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

OUT OF SIGHT OUT OF RIGHTS:
REJECTED ASYLUM SEEKERS AND CLOSED-FILES INDIVIDUALS IN EGYPT

A Thesis Submitted to the
Department of Law
in partial fulfillment of the requirements for the
LL.M. Degree in International and Comparative Law

By

Nourhan Abdel Aziz

February 2018

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

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Nourhan Abdel Aziz

Supervised by Professor Usha Natarajan

ABSTRACT

According to international law, everyone has the right to seek asylum; however, not every asylum seeker receives refugee status. Individuals whose asylum claims are rejected often stay in their country of destination out of fear of returning back to their countries of origin. Such populations are known as rejected asylum seekers and closed-files and in Egypt they are often found among the Sudanese, South Sudanese, Ethiopian, Eritrean, and Somali communities. This thesis focuses on the rights and entitlements of rejected asylum seekers and closed-files individuals who remain in Egypt after having their asylum claim rejected by UNHCR. The thesis argues that rejected asylum seekers have rights under international law but are not accessing and enjoying them in Egypt. To make this argument, the thesis answers two central questions: 1) What are the rights of rejected asylum seekers according to international and national laws; and 2) Are rejected asylum seekers receiving and enjoying these rights in Egypt? The thesis begins with an analysis of the international legal framework governing the rights of different categories of migrants. An analysis of the gaps in the international legal framework is also provided. An analytical overview on the legal, policy, and institutional frameworks governing migrants and refugees in Egypt and consular policies is presented. The situation of rejected asylum seekers is analyzed and the protection gaps identified.

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1. Introduction

On July 21, 2016 a series of protests broke out in front of the Office of the United Nations High Commissioner for Refugees (UNHCR) headquarters in Cairo, Egypt.¹ The protesters were members of the Ethiopian Oromo community. They were protesting against the high rates of asylum claim rejections their community have been receiving from UNHCR. Despite the fact that two Oromo community members were killed the event did not stir a lot of controversy in the public domain because the protests were dismantled quickly.² The Oromo are not the only group; high rejection rates by UNHCR are a concern among many different migrant and refugee communities in Egypt, particularly East African ones.³ However, low acceptance rates of some communities are not indicative of a broader level of acceptance that is much higher. Most asylum seekers in Egypt come from countries that make them have a high presumption of eligibility for refugee status. Syrians represent 80 percent of the caseload and almost all are accepted. As such, we can be sure that the acceptance rate is very high. The rejected cases are from the remaining 20 percent.⁴

This thesis focuses on rejected asylum seekers and closed-files individuals who remain in Egypt after having their asylum claim rejected by UNHCR. It argues that rejected asylum seekers have rights under international law but are not accessing and enjoying them in Egypt. To prove this argument, I ask the following questions: 1) What are the rights of rejected asylum seekers according to international and national laws; and 2) Are rejected asylum seekers receiving and enjoying these rights in Egypt?

The UNHCR applies the definition of ‘refugee’ as stated in the 1951 Refugee Convention: a refugee is a person outside his or her country of origin who cannot return due to a “well-founded fear of being persecuted for reasons of race, religion, nationality,

¹ The Huffington Post, “Oromo Asylum Seekers in Egypt Are Self-Immolating Out Of Desperation,” 16 September 2016. https://www.huffingtonpost.com/entry/oromo-asylum-seekers_us_57dc0b74e4b0071a6e06d44d

² Id.

³ Abdel Aziz, “Surviving in Cairo as a Closed-File: Socio-Economic and Protection Challenges,” Center for Migration and Refugee Studies, August 2017.

⁴ UNHCR Fact Sheet November 2017 <http://www.unhcr.org/protection/operations/53cd1f429/egypt-fact-sheet.html>

membership of a particular social group or political opinion.”⁵ A refugee must also prove that he/she is unable or unwilling to avail him/herself of the protection of their country. Individuals who fall under this category are protected by the concept of *non-refoulement* that is a state may not return a person to a country where he or she will face a threat to life or freedom.⁶ This principle is not only binding to the parties who ratified this Convention; it applies to all states since it is increasingly regarded as customary law.⁷ It does not only protect refugees; it prohibits the “expulsion, deportation, return or extradition of an alien to his state of origin or another state where there is a risk that his life or freedom would be threatened for discriminatory reasons.”⁸ Rejected asylum seekers do not enjoy the same rights as refugees. Rejected asylum seekers can be returned to their home state or sent to another state unless they face threats to their life or freedom there. The Convention against Torture also protects them from being sent to a state where they face torture.⁹ Consequently, in cases where rejected asylum-seekers manage to remain in the country where their asylum claim has been rejected, their access to services and enjoyment of protection is limited in various ways, as will be described in this thesis.¹⁰

Most governments consider rejected asylum seekers as irregular migrants who should, according to international law, return to their countries of origin. A central problem is that, in practice, their state of nationality often considers seeking asylum as an act of treason, such as the Eritrea, Sudan, and Ethiopia. In Eritrea, failed asylum seekers face a high risk of detention and are often subjected to torture upon their return.¹¹ Similarly, in Ethiopia, they are at risk of arbitrary and indefinite detention, torture, and extrajudicial

⁵ Convention Related to the Status of Refugees art. 1, A(2), July 28, 1951, 189 U.N.T.S. 150.

⁶ Art. 33. Id.

⁷ JAMES C. HATHAWAY, *THE LAW OF REFUGEE STATUS*. 185 (1991).

⁸ Office of the United Nations High Commissioner for Human Rights (OHCHR), “Expulsions of aliens in international human rights law,” OHCHR Discussion paper, September 2006. <http://www2.ohchr.org/english/issues/migration/taskforce/docs/Discussion-paper-expulsions.pdf>

⁹ Art.12, Art. 14. Refworld | Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, REFworld, <http://www.refworld.org/docid/3ae6b3a94.html> (last visited Oct 9, 2014).

¹⁰ Abdel Aziz, “Surviving in Cairo as a Closed-File: Socio-Economic and Protection Challenges.

¹¹ Amnesty International (AI), *Eritrea: Sent Home to Detention and Torture*, 9-10.

execution.¹² As a result, the majority of rejected asylum seekers prefer staying as irregular migrants than returning to their countries of origin.

Their stay in the country of destination is not without difficulties. The living conditions of this population is often dire. Various research papers have studied the socio-economic conditions of rejected asylum seekers and irregular migrants and have shown that they are at risk of arrest, detention, harassment and day-to-day violations by neighbors, employers, and other non-state actors. Given ongoing challenges, this issue deserves further research, especially as it has not been given due attention in the context of Egypt. A recent study has been conducted by the Center for Migration and Refugee Studies (CMRS) in the American University in Cairo to assess the socio-economic conditions and protection concerns of rejected-asylum seekers in Egypt. The CMRS report does not undertake a legal analysis of their rights under international law, so this thesis will consider the legal aspects of these challenges.

1.1. Significance and Scope of the Thesis

The rejection of an asylum claim has continues and significant impact on the wellbeing and safety of oftentimes already vulnerable individuals fleeing their countries and who often enter and stay in the host state irregularly. It is not enough to describe the socio-economic conditions and violations experienced by this population. Greater steps ought to be taken to understand that they are entitled to their human rights, even if they are irregular migrants. Knowledge of these rights will help advocate for better treatment. These individuals are greatly impacted by the ever-present threat of deportation. I have attempted when possible to keep central to this thesis the voices of different communities who have experienced the consequences of being rejected asylum seekers in Egypt.

This research employs both qualitative and quantitative analyses of legal instruments, statistics, and information gathered through previous research. This thesis states the rights of rejected asylum seekers and analyzes whether they are getting these rights. Issues related to their housing, employment, health, and education are useful factors to consider in assessing the overall socio-economic conditions of these communities. It is also useful

¹² AI, *Ethiopia: Prisoners of Conscience*, 51-51; Human Rights Watch (HRW), *‘Hostages to Peace,’* 42-44.

to consider issues relating to detention, arrest, deportation, and harassment. This thesis focuses only on their challenges while they remain in Egypt.

1.2. Methodology & Structure

I became aware of my research issue when working as the lead researcher on the aforementioned CMRS project relating to the conditions of rejected asylum seekers in Egypt in 2015 and 2016. While I was satisfied with the assessment of their socio-economic conditions and protection challenges, a legal analysis of their rights under international law was lacking. Some of the challenges observed in Egypt are shared by rejected asylum seekers in other countries. As such, this thesis may be relevant to other refugee-hosting countries as well. There were similarities among the different communities who were part of this thesis but there were also unique differences. The information received ranged from accounts of community leaders to first-hand stories from those who were rejected.

Therefore, it was necessary for me to approach this research while conscious of my existing conceptualization of the subjected based on my previous assignment, and most importantly to provide new information rather than repeating existing work on this issue. To achieve this, I employed both qualitative and quantitative methods, as the shortcomings of each method can be complemented by the other to ensure reliable and holistic data.¹³ The quantitative data gathered for this thesis is statistics and other measurable data based on desk research, which was supplemented for analytical purposes with qualitative analyses of legal instruments, policies, and institutional frameworks.

Desk research focused on the following subjects: 1) legal instruments, specifically the 1951 Convention Relating to the Status of Refugees, ILO Conventions governing the rights of irregular migrant workers, and the nine principal human rights conventions; 2) policy documents; 3) research reports on the conditions of rejected asylum seekers in Egypt; 4) statistics on numbers of refugees, asylum seekers, and rejected asylum seekers

¹³ Matveev, “Advantages of Employing Quantitative and qualitative Methods.”

in Egypt; and 5) qualitative and quantitative data regarding the protection gap faced by the population under study.

All of these components are analyzed in conjunction with each other in order to establish a broad, general understanding of the rights of rejected asylum seekers in Cairo and their ability to access and enjoy them. The sources mentioned above are useful in showing the obligations of states towards this population in Egypt and the extent to which these obligations are observed.

