



EGYPT/ISRAEL

# Sinai Perils

Risks to Migrants, Refugees, and Asylum Seekers  
in Egypt and Israel

HUMAN  
RIGHTS  
WATCH



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## Sinai Perils

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## I. Summary

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

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

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

Despite Israeli officials’ awareness of Egypt’s violations, Israel has summarily returned to Egyptian custody scores of migrants who illegally crossed the Sinai border. In August 2007, Israeli soldiers forcibly returned a group of 48 detained migrants, 44 of them Sudanese, back across the border without allowing them to claim asylum. Israeli officials said the Egyptian government agreed to the returns

and gave assurances that the returnees would not be mistreated, but Egypt had previously, publicly denied any such agreement. The returns also disregarded a petition by Israeli parliamentarians, calling on the government not to carry out announced plans to return to Egypt captured migrants. Egypt detained and denied all access to the 48 people, 23 of whom were refugees or asylum seekers. According to media accounts, Egypt subsequently deported between at least five and possibly as many as 20 of the group to Sudan, whence many had originally fled seeking refuge.

Between August 23 and 29, 2008, Israeli soldiers forcibly returned another 91 migrants to Egypt, including Eritreans, Sudanese, and Somalis, without allowing them to present asylum claims. An Israel Defense Forces (IDF) brigadier general stated in an affidavit that “officers in the field” had failed to follow procedures in carrying out the returns, but an IDF spokesman said the returns were ordered by the “political echelon.” The whereabouts of the 91 returnees, like the fates of the 48 returnees from August 2007, are unknown.

Both countries have detained migrants for long periods without allowing them to make asylum claims. Both countries are states parties to the 1951 Refugee Convention and its 1967 Protocol, and as such should not punish refugees fleeing from persecution. Guidelines by the United Nations High Commissioner for Refugees (UNHCR) state that detention of asylum seekers should be used only as a last resort.

The majority of those who cross the Sinai to enter Israel are Eritreans and Sudanese. Many of the approximately 4,300 Eritreans who have sought asylum in Israel since 2006, fleeing forcible military conscription or religious persecution, traveled illegally through Sudan and Egypt. Many of the 3,700 Sudanese who sought asylum in Israel, including Southern Sudanese and Darfuris, lived in Egypt as refugees or asylum seekers for years before security problems and harsh living conditions there led them to risk the illegal Sinai border crossing. These conditions are unbearable, many Sudanese say, because they are inescapable due to the increasing difficulty of being resettled from Egypt to a third country. The difficulty is largely due to decreasing interest from resettlement countries like the United States, but also to UNHCR’s policy to allow only some categories of Sudanese asylum seekers with special

protection needs to be eligible for refugee status determination. UNHCR classifies all Sudanese as asylum seekers without proceeding to a determination of refugee status except in these special cases. That procedure is meant to protect Southern Sudanese who might not qualify for refugee status from being returned to Sudan, but it makes it difficult for Darfurians who are likely to be found refugees to be resettled abroad.

Many of those who crossed the Sinai border say they fled to Israel out of desperation, unable to earn enough to meet their basic survival needs in Egypt. Others say that in Egypt pervasive, sometimes violent racism threatened their personal security, and that police officials failed to protect them or were themselves the agents of violence. Almost all migrants Human Rights Watch spoke with knew that crossing the border meant risking death or imprisonment for themselves and their families. Their willingness to take such risk underscores their claims that they were unable to find effective protection in Egypt.

Egypt has sought to justify its shoot-to-stop policy against refugees and asylum seekers seeking to cross the Sinai border into Israel on the grounds that organized Sinai-based criminal smuggling networks present a threat to national security. Egyptian officials assert the need to control the country's borders in light of terrorist attacks against tourist and government targets in the Sinai since 2004, as well as arms smuggling into the Gaza Strip and the passage of Palestinian fighters into and out of Gaza. In two known cases smugglers have shot and killed Egyptian border policemen. Yet of the known cases where Egyptian security forces have killed or wounded persons near the border, almost all have involved African migrants and refugees, and none involved border forces' shooting in self defense.

Egyptian security forces along the Sinai border as well as along the country's southern border with Sudan have arrested thousands of migrants attempting to make the journey to Israel. Egyptian detention policies separate migrant families: husbands from wives, boys from their mothers and other female relatives, and girls from their male relatives. Boys and girls who are arrested without relatives of the same gender are detained with unrelated adults. Children are subjected to the same poor conditions of detention as adults, and while children are apparently not tried

and sentenced, they may be detained for months. At trial, mothers detained with their children are usually released without being sentenced, but fathers detained with their children must serve prison sentences.

Egypt tries all illegal migrants apprehended in border security zones before military tribunals rather than civilian courts, although human rights law generally restricts the jurisdiction of military tribunals to cases involving military personnel and breaches of military law. Egypt has no formal system guaranteeing detained migrants' access to asylum procedures. While some detained migrants, by bribing jail guards or secretly using other prisoners' mobile phones, manage to make their cases known to UNHCR, many do not.

International human rights law prohibits states from arbitrarily depriving anyone under their jurisdiction of the right to life. In the Sinai border zone, Egyptian border police have used lethal force in what appears to be an arbitrary manner, in violation of Article 6 of the International Covenant on Civil and Political Rights (ICCPR). Police should resort to using lethal force only where strictly unavoidable in order to protect life.

The ICCPR also obliges Egypt to afford due process and fair trials to migrants detained for violating national laws. While Egypt may penalize unauthorized entry into a restricted military zone such as the Sinai, it must afford a fair trial to persons detained and charged with doing so.

Those migrants who successfully cross into Israel are, in the absence of asylum laws or adequate procedures, often subject to ad hoc and arbitrary treatment. From 2005 to 2007, Israeli authorities jailed Sudanese migrants, including children, for periods of more than a year without judicial review. Due to a successful court challenge by Israeli NGOs, Israel no longer indefinitely detains irregular arrivals from Egypt. However, proposed Israeli legislation would impose minimum jail terms of five to seven years on all "infiltrators" captured more than 72 hours after their illegal entry; those captured within 72 hours would be forcibly returned to Egypt. Israel continues to detain some, including children and unaccompanied minors, for months in poor

conditions. Israeli detention practices also separate husbands and wives from one another and fathers from their children.

In January 2008 Israel granted temporary residence visas to 600 Darfuris and work permits to 2,000 Eritreans. Nonetheless, Israeli officials have argued the need for “harsh” policies towards illegal border-crossers, and have voiced fears that a “tsunami” of hundreds of thousands of African economic migrants could otherwise be attracted to Israel. Israeli officials have repeatedly threatened to deport the majority of the arrivals—a threat that caused panic in migrant communities in Tel Aviv when immigration police rounded up hundreds of recognized asylum seekers and others in February 2008. Beginning that month, Israel prohibited new arrivals and migrants whose original residency documents had expired from living or working in the greater Tel Aviv area, where the majority had settled in part because of the possibility of finding jobs and the presence, unique in Israel, of NGOs providing services to the asylum seeker community. Police again arrested hundreds of migrants in Tel Aviv in July.

Israel, as a state party to the Refugee Convention and Protocol, should detain refugees and asylum seekers only as necessary to ascertain their identity and the basis of their asylum claims, and should not penalize asylum seekers for irregular entry. Egypt, also a state party (as well as to the African Refugee Convention), should afford detained migrants the opportunity to present asylum claims and have those claims adjudicated, prior to any decision to deport. Israel should desist from advancing draft legislation that would allow deportation of border-crossers within 72 hours and absent a guarantee that blanket security determinations cannot override the possibility to make an asylum claim.

Refugee law, as well as the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the ICCPR, prohibit both countries from carrying out forced return (refoulement) of refugees to countries where they have a well-founded fear of persecution or torture, or to third countries that might not respect that prohibition. Both Israel and Egypt are obliged by refugee law, the ICCPR, and the Convention on the Rights of the Child to ensure that children are only separated from their parents where this is in the best interests of the child, and to

ensure that where children are detained at all this is in conditions suitable to their special circumstances. These conventions also require these countries to protect migrants' right to family unity by not separating families unnecessarily, and to take steps to facilitate family reunification even if the state itself was not directly responsible for their separation.

Israeli NGOs, student groups, volunteers, and other private citizens have challenged the government's treatment of new African arrivals, and have tried to fill the void left by the government's failure to provide support services to them. In Egypt, where 40 percent of the population lives below or near the poverty line, the plight of foreign migrants and refugees has not gained significant public sympathy. Egyptian NGOs that service refugees and asylum seekers suffer from severe resource shortages, as well as from a generally repressive environment of governmental surveillance of civil society.

## **Methodology**

This report is based on interviews Human Rights Watch conducted with 69 refugees, asylum seekers, and other migrants in Israel and Egypt; members of NGOs and civil society groups in Israel and Egypt; Israeli and Egyptian government officials; officials from UNHCR Israel and UNHCR Egypt; and teachers of refugee or migrant children in Israel. Human Rights Watch also conducted phone interviews with current and former IDF soldiers, one of them high-ranking, and an Israeli government spokesman. We received written responses to questions from Israeli and Egyptian officials that are reflected in this report.

The Egyptian government did not respond to, and the Israeli government denied, Human Rights Watch's requests for permission to visit detention facilities where refugees, asylum seekers, and migrants are held. This report's descriptions of detention facilities draw on interviews with refugees, asylum seekers, and migrants who were detained, as well as with lawyers, representatives of community based organizations, and family members who visited detention facilities.

All the migrants, asylum seekers and refugees interviewed for this report have been disguised with initials (which do not reflect real names) in the interest of the security of the individuals concerned.

## II. Recommendations

### *To the Government of Egypt*

- Order border police to use lethal force only as a proportional and necessary response to a threat to life.
- Conduct a thorough and impartial investigation into the reported fatal shootings and beatings of 33 Sudanese and other African migrants, and make the results public. Prosecute any officer identified as having unlawfully killed or injured any migrants, or given orders to do so, and hold accountable any official with oversight responsibility for such incidents.
- Cease using military tribunals to try civilian migrants, refugees, and asylum seekers detained in the Sinai.
- Guarantee UNHCR access to all asylum seekers and refugees in official custody, as well as to migrants not yet registered with UNHCR who have international protection needs, and guarantee to detained migrants (including migrants who have not yet registered with UNHCR), the ability to contact UNHCR.
- Grant UNHCR unhindered, ongoing access to all detention centers, including those in security zones in the Sinai and near the border with Sudan.
- Cease deporting detained migrants until a system guaranteeing such access to UNHCR is fully functional, and ensure that this system is operational in all detention facilities in which migrants and refugees are detained, including but not limited to those in the Aswan, New Valley, Red Sea, and North Sinai governorates.
- Cease detaining children in regular jails, and pursue alternatives in line with international standards that protect family unity and promote the child's best interests.
- Allow external monitoring of conditions of detention at detention facilities where irregular border-crossers are held, in particular in the Sinai and along the southern border with Sudan.
- Pursue an agreement with Israel to allow for the reunification of families of refugees and migrants separated at the border.

- Consider steps to allow the local integration of refugees and asylum seekers, including granting refugees and asylum seekers the right to work, and addressing security concerns of refugee and asylum seeker communities.
- Implement a fair refugee status determination procedure with procedural safeguards, along with an effective asylum regime, consistent with Egypt's obligations in international law.

*To the Government of Israel*

- Conduct no additional “coordinated returns” to Egypt of persons who cross the Sinai border until:
  - Israel institutes a system that ensures border-crossers the ability to present asylum claims, and
  - Egypt credibly guarantees that it will (1) respect returnees’ rights under international human rights and refugee law; (2) not return them to countries where they could face persecution; and (3) allow UNHCR to visit all returnees in detention and monitor their conditions.
- Reject or substantially revise proposed legislation dealing with irregular border-crossing to remove provisions mandating immediate returns of migrants to Egypt and for mandatory minimum prison sentences for migrants who cannot be immediately returned.
- Ensure that persons who wish to present asylum claims after crossing the Sinai border into Israel are detained only as necessary to ascertain their identity and the basis of their asylum claims, and ensure that families are not separated in detention.
- Ensure that detention of children is in line with international standards concerning family unity and the best interests of the child.
- Allow external monitoring of conditions at detention facilities where irregular border-crossers are held, in particular the Ketziot facility.
- Implement a fair and expeditious refugee status determination procedure with procedural safeguards, along with an effective asylum regime, consistent with Israel’s obligations in international law.
- Cease future arrest sweeps and detentions of asylum seekers registered with UNHCR or whose status has been regularized, consistent with Israel’s obligations in international law.

*To UNHCR Egypt*

- Grant refugee status determination procedures to all asylum seekers, not only those with special protection needs, while continuing to grant asylum-seeker status to Sudanese in Egypt as a minimum form of protection from forcible return.
- Work with the Egyptian government to create a system of regular visits to all detention centers where migrants are kept.
- Work with UNHCR Israel to identify members of families of refugees and asylum seekers separated while crossing the Sinai border, with the aim of family reunification.
- Continue periodic meetings with refugee community-based organizations and outreach to improve relations with refugee communities in Egypt.
- Provide technical assistance to the National Assembly to develop a refugee law consistent with Egypt's accession to the Refugee Convention and Protocol, and assist the government to institute a refugee status determination procedure and asylum regime that meet international standards.

*To UNHCR Israel*

- Work with UNHCR Egypt to identify members of families of refugees and asylum seekers separated while crossing the Sinai border, with the aim of family reunification.
- Provide technical assistance to the Knesset to develop a refugee law consistent with its accession to the Refugee Convention and Protocol, and assist the government to institute refugee status determination procedures and an asylum regime that meet international standards.

*To the international community*

- Consider providing more resettlement spaces for refugees in Egypt and Israel.

*To the government of the United States*

- Ensure that no funding, training, or weapons are supplied to units of Egyptian border police responsible for using lethal force against migrants, asylum seekers, or refugees.

### III. Background: Egypt's and Israel's Refugee and Asylum Seeker Populations

The number of migrants in Egypt is currently estimated at between 750,000 and 4 million people, of whom some 43,000 are registered as asylum seekers or have been recognized as refugees.<sup>1</sup> Sudanese are by far the largest group in the migrant population.

Until 2005, Israel was the country of asylum of only a few hundred non-Jewish African refugees and asylum seekers.<sup>2</sup> Since 2006, more than 13,000 refugees, asylum seekers, and migrants, primarily from Eritrea (4290), Sudan (3714), and Côte d'Ivoire (1284), have sought asylum in Israel.<sup>3</sup> The vast majority have entered across the Sinai border between Egypt and Israel. Many paid smugglers who dropped them off within walking distance of the Egyptian side of the border. Although the Egyptian government designates the border as a closed security zone—portions along and to the east of the Gaza Strip and near the Israeli city of Eilat are fenced—much of the border's 266-kilometer length is physically open.

Many Sudanese who make or attempt the crossing into Israel are asylum seekers and refugees who struggled for years to live in Egypt. Other Sudanese migrants appear to have fled from the armed conflict in Darfur and traveled through Egypt

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<sup>1</sup> Katarzyna Grabska, "Living on the Margins: Analysis of the Livelihood Strategies of Sudanese Refugees with Closed Files in Egypt," The American University in Cairo, Forced Migration and Refugee Studies, Working Paper No. 6, June 2005, [http://www.aucegypt.edu/ResearchatAUC/rc/cmrs/reports/Documents/Living\\_on\\_Margins\\_Final\\_July\\_2005\\_000.pdf](http://www.aucegypt.edu/ResearchatAUC/rc/cmrs/reports/Documents/Living_on_Margins_Final_July_2005_000.pdf) (accessed September 26, 2008), p. 17. According to UNHCR figures, as of January 2008, there were 42,887 refugees and asylum seekers in Egypt, including 23,681 Sudanese. UNHCR, "Fact Sheet - Egypt, 2007/January 2008," copy on file with Human Rights Watch.

<sup>2</sup> According to the Hotline for Migrant Workers, an Israeli NGO that provides legal services to non-Israelis, there were 56 Sudanese in Israel by the end of 2005, and 260 by the end of 2006. See Hotline for Migrant Workers, "Sudanese Refugees in Israel," March 8, 2008, <http://www.hotline.org.il/english/news/2008/Hotline030808.htm> (accessed August 26, 2008). According to UNHCR figures, in 2002 and 2003 the main groups of refugees and asylum seekers in Israel included 142 Sierra Leoneans and 77 Ethiopians. In 2004 there were 245 Ivorians, 103 Congolese, 68 Sierra Leoneans, 65 Liberians, and 61 Ethiopians. The numbers in 2005 were almost unchanged: 271 Ivorians, 109 Congolese, 73 Liberians, 69 Sierra Leoneans, and 50 Ethiopians. *UNHCR Statistical Yearbook* (Geneva: UNHCR), editions for 2003-2005, Israel country data sheet, <http://www.unhcr.org/statistics.html> (accessed October 13, 2008).

<sup>3</sup> According to UNHCR figures, 1,411 persons sought asylum in Israel in 2006 (including 28 Eritreans, 271 Sudanese, and 146 Ivorians); 5,559 in 2007 (including 1,763 Eritreans, 1,688 Sudanese, and 751 Ivorians); and 6,034 from January to September 2008 (including 2,499 Eritreans, 1,755 Sudanese, and 387 Ivorians). UNHCR Israel figures are on file with Human Rights Watch.

quickly on a direct route to Israel. Many Eritreans likewise sought to transit directly through Sudan and Egypt en route to Israel.

Since at least the outbreak of the second Sudanese civil war in 1983, which displaced some four million southern Sudanese and left almost two million dead, Egypt has been host to a large Sudanese population.<sup>4</sup> The war between the government in Khartoum and the Sudan People's Liberation Movement/Army (SPLM/SPLA) formally ended with the Comprehensive Peace Agreement in January 2005. Since 2003, however, a separate conflict in Darfur, western Sudan, has killed 300,000 people and displaced 2.7 million.<sup>5</sup>

Refugees from armed conflicts in and between countries in the Horn of Africa since the 1990s, and from political repression in those countries, have also sought safety in Egypt.

After Israeli public figures likened the situation in Darfur to the Holocaust, then-Prime Minister Ehud Olmert instructed that 500 (later increased to 600) Darfuris be granted renewable temporary residency permits ("A-5 visas") in September 2007.<sup>6</sup> According to UNHCR, as of August 12, 2008 there were roughly 1,200 Darfuris in Israel, which means that at least 600 Darfuris remained without status. The decision bypassed many non-Darfuris with valid refugee claims, as well as at least 150 Darfuris who did not arrive in Israel by the announced cut-off date. The government also granted renewable work permits ("B-1 visas") to roughly 2,000 Eritreans who arrived before December 25, 2007. Eritreans who arrived in Israel after that date

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<sup>4</sup> "Millions dead in Sudan civil war," *BBC News Online*, December 11, 1998, <http://news.bbc.co.uk/2/hi/africa/232803.stm> (accessed July 1, 2008); "Sudan Civil War," *GlobalSecurity.org*, <http://www.globalsecurity.org/military/world/war/sudan.htm> (accessed July 1, 2008).

<sup>5</sup> "Darfur: top UN relief official 'deeply troubled' by attacks on aid workers," UN News Center, August 1, 2008, <http://www.un.org/apps/news/story.asp?NewsID=27562&Cr=Darfur&Cr1> (accessed September 8, 2008) (quoting UN Under-Secretary-General for Humanitarian Affairs John Holmes).

<sup>6</sup> Ilene R. Prusher, "Israel to grant Darfur refugees citizenship," *Christian Science Monitor*, September 6, 2007, <http://www.csmonitor.com/2007/0906/p05s02-wome.html> (accessed June 10, 2008). The Israeli press cited as a precedent Israeli Prime Minister Menachem Begin's decision to accept 66 Vietnamese "boat people" in 1977, whose case had been likened at the time to the plight of Jews on "refugee ships" seeking asylum from Nazi Germany. See Tom Tugend, "Vietnamese 'boat people' to become Israeli," *Jerusalem Post*, October 5, 2006, <http://www.jpost.com/servlet/Satellite?pagename=JPost%2FJPostArticle%2FShowFull&cid=1159193357339> (accessed April 16, 2008).

began to receive work authorizations in February 2008, but these documents do not permit them to reside or work in Tel Aviv.<sup>7</sup>

## International Legal Obligations Toward Refugees

Egypt and Israel are states parties to the 1951 Refugee Convention and its 1967 Protocol.<sup>8</sup> Egypt is also a party to the African Refugee Convention of 1974.<sup>9</sup> As states parties to the framework of international legal protection for refugees, they should not punish refugees fleeing from persecution. They may detain refugees and asylum seekers, but only as necessary to regularize their status, such as by ascertaining their identity and the basis of asylum claims.<sup>10</sup>

International standards further obligate Egypt and Israel to afford detained migrants the opportunity to present asylum claims before deporting them. Asylum procedures should meet minimal standards, including that they be conducted by persons specifically trained in refugee law, who speak a language understood by the asylum seeker.<sup>11</sup> Asylum seekers have the right to appeal rejections of their claims, and states must not deport them before allowing such appeals.<sup>12</sup>

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<sup>7</sup> The Israeli Ministry of Interior-issued documents require Eritreans to reside in areas north of the city of Hadera and south of the city of Gedera. Human Rights Watch email correspondence with Sigal Rosen, Hotline for Migrant Workers (Israeli NGO), September 29, 2008.

<sup>8</sup> Convention relating to the Status of Refugees (Refugee Convention), 189 U.N.T.S. 150, entered into force April 22, 1954, acceded to by Egypt on May 22, 1981, and ratified by Israel on October 1, 1954; and the Protocol Relating to the Status of Refugees, 606 U.N.T.S. 267, entered into force October 4, 1967 (abolishing the Refugee Convention's temporal and geographic restrictions), acceded to by Egypt on May 22, 1981, and by Israel on June 14, 1968.

<sup>9</sup> Convention Governing the Specific Aspects of Refugee Problems in Africa (African Refugee Convention), 1001 UNTS 45, entered into force June 20, 1974, acceded to by Egypt June 12, 1980.

<sup>10</sup> See the Refugee Convention, art. 31, and the associated UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers, February 1999, <http://www.unhcr.org.au/pdfs/detentionguidelines.pdf> (accessed September 28, 2008).

<sup>11</sup> UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* (Geneva: UNHCR, 1979, reedited 1992), HCR/IP/4/Eng/REV.1, <http://www.unhcr.org/publ/PUBL/3d58e13b4.pdf> (accessed September 28, 2008).

<sup>12</sup> UNHCR's ExCom, which is currently made up of 76 member States and meets annually to review and approve UNHCR's programmes and advise on international protection and discuss other issues, issued a general conclusion that "the applicant should be permitted to remain in the country pending a decision on his initial request by the competent authority" and "should also be permitted to remain in the country while an appeal to a higher administrative authority or to the courts is pending." UNHCR ExCom Conclusion No. 8 (XXVIII) – 1977: "Determination of Refugee Status," para. (e)(vii).

Egypt has no national legislation to enact the obligations it undertook by acceding to international and regional refugee conventions.<sup>13</sup> Under the terms of a 1954 Memorandum of Understanding, Egypt has devolved all responsibility for refugee status determination (RSD) to UNHCR.<sup>14</sup> A possible factor in some migrants' and refugees' choices to flee to Egypt in the 1990s was the fact that UNHCR's Egypt office, as well as private sponsorship programs to Canada, Australia, the United States, and Finland, resettled large numbers of refugees in third countries.<sup>15</sup> In recent years, resettlement from Egypt to third countries has slowed significantly, however. Given the security problems many refugees and asylum seekers face in Egypt and the lack of durable solutions there, Egypt cannot in many cases be said to be providing refugees and asylum seekers effective protection.<sup>16</sup> (For more on security problems and lack of durable solutions, including resettlement, see Chapter IV, below.)

Israel lacks asylum legislation, and in the majority of cases the government grants temporary asylum status on a group basis, depending on the nationality of the claimant (see Chapter VII). In a minority of cases that fall outside this group-based protection procedure, UNHCR adjudicates individual asylum claims and presents its recommendations to a National Status Granting Body that makes final decisions.

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<sup>13</sup> Article 53 of Egypt's constitution prohibits the extradition of "political refugees," but defines this category as "foreigner[s] persecuted for defending the people's interests, human rights, peace or justice," which is much narrower than the international definition of a refugee as anyone who, "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it." Refugee Convention, art. 1(a)(2). In practice, by article 53's narrow interpretation of the right to "political asylum," only a handful of cases of very high-level government officials have qualified.

<sup>14</sup> UNHCR signed a Memorandum of Understanding (MOU) with Egypt on February 10, 1954.

<sup>15</sup> One observer characterized this as "one of the largest resettlement programs in the world." See Grabska, *Living on the Margins*, p. 4.

<sup>16</sup> In a statement to the UNHCR ExCom in October 2004, Director of International Protection Erika Feller clarified that effective protection for refugees is that which, at a minimum, guarantees:

there is no likelihood of persecution, of refoulement or of torture or other cruel and degrading treatment;

there is no other real risk to the life of the person[s] concerned;

there is a genuine prospect of an accessible durable solution in or from the asylum country, within a reasonable timeframe;

pending a durable solution, stay is permitted under conditions which protect against arbitrary expulsion and deprivation of liberty and which provide for adequate and dignified means of subsistence;

the unity and integrity of the family is ensured; and the specific protection needs of the affected persons, including those deriving from age and gender, are able to be identified and respected.

The cornerstone principle of refugee law, which is also found in the Convention Against Torture (CAT) and the International Covenant on Civil and Political Rights (ICCPR), prohibits both Egypt and Israel from returning refugees to countries where they have a well-founded fear of persecution (refoulement) or to third countries that might not respect that prohibition.<sup>17</sup> The legal prohibition against refoulement is not limited in application to formally-recognized refugees, but applies to all persons who are outside of their country and are unwilling or unable to return due to a well-founded fear of persecution, and to all persons who would face a substantial risk of torture or cruel, inhuman or degrading treatment on return.<sup>18</sup> In April 2008 Egyptian authorities deported 49 Southern Sudanese, including recognized refugees and asylum seekers, to Sudan. In June 2008 Egypt forcibly returned up to approximately 1,200 Eritreans, at least 740 of whom were arrested and remain in detention at military facilities in Wei, and who face a grave risk of torture and prolonged incommunicado detention.<sup>19</sup> Israel deported to Egypt 48 (mostly Sudanese) migrants in August 2007, and a further 91 migrants in August 2008, despite objections from parliamentarians that such deportees would in turn be deported from Egypt to situations of risk. These various deportations are detailed in the chapters below.

