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The American University in Cairo

School of Global Affairs and Public Policy

**EXPLORING REFUGEE ADMINISTRATION MODELS IN EGYPT, JORDAN,
AND UGANDA: A COMPARATIVE STUDY**

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

Noura Ayman El Guindy

September 2020

The American University in Cairo

School of Global Affairs and Public Policy

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DEDICATION

To the soul of my wonderful uncle Yasser El Guindy, the first humanitarian I knew.

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

EXPLORING REFUGEE ADMINISTRATION MODELS IN EGYPT, JORDAN, AND
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Noura El Guindy

Supervised by Professor Jason Beckett

ABSTRACT

In this study, I compare three refugee administration models in the global south to one another: Egypt's, Jordan's, and Uganda's. This research is conducted at what I believe is a curious moment of history, where host countries in the global south are encouraged by wealthier states to accept aid in exchange for keeping migrants in the south. In these circumstances, refugee administration models in host countries continue to operate, and new political approaches arise, such as the "Jordan Refugee Compact". The aim of the comparative study is to spot both the successes and failures of each model in the three countries in terms of meeting the states' obligations as per international law. I also assess new approaches adopted by some states, spot the lessons learned, and conclude by formulating my recommendations for improving further the existing model in Egypt.

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I. Introduction to the Comparative Study

A. Background on the Refugee Scene in Egypt

Being a relatively-stable country in a rather unstable region, Egypt has increasingly become an attractive destination and transit country for asylum-seekers fleeing their countries.¹ Conflicts, social unrest, and political instability in the region have triggered large influxes of people seeking refuge in Egypt. According to the United Nations High Commissioner for Refugees (UNHCR), the number of registered refugees and asylum-seekers has increased at a rate of 24% over the course of 2017 and 2018 due to conflicts in Yemen and sub-Saharan African countries.² Additionally, those who were newly registered with UNHCR, only in 2019, constituted 14% of the total number of refugees and asylum-seekers.³

In its latest Factsheet (as of February 2020), UNHCR has announced that the number of refugees and asylum-seekers in Egypt is 256,632 refugees and asylum-seekers. Out of those, a figure of 129,642 persons are Syrian refugees and asylum-seekers, constituting 51% of the total refugee and asylum-seeker population.⁴ [For purposes of this research, the word 'refugees' in subsequent paragraphs will stand for refugees as well as asylum-seekers whose status has not yet been determined.]

The majority of refugees in Egypt are located in Greater Cairo, which has become home for the fifth largest urban refugee population in the world.^{5 6}

Some of the refugees in Egypt remain in the country in the hope of being resettled to Western countries such as Canada, Australia, the US, and other countries that have a very few resettlement slots for refugees. Only 3995 refugees were resettled last year, constituting an annual resettlement rate of 1.5% (vs. the aforementioned 14% of new arrivals)⁷. On the other hand, others come to Egypt with the intention to cross to Europe,

¹ TAREK BADAWY, THE MEMORANDUM OF UNDERSTANDING AND THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES: PROBLEMS AND RECOMMENDATIONS 1 (Jul. 2010), https://cadmus.eui.eu/bitstream/handle/1814/13442/CARIM_ASN_2010_07.pdf?sequence=3&isAllowed=y.

² UNHCR urges critical support for refugees in Egypt, UNHCR, (February 28, 2019), available at: <https://www.unhcr.org/news/press/2019/2/5c77e3154/unhcr-urges-critical-support-refugees-egypt.html>.

³ UNHCR EGYPT OPERATIONAL UPDATE 1 (Oct. - Dec. 2019), <https://reporting.unhcr.org/sites/default/files/UNHCR%20Egypt%20Operational%20Update%20-%20October-December%202019.pdf>

⁴ UNHCR EGYPT FACT SHEET (Feb. 2020), https://www.unhcr.org/eg/wp-content/uploads/sites/36/2020/03/UNHCR-Egypt_Fact-Sheet_February_2020.pdf

⁵ BADAWY, *supra* note 1, at 1.

⁶ Noura El Guindy, A Closer Look at the Life of Refugees in Egypt (May 2019) (submitted as a final paper to the course LAW5217 at the American University in Cairo).

⁷ UNHCR, *supra* note 3, at 6.

whether directly through the northern coast of Egypt, or through crossing to a neighboring country.⁸

It is commonly understood that only two of the three durable solutions for refugees are available in Egypt, namely, resettlement and voluntary repatriation. Like some other countries in the global south, integration is a difficult-to-impossible option in Egypt.⁹ The Egyptian Immigration and Nationality Law leaves no room before refugees for obtaining citizenship or an indefinite residency permit. As for resettlement, UNHCR works on increasing refugees' opportunities by pursuing different avenues such as family reunification.¹⁰

According to Filippo Grandi, the UN Higher Commissioner for Refugees, eight out of 10 refugees in Egypt cannot meet their basic needs.¹¹ In subsequent sections, I will attempt to elaborate on the causes of this critical situation from the points of view of different scholars and publicists, and also from my humble perspective. For the purposes of this comparative study, I will explore refugee administration models in Jordan and Uganda, as two of the biggest host countries for refugees in the global south. I will conclude with recommendations based on the lessons learned from the approaches of the three countries.

B. Research Questions

My research question is whether Egypt's refugee administration model meets Egypt's international obligations as per the treaties to which Egypt is a Party State, such as the 1951 Refugee Convention and other treaties of relevance. Furthermore, I will compare Egypt's model to models in Jordan and Uganda. My purpose of this comparison is to assess whether these models meet their respective states' international obligations, then to spot useful approaches and patterns of governance in those models that will help me formulate my recommendations for Egypt's model.

The first part of the thesis will be a research on the current legal situation of refugees in Egypt. I will explore the rights granted to refugees as well as challenges faced by them

⁸ AMIRA HETABA ET AL., REFUGEE ENTITLEMENTS IN EGYPT 1 (Feb. 2020), <http://schools.aucegypt.edu/GAPP/cmrs/Documents/Refugee%20Entitlements%20Report%20%281%29.pdf> [hereinafter CMRS Report].

⁹ Martin Jones, *Legal Empowerment and Refugees on the Nile: the Very Short History of Legal Empowerment and Refugee Legal Aid in Egypt*, 19 IJHR 308, 309 (2015).

¹⁰ UNHCR, *supra* note 4, at 3.

¹¹ UNHCR, *supra* note 2.

and the available discourse on Egypt's Policies. The second part of the thesis will explore the refugee administration systems in Jordan and Uganda, their relevant legal frameworks, and the rights granted to refugees in both countries. I will also explore whether legal issues highlighted in the first part were addressed/avoided in Jordan and/or Uganda. I will conclude with recommendations in the final chapter.

C. Significance

As a legal researcher, I have always wanted to read a comparative study of Egypt's refugee administration model and models of other countries, especially ones in the global south. Unfortunately, most of the scholarship available on the subject matter addresses the challenges faced by refugees in each country on its own, but does not compare Egypt's refugee administration system to systems in other countries.

There is only one exception, that is, the significant article *Hosting Guests, Creating Citizens: Models of Refugee Administration in Jordan and Egypt* published in 2017.¹² In this article, Rochelle Davis *et al.* compare the Egyptian model to the Jordanian one and conclude that both models have turned over time from relatively inclusive models to exclusionary ones that are dependent on international aid that generates aid hierarchies among refugees according to their nationalities.¹³ Further discourse from that article will be presented in a subsequent sub-section.

Other than this article, there were not any comparative studies that included Egypt and other states. Therefore, I have determined to conduct this research myself in hope that its outcomes would appeal to a technocrat in power and inspire him/her to make a policy change in Egypt.

We have the statistics that speak louder than words. 1.5% of refugees in Egypt depart to resettlement countries annually, while the fate of the rest remains unknown. For that reason, the discourse on the living conditions of refugees in Egypt, especially from a legal perspective, should be further explored.

Another glimpse of hope I see for refugees is Egypt's increasing interest in battling illegal immigration. In October 2018, Egypt signed with the European Union (EU) an agreement

¹² Rochelle Davis *et al.*, *Hosting Guests, Creating Citizens: Models of Refugee Administration in Jordan and Egypt*, 36 REFUG. SURV. Q. 1 (2017).

¹³ Noura El Guindy, *Exploring Egypt's Refugee Administration Model* (December 2019) (submitted as a final paper to the course MRS5100 at the American University in Cairo).

to that end, which amounted to €60 million. The agreement aims to end illegal immigration by battling the economic and social reasons leading to it in the first place.¹⁴¹⁵ In my opinion, one way to reduce the numbers of illegal immigration of migrants from Egypt is to offer them an opportunity to live in Egypt as per the standards of its international obligations. That is where my research steps in, assessing the existing legal arrangements Egypt and introducing new ones that are followed in other countries.

D. Methodology

I will mainly rely on academic articles for obtaining information and for making arguments. I will also resort to reports generated by humanitarian organizations on the ground when necessary. However, the arguments that I will present will be emphasized in academic sources for the most part.

As for my method of choice for this study, I will use the functional method to spot and compare laws of other countries to those of Egypt, and I will specifically use a recent, widely-circulated version of functionalism that is promoted by Ralf Michaels, a renowned scholar and expert in comparative law. Nevertheless, I will first introduce functionalism in the traditional sense.

As explained by Stephen A. Smith, functionalist comparative scholarship is where legal rules and establishments are compared in terms of the functions that they serve, rather than their wording or their classification in the legal systems in which they are found. Functional comparative scholars first identify the problems or the needs, then they analyze how these needs are met/how these problems are solved through both legal and non-legal establishments.¹⁶

The functional method has been regarded as the most convenient method of comparative legal studies¹⁷. This is emphasized by the widely-quoted words of Konrad Zweigert and Hein Kötz who developed and promoted functionalism: "The basic methodological principle of all comparative law is that of functionality. From this basic

¹⁴ Egypt, EU sign 2 agreements worth €135m to provide jobs, battle illegal immigration, Egypt Independent, 18 October 2018. Available at: <https://egyptindependent.com/egypt-eu-sign-2-agreements-worth-e135m-to-provide-jobs-battle-illegal-immigration/>

¹⁵ El Guindy, *supra* note 6.

¹⁶ Stephen A. Smith, *Comparative Legal Scholarship as Ordinary Legal Scholarship*, 5 J. COMP. L. 331, 337-338 (2010).

¹⁷ Julie de Coninck. *The Functional Method of Comparative Law: 'Quo Vadis'?*, 74 RABEL J. COMP. INT'L PRIVATE L. (RabelsZ) 318, 322 (2010).

principle stem all the other rules which determine the choice of laws to compare, the scope of the undertaking, the creation of a system of comparative law, and so on.”¹⁸

According to Zweigert and Kötz, the only way to compare certain laws of different legal systems is for those laws to have the same function, as only “comparables” can be compared. They argued that a comparative lawyer must pose his/her research question in “purely functional terms”, and not according to the concept of the comparatist’s own legal system.¹⁹

Moreover, a significant feature in their version of functionalism is that they believed that there is a great deal of similarity in the results “developed nations” achieve as they solve legal problems. In other words, they argued that different legal systems end up having the same or very similar solutions to legal problems to an extent that there almost exists a *praesumptio similitudinis*, i.e. a presumption that legal solutions in different societies are the same, or at least very similar.²⁰ According to that view, if a comparatist found that there were different legal solutions, he/she is required to verify that the questions he/she posed were in purely functional terms.²¹

This traditional theory of legal solutions being presumably similar has been criticized by “difference theorists”. They argued that it pressured the comparatist to think of similarities and to not pay as much attention to differences, or to marginalize those differences. A comparatist must be neutral and not favor similarities over differences in the process of his/her research.²² They stress that similarities that appear before a comparative researcher should be looked at with caution, as they might result from “a reductionist approach or cultural imperialism”, in Julie de Coninck’s words.²³ Those critics promote a focus on differences between legal systems that almost amounts, in turn, to a “*praesumptio dissimilitudinis*”, an assumption of the “singularity of legal systems”, as Julie de Coninck puts it. From difference theorists’ point of view, different cultural contexts produce different legal systems; each legal system is unique on its own.²⁴ As Pierre Legrand puts it, the discipline of comparative law is in itself a pursuit of difference.^{25,26}

¹⁸ KONRAD ZWIEGERT & HEIN KÖTZ, AN INTRODUCTION TO COMPARATIVE LAW 34 (Tony Weir trans., Oxford University Press, 2nd edn, 1992) (1987).

¹⁹ *Id.*

²⁰ De Coninck, *supra* note 17, at 330.

²¹ RALF MICHAELS, OXFORD HANDBOOK OF COMPARATIVE LAW, 369, chapter 10, (eds. Mathias Reimann and Reinhard Zimmerman, 1st edn. 2006) (2006).

²² *Id.*

²³ *Id.* at 370 (According to Michaels, this theory has been accused of being ‘reductionist’, as similarities are believed to appear when a researcher take the subjects of comparison out of their national contexts).

²⁴ De Coninck, *supra* note 17, at 332.

²⁵ PIERRE LEGRAND, LE DROIT COMPARS 37 (Presses Universitaires de France, 1999) (1991).

²⁶ Geoffrey Samuel, *Taking Methods Seriously (Part Two)*, 2 J. COMP. L. 210, 229-230 (2007).

Another important feature of Zweigert and Kötz version of functionalism, is that they argued that comparatists must, in the process of their research, take legal rules out of their national contexts. In other words, to distill them from its cultural circumstances and to look at those rules as neutral functions.²⁷ The purpose of this exercise is for the researcher to avoid the constraints of looking at those rules from the perspective of his/her legal system.²⁸

According to some academic views, there might be a number of reasons why Zweigert and Kötz called for distilling the rules from their cultural contexts. First, most comparative law focused on private law issues that might be less “culturally-determined” compared to other branches of law. Secondly, the scope of comparative law was mainly that of European legal constructions that might have similar backgrounds. In the time being, comparative law studies include in its scope non-European legal systems. Thirdly, the 1970's Zweigert and Kötz version of functionalism developed in a time where there was a need to focus on similarities, as war over differences remained in the memory and conscious of European thinkers.²⁹³⁰

With regards on how to deal with cultural circumstances, there are two extreme stances among scholars, as Stephen A. Smith explains. The first is what some comparative scholars believe, is that it is almost useless to compare laws of two different legal regimes, such as the English and the French one, because of the cultural differences between both countries, for example the philosophical grounds upon which the laws were founded. The other position, which is adopted by traditional functionalists and inspired by Zweigert and Kötz earlier stance, supposes that those differences are “largely irrelevant”. In a middle place between those two views, most comparative scholars place themselves. They give attention to cultural differences, but not to an extent that they would regard a comparative study between different legal regimes as pointless or futile.³¹

That middle stance, being a moderate and a widely-agreed-upon position among comparatists, will be my approach to this comparative study. I will compare Egypt's system to systems in other countries of the global south that might have different cultural and societal foundations. However, I will take those differences into consideration while comparing those regimes to one another and while drawing my recommendations. As

²⁷ ZWEIGERT & KÖTZ, *supra* note 18.

