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The American University in Cairo

School of Global Affairs and Public Policy

**INTERNATIONAL LAW, NATIONAL LAW AND UN PRACTICE
A STUDY OF THE COMPLEXITY OF BLACK REFUGEE WOMEN'S
COLLECTIVE IDENTITY IN CAIRO**

A Thesis Submitted to the

Department of Law

**In partial fulfillment of the requirements for the degree of
Master of Arts in International Human Rights Law**

By

Menna Roshdy

May 2019

The American University in Cairo
School of Global Affairs and Public Policy

INTERNATIONAL LAW, NATIONAL LAW AND UN PRACTICE
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A Thesis Submitted by

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To the Department of Law

In partial fulfillment of the requirements for the Master of Arts in
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The American University in Cairo
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ABSTRACT

African Refugees thought that by crossing the borders, they were escaping war, carrying their dreams and hopes for a better future. They did not know that they would face another war in the state of asylum. African refugees are marginalized in Cairo as a result of intersecting legal systems. The international law, national law, and the UNHCR policies are the main three legal systems that guide the refugee life. The gaps and contradictions between the three different legal systems along with the practice of these laws have dictated the current vulnerability status of the African refugees living in Egypt. In the case of African refugee women, the three legal systems are argued to create sexual vulnerable bodies as an enforced identity. An intersectional analysis of race, class, gender, and refugee status is carried out to understand these women's experience of sexual violence in Cairo. The international context of the African refugee women and the UNHCR policies despite the fact that international law and UNHCR has tailored a lot of policies and designed many programs that concentrate on the prevention and protection of refugee women against sexual violence, it does not make a real change or contribution in improving the vulnerable status that almost all the African refugee women in Egypt acquire but it is argued to be contributing in enforcing sexual vulnerability on African refugee women.

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Introduction

Humans throughout history have been forced to flee their homelands due to wars, natural disasters, and many other reasons and start their lives in a different place. Relocating to a new place and starting a new life has become harder than before specially for the poor. Those people who fled their homeland are named refugees. This term is defined and limited by different laws; such as international, regional and domestic laws. The increasing number of refugees in the world has grabbed the attention of researchers, rights advocates, governments, aid workers and policymakers worldwide to discuss refugee's rights and common obstacles.

Researchers have found that “80 percent of the world’s refugees are women and their dependents.”¹ These women were found to face “specific problems” in the different stages of refugeehood. One of the worldwide known violations against refugee women which grasped the international community attention is sexual and gender-based violence against women who are vulnerable and marginalized.² *This thesis is arguing that that the different intersecting laws that govern the refugees living in Cairo have many flaws and gaps. These gaps leave many issues ambiguous which directly increase the vulnerability of refugees living in Cairo. The thesis further argues that the intersecting legal systems impose an identity of vulnerable sexual bodies on the African refugee women living in Cairo.*

The first chapter examines the international legal framework that covers refugees in Egypt to give an overview of the international umbrella of rights that is supposed to protect refugees. The chapter criticizes the international law for failing to effectively protect refugees because of the ambiguity of the laws, lack of enforcing mechanisms, and the inapplicability of the durable solutions that was supposed to end the refugee status.

¹ Jane Edward, *Sudanese Women Refugees : Transformations and Future Imaginings*, 39, Palgrave Macmillan (2007)

<https://ebookcentral.proquest.com/lib/aucegypt/detail.action?docID=358565>

² Ginger Johnson, *Frozen words: memory and sexual violence amongst Sudanese refugee women in Cairo*, UNHCR (2012)

The second chapter discusses UNHCR policies and practices in Egypt and their contribution to increase the refugees' vulnerability. The lengthy process of refugee status determination, UNHCR self-reliance policy in urban places and its effect on shrinking the refugees' assistance in Cairo, the inconsistency of the financial assistance that are guaranteed to the most vulnerable among refugees are examples of the policies and practices that increasing refugee vulnerability. This chapter also argues that the refugees' marginality and vulnerability in Egypt is a result of UNHCR failure when it comes to refugees' safety and security.

The third chapter examines the Egyptian context, the state of asylum, and the contribution of the Egyptian laws and practice to the marginality of the refugees in Cairo. A background is given on the Egyptian government's international obligations through the treaties and conventions that Egypt has ratified to and how these obligations are limited through Egypt's five reservations to 1951 convention. This chapter also lists the Egyptian government practices that violate the international binding agreements that Egypt is part of.

The fourth chapter focuses on how the above-mentioned legal systems are systems of oppression that actively and willfully construct the refugees' marginality through law and its practice. The chapter also focuses on the refugees coping strategies to survive living in Cairo.

The fifth and final chapter examines the case of sexual and gender-based violence against African refugee women living in Egypt. The chapter argues that African refugee women are forced by the different legal systems to adopt sexually vulnerable bodies as an identity. The refugee women's voices and agency are silenced and they are forced to adopt this identity to get access to services. The chapter also argues that African refugee women's collective identity is better analyzed through intersectionality including their race, refugee status, gender, and class (livelihood activities).

I. International Law Context Governing Refugees in Cairo

A so-called “refugee crisis” has dominated the international scene and international media platforms with the escalation of the Syrian conflict that led Syrians to flee to neighboring countries and on to Europe. This issue is deeply contentious and toxic, especially when it comes to Europe. According to De Haas, “refugees account for around 0.3% of the world’s population” which is not a huge number that could constitute what so called a crisis.³ The disaster is not in refugees’ numbers but in the policies “drawn up in European capitals” and “the border systems designed to keep” refugees out.⁴ Refugees become a crisis because they are constructed to be seen that way. The public fear refugees and see their flow to European countries as a danger alert.

This panic is fueled by “a series of misconceptions about who the refugees are, why they come, and what it means for Europe.”⁵ Refugees could turn from being a crisis to being an asset as it is estimated that Europe would need “250 million immigrants by 2060” in order to prevent the working population from collapsing.⁶ Does that mean there is no existence of the refugee crisis? Refugee crisis exists but not in the European countries as it is claimed. According to UNHCR, the number of people who are currently displaced by wars and conflicts are estimated to be 66 million but around 86% of those people are internally displaced or “remain in the [neighboring] developing countries”.⁷ In some of these developing countries a real refugee crisis exists. For Example, “one-quarter of the population [in Lebanon] consists of refugees from Syria, over and above a flood of refugees from Palestine and Iraq”.⁸ Most of the refugees are internally displaced in the Middle East and African countries.⁹

This chapter discusses the international law context of the refugees and how it “aims to protect refugees while allowing states to retain control of their borders” and how it contributes to

³ Daniel Trilling, Five Myths about the Refugee Crisis, The Guardian (2018).

⁴ Id.

⁵ Id.

⁶ Noam Chomsky, For the Refugee Crisis, Democracy in Europe Movement 2025 (2016).

⁷ Trilling, *supra* note 3.

⁸ Chomsky, *supra* note 6.

⁹ Angela McCarthy, History Proves 'Refugee Crisis' is Largely a Myth, The New Zealand Herald (2017).

refugee's vulnerability in an urban developing setting like Cairo. It begins with a definition of refugee followed by people right to asylum. The lack of enforcement mechanism in international law and the three durable solutions are also explored.

A. The Definition of Refugees Explained

There are many different understandings to what the term “refugee” means and whom it includes. The 1951 Convention relating to the status of refugees has a definition for a refugee as “someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.”¹⁰

This definition was subject to criticism by many scholars like Joan Fitzpatrick for its “vagueness and manipulability”¹¹. The main criticism was addressed to the elasticity and vagueness of the word “persecution” as the Convention does not mention what is counted as “well-founded fear of persecution” and what is not.¹² This led to make “well-founded fear of persecution” definition “depend[ing] upon the political will of States Parties implementing the Convention’.¹³ The scope of the definition is also limited to face the “fear of persecution” which is not the case of most asylum seekers who could “have had their lives torn apart by wars or natural disasters.”¹⁴ This does fit in the 1951 Convention definition, therefore, those asylum seekers might not be granted the refugee status¹⁵. States also have an opportunity to “circumvent their obligations, and hence, a State has a broad-ranging discretion whether or not to accord an asylum seeker the title of refugee.”¹⁶

¹⁰ Convention Relating to the Status of Refugees, Art.1, Jul.28, 1951.U.N.T.S.189

¹¹ Joan Fitzpatrick, *Revitalizing the 1951 Refugee Convention*, 9 Harv Hum Rights J. 229-54 (1996)
<https://heinonline-org.libproxy.aucegypt.edu/HOL/P?h=hein.journals/hhrj9&i=235>

¹² Azfer Ali Khan, Can International Law Manage Refugee Crises, Oxford University Undergraduate Law Journal. 54-66 (2016)
<https://heinonlineorg.libproxy.aucegypt.edu/HOL/P?h=hein.journals/oxfuniv5&i=59>

¹³ Fitzpatrick, *supra note* 11 at 240

¹⁴ Id

¹⁵ Khan, *supra note* 12at 60

¹⁶ Id

There is another approach in conceptualizing the meaning of refugees that has been developed by academic scholars and will be adopted in this research. This approach was first “developed” by Malkki and applied by Sharmani and Grabska.¹⁷ This approach sees refuging a person as a multifaceted and “dynamic process of becoming.”¹⁸ Refuging is defined here as a social, political, economic and psychological stage/status. This status is obtained after going through certain experiences of not only crossing borders but also going through seeking asylum procedures, the common “sense of loss” in the host country, the host country environment and how these refugees are treated in the state of asylum.¹⁹ These collective feelings and experiences are forming the new collective identity that refugees are transformed into. This also entails the way refugees are looked at. Part of the refuging process is “performing refugeeness” by adopting the hope to get the refugee status and the hope of being resettled in a developed country where their life could get better.²⁰ It also entails being aware of the risks involved in case of being rejected and be “categorized as non-potential refugees.”²¹ Refugees need in that sense to “actively seek to prevent such positioning” by developing and adopting the required performance that will help them in “stand[ing] out as potential refugees and to get help while waiting.”²² The intersecting laws, policies, and their practices are actively participating in shaping how refugeeness should be performed.

B. Right to Asylum: Peoples Rights or States Right

The international refugee law states many rights to act as an international legal umbrella that guarantees protection and rights to refugees. The notion of international legal protection “has a

¹⁷ Katarzyna Grabska, Who asked them anyway? Rights, policies and wellbeing of refugees in Egypt, *Forced Migration and Refugee Studies* (2006) at 9. https://www.researchgate.net/profile/Katarzyna_Grabska2/publication/228389231_Who_Asked_Them_Anyway_Rights_Policies_and_Wellbeing_of_Refugees_in_Egypt/links/569b67df08ae6169e5605f38.pdf

¹⁸ Id

¹⁹ Id

²⁰ Jouni Häkli et al, *Becoming Refugee in Cairo: The Political in Performativity*, 11 *International Political Sociology*. 185-202 (2017) <https://doi.org/10.1093/ips/olx002>.

²¹ Id.

²² Id.

very narrow focus.”²³ The 1951 Convention asserts the sovereignty of the states which entails exercising the state power over its territories and includes controlling who has access to its territories; hence controlling who gets asylum. The right of asylum under the 1951 Convention is the right of the state to grant it or not, and not the right of an individual to receive it.²⁴ All the refugee rights that are detailed in the Convention “only appl[y] once a State” grants refugee status to the individuals seeking it.²⁵ Although article 14(1) of the Universal Declaration of Human Rights mentions that seeking and enjoying “asylum from persecution” is a right that everyone should enjoy, it does not mention the state duty to grant it.²⁶ The only duty that 1951 Convention required the states to carry on is the duty of the state not to prevent individuals from seeking asylum. The Convention does not give any rights to asylum for the individuals themselves as the state is the entity that has the final say on that issue.²⁷

Some researchers argue that the right to asylum is a natural right that binds the states under customary international law and therefore constructs a “state duty” to grant asylum.²⁸ According to Azfer Ali Khan the right to asylum is not considered as customary international law as there is not enough “state practice or opinio juris” to qualify the right to get asylum as a duty that binds states.²⁹ What makes it harder to be identified as a state practice is “the uncertain and mixed treatment” that the asylum seeking individuals get from the states of asylum that have no certain pattern to be considered as a custom.³⁰

Under international law and according to the principle of non-refoulement, the state cannot send individuals where they will be subject to persecution but this principle is only activated within the state territories. As a result, a state can “turn away asylum seekers not yet in its territory even if these people would face persecution elsewhere.”³¹ Based on that, individuals leaving a place

²³ Roman Boed, *The State of the Right of Asylum in International Law*, 5 Duke J. Comp. & Int'l L. 1-34 (1994) <https://heinonline-org.libproxy.aucegypt.edu/HOL/P?h=hein.journals/djcil5&i=7>

²⁴ Id.

²⁵ Khan, *Supra note* 12, at 56

²⁶ Häkli, *Supra note* 14, at 9

²⁷ Khan, *Supra note* 12, at 58

²⁸ Häkli, *Supra note* 14, at 8

²⁹ Khan, *Supra note* 12, at 59

³⁰ Id.

³¹ Häkli, *supra note* 26, at 23

where they are not safe, are not automatically guaranteed protection elsewhere; as they might not be allowed to cross the borders. In this case, people who flee their country may be forced to go back where they could risk their lives. All individuals who seek asylum and have successfully crossed the borders according to Article 31 of the 1951 Convention are granted a “limited right of temporary” residency until they finish the registration process.³² A vivid example can be seen in how the EU is trying to prevent asylum seekers crossing its borders wherever possible.³³ It did so by “closing down legal routes, such as the ability to claim asylum at overseas embassies; by introducing penalties for transport companies that allow people to travel into the EU without the correct documents; and by signing treaties with its neighbors so they control migration on the EU’s behalf”.³⁴ It could also be seen in Italy’s crack down on the NGOs that rescue asylum seekers and migrants from the sea.³⁵

C. Lack of Enforcement Mechanism in International Law

States are obliged by being part of international binding agreements to grant “the right to freedom of movement and work and thereby, have access to healthcare and education” to recognized refugees.³⁶ This is not the case in many countries including Egypt which highlights that underlying international law umbrella does not highly decrease the level of vulnerability that refugees are subjected to. The “refugee rights” are not implemented as it should be due to the lack of enforcement in international law. Lack of enforcement comes back to the nature of international law that cannot oblige the member states to act³⁷. The international law states some rights for refugees and some duties that should be binding for all the member states of any international agreement but it “fails to bind [the] states on how to carry out this determination.”³⁸ Another criticism that could be added to the above mentioned is the absence of monitoring and evaluation mechanism of state’s performance towards refugees’ rights. International refugee law failure to maintain monitoring and evaluation mechanisms made no consistent pattern to track to

³² Khan, *supra note* 12, at 59.

