



# Refugees / Migrants

## Refugee Mobility, Recognition and Rights

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### Refugee Recognition Regime Country Profile: Egypt

**Author: Martin Jones**  
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Martin Jones is Professor of International Human Rights Law at the York Law School of the University of York. Martin is active with refugee legal aid organisations in the Global South, including by co-founding in 2008 the Egyptian Foundation for Refugee Rights. Martin's research examines the intersection of refugee law and refugee protection, including in particular the role of the law, the legal profession and the judiciary in the enjoyment of refugee rights in the Middle East, South East Asia, and East Asia.

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### **About RefMig Project**

The RefMig project aims to examine the global refugee regime, with a particular focus on the institutionalisation of the refugee/migrant binary globally. The project is divided into two strands: Recognising Refugees and Organisations of Protection. This report falls under the Recognising Refugees strand, which examines the institutional practices that seek to distinguish refugees from migrants. We take a purposefully broad conception of refugee recognition, encompassing not only individual refugee status determination (RSD) but also the institutional processes that determine access to RSD, as well as various forms of group determination. We examine the role of state institutions in this context (bureaucracies, legislatures, and the judiciary), as well as UNHCR's mandate RSD practices, and its handovers to state authorities.

The project lead is Professor Cathryn Costello. During the RefMig project, she held the positions of Andrew W. Mellon Professor of International Refugee and Migration Law, Refugee Studies Centre, University of Oxford and Professor of Fundamental Rights and Co-Director of the Centre for Fundamental Rights at the Hertie School, Berlin. RefMig obtained ethics clearance from the Central University Research Ethics Committee (CUREC) of the University of Oxford (Ref No: R61177/RE001) and the European Research Council.

RefMig Working Papers are available to download at: <https://www.refmig.org/working-papers>

## Executive Summary

This paper explores the refugee recognition regime in Egypt, a major host of refugees in the Middle East and North Africa region and one of UNHCR's largest refugee status determination operations. Although the situation of refugees in Egypt has been the subject of significant study, this paper seeks to address, through a desk-based study, the nature and performance of the refugee recognition regime in Egypt, in particular the norms, institutions, modes of recognition, quality of recognition processes and quality of protection that is available to refugees in Egypt. The main findings are detailed in this executive summary.

**Norms:** Egypt is a party to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees. It is also party to the African regional treaty relating to refugees. However, Egypt has made reservations to its obligations under the former international treaties and does not have a specific law governing its treatment of asylum seekers and refugees. There is regular (and current) discussion about Egypt developing a national asylum system but this has not yet resulted in a public commitment to specific legislation or institutional arrangements.

**Institutions:** UNHCR maintains a significant role in Egypt and is regulated through its 1954 Memorandum of Agreement (MoA). Consistent with the MoA, UNHCR conducts refugee status determination (RSD) in Egypt and, through its implementing partners, provides refugees with access to various health, vocational and educational services. The Egyptian government grants short term residency permits to recognised refugees, though the process for obtaining such a permit is complex, costly and time consuming. Embassies and institutions of foreign governments have historically played a significant role in refugee recognition through their resettlement programmes.

**Modes of Recognition:** The way in which refugee status is recognised by UNHCR and other actors has changed over time and between actors. Historically, a distinction has been made between "asylum seekers" and recognised "refugees", though there is not always a means of transitioning from one type of recognition to the other. The former recognition can be time limited and, controversially for refugees in Egypt, does not have a path to resettlement (resulting in significant acts of protest by refugees). Syrian refugees have benefited from "merged" registration (and status determination) providing a fairly quick route to recognition; in contrast (newly arriving) Sudanese refugees experience "simple" registration with an indefinite delay between registration and status determination and are only granted temporary status during this period. The Egyptian government formally allows refugees to obtain residency permits based on their registration with UNHCR but in practice this can be difficult, expensive and complicated to obtain. UNHCR does not provide recognition for Palestinian refugees in Egypt.

**Quality of Recognition Processes:** Egypt has been a site of significant advocacy by refugees and civil society concerning the quality of recognition processes. In particular, several programmes of legal aid have been developed in response to chronic deficiencies in the recognition processes. Currently, many refugees benefit from high recognition rates and "merged" processes. However, for refugees undergoing refugee status determination, there remain significant issues with respect to the quality of an opaque decision-making process. The pandemic has resulted in larger backlogs for recognition processes and a shift to telephone and virtual meetings raise additional issues around appropriateness and quality. While UNHCR has in recent years established a greater presence outside of Cairo, physical access to UNHCR

remains an issue for many refugees. Women and unaccompanied minor refugees face particular barriers to gaining recognition. Legal representation by some programmes of legal aid has both significantly impacted recognition rates in the cases in which it is involved and supported longer term advocacy, particularly to UNHCR, with a view to improving the quality of recognition.

**Quality of Protection:** Recognised refugees in Egypt, particularly those who have valid residency permits, formally enjoy a wide range of economic and social rights, including the right to work and access to education and health care. Notwithstanding this formal entitlement to such rights, even refugees with valid residency permits face numerous obstacles to enjoying their rights. Freedom of movement and the principle of non-refoulement have been recognised in Egypt, though some refugees face long-term detention and there are documented cases of informal and formal refoulement. Refugees enjoy a range of livelihood rights but these can be difficult to access due to bureaucratic requirements and xenophobia. Some refugees have access to education and health services, depending on country of origin and type of refugee recognition. There is a significant gap between the formal entitlements of refugees and their enjoyment of rights in practice. Refugees without valid residency permits are even further removed from enjoying their rights. Refugees and civil society organisations working with refugees face a growing number of restrictions on their activities.

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## **List of acronyms**

MoA	Memorandum of Agreement between UNHCR and Egypt (1954)
RSD	Refugee Status Determination
UNHCR	United Nations High Commissioner for Refugees

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## **1. Introduction**

Egypt is home to one of the largest refugee status determination operations of UNHCR and has historically seen a relatively large number of refugees access resettlement. As this description suggests, UNHCR is the primary actor in refugee recognition in Egypt. However, notwithstanding the primacy of UNHCR, other actors including the Egyptian State, the international community, and civil society play important and understudied roles in the refugee recognition processes in Egypt. The refugee recognition regime in Egypt has undergone significant changes over the last two decades, streamlining itself significantly and more openly targeting its refugee recognition activities. UNHCR's refugee recognition activities in Egypt have been the site of academic critique, pioneering of new civil society interventions, public protest and private resistance by refugee communities. Many of the past restructurings of refugee recognition operations in Egypt responded to political and operational pressure, including to control movements into and out of Egypt, and limited operational resources. Transition to State-led refugee status determination through the introduction of legislation on refugee protection is currently being discussed and it remains to be seen whether this initiative will be more successful than previous efforts. With the mass influx into Egypt in 2023 by those fleeing armed conflict in Sudan, the importance of refugee recognition processes will only increase along with the stakes of any reform of refugee recognition policies.

## **2. Scope, Terminology and Methodology**

The paper examines the development and issues in refugee recognition in Egypt over the last two decades (since 2000). It is based primarily upon a review of the available literature on refugee recognition in Egypt. Academic, practitioner and international policy maker sources were reviewed across multiple academic indexes. The report also draws upon a series of interviews with practitioners in Egypt, conducted since December 2020; specific approval for interviews for the current paper was received from the appropriate ethics committee.<sup>1</sup>

The author of the paper has also been involved in the community of practice engaged in refugee protection in Egypt since 2007. The views expressed in the paper are inevitably informed by these experiences, including most notably with the operations of several of the civil society organisations engaged in refugee legal aid in Egypt.<sup>2</sup>

## **3. Background on refugee protection in Egypt**

Egypt is a middle-income country with a highly urbanised population of more than 100 million. Geographically, Egypt is located at the cross-roads of Africa, the Middle East and Europe. In terms of migration more generally, Egypt is a sending country, a country of transit, and a country of destination. Egypt is a member of and home to the headquarters of the Arab League. Egypt also plays a leading role in the African Union (formerly the Organisation of African Unity). As will be discussed further below, Egypt is party to all major refugee instruments and most international regional human rights treaties. Egypt is a member of UNHCR's Executive

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<sup>1</sup> The conduct of interviews was approved by the University of York's Interdepartmental Economics, Law, Management, Politics and Sociology (ELMPS) Ethics Committee by way of decisions communicated on 3 January 2020, and 28 October 2020 (email on file with author).

<sup>2</sup> The author is thankful for conversations and input on previous drafts from colleagues in Egypt and to the external reviewer of an earlier draft for her helpful comments and suggestions. All errors and omissions remain the sole responsibility of the author. The author is also thankful for the input, guidance and support provided by colleagues as part of the RefMig project.



Committee.<sup>3</sup> Despite these international obligations, refugees in Egypt often face serious and systematic violations of their rights.

Refugees in Egypt have historically been drawn from neighbouring countries and the broader region in which it is located. Whether as their initial destination, or as a result of other options being foreclosed, most refugees in Egypt are in protracted situations of displacement. Palestinian refugees have been displaced to Egypt as a result of regional conflicts over Palestine, including its governance of Gaza. Conflicts in the Horn of Africa and neighbouring Sudan have since the 1990s brought large numbers of Sudanese (including now South Sudanese), Ethiopian, Eritrean, and Somali refugees to Egypt. Some of these refugees came due to the presence of large national communities already in Cairo while others came *en route* to other destinations, primarily Europe (though also for a period of time Israel). A (relatively) large resettlement programme from Egypt up until recent years was also a pull factor. In more recent years, historic ties, through migration ties to other Arab states and its political union through the United Arab Republic to Syria, have also drawn large numbers of Iraqi and more recently Syrian refugees to Egypt. The Yemeni community in Egypt has also grown significantly in size over the last decade as the civil war in Yemen has escalated.<sup>4</sup> The large Sudanese diaspora in Egypt is rapidly increasing with the advent of armed conflict in Sudan in 2023.<sup>5</sup>

Egypt is near unique in the Middle East region and the continent of Africa in that Egypt has not mandated that refugees live in camps.<sup>6</sup> At present, Egypt is home to one of the largest populations of urban refugees in the world. Historically, refugees have lived almost exclusively in greater Cairo. While greater Cairo is still home to a majority of refugees in Egypt, there are significant populations of refugees now along the North Coast (in particular, in and near Alexandria) and in the (Nile) Delta (in particular, in and near Damietta).

At present, Egypt is home to 299,167 refugees registered with UNHCR, drawn from 55 countries (UNHCR, 2022b).<sup>7</sup> The largest single group of refugees in Egypt are Syrian refugees (147,401), constituting almost exactly half of all refugees. Other large refugee communities in Egypt include refugees from Sudan (64,395), South Sudan (26,259), and Eritrea (23,874). These figures do not include the newly arrived refugees (most of whom are unregistered) from the crisis in Sudan who are estimated to (as of June 2023) exceed 250,000.<sup>8</sup>

The overwhelming majority of registered refugees who remain in Egypt are in a protracted situation, having been in Egypt for more than five years; many refugees from Sudan and the

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<sup>3</sup> Egypt joined the Executive Committee of the High Commissioner's Programme (ExCom) in 2004. His Excellency Mr. Hisham Badr of Egypt chaired the 62<sup>nd</sup> session of ExCom during the tumult of the Arab Spring (from 3 October 2010 to 7 October 2011).

<sup>4</sup> The Yemeni embassy estimates that the Yemeni community has grown almost ten-fold to more than 500,000 in Egypt since 2014. See Qabool Al-Asi "The Struggle Far From Home: Yemeni Refugees in Cairo" (The Sana'a Centre, 18 December 2020).

<sup>5</sup> According to UNHCR, more than 250,000 Sudanese nationals (and individuals formerly habitually resident in Sudan) have crossed into Egypt between 15 April 2023 and 25 June 2023.

<sup>6</sup> The exception of the recent encampment of asylum seekers and migrants in the El Salloum camp near the border with Libya will be discussed below. Elzbieta M. Gozdzia and Alissa Walter *Urban Refugees in Cairo* (2013) Institute for the Study of International Migration, Georgetown University.

<sup>7</sup> These statistics exclude the recently arrived refugees from Sudan. For more on these new arrivals, see below. UNHCR *UNHCR Egypt: Monthly Statistical Report* (May 2023).

<sup>8</sup> UNHCR *Sudan Emergency: Latest Figures* (as of 28 June 2023). UNHCR reports there are 255,565 newly arrived refugees and asylum seekers in Egypt from Sudan since 15 April 2023. The overwhelming majority of these new arrivals are Sudanese nationals.

Horn of Africa have been in Egypt for decades. The Egyptian government has alleged that UNHCR's registration of refugees significantly misrepresents the number of refugees in Egypt, though the government's own rhetoric on refugees is subject to the same critique: in recent days, the President of Egypt has been quoted in local media discussing the "six million" refugees in Egypt.<sup>9</sup> Much of the dispute over the number of refugees in Egypt turns on what proportion of the large Sudanese diaspora in Egypt should be counted as refugees.<sup>10</sup> Since April 2023, the size of this diaspora has substantially increased with the outbreak of armed conflict in Sudan. If significant numbers of the new arrivals are registered as refugees (as is expected), then by the end of 2023 the number of refugees in Egypt will have increased substantially (possibly doubling) and Sudanese refugees will replace Syrian refugees as the largest group of refugees.

One of the challenges of refugee protection in Egypt is the diversity of the population of refugees: "Each refugee group in Egypt has a unique profile based on its legal rights, wealth, education level, languages spoken, length of time in Egypt and prospects for durable solutions."<sup>11</sup> There is an unspoken and underexplored racial dimension to this characterisation, particularly as it relates to relatively recent arrivals of Iraqi and Syrian refugees. The reality is that the majority of Iraqi and Syrian refugees are Arabs with paler skin, in particular contrast to other, largely sub-Saharan refugees. Refugees, particularly from Sudan and the Horn Africa, have long complained of racist abuse in Egypt. As noted in one first-person account "they call us black and filthy".<sup>12</sup> The literature has also commented upon the varying expectations and demands of different refugee communities based on length of time in Egypt and socio-economic background.<sup>13</sup>

Despite this diversity, the two largest recent refugee flows into Egypt, Iraqis and Syrians, can particularly be distinguished from other refugee communities. As Godziak and Water wrote about the Iraqi refugees arriving in Egypt from 2003:

When Iraqi refugees began arriving in Cairo after 2003, many came from middleclass communities, were well-educated and had adequate financial resources to cover their costs of living. While these resources in many cases are running out after years of living in Cairo, Iraqi refugees' social and educational backgrounds continue to set them apart from other refugees in Egypt.<sup>14</sup>

This is also true of the more recent Syrian refugees in Egypt. In addition, these features serve not only to differentiate these refugee communities from other refugee communities in Egypt

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<sup>9</sup> Refugees and migrants are often conflated in the public discussion of refugee protection in Egypt, particularly in relation to historic refugee communities such as the Sudanese. President El-Sisi was widely quoted in the press at the G20 summit in 2016 as stating that there were "five million refugees" in Egypt (see Ahram Online, "Egypt hosting 5 mln refugees despite economic challenges: Sisi at G20" (2016). More recent reporting from Egypt in 2019 quoting the President used similar numbers (Egypt Today, "How Egypt makes millions of refugees feel at home" (2019)). It is unclear from the reporting at times whether the President was referencing only refugees or refugees and migrants.

<sup>10</sup> Omer Karasapan "Who are the 5 million refugees and immigrants in Egypt?" (2016) Brookings Institution. See also Mike Kagan "From the Archives: Troublesome Refugee Statistics and the Case of Sudanese in Egypt" (2014).

<sup>11</sup> Godziak and Water (2013), above at fn. 6.

<sup>12</sup> "They call us black and filthy": Sudanese refugees in Egypt, trapped between racism and violence" (2018) Scene Arabia.

<sup>13</sup> Natalie Briant and Andrew Kennedy "An investigation of the perceived needs and priorities held by African refugees in an urban setting in a First Country of Asylum" (2004) *Journal of Refugee Studies* 17:4, 437-459.

<sup>14</sup> Godziak and Water (2013), above at fn. 6.

but also from refugee communities from countries elsewhere in the region. Although Iraqi refugees once constituted the largest single group of refugees in Egypt, the majority of Iraqi refugees have now been resettled or voluntarily repatriated.

The broader situation in Egypt is very challenging for all individuals and organisations involved in the protection of refugees. As has been noted globally, notwithstanding global commitments to refugee protection through such instruments as the Global Compact on Refugees, those working for the rights of refugees face an unprecedented set of challenges.<sup>15</sup> The UN Special Rapporteur on the situation of human rights defenders has noted that in Egypt civic and political space has almost completely disappeared:

Today, human rights defenders are reported to face harassment from State officials, arbitrary arrest, indefinite detention and unfair trial, enforced disappearance, and torture. The State has been reported to repeatedly target human rights defenders and organisations for prosecution and has introduced increasingly restrictive laws, policies and processes that severely restrict the activities and rights of human rights defenders.<sup>16</sup>

While those involved in refugee protection and community based organisations may face fewer threats and restrictions than more mainstream human rights defenders and organisations (working on more politically sensitive issues), the difference in risk is relative and no organisations or defender is completely immune from the shrinking civic space.<sup>17</sup> Those involved in refugee protection may also elevate their risk if they deal politically sensitive issues or work in sensitive locations in their work.<sup>18</sup> In this environment, the implementing and operational partners of UNHCR face severe challenges in maintaining their services to refugees. UNHCR has also faced limitations on its activities, including at times access to refugees in detention and access to refugees in sensitive areas of the country (eg. the Sinai and southern border with Sudan). Refugees who defend their own rights and the rights of members of their communities often suffer threats and violence from the government. As has been noted by the United Nations Special Rapporteur on the situation of human rights defenders, defenders of the rights of refugees who are themselves refugees face the largest risks as a result of their activism.<sup>19</sup> The ability of non-State actors to engage with any new Egyptian governmental process will be limited by the restricted civic space in Egypt.