Other international instruments to which both Egypt and Israel are party contain important human rights protections for persons notwithstanding their status as migrants, asylum seekers, or refugees; these are referenced in the chapters below.<sup>20</sup>

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<sup>17</sup> The prohibition against refoulement is enshrined in the Refugee Convention (article 33), the Convention Against Torture (article 3.1), the ICCPR (as derived from article 7), and international customary law. See also *Chahal v. the United Kingdom*, no. 22414/93, judgment of 15 November 1996, (1996, § 80); the New Zealand case of *Zaoui v. Attorney General* (2005), Supreme Court of New Zealand, CIV SC 13/04, judgment of 14 October 2004. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, acceded to by Egypt on June 25, 1986, and ratified by Israel on October 3, 1991; the International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Egypt on January 14, 1982 and by Israel on October 3, 1991.

<sup>18</sup> *Ibid.*

<sup>19</sup> “Egypt: Investigate Forcible Return of Refugees to Sudan,” Human Rights Watch news release, May 30, 2008, <http://hrw.org/english/docs/2008/05/30/egypt18977.htm>; Cynthia Johnston, “UN in frank talks with Egypt on Eritrea refugees,” Reuters, June 30, 2008, [http://uk.reuters.com/article/homepageCrisis/idUKL30287152.CH\\_242020080630](http://uk.reuters.com/article/homepageCrisis/idUKL30287152.CH_242020080630) (accessed September 28, 2008); Human Rights Watch email correspondence with Elsa Chyrum, Human Rights Concern Eritrea, August 15, 2008; Amnesty International, “Eritrea/Egypt: Arbitrary detention/Fear of torture and other ill treatment – Up to 1,200 forcibly returned asylum seekers,” Urgent Action 225/08, AI Index: AFR 64/004/2008, August 13, 2008, <http://www.amnesty.org/en/library/asset/AFR64/004/2008/en/1a74c9f5-69ed-11dd-8e5e-43ea85d15a69/af640042008eng.pdf> (accessed September 28, 2008).

<sup>20</sup> The International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, ratified by Egypt on January 14, 1982, and by Israel on October 3, 1991; the Convention on the Rights of the Child (CRC), adopted

## IV. Reasons for the Journey

*My choice was to stay in Cairo, go through Libya [to Europe] and maybe die at sea, or go to Israel and die by a bullet. I preferred to die by a bullet.*

—J.B., a Darfuri man who was arrested by Egyptian border police

Both Egyptian and Israeli officials describe the majority of those crossing the Sinai border as “economic migrants,” a term used by governments to refer to people seeking better opportunities, as opposed to “refugees” fleeing from persecution or danger. Rana’an Dinur, the director-general of the Prime Minister’s Office in Israel, has been tasked with overseeing the government’s policy regarding the new arrivals. He explained in an email to Human Rights Watch,

Not everyone who arrives in Israel through the Egyptian border is a refugee, and certainly not Sudanese. Over the past 18 months, we have been witness to a significant increase in the phenomenon of infiltration to Israel through the Egyptian border, when only a minority of those who cross into Israel are refugees from Sudan. The overwhelming majority are Sudanese, Eritrean[s] and other Africans who have infiltrated in search of employment. There are also quite a few who already received refugee status in other countries, but who heard of the conditions in Israel, and therefore decided to come here.<sup>21</sup>

Israel is the wealthiest country in the region. The UN’s Human Development Index for 2007-08 ranks Israel as the 23rd most developed country in the world; Egypt stands

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November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, ratified by Egypt on July 6, 1990, and by Israel on October 3, 1991; the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981, ratified by Egypt on September 18, 1981, and by Israel on October 3, 1991.

<sup>21</sup> Email to Human Rights Watch from Hillel Freeman on behalf of Rana’an Dinur, director-general of the Israeli Prime Minister’s Office, March 9, 2008. The message continued, “It is important to note that, even in the Israel Prison Service (IPS) facilities, the infiltrators “enjoy” a bed and warm meals, which they almost certainly did not receive in their countries of origin or in Egypt.” Dinur’s characterization of these “economic migrants” as “infiltrators,” a term derived from an Israeli law intended to prevent threats to national security, is discussed in section VII, below.

at 112th place. Sudan, Eritrea, and the countries bordering them are still more impoverished.<sup>22</sup>

Yet the category of economic migration does not fully explain this new population flow. Human Rights Watch spoke to individuals from various national groups, who described reasons for risking the journey to Israel that cannot be reduced simply to “economic migration.” Many Southern Sudanese and some Darfuris have lived for years in Egypt, and asylum seekers and refugees from these groups told us they had decided to go to Israel because they felt trapped in Egypt, and found it difficult to survive. Egypt made reservations upon acceding to the Refugee Convention that limit its obligations in various areas including equal access to protection under labor laws, thereby denying the right to work,<sup>23</sup> although under its human rights treaty obligations Egypt is obliged to provide the right to work and an adequate standard of living, as well as to the highest attainable standard of health.<sup>24</sup> Migrants and refugees in Egypt also complain of pervasive racism and official violence.

## Sudanese Refugees and Asylum Seekers

Human Rights Watch spoke with Southern Sudanese and Darfuris who vividly remembered brutal experiences in Sudan. A 33-year-old man now living in Tel Aviv recalled,

I left El Ginena [West Darfur] in 2003, in April, the last of the month. Because the Janjaweed attacked my village, Arwalla. They raped women, and they killed the eldest and the kids and they threw them in the fire. I saw. I saw my parents, my mother, father, brother, and sister

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<sup>22</sup> By the same measure, which takes many indices of development into account, Sudan is ranked 147; Eritrea, 157; and Ethiopia, 169. In terms of neighboring countries, Chad ranks 160. The IMF's 2007 rankings of countries by the single criterion of per capita GDP tell a similar story. Israel was the world's 31<sup>st</sup> richest country; Egypt was the 115<sup>th</sup>.

<sup>23</sup> Egypt reserved with regard to articles 12(1) (personal status), 20 (rationing), 22(1) (access to primary education), 23 (public relief and assistance), and 24 (labor legislation and social security).

<sup>24</sup> ICESCR, arts. 6 (right to work), 9 (right to social security), 11 (right to adequate standard of living), and 12 (right to highest attainable level of health). Moreover, both the 1954 MOU with UNHCR and the reservations have been partly superseded, at least formally, by a confusing set of laws and regulations from various ministries. See, for example, United States Committee for Refugees and Immigrants (USCRI), *World Refugee Survey 2007* (Arlington, VA: USCRI, 2007), Egypt chapter, <http://www.refugees.org/countryreports.aspx?id=1994> (accessed October 2, 2008): “According to a 2005 Ministry of Health decision, foreigners, including refugees, had a right to public primary health services on par with nationals, except that only indigent Egyptians were eligible for free services other than in emergencies.”

being killed and they burned our houses. And I saw them rape women. This happened to me. I was alone when I left, none of my family made it.<sup>25</sup>

In the vast majority of cases, Sudanese people interviewed for this report originally fled their homeland for Egypt, where UNHCR recognized them as refugees or registered them as asylum seekers.

### *Security problems in Egypt*

Many Sudanese asylum seekers and refugees told Human Rights Watch that serious and unresolved security issues in Egypt lay behind their decision to go to Israel.

In late September 2005, Sudanese asylum seekers and refugees began a sit-in demonstration in Mustafa Mahmoud Park, outside UNHCR's Cairo offices, which grew to include roughly 2,000 people and lasted for three months.<sup>26</sup> The protestors presented a list of demands to UNHCR—some of which reflected grievances not within UNHCR's control, including increases in living allowances and in rates of resettlement to third countries. On December 30 at least 27 Sudanese were killed and hundreds more were arrested when Egyptian police violently dispersed the demonstration. At least two of the organizers of the demonstration were still being detained in Qanatir prison outside Cairo in June 2008, two-and-a-half years after the events.<sup>27</sup>

When Human Rights Watch asked them about life in Egypt, Sudanese asylum seekers and refugees almost uniformly referred to the Egyptian police crackdown at Mustafa Mahmoud. Some cited it as the primary reason they left for Israel.<sup>28</sup> Others

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<sup>25</sup> Human Rights Watch interview with A.I., Tel Aviv, February 29, 2008. For Human Rights Watch's work on Sudan, see <http://hrw.org/doc/?t=africa&c=sudan>.

<sup>26</sup> For an account of the demonstration and its denouement, see Fateh Azzam, "A Tragedy of Failures and False Expectations: Report on the Events Surrounding the three-month Sit-In and Forced Removal of Sudanese Refugees in Cairo, September–December 2005," The American University in Cairo, Forced Migration and Refugee Studies Program, June 2006, [http://www.aucegypt.edu/ResearchatAUC/rc/cmrs/reports/Documents/Report\\_Edited\\_v.pdf](http://www.aucegypt.edu/ResearchatAUC/rc/cmrs/reports/Documents/Report_Edited_v.pdf) (accessed September 28, 2008).

<sup>27</sup> Human Rights Watch interview with refugee lawyer (name withheld), Cairo, March 12, 2008.

<sup>28</sup> Human Rights Watch interview with K K., Tel Aviv, March 1, 2008. Human Rights Watch was told that two of the organizers of the demonstration had fled to Israel. Human Rights Watch interview with N.N., Cairo, March 11, 2008.

said they continue to feel its effects: One refugee who played a role in the demonstrations said police detained him for three days in April 2007. “They told me they recognized me from when I spoke to international media during the demonstration,” he said, adding that a state security officer threatened to “cut my tongue” when they learned that he planned to organize a ceremony in December 2007 commemorating those who died in Mustafa Mahmoud Park.<sup>29</sup> A Southern Sudanese community leader in Cairo said his community “has orphans from Mustafa Mahmoud and no one can take care of them. Others had their children killed. The Egyptian government needs to ensure accountability for Mustafa Mahmoud, either through jail terms for those responsible or [by] compensating victims and their families.”<sup>30</sup>

Such an outcome appears unlikely. A flawed and superficial internal police investigation concluded in May 2006 that there had been no wrongdoing on the part of the police.<sup>31</sup> “My uncle Amoko died there,” a young Southern Sudanese man said. “To read the death certificate is very strange. It said he had lung cancer or heart trouble. But he was healthy before he died.”<sup>32</sup> A senior official in Egypt’s Ministry of Foreign Affairs, who spoke on condition of anonymity, seemed to sum up the official attitude when he told Human Rights Watch,

I have copies of police reports of harassment and drunkenness [by the demonstrators]. I don’t recall one bullet being shot, just water cannons. They [police] issued warnings and followed procedures. And they used the cannons for short periods. There were mistakes made, and one life lost is one too many. But I looked at all the coroner’s reports, and all

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<sup>29</sup> Human Rights Watch interview with N.N., Cairo, March 10, 2008.

<sup>30</sup> Human Rights Watch interview with M.P., Dinka community leader, Cairo, March 15, 2008. According to the UNHCR Egypt spokesperson, “We’ve been trying to improve relations with the refugee community. We fund CBOs [community based organizations] and meet weekly with them. The team we send to meetings includes protection, resettlement, voluntary repatriation, and community services officers. There are six CBOs and we alternate weekly meetings with all of them. Our funding helps CBOs rent locations, get equipment like photocopiers, and training staff. We’re doing an outreach campaign on the dangers of the trip to Israel through these meetings.” Human Rights Watch interview with UNHCR Egypt spokesperson, October 6<sup>th</sup> City, March 11, 2008.

<sup>31</sup> Human Rights Watch et al., “Egypt: New Investigation Needed Into Assault on Sudanese Protestors,” <http://hrw.org/english/docs/2007/12/29/egypt17666.htm>.

<sup>32</sup> Human Rights Watch interview with I.K., Tel Aviv, February 27, 2008.

but one death was the result of trampling. I have concerns about one death, but not the rest.<sup>33</sup>

A majority of the Sudanese whom Human Rights Watch interviewed, in Egypt and Israel alike, added that a significant factor in their decision to flee to Israel (or their plans to do so) was their belief that UNHCR's regional office had collaborated with the government in the forced removals from Mustafa Mahmoud Park, and could not be trusted to protect them in future. In an untitled document, dated October 25 2005, UNHCR Cairo sought to debunk this perception:

Rumour: UNHCR has requested the Egyptian authorities to diffuse the demonstration by force. False. From the outset, UNHCR has appealed to the authorities for a peaceful resolution to the situation. The authorities will decide to take the necessary action in accordance with their standard operating procedures for law enforcement and UNHCR will have little power to influence their actions.<sup>34</sup>

According to an eyewitness cited in an American University in Cairo report on the demonstrations, a UNHCR representative told refugees gathered in the park on December 19, 2005,

You will have casualties, not only in terms of physical suffering but also in terms of the legal implications. And we cannot be held responsible for the casualties or the failure to meet the legal requirements. And the reason I say this is because UNHCR has ... done everything that is required of us, but you are not willing to vacate this park.<sup>35</sup>

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<sup>33</sup> Human Rights Watch interview with B.N., Ministry of Foreign Affairs, March 17, 2008.

<sup>34</sup> Untitled UNHCR Cairo document listing 10 "rumours," on file with Human Rights Watch.

<sup>35</sup> Azzam, "A Tragedy of Failures and False Expectations," pp. 32-33.

UNHCR informed Egypt's Ministry of Foreign Affairs that it could do no more to resolve the situation in the park in a letter dated December 22, 2005.<sup>36</sup> As of October 15, 2008, UNHCR Egypt had not responded to Human Rights Watch requests for further information on the demonstration.<sup>37</sup>

The number of Sudanese fleeing to Israel increased in the months immediately after the events in Mustafa Mahmoud Park, and continued to grow. In 2005, before the events, 56 Sudanese had entered Israel; 270 more entered in 2006.<sup>38</sup>

Sudanese refugees and asylum seekers said they also faced more generalized security problems in Egypt. Several Sudanese said that while living in Cairo they had been detained and tortured for their affiliations with Southern Sudanese or Darfuri groups. A leader of a Fur dance troupe in Cairo said Egyptian police arrested him before his troupe was scheduled to perform on July 15, 2007, and detained him for three days without charge. "I [had been living] in Egypt for nearly four years, in Cairo. I collected iron from the garbage and I sold it," he said, explaining that he sometimes went hungry, but that it was his experience in jail that made him decide to flee for Israel. "Jail was it. They would hit me in the chest and back and beat the soles of my feet with short sticks. It was difficult to leave Egypt—we knew the Egyptians might shoot us, but we decided to leave."<sup>39</sup>

A 26-year-old Southern Sudanese man, now living in Tel Aviv, said he was detained and beaten three times between 2004 and 2006 by Cairo police, apparently because of his relationship to the Sudanese People's Liberation Movement (SPLM) office in Cairo, where he formed an organization of Dinka youth whose relatives had been killed in the Sudanese civil war. Like several other Sudanese asylum seekers Human Rights Watch spoke with, he believes the Sudanese embassy in Egypt played a role in his repeated detentions in Cairo. "One time, the police pulled out my left thumbnail," he said, "and the last time they beat me really badly. I was bleeding

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<sup>36</sup> Ibid.

<sup>37</sup> Human Rights Watch letter to UNHCR Egypt spokesperson, September 16, 2008.

<sup>38</sup> Hotline for Migrant Workers, "Sudanese Refugees in Israel," March 8, 2008, <http://www.hotline.org.il/english/news/2008/Hotlineo3o8o8.htm> (accessed August 26, 2008).

<sup>39</sup> Human Rights Watch interview with B.M., Tel Aviv, February 29, 2008.

from my tongue, and my lower back and my arm still hurt. There was no help from the UN[HCR]; they told me to tell the police.”<sup>40</sup>

Victimization by police can occur absent any political connotation: In one particularly egregious case recounted to Human Rights Watch by a Cairo lawyer representing the victim, two police officers orally raped a Sudanese woman. Although the Cairo Criminal Court sentenced one of the officers to 25 years in prison, he is still at large, according to the lawyer.<sup>41</sup>

Many Sudanese said that attitudes among ordinary Egyptians were racist and frequently spilled over into violence. Egyptian police, they said, were reluctant to protect them. “[People] would hit me, calling me a black, and throw things and dirty water from their balconies,” a young Southern Sudanese man said. “Sometimes they would surround me and threaten me with a knife and steal everything from me. The policemen could see this and they wouldn’t do anything. If I found a policeman [he] would be cursing me. That’s why I left.”<sup>42</sup>

Many Sudanese asylum seekers told similar stories. Several said that Egyptian police had refused to protect them from violent attacks or to investigate attacks brought to their attention. One said, “I went out of my work one day, and an Egyptian man began insulting me, and he beat me. A policeman was watching. I asked for help, and he asked me what I was doing in Egypt.”<sup>43</sup>

### *Lack of durable solutions*

UNHCR identifies three “durable solutions” for refugees: voluntary repatriation to their home country, local integration in their host country, and resettlement to a third country.<sup>44</sup> Many Sudanese asylum seekers and refugees told Human Rights Watch

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<sup>40</sup> Human Rights Watch interview with A.M., Tel Aviv, March 1, 2008.

<sup>41</sup> She has brought charges against the two officers and, according to her lawyer, has been threatened by police. Human Rights Watch interview with refugee lawyer (name withheld), Cairo, March 12, 2008.

<sup>42</sup> Human Rights Watch interview with M.A., Southern Sudanese asylum seeker, Tel Aviv, February 28, 2008.

<sup>43</sup> Human Rights Watch interview with A.A., Southern Sudanese asylum seeker, Tel Aviv, February 28, 2008.

<sup>44</sup> See UNHCR, “Framework for Durable Solutions for Refugees and Persons of Concern,” May 1, 2003, <http://www.unhcr.org/refworld/docid/4124b6a04.html> (accessed October 3, 2008).

they had made or were considering the journey to Israel because none of these options were available to them: they felt trapped in an unlivable situation in Egypt, where they were unable to work; had no avenues to resettlement to a third country; and could not risk returning home.

All of the Sudanese whom Human Rights Watch interviewed in Egypt said that UNHCR Egypt had registered them as asylum seekers and recognized some as refugees. While being registered as asylum seekers generally protected them from deportation, it did not, in their view, allow them to enjoy the rights of a recognized refugee or provide adequate support for their livelihoods. In April 2008 Egyptian authorities deported 49 Southern Sudanese, including recognized refugees and asylum seekers, to Sudan. Some of the men were rounded up by police after Sudanese youth gangs in Cairo damaged cars during a fight; others were deported directly from prison. They were detained for four months by Government of South Sudan authorities in Juba before being released in July.<sup>45</sup>

### **Obstacles to local integration**

Integration in Egypt is extremely difficult. The right to work, to an education, to medical care, and to public assistance, are aspects of local integration, and these rights must be given substance for integration to be effective.<sup>46</sup> Although Egyptian authorities no longer stamp “not authorized to work” in passports of Sudanese asylum seekers, as they used to, it is practically impossible for poor non-Egyptians to find work in the formal economy due to quotas and other requirements.<sup>47</sup> Refugees can join the millions of Egyptians who work in the informal economy.<sup>48</sup> However, non-citizens have limited rights of redress if they are harmed or exploited in the workplace. As a refugee aid lawyer remarked,

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<sup>45</sup> Human Rights Watch email correspondence with Noriko Yoshida, UNHCR Juba, August 9, 2008. See “Egypt: Investigate Forcible Return of Refugees to Sudan,” Human Rights Watch news release, May 30, 2008, <http://hrw.org/english/docs/2008/05/30/egypt18977.htm>.

<sup>46</sup> Egypt is obliged to uphold these rights generally under the International Covenant on Economic, Social and Cultural Rights. For the importance of these rights to local integration, see UNHCR ExCom Conclusion No. 104 (LVI) -- 2005.

<sup>47</sup> Human Rights Watch interview with UNHCR Egypt spokesperson, March 11, 2008.

<sup>48</sup> Human Rights Watch interview with Tareq Maaty, minister plenipotentiary, deputy minister for refugees and consular affairs, Ministry of Foreign Affairs, Cairo, March 16, 2008.

Egyptians who work informally and don't get paid can take their claims to one of the Ministry of Labor's special courts. Under the labor law, if you can prove the work relationship by any means, even two witnesses, you can get help. The refugees can't go to court to claim their rights if they're abused. Or they won't, because they fear what will happen.<sup>49</sup>

Even well-educated refugees and asylum seekers find it difficult to work. An asylum seeker, originally from Darfur, who had run a law office in Khartoum for 10 years, said,

I went to the [Egyptian] lawyers' syndicate to ask for a work permit, but they said they couldn't help. I had to work as a security guard for three months. My boss was very kind with me, but suddenly he died. The other Egyptians who worked with us hated me, and they started transferring me around. Now, I am not working.<sup>50</sup>

Refugees and asylum seekers unable to find work in the informal economy face dire conditions. Due to budget limitations, UNHCR-provided living assistance to asylum seekers and refugees in Egypt covers only 20 to 30 percent of basic needs. UNHCR also provides one-time emergency grants.<sup>51</sup>

The Sudanese refugees and asylum seekers Human Rights Watch interviewed in Egypt and Israel also complained about the difficulty of accessing health care and enrolling their children or themselves in school. UNHCR provides, through its implementing partners Caritas and Catholic Relief Services (CRS), assistance to refugees and asylum seekers in Egypt in need of medical treatment and in order to offset the cost of school tuition, respectively.<sup>52</sup> Many Sudanese complained that these programs were inadequate for their needs. A Sudanese community leader in Cairo told Human Rights Watch,

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<sup>49</sup> Human Rights Watch interview with S.L., refugee lawyer, Cairo, March 10, 2008.

<sup>50</sup> Human Rights Watch interview with N.A., Cairo, March 11, 2008.

<sup>51</sup> Human Rights Watch interview with UNHCR Egypt spokesperson, March 11, 2008.

<sup>52</sup> UNHCR provides assistance with medical care via implementing partner Caritas, which provides primary care and referrals to a network of around 15 hospitals. UNHCR covers at least 75 percent of primary healthcare costs. In 2007, 31,582 received healthcare assistance. CRS funded all or part of the education costs of nearly 7,000 asylum seekers and refugees in 2007. The total population "of concern" to UNHCR Egypt is 43,000.

We know of 60 kids afflicted by rickets, and they get no treatment. Some of them can't even stand up to go to the bathroom alone. If you go to the UN[HCR] because you're sick they say, "Go to the hospital, then come to us with the receipt and we'll refund part of it." We can't afford that. They need to pay it up front.<sup>53</sup>

The UNHCR Egypt spokesperson noted that over 30,000 refugees and asylum seekers in Egypt received healthcare assistance during 2007, but acknowledged that UNHCR's funding was inadequate to meet some refugees' needs.<sup>54</sup>

Radwa Robie, of CRS, noted that her organization's educational grants, like Caritas' healthcare grants, are offered as reimbursements rather than as advances; in many cases, she said, qualifying asylum seekers and refugees must choose between paying for school and paying several months' worth of rent. Those whom UNHCR registers as asylum seekers or recognizes as refugees after the beginning of the school year are forced to wait until the following year to enroll in the grant program. And while the grants pay the tuition of schools run by refugee communities, the Egyptian school system does not recognize these schools' diplomas.<sup>55</sup>

### **Resettlement opportunities curtailed**

The lack of social and economic integration in Egypt is not new and does not, by itself, account for the recent surge of migration from Egypt to Israel. A factor that has changed is the availability of resettlement to third countries. The number of Sudanese resettled from Egypt with UNHCR's assistance has declined sharply since 2005. Western "resettlement countries," which informally notify UNHCR Egypt of their quotas and criteria and make the final decision on whether to accept a refugee for resettlement, have shown decreasing interest in resettling Sudanese refugees

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<sup>53</sup> Human Rights Watch interview with J.M., Sudanese community leader, Cairo, March 15, 2008.

<sup>54</sup> Human Rights Watch interview with UNHCR Egypt spokesperson, March 11, 2008.

<sup>55</sup> Refugees with the means to do so can enroll their children in Egyptian private schools. But even with the educational subsidy provided by UNHCR's implementing partner, CRS, most Sudanese, Eritreans, and other Africans find private schools too expensive (tuition starts at 5,000 Egyptian pounds per year). Several hundred refugees or asylum seekers have enrolled their children in Egyptian public schools, especially in Alexandria, which are less expensive but extremely difficult to access. The majority of Sudanese refugees and asylum seekers enroll their children in community-based schools, often run by churches and staffed by refugee teachers. These schools are relatively inexpensive, but the quality of education they offer is often poor. Human Rights Watch interview with Radwa Robie, management quality officer, CRS, Cairo, March 13, 2008.

from Cairo after the January 2005 signing of the Comprehensive Peace Agreement between the Khartoum government and the Sudanese People’s Liberation Movement/Army. The leading resettlement country, the United States, resettled 2,759 Sudanese from Cairo in 2004, 1,540 in 2005, 1,088 in 2006, and 312 in 2007.<sup>56</sup>

Behind the drop in availability of resettlement is a well-intentioned but flawed change of approach by UNCHR. Normally, when an individual approaches UNHCR, she is first registered as an asylum seeker and later has her asylum claim thoroughly adjudicated. If she is found to have a valid claim she is recognized as a refugee and may then be eligible for resettlement. In June 2004, after the May 26 ceasefire between the government of Sudan and the SPLM/SPLA, UNHCR Egypt ceased conducting refugee status determination for all Sudanese asylum seekers, a decision subsequently renewed every six months.<sup>57</sup> Whereas recognized refugees received “blue cards,” UNHCR began providing all Sudanese—including Darfuris—with “yellow cards” to designate them as asylum seekers.<sup>58</sup> By thus granting Sudanese temporary protection, UNHCR sought to give them a modicum of protection against arrest, detention, and deportation. If UNHCR had continued to process their cases, it would probably have found many not to qualify as refugees due to a fundamental change of circumstances in Southern Sudan. It would have closed their cases, and they would be subject to immigration enforcement in Egypt. UNHCR’s policy thus protected persons from Southern Sudan against deportation. However, it does not afford Darfuris the refugee status—and the possibility of being referred for resettlement to a third country—that their cases might merit if UNHCR were to adjudicate their claims.