³³ Trilling, *supra note* 3.

³⁴ *Id.*

³⁵ *Id.*

³⁶ Lieke van Dongen, *Living in Turmoil: Refugees in Cairo Egypt, An Analysis of the Livelihood of Urban Refugees in an Under-Developed Country*, University of Groningen (2017)

³⁷ Khan, *supra note* 12, at 56

³⁸ *Id.*

what extent the states abide by the binding treaties.³⁹ This ambiguity in the laws makes it flexible for the states to interpret these laws to the extent that “it leaves States to rely on domestic laws or regional instruments to conclude whether a person qualifies for refugee status or not.”⁴⁰

D. Durable Solutions Applicability in Law and Practice

Under international law and UNHCR mandates, refugees are entitled to an end of their state of loss whereby refugees can “resume their normal lives in a safe environment.”⁴¹ This could happen through one of the recognized three durable solutions “namely, voluntarily repatriation to the country of origin, local integration in the country of asylum, and resettlement to a third country.”⁴² Most refugees prefer going back to their home land through voluntarily repatriation once the “conflict has ended, a degree of stability has been restored, and basic infrastructure is being rebuilt.”⁴³ This durable solution may take several years and might not be achieved due to the circumstances in their homeland. It might also be hard for refugees to get back to their countries even after the end of the conflict. In this case refugees might resort to local integration or resettlement as a durable solution.

1. Local Integration and How it is Not Applicable to Developing Countries.

Many refugees “remain permanently in the country” of asylum as their chosen durable solution.⁴⁴ Local integration gives refugees a chance to end the stage of loss that is linked to being a refugee and start to settle and plan for their future in the state of asylum. This solution is not a desirable solution to many of the developing host communities as they “give their limited economic capacity as well as security concerns as one of the main reasons to oppose local integration of refugees.”⁴⁵ This happens due to the fact that most of the host countries are the neighboring underdeveloped countries in Africa and the MENA region that carry the burden of the refugee

³⁹ Khan, *Supra note* 12, at 62

⁴⁰ *Id.*

⁴¹ United Nations, UNHCR and International Protection: A Protection Induction Programme, UNHCR (2006) www.unhcr.org/publications/legal/44b4bbcd2/unhcr-international-protection-protection-induction-programme.html

⁴² UNHCR, Information for Asylum-Seekers and Refugees in Egypt, UNHCR (2013). www.refworld.org/pdfid/5267a1d9b.pdf

⁴³ United Nations, *Supra note* 41, at 73

⁴⁴ United Nations, *Supra note* 42, at 77

⁴⁵ Dongen, *Supra note* 36, at 15

crisis. They host a very high number of refugees, which is more than these countries resources can afford. Mushira Khattab, former Secretary General of the National Council of Childhood and Motherhood, mentioned in an interview with Grabska that “the socio-economic consideration of the host country as well as issues of domestic migration has to be taken into account.”⁴⁶ A state with limited resources and a big number of vulnerable nationals who suffer from poverty cannot be a haven for refugees while it is struggling with its nationals.

In the case of Egypt, there are a lot of Egyptian children who are already out of schools due to the lack of resources.⁴⁷ Accordingly, Egypt cannot afford education service for thousands of the refugee children. One of the main conditions Egypt and other developing countries have “restrictive policy on refugees [is the] local economic and social situation.”⁴⁸ The Egyptian government does not recognize local integration as one of the available durable solutions for refugees. The government claims that it “does not have the capacity” for this option.⁴⁹ Egypt has officially denied local integration as a possible durable solution in the 1954 Memorandum of Understanding between the Egyptian Government and UNHCR.⁵⁰

2. Resettlement as a Durable Solution: The Myth of Shared Responsibility

The third durable solution is resettlement and this solution is available to a very limited number of refugees. Some countries like “Australia, Canada, Denmark, Finland, Ireland, Netherlands, New Zealand, Norway, Sweden, United Kingdom, and United States” developed a resettlement program to make a number of resettlement seats available each year for refugees⁵¹. Resettlement is seen as an effort from the global community to share the burden with the host countries. It is considered “a tangible expression of international solidarity” and an application of the shared responsibility principles.⁵²

⁴⁶ Grabska, Who asked them anyway? Rights, policies and wellbeing of refugees in Egypt, *supra note* 17, at 19

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ Federica Raimondi, Precarious Refugee Protection in Egypt: Politicization of the Refugee Issue and Other Factors Undermining Refugees’ Safety, The Ca’ Foscari University of Venice (2015)

<http://dspace.unive.it/bitstream/handle/10579/6985/822742-1174275.pdf?sequence=2>

⁵⁰ Id.

⁵¹ United Nations, *supra note* 41, at 76

⁵² UNHCR, UNHCR Resettlement Handbook, UNHCR (2011), www.unhcr.org/46f7c0ee2.pdf

In practice, the responsibility is not effectively shared but the burden lies to a huge extent only on the neighboring third world countries for several reasons. First, Refugees resettlement as durable solution is only available for those with refugee status as there is no “duty under international law to displace asylum seekers from one country to another if the former lacks the capacity or infrastructure to deal with the influx.”⁵³ This means that in Egypt, under international law, only 20% of the total population of refugees and asylum seekers are eligible for resettlement while the rest 80% who constitute the asylum seeker population are not eligible.⁵⁴ Second, the principle of shared responsibility is not binding under international law so “no country is legally obliged to resettle refugees.”⁵⁵ Due to the fact that resettlement is only a voluntary action, very “limited number of States offer” a limited number of resettlement opportunities on an annual basis.⁵⁶ According to UNHCR “10.5 million refugees in the world” needed to be resettled in 2010 “and only 1% were resettled through the agency.”⁵⁷

In the case of Egypt, according to UNHCR Egypt Fact Sheet, Egypt had a total number of 228,941 registered refugees and asylum seekers in 2018.⁵⁸ The total number of registered refugees and asylum seekers according to the fact sheet of 2017 was 211,104 which means that the number of total refugees and asylum seekers increased by 17,837 in one year.⁵⁹ Only 1083 refugee got the chance to be resettled in 2017.⁶⁰ This number in comparison with the total number of refugees and asylum seekers, and their increasing number per year means that the number resettled is ineffective in solving the state of asylum refugee crisis and does not qualify to be labeled as sharing the burden with the state of asylum. Even those who got into the resettlement process suffer from the unnecessarily complex procedures.⁶¹ This process increases

⁵³ Khan, *supra note* 12, at 64

⁵⁴ UNHCR, UNHCR Egypt Monthly Statistical Report as of 30 September 2018 – Egypt, ReliefWeb (2018) <https://reliefweb.int/report/egypt/unhcr-egypt-monthly-statistical-report-30-september-2018>

⁵⁵ UNHCR, *supra note* 52, at 5

⁵⁶ Id.

⁵⁷ Rasha El-Sayed Salem, Understanding African refugees integration in Cairo through the eyes of underprivileged host communities, (2014). <http://dar.aucegypt.edu/handle/10526/3776>

⁵⁸ UNHCR, Egypt Factsheet, June 2018 – Egypt, ReliefWeb (2018) <https://reliefweb.int/report/egypt/egypt-factsheet-june-2018>

⁵⁹ UNHCR, Egypt Factsheet, 2017 – Egypt, ReliefWeb (2017).

⁶⁰ Relief Web, Egypt UNHCR Operational Update, May - June 2017.

⁶¹ Salem, *supra note* 57, at 9.

“the frustration of the individual refugee” because of the lengthy process⁶². This process can take a whole year of waiting that might end up with rejection at any stage up to “the last stage when they obtain approved documents and their case is cleared.”⁶³ With a closer look at the complex processes and the very limited number that get resettled each year, which is barely effective and makes almost no difference to the refugee community and the host countries, we find that the resettlement programs exist to serve different objectives than the promoted ones.

According to UNHCR resettlement handbook, resettlement can be used to convince “countries of first asylum to keep open their borders.”⁶⁴ As a result, these refugees will resort to the neighboring countries for receiving resettlement rather than taking the risk of crossing seas and/or oceans along with their families and children. In that sense, the shared responsibility principle is not designed for sharing the burden with the developing states or for finding a suitable durable solution for the refugees. It is designed primarily to beautify the developed countries face by portraying themselves as caring states that take the extra step and design resettlement programs for refugees living in the developing world while avoid being recipient states.

As this chapter has shown, the vague language of the international law along with the gaps in the laws themselves have participated in creating the refugees vulnerability. The next chapter discusses how UNHCR policy directly contributes to the marginality of the refugees.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ UNHCR, *supra note 43*, at 4

II. UNHCR Contribution to Refugee Vulnerability: Policy and Practice

UNHCR has operated in Egypt since 1954, and throughout these years UNHCR has primarily been responsible for refugees and asylum seekers in Egypt. The Egyptian government and UNHCR signed a Memorandum of Understanding in 1954 to regulate the cooperation between the two parties. According to the memorandum, UNHCR “has assumed the responsibility for refugee status determination” based on the Egyptian government’s desire not “to carry out status determination.”⁶⁵ Refugees “protection and assistance” is also UNHCR Egypt task.⁶⁶

This chapter is arguing that UNHCR has contributed to refugee vulnerability both in policy and practice. This is seen in the exhausting and long process of refugee status determination, the 1997 policy and its effect on the refugee vulnerability in urban cities like Cairo and the limitation and inconsistency of the financial assistance. The chapter further argues that UNHCR is helpless when it comes to refugees’ protection.

A. UNHCR and Refugee Status Determination in Egypt

In Egypt, all asylum seekers have to go through a registration process within UNHCR channels. UNHCR applies international standards for granting the yellow card which is granted to all asylum seekers.⁶⁷ This card provides them with limited access to UNHCR services along with the right to stay in the land of first asylum (Egypt) under the UNHCR umbrella “until they are scheduled for a Refugee Status Determination (RSD) interview.”⁶⁸ The process between being an asylum seeker and a blue card holding is lengthy and might take several months. The very lengthy process of the RSD that can take eight months or more increases the refugees’ vulnerability as they experience feelings of loss, confusion and frustration while waiting for their RSD.⁶⁹

⁶⁵ Grabska, Who asked them anyway? Rights, policies and wellbeing of refugees in Egypt, *Supra note 17*, at 19.

⁶⁶ *Id.*

⁶⁷ Karen Jacobsen et al, *Sudanese Refugees in Cairo: Remittances and Livelihoods*, 27 *J Refug Stud.* 145, 145-145 (2014).

⁶⁸ *Id.*

⁶⁹ Salem, *supra note 57*, at 11.

This long waiting period puts asylum seekers at the risk of being arrested by the Egyptian government as the Egyptian government ignores the asylum-seeking process. They do not recognize the yellow carded temporary refugees who are waiting for their RSD results or the RSD appeal.⁷⁰ The UNHCR has an agreement with the Egyptian government to hold the arrest and deportation of asylum-seekers who are already registered at UNHCR for 18 months.⁷¹ After this waiting phase, asylum seekers may be granted refugee status. This means access and entitlement “to protection under international, regional and national law.”⁷² Being a blue carded refugee does not, in practice, make a huge difference from being an asylum seeker as those with recognized refugee status are only guaranteed limited protection.⁷³ In Egypt, both asylum seekers and refugees “are subject to varying degrees of insecurity and lack the means to claim their basic rights.”⁷⁴

In fact, not all the asylum seekers are granted the blue card (refugee status) as many of them get rejected.⁷⁵ The rejected seekers have the right to appeal once. If the appeal fails, their file will be closed by UNHCR. The Closed files holders are not considered persons of concern to UNHCR as they are supposed to leave Egypt.⁷⁶ Asylum seekers might wait for more than nine months just to be rejected at the end⁷⁷. Many of those asylum seekers who get rejected in the appeal do not leave Egypt as some refugees may be risking their lives by going back to their country. Some African countries consider seeking asylum itself as an act of treason. Some countries like Eritrea apply military service on all citizens “under 50” and any eligible citizen “leaving the country without permission is branded a deserter.”⁷⁸ This means they will get 5 years of detention “often

⁷⁰ Teresa A. Booker, *Living in Limbo with Hope: Sudanese Refugees and Social Injustice in Egypt*, 8, J PAN AFR STUD. 314 (2015).

⁷¹ Id.

⁷² Lina Lotayef and Nourhan Abdel Aziz, *Refugees in Urban Egypt: It’s Time to Reassess UNHCR’s 2009 Policy on Refugee Protection and Solutions in Urban Areas*, Institute for Environment and Development (2017)

⁷³ Id.

⁷⁴ Katarzyna Grabska, *Living on the margins: The analysis of the livelihood strategies of Sudanese refugees with closed files in Egypt*, American University in Cairo (2005)

⁷⁵ Johnson, *supra* note 2, at 6

⁷⁶ Id.

⁷⁷ Stefan Sperial, *Evaluation of UNHCR’s policy on refugees in urban areas: A case study review of Cairo*, (2001).

⁷⁸ Human Rights Watch, *Egypt: Don't Deport Eritreans* (2015)

in inhumane conditions, as well as forced labor and torture.”⁷⁹ That is why many rejected asylum seekers preferring to stay illegally in Egypt.