#### **4. Literature Review**

The literature on refugee protection in Egypt owes a significant debt to the presence of the Centre for Migration and Refugee Studies (CMRS) at the American University in Cairo<sup>20</sup> which has become the leading research centre in the region for forced migration studies and has been a key collaborator (and facilitator) of much of the research on refugees in Egypt. In addition, the historic role of Cairo as a regionally important site of civil society activity and

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<sup>15</sup> United Nations Special Rapporteur for the situation of human rights defenders (UNSR HRDs) “Report to the Human Rights Council: Human rights defenders of people on the move” (2018) UN document number A/HRC/37/51.

<sup>16</sup> UNSR HRDs *World Survey of the Situation of Human Rights Defenders* (December 2018) q.v. “Egypt”.

<sup>17</sup> Sara Sadek Mohamed *Refugees, Civil Society and the State: Rethinking Challenges and Prospects in Egypt* (2017) PhD thesis, University of York.

<sup>18</sup> For example, refugee rights defenders who work on LGBTQ+ issues or on cases raising national security issues may face the same risks as mainstream defenders.

<sup>19</sup> UNSR HRDs (2018), above at fn. 16.

<sup>20</sup> CMRS was founded in 2000 (as the Forced Migration and Refugee Studies programme, taking its current form in 2008). See the CRMS website at: <https://gapp.aucegypt.edu/centers/cmrs>.

international organisation has contributed to a similarly well-developed practitioner literature.<sup>21</sup> There is long-standing and significant literature on migration and Egyptian society<sup>22</sup>, including the effects of recent regional political change on migration.<sup>23</sup> The scholarly and practitioner literature on refugee protection exist within substantial broader literatures on migration into and from Egypt (for example, the work of Ayman Zohry, Phillipe Fargues and Ray Juredini, all of whom have been associated with CMRS).

The three inter-related themes of this literature are most relevant to an analysis of the refugee recognition regime in Egypt: the urbanisation of refugee protection; the role of refugee legal aid in refugee recognition; and, refugee protest and voice within refugee recognition processes.

#### 4.1. The Urbanisation of Refugee Protection

The status of Cairo as both home to a majority of refugees in Egypt and one of the world's mega-cities has made it an important case study for the protection of self-settled refugees in cities (urban refugees).<sup>24</sup> During the contemporary period, refugees in Egypt have never been predominantly encamped.<sup>25</sup> In contrast, for at least the first half century of the international refugee regime, the archetype of refugee protection was the refugee camp.<sup>26</sup> Beginning with the 'displaced persons camps' of Europe, this archetype spread along with the regime and quickly became the dominant popular image of the locale and means of refugee protection. Operationally, the archetype influenced how UNHCR (and other protection actors) designed its processes for refugee recognition and otherwise provided services to refugees.

As the international refugee regime has shifted its attention to urban refugees, Cairo has become one of the key sites of policy development and research into the predicament and protection of urban refugees. Cairo was one of the case studies reviewed by UNHCR as part

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<sup>21</sup> UNHCR's regional office (and regional representative) was formerly based in Cairo. However, in recent years, UNHCR's operations (and staffing) in Jordan (Aman) and Lebanon (Beirut) have significantly outpaced growth of UNHCR's operations in Egypt.

<sup>22</sup> See for example Richard Adams Jr. "The economic and demographic determinants of international migration in Rural Egypt" (1993) *Journal of Development Studies* 30:1, 146-167 and Ayman Zohry "The Place of Egypt in the regional migration system as a receiving country" (2003) *Revue Européenne des Migrations Internationales* 19:3, 129-149.

<sup>23</sup> Jackline Wahba, "Through the Keyhole: International Migration in Egypt" (2014) Economic Research Forum; Ayman Zohry, "Egypt's International Migration after the Revolution: Is There Any Change?" (2013) *Confluences Méditerranée*, 2013/4 (N° 87), p. 47-54.

<sup>24</sup> Greater Cairo is home to around 20 million people and was, until recently, one of the fastest growing cities in the world. Ironically, while refugees in Egypt live predominantly in urban areas the majority of the population of Egypt does not, in stark contrast to most countries in the MENA region. United Nations Department of Economic and Social Affairs, *World Urbanization Prospects: The 2018 Revision* (2019) UN document number ST/ESA/SER.A/420.

<sup>25</sup> The longer history of the reception of refugees in Egypt involves only limited encampment, including of White Russians during the period of British control (see Tania Konn-Roberts, "'Guests of the British Crown': White Russian Refugee Camps in Egypt, 1920–1922" (2021) *Slavonica*, 26:1, 37-57) and Palestinians during the Egyptian control of the Gaza Strip (Sara Roy, "The Gaza Strip: Critical Effects of the Occupation" (1988) *Arab Studies Quarterly* 10:1, 59-103). A more recent exception was the El Saloum (also known as Salloum or Salloum) Camp that operated at the Egypt-Libya border to receive people displaced from the fighting in Libya between 2011 and 2013.

<sup>26</sup> Anita H. Fábos and Gaim Kilbreab, "Editorial: 'Urban Refugees: Introduction'" (2007) in Anita H. Fábos and Gaim Kibreab (eds.) "Refugees in Urban Settings of the Global South". Special Issue of *Refuge: Canada's Periodical on Refugees* 24(1) 1-19.

of its review (and ultimately reformulation) of its policy on refugees in urban areas.<sup>27</sup> Egypt formed part of UNHCR's Urban Refugee Steering Group.<sup>28</sup> and was chosen as a site to pilot the implementation of the urban refugee policy.<sup>29</sup> The operations in Egypt have played a similarly important (if often hesitant) role in developing UNHCR's new "strategic direction" regarding the role of refugee status determination in protection.<sup>30</sup>

In the context of the protection of urban refugees, the recognition regime became particularly important. Representation and advice in the recognition regime was identified by refugees in Cairo as a priority concern.<sup>31</sup> Given the lack of direct financial (or other livelihood) support for urban refugees, Gabska (2005) noted that refugees in Egypt were often constrained in their pursuit of livelihood opportunities by their lack of legal status (often arising from issues within the refugee recognition regime) in Egypt.<sup>32</sup> However, while Jacobsen et al. confirmed this constraint they found that the lack of legal status was a smaller determinant of refugee livelihood than other factors, including the general economic situation and xenophobic attitudes.<sup>33</sup>

Within the urban context, information dissemination to refugees (about refugee recognition, amongst other topics) has become an important element in UNHCR's protection operations. Danielson notes: "Misinformation, rumours, mistrust, and the repeated protests they helped fuel have contributed to the arrests, injury and deaths of refugees, and to repeated closures of UNHCR's Cairo office."<sup>34</sup>

The analysis of urban refugee policy has also led to an interrogation of the role of the State vs. the role of UNHCR in Egypt. Whereas in camp-based situations, camps were treated as 'international' domains, in an urban situation the clear divisions of roles (and spaces) is less clear. As will be discussed later in this paper, UNHCR has played a major role in refugee protection in Egypt. As a result, the role of the Egyptian State in refugee protection in Egypt has been a frequent issue in the literature. Highlighting the disconnect between recognition as a refugee by UNHCR and meaningful protection, some authors have proposed that UNHCR take on the role of 'surrogate state' for refugees in Egypt.<sup>35</sup> The rapid shrinking of civic space in Egypt since the Arab Spring has indirectly caused the Egyptian State to play a more significant role in shaping refugee protection due to its growing control over the activities of civil society organisations.<sup>36</sup>

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<sup>27</sup> Stefan Sperl, *Evaluation of UNHCR's policy on refugees in urban areas: A case study review of Cairo* (2001) UNHCR document number EPAU/2001/07.

<sup>28</sup> MaryBeth Morand, Katherine Mahoney, Shaula Bellour, and Janic Rabkin *The Implementation of UNHCR's Policy on Refugee Protection and Solutions in Urban Areas: Global Survey 2012* (2012) UNHCR.

<sup>29</sup> UNHCR, *UNHCR Global Appeal, 2012-2015* (2012) q.v. "Egypt: Working Environment" at 128.

<sup>30</sup> UNHCR, *Note for the Executive Committee of the High Commissioner's Programme: Refugee Status Determination* (2016) UNHCR document number EC/67/SC/CRP.12.

<sup>31</sup> Briant and Kennedy (2004), see above at fn. 13.

<sup>32</sup> Katarzyna Grabska, "Living on the Margins: The Analysis of the Livelihood Strategies of Sudanese refugees with closed files in Egypt" (2005) FMRS Working Paper Number 6, American University in Cairo.

<sup>33</sup> Karen Jacobsen, Maysa Ayoub, and Alice Johnson "Field Report: Sudanese Refugees in Cairo: Remittances and Livelihoods" (2014) *Journal of Refugee Studies* 27:1, 145-159.

<sup>34</sup> Nora Danielson "Urban refugee protection in Cairo: The role of communication, information and technology" (2012) *New Issues in Refugee Research* Paper No. 236, UNHCR at 6.

<sup>35</sup> Michael Kagan "'We live in a country of UNHCR': The UN surrogate state and refugee policy in the Middle East" (2011) *New Issues in Refugee Research* Paper No. 201, UNHCR.

<sup>36</sup> Sadek Mohamed (2017), see above at fn. 17.

## 4.2. The Role of Refugee Legal Aid in Refugee Protection

As noted, a significant stream of the literature about refugee protection in Egypt focuses on the role of the provision of *pro bono* legal services to refugees (refugee legal aid), with a particular focus on its role during the refugee recognition process. Harrell-Bond's presence in Cairo (linked to the founding of what is now CMRS) and her interest in refugee legal aid contributed to the development of a range of refugee legal aid programmes in Cairo.<sup>37</sup> While the provision of legal aid was a novelty in the Global South at the time, none of the programmes which were developed (and some of which continue) have ever been able to come close to meeting demand.

Much of the scholarship on refugee legal aid emerges from individuals drawing upon their experiences in Cairo.<sup>38</sup> Formative experiences in Cairo (and inspiration and support from Harrell-Bond, in particular) have led to the development of refugee legal aid programmes in a range of other locations, in the region and globally. Although there is now a critical mass of literature on refugee legal aid in Egypt, very little of it makes reference to the broader Egyptian literature on legal aid with respect to other groups in vulnerable situations<sup>39</sup> or the tension between the cause lawyers and the authoritarian State in Egypt.<sup>40</sup> The former is likely contributed to by the international (non-Egyptian) authorship of the refugee legal aid literature and the latter reflects the focus of the literature on international (rather than Egyptian administrative or judicial) processes.<sup>41</sup>

Kagan's pioneering work examined the fairness of the UNHCR refugee status determination (RSD) process<sup>42</sup> and the impact of refugee legal aid on refugee protection,<sup>43</sup> using its operations in Cairo as their case study. Kagan's work extended and applied Alexander's broader critique of RSD (based on its operations in Asia)<sup>44</sup> to UNHCR's operations in Cairo. Others have built on Kagan's work by highlighting inadequate processes by UNHCR in relation to specific

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<sup>37</sup> Barbara Harrell-Bond, "Starting a Movement of Refugee Legal Aid Organizations in the South," (2007) *International Journal of Refugee Law* 19:4, 729-735; Martin Jones "Legal empowerment and refugees on the Nile: the very short history of legal empowerment and refugee legal aid in Egypt" (2015) *International Journal of Human Rights*, 19:3, 308-318.

<sup>38</sup> See for example Sarah Elliott and Megan Denise Smith. "AMERA: delivering a refugee-centred approach to protection" (2019) *Forced Migration Review* 61, 67-69 and Adhar Marup and Chuol Simon "Community-centred legal aid: strengthening protection and access to rights for refugees" (2023) *Forced Migration Review* (Special issue, April 2023), 17-20.

<sup>39</sup> See for example Fatima Khafagy, "Honour Killing in Egypt" (2005) for the Expert Group Meeting organised by the UN Division for the Advancement of Women, Association of Legal Aid for Women on legal interventions in response to honour killing or, in a comparative context also focusing on women, Martin Gramatikov and Jin Ho Verdonschot, "Legal Needs of Vulnerable People: A Study in Azerbaijan, Mali, Rwanda, Egypt and Bangladesh" (2010) TISCO Working Paper Series on Civil Law and Conflict Resolution Systems, Tilburg University.

<sup>40</sup> Tamir Moustafa, "Law and Resistance in Authoritarian States: The Judicialization of Politics in Egypt" in Tom Ginsburg and Tamir Moustafa, eds. *Rule by Law: The Politics of Courts in Authoritarian Regimes* (2012) Cambridge University Press, Egypt, 132-155 and Ahmed Ezzat, "Challenging the Legal Ideology of the State: Cause Lawyering and Social Movements in Egypt" (2019) Arab Reform Initiative.

<sup>41</sup> This observation may also be influenced by the language limitation of this literature review; this review only considers the English language scholarship.

<sup>42</sup> Michael Kagan, "The Beleaguered Gatekeeper: Protection Challenges Posed by UNHCR Refugee Status Determination" (2006) *International Journal of Refugee Law*, 18:1, 1-29.

<sup>43</sup> Michael Kagan, "Frontier Justice: Legal Aid and UNHCR Refugee Status Determination in Egypt" (2006) *Journal of Refugee Studies*, 19:1, 45-68.

<sup>44</sup> Michael Alexander, "Refugee Status Determination Conducted by UNHCR" (1999) *International Journal of Refugee Law*, 11, 251-289.

categories of individuals or situations, including stateless people<sup>45</sup> and unaccompanied minors.<sup>46</sup> More recently, Jones has noted that while refugee legal aid is well-established and effective in Egypt, it has struggled to develop models of programming that are genuinely empowering individual refugee clients and refugee communities more generally.<sup>47</sup> The technical aspects of the foregoing critiques will be further discussed below (see Section 7 in particular).

### 4.3. Protest, Voice and Refugee Recognition

In recent years, Egypt has been a cite of mass protest, most notably during the Arab Spring and during the subsequent military coup that brought the current regime (back) to power; many of these protests have been met by violence from the State.<sup>48</sup> UNHCR's Cairo office has also been a site of protest concerning refugee recognition policies, by refugees both as affected individuals and as mobilised communities. The most dramatic protest occurred in 2005 when an estimated 2,000 Sudanese refugees occupied Mustafa Mahmoud Square for more than three months; at least two dozen refugees (including children) were killed when the Egyptian police violently ended the demonstration.<sup>49</sup> The tragedy of Mustafa Mahmoud Square contributed to the relocation of UNHCR's office from central Cairo to its current location in the satellite town of 6<sup>th</sup> of October City and its continuing hypervigilance about acts of protest by refugees.

Desperate acts of protest by refugees occur (or are attempted) regularly, usually focused on UNHCR. In 2016, a group of Oromo refugees encamped outside of UNHCR's offices, and two of the group died as a result of self-immolation.<sup>50</sup> In 2020, Egyptian security forces violently dispersed Sudanese refugees and migrants protesting the killing and mutilation of a Sudanese child in Cairo; the protesters demonstrated near the child's home (in Masaken Othman) and in front of UNHCR's office.<sup>51</sup> As Grabska explains, the diffused institutional responsibilities of

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<sup>45</sup> Kelley McBride and Lindsey Kingston, "Legal Invisibility and the Revolution: Statelessness in Egypt" (2014) *Human Rights Review*, 15, 159-175.

<sup>46</sup> Clara Zavala Folache and Beth Ritchie, "Age assessment for unaccompanied asylum-seeking children in Egypt" (2020) *Forced Migration Review*, 65, 14-16.

<sup>47</sup> Jones (2015), see above at fn. 37. On legal empowerment, see the discussion below of recent developments in St Andrew's Refugee Services (StARS) legal aid programming. See also Marup and Simon (2023) updating the discussion with a current account of StARS' approach to legal empowerment.

<sup>48</sup> Neither mass protest nor the violent response from the State which it can provoke are peculiar to the Arab Spring (or post-Arab Spring) period. During the late-Mubarak period, workers' protests were frequent. While many of these were ignored (the purpose and politics of which is considered by Dina Bishak, "The Politics of Ignoring: Protest Dynamics in Late Mubarak Egypt" (2015), *Perspectives on Politics*, 13:4, 958-975) others were met with violence including the 2008 Egyptian general strike (Rabab El Mahdi, "Labour protests in Egypt: causes and meanings" (2011) *Review of African Political Economy*, 38:129, 387-402).

