.

³ The study on “Why do migrants leave their countries?”, was conducted in 2003. The study quotes that there were 2.7 million Egyptian migrants abroad during that year.

⁴ Studies further confirms that most of the migrants going to western European countries (55.5%) and almost all those who go to the US and Australia (93%) are permanent migrants. On the contrary, the whole sample of those going to Arab countries (100%) intends to go back to Egypt. MINISTRY OF MANPOWER AND EMIGRATION, “Why do migrants leave?” 2003

⁵ In 1813, Mohamed Ali sent the first Egyptian mission to Italy to study printing arts. In 1818, another expedition went to France to learn military and maritime sciences.

⁶ MINISTRY OF MANPOWER AND EMIGRATION, “Contemporary Egyptian Migration,” 2003.

⁷ Iraq-Kuwait War in 1990. The first Gulf war being the Iraq-Iran War which lasted throughout the 1980s.

⁸ The Ministry of State of Emigration Affaires was established in 1981 by virtue of Presidential Decree No. 574, for the purpose of establishing the Ministry of State for Emigration Affairs, due to Egypt’s concern with organizing migration and sponsoring Egyptian migrants. One of the most important responsibilities undertaken by this ministry is to sponsor Egyptians abroad and provide them with a number of services and facilities. Presidential decree no.31 of the year 1996

New policies relating to aspects of sponsorship and available facilities for Egyptians abroad were endorsed in cooperation with the several ministries and entities responsible for legislating, analyzing and organizing migration issues. Among those, the main authorities that deal with migration issues, in terms of legislation and implementation, are: the Ministry of Manpower and Emigration, the Ministry of Foreign Affairs and the Ministry of Interior.

The Ministry of Manpower and Emigration, as clarified in Emigration Law, is responsible for protecting all Egyptians abroad, taking steps to guarantee that the rights of Egyptian expatriates are respected, maintaining ties between citizens abroad and their homeland,⁹ and providing facilitations necessary to contribute to a national development strategy. In the framework of its mandate to encourage and regulate migration abroad, the Emigration sector in the Ministry of Manpower and Emigration focuses on two dimensions: 1) Developing information dissemination systems that include job opportunities abroad and automatic job matching systems and Internet portals for Egyptians abroad as well as potential migrants¹⁰; and 2) reinforcing the role of the “Union of Egyptians Abroad” and other civil society organizations that represent Egyptian abroad.¹¹ By this the government opts for “establishing ties between migrants and their mother country” and “linking emigration policy with the national interests of the State in achieving economic and social development” and “achieving the maximum capitalization of Egyptian potential abroad.”¹²

In the Ministry of Foreign Affairs, the Immigration Administration¹³ is responsible for coordinating with other governmental bodies in order to facilitate migration processes and undertaking studies to enhance policies. The Ministry of Interior grants work permits to temporary migrants prior to their departure and keeps records of all those who cross the Egyptian borders through its control points at the airports, marine ports and land points throughout Egypt.

Furthermore, a Higher Committee for Migration was formed, in 1997¹⁴ as one aspect of cooperation between ministries and entities concerned with migration. Headed by the Minister of Manpower and Emigration in his capacity as Minister concerned with emigration affairs,¹⁵ the Higher Committee for Migration provides an instrument to merge all the institutional bodies dealing with migration. Its competences are stated in article 5 of the Emigration Law; they include “Suggesting the facilitations to be granted to migrants, whether before their departure, or during their stay abroad, or after temporary or permanently returning to their homeland.”¹⁶ In carrying out its functions, the committee provides professional and specialized training to potential migrants. In addition, the committee aims at strengthening ties between Egyptian migrants and Egypt through media, national material, linguistic and religious support.

(Contd.) _____

transferred its competences from the cabinet presidency to the Ministry of Manpower, which was then renamed the Ministry of Manpower and Emigration

⁹ This can be done by requiring diplomatic representatives to look after the interests of the Egyptian expatriate community. It can also be achieved through liaising with other Ministries and agencies with the purpose of drafting legislation related to migration and signing agreements with foreign States that aim at helping Egyptian expatriates, facilitating their residence in destination countries, and safeguarding their rights and interests abroad (Art. 3).