As I have lived and worked in Cairo my whole life, I was able to use my connections with the local refugee and migrant communities, international and national organizations, as well as government institutions to facilitate the information gathering process. These contacts were helpful in giving me advice and input prior to undertaking this thesis as well as providing me with support throughout the thesis writing process. The experiences, knowledge, and relationships gained while working for the CMRS for the past five years were invaluable resources throughout the study.

This thesis asks for a better and fuller implementation of human rights law rather than criticizing the broader applications of law that make such protections necessary. As such, I am aware that, in the case of rejected asylum seekers, the proper application of the law may enable the return of rejected asylum seekers to their countries of origin, albeit in a humane way with all due legal process. Thus, a significant risk in this type of research is whether bringing forward the stories and experiences of rejected asylum seekers will on balance bring them more benefit or harm. Rejected asylum seekers are often not on the radar of policy makers in Egypt. This can be considered positive since mass deportations are not taking place. By shedding light on the population, there is a risk of perpetuating policies where more rejected asylum seekers are forcibly returned to their country of origin. While I understand the limitations of this approach and am aware of the risks, I have decided to use it because on balance international human rights law can help to improve the situation of many rejected asylum seekers who have not in fact been returned to their origin countries.

This thesis is divided into seven chapters. Following from this introductory chapter, Chapter Two focuses on the international legal framework governing the rights of all

categories of migrants. The first Section of this Chapter focuses on the different categories of migrants. It then analyzes the significance of the categories used, but sometimes not taken into proper account, by different stakeholders. Such concepts include refugees, asylum seekers, rejected asylum seekers, ‘closed-files’ individuals, irregular migrants, and migrant workers. Section Two of this Chapter takes the previous Section further by providing an analysis of the rights of all categories of migrants in different branches of international law. Specifically this Section looks at the rights under international human rights law, international labor law, and international refugee law. To give more knowledge on categories and rights that are applicable to the population under investigation, this Chapter concludes with a brief background on nationalities, numbers, and historical trends of migration of rejected-asylum seekers in Egypt.

An analysis of the gaps in the international legal framework then follows in Chapter Three. Chapter Four gives a descriptive and analytical overview on the legal, policy, and institutional frameworks governing migrants and refugees in Egypt and consular policies. The situation of rejected asylum seekers is then analyzed in Chapter Five. Chapter Six then evaluates whether the situation in Egypt is accordance with the rights rejected asylum seekers are entitled to. The protection gaps are also addressed. The role that shortcomings within the international refugee regime plays in influencing the policies of host and origin states is also explored in this Chapter. The thesis is concluded in Chapter Seven. The Chapter also includes recommendations to different stakeholders.

2. The International Legal Framework Governing the Rights of Different Categories of Migrants

To assess whether rejected asylum seekers have rights under international law and if they are accessing and enjoying these rights, we must start with an analysis of the different categorizations of migrants and the rights granted to each group. As such, this Chapter begins with exploring several key concepts and terminologies used to categorize migrants. Section A introduces the readers to basic concepts in migration studies: migrant, refugee, asylum seeker, rejected asylum seeker, and closed-files individuals. Section B reviews the rights of different categories of migrants according to international legal instruments. This Section will explore the rights applicable to all migrants as well as the rights applicable to refugees and migrant workers. Particular emphasis will be made on the rights of irregular migrants. Section C will then mention the responsibilities of states of origin to provide consular protection and assistance to its citizens. The Chapter concludes with an overview of which nationalities constitute the rejected asylum seeker community in Egypt to provide the readers with a brief background on the target group with whom this thesis is concerned.

2.1. Terminologies and Key Concepts

2.1.1. Refugees and Asylum Seekers

The 1951 Refugee Convention is the key global legal instrument that defines a refugee. According to article 1(A)(2), the term refugee applies to any person who

as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.¹⁴

The definition is highly criticized for being outdated.¹⁵ Regional efforts have been made to overcome the narrowness of this definition by developing regional conventions with

¹⁴ 1951 Refugee Convention, *Supra note 3*, art. 1A(2).

¹⁵ Feller, "The Convention at 50: the way ahead for refugee protection", *Forced Migration Review* 10. <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/FMRpdfs/FMR10/fmr10.3.pdf>

wider definitions.¹⁶ Such efforts include the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa 1969, the Cartagena Declaration on Refugees 1984, and Arab Convention on Regulating Status of Refugees in the Arab Countries 1994.¹⁷ In the context of Egypt, UNHCR undertakes the Refugee Status Determination Procedure (RSD); the process through which UNHCR determines if the asylum seekers is a refugee according to the 1951 definition and the OAU definition. The challenge, however, arises with resettlement, which is when a third state (for instance, the United States) agrees to admit certain refugees that have already had successful refugee status determination elsewhere (for instance, in Egypt). In such cases, states usually only grant resettlement to those that satisfy the 1951 Convention definition, with refugees who solely fall under regional conventions ineligible for resettlement.¹⁸ As a result, in practice, UNHCR in Egypt tries to a great extent to assess the claims of asylum seekers under the 1951 convention definition. Very few cases are recognized solely under the OAU convention.

2.1.2 Migrants: Regular vs. Irregular vs. Workers

There are different categories of migrants. According to the International Organization for Migration (IOM), a migrant is “any person who is moving or has moved across an international border or within a State away from his/her habitual place of residence, regardless of (1) the person’s legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) what the length of the stay is.”¹⁹ A second category is a migrant worker. The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Family defines “migrant worker” in Article 2(1) as “a person who is to be engaged, is engaged or has

¹⁶ See OAU Convention Governing the Specific Aspects of Refugee Problems in Africa 1969, Cartagena Declaration on Refugees 1984, and Arab Convention on Regulating Status of Refugees in the Arab Countries 1994

¹⁷ B.S. CHIMNI, INTERNATIONAL REFUGEE LAW. A READER. xii (B.S. Chimni ed., 8 ed. 2012). See the CONVENTION GOVERNING THE SPECIFIC ASPECTS OF REFUGEE PROBLEMS IN AFRICA (OAU CONVENTION), 1001 U.N.T.S. 45 (1969), <http://www.refworld.org/docid/3ae6b36018.html> (last visited Nov 26, 2015). 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, the Cartagena Declaration on Refugees, various European instruments including the Dublin Convention, and the Statute of the United Nations High Commissioner for Refugees adopted by the General Assembly in December 1950.

¹⁸ Abdel Aziz, 15.

¹⁹ International Organization for Migration, “Who is a Migrant?”

been engaged in a remunerated activity in a State of which he or she is not a national.”²⁰ According to this definition, a migrant worker can be a regular or an irregular migrant. Regular and irregular migrants are also distinguished. Regular migrants are usually defined by states as migrants who possess the legal permission (usually documents) that the state has prescribed. On the other hand, irregular migrants are migrants who are present in the state without the required legal permissions and documents.

2.1.3 Rejected Asylum Seekers and Closed-Files Individuals

This thesis focuses on individuals who have sought asylum in Egypt but were denied the status. There is a difference between ‘Closed-files’ individuals and rejected asylum seekers. These two categories are at two different stages in the refugee status determination (RSD) process of UNHCR. Rejected asylum seekers have a chance to submit an appeal whereby their claim can be re-examined; however, those whose files are closed no longer have an appeals process available to them and are therefore no longer of interest to UNHCR. For a variety of reasons, these individuals are either unwilling or unable to return to their country of origin and hence “remain in Egypt in precarious conditions, as [irregular] aliens, very often without any documentation or legal permission to reside in the country.”²¹ It is interesting to note that, despite the fact that they are regarded by the Government and UNHCR as irregular migrants, and despite the fact that they do not fall under international and regional law definitions of refugee, they continue to define themselves as refugees.²²

2.2 International Standards

According to Aleinikoff, “there is both more and less international law than might be supposed” when discussing the legal framework for managing international migration. Areas with considerable legal bases include: the protection of refugees from return to countries in which they would face persecution, the suppression of human trafficking and human smuggling, the prerogative of States to provide consular protection to their nationals in other States, and the duties of States to readmit their nationals who seek to

²⁰ International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 18 December 1990, 2220 U.N.T.C. 3.

²¹ Grabska, “The Analysis of the Livelihood Strategies of Sudanese Refugees with Closed Files in Egypt,” 13.

²² Abdel Aziz, 12.

return. Areas where the international consensus is less developed include “migration for purposes of family formation and family reunification, migration for economic purposes, the right to nationality, and frameworks to govern the integration of migrants.”²³

This section focuses on the different areas of law that protect the rights of migrants and refugees. There are three major branches of law that are relevant for this thesis. The first branch is international human rights law which include rights that are applicable to all human beings and are thus applicable to all categories of migrants. The second branch is international labor law. This includes ILO conventions and UN treaties governing migrant workers in regular and irregular situations. Lastly, international refugee law is a relevant branch of international law which includes the rights applicable to asylum seekers and refugees.²⁴

2.2.1 International Human Rights Law

Non-nationals enjoy all of the unalienable rights applicable in human rights instruments. There are nine human rights treaties which are: the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Rights of the Child (CRC), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (MWC), the International Convention for the Protection of All Persons from Enforced Disappearances (ICCPED), and The Convention on the Rights of Persons with Disabilities (CRPD).²⁵

According to the ICCPR, the basic rights of all persons are: the right to life, liberty and security; the right not to be held in slavery or servitude; the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment; the right not to be

²³ Martin, “The legal and normative framework of international migration,” A paper prepared for the Policy Analysis and Research Programme of the Global Commission on International Migration. September 2005

²⁴ Id. At 8.