²⁸ For further explanation of this feature of Zweigert and Kötz functionalism, see BART WERNAART, THE ENFORCEABILITY OF THE HUMAN RIGHT TO ADEQUATE FOOD. A COMPARATIVE STUDY 31-32 (Dec. 2013), <https://library.wur.nl/WebQuery/wurpubs/fulltext/282480>.

²⁹ MICHAELS, *supra* note 21, at 370.

³⁰ WERNAART, *supra* note 28 at 39.

³¹ Smith, *supra* note 16, at 347.

will be explained in subsequent paragraphs, the functionalist scholar Ralf Michaels' version of functionalism, namely equivalence functionalism, entails that the comparative researcher must take into account the cultural and societal background of a legal solution in study.³²

In Ralf Michaels' book *the Functional Method of Comparative Law*, the author first introduced a number of features of functionalism that all functionalist scholars agree upon (regardless of their chosen 'version' of functionalism).³³ I will list these agreed-upon features and will explain how I apply them to this study.

First, there is a focus on the effects of the law, rather than its wording. All functionalists are concerned with the practice of the law.³⁴ I follow the same approach in this study. For example, Egypt is a party to several bilateral agreements that might be of significance for the rights refugees of certain nationalities. However, I am interested to explore whether these agreements are being applied. Also, I will check for laws that fulfill certain functions even if they had different phrasing. For example, a country might not grant refugees citizenship, but give them permanent residency and citizen rights.

Another common feature in all versions of functionalism is the fact that a function is the point of comparison that inspired the author to make the comparison in the first place. As a consequence, different legal systems can be compared to one another if they serve the same function. Even non-legal systems can be compared to legal ones in that sense (that is, if they serve the same function).³⁵ In my research, it has been common to find that a function (relating to refugees' matters) that is carried out by a legal institution in one country is carried out by a non-legal one in another (or even by a non-governmental entity).

Lastly, function serves as an evaluative criterion in several versions of functionalism. The better law fulfills further its function.³⁶ In this research, the function/evaluative criterion is whether the concerned states abide by their international obligations towards refugees. The better law, in that sense is the law that serves further this function.

Ralf Michaels then introduced the version of functionalism he believes is the most suitable for comparative law: equivalence functionalism. He argues that it is the most robust version of functionalism and that it is the core of the concept of functionalism

³² MICHAELS, *supra* note 21 at 358-359.

³³ *Id.* at 342.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

promoted by Konrad Zweigert and Hein Kötz.³⁷ Nevertheless, he argues that the way they formulated the concept of similarity is misleading. In his explanation of this concept, there is not a “similarity” of legal solutions, but rather “functional equivalence” of them.³⁸

Solutions are neither identical nor necessary, but rather multiple and possible. Equivalence functionalism recognizes the uniqueness of every society embodied in its choice of one solution out of all its other multiple alternatives (i.e. among all other “functionally equivalent” solutions). Consequently, the comparatist must consider the cultural, national background behind the chosen solutions in comparison. As explained earlier in this chapter, I will use this approach of considering national backgrounds while comparing legal solutions that are proposed or in application in the three countries of this study.^{39,40}

I chose for this study two countries in the global south, Jordan and Uganda, because a fair assessment of Egypt’s practice would, in my opinion, require a comparative study with countries of challenging economic situations. There is much criticism of Egypt laws and practice with regards to refugees. Yet, there might be a possibility that this criticism is in fact inspired by authors’ comparing Egypt’s laws to those in much wealthier countries, which is unrealistic in my point of view.

My aim from this study is to 1. assess which countries have a refugee administration model that meets its respective countries’ international obligations; and, 2. to spot the useful approaches and patterns of governance in those countries. Spotting these practices would allow me further to structure my recommendations on how to deal with issues faced by refugees in Egypt.

Lastly, I would like to explain the reasons why I chose Uganda and Jordan in particular for the comparative part.

As for Jordan, it is comparable to Egypt in several aspects. On one hand, it has been deeply affected by the Syrian crisis. Just like Egypt, the largest refugee population there constitutes of Syrians. Meanwhile, the domestic law governs the matters of refugees in the same manner like Egypt’s law does: mainly through several renewable decrees, rather than a single legislation on the matter. In addition, there appears to be similarities on how Jordan and Egypt formulated their refugee policies; for example, the influence of

³⁷ *Id.* at 363.

³⁸ *Id.* at 371-372.

³⁹ *Id.* at 358-259.

⁴⁰ See also WERNAART, *supra* note 28 at 40. He provides a thorough explanation of Ralf Michael’s concept of equivalence functionalism.

political events on these policies. Lastly, several academics criticize both countries' policies for treating refugees differently according to their nationalities. I think that these similarities will be of value to the comparative study, especially in terms of spotting the patterns that led to the formulation of those policies.

On the other hand, comparing Egypt's laws to those of Uganda will be beneficial for a number of reasons. First, the fact that both countries are signatories to a large number of treaties of relevance to refugees makes a starting common ground in order to assess which country has a legal framework that further abides by its international convention. It will also be useful to explore the discourse on whether the seemingly-progressive laws in Uganda generate any challenges that are similar to those taking place in Egypt.

Lastly, an important reason for my choice is my own eagerness to check-facts with regards to the widely praised refugee system in Uganda, as well as the recent policy reforms in Jordan (known as "the Jordan Compact"). While Morocco is seemingly a more comparable country to Egypt for this study (being a transit country with a coastline that has been used to cross to Europe), my curiosity as a researcher has driven me to choose Uganda and Jordan. For Uganda, my aim is to assess the famously-progressive system. On the other hand, I choose Jordan with an aim to explore the recent Compact and whether it was a "game changer".

E. Scope

The research will mainly focus on three essential legal rights: right to work, right to education, access to healthcare. It will address the challenges faced by refugees with a focus on those produced by the law (e.g. reservations to international conventions, law provisions, regulations, etc.). While there are other serious challenges that are not law-related (such as lack of hospitality and resentment against refugees by some people in the society), I will mostly focus on the law-related ones for the purpose of the comparative study.

II. Egypt's Refugee Administration Model

A. The Legal Framework Governing the Matters of Refugees in Egypt

Egypt is a party to a number of global and regional refugee conventions. It acceded in 1981 to the 1951 UN Convention Relating to the Status of Refugees and its 1967 Protocol, with reservations to five provisions relating to public status, rationing, education, relief, and labor terms.⁴¹

In addition, Egypt is a party to the Organization of African Unity's Convention Governing Specific Aspects of Refugee Problems in Africa (OAU Convention) that adopts a broader definition of a refugee. It is also a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Although the latter does not concern itself with refugees⁴², it has provisions against forced deportation.⁴³

Furthermore, Egypt is a signatory to the Convention on the Rights of the Child of 1989 (CRC). As per the convention, the rights present in this convention apply to refugee children as well. It is also a State Party to the International Covenant on Economic, Social, and Cultural Rights (ICESCR). The rights enshrined in the latter extends to refugees as will be explained in subsequent sections.

In addition to all the above, Egypt had signed in 1954 a Memorandum of Understanding (MoU) with UNHCR Cairo office (even before it signed the 1951 Refugee Convention). According to the MoU, UNHCR shall conduct Refugee Status Determination (RSD) on behalf of the Egyptian State, where Egypt commits itself to issuing residency permits to these populations given the fulfillment of due requirements.⁴⁴

Lastly, Article 91 of the Egyptian constitution provides the right to seek political asylum 'for every foreigner persecuted for defending the peoples' interest, human rights, peace or justice'. It also prohibits extradition of political refugees.⁴⁵

Some academics root the general absence of rights of refugees in Egypt to its reservations to the 1951 Convention and the 1967 Protocol. Katarzyna Grabska, for

⁴¹ George Sadek, *Refugee Law and Policy: Egypt*, available at: <https://www.loc.gov/law/help/refugee-law/egypt.php>.

⁴² UNTC, *Signatories to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&clang=_en.

⁴³ Article 3(1).

⁴⁴ BADAWEY, *supra* note 1 at 4.

⁴⁵ El Guindy, *supra* note 13.

example, argues that these reservations are one of the reasons for limited protection of refugees in Egypt.⁴⁶ Below I will explore in subsequent sections some of the challenges refugees face in Egypt with regards to obtaining their rights.

B. Right to Work

First, it is important to establish that refugees are theoretically allowed to work in Egypt. Yet, they face practical difficulties in the highly-regulated process of obtaining permission to exercise this right.

Although there is a common misconception that Egypt has made a reservation to the 1951 Convention Article providing the right to work, both Gabriel Koehler-Derrick and Tarek Badawy explain that this is not the case. In fact, Egypt has made no reservation to Article 17 on Wage-earning Employment. According to this article, refugees shall be given the most favorable treatment given to foreigners with regards to employment, which means that they must fulfill the requirements that need to be met by the most favored foreigners in order for them to work in the host state. However, Article 17 encourages states to have a sympathetic consideration with regards to refugees who cannot meet the aforementioned requirements due to their situation as refugees.⁴⁷

In addition, Article 17 further provides that refugees who meet one of certain conditions shall be exempted from any measures that are imposed by the government on the employment of aliens to protect national labor. These conditions are either to: reside in the country for three years, marry a citizen, or become a parent of a citizen child.⁴⁸

The only reservations Egypt has made with regards to work are related to Articles on labor legislation and workplace protection, but not to the actual right to work.

In addition, the right to work is provided to refugees under ICESCR, where Article 6 states that State Parties recognize and safeguard the right to work, “which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts”. Furthermore, the Committee on Economic, Social, and Cultural Rights

⁴⁶ Katarzyna Grabska, *Living on the margins: The analysis of the livelihood strategies of Sudanese refugees with closed files in Egypt* (Forced Migration and Refugee Studies Working Paper Series, Working Paper No. 6, 2005).

⁴⁷ *CMRS Report*, *supra* note 8, at 94.

⁴⁸ MICHAEL KAGAN, SHARED RESPONSIBILITY IN A NEW EGYPT: A STRATEGY FOR REFUGEE PROTECTION 15-16 (Sep. 2011), <http://schools.aucegypt.edu/GAPP/cmrs/reports/Documents/KaganRefugeePolicyEgypt1109.pdf>.

(CESCR) stated in General Comment 20 that the Covenant rights apply to everyone including refugees.⁴⁹

In recent report on Refugee Entitlements in Egypt by the Center for Migration and Refugee Studies (CMRS) at the American University in Cairo, Amira Hetaba *et al.* make several arguments that will be elaborated in the next paragraphs. They conclude that refugees are entitled to favorable treatment with regards to work as per Egypt's regional and bilateral agreements as well as domestic laws and decrees applying to specific nationalities. The favorable treatment provided in those instruments shall be extended to refugees as per Article 17 of the Refugee Convention stating that refugees shall be accorded the most favorable treatment provided to foreigners with regards to wage-earning employment.

1. Favorable Treatment Accorded to Some Nationalities in Regional Accords and Bilateral Agreements

First, the Protocol for the Treatment of Palestinians in Arab States ratified by Egypt in 1965 provides that Palestinians have the right to work in Egypt with the same conditions as nationals. Subsequently, Palestinian and non-Palestinian refugees can claim their right to work on a par with nationals. However, there are views that suggest that the Protocol is not implemented in Egypt as explained by the CMRS report.

Secondly, according to the 2004 Four Freedoms Agreement between Egypt and Sudan, Sudanese are allowed to work "in any profession, crafts, and other works". This favorable access to the labor market is subsequently entitled to all refugees. As will be explained in the section *Politics Influencing the Rights of Refugees in Egypt*, it has been reported that the agreement is not fully implemented in reality.

Thirdly, another bilateral agreement that grants foreigners favorable treatment is the Agreement between Egypt and Greece for the Promotion of Bilateral Cooperation Concerning Labor Matters. By means of the agreement, Greek workers shall receive the same treatment as nationals. Subsequently, refugees can claim their right to work up to the same standard.

Last but not least, Article 5 of the Agreement between Egypt and Jordan concerning the Cooperation in Work Force Matters provides Jordanians working in Egypt, once they

⁴⁹ Text of General Comment 20 can be found at: <https://www.refworld.org/docid/4a60961f2.html>.

obtain a work permit, the right to be treated like the local workforce. In the same manner as in previous paragraphs, refugees can claim their right to the treatment provided by this agreement.

2. Favorable Treatment Accorded to Some Nationalities in Domestic Law

There are certain nationalities that enjoy a range of exemptions with regards to the requirements of obtaining a work permit. These nationalities are: the Sudanese, Lebanese, Palestinians, Greeks, and Italians. Next is the list of exemptions provided by a number of Ministerial Decrees to these nationalities.

As will be explained in the next section, a condition for a foreigner obtaining a work permit is to not compete with Egyptians applying to the same job. However, certain categories of foreigners are exempted from this condition, including: foreigners whose spouses are Egyptians, political refugees whose refugee status has been determined by the Presidency (not to be confused with regular refugees whose status has been determined by UNHCR), Palestinians with duly-issued passports, persons without specified nationality who have been residing continuously and permanently in Egypt, individuals with an ordinary residence permit for five years or a special residence permit for ten years, and those who have been born in Egypt and lived in it for fifteen years without leaving it for more than three months per year. Similarly, refugees should benefit from this exemption.

Other exemptions provided by the law to certain categories of foreigners are:

- The exemption provided by the Ministry of Manpower and Migration Decree No. 305 of 2015 to Sudanese, Lebanese, Palestinians, Italians, and Greeks who are staying no longer than five years in Egypt from paying work permit fees.
- The exemption provided by the Ministry of Manpower and Migration Decree No. 485 of 2010 Decree to Palestinians from the prohibition of foreigners to work in customs clearance.
- The exemption provided by the Ministry of Manpower and Migration Decree No. 485 of 2010 Decree to employers hiring Sudanese or Palestinians from submitting certain paperwork to the Ministry of Manpower and Migration.

As per Article 17 of the Refugee Convention, refugees should be able to claim their right to work under these privileged conditions.⁵⁰ However, this is not the practice as will be explained in subsequent sections.