Today, UNHCR Egypt conducts full refugee status determination only for individuals identified by a “needs-based” assessment that begins during their initial registration or through referrals. According to the UNHCR Egypt spokesperson,

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<sup>56</sup> RPC/ Report Statistician/WO 22474 Sudan Arrivals from Egypt FY 1995 through 2008, as of 23 June 2008. Data extracted from Worldwide Refugee Admissions Processing System (WRAPS), US Department of State, Office of Admissions, Refugee Processing Center, Bureau of Population, Refugees, and Migration, June 23, 2008.

<sup>57</sup> Azzam, “A Tragedy of Failures and False Expectations,” p. 10.

<sup>58</sup> Human Rights Watch interview with UNHCR Egypt spokesperson, March 11, 2008. According to the spokesperson, “After the 2005 peace agreement, Southern Sudanese would have no protection under the 1951 convention. So we stopped RSD [refugee status determination] and gave them all asylum seeker status and yellow cards. Closed files are not an issue for Sudanese now, because that only happens in cases of individual RSD.”

Through registration, we continue to screen people for resettlement according to needs-based criteria. These are female headed households, women at risk, people with life-threatening illnesses not treatable in Egypt, or individualized protection problems in Egypt. So both Darfuris and South Sudanese can get resettled if they're identified through the registration process. If they're screened this way they receive individual RSD [Refugee Status Determination] in order to be resettled.<sup>59</sup>

Despite requests for clarification, Human Rights Watch was unable to determine why UNHCR does not “freeze” Southern Sudanese at the asylum seeker level while still granting refugee status to Darfuris.<sup>60</sup> In practice, only a small number of Darfuris or other Sudanese receive full refugee status after being identified through the needs-based assessment procedure.

### **Repatriation not an option**

UNHCR provides small cash grants to assist in the voluntary repatriation of asylum seekers and refugees in Cairo who originate from Southern Sudan. In 2007 UNHCR assisted in the voluntary repatriation of more than 1,645 Sudanese from Egypt.<sup>61</sup> A UNHCR Egypt official told Human Rights Watch that UNHCR hopes to train voluntary returnees to match job opportunities available in southern Sudan.<sup>62</sup> But several Sudanese in Cairo, citing relatives living in Southern Sudan, said the situation there remains too volatile and dangerous to risk returning.<sup>63</sup> Others said they would consider repatriation but that UNHCR's repatriation assistance grant was inadequate to pay for the journey home, let alone the cost of starting their lives anew.

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<sup>59</sup> Ibid.

<sup>60</sup> Human Rights Watch letter and email to UNHCR Egypt spokesperson, April 5, 2008. Human Rights Watch re-sent the letter on September 16, 2008.

<sup>61</sup> UNHCR, “Fact Sheet – Egypt, 2007 / January 2008,” on file with Human Rights Watch.

<sup>62</sup> Human Rights Watch interview with UNHCR Egypt spokesperson, March 11, 2008.

<sup>63</sup> Human Rights Watch interviews with A.P., M.P., and J.M., Cairo, March 15, 2008. A surge of violence in Abyei, Southern Sudan, in May 2008 seems to lend substance to their fears. See Nicholas D. Kristof, “Africa’s Next Slaughter,” *New York Times*, March 2, 2008, [http://www.nytimes.com/2008/03/02/opinion/02kristof.html?\\_r=1&oref=slogin](http://www.nytimes.com/2008/03/02/opinion/02kristof.html?_r=1&oref=slogin) (accessed March 3, 2008).

A southern Sudanese community leader in Cairo summed up the reasons people in his community were leaving for Israel.

We don't have the right to be in Egypt and work or to live decently, and if we went back [to Southern Sudan] we don't know what we'd find; everything that we had there was destroyed. The UN says that Southern Sudan is now at peace and they won't take us [for resettlement]. But there is no infrastructure there, there are still landmines and militias fighting, and rebel movements. There is no way for the government in Southern Sudan to protect anyone who returns. And we can't go to other Arab countries. This is why people are going to Israel. If America or Canada or Australia were next door we'd go there. But Israel is it.<sup>64</sup>

## **Horn of Africa Refugees and Asylum seekers**

Unlike the Sudanese who undertook the journey to Israel, the majority of Eritreans spent relatively little time in Egypt and do not apply for asylum there.<sup>65</sup>

Eritreans fleeing to Egypt and then to Israel tend to base their subsequent refugee claims on their having evaded the draft for potentially endless and difficult military service, for which the consequence if caught may be mistreatment, torture or execution, or on having experienced persecution as members of an unrecognized religious minority, such as Pentecostals or Seventh Day Adventists.<sup>66</sup> Eritreans who apply for asylum in Egypt or Israel might also have sur place refugee claims that originate due to the act of leaving their country of origin.<sup>67</sup> In addition, the Eritrean

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<sup>64</sup> Human Rights Watch interview with M.P., Dinka community leader, Cairo, March 15, 2008.

<sup>65</sup> UNHCR Israel had registered 2,800 Eritrean asylum seekers as of February 2008; UNHCR Egypt had registered 1,400 by the same date.

<sup>66</sup> Human Rights Watch interview with Michael Kagan, senior fellow in human rights law, American University in Cairo, March 10, 2008.

<sup>67</sup> The Eritrean government has publicly taken the position that people who leave Eritrea for whatever reason do so as a result of a CIA plot to undermine and destroy the government by luring the country's population away. "Interview: Eritrean leader blames CIA plot for youth exodus," Reuters, May 13, 2008, <http://www.reuters.com/article/latestCrisis/idUSL13745161> (accessed August 30, 2008).

government regards Eritreans who apply for asylum elsewhere as traitors; they face the risk of detention and torture if returned.<sup>68</sup>

Eritreans in Israel and Egypt told Human Rights Watch that they must cross each border on their journey clandestinely. While in Sudan they faced the risk of deportation back to Eritrea.<sup>69</sup> One Eritrean detained while attempting to travel through Egypt to Israel told Human Rights Watch,

I left Eritrea because the authorities wanted to imprison me and my husband on account of our faith. My husband was smuggled to Sudan, then I was smuggled afterwards. It cost US\$3000. But I had heard that the Sudanese government wanted to detain people like us and send them back to Eritrea. I stayed in Khartoum for less than a month, because of this problem. Then I was smuggled to Egypt, for around \$800.<sup>70</sup>

(Egypt's deportation of Eritreans en masse is described in Chapter VI.)

From Sudan, some Eritrean migrants crossed on foot into Egypt, traveling at night.<sup>71</sup> Once in Egypt, Eritrean migrants generally attempt to travel to Cairo, where the majority may spend a few days or weeks, in many cases without applying for asylum with UNHCR, before paying middlemen and smugglers to take them to the Sinai border.

Ethiopian refugees reported similar circumstances in Egypt to Eritreans, although Human Rights Watch is not aware of recent cases where Egypt forcibly deported

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<sup>68</sup> Asylum seekers who are sent back to Eritrea face immediate imprisonment. The families of people who leave Eritrea face reprisal at the hands of the government. See also Amnesty International, "Sweden: Deportation / Torture: Jamil Mohamed Burhan," AI Index: EUR 42/001/2008, February 21, 2008, <http://www.amnesty.org/en/library/info/EUR42/001/2008/en> (accessed October 3, 2008).

<sup>69</sup> As of August 2007 there were approximately 130,000 Eritreans in refugee camps in Sudan. Reportedly Eritrean government forces have crossed into Sudan and raided some of the camps. See "Longterm Eritrean refugees in Sudan need durable solution – UN agency," UN News Service press release, August 22, 2007, <http://www.un.org/apps/news/story.asp?NewsID=23572&Cr=eritrea&Cr1> (accessed October 3, 2008).

<sup>70</sup> Human Rights Watch telephone interview with F.T., Eritrean woman detained in Aswan, March 17, 2008.

<sup>71</sup> Human Rights Watch interviews with J.R., refugee aid worker, Cairo, March 10, 2008.

Ethiopians to their home country. Ethiopian migrants told Human Rights Watch that they also had to be smuggled through Sudan into Egypt, and had made or were considering the journey to Israel because their community suffers similar problems to those described to us by Sudanese migrants.<sup>72</sup>

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<sup>72</sup> Human Rights Watch interviews with T.M. and S.A., Tel Aviv, February 28, 2008, and G.T., Ethiopian community leader, Cairo, March 17, 2008.

## V. Egypt's Lethal Border Control Policy in Sinai, and Israeli Pressure for Border Control and Returns

### June 2007: Policies Toughen

In late June 2007, Egyptian President Hosni Mubarak and Israeli then-Prime Minister Ehud Olmert, meeting in the Sinai resort of Sharm el-Sheikh, discussed the issue of the increasing numbers of Africans crossing into Israel from Egypt.<sup>73</sup> Olmert stated on July 1 that he had reached an “understanding” with Mubarak on “ways to deal with infiltration into Israel via the Egyptian border.”<sup>74</sup> According to Olmert, Egypt agreed

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<sup>73</sup> UNHCR's position is that coordinated returns between countries are acceptable in principle if credible safeguards are in place, including guarantees of non-refoulement and humane treatment. Human Rights Watch interview with Steven Wolfson, UNHCR liaison, Tel Aviv, March 4, 2008. On June 20, 2007, Sharon Harel, a UNHCR representative, stated to a Knesset committee that Israel should not deport Sudanese to Egypt due to the absence of such safeguards. However, Israeli authorities later claimed, apparently on the basis of statements by Michael Bavli, the head representative of UNHCR in Israel, that UNHCR approved the returns procedure used to forcibly deport the 48 people. The Israeli Ministry of Foreign Affairs, in a statement on its website titled “MFA Newsletter: Behind the Headlines: Israel and the Darfur refugees” (which was later taken down), claimed that “the 46 [sic] infiltrators returned to Egypt” were returned “in accordance with the Olmert-Mubarak agreement, under the supervision of the UN Refugee Agency, and on condition they would not be returned to Sudan” (screenshot of Israeli MFA website dated August 23, 2007, on file with Human Rights Watch). In a submission to the Israeli High Court of Justice dated September 9, 2007, lawyers for the State of Israel cited a letter from Bavli, dated July 23, to support their argument that returns to Egypt did not “require any legal order or any procedure, as long as it is coordinated with Egypt, on the basis of the aforementioned understandings, according to which Egypt is obligated to secure the lives and the safety of the infiltrators who would be returned to its territory ... We add that this position is the same as UNHCR's position.” (Quoted in letter from Anat Ben Dor, Tel Aviv University Refugee Law Clinic, and Yonatan Berman, Hotline for Migrant Workers, to Mr. Radhouane Nouicer, Director of the Middle East and North Africa Bureau, UNHCR Geneva, September 13, 2007, copy on file with Human Rights Watch.) Bavli's letter, as quoted in the State's submission, stated that based on Egypt's agreement not to return refugees to their state of origin, “there is no reason which prohibits Israel from barring entry (even if only as an emergency step in a situation which is getting out of hand).” The letter compared “the agreements that have been reached between the prime minister and the president of Egypt on the issue of the continued passage of asylum seekers” to other formal agreements on cross-border movements of people, like those between the US and Canada. Michael Bavli, UNHCR, letter to Israeli state attorney Yochi Ganessin, Ministry of Justice, July 23, 2007, copy on file with Human Rights Watch. The letter was in line with Bavli's prior statements to policymakers. The Israeli newspaper *Haaretz* reported that at a meeting chaired by Prime Minister Olmert on July 1, 2007, Bavli “warned that unless the wave of refugees is not stemmed in the south, ‘the ability of the UN to deal with the influx of refugees will collapse. It is already terribly behind.’” According to *Haaretz*, Bavli “made it clear that he is not opposed to the agreement between Olmert and Mubarak for the immediate deportation of the refugees who crossed into Israel from Egypt, as long as Egypt does not then send them back to Sudan.” See Reuters and Shahar Ilan, “Egyptian police fire at Sudanese refugees trying to enter Israel,” *Haaretz*, July 4, 2007, <http://www.haaretz.com/hasen/spages/878264.html> (accessed April 10, 2008). According to an article published by the UN's *IRINnews* service, Bavli justified the coordinated returns on the basis that “[y]ou cannot ‘shop’ for asylum’ .... ‘Asylum is given at the first country the refugee enters. This is not about seeking the most comfortable state.’” See “ISRAEL-SUDAN: Government to turn back refugees at border,” *IRINnews*, July 4, 2007, <http://www.irinnews.org/Report.aspx?ReportId=73078> (accessed May 4, 2008). In a second letter, dated September 20, 2007, after Israel forcibly deported 48 people, Bavli reversed this position, writing that no bilateral agreement on returns existed. Michael Bavli, letter to Yochi Ganessin, September 20, 2007, on file with Human Rights Watch.

<sup>74</sup> “PM Olmert holds discussion on infiltrations into Israel via the Egyptian border,” Israel Ministry of Foreign Affairs press release, July 1, 2007, <http://www.mfa.gov.il/MFA/Government/Communiques/2007/PM+Olmert+holds+discussion+on+infiltrations+into+Israel+via+the+Egyptian+border+1-Jul-2007.htm> (accessed June 30, 2008).

“to receive back infiltrators who cross the common border as well as all those who cross it in the future, and will work to prevent future infiltrations from its territory.” Israel, he said, would accept “Egyptian assurances regarding their safety.” According to Israeli news reports, Egypt agreed to receive hundreds of migrants who had crossed into Israel during the previous six months.<sup>75</sup>

Days earlier, on June 20, a joint session of Israeli parliamentary committees had discussed the increasing numbers of Sudanese, Eritreans, and Ivorians crossing into the country from Egypt. According to the Israeli newspaper *Haaretz*, a UNHCR representative, Sharon Harel, addressed the session, saying that Israel must not send Sudanese back to Egypt due to the possibility that Egypt would deport them to Sudan, where their lives would be at risk. A member of the Labor party, Avishay Braverman, predicted that Israel would be forced to deport the Sudanese “when the numbers grow,” and that Israel, the United States, and Europe should pressure Egypt to absorb Sudanese returnees instead of “spill[ing] their blood” by deporting them.”<sup>76</sup>

Blood was spilled, but on Israel’s doorstep rather than in Sudan. Within three days of Olmert’s post-Sharm el-Sheikh announcement, what appears to have been the new Egyptian policy to “prevent future infiltrations from its territory” claimed its first victim. On July 4, 2007, Egyptian border police shot and critically wounded a Sudanese man trying to cross the border into Israel south of Rafah.<sup>77</sup> Two-and-a-half weeks later, on July 22, Egyptian border police killed Hadja Abbas Haroun, a 28-year-old Darfuri woman, who was seven months pregnant, as she was trying to cross the border near al-Aouja, 62 miles south of Rafah.<sup>78</sup> The Egyptian commander at the Rafah crossing between Egypt and the Gaza Strip, Col. Amr Mamdouh, speaking with a *Washington Post* reporter about the incident, said that Egyptian border guards

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<sup>75</sup> Ronny Sofer, “Olmert, Mubarak agree to send infiltrators back to Egypt,” YNET, June 28, 2007, <http://www.ynet.co.il/english/articles/0,7340,L-3418476,00.html> (accessed April 15, 2008).

<sup>76</sup> Shahr Ilan and Mijal Grinberg, “Security forces detain 63 African refugees who infiltrated Israel,” *Haaretz* (Tel Aviv), June 20, 2007, <http://www.haaretz.com/hasen/spages/873065.html> (accessed July 1, 2008).

<sup>77</sup> Reuters and Ilan, “Egyptian police fire at Sudanese refugees trying to enter Israel,” *Haaretz*.

<sup>78</sup> Ellen Knickmeyer, “Flight from Darfur Ends Violently in Egypt,” *Washington Post*, August 19, 2007, [http://www.washingtonpost.com/wp-dyn/content/article/2007/08/18/AR2007081801236\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2007/08/18/AR2007081801236_pf.html) (accessed April 21, 2008). Human Rights Watch interviewed members of Haroun’s family, and Sudanese community leaders in Cairo with personal knowledge of her case, who stated that she was seven months pregnant when she was killed.

shouted “three or four times” at Haroun and her family to stop. “But they refused. So in this case we had to fire shots, warning shots, in the air. In the dark we cannot see the women from the men. And all of them are black.”<sup>79</sup>

On the night of August 1, 2007, according to an Israeli news broadcast, Israeli soldiers witnessed Egyptian border police kill four migrants who were attempting to cross the Sinai border into Israel.<sup>80</sup> Israel’s Channel 10 Television screened footage from an Israeli Defense Forces (IDF) surveillance video showing the migrants running toward the border. A man the broadcast identified as an Israeli soldier said that he saw Egyptian police “instantly open fire” at the group, apparently killing one man and wounding two others. A fourth reached the border fence, where Israeli soldiers reached out to him but were unable to help him to safety before Egyptian guards got to him and dragged him back. As the Israeli soldiers watched, the Egyptian guards bludgeoned this man and the other wounded migrants to death. “They killed two men with their own hands and sticks and rocks,” another Israeli soldier told Channel 10. “We heard them crying and screeching in pain until they died.”<sup>81</sup>

On August 3, 63 members of the Knesset, Israel’s parliament, signed a petition calling on Olmert’s government not to deport “refugees” back to Egypt. The petition, citing “the history of the Jewish people and the values of democracy and humanity,” said Israel had a “moral duty” to give “protection and shelter” to refugees.<sup>82</sup>

On August 11, Egypt issued an official statement claiming that “Egypt did not agree to re-admit the persons who previously trespassed to Israel through the Egyptian

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<sup>79</sup> Knickmeyer, “Flight from Darfur Ends Violently in Egypt,” *Washington Post*.

<sup>80</sup> “Egypt: Investigate Killing of Sudanese Migrants Attempting to Cross into Israel,” Human Rights Watch news release, August 8, 2007, <http://hrw.org/english/docs/2007/08/08/egypt16606.htm>. The *Jerusalem Post* and the Associated Press reported that Egyptian border police had killed four migrants. “Egyptians killed 4 Sudanese on border,” *Jerusalem Post*, August 2, 2007, <http://www.jpost.com/servlet/Satellite?pagename=JPost%2FJPArticle%2FShowFull&cid=1186066367980>; “Egyptians kill 4 Sudanese at Israeli Border,” Associated Press, August 2, 2007, <http://www.ynetnews.com/articles/0,7340,L-3433158,00.html> (both accessed October 15, 2008). *Haaretz* reported that three migrants were killed, two instantly and one by being beaten to death. Mijal Grinberg, “MKs oppose the deportation of Darfur refugees back to Egypt,” *Haaretz*, August 3, 2007, <http://www.haaretz.com/hasen/spages/889300.html> (accessed October 15, 2008).

<sup>81</sup> “Egyptians killed 4 Sudanese on border,” *Jerusalem Post*; “Egyptians kill 4 Sudanese refugees at Israeli border,” Associated Press. According to Israeli refugee lawyers, the television station has refused to release the surveillance video, which reportedly includes footage of the killings. Human Rights Watch interview with Anat Ben Dor, instructor, University of Tel Aviv Refugee Rights Clinic, and Yonatan Berman, attorney, Hotline for Migrant Workers, February 26, 2008.

<sup>82</sup> Grinberg, “MKs oppose deportation of Darfur refugees back to Egypt,” *Haaretz*; “MKs behind Darfur refugees,” YNET, August 3, 2007, <http://www.ynetnews.com/articles/0,7340,L-3433224,00.html> (accessed October 15, 2008).

borders, affirming that Egypt officially conveyed to Israel that it is not obligated to receive any non-Egyptian citizen who has illegally trespassed to Israel.”<sup>83</sup>

The Israeli government’s overall response to the recent African arrivals has been incoherent.<sup>84</sup> Some officials have argued that most border-crossers should be treated harshly. The newspaper *Haaretz* reported that at a meeting of officials on February 24, 2008, Prime Minister Olmert requested Israel’s defense minister Ehud Barak, “to relax Israel’s policy ... to make it easier for border troops to open fire on people trying to cross into Israel illegally.” Barak rejected Olmert’s recommendation.<sup>85</sup>

### **Egypt’s Efforts to Justify Lethal Force at the Border**

Between July 2007 and October 2008, Egyptian border forces killed at least 33 migrants at or near the Sinai border with Israel and wounded scores of others.<sup>86</sup> The actual numbers may be higher, since news media may not learn of all the shootings, many of which occurred in remote desert areas in a closed military zone. The Egyptian government has not released official figures on the number of fatalities. In addition, these figures do not account for persons who may have died later from injuries sustained in an encounter on the border. “We are wondering about our people who crossed the border,” a Sudanese church leader told Human Rights Watch.

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<sup>83</sup> “Israel: Halt Summary Expulsion of Sudanese Migrants: Unknown Fate Awaits Sudanese Fleeing From Darfur,” Human Rights Watch news release, August 24, 2007, <http://hrw.org/english/docs/2007/08/22/isrlpa16717.htm>; “Egypt warns it won’t take back refugees who cross into Israel,” Associated Press, August 11, 2007, <http://www.haaretz.com/hasen/spages/892139.html> (accessed October 14); Sheera Claire Frenkel, “Cairo warns it won’t take back refugees who sneak into Israel,” *Jerusalem Post*, August 12, 2007. An English translation of the Ministry of Foreign Affairs statement, “Egyptian efforts to combat trespassing across the international borders with Israel,” dated August 11, 2007, is available at [http://www.mfa.gov.eg/Missions/canada/OTTAWA/Embassy/en-GB/Press%20and%20Media/Press\\_Releases/borders](http://www.mfa.gov.eg/Missions/canada/OTTAWA/Embassy/en-GB/Press%20and%20Media/Press_Releases/borders) (accessed April 15, 2008).

<sup>84</sup> In addition to the measures discussed, the Israeli government is reportedly also considering constructing a wall along the entire Sinai border, at a projected cost exceeding US\$1 billion. Gad Lior, “New fence on Israel – Egypt border to cost over \$1b,” YNET, February 6, 2008 (accessed October 15, 2008).

<sup>85</sup> Barak Ravid and Associated Press, “Barak rejects PM call to ease rules of engagement at border,” *Haaretz*, February 24, 2008, <http://www.haaretz.com/hasen/spages/957417.html> (accessed October 12, 2008).

<sup>86</sup> Media reports state that Egyptian police killed 22 migrants in 2008; an additional 10 killings were reported in 2007. See Appendix A of this report for details. On March 16, 2008, the Cairo office of the Sudanese People’s Liberation Movement (SPLM) provided Human Rights Watch with a list of four Southern Sudanese and two Darfuris whom the office had verified were killed at the border, but it was not possible for us to determine whether these were additional to cases reported in the media, which often do not name the deceased.

In many cases we don't know if someone was arrested or killed. Sometimes the Egyptians contact us if they identify those dead or in jail; but we don't know if this is the majority. Probably it isn't. We only know about the three bodies we have seen with our own eyes. Wik Malong Agiw, a Dinka from Aweil in the Barakatal region, and a lady from Darfur, and an old man from the Nuba mountains who was killed last week. But so many have gone to the border. Where are the rest?<sup>87</sup>

In an official statement issued on August 11, 2007, Egypt provided a national security rationale for the use of lethal force:

The number of people trespassing to Israel through the Egyptian-Israeli borders has increased exponentially over the last couple of years. Both countries [should prevent] illegal activities such as trespassing across the borders or smuggling ... after the outrageous terrorist attacks on Sinai. Egyptian authorities are combating this growing phenomenon since it jeopardizes security and should be firmly dealt with, especially now there are organized networks that facilitate illegal trespassing.<sup>88</sup>

Egyptian foreign ministry officials reiterated these views to Human Rights Watch in March 2008, commenting that security along the Sinai border was internationally sensitive, with Egypt coming under Israeli and US criticism for failing to prevent weapons smuggling into the Gaza Strip.<sup>89</sup> Further, the officials said, the Egypt-Israel peace treaty of 1979 limits the number of forces Egypt may deploy along the border, and many more would be needed if restrictions were imposed upon their ability to use lethal force. These officials told Human Rights Watch that Egypt was allowed to deploy only 750 armed personnel along the border.

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<sup>87</sup> Human Rights Watch interview with M.P., Dinka community leader, Cairo, March 15, 2008.

<sup>88</sup> Ministry of Foreign Affairs, "Egyptian efforts to combat trespassing across the international borders with Israel." See below for a discussion of terrorist bombings in the Sinai and in southern Israel as they relate to border security.

<sup>89</sup> Human Rights Watch interviews with Tareq Maaty, March 16, and B.N., March 17, 2008.

