

Radboud University Nijmegen



Nijmegen School of Management
Human Geography

Masterthesis

The lock on the door of justice

Sudanese Refugees in Cairo and how to judge their situation through
the cosmopolitan lens.

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To my family

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Acknowledgement

Finally, I am sitting in front of the final version of my Master Thesis. Who would have thought that it would ever be finished? In the course of the last year I rather doubted that this moment will ever come. Now it is done and I am relieved and excited about the next period in my life. At this point I want to thank some people that were crucial for the development of my thesis and for my personal morale in writing it. First of all I would like to thank Mai Choucri from Tadamon who supported me during my field research and gave me a good insight in the world of refugees in Cairo. I also would like to thank all the participants in my research only their brave statements made it as lively as I believe it is. I especially want to thank Amna Mohammed (you will find her short story in the prologue) who provided me with all the documentation about her refugee status that was available to her and who inspired me to set up my own development program in Cairo. Furthermore, I would like to thank Sonja Arnold for providing a roof above my head while I was staying in Cairo. Her support and friendship were essential during my research in Cairo. I also want to thank Henk van Houtum for supervising me during this whole year and for advising me when my head was spinning, full of different ideas and thoughts.

Finally, I want to thank Ferry who had to suffer with me during the last year and who was the closest advisor during the whole process of completing this research. I want to thank him, my friends and my family for supporting me in everything I do, their open critique and unconditional love.

Prologue

“Yes, the norm is not to intervene in other people’s countries: the norm is self-determination. But not for these people, the victims of tyranny, ideological zeal, ethnic hatred, who are not determining anything for themselves, who urgently need help from outside. And it isn’t enough to wait until the tyrants, the zealots, and the bigots have done their filthy work and then rush food and medicine to the ragged survivors. Whenever the filthy work can be stopped, it should be stopped. And if not by us, the supposedly decent people of this world, then by whom?”(Walzer, M.,1995, p.7)

Amna’s wish to resettle to the United States of America¹

Amna is 32 years, has three children and had to flee from Darfur in 2004 after the Janjaweed attacked her village and killed her eldest son. Her husband was taken away by the rebels that day and Amna is convinced that she will never see him again and that he was killed by the same men that murdered her son. When the Janjaweed came to her village in the morning, she was sick and stayed home instead of working on the fields. She remembers that all of a sudden she heard gun-shots and screams filled the air. In panic she took the three smaller children and ran out of the house where she found her eldest son, shot in the head. The huts were burning and people were running away from the helicopters and men on horses. She found her sister outside in front of her house. With her and the children, she hid in the woods but was found by the Janjaweed after a short time. They interrogated them because they believed that their men belonged to the rebels. Amna and her sister were abused and raped several times. She still carries heavy scars from that time in her face and on her arms. The Janjaweed threatened to do the same thing to her daughters if she would not tell them where the men were. After a week of horrible pain the five of them were brought to one of the refugee camps. Amna did not feel safe there and the Janjaweed threatened her not to tell anyone what happened or they would kill her and her children. However, she was able to save some of her jewelry and the man who brought the water to the camp helped her to flee with her children and sister. On the back of a truck they drove for more than 24 hours until they reached Neyala, a city in the centre of Darfur. From there they were able to make their way to Khartoum, where they made contact with some tribe members. They helped Amna to falsify her passport. People from the Darfur region were persecuted but ethnic Africans from Khartoum still had more freedom to travel. Therefore, she changed her birthplace from Wadi

¹ Amna Mohamed is a refugee from Darfur. Pictures and her documentation as a refugee in Egypt can be found in the Annex

Gandi into Khartoum. After a long exhausting journey, which her relatives paid for her, she crossed the border to Egypt by boat. She heard that some of her neighbors also fled to Cairo and decided that she would go there to seek protection. After she arrived in Cairo she was granted refugee status and therefore holds a blue card. She is working sporadically as a housekeeper and earns very little. She does not have enough money to send her children to school and thus teaches them how to write and basic calculation herself. Her sister was severely traumatized by the experiences back in Sudan. One day she was gone. Amara thinks that she left for Israel and believes that she was among the refugees who got shot at the Egyptian-Israeli border. Amna was lucky to be considered for resettlement and refugee status in the United States. She was very excited about this decision. A friend of her told her to tell the officers from the United States Immigration Service everything, the whole truth about her refuge, as it was supposed to increase her chance to become resettled. So when she was invited for an interview, she was very nervous. Nonetheless, she decided to tell them that her passport was falsified during her flight from Darfur. A few weeks later she received a letter which stated that she was rejected from resettlement to the United States. The reason which is stated on the form is “credibility”. Apparently the authorities did not believe her story and therefore refused to resettle her and her three children. Amna thinks that her story was maybe a little bit chaotic as she was very nervous and she jumped from one point to the other. However, she believes that she got rejected because she had a fake birthplace in her passport. She is still living in Cairo with her three children hoping that she will be considered for resettlement another time.

Introduction

“It is not a matter of knowing which and how many of those rights there are, what their nature is and on what foundation they are based, whether they are natural or historical, absolute or relative; it is a question of finding the surest method of guaranteeing rights and preventing their continuing violation.” (Bobbio N. on Human Rights quoted by Ingram, J.D., 2008)

Human Rights are at the core of human interaction. They are based on the principle of equality and are meant to protect any individual from being maltreated. As it is stated in the Universal Declaration of Human Rights from 1948:

“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.” (UN, 2009)

However, as the incipient quote by Bobbio shows, those rights are insignificant if there is no mode that prevents their constant neglect and violation and ensures their universality. It is not novel that Human Rights are disrespected every day. Not only the developing world, but also the developed world has to be accused of continually breaching international law. Several organizations – such as Amnesty International - committed themselves to counter this *laissez-faire* policy of the international community and openly indict the countries and governments in question. Nevertheless, these organizations have limited influence and can only act to certain extend.

Egypt - the country where this research was conducted – infringes Human Rights on a daily basis; not only is the Egyptian population affected, also a huge number of refugees searching for protection in the country are deprived of their rights. Although, Egypt is signatory to Human Rights contracts such as the 1951 Convention determining the rights of refugees, it shows little motivation for conforming to those laws.

Rights are important to every human being and by this fall under the concept of cosmopolitanism. However, the most needy and vulnerable have a special interest in the protection of their rights. This becomes visible in the case of Sudanese refugees residing in Egypt. The constant violation of their basic rights makes it very difficult for them to sustain

a living as well as investing in their future (i.e. education or savings for their probable return to the home country). Though they seem rightful when looking at the international treaties for the protection of Human Rights and in specific refugee rights, they are actually right-less. Due to the fact, that rights, to which refugees are entitled, cannot be claimed in Egypt, Sudanese refugees in Cairo are stranded and in fact live in limbo. Refugees, therefore, develop livelihood strategies that detract themselves from the socio-political community they remain in. Sudanese refugees in Cairo are an interesting group to study as they form the biggest group of refugees after the Palestinians. This makes the accessibility of this group easier. Additionally, the situation in Sudan is of high actuality and this study contributes to the ongoing discussion about the victims and consequences of these conflicts.

This context evokes the question “what is the right to have rights?”. It implies a qualitative analysis of right (what is right, when do we have rights, who is protecting these rights?) and aims not only at political systems and entities but at the individual level. Does an individual become rightful simply by its existence? If right goes beyond political communities, which structure legitimates rights?

If one engages scientifically in these questions, the vast amount of literature points out the complexity of the topic. However, one thing that stood out during the research for this thesis is the reference of almost all used literature to Hannah Arendt and Immanuel Kant. Many of the contemporary scientists avail themselves of Arendt’s and Kant’s theories. A good example of this is the work of Seyla Benhabib. “The rights of others. Aliens, Residents and Citizens” examines the limits of political communities by focusing on political membership and advocates for moral universalism and cosmopolitan federalism.

The goal of this work is to create an ethic-normative picture of the right of Sudanese refugees in Egypt and the socio-political structures therein. Hereby, it is important to verify the “right to have rights” and its denotation in the contemporary discourse on refugee rights. It engages in the question how to combine the philosophical (what are rights? why do we have them?) with the political approach (how to put rights into practice) towards rights. As a sub-question this work will elaborate on the function of right for refugees in third world countries. The central research question, however, remains: **What is the legal situation of Sudanese refugees in Cairo and how do we need to judge it through the cosmopolitan lens of Immanuel Kant and Seyla Benhabib?**

Therefore, the following structure will be applied:

In the first part the empiric findings and outcomes of a three months research trip to Cairo (in 2008) will be presented. It will focus on the reasons why Sudanese refugees are coming to Cairo, the situation of refugees in Cairo including their theoretical as well as practical rights. The questions that this part will trigger will be presented in a second part where a theoretical approach will be taken towards right, the right of refugees and the question when a person should be granted rights. Therefore, this research avails itself of the works of Immanuel Kant and Seyla Benhabib. In the final part, the empiric and theoretic findings will be combined in a way that it will feature the faultlines within Egypt's human rights regimes and address multiple implications on the Egyptian as well as international level.

Methodology

In order to create a proximate realistic picture of the situation of Sudanese refugees residing in Cairo, the case study was chosen as the logical approach to the research question. This method gives the opportunity to study certain phenomena in depths and make open observations about the situation under investigation. The case study was carried out with the support of Tadamon the Egyptian Refugee Council. The organization offered logistical assistance to the research project by providing access to their database and making contacts to community based refugee organizations. Due to the fact that Sudanese refugees live under constant fear of the Egyptian authorities the contact with Tadamon played a key-role in carrying out the research. The fact that refugees established a relation of trust with this organization was of great help in order to find interview participants.

The case study is based on the triangulation of sources. The three sources used for the analysis were face-to-face interviews as well as group interviews among the Sudanese refugee community in Cairo, literature study and personal observation. This approach makes it possible to test the viability of the assumptions taken in this research on a wide scale. In total 25 people from Sudan were interviewed. The interviews were carried out from September until December 2008. The group of participants was relatively equal divided between Southern Sudanese and Sudanese from Darfur (see an overview below). It therefore leaves out refugees from the northern and eastern regions of Sudan, who may have different experiences of their lives in Cairo. However, as the focus of the research lies on refugees of the war-torn regions of Darfur and Southern Sudan the possible bias this might create remains relatively low. Moreover, relying on other research, the number of refugees from the North and East is comparably small (Grabaska, K., 2009).

In order to reach different interview participants the contacts of Tadamon were used for snow-ball sampling. The research, therefore, does not claim to have statistical significance. The fact that people were already in contact with a refugee organization means they are actively involved in enhancing their situation in Cairo. Additionally, the snow-ball sampling knows the bias of only being directed at people from the same level of education and livelihood circumstances. However, combined with literature study and research projects among Sudanese refugees that were carried out earlier I believe this work overcomes this bias and sketches a good picture of the situation. Furthermore, the information processed in this research was also gained through open interviews with scholars from the American University in Cairo who are experienced in the field of refugee rights and familiar with the situation in Egypt. Unfortunately, the United Nations' High Commissioner of refugees (UNHCR) in Cairo repeatedly refused to give an interview about their work. The reasons for the refusal are vague. As a consequence, all information about this organization is based on secondary sources.

The different stories that are told in this research are meant to highlight the communalities which the research encountered among all interviewees. Out of protection the names of the participants have been changed or shortened.

Overview of the interviewees

Gender	male				female			
Total	9				16			
Age	<20	20-25	25-30	30-40	<20	20-25	25-30	30-40
	0	2	7	0	0	1	9	6
Origin	Southern Sudan		Darfur		Southern Sudan		Darfur	
	4		5		6		10	
With Children	yes		no		Yes		no	
	2		7		Yes		no	

Chapter I Sketching the situation of Sudanese refugees in Egypt

1.1 Egypt – the safe haven?

“President Obama needs to convey a clear message that human rights in the region, including Egypt, are a central concern of his administration. He should be sure that what he says in his speech and in his private meeting with President Mubarak and his choice of other people to meet will combat the growing perception here that human rights are a second-rank concern.” (Sarah Leah Whitson, Middle East director, Human Rights Watch, 2009)

The Obama speech held in Cairo in June 2009 was seen as the start of a new era in the relationship between the West and the Arab-Muslim world. He chose Egypt for his speech. A strategic place as it has stronger ties with the West than any other Arab country in the Middle East. As a young man in Egypt put it when Obama became elected “Egypt is Obama country”. He receives comparably high support among the Egyptian population and their hopes rest on his time in office to enhance the relationship to the West.

Egypt, under the reign of President Mubarak since 1981, ranks low on the Human Development Index of the United Nations Development Program. From the 179 countries taken into account it is situated at rank 116 (UNDP, 2008). This might be surprising as we know Egypt from the nice pictures at the travel agency and cannot imagine that its development is lacking behind this severe. However, it is a fact that Egypt belongs to the development countries and with a GNI per capita of 2184\$ this is not a surprising fact (WorldBank, 2008). The living conditions for the vast amount of the population are very poor. Walking the streets of Cairo, away from touristic places, gives evidence to this. Streets become sandy pathways, houses are constructed of corrugated metal, mal-treated donkeys have to carry an enormous weight on their back and an offensive smell from the garbage that lies around everywhere accompanies you on your way. After this experience it is not surprising that taxi drivers charge at least five times the normal price from the supposedly rich Westerner. To make a living in Cairo is hard business.

Furthermore, Cairo is an urban magnet to many who seek a better life in the city. The influx of people from all over Egypt is tremendous. Official numbers state that Cairo has 17 million inhabitants. Estimations, however, claim that Cairo has at least 23 million inhabitants, which makes it the largest city on the African continent. Moreover, Egypt’s geographical situation plays an important role in mediating in conflicts, building a bridge between ‘East’ and ‘West’ and receiving people from other countries who seek protection. The fact that it is surrounded by countries struggling with violent conflicts contributes to this. The most prominent one

being the Israel-Palestine conflict, but also the devastating situation of Sudan and the Hoorn of Africa lies at its doors. Being neighbor to some of the gravest conflicts taking place in the world, Egypt became a country of refuge where people seek protection.

The official numbers of refugees in Egypt are published by the UNHCR, who is also responsible for the refugee status determination (RSD), and add up to 97.861 refugees plus 14.680 asylum seekers in 2009 (UNHCR, 2009). However, there are estimations that about 5 million refugees reside only in the area of greater Cairo. The tremendous difference between the numbers published by the UNHCR and the numbers which have been estimated by different humanitarian organizations², gives way to various profound discussions on Egypt's role in international Human Rights and the protection of refugees. If it is true that there are more refugees living in Cairo than those registered with UNHCR, the consequence is that there is a group which is entirely unprotected by UNHCR and its services.

