



Egypt - Researched and compiled by the Refugee Documentation Centre of Ireland on 31 August 2009

Information on failed asylum seekers

Page 1 of a November 2008 *Human Rights Watch* report under the heading 'Summary' states:

"Since 2006, over 13,000 refugees, asylum seekers, and other migrants have passed through Egypt and crossed the Sinai border into Israel. The majority arrived in Israel since 2007; at times, in early 2008, over 100 people per night reportedly crossed the border.

Both Egypt and Israel have responded to this cross-border flow with policies that violate fundamental rights. These violations, particularly on the Egyptian side, have become more numerous and more acute over the past year. In August 2007, Egyptian border police shot and beat to death four people trying to cross from Egypt into Israel, according to Israeli soldiers who said they witnessed the killings. The Israeli soldiers, who believed the migrants were Sudanese, were close enough to hear the migrants "screeching in pain until they died," one soldier said. Egyptian border police have killed at least 33 migrants and wounded dozens more attempting to cross into Israel since the first known fatality, a pregnant Darfuri woman, died in June 2007.

Egypt has also returned Eritrean and Sudanese nationals to their home countries, where they could face persecution and a substantial risk of torture, without allowing them to claim asylum or despite their asylum status. Beginning in February 2008, Egypt refused to allow UNHCR access to Eritreans in detention, many of whom military tribunals had sentenced to between one and three years in prison for illegally entering the country from Sudan. Over one week in June Egypt forcibly returned up to 1,200 of these detainees—of a total of approximately 1,400—to Eritrea, and the Eritrean government reportedly detained 740 of the returnees. In mid-April Egypt deported 49 Southern Sudanese men, at least 11 of whom were asylum seekers or refugees, to Juba, Southern Sudan." (Human Rights Watch (12 November 2008) *Sinai Perils: Risks to Migrants, Refugees and Asylum Seekers in Egypt and Israel*)

A September 2008 *IRIN News* report states:

"EILAT, 8 September 2008 (IRIN) - Israel deported to Egypt 91 illegal African migrants in four operations coordinated during the last two weeks of August, the State Attorney's Office said on 1 September.

A spokesman for the Israeli military, which patrols the state's borders, said it had returned them on government orders in line with the bilateral agreement signed with the Egyptian government.

However, rights groups are concerned that some were not given a chance to claim asylum in Israel.

Last year, Israel and Egypt agreed to clamp down on their porous border. "Israel cannot allow unfettered access to its sovereign territory," government spokesman Mark Regev told IRIN.

Several Israeli rights groups filed a petition last week in an attempt to halt the deportations. They said the Africans should be treated as asylum-seekers and be interviewed to make sure they were safe to return to Egypt.

Following the one previous use of the "hot return" policy - whereby Israel immediately returns captured infiltrators to Egypt upon arrest - rights groups had petitioned the court in August 2007 and received a response from the state saying it would not deport migrants without receiving assurances from Egypt regarding their welfare.

The UN Refugee Agency (UNHCR) in Tel Aviv said it was still awaiting clarifications from the Israeli government before "making a judgment" on the latest returnees.

"The court must intervene immediately to stop the endangerment of lives of asylum-seekers," lawyers Anat Ben Dor and Yonatan Berman wrote in the urgent appeal filed on 27 August, which failed to prevent the deportations." (IRIN News (8 September 2008) *Egypt-Israel: Government says it deported African migrants*)

Page 8 of a September 2007 UNHCR report under the heading 'Voluntary repatriation', states:

"During the course of the year 2006, UNHCR Cairo assisted some 910 refugees (and Sudanese asylum-seekers) to repatriate voluntarily to their respective countries of origin. This included 883 Sudanese, 11 Iraqis, 5 Somalis, 4 Burundis, 3 Ethiopians, 1 Liberian, 1 Libyan, 1 Sierra Leonean, and 1 Yemeni national. This represents a significant increase in the number of Sudanese (from the South) who opted to return. Despite this increase, UNHCR was and continues to be able to sustain the processing of exit-formalities and support with voluntary repatriation.

- A number of activities were undertaken by RO Cairo to disseminate information to the Sudanese community regarding voluntary return procedures, through frequent weekly or bi-weekly meeting with different Sudanese communities as well as on an individual basis through individual counseling provided directly by RO Cairo.

- Efforts to streamline and to put in place functioning arrangements for voluntary repatriation took place through a series of meetings with the Ministry of Interior, the Ministry of Foreign Affairs and the Sudanese Embassy in Cairo were successful. Agreement on the provision, free of charge, of travel documents for returnees or the renewal of national passports by the Sudanese embassy as well

as cooperation in facilitating exit formalities through the Ministry of Foreign Affairs expeditiously and efficiently. Could be achieved and the voluntary return procedures function smoothly, to date.” (UNHCR (1 September 2007) *Country Operations Plan 2008 Egypt*)

An April 2007 Amnesty International document, under the heading ‘Background’, states:

“Several transfers of Egyptian nationals from abroad have been carried out in collaboration with US, European and Arab governments. In some cases, the return has followed an extradition request by the Egyptian authorities. In others, the return has been the result of what the US authorities call “renditions” – the transfer of people between countries without due legal process – or of a failed asylum claim. All these returns have violated the principle of non-refoulement and have been carried out despite documentation provided by national and international nongovernmental organizations to highlight the high risks of torture and other abuses that face those threatened with forcible return.