3. Obtaining Work Permits: a Highly-Regulated Process

Legally speaking (given the above), refugees are allowed to apply and obtain work permits under the most favorable conditions accorded to foreigners. However, refugees experience the full, lengthy, process of attempting to obtain a work permit without enjoying any exemptions (except for the non-competition with nationals exemption; only for some refugees who are married to Egyptians).⁵¹

Before exploring the actual implementation of the law, I will list the steps required to obtain a work permit for the purpose of explaining the length and complexity of this highly-regulated process.

As explained thoroughly by the CMRS report⁵², a foreigner who has an authorization of entry and residency for work purposes could apply to obtain a visa, given that the workplace he/she will be employed at has no more than 10% of foreign workers. As per Article 5 the Ministry of Manpower and Migration Decree No. 305 of 2015, the requirements for a foreigner to apply to the visa are as follows:

- His/her qualifications should meet those required for the job;
- His/her years of professional experience should be at least three years;
- If the law in Egypt requires having a license to work in a specific profession, he/she has to have this license;
- There has to be an economic benefit of hiring a foreigner at this position;
- There should be no competition by Egyptians applying to this job;
- Upon his/her employment, two Egyptian assistants should be hired and trained by this foreigner;
- Priority should be given to foreigners who have been born in Egypt and permanently reside in it.

⁵⁰ *CMRS Report, supra* note 8, at 105-106.

⁵¹ *Id.* at 109.

⁵² *Id.* at 107-108.

In addition to those rigorous conditions they must meet in order to obtain work permits, some researchers report that foreigners, including refugees, must have a 'powerful' employer to sponsor them.⁵³ Most refugees do not meet those conditions except for a very limited, educated elite.

4. Regulations of Self-Employment: Obtaining a Business License

In order for refugees to start a licensed business, they must go through the same process as foreigners do. First, they must submit certain documentations to the Ministry of Investment and await its approval. Next, a security check is conducted where the applicants must pass a security clearance successfully. Finally, a renewable one-year business license and a residence permit are issued. Furthermore, Ministry of Investment information centers are accessible to both citizens and non-citizens to provide guidance and assistance with business-related matters.⁵⁴

5. Practice of the Law: What Takes Place on the Ground

The first problem is that there is no codification in the Egyptian law for the exemption from restrictions imposed on foreigners' work provided by the Refugee Convention to refugees whose spouses or children hold the nationality of the host state, or those who have completed three years of residence in the host state. Therefore, refugees in Egypt do not benefit from this exemption, although Egypt has made no reservation to this end.

Furthermore, the process of obtaining a work permit is reported to be difficult for some refugees and almost impossible for others.⁵⁵ As a consequence, Koehler-Derrick explains, refugees resort to non-contractual forms of labor. This has several implications on refugees working conditions, among which is the fact that refugees cannot avail themselves of the rights and benefits secured by Egypt's Labor Law such as: maternity and sickness leaves, pensions, etc.⁵⁶ Another implication is the fact that a large number of female African refugees, namely the Somali, Sudanese, Eritreans and Ethiopians, resort to domestic work in Egyptian households in affluent neighborhoods as a means to

⁵³ KAGAN, *supra* note 48, at 17-18.

⁵⁴ CMRS Report, *supra* note 8, at 113.

⁵⁵ *Id.* at 116.

⁵⁶ Gabriel Koehler-Derrick, *Egypt: Towards a culture of Legal Integration? Cairo's Urban refugees and Egypt's reservations to the 1951 Convention* (2004), available at: <http://www.altrodiritto.unifi.it/frontier/koehler.htm>.

make an income. Domestic work is described by Amira Hetaba *et al.* as the least protected area of work as it is explicitly excluded from government's sight and regulations, which exposes those workers to multiple risks, including abuse and sexual violence. Nevertheless, they tend to become the principal breadwinners in their families as the income they make is usually higher than the income males could bring in by working typical informal jobs such as daily laborers.⁵⁷⁵⁸ Others resort to jobs that are typically of low pay such as drivers and street vendors. In addition, the CMRS report provides accounts of refugees who report the long hours of these jobs, and the insufficiency of income to cover daily expenses.⁵⁹

Ironically enough, Tarek Badawy reports that, despite the fact that refugees have almost no actual access to formal work market as elaborated above, there is a general unwelcoming sentiment against refugees as there is a misconception among some Egyptians that they are competing with the public over the already-limited work opportunities.⁶⁰

With regards to the privileged status provided to Palestinians and Sudanese nationals as per the Casablanca Protocol and the Four Freedoms Agreement, practice does not seem to reflect the promised on-a-par-with-nationals status.⁶¹

As for Sudanese refugees, focus groups conducted by CMRS revealed that the Sudanese still find great difficulties landing a job for a range of reasons, including the fact that many employers do not accept UNHCR cards as IDs. However, Hetaba *et al.* conclude that it is unclear whether or not the agreement is being fully implemented in the sense that Sudanese workers would not need to obtain a work permit.⁶² As for Palestinian nationals, it has been reported that the relaxed regulations provided by the Casablanca Protocol stopped being implemented since 1978 for political reasons.⁶³ (Further reflection on the matter will be provided in a subsequent section on the influence of politics on refugees' rights).

Turning to self-employment, CMRS researchers report that refugees voiced in focus groups a reality that is different from the procedure explained earlier for obtaining a business license. For many refugees, receiving a business license is almost an

⁵⁷ *Id.*

⁵⁸ El Guindy, *supra* note 13.

⁵⁹ CMRS Report, *supra* note 8, at 116.

⁶⁰ BADAWY, *supra* note 1.

⁶¹ CMRS Report, *supra* note 8, at 116.

⁶² *Id.* at 116-118.

⁶³ *Id.*

impossible task.⁶⁴ The most challenging aspects are passing the security clearance and proving to have financial resources that are sufficient from the perspective of the decision-makers at the Ministry.⁶⁵

According to the CMRS report, some refugees resort to bringing in an Egyptian partner in order to facilitate the issuance of the license, as Egyptians are thought to more likely pass the security clearance than foreigners. However, some refugees complain that their Egyptian partners do not contribute much to the day-to-day work at their shared businesses but still demand most of the profit. As a result of these difficulties, some refugees avoid applying for a license for their small businesses.⁶⁶

C. Right to Education

1. Right to Education in International and Bilateral Instruments to which Egypt is a Party

While Egypt has made a reservation on the article pertaining to education in the Refugee Convention, it has related commitments as per other legal instruments.

As a signatory to ICESCR, Egypt is obliged as per Articles 13 and 14 to provide compulsory primary education that is free to all. While ICESCR allows its developing State Parties the gradual realization of some of its provisions, the CESCR explains in its general comments that there is a 'minimum core' that has to be immediately provided by State Parties regardless of their level of development.⁶⁷ Paragraph 10 of *General Comment No. 3: the Nature of States Parties Obligations (Art. 2, Para. 1, of the Covenant)* explains that the provision of primary education is included in this 'minimum core', unlike secondary and higher education that could be realized by States in a gradual manner.⁶⁸

ICESCR further provides in Article 13 that secondary education must be made 'generally available' and 'accessible' to all, while higher education shall be made 'generally accessible' on the basis of capacity. CESCR explained in paragraphs 6 and 13 of General Comment No. 13 the meaning of availability and accessibility to that end.

⁶⁴ *Id.* at 116-117.

⁶⁵ *Id.* at 113.

⁶⁶ *Id.* At 116-117.

⁶⁷ *CMRS Report, supra* note 8, at 126.

⁶⁸ *Id.*

Availability means that students are to be allowed in secondary education regardless of their apparent capacity, and that schools are geographically distributed in a manner that ensures their access by all. Accessibility, on the other hand, means: (1) that there shall be no discrimination in law or in fact regarding access of education; (2) education shall be physically accessible, i.e. access is within safe physical reach; and, (3) economically accessible. This means that secondary schools, even though it needs not to be free-of-charge, shall not require a prohibitive fee that would limit its access to vulnerable children. In addition, States Parties are obliged by Article 13 to move progressively towards making secondary and higher education free to all.

On the other hand, CRC, to which Egypt is a signatory, states that primary education shall be made available and free to all children in Article 28(1)(a). With regards to secondary education, Article 28(1)(b) encourages states to make secondary education available and accessible to all children and move towards free education or a subsidized one (in the sense of providing financial assistance). Furthermore, Article 22(1) states that all rights present in the Convention apply to refugee children. UNESCO stated that the core obligation of providing free primary education must be immediately realized by all states.

Furthermore, Egypt is committed to its obligations as per the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Article 5 of ICERD provides that State parties are obliged to prohibit any discrimination and ensure equality before the law in the enjoyment of several rights, including the right to education. In addition, the Committee on the Elimination of Racial Discrimination (CERD) provides in its *Recommendation XXX on Discrimination Against Non-Citizens*, paragraph 30, that educational institutions must be open for everyone including the children on non-documented immigrants.⁶⁹

In addition, the UNESCO Convention against Discrimination in Education, which Egypt ratified in 1962, provides in Article 3 that states must provide access to education to foreign nationals who are residents in its territory equally as nationals. In addition, Article 4 provides that states must formulate and develop national policies towards making primary education compulsory and free to all, while secondary education shall be available and accessible to all, and tertiary education shall be equally accessible to all on the basis of individual capacity.

⁶⁹ *Id.* at 128.

As for bilateral instruments pertaining to Education, there is an agreement between Egypt and Palestine. The Agreement on Cooperation in the Field of Education between the Government of the Arab Republic of Egypt and the Palestinian Liberation Organization representing the Palestinian National Authority was adopted in 1999. According to the agreement, Palestinian students do not need to sit for additional exams by the Ministry of Education, as the certificates they obtained in Palestine will count as equivalent to certificates obtained in Egypt.

However, the cooperation agreement has a serious drawback, as it covers Palestinians who obtained their previous certificates in Palestine, and not Palestinians who were educated in Syria, for instance, or elsewhere. Furthermore, it is unclear whether or not it is implemented.⁷⁰

2. Right to Education in Domestic Law

Despite the rights enshrined in the international and bilateral instruments listed above, domestic law in Egypt does not entirely reflect Egypt's international obligations. On the domestic level, there is a confusion among academics on the current implementation of education rights of refugee children. This is due to the fact that there is a large number of decrees and legal provisions governing the subject matter.⁷¹ On one hand, Article 52 of Egypt's Child Law states that education is an entitlement for every child regardless of nationality. This is contradicted by a number of decrees that only allows children of specific nationalities to access public schools.

Article 6 of the Ministerial decree no. 284/2014 (and before which: Ministerial decree no. 24/1992) states that non-Egyptian students are not allowed access to public schools, except for a few categories. These categories include: Libyan and Sudanese children (and a couple of other nationalities which are not in the scope of this research) and children who have received a scholarship from UNHCR. They also include Palestinian children whose parents work at the public sector or military, and the children of political refugees who were granted the refugee status by the President Office under Article 53 of

⁷⁰ *Id.* at 143.

⁷¹ TAREK BADAWY, REPORT ON HIGHLY SKILLED MIGRATION IN EGYPT, 4 (CARIM. Vol. Legal Module. Prod. Robert Schuman Centre for Advanced Studies. San Domenico di Fiesole: European University Institute, 2010).

the former constitution.^{72 73 74} However, Article 11 of the Decree stipulates that those categories are required to pay school additional fees.

In addition to those categories, Yemeni and Syrian children are allowed access to public schools as per an administrative order of 2018⁷⁵ (and before which: a Presidential Decree in 2012⁷⁶). This order is being renewed every year and it allows aforementioned access without imposing additional fees on Yemenis and Syrians (unlike the decree no. 284/2014).

Other than the aforementioned nationalities, refugees are not allowed to enroll their children to public schools. The alternatives are limited to homeschooling, private schools that often require prohibitive admission fees⁷⁷, and community schools that are not accredited by the Ministry of Education. Article 58 of Law 39/1981⁷⁸ states that owners of private schools must be Egyptian nationals. For this reason, many schools who are owned by persons from the same nationalities as the refugee communities are not accredited in Egypt. Consequently, children who graduate from these schools are not allowed to pursue higher education in Egypt.⁷⁹

While UNHCR exerts advocacy efforts with the government to allow refugee children of all nationalities access public schools, other organizations focus on improving the education provided to certain nationalities. Plan International works on enhancing Syrian learning centers that most refugee students attend (in parallel to public schools).⁸⁰

The concept behind these learning centers is to help Syrians avoid the hardships they face in public schools (explained in subsequent sections). As an alternative, Syrian students attend four times a week in these centers, and once a week in public schools (the minimum number of days they need to attend in order to be allowed to sit for final exams).⁸¹

⁷² Ministry of Education Decree No. 284 of 2014 (concerning the Rules of Incoming Students to Egyptian Universities, Scholarships for Incoming Students, and Egyptian Students Studying in Egyptian Schools Abroad), The Official Gazette, 7 July 2014 (Egypt) [hereinafter Decree No. 284/2014].

⁷³ WESAL AFIFI, FIELD REPORT PRELIMINARY INVESTIGATION OF EDUCATIONAL OPPORTUNITIES FOR REFUGEE CHILDREN IN EGYPT 10 (2003), <http://schools.aucegypt.edu/GAPP/cmrs/reports/Documents/wesal.pdf>.

⁷⁴ *CMRS Report*, *supra* note 8, at 144.

⁷⁵ Signed Administrative Order on Treating Syrian and Yemini Students as Egyptian for the Year 2018/2019.

⁷⁶ UNHCR EGYPT 3RP REGIONAL REFUGEE AND RESILIENCE PLAN 2017-2018 4, https://www.unhcr.org/eg/wp-content/uploads/sites/36/2019/05/3RP_2017_2018_EN.pdf.

⁷⁷ *CMRS Report*, *supra* note 8, at 147.

⁷⁸ Law No. 139 of 1981 (Promulgating Education Law), The Official Gazette, 20 August 1981 (Egypt) [hereinafter Law No. 139/1981].

⁷⁹ *CMRS Report*, *supra* note 8, at 147.

⁸⁰ *Id.* at 150.

⁸¹ *Id.* at 151.