¹⁰ IMIS Project <http://www.emigration.gov.eg/AboutUs/AboutIMISProject.aspx>

¹¹ See Objectives of the Emigration Sector posted at <http://www.emigration.gov.eg>

¹² See Vision of the Emigration Sector posted at <http://www.emigration.gov.eg>

¹³ Established by Ministerial Decree no. 121 / 1969

¹⁴ Stipulated in Article 4 of the Emigration law and formed by Resolution no. 2000 of 1997

¹⁵ The membership of the committee includes representatives of the following ministries: • The Ministry of Education • The Ministry of Information • The Ministry of Scientific Research • The Ministry of Tourism • The Ministry of Foreign Affairs • The Ministry of Insurance and Social Affairs • The Ministry of Interior • The Ministry of Finance • The Ministry of Defense • The Ministry of Tourism and Civil Aviation • The Ministry of Economy and International Cooperation • The Ministry of State for Local Development • The Ministry of Planning

¹⁶ Article 5 of the Emigration Law no 111/1983

Emigration law

Emigration Law is regarded as the main migration law in Egypt. The law provides a distinction between permanent and temporary emigration and outlines the rules and procedures to be followed for each of them. According to Article 8; “A permanent migrant is the Egyptian who stays abroad permanently, by obtaining the nationality of a foreign country, or a permanent residence permit to stay in this country ; or who stays abroad for at least ten years, or obtains an emigration permit from one of the countries of emigration specified by a resolution of the Minister concerned with Emigration Affairs”.

The information of potential migrants is registered in the records prepared for this purpose. Emigration status is however dropped if the person does not travel to the country of emigration within six months after obtaining the emigration permit or if he returns to live in his homeland for more than one continuous year provided that it is not due to *force majeure* or necessitated by his work.

As for temporary migration, Article 13 states that;

A temporary Egyptian migrant is the Egyptian Citizen, who is not a student, or seconded employee, who settles and sets up his main activity abroad, and has a job to make his living, providing that he has stayed abroad for one year and has not taken the permanent emigration procedures stated herein, or that he has taken the said procedures and returned to his homeland before fulfilling any of the conditions stated in article (8) herein. The period of one year referred to in the above mentioned paragraph is to be considered a continuous year even if it is interrupted by intervals not more than thirty days . This provision shall not prejudice the extension of sponsorship duty to all Egyptians abroad.

Accordingly, the temporary migrant loses his status if he returns to Egypt and remains there for more than six months.

Potential temporary migrants can request to be registered in a record prepared for this purpose at the Ministry of Emigration as a means of allocating emigration opportunities that are distributed among the registered persons according to their fields of specialization and capacities and the fields of specialization required in the receiving states.¹⁷

From a circular migration standpoint, temporary and permanent labor migration is regulated by law, which gives migrants a certain flexibility to return to Egypt for a short period of time and subject to the abovementioned conditions, without the migrant workers risking to loose their employment abroad. The legal difference between temporary and permanent migration is based on the duration of stay both abroad and in the home county; however, empirically the difference is merely geographical and to an extent depends on immigration laws and provisions in the host countries. Provided they obtain approval from host countries, migrants to North America and Europe for instance acquire a ‘permanent migrants’ status even if they return to Egypt. On the other hand, Arab Gulf countries have restrictive immigration policies and therefore only temporary status is given to migrants, even if they stay in them for lengthy periods.¹⁸ So in essence, most Egyptian migration is temporary and partly qualifies, within certain degrees of being temporal, renewable and circular, as circular migration.

In relation to the treatment of Egyptian expatriates, and/or their descendant, who return to their homeland, provisions on certain aspects of their integration are addressed in Emigration Law and Naturalization law. For instance, Egyptians who had been working with the Egyptian government and had resigned in order to emigrate permanently, and who emigrated as a result, are to be re-admitted at their original post, or another similar post, if they return to Egypt within two years of their resignation.