²⁵ Office of the High Commissioner for Human Rights, The Core International Human Rights Treaties. (2006) <http://www.ohchr.org/Documents/Publications/CoreTreatiesen.pdf>

subjected to arbitrary arrest, detention or exile; the right to marry and to found a family.²⁶ Article 2 of the ICCPR specifies that such rights are provided without distinction on the basis of grounds such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Egypt signed the ICCPR on 4 August 1967 and ratified it on 14 January 1982.²⁷

The right to work, free choice of employment and just and favorable conditions of work are among the rights guaranteed in the ICESCR.²⁸ Egypt signed and ratified the ICESCR on the same dates as the ICCPR. State parties to the Covenant undertake to ensure the right to form and join trade unions and recognize the right to social security, including social insurance, an adequate standard of living, the highest attainable standard of physical and mental health, education (compulsory and free at the primary level), and to take part in cultural life and benefit from scientific progress. However, in a clause specifically referring to non-nationals, the ICESCR recognizes that “developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals”.²⁹ Upon its ratification of the ICCPR and the ICESCR, Egypt declared the following reservation to the two treaties: “taking into consideration the provisions of the Islamic Sharia and the fact that they do not conflict with the text annexed to the instrument, we accept, support and ratify it.”³⁰

The CEDAW includes a number of provisions applicable to migrant women, including but not limited to the elimination of sex role stereotyping in Article 5, suppression of traffic in women and exploitation of prostitutes in Article 6, and an end of discrimination in the field of employment and citizenship in Articles 3, 9 and 11.³¹ Egypt ratified this Convention on 18 September 1981 and has made reservations on articles 2, 16, and 29. As is the case with the previous two Covenants, the reservations are made to ensure that Sharia Law applies when there is a conflict. The CERD, ratified by Egypt on 1 May

²⁶ International Covenant on Civil and Political Rights, December 19, 1966, 999 U.N.T.S.

²⁷ Id., Reservations and Declarations.

²⁸ International Covenant on Economic, Social and Cultural Rights, December 16, 1966, 993 U.N.T.S.

²⁹ Id.

³⁰ Id., Reservations and Declarations.

³¹ International Convention on the Elimination of All Forms of Discrimination Against Women, December 18, 1979, 1249 U.N.T.C. 13.

1987, is an instrument further protecting the rights of migrants, since many migrants experience racial discrimination.³² Article 1(1) of this Convention defines racial discrimination as “any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”

The CRC includes several articles useful for protecting migrant children. Article 7 asserts the right of the child to be registered immediately after birth. Article 11 prohibits trafficking of children under 18 years old. The CRC also mentioned education as a fundamental right for all children. Article 19 requires States to protect children from violence, abuse, neglect, exploitation and sexual abuse.³³ Egypt ratified the Convention on July 6, 1990 and does not have reservations. Egypt is also party to the CAT. Egypt ratified it on 25 June 1986 and has also made no reservations to this Convention. State Parties commit themselves under Article 3 not to return a person “where there are substantial grounds for believing that he would be in danger of being subject to torture”.³⁴ CAT absolutely prohibits torture and allows no exceptions on the basis of national security.

The ICCPED defines ‘enforced disappearance as

“the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.”

It asserts in Article 1(1) that “no one shall be subjected to enforced disappearance.” Article 1(2) also rejects any exceptions to Article 1(1) and states “no exceptional circumstances

³² International Convention on the Elimination of All Forms of Racial Discrimination (CERD), March 7, 1966, 660 U.N.T.C. 195.

³³ The Convention on the Rights of the Child, November 20, 1989, 1577 U.N.T.C, 3.

³⁴ The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 10 December 1981, 1465 U.N.T.C. 85.

whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance.”

The purpose of the CRPD, according to Article 1 of the convention is to “promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.” Article 11 on situations of risk and humanitarian emergencies asserts that

“States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.”

In addition to the abovementioned treaties, some customary laws also apply to all migrants. The human right to seek and enjoy asylum is stated in the Universal Declaration of Human Rights and is part of customary international law, which means that it is legally binding on all states.³⁵ The principle of non-refoulement, as explained above, is also customary international law.³⁶ The right to family unity and reunification is also a customary international law that all states acknowledge.³⁷ As such, these international laws bind Egypt.

Beyond these general rights that migrants enjoy by virtue of being human, the rights of migrants can vary depending on the purposes of their movement and the circumstances they may face upon return to their home countries. The following sub-section discusses the rights of two categories of persons: migrant workers, including both regular and irregular migrants; and refugees.

2.2.2 International Labor Law

2.2.2.1 ILO Conventions

The ILO has developed conventions to protect the rights of workers, including migrant workers in regular and irregular situations. Such conventions include the Convention

³⁵ B. S. Chimni, *Asylum*, in INTERNATIONAL REFUGEE LAW: A READER , 146 (B. S. Chimni ed., 2012).

³⁶ JAMES C. HATHAWAY, *supra* note 35 at 6.

³⁷ B.S. Chimni, *supra* note 39 at 359.

concerning Forced or Compulsory Labour (No. 29) and the Convention Concerning Abolition of Forced Labour (No. 105). They were ratified by Egypt on 29 November 1955 and 23 October 1958 respectively. The two Conventions protect regular and irregular workers from forced or compulsory labor without discrimination on any ground including their nationality and legal status. The Equal Remuneration Convention (No. 100) which also applies to regular and irregular workers was ratified by Egypt on 26 July 1960. The Discrimination (Employment and Occupation) Convention (No.111) was also ratified by Egypt on 10 May 1960 and it protects all workers from discrimination.

Another relevant convention is the C095 - Protection of Wages Convention, 1949 (No. 95). According to Article 2(1), “this Convention applies to all persons to whom wages are paid or payable.” Article 5 emphasizes that wages must be paid to the worker directly. Article 8 prohibits the arbitrary reduction of wages. Article 12 asserts that “wages shall be paid regularly.” Egypt has ratified this convention on 26 July 1960.

2.2.2.2 UN Convention on the Rights of All Migrant Workers on Members of their Family

The UN Convention on the Rights of All Migrant Workers and Members of their Family; referred to as Migrant Workers Convention (MWC) for the remainder of this thesis, builds on the ILO’s conventions as well as the human rights instruments referenced above. It reaffirms basic human rights norms and embodies them in an instrument applicable to migrant workers and their families. The underlying goal of the Convention is to guarantee minimum rights for migrant workers and members of their families who are in a documented/regular situation or an undocumented/irregular situation. Egypt was the first state to ratify this Convention on 19 February 1993. However, the overall number of states ratifying the Convention is small; only 51 ratifications.³⁸ Major destination country of migrants have yet to ratify it, raising serious questions about its effectiveness.

There are two main headings in the Convention: Part III “The human rights of migrants workers and members of their families”, which reaffirms the human rights of all

³⁸ International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 18 December 1990, 2220 U.N.T.C. 3.

migrants regardless of their legal status, and Part IV “Other rights of migrant workers” which sets out additional rights applicable only to migrant workers in a regular situation.³⁹ A number of provisions focus primarily on the right of all migrants, including those in irregular situations. Article 10 of the Convention prohibits torture or cruel, inhuman or degrading treatment or punishment. Article 11 prohibits slavery or servitude and forced or compulsory labor. Article 12 protects freedom of thought, religion and conscience, Article 13 provides for the freedom of expression, Article 14 prohibits arbitrary or unlawful interference with privacy or attacks on honor and reputation, and Article 15 prohibits arbitrary denial of property. Article 16 entitles migrants “to effective protection by the State against violence, physical injury, threats, and intimidation, whether by public officials or by private individuals, groups or institutions”. Article 22 prohibits collective expulsion and sets out the rights of migrants in expulsion proceedings. Article 23 provides the right of all migrants to seek the protection and assistance of the consular or diplomatic officials of their countries of origin.

A number of other articles focus on the social and economic status of migrants. Article 25 entitles all migrant workers to “enjoy treatment not less favorable than that which applies to nationals of the State of employment in respect of remuneration” and other conditions of work. Article 26 relates to the right to join trade unions. This article recognizes the right of migrant workers and their families to join freely any trade union and take part in the union’s meeting and activities. Article 26(2) states “No restrictions may be placed on the exercise of these rights other than those that are prescribed by law and which are necessary in a democratic society in the interests of national security, public order or the protection of the rights and freedoms of others.” Regarding social security, article 27 recognizes that States may limit benefits to migrant workers but encourages States “to examine the possibility of reimbursing interested persons the amount of contributions made by them with respect to that benefit on the basis of the treatment granted to nationals who are in similar circumstances”. Article 28 sets out the right of migrants and their families to health care “that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health”, specifying

³⁹ International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 18 December 1990, 2220 U.N.T.C. 3.

that emergency medical care should not be refused to those in irregular status. Article 29 discusses the rights of the children of migrants to a name, birth registration, a nationality. Article 30 provides a right to basic education, which cannot be denied because of the child's or his or her parents' irregular status. Article 31 protects the cultural identity of migrants and members of their family.

2.2.3 International Refugee Law

International legal standards for the protection of refugees are found in refugee, human rights and humanitarian law. The most developed of these frameworks applies to refugees as defined by the 1951 UN Convention (that is, persons who have a well- founded fear of persecution for reasons of their race, religion, nationality, membership of a particular social group, or political opinion, as well as persons who would be tortured if deported. Arguably, there is also a growing international consensus on the rights of persons who have been displaced by conflict and other situations that are likely to pose serious harm if return takes place.⁴⁰

The 1951 UN Convention Relating to the Status of Refugees emerged in the early days of the Cold War to resolve particularly the situation of hundreds of thousands of European refugees who still remained displaced by World War II and fascist and Nazi persecution.⁴¹ The 1967 Protocol Relating to the Status of Refugees lifted the time limitation and geographic restriction of the convention to refugees displaced in Europe. The core legal obligation of States pursuant to the Convention is *non- refoulement*, to refrain from forcibly returning people to countries in which they would face persecution. States undertake refugee status determinations or RSDs for asylum seekers inside their territories in order to determine if they have valid claims to refugee protection. The Convention ensures that states cannot impose penalties on refugees if they enter or stay irregularly, as long as the refugees “present themselves without delay to the authorities and show good cause for their illegal entry or presence” (Article 31). There are “exclusion” clauses in the Convention to exclude human rights violators and serious criminals. Thus, those who have committed a crime against peace, a war crime, a crime

⁴⁰ Martin, *supra note 13*, at 14.

⁴¹ United Nations High Commissioner for Refugees (UNHCR), *The State of the World's Refugees 2000: Fifty Years of Humanitarian Action* (New York: Oxford University Press, 2000), 17.

against humanity, or a serious non-political crime are excluded from international protection. That is, they are not to be granted refugee status and its attendant benefits even if they fall under the refugee definition.