However, this figure of 750 refers only to the number of military personnel Egypt is allowed to deploy along the 15-kilometer border with the Gaza Strip, and does not derive from the 1979 peace treaty.<sup>90</sup> There are no international or bilaterally-agreed restrictions on the number of police Egypt can station along the rest of the 266-kilometer border with Israel. Under the 1979 peace treaty, an unspecified number of Egyptian police share control of the Egyptian border zone (“Zone C”) of the Sinai peninsula with a Multinational Force and Observers (MFO).<sup>91</sup>

Egyptian officials have claimed that Egyptian border forces are justified in shooting at persons in the border security zone on several terrorism-related grounds. The August 2007 statement refers to the terrorist attacks against tourist and other sites in the Sinai between 2004 and 2006. At one point Egypt linked these terrorist bombings to Palestinian groups based in the Gaza Strip, but persons arrested by Egyptian security forces in connection with those attacks were mainly if not exclusively Egyptians, including three persons sentenced to death by an Egyptian tribunal in connection with the Taba bombings of October 2004.<sup>92</sup> Officials have also referred to the possible route of Gaza-based Palestinians intent on carrying out attacks inside southern Israel, and indeed one and possibly all three suicide bombers who attacked the southern Israeli cities of Eilat and Dimona in 2007 and 2008, respectively, came from the Gaza Strip and crossed into Israel via the Sinai border.<sup>93</sup> Egypt could argue that tight security is needed along the entire border to

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<sup>90</sup> On August 28, 2005, Egypt reached an agreement with Israel allowing the deployment of a new military contingent comprising 750 soldiers along the Philadelphi Road bordering the Gaza Strip. International Crisis Group (ICG), “Egypt’s Sinai Question,” Middle East/North Africa Report N°61, January 30, 2007, [http://www.crisisgroup.org/library/documents/middle\\_east\\_\\_north\\_africa/egypt\\_north\\_africa/61\\_egypts\\_sinai\\_question.pdf](http://www.crisisgroup.org/library/documents/middle_east__north_africa/egypt_north_africa/61_egypts_sinai_question.pdf) (accessed October 1, 2008), p. 6. The agreement was amended on July 11, 2007—see Multinational Force and Observers (MFO) website, <http://www.mfo.org/1/4/28/base.asp> (accessed May 12, 2008)

<sup>91</sup> The MFO currently consists of approximately 3,000 military and civilians and 1,900 observers. The MFO also monitors the deployment of the 750 Egyptian troops along the Gaza–Egypt border. *Ibid.*

<sup>92</sup> “Egypt: Terrorism Trial Shows Serious Flaws,” Human Rights Watch news release, December 12, 2006, <http://hrw.org/english/docs/2006/12/13/egypt14829.htm>; “Egypt: Halt Execution of Accused Taba Bombers,” Human Rights Watch news release, June 11, 2007, <http://www.hrw.org/english/docs/2007/06/11/egypt16131.htm>. From October 2004 to April 2006, five terrorist attacks occurred in the Sinai—three against tourist resorts in Taba, Sharm el-Sheikh, and Dahab, and two against the Multinational Force and Observers. Egyptian officials attributed the attacks to a single terrorist organization called Tawhid wa Jihad (Oneness and Struggle) allegedly linked to Palestinian Islamist organizations and comprised of Bedouin and Palestinian-descended Sinai residents. One study warned that this “official version of events” should be “treated with caution.” See ICG, “Egypt’s Sinai Question,” p. 3. Police arrested and detained without charge an estimated 3,000 people in northern Sinai in connection with the bombings in Taba in October 2004; many were tortured. Human Rights Watch, *Egypt: Mass Arrests and Torture in Sinai*, vol. 17, no. 3(E), February 2005, <http://hrw.org/reports/2005/egypt0205/>.

<sup>93</sup> In early 2007 a suicide bomber from Gaza crossed into Israel via the Sinai border and killed three civilians in an attack on a bakery in Eilat; the Al-Aksa Martyrs Brigades and Islamic Jihad claimed joint responsibility for the attack and identified the

apprehend such terrorists, but this does not justify a blanket policy of live fire against all persons who attempt to cross the border. Similarly, heightened Egyptian security concerns along the 14-kilometer long Gaza-Egypt border—due to weapons-smuggling tunnels, clashes between Palestinians and Egyptian border security, and Hamas’s breach of the border fence at Rafah—do not justify the use of live fire against migrants and refugees at all points along the rest of the Sinai border.<sup>94</sup>

Egyptian authorities also argue that the phenomenon of migrants and refugees leaving Egypt for Israel is a threat to Egypt’s national security because of its alleged connection to transnational organized criminal groups that are involved in smuggling women sex workers and drugs into Israel.<sup>95</sup> Areas south of Egypt’s tightly-monitored border with the Gaza Strip are, according to Israeli researchers who have examined the trafficking issue, “a zone of transit for drugs and clandestine migrants and a notorious base for networks bringing women ... to work as prostitutes in Israel.”<sup>96</sup> The authors of the US State Department’s 2006 report on human trafficking wrote,

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bomber as Muhammad Faisal al-Siksik, age 21, from northern Gaza. Greg Myre, “Suicide Bomb Kills 3 in Bakery in Israel,” *New York Times*, January 29, 2007,

<http://www.nytimes.com/2007/01/29/world/middleeast/29cnd-mideast.html?partner=rssnyt&emc=rss&pagewanted=all> (accessed October 1, 2008). On February 4, 2008, two suicide bombers attacked Dimona, in the Negev; one blew up his suicide belt, the other died in the attempt. Isabel Kershner, “Suicide Attack in Israel Kills One,” *New York Times*, February 5, 2008,

[http://www.nytimes.com/2008/02/05/world/worldspecial/05mideast.html?\\_r=2&ref=middleeast&oref=slogin&oref=slogin](http://www.nytimes.com/2008/02/05/world/worldspecial/05mideast.html?_r=2&ref=middleeast&oref=slogin&oref=slogin) (accessed October 1, 2008). Both Hamas’s military wing and the Fatah-affiliated Al-Aksa Martyrs Brigades claimed exclusive responsibility. Hamas claimed the men came from Hebron in the West Bank, but the Al-Aksa Martyrs Brigades said they came from Gaza, crossed into the Sinai, and thence into Israel. Amos Harel and Mijal Grinberg, “Hamas claims Dimona attack, says bombers came from Hebron,” *Haaretz*, April 2, 2008, <http://www.haaretz.com/hasen/spages/951028.html> (accessed October 1, 2008).

<sup>94</sup> For information about the weapons smuggling tunnels, see, for example, Human Rights Watch, *Razing Rafah: Mass Home Demolitions in the Gaza Strip*, October 2004, <http://hrw.org/reports/2004/rafah1004/>. Regarding the shootout in which two Egyptian border guards were killed in Rafah, see Conal Urquhart, “Two Egyptian soldiers killed after Palestinians breach border wall with bulldozer,” *Guardian* (London), January 5, 2006, <http://www.guardian.co.uk/world/2006/jan/05/israel> (accessed July 13, 2008). For a report that 45 Egyptian policemen were injured in clashes with Palestinians after tens of thousands of Gaza residents streamed into Egypt after Hamas blew up the border wall, see Yusri Mohamed, “Egypt rounds up hundreds of Palestinians in Sinai,” Reuters, February 5, 2008.

<sup>95</sup> Media reports and interviews with migrants identify smugglers as “Bedouins,” although Human Rights Watch cannot confirm the ethnic identity of any smugglers. According to ICG, “four major Bedouin tribes share the border region: the Tarabin, the Tiyaha, the ‘Azazma and the Ahaywat.” ICG, “Egypt’s Sinai Question,” p. 9.

<sup>96</sup> *Ibid.*, citing Nomi Levenkron and Yossi Dahan, Hotline for Migrant Workers, Isha L’Isha – Haifa Feminist Center, and Adva Center, “Women as Commodities: Trafficking in Women in Israel 2003,” [http://www.hotline.org.il/english/pdf/Women\\_as\\_Commodities\\_Trafficking\\_in\\_women\\_in\\_Israel\\_2003\\_Eng.pdf](http://www.hotline.org.il/english/pdf/Women_as_Commodities_Trafficking_in_women_in_Israel_2003_Eng.pdf) (accessed October 1, 2008).

Egypt is a transit country for women trafficked from Eastern Europe ... to Israel for the purpose of sexual exploitation. These women generally arrive in Egypt through air and seaports as tourists and are subsequently trafficked through the Sinai Desert by Bedouin tribes. Men and women from sub-Saharan Africa and Asia are similarly believed to be trafficked through the Sinai Desert to Israel and Europe for labor exploitation.<sup>97</sup>

Egyptian police have apprehended illegal migrants of diverse nationalities at the Sinai border—including Turks, Georgians, and Chinese—as well as women who may have been victims of trafficking, including Ukrainians and Russians. Egyptian border police are known to have killed one Turk and wounded two others in an October 2007 incident.<sup>98</sup> But otherwise all of the known shooting victims at the border have been African migrants, an imbalance that appears to undermine Egypt’s justification of its policy of lethal force as a response driven by the wider phenomenon of trafficking and smuggling in the Sinai.<sup>99</sup> Even if the people being apprehended were traffickers, that would not in itself justify lethal force.

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<sup>97</sup> US State Department, Office to Monitor and Combat Trafficking in Persons, “Trafficking in Persons Report – 2006: Egypt,” June 5, 2006, <http://www.state.gov/g/tip/rls/tiprpt/2006/65988.htm> (accessed October 1, 2008). The State Department report also asserts that smugglers in the Sinai, “who are very knowledgeable of desert routes and methods of avoiding detection, routinely rape and abuse victims during journeys that can take up to two months to complete.” Although none of the migrants who fled or attempted to flee and whom Human Rights Watch spoke with made allegations of sexual or other abuse by smugglers, human rights activists who work with migrants confirmed the State Department’s claim. Human Rights Watch interview with Yiftach Milo, Assaf (Israeli NGO), Tel Aviv, February 26, 2008; and Human Rights Watch telephone interview with Elsa Chyrum, Human Rights Concern Eritrea, May 12, 2008.

<sup>98</sup> “Turkish migrant shot by Egypt police dies of wounds,” Reuters, October 19, 2007.

<sup>99</sup> While Egypt argues that its fight against smuggling and trafficking necessitates the use of lethal force, it has failed to take other steps to combat trafficking, including criminalizing human trafficking in line with its international commitments. On March 5, 2004, Egypt ratified the United Nations Convention Against Transnational Organized Crime and the supplemental Protocol to Prevent, Suppress and Punish Trafficking in Persons (Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, G.A. Res. 25, annex II, U.N. GAOR, 55th Sess., Supp. No. 49, at 60, U.N. Doc. A/45/49 (Vol. I) (2001), entered into force September 9, 2003; the UN Convention itself has not yet entered into force.) On July 11, 2007, the Egyptian Council of Ministers agreed to establish a National Coordinating Committee to Combat and Prevent Trafficking in Persons. However, Egypt has still not enacted domestic legislation to give effect to the protocol. In 2007, “for the third year in a row, [it] failed to take any steps” to do so, and “made no efforts to protect trafficking victims.” US State Department, Office to Monitor and Combat Trafficking in Persons, “Trafficking in Persons Report – 2007: Egypt,” June 12, 2007, <http://www.state.gov/documents/organization/82902.pdf> (accessed October 1, 2008).

### *Egypt in breach of international standards on use of force*

According to a Ministry of Foreign Affairs statement of August 11, 2007, Egyptian and international laws grant the authorities the “right” to “use force to stop illegal trespassing across the borders.”<sup>100</sup> Egyptian authorities, it said, provide warnings before using force. “However, some trespassers refuse to stop, in which case the authorities have to deal with them to ensure respect for the law.”

Egyptian killings of migrants, asylum seekers, and refugees who attempt to enter Israel violate the International Covenant on Civil and Political Rights, which Egypt ratified in 1982 and which provides, “No one shall be arbitrarily deprived of his life” (article 6). This non-derogable obligation applies with regard to anyone on Egypt’s territory or under its jurisdiction. According to the Human Rights Committee, a body of experts mandated to monitor state compliance with the ICCPR, states parties should “take measures to prevent arbitrary killing by their own security forces,” and should ensure that laws “strictly control and limit the circumstances in which a person may be deprived of his life by such authorities.”<sup>101</sup> Egypt is also a state party to the African Charter on Human and Peoples’ Rights (ACHPR), which similarly prohibits the arbitrary taking of life (article 4).<sup>102</sup>

The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provide guidance in applying these human rights standards to the actions of Egyptian border police. These principles prohibit the intentional lethal use of firearms by law enforcement officials except when “strictly unavoidable in order to protect life” (principle 9). When firearms are used, law enforcement officials must ensure that relatives or close friends of the injured person are notified at the earliest possible moment (principle 5). Governments are obliged to criminally punish the arbitrary or abusive use of force and firearms by law enforcement officials, and are prohibited from invoking “exceptional circumstances,” including public emergencies,

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<sup>100</sup> Egypt Ministry of Foreign Affairs, “Egyptian efforts to combat trespassing across the international borders with Israel,” English translation dated August 11, 2007, [http://www.mfa.gov.eg/Missions/canada/OTTAWA/Embassy/en-GB/Press%20and%20Media/Press\\_Releases/borders](http://www.mfa.gov.eg/Missions/canada/OTTAWA/Embassy/en-GB/Press%20and%20Media/Press_Releases/borders) (accessed April 15, 2008). According to news reports, the statement was originally released on August 10, 2007.

<sup>101</sup> UN Human Rights Committee, General Comment 6, Article 6 (Sixteenth session, 1982), *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.1 at 6 (1994), para. 3.

<sup>102</sup> African [Banjul] Charter on Human and Peoples’ Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force October 21, 1986, ratified by Egypt March 20, 1984.

to justify any departure from the principles (principle 8). The apparent lack of any official investigation into use of lethal force at the border violates Egypt's obligation to provide redress by investigating these deaths and, where appropriate, prosecuting any persons found responsible for unlawful killings.<sup>103</sup>

Lethal force would be justified only in cases where it is necessary and proportionate to threats to the physical security of border guards. Clearly, in some cases smugglers are armed. One Masalit man from Darfur described receiving his final instructions from the smugglers: "The Bedouin blindfolded us and we walked for two hours, until we heard the Egyptian police talking, and their dogs [barking]. Then he told us, 'You have to cross the border, even if they shoot you. If you come back we will also shoot you.'"<sup>104</sup> Human Rights Watch is aware of two reported cases in which Egyptian border police exchanged fire with people-smugglers near the border. On the first occasion, an Egyptian border guard was shot dead when he confronted smugglers leading a large group of migrants approximately 10 kilometers southwest of the Gaza Strip (and a number of kilometers from the border, which lies to the southeast).<sup>105</sup> In another reported exchange of fire, smugglers shot and killed 21-year-old Mohamed Ahmed Hassanein, a conscript in the Egyptian Central Security Forces, about 16 kilometers from Sinai's Mediterranean coast.<sup>106</sup>

Human Rights Watch learned of two other cases where Egyptian police discovered people smugglers near the border. N.A. was traveling with a group of migrants accompanied by three men whom she described as guards and a scout, presumably

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<sup>103</sup> See, for example, Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, E.S.C. res. 1989/65, annex, 1989 U.N. ESCOR Supp. (No. 1) at 52, U.N. Doc. E/1989/89 (1989).

<sup>104</sup> Human Rights Watch interview with M.A., Tel Aviv, March 2, 2008.

<sup>105</sup> "Five wounded as Egyptian guards fire on African refugees on Israel border," Associated Press, December 22, 2007, <http://www.haaretz.com/hasen/spages/937127.html> (accessed July 13, 2008).

<sup>106</sup> "Traffickers kill Egyptian policeman on border," Reuters, August 18, 2008. The Central Security Forces (CSF) were "formed in 1977 to obviate the need to call upon the armed forces to deal with domestic disturbances," and augment Egypt's police force. The CSF are "responsible for guarding public buildings, hotels, strategic sites (such as water and power installations), and foreign embassies ... [and] helped direct traffic and control crowds." See Helen Chapin Metz, ed., *Egypt: A Country Study*, Federal Research Division, Library of Congress, 1990, LOC No. DT46 .E32 1991. In addition to these two incidents, some news reports claim smugglers have killed three Egyptian border police, but this appears to be incorrect. On July 7, 2008, news reports first claimed that "masked" smugglers leading migrants into Israel had killed an Egyptian officer. See "Traffickers shoot dead Egypt officer on Israel border," Agence France-Presse, July 7, 2008. However, Israel Army Radio later reported that Israeli soldiers killed the Egyptian officer, Mohamed Farul Ali al-Kersh, when he wandered into Israeli territory and opened fire on the Israeli forces, possibly mistaking them for smugglers. See "Egyptian officer shot dead by Israeli fire," *al Bawaba*, July 9, 2008, <http://albawaba.com/en/news/231398> (accessed August 26, 2008).

smugglers, who fled immediately when Egyptian border forces discovered them: “We were waiting for the man who had gone ahead to scout for us, but before he came back the army [sic] saw him. The two men who were guarding us ran away.” Egyptian forces then began firing at the group.<sup>107</sup> In another case, Egyptian forces reportedly shot dead an Egyptian Bedouin man as he tried to help African migrants cross the Israeli border.<sup>108</sup>

These cases were, however, exceptions to a larger trend. Egypt’s claim that the fight against smuggling networks necessitates border guards’ use of lethal force appears questionable in the majority of cases Human Rights Watch investigated, where smugglers were not present when border guards opened fire at migrants. Interviews with refugees, asylum seekers, and migrants show a common pattern whereby smugglers, whom interviewees identified as Bedouins, wait until nightfall, lead the migrants to within walking distance of the border, orient them in its direction, and leave. Human Rights Watch attempted but was unable to interview smugglers. One smuggler told a Reuters reporter that he prudently limited his contact with refugees. Before making the final leg of the journey to the border, he said, “[w]e leave the Sudanese in a Bedouin tent so that if the police arrest them, we’re far off.”<sup>109</sup>

Human Rights Watch found no evidence to suggest that Egyptian border guards are shooting at migrants because they mistakenly believe them to be dangerous criminals. The migrants and refugees Human Rights Watch interviewed typically attempted to cross the border in large groups of between 10 and 40 or more people, under cover of darkness. Entire families frequently made the crossing. Several refugees and migrants said that border guards were alerted to their presence when young children began to cry. M.M. said he was crossing the border in a group of 37 people when border police heard them.

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<sup>107</sup> Human Rights Watch interview with N.A., October 6<sup>th</sup> City, Egypt, March 11, 2008.

<sup>108</sup> “Egypt kills man at Israel border, 30 migrants held,” Reuters, July 12, 2008. Unnamed security sources identified the man as Ahmed Salim Oweid, and said he was shot when he refused police orders to stop. “He was hit twice and died of his wounds,” according to the Reuters article, while “a group of African migrants who were with him fled and were being pursued by police.”

<sup>109</sup> Yusri Mohamed, “Sudan migrants make dangerous desert run for Israel,” Reuters, July 11, 2007. The smuggler reportedly gathered migrants in a tent around 15 kilometers south of the Rafah crossing on the Egyptian-Gaza border, then drove them in a small, unmarked truck along routes without police checkpoints to border areas where there are gaps in Egyptian and Israeli security lines. “But our role is limited,” the smuggler said. “We just ease their crossing through the barbed wire and into Israeli territory.”

It was 8 p.m., and there was no moon, it was blackout. But the soldiers could hear us, they were saying “Ay ay ay!” to scare us. They shouted “Hey, samara [black]!” ... I heard the bullets going past, they were shooting at us from both sides.<sup>110</sup>

In another case, Egyptian border guards began firing at a group of migrants who became visible as Israeli border guards illuminated them. M.B., a 26-year-old Darfuri man who crossed the border on August 28, 2007, recalled,

The Egyptians didn’t see us at first, but then the Israelis shined a light on us from their side, and the Egyptians started shooting at us. There were three fences, and I made it past the first two, but at the third one I was shot. They shot me three times. But the Israelis told the Egyptians to stop shooting, they said it in Arabic. And I was lucky because the Israelis called an ambulance after I fell. I couldn’t speak for three days.<sup>111</sup>

Further, there is no evidence, and Egyptian officials have not claimed, that in any of the known cases where Egyptian border guards killed or wounded migrants and refugees, they fired in self-defense. N.A., the Darfuri woman quoted above, recalled that Egyptian border forces fired at the group she was traveling with even though they were seated:

[T]he army started shooting at the group of us sitting on the ground. They were shouting, “Do any of you have a gun?” They were firing for a long time. They encircled us. Then dawn came. They checked and there was one dead and five injured. Then they took us to a military camp—they took all of us, they took our clothes and our documents and our money. They used our clothes to clean up the blood of the wounded people.<sup>112</sup>

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<sup>110</sup> Human Rights Watch interview with M.M., Tel Aviv, February 28, 2008.

<sup>111</sup> Human Rights Watch interview with M.B., Tel Aviv, March 2, 2008.

<sup>112</sup> Human Rights Watch interview with N.A., October 6<sup>th</sup> City, March 11, 2008.

In none of the killings has it been shown that the intentional lethal use of force by border police was strictly unavoidable in order to protect life—the only ground permitted for such use in the UN Basic Principles on the Use of Force and Firearms.

Egyptian guards along the Sinai border are apparently under orders to use lethal force against migrants and refugees regardless of whether the latter pose any threat. Egyptian officials have stressed, and some witness accounts confirm, that Egyptian border police follow a common warning procedure before directly targeting people attempting to cross the border. A Southern Sudanese man who crossed the border on February 17, 2008, said,

I could see the police. They shouted, and shot up in the air, then down. I saw someone dead in front of me, his name was Wik. And I saw another person get shot in the legs and in the wrist, when they shot down. Then they brought an ambulance—we saw them loading it up, when we made it across the border. We were watching them put in people—people lying quiet.<sup>113</sup>

Such a warning procedure is irrelevant to the legality of lethal force by police in instances other than self defense. In other cases, including the events witnessed by IDF soldiers on August 1, 2007, border guards reportedly opened fire on fleeing migrants without warning. “They just started shooting at us—we were really surprised,” said a southern Sudanese man who crossed into Israel in early August, 2007.<sup>114</sup> “I saw one man get shot in his leg. Mohammed. He was from Darfur also. I don’t know what happened to him [after that]. You don’t know what has happened to your friend.” Nine of his group of 38 migrants crossed two fences into Israel, where IDF soldiers picked them up.

The approach taken by the Israeli Defense Forces suggests that refugees, asylum seekers, and migrants crossing the Sinai do not present a serious threat to armed border guards. Since 2005, when Sudanese refugees began arriving in Israel via the

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<sup>113</sup> Human Rights Watch interview with A.D., Tel Aviv, February 28, 2008.

<sup>114</sup> Human Rights Watch interview with B.M., Tel Aviv, February 29, 2008.

Sinai border, IDF forces have, according to news reports, shot and killed several Palestinian and Egyptian “infiltrators” at the border on the grounds that they posed security risks, in one case killing a Bedouin man in unclear circumstances, in another firing in self defense on two men wearing Egyptian army uniforms who attacked an IDF tank crew.<sup>115</sup> During that same time period, IDF border forces reportedly also killed one migrant, in June 2006.<sup>116</sup> However, migrants and currently-serving Israeli Defense Forces (IDF) soldiers interviewed by Human Rights Watch confirmed that Israeli soldiers typically approach the migrants—in at least some cases without raising their weapons—and tell them to put up their hands, search them, ask them where they are from, offer them water and, if necessary, administer first aid before driving them, without handcuffing them, to the nearest IDF base. From there they are taken to one of two larger bases at Har Kholeif or near Ketziot.<sup>117</sup>

An IDF reservist who was stationed at the Nitzana border base in April and May 2007 told Human Rights Watch,

We knew about the refugee phenomenon, the army talked about it, so we never opened fire; as far as I know a bullet was never shot. The way it usually happens is that when night falls they start crossing, and there are military patrols on the main routes and roads and they are found usually sitting and waiting for the patrols. They are checked on

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<sup>115</sup> On May 22, 2008, Israeli forces killed Ayesh Suleiman Mussa, a Sinai Bedouin, who had crossed into Israel at an unspecified location; Egyptian officials claimed he was a drug smuggler. See “Body of Egypt Bedouin killed by Israelis returned,” Agence France-Presse, May 22, 2008, <http://www.haaba.com/news/2008/05/22/7-137075/body-of-egypt-bedouin-killed-by-israelis-returned.htm>. See also, for example, Yaakov Katz, “IDF probes ‘strange’ shoot-out at Sinai border,” *Jerusalem Post*, June 4, 2006 (in self-defense, IDF soldiers killed two men in Egyptian army uniforms who fired on them). Another report is ambiguous as to the identity of a person killed by the IDF along the border in mid-2006, identifying him only as one of “six people carrying bags” who did not stop when requested to do so. See Efrat Weiss, “IDF kills 2 Egyptian officers on border,” YNet, June 2, 2006, <http://www.ynetnews.com/articles/0,7340,L-3257980,00.html>. <http://www.jpost.com/servlet/Satellite?pagename=JPost%2FJPArticle%2FShowFull&cid=1148482092580> (accessed July 13, 2008). In a third incident, IDF soldiers shot at Egyptian border police who had crossed into Israel while pursuing men they believed to be drug smugglers. Yuval Azoulay, “IDF rebukes Egypt over fatal cross-border manhunt,” *Haaretz*, July 8, 2008, <http://www.haaretz.com/hasen/pages/1000144.html>.

<sup>116</sup> An Israeli NGO, in a letter to the IDF demanding an inquiry, referred to Hebrew-language media reports that the IDF had killed a Sudanese man on June 30, 2006. See Physicians for Human Rights – Israel, “Demand for Investigation into the Death of Sudanese Asylum Seeker on the Israel-Egypt Border,” July 1, 2006.

<sup>117</sup> Human Rights Watch telephone interviews with IDF soldier and IDF official (names withheld) serving on the border in the southern command, March 31 and April 3, 2008.

the spot, the regular security procedure of asking for their papers, giving them a pat-down, and then they are taken to the base.<sup>118</sup>

Although the IDF has forcibly returned migrants to Egypt in August 2007 and August 2008, migrants interviewed in Israel by Human Rights Watch said that they intended to be intercepted by the IDF near the border because they viewed Israel as a safe destination.

### *Families terrorized and separated at the border*

Many refugees and migrants try to make the trip to Israel with their families, but in the desperate final moments near the border, mothers, fathers and children can become separated.<sup>119</sup> H.B., who had just arrived with his two young boys in Tel Aviv when Human Rights Watch spoke to him, tried to remember the last time he saw his wife, moments before their family came under fire:

I heard the bullets whizzing in my ears and I don't know what happened to the rest [of our group]. I decided to run with my kids for Israel. I don't know whether the rest are alive. Even now I'm not sure what happened to my wife. It was raining. We were running towards the border together. After that I don't know what happened to her.<sup>120</sup>

In Israel, Human Rights Watch met several unaccompanied children whose parents had been arrested at the Sinai border. Two sisters, ages 8 and 7, became separated from their mother, father, and two siblings at the border. Two men who came to know the family during their journey to the border are caring for the sisters. "I dragged the kids across the border," explained G.H., a 25-year-old Eritrean man living in Tel Aviv. "They were only 20 meters away from their mother, but she was caught. Now the kids

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<sup>118</sup> Human Rights Watch telephone interview with former IDF commander and current reservist (name withheld), March 31, 2008.