¹⁷ Emigration Law no 111/1983, Article 6

¹⁸ See Nassar, “Temporary and Circular Migration: The Egyptian Case“, 2008

If they exceed the period preferred, the migrant may be reappointed, provided he meets the conditions required for filling the post, without going through the contest required for filing that post.¹⁹

Emigration law also allows those who emigrated prior to the coming into force of the Law (in 1983) and had lost their Egyptian citizenship to have it restored to them. Their children and spouses (wives) can also be naturalized subject to the requirements of Law 26/1975.²⁰ “Egyptian citizenship is transferred by blood (*ius sanguinis*) or acquired through naturalization. Foundlings and children of Egyptian men are granted Egyptian citizenship automatically.”²¹ A person born to an Egyptian permanent migrant shall enjoy the same rights and advantages enjoyed by his father. This is applicable to the children of an emigrating mother, who still preserve their Egyptian nationality.²² Furthermore, foreigners of Egyptian descent also qualify for Egyptian nationality; however, it is conditional on their return and stay in Egypt for a period of five years.²³

In terms of social and political rights, neither the constitution nor the Emigration Law makes explicit mention of the rights of Egyptians abroad, or of the mechanisms for their political participation while living abroad. As far as access to social benefits is concerned, social insurance acts give Egyptians abroad the option to contribute to a pension fund whether they are employed or work independently abroad, pending their return to Egypt. Alternatively, the Ministry of Foreign Affairs and the Ministry of Labor have together created a compensation scheme in the form of insurance policy that could be part of the contract between the worker and the host country.

In view of the above, national legislation governing migration flows, in essence, allow circular migration to those who wish to engage in it. Nonetheless, there is room for improvement in terms of the criteria defining circular migration, particularly as regards political rights and more importantly the policy on migration management. In this vein, migration policies are incomplete, as they focus on facilitating legal migration among skilled persons, looking after the labor needs in host countries while disregarding those needs in the home land.

The main push factor that drives people to migrate is the burden the fast growing population imposes on the labour market.²⁴ The Egyptian labor market is characterized by its inadequacy to absorb the growing labor force. New entrants to the labor market are estimated around 600,000 or more on a yearly basis, and despite the accelerated annual GDP growth since 2003 (according to official statistics, GDP growth rate accounted for 7.1% in early 2007), the unemployment rate remained fairly constant (falling below 10%), yetis particularly increasing among women.²⁵ Given that the public sector already suffers from overstaffing coupled with a shortage is skilled workers, while the private sector is not large to absorb the labor force, job seekers sought the informal sector as an alternative. The informal sector is often estimated at one third to one half of the size of the official GDP. This phenomenon is a major characteristic of the Egyptian economy.²⁶ Given this state of affairs, migration is seen as an outlet. Migration affects the labor market by reducing the number of unemployed, and reducing the number of the work force. However, studies show that Egyptian migration has been a selective phenomenon in terms of age, sex and educational status. Migrants are

¹⁹ Presidential resolution in law no. 73/1971

²⁰ Emigration Law 111/1083, Article 20

²¹ See Badawy, “Egypt: the legal dimension of migration”, 2008

²² Emigration Law Article 11

²³ Foreigners of Egyptian descent are granted the Egyptian nationality only after they have made Egypt their habitual residence for five years prior to applying for citizenship and are over the age of maturity at the time of application (21 years). (Law 26/1975 Concerning Egyptian Nationality, Article 4)

²⁴ Some estimates indicate that the Egyptian population may, exceed 100 million by 2020. The current annual population growth rate is 2%.

²⁵ UNDP, Human Development Report 2008

²⁶ See Nassar, “Temporary and Circular Migration: The Egyptian Case” 2008

concentrated in young age groups, mostly male and of high educational background.²⁷ Migration policies that encourage circular migration can mitigate the impact of brain drain by making use of the skills and expertise that returned migrants have acquired or developed while abroad and encourage them to use their savings in productive investment. The creation of new job opportunities in the local markets through these investments will have the double effect of enhancing the national capacity and reducing the recourse to illegal migration.

Illegal migration to Europe is increasing as a phenomenon among young graduates and unskilled unemployed young Egyptians. Driven by the high unemployment rate and difficulty in finding good work opportunities in Arab countries, many engage in irregular migration to Europe, especially to Italy, Malta, Cyprus and France, where the choice of destination is related to geographical proximity and availability of migration networks (family, friends and peers). Little literature is available on permanent and temporary trends within this form of migration; however a study in 2006²⁸ showed that the push factor for migration in the Egypt is primarily economic as migration can be attributed to low wages in Egypt in comparison to Europe, bad living conditions and lack of job opportunities, especially among new entrants to the labor force. Research further suggests that, unlike the permanent nature of Egyptian migration to Europe during the 1960's and 1970's, which took place due to political reasons and was comprised of highly educated and economically established Egyptians, contemporary migration is temporary in nature and is labor-oriented. Young males migrate –legally or illegally- to achieve financial goals before returning home.²⁹

II. Foreign migration into Egypt

Historically, Egypt was a land of immigrants rather than emigrants. Until the mid-1950s, foreigners moved to Egypt while Egyptians rarely migrated abroad. The ancestors of the Egyptian population include many races and ethnic groups, such as Africans, Arabs, Berbers, Greeks, Persians, Romans, and Ottomans, including Turkish, Circassian, and Balkan peoples.

