

TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

COMMITTEE ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES 6TH SESSION EGYPT, 1ST REPORT, 23-24 APRIL

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Information submitted to the Committee

Egypt appeared before the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (the Committee) on 23-24 April to present its initial report submitted to the Committee on 3 April 2006.¹ The Committee welcomed the good quality of the report and thanked the delegation for having provided comprehensive replies to the list of issues. The fact that Egypt was the first State to ratify the Convention was highlighted by both the Committee and the State's delegation. The Committee also acknowledged the specific situation of Egypt as country of origin, transit and destination for migrant workers. The Committee's chairman stressed the guiding role that could be played by Egypt with regards to neighbouring States which are non-parties to the Convention, and reminded both the experts and the delegation that for this reason the outcome of the consideration of the Egyptian report was important.

¹ CMW/C/EGY/1 available at <http://www.ohchr.org/english/bodies/cmw/cmws06.htm>.

Nevertheless, the lack of disaggregated and reliable data and practical examples on how the Convention's provisions are applied in concrete situations was pointed out by the Committee. In this view, the Chairman recalled that the aim of the Convention is that words must match deeds.

In its report to the Committee, Egypt provided extensive information of a general nature on the legal framework and the institutional mechanisms concerned with the protection of human rights principles. The report also described the Egyptian judicial system in detail as the means for the enforcement of human rights. As regards the specific provisions enshrined in the Convention, the report only indicated which domestic legal provision covered them. The report contained only a few general indicators regarding Egypt's population and economic situation, but no statistics or figures concerning migrant workers.

In the replies to the list of issues, the information submitted by the State party to the Committee on 5 February 2007 was more focused on the treatment of migrant workers.² Egypt provided replies to most of the issues raised, though often relying on references to its legal framework and existing institutions. No concrete examples of violations and measures taken as sanctions and remedies were given. Furthermore, the replies contained no disaggregated data, and the few numbers given lacked accuracy and reliability. On several issues, the State simply replied that it would need time to find about the figures before being in a position to communicate them.

In her statement to the Committee, the head of the delegation and Minister of Manpower and Migration, Mrs. Aisha Abdel Hady, insisted upon the active role that Egypt had played in finalising the text of the Convention, and that it still played in its promotion. She recalled that historically Egypt had always been at a crossroad between the east and west, having developed a strong culture of tolerance and peaceful interactions between peoples. She emphasised four issues regarding States receiving migrant workers: the need for a comprehensive approach based on human rights; the perception of the migrant worker not only as a means of production but also as a cultural and social benefit; the need for special rights of migrant workers' children, as they are most vulnerable; and the need for special attention devoted to women migrant workers.

As regards Egyptian migrant workers abroad, Mrs. Hady announced that the Egyptian authorities were considering the establishment of a special fund to answer their needs. She further stated that the Egyptian report highlighted the role of the Supreme Constitutional Court which had based rulings on international human rights provisions. She noted the Committee's concerns, expressed in the list of issues, regarding the impacts of the state of emergency on the implementation of the Convention, but dismissed them, claiming that the state of emergency was restricted to issues linked to drug trafficking and terrorism. She informed the Committee that an inter-ministerial committee was working on a draft law to replace the state of emergency. Mrs. Hady concluded by recalling that the challenges faced by Egypt in adapting to the market economy and the armed conflicts destabilising the region should be borne in mind during the examination of the report.

NGO information submitted to the Committee

Four alternative reports were submitted to the Committee prior to the beginning of its session: one by the National Council for Human Rights; one by an Egyptian NGO in collaboration with the International Federation for Human Rights; one by an Israeli NGO Hotline for Migrant Workers; and one paper presented by an Egyptian author in his individual capacity.³ The Egyptian Initiative for Personal Rights, the only

² List of issues CMW/c/EGY/Q/1 and replies to the list of issues CMW/C/EGY/Q/1/Add.1 available at <http://www.ohchr.org/english/bodies/cmw/cmws06.htm>.

³ National Council for Human Rights, "The rights of migrant labor and members of their families according to both the 2006/2007 Council's annual report and the National Plan of the Council to enforce and protect human rights"; The Egyptian Initiative for Personal Rights and International Federation for Human Rights, "NGO Alternative Report to the UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families", April 2007; Hotline for Migrant Workers, "Egyptians staying in Israel illegally and Egyptian authorities during 2006", 16 February 2007; Tarek Badawy, "Comments on Egypt's Report to the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families", 16 April 2007; all available at <http://www.ohchr.org/english/bodies/cmw/cmws06.htm>.

Egyptian-based NGO, recalled the restrictive legal and policy climate in which NGOs had to carry their activities.