This group of rejected refugees is considered as the most vulnerable among the refugee community as they do not have a legal personality, access to services that are usually available for registered refugees through UNHCR and its partner organizations including education, health care and livelihood programs⁸⁰. Because many of the rejected refugees have no identification, the limited informal business opportunities that recognized refugees have in Egypt are even more shrunken for the closed files refugees. Closed files holders live in Egypt as a “marginalized group” with no guaranteed rights or protection. Their constant fear of being arrested and deported to their country increases their vulnerability and makes them subject to harassment, abuse and exploitation.⁸¹

This mapping of the refuging process with its different classifications illustrates how the international law wording and its interpretation are being used to increase the refugees’ vulnerability. These classifications strip refugees of their basic rights and classify them as a marginalized segment within the refugee community itself by branding them as asylum seekers, refugees and rejected/closed files.

B. UNHCR 1997 Policy and Refugees Vulnerability in Urban areas

Beside the degrading classification, UNHCR policies toward recognized refugees also contribute to a great extent to their vulnerability in urban megacities like Cairo. UNHCR decided to change their global policy towards refugees in urban areas in 1997, for reasons of “funding constraints” and promoting “self-reliance” for refugees; instead of dependency on UNHCR services.⁸² In

⁷⁹ *Id.*

⁸⁰ Lotayef, *supra note 72*, at 2.

⁸¹ Grabska, *Living on the margins: The analysis of the livelihood strategies of Sudanese refugees with closed files in Egypt*, *supra note 74*, at 35.

⁸² Katarzyna Grabska, *Marginalization in Urban Spaces of the Global South: Urban Refugees in Cairo*, 19 *J Refug Stud.* 297, 287-307 (2006)

light of the new policy, financial assistance and care are strictly limited to the new arrivals and very vulnerable cases among refugees, and for only a very limited period of time.⁸³

The 1997 policy is applicable where refugees have access to their guaranteed rights under international law such as access to work, healthcare and other services that are available for nationals.⁸⁴ Applying such a policy in the case of Egypt while ignoring the Egyptian context increases the refugees' vulnerability instead of promoting independence.⁸⁵ Refugees in Egypt are denied their right to work and have limited access to services like education and health care regardless of their legal status.⁸⁶ Shrinking any assistance drives refugees "into a more marginalized and impoverished position."⁸⁷

After three years of application of the self-reliance policy, UNHCR's Evaluation and Policy Analysis Unit did an "assessment of the urban refugee policy framework."⁸⁸ The evaluation unit found that there are actual problems in Cairo regarding the implementation of this policy. In 2001, UNHCR realized that depending on a self-reliance policy with the hope that refugees will depend on themselves and integrate with the host society is "difficult and unlikely, mainly due to restrictive host country labor laws."⁸⁹ Even after changing the policy of self-reliance in theory it has not made much difference in reality due to the increasing number of refugees and the limited funds that UNHCR receives.

⁸³ Id.

⁸⁴ Id.

⁸⁵ Elżbieta Goździak, *Urban refugees in Cairo*, Institute for the Study of International Forced Migration. 1-43(2012).

http://issuu.com/georgetownsf/docs/urban_refugees_in_cairo

⁸⁶ Id.

⁸⁷ Id.

⁸⁸ Id.

⁸⁹ Id.

C. UNHCR Financial Assistance Policy in Practice

As a result of the 1997 policy along with the increasing number of refugees in Egypt and limited resources, most refugees do not receive any financial aid, only “very limited support.”⁹⁰ Those who are recognized by UNHCR as the most vulnerable among the refugee community, sexual and gender-based violence survivors, people with disabilities, unaccompanied children and victims of torture, deserve the financial assistance.⁹¹ Even these “most vulnerable” refugees who are eligible to receive monthly financial assistance, experience instability in receiving it. They do not receive financial assistance on a regular basis and in many cases the financial assistance stops all together after a few months without any change in their vulnerability status that could justify this discontinue of the assistance.⁹²

Promising these most vulnerable refugees, according to UNHCR categories, financial assistance and then delay the money for a couple of months or stop the monthly assistance all together without notifying the refugees does not help these most vulnerable refugees as UNHCR claims. The instability of the financial assistance rather increases their vulnerability instead. Those recipients of the financial assistance count on this money to pay for their essentials. One of these essentials is paying their rent; therefore, stopping or even delaying the money means the automatic inability to pay the rent which puts them at the risk of being expelled by the landlord.

Due to these financial problems, many refugees are left homeless and subjected to abuse. Due to the fact that the number of refugees is increasing but the funds the UNHCR receives is very limited, UNHCR cannot provide financial assistance to all the vulnerable refugee community. This leads the argument to ask about UNHCR’s capability to help refugees to have a more sustainable livelihood to depend on their income instead of UNHCR. According to Al-Sharamani, UNHCR “does not play a crucial role in the livelihood of refugees.”⁹³ Recognized refugees as well as unrecognized refugees do not have access to the formal job market in

⁹⁰ Grabska, *Living on the margins: The analysis of the livelihood strategies of Sudanese refugees with closed files in Egypt*, *supra note* 74, at 16.

⁹¹ Dongen, *supra note* 36, at 19

⁹² Mulki Al-Sharmani, *Livelihood and Identity Constructions of Somali Refugees in Cairo*, 2 *Forced Migration and Refugee Studies Program*. 19, 1-37 (2003)

⁹³ Al-Sharmani, *Livelihood and Identity Constructions of Somali Refugees in Cairo*, *supra note* 92, at 28

Egypt.⁹⁴ UNHCR has tried before in 1997 to “explore the possibility of offering vocational training and providing microcredit opportunities to female refugees” in order to help them in starting their micro projects.⁹⁵ This project was not pursued as the microcredit permit was rejected by the Egyptian government. Since that time, UNHCR has been unable to develop effective livelihood programs that can provide refugees with financial stability and at the same time get approved by the Egyptian government.⁹⁶

D. UNHCR Failure to Protect Refugees in Cairo

The refugees’ vulnerable context in Egypt and, their feeling of receiving almost nothing of the rights they are entitled to, have resulted in developing feelings of anger and disappointment towards UNHCR.⁹⁷ This anger and disappointment were clearly shown at periodic protests in front of the UNHCR offices of individuals asking for services, being blue carded or resettled.⁹⁸ Some people just protested their rights while “other people went on hunger strikes or left their children behind at the gate and disappeared.”⁹⁹

One of the most tragic incidents in UNHCR Cairo took place in 2005. Large group of Sudanese asylum seekers and refugees protested in front of UNHCR office. They “initiated a sit-in” to express their refusal of the “suspension of refugee status determination” along with the miserable life they had in Egypt due to the national strict laws.¹⁰⁰ The strike lasted for three months. UNHCR has “failed to meet the demonstrators” demands or provide a satisfactory end to the strike.¹⁰¹ The Sit-in was forcibly cleared by the Egyptian police and resulted in the death of 28 refugees and asylum seekers including women and children.¹⁰² UNHCR failed to play its role in

⁹⁴ *Id.*

⁹⁵ Elżbieta Goździak, *Urban refugees in Cairo, Institute for the Study of International Forced Migration, supra note 85*, at 10

⁹⁶ *Id.*

⁹⁷ Forced Migration and Refugee Studies Program, *A Tragedy of Failures and False Expectations: Report on the Events Surrounding the Three-Month Sit-in and Forced Removal of Sudanese Refugees in Cairo*, FMRS (2005).

⁹⁸ *Id.*

⁹⁹ Dongen, *supra note 36*, at 8

¹⁰⁰ Forced Migration and Refugee Studies Program, *supra note 97*.

¹⁰¹ *Id.*

¹⁰² *Id.*

protecting refugees according to the 1954 MOU. UNHCR “failure” is not only seen in the 2005 sit it, it rather describes UNHCR overall performance in Egypt for many reasons.

First reason is that UNHCR silence towards how “the Refugee Convention is ignored in favor of the MOU”.¹⁰³ According to 1951 convention, the Egyptian government is obliged to “provide UNHCR with information about refugees. Yet to this day, UNHCR continues to provide such data to the Egyptian government in accordance with Article 2(a) of the MOU”.¹⁰⁴ Article 2(b) and 2(c) of the MOU also contradict with Egypt’s responsibility towards local integration as one of the durable solutions for refugees.¹⁰⁵ Egypt has made no reservations to local integration in the 1951 Convention, thus “the Refugee Convention should automatically override the provisions of the MOU” once Egypt became party of the convention in 1981.¹⁰⁶ UNHCR should have demanded the Egyptian government to amend the MOU in avoid contradictory with the refugee convention.

Second, the failure is not exclusively related to UNHCR efforts with the Egyptian government to undertake their obligation under international law. It includes the lack of integration efforts with the nationals as well. The “absence of holistic and intensive integration policies and projects” leave the nationals with their misunderstandings and stereotypes.¹⁰⁷ Egyptians have no clue about who refugees are, what they are doing, why they left their countries or what the refugee rights in the state of asylum/refuge are.¹⁰⁸ The gap between refugees, especially African refugees, and Egyptians is mainly due to the misinformation the Egyptians have about refugees’ role in Egypt.¹⁰⁹ If UNHCR exerted enough effort to design effective integration programs that target Egyptians especially in the poor neighborhoods where refugees live, this could mitigate the mistreatment and discrimination that refugees face in the Egyptian streets.

¹⁰³ Tarek Badawy, *The Memorandum of Understanding between Egypt and the Office of the United Nations High Commissioner for Refugees: Problems and Recommendations*, CARIM (2010).

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ Salem, *supra note 57*, at 12

¹⁰⁸ *Id.*

¹⁰⁹ Forced Migration and Refugee Studies Program, *supra note 97*, at 16

Third, Egyptians are not the only group that is misinformed; the refugees are misinformed as well. They do not have a reliable and trusted source to inform them about the rights and the services they are entitled to. UNHCR and its partners should provide a clear description of the services they offer along with the eligibility criteria.¹¹⁰ In practice this does not happen. Neither UNHCR nor its partners “provide clear and accessible information on what [sources are] available, how [they] can be accessed, and who qualifies.”¹¹¹ A reason behind this could be that if refugees were informed about the service programs and eligibility criteria, the number of refugees UNHCR usually deals with might increase. Also, the spread of knowledge may increase the ratio of the refugees who may try to benefit from the system through performing certain vulnerability to get access to some financial assistance or some services that are limited to a certain niche of the refugee population.

Fourth, another aspect of UNHCR’s failure is the “lengthy and unfair procedures.”¹¹² Many researchers already criticized the superficial RSD interviews that UNHCR conducts through insufficiently trained staff.¹¹³ The absence of “transparency, lack of adequate and clear information and at times even arbitrary and unreasonable determinations” can be added to the criticisms of UNHCR’s practice in Egypt.¹¹⁴

UNHCR failure cannot be discussed without shedding light on some of the reasons behind its performance. The scarce resources in the hands of UNHCR globally explain why UNHCR locally cannot afford covering the refugees needs. UNHCR depends mostly on “voluntary contributions” made by (received from) fourteen governments and the European Commission to fund its operations with only 2% of the budget covered by UN regular budget.¹¹⁵ The fund that UNHCR received in 2018 covered only 55% of the UNHCR budget.¹¹⁶ This funding gap have “a

¹¹⁰ Id.

¹¹¹ Id.

¹¹² Forced Migration and Refugee Studies Program, *supra* note 97, at 9

¹¹³ Id.

¹¹⁴ Id.

¹¹⁵ UNHCR, The Global Appeal 2001. 16, 16-21 (2001)

<https://www.unhcr.org/3e2c05c30.pdf>

¹¹⁶ UNHCR, Refugees bear cost of massive underfunding (2018)

<https://www.unhcr.org/news/briefing/2018/10/5bbc57d94/refugees-bear-cost-massive-underfunding.html>

devastating impact on people of concern... and would require radical reprioritization of support for critical needs”.¹¹⁷ This global issue of lack of funding has a manifested effect on UNHCR office in Egypt which led UNHCR to issue a warning stating the situation and how the protection services are at great risk because of lack of funding.¹¹⁸

Another reason for UNHCR failure in protecting refugees is the ineffectiveness of UNHCR “supervisory role, set out in Article 35 of the Convention”. This happens because of the UNHCR undefined position vis-à-vis State actors. UNHCR according to its governing structure is dependent on the states while at the same time “it needs to influence them to ensure refugee protection”.¹¹⁹ Also the question of accountability as there is “no true accountability for refugee protection in the current system”.¹²⁰ UNHCR is argued not to be accountable for refugees protection as its duties lies in providing protection services for refugees. The state actors have the “legal obligations to protect refugees” and asylum seekers in light of the 1951 Convention and the 1967 Protocol.¹²¹ In practice, refugees suffer from the lack of effective legal accountability mechanisms.

¹¹⁷ UNHCR, Highlighted Underfunded Situations 2018.
<http://reporting.unhcr.org/sites/default/files/UNHCR%20Brochure%20on%20Underfunded%20Situations%20-%20September%202018.pdf>

¹¹⁸ Id.

¹¹⁹ Danish Refugee Council, Whose Responsibility? Accountability for Refugee Protection and Solutions in a whole of society approach. 8, 1-31 (2017).

¹²⁰ Id.

¹²¹ Id.

III. Egyptian Law and Practice Contribution to Refugees Vulnerability

Egypt has signed and ratified both the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. Egypt is also party to the 1969 Organization of African Unity (OAU) (later changed to African Union (AU)) Convention “governing Specific Aspects of Refugee Problems in Africa.”¹²² Being part of these international and regional agreements means that Egypt has some international obligations towards refugees. Egypt is also a signatory to many international agreements besides the refugee related international and regional agreements.¹²³ Egypt is party to the 1990 UN Convention on the Rights of the Child with no reservations, International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and the 1986 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.¹²⁴

All these agreements, even together, have not secured refugees living in Egypt the minimal rights that these conventions are calling for. Refugees are not allowed to compete in the job market with nationals and they do not have access to public education.¹²⁵ They have also reported many times that they “suffer physical abuse from Egyptian police if they [get] arrested.”¹²⁶ Refugees in Egypt are not guaranteed their safety from wrongful detention or abuse.