Academics such as Katarzyna Grabska and Tarek Badawy argue that Egypt is breaching an international obligation, its obligation as per Article 28(1)(a) of the CRC, by not allowing refugee children of all nationalities to primary public schools.⁸²⁸³⁸⁴ Amira Hetaba *et al.* agree with the aforementioned view, and adds that Egypt is also breaching its obligation as per Article 13 of ICESCR.⁸⁵

D. Access to Healthcare

As for Egypt's international obligations to allow access to healthcare to refugees, Article 12(1) of ICESCR provides "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health." Moreover, ILO Convention of 1962 No. 118 on Equality of Treatment (Social Security) to which Egypt is a party provides as per Article 2(1)(a) non-nationals the right to medical care on a par with nationals. There is a general requirement of reciprocity provided by the Convention, but refugees are exempted from it as per Article 10(1).

There exist bilateral agreements as well, such as the Protocol in the Area of Health and Drugs between the Government of the Arab Republic of Egypt and the State of Palestine of 1996. According to the Protocol, Egypt is committed to treat difficult cases from Palestine in Egyptian hospitals. However, the status of its implementation of the Protocol is unclear. The mechanism is also unknown, that is, whether Palestinian patients should approach hospitals directly or whether the two governments have to agree on those cases before.⁸⁶

Domestically, a glimpse of hope exists in the fact that Egypt's policy regarding healthcare facilities is to allow all refugees access. They are entitled to primary, secondary, and

⁸² Tarek Badawy, *Comments on Egypt's Report to the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families* (April 2007), available at: https://www2.ohchr.org/english/bodies/cmw/docs/tarek_badawy.doc.

⁸³ KATARZYNA GRABSKA, WHO ASKED THEM ANYWAY?: RIGHTS, POLICIES AND WELLBEING OF REFUGEES IN EGYPT (2006), http://aucegypt.summon.serialssolutions.com/2.0.0/link/0/eLvHCXMwY2AwNtlz0EUrE8yS05KNk1IskwyNk02TDA3N0oxSDZltjVJTgNVTinka_FIF0DmfiDOTMG_kgo1cGAPbHcbAopfZxAjU5TJ3DQcdsQxVilRDuAkyslB2DQgxMKXmiTCIhWfkKyQWZ6emKIAORVUAZrjyxEp7UQZFN9cQZw9dmAnx0MGTeJhNikZiDCzADnmqBIOCSYqBZWKauVFalrC9Y2iRmJRqmGYCbJcDVVlamCWaSTJI4TZHCp-kNAMXoosvw8CaBkyCqbIlij8mBfQoAF-xf9A.

⁸⁴ El Guindy, *supra* note 13.

⁸⁵ *CMRS Report*, *supra* note 8, at 145.

⁸⁶ *Id.* at 170.

emergency healthcare on an equal level to Egyptian nationals; a policy which has always been praised by UNHCR.⁸⁷

However, there exists a number of practical problems on the ground. First, refugees face the same issues as Egyptians with regards to the crowdedness and the poor quality of medical services at public health facilities.⁸⁸ Refugees have reported in focus groups conducted by CMRS that they have approached public healthcare facilities seeking urgent medical services, but there were no beds available at the time.⁸⁹

A research conducted by CMRS indicated that many refugees who were interviewed for the purposes of the research did not know that they are allowed access to public healthcare.⁹⁰ This could be due to what the authors of the report describe as the fragmentation of the provision of healthcare services. These services are provided by public health facilities (including certain hospitals with low cost for refugees such as *Mustafa Mahmoud*) and different NGO and INGO service providers.⁹¹ Refugees interviewed demonstrated a lack of knowledge on the process they need to go through in order to obtain free or subsidized healthcare services, therefore, they resort to private and expensive alternatives. The report reveals that Syrian households included in the study spend an average of 735 EGP a month on healthcare.⁹²

Moreover, Hetaba *et al.* point out another issue faced by refugees, which is the lack of healthcare providers' awareness of refugees' right to access public health facilities on an equal level as nationals. As a result, some refugees may face discrimination to that end.⁹³ However, the CMRS report does praise Egypt for its successful efforts with regards to medical treatment of the newborn. Each newborn in Egypt receives a health card by which he or she can have free vaccinations and medical care regardless of his or her nationality.⁹⁴

And in the same exemplary manner, Egypt provides medical services to refugee newborn children. Hetaba *et al.* call to extend the scope of public health campaigns in Egypt, such as the recent screening campaign for Hepatitis C, to include refugees. They argue that the latter campaign has been focused on nationals, although there are no

⁸⁷ UNHCR, *supra* note 4, at 3.

⁸⁸ CMRS Report, *supra* note 8, at 183 and 185.

⁸⁹ *Id.* at 185.

⁹⁰ *Id.* at 183.

⁹¹ *Id.* at 188.

⁹² *Id.* at 183.

⁹³ *Id.* at 183.

⁹⁴ *Id.* at 187.

provisions explicitly restricting foreigners from taking benefit of it.⁹⁵ They also recommend that healthcare services are to be provided to refugees through clearly identified institutions in order to address the issue of fragmentation. Furthermore, awareness should be raised among refugees of the steps needed to seek medical care.⁹⁶

Lastly, it is important to mention that UNHCR is trying to compensate for the gaps in the healthcare system by conducting capacity building activities at public health facilities. It also provides through partners psychosocial and mental health support to refugees, as well as follow-up on the ones with chronic diseases and referral care for some cases.⁹⁷

E. Bureaucratic Challenges

There exist bureaucratic obstacles; most of which are not addressed by academic papers, but rather by UNHCR reports and news sites. An example of these challenges is the process by which refugees obtain residency permits. According to UNHCR, the process is lengthy, and the permit is only valid for six months (a relatively short period in light of the difficulties of its issuance process).^{98 99}

It even has become more complicated, as a residency permit digital card has been introduced in October 2019 to replace the residency stickers fixed on UNHCR cards. Yet, the 100 EGP renewal fees of the card remain above 100% more expensive than the old sticker renewal fees. According to the government, the new digital cards may allow refugees to access some social services. There has been no clarification so far of the nature of those anticipated services.¹⁰⁰

On a related note, a residency is essential for admission in public schools (for refugee children of so -called “privileged” nationalities). It has been reported that there are cases where some schools require the residency to be issued on a passport which complicates the process even further.

⁹⁵ *Id.*

⁹⁶ *Id.* at 188.

⁹⁷ UNHCR, *supra* note 4, at 4.

⁹⁸ El Guindy, *supra* note 6.

⁹⁹ UNHCR, *supra* note 4, at 2.

¹⁰⁰ Sama Osama, *Egypt issues new permit residence cards for refugees and asylum-seekers*, AHRAM ONLINE (October 28, 2019), available at: <http://english.ahram.org.eg/NewsContent/1/64/354842/Egypt/Politics-/Egypt-issues-new-permit-residence-cards-for-refuge.aspx>.

One more bureaucratic challenge that faces parents of refugee children during the admission process is the requirement to provide the last school certificate that is less than two years old. If the certificate is not available/is more than two years old, students are required to sit an exam at the Ministry of Education.^{101 102}

F. Discourse on Egypt's Policies

In this section, I will put forward the views of several academics and publicists on Egypt's policies. I will focus on the following subjects: the unequal treatment of refugees according to their nationalities, the impact of politics on refugees' rights in Egypt, and the criticism of the MoU between UNHCR and the government of Egypt and the RSD system.

1. Unequal Treatment of Refugees According to Their Nationalities in Egypt

In addition to the fact that only certain nationalities are allowed access to public schools as per the law (leaving children from sub-Saharan African countries with no access to formal education), several scholars have tackled the issue of the unequal treatment from different angles.

Rochelle Davis points out that Somalis, Eritreans, and Ethiopians generally do not enjoy any privileged status by the Egyptian government and that they completely rely on services that are provided by UNHCR and other NGOs. She also brings the example of Iraqis not being allowed to create community organizations like Syrians. This shuts the door for possible alternative services that could have helped destitute Iraqi refugee families.¹⁰³

However, it is important to note that even a "privileged" status that is given to a few nationalities of refugees could be tricky. For example, refugee children who have access to public schools, such as Syrians, report serious problems that are not properly addressed. The problems include bullying that they face in public schools on the basis of

¹⁰¹ AFIFI, *supra* note 73, at 12.

¹⁰² El Guindy, *supra* note 13.

¹⁰³ Davis *et al.*, *supra* note 12, at 30.

their nationality, in addition to common problems that even citizen children suffer from, like overcrowded classrooms and the lack of transportation to schools.¹⁰⁴

2. Politics Influencing the Rights of Refugees in Egypt

On another note, Rochelle Davis argues that politics affect the manner the Egyptian government treats different categories of refugees. Requirements are increasingly being made for entry of asylum-seeking persons to Egypt. For example, Syrians could enter the country before with no need for a visa. After the political changes that ensued Morsi's removal from Office in summer 2013, restrictions have been made requiring Syrians to have a visa and to finish a security clearance procedure. Aside from the fact that this process is time-consuming, it is also an expensive one, costing thousands of dollars per person for it to be duly finished.¹⁰⁵

According to Davis, different political events repeatedly affected how refugees were treated by the state over the past decades. To name an example, Egypt's deteriorating relations with the Palestine Liberation Organization (PLO) have scaled down the rights Palestinians are provided in Egypt. It reportedly started with the assassination of Egypt's Minister of Culture in 1978 by a Palestinian splinter group. Then, it was further worsened by the coming into force of the Camp David Accords. A gradual restriction of rights of Palestinians has continued to take place. As a result, Palestinians today do not have free access to public education. Furthermore, they are no longer entitled to own property, and their right to work has been scaled down.¹⁰⁶

Another similar event that negatively affected refugees was the time where an attempt to assassinate Hosni Mubarak took place in Addis Ababa in 1995 by Islamic militants. Ethiopia accused Khartoum of being involved in this attack. As a result, Egypt revoked Wadi Al-Nil agreement with Sudan. Consequently, the living conditions of the Sudanese populations living in Egypt significantly deteriorated.¹⁰⁷

Later on, the 2004 Four Freedoms agreement mentioned in earlier sections of this research has supposedly increased the rights provided to Sudanese persons in Egypt. However, it was reported that, in practice, Sudanese refugees face random deportations

¹⁰⁴ Mohamed Abdelwahab, *Emergency and Resilience | UNICEF Egypt* (2013), available at: <https://www.unicef.org/egypt/emergency-and-resilience>.

¹⁰⁵ Davis *et al.*, *supra* note 12, at 30.

¹⁰⁶ *Id.* at 14.

¹⁰⁷ *Id.* at 19-20.

and difficulties in accessing employment. This is an example of how a so-called “exceptional status” could be tricky.¹⁰⁸

On a related note, Tarek Badawy partially blames UNHCR for the situation. He says that had UNHCR stopped assisting Sudanese refugees once the Four Freedoms agreement came into force, the Egyptian state would have found itself compelled to fulfill its commitments towards them. This type of over-mandatory practice by UNHCR is what Badawy calls “negative responsibility”, as it eventually works against the interests of UNHCR’s people of concern.¹⁰⁹¹¹⁰

3. Criticism of the MoU and the RSD System in Egypt

In addition to the aforementioned points, Badawy criticizes the MoU signed in 1954 for being outdated, vague-worded, and with negative implications in the present on UNHCR work. Although one could easily fall prey into believing that the reservations to the Refugee Convention constitute the most difficult challenge that comes in the way of integration of refugees in Egypt, it is not the case. By looking into the MoU that Egypt signed decades ago, we see that the absence of integration as a durable solution has been rooted in Egypt’s stance since 1954.

As pointed out by Badawy, local integration is not added to the durable solutions mentioned in Articles 2(b) and (c). The articles go as follows:

“b) Facilitate the voluntary repatriation of refugees;

c) Encourage, in cooperation with the Egyptian Government, and the international organizations competent in immigration matters, the initiative leading to resettle, in every possible measure, in the countries of immigration, the refugees residing in Egypt;”

Tarek Badawy argues that the fact that Egypt neglects the integration durable solution is itself a breach to its international commitments. Although Egypt has made reservations to some of the provisions of the 1951 Convention, it has accepted other provisions that implied that integration is one of the durable solutions for refugees. By assuming that

¹⁰⁸ *Id.* at 21.

¹⁰⁹ BADAWY, *supra* note 1.

¹¹⁰ El Guindy, *supra* note 6.

integration is not a valid option for refugees, Egypt would be breaching its obligation to abide by the Refugee Convention it has acceded to.¹¹¹¹¹²

To mention other aspects of Badawy's criticism of the MoU: he criticizes the fact that UNHCR is obliged, according to the MoU, to provide Egypt with information on refugees in Egypt, while it is Egypt that is supposed to provide UNHCR with such information according to the Refugee Convention. Other academics, such as Rochelle Davis, agree with Badawy that the MoU provisions are no longer relevant.¹¹³

On another note, Badawy criticizes the current asylum system in Egypt for the fact that UNHCR solely conducts the Refugee Status Determination (RSD) process by which asylum-seekers are given the refugee status under international law. According to UNHCR, RSD is primarily the states' responsibility. In some cases, UNHCR steps in to conduct RSD on behalf of states. (The reason could be that the state is not a party to the 1951 Convention, or that it does not have an appropriate national asylum system in place).¹¹⁴ Some countries conduct RSD jointly with UNHCR pending the establishment of an efficient national system. Badawy refers to the system in Turkey as an example of these countries where hybrid systems exist. While the Turkish government processes asylum requests of European nationals only, UNHCR processes requests of non-Europeans (subject to resettlement to a third country within six months as a condition). Nevertheless, this is not the case for Egypt, as all asylum requests are handled by UNHCR.

Badawy argues that UNHCR Egypt should have seized the opportunity of potential state cooperation when an RSD committee was created under the MFA in 1984. According to observers, no follow-up on that initiative has been made; it has since fallen into obscurity.¹¹⁵ Badawy says that the organization should have entirely handed over the RSD work to the newly-created committee.

As for the current state of affairs, Badawy suggests that a hybrid system could be introduced where the UNHCR keeps conducting RSD requests, while the Egyptian government would process RSD appeals. This system would be in the best interest of refugees for a couple of reasons. First, it will take a financial burden off UNHCR so it could focus on its original mandate, that is, lobbying for the protection of refugees. As

¹¹¹ BADAWY, *supra* note 1.

¹¹² El Guindy, *supra* note 6.

¹¹³ Davis *et al.*, *supra* note 12, at 29.