<sup>119</sup> In a highly-publicized case of family separation, Aliza Olmert wrote a letter to her Egyptian counterpart Susan Mubarak, successfully pleading for the reunification (in Israel) of a young girl with her migrant parents, who had left her behind in Egypt as they rushed across the border into Israel. See Kershner, "Israel Returns Illegal African Migrants to Egypt," *New York Times*.

<sup>120</sup> Human Rights Watch interview with A.A., February 28, 2008.

are staying [with us].”<sup>121</sup> B.D., a Southern Sudanese man who came to Israel with his wife and son in mid-2007, is also caring for two other sisters, ages 12 and 6, whose mother and three siblings were arrested by border guards in February 2008. “We spoke [by phone] to the father in Cairo. We don’t know what to do. The little girl cries all night, [she] saw someone who was shot. We need help to find where the mother is.”<sup>122</sup>

### *Little evidence of deterrent effect*

Although Egypt’s unlawful, lethal policy has presumably deterred some people from attempting to cross into Israel, the number of asylum seekers who have crossed the border continues to increase. In early July 2007, Prime Minister Olmert told the foreign affairs committee of the Knesset that 2,500 people had crossed the border during the first six months of that year—before Olmert reached his “understanding” with President Mubarak, and before the first reports that Egyptian border forces were shooting migrants surfaced in July 2007.<sup>123</sup> A further 2,500 people nevertheless crossed the border by the end of the year, and 6,034 applied for asylum in Israel from January to September 2008.<sup>124</sup> On March 22, 2008, nearly a year after 40 Israeli parliamentarians criticized the “government’s failure to resolve the problem of Darfur region refugees,” Prime Minister Olmert warned his cabinet that Israel continued to face a “tsunami” of African migrants “that can only get worse. We must do everything we can to stop it.”<sup>125</sup>

People continue to attempt the crossing despite knowing the risks involved. A Sudanese man who succeeded in crossing the Sinai border into Israel with his two children in November, 2007, told Human Rights Watch that his wife, terrified by the gunfire, ran back and was captured by Egyptian border guards. “I talked to her for the first time [four months later]. She was in jail [in Egypt] for two months. She had to

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<sup>121</sup> Human Rights Watch interview with J.I., Tel Aviv, February 28, 2008.

<sup>122</sup> Human Rights Watch interview with A.D., February 28, 2008.

<sup>123</sup> Reuters and Ilan, “Egyptian police fire at Sudanese refugees trying to enter Israel,” *Haaretz*.

<sup>124</sup> Barak Ravid, “Gov’t: 5000 people have entered Israel illegally from Sinai in 2007,” *Haaretz*, December 30, 2007. Other annual figures provided by UNHCR Israel to Human Rights Watch. The rate of arrivals to Israel dropped in March 2008, but it is difficult to determine whether this is a lasting trend, or to identify its causes.

<sup>125</sup> Roni Sofer, “Olmert: We must curb infiltrations from Egypt,” YNET, March 23, 2008, <http://www.ynetnews.com/articles/0,7340,L-3522476,00.html> (accessed April 10, 2008).

work in the jail, cleaning it. She's there waiting for me to get a job. With my first paycheck, I will send it to her and she will come across."<sup>126</sup>

#### Other Abuses during Border Interceptions by Egyptian Forces

Judging from the accounts given to Human Rights Watch, Egyptian border police often beat or kicked migrants and refugees during arrest. Several migrants said they saw police hitting others in the head with gun butts or were hit themselves. G.B., a 25-year-old man who left Eritrea in early February 2008, hid from Egyptian police who shot him and one of three travelling companions. He witnessed this other man being apprehended:

[E]ven though he was already across the wire [that marked the border] they shined a light on him and told him to come back. He did it, he went back. He was afraid they'd shoot him again. I fell under some grass so they did not see me. But he had no grass. Then they beat him. They put him in a car and drove him away.<sup>127</sup>

In some cases the border police beat migrants while interrogating them immediately upon arrest. A young Southern Sudanese man who crossed the border told Human Rights Watch that he heard Egyptian police beating his traveling companion, "[who] was screaming, 'there are two, there are two,' because they were telling him to say who he was with."<sup>128</sup>

A Darfuri woman said police threatened her for the same reason: "Most of our group crossed the border, but me, another woman and man, and our kids were captured. The soldiers were shooting into the ground beside us to frighten us. They were asking us: who brought you, who was with you, who crossed over?"<sup>129</sup>

Some border guards also beat and insulted migrants for their intent to go to Israel.

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<sup>126</sup> Human Rights Watch interview with A.J., Eilat, Israel, March 3, 2008.

<sup>127</sup> Human Rights Watch interview with, G.B., Tel Aviv, March 2, 2008.

<sup>128</sup> Human Rights Watch interview with F. S., Tel Aviv, February 27, 2008.

<sup>129</sup> Human Rights Watch interview with F.A., Cairo, March 15, 2008.

According to a Sudanese community leader in Cairo who visited detained migrants in Egyptian jails, “At the border, the police say you are a Jew, and they beat you. But they really shout at people from the south [of Sudan, many of whom are Christian]. They tell them, ‘You are the enemy of Arabs and Islam.’”<sup>130</sup> N.A., a woman in her twenties, said that after border police captured her, “They took us to a military camp. They kicked and beat us and said, ‘Israel is a bad country, and dirty.’ They would [slap] the kids in the face and say, ‘Why do you want to go to a bad country like that?’”<sup>131</sup>

## The Situation for the Wounded Who Reach Israel

People who are seriously wounded by Egyptian border police at the Sinai border but succeed in crossing receive initial medical treatment from the state upon entering Israel, and are eligible for health insurance if they receive work permits and are legally employed, a process that may take months.<sup>132</sup> Until that happens, the wounded once discharged from hospital depend on medical staff to volunteer their help and on a single NGO, Physicians for Human Rights – Israel, which has a clinic in Tel Aviv.<sup>133</sup>

Most new arrivals to Tel Aviv depend on overcrowded, unsanitary, volunteer-run refugee shelters for living quarters and food. G.B., the Eritrean man quoted above, described the experience that had left him badly wounded and unable to move from his bed in the hallway of a refugee shelter in Tel Aviv. After traveling from Eritrea to Khartoum, Aswan, and Cairo,

it took four more days to get to the border with Israel. I crossed at 3 a.m. There were four of us. They shot two of us. They shot me in my

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<sup>130</sup> Human Rights Watch interview with Madhal Aguer Guot Chol, secretary of organization and community, SPLM, Cairo, March 16, 2008.

<sup>131</sup> Human Rights Watch interview with N.A., October 6<sup>th</sup> City, March 11, 2008.

<sup>132</sup> Human Rights Watch interviews with Ran Cohen and Noa Kaufman, Physicians for Human Rights – Israel, Tel Aviv, February 27, 2008.

<sup>133</sup> Dr. Kobi Arad, head of the emergency room at a hospital in Eilat, described a network of medical staff throughout Israel who volunteered time and assistance to help wounded migrants and refugees who were not eligible for insurance, or whose injuries and illnesses, including several cases of HIV, the national healthcare system excluded as conditions preexisting the migrants’ entry to Israel. Human Rights Watch interview with Dr. Kobi Arad, Eilat, March 3, 2008.

knee, and I crawled ... The Israelis found me after a day and a night, at 7:30 the [following] morning. They took me to an army camp, and to [Soroka] hospital in Be'er Sheva.

Two weeks later, talking to Human Rights Watch after having been transferred out of the hospital, G.B. worried that he would fall ill in the refugee shelter. <sup>134</sup>

## Israel's "Coordinated Immediate Returns"

Perhaps the most troubling aspect of Israel's reaction to the border-crossing phenomenon has been its episodic involuntary returns of those who cross the Sinai border to Egyptian border police. The underlying policy, although not acted on for extended periods, remains alive in high-level government discussion.<sup>135</sup>

### *"Hot returns" by Israel*

According to Israeli refugee lawyers, Israel first conducted so-called hot returns on the night of April 25, 2007, when IDF soldiers forcibly returned six Eritrean border-crossers to Egypt. The lawyers said they were contacted by IDF reservists who refused to obey orders to push the Eritreans through a hole in the border fence, but had witnessed other soldiers who did so.<sup>136</sup> Since then, Israel has forcibly returned several groups of migrants.

Following the July-August 2007 killings by Egyptian border forces, and Egypt's denial of any agreement to accept migrants returned from Israel, on August 18, 2007, Israeli authorities transferred to the custody of Egyptian border forces a group of 48 migrants—44 of them Sudanese—who had crossed the Sinai border during the preceding 48 hours.<sup>137</sup> Israeli authorities did not allow members of the group to

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<sup>134</sup> Human Rights Watch interview with G.B., Tel Aviv, March 2, 2008. At the time, water was overflowing the shelter hallway floor from the nearby toilet.

<sup>135</sup> Human Rights Watch, Letter to the High Court of the State of Israel Re: Proposed Border Asylum Procedure, December 21, 2007.

<sup>136</sup> See Refugees' Rights Forum, Tel Aviv, "Policy Paper: The Principle of Non-Refoulement," July 2008, p. 6 (copy on file with Human Rights Watch).

<sup>137</sup> Isabel Kershner, "Israel Returns Illegal Migrants to Egypt," *New York Times*, August 20, 2007, <http://www.nytimes.com/2007/08/20/world/middleeast/zomideast.html> (accessed October 3, 2008).

present asylum claims before forcibly returning them to Egypt. Based on a list of names later provided by the Egyptian government, UNHCR determined that 23 members of the group had previously registered as refugees or asylum seekers in Egypt.

According to news reports, on August 19, anonymous Egyptian officials denied that Israel had sought assurances about the refugees: “Israel just said, ‘Please take them.’”<sup>138</sup> Egyptian Foreign Minister Ahmed Aboul Gheit said that Egypt would accept the refugees for “very pressing humanitarian reasons” but that this type of return “would not be repeated again.”<sup>139</sup>

Egyptian authorities rebuffed repeated requests by UNHCR to visit the 48 returnees.<sup>140</sup> Egyptian officials told Human Rights Watch in March 2008 that all 48 people had been released in Egypt.<sup>141</sup> According to news reports, however, Egypt deported between five and 20 of the group to Sudan (see below), despite the risk of persecution.<sup>142</sup> Sudanese members of the group may also have acquired refugee claims by virtue of having entered Israel, as statements by Sudanese officials suggested that they could face persecution for attempting to enter “an enemy nation.”<sup>143</sup> Aliza Olmert, wife of the Israeli prime minister, wrote on July 31, before

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<sup>138</sup> Ellen Knickmeyer, “Israel to Block New Refugees from Darfur,” *Washington Post*, August 19, 2007, <http://www.washingtonpost.com/wp-dyn/content/article/2007/08/19/AR2007081900391.html> (accessed October 15, 2008).

<sup>139</sup> Matti Friedman, “Israel to Send Darfur Refugees Back to Egypt,” Associated Press, August 19, 2007, <http://www.foxnews.com/story/0,2933,293771,00.html> (accessed October 20, 2008).

<sup>140</sup> Ben Lynfield, “UN official: 48 African refugees missing since deported by IDF,” *Haaretz*, October 28, 2007, <http://www.haaretz.com/hasen/spages/917776.html> (accessed October 1, 2008). The article quotes UNHCR spokesman Peter Kessler as stating, “We’ve been requesting information [from the government of Egypt] about [the 48 returnees] and their whereabouts since August and we haven’t received anything.”

<sup>141</sup> Human Rights Watch interviews with Tareq Maaty, March 16; and B.N., March 17, 2008. Human Rights Watch requested further information about the 48 returnees from authorities at the Egyptian Ministry of Interior. To date, there has been no response. Human Rights Watch contacted two persons and attempted to contact two others who might have been members of the group of 48 (one in Israel, two in Egypt, and one in Sudan), but was unable to confirm their stories.

<sup>142</sup> “Israel struggling to deal with influx of African asylum seekers,” Associated Press reproduced in the *International Herald Tribune*, February 26, 2008, <http://www.iht.com/articles/ap/2008/02/26/africa/ME-GEN-Israel-Escaping-Africa.php> (accessed May 16, 2008): “Last year, Israel sent a group of 48 African refugees, mostly from Darfur, to Egypt after receiving assurances that they would not be harmed. But 20 of them were ‘asked to leave’ and returned to Sudan, an Egyptian Foreign Ministry official said.”

<sup>143</sup> In early July 2007, an Israel Radio report cited the Sudanese minister of interior as threatening to prosecute any Sudanese who had participated in an alleged Israeli plot encouraging their emigration in order to damage the Khartoum government’s image. Sheera Claire Frenkel, Ilana Diamond et al., “Sudan: Israel encouraging emigration,” *Jerusalem Post*, July 9, 2007. In July 2007 the Sudanese refugees commissioner, Mohammed Ahmed al-Aghbash, claimed that Sudanese refugees in Israel wanted to “implement Zionism agendas against Sudan,” and called on Egyptian authorities to “firmly penalize any Sudanese

Israel returned the group to Egypt, that “sending a Sudanese back to Sudan after he has visited Israel, an enemy nation, is tantamount to a death sentence.”<sup>144</sup>

One year after the forced returns of the 48 people, on August 27, 2008, IDF spokesmen confirmed that Israel had again returned an unspecified number of African border-crossers to Egypt.<sup>145</sup> One IDF soldier stationed near the Sinai border told Human Rights Watch he had received orders to return all border-crossers to Egypt and was unaware of any order or procedure to allow them to present asylum claims; another IDF soldier said soldiers in her unit detained a group of Eritrean migrants and protested when the driver of a military bus told them he was going to drive the Eritreans back to Egypt, temporarily preventing the bus from leaving.<sup>146</sup> The soldiers who spoke to Human Rights Watch said they had been told by contacts in the IDF that two groups of detained migrants had been returned at the Sagi and Kharif mountain areas of the Sinai border. Israeli refugee rights advocates in September filed a petition for an injunction against future “hot returns”; in its response to the petition, the Ministry of Defense included an affidavit written by Brig.-Gen. Yoel Strick, who is responsible for the IDF in the Sinai border area. According to the Strick affidavit, IDF “commanders in the field” returned a total of 91 people in four episodes from August 23 to 29, but failed to follow “binding commands” regarding proper procedures in conducting the returns.<sup>147</sup> The whereabouts of the 91 returnees are unknown to Human Rights Watch.

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refugees if they were found trying to infiltrate through Egypt into Israel.” “Egypt sends refugees to uncertain fate in Sudan,” Agence France-Presse, October 29, 2007, reproduced at <http://www.reliefweb.int/rw/rwb.nsf/db900sid/EMAE-78FM49?OpenDocument> (accessed July 13, 2008).

<sup>144</sup> Aliza Olmert, “Exodus: Sudan,” YNET, July 31, 2007, <http://www.ynet.co.il/english/articles/0,7340,L-3431903,00.html> (accessed August 25, 2008).

<sup>145</sup> Human Rights Watch telephone interview with Avital Leibowitz, IDF spokesperson, Tel Aviv, August 27, 2008.

<sup>146</sup> Human Rights Watch telephone interview with IDF soldiers (names withheld), Southern Command, August 26, 2008.

<sup>147</sup> Dan Izenberg, “The IDF, breaking its own rules, expels 91 Africans,” *Jerusalem Post*, September 2, 2008, <http://www.jpost.com/servlet/Satellite?cid=1220186504138&pagename=JPost%2FJPArticle%2FShowFull> (accessed September 12, 2008); see also “Egypt – Israel: Government says it deported African migrants,” IRINnews, September 8, 2008, <http://www.irinnews.org/report.aspx?ReportId=80213> (accessed September 12, 2008).

### *“Coordinated immediate returns” policy*

Israel’s policy of allowing border-crossers to be immediately returned apparently originated in a meeting on March 1, 2006. According to a report of the meeting by refugee lawyers who were present, the state legal advisor stated,

From the legal point of view, there is no impediment to the return to Egypt of a person who infiltrated into Israel, soon after his entry, such return does not require a legal order or any other procedure. Legally, this is prevention of entry, and not deportation from Israel. The one condition to apply to this procedure is proximity in time and in place to the border crossing.<sup>148</sup>

The proximity of detention to the time and place of entry are irrelevant to Israel’s obligation to abide by the prohibition on refoulement. In 1977, UNHCR’s ExCom, of which Israel is a member, adopted by consensus Conclusion 6, which “[r]eaffirms the fundamental importance of the observance of the principle of nonrefoulement—both at the border and within the territory of a State ...”<sup>149</sup> The ExCom reaffirmed this in October 2004 with Conclusion 99, which calls on states to ensure “full respect for the fundamental principle of nonrefoulement, including non-rejection at frontiers without access to fair and effective procedures for determining status and protection needs.”<sup>150</sup>

### **Proposed enabling procedures falling short of international refugee law**

In September 2007, Israeli NGOs challenged Israel’s forcible return of 48 people to Egypt the previous month. The Israeli High Court of Justice required the state of Israel

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<sup>148</sup> Protocol of the March 1, 2006 meeting, issued on March 16, 2006, quoted in letter from Anat Ben Dor, Tel Aviv University Refugee Law Clinic, and Yonatan Berman, Hotline for Migrant Workers, to Mr. Radhouane Nouicer, Director of the Middle East and North Africa Bureau, UNHCR Geneva, September 13, 2007 (copy on file with Human Rights Watch).

<sup>149</sup> UNHCR ExCom Conclusion 6 (XXVIII) – “Non-Refoulement,” October 12, 1977, <http://www.unhcr.org/excom/EXCOM/3ae68c43ac.html> (accessed December 20, 2007), para. (c).

<sup>150</sup> UNHCR ExCom Conclusion 99 (LV) – “General Conclusion on International Protection,” October 8, 2004, <http://www.unhcr.org/excom/EXCOM/41750ef74.html> (accessed December 20, 2007), para. (l).

to present to the court its proposed procedures for “coordinated immediate return” of “infiltrators” crossing into Israel from Egypt.<sup>151</sup>

As presented in December 2007, the proposed procedures, direct that an “infiltrator” be questioned “by the capturing force in the field” within three to six hours of capture, following a standard set of questions. The questioner— “a soldier or a policeman”—needs only to have the “basic ability to communicate with the infiltrator.” If questioning in the field is impossible, soldiers take the migrant to an army camp where the same procedures apply.

The questionnaire does not instruct the interviewer to ask directly whether the migrant fears any risk in his or her country of origin or in Egypt. If the questioning raises suspicions of a “security or criminal infiltration,” the “infiltrator would be transferred to the relevant ... avenues,” but the procedures do not specify what happens if the questioning raises concerns about a possible need for protection. Instead, the information derived from the questioning would be transferred to an IDF lieutenant colonel or colonel, who would decide whether the migrant, based on “his personal circumstances, the circumstances of his capture and his status in Egypt,” should be returned to Egypt.

If the migrant’s file indicated that the migrant had claimed a serious danger to his life if he were returned, the proposed procedures direct the army officer to ask for the advice of “a legal authority from the army legal division” or another authorized government authority. The authority could direct the migrant to be transferred to the civil immigration authorities if he believes that “there is danger to the life or liberty of the infiltrator in Egypt.” However, the procedures specify that this authority would not take into account any “risk of prosecution or imprisonment or punishment due to the infiltration or other criminal offenses committed within Egypt.” Migrants would be deported to Egypt within 72 hours upon “receiving the necessary approval” in

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<sup>151</sup> The High Court of Justice, petition HCJ 7302/07, served on August 28, 2007 by the Hotline for Migrant Workers and the Refugee Rights Clinic at Tel Aviv University on behalf of the Association for Civil Rights in Israel, the Israel Religious Action Center, Physicians for Human Rights – Israel and Assaf. The State of Israel presented to the High Court a “Complementary Announcement on Behalf of the State” (December 3, 2007). The complementary announcement includes, as an annex, the proposed procedures, entitled, “IDF permanent operational order 1/3.000, Procedure for Immediate Coordinated Returns, Infiltrators on the Israeli / Egyptian Border, November 2007, Southern Sector.”

“coordination with the relevant Egyptian authorities.” Until then, the IDF would detain the migrant according to temporary or permanent deportation orders.

Almost every aspect of the proposed procedures—which stigmatize potential asylum seekers and other migrants as “infiltrators”—falls short of Israel’s commitments under refugee law. The Israeli government’s proposed procedures follow neither of the two “necessary” stages of refugee status determination: to “ascertain the relevant facts of the case” and to apply to the facts thus ascertained “the definitions in the 1951 Refugee Convention and the 1967 Protocol.”<sup>152</sup>

UNHCR guidelines establish that applications for asylum should “be examined within the framework of a specially established procedure by qualified personnel having the necessary knowledge and experience, and an understanding of the applicant’s particular difficulties and needs.”<sup>153</sup> Nothing in the proposed procedures suggests that the “questioner” operating as part of the “capturing force in the field” should or would have the knowledge and experience required to conduct a first-instance interview to ascertain these particular protection needs.<sup>154</sup> Instead of making available to the applicant the necessary facilities, including the services of a competent interpreter, for submitting his case, the proposed procedures do not even require that the “soldier or policeman” who conducts the questioning has competency in a language the migrant understands.<sup>155</sup> The procedures are virtually silent as to the treatment of women and children, whereas UNHCR provides specific guidance to refugee status decision-makers on interviewing and assessing the claims of these and other vulnerable groups and individuals.<sup>156</sup>

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<sup>152</sup> UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, p. 29.

<sup>153</sup> *Ibid.*, p. 190.

<sup>154</sup> According to the procedures, only if “the capturing force cannot perform the questioning” would the applicant be moved from the “field” to “a division military camp.” Complementary Announcement on Behalf of the State (December 3, 2007), para. 5.

<sup>155</sup> UNHCR Excom Conclusion 8 (XXVIII) – 1977: “Determination of Refugee Status,” at (e)(iv) and at para. 7.

<sup>156</sup> The proposed procedures say only, “The questioning of a minor would be done by the interviewer, as far as possible by questioning the minor or the adult with whom he had infiltrated.” Complementary Announcement on Behalf of the State (December 3, 2007), annex 1, art. A.4.C. By contrast, the UNHCR Handbook says that “it will generally be necessary to enroll the services of experts conversant with child mentality” and possibly the appointment of a legal guardian in order to ensure that the best interests of the child are “fully safeguarded.” UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, p. 214. See also, *inter alia*, UNHCR, “Refugee Children: Guidelines on Protection and Care (1994), Guidelines on the Protection of Refugee Women” (1991),

The proposed procedures do not indicate that the standard for protection is “a well-founded fear of being persecuted,” but rather establishes a higher threshold of “a real danger to his life.” Instead of aiming to provide interviewers with a thorough knowledge of refugee law, the proposed procedures only “considers the option” of including a “general review” of such topics as the Refugees Convention in a vaguely-described training program for “questioners.” Nor do the procedures meet the related requirement in refugee law that military authorities transfer all migrants to civilian authorities competent to make first-instance decisions on asylum claims at the earliest possible time. The procedures merely give the IDF that discretion (but no guidance).<sup>157</sup>

The proposed procedures direct “questioners” not to inform migrants of any right to seek asylum: “The purpose of the questioning is to provide necessary information on the infiltrator and to allow him to provide, on his own initiative, claims regarding danger to his life emanating from return to Egypt or from being a refugee.”<sup>158</sup> According to UNHCR, applicants should be duly informed of and afforded the opportunity to contact a representative of UNHCR.<sup>159</sup> Yochi Ganessin, who argued the case before the High Court on behalf of the state, told Human Rights Watch that asking the question directly “is putting words in their mouths, it’s telling them to make refugee claims. He should tell his own story.”<sup>160</sup>

The procedures, in ordering that potential asylum seekers be deported within 72 hours, violate the right of asylum applicants to remain in Israel pending a final

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“Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum” (1997), and *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, pp. 206-219, which also includes refugee status determinations for mentally disturbed persons.

<sup>157</sup> UNHCR Conclusion 8 (XXVIII) – 1977: “Determination of Refugee Status,” at (e)(iii). The ExCom further states that if the applicant is not recognized, he should be given a reasonable time to appeal for a formal reconsideration of the decision, either to the same or to a different authority, whether administrative or judicial, according to the prevailing system. It is highly unlikely that the ExCom contemplated that the armed forces would be an appropriate administrative or judicial authority for examining refugee claims. *Ibid.*, at (e)(vi).

<sup>158</sup> Emphasis added. Complementary Announcement on Behalf of the State (December 3, 2007), annex 1, art. 5.A.1.

<sup>159</sup> UNHCR Conclusion 8 (XXVIII) – 1977: “Determination of Refugee Status,” at (e)(iv).

<sup>160</sup> Human Rights Watch interview with Yochi Ganessin, March 6, 2008.

decision on their cases, and thereby breach Israel's non-refoulement obligations and international law provisions related to the right to an effective remedy.<sup>161</sup>

According to the UNHCR ExCom, any official conducting an asylum interview is required to act in accordance with the principle of nonrefoulement.<sup>162</sup> The proposed standard of "real danger to life" risks excluding refugees who face risks short of mortal danger but that may nevertheless meet the "well-founded fears of persecution" standard under the Refugee Convention, or other grounds that would establish a need for protection or a humanitarian basis for non-return.<sup>163</sup>

Before a state proposes to remove a refugee or asylum seeker to a third country it must assess whether that country is indeed safe. UNHCR's Executive Committee has concluded that refugees and asylum seekers who move in an irregular manner from a country where they have already found protection, may be returned to that country only if they are protected there against refoulement.<sup>164</sup> Judicial authorities also hold that the principle of non-refoulement precludes "the indirect removal ... to an intermediary country" in circumstances in which there is a danger of subsequent refoulement of the individual to a territory where he or she would be at risk.<sup>165</sup> The proposed Israeli procedures would stop deportation to Egypt only if "there is a danger to the life or liberty in Egypt if the person is returned." An assessment limited only to the immediate danger a third-country national might face to life or liberty in Egypt is not a sufficient assessment of risk; such an inquiry must include not only the risk of removal by Egypt with insufficient regard for protection needs, but also the risk of harm in the migrant's country of origin.

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<sup>161</sup> UNHCR's ExCom has concluded that "the applicant should be permitted to remain in the country pending a decision on his initial request by the competent authority" and "should also be permitted to remain in the country while an appeal to a higher administrative authority or to the courts is pending." UNHCR Conclusion 8 (XXVIII) – 1977: "Determination of Refugee Status," at (e)(vii).