The Convention also sets out the rights of refugees. Certain fundamental human rights including the right not to be expelled, except under certain, strictly defined conditions (Article 32); the right to work (Articles 17 to 19); the right to housing (Article 21); the right to education (Article 22); the right to public relief and assistance (Article 23); the right to freedom of religion (Article 4); the right to access the courts (Article 16); the right to freedom of movement within the territory (Article 26); and the right to be issued identity and travel documents (Articles 27 and 28). In addition, the Convention cannot be applied in a discriminatory way regarding race, religion, and country of origin as stipulated in Article 3.

Egypt has ratified the 1951 Convention on 22 May 1981 with reservations in respect of article 12 (1), articles 20 and 22 (1), and articles 23 and 24.⁴² The explanation given by the Government of Egypt as to the reservation to article 12(1) is that it contradicts the Egyptian Civil Code. Article 12(1) provides that the personal status of a refugee shall be governed by the law of the country of his domicile or, failing this, of his residence. However, article 25 of the Egyptian Civil Code states,

the judge declares the applicable law in the case of persons without nationality or with more than one nationality at the same time. In the case of persons where there is proof, in accordance with Egypt, of Egyptian nationality, and at the same time in accordance with one or more foreign countries, of nationality of that country, the Egyptian law must be applied.⁴³

The competent Egyptian authorities have asserted that they are not in a position to amend this article of the civil code. Concerning rationing (Article 20) public education (Article 22 (1)), public relief (Article 23) and labor legislation and social security (Article 24) , the competent Egyptian authorities had reservations because these articles provide refugees with rights equal to nationals. The competent Egyptian authorities instead assert

⁴² 1951 Convention, Reservations and Declarations

⁴³ Id. Reservations and Declarations

a discretionary power with regard to these Articles to grant privileges to refugees on a case-by-case basis.

2.3 Consular Protection and Assistance

States should protect the interests of their nationals who are present in other states. According to the Vienna Convention on Consular Relations, the consular functions may include among other things: 1) protecting the interests of the origin state and its nationals be it individuals or corporates within the limits permitted by international law; 2) helping and providing assistance to nationals, both individual and corporate bodies, of the origin country; 3) issuing passports and travel documents to nationals; and 4) presenting or arranging appropriate representation for nationals of origin country before the tribunals and other authorities of the host state in situations where nationals are unable at the proper time defend their rights and interests.⁴⁴ Somalia, Sudan, and Eritrea acceded to this Convention in 1968, 1995, and 1997 respectively.⁴⁵

2.4 Background on Rejected Asylum Seekers in Egypt

Having examined the categories and rights of migrants, this Subsection provides an overview and brief background on the population under study before proceeding to the analysis in subsequent Chapters. In Egypt, the majority of migrants, refugees, and asylum seekers reside in Cairo. Previous studies on rejected asylum seekers were conducted in Cairo. According to the latest UNHCR statistics, there are currently 215,911 persons of concern to UNHCR in Egypt. Of this group, 175,808 are asylum seekers and 40,103 are officially recognized refugees.⁴⁶ The following table offers a breakdown of these numbers by country of origin.

<i>Country of Origin</i>	<i># of Asylum Seekers</i>	<i># of Refugees</i>	<i>Total</i>
<i>Syria</i>	119,908	6,119	126,027
<i>Sudan</i>	18,589	16,713	35,302
<i>Ethiopia</i>	11,851	2,426	14,277
<i>Eritrea</i>	9,327	2,335	11,662

⁴⁴ Vienna Convention on Consular Relations, art. (5). 24 April, 1963, 596 U.N.T.C. 261.

⁴⁵ Vienna Convention on Consular Relations, Reservations.

⁴⁶ UNHCR, “UNHCR Egypt Monthly Statistical Report as of 31 October 2017.”

South Sudan	4,778	4,664	9,442
Others (60 Countries)	11,355	7,846	19,201
Total	175,808	40,103	215,911

Table 1 Breakdown of Number of Asylum Seekers and Refugees in Egypt by Country of Origin as of October 2017

When it comes to rejected asylum seekers, there are difficulties in estimating numbers accurately. They are a hidden community and do not approach government authorities and thus do not get counted. The majority of international organizations do not have estimates either. A few organizations document the number of rejected asylum seekers they provide services to.⁴⁷ The numbers of rejected asylum seekers are often quite small because service providers do not provide a large number of them with assistance. UNHCR is the only organization which documents the number of rejected asylum seekers but it is difficult to access this information. There is no record of how many remain in Egypt and how many return or move on to a new destination.

According to UNHCR, there are five major communities in Egypt with high numbers of rejected asylum seekers, Sudanese, South Sudanese, Ethiopian, Eritrean, and Somalis. The estimated number of rejected asylum seekers as of 2016 are 20,983 Sudanese, 561 South Sudanese, 3,879 Ethiopians, 2,248 Eritreans, and 5,768 Somalis.⁴⁸

The majority of rejected asylum seekers remain in Egypt due to fear of returning home after having applied for asylum. They fear that their government would retaliate and punish them or members of their family. Also, if they see that their countries of origin are still unstable, they may prefer living in an irregular situation in Egypt than going back home. They continue to identify themselves as refugees although, once their file is closed, they are of no concern to UNHCR and are legally considered irregular migrants by service providers and government institutions. The services they once received as asylum seekers are put to a halt and their request for assistance is often unmet. The Chapter below addresses the gaps in the international legal framework and its implementation as it relates to rejected asylum seekers.

⁴⁷ Gabska, *Supra note 23*, at 4.

⁴⁸ Abdel Aziz, *supra note 12* at 14.

3 Gaps in the International Legal Framework

This Chapter examines the gaps in the internationally recognized rights mentioned above. These gaps include: 1) the restrictive nature of the 1951 refugee convention definition; 2) the gap in Egypt's implementation of the MWC; 3) the migration-refugee nexus; and 4) weaknesses in consular protection.

3.1 Restricted Definition

The first gap in international law is the restricted definition of 'refugee'. The 1951 Refugee Convention's focus on persecution limits its applicability and scope.⁴⁹ Today, the major causes of flight are war and civil strife.⁵⁰ To overcome the limited definition of the 1951 Refugee Convention, regional bodies developed regional instruments to broaden the definition based on the major causes of flight in their respective regions. In recognition of the actual forced movements occurring regularly in Africa, the Organization of African Unity (OAU) adopted the Convention Governing the Specific Aspects of Refugee Problems in Africa in 1969. The OAU Convention broadened the definition and set out other important protection provisions while acknowledging the UN Refugee Convention as the basic and universal instrument regarding the protection of refugees.

In addition to protecting individuals fleeing persecution, this regional treaty protects an individual who "owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality."⁵¹ Refugees who are recognized under the OAU Convention are not eligible for resettlement. Resettlement is "the transfer of refugees from an asylum country to another State that has agreed to admit them and ultimately grant them permanent settlement."⁵² Resettlement is not an international law obligation and only very small numbers of refugees are resettled. States

⁴⁹ UN Convention relating to the Status of Refugees, Art. 33(2), July 28, 1951.

⁵⁰ James Hathaway, *The Law of Refugee Status* (Toronto: Butterworths, 1991), 10.

⁵¹ 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, UNTS No. 14, 691

⁵² UNHCR Website, Resettlement, at <http://www.unhcr.org/resettlement.html>

that elect to accept refugees in this way usually only consider those falling under the 1951 Convention.

On the ground, one of the ways in which the definitional inadequacies manifest themselves is revealed in the fact that rejected asylum seekers continue to perceive and categorize themselves as refugees. They either disagree with the 1951 definition, or argue that UNHCR has misjudged their claims and they do fall under it.

3.2 Gap in Implementation of MWC

The second gap is the implementation of the MWC. As previously mentioned, the MWC is significant insofar as it outlines the rights of migrant workers in regular and irregular situations. As rejected asylum seekers, the population of concern can benefit from this convention as irregular migrant workers. However, only 27 countries have ratified the MWC, with no major receiving country among them. States are reluctant to ratify the convention for practical and political reasons. On the practical side, the MWC is extensive and complex, raising technical questions as well as financial obligations on State parties. For example, Article 65 of the Convention requires States Parties “to maintain appropriate services to deal with questions concerning international migration of workers and members of their families.”

Furthermore, although almost all States have some emigration and immigration, States with relatively low levels of migration may see no particular reasons to ratify the Convention. On the political level, the Convention raises basic questions about State sovereignty, particularly regarding the capacity of States to deter irregular migration. The Convention requires States Parties to cooperate in curbing irregular migration and returning those without authorization to remain in a destination State. Yet, many receiving countries are concerned that the rights granted to irregular migrants under this Convention will hinder their ability to control such movements. Some States are concerned that specifying the rights of irregular migrants will serve as a magnet, drawing them to their territory. Despite the fact that Egypt has ratified the Convention, the logic behind this decision was to protect and promote the rights of Egyptian migrant workers abroad and not necessarily the rights of foreign migrant workers in Egypt. Egypt is nevertheless obliged to grant all Convention protections to migrants in Egypt.

However, in practice, policy initiatives concerning protection and promotion of migrants' rights have focused primarily on Egyptian migrants and not foreign migrants working in Egypt.⁵³

3.3 Migration-Refugee Nexus

Serious problems of implementation on the national level exist. These legal frameworks must be understood in the context of growing confusion about the migration-refugee nexus. No international treaty provides for a right to get asylum, only a right to seek asylum. Determining who is a refugee, as compared to an economic migrant, can be an extremely difficult task, particularly when individuals migrate for a variety of reasons. For example, an individual may leave his or her home because they have a well-founded fear of persecution or life-endangering conflict. However, he or she may choose a particular destination because of family connections or employment opportunities or the decision may be made for the individual by a smuggler.