¹¹⁴ Refugee Status Determination (RSD), UNHCR, available at: <https://www.unhcr.org/refugee-status-determination.html>

¹¹⁵ Koehler-Derrick, *supra* note 56.

mentioned in an interview with UNHCR Assistant Regional Representative, Vincent Cochetel: "This office was not meant to be what it is. UNHCR has been working in Egypt on RSD procedure since 1954. It is filling a vacuum, determining status for the government by default because the authorities are not ready to assume responsibility. It is not natural for UNHCR to get involved in this field."¹¹⁶

The second reason why a hybrid system would be useful is because it allows asylum seekers to appeal to their RSD at a separate body than the one that initially conducted it.¹¹⁷

¹¹⁶ Pascale Ghazaleh, *In Closed File Limbo: Displaced Sudanese in a Cairo Slum*, FORCED MIGR. REV., Jan. 2003, at 26.

¹¹⁷ El Guindy, *supra* note 6.

III. Refugee Administration Models in Jordan and Uganda

For the purposes of this comparative study, I have examined the sources available on refugee policies in two countries, Jordan and Uganda. Both countries are comparable to Egypt in several aspects. The reasons for which I have included both countries in my research is already mentioned in the Methodology section.

A. Jordan's Refugee Administration Model

Like Egypt, Jordan is considered a transit country for refugees. It is the country with the second largest share of refugees per capita, hosting 745,192 refugees as per UNHCR Latest Factsheet (November 2019). Around 88% of this figure are Syrian refugees.¹¹⁸ The majority of refugees in Jordan live in urban settings alongside nationals rather than camps and are expected by humanitarian experts to stay for decades.¹¹⁹

1. Legal and Institutional Framework Governing the Matters of Refugees in Jordan

Unlike Egypt, Jordan is not a party to the 1951 Refugee Convention. Yet, it signed in 1998 an MoU with UNHCR that states that refugees can stay in Jordan for six months after recognition, given that UNHCR will find a country to be resettled in.¹²⁰ Also, it is obliged to abide by the Arab Charter on Human Rights of 2004 that grants several freedoms, such as freedom of belief, education, movement and access to courts. In addition, Jordan must, as a member state of the Arab League, grant asylum for those who are forced to leave their country due to a threat on life, political opinions, their religion, or their ethnicities.¹²¹

¹¹⁸ UNHCR JORDAN FACT SHEET (Nov. 2019), http://reporting.unhcr.org/sites/default/files/UNHCR%20Jordan%20Fact%20Sheet%20-%20November%202019_0.pdf.

¹¹⁹ Veronique Barbelet *et al.*, *The Jordan Compact: lessons learned and implications for future refugee compacts* (Feb. 2018), available at: <https://www.odi.org/publications/11045-jordan-compact-lessons-learned-and-implications-future-refugee-compacts>.

¹²⁰ *Legal Status of Refugees: Egypt, Jordan, Lebanon, and Iraq*, available at: <https://www.loc.gov/law/help/refugees/legal-status-refugees.php>.

¹²¹ Wa'ed Alshoubaki, *A Synopsis of the Jordanian Governance System in the Management of the Syrian Refugee Crisis*, 39 J. INTERCULT. STUD. 596–603 (2018).

2. Registration of New Arrivals

The two entities that work on refugee administration in Jordan are the government of Jordan, and the UNHCR office.

On one hand, the Ministry of Interior ensures national security by performing the early registration process that involves interviews and a biometric scan. It grants a service card to refugees upon registration that would allow them to live outside camps and access education and healthcare.¹²²

Meanwhile, the Planning and International Cooperation Ministry coordinates with NGOs their proposed plans and refers them to the concerned ministries.

As for UNHCR, it mainly works on finding a third country for resettlement as per the MoU, conducts RSD along with the state, and protects refugees against gender-based violence, exploitation, and trafficking. It also protects refugees against refoulement by verifying the reasons of return and collaborates with other UN entities such as the WFP.¹²³

3. Right to Work

Theoretically, Syrian refugees are allowed and encouraged to work in Jordan since the signing of an agreement called the Jordan Compact in 2016 (will be elaborated in further sections; it is important also to mention that the Compact extends to Syrian refugees only).

However, work of all refugees, whether Syrians or non-Syrians, is prohibited unless they obtain a work permit, which is almost an impossible task due to a number of reasons. First, it is a costly procedure that only a little fragment of refugee households can afford. Even those who could afford applying to work permits might not do so due to their lack of knowledge on the process and/or general mistrust of governmental entities. In addition, the law requires refugees to have a Jordanian sponsor, sometimes named a 'guarantor'; a procedure informal employers who hire refugees tend to avoid. Formalizing employees

¹²² *Id.*

¹²³ *Id.*

adds financial costs to the employers, such as the amount they must pay for social security, therefore, a large number of employers prefer to lean on informal labor.¹²⁴

There also exists the challenge that most of the jobs refugees manage to land are low-paying factory jobs.¹²⁵ Some of the Syrian refugees who are college-educated land jobs that do not align with their skill sets and level of education. While this might be the case for many Jordanian college graduates, refugees' chances of landing jobs that match their qualifications are even less. According to an ILO report, 17 sectors are closed before foreigners in Jordan, including: engineering, telecommunication, accounting, sales, clerical and administrative jobs.¹²⁶

4. Right to Education

Despite Jordan's non-restrictive policies with regards to access to school education, a large number of refugee children remain out of school for a number of reasons. These include the financial burden of transportation costs and school supplies that low-income refugee families might not afford.

In an attempt to provide school education for all refugee children without overcrowding public schools, Jordan established a double-shift system at schools where Jordanian children mostly attend school in the morning, and Syrian children mostly attend the afternoon shift. As indicated by Veronique Barbelet *et al.*, the system caused a number of problems. First, some families were reluctant to send their female children to the afternoon shift as it gets dark. Secondly, the quality of education is generally perceived to be lower in the afternoon shift. Furthermore, it is easier in the afternoon shifts for children to be identified as Syrians, which exposes them to harassment. Eventually, many children in the secondary stage drop out. On one hand, they suffer from bullying. On the other hand, they need to work in order to contribute to their family incomes.¹²⁷

¹²⁴ Barbelet *et al.*, *supra* note 119.

¹²⁵ Making them welcome; Integrating refugees, 427 THE ECONOMIST 52 (2018).

¹²⁶ WORK PERMITS AND EMPLOYMENT OF SYRIAN REFUGEES IN JORDAN: TOWARDS FORMALISING THE WORK OF SYRIAN REFUGEES (2017), https://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_559151.pdf [hereinafter ILO report].

¹²⁷ Barbelet *et al.*, *supra* note 119, at 4.

5. Access to Healthcare

Access to public healthcare at the Ministry of Health facilities is not free for refugees in Jordan. Some nationalities have access at a highly subsidized rate, while others have to pay full foreigners' rate. However, emergency, maternity and childcare health services are free-of-charge for some nationalities given that certain requirements are met.¹²⁸ Further explanation will be put forward in the 'Unequal Treatment' section.

6. Discourse on Jordan's Policies

Jordan has had recent influxes of refugees since the Syrian crisis in 2012,¹²⁹ which made popular the study of its refugee policies among researchers in recent years. Several publicists have criticized those policies for different reasons. The main three accusations present in the literature are: 1. Jordan's refugee policies are heavily influenced by politics; 2. The claim that Jordan is using its refugee policies to lobby for additional international aid; and, 3. the unequal treatment of refugees according to their nationalities in Jordan. I will present below the narratives of those authors.

a. Politics Influencing the Rights of Refugees in Jordan

According to Victoria Kelberer, author of *Negotiating Crisis: International Aid and Refugee Policy in Jordan*, the unwelcoming attitude towards refugees all started in the late 1960's when Palestinian refugee camps became enclaves for Palestinian nationalism, and mini-states of a sort. She argues that the bloody confrontations between Palestinian militias and Jordanian forces in 1970 (known as Black September) might have inspired a closed-door policy towards refugees for many years.

Decades after this conflict, large numbers of Iraqis fled to Jordan in the aftermath of the Gulf War in 1991. Jordan was already impacted by the Palestinian camps experience, therefore it insisted to label Iraqi refugees as "guests" rather than "refugees". It allowed them to stay in urban settings, because: 1. it wanted to avoid the Palestinian camps

¹²⁸ ON THE BASIS OF NATIONALITY (Nov. 2017),

<https://reliefweb.int/sites/reliefweb.int/files/resources/On%20the%20Basis%20of%20Nationality.pdf>.

¹²⁹ Elizabeth Turnbull, *Jordan remains second largest refugee host globally* — UNHCR, THE JORDAN TIMES, (Jul. 28, 2019), available at: <https://www.jordantimes.com/news/local/jordan-remains-second-largest-refugee-host-globally---unhcr>.

scenario; and, 2. because it wanted the economy to take benefit from the presence of the relatively wealthy Iraqis.

As a result of the influx of Iraqis, the international scene in Jordan has changed. UNRWA used to be the operating refugee agency in the country as it served the Palestinian population. A few years after the Gulf war, UNHCR established its office in 1997 and signed an MoU with the Jordanian government in 1998. Since that time, Jordan has sat on the Executive Committee of UNHCR and has played an important role in shaping its policies (although it is not even a signatory to the 1951 Convention).¹³⁰

The second influx of Iraqi refugees took place a decade after. When the US invaded Iraq in 2003, the international community anticipated a new influx of Iraqis fleeing their country. According to the authors of *Hosting Guests, Creating Citizens: Models of Refugee Administration in Jordan and Egypt* only a small community of Iraqi officials and their families fled at that time. Two years after, when the sectarian conflict began in 2005, large influxes of Iraqis fled to Jordan. At that time, the international community was not prepared.¹³¹

According to Kelberer, Jordan has first been welcoming of the Iraqi “guests”, allowing them access to public schools, as well as applying a *laissez-faire* policy with regards to their contributing to the economy. Effectively, it allowed their access to the informal labor market as well as having their own businesses. The turning point was the 2005 bombing of hotels in Amman, reportedly committed by Iraqis. After then, the government started restricting their access to public schools and to crack down on their businesses. The situation kept deteriorating until UNHCR transferred directly to the government more than half of 2007 budget. Only then, the tightened policies started to relax. Kelberer argues that this is a clear example of how Jordan has used its refugee policies to receive direct aid from the international community.

In the beginning of the Syrian crisis, refugees did not need a visa. An open-door policy operated until 2013 as the arrival rates started to grow in the latter half of 2012 through 2013 (it has been reported that the number of new arrivals reached 3000 refugees per day at some point).¹³²¹³³ Over the course of 2012 to 2014, Jordan opened two refugee

¹³⁰ Victoria Kelberer, *Negotiating Crisis: International Aid and Refugee Policy in Jordan*, 24 MIDDLE EAST POLICY 148–165 (2017).

¹³¹ Davis *et al.*, *supra* note 12.

¹³² Alshoubaki, *supra* note 121.

¹³³ *Id.*

camps to accommodate large numbers of Syrians, especially the new arrivals. However, the majority of refugees lived in urban settings as mentioned earlier.

The government then limited the number of new arrivals by restricting the unofficial crossing and created a procedure in 2013 by which the refugees stayed in camps unless they are sponsored by a Jordanian household with a direct kinship. Afterwards, a bombing took place at a border crossing that led to the killing of state officials. As a consequence, Jordan closed its northern border at the time.¹³⁴

Nevertheless, Jordan has allowed Syrians to access healthcare facilities and to attend public schools; a decision that came as surprising to observers. However, the Kelberer argues that the decision comes as a part of Jordan's broader tendency of using its refugee policies to lobby for additional direct aid. The author brings the example of the \$150 million loan approved by the World Bank for its bread subsidy program; although the World Bank policy is not in favor of subsidies.¹³⁵

Another aspect of the government's concerns was the deteriorating services provided to Jordanian citizens. Kelberer reports that areas with a high refugee population suffered degraded infrastructure and overstretched services that barely met the basic needs of impoverished Jordanians as well as migrant workers and refugees. In 2014, however, the government announced that it no longer provided free healthcare to Syrian refugees, who would have to pay fees to have access equal to those paid by uninsured Jordanians.¹³⁶

b. Jordan's Lobbying for International Aid: the Jordan's Compact

Rochelle Davis *et al.* argue that the concern of the impact of refugees on Jordan as a host country has been used by Jordan in international conferences to provide investment opportunities for Jordan; the EU is increasingly willing to provide grants and benefits to host countries in the global south. As thousands of refugees died on their journey to Europe over the course of 2015, new migration policies had to be placed by the EU.¹³⁷ Rochelle Davis *et al.* bring the example of a document Jordan presented to the international community in the London Syria Conference in 2016 titled the Jordan

¹³⁴ *Id.*

¹³⁵ Kelberer, *supra* note 130.

¹³⁶ Davis *et al.*, *supra* note 12.

¹³⁷ Barbelet *et al.*, *supra* note 119.

Compact.¹³⁸ Jordan clearly stated that the Compact aims to turn the refugee crisis to a development opportunity for both nationals and refugees.¹³⁹

The Jordan Compact is a new holistic approach signed in February 2016 between Jordan, and various humanitarian and development actors, including the UK, Germany, Norway, Kuwait, and the United Nations. It deals with protracted displacement, namely the Syrian Refugee Crisis.¹⁴⁰ It calls for a “development” plan to alleviate the impact of influxes of refugees and opens up the EU market to Jordan.¹⁴¹

(Remark: the Jordan Compact is limited to Syrian refugees only; it does not include non-Syrian refugees. Further elaboration is included in the ‘Unequal Treatment’ section.)

According to the Compact, Jordan is committed to providing school education to all Syrian refugee children. Furthermore, grants and loans would be paid to Jordan and relaxed EU trade regulations would be in force. Payment of grants and loans is linked to the achievement of certain targets/milestones, such as Jordan’s issuance of 200,000 work permits in certain sectors. On the other hand, facilitated trade regulations with the EU are to be applied with Jordan’s businesses given that these businesses employ certain quotas of Syrian refugees. Moreover, Jordan is committed to formalizing Syrian businesses.

Refugee Compacts are new policy models for host countries neighboring conflicts to deal with refugee crises. The example of Jordan Compact is followed/to be followed by several countries including Turkey, Lebanon and Ethiopia. Veronique Barbelet *et al.* think that future approaches in Jordan and other countries should aim to include the perspectives of refugees and try to be realistic in terms of the expected achievements. For that reason, they produced a policy brief to analyze the outcomes of the Compact. The policy brief was published in 2018 by Overseas Development Institute (ODI), a UK think tank on international development and humanitarian issues.¹⁴²

While the authors acknowledge that the Jordan Compact has increased the number of Syrian refugee children enrolled in schools as well as refugees in the formal labor market, they argue that it had several drawbacks. On one hand, two studies conducted in 2016 and 2017 by Bellamy *et al.* and Hagen-Zanker *et al.* concluded that the daily lives of refugees in Syria did not improve quickly after the application of the Compact. It has

¹³⁸ Davis *et al.*, *supra* note 12.