The biggest registered group of refugees is Palestinian from the occupied Palestinian territories. This one is followed by a huge amount of Sudanese refugees who fled their country due to the ongoing, violent conflict in Southern Sudan and the region of Darfur. Furthermore, there are Eritreans, Ethiopians as well as Somalis of whom the majority left the country due to conflict and persecution. Additionally, many Iraqis remain in the country because of the second Iraq-War (UNHCR, 2009). While Palestinians and Iraqis enjoy a lot of sympathy by the Egyptian population, ethnic Africans have a much harder stand. Open racism, poverty and the lack of access to basic human rights make their lives miserable.

Egypt is signatory to the 1951 Convention relating to the Status of refugees and its 1967 Protocol, and was the only non-Western country on the Convention's drafting committee (Al-Sharmani, M., 2008). Additionally, it is member of the Organization of African Unity's Convention Governing the Specific Aspects of Refugee Problems in Africa. In theory, Egypt shows commitment to the principle of human rights. In practice, the government restricts the rights of refugees heavily by having a proviso on Art. 12 (1), 20, 22, 23 and 24³ of the 1951 Convention (ibid, 2008). As a consequence, refugees encounter strong obstacles when they

² In interviews Tadamon as well as representatives of the American University in Cairo estimated that the number was somewhere around 3-5 million refugees.

³ Those Art. concern personal status, Rationing, Public education, public relief and Labor legislation & social security

seek employment, education or medical support. They become actively as well as passively marginalized.

1.2. Reasons for Sudanese to come to Egypt

1.2.1 The situation in Sudan

"In the morning, the militia came to our village. My husband and oldest son were outside taking care of the cattle. I heard shootings and took my three other children in order to run away and hide. Outside the house, I found my son. They shot him in the head. Some of the houses were burning. The air was filled with screams. Sometimes, I believe that god only created black people to suffer." (Amna Mohammed, 2008)⁴



To understand the conflict-laden country Sudan and especially the crisis in Darfur is like the eternal task of Sisyphus. The vast amount of different tribes and ethnic backgrounds of the Sudanese population make it hard to find a starting-point for the violent altercation. The region of Darfur alone knows the tribe of the Fur, Tunjur, Zaghawa, Seinga, Berti, Jawamaa, Kaitinga and some more. Moreover, among these tribes there are different branches that emerged over history (Flint, J.& Waal, A. de, 2005). Simplified, one can say that the conflict in Darfur rose in 2003, when ethnic African rebels⁵, members of the SLA (Sudanese Liberation Army) and JEM (Justice and Equality Movement), from the western regions revolted against the neglect of their living space as well as open racism by the Sudanese (ethnic Arab) government against the ethnic African population. They attacked several

⁴ Amna Mohammed is a Sudanese refugee living in Cairo with her 3 children. She had to flee from Wadi Gandi, Darfur when the militia came to her village. See her short story in the prologue and documentation in the appendix

⁵ The most prominent ones being SLA (Sudanese Liberation Army) and Justice JEM (Justice and Equality Movement)

governmental institutions and public buildings such as the Geneina airport in western Darfur. In return the Arabic government mobilized Arabic militias, also known as Janjaweed⁶, that were supposed to put down the rebellion by any means. (ibid 2005) As a result, the militias invaded the villages of Darfur which they suspected of sheltering and/or sympathizing with the rebels. In many cases, the Janjaweed simply destroyed everything that was in their way. They stole all valuable, killed the men and raped the women.⁷

“I have been raped several times after they captured me and my children. They said that they would do the same to my daughters if I was not going to tell them where the men were. Almost all my friends were raped; I am ashamed but know that it is not my fault now. But the children – they raped children. I will never forget.” (A.M.)

Consequently, many people living in the Darfur region fled in order to survive and escape the violent assaults. Huge numbers of refugees were internally displaced and went to refugee camps established by the United Nations or the Sudanese government. However, a considerable amount of refugees attempted to leave the country and find protection in the neighboring countries of Sudan. Amna reports that she was taken to a refugee camp after a week of constant abuse by the Arabic militia. However, the camp was established by the Sudanese government. She did not trust the people in the camp and decided to flee:

“After a week they brought us to a refugee camp and told us to keep our mouths shut otherwise they come and kill us. We were lucky that the man who brought the water to the camp was nice to us and helped us to escape on his truck. With the help of some relatives we managed to cross the border to Egypt.”(A.M.)

Despite the conflict in Darfur, Sudan has been shaken by another civil war between the North and the South which went on for more than two decades, asked more than 2 million deaths and more than 4 million people to flee the country (UNMIS, 2007). It heated up during The Second Sudanese Civil War, as this conflict is often referred to, which took place between 1983 and 2005. It theoretically ended when the Comprehensive Peace Agreement was signed in January 2005. However, independent observers report that the agreements have not been implemented yet and tensions are still on a high level⁸. Additionally, the recent arrest warrant against President Omar Al-Bashir issued by the International Criminal Court (ICC) in The Hague worsened the situation in Sudan and numerous aid organizations (e.g. Doctors without borders) had to leave the country (Gottlieb, S., 2009).

⁶ Janjaweed (arabic: *دويوج نج*) Translation (by the author): “Devil on a horse”

⁷ For a timeline of the Darfur conflict see: http://www.un.org/News/dh/dev/scripts/darfur_formatted.htm

⁸ See United Nations Sudan Information Gateway: <http://www.unsudanig.org/news/index.php?fid=usefullinks>

According to Integrated Regional Information Networks (IRIN) Africa, these developments will have a negative impact on the peace-process so much needed in order to give effective aid to the people. The fact that Sudan is home to many different ethnic groups and tribes, following different goals in the conflict, makes the peace-process a very difficult task. The announcement by the Sudanese government to nationalize humanitarian aid by the end of next year was seen as a provocation towards the Sudanese Liberation Army (SLA) and bears the risk that people will take up weapons again. Also the Justice and Equality Movement (JEM) expressed its resentment. *“How can the killers of these people become their feeders?...Darfur people will certainly not accept any relief from Bashir’s security apparatus and reject them”*(IRIN Africa, 2009)

While this conflict is still going on, people will keep on trying to get hold of a spot in the few overcrowded refugee camps. The ones who have a little bit more money can try to travel across the border in order to seek protection there. Amna Mohammed could leave the country because she was able to save some of her jewelry she was given for her wedding. In her interview she said *“I was lucky that some of my jewelry was left, I was able to pay for a fake passport that stated I was born in Khartoum and not Darfur, and with that cross the border to Egypt. It was a terrible journey – and now we are here, we are still not safe.”* (A,M.)

1.2.2 The decision to go to Egypt

When a country is at war, internally or externally, people tend to flee to the neighboring countries in order to escape the violence. However, the border with Egypt is not the closest one to the conflict in Darfur and Southern Sudan. Therefore, there must be other factors than the geographical location alone that are attracting the refugees. It is of course difficult to generalize in this matter but from the interviews as well as other research (Grabska, K 2005., Al-Sharmani, M. 2008), one can assume that personal relations with relatives or friends who already resided in Cairo were crucial in the decision to flee to Egypt. As Botros states during a group interview *“My friend was in Egypt. Because I had no-one left from my family I decided to go there. I did not know about all the problems here. I only heard that one can get to Europe or America from here. That sounded good, but I just wanted to escape from the brutality.”*

Due to the former strong ties between Sudan and Egypt, many Sudanese already resided in Egypt out of educational or professional purpose. The relationship between Egypt and Sudan worsened significantly after the assault on President Mubarak in 1995, which was imputed to

the Sudanese government. However, a network of Sudanese was thus existent prior to the conflict in Darfur as well as Southern Sudan. Half of the participants stated that they already knew someone who was living in Cairo.

Additionally, one can say that the UNHCR's resettlement program forms another attractive pull-factor for refugees. Here, UNHCR acts as agent between the refugee and a third country (mainly western countries). It proposes the resettlement of very vulnerable refugees to another country (e.g. Canada, USA, Sweden). This country then will decide whether the refugee will be considered for refugee status and can be resettled to its territory. The chance to be resettled to a Western country evokes high expectations among refugees for a better life. This becomes evident from the fact that at least 20 of the participants admitted to have heard about this opportunity before they came to Cairo. This corresponds with the findings Gabraska (2005) made in her research case, where 65% of the contestants said that they were aware of the resettlement program before they came to Egypt. Many of the refugees were hoping to be given this alternative.

However, these pull-factors do not weigh stronger than the evident push-factor, namely the fear of persecution, lack of security and extreme poverty. Without these circumstances, the majority of the interviewees would not have left Sudan. Iman described the feeling of not living in Sudan anymore with these words *"Sudan is my home. I am home-less right now. A man is nothing without his country. I would have never left my country if it wasn't for the war. Probably I shouldn't have."* (I.B.)

1.3. The situation of Sudanese refugees in Cairo

Sudanese refugees in Cairo are subject to the restrictions, Egypt put on the 1951 Convention. In total an estimated number of one million Sudanese is affected by these measures. In practice this means that they have restricted access to education, work, health care and protection. Furthermore, children are excluded from public schools, work is mainly available in the extralegal sector and the fear of deportation or imprisonment is a constant companion. The situation is even worse for refugees that are not registered with the UNHCR or who were denied refugee status.

1.3.1 Refugee Status Determination

The refugee status determination is not, like one would expect, administered by governmental institutions but issued by the UNHCR. In the light of a non-existing refugee and immigration

policy in Egypt, it took this responsibility in order to guarantee refugees the protection they are entitled to (Grabska, K, 2005 & Azzam, F., 2006; Kagan, M., 2006). This is not only the case in Egypt. According to Michael Kagan, UNHCR conducted refugee status determination in 80 other countries (Kagan, M., 2006). Although it is preferable if a country processes the refugee status determination itself, UNHCR takes over this task if a country lacks the means or legal framework of doing so (ibid, 2006).

Once the refugees manage to reach Cairo a crucial period starts for them. First of all, they need to apply for refugee status with UNHCR to be able to legally remain in Egypt. The procedure for attaining the status of a refugee and the “saving” blue card⁹ – a card which functions as a sort of passport and states that the person holding it is indeed a recognized refugee - can be long and exhausting for the refugees. After they registered with the UNHCR they have to file a statement which describes why they should be issued refugee status (see example in the appendix). On the basis of this statement the candidate will have a registration interview where he has to explain his situation and the reason why he seeks protection in Egypt. If the reasons are viable enough to the UNHCR he will be given the yellow card. The yellow card is also a sort of passport that states that the person holding it is an asylum seeker and in the procedure of refugee status determination. This document, however, does not state that the person holding it is indeed a refugee. It is merely proof that he is registered with the UNHCR for further determination of his status. However, it gives the asylum seeker the security of non-refoulement, i.e. that the person holding the yellow card cannot be deported to his country of origin. Furthermore, an asylum seeker with a yellow card or a recognized refugee with a blue card can and needs to obtain a residence permit at the Ministry of Foreign Affairs in order to finalize the refugee or asylum seeker status with a legal residence permit.

The yellow card furthermore indicates that a refugee is in the second round and will be invited for an interview in order to determine whether he is eligible for refugee status . If the UNHCR decides in the refugee status determination interview that the reasons for refuge are viable, the refugee will receive a blue card which is proof for his refugee status and gives him access to the services provided by UNHCR (e.g. financial support, medical care) and its partner organizations like Caritas which provides assistance to people in need and by this also to refugees. Through different programs they offer education, financial and medical assistance. If, however, the refugee is rejected from receiving a blue card, his file will be closed and he

⁹ See example of a blue card in point 3 of the appendix

will have no legal right to remain in Egypt. The refugee has the chance to submit an appeal to this decision and can try to gain refugee status in an appeal interview (see the whole RSD procedure in Fig.1).

In his article “Frontier Justice: Legal Aid and UNHCR Refugee Status Determination”, Michael Kagan stresses the importance of legal assistance to refugees during this process. He states that research has shown that refugees who had legal guidance were by far more successful in attaining legal refugee status – thus the blue card - than those who did not have legal assistance. He furthermore states that UNHCR Cairo, different to other offices, approves legal guidance but does not offer legal services itself. Additionally, he experienced himself that legal advisors or attorneys did not have enough access to UNHCR’s documentation on the person in question. This means that he did not have access to transcripts of interviews or reasons for rejection of refugee status. He therefore pleads for a more transparent refugee status determination procedure and a stronger involvement of legal assistance organizations. Legal assistance is thus crucial in the difficult and long procedure of attaining the refugee status. The interviewees of this research confirmed that legal guidance helped them to understand their rights and the procedures they have to follow better than the pamphlets that are handed out by UNHCR.

Neither the yellow nor the blue card gives access to Egyptian citizenship rights. These can only be obtained if one holds the Egyptian nationality. However, the procedure to gain an Egyptian passport is blurry. Children who are born to at least one Egyptian parent are automatically Egyptian, women who marry an Egyptian man can request the Egyptian nationality quite easily but naturalization seems to be more complicated. Following Law No. 26 of 1975 Concerning the Egyptian Nationality, a foreigner can only obtain the Egyptian nationality after he constantly resided in Egypt for ten years. In order to be considered for Egyptian nationality the person in question needs to fulfill the following criteria:

- He needs to be “mentally sane and suffering from no disability rendering him a burden on society”
- He needs to be “of a good conduct and reputation, and that no criminal penalty or penalty restricting his freedom should have been passed against him in a crime against honor, unless he has been rehabilitated.”
- He needs to be “acquainted with the Arabic language”
- He needs to have “legal means of earning his living”

Furthermore, if a foreigner manages to fulfill the criteria and obtain the Egyptian nationality it does not imply that he has access to all citizen rights. In Article 9, Law No.26 it is stated that

“A foreigner who has acquired the Egyptian nationality pursuant to the provisions of articles 3,4,6 and 7, shall not be entitled to exercising political rights before the lapse of five years from the date he acquires the nationality. He may not be elected or appointed a member of any parliamentary body before the lapse of ten years from the said date. However, by Presidential decree, he may be exempted from the first restriction, or both restrictions combined.

The Minister of Interior, may exempt by decree, those who have joined the Egyptian fighting forces an fought in their ranks, from the first restriction or both restrictions combined.

Shall likewise be exempted from these two restrictions members of Egyptian religious sects as regards the exercise of their rights in the elections of Mellah Councils to which they belong. and their memberships to such councils.” (Law No. 26 of 1975)

However, to fulfill the criteria is almost impossible to refugees. Especially the “legal means of earning his living” is something that refugees in Egypt are not able to provide. Due to their legal situation they are forced to work in the extra-legal sector. Apart from this refugees see their disposition in Egypt as temporary. The likeliness of Sudanese refugees applying for Egyptian nationality thus seems rather low. During the whole research period in Egypt there was not one refugee that reported that he applied for an Egyptian passport.