<sup>49</sup> Martin Rowe, "Performance and Representation: Masculinity and Leadership at the Cairo Refugee Demonstration" (2006) as part of the panel discussion on Sudanese Refugee Protest in Cairo: Community Dynamics and Broader Implications, University of East London; Carolina Moulin and Peter Nyers, "We Live in a Country of UNHCR: Refugee Protests and Global Political Society" (2007) *International Political Sociology* 1:4, 356-372; Fatah Azzam, Maisaa Youssef, Andrew Woods, Nora Danielson, Themba Lewis, Laura Maxwell, James Pearce, and Sarah Sadak *A Tragedy of Failures and False Expectations: Report on the Events surrounding the Three Month Sit-in and Forced Removal of Sudanese Refugees in Cairo, September – December 2005* (2006) Forced Migration and Refugee Studies, American University in Cairo.

<sup>50</sup> Stephen Grey and Amina Ismail "In Cairo, Ethiopia's Oromos lose hope with UN refugee agency" (2016) Reuters; Unrepresented Nations and Peoples Organisation, "Oromo: Several Self-Immolations in Front of UNHCR Office in Egypt" (2016).

<sup>51</sup> Amnesty International, "Egypt: Protests by Sudanese migrants and refugees over brutal killing of a child met with violence and arrests" (2020).

the current institutional arrangements results in an environment where the issue of accountability has become problematic and led to the frustration of refugee communities.<sup>52</sup>

Beyond the struggle for voice through protest, the literature on refugee protection in Egypt has also increasingly examined the role of refugees and refugee communities.<sup>53</sup> In recent years, local civil society organisations have won international awards for their involvement of refugee communities in service delivery.<sup>54</sup> Much of the concern expressed in the refugee protests emerges out of a lack of transparency in decision making. The lack of transparency (and attempts to address this) are *leitmotifs* in much of the literature emerging out of Egypt even when not focused on protests.<sup>55</sup>

At its furthest extremes, the discussion of refugee voice and protest in Egypt has raised questions about the nature of refugee identity. A significant literature has emerged from other locales critiquing refugee subjectivities as subjectification: “a technology of government that works through the construction of certain forms of refugee subjectivities”.<sup>56</sup> While this has informed some of the work on the marginalisation of refugees in Egypt,<sup>57</sup> much of the literature<sup>58</sup> on refugee protest in Egypt explores protest less as an indicator of total subordination and more as an act of political possibility: “the condition of possibility to political agency based on the capacities of asylum seekers to become attentive to their positions and shared grievances, to raise awareness of inequalities and injustices, and ultimately, to mobilize individually and collectively.”<sup>59</sup>

## 5. Norms

### 5.1 Domestic Norms

Egypt is a unitary State with a civil law legal system. Egypt’s obligations towards refugees are mediated by its Constitution and a series of national laws. Unfortunately, the relevant provisions of the former are rarely applied to refugee protection in general and the later do not explicitly mention refugees.

#### 5.1.1. Constitutional Norms

Although very turbulent in recent years, Egypt’s current constitutional order dates to the dissolution of the Egypt-Syria union in 1971. Since then, Egypt has largely been governed by the Constitution of 1971. Since the abdication of President Mubarak amidst the Arab Spring,

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<sup>52</sup> Grabska (2005), see above at fn. 32.

<sup>53</sup> Jones (2015), see above at fn. 37.

<sup>54</sup> St. Andrews Refugee Services (StAR) won the Ockenden Prize in 2017.

<sup>55</sup> As examples see, respectively, Grabska (2005), above at fn. 32; Barbara Harrell-Bond, “Protests Against the UNHCR to Achieve Rights: Some Reflections” (2008) in Katarzyna Grabska and L. Mehta (eds) *Forced Displacement* Palgrave Macmillan, London; and, Briant and Kennedy (2004), see above at fn. 13.

<sup>56</sup> E. Olivius, “(Un)Governable Subjects: The Limits of Refugee Participation in the Promotion of Gender Equality in Humanitarian Aid” (2014) *Journal of Refugee Studies*, 27:1, 42-61.

<sup>57</sup> See for example, Grabska (2005), see above at fn. 32.

<sup>58</sup> For example, Peter Nyers, “Taking rights, mediating wrongs: Disagreements over the political agency of non-status refugees.” (2006) in Jef Huysmans, Andrew Dobson, and Raia Prokhovnik, *The Politics of Protection*, Routledge, 60-79.

<sup>59</sup> Engin Isin *Citizens without frontiers* (2012) Continuum, London quoted in Jouni Hakli, Elisa Pascucci, and Kirsi Pauliina Kallio “Becoming refugee in Cairo: The political in performativity” (2017) *International Political Sociology*, 11:2, 185-202.



there have been a series of constitutional instruments and proposals.<sup>60</sup> Since January 2014, Egypt has been governed by a new Constitution. Although there have been numerous amendments to the constitutional order and, in recent years, much controversy around the process and substance of constitutional reform, the provisions relevant to the protection of refugees in Egypt have remained relatively constant. Of particular relevance to the protection of refugees are the constitutional protection of basic rights, the guarantee of political asylum, and the reception of international obligations into the domestic legal order. Each of these will be discussed in more detail.<sup>61</sup>

### *5.1.2. Protection of basic rights*

The Egyptian constitutional order has long formally guaranteed human rights. These were previously generally extended to all persons in Egypt. Part III of the Constitution of 1971 protected a range of civil and political rights. However, some rights were articulated as belonging only to citizens, notably the prohibition of discrimination, the protections of aspects of the right to private life, the right to peaceable assembly and freedom of association which were only provided to citizens.<sup>62</sup> The current constitution adopted a different structure in articulating rights. Part III of the Constitution of 2014 articulates a range of human rights. Those rights previously limited to citizens continue to be limited, with the exception of the right to private life which is extended to all persons.<sup>63</sup> The current constitution also expands the (already significant) list of economic and social rights provided for in earlier constitutional documents, providing more detail on the scope of the rights to education and health care.

It has been often observed that the Egyptian constitutional order often recognises rights but allows for their limitation. Many of the rights articulated in the current constitution are subject to the proviso that they be enjoyed “in accordance with the law.” Unfortunately, the constitution itself provides little guidance on the scope of any limitations: “Overall the constitution has no clear concept of how far human rights can be limited. In the past many constitutional guarantees were undermined through clawback clauses (‘to be regulated by law’) that opened the door for repressive legislation and administrative practice. The new constitution does little to prevent that from happening again.”<sup>64</sup>

### *5.1.3. Political asylum*

There has long been a constitutional acceptance of political asylum. The Constitution of 2014 provides in Article 91: “The state shall grant political asylum to any foreigner who has been persecuted for defending the interests of peoples, human rights, peace or justice.

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<sup>60</sup> The ‘revolution’ resulted in a Constitutional Declaration of March 2011. This was followed by a controversial constitutional drafting process under the government of President Morsi. The resulting constitution (of December 2012) was suspended by decree (in July 2013) after the overthrow of the Morsi Government. A new drafting process began that resulted in the Constitution of 2014 which was confirmed by referendum in January 2014.

<sup>61</sup> The constitutional order of Egypt also guarantees judicial independence which will be further discussed in Section 5, below.

<sup>62</sup> Articles 40, 45, 54 and 55 of the Constitution of 1971. Some other rights were similarly limited to citizens but generally in accordance with international standards (for example, the rights to entry and exit, and freedom of residence, see Articles 50, 51 and 52).

<sup>63</sup> Article 57 of the Constitution of 2014.

<sup>64</sup> European Union Directorate General for External Policies, *Egypt: In-depth Analysis of the Main Elements of the New Constitution* (2014) EU document number EXPO/B/AFET/2013/40 PE 433.846.

Extradition of political refugees is forbidden. All of the above is according to the law.” This provision is effectively identical to the earlier guarantee of Article 53 of the Constitution of 1971, with the exception of the proviso that it be “in accordance with the law.” There has never been legislation providing for political asylum.

#### *5.1.4. Reception of international obligations*

Egypt is a monist legal system. International obligations are, provided certain formalities are met, considered part of the domestic legal order. Article 151 of the Constitution of 2014 provides that treaties may be negotiated by the President. Treaties are then subject to approval by the House of Representatives and “shall acquire the force of law following their publication.” While the requirement of approval by the House of Representatives is an additional procedural requirement, a similar provision receiving international obligations into the domestic legal order existed in the Constitution of 1971 (also coincidentally as Article 151).<sup>65</sup> Article 93 of the current constitution also has an explicit recognition of international human rights agreements: “The State shall be bound by the international human rights agreements, covenants and conventions ratified by Egypt, and which shall have the force of law after publication in accordance with the prescribed conditions.”

#### *5.1.5. Legislative Norms*

Apart from a brief period after Egypt became party to the *Refugee Convention*, Egypt’s national laws have not generally referenced refugee protection.<sup>66</sup> Currently, there is no national legislation supporting the asylum system and almost all of Egyptian law does not make explicit reference to asylum or refugees. Occasionally, legislation exempts refugees from the application of restrictions on foreigners, though this is usually restricted to Palestinian refugees.<sup>67</sup> There have been recent initiatives by civil society (led by the Egyptian Foundation for Refugee Rights) and by officials within the Egyptian government to formulate a national asylum law.<sup>68</sup> In 2018, the Egyptian Foundation for Refugee Rights hosted an European Union supported consultation on establishing a national asylum system.<sup>69</sup> In September 2019, Deputy Assistant Minister for Migration, Refugees and Combatting Human Trafficking, Ambassador Dina Al-Sehy, announced that “Egypt is in the process of drafting a national asylum legislation.”<sup>70</sup> While these initiatives have been supported in recent years by UNHCR and other actors (notably the European Union), it is currently uncertain whether these will remain simply proposals. Anonymous sources within the Egyptian government have claimed that the initiative comes out of internal and national consultations since 2019.<sup>71</sup> Since the beginning of the influx

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<sup>65</sup> Article 145 of the ill-fated Constitution of 2012, with slightly different requirements for approval, similarly recognised international agreements as having the force of law after publication.

<sup>66</sup> The moment of transition to being a State party which resulted in a Presidential decree and the formation of national institutions to regulate asylum is discussed below in Section 5.

<sup>67</sup> For example, Sadek, 2013 notes that Law 124 of 1958 (24 August 1958) prohibits foreigners from owning agricultural land but Palestinian refugees are exempted from this prohibition by Law 15 of 1963.

<sup>68</sup> Neemat Sharafeldin, “Refugee in Egypt: practices and prospective law” (2020), Master’s Thesis, American University in Cairo.

<sup>69</sup> This initiative resulted in a draft text of a national law recognising refugees (and potentially a broader category of persons otherwise in need of protection) explicitly and allowing for refugee recognition by the State directly (without UNHCR).

<sup>70</sup> Sharafeldin (2020), see above at fn. 68.

<sup>71</sup> Sharafeldin (2020), see above at fn. 68.

of refugees from Sudan, there have been reliable reports that the Egyptian government will soon introduce a new legal and policy framework for refugee protection.<sup>72</sup>

## 5.2. International Norms

Egypt is *inter alia* a member of the United Nations, Arab League and African Union. As a result, it has made a series of international commitments towards refugees. As noted above, these commitments are received into the domestic legal order by virtue of Article 151 of the Egyptian Constitution.

### 5.2.1. Refugee Norms

Egypt was a participant in the Conference of Plenipotentiaries in July 1951 that completed the drafting of the *Convention Relating to the Status of Refugees (Refugee Convention)* of 1951, although it only became party to the treaty thirty years later.<sup>73</sup> Egypt is also party to the *Protocol Relating the Status of Refugees (Refugee Protocol)* of 1967.<sup>74</sup> Presidential Decree 331 of 1980 (28 May 1981) adopted the *Refugee Convention* as domestic law.

Egypt is also party to the Organisation of African Unity (now African Union's) *Convention Governing the Specific Aspects of Refugee Problems in Africa (African Convention)* of 1969.<sup>75</sup> Historically, Egypt was an important driver in the negotiation process of the *African Convention*, being perhaps the first State to (unofficially) raise in an international forum the adequacy of the *Refugee Convention* to respond to displacement in the region.<sup>76</sup> However, as with the *Refugee Convention*, it wasn't until much later, in 1980, that Egypt became party to the treaty. More recently, Egypt was a participant in the *Addis Ababa Document on Refugees and Forced Population Displacements in Africa* which, *inter alia*, called for greater international support for host States in Africa.<sup>77</sup> In 1994, Egypt joined the Organisation for

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<sup>72</sup> Personal correspondence on file with author, May 2023.

<sup>73</sup> 189 U.N.T.S. 150, entered into force April 22, 1954. Egypt acceded to the *Refugee Convention* on 22 May 1981. See Hirotaka Fujibayashi, "When an Arab State entered into International Refugee Instruments: Behind the scenes of Egypt's accession to the 1951 Refugee Convention" (2022) *Journal of Refugee Studies*, 35:1, 220-241 for an examination of the reasons behind Egypt's accession.

<sup>74</sup> 606 U.N.T.S. 267, entered into force Oct. 4, 1967. Egypt acceded to the *Refugee Protocol* also on 22 May 1981.

<sup>75</sup> 1001 U.N.T.S. 45, entered into force June 20, 1974. Egypt (in its previous incarnation as the United Arab Republic) signed the *African Convention* on 10 September 1969 at the conclusion of its negotiation in Addis Ababa. It later ratified the *African Convention* on 12 June 1980.

<sup>76</sup> Marina Sharpe (in "The 1969 OAU Refugee Convention and the Protection of People fleeing Armed Conflict and Other Situations of Violence in the Context of Individual Refugee Status Determination" (2013) UNHCR document number PPLA/2013/01 at fn 92) notes that Egypt made this point unofficially at a 1964 Cairo meeting of the Asian-African Legal Consultative Committee (AALCC). There it expressed reservations about the inability of the 1951 Convention's refugee definition to cover those fleeing their country for generalised reasons. The AALCC's refugee work is described in E. Jahn, 'The Work of the Asian-African Legal Consultative Committee on the Legal Status of Refugees' (1967), *Heidelberg Journal of International Law*, 27, 122-38.

<sup>77</sup> *The Addis Ababa Document on Refugees and Forced Population Displacements in Africa*, adopted by the OAU/UNHCR Symposium on Refugees and Forced Population Displacements in Africa (8 - 10 September 1994). See in particular Recommendation 8: "The international community, the United Nations, the United Nations High Commissioner for Refugees, and other relevant organizations, should support and assist host Governments in fulfilling their responsibilities towards refugees in a manner consistent with the principles of refugee law on the one hand, and legitimate national security, social and economic interests on the other hand. In particular, financial, material and technical assistance should be made available to enable Governments to respond effectively to situations which may contribute to a deterioration in security, law and order in the refugee-hosting areas..."

African Unity's Commission of 15 (as it then was) on Refugee Problems in Africa (Sharpe, 2011).<sup>78</sup> Although not explicitly concerning refugees, Egypt has also played a role in the EU-Horn of Africa Migration Route Initiative (known as the Khartoum Process), notably serving as its first chair.<sup>79</sup>

### *Definition of refugee*

Egypt applies the definition of refugee contained in Article 1(A)(2) of the *Refugee Convention* without either geographic or temporal limitation.<sup>80</sup> Thus a refugee in Egypt under the *Refugee Convention* (as updated by the *Refugee Protocol*) is: "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country."<sup>81</sup>

In addition, as a party to the *African Convention* Egypt additionally considers as refugees persons who: "owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality."<sup>82</sup>

Historically, Palestinian refugees have not been considered to fall within the definition of refugee (or under the mandate of UNHCR) by Egypt. Although UNRWA has offices in Cairo, it does not maintain a field presence (or otherwise provide support to Palestinian refugees) in Egypt. In these circumstances, contrary to Egyptian practice, most interpretations of the *Refugee Convention* would not exclude Palestinian refugees.<sup>83</sup> Egypt's exclusion of Palestinian refugees is often attributed to it being a signatory to the Arab League's *Protocol for the Treatment of Palestinians in Arab States (Casablanca Protocol)* of 1965. Under the terms of the instrument, Palestinian refugees are to receive the entitlements of nationals in relation to education and employment. However, neither the *Casablanca Protocol* nor any other instrument of the Arab League precludes providing Palestinian refugees with the rights accorded to them under the *Refugee Convention*. The growing political alienation of the Palestinian cause from the Egyptian State is a more likely cause of the exclusion of Palestinian refugees.

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<sup>78</sup> Egypt joined the Commission of 15 after the *Khartoum Declaration on Africa's Refugee Crisis*, OAU Doc. BR/COM/XV/55.90 (1990), though many of that declaration's propositions found further articulation in the Addis Ababa Document the drafting of which Egypt participated.

<sup>79</sup> The Khartoum Process is a forum which is "primarily aimed at combating human trafficking and smuggling in the [Horn of Africa to Mediterranean] region" per Lutz Oette and Abdelsalam Babiker, "Migration Control a la Khartoum" (2017) *Refugee Survey Quarterly*, 36:4, 64-89.

<sup>80</sup> Egypt did not make a declaration limiting the geographic scope of the definition under Article 1(B)(1) of the *Refugee Convention* nor is it clear that it would it have been able to do maintain such a declaration given that Article 1(3) of the *Refugee Protocol* exempts only "existing declarations made by States already Parties to the Convention" (and Egypt became party to both treaties on the same day). The extent to which "Egypt" applies any definition of refugee is discussed below in relation to refugee recognition (which is the task of UNHCR in Egypt more than the government).

<sup>81</sup> Article 1(A)(2) of the *Refugee Convention*.

<sup>82</sup> Article 1(2) of the *African Convention*.