Taking into consideration the non-Egyptian Arab nationals in addition to the several thousand Americans, Europeans, and other non-Arabs in Egypt, who on projects sponsored by foreign governments, international agencies, and private charitable groups in Egypt, the number of immigrants may very well exceed the number of emigrants. However, not all foreign residents of Egypt fall within the legal definition of migrant workers found in the Convention on the Rights of Migrant Workers and Members of their Families. Cairo accommodates one of the largest urban refugee populations in the world. Besides Palestinian residents of the city, the Sudanese and Iraqi residents constitute two other large groups whose legal status is not clearly defined. The Sudanese community alone is estimated between 3 to 5 million.³⁰

The Sudanese community is the largest in Egypt. It is reported that most of the Sudanese that have arrived in Egypt since 1995 fled their country for reasons related to the civil war between the Sudanese government and the SPLA.³¹ However, the coming into force of the Four Freedoms Agreement

²⁷ Ministry of Manpower and Emigration, “Why do migrants leave their countries?” 2003

²⁸ Field study on “Attitudes of Egyptian Youth Towards Migration”, conducted by the Emigration Sector of the Ministry of Manpower and Emigration in cooperation with the IOM and *Cooperazione Italiana* conducted through the Information dissemination for the Prevention of Irregular Migration Project (IDOM), 2006

²⁹ Zohry, “Egyptian Irregular Migration to Europe”, 2007.

³⁰ “The estimates on the number of Sudanese refugees in Egypt vary greatly from three to five million, to a couple of hundred thousand.” Ministry of Manpower and Emigration “Contemporary Migration” 2003. However, these estimates may include asylum seekers, refugees and Sudanese migrants. They may also include persons who hold both Egyptian and Sudanese citizenship.

³¹ Sudanese People's Liberation Army

between Egypt and Sudan,³² coupled with the signature of the Peace Agreement between the SPLM and the Sudanese government, led UNHCR to put a halt on the refugee status determination as far as Sudanese-asylum seekers are concerned. To this day, it is unclear whether asylum-seekers from Sudan would ever qualify as refugees.

Iraqis, too, constitute a unique group of refugees as they benefit from refugee status on a *prima facie* basis. Unlike other refugees in Egypt, Iraqi refugees were mainly driven out of their country due to generalized violence and not individualized persecution. Accordingly, they have easy access to their embassy and are in regular contact with their family in their home country. Until recently, Iraqis who fled the war were able to live in Egypt on a tourist visa with the possibility of renewal. Alternatively they could request residence permits to join family members who held student visa.³³ Given Egypt's encouragement of foreign investment, it was easy for Iraqis to obtain residence permits (investment visa) provided they invested in the country. However, due to the heavy influx of Iraqi asylum seekers, Egypt withdrew these benefits and imposed a general ban on all types of visas for Iraqis.³⁴ It is reported that the government suspects that Iraqis use investment visas to enter Egypt then apply for asylum.³⁵

Laws and procedures regulating foreign nationals in Egypt

Entry and exit

Only those who hold a valid passport, or its equivalent, and a visa are allowed to enter Egypt.³⁶ More requirements are imposed on nationals of some states,³⁷ who must report to authorities within a week of their arrival.³⁸ There are however two exceptions to the given general rule to visa requirement: (1) if the Director of the Passports at Immigration and Citizenship Department authorizes exempting a foreign national from the visa requirement, or (2) if the Ministry of Interior issues a decree that exempts nationals of certain countries from the visa requirement. As such, in all cases, State authorities have complete control over who is allowed to enter Egypt. Against this background, those who attempt to enter Egypt without the relevant documents can be prosecuted and imprisoned.

³² In 2004, Egypt signed The Four Freedom Agreement with the Government of Sudan as a means to regularize their stay in Egypt. According to this treaty, citizens of both countries have the freedom to move, reside, work and own property across national borders. See Agreement Between the Government of the Arab Republic of Egypt and the Government of the Republic of Sudan on Freedom of Movement, Residence, Work, and Property (Four Freedoms Agreement), Official Gazette, Vol.37, 9 September 2004, at 2041.