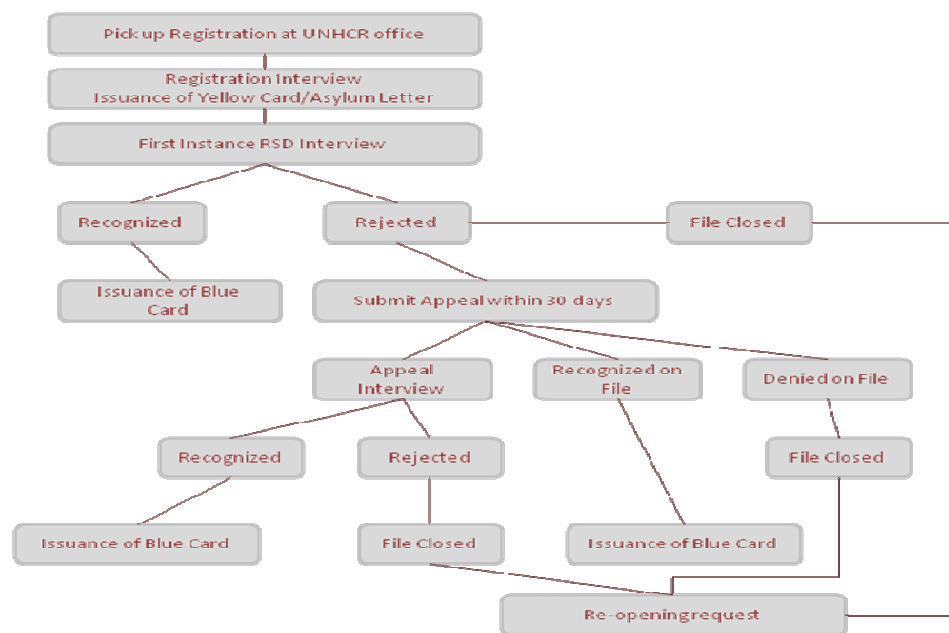


Fig.1 Refugee Status Determination, UNHCR Cairo

UNHCR handles three durable solutions for refugees: repatriation, resettlement and local integration. In the case of Southern Sudan the UNHCR follows more and more the policy of voluntary repatriation. This is also due to the situation that, according to UNHCR, the financial situation of Egypt makes it very difficult to pursue the solution of local integration

for a huge number of refugees. Resettlement therefore is an option which is taken into account. However, preference is given to voluntary repatriation. (Pambazuka, 2005)

After the Apprehensive Peace Agreement between the Sudanese government and SPL in 2004, Sudanese refugees were suspended from RSD. Due to the peace agreement, they are now automatically issued a yellow card and the process of RSD for them stops at this stage. Although the agreement is of no significance for refugees from Darfur and many others from southern parts of Sudan, UNHCR applies this measure to all Sudanese refugees. The yellow card theoretically protects asylum seekers from refoulement and according to Africa and Middle East Refugee Assistance (AMERA) very little yellow card holders are indeed deported. The UNHCR argues that this measure would at least guarantee the refugees a minimum protection. It sees the peace agreement as a factor that could possibly lead to the rejection of great numbers of Sudanese refugees who consequently had no legal right to remain in Egypt. With the yellow card, these refugees would at least have a minimum protection and access to some of the services provided by UNHCR and its partners. (Azzam, F. 2006)

The decision by UNHCR to exclude Sudanese from the refugee status determination procedures was seen with a lot of anxiety among the Sudanese refugee population in Cairo. Without the prospect of eventually receiving a blue card, the hopes for resettlement and a better life somewhere else were crushed, as only blue card holders are considered in this respect. Additionally, the yellow card can only provide temporary protection from refoulement. Its holders have the right and duty to receive a residence permit at the Ministry of Foreign Affairs which has to be renewed every six months. However, an asylum seeker can only do so up to three times and thus remain under protection for 18 months. After this period the refugee remains illegal in Egypt and thus with the risk of being deported. Nonetheless, Sudanese refugees are given the chance to apply for a new yellow card after the first one expired. However, many Sudanese refugees are not aware of this right and therefore become illegal out of nescience (AMERA, 2009).

1.3.2 2005 Protest of Sudanese Refugees

In September 2005 a small group of Sudanese refugees decided to protest by means of a sit-in at Mustafa Mahmoud Park, close to the UNHCR's office. They wanted to express their

resentment about UNHCR's policy, their bad living conditions and protest against the suspension of Sudanese refugees from RSD. Additionally, UNHCR had announced a reduction in social services due to cuts in its budget. The small group grew fast and it is estimated by AMERA that an average of 2000 people was present during the three months the protest lasted. These people were constantly living in the park. They brought their families and belongings and established a camp in the park to show UNHCR their seriousness. (Azzam, F., 2006) AMERA explains the reasons for the protests as follows;

“Difficulties in accessing employment, education, health care and housing, racism both from and against Egyptians, and UNHCR's lengthy procedures, diminishing resources for assistance, a perceived low rate of acceptance and rumors and misinformation have all combined over the years to create growing frustration and discontent within the Sudanese refugee community in Egypt.” (AMERA, 2009)

According to Fateh Azzam (2006) there were different lists of requests circulating among the protestors. Common to all these lists were the demands for reopening individual RSD process for Sudanese refugees, re-evaluation of closed files and the protection from the Sudanese government. Additionally, they addressed the problem of voluntary repatriation, which the refugees described as “compulsory voluntary repatriation”. Due to the Comprehensive Peace Agreement, UNHCR Cairo decided to pursue the durable solution of voluntary repatriation. However, especially the Southern Sudanese fear that the situation has not improved in their country and are reluctant to return to Sudan. Furthermore, they are afraid that they will be forced to do so either by physical force or forced abnegation of social services. (Azzam, F. 2006)

After three months of negotiations and bargain between the refugees and UNHCR an agreement was signed in December 2005 by five representatives of the refugees and UNHCR officers. However, the agreement was refused by the majority of the protestors at the park. As a consequence all communication between them and UNHCR was frozen. On December 22, UNHCR decided to inform the Ministry of Foreign Affairs that they reached their limits and were not able to take other measures. As a result, the protestors were removed on December 29 from Mustafa Mahmoud Park by an estimated number of 4000 riot policemen. They were taken into custody and placed in some detention centers around Cairo. The removal was very violent and at least 27 refugees and asylum seekers were killed, half of them being women and children. (AMERA, 2009) However, the number of deadly victims may lie much higher, according to a resolution by the European Parliament in 2006. This resolution talks about

more than 200 deaths caused by the violent removal of demonstrators (European Parliament, 2006).

1.3.3 Illegal, legal or something in between?

Due to the fact that UNHCR took the responsibility for the RSD, refugees are depending on its judgment. As a consequence, we can distinguish between 4 groups of refugees. First there are those who attained refugee status and hold a blue card. These refugees are of concern to UNHCR and are eligible for the services provided by UNHCR and its partners. UNHCR's durable solution of resettlement is only available to these recognized refugees. However, it is not a right but a tool UNHCR uses in order to protect the most vulnerable refugees. (Tarfur, J.,2007) Second, there are refugees which registered with UNHCR and are still in RSD process. These hold a yellow card which protects them from refoulment and gives them access to the services of UNHCR (since 2004 all Sudanese are held at this stage of RSD). However, they are not officially seen as refugees, this group is called asylum seekers and they are not considered for resettlement. Third, we know that there are refugees who applied for refugee status with UNHCR but got rejected. These people have no document which allows them to remain in Egypt. This makes them officially "illegal" as they are obliged to leave the country. However, many of them remain in Egypt out of fear to return home. The majority of the rejected refugees lives in hiding and tries to attract as less attention as possible to anticipate their deportation. Fourth, there is a group of refugees that does not register with UNHCR and therefore is not under its protection and cannot make use of the services it provides. The reasons why refugees do not register with UNHCR are difficult to study as this group is very suspicious due to their fear of being imprisoned and deported. For Sudanese it is the case that a larger group was living in Egypt prior to the violent conflicts who are not refugees in the classical sense and who maintain a relative good live in Cairo and therefore are not registered with UNHCR. However, to explore the scope of this group would go beyond this research.

The fact that UNHCR in Egypt plays the key-role in the decision whether a refugee becomes legal or illegal makes it interesting to look at the framework which is applied to refugees. When is a person a refugee in UNHCR's eyes and when is he not? And are the practices of UNHCR fair, that means are they applied equally to all refugees? In 2003, UNHCR introduced the "Procedural Standards for Refugee Status determination under UNHCR's mandate". This measure was supposed to ensure equal execution of UNHCR's RSD globally. Additionally, UNHCR handles certain guidelines for specific cases of refugees in the field.

(Stainsby, R., 2009) However, RSDWatch (an independent observer of UNHCR's RSD practices) claims that even though UNHCR made attempts to improve its RSD procedure in the past years, it still has a serious transparency deficit. RSDWatch published a report "No margins for error" in 2008 where it investigated RSD practices of eight UNHCR offices among which also the Cairo office. Here the report identifies two major shortcomings. First, UNHCR's Cairo office does not give proper access for refugee to evidence of their case. This means that refugees are not able to receive copies of interview records as well as UNHCR's assessment of their case. Additionally, rejected refugees do not receive - as the 2003 Procedural Standards say - an individual letter where the reason for their rejection is explained specifically. Instead of providing each individual with precise information about the case, the UNHCR Cairo office handles a list with ten categories for rejection. Among these categories there are (Doctor, J. & Kagan, M., 2002):

- LOC = Lack of Credibility
- NWP = no well-founded fear of persecution
- BPS = Burden of proof not satisfied
- NRC = manifestly unfounded
- WFN = well-founded fear not related to persecution
- NFD = no forced external displacement

Furthermore, if a refugee chooses to hand in an appeal and the appeal is rejected, no information about the reason is provided. (RSDWatch, 2008)

The situation described by the RSDWatch report in Cairo shows that it is difficult to elaborate on the reasons why certain refugees are rejected from refugee status. However, the lack in transparency about the reasons for rejection raises suspicions and is counterproductive to the policies carried out by UNHCR. In how far is the determination of refugee status actually fair? A transparency deficit gives reason to believe that at least some cases were treated arbitrary. This is affirmed by a case presented in the documentary by Juliana Tarfur, where a Sudanese refugee (recognized by UNHCR) reports that his brother who had the same refugee story as himself was rejected. When he wanted to add him to his file as relative, this was denied as well by the UNHCR Cairo office. (Tarfur, J., 2007) The assumption that refugees become illegalized by unfair practices of RSD is thus not anchorless.

The case of Sudanese refugees in specific is even a bit more complicated. Since Sudanese refugees are not taken into consideration for refugee status anymore they remain somewhere in between legal status and illegality. Although they have the possibility to receive a residence permit at the Ministry of Foreign affairs, they are neither officially recognized refugees nor

are they rejected yet. Only in exceptional, vulnerable cases, Sudanese refugees will be granted refugee status, however, the criteria for being very vulnerable are not clearly stated by the UNHCR office. Therefore, a single mother with five children could be declared invulnerable while a single mother with six children will be seen as vulnerable. It seems as if these decisions are taken arbitrary. In this context Barbara Harell-Bond states:

“It [UNHCR] had cuts and cuts in its budget for subsistence and a vast increase in the numbers of refugees. So what it [UNHCR] does, of course, is trying to define vulnerability downwards and downwards.” (see movie by Tarfur, J., 2007)

1.4. The legal situation

Remaining legal or illegal in Egypt, Sudanese refugees face a hard time due to their restricted rights. Even though rights are theoretically present, in practice they are often not implemented. A good example in this context is the Four Freedoms Agreement between Sudan and Egypt (Azzam, F., 2006). It theoretically allows Egyptians and Sudanese equally to reside, work, own property and move between the countries. However, there is no proof that this agreement has been implemented (Tarfur, J., 2007). Additionally, the lack of a profound information network leads to misinformation and nescience among the refugee population. Many of the refugees do not know their rights and how to access them. These factors have serious impact on the living conditions of Sudanese refugees. Finding work, proper housing, medical aid and access to education is more complicated to them than it already is for the Egyptian population.

1.4.1 The right to work

With a constant unemployment rate that lingers around 11% and even higher numbers among the young population (37.3% for 20-25 year old), finding work in Egypt is very difficult and even more difficult for Sudanese refugees. Apart from that, yellow card holders as well as closed file refugees have no right to obtain a working permit and are forced to find work in the extra-legal sector. Those who have a blue card and are recognized refugees can attain a permit at the Ministry of Manpower. However, due to its economic situation Egypt demands that a list of requirements is fulfilled by the applicant. Refugees receive the same treatment in this respect as any other foreigner who seeks employment in Egypt. To meet these demands is almost impossible for refugees, which in return forces them to seek employment on the extra-legal labor market. The requirements that have to be met are:

- Sponsorship by the employer
- Legal residence and travel documents

- Proof of specialized skills that are not in competition with those of an Egyptian worker
- HIV test
- Payment of processing fees
- A foreigner can only work in a company if there are 10 Egyptians employed already

Despite these requirements and the overall high unemployment rate, another obstacle is restricting the right to work for Sudanese refugees. Prior to 2005 the stamp of residence stated “Work is not permitted”. Even though this statement was removed many employers are not aware that they are actually permitted to hire recognized refugees. This mal-information contributes to the unwillingness of Egyptian employers to give work to Sudanese refugees.

The fact that Sudanese refugees recognized or unrecognized de facto only search for employment in the illegal sector makes them particular vulnerable for abuse and mal-treatment. The spectrum reaches from underpayment to physical abuse. Dr. Harrell-Bond who is a well-known migration scientist and committed to refugees residing in Egypt claims that at least two women have been killed by their employers. While it was said that they committed suicide, she says that there was actual proof they had been pushed from balconies. (Tarfur, J., 2007) Refugees repeatedly stated that they experienced abuse at their working place:

“I was working in the house of an Egyptian family. Doing some cleaning and things like that. When I did the dishes and accidentally broke one of the glasses, the women there spilled boiling oil over my arms.”(A.M.)

“We agreed that I would receive 50 LE at the end of the day. I was doing the garden. After I finished the lady of the house refused to give me the money and got the doorman to help her to throw me out of her home.” (B.M)

“I was ironing clothes when the man came in and said that his wife thinks I am not doing it good. He hit me in the face twice. You can still see it here, my lip was bleeding.”(H.M.)

Communality in all the stories is that as soon as the Sudanese women and men threatened to inform the police, the employers replied that they would tell the police that the Sudanese had stolen something. Out of fear, all the interviewees decided not to contact the police.