A. Egypt Reservations to the 1951 Convention

Egypt entered a number of reservations to the 1951 Convention that led to shrinking the Egyptian international obligations and constraining many refugee rights.¹²⁷ Egypt entered five reservations to the 1951 Convention that directly contribute to increasing the vulnerability of the

¹²² United Nations, OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, UNHCR (1969) www.unhcr.org/about-us/background/45dc1a682/oau-convention-governing-specific-aspects-refugee-problems-africa-adopted.html.

¹²³ Elżbieta Goździak, *Urban refugees in Cairo*, Institute for the Study of International Forced Migration, *supra* note 85, at 12

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ Grabska, *Living on the margins: The analysis of the livelihood strategies of Sudanese refugees with closed files in Egypt*, *supra* note 74, at 15.

refugees by restraining many of the rights that they are entitled to. The articles that Egypt made reservations to are articles 12(1), 20, 22(1), 23 and 24. These reservations are on the articles that addressed access to main rights and services for refugees to have a humane life in the state of asylum¹²⁸. These reservations were to articles that addressed the rights to primary education, labor legislation and social security, public relief and assistance, and rationing.¹²⁹ There were no objections from other member states on these reservations and according to international law there is no international obligation on Egypt regarding these five articles. The five reservations that Egypt entered have restrained refugees' rights and obscured the Egyptian government's legal obligations towards them.¹³⁰ These observations shrank the refugees' access to work and education which have created new challenges for refugees' life in Egypt.

Moreover, the Egyptian government has not developed any internal law or institutional framework that regulates refugee issues. Refugees are treated like foreigners before the law; the laws that govern foreigners are the same that govern refugees.¹³¹ Nor has Egypt developed any legal procedure or an institution that legislates or allows for the registration of the asylum seekers who arrive into the country.¹³² The Egyptian government deals with very limited refugees' issues through two governmental bodies. The first governmental department is the Department of Refugee Affairs that mainly issues "letters to obtain residence permit[s]."¹³³ The second one is the Ministry of Interior that issues asylum seekers and refugees residence permits.

1. Egyptian Government and Refugee Livelihood

Egypt's reservations have resulted in limiting refugees' access to work. Egypt has not developed special laws or regulations for refugees and this reduces their access to the job market. The right to work for the blue carded refugees does not differ a lot from the asylum seekers' right to work as both are regulated by the Egyptian laws on the employment of foreigners, law no. 137 of

¹²⁸ Id.

¹²⁹ Id.

¹³⁰ Grabska, Who asked them anyway? Rights, policies and wellbeing of refugees in Egypt, *supra note 17*, at 11

¹³¹ Id.

¹³² Nourhan Abdel Aziz, Out of Sight Out of Rights: Rejected Asylum Seekers and Closed-Files Individuals in Egypt, (2018)

¹³³ Grabska, Who asked them anyway? Rights, policies and wellbeing of refugees in Egypt, *supra note 17*, at 19

1981. Based on this law, refugees have to obtain a work permit in order to be allowed to work legally in Egypt. Obtaining a work permit is difficult and costly. First, refugees have to find an employer that would accept to sponsor them and pay the yearly fees that is required to be paid whenever a foreigner is hired. Second, the employer is not allowed to hire a foreigner unless all the Egyptian applicants have been deemed not qualified enough to take this job.¹³⁴

This condition is very difficult to claim in the majority of the refugee cases as most of them have a limited educational background or are illiterate or low skilled. Moreover, the Egyptian labor law limits the percentage of foreigners to Egyptian nationals in any organization which puts further limitations on the refugee's access to jobs.¹³⁵ Beside the limitations of employing foreigners, the Egyptian economic context is considered another challenge for refugees as Egypt suffers from a high unemployment rate among Egyptians. Egypt is "struggling to provide work for its own labor force. Although Egyptians have the right to work, access to the formal job market is limited."¹³⁶

In order for refugees to secure an income while being unqualified to fit into the Egyptian law criteria, they have resorted to working in the informal sector where work permits are not required.¹³⁷ In the informal sector, they are more likely to be exploited in under-paid jobs that are not stable.¹³⁸ It is called informal because there is no contract that regulates the relationship between the employer and the employee and thus there are no rights guaranteed. There is no insurance, healthcare, vacations or maximum working hours. Refugees working in the informal sector are subject to exploitation.¹³⁹ They may even be denied their payment after they do the required work. "They also have no healthcare benefits which often translates into being fired if one gets sick and must rest even if for a few days."¹⁴⁰

¹³⁴ Lotayef, *supra note 72* at 2

¹³⁵ *Id.*

¹³⁶ Grabska, *Living on the margins: The analysis of the livelihood strategies of Sudanese refugees with closed files in Egypt*, *supra note 74*, at 40

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ NOURHAN ABDEL AZIZ, SOCIO-ECONOMIC AND LIVELIHOOD CHALLENGES P25 (2017), <http://www.jstor.org/stable/resrep02732.9>

The very limited livelihood options with very little payment have led to another obstacle that refugees face in Cairo which is the housing problem. Renting a flat requires paying two months deposit in advance to the flat owner and this deposit might be three months in case the flat has basic furniture. They need to also pay the broker who usually asks for one month rent as commission.¹⁴¹ In order to solve the issue of renting a flat with such high expenses, refugees usually share one small flat together so they can divide the rent amongst themselves. Eventually, they end up living “in overcrowded dwellings in poor neighborhoods in central Cairo with insufficient furniture.”¹⁴² Sharing one flat with another family is not an easy choice as there is almost no “privacy in overcrowded apartments.” Refugees in such shared apartments have concern regarding leaving their children, “especially female adolescents, in the apartment when shared with men.”¹⁴³ They usually rent flats with low monthly rents in slum areas and poor neighborhoods. These “neighborhoods where refugees often reside are [not] safe. Some areas are more dangerous than others” especially for girls and women.¹⁴⁴ Finding a flat that is safe, affordable and securing a job in order to pay the rent are the most immediate problems that refugees face.

2. Refugee Children Access to Education in Law and Practice

Another problem that faces the refugees living in Egypt in light of the legal system is the refugees’ children access to education. Egypt has already entered a reservation on refugee children’s right to public education.¹⁴⁵ In fact this is not the only international agreement that govern the refugee children’s access to public schools; Egypt is “a party of the Convention on the Rights of the Child.”¹⁴⁶ As a result, Egypt has an international obligation to secure “access to public education for all children residing on its territory.”¹⁴⁷ In theory, Decree No. 24 of 1992 that was issued by the Minister of Education has given access of Sudanese to public schools.¹⁴⁸

¹⁴¹ Id.

¹⁴² Elżbieta Goździak, *Urban refugees in Cairo*, Institute for the Study of International Forced Migration, *supra note* 85, at 12

¹⁴³ Id.

¹⁴⁴ Abdel Aziz, SOCIO-ECONOMIC AND LIVELIHOOD CHALLENGES, SUPRA NOTE 140, AT 25

¹⁴⁵ Grabska, Who asked them anyway? Rights, policies and wellbeing of refugees in Egypt, *supra note* 17, at 19

¹⁴⁶ Id.

¹⁴⁷ Id.

¹⁴⁸ Elżbieta Goździak, *Urban refugees in Cairo*, Institute for the Study of International Forced Migration, *supra note* 85, at 26

The Egyptian government has also issued two ministerial decrees that provide exceptions for certain refugee groups. In 2000, another decree was issued by the Minister of Education that extended “the application of the 1992 Decree” to other refugees¹⁴⁹.

In practice, refugees do not have real access to public schools. This is mainly due to the confusion that these decrees have created especially when it comes to the “implementation processes.”¹⁵⁰ It is even more complicated when “it trickle[d] down from the ministerial level to the school administration level” where people are confused between the existing laws and the ministerial decrees.¹⁵¹ This is not the only problem that hinders refugees from accessing Egyptian schools. There are many other problems such as the lengthy procedures, and the extensive documentation that are required in order to admit a refugee to Egyptian schools. The required documents include “birth certificates, last school certificates, identity documents along with a legal residence permit and a letter from the Embassy.”¹⁵²

These documents are not always accessible for refugees as many refugees might risk their protection by contacting their embassies.¹⁵³ This is beside the fact that the Egyptian schools are very crowded with Egyptian students. With the high demand and the shortage in the available seats, the priority goes to Egyptian students over the refugees¹⁵⁴. As a result, many refugees resort to community schools that are designed and run by the community members. These schools are, in a certain sense, suitable for many refugees as they are “much cheaper than the private schools and located closer to where refugees live.”¹⁵⁵ However, most of these community schools are not accredited by the Ministry of Education and they are not teaching the Egyptian curriculum which make it hard for refugees to get certified for their educational level.

B. Egyptian Government Violation to International Law

¹⁴⁹ Id.

¹⁵⁰ Grabska, Who asked them anyway? Rights, policies and wellbeing of refugees in Egypt, *supra note 17*, at 20

¹⁵¹ Id.

¹⁵² Elżbieta Goździak, *Urban refugees in Cairo*, Institute for the Study of International Forced Migration, *supra note 85*, at 26

¹⁵³ Id.

¹⁵⁴ Id.

¹⁵⁵ Id.

Egypt has violated its binding international obligations towards refugees many times. Egypt has revoked the principle of non-refoulement by returning refugees who are blue carded or waiting for their refugee status determination back to the state of origin where they could face persecution. Egypt has also violated the 1951 Convention by handing all the Egyptian government responsibilities to the UNHCR according to the Memorandum of Understanding of 1954. Moreover, Egypt has refused local integration as a durable solution for refugees in practice while making no reservation to this article.

1. Egypt Revoking the Principle of Non-Refoulement

Egypt has many incidences when it ignores the principle of non-refoulement. This happened in 2011 when Egypt decided to deport 118 Eritreans “including 40 who already [had] refugee status” to their homeland where they were expected to face persecution¹⁵⁶. According to Human Rights Watch Egypt pressured the Eritrean refugees to sign papers in which they consent to being voluntarily repatriated.¹⁵⁷ Many other incidents took place with other nationalities such as deporting the Sudanese refugee Mohammed al-Haj Abdallah back to Sudan even though he was recognized by UNHCR¹⁵⁸. Another incident have taken place when Egypt forced forty-five Eritrean asylum seekers to go back to Eritrea.¹⁵⁹ The international law and its agreements did not assure the safety of these refugees or even take any measure against the state who committed a wrongful act according to Article 1 of the 2001 International Law Commission (ILC) Articles on Responsibility of States for Internationally Wrongful Acts.¹⁶⁰

2. The 1954 Memorandum of Understanding

The Egyptian government signed the 1954 Memorandum of Understanding (MOU) with UNHCR to regulate the collaboration between Egypt and UNHCR to meet refugee needs. Egypt in the memorandum did not take accountability for any refugees’ rights. The refugee registration procedure along with the other refugee services is assigned to UNHCR. The Egyptian

¹⁵⁶ Human Rights Watch, *supra notes* 69

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ Khan, *supra note* 12 at 56

government responsibility is limited to granting “residence permits to refugees” who are recognized by UNHCR.¹⁶¹ Egypt also refused local integration as a durable solution for refugees by “explicitly stress[ing] that only repatriation or resettlement [are] to be considered [as] the durable solution in Egypt.”¹⁶²

Refusing local integration in Article 2(b) and (c) of the MOU as a durable solution is a clear violation of the 1951 Convention. Egypt made no reservation on local integration in the Convention which means that Egypt carries the international obligation to consider local integration as a durable solution after the ratification of the Convention¹⁶³. Egypt has also breached the Convention by assigning all the refugee rights to UNHCR while Egypt is “the first authority charged with protecting refugees in the country.”¹⁶⁴ Egypt also has an obligation under Article 35 of the 1951 Convention to “provide UNHCR with information about refugees.”¹⁶⁵

Up until this day UNHCR is the one who is responsible for “provid[ing] such data to the Egyptian government in accordance with Article 2(a) of the MOU.”¹⁶⁶ The Egyptian authorities tend to ignore the 1951 Convention and stick to the MOU. From this brief analysis of refugees’ legal context in Egypt, one can imagine the difficulties of living as a refugee in Egypt. They encounter difficulties that threaten their livelihood, housing, education of their children and physical protection and much more.

C. Refugees Struggle and Social Integration

All these struggles that the refugees in Egypt have to go through on a daily basis hinder the possibility of being socially integrated to the community. This possibility has shrunk even more “due to lack of access to citizenship, restricted access and enjoyment of rights and limited income-generation possibilities in the current economic conditions.”¹⁶⁷ These restrictions come

¹⁶¹ Abdel Aziz, *Out of Sight Out of Rights: Rejected Asylum Seekers and Closed-Files Individuals in Egypt*, *supra note* 132 at 33

¹⁶² *Id.*

¹⁶³ Badawy, *supra note* 103 at 15

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ Grabska, *Marginalization in Urban Spaces of the Global South: Urban Refugees in Cairo*, *supra note* 82, at 297

from the Egyptian government's desire of treating the asylum seekers and refugees as temporary residents.¹⁶⁸ The Egyptian government, along with many refugees, recognize that their residency in Egypt is temporary. Although blue carded refugees are allowed to live in the local community, they understand that, in the long run, there are only two options: either going back to their countries or resettlement.¹⁶⁹

The Egyptian legal context is not the only barrier that stands in the way of the refugees' local integration, Egyptian society also constructs a barrier. The Egyptian community perceives refugees as illiterate, unskilled and impoverished. They are also seen as very different in terms of "cultural background that is even considered immoral."¹⁷⁰ The Egyptian government and media is partly responsible for this image as they commonly use "illegal migrants and refugees as scapegoats for economic and social problems."¹⁷¹ The media often tend to blame the increasing rate of crimes, prostitution and "demoralization of the Muslim society on refugees (by the alleged loose and provocative manners of African women)."¹⁷² Refugees have reported many times that they are treated with disrespect within the Egyptian society.