³³ The ability to obtain residence permits is also contingent upon the applicant's type of passport. As of February 2008, due to security reasons, the Egyptian government only recognizes Iraqi passports whose numbers start with letters other than *S*. All "*S Passport*" holders are therefore required to approach the Iraqi embassy, which will issue them passports whose numbers start with the letter *G* after a security clearance is granted.

³⁴ Upon imposing the ban on all visas for Iraqis, Iraqi migrants were compelled to apply for refugee status and are now subject to restrictions on their international mobility. (See Badawy, "Iraqi Refugees in Egypt" 2008, and footnote 56 below). Those who held residence visas in Egypt prior to the ban can still renew them. They are technically considered temporary migrants, some of whom may meet the criteria of quasi-circular migrants should they decide to return to Iraq in the future.

³⁵ See Badawy, "Iraqi Refugees in Egypt" 2008

³⁶ Law 89/1960 as amended by Laws 99/1960,49/1968 and 88/2005, regulating the procedures for foreign nationals wishing to enter and to reside in Egypt. It does not apply to diplomats, ship or airplane crews, and passengers in transit.

³⁷ In 1996 the Minister of Interior passed Decree 7067/1996 requiring citizens of certain countries to report to relevant authorities within a week of arrival. For a list of these countries see the website of the Egyptian Ministry of Interior, <http://www.moiegypt.gov.eg/Arabic/Departments+Sites/Immegration/ForignersServices/TasgeelAlAganeb/>.

³⁸ Khalil, "Egyptian Legislation Related to Refugees" 2004 (Article 8 of Law 88/2005).

Similarly, no person is allowed to leave Egypt without the approval of domestic authorities. No exit visa is required from either Egyptians or foreigners. However, Egyptians of military age must seek a travel permit from the Military authorities.

Residence

Every foreigner must have a residence permit to live on Egyptian territory. Residency permits indicate the purpose of entry and stay in Egypt and the conditions that the foreigner must adhere to.³⁹ So, for example, foreigners cannot work in Egypt if they were given a medical or tourist visa.

The Law on Entry and Residence of Foreigners in Egypt⁴⁰ recognizes three categories of residence permits for foreign nationals: special residence, normal residence, and temporary residence (Art. 17). Special residence is mainly granted foreign nationals born in Egypt before the publication of Decree 74/1952 who remained in Egypt until Law 89/1960 was passed, and foreign nationals who have lived in Egypt for over twenty consecutive years, provided that they entered Egypt legally (Art. 18). The Law also grants special residence to scientists, intellectuals, artists and businessmen who benefit the national economy or have provided scientific, cultural or artistic services to Egypt (Art.18). Normal residence is mainly granted to foreign nationals who lived in Egypt for fifteen or more consecutive years prior to the publication of Decree 74/1952 and who remained in Egypt until Law 89/1960 was passed, provided that they entered Egypt legally (Art. 19). Lastly, a renewable one-year residence permit is granted to those who do not meet the previous conditions, subject to the approval of the Director of the Passports, Immigration and Citizenship Department. The one-year period can be extended to five years if the Minister of the Interior approves (Art. 20).⁴¹ Refugees, including Palestinians who settled in Egypt for over ten years, are normally granted a three year temporary permit, subject to renewal.

Civil, socio-economical and political rights of foreigners

The Minister of Interior has the authority to deport (Article 25 of Law 89 of the year 1960) a foreign national if he believes he or she represents a threat to national security, the economy, public health or public order or if they constitute a burden on the State.⁴² Exceptions are made to those who benefit from special residency permits,⁴³ to UNHCR registered refugees and asylum seekers or those at risk of torture⁴⁴ upon return to their country of origin. Regrettably, deportation decisions cannot be appealed in court as they are considered of a sovereign nature. Since deportees are requested to cover the financial cost of their transfer to their home countries, failure to do so will subject them to prolonged detention on grounds of illegal stay that could either result in eventual release or, in extreme situations, deportation to another country where the deportee may be subject to detention on the grounds of illegal stay.

Persons who may acquire Egyptian citizenship and the different routes to naturalization are listed in the Law.⁴⁵ Although Egypt does not apply the *ius soli* principle, people born in Egypt are

³⁹ The legislation also states that "the foreigner cannot violate the declared reason of entry, or residence, save by obtaining permission from the director of the Immigration and passports and nationality.