Moreover, refugee workers earn less than Egyptian workers. However, due to the fact that they are foreigners they have higher living costs reaching from the rent to prices they pay for food. Therefore, they live a very poor life sometimes not knowing how to provide the food for the next day. One of the women explained

“I earn 400LE (ca. 52€) per months, the rent here is about 200LE that leaves 200LE for me and my children, at the end of the month I often cannot provide them with proper food. I am so ashamed.”(B.M.)

In order to combat the poverty among the whole refugee population some NGOs and church-organizations (St. Andrews, Heliopolis Community Church, All Saints) started working-placement programs to which refugees with or without official status can apply. However, the chance to find a job that ensures the refugees of a regular income is rather small. Additionally, some of the NGOs are not registered or recognized by the Egyptian authorities and the persons working for them are taking relatively high risk by supporting refugees.

1.4.2 Housing

To find a proper apartment as a refugee is fairly difficult in Cairo. Especially, those who do not have a valid residence permit or closed files face hard times in finding a roof above their head. The likeliness of exploitation by landlords is high and rental prices for them exceed those for Egyptians by far. This is also connected to the fact that they do not have the right to subsidized housing like Egyptians do. Outside the subsidy program, landlords can set the prices by free choice and normally demand higher prices from foreigners, including refugees.

Due to the fact that refugees normally have no regular income, they try to cope with the higher rental costs by sharing their flats. Consequently, many of them live in crowded, small apartments. The principle they follow is that everyone who can, needs to contribute to the living costs and support those without financial means. “In these two rooms we live with 11 people. The men sleep on the floor while the children share one bed and the women the other.” (A.A.) According to Al-Sharmani (2008), the Sudanese refugee community is concentrated in five districts of Cairo, namely Aba-Wa-Nus, Ain Shams, Maadi, Nasr City and 6th October.

Neil R. Brown, Sean Riordan and Marina Shape conducted research among the Eritrean and Ethiopian refugee population (Brown, N.R, Riordian, S. & Shape, M. (2004). During their research, refugees regularly reported about the mal-treatment by their landlords. One example being, a woman who was asked for a residence permit three months after she moved into an apartment. The landlord threatened that if she was not able to show him her residence permit he would charge her twice the amount of rent (ibid, p.681). It can be assumed that similar practices are also handled among the Sudanese population. Additionally, Brown et al. report

that the Eritrean and Ethiopian refugees are subject to regular, random police checks. Even though this was not reported by the interviewees in this research it can be expected that they as well have to deal with the fear of police raids.

Furthermore, three of the interviewed women who are living in the same area in Ain Shams communicated that there were several Egyptian men in their neighborhood who are raping refugee women. They enter the apartments with some official excuse (e.g. being the plumber) and subsequently harass and abuse the women. When those with blue cards and residence permit wanted to report this to the police they were rejected entry at the police station. However, news like this travel fast according to the women and most of the refugees in the area are aware of this situation.

1.4.3 The right to medical care

“The contracting states shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.” (Art. 23 Convention relating to the Status of refugees, 1951)

Asylum seekers and refugees registered with UNHCR have the right to seek healthcare in Egypt. However, Sudanese refugees often encounter problems asking for treatment at hospitals or doctors. Regularly, refugees are refused treatment, especially if they do not have a valid residence permit. In those cases asylum seekers and refugees can go and seek support at UNHCR’s implementing partner CARITAS, which is providing financial support as well as medical treatment. Additionally, there are some church-based organizations as well as NGOs offering medical assistance to refugees even without being registered at UNHCR. However, CARITAS services are not free of charge. Normally, the patients at CARITAS are asked to contribute 50% to the costs of medicine. Furthermore, CARITAS is struggling with its budget making it difficult for them to take care of all cases with the attention that they require. Consequently, the refugees reported about cases where people died of rather small medical conditions due to marginal medication. Additionally, there are cases where chronic diseases like diabetes are not treated by CARITAS. (Tarfur, J., 2007) UNHCR explains this situation by the major cutbacks in its budget. They try to help the “most needy” persons. (ibid, 2007) However, to identify the “most needy” among a very vulnerable population group remains a difficult task.

Furthermore, refugees who have been subject to torture and suffer from psychological conditions can seek help at the Al-Nadeem Centre. Since 2000 it is partner of UNHCR in RSD on basis of torture (Al Nadeem Centre, n.d.). Two of the women who have been interviewed during the research period told that they were very happy about the service Al-Nadeem provided. They felt that they could talk about the terrible things that happened to them without feeling ashamed for it. Furthermore, they were happy to be provided with some medication that would help them to feel less depressed. (see example of a diagnosis by El-Nadeem in the appendix)

1.4.4 The right to education

“1. The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.

2. The Contracting States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.” (1951 Convention Art. 22)

According to the 22nd article of the 1951 Convention, every refugee has the right to attend primary education under the same conditions as nationals. However, Egypt put reservations on Art. 22 and in practice very little numbers of Sudanese refugees manage to send their children to public elementary schools. Through school fees that Egypt charges of foreigners, the majority of Sudanese refugees are financially unable to enroll their children for primary education. The access to secondary education is thus hampered. Also refugees who attained a degree from primary school in Sudan are unable to attend secondary education. They need to provide proof of their education, which they often cannot provide as they lost the papers during their flight. Additionally, schools tend to give Egyptian children priority above Sudanese children.

Theoretically, in Egypt, refugees have three options. First, they can attend public schools where they will be taught in Arabic and attain an official degree. However, with the reservations on Article 22 of the 1951 Convention which access to primary schooling became very unlikely for Sudanese refugees. Consequently, children are not able to attain a degree which will allow them to study at secondary school. Second, they can seek a place at a private school. However, the tuitions are too high to be paid by the regular refugee. Only a few refugees manage to send their children to private schools. Those are mainly Iraqi who managed to sell their houses in Iraq and who have a different financial background. Third,

children can attend refugee schools which are run by NGOs or CBOs and cost very little or nothing at all. This is the option which is widely taken by refugees.

Nonetheless, there is a severe deficiency. Even though these schools teach the Egyptian curricular, they are not recognized by the Egyptian authorities. In practice this means, that children attending these schools will not be able to complete an official degree which will allow them to take part in higher education. The opportunity to visit a high school or university is thus wrested from refugees. Furthermore, Sudanese themselves refuse to send their children to Egyptian schools as they are anxious that they will be subject to racist assaults. This self-marginalization is the result of bad experiences, some of the children had in Cairo's streets, where Egyptian children threw stones at them calling them names. (Tarfur, J., 2007) In this context M.M. said,

"I will never send my children to an Egyptian school. Just a views days ago, children in the streets hit my son with a brick on his head [she shows a relatively fresh laceration on the head of her son B.S.] and told him to go to the zoo and live with the monkeys there. What do you think will happen in a school?"

Comparable stories have been told by many of the interviewees. A single mother living with her 3 children in a 2 room apartment told that she is only living in one room at the moment, namely the one which has no window to the street because neighbors and children were throwing stones and dirt at them during the day.

1.4.5. Xenophobia

Refugees themselves repeatedly reported that they had been subject to racist assaults. "The worst is not that they call us apes and chocolate, but being violent, throwing with stones and garbage, that is what I don't understand."(M.M) Although, Egyptians themselves would claim not to be racist at all, racist incidents happen every day in Cairo's streets. *"Perhaps it is because we [the Egyptians] do not know the concept of racism. We are not a well-educated nation anymore -people do not know that their behavior is wrong."*(Ahmed M.)

Fateh Azzam searches for an explanation for racist behavior among the Egyptian population. He states that *"In some cases, negative relationships between refugees and locals are perpetuated by the resentment felt by Egyptians, who may be just as poverty-stricken and are unable to access the services available to refugees. In addition, refugees are often blamed for taking jobs away from locals, an especially sensitive issue in a country with an estimated 30 percent rate of unemployment."*(Azzam, F., 2006, p.15)

Refugees who already feel marginalized and excluded from society receive a confirmation through the racist assaults and defamations. Consequently, frustration increases which leads to “counter-racist attitudes” (ibid, p.16). These refugees refuse to interact with the Egyptian society, also due to the fact that they regard their habitation as temporary. They either want to go back to Sudan as soon as the situation improves and they feel safe to return, or, in case they are blue card holders, are hoping for resettlement. The durable solution of local integration is thus minimized and becomes very unlikely. All these factors aggravate the self-marginalization of refugees. (ibid, p.16)

1.4.5. Egypt's rationale

The living-conditions and restriction of rights for Sudanese refugees are harsh in Cairo. The lack of access to medical care, education, work and genuine protection are huge obstacles for the refugees to pursue a regular living. Seeking explanations for the situation of Sudanese refugees who actually live in limbo is a sensitive issue. Many questions emerge when one deals with the situation of these refugees. One immediate is the question about the reasons for the reservations on the articles of the 1951 Convention. Egypt is signatory to this international treaty. However it became clear in the previous sections that it is not embracing the agreements laid down by this treaty. Therefore, the question why Egypt is acting this way needs to be addressed

Al Sharmani (2008), a scientist from the American University in Cairo, writes about an interview she took with the Head of the Department of Refugee Affairs at the Ministry of Foreign Affairs in Cairo. It was confirmed to her that Egypt obligates itself to protecting refugees as it is signatory to the relevant international conventions. However, the reservations on some articles of the 1951 were explained to her by the fact that the Egyptian population is very big already and that the economic situation is difficult. It is worthy to quote the whole statement.

“We put reservations on the 1951 Geneva Convention, which is understandable. We do not have enough resources to offer education and other services to all nationals. So it is not possible for us to make that commitment to refugees. So refugees are not allowed to enroll in free public schools. But we try to help refugees who need education on an individual case basis. We are also working on an agreement with European NGOs and the EU to build schools that will offer education to both Egyptian and refugee children. Refugees’ time in Egypt is transitory but an important phase....Refugees have to obtain work permit before they can work. They have to go through the same procedures for obtaining a work permit that foreigners do. But many refugees manage to work in the tertiary sector as many Egyptians do.” (Al Sharmani, 2008)

Though the explanation seems plausible a bitter taste remains. The conclusion that you cannot expect to have rights if you come to a country which is struggling with its economy and society is disturbing and triggers new questions. When do people have rights? Who is granting these rights? What are the boundaries to rights? Human Rights are supposed to be universal and this includes the 1951 Convention, so how can we explain that it is violated not only by Egypt but also by more developed countries? It is not a secret that refugees have been send back to their country of origin even if their reasons for flight have not changed. These cases are known in Germany, The Netherlands, Great Britain, France and many more. What is needed in order to overcome these violations?

All these questions are very complex and in itself each of them could lead to another extensive research. However, it is important to draw near to them in order to be able to understand why Sudanese refugees in Cairo are facing hardship in their living situation. It is necessary to theoretically approach the findings presented above in order to analyze refugee rights and draw conclusions for political implications. Therefore the following part will concentrate on the concept of cosmopolitan right, world citizenship and membership which was strongly influenced by Immanuel Kant. Furthermore, it will take into account the work of Seyla Benhabib. Additionally, it will address the question about foreign intervention into Egypt's practices. This all creates a normative picture of refugee rights and will be translated to the right of Sudanese refugees remaining in Cairo in particular. This asymptotic approach will make it possible to formulate some suggestions for change.

Chapter 2 Cosmopolitanism as an answer?

The example of Sudanese refugees in Cairo shows us the persistent power of nation-states and borders. The fact that people can be deprived of any right by merely crossing a geographical border and the ever growing “protection” of countries to dim the influx of migrants or refugees into their territory can be observed worldwide. Very prominent in this context is “Fortress Europe” as well as the Mexican- US border. Border patrol that is armed to the teeth has the task to prevent any person from “illegally” entering European soil. The latest technology is used in order to hunt and imprison people to send them back to where they came from. What is striking about this is that migration is deprived of its human character. It is not people who are moving but objects.

The case of Sudanese refugees in Cairo gives proof to this. Furthermore, it shows us that next to the geographical borders there are other borders to be overcome. Indeed, the situation of Sudanese refugees can be described as being caught in a room with only one door. This door leads to justice – and thus the way outside – but it is shut and locked with a huge padlock to which none of the caught persons has a key. The only way to remove this lock is by combined force or by somebody from outside. However, as the 2005 protest of Sudanese refugees showed, combined force does not always lead to the success intended. It carries the risk that people from outside will punish this attempt or put it down violently. Moreover, even if the lock can be opened from the inside, after crossing the door a long, stony path has to be crossed. The distressing factor about this picture is that the people within the room did not choose to be there. In the case of Sudanese refugees it was the flight from violent conflict that made them end up in this situation of limbo.

The situation of Sudanese refugees in Cairo becomes particularly interesting through a cosmopolitan lens. In their case there is a threefold faultline. First, they are deprived of their rights in their home-country. Second, they are deprived of their right as refugees in Egypt and third, they are not seen as members of the world society.

Kant's cosmopolitan ideal

“The peoples of the earth have thus entered in varying degrees into a universal community, and it has developed to the point where a violation of rights in one part of the world is felt everywhere. The idea of a cosmopolitan right is therefore not fantastic and overstrained; it is a necessary complement to the unwritten code of political and international right, transforming into a universal right of humanity.” (Kant, I., [1795] 1970, pp.107)

With this statement Kant wanted to highlight the fact that the world is growing together and that distances become smaller which makes the people on the planet move to close ranks. Keeping in mind that his writings were published in the 18th century it is not circumlocutory to say that he was the forethinker of globalization as we know it today. Technological progress made us overcome distances that were unreachable for the common people in Kant's time. The fact that he made such a statement already during his life remains remarkable. To him it was inevitable that humankind needed to realize that we are all citizens of the world and that our actions will have effect on others. (Kant, I. [1795] 1970 pp. 93-130 (see also Benhabib, S., 2004, p.24)) In analyzing the situation of Sudanese refugees through his cosmopolitan lens it is indispensable to understand Kant.

2.1 Kant's definition of "Recht" and the cosmopolitan ideal of hospitality

"Right is the restriction of each individual's freedom so that it harmonises with the freedom of anyone else (in so far as this is possible within the terms of a general law)." (Kant, I., 1793 [1970], p.73)

Immanuel Kant lived from 1724 to 1804 in the former Prussian city of Königsberg, which is now known as Kaliningrad. He was and remains one of the most influential philosophers of modern Europe. His ideas paved the way for contemporary discussions about right [das Recht] and law [die Rechtslehre] and are still the originator for many current scholars that occupy themselves with the philosophy of right.

