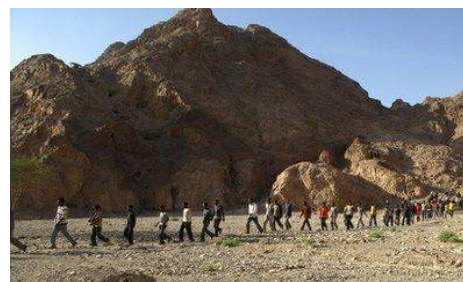


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Seeking safety, restoring dignity: Responding to the precarious plight of refugees in post-Mubarak Egypt

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By Perveen Ali. Forced migrants and refugees in Egypt are facing a mounting crisis as their protection concerns have been overshadowed by pressing political questions about the future of the Egyptian government. Numerous reports of human smuggling, such as the recent article in the Guardian and [testimony](#) by Mogos Redae, attest to the escalating severity of the security situation. Human smugglers are kidnapping, torturing, raping, and murdering refugees and migrants fleeing Eastern Africa as they cross through the Sinai Peninsula on their way to Israel. The US Department of State's [Trafficking in Persons Report 2011](#) documented that many of the migrants are women and children trafficked for purposes of forced labour and sexual exploitation. Smugglers and traffickers are holding them in camps in the Sinai where they are ordered to find relatives to raise exorbitant ransoms for them on the threat of torture or death. Some have also reported forced organ removal for purposes of illicit organ trafficking. The Egyptian authorities are well aware of this ongoing situation, but they are failing to respond to protect them, implicitly giving the smugglers license to continue these inhumane, predatory, and criminal activities.



Refugees in the Sinai Desert

Human smuggling across the Sinai is hardly new, and it has become increasingly prevalent in Egypt as refugees have fewer and fewer resources for seeking protection there. Egypt currently hosts 43,000 refugees, and an estimated 2,000 migrants enter the country each month. Egypt's obligations to protect refugees are enshrined in the 1951 [Convention Relating to the Status of Refugees](#) and the 1967 [Optional Protocol](#), to which it is a signatory, and which form the foundation of the international refugee protection regime. However, it did enter [reservations](#) to provisions related to education and employment in the convention. Egypt has also acceded to the 1969 [Organization of African Unity's Convention Governing Specific Aspects of Refugee Problems in Africa](#), which mirrors many elements of the refugee conventions, but provides an expanded legal definition of who may be considered a refugee. However, Egypt has neither domestic legislation that implements the provisions of these conventions nor functioning mechanisms for adjudicating asylum claims. In 1984, it did form the Refugee Status Determination Committee at the Egyptian Ministry of Foreign Affairs under Decree 188/1984, but this mechanism is rarely utilised and generally reserved for high-profile political cases.

Instead, the Egyptian government handed over many of its responsibilities for refugee protection to the UN High Commissioner for Refugees (UNHCR) under the auspices of a [Memorandum of Understanding](#) signed in 1954. Under this agreement, UNHCR agreed to adjudicate asylum claims, provide social and economic support for refugees, and seek durable solutions for them. The international refugee protection regime provides for three traditional "durable solutions" for refugees, including local integration in their country of asylum, resettlement to a third country (usually in the global north), or voluntary repatriation to their country of origin. Refugees in Egypt, particularly those from East Africa, often cannot return to their countries of origin for fear of facing persecution and human rights violations. They further cannot effectively locally integrate in Egypt as they have no rights to public education or employment in the formal sector. And they have few options for resettlement as less than five percent of the nearly 43,000 refugees living in Egypt can expect to be resettled in a given year. Therefore, the vast majority of refugees in Egypt live in untenable situations of considerable legal uncertainty and physical insecurity, and they struggle to survive on a daily basis. They have few options for securing livelihoods and cannot plan for their futures.

Facing such dismal prospects for long-term or effective protection in Egypt, many refugees and migrants who enter Egypt do so only for purposes of transiting through the country on their way to Israel where they hope to find better opportunities to survive as a part of the informal labour force. However, their increasing numbers have raised fears on both sides of the Egyptian-Israeli border. The Israeli government has responded by extending its 1954 [Prevention of Infiltration Law](#), first intended to prevent Palestinian refugees from returning to their homes, but now also aimed at East African refugees and migrants. Persons arrested under this law can be detained without trial for up to three years in the largest detention camp for migrants in the world, during which time a deportation order is sought. Any Israeli citizens who attempt to assist them can also face detention of up to 15 years.

The political sensitivities raised by this continued border crossing have had serious consequences on the Egyptian side of the border, as well. Reports of Egyptian police and border agents [arresting, shooting, and killing](#) migrants as they attempt to cross have proliferated over the past several years. Refugees and migrants in Egypt continue to face [arbitrary arrest and detention](#), often without access to the assistance of UNHCR. Many have been deported to the violence they fled in their countries of origin in contravention of Egypt's obligations under international law not to return refugees or migrants to countries where they may face persecution or torture. Such treatment has escalated since 2005 when a refugee demonstration outside of UNHCR was violently suppressed by the Egyptian authorities, resulting in the deaths of 27 persons.

Sadly, this situation has not improved with the fall of Mubarak's government. The UN High Commissioner for Refugees [stated](#) in April 2011 that he hoped that the revolution would provide for "a new beginning for refugee protection in Egypt". However, popular xenophobia and government-supported scapegoating of refugees and migrants have persisted and even worsened in the face of insecurity and the rise of nationalist sentiments. The faltering and uneven transition to democratic rule has not automatically paved the way for enhanced refugee protection. The rise of authoritarianism and a lax policing policy have left refugees in Egypt vulnerable to increasing [violence](#) in the form of discrimination, forced evictions, arbitrary arrests, physical assaults, and rapes. Refugees are accused of being foreigners supported by Mubarak and of meddling in Egyptian affairs, and have been told by civilians to go home. Complicating the refugees' increasingly dangerous plight, international NGOs based in Egypt are facing governmental [crack-downs](#) that discourage them from openly advocating for refugee rights.