⁴⁰ Law 89/1960 as amended by Law 88/2005.

⁴¹ The Minister of the Interior issued Decree 8180/1996 where he specified who is eligible for residence permits that last from three to five years. Investors and refugees are meant to benefit from this Decree; see KHALIL, "Egyptian Legislation Related to Refugees" 2004

⁴² Articles 26 and 29 of 89/1960 Regarding Entrance, Exit, and Residence of Foreigners.

⁴³ Foreigners benefiting from special residence permits cannot be deported without the approval of a Deportation Committee

⁴⁴ See Convention Against Torture, Article 3

⁴⁵ Law 26/1975A

privileged with regards to naturalization.⁴⁶ It was not until 2004 that Egyptian women married to non-Egyptian nationals were allowed to transfer their citizenship to their children. However, due to policy reasons, Egyptian women married to Palestinians have been denied such rights. In addition, foreign nationals who do eventually acquire the Egyptian nationality are not entitled to vote until five years after their naturalization. Furthermore, they cannot be elected or appointed to the judiciary until ten years after their naturalization. Only the President of the Republic has the right to exempt anyone from these rules.⁴⁷

The Egyptian labor market is regulated by the “Unified Labor Code” (Law no.12/2003). The law entered into effect on 7 July 2003. It acknowledges international regulations concerning labor rights and defines the status of provisional workers, casual workers and seasonal workers and protects their rights.

Foreigners interested in employment in Egypt have to obtain work permits and follow the corresponding regulations issued by the Ministry of Manpower and Migration in this respect. After a work permit is obtained, the foreign national's visa (whether tourist or temporary) is converted into a work visa, with the same duration as the work permit. As such, foreign nationals can be employed in Egypt on two conditions. First, they must acquire a work permit from the Ministry of Manpower and Emigration, issued by the District Authority.⁴⁸ Permits should also specify place of work, period of employment, employer details, and employee information. Moreover, the employer must pay employment fees,⁴⁹ with exemptions made to Greeks, Italians, Palestinians and Sudanese citizens by virtue of bilateral agreements and strong historical ties with Egyptian society. Second, the foreign national needs to have a valid residence permit.

In addition, there are some general limitations on the right of foreign nationals to work in Egypt.⁵⁰ For example, Executive Relations and Company Law⁵¹ stipulates that non-Egyptian workers should account for not more than 10% of the workforce in any given company, and that their wages should account for not more than 20% of the total payroll. However, exceptions can be made by the Minister of Interior. Furthermore, except in certain circumstances, liberal professions are generally restricted to Egyptians. Finally, the work permit can be suspended if the foreign national is found guilty of serious crimes or if the worker represents a danger to national security or public order.⁵²

Foreign nationals are subject to different laws with regards to education depending on their status or nationality. In theory, all foreign children should be admitted to Egyptian public schools without discrimination by virtue of Egypt's ratification of international human rights treaties.⁵³ However, in practice, the Minister of the Education's Decree 24/1992 clearly stipulates that foreign nationals can only enroll in private schools (Art. 5). Exceptions are made for citizens of Sudan, Libya, and Jordan

⁴⁶ Foreign nationals born in Egypt can apply for Egyptian citizenship within one year of reaching the age of maturity (21 years), if (1) they come from a majority population of an Arab or Islamic state (that is they are Arab or Muslim from an Islamic State, or both) and of a father who is also born in Egypt, or (2) they make Egypt the country of habitual residence at the time of reaching 21. They must be in good mental and physical health so as not to constitute a burden on society, be of good reputation and have no serious criminal record. In addition, they must know basic Arabic and have a legitimate source of income. See Badawy, “Egypt: the legal dimension of migration”. 2008

⁴⁷ Article 9 of Law 26/1975

⁴⁸ Ministerial Decree 135/1996

⁴⁹ Article 6 of Decree 136/ 2003 – Also, as of September 2004, Sudanese citizens are no longer required to obtain work permits by virtue of the coming into force of the Four Freedoms agreement.

⁵⁰ See the Minister of Manpower's Decrees 136/2003 and 357/2004 for an idea about the restrictions on the work of non-Egyptians.

⁵¹ Law no. 159 of the year 1981.