<sup>83</sup> UNHCR, "Guidelines on International Protection No. 13: Applicability of Article 1D of the 1951 Convention relating to the status of refugees to Palestinian refugees" (2017), UNHCR document number HCR/GIP/17/13; Oroub El-Abed, "The forgotten Palestinians: how Palestinian refugees survive in Egypt" (2004) *Forced Migration Review*, 20, 29-31.

## *Reservations to refugee rights*

In becoming party to the *Refugee Convention*, Egypt made five reservations: “With reservations in respect of article 12 (1), articles 20 and 22 (1), and articles 23 and 24.” Egypt subsequently explained (through clarifications received three years later) the reservation to Article 12 as due to a conflict with the provisions on personal status of Egypt’s civil code. The explanation in relation to the other articles were, it would seem, more principled: “because these articles consider the refugee as equal to the national”.<sup>84</sup> Despite its reservation, Egypt allowed that it might grant privileges in relation to the reserved rights to refugees “on a case-by-case basis”.<sup>85</sup>

As noted earlier, Article 12 addresses the determination of which laws will govern the determination of personal status of a refugee. Article 20 addresses the entitlement of refugees to rationing. Article 22(1) addresses the entitlement of refugees to elementary education. Article 23 addresses the entitlement of refugees to public relief. Article 24 addresses the entitlement of refugees to protection by labour legislation and social security.

In relation to these reservations, a few points should be noted.

Firstly, it is sometimes (incorrectly) stated in some of the literature that Egypt has made a reservation to the *Refugee Convention* that allows it to refuse refugees the right to work.<sup>86</sup> This is clearly not the case. While Egypt’s commitments under the *Refugee Convention* certainly do not guarantee all workplace protections, it has not made a reservation to the core provisions guaranteeing refugees the rights to wage-earning employment (Article 17), self-employment (Article 18), and the practice of a liberal profession (Article 19). Egypt’s reservations under Article 24, for example with respect to entitlement to social security, are also sometimes used as a pretext to denying refugees employment.<sup>87</sup> The misstatement that Egypt has made a reservation with respect to employment is likely a misunderstanding of the limits of the right to wage earning employment within the *Refugee Convention* and a conflation of the right to employment with other related rights.<sup>88</sup>

Secondly, the importance of many of the reservations have been diminished by subsequent international commitments and domestic legal provisions. In relation to the right to elementary education, Egypt did not make any reservation with respect to the entitlement of all children in Egypt to primary education.<sup>89</sup> Egypt is party to the *International Covenant on Economic, Social*

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<sup>84</sup> Despite the ‘principle’ of not wishing to equate the rights of refugees to those of nationals, Egypt did not make a reservation in relation to other refugee rights defined in relation to the rights of nationals, including Article 14, 16(2) and 29.

<sup>85</sup> For discussion of the politics around the making of the reservations (and their potential removal), see Gabriel Koehler-Derrick, “Egypt: Towards a culture of legal integration? Cairo’s urban refugees and Egypt’s reservations to the 1951 Convention” (2004) ADIR L’altro diritto.

<sup>86</sup> Grabska (2005), see above at fn. 32, and Godziak and Water (2013), see above at fn. 6, as examples of this misstatement (in otherwise well-grounded analyses).

<sup>87</sup> For example, the lack of social security registration may be used as a pretext to refuse a refugee employment.

<sup>88</sup> Article 17 of the *Refugee Convention* only guarantees the right to “wage-earning employment” to “refugees lawfully staying” in Egypt and only to the extent such a right is “the most favourable treatment accorded to nationals of a foreign country in the same circumstance.”

<sup>89</sup> See Article 28 of the Convention on the Rights of the Child, 1577 U.N.T.S. 3, entered into force 2 September 1990. Egypt became a party to the Convention in 1990.

*and Cultural Rights (ICESCR)*<sup>90</sup>, and all eight fundamental conventions of the International Labour Organisation.<sup>91</sup>

Thirdly, it has been observed that the formalities of Egypt's incorporation of the *Refugee Convention* into domestic law (by way of publication in the official gazette) omitted publication of the reservations.<sup>92</sup> Thus, while the reservations may limit Egypt's obligations under international law, they do not limit Egypt's obligations to refugees in domestic law.<sup>93</sup>

### 5.2.2. Human Rights Norms

As noted above, Egypt's constitutional order explicitly recognises international human rights treaties and has protected many of the rights articulated in international human rights treaties. Egypt is a party to eight of the nine main international human rights treaties. The notable exception is the *Convention for the Protection of All Persons from Enforced Disappearance*.<sup>94</sup> Egypt is not party to the optional protocols, notably abolishing the death penalty (CCPR-OP2) and establishing a preventative mechanism for torture (OP-CAT). Egypt has not declared (or otherwise) accepted the jurisdictions of various human rights treaty bodies to receive individual communications.<sup>95</sup> As a member of the African Union, Egypt is party to the *African Charter on Human and Peoples' Rights (African Charter)*.<sup>96</sup> Article 12(3) of the *African Charter* guarantees the right "to seek and obtain asylum in other countries in accordance with the law of those countries and international conventions."

Although not directly binding on UNHCR, as an international organisation, UNHCR's Standard Operating Procedures (SOPs) for refugee status determination have included reference to the standards of fair trial contained in Article 14 of the *International Covenant on Civil and Political Rights*. UNHCR has also often promised to respect the right to "due process" in information distributed to asylum seekers and refugees.

### 5.2.3. Other Norms

Although not a human rights treaty, Egypt signed a bilateral agreement with Sudan in 1976, the Wadi El Nil (Nile Valley) Agreement. This agreement entitled nationals of Sudan special treatment in Egypt (and vice versa), particularly in relation to work, education, healthcare, and property ownership (the so-called "four freedoms" of the agreement). Official mention of the agreement ended in 1995, after a group of Sudanese nationals attempted to assassinate then President Mubarak in Addis Ababa. However, the agreement does not appear to have been

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<sup>90</sup> 993 U.N.T.S. 3 entered into force 3 January 1976. Egypt became a party to the *ICESCR* on 14 January 1982 with no reservations (beyond a general declaration of non-conflict with Sharia law).

<sup>91</sup> This has been true since at least 2002 (when Egypt became party to the eighth fundamental treaty of the ILO, *Worst Forms of Child Labour Convention (C182)*).

<sup>92</sup> A. M. Ruxi "The human rights situation in Egypt as an insecure host state of refugees"(2006), Master's dissertation, University of Malta.

<sup>93</sup> This argument has not, to the best of my knowledge, been confirmed in Egyptian courts. Furthermore, for the reasons outlined earlier (under the second point) they are increasingly unlikely to be tested.

<sup>94</sup> G.A. res. 61/177, U.N. Doc. A/RES/61/177 (2006), entered into force Dec. 23, 2010.

<sup>95</sup> United Nations Office of the High Commissioner for Human Rights, "Acceptance of individual complaints procedures for Egypt" available online at [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=54&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=54&Lang=EN) (last accessed 29 June 2023).

<sup>96</sup> Adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986.

formally renounced.<sup>97</sup> Even scholars who believe the agreement to have been renounced have argued that Sudanese in Egypt before 1995 continue to enjoy rights under the agreement.

Although much less discussed than the situation of Sudanese nationals in Egypt, some scholars have suggested that other bilateral agreements with refugee producing States in the region may entitle nationals of those States to rights, including access to residency permits, in Egypt. Various authors suggest that Egypt has such agreements with a range of neighbouring States, including Libya, and Yemen and that these influence UNHCR protection policy. For example, Sharefeldin quotes a UNHCR official as claiming UNHCR does not register Libyan nationals on the basis of their entitlement to residence permits under such an agreement.<sup>98</sup> Such agreements (in particular the Wadi El Nil Agreement) are potentially important for interpreting refugee rights under the *Refugee Convention* that are benchmarked against the entitlements of most favoured non-nationals. While the object of such agreements may be to benefit nationals of these ‘most favoured’ States, in effect they can leave nationals who are refugees in limbo and result in bespoke refugee recognition arrangements that are the antithesis of ‘most favoured’.<sup>99</sup>

## 6. Institutions

Refugee recognition is primarily conducted by UNHCR in Egypt, pursuant to a memorandum negotiated at the start of its operations in Egypt. UNHCR conducts refugee status determination (both *prima facie* or group-based and individualised) and supports historically large numbers of refugee resettlement from Egypt. The Egyptian government formally recognises refugee status through the granting of time limited residency permits by the Ministry of the Interior. UNHCR is facing strategic challenges with respect to its refugee recognition activities and Egypt has undergone significant change in its governmental arrangements in recent years. Despite the recent discussion of asylum legislation, it is likely that the current institutional arrangements in Egypt will continue into the near- and medium-term future. This section explains the roles of both the UNHCR and the Ministry of Foreign Affairs and the Ministry of the Interior in refugee recognition in Egypt. This section will also address the role of UNHCR and foreign governments in refugee recognition in Egypt through their resettlement selection processes.

### 6.1 UNHCR

Egypt is UNHCR’s oldest office in the Middle East.<sup>100</sup> Since 1954, the operations of UNHCR have been governed by a Memorandum of Understanding (MOU) between Egypt and UNHCR.<sup>101</sup> Despite significant change in the operational scope of UNHCR and the legal obligations of both parties, the MOU has not been amended. Although the MOU was negotiated before the *African Convention*, it defines its *ratione personae* as “refugees who are within the mandate of the United Nations High Commissioner for Refugees” which would presumably

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<sup>97</sup> The literature on this point is mixed. For a contrary view, though without sources, see Sharefeldin (2020), see above at fn. 68.

<sup>98</sup> Sharefeldin (2020), see above at fn. 68.

<sup>99</sup> For example, Yemeni nationals had their registration placed ‘on hold’ for many years and generally now can only access status determination without referral for resettlement.

<sup>100</sup> Kagan (2011), see above at fn. 35.

<sup>101</sup> See Annex 1 for the full-text of the MOU.

also include those refugees that fall within the extended definition of the *African Convention* (at least once Egypt became party to it).<sup>102</sup>

The MOU entitled UNHCR to establish a “branch office” in Cairo.<sup>103</sup> The branch office eventually became expanded to several offices within and beyond Greater Cairo and had a role in the regional leadership of the organisation.<sup>104</sup> Article 2 of the MOU sets out the mandate (“tasks entrusted to the High Commissioner Delegation in Egypt”) of UNHCR in Egypt which notably includes cooperation “with the governmental authorities in view of undertaking the census of and identifying the refugees eligible under the mandate of the High commissioner” (Article 2(a)). Beyond the role in the “census” of refugees, UNHCR is charged with facilitating the voluntary repatriation of refugees (Article 2(b)), encouraging resettlement (Article 2(c)), providing assistance to destitute refugees (Article 2(d)), and coordinating refugee related activities in Egypt (Article 2(e)).

The MOU also provides for the establishment of an office and liaison between UNHCR and the government (Article 3) and the appointment of and immunities for UNHCR staff in Egypt (Articles 4 and 5). Significantly, Egypt also committed to recognise refugees in Egypt through the granting of residency permits: “The Egyptian Government will grant to “bona fide” refugees, residing in Egypt, who fall within the High Commissioner’s mandate, residence permits according to the regulations in force.” Egypt’s recognition of refugees under the MOU extends to the issuance of travel documents to refugees traveling (and returning from) abroad (Article 7).<sup>105</sup> The ways in which UNHCR has historically recognised and currently recognises refugees in Egypt will be elaborated in detail below in Section 6.

The role of UNHCR as the primary institution responsible for refugee recognition, including registration, recognition and settlement, stems primarily from the text of the MOU charging UNHCR with the “census” of refugees (and the other provisions concerning resettlement). However, the role of UNHCR as the institution responsible for refugee recognition in Egypt was, for a short period of time, brought into doubt around the time of Egypt becoming a party to the *Refugee Convention* and *Refugee Protocol* (on 22 May 1981). In May 1984, the President of Egypt issued Decree No. 188/1984 (15 May 1984) “calling for the creation of a Permanent Refugee Committee, entrusted with conducting RSD based on the *Refugee Convention*”.<sup>106</sup> Later in May, the Deputy Minister of Foreign Affairs issued an order establishing the Permanent Refugee Committee.<sup>107</sup> However, for reasons that have not been fully explored in the scholarship, Egypt did not assume the conduct of RSD.

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<sup>102</sup> While Paragraph 6(a) of the *Statute of UNHCR* defines refugee in terms foreshadowing the definition of the *Refugee Convention*, support for UNHCR having responsibility for refugees falling within the extended definition of the *African Convention* can be found in other paragraphs of its *Statute* and subsequent treaties and practice. Paragraph 8(a) of the *Statute*, subsequent resolutions of the General Assembly (pursuant to Paragraph 9 of the *Statute*) and Article 8 the *African Convention* all of which explicitly recognise the role of UNHCR in coordinating international protection to refugees who fall within the extended definition. For a contrary opinion, see Tarek Badawy “The Memorandum of Understanding between Egypt and the Office of the United Nations High Commissioner for Refugees: Problems and Recommendations” (2010) CARIM Analytic and Synthetic Notes 2010/07, Robert Schuman Centre for Advanced Studies.

<sup>103</sup> Article 1 of the MOU.

<sup>104</sup> Although the representative in Egypt based in Cairo was previously the regional representative, the regional leadership of UNHCR in the field has shifted to Beirut (for resettlement) and Aman (more generally).

<sup>105</sup> This provision seems based on the requirements of Article 28 of the *Refugee Convention*.

<sup>106</sup> Badawy (2010), see above at fn. 102.

<sup>107</sup> Badawy (2010), see above at fn. 102.



Although the MOU is not as explicit as other agreements between UNHCR and other states in the region, the MOU notably does not address the role of local integration in resolving the situation of refugees in Egypt.<sup>108</sup> As noted, the provisions of Article 2 explicitly enumerate the facilitation of voluntary repatriation and onward resettlement as the tasks entrusted to UNHCR. Some authors have inferred from the failure to mention local integration that “local integration is not a recognised durable solution for refugees in Egypt”<sup>109</sup> – which may reflect the practical difficulties on the ground but is not a logically necessary conclusion from the MOU. The omission of local integration could have more to do with the lack of the need for a role for UNHCR in such a process, governed as it is by local laws and institutions. Having said this, the historic preference of Egypt has been to locally integrate refugees only as a last resort.<sup>110</sup>

## 6.2 Ministry of Foreign Affairs and Ministry of Interior

The recognition of refugees by Egypt is handled jointly by the Ministry of Foreign Affairs and the Ministry of Interior. The issuance of residence permits by the Egyptian State relies upon the provision of documentation by UNHCR; the Egyptian government authorities stamp the various documents issued by UNHCR with the residency permit (given the usual lack of passports and travel documents by refugees).

Historically, residency permits have been stamped by the Ministry of Foreign Affairs and the Refugee Affairs section of the Ministry of Interior. In recent years, the stamp has been replaced by stickers (affixed to UNHCR registration cards) and now “digital permit cards”.<sup>111</sup> The fees associated with issuance and renewal of residence permits have often meant refugees are unable to access this form of documentation.<sup>112</sup> Short periods of renewal have also imposed costs, including lost work and for travel.

The issuance of residency permits is governed by Ministry of Interior Decree 8180 of 1996.<sup>113</sup> Residency permits may be issued for between six months and three years, though practice has generally been to issue permits for shorter periods of residency. Palestinian refugees have typically been under a separate residency regime which varies (in terms of the length of residency) according to their date of arrival in Egypt.<sup>114</sup>

## 6.3 International processes for resettlement

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<sup>108</sup> In contrast, the MOU between UNHCR and neighbouring Jordan specifies that recognised refugees must be resettled within six months (a limitation period that has been historically impractical to observe). For a more general discussion of MOUs between UNHCR and States in the region see Kagan (2011), above at fn. 35.

<sup>109</sup> Badawy (2010), see above at fn. 102.

<sup>110</sup> Grabska (2005), see above at fn. 32, quotes Egyptian Ambassador Menha Bakhom: “Our priority for refugees in Egypt is repatriation or resettlement. Until this happens, we are willing to help them and have them on our territory.”

<sup>111</sup> Sama Osama “Egypt issues new permit residence cards for refugees and asylum seekers” (Ahrām Online, 28 October 2019) available online <https://english.ahram.org.eg/NewsContent/1/64/354842/Egypt/Politics-/Egypt-issues-new-permit-residence-cards-for-refuge.aspx> (last accessed 1 June 2023).

<sup>112</sup> The cost of a residence permit (the digital residence card) is 100 EGP (initially the cards were issued for 570 EGP). The stickers which the card replaced cost 40 EGP. However, these costs are per document – so families of refugees face much higher total costs.

<sup>113</sup> George Sadek, “Legal Status of Refugees: Egypt, Jordan, Lebanon and Iraq” (2013) The Law Library of Congress, Global Legal Research Center.

<sup>114</sup> Sadek (2013), see above at fn. 113, quoting Liala Hilal and Shahira Sami, “Immigration and Asylum in the Levant” (2012) Euro-Mediterranean Human Rights Network.