2.1.1. Kant's right and law

In order to understand the right of refugees and the situation of Sudanese refugees in Egypt in particular through the lens of cosmopolitanism or it is necessary to analyze Kant's understanding of right. In order to grasp his conception of right one has to be aware of his view on mankind and its characteristics. To Kant "man is an animal who needs a master" (Kant, I., 1784 [1970], p. 46). He is convinced that human beings will misuse their freedom in respect to others. Even though he thinks that humans are rational beings, Kant believes that mankind is driven by animalistic self-interest and therefore will always try to find ways around the law he imposes on his freedom.(ibid, p.46) Therefore, man needs a supervisor, a greater power controlling the universalism of freedom. However, Kant sees an inevitable problem in the fact that such power will again be executed by humans who will abuse their

freedom to the disadvantage of others. In this context he states that “Yet the highest authority has to be just *in itself* and yet also a *man*. This is therefore the most difficult of all tasks, and the perfect solution is impossible.”(ibid, p.46)

Many scholars have studied his ideas and contributed to the translation of his thoughts into contemporary questions about right. Among them are Muthu (2000) and Williams (2007) who redrew Kant’s understanding of right and law. Both lay emphasis on the notion that he distinguished right into the division of “internal freedom” and “external freedom”. While internal freedom refers to the state of mind (thoughts are free) and the freedom of choice to act in one way or the other, external freedom targets at the compatibility of choices of different individuals. The core notion of Kant concerning right was that the action of one person need to be in compliance with the freedom of another. To Kant this can only be achieved in a society that knows a just civil constitution.(ibid, p. 46) In this context he states in “The Metaphysics of Morals” that right is “every action which in itself or by its maxim enables the freedom of each individual’s will to co-exist with the freedom of everyone else in accordance with a universal law...”(Kant, I. 1797 [1970], p.133) As William’s puts it, Kant’s understanding of right is as follows: “...right gives rise to a system of obligations and authorizations where the independent actions of one person can be combined with the independent actions of others in such a way that all remain free.” As a consequence, this requires a set of legislative rules, in order to restrain all potential actions equally in their exertion (Williams, 2007, p.59).

The assumption that a legislative system is required to co-ordinate potential actions of individuals bears the question of obedience to the rules set out by potential actors. According to Williams there are two options under the Kantian model of right. First, individuals will follow their “internal incentive”. That is the moral motivation which influences our decision to act in one way or the other. Second, the “external incentive” is given by eventual practice of coercion. However, Muthu argues for Kant, that such a legislative system would be “merely rules-of-thumb”, as there is no universal scope in the judgment of actions because it varies through time and space (Muthu, 2000, p. 26). This is particularly interesting when thinking about the violations of human rights in Egypt. What will be the best system to “force” Egypt into compliance with human rights? This question remains and if one follows Muthu’s argumentation, it might even be impossible to achieve a state where moral incentives are translated into a legal system.

Nonetheless, one can say that according to Kant, law and right are not simple facts which, can be taken for granted. To him, law and right lie at the core of human interaction and therefore adjust to the circumstances that shape it. The most important feature therein is that law appeals to humans as rational beings. The fact that humans are able to deliberate about whether an action has positive or negative influence on others is one of the significant features of justice. As Williams puts it “without the acceptance of a certain pattern of moral thinking there would be no law.” (Williams, 2007, p.61)

Even so, Kant acknowledges that a legal system cannot merely exist on the basis of moral thinking. In the Kantian view this is only possible in civil societies that transfer the authority for legal regulation to legislators. Legal systems thus can only come about if the society agrees upon the election of such representatives. Furthermore, this entails that every human being needs to be guaranteed the right to membership into a civil society in order to be represented by the elected power and enjoy the rights this society embraces. Kant’s concern here is, however, that – as mentioned before – transferred authority will be represented by man and thus be shaped by the self-interest of the representatives (Kant, I. (1784) [1970], p.46). Therefore, the critique in this point has to be that legislators cannot represent every member of the civil society equally. It is impossible to take all the different opinions into account and combine them with self-interest. Thus, transferred authority bears the risk of an underrepresentation of minorities. This will especially hold true in a world system where power is transferred from nation states to one body. Due to the bigger scale, namely the whole globe, the risk of underrepresentation of one specific interest group becomes more likely.

2.1.2 The three levels of right and law

The Kantian understanding of right and law knows three levels, namely the domestic, international and cosmopolitan level. He made this distinction in order to distinguish between the different levels of law enforcement and political actions needed according to each level in order to establish a civil, just society. The cosmopolitan level will be addressed separately in the next section of this chapter. The implementation-processes of the different levels of law vary significantly. According to Muthu, Kant understands the domestic level as the one where civil rights “apply to the institutions and practices of individual states”. This means all the rights that comprise persons belonging to a certain civil society including for example property rights and cases related to the constitutional legislation (Muthu, p.31). While the enforcement of law on the domestic level is regulated by civil society itself and the power which is entrusted with its realization, on the international level things become a bit more

blurry. International law concerns the relation between different nations (or states). In Kant's view the most desirable way of law enforcement between nations was an ever growing federal community of states (Kant, I. 1784 [1970], p.47). This means that he believed that the creation of a civil constitution is dependent on the external relationship of states. He was convinced that states would mirror the "unsociableness of men" and all that states could expect from each other would be "antagonism" leading to war and destruction. He therefore pleads that states need to transfer power to a "law-governed constitution" in order to establish peace. (ibid, p.48-49)

2.2. Cosmopolitan Right and Hospitality

The threefold division of right holds cosmopolitan right as a third level. While the first two are occupied with the civil right and right of nations, this level concerns the right between persons **and** foreign states. By this, it grasps the relation from one individual in one state to an individual in another state as well as the relation of individuals to other states as a whole. Muthu states in this context: "Kant believed that a discussion of justice at only the domestic and interstate level could not fully capture the newly emerging ethical problems of the modern age." (Muthu, S., 2000, p.31) With this statement one can label Kant as one of the forerunners on thoughts regarding globalization and its effect. To him his world had moved beyond merely transnational relationships that were occupied by international trade. Right stood central to this thought. He believed that the infringement of right in one part of the world could be felt anywhere else and therefore requires a new system of understanding right globally (Kant, I., 1795 [1970], p.107-108). Hence, cosmopolitan right in the Kantian view is a "moral necessity" (Muthu, S., 2000, p.32).

In Kant's 'Towards perpetual peace', he describes that "a constitution based on cosmopolitan right, in so far as individuals and states coexisting in an external relationship of mutual influences, may be regarded as citizens of a universal state of mankind." (Kant, I., 1795 [1970], p.98) In the translation this would refer to the term *Weltbürgerrecht* (right to world citizenship). Kant advocates for the voluntary alliance of states even though he acknowledges that a perfect solution impossible and that the survival of such a "formation" is "a lucky accident which is hardly likely ever to occur" (Kant, I. 1784 [1970], p.47). Such a new system requires a new order of right and justice. The interaction of humans around the globe cannot merely be guarded by principles of philanthropy and amiability. As a consequence, the responsibility of an individual to another is an issue of justice.

In the case of Sudanese refugees in Egypt, Kant's theoretic approach can be translated into the lack of an existing cosmopolitan system. The fact that Sudanese are deprived from their basic rights gives proof to this. It becomes clear by Kant's argumentation that justice on a global level needs to embrace more than states. It goes beyond the definition of borders. However, Muthu explains that it is not the global scale that makes a new domain of right necessary. To him, cosmopolitan right is sole in its effort to formulate standards that concern ethical problems which emerge through higher common interaction of states and 'foreign' individuals. By this it clearly distinguishes itself from international right which concerns the right of states to each other and is thus also different from the domestic level that is occupied by the relation of individuals to the states they remain in. Cosmopolitan right is meant to take into account the individual on the global scale independent from its status or country of origin.

2.2.1 *The right of hospitality*

"...we are here concerned not with philanthropy, but with right. In this context, hospitality means the right of a stranger not to be treated with hostility when he arrives on someone else's territory. He can indeed be turned away, if this can be done without causing his death, but he must not be treated with hostility, so long as he behaves in a peaceable manner in the place he happens to be in." (Kant, I. 1795 [1970], pp.105-106)

The right to hospitality is part of cosmopolitan right. In "Perpetual Peace" Kant defined common denominators which, to him, are required to come closer to lasting peace. The third article 'The Law of World Citizenship Shall be Limited to Conditions of Universal Hospitality' adverts to the *Weltbürgerrecht* mentioned earlier. As Seyla Benhabib puts it:

"hospitality is not to be understood as a virtue of sociability, as the kindness and generosity one may show to strangers who come to one's land or who become dependent upon one's acts of kindness through circumstances of nature or history; hospitality is a 'right' which belongs to all human beings insofar as we view them potential participants in a world republic." (Benhabib, p.26)

With the right to hospitality Kant provides a model for a new righteous order which concerns the relation of 'insiders' and 'outsiders'. It administers the correlation between individuals belonging to diverse civic communities and by this limits civic space in 'members' and 'non-members'. However, Kant makes a difference between the right to be permanent visitor and the right of temporary sojourn. The right to be permanent visitor needs to be agreed on freely with a special contract, and does not include morally or legally binding entitlement. To Kant this is a preferential treatment which civic entities can administer to foreigners who embrace specific functions such as the representation of their own community. (Kant, I., 1795 [1970],

p.106) One can think of ambassadors as an example to this right. The fact that the right to be permanent visitor needs to be agreed on by a certain contract includes the possibility for civic entities to refuse entry to foreigners on this ground.(Benhabib,S., 2004, p. 28)

This is especially interesting to the case of Sudanese refugees residing in Egypt, as they are seeking protection from a seriously dangerous situation in their home country which has been going on for years. Are they thus temporary residents or can they already be regarded as permanent visitors? The fact that refugees do not reside in Egypt out of free will but out of necessity should tell us that they are different from permanent visitors. Also all interviewees in this research stated that they would return immediately as soon as they believe that the situation is safe enough to go back. The nature of their stay is thus temporarily. However, it is legitimate to wonder what will happen if the situation in Sudan will not change. Many of the refugees reside in Egypt for more than five years. This is a considerable amount of time and it is therefore essential to find a suitable answer to the situation of Sudanese refugees, in compliance with justice and morality.

In contrast to the right to be permanent visitor, the right to hospitality aims at temporary sojourn which cannot be rejected. To Kant the non-obligation to this moral and legal right would lead to the demise of the “outsider”. To him this is an unacceptable scenario. The right of hospitality includes that individuals belonging to one entity can turn to another in times of crisis such as war and natural disasters. To refuse entry to those people for sojourn is simply immoral and moreover, illegal to Kant. He clearly states in his “Perpetual Peace” that a foreigner can only be refused entry “if this can be done without causing his death” (Kant, I. 1795, p.136). He furthermore states that this is a right, and by this a also a legal question, that every human being should enjoy. This entails that borders of states can never be absolute. By this, the work of Kant and the right to hospitality are still of high actuality in the discourse on right of asylum and refuge as can be seen in the case of Sudanese refugees in Egypt. Translating Kant’s believes, Egypt is obliged to protect refugees out of a moral and legal standpoint.

Williams also points out that the right of hospitality should not be confused with the right of a guest. While a guest receives an invitation and by this can expect a preferable treatment, the right of hospitality aims at the interaction of people on the earth without invitation. The right of hospitality is thus the right of a visitor and not a guest. However, the right of hospitality did

not explicitly aim at people in need. In Kant's view it was first and foremost the right of human beings to visit each other. An individual from one civil entity has the right to establish commerce and relation with an individual from another entity (Kant, I.1795 [1970], pp. 105-107).

Kant bases the right of hospitality on the geographical argumentation that humanity possesses the surface of the earth conjointly. Assuming, that in the beginning no-one had superior rights to the possession of one place, and acknowledging that the surface of the earth is finite – it is logical that interaction and association between different individuals took place. A growing population on earth and the finite character of the globe make it inevitable that people's paths cross. (Kant, I. 1797 [1970], p.138) Following this argumentation, one can conclude that it is natural that people move and meet due to the finite space the globe offers. However, the influx of refugees in Egypt is caused by conflict and war. It is natural indeed to flee from such a situation but the movement does not take place out of free will. Nevertheless, this does not make it less legitimate. On the contrary, it becomes even more genuine.

2.3. Seyla Benhabib and “The rights of Others”

Seyla Benhabib makes extensive use of Kant's thoughts and concludes in her work “The Rights of Others. Aliens, Residents and Citizens.”, that the right of hospitality represents

“...all the dilemmas of a republican cosmopolitan order in a nutshell: namely how to create quasi-legal binding obligations through voluntary commitments and in the absence of an overwhelming sovereign power with the ultimate right of enforcement.” (Benhabib, 2004, p. 29)

Due to the fact, that the right of hospitality goes beyond merely moral duty the question remains how to enforce it in such a way that sovereign states comply with this new dimension of right. To Williams the solution needs to be as follows:

“In the absence of a world state we have to look to those rights being enforced by our own state and also all other states which maintain or aspire to a civil condition. In showing respect for the rights of visitors in our own state we play our part in enforcing the global social contract.” (Williams, H. 2007, p.66)

However his argumentation leaves out the case of non-compliance of other states and the possibility to pressure them into it. It is very unlikely that Egypt will adjust its policy towards Sudanese refugees on the ground that other countries are practicing a more just refugee-policy. As was shown previously, Egypt explains its shortcomings by the fact that their economic situation forces them to exclude refugees from certain rights. This is a dilemma which is explicit for third world countries, and the protective argument is a strong one when

looking at the practical realization of equal treatment. How can they provide refugees with services many nationals do not have access to? However, this argumentation of Egypt is of pure financial nature. It leaves out the human aspect of the problem and by this lacks legitimacy. The fact that Egypt commits itself to international norms, laws and standards means that it has to investigate all options to conform to these. Therefore, Egypt needs to raise the awareness for its problems in guaranteeing refugees the rights on the international arena. It needs to show its willingness to change the status quo and identify the fields in which the international community needs to interfere stronger or differently. However, this does not mean that Egypt can solely transfer the responsibility to the international community. Its own involvement is required in order to improve the legal situation of refugees and by this their living-conditions.

2.3.1 Seyla Benhabib on Immanuel Kant, Hannah Arendt and Contemporary Cosmopolitanism

In the previous chapter it was described how Kant translates the new challenges of an ever shrinking world into right and justice. To him the sovereign state plays the key-role in granting rights to individuals. Seyla Benhabib, professor of political science and philosophy at Yale University, is an advocate of porous borders. She is infamous for her thoughts on pluralism and cosmopolitanism that were strongly influenced by Immanuel Kant, Hanna Arendt and Jürgen Habermas. Her book “The Rights of Others. Aliens, Residents and Citizens” was winner of the 2004 Best Book in Social Philosophy Award by the North American Society for Social Philosophy and Co-winner of the 2005 Ralph Bunche Award of the American Political Science Association. She develops Kant’s thoughts on the sovereignty of nation states further and calls for moral universalism as well as cosmopolitan federalism.