They face verbal insults and multiple "incidents of violent attacks by the Egyptian youth."¹⁷³ Refugees find themselves subject to abuse from their employers, landlords, neighbors and supermarket owners. They also get harassed while being asked for their identification by the police "and extort[ed] for the little money they might have."¹⁷⁴ Suffering from police discrimination, and brutality in the streets and in detention, often discourages refugees from filing any official reports against racist treatment out of fear of retaliation and further discrimination by Egyptian officials.¹⁷⁵

¹⁶⁸ Johnson, *supra* note 2, at 13

¹⁶⁹ *Id.*

¹⁷⁰ Grabska, *Living on the margins: The analysis of the livelihood strategies of Sudanese refugees with closed files in Egypt*, *supra* note 74, at 74.

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ Grabska, *Living on the margins: The analysis of the livelihood strategies of Sudanese refugees with closed files in Egypt*, *supra* note 74, at 73.

¹⁷⁵ Al-Sharmani, *Livelihood and Identity Constructions of Somali Refugees in Cairo*, *supra* note 92, at 27

Refugee children also face discrimination which makes it hard for them “to socialize outside of the house.”¹⁷⁶ This discrimination against them, especially black African refugee children, is also considered a “barrier to education” for them.¹⁷⁷ African refugee children are bullied and discriminated against in the Egyptian schools and in streets. Many children refuse to go to school and many of them resort to community school or they just stay at home. Many parents, especially African refugees, find it “unsafe for children to play” in the streets because of the risk of being subjected to harassment or discrimination by Egyptians.¹⁷⁸ Many refugee children complain of being beaten up and insulted for no reason by Egyptian children their age.¹⁷⁹ This does not only affect their social integration in the community but also affects the children’s health. Many parents tend to keep their children locked indoors for long periods of time especially working mothers.¹⁸⁰ Being locked inside the house along with the “lack of affordable and adequate childcare” results in children suffering from Vitamin D deficiency along with further segregation of the refugee community from the Egyptian society.¹⁸¹

¹⁷⁶ Elżbieta Goździak, *Urban refugees in Cairo*, Institute for the Study of International Forced Migration, *supra* note 85, at 21

¹⁷⁷ Id.

¹⁷⁸ Id.

¹⁷⁹ Id.

¹⁸⁰ Id.

¹⁸¹ Id.

IV. Refugees Struggle in Cairo as a Result of the Intersecting Systems of Oppression

Refugees and asylum seekers who live in Egypt are aware of the injustices they face in the state of asylum. Their situation in Cairo is getting worse due to the economic situation in Egypt in which the nationals themselves are struggling to earn their living. Asylum seekers share a stage of loss waiting for the determination of their status to see whether they will get rejected or get the blue card and start their new struggle in the state of refuge. Rejected refugees might, if caught, be forced to travel back to their homeland where they will be punished indirectly for seeking asylum, as many countries “punish their nationals for doing so in various indirect ways.” Their last resort will be managing to disappear in the city and live illegally with no rights at all.¹⁸² Thus, the law contributes directly in increasing refugees’ vulnerability as the marginalization of the refugees, asylum seekers, and closed files holders is a result of intersecting legal systems that are vague, confusing, and contradict each other. Refugees living under these laws’ umbrella are suffering and surviving their everyday vulnerability as if they are not entitled to any legal protection. The laws that are supposed to improve and protect refugees’ life are increasing their vulnerability instead.

UNHCR classifications are degrading in nature, as “an international aid agency [like UNHCR] cannot treat people selectively according to the status of their applications.”¹⁸³ The different categorizations come with different legal and rights acquisitions that varies from limited access to fundamental rights in the case of asylum seekers to a total absence from UNHCR legal and rights spectrum in the case of refugees with closed files. The refugee status classifications that UNHCR adopts actively contribute to the marginalizing of asylum seekers in the long waiting phase, and closed files holders who cannot return back to their homeland.

¹⁸² Abdel Aziz, *Out of Sight Out of Rights: Rejected Asylum Seekers and Closed-Files Individuals in Egypt*, *supra* note 132, at 36

¹⁸³ Grabska, *Living on the margins: The analysis of the livelihood strategies of Sudanese refugees with closed files in Egypt*, *supra* note 74, at 10.

Egypt, like other developed and developing countries, is hostile towards refugees. The Egyptian government ignores the international binding agreements and commits real violations to the refugees' agreement and their universal human rights. Moreover, the absence of any international enforcement mechanism is helping the state not to carry out its international obligations. A huge part of the problem is because the burden of accommodating refugees along with their problems lies only on the neighboring poor countries. Less than 1% of the world refugees get resettled per year while the 99% remain in the undeveloped countries, such as Egypt, alongside millions of nationals who are unprivileged and vulnerable as well.¹⁸⁴

Refugees living in such extremely vulnerable environment have developed coping strategies to minimize the risks that they face on a daily basis in Cairo. Refugees and asylum seekers tend to develop connections with other community members so they can help each other in “seeking for housing, food, health care, electricity, internet access, and other basic supplies and services.”¹⁸⁵ They also help in cases of emergencies by hosting other members of the community and/or lending them money. Some African refugees receive money on monthly bases from their family members or relatives who got resettled. These remittances help them pay for the rent and education of their children.¹⁸⁶ Refugees also feel safe when they are surrounded by people who share the same experiences they are going through. That is why they prefer to live in areas that have a significant number of their community members in order not to feel isolated and to feel safe. Refugees also try to make “themselves invisible [in the city, in order to] protect their own security.”¹⁸⁷ This task is harder for Africans with dark complexion as they are to some extent visible to Egyptians. These are some of the refugees coping strategies that they adopt to escape their marginality in a big city like Cairo.

¹⁸⁴ Häkli, *supra* note 14, at 14

¹⁸⁵ *Id.*

¹⁸⁶ Elżbieta Goździak, *Urban refugees in Cairo*, Institute for the Study of International Forced Migration, *supra* note 85, at 21

¹⁸⁷ Grabska, *Living on the margins: The analysis of the livelihood strategies of Sudanese refugees with closed files in Egypt*, *supra* note 74, at 26.

V. Vulnerable Bodies as an Imposed Identity on African Refugee Women

African refugee women living in Cairo are vulnerable to a high extent to different forms of violence in the state of asylum. This chapter examines this issue in light of intersectional layers of those women's identity. It also sheds lights on the Egyptian police practice and UN policy in response to sexual and gender-based violence (SGBV) incidents. The chapter further argues that all the above-mentioned dimensions taken together impose a new collective identity for African refugee women living in Cairo as vulnerable sexual bodies. Refugee women are forced to acquire vulnerable bodies as an identity by the UNHCR policies and the Egyptian police practice.

A. Intersectionality and African Refugee Women Identity in Cairo

For full understanding of why African refugee women are subjected more to sexual violence in Cairo, intersectional analysis of the African refugee women needs to be done. Race, class (livelihood), refugee status, gender and the context of Egypt as a state of asylum are the aspects that need to be examined

1. Racism Against African Refugees in Cairo

African refugees are facing troubles in Egypt according to their race. Many Egyptians harass African refugees because of the fact that they have a dark skin. They call them names in Cairo streets like “chocalata, dalma, (darkness), or samara (black), bonga bonga” or Shikabala (Egyptian black football player).¹⁸⁸ Egyptian youth and children sometimes physically attack African refugees by hitting them or throwing things on them¹⁸⁹. The harassment incidents are escalated sometimes into violent physical assault or robbing in refugees' neighborhoods by groups of Egyptian men and the rates of these incidents increase at night.¹⁹⁰

¹⁸⁸ Paul Miranda, *Getting by on the Margins: Sudanese and Somali Refugees - A Case Report of Refugees in Towns; Cairo, Egypt*, ReliefWeb (2018) at 21

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

Paul Miranda mentioned in his research paper *Getting by on the Margins: Sudanese and Somali Refugees* the racism and anti-blackness that Amira Ahmad, a researcher from north Sudan, experienced in Cairo.¹⁹¹ Ahmad mentioned that Egyptians looked at her in a different way than what she was used to. She has encountered many racist comments in the Egyptian streets for being black. Ahmad thinks that African refugees face incidents of violence and racism on a daily basis “because of their blackness, cultural differences, and identity as refugees as they are perceived as a burden and taking opportunities away from Egyptians.”¹⁹² In a report that was done about Sudanese refugees in Cairo, many refugees commented on the racist treatment they receive in Egypt starting from yelling “Ya aswad” to refusing to give them seats in the metro and even harassing them by dogs at night in the streets.¹⁹³ Another example that broke the silence around the racism that black refugees face in Egypt is Fatma Ali, Miss Sudan, who decided to talk to the media and raise awareness about the racist treatment that black people receive in Egypt. She mentioned in a BBC Arabic report that although people all over the world think that she is beautiful and many have encouraged her to work as a model, she thinks that the Egyptians she met in the streets “have a different opinion.”¹⁹⁴ She said that they always yell at her ‘eh el sawad da’ (What is that darkness).¹⁹⁵ Ali found that this is not a special case as her family has similar experience with harassment and racism in the Egyptian streets.¹⁹⁶

Racism against black people is exacerbated by the Egyptian cinema as almost all black men are represented as servants and black women as maids or prostitutes. Black Africans are stereotyped as subservient and “blackness [represents] violence and irrationality.”¹⁹⁷ The Egyptian cinema has contributed to the construction of these stereotypes and many of the racist comments that black Africans face in the Egyptian streets originate from these movies. In Egyptian movies black people are considered a rich material for comedy scenes and an easy way to make people laugh. Black characters are mostly imposed in the movies just to add some easy and cliché

¹⁹¹ Id.

¹⁹² Id.

¹⁹³ SAT7ARABIC. A Report with Sudanese Refugee, YouTube (2017) www.youtube.com/watch?v=7B4L-WpvvAI.

¹⁹⁴ عربي BBC News. Miss Sudan face harassment and racism in Egypt, YouTube (2017) www.youtube.com/watch?v=x4yp3nmwFIU.

¹⁹⁵ Id.

¹⁹⁶ Id.

¹⁹⁷ Miranda, *supra note* 188, at 22

comedy lines by allowing the movie star to make fun of black people just because of their dark skin. Blacks are also featured as stupid, dependent and irrational. In *Eli Bali Balk* movie of 2003, the movie star Mohamed Saad made fun of his black servants. In one scene he was flirting with his wife saying “what is that light” and then he saw his black servant so he continued “what is that dark night.” In another scene, he made fun of a little black girl by calling her “soba3 3agwa” (dark dessert made of date). Another example is *Alf Mabrook* (Congratulation) movie of 2009 featuring the movie star Ahmad Helmy. One of the scenes featured a black character whose job was “handing folks paper tissues” to people while they were getting out of the toilet¹⁹⁸. The character was not responding to Ahmad Helmy’s questions so Helmy started to throw things at him to make sure that he was real.

The Egyptian cinema has also contributed to the stereotype of the African black women as dirty, easy going and/or prostitutes. In the 1998 film *Saedy fel Gamaa el Americaya* (A man from Upper Egypt in the American University), Samara was a black prostitute who received a lot of “funny” comments on her black skin like ‘Ma7ro2a’ (burned out) along with other scenes which was dedicated to make fun of Samara. Another character that was dedicated to the same purpose was Zinga in *Africano* film of 2001. Zinga is a black African woman that was deceived by an Egyptian man who pretended to love her so he could have fun during his visit to Africa. The film showed deceiving Zinga as a funny side joke that was used in many scenes. Even the scene when the Egyptian man told her that he was just fooling around and that he was married was designed as a funny scene where there was no place to empathize with Zinga’s feelings. As Paul Miranda mentioned in his work that “the way Egyptian media and pop-culture portrays Africa surely contributes to the widespread perception of Africans” in Egypt.¹⁹⁹

2. The Gender Element of The African Refugee women suffering in Egypt

The racism that African women experience in Egypt in particular has “a strong gender component... black women are sexually harassed and referred to as prostitutes in the

¹⁹⁸ Nour Nasreldin, 7 Times Egyptian Cinema Contributed To Racism Against Black People, *whatsupcairo* (2018) <https://whatsupcairo.com/site/7-times-egyptian-cinema-contributed-to-racism-against-black-people/>

¹⁹⁹ Id.

street[s].”²⁰⁰ The stereotypes of black women as easy, women who will have sex with anyone, contributes to the way African women are treated in the streets of Cairo. In a blog named Racism against Blacks in Egypt and the Arab world, Fatma Ali published an article called Diary of a Black Girl in which she talked about the racism that she faced in the Egyptian streets.²⁰¹ Beside the racist comments on her skin color, Ali mentioned that when she went to take a microbus many of the drivers offer her a ride because they are thinking black girls are *siko siko* prostitutes.²⁰² Hoda Salem, an Egyptian Sudanese writer, mentioned in her article *Sawdaa* Black that she struggles from a very young age with being mistaken for prostitute or cleaner by strangers in the streets and policemen just because of her skin color.²⁰³ African refugee women never imagined that this would be their situation in Egypt while they were crossing the Egyptian borders. They were “escaping war” when they left their homeland and never imagined that there is another war waiting for them in Cairo. Sexual violence has become a routine of their life in Cairo. They “face sexual harassment on the street” as “men are always touching [them] inappropriately.”²⁰⁴ Women are groped in the streets; “for Egyptians, black women are prostitutes.”²⁰⁵ One refugee woman said that Egyptian men “do not believe us when we tell them no.”²⁰⁶ Sexual attacks in Cairo streets became part of refugee women’s daily routine.

Black refugee women do not only face sexual violence in the streets but also in their household. Many of the SGBV survivors’ husbands physically hurt their wives or at least decide to leave them when they know that they have been raped.²⁰⁷ This happens due to cultural norms as those men who are exercising violence against SGBV survivors are, from their point of view, “defend[ing] their own reputations against perceived honor threats.”²⁰⁸ Men’s honor in many

²⁰⁰ Id.