Historically, refugees have been resettled from Egypt in large numbers. As a result, selection for resettlement by UNHCR and/or foreign governments has been an important element of the refugee protection regime in Egypt. While resettled refugees are, by definition, no longer in Egypt, the processes and criteria by which refugees are selected for resettlement influences the individuals and communities that remain in Egypt. In conversation, refugees have described resettlement as “a poison” that alters the processes and priorities of the broader regime (and the life choices of refugees in Egypt).<sup>115</sup> However it is viewed, considerations about resettlement shape the lives of refugees and heavily influence many of the policy decisions around refugee protection in Egypt.

Resettlement has historically been at the centre of UNHCR decision making in Egypt. Refugee communities inevitably view resettlement as their preferred durable solution and it affects everything from their individual and communal requests for support while in Egypt to intra and inter community relations.<sup>116</sup> Many UNHCR policy decisions are also shaped by the presence (or absence) of resettlement, including notably the process of refugee status determination and the type of status given to particular communities of refugees. Real and perceived changes in the availability of resettlement have also prompted most of the significant refugee protests in Egypt over the last 20 years. For example, the ill-fated Sudanese protest of 2005. Beyond the institutional failures in responding to the protest, Azzam et al. notes: “there were false expectations on the part of the Sudanese about their chances for resettlement.”<sup>117</sup>

## 7. Modes of Recognition

There are several different modes of refugee recognition by UNHCR and other actors. Some of these have changed over time, with the current model highly tailored to the particular issues around refugee recognition facing the Syrian refugees who now make up an overwhelming majority of refugees in Egypt.

Discussion of refugee recognition in Egypt has often made reference to “blue cards” and “yellow cards.” The colours refer to the colour of the old cardboard documentation booklets issued by UNHCR (light blue and canary yellow). Historically, UNHCR used this colour coding to distinguish between temporary recognition of an individual as a person of concern (yellow card) and semi-permanent recognition of an individual as a refugee (blue card). The type (colour) of card then impacted the level of services that an individual might receive from UNHCR’s implementing and operational partners. Historically the colour of the card also indicated whether an individual was eligible for resettlement (with only blue card holders being eligible for resettlement).<sup>118</sup> Significantly, there has often been no ability to ‘progress’ from a yellow card to a blue card. While simplistically, one might think that asylum seekers receive yellow cards and recognised refugees receive blue cards there were and are significant

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<sup>115</sup> The use of the term “poison” comes from a personal communication with a Sudanese refugee in 2007 resisting resettlement from Cairo, hoping instead to build a durable community in Cairo. Despite his views, he subsequently reluctantly agreed to resettlement to Sweden in the face of deteriorating conditions and growing risk. He was one of many refugees who expressed a similar view of resettlement, albeit often young, non-disabled, Arabic speaking and male (so individuals with the highest ability to locally integrate).

<sup>116</sup> Briant and Kennedy (2004), see above at fn. 13.

<sup>117</sup> Azzam et al. (2006), see above at fn. 49.

<sup>118</sup> Those who had ‘only’ yellow cards such as asylum seekers awaiting status determination and those who received *prima facie* status were not eligible for resettlement. As noted above, see Azzam et al. (2006), see above at fn. 49, for the link between decisions concerning the colour of refugee documentation, resettlement policy and the deadly protests of 2005.

exceptions to this proposition. For example, currently refugees who are recognised through *prima facie* recognition (such as Syrian and Yemeni refugees) only receive yellow cards.

## 7.1 UNHCR refugee recognition process

UNHCR's role in refugee recognition in Egypt makes it UNHCR's "largest refugee status determination (RSD) operation globally".<sup>119</sup> As noted, the process has historically streamed different individuals into different processes and this continues to be the case. All individuals seeking to be recognised a person of concern by UNHCR in Egypt attend a registration interview; the nature of the registration interview (and any subsequent interviews) varies on the nationality of the individual, the complexity of their claim, and any issues concerning resettlement. In line with UNHCR's recent global "strategic engagement" with RSD operations,<sup>120</sup> UNHCR in Egypt prioritises resources (as indicated by interviews and scheduling) where it will have an immediate protection benefit or lead to resettlement: "operations prioritize strategic engagement and will only conduct individual determination when there are protection and solution dividends that cannot be otherwise delivered."<sup>121</sup>

Individuals who register with UNHCR receive a "UNHCR Asylum-Seeker Registration Card", the so-called yellow card. This renewable document expires in 18 months and indicates that the individual is still awaiting the final decision on status. The card contains a photograph and dependents of an asylum seeker are listed on the card. Registration occurs at different locations depending on the nationality of the asylum seeker: Syrians are processed at UNHCR's central Cairo office in Zamalek and all other nationalities are processed at its office in 6<sup>th</sup> of October City.<sup>122</sup> In some cases, where UNHCR is only able to conduct a very brief registration, asylum seekers may be issued with a temporary "asylum seeker certificate" (white certificate or paper) that is valid for six months until the full registration process can be completed.<sup>123</sup> Some asylum seekers may be left with a white paper indefinitely if they are unable to present any proof of identity.<sup>124</sup>

Registration can either be "simple" registration or "merged" registration (and RSD). The former (simple registration) consists of an interview with all family members, the collection of passports and other supporting documentation, recording biographic information, and the capture of biometric information (through an iris scan).<sup>125</sup> Simple registration interviews usually last 30 to 45 minutes. Refugee status determination interviews are then scheduled at a future date (typically after lengthy delay). Where an asylum seeker is successful, their yellow card will be replaced with a blue card.

Merged registration interviews combine the registration interview with a simplified refugee status determination interview. The simplified RSD interview focuses on grounds for exclusion and/or resettlement. The merged interviews do not usually last longer than the simple interviews. At present, Syrians and Yemeni refugees are subject to merged registration and all

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<sup>119</sup> UNHCR, "Egypt: Factsheet" (August 2021) at 3.

<sup>120</sup> UNHCR (2016), see above at fn. 30.

<sup>121</sup> UNHCR, *Global Appeal 2022* (2022) at 56.

<sup>122</sup> All nationalities may also seek registration at UNHCR's smaller office in Alexandria (which predominantly serves the Syrian community along the North Coast).

<sup>123</sup> UNHCR, "Registration (Information Sheet)" (2022).

<sup>124</sup> UNHCR, "Services for Refugees and Asylum Seekers: Registered with UNHCR in Cairo: Useful Information for Refugees and Asylum Seekers" (2019).

<sup>125</sup> UNHCR (2022), see above at fn. 123.

other nationalities undergo simple registration (and then RSD). Individuals are issued with a yellow card at the end of a merged registration interview. In complex cases, they may be called back for one or more further interviews focused on any issues that arose, predominantly relating to identity, exclusion, or resettlement. While in theory, merged registration interviews should not result in rejection there have been anecdotal reports of such an outcome.

As noted earlier, while the merged registration applies to Syrian and Yemeni refugees, it is not a new process. However, the innovation of the current iteration is that those refugees who are streamed into the merged registration interview are generally in an advantageous situation, enjoying a faster process, at least equal access to services, and consideration for resettlement. In previous iterations of the merged (or ‘simplified’ or ‘prima facie’) process, asylum seekers who were streamed into the merged process were effectively warehoused, with less access to services and no consideration for resettlement. The differentiation between asylum seekers from Darfur and southern Sudan (eligible for blue cards) and asylum seekers from elsewhere in Sudan (only eligible for yellow cards) was one of the precipitating factors behind the refugee protests that culminated tragically in 2005.<sup>126</sup> In recent years, UNHCR has introduced an online portal through which individuals may track the progress of their refugee claim.<sup>127</sup>

## 7.2 Egyptian government residency permit

The documentation issued by UNHCR can be used to obtain a residency permit. As noted above, the type of documentation and process for obtaining it has gone through a series of changes. Not all UNHCR documentation entitles an individual to a residency permit. For example, white certificates or papers do not entitle a refugee to a residency permit. Currently, refugees receive a “digital residence card” from the Egyptian government after registration with UNHCR. Previously, successful applicants received a sticker or stamp for their UNHCR documentation.<sup>128</sup>

Notwithstanding its digital rebranding, the process continues to be extremely bureaucratically cumbersome and time-consuming. After receiving a UNHCR registration card, refugees must wait 21 days. They must then approach the Ministry of Foreign Affairs at Corniche El Nil in Downtown Cairo for a reference number. After waiting another 21 days, refugee must convert their reference number to a submission appointment at the Communications Office of the Residence Unit at the Passports and Immigration Administration in the Abbasiya neighbourhood of Old (Islamic) Cairo. At the submission appointment (also at the Communications Office) refugees must present their application form, passports, and photographs and have their fingerprints taken.<sup>129</sup> At least one week later (and often longer), refugees return to the Communications Office to receive their residence card. Adult dependents (such as spouses and adult children) must attend all appointments; younger children are generally exempt from attending (and added to an adult residence card). All refugees in Egypt must go through this lengthy process in Cairo regardless of their place of residence.<sup>130</sup>

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<sup>126</sup> Azzam et al. (2006), see above at fn. 49.

<sup>127</sup> The online portal is often offline (though it continues to be listed in UNHCR guidance as the source of information about the status of an application). The URL of the online portal is: <http://rsd.unhcregypt.org/refugeeresult.aspx> (last accessed 1 June 2022).

<sup>128</sup> This change occurred in October 2019 according to Amira Heteba, Claire McNally and Elena Habersky *Refugee Entitlements in Egypt* (2020), Cairo Studies on Migration and Refugees, Paper 14, American University in Cairo.

<sup>129</sup> Heteba et al. (2020) see above at fn. 128.

<sup>130</sup> The current process is outlined in UNHCR’s information on current services: UNHCR “Services for Refugees and Asylum Seekers Registered with UNHCR in Greater Cairo” available online at

Successful applicants currently receive a residence permit card that is valid for (only) six months.<sup>131</sup> The renewal process is identical and similarly lengthy (with UNHCR recommending that refugees begin the process at least one month before the expiry of their card).

### 7.3 International processes for resettlement

As noted earlier, selection for resettlement is a process that occurs both within UNHCR status determination and international diplomatic offices in Egypt (and the broader region). The former historically was separated from refugee status determination; successful asylum seekers (with a blue card) were then screened for resettlement, usually through an additional interview. The sequential nature of the process often meant refugees waited for years as their status and then eligibility was determined by UNHCR. Since the global reform of status determination in 2006 and the arrival of Syrian refugees in Egypt, UNHCR has sought to consolidate its processes. For refugees undergoing *prima facie* status determination, resettlement screening occurs as part of the merged registration interview. Civil society organisations have often provided support to refugees eligible for resettlement but have resorted to euphemistic language to describe programming.<sup>132</sup>

The international processes are more opaque, especially to refugees. Over the last twenty years, the primary destinations for resettlement from Egypt have, not surprisingly, been the traditional countries of resettlement: Australia, Canada and the USA. Particular advocacy occurred in Egypt during the Iraqi refugee crisis with a view to supporting increased resettlement of Iraqi refugees.<sup>133</sup> However, the resettlement processes in Egypt have been plagued by the problems faced by all resettlement, including poorly trained decision makers, lack of representation and participation in the process, and barriers to independent (judicial) scrutiny.<sup>134</sup>

One of the few cases that has been judicially examined is the case of a group of Pentecostal refugees from Eritrea seeking resettlement from Egypt to Canada.<sup>135</sup> Unfortunately, an official in the Canadian embassy determined the group to be “religious imposters” (based on a flawed understanding of their Pentecostalism). The cases were ultimately (mainly) successfully

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<https://www.unhcr.org/eg/wp-content/uploads/sites/36/2020/01/Merged-brochure-En-December-2019.pdf> (last accessed 1 June 2023).

<sup>131</sup> The short time limit of the residence permits conflict with the longer limits allowed by Decree No. 8180 of 1996.

<sup>132</sup> AMERA Egypt had a significant (but deliberately low-profile) role in resettlement through the work of its “durable solutions” team; St. Andrews Refugee Services (StARS) continues this tradition. Fears have been expressed that if refugee communities (or individual clients) become aware of the availability of support for resettlement that it will have an adverse effect on the organisation. Possible consequences cited in conversation with colleagues over the years have ranged from qualitatively altering the relationship with the client to resulting in the type of protest activities (to support advocacy for resettlement) at the civil society organisation that is faced by UNHCR.

<sup>133</sup> IRAP (formerly the Iraqi Refugee Assistance Project became the International Refugee Assistance Project in 2015) and a collection of individuals (mainly drawn from the expatriate community) in Egypt campaigned for a change in US resettlement policy during the years after the invasion of Iraq.

<sup>134</sup> Martin Jones and France Houle, “Building a Better Refugee Status Determination System” (2008) *Refugee*, 25:2, 3-11.

<sup>135</sup> Michael Kagan, “Refugee Credibility Assessment and the ‘Religious Imposter’ Problem: A case study of Eritrean Pentecostal Claims in Egypt” (2010), *Vanderbilt Journal of Transnational Law*, 43:5, 1179 – 1233; more generally on this point see Pierre-Andre Theriault, “Settling the Law: An empirical assessment of decision-making and judicial review in Canada’s refugee resettlement system” (2021) PhD dissertation, University of York.

judicially reviewed by the Federal Court of Canada through transnational legal advocacy coordinated by AMERA Egypt and the Canadian Council for Refugees.<sup>136</sup> An important issue in the cases was the extent to which Canadian (resettlement) officials gave regard to UNHCR's determination of status: "Did the Officer err by failing to have regard to the Applicant's status as a UNHCR refugee?" Madam Justice Snider wrote in response to this question that while UNHCR's determination of status was not determinative it must be an important consideration:

The evidence of the UNHCR designation was so important to the Applicant's case that it can be inferred from the Officer's failure to mention it in her reasons that the decision was made without regard to it. This is a central element to the context of the decision. The Officer, faced with a UNHCR refugee, should have explained in her assessment why she did not concur with the decision of the UNHCR. The Officer was not under any obligation to blindly follow the UNHCR designation; however, she was obliged to have regard to it. Unless a visa officer explains why a UNHCR designation is not being followed, we have no way of knowing whether regard was had to this highly relevant evidence.<sup>137</sup>

Kagan also notes in his examination of the broader caseload of Pentecostal refugees from Eritrea in Egypt that UNHCR's decision making process with respect to the caseload were fraught with an overreliance on highly subjective determination of 'sincerity', a point which will be further explored below (in Section 8).

#### 7.4 Palestinian refugees<sup>138</sup>

As noted earlier, Egypt distinguishes between Palestinian refugees and all other refugees. The former may receive residency permits of up to five years.<sup>139</sup> Palestinians who arrived in Egypt before or during 1948 receive residency permits of five years; all other Palestinian refugees receive residency permits of three years. In order to obtain a residency permit, Palestinian refugees must establish a valid reason for remaining in Egypt, such as education, work or family links. Proof of a "valid reason" effectively entails locating an Egyptian guarantor, be it a university or an Egyptian family member.<sup>140</sup> Palestinian refugees are entitled to exemption from residency permit fees and also to apply for temporary travel documents.<sup>141</sup>

#### 7.5 Refugee recognition during the pandemic

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<sup>136</sup> Four cases were heard together: *Henok Aynalem Ghirmatsion v. the Minister of Citizenship and Immigration (MCI)* [2011] FC 519; *Tsegeroman Zenawi Kidane v. MCI* [2011] FC 520; *Tsegay Kiflay Weldesilassie v. MCI* [2011] FC 521; and *Selam Petros Woldesellassie v. MCI* [2011] FC 522. *Ghirmatsion* was the lead case (and the longest judgment of the four). The four cases were selected for hearing as representatives of a larger body of around 40 other applications for judicial review.

<sup>137</sup> *Ghirmatsion* at ¶58.

<sup>138</sup> As noted at the outset, this report is based upon research conducted before the onset of the current crisis in Palestine. The status of Palestinians has formally remained unchanged during the crisis, though the crisis has prompted demonstrations of popular (and political) support for the Palestinian cause. The government of Egypt is anxious about an influx from Gaza and continues to practice a policy of *non-entrée*. Palestinians (and other foreign nationals) who enter from Gaza are currently given only 72 hour 'transit' visas (to allow onward passage to other countries from Cairo).

<sup>139</sup> Hetaba et al. (2020), see above at fn. 128.

<sup>140</sup> Oroub El-Abed, *Unprotected: Palestinians in Egypt since 1948* (2009) Institute for Palestinian Studies, IDRC.

<sup>141</sup> Temporary travel documents are regulated by Decree 181 of 1964 and proof of having "acquired refugee status". It has been suggested that this should be done using an identity card issued by the Egyptian Department of Passports and Nationality.

The recognition of refugees by UNHCR was seriously disrupted during the pandemic. Refugees and UNHCR’s partner organisations have reported recognition processes that have been in some cases indefinitely suspended. Previous large backlogs have been exacerbated. UNHCR public reports of its operations have downplayed these challenges: “UNHCR Egypt maintained its essential services throughout the pandemic. By the end of August 2020, all activities resumed with adapted modalities and precautionary measures in place.”<sup>142</sup>

UNHCR closed its offices for all in person registration, status determination and resettlement interviews during the early months of the pandemic. Telephone interviews began to occur in the summer of 2020 but these were only for existing “simple” cases. At present, UNHCR conducts “remote RSD” by smart telephone using telephone and the secure video application Signal. Remote RSD is only conducted with the consent of the asylum seeker (though choosing an in-person interview results in an indefinite delay to the processing of the claim). The interview is conducted by telephone except for a short videocall using Signal (without an interpreter) to confirm the identity of the asylum seeker. Any documents may be submitted to UNHCR using Signal. Interpreters can be involved in the telephone call (by three-way call) as needed. Civil society organisations, including providers of legal services to refugees, have expressed concerns about the shift to the use of telephone and virtual appointments by UNHCR.<sup>143</sup>

The capacity of UNHCR to register and recognise refugees was and continues to be significantly impaired due to the pandemic. As an example, in the first year of its remote operations (July 2020 to July 2021) “2,513 remote RSD interviews were conducted involving 4,339 persons” (UNHCR, 2021a). This represents a significant decrease from pre-pandemic levels. The refugee resettlement activities of UNHCR partners were also impacted significantly by the pandemic. Both the ability of embassies in Cairo (and the region) to process refugee resettlement and the ability of refugees to travel were severely limited. Although the shrinking number of resettlement spaces makes year-on-year comparisons for resettlement more difficult, only 976 refugees departed from Egypt to eight resettlement countries during the first year of remote operations.