2.3.1.1 The right to have right

Arendt especially focused on the role of nation-states and their power to exclude people from their political community. In a state-centric order, the legal status of a person is dependent on the authority that controls the area in which one is living. Thus the right to which one is entitled is proportional to the power which executes them. In this context, refugees, minorities, stateless persons and displaced persons are endowed with less or different rights due to their status of belonging. Relating to this phenomena Arendt states:

“We become aware of the existence of a right to have rights (and that means to live in a framework where one is judged by one’s actions and options) and a right to belong to some kind of organized community, only when millions of people emerge who had lost and could

not regain these rights because of the new political situation...The right that corresponds to this loss and that was never even mentioned among the human rights cannot be expressed in the categories of the eighteenth century because they presume that rights spring immediately from the "nature" of man...the right to have rights, or the right of every individual to belong to humanity, should be guaranteed by humanity itself. It is by no means certain whether this is possible."(Arendt, H. 1951 [1966])

Seyla Benhabib manages in "The rights of others" to explain the moral imperative Arendt is referring to. According to Benhabib, the right to have rights invokes a moral claim to membership and in addition a certain form of treatment compatible with the claim to membership (Benhabib, S., 2004, p.56).

Hence, the first "right" in "the right to have rights" is the demand that everyone is entitled to belong to "some human group...and the protection of the same". Membership, thus, is a human right. The second "right" is dependent on the first. Once an individual enjoys being a member of a political entity he or she can claim to act in a certain way without the hindrance of others. Rights within a community thus relate to mutual obligations. Benhabib concludes in this context " 'rights' suggest a triangular relationship between the person who is entitled to rights, others upon whom this obligation creates a duty, and the protection of this rights claim and its enforcement through some established legal organ, most commonly the state and its apparatus." (ibid, p.57) (see Fig .2)

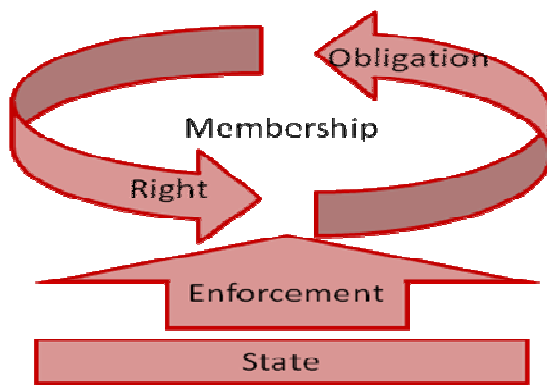


Fig. 2 Co-relation of right and obligation

The right to be recognized as a member, however, has another quality than the rights which can be claimed after membership is approved. It is clear that once membership is achieved, individuals can direct their demands at the power which is enforcing right and the co-related obligation. Unlike this, the right to membership has no clear addressee for claims. Arendt seeks the solution in humanity itself, although she is aware of its unlikelihood. In the case of Sudanese refugees in Cairo, this is a crucial point to recognize. They were violently deprived of their membership to the "entity" Sudan. However, to be able to claim rights, membership is

a prerequisite. The fact that they are also not seen as a member of the entity “Egypt” leaves them without this necessary precondition. In this context, Benhabib notes that “...the challenge ahead is to develop an international regime which decouples the right to have rights from one’s nationality status.” (Benhabib, S., 2004, p. 68) This means that a system is required that goes beyond “the characteristics which define us at birth”. (ibid, p.59)

Benhabib then analyzes that Kant’s understanding of right is similar to that of Arendt to the extent that both believed that rights cannot be established without political order, even though Arendt was slightly more skeptical towards nation-states than Kant. In this regard, she points out in her work that the moral justification that lies behind the argumentation of Arendt and Kant, namely that one should “act in such a way that you treat humanity in all your actions as an end, and never as means only”, is the right of humanity. It thus includes that one should be treated and treat others without violating their right as a human. In a nutshell we can understand it as – do unto others what as you would have others do unto you. Benhabib further describes that this right of humanity comes along with the mutual obligation to become member of a civil society and restrict our own freedom so it is pertinent with the freedom of others under a universal law. The conclusion she derives from this is, that the right of hospitality is not linked to equal inheritance of the surface of the globe but rather the right of humanity itself. (ibid, p.59)

In analyzing Kant and Arendt further, Benhabib argues rightfully that both thoughts – the one of cosmopolitan right and the right to have rights – contain a dilemma. Both are focused on the power of nation-states or as Benhabib puts it “republican sovereignty”. Furthermore, she argues that even though Arendt was skeptical about nation-states, she, as well as Kant, believed that rights can only be granted by these. However, as a consequence this entails the inevitable creation of members and non-members. Arendt was well-aware of this paradox, however did not manage to overcome it in her writings (Benhabib, 2004, p.66). Benhabib depicts that the dilemma can only be solved if one looks at the concept of right on the one hand and sovereignty on the other hand. (ibid, p.66-67)

While Kant and Arendt believe that territorial control is a sovereign right which cannot be restricted from outside, Benhabib believes that this is not the case and that “cosmopolitan rights create a network of obligations and imbrications around sovereignty.” (ibid p. 67) She argues further that there have been numerous institutional changes in the post-war period which all aim at the protection of people whose rights were denied and which are

supranational of nature. Among others she names the Geneva Convention relating to the status of Refugees (1951) and the creation of the UNHCR (United Nations High Commissioner of refugees) as examples. By this she shows that a system emerged which is constantly trying to separate the right to have rights from one's nationality. (ibid, p.67 -68) However, in the eyes of constant violation of international treaties concerning especially human rights, the question remains how strong this system is and what needs to be changed in order to make it more efficient.

In a nutshell, one can conclude from Benhabib's findings that every human being has the right to belong to some kind of political entity and by this ensure the protection of one's rights. However, if the right to belong to such an entity is not provided by for example the country of origin, it does not make a person right-less. The international community is responsible for monitoring the abidance by the law. Here, one can think of sanctions which can be imposed on countries that are violating these laws. Furthermore, the international community can choose to intervene in a situation that is unacceptable in the terms of international treaties. This is partly done in the case of Sudan where the international community sent peace keeping troops into the hard-fought areas. In the case of Egypt one might think of a stronger intervention into Egypt's domestic policy, where ambassadors of the international community persistently support and promote the formulation of a refugee and migration law that is in compliance with the international treaties and which is administered by Egyptian authorities themselves instead of UNHCR. This would leave room for the UNHCR office to focus stronger on delivering services to refugees and support them in their daily lives.

2.3.2 Seyla Benhabib and The Dilemma of the Cosmopolitan Vision of Rights

"Human rights politics remains a politics of the stronger, not of those whose rights are at issue." (Ingram, J.D, 2008)

Human Rights are rights which should be granted to every human being. While states commit themselves to the protection of human rights (in national constitutions, international organizations etc.), the understanding of the universal nature of human rights intertwines with national politics and by this remains a national interest although human rights are intended to be cosmopolitan, controlled by a cosmopolitan institution. However, the dodgy situation of national interest on the one hand and the moral task of protecting human rights on the other make it difficult to claim the rights once they are violated. "Rights are inescapably political, because they tacitly imply a conflict between a rights holder and a rights 'with-holder', some

authority against which the right holder can make justified claims” (cited by Ingram, J.D., 2008. P.405). It needs to be marked that national interests and human rights are not necessarily contradicting each other. Nevertheless, it is evident that national interest can influence the moral imperative of human rights politics strongly. As Ulrich Beck puts it “...the state’s claim to exercise power and control was the foundation of the state.” (Beck, U. 2000). That this claim has not vanished is still visible in our world today. Cases are countless, from the discussion about Guantanamo to detention centers for migrants in Europe. This is a severe dilemma that human rights politics is facing and which is represented in the work of James D. Ingram, Hanna Arendt and Seyla Benhabib.

So the question remains who is executing human (cosmopolitan) rights? The dilemma becomes palpable when asking about the validity of human rights for a stateless- person. There is no entity this person “belongs” to, except from the fact that he or she is a human being and naturally falls into that category. Probably, a certain place of origin becomes visible from the outside appearance but whether a Caucasian person is from e.g. France, Germany or Belgium is rather difficult to judge. Moreover, in times of globalization and multicultural societies the outside appearance becomes even less reliable as indicator for a place of origin, as people from every ethnic background can hold a passport from all over the world. However, the state-less person cannot show his passport and call on his rights on the basis of belonging to a certain society. A state-less person has no embassy which will support him whenever in trouble and no state that will guarantee to defend his rights as a human being. So whenever his rights are violated, there is no institution to turn to in order to claim those rights, or as James Ingram puts it: “Rights and their beneficiaries depend on a superior external power”. Though, a Convention Relating to the Status of Stateless Persons exists, there is no official institution these people can turn to for demanding their rights (Düvell, F. 2006. P.59). Rights, thus, are not a self-controlled power, even though they should be according to Arendt. This is also true in the case of Sudanese refugees in Cairo. Even though they are not stateless in the sense that they still hold the Sudanese nationality. They do not enjoy membership in the sense that they have access to citizen, respectively human rights.

As a consequence, human rights are politicized in a manner that they are exclusive to those who belong to a certain population group which is ensured to benefit from human rights by their political leadership. Consequently, in this context human rights, though philanthropic

and universal of origin, are not exercisable as one pleases but need to be given to you by an external power which makes them a clear political measure (Ingram, J.D., 2008. P. 405).

Benhabib argues in her book “The Rights of others” that limiting the sovereignty of the state on the one hand will lead to fortification of cosmopolitan rights. In place of the state, a regional and international system needs to be established which is narrowing down states’ sovereignty. Overall, she is pleading for a system in which human rights are not only seen as a moral right – thus as an ‘ought to be’ – but as firm strong rights which are defended by the international community. One might argue that such a system is already in place, represented by the United Nations, European Union and other international bodies. Benhabib acknowledges that there has been development in that field in the 20th century. However, she criticizes that the system is still based on the good-will of nation states and that the system itself is controlled by nation-states.

The question following Benhabib’s criticism thus needs to be how to establish an independent, international, global system which is reacting to universal problems such as human rights politics, without the influence of national interests. Such a system needs to be detached from the idea that representatives of states negotiate a joint standpoint in matters like human rights politics. It needs to appreciate that it can only be weakened by the intent to find compromise. The national interest is the true faultline in an international human rights regime. The borders of human rights are defined by national interest. While borders should have no importance in human rights, they are as present as in other global questions.

It has to be acknowledged that there have been great attempts through the 20th century to protect the right to have rights internationally, starting from the Nuremberg Trials to the creation the International Court of Justice (ICJ) and not to forget the Geneva Convention. These developments are showing that states are willing to give in to an internationally organized system dealing with the rights of people (Benhabib, S. 2004. p.67). However, one of the biggest problems is the weakness in bringing states to justice who are not obliging the rules set out in international treaties. There are diverse situations which give proof to the weakness of international agreements and institutions. One of the latest examples is the visit of the president of Sudan, Al-Bashir, for whom the International Criminal Court in The Hague issued an arrest warrant, to Egypt. The Arab League is protecting Al-Bashir from being

arrested and by this, is not only ignoring international rights, but slaps international law in the face.

Chapter 3 Bridging morals and practice

3.1. Critical reflection on cosmopolitan rights

In the previous sections we learned that nation-states and borders still play an important role in questions concerning cosmopolitan rights. Even though, there has been commitment by many states to assign to an international charter, the “non-compliance”- dilemma remains. How can you force states in acting according to the rules that the international community agreed on? By acknowledging this faultline within cosmopolitan rights, the consequent question needs to be how to create a system without it. It basically is the demand to combine the philosophical level of cosmopolitanism with a political, practical level.

3.1.1 *Cosmopolitan right and refugees*

Just like Kant, Benhabib believes in federal cosmopolitanism. However, she describes the shortcomings of the international regime of rights as we know it today. She judges it for not fully integrating the rights of refugees, state-less persons and asylum seekers. The lack of a clear citizen status, she agrees with Arendt, can be equalized with the loss of human rights to a certain extent (Benhabib, S., 2004, p. 215). In the context of the ‘right to have rights’, refugees are a group that requires special attention. They are forced to leave their home-country due to natural disaster, war or persecution. The movement is thus not a free choice and cannot be regarded as a “visit” in the Kantian sense. It is rather a request for temporary protection in another country until the situation in the home-country has recovered. Asylum thus is a right which is detached from nationality, as everyone should enjoy it, who is endangered in his or her home-country for whatever reason. Additionally, it needs to be valid to those who are deprived of their national belonging.

Refugees, in their vulnerability, need a different approach of looking at their rights to be able to translate them into practice. Furthermore - as Benhabib also assesses - in a globalizing world, movement of people is an expression of freedom. The fact that refugee’s rights are still constricted, even in the most advanced legal systems today, leaves them in a “quasi-criminal status” (Benhabib, S., 2004, p. 168) The right of hospitality described by Kant, therefore, still enjoys high actuality. Benhabib demands in this regard, that “We need to decriminalize the worldwide movement of peoples and treat each person, whatever his or her political citizenship status, in accordance with the dignity of moral personhood.” (ibid, p.177) Consequently, it is necessary to combine the philosophical, moral approach with the political, practical approach.

In “Is there a right to have rights? The Case of the Right of Asylum”, Stefan Heuser elaborates further on the right of asylum and the obligations it entails for the world community. In this context he states

“The borders of liberal democracies should be as open as possible for those who have lost their civil rights in their countries of origin. The postulate does not exclude prudence from asylum policy. Democracies have a genuine task and interest in granting citizenship to political refugees.” (Heuser, S., 2008, p.7)

Heuser agrees with Benhabib and Arendt that every human being should be entitled to civil rights, and by this sees asylum as the bridge between human rights and civil rights. Though, according to Gerard Delanty (2000), human rights and citizen rights have grown towards each other over time. While human rights were at first of ethical status and civil rights were of political status, he argues that both purposes merged over time and that a distinction between human rights and citizen rights is very hard to make. (Delanty, D., 2000, pp. 68-80)

However, following the argumentation of Heuser, there is one detail that is disturbing, when applying it to the case of Sudanese refugees in Egypt. Heuser is talking about liberal democracies. Even if the Egyptian government might claim to be a democracy, in practice one can say that this is not the case. Nonetheless, it does not weaken the demand for granting refugees civil rights. Undoubtedly, this question still is of profound ethic nature and giving asylum seekers access to citizen rights transcends the political system they reside in, as long as we see them as universal and unconditioned. It is therefore necessary to establish an international community that detaches itself from the will and sovereignty of nation-states.