<sup>162</sup> ExCom Conclusion No.8 (XXVIII) -- 1977: "Determination of Refugee Status."

<sup>163</sup> If a migrant presents asylum claims during an initial interview, the only reason not to pass the migrant on to civil immigration authorities would be if the migrant's claims were "clearly abusive" or "manifestly unfounded." Even in such cases the applicant should be given "a complete personal interview by a fully qualified official and, whenever possible, by an official of the authority competent to determine refugee status." ExCom Conclusion No.30 (XXXIV) 1983: "The Problem of Manifestly Unfounded or Abusive Applications for Refugee Status or Asylum," at (d), (e), (i).

<sup>164</sup> ExCom Conclusion No. 58 (XL) 1989.

<sup>165</sup> *T.I. v. United Kingdom*, Application No. 43844/98, Decision as to Admissibility, 7 March 2000, [2000] INLR 211, at 228.

Moreover, the proposed procedures fail to address the fact that Sudanese nationals may become refugees *sur place*—they have a well-founded fear of persecution if returned to their home country by virtue of events that occurred after, rather than before they left: that is, by entering Israel, a country that Sudan considers to be an enemy state.<sup>166</sup>

Ganessin, the lawyer at the Ministry of Justice, told Human Rights Watch,

The real point is that Egypt should be considered a safe first country. It should be this under refugee law. It has a UNHCR office. It has also signed the Refugee Convention and the African refugee convention. Many people who made it to Israel got recognized in Egypt—HCR there gave them blue or yellow cards [indicating refugee and asylum seeker status, respectively]. So from an Israeli perspective, Sudanese and Eritreans should be protected in Egypt.<sup>167</sup>

Egypt, in fact, has not protected them. Egypt held in incommunicado detention asylum seekers and refugees sent back by Israel on August 18, 2007. Egyptian authorities may have committed refoulement on October 28, 2007, when they reportedly removed to Sudan at least five of the group, after they were held at an unknown location and without being given the opportunity to make claims for refugee status. An Associated Press article later quoted an anonymous Egyptian Ministry of Foreign Affairs official as saying that 20 of the group had been “asked to leave” Egypt.<sup>168</sup>

The proposed Israeli procedures thus appear to instruct soldiers and policemen charged with questioning “infiltrators” to disregard practices and laws in Egypt, and

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<sup>166</sup> Persons who were not refugees when they left their countries, but who became refugees at a later date are called refugees *sur place*. A person might become a refugee *sur place* because of changes that occurred in the country of origin after departure or because of the person’s own actions while outside the country. See UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, pp. 94-96.

<sup>167</sup> Human Rights Watch interview with Yochi Ganessin, March 6, 2008.

<sup>168</sup> Aron Heller, “Israel: No Promised Land for Africans,” Associated Press.

in third countries, that could bear directly on a migrant's possible refugee claim.<sup>169</sup> It is hard to understand otherwise the proposed procedures' reliance on the concept of "coordinating with Egyptian authorities" to provide for the smooth and safe return to Egypt of migrants attempting to cross into Israel. As noted above, the Egyptian Ministry of Foreign Affairs has stated that no "coordination" agreement exists.<sup>170</sup> Even if Egypt had provided assurances that it would treat returnees humanely, human rights experts and authorities have concluded that "diplomatic assurances" are inadequate safeguards to ensure that deportees to countries known to practice torture will be protected.<sup>171</sup>

According to Ganessin, "[Israel] agrees with the [Refugee] Convention's other prohibited grounds of persecution. But you can't get protection under non-refoulement just for committing a national crime that carries a prison sentence, like desertion from army service in Eritrea or crossing the Egyptian border illegally."<sup>172</sup> This narrow view of Israel's non-refoulement obligations seems incompatible with the concept of *sur place* refugee claims. It further deems it irrelevant that Eritrean authorities have tortured or executed deserters, and that torture is a well-documented and pervasive practice in detention facilities and at all stages of arrest and detention in Egypt.<sup>173</sup>

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<sup>169</sup> The proposed procedures instruct the relevant authority not to take into account any "risk of prosecution or imprisonment or punishment due to the infiltration or other criminal offenses committed within Egypt."

<sup>170</sup> "Israel: Halt Summary Expulsion of Sudanese Migrants; Unknown Fate Awaits Sudanese Fleeing From Darfur," Human Rights Watch news release.

<sup>171</sup> For references to several expert opinions, see Human Rights Watch, "Denmark and diplomatic assurances against grave violations of human rights," letter to Danish Minister of Justice Lene Esperson, June 18, 2008, [http://hrw.org/english/docs/2008/06/18/denmar19151.htm#\\_ftn3](http://hrw.org/english/docs/2008/06/18/denmar19151.htm#_ftn3), appendix.

<sup>172</sup> Human Rights Watch interview with Yochi Ganessin, March 6, 2008.

<sup>173</sup> The US Department of State, in its 2007 "Country Reports on Human Rights Practices," summarized abuses in Eritrea as follows: "[T]he government continued to authorize the use of lethal force against anyone resisting or attempting to flee during military searches for deserters and draft evaders, and the practice reportedly resulted in deaths during the year. Several persons detained for evading national service died after harsh treatment by security forces. There were reports that individuals were severely beaten and killed during roundups of young men and women for national service. There were reports of summary executions and of individuals shot on sight near the Ethiopian and Sudanese borders, allegedly for attempting to cross the border illegally." US Department of State, Bureau of Democracy, Human Rights and Labor, "Country Reports on Human Rights Practices – 2007: Eritrea," March 11, 2008, <http://www.state.gov/g/drl/rls/hrrpt/2007/100480.htm> (accessed August 25, 2008). On torture in Egypt, see Human Rights Watch, *Egypt's Torture Epidemic*, February 2004, <http://hrw.org/english/docs/2004/02/25/egypt7658.htm>. Other Human Rights Watch reports on torture in Egypt include *In a Time of Torture: The Assault on Justice In Egypt's Crackdown on Homosexual Conduct* (New York: Human Rights Watch, 2004), <http://hrw.org/reports/2004/egypt0304>; *Egypt: Mass Arrests and Torture in Sinai*, vol. 17, no. 3(E), February 2005, <http://hrw.org/reports/2005/egypt0205/>; *Black Hole: The Fate of Islamists Rendered to Egypt*, vol. 17, no. 5(E), May 2005, <http://hrw.org/reports/2005/egypt0505/>.

## Continuing political instance on “coordinated returns”

In February 2008, in rejecting Prime Minister Olmert’s recommendation for tougher rules of engagement at the border (see above), Defense Minister Barak argued that the government should re-activate the policy of immediate “coordinated returns” to Egypt.<sup>174</sup> *Haaretz* quoted then-Foreign Minister Tzipi Livni as saying, at the same meeting, that “a distinction must be made between refugees and job seekers. Against the latter we must employ harsh measures at the border initially, and later at the detention facilities. We mustn’t provide solutions for people who come here seeking work.”

Also at the February 24 meeting, the prime minister reportedly “directed authorities to expel 4,500 Africans, including people from Ivory Coast, Ghana and Nigeria, by the end of the week.”<sup>175</sup> The order was not carried out, and at another meeting on the issue on March 23, “Olmert expressed anger that the IDF was not conducting ‘hot returns.’” He and Barak “criticized the Ministry of Foreign Affairs for not holding negotiations with Eritrea regarding the infiltrators, as most are from that country. Olmert instructed the Ministry to find a third country within a week that will be willing to accept the African infiltrators.”<sup>176</sup> Olmert reportedly again requested the defense minister to “stop the infiltrations, even if it called for a ‘moderate use of force.’”<sup>177</sup> The next day, immigration police conducted sweeps of privately-run refugee shelters in Tel Aviv and arrested approximately 300 people. Many were detained for four days, separated from their families, and in some cases transferred to prisons in other cities before being released (see Chapter VII).

The August 2008 returns of 91 people, described above, went ahead despite court approval of the enabling procedures for the coordinated returns policy still being

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<sup>174</sup> Barak Ravid and Associated Press, “Barak rejects PM call to ease rules of engagement at border,” *Haaretz*, February 24, 2008, <http://www.haaretz.com/hasen/spages/957417.html> (accessed October 12, 2008).

<sup>175</sup> Aron Heller, “Israel: No Promised Land for Africans,” Associated Press, February 26, 2008.

<sup>176</sup> Hati Sini and Barak Ravid, “Prime Minister to return infiltrators to Egypt immediately upon their capture” (להחזיר הורה מ"רה), *Haaretz* (in Hebrew), March 23, 2008, <http://www.haaretz.co.il/hasite/pages/ShArtPE.jhtml?itemNo=967594&contrassID=2&subContrassID=1&sbSubContrassID=0> (accessed October 12, 2008); a less-detailed version of the story is available on *Haaretz*'s English-language website: Barak Ravid and Associated Press, “PM: Israel to send back refugees who infiltrate from Sinai,” March 23, 2008, <http://www.haaretz.com/hasen/spages/967272.html> (accessed October 12, 2008).

<sup>177</sup> Roni Sofer, “Olmert: We must curb infiltrations from Egypt,” YNET, March 23, 2008.

pending. An IDF spokesman who confirmed the returns (without specifying the number) to Human Rights Watch said that they “follow[ed] instruction in recent months from the political echelon to do so.”<sup>178</sup>

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<sup>178</sup> Human Rights Watch telephone interview with Avital Leibowitz, IDF spokesperson, Tel Aviv, August 27, 2008.

## VI. Egyptian Treatment of Those Detained

Egyptian law prohibits entry or attempted exit from the country through any points other than designated border crossings, prescribing punishments of up to six months' imprisonment and a fine, or from two to five years' imprisonment and a fine where the crossing occurred in specially designated prohibited areas, also referred to as security zones.<sup>179</sup> In the Sinai, and on Egypt's border with Sudan, police have arrested hundreds of migrants in the past two years alone. A spokesperson for UNHCR Egypt confirmed that "the majority of [migrants] in detention now are [those] captured at borders."

People apprehended at the border and taken into detention face violations of their rights as criminal defendants, as refugees, and as detainees.

### Use of Military Tribunals to Try Civilians

Most migrants and asylum seekers who are arrested in Cairo are tried before civilian courts and have access to UNHCR. However, migrants arrested for illegally entering Egypt at a non-authorized border crossing, or for attempting to enter the Sinai peninsula (a designated "security zone") without authorization, or for attempting to cross the border with Israel, fall within the jurisdiction of the nearest military tribunal. At least four Egyptian military tribunals try persons detained for crossing borders: in Aswan and Ghorgada (for irregular entries from Sudan); in Marsa Matroh (from Libya); and in Ismailiyya (those entering the Sinai military zone). These tribunals apply domestic Egyptian law.<sup>180</sup> The tribunals' rulings cannot be appealed.

Migrants are tried and sentenced in groups divided by gender. The authorities make no effort to try families together, and in many cases try and sentence as a group persons who did not attempt to cross the border at the same time. Refugees and migrants said their trials comprised two or three relatively brief hearings and that they were not asked their motives or their asylum status during the trial. While

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<sup>179</sup> Presidential Decree-Law No. 89 for 1960, Entry and Residence of Aliens in the Territories of the United Arab Republic and Their Departure Therefrom, arts. 3, 41.

<sup>180</sup> Ibid.

lawyers are present at trial hearings, refugees and migrants said their legal counsel tended to play a merely pro-forma role. “I was in jail for six months,” said a Southern Sudanese woman who was arrested in June 2007 but who succeeded in crossing into Israel after her release. “The judge called us by name, and said, ‘You tried to cross the border with Israel,’ and our lawyer just said, ‘Don’t say yes, say no.’”<sup>181</sup> Several former detainees complained that they paid lawyers to represent them but received merely pro-forma legal services.

Trying civilians in military tribunals violates Egypt’s obligations to ensure the rights to due process and a fair trial under the ICCPR and the African Charter on Human and Peoples’ Rights. Egypt is obliged to afford due process and a fair trial to migrants, asylum seekers, and refugees whom it detains for violating national laws by entering the country irregularly via unauthorized points on the Sudanese border, by illegally entering the Sinai peninsula, or by attempting to cross the border into Israel in an unauthorized manner. The ICCPR affirms that everyone has the right to be tried by a competent, independent, and impartial tribunal established by law (article 14). As a state party to the ACHPR, Egypt has “the duty to guarantee the independence of the courts” (article 26).

The Human Rights Committee has stated that the trial of civilians by military courts should be very exceptional and occur only under conditions that genuinely afford full due process.<sup>182</sup> The African Commission on Human and Peoples’ Rights, the body created to monitor the implementation of the ACHPR, elaborated that “the only purpose of military courts shall be to determine offenses of a purely military nature committed by military personnel,” and that “military courts should not, in any circumstances whatsoever, have jurisdiction over civilians.”<sup>183</sup>

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<sup>181</sup> Human Rights Watch interview with R.A., Eilat, March 3, 2008. Although there were three hearings in her case, “the lawyer waited until the third time, after six months, to take the birth certificate for my youngest son to the judge. And that same day they let me out.” As discussed below, Egyptian military tribunals tend to release mothers detained with their children.

<sup>182</sup> UN Human Rights Committee, General Comment No. 13: Equality before the courts and the right to a fair and public hearing by an independent court established by law (art. 14), April 13, 1984, <http://www.unhcr.ch/tbs/doc.nsf/o/bb722416a295f264c12563ed0049dfbd?Opendocument> (accessed September 28, 2008), para. 4.

<sup>183</sup> African Commission on Human and Peoples’ Rights, Principles and Guidelines on the Right to a Fair Trial in Africa, art. L (a), (c), reproduced at [http://www.justiceinitiative.org/db/resource2?res\\_id=101409](http://www.justiceinitiative.org/db/resource2?res_id=101409) (accessed September 28, 2008).

## *Separation of families*

One consequence of the detention policy is family separation. In one case recounted to Human Rights Watch, Egyptian border police separated a woman from her husband shortly after arresting them in April 2007, taking them from the border to different prisons. “That was the last time I saw him,” she told us, 11 months later.<sup>184</sup>

Specifically with regard to minors who are refugees or asylum seekers, UNHCR’s Executive Committee (ExCom) has called upon states “to respect and observe ... the principle of the best interests of the child and the role of the family as the fundamental group of society.”<sup>185</sup> The ExCom further “[urged] States and concerned parties to take all possible measures to protect child and adolescent refugees, inter alia, by: (i) preventing separation of children ... refugees from their families.”<sup>186</sup>

Before their cases come before military tribunals for trial, mothers are detained with any accompanying minor children (see below). The military tribunals typically sentence women to about six months and men to around one year in prison for illegally entering Egypt or attempting to cross illegally into Israel, in addition to fines of around 2,000 Egyptian pounds (LE). According to numerous former detainees, the tribunals order the release of mothers with their children, although it appears that compliance with such orders is not always immediate: “When my husband was sentenced,” N.A. said, “the judge said [my child and I] could go free. But after that they took the women back to the same prison and we had to stay there for another 45 days!”<sup>187</sup>

The humane policy of releasing mothers with children does not apply to fathers arrested with their children. Hadja Abbas Haroun, the pregnant woman killed on July 22, 2007, was survived by a daughter who is now three years old, and by a husband

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<sup>184</sup> Human Rights Watch interview with S.G., March 12, 2008. A military tribunal ordered the woman’s release after roughly one month in detention because her twin infants had been arrested with her at the border (see below for a discussion of the policy whereby mothers detained with young children are released).

<sup>185</sup> UNHCR ExCom Conclusion No. 84 (XLVIII) – 1997: “Refugee Children and Adolescents,” para. (a)(i)-(iii). The ExCom has also “reaffirmed the fundamental right of refugee children to education and called upon all States, individually and collectively, to intensify their efforts ... to ensure that all refugee children benefit from primary education of a satisfactory quality.” Conclusion No. 47 (XXXVIII) – 1987: “Refugee Children,” para. (o).

<sup>186</sup> UNHCR ExCom Conclusion no. 84 (XLVIII), para. (b).

<sup>187</sup> Human Rights Watch interview with N.A., October 6<sup>th</sup> City, March 11, 2008.

who is now serving a one-year jail sentence. A relative of Haroun told Human Rights Watch that he managed to attend her husband's military trial in Ismailiyya. "As soon as they killed the mom they took the child and the father to prison. But they separated her from her dad, and she was staying in jail with three other women in al-Arish. At the court, that was the first time her father had seen her."<sup>188</sup> The experience of detention, evidently in a regular jail cell with prisoners to whom she was not related, took a toll on the girl's health. "After [she had been] a week in jail," Haroun's relative continued, "I saw the girl in court and she looked really sick." Two days later, at a second hearing, the military tribunal sentenced the father to jail and a 2,000 LE fine, and allowed the relative to bring the girl home with him. "She had stomach problems, she was throwing up," he said.

And she was really hot, her skin had blisters—they were all over her body, but [worst] on her head. For a few days she wasn't speaking, she was just crying. If we hadn't got her she might have died. The Egyptians were just giving her bread but she hadn't been eating. I asked the women she was with in jail if she'd ever been taken to hospital and they said no.

Since her release, the relative added, "she wakes up at midnight two or three times a week and starts screaming."<sup>189</sup>

Egypt is obliged, according to the Convention on the Rights of the Child (CRC), to ensure the rights of children to family unity: "[A] child shall not be separated from his or her parents against their will," according to the CRC, "except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child."<sup>190</sup> Where children are separated, Egypt is obliged to "respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis," and, in cases where these countries have detained, imprisoned, or killed one or both of a child's parents, to,

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<sup>188</sup> Human Rights Watch interview with H.A., Cairo, March 16, 2008.

<sup>189</sup> *Ibid.*

<sup>190</sup> CRC, art. 9(1).

“upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family.”<sup>191</sup>

## Denial of Access to Asylum Procedures

In Egypt, asylum seekers and refugees detained in security zones benefit from a lesser degree of international protection than those detained elsewhere. In general, if a registered asylum seeker or refugee is detained on grounds related to her immigration status in a non-security zone (such as Cairo) and she informs Egyptian authorities that she is under UNHCR’s protection, the authorities will verify her claim with UNHCR, and will release her (although State Security Investigations retains the final authority to decide on the release).<sup>192</sup> If the detainee has not yet registered with UNHCR, the Egyptian government will contact the detainee’s embassy to arrange for deportation, but in the interim the detainee can ask the Egyptian authorities to contact UNHCR, or can usually contact legal aid NGOs, community leaders, or relatives and ask them to do so on her behalf. Lawyers, relatives and migrant community members can ask to visit such detainees in detention, although Egyptian authorities denied access to Eritreans in detention from late February 2008 until forcibly returning hundreds to Eritrea in June.<sup>193</sup>

It is significantly more difficult for asylum seekers, refugees, and other migrants detained in designated security zones to invoke international protection. In practice, such detainees may be visited only exceptionally. According to former detainees, military tribunals do not ask detainees about their asylum status; rather, at some point during their detention, state security agents determine whether detainees have registered with UNHCR as asylum seekers or refugees. After they have served their sentences, those who have so registered are released, but those who have not are deported.<sup>194</sup> A Darfuri woman who was detained at the Sinai border said,

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<sup>191</sup> *Ibid.*, art. 9 (3)-(4).

<sup>192</sup> For example, for not having either a national identity card or a residency permit stamped on his or her passport or UNHCR card.

<sup>193</sup> Human Rights Watch interviews with lawyers with refugee service NGOs, UNHCR official, and Ethiopian refugee volunteer (names withheld), Cairo and October 6<sup>th</sup> City, March 10-16, 2008.

<sup>194</sup> Human Rights Watch interview with Michael Kagan, March 10, 2008. A refugee elaborated on her own experience of these procedures as follows: “A police officer [at the Immigration Department at the Mugamma administrative building in Cairo] had

State security, who took our passport and UNHCR numbers, told us that if we tried to cross the border again they'd put us in jail for three years and then deport us. We went to the Mugamma [an administrative headquarters in downtown Cairo], and they released those of us with UNHCR cards. But they told two women, "We're going to send you back." The women had never gone to UNHCR. They were from Darfur too, but they were only in Egypt for two months.<sup>195</sup>

Persons who have not yet registered for asylum with UNHCR and who are detained at Egypt's borders therefore face the risk of being deported without ever having an opportunity to present asylum claims. As Michael Kagan, senior fellow in human rights law at the American University in Cairo, put it,

There has never been any solid system to ensure that UNHCR was contacted by the government of Egypt when someone in detention makes asylum claims. ... There's a big gap in terms of those who may be unable to have their asylum status determined. UNHCR would only find out you existed if you were allowed to make a phone call.<sup>196</sup>

Detained migrants who manage to contact UNHCR often do so despite, rather than with the assistance of, Egyptian prison authorities. A refugee lawyer told Human Rights Watch that according to some of his clients, "It's only by chance that [detained migrants] can get their case in front of UNHCR. On their trips to security outside of jail, they have to bribe cops to let them make calls to their relatives or to have them contact immigration."<sup>197</sup> An Ethiopian who volunteers to visit detained migrants in Cairo said he advised Eritrean and Ethiopian detainees that in case of

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our names and information and read it out. They checked to see whether we had UN numbers. The people without any were sent back to Sudan. I knew someone from Abyei who tried to cross the border with me and was caught with me, but her UN file had been closed.... They brought her and me and her husband to Mugamma [a large administrative building in downtown Cairo that houses Ministry of Interior and other offices] together. Then they sent me back to jail but sent her to Sudan. They said they were going to. I heard from her relatives she had been sent back." Human Rights Watch interview with R.B., Eilat, March 3, 2008.

<sup>195</sup> Human Rights Watch interview with F.A., Cairo, March 15, 2008.

<sup>196</sup> Human Rights Watch interview with Michael Kagan, March 10, 2008.

<sup>197</sup> Human Rights Watch interview with N. C., refugee lawyer, Cairo, March 12, 2008.

emergency they should bribe Egyptian prisoners, who are allowed mobile phones, to make contact with him for them.<sup>198</sup>

This volunteer told Human Rights Watch that he had been involved in the case of an unaccompanied Ethiopian boy, whose age he estimated at 10 or 12, whom Egyptian authorities had deported without allowing him the opportunity to make an asylum claim. The volunteer said that he had visited the boy after he had been transferred to detention in Cairo:

The boy was arrested at Aswan, when he crossed the border from Sudan. He said his father was dead, and he didn't know where his mother was. He told me his journey was seven days by foot—people who take that route go to the Nile to get water, they walk at night, sleep during the day, with barely anything to eat. He was sent back [to Ethiopia] in October 2007. We haven't heard from him since. I wanted to talk to him before he left. I learned the flight time from a man in the Ethiopian embassy and I went to the airport, but the police refused to let me see him.<sup>199</sup>

A spokesperson for UNHCR Egypt told Human Rights Watch that “we learn about those in detention from the Egyptian government.” This official stressed that the Egyptian government “is cooperative in telling us about illegal Eritrean entrants.”<sup>200</sup> Egypt's deputy minister for refugees told Human Rights Watch that his office at the Ministry of Foreign Affairs sends “dozens of faxes” per day to UNHCR regarding migrants and asylum seekers detained at the borders.<sup>201</sup>

Nonetheless, in late February 2008, Egyptian authorities refused UNHCR access to detained Eritreans. In March 2008, Egyptian lawyers told Human Rights Watch, over 280 Eritreans and Ethiopians were known to be detained in Burj al-Arab prison in

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<sup>198</sup> Human Rights Watch interview with Y.Z., Cairo, March 13, 2008.

<sup>199</sup> Ibid.

<sup>200</sup> Human Rights Watch interview with UNHCR Egypt spokesperson, March 11, 2008.

<sup>201</sup> Human Rights Watch interview with Tareq Maaty, March 16, 2008.

Alexandria.<sup>202</sup> In May, an Egyptian community-based NGO, compiling various lists, put the figure at 400 Eritrean detainees. Egyptian authorities reportedly transferred hundreds of Eritrean detainees to military detention centers in May, a move human rights and refugee lawyers feared was a prelude to mass deportations.<sup>203</sup> By June, UNHCR had collected the names of 1,400 Eritreans detained at various sites throughout Egypt.<sup>204</sup> From June 12 to June 15, Egypt reportedly deported 690 Eritreans on special Egyptair flights from the Shallal detention facility in Aswan governorate to Massawa, Eritrea.<sup>205</sup> In total, Egypt may have deported 1,200 Eritreans from June 12 to 19.<sup>206</sup> Human Rights Watch spoke with Egyptian and Eritrean human rights advocates who said they received frantic phone calls from detainees being rounded up and put on trucks.<sup>207</sup> A lawyer with the Hisham Mubarak Law Center, who was based in Aswan, said detainees pleaded with Egyptian guards and threatened to commit suicide before being forcibly deported.<sup>208</sup>

## Conditions of Detention

### *Inadequate medical care*

S.G., from Southern Sudan, was captured after Egyptian border police shot and wounded her husband and her 13-month-old son. The family was taken to hospital in al-Arish for 12 days, then to prison.<sup>209</sup> S.G. has not seen her husband since. There may be many wounded migrants in Egyptian jails like S.G.'s husband. *A Washington*

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<sup>202</sup> Human Rights Watch interviews with J.R. and S.L., Cairo, March 10, and O.A., Eritrean Pentecostal pastor, Cairo, March 17, 2008.

<sup>203</sup> Human Rights Watch email correspondence with Elsa Chyrum, May 28, 2008, and Egyptian human rights and refugee lawyers (names withheld), May 2008.

<sup>204</sup> "UNHCR interviews 179 Eritrean asylum seekers detained in Egypt," UNHCR press release.

<sup>205</sup> Amnesty International, "Egypt: Forcible return/ Fear of torture or other ill treatment: Up to 900 Eritrean asylum-seekers," AI Index: MDE 12/013/2008, June 16, 2008, <http://www.amnesty.org/en/library/asset/MDE12/013/2008/en/76cbeb84-3c62-11dd-a518-c52d73496467/mde120132008eng.html> (accessed October 3, 2008).

<sup>206</sup> Cynthia Johnston, "UN in frank talks with Egypt on Eritrea refugees," Reuters, June 30, 2008.