At present, UNHCR is only allowing individuals who have been pre-screened by telephone to attend for registration and for document updating and renewal.<sup>144</sup> In a very dramatic shift, UNHCR now relies on “Infoline”, its telephone hotline, for most interactions with refugees. Previously, UNHCR required refugees to attend in person at its offices for almost all tasks, often requiring refugees to ensure long queues and repeated time-consuming visits. In late 2021, UNHCR entered discussions with its operational and implementing partners to set up an in-person “one stop shop” in Cairo that would allow its civil society partners to provide a range of services to refugees in one location and to act as an in-person liaison between refugees and UNHCR. This suggestion reflects the longer-term worry that UNHCR restrictions on in-person services will be more constraining than those adapted by its partners. While such a “one

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<sup>142</sup> UNHCR (2021), see above at fn. 119.

<sup>143</sup> See Martin Jones, *Practice Note 1: Legal Advice by Telephone as a Response to the COVID-19 Pandemic* (2020), Access to Justice in Displacement Project, University of York available online at [www.frontierofasylum.net/a2jd](http://www.frontierofasylum.net/a2jd) (last accessed 30 June 2023).

<sup>144</sup> UNHCR’s registration FAQ on its website states “Only cases that have been contacted or have called the Infoline to book an appointment will be allowed inside UNHCR offices.” Available online at [https://help.unhcr.org/egypt/en/registration/#\\_ga=2.268225422.1266200156.1652109946-373208335.1643028952](https://help.unhcr.org/egypt/en/registration/#_ga=2.268225422.1266200156.1652109946-373208335.1643028952) (accessed 1 May 2022).

location” approach has not been operationalised, implementing partners play a growing and more visible role in the front-line triage of refugees in need of protection.

## **8. Quality of the Recognition Process**

Although there are other modes of recognition (notably, by the Egyptian government through a residence permit and by another State through resettlement), the assessment of the quality of the recognition process will focus predominantly on the quality of UNHCR’s recognition process. UNHCR recognition is a process through which all recognised refugees go, and which exists as a precondition of other recognition processes.<sup>145</sup>

### **8.1. Accessibility**

Kagan famously outlined the problem of accessibility, which he saw as part of UNHCR’s role as the “beleaguered gatekeeper” as typified by the image of refugees in an urban context crowding around the entrances to UNHCR’s office in Cairo: “The crowd presses in toward openings in the fence without any clear order; on crowded days they sometimes push each other for position, elbows used for leverage. Every so often voices are raised.” (Kagan, 2006). But even getting to the fence is an issue for refugees outside of Cairo. And many individuals in (to use UNHCR’s language) “refugee-like situations” are not even aware of the role of UNHCR or where and how to access its recognition processes. The accessibility of refugee recognition processes to refugees varies depending on their location in Egypt and their awareness of the possibility and processes related to recognition.

#### *8.1.1. Geography*

An account by a refugee cited by Miranda summarises the often mundane but significant problems refugees have in accessing UNHCR and its recognition processes in Egypt:

Getting to UNHCR’s office in 6th October City in Cairo’s traffic means spending hours on a microbus. You try to arrive at the UNHCR office around dawn. Some come the night before and sleep in front of the building with their young children. After waiting for hours in a disorderly line in Cairo’s stifling heat, you speak to someone through a thick glass window surrounded by a barbed wire fence with a crowd of people crushed around you leaving no privacy. UNHCR has a phone hotline which has improved somewhat over the years; however, you use up phone credit while sitting on hold for ~30 minutes before being able to speak to someone. Suffice to say, unless it is an emergency, it is not worth one’s time to try and update UNHCR.<sup>146</sup>

Accessing UNHCR’s office raises issues of physical security for many refugees. Women refugees in particular have faced sexual harassment while waiting outside UNHCR. Some refugees at risk also fear for their safety given the highly visible nature of attending UNHCR’s office.

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<sup>145</sup> It is hypothetically possible to be resettled by a State without being recognised by UNHCR as a refugee. However, I have never heard of this occurring in practice. While some refugees in Egypt may be resettled without having been recognised by UNHCR, in my experience this has never without trying (and being rejected).

<sup>146</sup> Paul Miranda, “Getting by on the Margins: Sudanese and Somali Refugees in Cairo, Egypt” (2018), Refugees in Towns (RIT) Project, Feinstein International Center.



Accessibility to UNHCR has been, until recently, constrained by its physical location in Cairo. Historic settlement patterns of refugees have been explained in terms of access to UNHCR.<sup>147</sup> Until the Sudanese protests of 2005, UNHCR was located in central Cairo, in the Mohandesin area.<sup>148</sup> The main office of UNHCR is now in the “satellite city” of October 6<sup>th</sup> City.<sup>149</sup> However, October 6<sup>th</sup> City also boasts cheaper rents (compared to central Cairo) and (now) established refugee communities. At the very least, the presence in October 6<sup>th</sup> City of refugees and UNHCR has made it easier for new refugees to settle in it, notably now Syrian refugees.

The urban congestion of Cairo makes travel across the city very time consuming, often meaning that a trip to and from UNHCR’s offices can use up the better part of the day. The further economic development of October 6<sup>th</sup> City through participatory processes for the benefit of refugees and Egyptians has been noted as ‘good practice’ by the Egyptian government as part of the Global Compact on Refugees’ digital platform.<sup>150</sup>

Access to UNHCR has been difficult for refugees located outside of greater Cairo. Refugees who enter Egypt from Sudan face a long journey to UNHCR in Cairo for registration; refugees without status may be vulnerable to arrest while en route to UNHCR. A growing number of refugees are settling outside of Cairo, for example in the Nile Delta (Mansoura, Tanta), in the cities of the North Coast (Alexandria, Damietta, Port Said) or in any of the many other cities of Egypt. In 2021, UNHCR conducted 11 mobile registration missions to Marsa Matrouh and Damietta to reach some of these refugees.<sup>151</sup>

It is an open question as to whether the absence of a UNHCR presence outside of Cairo (and therefore lower rates of recognition) has led to a biased view of the number (and distribution) of refugees in Egypt. However, what is certain is that Syrian refugees more than any previous refugee community are distributed throughout Egypt.<sup>152</sup> This is likely due to the historic ties between Syria and Egypt and the broader, more diverse network of social connections linking refugees with Egypt; distrust of fellow nationals prompted by the civil war has also been articulated (by some Syrian refugees) as a reason for their more diverse distribution. Since the influx of Syrian refugees into Egypt, UNHCR has opened an office in Alexandria. The office is responsible for refugees living in the Nile and along the North Coast, accounting for roughly 15% of UNHCR’s persons of concern in Egypt.<sup>153</sup>

### *8.1.2. Self-awareness of being a refugee*

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<sup>147</sup> Jacobsen et al. (2014), see above at fn. 33; Godziak and Walter (2013), see above at fn. 6.

<sup>148</sup> The neighbourhood has been described as “upper middle class” (especially in contrast to October 6<sup>th</sup> City).

<sup>149</sup> The concept of ‘satellite city’ (often expressed as ‘old’ and ‘new’ Cairo) has changed over time. Over the last decade, October 6<sup>th</sup> has gone from being on the outskirts of greater Cairo to one of many satellite cities that have decisively shifted the centre of gravity of Cairo away from its historic core. See Salem, 2019 for a discussion of the shift of population to ‘peri-urban’ areas of greater Cairo.

<sup>150</sup> See online entry at <https://globalcompactrefugees.org/article/participatory-upgrading-plan-amriekiya-area-cairo> (last accessed 12 May 2022).

<sup>151</sup> UNHCR, “2021 in Numbers” (2021); similar numbers were posted for 2022 (see UNHCR, “2022 in Numbers” (2022).

<sup>152</sup> UNHCR’s statistics, albeit limited to persons of concern, indicate that Syrian refugees are located away from the Cairo-Giza governates at a scale of magnitude greater than other refugees (even after adjusting for the relative size of their communities). For example, there are almost 10,000 Syrian refugees registered as living in Damietta compared with only 63 refugees of other nationalities.

<sup>153</sup> Based on calculations using UNHCR, “Monthly Statistical Report as of 31 March 2022” (2022).

Some refugees may be less likely to consider themselves as “refugees” (and therefore less likely to register as such and be enumerated in UNHCR’s statistics). As noted at the outset, there have been regular assertions by the Egyptian government that there are many more refugees in Egypt than have been counted by UNHCR. Sudanese refugees, many of whom enjoyed preferential status as migrants under the Wadi El Nil Agreement discussed earlier have often been cited as a group which might be less likely to register as refugees, particularly if not wanting access to resources (like health care or resettlement) that require such registration. More recently, some Syrian refugees did not register with UNHCR under the belief that it would limit their ability to travel to and from Syria (to manage business or family affairs); a UNHCR poll suggested almost half of Syrians did not wish to finalise their status due to uncertainty about whether Egypt would be a sustainable place of residence.<sup>154</sup>

Gender also plays a role in who self-identifies as a refugee and whose account of risk is placed at the centre of the refugee recognition process. Women continue to be listed as dependents of male asylum seekers and not interviewed in any great length about their reasons for being at risk. As Kagan noted, the accounts of female asylum seekers are often omitted from the recognition process:

Legal aid files indicate that there have been cases in Cairo where married female applicants have been rejected by UNHCR-Cairo after they suppressed their own refugee claims from UNHCR because their husbands, communities, or in rarer cases UNHCR staff members told them that they could not explain their own problems if they apply with their husbands. This can result in an effective denial of the right to seek asylum for women refugees.<sup>155</sup>

UNHCR continues to manage files by “principal applicant”, which is most commonly the husband or father. Popular conceptions of who is a refugee exacerbate this issue by emphasising a refugee as a public, political actor – a profile less likely for women from traditional (patriarchal) societies.

Children, in particular unaccompanied minors, face barriers to accessing treatment as children. Since 2019, UNHCR in Egypt conducts a “Multifunctional Protection Assessment” (MPA) to determine the age of a child. The MPA results in a determination of age as part of a larger interview concerning protection, often without the individual being aware that their age is being assessed. The criteria for the MPA have not been disclosed by UNHCR. A majority of individuals going through this process are considered to be adults.<sup>156</sup> There is no direct appeal of an age determination (though the decision may be revisited in subsequent child protection case conferences, limiting the access to individuals found to be children and receiving support). Being determined not to be a child removes access to a range of services by UNHCR and its operational and implementing partners.<sup>157</sup> Beyond creating a barrier to access for children wrongly determined to be adults, many of the noted features of the age determination process

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<sup>154</sup> AbdelHalim H. AbdAllah “Refugees should not participate in domestic politics: UNHCR official” Daily News Egypt (2 December 2013) available online <https://www.dailynewsegypt.com/2013/12/02/refugees-should-not-participate-in-domestic-politics-unhcr-official/> (last accessed 1 June 2022). Egypt’s change in visa policy towards Syrians and the prolonged nature of the conflict made such a practice untenable over the long term.

<sup>155</sup> Michael Kagan, “Assessment of Refugee Status Determination Procedure at UNHCR’s Cairo Office, 2001-2002” (2002), Forced Migration and Refugee Studies Working Paper No. 1, American University in Cairo.

<sup>156</sup> Zavala Folache and Ritchie (2020), see above at fn. 46.

<sup>157</sup> Zavala Folache and Ritchie (2020), see above at fn. 46.

are manifestly unfair, notably the opacity of the criteria and process and lack of any meaningful opportunity to challenge the decision.

### *8.1.3. Impact of pandemic*

The pandemic and related closure of UNHCR's offices limited access to recognition. The new criteria for virtual (telephone) recognition processes creates barriers to access by those not fluent in Arabic or English (the main languages of UNHCR's Infoline) and unable to discuss their situation by phone (either due to lack of access to a telephone or the sensitive nature of what they wish to discuss). The resumed virtual (telephone) interviews usually prioritise 'simple' cases without claimants in a vulnerable situation, creating a barrier to recognition for those with complex cases and those in a vulnerable situation.<sup>158</sup>

Access is a significant issue for recognition through resettlement processes. Most resettlement processes for refugees in Egypt are triggered by a referral by UNHCR to a country of resettlement. These referrals are based upon UNHCR's understanding of the refugee's situation as judged against the criteria for resettlement. A condition precedent of such a referral is recognition by UNHCR as a refugee. Refugees who are recognised by UNHCR under its extended mandate do not qualify for resettlement referrals, notwithstanding the existence in various resettlement programmes of categories that might accommodate such individuals<sup>159</sup>; such decisions by UNHCR are viewed as 'positive' (favourable) decisions and have not, until recently, been appealable. An incomplete understanding of the claim (particularly possible due to the abbreviated nature of merged registration interviews) can result in the failure to progress a case for resettlement (or even to flag it for further consideration).

## **8.2. Accuracy**

It is difficult to fully ascertain the accuracy of UNHCR's refugee recognition activities given the opacity of its processes and decisions, even to asylum seekers and refugees in these processes. UNCHR's operations in Egypt have perpetually been one of its largest (individualised) refugee recognition operations in the world. This means that even small issues that arise with respect to accuracy may affect very large numbers of refugees. But this also makes it hard to ascertain whether practices noted in individual (or even groups of) cases are isolated or widespread.

### *8.2.1. Challenges in ascertaining accuracy*

Accuracy is particularly difficult to judge for UNHCR recognition processes and decisions given the frequent lack of detailed reasons for the decision. Until around 2010, UNHCR in Egypt did not provide any written reasons to asylum seekers who were refused status. Practice then evolved to call asylum seekers in for an oral briefing of the reasons for a decision to refuse status. However, such briefings were very ineffective as the asylum seeker seldom made notes and were often overwhelmed by the nature of the decision. Local UNHCR officials resisted the introduction of anything in writing, citing workload implications (in a very high-volume setting) and safety implications (for refugees often living in shared accommodation). This

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<sup>158</sup> For example, UNHCR's criteria screen out survivors of sexual and gender-based violence from virtual (telephone) interviews. Some refugee advocates worry that the need to present as a 'simple' case may put refugees under further pressure not to disclose vulnerabilities.

<sup>159</sup> Resettlement categories sometimes go beyond, and are defined other than as simply, refugees.

makes assessing the ‘accuracy’ of the decision very difficult as the precise reasons for the decision are seldom completely known.

In more recent years, UNHCR’s operations in Egypt have provided failed asylum seekers with short written summaries of the issues on which the case has been decided. These ‘reasons’ are typically taken from boilerplate text, including references to credibility, risk based on country of origin information, or lack of nexus. While still falling well short of the level of detail usually contained in decisions by States, the reasons for decisions have allowed for a better understanding of the basis of the decision (and supported the filing of more targeted appeals).

One proxy for accuracy has been consistency. Where country conditions and the nature of asylum applications remain constant, one would expect that the success rate of applications would remain constant. Historically, in Egypt, status determination outcomes have been subject to significant fluctuation:

In Cairo, the annual UNHCR recognition rate fluctuated between 30 and 40 per cent from 1998 through 2000, then jumped to 42 per cent in 2001, then fell to 24 per cent in the first half of 2002. There was no apparent change in the demographics of the asylum-seeker population to account for this, nor major changes in the human rights conditions in Sudan and Somalia, Egypt’s main refugee producing countries.<sup>160</sup>

With the recent mass influx of refugees from Syria and move towards merged registration and status determination, the overall success rates of applications have become much higher and it has been harder to locate patterns of inconsistency in individualised decisions amongst high volume nationalities.<sup>161</sup> However, after factoring out the administrative closing of files (which was particularly significant due to the conclusion of the peace process and new independence of South Sudan), in 2010 more than 90% of Sudanese asylum seeker decisions were positive. This number has declined to consistently only slightly more than 50% in 2020.<sup>162</sup> In contrast, over the same period of time the acceptance rate of Eritrean asylum seekers has improved from around 40% to more than 90%.<sup>163</sup> While some of this variation can be explained by some change in country conditions and/or the basis of claim, there does not appear to be a complete explanation other than varying institutional approaches to the type of claim. In both cases, the shifts in recognition rates were associated with an increase in the volume of asylum claims and an increase in the number of decisions being issued.

### 8.2.2. *Key issues*

Central to most refugee recognition processes is a determination about the (in)credibility of an asylum seeker or refugee’s testimony. Understanding the testimony of a claimant is often made more difficult by the need for interpretation (for non-Arabic or English speakers). Interpretation is more difficult when the asylum seeker speaks an uncommon (in Cairo) language or dialect. The challenges in accurately assessing the credibility of an asylum seeker’s testimony are distributed unevenly. As Kagan noted in one of the earliest critiques of refugee recognition in Egypt (2002): “The weight of the problems with the current system are likely to fall particularly on the most vulnerable refugees, many of whom are the least able to express

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<sup>160</sup> Kagan (2002), see above at fn. 155.