Controversially, this is only possible if nation-states are willing to transfer power to an independent, international power. This is a severe dilemma of which I am not certain how it can be overcome. As Ulrich K. Preuss puts it in his article “Human Rights and international politics – a dilemma”, “The international community must not be misunderstood as the embodiment of mankind; it is no more and no less than the society of states.” (Preuss, U.K, 2008, p.18) In the case of Sudanese refugees in Cairo I argue that the international community existent already should have a stronger stand on the violation of rights in Egypt. However, the case of Sudanese refugees goes beyond the borders of Egypt, as the root of their displacement lies with the conflict in Sudan. It even goes beyond geographical borders and is closely connected to an uneven distribution of wealth in the world. However, this discussion would go beyond the scope of this thesis. The question remaining is whether the developed world needs to interfere stronger or not. And if so, at which point does it need to intervene? The role

of UNHCR is therefore of high importance as it is **the** international body in Egypt concerned with the rights of refugees. The role of UNHCR will be addressed separately in 3.3.1.

3.2. The problem of outside intervention

In the beginning of this thesis it became clear that the situation of Sudanese refugees in Cairo is one where they are deprived of their rights as human beings. They are representative for many other refugee populations, not only in Egypt, but the rest of the world. It was also said that in an ideal world, their rights should not be dependent on the sovereign will of nation states but controlled by a power that is detached from political entities such as states. However, as such a system is absent at the moment, I argue that for the medium-term improvement of the situation of refugees in Egypt, the international community and its bodies need to intervene stronger in Egypt's practices in this regard.

3.2.1 ...is intervention comparable to colonialism?

When talking about the intervention of states into another state's policy the discussion about colonialism, post-colonialism and colonialist behavior is not far away. However intervention does not always indicate that one state is dictating a certain behavior on other states. Intervention does not need to be violent and often does not mean military intervention. It can also be understood as diplomatic intervention or as the work of international bodies in a country struggling with internal problems. However, looking at Kant's opinion on colonialism, the interference of one country in the internal practices of another country is abject. The right of hospitality forms the basis for Kant's condemnation of colonialist aspirations. It preaches the right to visit. However, it is only just when host and visitor both respect the right and do not breach it with an act of hostility. Hence, it builds the framework for the intervention of one state in another. Kant rejects the thought of dictating one state's credo onto another by force and harshly judges European colonization in America, Africa and the East. Williams concludes in this context that "Interaction and contact with others is a vital part of the human condition and so to be supported so long as its basis is voluntary and assumes our mutual equality."

To Kant, the argument that uncivilized communities would be doomed to live without progress and modernity if civilized states do not intervene, is untenable. He underlines his opinion with the examples of China and Japan which managed to allow visitors to their territory but prevent the penetration of their system by outsiders. To him entities have to reach the state of civil-society by themselves without the influence of others. According to

Williams, Kant believes that “wherever there are human beings, they will already have established their own form of political authority.” (p.69) Ulrich Beck manages in his “What is Globalization” to describe this notion of Kant by using a scene of a cartoon which is worth of full citation.

“A cartoon shows the Spanish conquistadors entering the New World with glittering weapons. ‘We have come to you,’ says the balloon, ‘to speak with you of God, civilization and truth. And a group of puzzled –looking natives answer: ‘But of course: what do you want to know?’” (Beck, U., 2000 p.77)

This scene shows in an amusing manner that the assumption during the colonial times that “others” need to be civilized was at least premature. Muthu adds to these thoughts that the imperial justification of civilizing the other can be rejected by the argumentation that “if human freedom is given its due, then there cannot be a duty to develop other individuals.” (Muthu, S., 2000, p. 40)

The argumentation above, though directed at colonial exertions, can be translated into contemporary interventions of one state into another state’s internal affairs. This line of argumentation would clearly reject any outside intervention of any state in Egypt’s refugee policy. However, Kant was also an advocator of an ever growing federation of states that is submitted to a cosmopolitan legal order. Due to the fact that Egypt is part of an international - if not to say cosmopolitan - alliance of states and committing itself to agreements made on this level, the argumentation against other state’s interference cannot hold. I, therefore, argue that the anti-colonialist argumentation becomes nihil. Intervention of other countries in the refugee policy is thus not to be misunderstood as “colonialist” action but as the attempt to either force or help Egypt to fulfill the requirements set out by international law. Especially, as it concerns human rights and the prevention of their violation.

3.3 The implications

In “Reconceiving International Refugee Law”, James C. Hathaway describes that the main problem of refugee rights legislation is that it was directed at all states equally, without taking their national interest and condition into account. For example, one can imagine that more developed countries can handle the influx of refugees differently than Egypt. He therefore suggests that refugee protection should be reformed based on four new principles:

1. Temporary protection
2. Repatriation assistance and development aid
3. Human responsibility sharing

4. Fiscal burden sharing

Hathaway argues that the detachment of protection and permanent residence will lead to a higher willingness of states to grant bigger numbers of refugees access to their territory. Additionally, a “burden” sharing, especially financially, to reimburse the asylum state seems a plausible solution for the international community to distribute the responsibility evenly. He argues that especially countries in the South are coping with the influx of refugees and that they lack the logistic as well as financial means to handle protection in the preferable way.

However, the argumentation of Hathaway undermines the principle of the right to have rights. It maneuvers around the question of every human’s entitlement to have access to human rights or better citizen rights. Nonetheless, I agree that an approach is needed that combines development in the country of origin as well as the country of refuge. In practice this would mean that it is not enough for the international community to support Egypt logistically and financially but it has to intervene in the conflict of Sudan as well. Hathaway rightly argues that “a renewed model of international refugee law” is needed that is “built on the principle of common but differentiated responsibility”. (Hathaway, J.C., 1997, p. xxvi)

The way described by Hathaway is of course one way to tackle the situation of refugees in development countries. However, restructuring will take time and needs a new consensus on the international arena. Therefore, other measures are needed in order to bring short- and medium-term change. Michael Walzer elaborates on the question of foreign intervention in his article “The politics of rescue – Rescue: The Paradoxes of Virtue” (1995). He supports the thought that foreign intervention is always a sensitive issue. Even though he is mainly occupied by thoughts on military intervention, his work can be translated to other interference as well.

Disagreeing with Kant, he states that “nonintervention is not an absolute moral rule: sometimes, what is going on locally cannot be tolerated” (Walzer, M., 1995, p.1). I argue that this is the case for Sudanese refugees in Cairo, also or even because their case is representative for many other refugees in the world. Furthermore, if we take the Millenium Development Goals serious, it is inevitable to pay attention to the situation of refugee populations - and in this case Sudanese in Cairo in particular. The ambitious intent to end poverty, give equal access to education etc.¹⁰ until 2015 asks for immediate action.

¹⁰ For a whole list of the millennium development goals see: <http://www.un.org/millenniumgoals/>

3.3.1 The role of UNHCR in Cairo

As became clear in the beginning of this thesis, the United Nations' High Commissioner of Refugees is *the* international body in Egypt concerned with refugees. It is their task to protect, support and grant relief to all refugees in Egypt. The fact that they excluded Sudanese refugees from RSD is a severe problem as it limits the access for Sudanese to services which can be enjoyed by recognized refugees. Thus next to Egypt's policy, the policy of UNHCR is part of the problem of the situation Sudanese refugees face in Cairo. Especially, the reluctance of the Egyptian government to create a national system of RSD leaves UNHCR with a huge bureaucratic task that constrains its latitude. Grabska (2006) explains this by the fact that many Sudanese are residing in Egypt. Admitting them as refugees through a national RSD-system - the government fears - could worsen diplomatic ties, as this could be interpreted as criticism towards the Sudanese regime. (Grabska, K., 2006, p. 25-27) However, the validity of this argument is questionable, as Sudanese in general are not given refugee status anymore, also by UNHCR.

Furthermore, the Cairo office of UNHCR experienced major cutbacks in its budget. Between 2002 and 2006 the budget decreased from \$ 3.9 million to \$ 2.2 million per year. (Grabska, K., 2006, p. 25-27) Combined with the fact that the number of recognized refugees tripled in the same period, this means that UNHCR is suffering from severe underfunding. In order to improve the situation of Sudanese refugees in Cairo, this is one of the first points that have to be tackled. The international community needs to become aware of the significance of a well operating UNHCR office.

During the field-research not only refugees but also NGOs complained about the work of UNHCR and its implementing partners such as Caritas. Numerous stories were told where recognized refugees were denied medical or financial assistance. Furthermore, Barbara Harell-Bond blames UNHCR itself for not raising enough awareness for the issues concerning refugees in Egypt on the international level. She says;

"It is really – I think – UNHCR's own fault that funds are not available for programs in places like Cairo. Because they put on their website that there are only, say, 30.000 refugees in Cairo. So who – what donor is going to be concerned about 30.000 when there are really hundreds of thousands of refugees here [Cairo] but they [UNHCR] only put the numbers of the recognized [refugees]?" (see the movie by Trafur, J., 2007)

What becomes clear, is, that UNHCR as the main international body concerned with the situation of refugees in Egypt, needs to enhance its role. This requires also a stronger position

in the mediation between refugees' interests and the Egyptian government. Furthermore, Grabaska argues that other UN agencies should include refugees in their programming. However, agencies like the World Food Program, UNICEF, The World Health organization and the like, seem to be reluctant to do so. They argue that they are agencies which are meant to assist the Egyptian government in meeting the Millenium Development Goals. The inclusion of refugees in their activities – they say - would require the consent of the Egyptian government, which they most likely will not receive. (Grabska, 2006, p.27-28)

This is a clear point where the moral obligation of helping people on the basis that they are human and practical implementation clash with each other. If the international community sends development aid to Egypt, why can they not require that it includes all people residing in the country? Should they use their power to force Egypt into this obligation or would this jeopardize development and diplomatic ties? If we assume, believe and support that people have rights on the basis that they are humans, then – I am convinced – there is no way around the inclusion of refugees in development programs especially in the South.

We need to move away from the image of human rights as a question of practicality. As Ingram puts it in his article “What is the right to have rights? Three images of the Politics of Human Rights”, “the development of human rights regimes and instruments has fostered a spirit of pragmatism. For practioners, it is enough to assume the validity of the rights adumbrated in various agreements and focus on implementing them.” However, it is not enough to take measures and presume that these are in compliance with law and simply implement them. Measures need to be balanced and targeted at the needs of refugees. Otherwise, it leaves out the moral, thus philosophical scope of rights and dehumanizes refugees.

In Egypt's case this means that Egypt has to develop an own refugee status determination policy which is also administered by Egyptian authorities. The international community can assist in formulating and implementing this policy. Consequently, UNHCR would have more room to take care of the needs of refugees and provide them with services required for their daily lives. This all entails that UNHCR Cairo starts to speak with a louder voice on the international arena. Apart from this UNHCR needs to be more transparent about its RSD practices. It is unacceptable that refugees and their legal advisors (if they have one) have restricted access to the transcripts of interviews or reasoning for rejection. Furthermore, it

needs to re-start RSD procedures for Sudanese refugees in order to create a perspective for these refugees who are often in Egypt longer than three years. Moreover, there are still many refugees arriving in Egypt every day. The best solution for Sudanese refugees, however, would be the recognition and implementation of the four freedoms agreement between Egypt and Sudan.

3.3.2 The role of independent NGOs and CBOs

There is a significant number of NGOs and CBOs in Cairo that offer services to refugees. Many of the CBOs were created by refugees and their affiliation with the country of origin can be found in their names (e.g. Sudanese Women Union, Somali Learning Centre). However, their work is inconsistent as they lack the means to raise sufficient funds. Additionally, there are churches and NGOs (also UNHCRs implementing partners such as Caritas) who offer services to refugees. Nonetheless, these are also limited in their financial means and their work is mainly on an ad hoc basis. They do not have the logistic size to be able to transform the system granting refugee rights. However, their power in lobbying should not be underestimated. Especially, the international operating NGOs need to increase their efforts to intervene in the policy cycle and raise awareness for the situation of refugees in Egypt.

3.3.3 The role of third countries

The three durable solutions handled by UNHCR are resettlement, voluntary repatriation and local integration. It was shown in the course of this thesis that local integration ranks lowest on the list of these three. This can be attributed to the lack of rights refugees encounter in Egypt, a rising xenophobia, especially towards black Africans and the reluctance of refugees to integrate. Thus, the two options of relocating refugees either back to their country of origin or to another country are the only realistic options to bring immediate relief. Therefore, third countries need to increase their willingness to take refugees under their supervision including their resettlement to their territory. Apart from this, the international community needs to interfere stronger in Sudan. Next to sanctions it needs to consider the increase of military intervention. Furthermore, president Al-Bashir needs to be brought to justice. His case with the ICC might play a key-role in a positive development in Sudan.

Chapter 4 Conclusion

“Misr oum el dounia”- Egypt the mother of the Earth – that is what Egyptians like to say about their country. It is a fact that Egypt was one of the most advanced civilizations on Earth once. The miraculous pyramids, the Valley of the Kings and displays in the Egyptian Museum give proof to the prosperous, far-developed past of this country. Today not much is left of this wealth. As it was shown in the course of this thesis, Egypt ranks low on the development index of the United Nations Development Program. The economic situation is that of a development country which does not contribute positively to the social human standards. This thesis paid special attention to the legal situation of Sudanese refugees. Sudanese form the biggest group of refugees behind Palestinians from the occupied territories and therefore strongly reflect Egypt’s refugee policy.

In chapter one it was explained that Egypt is signatory to various international treaties concerning human rights in general and refugee rights in particular. However, it took reservations on some of the articles of the 1951 Convention relating to the Status of Refugees. This has severe influence on the living conditions of - in this case – Sudanese refugees. Due to the ongoing conflicts in Sudan, they seek protection in Egypt. It was shown that their rights are restricted so harshly that sustaining a living and investing in the future is full of obstacles that are very difficult, if not impossible, to overcome. The fact that the four freedoms agreement between Egypt and Sudan has not been actively implemented in Egypt further contributes to this drawback. Sudanese refugees are struggling to find work in the legal sector which exposes them to maltreatment and abuse on the extra-legal labor market. Their earnings are low and sending their children to schools in order to give them a proper education for their future is therefore impossible. Attending free refugee schools run by NGOs or churches is almost futile due to the fact that children are not able to attain a diploma as Egypt does not recognize these schools. Furthermore, xenophobia in Egypt is rising and active as well as passive marginalization is a daily occurrence.