⁵² Article 10 of Ministerial Decree 135/1996

⁵³ CRC (Arts. 2(1), 28(1)(a), and 22(1)), ICESCR (Arts. 2 and 13(2)(a)), and the African Charter (Art. 17).

who may enroll in public school, in addition to children of Arab diplomats and foreign nationals who live in areas where no private schools exist. Palestinian refugees can only benefit from public education if their mothers are Egyptian, or if one of their parents works for the Egyptian government. Children of Iraqi refugees are r banned from joining public schools.⁵⁴ The law is further restrictive with regards to university education where foreign nationals are required to pay high tuition fees and no exceptions are made for refugees.⁵⁵ This describes how Egypt perceives foreigners: that is, foreigners are welcome on Egyptian soil as long as their stay is temporary, benefit the country, and do not constitute a burden on the economy. Circular migration is thus relevant only with foreigners who are citizens of countries with which Egypt has signed agreements, or with regard to certain non-nationals with special historical and cultural ties with the Egyptian society. On the one hand, bilateral agreements provide safeguards for achieving favorable treatment and ensuring migration conditions which are similar to those imposed by circular migration (temporary, renewable, legal, circular, manageable and to an extent, respectful of migrant rights). However, universal rights are reserved for nationals of certain States and are for the most part contingent upon the existence of bilateral agreements between these States and Egypt, which creates a gap between law, whether domestic or international, and its implementation.

The adverse incorporation of refugees

Egyptian authorities cancel people's entry visa upon their application for refugee status. As a result, applicants for asylum cannot leave Egypt unless they renounce their status as asylum-seekers or refugees.⁵⁶ In exceptional circumstances, and subject to UNHCR's approval, a refugee or asylum-seeker may be given a convention travel document (CTD) in accordance with Article 28 of the Refugee Convention. Few refugees have benefited from this right. Refugees are also allowed to leave Egypt without renouncing their status if they are recognized for resettlement. Their travel arrangements are made by UNHCR, the International Committee of the Red Cross (ICRC), the State of resettlement, and the Egyptian government.

In addition to Palestinian refugees, who hold a special status in Egyptian law, there are two categories of refugees in Egypt: (1) refugees granted asylum by UNHCR pursuant to a Memorandum of Understanding between Egypt and UNHCR, and (2) refugees recognized under Egypt's own domestic asylum mechanism established in Article 53 of the Egyptian Constitution. The Refugee Committee at the Ministry of Foreign Affairs is responsible for refugee status determination (RSD) functions for Convention refugees. However, it lacks a clear mechanism to investigate asylum claims, and UNHCR continues to assess asylum claims as per the aforementioned MOU. Thus failed asylum seekers are technically considered irregular migrants unless their status is regularized. If they do not regularize their stay through the UNCHR system, they live with invalid documents and fall under the laws concerned with illegal entry to Egypt.

Each category of refugees is bound by its own set of rules with regard to the rights to employment, education and naturalization. What they share, however, is their automatic exclusion from the benefits of the Convention of the Rights of Migrant workers. Refugees need a valid residence and work permit in order to seek employment in the formal sector. Although this violates Egypt's obligations under the Refugee Convention (Article 17 of the Refugee Convention), the government maintains that refugees

⁵⁴ Badawy, "Iraqi Refugees in Egypt" 2008

⁵⁵ Executive Charter of Law No.49 of 1972 University Organization and Presidential Decree No. 809 of 1975

⁵⁶ Article 7 of the MOU between the government of Egypt and UNHCR stipulates that the government shall grant travel documents and re-entry visas to refugees that wish to engage in short travel outside Egypt. However, with a rise in number of fraudulent applications for asylum, it is reported that UNHCR Ro Cairo requested that refugees should not be allowed to leave the country without its approval, unless they renounce their refugee status. By imposing this policy, UNHCR aims at preventing fraudulent applicants from returning to their States of origin during the refugee status determination process.

are “foreigners” and are subject to the requirements that other non-Egyptians must fulfill under the Unified Labor Code.⁵⁷ Refugees find themselves in a precarious situation where they may have a valid residence permit in Egypt but work without authorization, becoming de facto irregular migrants. If caught, their employers are liable to pecuniary sanctions in accordance with the Unified Labor Code (Art 245). This seldom happens as refugees are mainly employed in the informal sector.