¹³⁹ *Id.*

¹⁴⁰ Barbelet *et al.*, *supra* note 119.

¹⁴¹ Davis *et al.*, *supra* note 12.

¹⁴² Barbelet *et al.*, *supra* note 119.

been argued that the views of refugees have not been taken into consideration in the design of the Compact. Veronique Barbelet *et al*/ argue that the negotiations of the Compact were not inclusive as it mainly included representatives of the governments of Jordan and the UK as well as the World Bank. There were no actors bringing in refugee perspectives. For example, UNHCR has only been consulted in the final stages. Moreover, civil society, private sector, and trade unions were not included in the negotiating process. As a counter-argument, it has been said that the choice of negotiators had to be politically pragmatic or else the Compact would not be issued, especially in the sensitive context of a country in the Middle East with a high unemployment rate among its nationals.¹⁴³

With regards to work opportunities provided to refugees, the number of work permits provided to refugees before the Compact used to be drastically low; around 3,000 work permits. Over the course of one year and eight months after the Compact signing, 71,000 permits had been issued for Syrian refugees as the government has established several procedures to facilitate the issuance of work permits. For example, it has set 'grace periods' where application fees of work permits would be waived for Syrian refugees. So far it has set nine periods; the latest one will end in December 2020.¹⁴⁴ In addition, cooperatives could now apply for work permits on behalf of Syrian refugee workers in the agriculture fees. This has led to a big increase in the number of permits in that field, as these permits allow agricultural workers to change employers as per the seasonal labor demand without having to apply for a new permit.¹⁴⁵

Furthermore, the Compact assigns refugees jobs in Special Economic Zones (SEZs), which has contributed to the considerable increase in the number of issued permits. However, the ILO reports that some Syrian refugees are reluctant to work in SEZs for a number of reasons, including the poor income (compared to the informal sector) and the fact that they are at a large distance from where refugees live with weak transportation means.¹⁴⁶

Despite the increasing number of work permits issued, the majority of Syrian refugees remain in informal jobs. According to an ILO report, only one eighth of the adult refugee population are working in the formal labor sector. In addition, the challenges elaborated earlier remain to exist, such as the bureaucratic challenges and the reluctance of

¹⁴³ *Id.*

¹⁴⁴ *UNHCR Jordan Operation Update* (Jan. 2020), available at: <https://data2.unhcr.org/en/documents/details/73847>.

¹⁴⁵ *ILO Report*, *supra* note 126.

¹⁴⁶ Barbelet *et al.*, *supra* note 119.

employers to pose as ‘guarantors’ of their refugee employees. Furthermore, the access ensured by the Compact to refugees has been limited to a few sectors of industry. Self-employment is not allowed either.¹⁴⁷ A similar concern is reported by other researchers who argue that the Compact has produced ‘mixed results’, as only a minority of refugees are involved in well-paying construction jobs.¹⁴⁸

The Compact did not improve the working conditions of most Syrian female refugees. The majority of female refugees work in or close to their homes due to social constraints; for example, as caterers, sewers, or cleaners. The Compact does not cover self-employment, therefore these informal workers neither are included in social security nor do they receive support. Veronique Barbelet *et al.* recommend that labor law should regulate different forms of self-employment. They also suggest that policy makers would address issues that hinder female refugees from seeking employment outside of their homes, such as harassment in public spaces.¹⁴⁹

One more problem that faces refugees is the lack of knowledge on the process of applying for work permits and the fear that they would be unnecessarily identified in the eyes of the government. The authors recommend better communication on the process to be carried out by organizations dealing with refugees as well as influential community leaders, especially in faith-based circles.¹⁵⁰

As a result of the fact that refugee perspectives were not included in the designing stage of the Compact, government priorities were put first. This is reflected in the indicator measuring the success of the Compact, which is the number of permits issued. Instead, Veronique Barbelet *et al.* suggest using as an indicator the number of refugee households that ceased to be under the poverty line, and other indicators, which would truly reveal the economic situation of those households¹⁵¹¹⁵². They suggest that refugee voices are to be included in the assessment of the Compact through conducting perception surveys.¹⁵³

On another note, it is true that the numbers of refugee children enrolled in school have increased. However, large numbers of refugee children are still out of school for a

¹⁴⁷ *Id.*

¹⁴⁸ Making them welcome; Integrating refugees, *supra* note 125.

¹⁴⁹ Barbelet *et al.*, *supra* note 119.

¹⁵⁰ *Id.*

¹⁵¹ The authors suggested the poverty line indicator as an example and as an alternative. However, they did not specify which “poverty line” in particular.

¹⁵² Barbelet *et al.*, *supra* note 119, at 5.

¹⁵³ *Id.*

number of reasons including financial burdens and the poor quality of education. A large number of refugee children attend only part-time. Also, the Compact states that around a hundred double-shift schools shall be established. It is necessary to take into consideration the challenges produced by the double-shift system in order to establish the proper measures. To bring an example of such measures, Veronique Barbelet *et al.* suggest that refugee children who live away from school should be allowed to attend the morning shift.

c. Unequal Treatment of Refugees According to Their Nationalities in Jordan

Non-Syrian refugees are largely excluded from humanitarian programs that target Syrians. On the level of assistance provided by the UN, non-Syrian refugees who lie under the vulnerability threshold receive less total assistance than Syrian refugees in the same conditions. This is due to the fact that Syrian-refugees receive WFP food vouchers as well as child cash grants by UNICEF, in addition to the monthly cash assistance by UNHCR. Vulnerable non-Syrian refugees, on the other hand, receive only the cash assistance from UNHCR. As for non-Syrian refugees who lie just above the vulnerability threshold, they still receive less total assistance than Syrian refugees who are at the same economic level.

On the level of NGOs, non-Syrian refugees are often excluded from assistance programs provided by these organizations. Even the NGO programs that include non-Syrians as beneficiaries, only a little fraction of the total amount of their beneficiaries. This could be due to the fact that the non-Syrian refugees are often invisible and out of radar for these organizations.¹⁵⁴

This situation extends to governmental approaches as well, such as the Jordan Compact. Although the Compact has been seen as a vital and a progressive step towards improving the lives of refugees in Jordan, its scope is only limited to Syrian refugees. Iraqi, Sudanese, and other nationalities refugees cannot obtain work permits under the Compact in the same manner Syrian refugees do. Moreover, informal workers who are non-Syrian refugees who get prosecuted for not having a work permit shall be subject to penalties, unlike Syrian refugees who would get exempted of penalties upon their retroactive applying to a work permit.¹⁵⁵

¹⁵⁴ ON THE BASIS OF NATIONALITY, *supra* note 128.

¹⁵⁵ *Id.*

This unequal treatment could be attributed to the lack of a strong international lobby pushing for the rights of non-Syrian refugees in Jordan,¹⁵⁶¹⁵⁷ unlike the case for Syrian refugee crisis. Reports by Refugees International (RI) and Mennonite Central Committee (MCC) recommend that the government include non-Syrian refugees in the Compact flexible regulations with regards to work permits.¹⁵⁸¹⁵⁹ However, the most prominent aspect of unequal treatment lies in the fact that refugees have different access levels to healthcare based on their nationalities.

As for Syrians, they were initially allowed in Ministry of Health facilities for free healthcare services. Then, starting November 2014, they had to pay a subsidized rate which is equivalent to that of uninsured Jordanians, namely 35-60% lower than the foreigners' rate. As of February 2018, the government decided that Syrians will pay 80% of the foreigners' rate, which has led to financial hardships for Syrian refugees needing healthcare. Later in April 2019, the government revoked the decision. Therefore, Syrian refugees are now allowed in public healthcare facilities on the same level as uninsured Jordanians. Moreover, Syrian refugees are allowed free-of-charge maternity and childcare health services. The World Bank continues to support the government in order to keep providing these subsidies.¹⁶⁰

The problem is that this treatment does not extend to non-Syrian refugees. As for the Iraqi refugees, they used to access healthcare services at the rate of uninsured Jordanians until mid-2015. Then the government decided that they would pay full foreigners' rate. Once again, the government took back the decision in 2017 and allowed Iraqi refugees with residency permits to access healthcare at previous rates. However, not all Iraqis meet the requirement of having a valid residency permit.¹⁶¹ As for refugees who are non-Syrians and non-Iraqis, they have always had to pay foreigners' rates in governmental hospitals.¹⁶² The only exception is the fact that children of all nationalities receive free vaccinations at public health facilities until the age of five.¹⁶³

¹⁵⁶ Rochelle Johnston *et al.*, *Realizing the Rights of Asylum Seekers and Refugees in Jordan from Countries Other than Syria*, 3 (Apr. 2019), available at: <https://data2.unhcr.org/en/documents/download/71975>.

¹⁵⁷ ON THE BASIS OF NATIONALITY, *supra* note 128, at 4-6.

¹⁵⁸ *Id.*

¹⁵⁹ Izza Leghtas, *Out of Reach: Legal Work Still Inaccessible to Refugees in Jordan* (Sept. 2018), available at: <https://www.refugeesinternational.org/reports/2018/9/10/out-of-reach-legal-work-still-inaccessible-to-refugees-in-jordan>.

¹⁶⁰ ON THE BASIS OF NATIONALITY, *supra* note 128.

¹⁶¹ *Id.* at 18.

¹⁶² UNHCR JORDAN FACT SHEET (Apr. 2019), <https://data2.unhcr.org/en/documents/download/69370>.

¹⁶³ Johnston *et al.* at 38.

Even access to emergency healthcare for non-Syrians is charged. While it is sufficient for Syrian refugees to present valid UNHCR cards as well as their Ministry of Interior ID to access free emergency healthcare, non-Syrian refugees are charged for it. ¹⁶⁴

In an attempt to fill the gaps, UNHCR provides in their clinics a few healthcare services that are free of charge for all non-Syrian refugees (whether those who live in the camps or in urban settings).¹⁶⁵ However, a study by UNHCR reveals that only 66% of non-Syrian refugees (among study interviewees) are aware of the free healthcare provided by UNHCR. Among those who are aware of the existence of the services, only 51% know the location of their nearest UNHCR clinic.¹⁶⁶ In addition, the limited number of clinics make it difficult for healthcare staff to serve all the patients showing up on the same day. Furthermore, UNHCR covers only a small number of high cost tertiary services. For the non-Syrians who are registered at UNHCR but have not yet obtained their refugee status, UNHCR only covers emergency high-cost interventions. ¹⁶⁷

On another note, Rochelle Davis *et al.* elaborate on the unequal treatment of refugees according to their nationalities and deem it comparable to the situation in Egypt. For example, the Sudanese and Somali refugees, who arrived in Jordan through complicated journeys, are not allowed to access services by the government or UNHCR while their cases are viewed by UNHCR.

Another example of unequal treatment that is brought by the authors is Jordan's policy of not allowing in/providing governmental services to Palestinians fleeing Syria, although they flee as a result of the same crisis other Syrian refugees escape from. ¹⁶⁸

B. Uganda's Refugee Administration Model

As per UNHCR factsheet dated January 2020, Uganda, the country with the third largest refugee population around the world, hosts around 1.394 million refugees; almost 62% of which are South Sudanese refugees. It has been known in the media for being the most

¹⁶⁴ ON THE BASIS OF NATIONALITY, *supra* note 128, at: 18-19.

¹⁶⁵ UNHCR, *supra* note 118.

¹⁶⁶ UNHCR, HEALTH ACCESS AND UTILIZATION SURVEY 19 (Dec. 2017), <https://reliefweb.int/sites/reliefweb.int/files/resources/UNHCR-HealthAccess%26UtilizationSurveyinJordan2017-OtherNationalities.pdf>.

¹⁶⁷ ON THE BASIS OF NATIONALITY, *supra* note 128, at 18-19.

¹⁶⁸ Davis *et al.*, *supra* note 12.

refugee-friendly country in the world as it has maintained an open border policy and has always allowed refugees to stay in the country for as long as they want.¹⁶⁹¹⁷⁰¹⁷¹

Around 92% of refugees in Uganda live in settlements in West Nile (a sub-region in northern Uganda)¹⁷². In this region, refugees are given plots of land for farming and housing as will be explained in subsequent sections.¹⁷³ Only 8% of refugees live in urban settings including Kampala, the Capital.¹⁷⁴

The history of Uganda as a host country to refugees dates back to the Second World War, where it hosted thousands of Europeans who have been displaced. In the decades after, it has hosted refugees fleeing neighboring countries due to armed conflicts, wars of independence, and natural disasters.¹⁷⁵

1. Legal and Institutional Framework Governing the Matters of Refugees in Uganda

Like Egypt, Uganda is a State Party to the 1951 Convention, the 1967 Protocol, and the OAU Convention that adopts a broader definition of refugees. Locally, the matters of refugees are governed by a domestic law called the Refugee Act of 2006 and a complementary set of regulations called the Refugee Regulations of 2010.

The law has been seen as protection-oriented, and in harmony with the aforementioned conventions. While the law is progressive in total, some of its provisions have been criticized by academics. I will start by listing all aspects of it, including progressive ones, then I will put forward the criticizing discourse.

¹⁶⁹ Sulaiman Momodu, *Uganda stands out in refugees hospitality* (Dec. 2018 - March 2019), available at: <https://www.un.org/africarenewal/magazine/december-2018-march-2019/uganda-stands-out-refugees-hospitality>.

¹⁷⁰ Joseph Goldstein, *As Rich Nations Close the Door on Refugees, Uganda Welcomes Them*, N.Y. TIMES, (Oct. 28, 2018), available at: <https://www.nytimes.com/2018/10/28/world/africa/uganda-refugees.html>.

¹⁷¹ UNHCR UGANDA FACT SHEET (Jan. 2020), https://reporting.unhcr.org/sites/default/files/UNHCR%20Uganda%20Fact%20Sheet%20%20-%20January%202020_0.pdf.

¹⁷² UNHCR UGANDA COUNTRY REFUGEE RESPONSE PLAN 6 (2019-2020), <https://reporting.unhcr.org/sites/default/files/Uganda%20Country%20RRP%202019-20%20%28January%202019%29.pdf>.

¹⁷³ *Id.* at 8.

¹⁷⁴ *Id.* at 6.

¹⁷⁵ Frank Ahimbisibwe, *The Legal Status of Refugee Protection and State Obligations in Uganda*, 13 US-CHINA L. REV. 730 (2016).