From the point of view of states, domestic political, economic, and security concerns often trump concerns about migrant rights. States have adopted various policies to deter asylum seekers from reaching their territory or to shift the burden for making refugee status determinations to other states. Policies that fall short of actual refoulement nevertheless deter bonafide refugees from seeking protection. These include visa restrictions imposed on nationals of certain states, sanctions against carriers that transport persons without proper documentation, safe third country and safe country of origin provisions through which States return asylum seekers without hearing their applications, transfer of asylum seekers interdicted on the high seas to processing centers in other countries, expedited processing provisions that turn away certain applicants, those judged to have no credible claim or a manifestly unfounded claim, without benefit of a full asylum hearing, and mandatory detention of asylum seekers.⁵⁴

3.4 Weak Consular Protection

Consular protection and assistance has potential to play an important role in ensuring that migrants do not face abusive situations and rescue migrants who are in abusive

⁵³ Ministry of Manpower, "Action Plan on Institutional Strengthening in the Area of Labour Migration," October 2016.

⁵⁴ Martin, *supra note 13*, at 25

situations. Consular officers can also monitor the security of migrant workers in potentially vulnerable positions, using their diplomatic positions to engage the host country in mediating favorable conditions for migrants. Too often, however, there are too few consular offices and officials to be able to carry out these activities. Despite the fact that there are embassies of the major countries of origin of refugee and migrant communities in Egypt, there are no consulates. For Sudan, South Sudan, Eritrea, Ethiopia, and Somalia, there are consular agents working on consular relations in the embassies not in independent consulates. Very few staff members work on consular affairs and in some cases there is only one consular agent responsible for all nationals' affairs. Another limitation is the absence of interest, on the part of the consular authorities, to provide any sort of assistance to rejected asylum seekers. According to the Vienna Convention on Consular Relations of 1963, consular functions include protection of nationals' interests in host country; however, there is no specific reference to the protection of rejected asylum seekers.⁵⁵ As will be demonstrated below, different communities have expressed fear from their consular authorities in Egypt; such as the Eritrean and Ethiopian communities. The Sudanese and South Sudanese communities argue that their embassies have access to the list of their nationals who register with UNHCR and fear approaching the embassies and consular agents when their asylum claim is rejected. Even if they approach their authorities, their requests for documents and assistance are constantly denied.

⁵⁵ Vienna Convention on Consular Relations of 1963.

4 The National Legal, Policy, and Institutional Frameworks

The purpose of this Chapter is to understand the national context in which the population under investigation is present. Without this analysis, it is difficult to understand why they face challenges in accessing certain rights. This Chapter is divided into two Sections. The first Section analyzes the relevant legal, policy, and institutional frameworks present in Egypt to govern migration and refugee movements. It examines the relationship between the Government of Egypt and UNHCR and other relevant organizations in the migration and refugee fields. A critique of these frameworks follows. The second Section of this chapter investigates different consular policies of origin countries of rejected asylum seekers.

4.1 Egypt's National Framework for Governing Migration and Refugees

Refugee and migration policies have been stagnant in Egypt. The policy and institutional framework governing refugees and migrants in Egypt is centralized. Whilst it hosts a significant number of refugees, Egypt has not developed a national asylum procedure. Nor does it have particular institutions dedicated to refugees and migrants present on its territories. UNHCR is entrusted with the functions of registration, documentation and refugee status determination. In Egypt, UNHCR functions as a 'UN surrogate state'.⁵⁶

4.1.1 The UN-Surrogate State: Government of Egypt and UNHCR Relations

'UN surrogate state' is a term developed by Slaughter and Crisp in 2009 to describe cases in which there is a de facto transfer of responsibility from sovereign states to UNHCR regarding the management of refugees on their territories. This situation can be seen in various countries in the Middle East, Africa, and Asia where UNHCR is delegated the authority to carry out refugee registrations, status determination and administration of social welfare programs related to education, health and livelihoods.⁵⁷ While carrying out such functions, UNHCR acts, to a great extent, as a 'surrogate state', performing the roles that are supposed to be undertaken by states but without the capacity to fully substitute the host governments.

⁵⁶ Slaughter and Crisp, *A Surrogate State? The Role of UNHCR in Protracted Refugee Situations*, (2009) <http://www.unhcr.org/research/working/4981cb432/surrogate-state-role-unhcr-protracted-refugee-situations-amy-slaughter.html>

⁵⁷ Id. at 3

As Slaughter and Crisp point out, host governments in the global South, where the majority of refugees are located, accept mass influxes while refraining from refoulement on the premise that the needs of such vulnerable populations are to be met by the international community, a situation commonly referred to as ‘burden-sharing’.

As previously discussed, non-refoulement is an internationally recognized principle which prohibits the return of a person to a country where he/she has reason to fear persecution. It is usually referred to as the cardinal principle of international refugee law. Due to restrictive asylum policies in the global North, the number of resettlement slots for refugees are very low. According to UNHCR “There were 16.1 million refugees of concern to UNHCR around the world at the end of 2015, but less than one per cent were resettled that year.”⁵⁸ As a result, countries of the global South expect the states of the global North to contribute, as the main donors of UNHCR, by having the agency take over much of the responsibility for refugees and meeting their needs. This responsibility shift does not take place in all states of the South, but “it is nearly universal in the Middle East”.⁵⁹

In this regard, the central role of the host government is the protection of negative liberties. Negative liberty is the absence of external obstacles, barriers, or constraints. For refugees, this refers to critical security threats that often translate into refoulement and detention by the state through deportation and police harassment. There are political forces that lead states to want this transfer for their own benefit. Such benefits include lack of expectations of host states to provide assistance and protection to refugees as well as increased support from donor states. In this type of relationship, the host government can live up to its end of the bargain by simply refraining from deporting or arresting refugees and making sure that UNHCR does the rest.

4.1.2 Government of Egypt-UNHCR Memorandum of Understanding of 1954
MOUs are a common tool for developing states to overcome the burdens associated with the mass influx of refugees by delegating significant tasks to UNHCR. A bilateral memorandum of understanding (MOU) between Egypt and UNHCR was signed in

⁵⁸ UNHCR Website, Resettlement, <http://www.unhcr.org/resettlement.html>

⁵⁹ Kagan, *supra note 58*, at 2

1954.⁶⁰ As Egypt hosts the oldest UNHCR office in the MENA region, the MOU is also the oldest signed in the region. Despite the fact that the MOU is quite general and ambiguous with regard to Egypt's obligations towards refugees, it is clear about the state versus UNHCR division of tasks.⁶¹ Cairo hosts one of the largest urban refugee population worldwide, even before the Syrian influx.⁶² This will have gone up after the influx of Syrian refugees. UNHCR is delegated the authority to 'help the most destitute refugees' and coordinate welfare programs designed to benefit refugees and provide them with social welfare. There is no mention of the explicit delegation of registration and refugee status determination to UNHCR; however, in practice, it has been part of UNHCR's operations and duties. These roles are implied by the provision that calls for UNHCR to 'cooperate with governmental authorities in view of undertaking the census of and identifying the refugee eligible under the mandate of the High Commissioner'.⁶³ As a result, the government of Egypt does not promise any rights to refugees under the MOU with UNHCR except granting residence permits to refugees who fall under UNHCR's mandate and explicitly stresses that only repatriation or resettlement are to be considered the durable solutions in Egypt. Local integration is not granted as a durable solution for refugees in the country, which shows the extent of the difficulties faced by the refugee communities remaining in Egypt and service providers in providing sustainable livelihoods. Another major limitation to the arrangement is the fact that once the files of asylum seekers are closed by UNHCR, these individuals fall out of the mandate of any institution that is dedicated to providing welfare programs. As discussed in the analysis below, very few rejected asylum seekers receive assistance from international and national organizations, and there are no services provided to closed-files populations.

⁶⁰ Badawy, *The Memorandum of Understanding between Egypt and the Office of the United Nations High Commissioner for Refugees: Problems and Recommendations* (2010) at 6

http://cadmus.eui.eu/bitstream/handle/1814/13442/CARIM_ASN_2010_07.pdf?sequence=3&isAllowed=y

⁶¹ *Id.* at 7

⁶² Gozdziaik and Walter, *Urban Refugees in Cairo*, Institute for the Study of International Migrant, Center for Contemporary Arab Studies, Georgetown University at 2

<https://reliefweb.int/sites/reliefweb.int/files/resources/urban-refugees-in-cairo.pdf>

⁶³ Kagan, *supra note* 62, at 32

4.1.3 UNHCR Asylum Procedures

UNHCR's policy, which was developed in 2009, is made up of twelve objectives.⁶⁴ These objectives fall into three main categories: firstly, documentation and status determination; secondly, community relations; and finally, safe and sustainable existence for urban refugees. For the most part, the closed-file cases are unable to make use of the third category as they are not recognized as asylum seekers or refugees and therefore cannot access rights and services despite their vulnerability. Asylum seekers are required to register with UNHCR upon arrival in Cairo, whereupon they receive their asylum-seeking card, the "yellow card", which enables them to stay in Egypt under the protection of UNHCR until they are scheduled for a refugee status determination interview. Following the RSD process, if refugee status is granted, the person becomes a recognized refugee and receives a "blue card". Yellow and blue cardholders are considered as "people of concern to UNHCR" and are protected by the organization; the most important protection is that against refoulement. Moreover, they are entitled to welfare assistance from UNHCR's implementing partners. Anyone rejected after the RSD interview is entitled to an appeal. If the appeal fails, the file is closed and that person is no longer of concern to UNHCR and is expected to leave Egypt. In practice, there is no regular mechanism by which either the Egyptian government or UNHCR deports rejected asylum seekers. Thus a large number of "closed-files" individuals continue to live in Cairo without access to welfare services and vulnerable to deportation if noticed by the state authorities, rendering them unprotected from exploitation and maltreatment.