<sup>207</sup> Human Rights Watch phone calls and email correspondence with Elsa Chyrum, Human Rights Concern Eritrea; Dr. Khataza Gondwe, advocacy officer, Christian Solidarity Worldwide; Michael Kagan, senior fellow in human rights law, American University in Cairo; and Cairo-based refugee lawyer (name withheld), June 2008.

<sup>208</sup> Amnesty International, "Egypt: Amnesty calls for President to stop flights to possible torture in Eritrea," June 20, 2008, AI Index: MDE 12/014/2008, <http://www.amnesty.org/en/library/asset/MDE12/014/2008/en/4cd747e2-3ee6-11dd-9656-05931d46f27f/mde120142008eng.html> (accessed October 3, 2008); Sarah Carr, "One African shot at border, deportations continue," *Daily News Egypt*, June 19, 2008, <http://www.thedailynewsegypt.com/article.aspx?ArticleID=14541> (accessed June 19, 2008).

<sup>209</sup> Human Rights Watch interview with S.G., Cairo, March 12, 2008.

*Post* reporter described how one migrant carried another, whose legs had been shattered by bullets, into an Egyptian courtroom, where the judge sentenced both men to a year in prison and a fine for attempting to cross the border.<sup>210</sup>

Migrants and refugees who are seriously wounded at the Sinai border face special risks in detention in Egypt. In some cases the wounded faced initial delays in receiving medical care, such as when border police detained a group of 16 migrants, including five who were shot at the border, reportedly from 4 a.m. to noon in a police station before transferring the wounded to a hospital.<sup>211</sup> After treating them in hospitals, authorities subsequently transfer the wounded to prisons where it is difficult to receive further medical care. A Sudanese community leader told Human Rights Watch of one case where, he said, a man had died from wounds inflicted by border guards after prison authorities denied him adequate medical care. “They shot Yusuf in May 2007,” said the community leader, who had visited the man later that month.

No doctor took care of him in jail. It was in Port Said. The jail there is very bad. They give them three pieces of bread every morning at 10 a.m. and that’s it. He died about a month after he was shot. There was no medicine. They took the body back to Sudan.<sup>212</sup>

A former detainee told Human Rights Watch of a girl who appeared to need medical care but did not receive it in detention. “There was a girl, around 12 years old, who’d been shot in the shoulder at the border,” he said, “but they never let her go back to the hospital.”<sup>213</sup> Other former detainees recalled several cellmates who had been wounded by border police gunfire. “She had been shot twice in the leg and once in the shoulder,” a woman recalled of a cellmate.<sup>214</sup> A man remembered that during his time in an Egyptian prison, “I saw someone who had been shot in his stomach and

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<sup>210</sup> Knickmeyer, “Flight from Darfur Ends Violently in Egypt,” *Washington Post*.

<sup>211</sup> Human Rights Watch interview with N.A., October 6<sup>th</sup> City, March 11, 2008.

<sup>212</sup> Human Rights Watch interview with Madhal Aguer Guot Chol March 16, 2008.

<sup>213</sup> Human Rights Watch interview with L.B., October 6<sup>th</sup> City, March 11, 2008.

<sup>214</sup> Human Rights Watch interview with F.A., Cairo, March 15, 2008.

someone else who'd been shot in the foot, and another [who'd been shot] in the calf."<sup>215</sup>

### *Conditions for women detained with their children pretrial*

M., a young mother arrested at the Sinai border, said she was kept in a small cell with 14 other women. "We all got sick. We got only one meal a day. Children got the same food. When I asked for anything else for the children they laughed at me."<sup>216</sup> An Eritrean woman, G.F., was a detainee at the Merkaz al-Nasser facility, known as "Nuba Aswan," when she spoke with Human Rights Watch by telephone in March 2008, and said she shared a cell with 13 other people, of whom four were children, including her own boys, ages 4 and 2. "There is not enough food," she told us, "and the guards threatened that we would be deported because we are not Muslims."<sup>217</sup> Another woman, F.A., said her two young children were the only ones in a small, dirty jail cell they shared with 18 or 20 other inmates. "There was nowhere to put my children down, and the toilet was in the corner. The room was probably three meters [square], it was really small. The toilet [a hole in the ground] was right there, we had to sleep lying on top of it."<sup>218</sup>

Egyptian authorities have refused to allow volunteers seeking to improve grim conditions of detention access to detained women and children. An Ethiopian man who volunteers to bring food and medicine to Eritrean and Ethiopian detainees transferred from the Sinai to Qanatir prison, outside Cairo, said prison authorities there refused to allow him access to a new mother and a pregnant woman.

We knew of two girls who were arrested at the border, one was pregnant, one had just given birth. So we took food, milk, baby clothes. And they wouldn't let us in. I know that the people who try to cross

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<sup>215</sup> Human Rights Watch interview with H.K., Cairo, March 13, 2008.

<sup>216</sup> Human Rights Watch interview with N.A., March 11, 2008.

<sup>217</sup> Human Rights Watch telephone interview with F.T., March 17, 2008.

<sup>218</sup> Human Rights Watch interview with F.A., March 15, 2008.

into Israel are breaking the law. But the Egyptian government should treat them better in jail, or let us visit them and give them food.<sup>219</sup>

Human Rights Watch could find no evidence that Egypt has taken steps to ensure the health or other special needs of detained migrants and refugee children are met, in violation of its international obligations.<sup>220</sup> Failure to provide prisoners, including children in detention, with adequate food violates Rule 20 of the Standard Minimum Rules for the Treatment of Prisoners.<sup>221</sup>

### *Detention of unaccompanied children with adults*

Human Rights Watch learned of cases where Egyptian authorities detained children who had attempted to cross into or out of the country irregularly, in ordinary jails with adult prisoners in conditions that did not appear to meet the “best interests of the child” principle articulated by ExCom (see above),<sup>222</sup> and specifically breached the prohibition in international law on detaining children with adults. In one case recounted to Human Rights Watch in March, two unaccompanied Eritrean boys, ages 13 and 11, whose mother had died in a car accident shortly after entering Egypt, had

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<sup>219</sup> Human Rights Watch interview with Y.Z., Cairo, March 13, 2008.

<sup>220</sup> See “Background,” Section III, above.

<sup>221</sup> Standard Minimum Rules for the Treatment of Prisoners, adopted Aug. 30, 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/CONF/611, annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977).

<sup>222</sup> ExCom Conclusion No. 84 (XLVIII) 1997: “Refugee Children and Adolescents,” para. (a): ExCom [c]alls upon States ... “to respect and observe ... (i) the principle of the best interests of the child and the role of the family as the fundamental group of society ... (ii) the fundamental right of children ... to life, liberty, security of person, and freedom from torture ... (iii) the right of children ... to education, adequate food and the highest attainable standard of health; para (b) “Urges States and concerned parties to take all possible measures to protect child and adolescent refugees, inter alia, by: (i) preventing separation of children ... refugees from their families (ii) safeguarding the physical security of refugee children ... [and] (iv) providing appropriate training to military personnel ... on human rights and humanitarian protections to which children ... are entitled.” The ExCom has also “reaffirmed the fundamental right of refugee children to education and called upon all States, individually and collectively, to intensify their efforts ... to ensure that all refugee children benefit from primary education of a satisfactory quality.” Conclusion No. 47 (XXXVIII) 1987: “Refugee Children,” para. (o).

been detained for roughly a month in the “Nuba Aswan” facility.<sup>223</sup> A July press release from UNHCR mentioned the same two boys, still detained.<sup>224</sup>

In another case, an Eritrean interpreter for UNHCR Egypt told Human Rights Watch that in February 2008 Egyptian guards had killed an Eritrean woman named Mervat Mer Hatover at the Israeli border.<sup>225</sup> The woman was known to be traveling with two girls, but the interpreter said that a month after they were presumably arrested, “no one knows where her girls are.”<sup>226</sup> There is reason to fear that other unaccompanied children who have been detained at either the Sudanese or Israeli borders may be “lost” in the Egyptian prison system. According to Mokhlis Qutb, secretary-general of Egypt’s quasi-official National Human Rights Council, many prison officials habitually fail to register both Egyptian and foreign detainees in their custody.<sup>227</sup>

Detaining children with adults violates Egypt’s obligations under the Convention on the Rights of the Child and under refugee law. Egypt is obliged to ensure that “every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so.”<sup>228</sup> States must also protect detained children from the serious risk of abuse by guards and other prisoners, including sexual abuse.

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<sup>223</sup> A religious leader in the Eritrean community in Cairo had learned of the boys’ case when another prisoner called him and said he and 18 other men were being detained in the same jail cell, around 3 meters square, with the two boys. The boys’ mother had died in a car accident in Aswan after crossing the border from Sudan; the brothers had no family members in Egypt. Human Rights Watch interview with O.A., Cairo, March 17, 2008. Human Rights Watch also spoke with an Eritrean woman, G.F., who said she had been a detainee in the same jail, and that she knew of the two children. Human Rights Watch telephone interview with F.T., March 17, 2008.

<sup>224</sup> “UNHCR Interviews 179 Eritrean asylum seekers detained in Egypt,” UNHCR press release, July 2, 2008, <http://www.unhcr.org/news/NEWS/486b9e9f4.html> (accessed October 3, 2008). The press release identifies the detention center as the Shalal facility in Aswan, where the children had evidently been transferred.

<sup>225</sup> Media reports confirm the woman’s death at the border. See, for example, Ashraf Sweilam, “Egyptian Guards Kill Eritrean Migrant,” Associated Press, February 16, 2008.

<sup>226</sup> The girls were 10 and 8 years old, according to the interpreter, who said the woman’s husband had contacted him. Human Rights Watch interview with B.T., Cairo, March 16, 2008.

<sup>227</sup> Human Rights Watch interview with Mokhlis Qutb, secretary-general of the National Human Rights Council, Cairo, March 17, 2008.

<sup>228</sup> CRC, art. 37 (c)-(e). Similarly, according to the UN Rules for the Protection of Juveniles Deprived of their Liberty, Egypt should provide “every means” to ensure juveniles “have adequate communication with the outside world, which is an integral part of the right to fair and humane treatment,” including allowing them “to communicate with their families, friends and other persons or representatives of reputable outside organizations,” to “receive regular and frequent visits, in principle once a week and not less than once a month,” and “to communicate in writing or by telephone at least twice a week with the person of his or her choice ... [and] to receive correspondence.” United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted December 14, 1990, G.A. res. 45/113, annex, 45 U.N. GAOR Supp. (No. 49A) at 205, U.N. Doc. A/45/49 (1990), arts. 59-61.

## VII. Treatment of Refugees, Asylum Seekers, and Migrants in Israel

Israeli immigration authorities have absorbed large numbers of immigrants in recent decades, such as the 950,000 Jewish immigrants from the countries of the former Soviet Union between 1989 and 2003 or the 15,000 Ethiopian Jews airlifted over two days in 1991.<sup>229</sup> By 2003, Israel had also admitted an estimated 300,000 migrant workers, mainly from Asian and Eastern European countries, as part of a policy to use migrants “to replace Palestinian workers,” whom largely ceased to fill difficult, low-paying jobs in Israel after the “first intifada” ended in 1992 and especially since the “second intifada” began in 2000.<sup>230</sup>

By comparison, the 13,000 arrivals to Israel from various African countries over the past three years is a relatively small number. Many of those who cross the border from Sinai appear to fill the same niche in the Israeli labor market as do other migrant workers.<sup>231</sup> Virtually all of them have registered for asylum with UNHCR Israel. There is, however, little institutional capacity to deal with this number of non-Jewish asylum seekers.<sup>232</sup> Israel lacks national legislation incorporating its obligations under the Refugee Convention, and its asylum procedures are under-resourced.

The result has been an enormous backlog in asylum applications. In his annual report, submitted to the Knesset on May 20, 2008, State Comptroller Micha Lindenstrauss examined the cases of asylum seekers who entered Israel via the Sinai border since 2005. Israeli authorities recognized as refugees only 11 of 909 asylum applicants in 2005; 6 of 1,348 applicants in 2006; and 3 of over 3,000

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<sup>229</sup> See Jewish Virtual Library, “Immigration since 1948,” [http://www.jewishvirtuallibrary.org/jsource/Immigration/Immigration\\_Since\\_1948.html](http://www.jewishvirtuallibrary.org/jsource/Immigration/Immigration_Since_1948.html) (accessed October 3, 2008).

<sup>230</sup> M. Ellman and S. Laacher, Euro-Mediterranean Human Rights Network and the International Federation for Human Rights, “Migrant Workers in Israel: A Contemporary Form of Slavery,” 2003, p. 6. While most of those workers entered Israel legally, they lost their legal status when they lost or switched jobs. As of 2003, an estimated 200,000 were in Israel illegally and thus “liable to arrest and detention at any moment, and ultimately to deportation.” *Ibid.*, p. 9.

<sup>231</sup> Aron Heller, “Israel: No Promised Land for Migrants,” Associated Press, February 26, 2008.

<sup>232</sup> Israel has a tradition of granting asylum to small numbers of non-Jewish refugees via ad hoc interventions by the executive branch. In 1979 Prime Minister Menachem Begin ordered that Vietnamese boat people (some of Chinese origin) be granted residency in Israel; in 1993 Israel granted permanent residency to roughly 100 Bosnians; and in 1999 the government of Israel granted six-month tourist visas and economic assistance to 112 ethnic-Albanian Kosovar Muslims. Anat Ben Dor and Rami Adut, Tel Aviv Faculty of Law and Physicians for Human Rights, “Israel: A Safe Haven? Problems in the Treatment Offered by the State of Israel to Refugees and Asylum Seekers,” September 2003, pp. 21-23.

applicants in the first nine months of 2007. The comptroller's report found that officials took six months to reject asylum seekers and almost three years to decide cases deemed worthy of adjudication. Refugees had no access to healthcare and welfare services during that period.<sup>233</sup>

## Israel's Refugee Status Determination Process

### *Detention as default for illegal entrants at the Sinai border*

Israeli law considers that all persons who cross the border into Israel without authorization are illegal "infiltrators" subject to mandatory detention, under the Prevention of Infiltration law of 1954,<sup>234</sup> prior to being allowed to apply for asylum. As one official told Human Rights Watch, "Infiltrators of the Egyptian border are arrested and transferred to IPS [Israel Prisons Service] detention facilities because they are breaking the entry laws of Israel and are criminals. Anyone eventually recognized as a refugee is not detained."<sup>235</sup> Until they are recognized as refugees, however, applicants may be detained.

Due to a successful court challenge in 2007 by refugee rights NGOs against the Prevention of Infiltration law, Israel no longer subjects border crossers to indefinite and unreviewable detention (see below).

The Israeli Defense Forces detains the vast majority of persons who illegally cross the Sinai border for an initial period, usually a few days, at camps near the border. During this initial detention, the IDF determines whether border-crossers are "security threats." It sends those who are not to detention facilities where the authorities apply the Entry into Israel law of 1952.<sup>236</sup> Those who are security threats are referred to unspecified procedures normally used in such cases.

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<sup>234</sup> Prevention of Infiltration (Offenses and Jurisdiction) Law, 5714 – 1954 (passed by the Knesset on August 16, 1954), *Laws of the State of Israel: Authorized Translation from the Hebrew*, Vol. 8, Government Printer, Jerusalem, Israel (1948-1987), p. 133-7.

<sup>235</sup> Email to Human Rights Watch from Hillel Freeman on behalf of Rana'an Dinur, March 9, 2008.

<sup>236</sup> Entry into Israel law, 5712 – 1952 (passed by the Knesset on August 26, 1952), *Laws of the State of Israel: Authorized Translation from the Hebrew*, Vol. 6, Government Printer, Jerusalem, Israel (1948-1987), p. 159-162.

### *The Entry into Israel law and individual status determination*

The Entry into Israel law permits the detention of irregular arrivals for up to 4 days prior to a detention review hearing where the individual may be represented by a lawyer.<sup>237</sup> Rejected asylum applicants may appeal the ruling to local administrative courts. The Entry law instructs authorities to release immediately detainees who promise to “cooperate,” meaning that they are willing to leave the country if released from detention, but those who say they are seeking asylum status, and thus do not intend to leave Israel, are for purposes of the law considered “uncooperative.”<sup>238</sup> In such cases, detention review officials contact UNHCR, which conducts initial refugee status determination interviews according to internal, Ministry of Interior regulations issued in 2001.<sup>239</sup> Based on these regulations, UNHCR Israel is responsible for conducting first-instance refugee status determination and submitting recommendations to the National Status Granting Body.<sup>240</sup>

The prime minister’s office told Human Rights Watch, “A person recognized as a refugee [by the NSGB] will receive an A-5 permit to stay in Israel.” The official continued,

Infiltrators from countries which are temporarily dangerous or those for whom it takes too long to determine their refugee eligibility receive temporary B-1 work permits, which need to be renewed periodically. Anyone who is conclusively not a refugee remains in the detention facility and awaits deportation from Israel to his country of origin,

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<sup>237</sup> Human Rights Watch interview with Yochi Ganessin, state attorney and member of National Status Granting Body, Ministry of Justice, Jerusalem, March 6, 2008. Ms. Ganessin argued the State’s case before the High Court. Human Rights Watch did not learn of any cases where Israeli authorities categorized African or other migrants or asylum seekers as security threats, nor did we investigate procedures applied to persons categorized as such.

<sup>238</sup> Human Rights Watch interview with Anat Ben Dor and Yonatan Berman, February 26, 2008.

<sup>239</sup> “The authority to grant permits to stay in Israel belongs to the Ministry of the Interior, and the Population Administration in the Ministry is ‘responsible for the treatment of refugees.’” Email to Human Rights Watch from Hillel Freeman on behalf of Rana’an Dinur, March 9, 2008.

<sup>240</sup> During their initial review of persons detained after entering Israel illegally, detention review officials may recommend the release of detainees who do not present a security threat. According to UNHCR officials and Israeli NGOs, Israeli authorities will also typically release detainees upon UNHCR’s written recommendation, though sometimes after significant delays. The former detainees then present themselves to UNHCR for refugee status determination interviews.

Egypt, or a third-party country. It should be emphasized that no one is returned to his country of origin if there is any threat to his life.<sup>241</sup>

Few refugees have actually been processed through Israel's asylum system, which has failed to accommodate the large numbers of asylum seekers over the past several years. The NSGB deals, at best, with a few dozen cases per month.<sup>242</sup> In addition, UNHCR's office in Tel Aviv is only two years old and was, when Human Rights Watch visited in March 2008, evidently under-staffed to deal with its responsibility, under the 2001 Ministry of Interior regulations, for conducting first-instance interviews with asylum seekers. One morning in February 2008, the office was faced with a line of some 500 applicants stretching around the block.<sup>243</sup>

Asylum seekers can appeal unfavorable decisions, whether by UNHCR or by the NSGB, but must appeal to the same body that rejected them. This appeals procedure denies asylum seekers access to the courts; further, as Israeli NGOs have pointed out, the procedure does not direct the NSGB to publish its reasons for rejecting the initial application, making it nearly impossible for the rejected applicant to know on what basis to appeal.<sup>244</sup>

### **Prolonged detention pending review**

Notwithstanding the Entry into Israel law's requirement that detention be reviewed within 14 days, authorities detain many potential asylum seekers for weeks or months. In part this is because there are fewer than 10 detention review officials in the whole country as of early March 2008. Volunteers used to be able to visit and identify potential asylum seekers in detention, but in early January 2008 officials at a

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<sup>241</sup> Email to Human Rights Watch from Hillel Freeman on behalf of Rana'an Dinur, March 9, 2008.

<sup>242</sup> According to the regulations, the asylum seeker applies to UNHCR, which interviews him or her and notifies the Ministry of Interior of the application, requesting any information in the Ministry's possession (art. 1). If the applicant "passes" this first examination, UNHCR will transfer his or her file to an "Advisory Committee" comprised of representatives of the Israeli ministries of Interior, Justice, and Foreign Affairs (art. 2). The applicant is referred for a second interview by the Local Population Bureau (art. 3). The Advisory Committee will then review his or her file and decide whether to grant residency status (valid until he or she resettles to another country or conditions in his/her country of origin change) (art. 3). The Israeli authorities should, "as a general rule," grant the asylum seeker a temporary residency permit (art. 1 c). Ministry of Interior internal directive, "Regulations Regarding the Treatment of Asylum Seekers in Israel," 2001, reprinted as Annex A in Ben Dor and Adut, "Israel: A Safe Haven?"

<sup>243</sup> Human Rights Watch interview with Steve Wolfson, March 4, 2008.

<sup>244</sup> Ben Dor and Adut, "Israel: A Safe Haven?"

new, 1,000-bed, camp-like detention facility for migrants, next to the prison at Ketziot, limited volunteers' access to those detainees whom they requested to see by name, making it difficult to identify and bring to the attention of the authorities new cases of migrants with international protection needs.<sup>245</sup>

### *Detention not a last resort*

Detention should be a last resort, used only when a limited set of circumstances make it necessary.<sup>246</sup> UNHCR guidelines, which offer numerous alternatives, state that detention should not be used against asylum seekers except as necessary in order to: (1) verify the identity of the asylum seeker if it is undetermined or disputed; (2) to determine the elements on which the claim for refugee status or asylum is based (during a preliminary interview); (3) in cases where asylum seekers have destroyed their travel and/or identity documents or have used fraudulent documents in order to mislead the authorities of the state in which they intend to claim asylum; or (4) to protect national security and public order (in cases where there is evidence that the asylum seeker's antecedents or affiliations pose such a danger). As the UNHCR guidelines explicitly state, detaining asylum seekers for any other purposes,

for example, as part of a policy to deter future asylum-seekers, or to dissuade those who have commenced their claims from pursuing them, is contrary to the norms of refugee law. It should not be used as a punitive or disciplinary measure for illegal entry or presence in the country.<sup>247</sup>

Detaining asylum seekers or failing to allow detainees access to asylum procedures for unnecessarily lengthy periods, and using detention as a default for all persons including asylum seekers when alternatives are available (such as self-reporting by asylum seekers to Israeli officials), are practices inconsistent with international legal obligations. Israel, like Egypt, should act consistently with article 31 of the Refugee Convention and not penalize asylum seekers for illegal entry or detain them except

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<sup>245</sup> Human Rights Watch interview with Anat Ben-Dor and Yonatan Berman, February 26, 2008.

<sup>246</sup> ExCom Conclusion No. 44 (XXXVII) 1986: "Detention of Refugees and Asylum seekers."

<sup>247</sup> UNHCR, "Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers," February 1999, <http://www.unhcr.org.au/pdfs/detentionguidelines.pdf> (accessed October 3, 2008), guideline 3.

as a last resort and only for the time necessary to regularize their status.<sup>248</sup> Under ICCPR article 9, Israel is required to ensure that “no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law” and that “Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”

### **Detention of children**

Israel’s default position to detain everyone who crosses the Sinai border includes women and children. According to the prime minister’s office,

Women and children who are not refugees are also in detention facilities as they too are breaking the law, but they are kept in separate wings with proper conditions, including playgrounds for the children and educational activities.

Israeli officials stress that detained children are well-treated, including receiving appropriate food according to Israel Prisons Service regulations. State attorney Yochi Ganessin, who has argued several cases before the High Court of Justice regarding the treatment of migrants and refugees, told Human Rights Watch,

As for unaccompanied children, if they’re under 12 they will be sheltered by the Ministry of Health and Social Welfare, who will maybe find a foster home for them. If they are over 12 they are freed from jail and put in Israeli boarding schools. It depends on the circumstances. Some kids from Sudan might still be in jail. But a lot of them fake their ages [pretend they are under 18] and have to wait for an age test, they do it by checking the wrist, and also an endocrinologist tests them for sexual maturity as a sign of age.<sup>249</sup>

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<sup>248</sup> UNHCR ExCom Conclusion No. 44 (XXXVII) – 1986: “Detention of Refugees and Asylum seekers,” at (b).

<sup>249</sup> Human Rights Watch interview with Yochi Ganessin, March 6, 2008.

The experiences of detained refugees and migrants did not always reflect these official policies. Human Rights Watch interviewed several children who had been detained after crossing the Israeli border from the Sinai. One, a 15-year-old Darfuri boy, said he left Sudan after Janjaweed forces killed his father in 2007. He spent 25 days traveling through Egypt before crossing the border with Israel. From IDF detention, he said,

I was put in Ketziot for three-and-a-half months, with 200 Darfuris. Then I was sent to Ramleh for around two-and-a-half months, with black people from Nigeria and Ghana. Finally they put me in Gadera for another month-and-a-half, with three Darfuris, ten Ethiopians, and two Ivoirians. In Gadera they gave me some books, and I was in a room with boys only, but in Ketziot I was in a room with five people who were mostly in their 30's. No one told me why I was in prison.<sup>250</sup>

In a petition against poor conditions of detention for women and children detained for crossing the Sinai border, argued before the Israeli High Court in January 2008, the Hotline for Migrant Workers pointed out that the authorities were detaining 80 children at the Ketziot facility, some since July 2007.<sup>251</sup> (According to the Hotline, the number as of May 2008 was 100 children.)<sup>252</sup> In October 2007 these children and their mothers were transferred to tents which are inadequately heated and in summer extremely hot. The Hotline petition noted that the tents have no storage space for personal belongings and inadequate educational and play activities for children: as of early March 2008, there were three teachers, whose classes group together ages 0 to 6, 6 to 12, and 12 to 18, meaning that 12-year-old children and young adults of 18 are in one classroom, inside a tent, with no curriculum. Social support consists of one social worker whom detainees were unaware of when Hotline volunteers were last allowed to visit Ketziot in January.

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<sup>250</sup> Human Rights Watch interview with A.R., Tel Aviv, March 4, 2008.

<sup>251</sup> The High Court of Justice, petition HCJ 212/08, served on January 7, 2008 by the Hotline for Migrant Workers on behalf of the Association for Civil Rights in Israel, the Israel Religious Action Center, Physicians for Human Rights – Israel and Assaf.

<sup>252</sup> Human Rights Watch telephone interview with Yonatan Berman, Tel Aviv, May 16, 2008.