²⁰¹ BBC News, *supra note* 174

²⁰² Fatma Ali, Diary of a Black Girl. Black in Egypt (2014) blackinegypt.wordpress.com/2014/06/13/1-يوميات-بنات-سمر-ا/

²⁰³ Hoda Salem, سوداء . Ikhtyar https://www.ikhthar.org/?page_id=21182#

²⁰⁴ Miranda, *supra note* 188, at 16.

²⁰⁵ IRIN, Refugees hit by discrimination, violence amid heightened nationalism, IRIN News (2011).

<http://www.irinnews.org/report/94294/egypt-refugees-hit-discrimination-violence-amid-heightened-nationalism>

²⁰⁶ Johnson, *supra note* 2, at 2

²⁰⁷ IRIN, *supra note* 205.

²⁰⁸ Ryan P. Brown. Et al, Culture, masculine honor, and violence toward women, 44(4) Personality and social psychology bulletin. 539, 538-549 (2018).

cultures “is so tightly bound up” with women’s sexual activity .²⁰⁹ . The gender-based violence is doubled when survivors’ husbands or other male family members know about the rape that women were subjected to. The domestic violence that the SGBV survivors are subjected to range from divorce to murder. In an interview done by Paul Miranda a Sudanese man said that “for a lot of husbands, if he knows his wife has been raped, he will not want to be with her anymore.”²¹⁰

The domestic violence these women face is not limited to those who were subjected to SGBV but also it is a result of the shift in the gender roles they face in the state of asylum. As mentioned in the last chapter refugees do not have legal access to the job market which makes them resort to informal work. It is more difficult for men to find a job in the informal sector while women have a better opportunity as they can engage in domestic work like cleaning, baby-sitting, drawing henna, cooking and so on.²¹¹ The money that women make from the informal activities is spent on the whole family including the husband and it is used to maintain the family daily livelihood.²¹² This shift in the “family dynamics” by the new economic rules “represents a pronounced shift in gender roles and, consequently, a sharp rupture in gender identities.”²¹³ Women in that sense become the money generator for the family members.²¹⁴ Women being the family breadwinners are enabled to take the lead when it comes to “family decisions that involve allocation of funds, relocation of family members, and the responsibilities assigned to different family members.”²¹⁵ Given the fact that refugee women become the breadwinner, refugee men have a sense of failure through their “inability to provide for, and protect, their wives and children.”²¹⁶ Men’s sense of failure to maintain what they believe to be their masculine social

²⁰⁹ Id.

²¹⁰ Miranda, *supra* note 188, at 16.

²¹¹ Mulki Al-Sharmani, *Living Transnationally: Somali Diasporic Women in Cairo.*, 44 *International Migration*. 58, 55-77 (2006)

²¹² Id.

²¹³ Hala Mahmoud, “*Conflict defines origins*”: *Identity transformations of Sudanese refugees in Cairo*, 28 *Conflict Resolution Quarterly*. 281, 263-289 (2011)

²¹⁴ Al-Sharmani, *Living Transnationally: Somali Diasporic Women in Cairo*, *supra* note 211 at 44

²¹⁵ Al-Sharmani, *Living Transnationally: Somali Diasporic Women in Cairo*, *supra* note 211 at 58.

²¹⁶ Desiree Lwambo, "Before the war, I was a man": men and masculinities in the Eastern Democratic Republic of Congo, 21(1) *Gender & Development*. 50, 47-66 (2013).

responsibilities results in further vulnerability and humiliation.²¹⁷ Refugee men find themselves risking their “social hierarchy” through their failure to maintain their gender role within the household.²¹⁸ Refugee men who experience these shifts may resort to using violence against women in the household as a result of their feelings of being useless and weak.²¹⁹ They use violence to prove to themselves that they are still in charge and they are the head of the house even if their wives are the breadwinners. They use violence as a way to restore their masculinity.²²⁰

3. African Refugee Women’s Livelihood and Their Vulnerability to SGBV

The kind of work that refugee women find is mostly “work that takes place in secluded places” like domestic work which increase women’s risk of exploitation.²²¹ What increases their vulnerability to exploitation and abuse in the workplace is directly connected to the fact that domestic work lacks protection from the law.²²² Care work lies in the informal business spectrum which “often fall[s] outside recognized labor or human rights standards.”²²³ Migrant domestic workers vulnerability to violence is associated with the nature of their work conditions “due to the unequal power relations at work based on the combined oppressions of gender, class, nationality and ethnicity.”²²⁴ As those women lack legal protection, they are deprived of the basic labour rights like wage payment, minimum wages and paid days off.²²⁵

According to the research that was conducted in 2007 by the Centre for Migration and Refugee Studies, more than 59% of non-Egyptian domestic workers in Cairo are subjected to “verbal abuse” in the workplace, while “27% are being physically abused, and 10% exposed to sexual

²¹⁷ Id.

²¹⁸ Karen Graaff, et al. Masculinities and gender-based violence in South Africa: A study of a masculinities-focused intervention programme, 34(5) *Development Southern Africa*. 670-686

²¹⁹ Al-Sharmani, Al-Sharmani, *Living Transnationally: Somali Diasporic Women in Cairo*, *supra note* 193 at 44, *supra note* 211 at 58.

²²⁰ Id.

²²¹ Margaret Konstanski, *An Environment of Impunity: Criticisms of Current Approaches to Sexual Violence*, The American University in Cairo (2011)

²²² Ray Jureidini, *Irregular Workers in Egypt: Migrant and Refugee Domestic Workers*.11 *IJMS*. 88,75-90 (2009) www.unesco.org/shs/ijms/vol11/issue1/art4

²²³ Jacqui True, *The political economy of violence against women: A feminist international relations perspective*, 32 *Australian Feminist Law Journal*. 46, 39-69

²²⁴ True, *supra note* 223 at 52.

²²⁵ Id.

harassment, attempted rape and gang rape.”²²⁶ The verbal abuse includes calling them names. Some of these names are racist names like “*abda* (meaning Slave)”, “*Kalb Aswad* (black dog), *Ya Khara* (you shit), *Ya Aswad* (you black one).” Domestic workers are also called sexual insulting names like “*Bint al Wiskha* (dirty girl)” and “*sharmouta* (prostitute).”²²⁷ These represent the sexual and racial stereotypes that black women suffer from. Although the verbal violence exercised against refugee black domestic workers is a harsh experience, it is the least violent form of abuse that these women could experience. Many refugee women complain of physical along with sexual and gender-based violence.²²⁸ SGBV that domestic workers are subjected to varies from “demanding sex, verbal harassment (asking, commenting), touching, exposing genitals, showing pornographic films and materials, attempted rape, rape and gang-rape.”²²⁹ Violence and exploitation are widespread in that field and it is common for NGO workers and researchers to hear such stories from refugees. Domestic workers are stereotyped as “sexual beings” who “are willing to” accept anything for money.²³⁰

Domestic workers who are subjected to sexual violence in the workplace are more likely not to be believed by their female employers. Domestic working women are perceived by their female employers as “a source of immoral sexual threat to the men of the household.”²³¹ They can also find themselves accused of being responsible “for any sexual misbehavior of their male employers by virtue of their gender and subservient position in other people’s homes.”²³² In many cases, domestic workers are threatened in various ways including “losing their jobs, physical violence... or being sent to prison” to maintain their silence.²³³ If refugee women thought of reporting what they face inside these houses or talk about it, they could get fired and be denied their salaries, which is already very little compared to what was promised by their employers.²³⁴ They also might find themselves “accused of theft and detained by the police or by

²²⁶ Al Bawaba. Hell in the Household for Domestic Workers in Egypt. Al Bawaba, Al Bawaba,(2015).

www.albawaba.com/business/hell-household-domestic-workers-egypt-697524.

²²⁷ Jureidini, *supra note* 203, at 86

²²⁸ Miranda, *supra note* 188, at 16

²²⁹ Jureidini, *supra note* 203, at 87

²³⁰ Amira Ahmed, ‘I need work!’: The Multiple Roles of the Church, Ranking and Religious Piety Among Domestic Workers in Egypt, 11(3-4) *The Asia Pacific Journal of Anthropology*. 371, 362-377 (2010).

²³¹ Id.

²³² Id.

²³³ Jureidini, *supra note* 203, at 89

²³⁴ Miranda, *supra note* 188 at 16

the family they work for.”²³⁵ Many refugee women choose to keep silent because, in many cases, these women are the head of the households; who have bills to pay, and children to raise, so they remain silent. Beside their need for money, they are also aware that the Egyptian police will not help them against the perpetrators as African refugees often complain of “their inability to access police services.”²³⁶ Whenever refugees try “to report crimes or seek assistance”, they get rejected by the police and denied their right to file a report.²³⁷

B. SGBV in the Refugee Context

Refugees and asylum seekers were found to be a target of sexual violence and GBV.²³⁸ Women could face sexual and gender-based violence in the country of origin and this could be a reason why they fled their country from the first place. They could face it also during flight which means on their way to the state of asylum as many refugees got smuggled and travel through illegal methods which put on them a higher risk of SGBV.²³⁹ Refugee women also face sexual violence from the host community and/or other refugees in the state of asylum.

1- SGBV in International Law Context

The recognition of Sexual and gender-based violence in refugee/war context as it is addressed by the international community came in gradual steps. Feminists have put pressure on the international community to include rape and sexual violence as core human rights violations.²⁴⁰ SGBV is a widespread crime that constitutes a worldwide problem that is left unsolved²⁴¹. Women are the primary subject to SGBV. One in every three women is subjected to at least one form of sexual violence in her lifetime.²⁴² SGBV could take different forms like; rape, sexual assault, domestic violence, emotional and physical violence, etc. It is defined by UNHCR as:

²³⁵ Id.

²³⁶ Miranda, *supra note* 188 at 20

²³⁷ Id.

²³⁸ Dale Buscher, *New Approaches to Urban Refugee Livelihoods*, 28 *Refuge: Canada's Journal on Refugees*. 22. 17-29 (2013)

²³⁹ Id.

²⁴⁰ Id.

²⁴¹ Konstanski, *supra note* 221, at 48

²⁴² Deborah Anker, *Refugee Law, Gender, and the Human Rights Paradigm*, 15 *Harv Hum Rights J.* 141, 133-54 (2002)

*Any act that is perpetrated against a person's will and it is based on gender norms and unequal power relationships. It includes physical, emotional or psychological and sexual violence, and denial of resources or access to services. Violence includes threats of violence and coercion. SGBV inflicts harm on women, girls, men and boys and is a severe violation of several human rights.*²⁴³

According to this definition feminist activists and scholars have noted that SGBV occur excessively in the conflict and refugee context which pushed scholars and policy makers to dig deep to in this phenomenon to understand the causal relation between SGBV and conflict.

2- SGBV as a Strategy in Conflict Zones

It has been noted that SGBV takes another dimension in conflicts and wars as it becomes more of a strategy that is used systematically as a weapon to defeat the other party. Violence against women in the context of conflict, ethnic cleansing, war and genocide were using as a strategy to cause “social death” to the other party.²⁴⁴ In many societies like in Sudan “a woman’s dignity and moral standing is based on her virginity before marriage.”²⁴⁵ As a consequence, women who are subjected to a form of sexual violence are seen as dishonored and spoiled. The way sexual survivors are envisioned lead women to choose between death or being rejected by the family.²⁴⁶ Using rape and other forms of violence against women bodies are considered a sort of humiliation to the men of the opposing group.²⁴⁷

Activists struggled to prove how sexual violence and rape against women bodies could be used as a war strategy in order to defeat the other party. Many activists and human rights lawyers exerted a lot of effort in order to publicize how sexual violence in the context of Yugoslavia and Rwanda conflict have been used as a weapon.²⁴⁸ Advocates and human rights lawyers’ efforts

²⁴³UNHCR, Sexual and Gender Based Violence, UNHCR.

<https://www.unhcr.org/sexual-and-gender-based-violence.html>

²⁴⁴ Veena Das, *Violence, Gender, and Subjectivity*, 37 Annual Review of Anthropology. 290, 283-99 (2008)

²⁴⁵ Hala Mahmoud, Exploring Identity Changes of Sudanese Refugee Women in Cairo: Liminality and the Frustrating Struggle between Stability and Change, *Al-Raida Journal*. 13, 11-19 (2008)

²⁴⁶ Id.

²⁴⁷ Id.

²⁴⁸ Anker, *supra note* 242, at 141

did not stop by that but they succeeds to include rape as a way of torture.²⁴⁹ International law also recognizes sexual crimes that have a “systematic nature” as war crimes and/or “a crime against humanity.”²⁵⁰ Sexual violence against vulnerable and marginalized women became in that sense a worldwide known practice which grasped the international community’s attention.²⁵¹ Many jurists interpreted rape along with other sexual violence forms to be a “cruel, inhuman and degrading treatment” which consist a threat to the security of a person²⁵². Therefore, sexual and gender-based violence has been considered, using the vague definition of the word persecution under refugee law, a cause of a well-founded fear of persecution under international refugee law.

3- SGBV in The State of Asylum

Refugee women face the risk of being subjected to sexual and gender-based violence in every step they took to fled their country of origin and even in the state of asylum. The unfamiliarity of the culture and sometimes the language of the host community and the lack of legal acquisition and protection “creates a dependency that is easy to exploit” that make refugee women at a higher risk of SGBV than local women.²⁵³ The refugee status as well as the context of the country of asylum should be taken into consideration while examining SGBV. It became very common for UNHCR staff and its NGO partners to encounter refugee survivors of “aggressive” SGBV incidents “on the streets of Cairo” on a regular basis.²⁵⁴ Ahmad Badawy, the head of Egyptian foundation for refugees rights, said in a documentary named African refugees – Awel el Khayt – that it was very common for the organization to receive cases that report rape incidents; some of these survivors were raped by Egyptians and others by male refugees.²⁵⁵

²⁴⁹ Id.