<sup>161</sup> In 2020, the last year for which there is complete data, the overall success rate (excluding closing of files) for determination of status was 79%. See <https://www.unhcr.org/refugee-statistics/download/?url=c0NIIV>

<sup>162</sup> See <https://www.unhcr.org/refugee-statistics/download/?url=Ct14sB>

<sup>163</sup> See <https://www.unhcr.org/refugee-statistics/download/?url=dS8NEr>

their refugee claims on their own. Women, people lacking education, people intimidated by official processes, and trauma victims are particularly vulnerable to incorrect rejections.”<sup>164</sup> An asylum seeker who challenges a rejection on the basis of credibility faces a particularly difficult challenge on appeal. Notes of testimony at first instance are not disclosed to appellants and any written or orally communicated decision may not flag the specific credibility issue that has arisen.<sup>165</sup>

Country of origin information (COI) can be used as part of both the determination of credibility and the objective situation in the country of origin. In relation to the former, consistency (or lack thereof) of an individual’s testimony (or supportive documents) with COI can be used as the basis of a finding of general or specific lack of credibility. In relation to the latter, UNCHR refugee recognition activities must be informed by the definition of refugee set out in its *Statute* and in the *Refugee Convention*. Unlike national decision makers, in conducting this task UNHCR is institutionally “untrammelled by notions of its national legal culture”<sup>166</sup>. However, despite this institutional position, UNHCR decisions often reveal misunderstandings of international refugee law. These misinterpretations of the definition make the resulting decisions less accurate (and they can also be understood as a fundamental type of unfairness). The ability of an asylum seeker to appeal a misinterpretation of the definition of refugee is almost non-existent in the absence of competent legal representation.<sup>167</sup> Given the severe capacity constraints on legal representation, the number of asylum seekers in such a situation may be quite large.

### 8.3. Efficiency

UNHCR in Egypt has made use and continues to use the screening of asylum seekers into ‘streams’ of process based on their nationality. Currently, Syrian and Yemeni asylum seekers enjoy an abbreviated ‘merged’ registration interview.<sup>168</sup> As noted previously, the interviews focus on collection of identity and biodata and biometric information and identification of any potential exclusion and/or resettlement criteria. This simplified process has been used previously in response to influxes from Sudan, including South Sudan and later Darfur.<sup>169</sup> UNHCR has also in the past used streaming into an (indefinite) asylum seeker category when faced with secondary movement.

The current process for Syrian and Yemeni refugees has worked well at least when judged against allowing UNHCR to register a large number of refugees in a short period of time. Exclusion interviews have focused on male claimants and grounds of exclusion linked to participation in armed conflict and repressive government. It would also not be unreasonable

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<sup>164</sup> Kagan (2002), see above fn. 155, at 4.

<sup>165</sup> Written decisions and oral reasons for decision often refer to only the generalities of a credibility issue. For example, the decision might note that “inconsistency between the testimony and country of origin information led the decision maker not to believe the account of Event X” without indicating which aspect of the account was inconsistent.

<sup>166</sup> *R. v. Secretary of State for the Home Department, ex parte Adan and Secretary of State for the Home Department, ex parte Aitsegur* [2000] UKHL 67 (19 December 2000).

<sup>167</sup> The lack of legal representation for appeals of status denial is particularly problematic given the relatively high rate of success on appeals when represented (anecdotally around 40%). See Kagan (2006), at fn. 42, on this point.

<sup>168</sup> The official explanation of this policy is that it is based on complexity: “UNHCR Egypt has different procedures depending on the complexity of the cases.” (from the UNHCR Egypt website, <https://help.unhcr.org/egypt/en/refugee-status-determination-rsd/> (accessed 12 May 2022)).

<sup>169</sup> Previous versions of the ‘merged’ process did not generally include review of resettlement grounds.

to hypothesise that resettlement cases based on sexual and gender-based violence will have been harder to identify (particularly where the survivor remains part of a family group), though the literature and anecdotal conversations have not identified any instances of this.

UNHCR has in the past linked the issue of efficiency with accuracy. In the past it has explained lower rates of successful applications with longer waiting times:

UNHCR-Cairo notes that the drop in recognition rate may be linked to an increase in the waiting time from an asylum-seeker's arrival until actual RSD interview. This delay may make applicants more vulnerable to incorrect advice spread in the refugee community, some of which urges applicants to either hide information or falsify information in refugee applications. As UNHCR-Cairo notes, "With longer waiting times, the effects of this misinformation may be exemplified."<sup>170</sup>

In this explanation, UNHCR adopts the trope of the "pure" testimony of a refugee occurring before he or she is "tainted" by advice from his or her community (or even legal representatives). This trope has been noted in the analysis of attitudes of immigration officials and decision makers within State systems, including within the jurisprudence on determining the credibility of asylum seekers. Even accepting the underlying observation (increasing rates of negative credibility findings in prolonged processes), a simpler explanation is that delay affects an asylum seeker's recall of key events and is not adequately accounted for within decision making processes.

In recent years, UNHCR has become much more transparent about the numbers of applications and outcomes of refugee status determination. It now regularly publishes monthly reports on its determination of status. However, data about backlogs is still harder to come by. These delays are sometimes the result of unexpected events (like the pandemic) but have also been used as to manage (secondary) movement to Egypt. In the past (the years leading up to 2001) UNHCR in Egypt deliberately did not expand the capacity of its recognition processes in order not to create a "pull factor".<sup>171</sup> Similarly, as noted previously, UNHCR shifted the process for recognising Sudanese refugees in Cairo in June 2004 (providing only group-based temporary protection in the form of yellow cards and thereby preventing access to resettlement) in order to discourage (primary) movement to Egypt.<sup>172</sup>

Delays in processing can also result from factors relating to the individual claim. For example, as previously noted, the inability to meet identification requirements can result in indefinite delays at the stage of registration (resulting in only a white certificate or paper being issued). Delay can also result from the need to consider problematic issues within a claim, in particular exclusion. There have been reports of (positive) decisions being revisited as a result of information received during resettlement processes, which is both an inefficiency and a manifest unfairness (Kagan, 2006). Beyond the individual case, Syrians and non-Syrians face different administrative processes (located in different locations) which clearly result in varying timelines. Within non-Syrians, particular nationalities of asylum seekers have faced delays due to suspension of processing due to uncertainty about country conditions.

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<sup>170</sup> Kagan (2002), see above at fn. 155.

<sup>171</sup> Kagan (2006), see above at fn. 42, and Sperl (2001), see above at fn. 27.

<sup>172</sup> Kagan (2006), see above at fn. 42.

## 8.4. Fairness

As noted earlier, although not formally bound by international treaty obligations, UNHCR in Egypt has frequently committed itself to abide by the related right to due process and fair trial, as articulated in Article 14 of the *International Covenant on Civil and Political Rights*. UNHCR's *Procedural Standards for Refugee Status Determination under UNHCR's Mandate* published in September 2005 also set out a range of procedural guarantees to refugees. While the *Procedural Standards* fall short of international standards (including obligations under Article 14), its standards can be used as a measuring stick for improvements in the fairness of refugee recognition in Egypt.

### 8.4.1. Positive developments

Legal representation in refugee recognition processes has long been allowed by UNHCR in Egypt. Refugees in Egypt have benefited from a range of civil society initiatives providing independent legal advice and representation in recognition processes (Jones, 2017). In recent years, UNHCR has agreed to formalise its relationship with civil society organisations providing legal services to refugees. The Egyptian Foundation for Refugee Rights, which apart from its work in domestic courts also represents a smaller number of refugees in recognition processes, has become an implementing partner of UNHCR. UNHCR Egypt has recently signed a memorandum of understanding with St. Andrews Refuge Services recognising its role in provide advice and representation of refugees in recognition processes.

UNHCR has improved how it communicates decisions. Previously, asylum seekers were provided with the decision in writing, without any reasons. Reasons were very briefly communicated orally (in person or by telephone) to an asylum seeker, often with the asylum seeker overwhelmed by the news and unable to take accurate notes of the conversation. UNHCR subsequently switched to communicating by brief letter to asylum seekers, with the reasons for the decision summarised in a boilerplate sentence or two. UNHCR now communicates short decisions with more bespoke reasons to failed asylum seekers, though the decisions still pale beside the length and detail of reasons in State asylum processes.

### 8.4.2. Appeals

With an overall high rate of recognition, appeal rates are low but appeal processes continue to be unfair. Overall high rates of recognition also obscure large variations in recognition between groups and the consequent increased importance (to groups with low recognition rates) of appeal processes. Following the guidance of the *Procedural Standards*, UNHCR in Egypt has a long-standing policy of not guaranteeing an interview on appeal. While the decision maker is different than the original decision maker, there is no guarantee that the appealing asylum seeker will receive an opportunity to meet with the decision maker before a decision on the appeal is reached. Furthermore, there is no guarantee that the appellate decision maker will not consult with the previous decision maker or their supervisor about the case without disclosing the consultations or their content. A majority of appeals continue to be disposed of without an in-person hearing.

The challenges already outlined in the accuracy of refugee recognition processes are exacerbated in appeal processes. Delay, interpretation issues during previous processes, complexity of issues, and the need to engage with an almost completely text based (written and documentation based) process all result in low rates of appeal and low rates of success in

appeal. Where asylum seekers have legal representation, rates of success on appeal are very high<sup>173</sup>. To the extent these cases are representative, there may be a larger number of asylum seekers who are refused recognition but unable to successfully navigate the appeal process.

## **9. Quality of Protection**

Recognised refugees in Egypt, particularly those who have valid residency permits, formally enjoy a wide range of economic and social rights, including the right to work and access to education and health care. Notwithstanding this formal entitlement to such rights, even refugees with valid residency permits face numerous obstacles to enjoying their rights. In short, there is a significant gap between the formal entitlements of refugees and their enjoyment of rights in practice. Refugees without valid residency permits are even further removed from enjoying their rights.

In addition, the quality of protection of refugees in Egypt must be assessed in the context of the broader environment for the protection of rights. All people in Egypt have historically suffered (and continue to suffer) a significant risk of serious human rights violations. The challenges facing refugees in realising their rights are not always unique to refugees. Individual refugees (and particular refugee communities) may also face challenges in realising their rights due to aspects of their identity, including their (dis)ability, gender and race. Refugees also face challenges arising from their role as outsiders and foreigners. Xenophobia shapes the experience of many refugees in Egypt; particularly at moments of crisis refugees have been subject to scapegoating in the media and in popular behaviour.

### **9.1. Freedom of movement and residence within Egypt**

As noted previously, refugee populations in Egypt have not traditionally been encamped. The notable recent exception in relation to this proposition was the short lived El Saloum Camp housing those displaced by the conflict in Libya between 2011 and 2013. Refugees with residency permits are permitted to reside throughout Egypt. However, despite freedom of movement and residence refugee communities have tended to locate themselves in greater Cairo, likely in part due to the presence of UNHCR in Cairo. Until the arrival (and dispersal into the Nile and North Coast) of the Syrian refugees in 2011, very few refugees resided outside of greater Cairo. Refugees who are found in “sensitive” locations (such as the Sinai, the Egypt-Sudan border or in smaller towns along the North Coast) are often subject to suspicion by the authorities and arrested and detained.<sup>174</sup>

### **9.2. Non-refoulement and security of residence**

The entry into Egypt and residence of foreign nationals is governed by Law 89 of 1960 as amended by Laws 99 of 1960 and Law 49 of 1968.<sup>175</sup> These laws predate the dissolution of the United Arab Republic (eg. the separation of Egypt from Syria). Deportation from Egypt is governed by Chapter IV of Law 89 of 1960 which allows also for the detention of those facing deportation. The procedural protections of the law (which require review by a Deportation

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<sup>173</sup> Although rates of success on appeal vary between legal aid provider and time, rates of success between 30% and 60% are reported by legal aid providers.

<sup>174</sup> Many of these refugees find themselves in these locations as part of the process of transiting into or from Egypt.

<sup>175</sup> Tarek Badawy, “Egypt: the legal dimension of migration” (2009) in Phillippe Fargues, ed. *Mediterranean Migration, 2008-2009 Report*, European University Institute, 79-88.



Committee) apply only to those holding special residency permits, which are rarely held by refugees.<sup>176</sup> Newer legislation, Law 82 of 2016 (On Combatting Illegal Migration and Smuggling of Migrants, 7 November 2016) seeks to regulate exit from Egypt and criminalise organised smuggling. The legislation was passed shortly after the capsizing of a boat causing 300 migrants to die or go missing.<sup>177</sup>

Although none of the legislative framework explicitly prohibits refoulement, Egypt has generally abided by the norm of non-refoulement. The Egyptian Foundation for Refugee Rights has also obtained judicial judgments recognising the principle of non-refoulement as prohibiting the deportation of refugees. However, refugees viewed as a threat to national security and those in border areas have often been subject to summary expulsion and refoulement. In some reported cases, Egyptian border guards have shot at refugees crossing the border.<sup>178</sup> Refugees who are caught at the border (particularly with Sudan) are at risk of lengthy detention and deportation, including refoulement. In October 2021, Egypt refouled a group of Eritrean asylum seekers who had been detained at the Sudanese border for two years.<sup>179</sup> The political cooperation between Egypt and Sudan has led many dissident Sudanese refugees to fear arrest and deportation.

### 9.3. Livelihood rights

As noted earlier, there is some confusion in the literature about the livelihood rights enjoyed by refugees in Egypt. This confusion often extends to refugee communities, where legal entitlement to work is often conflated with ability to gain formal employment. In a country where informal employment is a norm, legal entitlement to labour force participation does not necessarily entail employment in the formal economy. Xenophobia, racism, poor economic growth in Egypt, lack of recognition of foreign experience and credentials and the chronic oversupply of labour all combine to force even refugees with lawful status into the informal economy. As noted earlier, the inability to navigate Egyptian bureaucratic processes (for example, to register for social security) may interfere with a refugee's ability to gain formal employment. Needless to say, being forced into the informal economy entails lower wages and a greater likelihood of exploitation.

Egyptian law highly regulates the right to (wage-earning) work of non-citizens, capping the percentage of non-Egyptian employees in many workplaces and requiring specific permission.<sup>180</sup> While Egyptian law allows for the waiving of these requirements for refugees it limits the category of refugees to those recognised under its Constitutional asylum provisions (administered by the Political Refugees Office of the Presidency).<sup>181</sup> Furthermore, refugees lawfully staying in Egypt should benefit under Article 17 of the *Refugee Convention* from the exemptions from the regulation of the work of non-citizens given to both Palestinian and Sudanese nationals.

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<sup>176</sup> Article 18 of the law allows for special residency permits to be issued to “scientists, intellectuals, artist and businessmen who benefit the national economy or have provided scientific, cultural or artistic services to Egypt”; see Badawy (2009), see above at fn. 175.

<sup>177</sup> Human Rights Watch, “Egypt: Immigration Law Lacks Key Protections” (2016).

<sup>178</sup> Hyab Teklehalmanot Yohannes, “Refugee Trafficking in a Carceral Age: A Case Study of the Sinai Trafficking” (2023), *Journal of Human Trafficking*, 9:1, 33-47.

<sup>179</sup> United Nations, “UN experts deplore the expulsion by Egypt of Eritrean family seeking asylum in violation of the principle of non-refoulement” (2021).

<sup>180</sup> Hetaba et al. (2020), see above at fn. 128.

<sup>181</sup> Article 19 of Decree No. 485 of 2010.

Access to self-employment and the practice of (the liberal) professions are also highly regulated. The processes for gaining lawful approval to open a small business are time consuming and expensive, limiting these to affluent refugees seeking a longer-term presence in Egypt. Many refugees are also under the (false) impression that an Egyptian business partner is a requirement, leaving them open to exploitation from unscrupulous business partners.<sup>182</sup>

Labour conditions are generally poor and the ability of refugees to access redress is very limited. Recent US Department of State reports have identified some refugee nationalities (along with females) working in particular sectors, including as domestic workers, as vulnerable to trafficking. Domestic workers have reported high rates of sexual harassment and violence. Refugees in the informal sector are particularly vulnerable to exploitation and lack of redress.

#### 9.4. Education<sup>183</sup>

As noted earlier, Egypt made a reservation to Article 22(1) of the *Refugee Convention* denying refugees the right to education. However, this reservation has been rendered moot by Egypt's commitments under the *Convention on the Rights of the Child* and its new constitution (Article 18 under its earlier Constitution and currently Article 80). Neither of these more recent commitments limit the right to only citizens. Although the main focus of the analysis will be access to primary and secondary education by refugee children, access to higher education and adult education will also be briefly discussed.

The bilateral Wadi El Nil Agreement in 1976 extended access to education to Sudanese nationals on the same basis as Egyptians. This entitlement has been extended to South Sudanese nationals. The Ministry of Education issued Decree No. 24 in 1992 (22 January 1992) allowing the children of recognised refugees from Sudan and the children of Sudanese, Libyan, and Jordanian asylum seekers to attend public school.<sup>184</sup> More recent Ministerial decrees have extended access to education to Syrian and Yemeni refugees. However, access to education was not extended to Iraqi refugees during their time in Egypt nor has access been granted to the sizable and longstanding refugee communities from Ethiopia, Eritrea and Somalia.