It was also shown that UNHCR plays a key-role for Sudanese refugees and their living-conditions. As it took over the refugee status determination responsibility from the Egyptian government, refugees are depending on its judgment in order to be officially recognized as refugee. Their legal status in Egypt is thus determined by the decisions taken by UNHCR as they are most likely not able to issue a request for the Egyptian nationality due to the fact that they cannot meet the strict requirements. The governmental role of refugee status determination is taken over by UNHCR in various countries that do not have the logistics or

legal framework for refugee status determination. However, as it became clear in the course of this thesis, the practices by UNHCR in Egypt are nontransparent. The fact that it decided to hold all Sudanese refugees at the status of asylum seeker and not issue them a blue card is one of the examples. The argumentation of UNHCR for this measure is the 2004 Apprehensive Peace Agreement and their fear that a mass of refugees could be rejected on the ground of this agreement. However, UNHCR is in charge of determining refugee status and should therefore be able to bargain fierce about the conditions under which they accept refugees with the Egyptian government. Additionally, UNHCR's behavior in the 2005 protests showed that UNHCR Cairo is inflexible in its policy adjustment.

Looking at all of the above through the cosmopolitan lens of Immanuel Kant and Seyla Benhabib and defining implications out of it was the goal of this thesis. Kant's understanding of right and Seyla Benhabib's advocacy for federal cosmopolitanism were presented in chapter two of this thesis. This theoretical background showed that the power and willingness of nation-states is persistent on the international arena today. A cosmopolitan world as it is described by Kant and Benhabib, where nations submit themselves to a federal system of states with a central legal organ that is not influenced by the self-interest of states, is absent in today's world order. However, Kant as well as Benhabib believes that the creation of such an order is inevitable regarding the rights of individuals on an international level. Both identified the dilemma of a cosmopolitan system and recognized that such an order is always dependent on the voluntary submission of nation-states. Benhabib attempts to describe a way out of this dilemma by acknowledging the developments that have been made in the field of international law in the post world war period. However, in the end she admits that the international order is still dependent on the will of states and fails to define a clear way out of the dilemma.

While accepting this dilemma it does not mean that the status quo of international law and its implementation cannot be improved. This can be seen in the case of Egypt and its refugee policy towards Sudanese refugees. Egypt committed itself to the creation of an international order concerning refugee law, however, states that it is not capable of dealing with the numbers of refugees residing on its territory. Although, I argue that Egypt needs to engage more in its own refugee policy, I also argue that the international community that wishes to have a universal system of refugee law needs to admit its responsibility in places like Egypt that have clear difficulties in fulfilling the international agreements.

In Egypt's case, UNHCR will need to take over a different role in order to improve the legal situation of refugees. As the main body of the international community that occupies itself

with refugees it needs to exert more influence on the Egyptian government. This, however, can only be done if other member states realize that the situation of refugees in Egypt is one of poverty, desolation and despair. On its website UNHCR states

“The agency is mandated to lead and co-ordinate international action to protect refugees and resolve refugee problems worldwide. Its primary purpose is to safeguard the rights and well-being of refugees. It strives to ensure that everyone can exercise the right to seek asylum and find safe refuge in another State, with the option to return home voluntarily, integrate locally or to resettle in a third country. It also has a mandate to help stateless people.” (UNHCR, n.d.)

Especially, the first sentence, I believe, is of importance. The mandate for UNHCR is thus to “lead” and “co-ordinate” actions concerning refugees. As a consequence, UNHCR Cairo needs to take up this mandate and start to bring international attention to the situation of refugees in Egypt. Furthermore, it needs to promote the creation of a refugee status determination system that is administered by the Egyptian government. This reaches from the formulation of an Egyptian refugee policy to the practical implementation. This can and needs to be done in co-operation between UNHCR and the Egyptian government in order to make sure that a presumably Egyptian refugee policy is in compliance with international treaties. UNHCR thus would take over a monitoring task instead of fulfilling a governmental role. In the short-term, however, UNHCR Cairo needs to overcome its transparency deficit. It is unacceptable that refugees have no access to their documentation or to reasons of denial. The fact that UNHCR refused to be interviewed for this research can also be seen as a lack of transparency and the Cairo office should clearly change its behavior towards researchers who want to grasp the situation of refugees in Egypt.

Additionally, the Egyptian government needs to take more responsibility in the case of Sudanese refugees. The actual implementation of the Four Freedoms Agreement between Sudan and Egypt could change the situation of many Sudanese refugees as they would be able to work legally, attend Egyptian schools and reside anywhere in the country without legal obstacles. Furthermore, other international bodies like the World Food Program need to open up to the possibility of including refugees into their activities. The international community should and must use its powers of intervention through organizations that are promoting development in Egypt much stronger.

Apart from that the root problem, namely the ongoing conflicts in Sudan, needs to be tackled. If necessary, the international community should consider a stronger military intervention in Sudan. Diplomatic efforts to end the violence need to be increased and relief organizations need to experience stronger international support. I believe that only a multi-targeted policy on the national as well as international level, governmental and non-governmental can lead to the improvement of the legal as well as socio-economic situation of Sudanese refugees in Egypt. In a world that is moving to close ranks this approach can be the only solution.

Appendix

1. Example of a statement to UNHCR for a blue card application

United nation high commission for refugee
Protection officer
Egypt -Cairo.

Subject: applicant: for protection

Dear Sir,

In regard to the above mention subject, I would be most grateful and thankful if you esteem humanitarian office could kindly put this application of me under your faithful consideration of the following grounds:

I, Amana Mohamed Abakar Yousif Sudanese refugee citizen and woman at risk currently living in Egypt with my child after I fled my home country due to insecurity problems in western Sudan.

I was born in 1972 and belong to For ethnic group of western Sudan and was living in my area of Talowkatang that belong to south Darfor region with my husband and my four children ,my brother and my father .

We were working as farmers and cattle herder (keeper) at Wadi Gardi until the problem occurred between the government army and the rebels in the early morning of 24th /8/2004 when the government forces and their pro-militias tribes men of Gengawit attacked our area ,where they killed all people in the area ,burn down houses and huts.

In that massive attacked, they killed my small son, while my husband and the rest of my natives escaped for the fear of their life but I could not manage to escaped because I was sick, hence I was arrested together with my younger sister and my three sons and got blindfold then they took us to their areas and there I and my sister were subjected to raped, beating and mistreatment then accused of the following:

- 1- That we know where the rebels hid
- 2- That we collaborate with the rebels and provided them with food and information
- 3- That we helped the rebels to escaped the area before their arrival to the area.

After that they interrogated us and asked me about the mother of the rebel's ring leader who was living with us in the same area but had escaped before the attacked but they did not believed me and began to beat my three small child till they fell unconscious and they do tell me that they will killed them in front of my eyes if I did not confess and tell them the needed information ,and they denied us from food and water and kept us in detention until later on when they find out that we don't know anything .

then they again blindfold our eyes me and my sister and transfer us to the displace camp known as calma and threaten us not to tell any body a bout what they did to us because they will come again and took us for interrogation .but there I manage to

escaped with my younger sister and my children through great help of a man who sympathies with me and my children , and he took us to Neyala town ,where we found one of our relative who worked in an organization who also helped us to escaped to el Obied town and from there we proceed to Khartoum town .

Before we enter Khartoum , we found some security men at the entrance gate that lead to the Khartoum city and they do detained every one who comes from Darfor areas and when they asked me ,I denied that I didn't came from Darfor but we came from El Obied town because if they knew that we were from For tribes and that we came from war areas ,they would have detained us a gain or killed us.

Then we enter Khartoum town and began to move in the streets and beside the mosques till we found one of our tribes fellow who took us to his house at Omdurman and there he told us that the security men do arrested and detained the For 's sons inside Khartoum ,and he issued us both new certificated for my children and passports for me and my younger sister and also he gave us tickets to Wadi- Halfa .

On 20th /1/2005 we escaped Sudan by steamer from Wadi- Halfa and arrived Aswan seaport in Egypt on 21st / 1/ 2005 in peace together with children and my younger sister.

although we are now living in Egypt far from Sudan security men ,yet our life is not safe because we are living here illegally without any legal permission from the Egyptian authorities and always in great fear of being arrested by the Egyptian authorities and get deported back to Sudan where we will again be re-arrested and subjected to beating ,rape and mistreatment from both the Sudan security men and it's pro-militias tribes men of Gengawit who killed my son ,and separated me from my husband ,and my relatives and till now I don't know their fate if they are still alive or been killed because since that time of the attacked I never seen them or hear any news about them until I escaped Sudan with my children and younger sister for our the safety of our life and stability.

Therefore I'm here by submitting this application of mine before your esteem humanitarian office seeking your protection for me ,my children and my sister because we are now living here in a bad living condition and always facing life challenges since we don't have any body who can help us or can protect us hear .

Thanks

Applicant: Amana Mohamed Abakar Yousif

2. Example of a physiological statement by El-Nadeem

El-Nadim
For Psychological Management & Rehabilitation
 Address: 3 A Soliman El Halabi St. from Ramsis St.
 Tel. (202)5787089 (202) 5776792
 E-mail: nadeem@link.net website: www.hrinfo.net/egypt/nadeem

To Whom It May Concern

Amna Mohamed Abu Baker is 31 years old female, from Darfur. She was referred to El-Nadim center on 16/8/2006 by her sister for psychological help.

During the interview, she was restless, wandering, smiling for no obvious reason. Her speech was spontaneous, she kept saying "There are children, I want to kill them". Amna was extremely disturbed and disoriented.

Her sister reported bouts of excitement and disturbed behavior during the last previous few days.

Amna was referred to psychiatric hospital for admission. She was admitted for about 2 weeks. Her condition was diagnosed as "severe depression with psychotic symptoms".

Amna visited El-Nadim on 16/9/2006 for follow up. She is found to be almost in relapse.

She is uncompliant with medication and lives in very stressful conditions, without mention of the long past history of traumatic events:

- she is responsible for her 3 children (the eldest is 8 years old)
- Amna's sister cares after the whole family (the sister suffers PTSD & receives treatment)
- Neither Amna nor her sister able to work.
- No financial resources for the basic needs: shelter, food Etc. Currently they are helped by other asylum seekers from Darfur (which can't last for too long time)
- They are not yet recognized by UNHCR

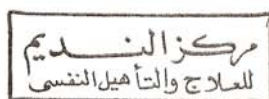
Conclusion:

Amna and her family need urgent psychological and socioeconomic help.

Psychiatrist
Mona Hamed
 16/9/2006

Mona Hamed

16/9/2006



3. *Picture of Amna Mohammed with blue card and passport*



4. *Picture of Azza Centre (CBO in one of the suburbs of Cairo)*



5. Example of rejection letter



27-76-08

U.S. Department of Homeland Security
AMERICAN EMBASSY
ATHENS, GREECE



U.S. Citizenship
and Immigration
Services

27-76-08

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NOTICE OF INELIGIBILITY FOR RESETTLEMENT

Dear M. ABAKAR, Anna Mohamed Yousif

This letter refers to your Registration for Classification as a Refugee (Form I-590) and your recent interview with an officer of the U.S. Citizenship and Immigration Service (USCIS). Pursuant to § 207 of the Immigration and Nationality Act ("INA") (8 U.S.C. § 1157) and § 101(a)(42) of the INA (8 U.S.C. § 1101(a)(42)), applicants for classification as refugees must establish that they are unable or unwilling to return to their country because they have suffered past persecution or have a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. Applicants for refugee classification must also establish that they are otherwise admissible to the United States, are of special humanitarian concern to the United States, and are not firmly resettled in a third country.

For the reason or reasons indicated below, we have determined that you are not eligible for resettlement in the United States.

1. ☐ **RETURN.** You did not establish that you are unable or unwilling to return to a country of your nationality or last habitual residence.
2. ☐ **PERSECUTION.** You did not establish that you have suffered past persecution or that you have a well-founded fear of future persecution.
3. ☐ **PROTECTED CHARACTERISTIC.** You did not establish that the persecution or fear of future persecution was on account of race, religion, nationality, membership in a particular social group, or political opinion.
4. ☒ **CREDIBILITY.** The USCIS officer informed you of discrepancies concerning material facts within your testimony during your interview and you were provided with an opportunity to reconcile those discrepancies. Because you were unable to reconcile the discrepancies to the officer's satisfaction, it has been determined that your testimony lacked credibility on those material facts. As a result, you are not eligible for refugee status.

www.uscis.gov

[File Number]

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5. ☐ **PERSECUTOR.** You are ineligible for refugee status because it has been determined that you ordered, incited, assisted, or otherwise participated in the persecution of others on account of race, religion, nationality, membership in a particular social group, or political opinion.
6. ☐ **FIRM RESETTLEMENT.** You are ineligible for refugee status because you have been firmly resettled in a third country.
7. ☐ **INADMISSIBILITY.** You were found to be inadmissible to the United States pursuant to INA § 212(a) (8 USC § 1182(a)) pertaining to:

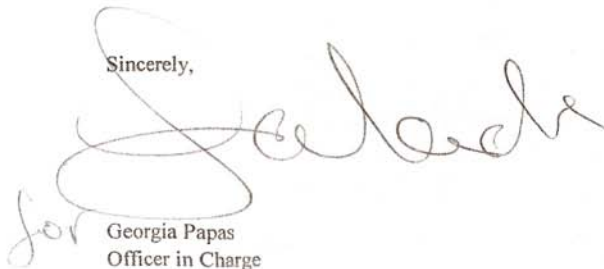
- ☐ A waiver of the inadmissibility cited above may be requested.
☐ A waiver is not available for the inadmissibility cited above.

8. ☐ **OTHER REASON(S):** _____

Based on the reason or reasons indicated above, your request for resettlement to the United States is hereby denied.

There is no appeal for a denial of an application for refugee status. USCIS may exercise its discretion to review a case upon timely receipt of a request for review from the principal applicant. The request must include one or both of the following: (1) a detailed account explaining how a significant error was made by the adjudicating officer, or (2) new information that would merit a change in the determination. USCIS will only accept one request that is postmarked or received by USCIS within 90 days from the date of this notice.

Sincerely,


for Georgia Papas
Officer in Charge

(ORAIO Ed. 12-14-04)

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Movies

Rightful yet Rightless. Documentary by Juliana Tarfur. (2007)

African Refugees in Egypt: <http://www.youtube.com/watch?v=4MrhBx3wxqw>

Sudanese Refugees in Egypt Torture claims: http://www.youtube.com/watch?v=Ec-KzmMpcBU&feature=Playlist&p=887F33F49BC52D22&playnext=1&playnext_from=PL&index=31

Barack Obama on Darfur: <http://www.youtube.com/watch?v=QEd583-fA8M>