2. Registration of New Arrivals

New arrivals in Uganda are received in reception centers. Due to the refugee influx in late 2017, several reception centers have recently been established/expanded.¹⁷⁶¹⁷⁷ The Office of Prime Minister is the responsible authority for the registration and documentation of refugees.¹⁷⁸ After that, the receiving officer shall inform the registered persons of the address of the nearest UNHCR office. A temporary pass shall then be issued for registered asylum-seekers as evidence of their request of asylum.¹⁷⁹

Next, an inter-ministerial committee called the Refugee Eligibility Committee (REC) decides on the status of refugees. Members of the committee include officials from different ministries/departments in Uganda.¹⁸⁰¹⁸¹

Upon receipt of refugee status, refugees obtain cards by which they could enjoy privileges similar to those of aliens under the Constitution, as well as rights provided by the Refugee Act, which will be explained further in next paragraphs.

3. Right to Work

The 2006 Refugee Act provides the right to work as in: “right to engage in agriculture, industry, handicrafts, and commerce”. The 2010 Refugee Regulations introduced an even broader definition of work, that is, “gainful or wage-earning employment”. In addition, they provide a refugee exemption from paying charges in order to access employment. Regulation (64) reads as follows:

“A person who has been granted refugee status and is in possession of a valid identity card issued by the Commissioner for Refugees, shall, in order to facilitate his or her local integration, be allowed to engage in gainful or wage earning employment on the most favourable treatment accorded to foreign residents in similar circumstances; except that recognised refugees shall exceptionally be exempt from any requirement to pay any

¹⁷⁶ UNHCR, *supra* note 172, at 8.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ Uganda’s 2010 Refugee Regulations, Regulations (12) and (13).

¹⁸⁰ Hadijah Mwenyango & George Palattiyil, *Health needs and challenges of women and children in Uganda’s refugee settlements: Conceptualising a role for social work*, 62 INT. SOC. WORK 1535 (2019).

¹⁸¹ REFUGEE STATUS DETERMINATION: A STUDY OF THE PROCESS IN UGANDA (2018), <https://reliefweb.int/sites/reliefweb.int/files/resources/refugee-status-determination---a-study-of-the-process-in-uganda.pdf>

charges or fees prior to the taking up of any offer of or to continue in his or her employment.”

4. Right to Education

The 2006 Refugee Act also provides refugees the right to elementary education on the same level of nationals as per Article (29)(e)(iii). The same sub-article provides for their right to education beyond elementary schools, such as access to particular studies, at least at the same level enjoyed by aliens in Uganda.

According to the UNHCR Country Refugee Response Plan (RRP) of 2019-2020¹⁸², more than 60% of refugees in Uganda are minors. Therefore, education for all refugee children in Uganda is a critical need. On the bright side, education in Uganda has come a long way. Before the Refugee Act was issued in 2006, Refugees did not have the legal right to reside outside of camps. The education initiatives that existed at that time in urban settings were organized by refugees themselves and not supported by UNHCR, the government, or any other entities.¹⁸³

Although refugee children in Uganda have in the meantime the legal right to attend public schools, the national education system has problems similar to those in Egypt's education system. These include: overcrowded classrooms (an average of 100 children per classroom and up to 300 children, according to a 2018 survey¹⁸⁴), poor infrastructure, and the lack of qualified teaching capacities.¹⁸⁵

The recent challenge faced by national schools in Uganda was the influx of refugees in 2017. In the aftermath of conflicts in South Sudan, waves of South Sudanese refugees fled to Uganda in April, May, and August 2017. Then, a similar wave of Congolese refugees fled conflicts in their country in September 2017. As a result, the national schools were over stretched. Some schools were reported to have a number of refugee children that was increased by a multiple of five.¹⁸⁶

¹⁸² UNHCR, *supra* note 172.

¹⁸³ Sarah Dryden-Peterson, *Refugee education in countries of first asylum: Breaking open the black box of pre-resettlement experiences*, 14 THEORY RES. EDUC. 131, 139 (2015).

¹⁸⁴ ROD HICKS & LUCY MAINA, THE IMPACT OF REFUGEES ON SCHOOLS IN UGANDA (2018), https://www.britishcouncil.ug/sites/default/files/uganda_schools_language_for_resilience.pdf.

¹⁸⁵ *Education for Refugee Children in Uganda - Ash Hartwell* (2017-2018), available at: <https://www.umass.edu/cie/news/education-refugee-children-uganda-ash-hartwell>.

¹⁸⁶ HICKS & MAINA, *supra* note 184, at 6.

Further, the language barrier is a serious challenge as well. Large numbers of children have been reported to be enrolled in grades that are below their educational level due to mere language barriers. There are no specific admission/student placement procedures set by the Ministry of Sports and Education; it varies from one school to another. Yet, refugee children in most schools get placed by an oral interview in English. As a result, if a child's skills in spoken English are weak, they are often placed at a much lower grade than they were in their country of origin, even if their skills in science and math are relatively advanced.¹⁸⁷

In an attempt to address the language issue, there is a high hiring demand in schools for adult refugees who are bilingual and have a teaching experience. The role of those teaching assistants (sometimes called language assistants) is to facilitate teaching the lessons for refugee children who do not understand the language of learning. However, a study suggests that they sometimes end up working not as language assistants but rather as teachers, due to the increasing needs for additional teachers at schools. The study suggests that it is problematic for assistants to fulfill the teaching and interpreting roles at the same time. However, the study praises the policy of hiring them as it has been an improvement in the overall learning experience for refugee children.¹⁸⁸ There exist helpful non-governmental initiatives as well. A number of NGOs in Kampala provide English lessons to refugee children so that they could enroll into education at an appropriate age. However, this practice is neither formal nor generalized.¹⁸⁹

On another note, researchers report that many parents are reluctant to enroll their children in schools as a result of the general sense of hopelessness prevailing due to lack of employment opportunities. Despite the fact access to elementary schools is free, the parents of refugees and nationals alike have to pay for school uniforms, meals and a so-called repairs fee. As a result, some parents do not enroll their children in elementary schools, while the majority tend not to enroll their children in secondary education.¹⁹⁰

¹⁸⁷ *Id.* at 24.

¹⁸⁸ *Id.* at 36-38.

¹⁸⁹ *Id.*

¹⁹⁰ Heidrun Bohnet & Clara Schmitz-Pranghe, *Uganda: A role model for refugee integration?* 20 (Bonn International Center for Conversion (BICC) Working Paper No. 2, 2019), available at: https://www.bicc.de/uploads/tx_bicctools/WP2_19_Uganda_web.pdf.

5. Access to Healthcare

Refugees in Uganda are allowed access to public healthcare facilities at a similar level as Ugandans. Even newcomers who just arrived in border regions are allowed immediate access to public health centers on a par with nationals. Furthermore, Uganda deploys healthcare staff to refugee settlements. It also contributes medical supplies to UNHCR refugee operations.¹⁹¹¹⁹²

Nevertheless, Uganda suffers from dilapidated health facilities that are often understaffed. Therefore, large numbers of nationals and refugees remain with serious health issues.¹⁹³

As a consequence, a number of NGOs operate under the coordination and supervision of UNHCR to provide healthcare services to refugees.¹⁹⁴

6. Other Rights

Other rights provided by the Refugee Act include: owning movable and immovable property, and the right of movement (provided that certain measures are followed).¹⁹⁵

In addition to all the above, Uganda grants refugees pieces of land to build houses on and cultivate in order to provide for their needs.¹⁹⁶ Since the 1950's, Uganda adopted the approach of giving refugees pieces of land to allow them to engage in farming activities. In 1999, Uganda formalized this approach by adopting the self-reliance strategy (SRS), jointly developed by the government of Uganda and UNHCR. The strategy aimed at turning refugees from "beneficiaries" to "agents of development".¹⁹⁷¹⁹⁸

¹⁹¹ WHO, HEALTH OF REFUGEES AND MIGRANTS: PRACTICES IN ADDRESSING THE HEALTH NEEDS OF REFUGEES AND MIGRANTS (2018), <https://www.who.int/migrants/publications/PAHO-Practices.pdf?ua=1>.

¹⁹² UNHCR, GLOBAL APPEAL – UGANDA (2014-2015), <https://www.unhcr.org/528a0a268.pdf>.

¹⁹³ Mwenyango and Palattiyil, *supra* note 180.

¹⁹⁴ *Id.*

¹⁹⁵ Ahimbisibwe, *supra* note 175.

¹⁹⁶ *Id.*

¹⁹⁷ Lucy Hovil, *Uganda's refugee policies: the history, the politics, the way forward* (Oct. 2018), available at: <http://refugee-rights.org/uganda-refugee-policies-the-history-the-politics-the-way-forward/#:~:text=The%20paper%2C%20entitled%20Uganda's%20refugee,recommendations%20for%20the%20way%20forward.>

¹⁹⁸ Alexander Betts *et al.*, *Uganda's Self-Reliance Model: Does it Work?* Research-in-brief, Refugee Studies Centre, Available at: <https://www.rsc.ox.ac.uk/publications/research-in-brief-ugandas-self-reliance-model-does-it-work>

In the meantime, most land reserved by the state for refugees are located in the West and the North. In areas where no land is reserved, the Department of Refugees negotiates with local communities to allow refugees to be placed on a piece of land. In return, the government promises to improve infrastructure and services in those areas.¹⁹⁹

7. Discourse on Uganda's Policies

Frank Ahimbisibwe, the author of *the Legal Status of Refugee Protection and State Obligations in Uganda* argues that some of the Act's provisions violate the 1951 Convention. For example, section 40(1) states that the Minister could, upon consultation with the concerned Minister, order the expulsion of any refugee causing a threat to national security or public order. In another article of his, *Rwandan Refugee Rights in Uganda: Analysis of Law and Practice*, Ahimbisibwe argues that there is discrepancy between law and practice with regards to refugee rights in Uganda. According to Ahimbisibwe, refugees in Uganda are legally entitled to non-discrimination as per Uganda's domestic law as well as its international obligations.²⁰⁰

On one hand, Uganda's constitution states that: "a person shall not be discriminated against on the ground of sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability."²⁰¹ Moreover, the 2006 Refugee Act states that refugees are "entitled to fair and just treatment without discrimination on grounds of race, religion, sex, nationality, ethnic identity, membership of a particular social group or political opinion."²⁰²

Furthermore, the right to non-discrimination is emphasized in both the 1951 Refugee Convention and the 1969 OAU Convention to which Uganda is a Party. Article (3) of the 1951 Convention states that: "the Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin". Meanwhile, Article (4) of the 1969 OAU Convention states that: "Member States undertake to apply the provisions of this Convention to all refugees without discrimination as to race, religion, nationality, membership of a particular social group or political opinions."

¹⁹⁹ Mwenyango and Palattiyil, *supra* note 180.

²⁰⁰ Frank Ahimbisibwe, *Rwandan Refugee Rights in Uganda: Analysis of Law and Practice*, Volume 13 US CHINA LAW REV. 857–880 (2016).

²⁰¹ UGANDA CONST., Art. 21, ¶2.

²⁰² Uganda's Refugee Act of 2006, Article 29(c).

Despite all the emphasis on non-discrimination in domestic and international law, the author argues that Uganda violated its obligation towards Rwandan refugees in 2009, as it famously prevented Rwandan refugees, and no other groups of refugees, from cultivation and reduced their food rations.²⁰³²⁰⁴ The timing of the cultivation ban coincided with efforts by the government to promote ‘voluntary’ repatriation of refugees.²⁰⁵ Consequently, Amnesty International published a memorandum indicating its “grave concern” about the situation, and questioning Uganda’s commitment to the principles of non-discrimination and *non-refoulement*.²⁰⁶ Furthermore, a report prepared by various international organizations and research institution condemned the reduction of food rations that has been exclusively imposed on Rwandan refugees and stated that it acted, against international law, as a tool to repatriate.²⁰⁷

The author further reports another incident that took place in 2010 when Rwandan asylum-seekers whose asylum has been rejected by the Refugee Eligibility Committee were deported to Rwanda without having the opportunity to appeal the Committee’s decision.²⁰⁸

Moreover, Uganda’s approach to self-reliance by giving refugee slots of land to cultivate has been reported to have some drawbacks. On one hand, not all refugees manage to be self-reliant due to the small size of the land slots and the infertile soil in some cases. In addition, some refugees have reported not being used to farming, neither as a profession nor as a lifestyle.²⁰⁹

On a related note, it has been found that the size of land slots, as well as the amount of food rations, often differ from one refugee to another as per the region he/she settles in and the time he/she has arrived in Uganda. This inequality, although clearly unintended to discriminate, has been reported to cause tensions among refugee communities. Similarly, family members of existing refugees might arrive in Uganda at a later stage than their relatives, seek asylum, and receive land slots in regions distant from their

²⁰³ AMNESTY INTERNATIONAL, MEMORANDUM TO THE GOVERNMENT OF UGANDA ABOUT THE CESSATION OF REFUGEE PROTECTION FOR RWANDANS 12 (Dec. 2011), <https://www.amnesty.org/download/Documents/28000/afr590212011en.pdf>.

²⁰⁴ International Refugee Rights Initiative (IRRI), *A Dangerous Impasse: Rwandan Refugees in Uganda 1 & 20* (IRRI & Refugee Law Project, Working Paper No. 4, 2020) at 1 & 20.

²⁰⁵ Ahimbisibwe, *supra* note 200.

²⁰⁶ AMNESTY INTERNATIONAL, *supra* note 203.

²⁰⁷ IRRI, *supra* note 204.

²⁰⁸ Ahimbisibwe, *supra* note 200, at 867.