4.1.4 Egypt's Migration Policy?

Egypt does not have a written migration policy.⁶⁵ Nor has there been explicit statements made about such policies by government representatives. It is however clear from observations and other policy statements that Egypt, as far as it is interested in migration, is focused on Egyptian migrants abroad rather than foreign migrants in Egypt. There is constant criticism made by civil society organizations regarding Egypt's treatment of migrants, especially those in an irregular situation. There is no evidence to suggest that

⁶⁴ Lotayef, *Refugees in urban Egypt: it's time to reassess UNHCR's 2009 Policy on refugee protection and solutions in urban areas*, 1, <http://pubs.iied.org/17422IIED/>

⁶⁵ Zohry, *Exploring Contemporary Egyptian Migration*, Unpublished.

Egypt is focusing on massively deporting rejected asylum seekers. As pointed out by the study conducted by the CMRS on the socio-economic conditions of rejected asylum seekers in Cairo, the majority of this study's participants stated that they do not feel like they are at risk of deportation by the Government of Egypt. They emphasize that if they are able to avoid interactions with the police, then they are generally left alone by government authorities.

There are a number of Egyptian institutional bodies focusing primarily on migrants and refugees. The Department for Migration, Refugees, and Trafficking in Persons in the Ministry of Foreign Affairs is the government's focal point for international organizations working with migrants and refugees. They issue the yellow and blue cards for asylum seekers and refugees in light of UNHCR's registrations and RSDs. The Prime Minister's Cabinet issued a decree in 2009 to create the National Coordinating Committee for Combating and Preventing Illegal Migration and Trafficking in Persons. It focuses on halting Egyptian irregular migration to Europe and preventing the trafficking of Egyptians.⁶⁶ Similarly, in January 2017, the Prime Minister of Egypt issued a decree to create a National Coordinating Committee for Refugees. These Committees include representatives from all relevant ministries and a member from civil society to address any refugee-related issues. Representatives include all the security agencies such as the Ministry of Interior, Ministry of Defense, Central Intelligence, and Military Intelligence.

There are other institutions who are relevant to migration but not working primarily on migrants and refugees. For example, the Ministry of Manpower regulates all issues related to employment, including the employment of foreign migrants and refugees. They also participate in dialogues to improve migration management in the region. They are important stakeholders when it comes to concluding and implementing bilateral labor agreements. The Ministry of Interior manages and approves all the residence permits for refugees and migrants. In cases of deportation, they are also the most relevant stakeholder. Surprisingly, the Ministry for Migration and Egyptian Expatriates' Affairs is mandated to look after the interests of Egyptian migrants abroad and is not concerned with foreign migrants in Egypt.

⁶⁶ National Coordinating Committee for Combating and Preventing Irregular Migration, "Strategic Action Plan 2016-2010", January 2016.

4.2 Consular Relations of Countries of Origin and their Nationals

As previously mentioned, international law does not specifically call on states to provide assistance to their nationals if they sought asylum in another state and got rejected.

However, the right to seek asylum is a universal human right, so if states punish their nationals for exercising a human right, then the right is violated. After rejection, these individuals as nationals are entitled to the services and protection of their embassies and consular authorities to the same extent as their fellow nationals. Despite the fact that the right to seek asylum is customary international law and thus binding on all states, there are countries who punish their nationals for doing so in various indirect ways in Egypt.

Governments can punish their nationals for the act of seeking asylum without legally criminalizing the act of seeking asylum.⁶⁷ This is very problematic for rejected asylum seekers who cannot regularize their stay in the receiving countries and are expected to return to their country of origin upon receiving their rejection notice. In practice, the Eritrean government considers seeking asylum as an act of treason. As such, failed asylum seekers who are forcibly returned or voluntarily return to Eritrea face a high risk of incommunicado detention. According to Amnesty International's report entitled "Eritrea: Send Home to Detention and Torture", rejected asylum seekers are subjected to torture upon return to Eritrea.⁶⁸ Reports by UNHCR and Human Rights Watch have also observed that rejected asylum seekers and their families are exposed to investigations, reprisals and mistreatment.⁶⁹ According to the UN Special Rapporteur on Human Rights in Eritrea, asylum seekers whose claims are rejected "generally disappear on their return."⁷⁰

In Ethiopia, there is no clear policy for rejected returnees. However, it has been pointed out by Amnesty International's report "Prisoners of Conscience" that "forced returnees,

⁶⁷ Burke, "The Nexus between Sudan's Refugee Policy and its Bilateral Relations with Ethiopia and Eritrea," November 2012.

⁶⁸ AI, *Eritrea: Sent Home to Detention and Torture*, 9-10

⁶⁹ Human Rights Watch, *Hostages to Peace*, 41

⁷⁰ *Report of the Special Rapporteur on the situation of human rights in Eritrea, Sheila B Keetharuth (A/HRC/23/53)* http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.53_ENG.pdf

position party members, and government critics as well as those suspected of involvement in certain ethnically-based liberation movements are at risk of arbitrary and indefinite detention, torture, and extrajudicial execution upon return to Ethiopia.”⁷¹ In Sudan, the number of detention cases of rejected asylum seekers is small; however, this is due to the fact that the number of returnees is minimal. Only a small number of Sudanese rejected asylum seekers repatriate to Sudan or are forcibly returned by Egypt. Similarly, very few Somalis return to Somalia from Egypt even if their asylum claim is rejected. Somalia is not considered a safe country by the International Organization for Migration (IOM); the only organization offering assisted voluntary return services to migrants in Egypt and as such they do not repatriate to Somalia.

It comes to no surprise that countries who punish their citizens for seeking asylum would also implement a no-assistance policy in their embassies and consulates where their nationals seek asylum. As pointed out in the most recent study on rejected asylum seekers in Egypt, almost all rejected asylum seekers interviewed in this project mentioned that their embassies refuse to provide them with any services. The problem for closed-files individuals is that they are no longer of concern to UNHCR but also do not receive any assistance or protection from their consular authorities, and so have nowhere to turn.

Members of the Sudanese, South Sudanese, Ethiopian, and Eritrean communities unanimously confirm that their embassies refuse to provide them with assistance, most importantly in issuing identification documents.⁷² They often need the embassy to renew their expired passports and issue marriage and birth certificates. In the case of the Sudanese community, students who attend community schools must take their examination in the Embassy.⁷³ If the child does not have a birth certificate, because the Embassy refuses to issue it to the parents who sought asylum, he/she cannot take the final exams and thus cannot receive a certificate or diploma. Without such documents the child cannot prove his/her education level.

Contrary to the abovementioned communities, in the case of Somali rejected asylum seekers, the views were different. In the Somali community, a few members stated that

⁷¹ AI, *Ethiopia: Prisoners of Conscience*, 51-52

⁷² Abdel Aziz, *supra note 12*, at 14.

⁷³ *Id.* At 15.

they do not fear approaching the Embassy for assistance. They stated that the Embassy employees understand that the primary motivation behind seeking asylum in another country. As such, the Embassy provides them with assistance when possible.

Institutionalizing harassment in embassies and consulates has been a strategy used by the Ethiopian government to punish individuals who seek asylum in other countries. This strategy is not implemented in Egypt alone. According to Human Rights Watch, harassment by Ethiopian Diplomatic Missions has been taking place in Kenya, Uganda, Sudan, and Djibouti.⁷⁴ Members of Oromo and Amhara communities in Egypt have repeatedly called for protection against Embassy staff members who harass them on social media and send them threats virtually and physically. They have also reported cases of kidnappings and mass disappearances. Human Rights Watch has stated that Ethiopian activists and asylum seekers are assaulted, detained, and interrogated before Ethiopian officials and forced to return to Ethiopia. However, this was in Nairobi. No written report alleges similar acts in Cairo. The available information is based on testimonies of community leaders and members from the Oromo and Amhara communities in Cairo. There is no evidence to suggest that Embassies of the other four communities have incorporated this strategy in their policy towards their nationals who have become asylum seekers, refugees, and rejected asylum seekers.

⁷⁴ African Times, *Ethiopian Asylum Seekers Forcibly Returned from Other Nations*, <http://africatimes.com/2017/09/21/ethiopian-asylum-seekers-forcibly-returned-from-other-nations-hrw-says/>

5 Socio-Economic and Protection Conditions of Rejected Asylum Seekers in Egypt

The estimated number of closed-files individuals is 33,000 individuals from the five communities mentioned above. Regarding irregular migrants, the services they received from civil society organizations and the protection they enjoyed from UNHCR while they were asylum seekers are no longer available. An examination of their housing, employment, education, and health conditions as well as their legal challenges associated with their legal status is significant in order to assess whether they are receiving the rights they are entitled to as described in Chapter Two of this thesis.

5.1 Livelihoods

Closed-files individuals must secure their livelihoods without dependence on service providers due to limited resources available for this particular group. This Subsection address the four major components affecting the livelihoods of closed-files individuals: housing and shelter, employment, education, and health. The challenges faced by the population under study will be addressed for each component so that this analysis can be used in the next Chapter to assess whether these challenges constitute a violation of their rights mentioned under Chapter Two or not.