Refugees who cannot access public education are eligible for a cash grant to offset at least some of the fees for private education.<sup>185</sup> Public education classrooms are often overcrowded and there is little to no support for refugees not fluent in the Arabic language. As with refugee communities elsewhere, attitudes towards the 'local' (Egyptian) educational system vary. Some refugee communities prefer to educate their children in their national curriculum; other refugees wish any education to support the (often illusory) prospect of resettlement (eg. by being in the English or other Western language). Refugee community schools, while often a last resort, are fraught with lack of monitoring and regulation and often issue credentials that are not recognised in Egypt.

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<sup>182</sup> Hetaba et al. (2020), see above at fn. 128.

<sup>183</sup> As noted earlier, the research of this report was conducted before some developments in the recent crises in Sudan and Gaza. In October 2023, the government of Egypt restricted access to education by refugees in Egypt (ostensibly as a result of the influx from Sudan). It is unclear whether this policy is a temporary suspension (likely to be prolonged due to worries about an influx from Gaza) or permanent.

<sup>184</sup> Sadek (2013), see above at fn. 113.

<sup>185</sup> Refugees in public education are eligible for a cash grant of 1,800 EGP (104 USD) whereas those in private education are eligible for a cash grant of 4,000 EGP (231 USD). See Sharafeldin (2020), above at fn. 68.

Non-Egyptian nationals may access higher education under Presidential Decree 49 of 1972. However, higher education is not free for non-nationals, including most refugees. Sudanese and South Sudanese benefit from treatment as an Egyptian national under the terms of the Wadi Al Nil Agreement. Since 2012, treatment as an Egyptian national was extended to Syrian refugees. However, since 2016, Syrians who completed their secondary education outside of Egypt have been required to pay varying amounts of fees.<sup>186</sup>

## 9.5. Health care

Access to health care has become an important entitlement due to the pandemic. While the right to access health care is not explicitly enumerated in the *Refugee Convention*, it is often read into Article 23 (Public Relief). Unfortunately, Egypt made a reservation to this article when it became a State party to the *Refugee Convention*. However, Egypt has guaranteed the right to “the highest attainable standard of physical and mental health” under Article 12 of the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*.<sup>187</sup> Additional international and regional treaties also bind Egypt to the provision of health care to various overlapping groups, including survivors of torture, children, women and persons with disability.

The Egyptian Constitution does guarantee access to health care, but the general entitlement only applies to citizens under Article 16. However, some refugees may benefit from guarantees of health care for children (Article 80), persons with disability (Article 81) and the elderly (Article 83). Since 1996, various groups of refugees have been given access to the Egyptian public health care system.<sup>188</sup> Ministry of Health Decree No. 242 of 1996 extended access to health care to nationals of “some Arab and some African states”. Later Decrees No. 217 and 337 of 2012 allowed nationals of Sudan and Eritrea to access health care on the same basis as Egyptian nationals. Decree No. 601 of 2012 then extended access to the public health care system to all Syrians.

UNHCR’s implementing partners Caritas and Save the Children also provide some primary and secondary medical services to refugees, particularly those with chronic conditions. Psycho-social care for refugees in Egypt is provided by a range of civil society organisations. Furthermore, UNHCR has a memorandum of understanding with the Ministry of Health “ensure access to emergency healthcare in public hospitals and applied to all nationalities.”<sup>189</sup> Egypt also includes refugees in many of its most significant public health initiatives, in particular those initiatives targeting hepatitis, tuberculosis and HIV/AIDS. In recent years, UNHCR has made financial and in-kind contributions to the Ministry of Health to offset a small part of the cost of health care for refugees.

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<sup>186</sup> The fees have varied depending on whether the refugee completed their education in Syria or elsewhere in the Arab world. The latter were required to pay the full cost of their education, often up to 5,000 USD.

<sup>187</sup> G.A. res. 2200A (XXI), 21 U.N.GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force Jan. 3, 1976. Egypt became party to the *ICESCR* on 14 January 1982; Egypt did not make a declaration or reservation affecting its obligations under Article 12.

<sup>188</sup> Sharafeldin (2020), see above at fn. 68.

<sup>189</sup> Sharafeldin (2020), see above at fn. 68.

During the pandemic, asylum seekers and refugees have been included in the government's pandemic response. Refugees and asylum seekers are able to be tested, admitted and treated for Covid-19 at State hospitals.<sup>190</sup>

Notwithstanding the entitlement of refugees to access to health care, many refugees face barriers. Although Egypt is transitioning to a "universal health care" model, historically public health care has come with a cost to the patient at point of delivery. Health insurance schemes in Egypt previously only covered State employees, leaving refugees and many others in Egypt having to pay large charges for medical services. While UNHCR has tried to subsidise such costs (either by direct payment or redirecting refugees with chronic care needs to its implementing partners), it has been unable to meet the need.

Previously resettlement was used for refugees with needs beyond the ability of the Egyptian health care system or costs beyond the capacity to bear of UNHCR or the refugee. However, the declining willingness of States of resettlement to accept such refugees and the broader shrinking of general resettlement numbers has made resettlement less of a viable option. Beyond financial costs, refugees often face language barriers, racism and xenophobia within the health care system as with other areas of their life in Egypt.

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<sup>190</sup> Although the relevant government directives extended access to all "foreigners" in Egypt, the directives specifically enumerated refugees and asylum seekers. See Sharafeldin (2020), see above at fn. 68.

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## 11. Appendices

Attached as separate appendices are the following:

- Annex 1: UNHCR-Egypt MOU (1954)
- Annex 2: Historical refugee status determination data (2010 – 2020)

### **Annex 1: Memorandum of Agreement between UNHCR and Egypt**

From Tarak Badawy, *The Memorandum of Understanding between Egypt and the Office of the United Nations High Commissioner for Refugees: Problems and Recommendations*, (2010) CARIM Analytic and Synthetic Notes 2010/07, Robert Schuman Centre for Advanced Studies [translated from French into English by Tarak Badawy]

#### **AGREEMENT BETWEEN THE EGYPTIAN GOVERNMENT AND THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES**

##### PREAMBLE

CONSIDERING that the Egyptian Government is desirous to continue the international co-operation within the United Nations in favour of refugees who are within the mandate of the United Nations High Commissioner for Refugees;

CONSIDERING the large number of these refugees in Egypt;

The Egyptian Government and the High Commissioner agree on the following:

##### Article 1

Without prejudice to Egyptian legislation and, in general, of all sovereign prerogatives of the Egyptian Government, the High Commissioner for Refugees is authorized to establish a Branch Office in Cairo in view of assuring, in the interest of the refugees within his mandate, and in agreement with the Egyptian authorities, the closest possible cooperation with such authorities for the implementation of the tasks mentioned in article 2 below.

##### Article 2

The tasks entrusted to the High Commissioner Delegation in Egypt will be in particular, the following:

- a) Cooperate with the governmental authorities in view of undertaking the census of and identifying the refugees eligible under the mandate of the High commissioner;
- 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;

- d) Help, within the limits of the funds received to this effect, the most destitute refugees within his mandate residing in Egypt;
- e) Insure the coordination of the activities undertaken in Egypt in favour of refugees under his mandate, by welfare societies duly authorized by the Government.

#### Article 3

The contacts between the Branch Office of the UN High Commissioner in Egypt, the Government and the Egyptian administrations will be ensured, in a general way, by the intermediary of the Ministry of Interior.

#### Article 4

The nomination of the Representative of the High Commissioner will be submitted to the agreement of the Egyptian Government. The High Commissioner will consult the Egyptian Government concerning the nomination of the other eventual members of his Office.

#### Article 5

The Egyptian Government undertakes to give to the delegation of the High Commissioner all facilities necessary to the exercise of its functions. The Egyptian Government will give to the Delegate of the High Commissioner the same favourable treatments as those given to other United Nations Missions and Specialized Agencies. The list of the staff members of the Delegation of the High Commissioner in Cairo called to benefit from the same treatment given to staff member of the other Delegations of the United Nations and Specialized Agencies in Cairo will be established by common agreement between the Government and the High Commissioner.

#### Article 6

The Egyptian Government will grant to "bona fide" refugees, residing in Egypt, who fall within the High Commissioner's mandate, residence permits according to the regulations in force.

#### Article 7

The Egyptian Government will grant to the said refugees, when they will have to travel abroad, travel documents with a return visa, of a limited, but sufficient, duration, except if reasons of public security prevent it.

#### Article 8

The present agreement will enter in force as soon as the Egyptian Government notifies the United Nations High Commissioner for Refugees of his approval of the agreement, in conformity to its constitutional procedure.

In witness whereof the Representative of both Contracting parties have signed the present Agreement.

Made in double copies in French language.

Cairo, 10 February 1954.

## Annex 2: UNHCR Statistics from Egypt

All data is extracted from UNHCR's online Refugee Data Finder database of population data (checked as of 29 November 2023).<sup>191</sup>

**Table 1: Populations recognised by UNHCR in Egypt<sup>192</sup>**

Year	Refugees under UNHCR's mandate	Asylum-seekers	Stateless persons	Total
2000	6840	11164	0	18004
2001	7223	15644	0	22867
2002	80488	12085	0	92573
2003	88745	5390	0	94135
2004	90335	8741	113	99189
2005	88934	11003	96	100033
2006	88014	16355	77	104446
2007	97550	14865	74	112489
2008	97851	14653	64	112568
2009	94392	13425	64	107881
2010	95044	14283	60	109387
2011	95078	18915	60	114053
2012	109923	16938	60	126921
2013	230070	23150	23	253243
2014	236085	25603	20	261708
2015	212492	38135	22	250649
2016	213515	49844	19	263378
2017	232647	56557	0	289204
2018	246746	68168	5	314919
2019	258391	66309	5	324705
2020	272826	56446	10	329282
2021	280686	60392	5	341083
2022	294632	63881	10	358523

<sup>191</sup> See <https://www.unhcr.org/refugee-statistics/download/>.

<sup>192</sup> UNHCR data does not list any displaced persons in the following categories in Egypt: Internally Displaced Persons of concern to UNHCR; Other people in need of international protection; Stateless persons; Host community (receiving protection); and, Others of concern.



**Table 2: Gender and Age breakdown of populations recognised by UNHCR in Egypt<sup>193</sup>**

Year	Female							Male							Combined Total
	0 - 4	5 - 11	12 - 17	18 - 59	>60	Other	Female Total	0 - 4	5 - 11	12 - 17	18 - 59	>60	Other	Male Total	
2001	377	519	431	1673	173	5079	8252	406	579	497	2463	105	10565	14615	22867
2002	546	643	551	2366	170	30100	34376	626	736	625	3809	101	39900	45797	92573
2003	896	1033	893	4095	200	0	7117	1050	1171	999	7819	131	0	11170	94135
2004	1422	1440	1228	6035	132	0	10257	1676	1622	1393	13441	107	0	18239	99076
2005	1559	1510	1298	6476	146	0	10989	1812	1677	1437	13767	114	0	18807	99937
2006	7758	10239	6396	21069	1078	0	46540	8555	7442	11599	29461	772	0	57829	104369
2007	7927	10839	6952	23838	1302	0	50858	8742	8199	12112	31528	976	0	61557	112415
2008	7875	10962	6958	24045	1343	0	51183	8592	8301	12101	31339	988	0	61321	112504
2009	7507	10537	6807	23273	1327	0	49451	8234	7818	11946	29413	955	0	58366	107817
2010	7489	10544	7008	23831	1397	0	50269	8208	7871	12146	29838	995	0	59058	109327
2011	7621	10819	7289	25608	1489	0	52826	8408	8143	12418	31116	1082	0	61167	113993
2012	8437	11997	8237	29697	1708	0	60076	9215	9299	14273	32650	1348	0	66785	126861
2013	17520	22583	15336	62399	4255	0	122093	18702	20601	21921	66011	3892	0	131127	253220
2014	17179	18866	57446	28971	4454	0	126916	18400	16770	64207	31359	4036	0	134772	261688
2015	15480	23440	15670	62950	4082	0	121622	16781	21328	21256	65832	3782	26	129005	250627
2016	16019	24232	16452	66255	4141	0	127099	17237	21919	22806	70396	3902	0	136260	263359
2017	17154	25957	17788	72283	4674	0	137856	18520	23806	24923	79585	4514	0	151348	289204
2018	11781	19803	14077	67114	4393	0	117168	12489	20703	15932	74136	4484	0	127744	314914
2019	12186	19859	15004	71478	4803	34995	158325	12823	20800	17204	75729	4830	34994	166380	324705
2020	10722	20272	15664	73650	5162	35000	160470	11240	21295	17786	78344	5142	35000	168807	329277
2021	11822	20368	16749	76199	5631	35001	165770	12442	21530	18952	81981	5407	35001	175313	341083
2022	12863	21791	18918	81429	5622	35001	175624	13488	22896	21036	85011	5462	35001	182894	358518

<sup>193</sup> No age and gender breakdown is available for 2001. The population totals between Table 1 and Table 2 do not always match exactly, though any discrepancies are usually very small (<+/-1%). UNHCR does not publicly report whether persons are recognised in 'other' and/or trans gender categories.

**Table 3a: Selected country of origin breakdown of populations recognised by UNHCR in Egypt: Eritrea, Ethiopia, Iraq and Palestine<sup>194</sup>**

	Eritrea		Ethiopia		Iraq		Palestine	
	R	AS	R	AS	R	AS	R	AS
2000	0	206	54	517	48	50		
2001	41	332	102	807	36	44	134	5
2002	44	265	111	612	36	106	70195	0
2003	98	221	329	507	33	151	70215	0
2004	176	31	481	107	39	91	70245	0
2005	205	89	516	71	35	216	70255	0
2006	274	146	507	126	43	3020	70198	5
2007	373	749	468	275	10273	204	70213	19
2008	752	768	473	301	10091	94	70174	25
2009	859	653	492	320	6572	72	70024	24
2010	938	621	562	316	6772	167	70026	27
2011	1036	881	609	827	6037	1401	70029	20
2012	1182	1050	863	1343	5703	1092	70028	35
2013	1523	1350	1029	2099	5506	1483	70026	31
2014	1625	1110	1138	3074	5149	1723	70023	18
2015	1405	2431	1085	5846	4347	2844	70021	5
2016	1531	5601	1392	10637	4362	3129	70027	5
2017	2727	9966	2676	11776	4275	2388	70018	0
2018	4340	11102	3814	12117	4346	2648	70021	0
2019	8858	9374	4599	11657	4426	2345	70010	0
2020	13528	5551	5296	10803	4660	2144	70022	0
2021	14141	6785	5589	9895	4629	2178	70021	0
2022	16526	5881	5814	10010	4496	1179	70020	0

<sup>194</sup> R denotes UNHCR's category of 'Refugees under UNHCR's mandate' and AS denotes 'Asylum-seekers'. Empty cells denote gaps in the data.

**Table 3b: Selected country of origin breakdown of populations recognised by UNHCR in Egypt: Somalia, Sudan, South Sudan, Syria and Yemen<sup>195</sup>**

	Somalia		Sudan		South Sudan <sup>196</sup>		Syria		Yemen	
	R	AS	R	AS	R	AS	R	AS	R	AS
2000	2610	1515	2833	8727					683	22
2001	1177	2974	4659	11293			0	8	628	12
2002	1639	3407	7629	7404			0	9	412	5
2003	3068	1807	14178	2373			6	12	344	5
2004	3809	147	14904	8122			0	5	319	5
2005	3940	244	13446	10191					209	0
2006	4317	301	12157	12521			5	9	204	0
2007	5139	150	10499	13226			5	13	204	0
2008	5600	98	10146	13137			9	8	204	0
2009	6096	130	9818	11984			9	0	205	0
2010	6172	378	10035	12476			8	0	205	9
2011	6328	840	10324	14426			9	85	205	50
2012	6250	1187	12124	10664	178	764	12836	0	207	120
2013	6316	1781	12927	13488	299	1518	131659	0	216	188
2014	5733	1632	12730	13997	542	2467	138381	0	198	215
2015	4491	3191	11296	17316	1686	2461	117635	0	54	1328
2016	3384	3643	13848	19280	2532	3109	116013	0	66	2572
2017	3252	3395	17298	18439	5247	4828	126688	0	85	4500
2018	3588	3576	19540	22231	7737	6885	132871	0	100	8222
2019	3973	2729	21861	25902	14832	4181	129210	0	126	9032
2020	4580	2150	25283	23966	18179	1626	130577	0	154	9113
2021	4698	2067	25476	26527	18673	2040	136727	0	156	9735
2022	4666	1771	25476	32761	21309	3037	145658	0	163	7992

<sup>195</sup> R denotes UNHCR's category of 'Refugees under UNHCR's mandate' and AS denotes 'Asylum-seekers'. Empty cells denote gaps in the data.

<sup>196</sup> South Sudan gained independence on 9 July 2011; it was recognised as a new member state of the United Nations on 14 July 2011. UNHCR began to use the national label South Sudanese in 2012. Some South Sudanese nationals remain registered with UNHCR as Sudanese nationals (if their recognition predates South Sudanese independence), though this is an increasingly rare phenomenon.