A brighter future?

In the midst of this dismal situation, however, there might be opportunities to press for greater protections for refugees in Egypt, which could go some way towards discouraging human smuggling and trafficking and their associated dangers. Ideally, Egypt should rectify this situation by creating domestic legislation and adjudication systems and assuming full responsibility for refugee protection in accordance with its obligations under international law. However, in the context of the government's current deprioritisation of refugees in its agenda, this may not only be unrealistic, but also dangerous for refugees themselves who cannot count on a fully equipped and trained judiciary, an enabling political environment where rights protection could flourish, or the rule of law to protect them.

Short of this, there may be other possible strategies for promoting refugee protection in the current climate. Foremost, in crafting a solution, it will be critical for the international community and UNHCR to develop strategies that both protect refugees and respond to the political and economic interests of the Egyptian government. In particular, now might be the opportunity to revisit the terms of the Memorandum of Understanding and to revise it to accord more closely with Egypt's obligations under international law and to address the resource issues faced by Egypt at the same time. In a recent [article](#) by Tarek Badawy and a [paper](#) by Michael Kagan, there are numerous suggestions for how best to proceed with such revisions – from assigning UNHCR a secondary supportive and advocacy-based role in refugee matters to clarifying primary roles assumed by both UNHCR and the Egyptian government in sharing responsibility for refugee protection.

In regards to the rising levels of violence associated with human smuggling and trafficking of refugees and migrants, it will be critical for the Egyptian authorities to recognise that migrants have many reasons for leaving their country of origin, chief among which may include fear of bodily and psychological harm. A protection-sensitive approach to migrants caught up in smuggling and trafficking networks across the Sinai would require a means for assessing individual claims to determine whether they require assistance and protection as refugees, children, victims of crime, and/or victims of trafficking. In exchange for the Egyptian government monitoring these networks, intercepting and responding to reports of torture and kidnapping, and providing UNHCR access to persons in detention, the international community could contribute to funding these activities, and UNHCR could conduct protection assessments and provide follow-up support or linkages to other agencies where needed.

Regarding refugees within Egypt, many scholars and policy-makers agree that one of the primary revisions required to move forward is to explicitly recognise and provide opportunities for refugees to locally integrate when they do not have foreseeable prospects for voluntary repatriation to their countries of origin or resettlement to countries in the global north. Facing pressures of mounting social and economic need from its own population, the Egyptian government has been reticent to extend any prospects for long-term integration to refugees who have no other solutions available to them, and no provisions for local integration are in the current version of the Memorandum of Understanding. For any strategy promoting local integration to be effective, then, the international community and UNHCR may need to share some of the economic burdens and legal responsibilities associated with refugee protection. This has already been the case in practice to some extent under the current Memorandum of Understanding, but the respective responsibilities of UNHCR and the Egyptian government have been left vague and ambiguous, which creates gaps in protection and confusion about accountability and contributes to the deteriorating situation for refugees. A clearer delineation of responsibilities would not only address some of these deficiencies, but would also provide a legal foundation for activist litigation – using the court system to press for reforms in the state's treatment of refugees.

Strategies to promote greater refugee protection through local integration should include both short and long-term measures that ensure refugees' rights to live in dignity and safety, regardless of the durable solution that they will secure in the future. UNHCR and its international donors might be able to encourage greater opportunities for all refugees' local integration by providing funding for public schools or livelihood training that benefits both local Egyptian citizens and refugees alike. In exchange, the Egyptian government could explicitly recognise the rights of refugees to work and to access public education, or it might finally agree to accredit private refugee schools. Such strategies are in keeping with UNHCR's [urban refugee policy](#); benefiting both citizens and refugees in urban environments, such initiatives are crucial for decreasing local hostility towards refugees and facilitating greater social acceptance. This would also provide refugees in Egypt with more legal security as they would no longer have to fear arrest and detention for working in Egypt without a permit. Michael Kagan proposed a long-term solution involving the ["strategic use of resettlement"](#) to benefit both refugees and the Egyptian government: The Egyptian government could grant permanent residence to the same number of refugees as the number who are resettled each year to

third countries by UNHCR. Towards such a project, the international community could raise the number of available resettlement places for refugees as a demonstration of its commitment to burden-sharing and to encourage the Egyptian government to engage in more measures aimed at local integration and protection. This would also give refugees greater access to durable solutions.

Such responsibility-sharing measures are critically needed in the current climate of political and economic insecurity in the new Egypt. Both Egypt and UNHCR have the opportunity now to step up and redress the many harms resulting from the vague and problematic provisions of Memorandum of Understanding. It is imperative that they set out their respective roles and refugees' rights and available durable solutions in a clear and explicit form and ensure that the provisions are in keeping with Egypt's obligations under international human rights and refugee law. This would provide a stronger legal basis for refugee protection and state and organisational accountability. Through such agreements, they could mutually support one another in positioning Egypt to become a stronger model for refugee protection in a region where few states have even acceded to the refugee conventions. And most of all, in making the right of refugees to live in safety and dignity central to any protection strategy, regardless of their future durable solution, refugees would not have to risk their lives and security in seeking dangerous smuggling routes through the Sinai and further afield.

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