5.1.1 Housing

Urban refugees and low-skilled economic migrants all over the world often complain of the lack of proper housing opportunities and expensive rent.⁷⁵ Placing refugees in refugee camps has been criticized by academics, activists, practitioners and policymakers since camps restrict movement and access to labor markets.⁷⁶ Camps also imply that the situation is temporary while in reality sometimes refugees remain for years and even decades. UNHCR argues that “unlike a camp, cities allow refugees to live anonymously, make money, and build a better future”.⁷⁷ Since Egypt has no encampment policy, refugees, asylum seekers and closed-files individuals and rejected applicants live in

⁷⁵ International Federation for Housing and Planning, *Housing Refugees Report: Part of the IFHP Refugee Housing Program*,

<http://www.ifhp.org/sites/default/files/staff/IFHP%20Housing%20Refugees%20Report%20-%20final.pdf>

⁷⁶ Maple, *Rights at Risk: A Thematic Investigation into How States Restrict the Freedom of Movement of Refugees on the African Continent*, UNHCR, <http://www.unhcr.org/57ee60d57.pdf>

⁷⁷ UNHCR Egypt Fact Sheet,

<http://reporting.unhcr.org/sites/default/files/UNHCR%20Egypt%20Factsheet%20-%20September%202017.pdf>

cities.⁷⁸ Specifically, they live in Cairo and Alexandria, the two main urban centers. While some might consider this situation as favorable to the designated community, the closed-files community face various challenges regarding housing and shelter. The three most prominent challenges are: 1) housing requirements, 2) housing conditions and 3) exploitation and discrimination by landlords and neighbors.⁷⁹

The first and most obvious challenge for closed-files individuals and rejected asylum seekers is difficulty finding housing due to the fact that landlords often require residence permits which only refugees and asylum seekers with UN IDs can receive. In case they find a landlord who is willing to rent his or her apartment without proper identification documents from the residents, tenants cannot enforce their rights, and are often evicted without prior notice and without sufficient time to collect their belongings. As pointed out in previous studies, rejected asylum seekers commonly face eviction for reasons such as sudden and persistent increases in rent.⁸⁰ The landlords take advantage of the fact that organizations will not intervene and that the police will not provide support to the refugees when a landlord violates the terms and conditions of the contract.⁸¹

Refugees and migrants take into consideration the concentration and presence of their communities in a particular location first and foremost. As a result, refugee and migrant communities are often clustered in the same neighborhoods around Cairo. They also consider the rent, safety, and proximity to potential service providers. More specifically, rejected asylum seekers choose to reside in areas where members of their community are present to rely on their social networks. It is easier to become ‘invisible’ amongst larger migrant and refugee populations that have resided in these areas for generations.⁸² They often occupy small, ill-furnished apartments in poor neighborhoods in Cairo. The major challenges pertaining to the housing conditions are related to the location of residence, over-crowding, and lack of safe structures.

In the shabby neighborhoods where they live, rejected asylum seekers often face harassment and blackmail from neighbors and landlords who are aware of their irregular

⁷⁸ Id.

⁷⁹ Abdel Aziz, *Supra note 12* at 23.

⁸⁰ Abdel Aziz, *Supra note 12*, at 25

⁸¹ Id.

⁸² Gabska 55.

status.⁸³ They also experience severe xenophobic attacks ranging from name-calling to physical assault and other forms of harassment.⁸⁴ Children are the most vulnerable in these situations. They are more vulnerable to attacks by other children and adults. Such incidences were a common experience across all communities, gender and ages. Overcrowded apartments are another major challenge. Due to high rents, refugees, asylum seekers, and closed-files individual often end up moving in with other families in order to afford rent.⁸⁵ Such conditions pose threats to privacy health, and safety, especially for children.⁸⁶ Contagious diseases easily spread across individuals living in common quarters. Children are also at risk because they are often left alone with individuals unknown to them while their parents go to work and thus are at risk of exploitation.⁸⁷

5.1.2 Employment

The irregular situation of the target population constrains their ability to work. The overwhelming majority of refugees and asylum seekers in Egypt work in the informal sector.⁸⁸ It is extremely difficult even for recognized refugees to access the formal labor market. The informal economy is distinguished by the absence of job security and protection.⁸⁹ Individuals working in the informal sector, Egyptians and foreigners alike, do not have contracts. All are working informally even if they are employed in formally regulated institutions such as pharmacies or schools. As a result, they are vulnerable to exploitation. A common form of exploitation is being denied payment after work.⁹⁰ They also have no healthcare benefits which often translates into being fired if one gets sick and must rest, even if only for a few days. Work is mostly temporary and paid on a daily

⁸³ Gabska, *supra note 13*, at 7.

⁸⁴ Human Rights Watch, “Egypt: Immigration Law Lacks Key Protection”.
<https://www.hrw.org/news/2016/12/15/egypt-immigration-law-lacks-key-protections>

⁸⁵ UNHCR, “*The Implementation of UNHCR’s Policy on Refugee Protection and Solutions in Urban Areas: Global Survey*.” <http://www.unhcr.org/516d658c9.pdf>

⁸⁶ *Id.* At 15

⁸⁷ *Id.* At 16

⁸⁸ UNHCR, “Vulnerability Assessment of Syrian Refugees in Egypt 2016”,
<https://reliefweb.int/sites/reliefweb.int/files/resources/VSYR.pdf>

⁸⁹ European Union, “Speech at Informal Ministerial Meeting on Fair and Effective Access to Labor Markets for Migrants and Refugees”, ILO 10th Regional Meeting, Turkey,
https://ec.europa.eu/commission/commissioners/2014-2019/thyssen/announcements/speech-informal-ministerial-meeting-fair-and-effective-access-labour-markets-migrants-and-refugees_en

⁹⁰ Abdel Aziz, *Supra note 12*, 25.

basis. Thus, it is common for rejected asylum seekers to change jobs frequently.⁹¹ These jobs are also unsuitable for the elderly or for individuals with health concerns.⁹² As a result, they must depend on other family members or members of the community for survival.

Workers in the informal market also complain about long working hours. They often get sick due to the long working hours and sleep and food deprivation.⁹³ Even direct work injuries are not covered by employers and if injuries hinder the performance of the individual, they are fired. Some experience beatings, verbal racial harassment, sexual harassment, food deprivation, and non-payment of salaries.⁹⁴ When they voice their concerns with their employers, they are often blamed for theft as a way of threatening them with calling the police or any other authority that exposes them to the risk of detention or deportation.⁹⁵

Closed-files individuals face more difficulty than refugees with blue cards and asylum seekers with yellow cards.⁹⁶ Carrying a UN ID is beneficial for guaranteeing basic forms of protection since employers would be more reluctant to abuse those who fall under the mandate of a UN agency.⁹⁷ More importantly, not carrying valid documents means that you cannot seek the support of the police since a valid ID is required for filing a police report. Employment opportunities available to closed-files individuals may require working through the night. This is a major constraint due to the fact that police checkpoints operate in all of the major cities in Egypt after midnight and between governorates.⁹⁸ This poses high risks for rejected asylum seekers who carry no or expired documents.

⁹¹ UNHCR, *supra note 81*, at 6

⁹² *Id.* At 8

⁹³ Abdel Aziz, *supra note 12*, at 26

⁹⁴ Gabska, *supra note 13*, at 9

⁹⁵ Jureidini, Ray. Irregular Workers in Egypt: Migrant and Refugee Domestic Workers. *IJMS: International Journal on Multicultural Societies*. 2009, vol.11, no.1, pp. 75-90, UNESCO. ISSN 1817-4574. www.unesco.org/shs/ijms/vol11/issue1/art4

⁹⁶ *Id.* At 81.

⁹⁷ *Id.* At 81.

⁹⁸ Abdel Aziz, *supra note 12*, at 28

5.1.3 Education

According to the ICESCR, the 1989 Convention on the Rights of the Child, as well as the 1951 Refugee Convention, education is a basic human right.⁹⁹ Out of the 16 million refugees under the protection of UNHCR worldwide, 6 million are of school-going age, which is defined as 5 to 17 years of age.¹⁰⁰ 61 percent of refugees attend schools, compared to the global average of over 90 per cent. Around 1.75 million refugee children are not in primary school and 1.95 million refugee adolescents are not in secondary school.¹⁰¹ Education is crucial in times of displacement. According to UNHCR, “it can foster social cohesion, provide access to life-saving information, address psychosocial needs, and offer a stable and safe environment for those who need it most”.¹⁰²

Limited to no access to education puts an entire generation at risk. Access to education is limited for refugees. According to UNHCR, refugees are five times more likely to be out of school than the global average. Closed-files individuals and rejected asylum seekers are far more marginalized with regards to access to education. Since they are not under the mandate of UNHCR, they cannot benefit from educational grants provided by the organization or its implementing partners.

Access to formal education for the target group is very limited.¹⁰³ It is difficult for their children to be enrolled in government schools, which are accessible to refugees of certain nationalities. To be enrolled in a government school, the child must have a birth certificate; children born to parents with a ‘closed-file’ do not have birth certificates because their parents are required to provide valid IDs to get a birth certificate. Children who were enrolled in schools were dismissed once their parents’ files were closed by UNHCR.¹⁰⁴

⁹⁹ The Convention on the Rights of the Child, November 20, 1989, 1577 U.N.T.C, 3.

¹⁰⁰ UNHCR, Education, <http://www.unhcr.org/education.html>

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ UNHCR, “*Missing Out: Refugee Education in Crisis*,” <http://www.unhcr.org/57d9d01d0.pdf>

¹⁰⁴ Abdel Aziz, *supra note 12*, at 29 and Gabska, *supra note 13*, at 9

In the case of the Sudanese community, there are privately run community schools, which can enroll children with no birth certificates; however, they are very expensive.¹⁰⁵ In the case of asylum seekers and refugees who fall under the mandate of UNHCR, the organization covers their educational fees. However, once someone's file is closed, UNHCR no longer covers the cost of their children to go to school. As a result, parents are unable to cover the fees due to their dire economic situation. The students are also required to take their examination in the Sudanese Embassy which requires valid IDs. For adults, various organizations provide English courses; however, these courses are usually restricted to blue-card and yellow-card holders. Additionally, the courses that allow for the participation of the target community usually conflict with the time of their work. As a result, they are also unable to attend the courses. As pointed out by one of the participants who participated in the study of the socio-economic analysis of rejected asylum seekers in Egypt, "education is considered a luxury when you cannot pay for rent and food".¹⁰⁶

5.1.4 Health

Closed-file individuals cannot receive treatment in governmental hospitals. As a result, they must go to private hospitals, which are far more costly than public ones.¹⁰⁷ Hospitals also charge foreigners a different rate than Egyptians. Thus, even though there is the possibility to receive treatment in privately run hospitals and clinics, the fact that closed-file individuals cannot cover the costs serves as a barrier to their access to health services in Egypt. However, it is important to note that service providers that give health grants provide these regardless of their legal status.¹⁰⁸

Access to services related to pregnancy and childbirth, children, and mental illnesses varies. Generally, mental illness is not supported by any service provider for asylum seekers, refugees, rejected asylum seekers, and closed-file individuals.¹⁰⁹ Patients are

¹⁰⁵ Id.