²⁵⁰ Mariham Wahba, *The State of Statelessness: Justice, Violence, Subjectivity, and Urban Asylum Seeking and Refugee Women in Cairo*, The American University in Cairo (2011)

²⁵¹ Johnson, *supra note 2*, at 1

²⁵² Anker, *supra note 242*, at 141

²⁵³ Konstanski, *supra note 221*, at 48

²⁵⁴ Johnson, *supra note 2*, at 1

²⁵⁵ e3lamakTV. Searching for a Home, YouTube (2015)

www.youtube.com/watch?v=v3zRAF7WCUs.

C. The Police Practice and SGBV against Refugee Women

Most of the SGBV incidents that occur to refugees is underreported. Many refugee survivors prefer to report the SGBV incident to the international/national organization and not to the police. Refugees complain from the terrible treatment they face at the Egyptian police stations.

1- The Challenges that Hinder reporting SGBV to the Police

The required legal procedures and the police practice towards refugees in general and refugee women who want to report SGBV incidents specifically makes it impossible for them to consider consulting the Egyptian police on any matter.

The required legal procedures and conditions for reporting sexual violence are hard to meet for refugee women. In order to file a police report, the victim needs to have “physical evidence” and in the case of rape, the survivor needs to “be examined by the medical examiner provided by the police” within the first 72 hours after the incident.²⁵⁶ In order for the report to be taken seriously, the survivor needs to “have the address or some other identifying information about the perpetrator.”²⁵⁷ This requirement makes it hard for many refugee women who are in many cases raped by strangers to file a police report. Refugees’ UNHCR identification is not considered by many policemen as an official identification as they require the victim to have a national ID or a valid passport which is hard for most of the refugees to obtain.²⁵⁸

It is known for “refugee women as well as service providers” that going to the police is useless and, in some cases, it will harm the survivor herself.²⁵⁹ Klovirt Jalo, chairman of the Nuba Mountains International Association, a community organization for the Nuba of Sudan in Cairo, said in an interview with IRIN news that the Egyptian police is hesitant when it comes to refugees. Sexual violence survivors who go to the police to file a report will be the ones

²⁵⁶ Wahba, *supra note* 250 at 175.

²⁵⁷ *Id.*

²⁵⁸ Ahmed Khaled, Exposing the Horrors of Sexual Violence Against Refugees in Egypt, Egyptian Streets (2015) <https://egyptianstreets.com/2015/04/18/exposing-the-horrors-of-sexual-violence-against-refugees-in-egypt/>

²⁵⁹ Wahba, *supra note* 250 at 173.

investigated rather than the criminals.²⁶⁰ They might also get detained for any other reason like expired residency. It has also been reported many times that the reporting process usually results in revictimization of the survivors.²⁶¹ Refugee women have reported many incidents of being sexually harassed and abused in police stations.²⁶² A refugee woman has reported that she was sexually harassed in the police station “during her four-day detention after UNHCR filed a complaint of disturbance against her.”²⁶³ Another woman claimed “that she was a victim of repeated rape and ill-treatment when she was detained for 14 days at Alarich prison.”²⁶⁴

For all these reasons, service providers do not advise survivors to file a report; not even with the option of sending a lawyer that represents UNHCR with them, because it is not usually effective and will result in nothing but re-victimization of the survivor.²⁶⁵ Even with the presence of the lawyer, the SGBV survivor might face a different form of re-victimization than that of being sexually abused by policemen themselves. The police makes the survivor “retell” the story with its details over and over.²⁶⁶ Michael Kagan, former Senior Fellow and Professor of Human Rights at the American University in Cairo, and Policy Director of Asylum Access, stated in an interview that one of his SGBV refugee survivors was asked to keep telling her story over and over to many different officers and “she was deprived of sleep for 24 hours because the police extensively made her retell her story again and again.”²⁶⁷ Kagan concluded that there is no benefit in putting refugees in such degrading situations.²⁶⁸ As a result of this, UNHCR and its partners focus more on medical service just like “emergency contraception” and psycho social support services to help survivors go through their trauma.²⁶⁹

²⁶⁰ Eleanor Acer, Refugees in Egypt Urgently Need Protection, Human Rights First (2016) <https://www.humanrightsfirst.org/blog/refugees-egypt-urgently-need-protection>

²⁶¹ Wahba, *supra note* 250 at 173.

²⁶² *Id.*

²⁶³ Jane Freeman, et al. “Violence against migrant and refugee women in the Euromed region” Case studies: France, Egypt & Marocco, EMHRN (2008).

²⁶⁴ *Id.*

²⁶⁵ Wahba, *supra note* 250 at 174.

²⁶⁶ *Id.*

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ *Id.*

Although it is very hard for refugees to file a police report in terms of putting themselves in a situation where they could face further victimization, some refugees take the risk of reporting SGBV incidents that they were subjected to. This is because “police reports hold a great significance in situations where there has been sexual violation in terms of receiving aid, being considered for resettlement” and being perceived as credible from UNHCR.²⁷⁰

2- The Philosophy Behind the Police Practice

Policemen are not willing to file reports for refugees for many reasons. One of these reasons is that the police do not believe the refugees’ claims. They believe that African refugee women fabricate rape charges after consenting to sex. Policemen think that refugee women are doing so in order to grab the UNHCR and international organizations’ attention, and using rape “as an excuse to get resettled.”²⁷¹ The police practice against refugees who want to file reports against their perpetrators has resulted in doubling the violence the refugees face in the Egyptian streets. Refugee women are targeted because of their identity as refugees. Perpetrators know that “they will not be prosecuted for crimes against refugees.”²⁷²

Real Rape Vs Simple Rape: SGBV Against Refugees as Simple Rape

The police practice could be looked at from a different angle to understand the philosophy behind being reluctant toward filing a rape report for refugees. The “cultural myths and stereotypes about rape” such as perceiving rape as “sex act rather than an assault” and raped victims “as less respectable [who most of the time] lie about being raped” need to be taken into consideration while discussing police practice.²⁷³ Many scholars have argued that there are two types of rape: “real rape” and “simple rape.”²⁷⁴ Rape is considered real and serious when the

²⁷⁰ Wahba, *supra note* 250 at 175.

²⁷¹ *Id.*

²⁷² Acer, *supra note* 260.

²⁷³ Mary white Stewart, et all. “Real rapes” and “real victims”: The shared reliance on common cultural definitions of rape.” 4(2) *Feminist Legal Studies*. 160, 159-177(1996).

²⁷⁴ Susan Ehrlich, *Discourse, gender and sexual violence*.5, 5-7 (2002).

perpetrator is a black armed stranger “attacking a white woman.”²⁷⁵ In that case, the perpetrator will be arrested and imprisoned. Also, the “traditional notions of chastity and respectability” need to be applied to the victim in order to be considered a real victim.²⁷⁶ On the other hand, “simple rape” occurs when the perpetrator is the survivor’s partner, “boss”, or friend and there is “no weapon” involved and “no overt evidence of physical injury.”²⁷⁷ The rape is also considered to be simple when the victim do not fit in the category of “real victim.” When the victim is perceived as “experienced and misbehaved” that means she will not successfully “claim or achieve real victim status.”²⁷⁸ Women who does not fit the “real victim” category include sex workers, black women, and low-income women.²⁷⁹ In these cases, incidents of rape are not taken seriously and they are “much less likely to be treated as [a crime] by the criminal justice system.”²⁸⁰

Applying the same argument to the case of African refugee women SGBV survivors in Egypt, we find that they are perceived as filthy and prostitutes who are “less inherently worthy.”²⁸¹ That’s why the Egyptian police are reluctant to report rape cases as the police do not recognize it as “real rape.” As long as the survivor is a black refugee woman it is not a serious crime as their bodies are seen as unrapable bodies.²⁸² The rapability of women’s bodies is not defined biologically but it is defined in social terms.²⁸³ Black women, especially who survived conflict zones, are considered as “always already raped” so reporting another rape is not an event but a simple incident.²⁸⁴ Raping black refugee women is not as harmful as raping other women as black women are viewed as women who do not have “honor to lose, therefore unrapable.”²⁸⁵

²⁷⁵ Id.

²⁷⁶ Janice Du Mont, et all. The role of “real rape” and “real victim” stereotypes in the police reporting practices of sexually assaulted women, 9(4) Violence Against Women.470, 466-486 (2003).

²⁷⁷ Ehrlich, supra note 274 at 5.

²⁷⁸ Du Mont, supra note 276 at 470

²⁷⁹ Id.

²⁸⁰ Ehrlich, supra note 274 at 5.

²⁸¹ Du Mont, supra note 276 at 470

²⁸² Du Mont, supra note 276 at 479

²⁸³ Catharine MacKinnon, Feminism, Marxism, method, and the state: Toward feminist jurisprudence, 8(4) Journal of women in culture and society. 651, 635-658 (1983).

²⁸⁴ Rebecca Helman, *Why are all rapes not grievable*, 48 South African Journal of Psychology. 404, 403-406 (2017)

²⁸⁵ Id.

The huge amount of sexual violence that refugee women are subjected to in Egypt, along with the inaction of the police, who even commit sexual violence crimes themselves, against refugees are not just for sexual pleasure. I argue that the amount of sexual violence the refugee women face in the Egyptian streets is a tool of coercion. Rape as a disciplinary and coercive power to remind refugees of their status in the Egyptian society; as inferior, subordinate, unrapable, bodies. Raping a woman could be a tool for “humiliat[ing] her community.”²⁸⁶ Some Egyptians think that if they “are too nice to” refugees, “they will never leave.”²⁸⁷ Refugees are seen as a burden on the Egyptian economy and competitors to the low-income Egyptians. Violence, following this logic, is a message some Egyptians send to African refugees to let them know that they are not welcomed and if they stayed, their stay should be temporary and they need to behave according to the way Egyptians imagine them. They should stay invisible in the city, causing no troubles and asking for no rights.

D. UNHCR Categorization of Refugees and Commodification of SGBV

UNHCR has tailored policies for SGBV prevention and protection of refugee women. These policies have created room for refugee women to use sexual and gender violence as a form of threat of “persecution” in “the asylum determination process.”²⁸⁸ Many of the gender violence related experiences that women face because of their gender like rape, FGM, and other sexual violence experiences are also material for refugee status determination as they fall under the category of women at risk. SGBV incidents do not only affect the refugee status determination but also the survivors’ access to resources such as cash assistance and housing services, especially in urban settings like Cairo.

Determining through UNHCR policies who fits in the UNHCR refugee category and allocating assistance” to a “certain niche within that group” amounts to categorizing the refugees through

²⁸⁶ Anker, *supra* note 242, at 141

²⁸⁷ Miranda, *supra* note 188, at 22

²⁸⁸ Edward, *supra* note 1, at 39

“a matrix of practices... rules and resources.”²⁸⁹ These practices shape the identity of refugee women through UNHCR categorization.²⁹⁰ Categorizing refugees in terms of vulnerability “and protecting the most vulnerable becomes a device for not protecting everyone.”²⁹¹ This categorization is usually blamed on the limited resources that are allocated for refugees in urban places as explained before. The resources limitation, policies like UNHCR urban policy that and practices like credibility assessments make it difficult for refugees to get assistance.²⁹² Resources are only available for a certain niche of the refugee population that are labeled as the most vulnerable groups including “women at risk.”²⁹³ The UNHCR “rely heavily on testimony [and credibility assessments] to determine refugee status.”²⁹⁴ Testimonies and credibility assessments are UNHCR tools for the categorization of refugees.

1- The Commodification of SGBV

SGBV incidents have been commodified through UN policies and practice. Many women who seek asylum or need to get access to services resort to tell “an imagined history” that will demonstrate how vulnerable they are. The story must be told in a certain way that fits UNHCR women at risk category, in order to guarantee refugee women a limited access to resources through the economy of violence.²⁹⁵ All what the refugee women own are their words, that “must be persuasive and convincing” in order to pass the UNHCR credibility assessment and be considered for limited access to resources.²⁹⁶ Getting access to resources in the UNHCR categorized system became directly related to performing certain sexual “victimhood” in a way that is “scripted and stereotyped” in order to fit into UNHCR category and to be “perceived as credible.”²⁹⁷ Refugee women have to learn how to speak the UNHCR language in order to be identified by UNHCR as a woman at risk. that allows these women to get access to services

²⁸⁹ Maroussia Hajdukowski-Ahmed. et al, *Not born a refugee woman: Contesting identities, rethinking practices*, 24 Berghahn Books (2013).

²⁹⁰ *Id.*

²⁹¹ MacKinnon, *supra note* 273, at 648.

²⁹² *Id.*

²⁹³ *Id.*

²⁹⁴ Wahba, *supra note* 250, at 177

²⁹⁵ Johnson, *supra note* 2, at 8

²⁹⁶ *Id.*

²⁹⁷ Wahba, *supra note* 250, at 25

along with “fast track procedures.”²⁹⁸. They memorize what the aid workers need to hear from their story and then freeze the words.