Some foreign governments have argued that the use of bilateral measures such as “diplomatic assurances” (or “diplomatic contacts”) eliminates the risk that Egyptians suspected of involvement in terrorism either abroad or in Egypt will be arrested and tortured or otherwise ill-treated in Egypt. Such bilateral agreements between governments, however, are not binding in international law, unlike the treaties prohibiting torture to which Egypt is a party but has consistently breached. Amnesty International has fundamental concerns about the use of “diplomatic assurances” to justify the return of foreign nationals who are considered to be a security threat. In the case of Egypt, Amnesty International is additionally concerned that, in practice, no judicial control can be exercised over the conduct and activities of the General Intelligence (Mukhbarat) and the SSI, who would most likely be responsible for detaining the returnees.” (Amnesty International (11 April 2007) *Egypt - Systematic Abuses in the Name of Security*)

Page 18 of an April 2005 *International Federation for Human Rights* report, under the heading ‘Summary rulings or rulings in absentia’, states:

“By Decree No. 375 of 1993, based on Article 6 of the Military Code, President Mubarak referred two cases before the military court. These were called the “Returnees from Afghanistan” and the “Tandhim of the Jihad” cases, in which 48 civilians who were tried and sentenced for acts of violence and terrorism by the Supreme Military Court of Alexandria in cases “23” and “24” of 1992. On 3 December 1992, the court pronounced 9 death sentences, one of which was in the presence of the accused and the remaining 8 in absentia.

According to Mr Muntaser Al-Zayat, one of the lawyers in these two cases, the proceedings were conducted in violation of all the constitutional guarantees and of the Code of Criminal Procedure. These cases, which implicated about 90 people, were conducted in extreme haste. There was only one month between the date of the decision to instigate proceedings and the date of the sentence. This did not allow the defence nearly enough time to become acquainted with the case file and to prepare pleas in a trial involving 90 defendants.

Mr Muntaser Al-Zayat also cited the "Talâ'i al-fath" case concerning another Islamic group and implicating civilians accused of acts of terrorism. In 1993, the military court pronounced nine death sentences, which have been carried out.

On 17 March 1994, Mohamed Ismail Othman Salah was sentenced to death in absentia by the Supreme Military Court in case no. 2/1994 known as "the case of the attempted assassination of the Chairman of the Council of Ministers". In August 1998, he was extradited from Albania to Egypt and brought before the military court in another case known as the "Returnees from Albania". He was sentenced to 15 years in prison. On 23 February 2000, Mohamed Ismail Othman Salah was executed by hanging following the sentence pronounced in absentia on 17 March 1994. Articles 384 to 397 of the Code of Criminal Procedure however stipulate that sentences must be pronounced in the presence of the accused, if he/she is absent, the verdict must be made known to him/her and he has the right to oppose the sentence.

The situation of Ahmed Ibrahim Najjar was similar. He was also extradited from Albania in August 1998 and implicated in the "Returnees from Albania" case, as a result of which he was sentenced to 25 years in prison by the military court.. Earlier, on 15 October 1997 in case no. 60/1997, "the Khan Khallili" case he was sentenced to death in absentia. He was not able to challenge this sentence as permitted by the Code of Criminal Procedure. The sentence was carried out on 23 February 2000, the same day as the execution of Mohamed Ismail Othman Salah.

These cases serve to illustrate the arbitrary nature of trials in the special courts and the persistent violation of basic rules guaranteeing the elementary rights of persons on trial which are recognised by the Constitution and by the laws which should logically be applied.

The rights of the defence are completely ignored in the special courts. At best, counsel only have access to case files on the day of the hearing. They are only able to visit the accused for 10 minutes, in the court room, although these cases involve many accused persons who incur the death penalty. On several occasions, and especially in the "Returnees from Albania", defence counsel withdrew as a sign of protest against the rejection by the military judges of their requests to see the case file. In 1994, the military courts sentenced 21 people to death.

Contrary to the common law which stipulates that all death sentences shall be systematically appealed, death sentences pronounced by the Supreme Military Court are not published and cannot be appealed except by presenting a petition to the President of the Republic or the Chairman of the Council of Ministers.

These provisions are violations of Article 14 of the ICCPR, which stipulates that any person who is declared guilty of an offence has the right to have the guilty verdict and the sentence examined by a higher court and the right to have the case judged by an independent and impartial court." (International Federation for Human Rights (April 2005) - *The Death Penalty in Egypt*)

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This response was prepared after researching publicly accessible information currently available to the Refugee Documentation Centre within time constraints. This response is not and does not purport to be conclusive as to the merit of any particular claim to refugee status or asylum. Please read in full all documents referred to.

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Human Rights Watch

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IRB: Immigration and Refugee Board of Canada

IRIN News

Lexis Nexis

Refugee Documentation Centre Query Database

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UNHCR Refworld
US Department of State