²⁰⁹ Bohnet & Schmitz-Pranghe, *supra* note 190, at 5.

family. As a result, family members choose to stay together at the expense of sharing a relatively small land slot as well as limited food rations.²¹⁰

Although Uganda is reportedly one of the most progressive countries in terms of refugee policies, various publicists have had doubts whether Uganda adopts its open-door policy in good faith or not. For example, there exists an argument that Uganda is taking advantage of the international aid transferred to it as well as the taxes it imposes on commodities procured in the service of refugees.²¹¹

Publicists report that refugees in Uganda are regarded by some nationals as beneficial for the economy since they buy local commodities. It has been reported that every new refugee household increases the total income of all households in Uganda (including those of refugees) by around \$400 more than the aid that the new household receives (and even a larger amount when aid is given in cash, rather than food rations; as cash enables them to buy local commodities produced by other households). It was also reported in 2016 that the consumption of households in Uganda has increased due to the influx of Congolese refugees.²¹² Some publicists argue that refugees in Uganda are regarded by some nationals as an attraction for foreign aid. It is reported that some nationals in poor Northern areas pose themselves as refugees in order to receive aid.²¹³

On the bright side, publicists report that the aforementioned public perspective of refugees contributes to the general welcoming attitude of locals towards refugees, especially in areas where new schools and water systems are established for refugees as well as their host communities.²¹⁴

Furthermore, two academics have published on a news site an article named: "Is Uganda really a 'refugee paradise'?" in response to a story on Uganda that was published in a Dutch media platform. They have argued that there are hidden interests in portraying Uganda as a "refugee paradise", which is an image that serves an agenda for both the EU and Uganda's government.²¹⁵

²¹⁰ *Id.*

²¹¹ Yusuf K. Serunkuma, *Notes on Uganda's "Refugee Paradise"* (Jul. 2019), available at: <https://kujengamani.ssrc.org/2019/07/17/notes-on-ugandas-refugee-paradise/>.

²¹² Making them welcome; Integrating refugees, *supra* note 125.

²¹³ *Id.*

²¹⁴ Heidrun Bohnet & Clara Schmitz-Pranghe, *supra* note 190, at 5.

²¹⁵ Julie Schiltz & Kristof Titeca, *Is Uganda really a 'refugee paradise'? The grim reality behind the euphoric coverage of Uganda's "exemplary" refugee policy*, AL JAZEERAH, (Jul. 19, 2017), available at: <https://www.aljazeera.com/indepth/opinion/2017/07/uganda-refugee-paradise-170726133024156.html>.

On one hand, they argue that the EU has had an increasing interest in the ‘externalization of its asylum policy, tackling the migration issue at its roots’, that is, global south countries.²¹⁶ On the other hand, the authors argue that Uganda is using the propaganda to deflect attention from its authoritarian practices by the current regime, such as its recent efforts to allow presidency for life.²¹⁷

Moreover, the authors add that the story published by the Dutch media outlet turns a blind eye to several challenges faced by refugees in Uganda. To name a few: the fact that most refugees are situated in areas that are underdeveloped with high rates of poverty, incidents that took place over the past years of locals attacking refugees or not allowing them to locate on their land, etc.²¹⁸

Similarly, a report by the International Refugee Rights Initiative (IRRI) seems to share the previous view. It refers to Uganda’s positioning itself in the eyes of the international community as an ally to the West in its war against terror, a participant in peace operations in Africa, and a showcase for progressive refugee policies. The authors argue that western countries, in return, turn a blind eye to repressive policies imposed by the government of Uganda on a domestic level.²¹⁹

The authors further argue that the refugee situation in Uganda requires a “brave” discussion on an international level on durable solutions, other than the constantly promoted option of voluntary repatriation, and the concept of “shared responsibility”. They call for an increase in the number of refugees to be resettled in wealthier countries around the globe.²²⁰

On the other hand, there were incidents of corruption in the refugee administration system that were reported by UNHCR in late 2017. As a consequence, senior refugee officials were suspended in 2018 due to reports of fraud by the UN. The breaches included extortion and faking increased refugee numbers in order to receive aid for beneficiaries that did not exist.²²¹ In addition, the government and UNHCR have verified the numbers of refugees across the country using UNHCR biometric systems. The verification process lasted from March to October. Furthermore, an agreement has been

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ Hovil, *supra* note 197, at 7-8.

²²⁰ *Id.* at 15.

²²¹ Making them welcome; Integrating refugees, *supra* note 125.

established between the government and UNHCR that the Office of Prime Minister will use UNHCR enhanced biometric systems to register new refugees.²²²

Those have been the main arguments raised in the discourse on Uganda's refugee policies by academics and experts. Despite Uganda's largely-progressive policies towards refugees, some have expressed concerns with regards to a few legal provisions, potential political agendas, and certain incidents (such as the 2009 cultivation ban). In the next chapter I will conclude with recommendations based on all the above.

²²² UNHCR, *supra* note 172.

V. Conclusion

A. Reflections on the Three Models

This research has aimed to fill a gap in the field of comparative refugee law as there is no available scholarship attempting to compare Egypt's laws with regards to refugees to other countries' except for one academic article. Most of the scholarship available is tackling each country's legal system on its own. Nevertheless, those academic articles have been of a great use for this research, as it has relied on them for the most part to obtain information and present existing discourse.

As explained above, the causes of challenges faced by refugees in Egypt include: Egypt's not committing to its international obligations, UNHCR taking up Egypt's responsibilities, and the outdated MoU between Egypt and UNHCR office in Egypt.

In both Egypt's and Jordan's models, political events have impacted the treatment of refugees. Another common feature between the two models is the unequal treatment between refugees on the basis of nationality, especially in access to healthcare (in Jordan's model), and public education (in Egypt's model). This has been a serious aspect of criticism argued by several academics and organizations.²²³

While Jordan is not a signatory to specified Refugee treaties, Egypt is a party to both the 1951 Refugee Convention and the 1969 OAU Convention and is expected to abide by their provisions. By treating refugees differently on basis of nationality in aspects such as access to education, right to establish community-based organizations, and more, Egypt is breaching its international obligations as per the 1951 Convention and the 1969 OAU Convention, namely the non-discrimination principle enshrined in Article (3) and Article (4) respectively in both conventions. It does not meet its obligations as per CRC and ICESCR either.

An obstacle that hinders any possible progressiveness of Egypt's refugee legal framework is the existence of many decrees and bilateral agreements of relevance. Some of those instruments are long forgotten or not implemented for one reason or another. As for the bilateral agreements, they are not always reflected in domestic law.

²²³ As mentioned earlier, a similar discrimination upon nationality reportedly took place in some incidents in Uganda (such as the 2009 cultivation ban against Rwandan). refugees). However, this practice has been limited to a few separate incidents, unlike the situation in Jordan and Egypt, where refugees in Egypt and Jordan receive different treatment on the basis of their nationality by force of law.

As for the administrative orders/decrees, they are sometimes unknown to the concerned officials (e.g. healthcare providers). The solution in my opinion is to identify the best treatment provided by these instruments, codify it in a body of domestic law (such as Uganda's Refugee Act), and to provide it to refugees of all nationalities without discrimination.

Indeed, Uganda's Refugee Act has been an exemplary body of law that provides the most important citizen-rights, especially in comparison to Egypt's and Jordan's models of scattered laws and decrees. The Refugee Act is generally praised for meeting Uganda's obligations in accordance with the 1951 Convention, the 1967 Protocol, the OAU Convention, and other international treaties.

However, it is not untrue to say that there are avenues of improvement that should yet be explored in Uganda's law. For example, a few law provisions in Uganda's Refugee Act that are said to violate the concept of *non-refoulement* present in the 1951 Convention could be amended.

Nevertheless, several lessons could still be learned from Uganda's model and applied to Egypt's model. For example, efforts could be explored in Egypt to apply a practice like the refugee land ownership and cultivation in Uganda, but in a manner that would accommodate the cultural and societal circumstances of refugees in Egypt, since the refugee population in Egypt lives in urban settings. A national program could be established where refugees are encouraged to start their own businesses, while UNHCR could assign part of its budget to support those small businesses. As it is in Jordan's SEZs, refugee business owners might be required to hire a certain quota of refugee employees in exchange for administrative facilitation of their license renewal. And as it is with the land ownership in Uganda, refugee business owners could be allowed after a certain period of time to own the properties at which they operate their businesses and to receive permanent residence.

As for the education sector, there are useful practices in Uganda that could be imitated in Egyptian schools. For example, "language assistants", similar to those hired in Ugandan schools, could be hired in Egyptian schools upon the inclusion of non-Arabic speaking refugee children. CMRS researchers argue that the language barriers might be a reason for the Ministerial policy of not allowing refugee children of sub-Saharan countries to enter public Egyptian schools.²²⁴ The authors recommend that these children are to be

²²⁴ CMRS Report, *supra* note 8, at 150.

assigned a place for education and to be given mandatory Arabic classes to allow their integration in the system. In the process of their education and integration, job opportunities will be provided to adult refugees from their communities.²²⁵ I agree with that recommendation as it has proven to be beneficial in Ugandan schools.

Last but not least, I agree with Tarek Badawy's call for a hybrid RSD system in Egypt where UNHCR conducts RSD and Egypt manages the appeal system to RSD decisions. This would allow UNHCR to save a lot of its resources and channel them to support public facilities that serve both nationals and refugees, especially in the education and healthcare sectors.

B. Principled Pragmatism: I Say Why Not?

As this research has demonstrated, host countries in the global south can take advantage of adopting progressive policies towards refugees. Benefits include foreign aid provided by western countries with the aim to "contain migration in the south". As a report by IIRI concludes, Uganda's progressive refugee policies largely owe to the global political climate that allowed, and encouraged, the adoption of these policies without Uganda having to pay a high price domestically.²²⁶ This global political climate has also allowed Jordan to pass the Jordan Compact, turning a restrictive environment to a relatively-progressive one for Syrian refugees.

However, both countries' approaches were criticized. On one hand, concerns exist on whether the propaganda on Uganda's progressive policies distract donor countries from seeing the reality of life for refugees in the country, including incidents of conflict with the locals as well as high poverty rates.²²⁷ There are also questions on whether this propaganda serves an EU agenda of keeping the migrants in Africa, and whether it has been used in bad faith to turn attention away from some of the Ugandan regime practices. On the other hand, Jordan is criticized for using its refugee policies to pressure donor states for additional, direct transfer of aid.

While some (or all) of these arguments might be valid, practicality requires us to weigh the outcomes of those policies. And the outcomes are promising. In Uganda, refugees are treated on a par with nationals in several aspects, while in Jordan, an exceptionally

²²⁵ *CMRS Report*, *supra* note 8, at 152.

²²⁶ Hovil, *supra* note 197, at 15.

²²⁷ Schiltz & Titeca, *supra* note 215.

large number of work permits have been issued since the enforcement of the Compact. In my opinion, the timing could not be more convenient for Egypt to take a similar path while drawing on the lessons learned from previous approaches of Uganda, Jordan, and other refugee-hosting countries in the global south.

In case a Refugee Compact is to be formulated in Egypt, it is important to avoid the drawbacks reported of the Jordan Compact. As recommended by humanitarian experts, it is crucial to integrate the perspectives of refugees themselves, UNHCR, NGOs that have been operating in the refugee scene, and civil society in the making stage of such approaches. It is also necessary (as per international law) to avoid restricting the scope of their application to certain nationalities while leaving the rest to suffer.

Indeed, progressive approaches like refugee compacts come with a price. The burden added to the already stretched public services of the poor, highly populated countries has been a difficult political choice for countries in the global south that host refugees. It is noticeably one of the reasons hindering Egypt and Jordan from allowing free and equal access to refugees to public facilities. However, it did not stop Uganda from bringing together a legislation that is in line, in most part, with the UN Refugee Convention as well as other international accords. Despite the modest quality of services provided in public facilities, Uganda impressively continues to allow refugees' access on a par with nationals to schools, healthcare, and the labor market.

On another hand, Uganda's refugee situation proved that refugees could act as buyers of local goods, increasing overall consumption, and contributing to the businesses that revive the host country's economy. What I call for, based on my research, is for Egypt to make use of this historical moment where donor countries, and the EU in particular, is willing to provide aid and investment opportunities for countries taking up what is perceived as the 'heavy duty' of hosting migrants.

It is true that so far the EU has not yet shown much substantial concern for the well-being of migrants (as indicated by its support to the Libyan coastguards, notoriously known for their violence against migrants²²⁸). However, what has inspired me with a mood of optimism is the existence of a few promising, unprejudiced voices of certain weighty members of the EU. For instance, Angela Merkel has welcomed a large number of Syrian refugees in her country and urged other countries of the EU to share in the

²²⁸ Charles Heller *et al.*, *'It's an Act of Murder': How Europe Outsources Suffering as Migrants Drown*, N.Y. TIMES, (Dec. 26, 2018), available at: <https://www.nytimes.com/interactive/2018/12/26/opinion/europe-migrant-crisis-mediterranean-libya.html>.

human responsibility of accommodating them.²²⁹ Another important figure in the EU who has, also, shown similar concern for the refugees is Emmanuel Macron. Thousands of refugees have been given legal status to reside in France with a plan in place (designed by Macron's administration) to help them find jobs and integrate into their new society with the help of young French citizens. Paid community service has been used as a tool to help young refugees have their goals set pertaining to what they would like to learn and do. They also learn the language through state-funded classes.²³⁰

On the other side, I am aware of the rise of anti-immigrant right wing (for example, Alternative for Germany (AfD), the far-right party in Germany that won the third place in state elections last year²³¹). Nevertheless, the main concerns for right wingers as indicated explicitly by their promotional campaigns is fear of losing their national identity and culture (or as put by an AfD controversial poster: "Burkas? No, we prefer bikinis"²³²). Therefore, I believe that those far-right parties will be on board with proposals like the Jordan compact, as long as migrants remain in transit countries in the global south.

In that sense, an approach that is both pragmatic and principled could be proposed by Egypt to the international community in the same manner Jordan has done. The approach could include a number of policy reforms with an aim of meeting the international standards, to which Egypt has already committed itself, in exchange for relaxed trade regulations, investment opportunities, and international aid that could be channeled to improve public facilities in Egypt. Lessons from past approaches of other countries should then be drawn to ensure the best outcome hoped for: an improved, dignified quality of life for both nationals and refugees.

²²⁹ Alison Smale & Barbara Surk, *Angela Merkel Calls for United Europe to Address Migrant Crisis*, N.Y. TIMES, (Oct. 7, 2015), available at: <https://www.nytimes.com/2015/10/08/world/europe/angela-merkel-calls-for-united-europe-to-address-migrant-crisis.html>.

²³⁰ Annabelle Timsit, *France has a compassionate plan to help young refugees make friends and get jobs* (Oct. 2018), available at: <https://qz.com/1410589/macrons-creative-plan-to-help-refugees-in-france-assimilate/>.

²³¹ Titus Molkenbur & Luke Cooper, *The AfD is gaining strength in Germany. A reformed EU can stop it*, GUARDIAN, (Sept. 3, 2019), available at: <https://www.theguardian.com/commentisfree/2019/sep/03/afd-germany-reformed-eu-immigration-parties-europe>.

²³² *Germany's AfD: How right-wing is nationalist Alternative for Germany?*, BBC, (Feb. 11, 2020), available at: <https://www.bbc.com/news/world-europe-37274201>.