The court ruled on February 6, 2008, that “the most urgent problems are those of the extreme cold and the problem of education. We hope that the respondents will act urgently to solve those problems. ... We do not think there is currently a need for legal intervention....”<sup>253</sup> Attorneys and volunteers who have visited the facility subsequently say that conditions remain inadequate.<sup>254</sup>

Despite repeated requests, including a fax received on February 14, 2008, and approximately a dozen phone calls, the Israel Prisons Service denied Human Rights Watch permission to visit the Ketziot facility or to interview its chief warden.<sup>255</sup>

Israel’s detention of children, like Egypt’s, should be guided by the “best interests of the child” standard according to its obligations under refugee law and international human rights law.<sup>256</sup> Detaining children for months in poorly heated tents without adequate access to educational materials cannot be considered as in the child’s best interests.

### **Family separation**

Israeli authorities have split apart families that have crossed the Sinai border. Human Rights Watch spoke with two women who had recently been released from IDF custody at the border but whose husbands had been sent to jail; one woman knew where her husband was being detained, the other did not.<sup>257</sup> Another Darfuri woman described how IDF soldiers took two of her children from her at the border. On February 15, 2008, seven days after she arrived in Israel with her three children, the IDF bussed her 19-year-old daughter and seven-year-old son to the jail at Ketziot, but “the bus was too full” for the woman and her other daughter to board. The next day the woman and her other daughter found themselves in the Be’er Sheva bus

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<sup>253</sup> Yochi Ganessin, who argued the case for the State of Israel, described why she believed the court had rejected the petition. “The Hotline petition was asking for all families not to be arrested if they had children. The court was upset at the Hotline for this because it was asking to give immunity to anybody with kids, so then everybody would start coming across the border with kids.” Human Rights Watch interview with Yochi Ganessin, March 6, 2008.

<sup>254</sup> Human Rights Watch telephone interviews with Sigal Rosen and Anat Ben Dor, Tel Aviv, August 24 and 26, 2008.

<sup>255</sup> Human Rights Watch letter to Yaron Zamir, spokesman, Israel Prisons Service, February 14, 2008.

<sup>256</sup> See “Separation of families,” Section VI, and accompanying notes.

<sup>257</sup> Human Rights Watch interviews with T.M. and S. A., Tel Aviv, February 28, 2008. T.M. added, “They let me out after four days because I had three kids. But they sent my husband to jail. I protested but no one listened to us. My four-year-old cries all night for his father.”

station. “No one told me where the bus was going or where the children went, and we didn’t know where our bus was going, either.” She only discovered her children were in Ketziot two weeks later, when an Israeli NGO found them in detention. At the time she spoke with Human Rights Watch, she had not been able to visit or speak to her children, who remained in detention three weeks later, and said she was worried about her little boy.<sup>258</sup>

International human rights law and refugee law protect the right to family unity, and refugees, asylum seekers and other migrants are among the holders of that right.<sup>259</sup> Israel’s practices in this regard violate its obligations as a state party to the Convention on the Rights of the Child.

### *Prima facie asylum determination and temporary protection for some groups*

The procedures outlined above apply only to a minority of asylum seekers. The majority of asylum seekers in Israel are Eritrean and Sudanese, and receive temporary permission to remain in Israel based on their countries of origin rather than based on individual assessments of their particular asylum claims. Ivorians and Congolese have also benefited from group-based protection in the past, although it is unclear whether this has ceased at this writing. Thus, the majority of asylum seekers do not undergo complete refugee status determination procedures, but are instead granted temporary protection after their initial detention. It was on this basis that in 2007 and 2008, 2,000 Eritreans received renewable 6-month work permits (“B-1 visas”), and 600 Darfuris received renewable multi-year temporary residency permits (“A-5 visas”), as mentioned in Chapter III.

## **Indefinite Detention Struck Down in 2007, Back in Prospect in 2008**

### *2007 Challenge to the Prevention of Infiltration Law*

In April 2006, refugee and migrant rights groups brought a legal case before the High Court of Israel against the government’s application of the Prevention of Infiltration law so as to indefinitely detain Sudanese nationals, in contravention of rights

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<sup>258</sup> Human Rights Watch interview with V.J., Eilat, March 3, 2008.

<sup>259</sup> See “Separation of families,” Section VI, and accompanying notes.

enshrined in Israeli law.<sup>260</sup> The Court required the State to provide Sudanese detainees the ability to have their detention judicially reviewed.

### **Background: Prolonged and Arbitrary Detention of Sudanese**

The first wave of arrivals into Israel via the Sinai, in 2005 and 2006, consisted primarily of Sudanese nationals. Israel has no diplomatic relations with Sudan, which it considers an enemy state. Israeli authorities applied the 1954 Prevention of Infiltration law to the Sudanese arrivals.<sup>261</sup> The law authorizes detention of “enemy nationals” without review in order to facilitate their deportation. Israel thus detained refugees fleeing from persecution by the Sudanese government on the grounds that they were, in some way, agents of that government—an irony that has led some to speculate that Israel’s central concern was to discourage any further Sudanese migrants from attempting to make the journey.<sup>262</sup>

Currently, IDF soldiers briefly detain virtually all migrants who enter Israel from Egypt; the IDF then transfers them to the custody of the Israel Prisons Service (IPS), although the IDF has simply released large numbers of detainees who were initially detained at times when no prison spaces were available.<sup>263</sup> From 2005 until the July 2007 court ruling, the IPS detained the Sudanese migrants for extended periods under the Prevention of Infiltration law.<sup>264</sup> Human Rights Watch spoke with several Sudanese men who had formerly been detained for over a year without access to lawyers. One of them, jailed for 16 months, “most of the time in the same clothes from when I crossed the border,” said he knew another Sudanese man who was detained for 23 months before his release.<sup>265</sup> According to Ran Cohen, of Physicians for Human Rights – Israel, “no one even knew the Sudanese were in detention until

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<sup>260</sup> The High Court of Justice, petition HCJ 3208/06, served on April 11, 2006 by the Hotline for Migrant Workers and the Refugee Rights Clinic at Tel Aviv University.

<sup>261</sup> The Prevention of Infiltration (Offences and Jurisdiction) Law, 5714 - 1954.

<sup>262</sup> Human Rights Watch interview with Anat Ben Dor and Yonatan Berman, February 26, 2008.

<sup>263</sup> In these cases the IDF drives the migrants from the border to Beer Sheva or Eilat, where they are released.

<sup>264</sup> At first, Israeli authorities put the Sudanese in regular jails. Southern Sudanese men who crossed the border in December 2005 and March 2006, respectively, said they were detained with Palestinians, some of whom regarded them as Israeli spies. Human Rights Watch interviews with T.A. and K.K., Tel Aviv, February 29 and March 1, 2008.

<sup>265</sup> Human Rights Watch interview with Y.M., Tel Aviv, February 27, 2008.

the Hotline [for Migrant Workers, an Israeli legal aid NGO] found them during prison visits.”<sup>266</sup>

Detention made it impossible for these detainees to make asylum claims on their own accord, even though, in some cases, judicial authorities recognized their right to do so. Two months after he was detained, O.B. was taken to another prison, where after another two months he was interviewed by a UNHCR delegation from Geneva.

Then a while later I was interviewed by a judge. He told me to contact Anat Ben Dor [a lawyer who works with Tel Aviv University’s refugee law clinic]. I said, there are no phones in the jail! He said, just ask Anat. I never could. And I never talked to UNHCR Israel.<sup>267</sup>

Another man, A.J., said that after prison authorities initially told him that he would be deported to Egypt, three months passed before International Committee of the Red Cross (ICRC) representatives visited him. A month later, he had his first UNHCR visit; he was finally released 11 months later, in March 2007, after almost a year-and-a-half in jail.<sup>268</sup>

These long periods of detention without judicial review appear to violate Israel’s ICCPR obligation to allow “[a]nyone who is deprived of his liberty by arrest or detention ... to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful” (article 9).

### *Proposed Legislation Reinstating Indefinite Detention*

A proposed law, which passed its first reading in the Knesset in May 2008 (and is presently being revised before being submitted to the second of three readings), would reinstate the harshest provisions of the Prevention of Infiltration law. According to the draft law’s “Explanatory Notes,” the government is proposing the

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<sup>266</sup> Human Rights Watch interview with Ran Cohen, Physicians for Human Rights – Israel, Tel Aviv, February 27, 2008.

<sup>267</sup> Human Rights Watch interview with O. B., Tel Aviv, February 28, 2008.

<sup>268</sup> Human Rights Watch interview with A.J., Eilat, March 3, 2008.

law because “[i]n the past few years the State of Israel has witnessed an increase in the phenomenon of infiltrators into Israeli borders, not at border crossing points, and especially through the border with Egypt.”<sup>269</sup> The Notes state that “after examining the circumstances of infiltration, it was found that most of the infiltrators to Israel during the last years were not security related.” Yet the Notes then assert, inconsistently, that “due to the security nature of the infiltration phenomenon, the proposed arrangements are severe” because the “assumption is that a person who infiltrates through the legal border of the State does so with the intention to do harm.”<sup>270</sup>

The bill seeks to write into law the “coordinated returns” procedure (see Chapter V) by authorizing the detention of all “infiltrators”—defined as anyone who knowingly entered Israel via a non-authorized border crossing—pending their deportation within 72 hours of their entry into Israel.<sup>271</sup> The bill would sentence anyone arrested who was found to have infiltrated more than three days’ previously to a minimum of five years’ imprisonment, or seven years’ for persons from a list of 10 “enemy” countries or territories, including Sudan. The bill asserts that persons deemed not to be security risks could be transferred to detention under the Entry into Israel law, which provides for judicial review of detention (as discussed above), but it includes no procedures guiding this transfer.<sup>272</sup>

The bill provides for the review of detention within 14 days by an appointed adjudicator, and also sets forth criteria for the release of “infiltrators” on bail in enumerated “exceptional cases,” including if detention would cause damage to the health of the person in question due to age or illness, “other humanitarian reasons,”

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<sup>269</sup> Prevention of Infiltration Law: 2008, Explanatory Notes, Introduction, “General.”

<sup>270</sup> Prevention of Infiltration Law: 2008, Explanatory Notes.

<sup>271</sup> Article 11(a) states, “[I]f the authorized officer believes that the infiltrator recently entered Israel, he may order his immediate return to the country or to the territory from which he had infiltrated, providing the return would be performed before 72 hours have elapsed from the time the policeman or officer [who detained the ‘infiltrator’ and notified the authorized officer of the case] had reasonable grounds to suspect that the person had infiltrated to Israel.” The Explanatory Notes explain that “return shortly after the infiltration would be performed in accordance to Israel’s obligations under international conventions including the principal of *non-refoulement*,” but provide no further guidance.

<sup>272</sup> Article 12(a) of the proposed bill states, “There is nothing in the articles of this law to prevent the application of the clauses of the Entry to Israel Law to an infiltrator, providing it has been ascertained that the circumstances of his infiltration do not relate to the activities of hostile elements which might endanger state security and that he himself does not pose a security risk.”

or if release would assist in deportation proceedings.<sup>273</sup> However, these exceptional provisions would not apply if the person did not “fully cooperate” in his own deportation; if his release might endanger state security, public safety or public health; or “the relevant security authorities have filed an opinion according to which in the infiltrator’s country of origin or in his area of residence, there is activity which might endanger the security of the State of Israel or its citizens.”<sup>274</sup> The proposed bill does not include any procedure by which the “infiltrator” could appeal this security determination.

### **Arrests of Asylum Seekers**

In several sweeps during late February and early March 2008, immigration police in Tel Aviv and Arad arrested and detained over 300 asylum seekers and migrants, even entering three privately operated shelters without warrants. Immigration police also arrested Sudanese migrant workers in Eilat, and requested hotels that employ them as cleaners to provide their pictures, names, and addresses.<sup>275</sup> The round-ups were based on instructions from national police operations head Berti Ohayon, issued on February 27, 2008, to “arrest 2,100 migrants” during “seven days of operations.”<sup>276</sup> Many of those arrested held papers indicating they had appointments to be interviewed by UNHCR Israel, or more formal UNHCR protection documents recognizing them as asylum seekers. Others were arrested despite carrying papers indicating that they had previously been imprisoned when entering Israel and released after detention review tribunals found that they did not constitute a threat.

None of those arrested on this occasion were deported, although this was very nearly not the case: On March 6, three Ivorian registered asylum seekers contacted the Hotline for Migrant Workers six hours before they were to be deported by plane to Abidjan by the Israeli Immigration Authority.<sup>277</sup> The three had been forced to board

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<sup>273</sup> Prevention of Infiltration Law: 2008, art. 15(a)(1-3).

<sup>274</sup> *Ibid.*, art. 15(b)(1-3).

<sup>275</sup> Human Rights Watch interview with Etti Krichevi, Human Resources department, IsrHotels, Eilat, March 4, 2008.

<sup>276</sup> Copy on file with Human Rights Watch.

<sup>277</sup> The men were identified as Kwame Onore, Coulibaly Ibrahim, and Diarra Lacina.

the plane before UNHCR successfully intervened and the three were returned to prison.<sup>278</sup>

Human Rights Watch spoke to several persons who had been arrested during the sweeps, the majority of whom Israeli authorities had released after four days. The arrests, detentions, and subsequent releases were conducted on an apparently ad hoc basis. The persons we interviewed included a man who had just returned from detention to his lodging in a converted bomb shelter in Tel Aviv's Levinsky Park, now used by asylum seekers. "Ayoun and I were arrested on Monday," he said, referring to a friend from the shelter.

We both have the same UN documents, which are good for three months [recognizing them as asylum seekers]. I was released on Thursday at 4 p.m., but he is still in jail. We were moved to two jails [during our four days in detention]; the last one was in Ashkelon, that's where they released me."<sup>279</sup>

The arrests and detentions separated migrant families and predictably caused anxiety among them. Most speak no Hebrew and had no access to information about changes of official policies towards them. "There are rumors now that they will send people back to Egypt even [if] they are carrying [UNHCR protection] papers," one asylum seeker in Tel Aviv told Human Rights Watch, "so people are all staying locked up inside."<sup>280</sup> While some said that they did not believe Israel would actually deport them to countries where they faced persecution, others appeared afraid that it was a real possibility.

In addition, government policy may be affecting the attitudes of the police towards asylum seekers and other migrants. A Southern Sudanese asylum seeker in Tel Aviv described the following incident:

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<sup>278</sup> Hotline for Migrant Workers, "Arrest and Deportation of Asylum Seekers: An Update: February 25 – March 17, 2008," March 21, 2008.

<sup>279</sup> Human Rights Watch interview with E.D., Tel Aviv, February 29, 2008.

<sup>280</sup> Human Rights Watch interview with I.A., Tel Aviv, February 27, 2008.

I work at night. When I was leaving work the chain of my bicycle was pulled down. I was fixing it when people surrounded me, they said I could raise my hands up, or I could be killed. I raised my hands, and they took the 400 shekels I had on me. I went to my friend ... who knows Hebrew, and we went to the police together. We went at 12 midnight. We stayed there until morning. The police told us to leave, and we'll call you back. So we came back at noon and the police there threatened that they were going to deport me.<sup>281</sup>

After a February 2008 order from the Ministry of Interior banning new asylum seekers and those whose work visas had expired from living in the Tel Aviv metropolitan area, since July Israeli police have conducted further rounds of arrests and shut down privately-run refugee shelters in the downtown area. At least 200 African migrants and asylum-seekers were detained. The Hotline for Migrant Workers told Human Rights Watch on October 19 that many of them remain in detention.

Israel's repeated detentions of registered asylum seekers does not meet criteria set out by UNHCR guidelines (see discussion of Egypt's detention of people at its southern border, in Chapter VI). The detention of recognized asylum seekers and refugees whose protection documents, work permits, and related documents had not expired also violates Israel's obligations under the ICCPR. According to the Human Rights Committee, the body of experts tasked with overseeing states' implementation of the ICCPR, "An alien who has entered the state illegally, but whose status has been regularized, must be considered to be lawfully within the territory," and as such cannot have his freedom of movement, or the other rights attached to legal residency, restricted.<sup>282</sup>

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<sup>281</sup> Human Rights Watch interview with Y.B., Tel Aviv, February 27, 2008.

<sup>282</sup> General Comment 27/67, para 4, cited by Manfred Nowak, *UN Covenant on Civil and Political Rights, CCPR Commentary*, 2<sup>nd</sup> ed, (Kehl, Germany: NP Engel, 2005), p. 264.

## **Acknowledgments**

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## Appendix: Fatalities

As of October 15, 2008, there are 33 reported incidents of Egyptian border police killing migrants since the first recorded fatality on July 22, 2007. Victims range in age from a seven-year-old girl to a man in his fifties. Of the 33 fatalities, 32 were Africans (border police killed a Turkish man in 2007). Egyptian border police have also reportedly killed two smugglers during this period. Smugglers have reportedly killed three policemen.

### 2008 (23 fatalities):

- October 15: Egyptian border police kill an Eritrean migrant.<sup>283</sup>
- September 9: Egyptian border police kill two Sudanese migrants south of Rafah.<sup>284</sup>
- August 19: A 27-year-old Sudanese man is shot while trying to cross border 8 kilometers south of Rafah; dies of gunshot wounds to stomach.<sup>285</sup>
- August 6: Haroun Mohamed Yehya Haroun, a 24-year-old Sudanese man, dies of gunshot wounds to the head.<sup>286</sup>
- August 1: An unidentified African man dies of gunshot wounds on the way to hospital.<sup>287</sup>
- July 20: Abdel-Wahab Abdel-Karim Ahmed Adam, a 32-year-old Sudanese man, is shot in the chest and killed at a border point in central Sinai.<sup>288</sup>
- June 28: Police kill a seven-year-old Sudanese girl and an unidentified man in his thirties south of Rafah.<sup>289</sup>
- June 19: An unidentified African man, apparently in his thirties, is shot dead.<sup>290</sup>

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<sup>283</sup> "Egypt police kill African migrant on Israel border," Agence France-Presse, October 15, 2008.

<sup>284</sup> "Egyptian police kill two Africans at Israel border," Reuters, September 9, 2008.

<sup>285</sup> "Egypt police kill Sudanese migrant at Israel border," Reuters, August 19, 2008; "Official: Sudanese killed near Egypt-Israel border," Associated Press, August 19, 2008.

<sup>286</sup> "Egypt police kill Sudanese migrant at Israel border," Reuters, August 6, 2008.

<sup>287</sup> "Egypt police kill African migrant at Israel border," Reuters, August 1, 2008.

<sup>288</sup> "Egypt police kill Sudanese migrant at Israel border," Reuters, July 20, 2008.

<sup>289</sup> "Egypt police kill African man, 7-year-old at border," Reuters, June 28, 2008; "Egypt police kill girl, 7, on Israel border," Agence France-Presse, June 28, 2008.

- June 10: 29-year-old Mohammed Tahir Mersal, from Sudan, is killed.<sup>291</sup>
- May 6: An 25-year-old Nigerian man is killed.<sup>292</sup>
- April 17: An unidentified Eritrean migrant is killed.<sup>293</sup>
- March 27: Two men in their thirties from Cote D'Ivoire are shot dead.<sup>294</sup>
- March 18: A 25-year-old Eritrean woman, named Karina, dies of three bullet wounds.<sup>295</sup>
- March 10: Egyptian police kill 23-year-old Adam Mohammed Othman, from Sudan.<sup>296</sup>
- February 25: An unidentified Eritrean woman, in her thirties, is killed.<sup>297</sup>
- February 19: A Sudanese man, Armeniry Sinat, age around 50, is shot dead about 18 kilometers south of Rafah.<sup>298</sup>
- February 16: An Eritrean woman, Mervat Mer Hatover, 37, is shot and killed trying to cross the border in El Kuntilla region in eastern Sinai. Hatover was traveling with two daughters, ages 8 and 10.<sup>299</sup>
- January 30: A 22-year-old man and an 18-year-old woman from Cote D'Ivoire are shot dead.<sup>300</sup>
- January 19: Cherif Lansana, a 22-year-old man from Cote D'Ivoire, is shot dead on barbed wire between Israel and Egypt.<sup>301</sup>

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<sup>290</sup> "Egypt police shoot dead African migrant trying to cross into Israel," Reuters, June 19, 2008.

<sup>291</sup> "Egyptian police kill Sudanese migrant trying to infiltrate Israel," Associated Press, June 10, 2008.

<sup>292</sup> Ashraf Sweilam, "Egyptian border guards kill 1 Nigerian, injure 4 Sudanese trying to sneak into Israel," Associated Press, May 6, 2008. Egyptian guards also shot three Sudanese men and one woman.

<sup>293</sup> "Egypt police kill Eritrean migrant at Israel border," Reuters, April 17, 2008.

<sup>294</sup> "Migrants killed on Egypt's border," BBC News, March 27, 2008, [http://news.bbc.co.uk/go/pr/fr/-/2/hi/middle\\_east/7317269.stm](http://news.bbc.co.uk/go/pr/fr/-/2/hi/middle_east/7317269.stm) (accessed October 15, 2008).

<sup>295</sup> "Egyptian police kill Eritrean migrant," Reuters, March 18, 2008.

<sup>296</sup> "Egypt police kill Sudanese man trying to cross into Israel," Agence France-Presse, March 10, 2008; "Egyptian troops kill Sudanese man trying to cross into Israel," Associated Press, March 10, 2008.

<sup>297</sup> "Egyptian cops 'kill' Eritrean," Agence France-Presse, February 25, 2008.

<sup>298</sup> Ashraf Sweilam, "Egyptian guards kill Sudanese man trying to cross illegally into Israel," Associated Press, February 19, 2008. A Reuters report identified the victim as Ermeniry Khasheef. "Egypt police kill Sudanese migrant on Israel border," Reuters, February 19, 2008.

<sup>299</sup> Ashraf Sweilam, "Egyptian guards kill Eritrean migrant," Associated Press, February 16, 2008. Reuters identified the woman as Murfit Meery, age 37. "Egypt police kill Eritrea migrant on Israel border," Reuters, February 16, 2008.

<sup>300</sup> "Egyptian police kill two migrants on Israel border," Reuters, January 30, 2008.

<sup>301</sup> "Egypt police kill African migrant on border," Reuters, January 19, 2008.

## 2007 (10 fatalities):

- November 10: Henna Mohammed Mohammed, a 24-year-old Eritrean man, is killed south of Rafah.<sup>302</sup>
- October 19: A 35-year-old Turkish man dies in hospital after border police shot him in the head.<sup>303</sup>
- October 13: An Unidentified African man crosses into Israel before dying of gunshot wound to the head.<sup>304</sup>
- September 17: An Eritrean man is shot dead trying to cross at the central section of the Sinai border.<sup>305</sup>
- August 8: An unidentified migrant is killed by Egyptian border police, according to Israeli officials.<sup>306</sup>
- August 1: Two Sudanese men are shot, one instantly killed; Egyptian forces then caught and beat to death the wounded man as well as two others.
- July 22: Egyptian police killed Haja Abbas Haroun, a 28-year-old from Darfur, who was trying to enter Israel from the town of Al-Aouja.<sup>307</sup>

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<sup>302</sup> “Egypt police shoot Eritrean at Israel border,” Reuters, November 10, 2007; see also Human Rights Watch, “Letter to Egypt’s Minister of Interior General Habib al-`Adli,” November 14, 2007, <http://hrw.org/english/docs/2007/11/14/egypt17341.htm>.

<sup>303</sup> “Turkish migrant shot by Egypt dies of wounds,” Reuters, October 19, 2007.

<sup>304</sup> Yonat Atlas, “Sudanese refugee shot to death at border,” Ynet, October 13, 2007, <http://www.ynetnews.com/articles/0,7340,L-3459441,00.html> (accessed October 15, 2008).

<sup>305</sup> “Eritrean migrant shot dead on Egypt-Israel border,” Reuters, September 17, 2007.

<sup>306</sup> Ellen Knickmeyer, “Flight From Darfur Ends Violently in Egypt,” *Washington Post*, August 19, 2007: “The beaten and bound body of another Sudanese man was found near the border on Aug. 8. Egyptian officials said the man likely was killed in a money dispute with Bedouin guides. Israeli media quoted officials there as saying Israel has surveillance video proving the man was shot by Egyptian security forces.” For the Egyptian police version of events, see “Sudanese man found dead in Sinai, probable migrant,” Reuters, August 19, 2008.

<sup>307</sup> Knickmeyer, “Flight From Darfur Ends Violently in Egypt,” *Washington Post*, August 19, 2007.

## Sinai Perils

### Risks to Migrants, Refugees, and Asylum Seekers in Egypt and Israel

Since 2006, more than 13,000 migrants, asylum seekers and refugees, primarily from Eritrea and Sudan, have traveled through Egypt and crossed the Sinai border into Israel. Sinai Perils documents how both Egypt and Israel have responded to this cross-border flow with policies that violate fundamental rights.

Egypt's violations, in particular, have become more numerous and severe over the past year—especially its policy of using lethal force on the Sinai border. Beginning in June 2007, Egyptian border police have killed at least 33 men, women and children who were attempting to cross into Israel at the Sinai crossing. Hundreds of migrants, including children, have been arrested and detained in harsh conditions. Egypt also denied UNHCR access to hundreds of Eritreans and summarily returned them to Eritrea, where they could face a substantial risk of torture, and has also “refouled” (returned) Sudanese refugees and asylum seekers to Sudan regardless of the threat of persecution.

Despite these violations by Egypt, Israel has summarily returned to Egyptian custody scores of migrants who illegally crossed the Sinai border without allowing them to present asylum claims. Israeli authorities classify migrants as dangerous “infiltrators” and have detained many, including children, for long periods without allowing them to make asylum claims. Although the government granted hundreds of Darfuris temporary residency, Israel's inadequate asylum system has recognized virtually no migrants as refugees.

Based on interviews with 69 migrants, refugees and asylum seekers, as well as government officials and NGO workers on both sides of the border, Sinai Perils calls for Egypt immediately to cease its policy of lethal force and to investigate cases of killings, and calls on Israel to cease all returns of migrants to Egypt pending credible guarantees of their humane treatment and access to UNHCR.

*Right: Sudanese migrant detained in Maasiyahu prison, Israel.*

*Front cover: A girl's dress caught on the Sinai border fence separating Egypt and Israel.*

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