As refugees are treated like other foreigners, their situation is not that of non-integration, but that of integration based on adverse terms. Lack of employment prospects in the formal sector, coupled with lack of educational opportunities and social provisioning, in addition to absent legal resources other than a seriously constrained resettlement program, are factors to their adverse incorporation (subjecting them to systematic exploitation and pushing them to impoverishment). This situation drives refugees to flee Egypt to neighboring States to attempt to find better socio-economic conditions. Refugees and asylum-seekers are often compelled to leave Egypt for Israel and Libya given the proximity factor. Since such illegal exit is penalized by law, those who fail to cross the border are arrested, jailed and risk deportation to their country of origin unless UNHCR succeeds in convincing the government to grant them leave to stay. Those who succeed to cross into Israel or Libya are at risk of arrest and detention followed by deportation to Egypt.

Bearing in mind that “circular migration could create an opportunity for persons residing in a third country to travel to the EU temporarily for work, study, training or a combination of these reasons, on the condition that at the end of the period for which they were granted entry, they must re-establish their main residence and their main activity in their country of origin”, and that “measures must be implemented in full compliance with the fundamental rights of persons in question, including the specific rights of persons who might be in need of international protection” (COMM 2007), refugees should not be excluded from the debate on circular migration. We submit that for the purpose of circular migration, ‘the country of origin’ in the case of these refugees, should be the country of refuge.

The signing of the Four Freedom Agreement between Egypt and Sudan constitute a good example of a quasi-circular migration approach. According to this treaty, citizens of both countries have the freedom to move, reside, work and own property across national borders. However, this scheme falls short of a viable successful circular migration scheme in that in practice, it does not necessarily comply with their universal rights to education, health care and social security.

Several objectives can be attained by including refugees among the categories of legal migrants within the various circular migration programs proposed in the EU Communication. First of all, it assists the Egyptian government in upholding its responsibility of refugee protection by providing decent opportunities for refugees. It also contributes to alleviating the burden on Egypt, which is imposed by an overwhelming increase in the population. Also, it eliminates obstacles to Egypt, which is making adjustments to existing legal legislation in order to promote social cohesion and stability.

That said, the existing laws do not allow such circularity among refugees as they are not allowed to leave the country, to seek employment or education elsewhere, without losing their refugee status and consequently their legal stay in Egypt. In addition, discriminatory legal practices regarding employment and social provisioning are characterized by an arbitrary application of the principle of reciprocity without due regard to the special situation of refugees and their broken ties with their home countries.

⁵⁷ Egypt did not make reservations to articles 17 (on wage-earning employment) or 18 (on self-employment) of the Refugee Convention. However, according to the Minister of Manpower’s Decree 357/ 2004, Constitution refugees need the approval of the Presidential Office to access the labour market

Conclusion

It is safe to conclude that the Egyptian laws do not impede a shift to circular migration as a new approach to international migration. However the issue of circularity does not lie in rules that promote migration, but rather in the local conditions that drive people to migrate.

The traditional factors denoting the drive behind Egyptian migration are a fast growing population, living on a small part of the territory, and the increasing severity of unemployment. The government of Egypt has been endorsing laws and policies that actively encourage labor migration as a response to this situation. To that end, legislation provides for facilitating Egyptian nationals residing in immigration countries and securing their rights and interests there, in addition to drafting agreements with foreign countries to open new emigration markets. A good example is the Labor agreement between Italy and Egypt. On the other side, legislation suffers a shortage in policy and structure for re-integrating returning migrants and their families, in terms of employment and service provisioning. Furthermore, it is reported that the government does not always respond to the needs of Egyptian expatriates.

Egyptians laws concerned with fundamental rights and social benefits exclude foreign residents from their benefits. Refugees are structurally denied access to the labor market due to national legislation, and as such, they tend to rely almost exclusively on the informal sector. Currently, Egyptian law does not differentiate between a migrant and a refugee with regard to access to rights. However, given that refugees do not have the option of returning to their countries of origin, they oftentimes find themselves compelled to illegally cross the border in search for better economic and social conditions as well as better healthcare and access to education elsewhere.

In order to meet the objective of circular migration, Egypt must redirect its policies towards improving its economic and social conditions. This will create a climate that encourages the return of its skilled labour, not to mention the reduction of the brain drain from which the Egypt is suffering as well as a reduction in the illegal migration of young Egyptian workers. Also, if planned properly, circular migration can offer the refugee community in Egypt an alternative solution to resorting to illegal migration.

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