¹⁰⁶ Abdel Aziz, *supra* note 12, at 28

¹⁰⁷ Eidener, "Providing Health Care Information to Refugees in Cairo: Questions on Access and Integration", <http://schools.aucegypt.edu/GAPP/cmrs/reports/Documents/Eidener.pdf>

¹⁰⁸ Abdel Aziz, *supra* note 12, at 30.

¹⁰⁹ UNHCR and WHO, "Mental Health of Refugees," <http://www.unhcr.org/publications/operations/3bc6eac74/mental-health-refugees-unhcrwho.html>

either left untreated or members of the community try to collectively raise the cost of treatment.¹¹⁰ Generally, less attention is given to mental health support than other pressing physical illnesses. As for pregnancy and childbirth, private hospitals and clinics are accessible; however, the cost must be covered by the parents and relatives. Refuge Egypt, an Egyptian-based NGO provides financial support to cover childbirth; however, the number of rejected asylum seekers who benefit from these financials grants are small because the resources are limited. As for children's health, all children are vaccinated as part of a nationwide campaign led by the Ministry of Health that vaccinates all children in Egypt regardless of nationality or legal status.

Coping mechanisms for health vary from individual to individual. In a few cases, the community relies on their Egyptian neighbors for support. For the Ethiopian and Eritrean respondents, a common strategy was seeking the support of their employers; however, this is not very common. The support sought is mostly financial. Another coping mechanism is the use of UNHCR IDs of relatives or friends.¹¹¹ They use the IDs of those who tried crossing to Europe. Before departure, they would leave their documents with their relatives or friends who can then use them in an attempt to obtain services. This is the easiest but most risky mechanism. If caught, both the rejected asylum seeker and the original owner of the UN ID can be punished by the Egyptian government.

5.2 Protection: Challenges of Legal Status and Access to Justice

The majority of rejected asylum seekers carry some sort of identification document. However, they are mostly invalid.¹¹² Most resort to their expired passports or yellow cards. Only a few do not carry any documents; they are mostly confiscated by current or previous employers and landlords. Without valid IDs, many of their rights are denied. In order to issue marriage and divorce certificates, both parties must have valid documents. This is also the case for issuing birth certificates for children, where both parents must hold valid identification documents.

¹¹⁰ Abdel Aziz, *supra note 12*, at 31

¹¹¹ *Id.* At 32

¹¹² *Id.* At 34

Most communities use the concept of ‘publicity’ to validate a case of marriage or divorce.¹¹³ Since they are unable to issue documents from the state, they depend on informing the maximum number of individuals from their community as a way to cope with their status. Unfortunately, this system does not safeguard the rights of both partners in the relationship.¹¹⁴ The same applies to cases of divorce. This informal system creates various legal and social problems among the community. This becomes more problematic when a rejected asylum seeker is getting married to a registered asylum seeker or officially recognized refugee.

As previously explained, children born to parents who are ‘closed file’ do not have birth certificates. This puts their future at risk due to the fact that their basic rights to health and education cannot be met.¹¹⁵ They are more vulnerable than children who access schools.

Another consequence for not carrying valid identification documents is the limited access to justice. As previously pointed out, rejected asylum seekers cannot approach police stations when they are victims of any sort of crime. In cases of harassment, they are unwilling to approach police stations because they cannot file police reports without presenting valid documents. They also fear being arrested by police if they do not present legal documents. This issue becomes more problematic when the perpetrators are known to the victims and are individuals who they come in regular contact with.

One of the striking results of the study on the socio-economic assessment of rejected asylum seekers in Egypt is that the majority of participants responded with ‘rarely’ to the question on how often does arrest or detention takes place among members of their community.¹¹⁶ The complementary interviews conducted with international organizations and with civil society provide an interesting explanation for why this might be the case. The government of Egypt does not cover the cost of deportation; in the majority of deportation cases, the individuals is expected to cover the cost of his or her return. When this is not possible, international organizations cover the cost of return in case it is

¹¹³ *Id.* At 36

¹¹⁴ *Id.* At 37.

¹¹⁵ Lewis, “Sudanese Refugee ‘Youth’ Gangs in Cairo,”

<http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/FMRpdfs/FMR33/52-53.pdf>

¹¹⁶ Abdel Aziz, *supra note 12*, at 37.

voluntary or else their Embassies are expected cover the cost. In the context of Closed-files, the possibility of any of these ways of covering their return expenses is very low. Even organizations like the International Organization for Migration, which offers financial support for return, can only intervene in cases where return is voluntary and not forced by the government. Embassies are unwilling to cover the expenses of return themselves due to their limited capacity. Detaining large numbers of closed files individuals indefinitely is expensive for the state. Consequently, for the most part, police in Egypt do not target closed-files individuals or rejected asylum seekers, which is why these communities have not witnessed many arrests, detentions, or deportations.

The most common reason for detention is if the individual is arrested by police or military while trying to migrate to Europe by boat. UNHCR can intervene in order to release those who hold valid UNHCR IDs; however, those who do not have UNHCR ID either get deported back to their origin countries or remain in indefinite detention.

6 Protection Gap: Challenges and Limitations of Stakeholders

The purpose of this Chapter is to analyze the gap between the rights that rejected asylum seekers are entitled to and the lack of access to rights in Egypt. It focuses on the challenges and limitations of the Government of Egypt and the Consular authorities of these communities because they have responsibilities and duties under international law.

6.1 Government of Egypt

The Government of Egypt has responsibilities towards rejected asylum seekers on its territory. Based on the low number of deportations, it is safe to assume that for the most part Egypt abides by the principle of non-refoulement with regard to closed-files individuals.¹¹⁷

By requiring valid identification documents from parents to issue birth certificates, the Government of Egypt is violating the right of the child to have a birth certificate. The right to birth registration and the right of everyone to recognition everywhere as a person before the law is a universal human right, first acknowledged in Article 6 of the Universal Declaration of Human Rights and specifically recognized in Article 24(2) of the International Covenant on Civil and Political Rights, which states that every child shall be registered immediately after birth.¹¹⁸ The absence of a birth certificate has an impact on other human rights such as the right to education and right to health.¹¹⁹ The absence of a birth certificate can put a child at risk of child labor, trafficking, and statelessness.

The Sudanese, South Sudanese, Ethiopian, Eritrean, and Somali communities are visibly different from most of the residence of Cairo and Alexandria. There is a history of discrimination against those with darker skin.¹²⁰ Even Egyptian Nubians, who have darker skin than the majority of Egyptians face racial discrimination. Closed-file individuals thus face racial discrimination by virtue of being members of these communities. Lack of initiatives to help with their integration can result in a violation of

¹¹⁷ *Id.*

¹¹⁸ The Universal Declaration for Human Rights, art 6, and the International Covenant on Civil and Political Rights, art 14(2)

¹¹⁹ Gabska, *supra note* 13, at 30

¹²⁰ The Cairo Institute for Human Rights Studies, “On the Fringe of the Sudanese Refugees’ Tragedy: Egyptian Racism- Curable or not?” <http://www.cihrs.org/?p=4951&lang=en>

the Convention on the Elimination of all Forms of Racial Discrimination, which calls on states to take all necessary actions to eliminate racial discrimination in their countries.

The analysis above concerning employment conditions of closed-file individuals evidences violations of aforementioned ILO and MWC standards developed to safe guard the rights of workers. Forced labor is a major concern among this group. They are not guaranteed minimal rights as articulated in the MWC. They cannot form or join unions according to Egyptian national law. While this law applies to all non-nationals, not just irregular workers; and while ability to unionize is also heavily controlled for nationals; the context of irregularity heightens vulnerability and risk.

6.2 Consular Authorities

The Vienna Convention on Consular Relations lists protection of nationals, in their country of destination, within the limits permitted by international law as one of the core functions of consular authorities. Based on the experiences of rejected asylum seekers, the Sudanese, Eritrean, and Somali Embassies prevent closed-file individuals from renewing their passport; as such, they are unable to have legal identification documents which are needed to apply for residency and issue official papers such as marriage, divorce, and child birth certificates.¹²¹ Valid identification documents are also required to access police stations, schools, and public hospitals.

The consular authorities are violating the right to education and health which are universal human rights. Without documents and without allowing children of rejected asylum seekers to take exams in Embassies, parents end up not enrolling their children in community schools even if they are able to afford them. Affordable health care in public hospitals is inaccessible to any individual without valid paper which the consular authorities prevent access to.

All five origin countries addressed in this thesis are also violating the right to seek asylum. By punishing rejected asylum seekers for seeking asylum with UNHCR, they are ultimately violating this right.

¹²¹ Abdel Aziz, *supra note 12*, at 31

In the case of the Ethiopian consular authorities, allegations regarding harassment, torture, kidnapping, and forced disappearances are alarming. It is difficult to prove beyond the testimonies of members of the Ethiopian community in Egypt and evidence of such incidents by Ethiopian authorities in other states. Such acts are a clear violation of the Convention against Torture. The absolute prohibition of torture is customary international law, indeed it is *jus cogens*, and no state can deviate from it under any circumstances.

7 Conclusion

This thesis argues that closed-files individuals have rights under international law but are not receiving and enjoying these rights in Egypt. To support this argument, the thesis mapped out the rights of closed-files individuals according to international law and the gaps in the international legal framework. It also analyzed the national legal, policy, and institutional frameworks of Egypt as well as the consular policies of some of the countries of origin of closed-files individuals. Following this analysis, the thesis presented the housing, employment, education, health, and protection conditions of rejected asylum seekers in Egypt. The purpose of this analysis was to assess to what extent are rejected asylum seekers accessing and enjoying their rights in Egypt.

Based on the analysis provided in this thesis, closed-files individuals are accessing their rights to a small extent. Luckily, there is no evidence to suggest the mass deportation of rejected asylum seekers, some of whom may be at risk of torture and degrading treatment back home. However, their access to housing, education, health, and decent work opportunities is limited. Due to the fact that closed-files individuals cannot renew their documents in their embassies, they are unable to regularize their stay in Egypt and are unable to issue identification documents for their children. Without basic identification documents they remain hidden within their communities and unable to improve their living conditions.