Other forms of violence that refugee women could be subjected to because of their race, economic suffering, or religious beliefs are overlooked because they do not fit to the discourse of sexual violence. This “exclusion of particular victims of violence and the categorization among refugees’ vulnerability is a kind of violence that is exercised by UNHCR.”²⁹⁹ This violence leaves refugee women with no option but to present themselves as SGBV victims, “as this is the privileged testimony in gaining access to urban resources.”³⁰⁰ This commodification of sexual violence by making it an “access point” to services has encouraged African refugee women who have not experienced SGBV to adopt sexual vulnerability as an identity to get an access to the system as their other struggles are overlooked just because they are not sexual.³⁰¹

2- UNHCR Credibility Assessments

Every commodity has a price and the price of SGBV privilege here is passing the UNHCR credibility assessments. Credibility assessments became an essential part of UNHCR and other organizations’ process since sexual vulnerability as an access point to financial assistance has become a well-known gateway among the refugee community³⁰². This led UNHCR to doubt the credibility of the refugee women’s claims.³⁰³ This has forced refugee women to “perform this sexual vulnerability in ways that are scripted and stereotyped to be perceived as “credible.” If not, they are deemed as incredible and lose access to services.”³⁰⁴ In order to pass the credibility assessment women need to fit in the sexual violence discourse’s “vision of what a victim of sexual and gender-based violence must look like.”³⁰⁵ This gives a great power to the service

²⁹⁸ Wahba, *supra note 250*, at 133

²⁹⁹ *Id.*

³⁰⁰ Johnson, *supra note 2*, at 7

³⁰¹ *Id.*

³⁰² Wahba, *supra note 250*, at 177

³⁰³ *Id.*

³⁰⁴ *Id.*

³⁰⁵ *Id.*

provider in determining the credibility of the refugees' claims and the access to services they will get accordingly.³⁰⁶

There are a number of issues that affect the credibility assessment results. The language the applicant speaks can be a barrier that requires the existence of interpreter as a mediator between the interviewer and the applicant. The existence of interpreter as a third party is adding another layer of complexity to the process.³⁰⁷ The interpreter's nationality, ethnicity, affiliation, or gender can affect what is conveyed" and therefore affect the results of the assessment. The culture differences and the "lack of familiarity with the cultural backgrounds of applicants as well as the social mores and gender norms of their societies of origin" could be a major factor in misleading the assessment.³⁰⁸ Many survivors might hide important information about their sexual violence history because "in their culture sexual issues are not talked about, especially rape."³⁰⁹ Refugee women might also hide their history with sexual violence if the interviewer is a man for cultural reasons.³¹⁰ The unprofessional interviewing techniques, interrogation or unclear and inconsistently asked questions are also strong factors in the determination process.³¹¹ The aid provider/interviewer is also an important variable in this equation. The interviewer's impression, assumptions and values can easily affect his/her decision regarding the interviewee's credibility. The survivors' psychological status, state of health, and mind-set, are all variables that affect how credible the survivor seems to the interviewer. Miscommunication is also a major factor and miscommunication could be a result of the trauma the survivor went through, their gender identity, social status or the educational level.³¹²

The refugee testimony is "a major source, may sometimes be the only evidence the applicant furnishes" especially in cases of SGBV where the survivor has not reported the incident to the

³⁰⁶ Id.

³⁰⁷ United Nations High Commissioner for Refugees, *Beyond proof: Credibility assessment in EU asylum systems* (2013).

³⁰⁸ Id.

³⁰⁹ Diana Bögner, *Impact of sexual violence on disclosure during Home Office interviews*, 191(1) *The British Journal of Psychiatry*.79, 75-81 (2007).

³¹⁰ Id.

³¹¹ Wahba, *supra note* 250, at 177

³¹² Id.

police and do not have physical proof to it.³¹³ SGBV survivors might not convince the service provider due to the reasons mentioned above that they are credible enough to get access to the resources which directly lead to increase the survivors' vulnerability. Women need to adopt sexual vulnerability in a certain way and say the key words that the interviewer needs to hear in order to get access to financial assistance or refugee status. Successfully adopting vulnerability became a source of income in that sense. Regardless of whether it is a taboo in the survivor's culture to expose their history with sexual violence, regardless of how hard it is and whether SGBV actually happened, or is just an imagined history, what matters is the frozen words that match how these women are constructed.

Refugee women might be asked to keep repeating their sexual violence experience in different interviews and in front of different aid workers to get access to services or get their refugee status. They keep telling their sexual violence stories in front of strangers which keeps reminding them of such memories and experiences they went through and that they wish to forget. Retelling the SGBV stories revives their psychological pain and increases their vulnerability. In order for these women to overcome the sensitivity and the difficulties of storytelling performance in front of UNHCR staff and other NGOs service providers, they "freeze" their words which will minimize their pain.³¹⁴

In that sense, the incident reporting and the act of storytelling which is claimed to be focusing on sharing the refugee women problems, "the root causes [and questioning] the agency and multiple identities of refugee" actually precludes giving a real voice to the survivors.³¹⁵ The refugee women who are supposed to be the center of this "discourse" are ignored and denied their voice and agency. These women have speech but not voice as they train themselves on the UNHCR language that they need to speak and memorize a story with a certain flow and key words that the service providers want to hear. The women do not have "agency [or an] active role... in the narration process."³¹⁶

³¹³ United Nations High Commissioner for Refugees, *supra note* 289.

³¹⁴ Johnson, *supra note* 2, at 7

³¹⁵ *Id.*

³¹⁶ *Id.*

E. Imposing Vulnerable Sexual Bodies as an Identity on African Refugee Women

There is a tendency to cast African refugee women as vulnerable sexual victims; an image that reinforces their vulnerability.³¹⁷ The dominant sexual violence narrative, international systems and UNHCR focus only on sexual violence while ignoring the other kinds of violence that women may face because of their intersecting collective identities; their race, class, refugee status and gender. The language and terminology used in the sexual violence discourse is “casting women as vulnerable and damaged victims” and “serv[ing] to further marginalize women.”³¹⁸ Thus, all the increased attention on some women refugees’ issues like SGBV has not “increased the visibility of [these] women.”³¹⁹

Following this system, refugee women need to follow “the dominant narrative” that constitute them “through law as vulnerable bodies and sexualized victims.”³²⁰ Women’s real “needs, agency and voice are silenced as advocates, academics and lawyers assume an understanding of African women’s needs and struggles and thus they wrote about refugee women, speak for them and make policies to reduce their supposed vulnerability. Making policies and designing programs while ignoring that these women “have voice and agency” may lead to increase the attention to sexual violence issues but it does not necessarily represent the needs of these women³²¹. African refugee women are given their voices “back” only after they were trained and shaped with what their mouths need to say and what is expected to be heard from them³²². Focusing on sexual violence as such and imposing an image of African refugee women as vulnerable bodies who are dependent, useless, and weak – and forcing refugee women to adopt it – does not improve these women’s status, it only imposes sexual vulnerability on them as a suitable identity.

³¹⁷ Konstanski, *supra note 221*, at 60

³¹⁸ *Id.*

³¹⁹ *Id.*

³²⁰ *Id.*

³²¹ *Id.*

³²² *Id.*

I am arguing that this structure is producing a new identity for refugee women as vulnerable sexual victims. This is not only a performed identity but I am further arguing that after a while of performing this imposed identity, African refugee women start to adopt this identity as a group collective identity in order to fit in that structure, and in the little room made for refugee women. They need to “perform a particular kind of sexual vulnerability and embody a particular subjectivity” in order to be considered victims and thus guarantee access to the system.³²³ They start to see themselves as they are “constructed and portrayed [within the system] as weak and vulnerable.”³²⁴ Sexual vulnerability has become, in that sense, a part of the refugee identity for all women; even those who were not subjected to SGBV. An identity that is acquired through a chain of policies and practices that left no room for refugee women but being sexual victims. Sexual vulnerability is seen by these women as the only suitable identity that they should display; this is how they learn to be seen and present themselves. African refugee women are also portrayed as dependent and passive creatures that are incapable of making decision for their own.³²⁵

This package of collective identity is imposed and reinforced on African refugee women living in Cairo. Sexually vulnerable, yet unrapable, bodies that are exploited and violated is the identity that is imposed on African refugee women by Egyptian government, police, international law and UNHCR system. This identity is adopted and performed by large number of African refugee women, and becomes their group identity. According to theories of social identity, a person’s identity and behavior could change according to their “collective membership” to a certain social group.³²⁶ African refugee women, in coming to Cairo, are becoming part of the refugee community and they are defining themselves by this new community that is suitable for their new environment. African women adopt the new identity by following the community guidelines for being safe and invisible in Cairo and exposing their sexual violence stories to aid workers or adopting sexual vulnerability to pass RSD and/or get access to resources. They have also

³²³ Wahba, *supra note* 250, at 24

³²⁴ *Id.*

³²⁵ Hajdukowski-Ahmed, *supra note* 289, at 6

³²⁶ Kathleen Ethier & Kay Deaux, Negotiating social identity when contexts change: Maintaining identification and responding to threat, 67(2) *Journal of personality and social psychology*. 243, 243-251 (1994).

developed sense of belonging to the group ‘vulnerable black refugee women’.³²⁷ These women share “trauma in one form or another.” They are categorized in social, political and economic terms.³²⁸ They seek to be categorized as women in danger.

Are Refugee Women Weak Dependent Vulnerable Bodies?

This constructed identity of refugee women as weak dependent vulnerable bodies is not necessarily the right one. In the sexual violence discourse, African refugee women are imagined, written about, spoken and legislated for, but never given agency. The sexual violence discourse, programs and policies are not “centered on women’s experience.” If a closer look was taken at these women’s lives, much more than just vulnerable sexual bodies would be seen. Many of the African refugee women are the family head, responsible for an entire family, who work in order to provide for their children food and education.³²⁹ They resist all these oppressive systems in their way. They resist their legally marginalized status in Egypt by working as domestic workers and/or drawing henna. They also resist the racism and marginalization they face in host societies³³⁰. They struggle to get their basic rights like education, “and opportunities for social mobility for their children.”³³¹

African refugee women also exert extra effort finding tactics to survive their vulnerability and marginality in Cairo. They go to “UNHCR and other refugee organizations, and dealing with various Egyptian institutions to renew residence permits.”³³² African refugee women also manipulate the aid system by adopting certain vulnerability to access some resources that will help them to support their family. In a documentary that interviewed refugees, Rose a South Sudanese refugee is working in two jobs (house worker and in hair dresser) so she can afford the very basic needs to raise her four children. Rose said that she sleeps only for 3 or 4 hours a

³²⁷ Tom Postmes, "Individuality and social influence in groups: Inductive and deductive routes to group identity." 89(5) *Journal of Personality and Social Psychology*. 247-263 (2005)

³²⁸ Amanda Wise, *Embodying exile: Trauma and collective identities among East Timorese refugees in Australia*, 48 (3) *Social Analysis*. 24-39 (2004).

³²⁹ Miranda, *supra note* 188, at 16

³³⁰ Al-Sharmani, *Living Transnationally: Somali Diasporic Women in Cairo*, *supra note* 198 at 44, *supra note* 211, at 71

³³¹ *Id.*

³³² *Id.*

day.³³³ She also faces racist comments every day for her skin color. Victoria is a Sudanese refugee woman, who lost her husband in the war and who is struggling to raise their children. One of Victoria's daughter was subjected to rape, and the other was tortured while working as a cleaner in a house.³³⁴

African women although they are “disadvantaged in terms of the financial”, social and legal terms, they support each other by babysitting other refugee women's children while they are working, and sharing a flat together so the rent would be split on two families.³³⁵ African Refugee Women are not weak useless and dependent women who constitute a burden on the aid system and the Egyptian government. They have agency, they contribute to the economy through the informal sector, raise their children, survive Egypt's streets, and help other refugee women. They also manipulate the systems to survive the vulnerability they are forced into in the state of asylum.

³³³ e3lamakTV, *supra note* 166

³³⁴ *Id.*

³³⁵ Al-Sharmani, *Living Transnationally: Somali Diasporic Women in Cairo*, *supra note* 211 at 44, *supra note* 191, at 71

VI. Conclusion

African Refugees thought that by crossing the borders, they were escaping war; they came to Egypt carrying their dreams and hopes for a better future. They did not know that they would face another war in the state of asylum.”³³⁶ African refugees are marginalized in Cairo as a result of intersecting legal systems. International law, national law, and UNHCR policies are the main three legal systems that guide the refugee life. The gaps and contradictions between the three different legal systems along with the practice of these laws have created the current vulnerability status of the African refugees living in Egypt.

First, the international law has failed to protect refugees both in law and practice. The vague laws have left a room for manipulation and different interpretations of the laws themselves. In practice, the lack of enforcing mechanisms and the inapplicability of the durable solutions have directly affected the refugees’ life and contributed to increase their vulnerability.

Second, UNHCR is argued to be playing a role in increasing the refugee’s vulnerability. UNHCR role in refugee’s marginality can be seen in the long and exhausting process of refugee status determination. The UNHCR self-reliance policy in urban places that limited the financial assistance that refugees get along with the inconsistency of the financial assistance, are also reasons for refugees marginality in Cairo.

Third, the thesis also argued that Egypt’s international obligations are limited by the reservations that Egypt made to 1951 Convention and other international agreements. Egypt’s contribution to the refugees’ vulnerability is not limited to the reservations but also the Egyptian government violations to the international binding agreements that Egypt is party to.

The three above mentioned legal systems are argued to actively participate in creating the African refugee women’s vulnerability and marginality in the Egyptian context. The African refugee women’s struggle is multi-layered as many reasons combined together to constitute their vulnerability such as their refugee status, their class, gender, and the Egyptian context as a state of asylum. Their refugee status in Egypt automatically means a very limited legal acquisition of rights that do not protect them effectively. Their skin color makes them vulnerable to racism and

³³⁶ Miranda, *supra note* 188, at 16

harassment that sometimes evolves into physical assault on Cairo's streets. Moreover, most of the African refugees are belonging to low class category according to the fact that they do not have the right to work in Egypt which leaves them with no option but the informal sector where there is no contract and thus, no rights.

These women work as cleaners within the houses which puts them in the risk of physical and sexual harassment, racism, and denial of payment. Adding the gender element to the above-mentioned identities, African refugee women are seen as prostitutes. They face multiple attempts of rape in Cairo with no action whatsoever from the Egyptian police because the policemen themselves were seeing their bodies as unrapeable, and the incidents they face as a simple rape. The international context of the African refugee women and the UNHCR in Cairo policies despite the fact that they have tailored a lot of policies and designed many programs that concentrate on the prevention and protection of refugee women against sexual violence, they do not make a real change or contribution in improving the vulnerable status that almost all the African refugee women in Egypt acquire.