These alternative reports highlighted the discrimination suffered by migrant workers in Egypt, especially those who are HIV positive. Indeed, the Egyptian Initiative for Personal Rights claimed that migrant workers have to take a mandatory HIV test, and that those with positive results were systematically denied employment. Tarek Badawy affirmed that migrant workers are also discriminated against as regards access to social security benefits, and that their children do not have the same access to public education as Egyptian children.

The Egyptian Initiative for Personal Rights also denounced the racist attitude prevailing in Egypt towards migrant workers. Despite the adoption in 2006 of an amendment to the penal code criminalising the incitement to discrimination including on the ground of race, black Africans in particular had to suffer regular verbal harassment and physical attacks by both the public and law-enforcement officials.⁴ As regards the state of emergency, it allows the police to ask any individual for identification at any time. Tarek Badawy pointed out that in case of arrest the individual is at the mercy of the authorities for a few days, during which they may be detained with common criminals until they check their identity with the UNHCR or the relevant consulate.

Since migrant workers are often arrested and detained for identity check reasons, they are also more likely to become the victims of torture and ill-treatment as documented by human rights NGOs, UN treaty bodies and special procedures. The state of emergency also allows impunity for the perpetrators of such acts. In the same view, the Egyptian Initiative for Personal Rights denounced the closing of the judicial inquiries into the killing of 27 Sudanese nationals on 30 December 2005 after the police decided to evacuate the square where they had been sitting for days to demonstrate against their living conditions.

The status of migrant domestic workers was also listed as a source of great concern. As domestic work is not covered by the Egyptian labour code, human rights abuses, including confiscation of identity documents, rape, forced confinement, and slavery condition have become a prevalent pattern. Fearing deportation or retaliation, domestic workers rarely report these abuses.

Reports also raised issues concerning Egyptians working abroad. The Egyptian Initiative for Personal Rights expressed serious concerns regarding the “kafeel” or “sponsorship” system, under which migrant workers must submit to the total control of their employer (the “sponsor”), which renders them particularly vulnerable to abuses of all sorts. The NGO claimed that the Egyptian authorities are not taking serious measures to protect their citizens from abuses and discrimination – indeed in some Arab Gulf countries, Egyptian migrant workers have to take a hepatitis C test, and they are denied employment if the outcome is positive.

The Hotline for Migrant Workers, an Israeli NGO, focused its report on the situation of Egyptians detained in Israel for illegal stay. Basing its argument on first hand documented cases, the report claimed that the Egyptian authorities deliberately delayed deportation of undocumented Egyptian nationals by not providing them with the necessary travel documents, thereby impairing their freedom of movement. The Hotline was also concerned by the fact that all detainees considered in the report were Bedouins, suggesting that they were victims of ethnic discrimination on the part of the Egyptian authorities. The report also pointed out that some returned Bedouins were allegedly detained in Egypt for long periods of time.

Prior to the consideration of the report the two NGOs, the Egyptian Initiative for Personal Rights and the Hotline for Migrant Workers addressed the Committee recalling the main points of their reports.

⁴ Mass arrests based on the ground of skin colour have been reported, and the Committee in the Elimination of All Forms of Racial Discrimination had already highlighted in its concluding observations on Egypt’s report in 2001 the need for adequate training of law-enforcement officials.

Themes and Issues

The Egyptian delegation was headed by the Minister of Manpower and Migration, Mrs. Aisha Abdel Hady. She was accompanied by the Permanent Representative of Egypt in Geneva, Ambassador Sameh Shoukry, several high ranked representatives of the Egyptian mission in Geneva, the Ministry of Social Solidarity, the Ministry of Justice, the Ministry of Manpower and Migration, and the Ministry of Foreign Affairs, as well as Dr. Reda Shehata, former expert member of the Global Commission on Migration. The Committee members expressed their satisfaction regarding the presence of a very high level delegation, as it showed the commitment of the State party to the cause of migrant workers.

The country Rapporteur, Mr. Abdelhamid El Jamri, stated that Egypt's report gave priority to a theoretical rather than a practical approach; hence, he emphasised the need to know how all the legal provisions mentioned were concretely applied and enforced. He also wished to be provided with more information on the difficulties encountered in the application of the provisions of the Convention.

Status of the Convention under domestic law

In its introductory statement, Ambassador Shoukry affirmed that the promotion and protection of all human rights is enshrined in the Egyptian Constitution and safeguarded by the law. He pointed out the recent reforms aiming at upgrading the Constitution and improving equality between citizens, and the creation of a full fledged Ombudsman. Nevertheless, the Committee expressed confusion about the status of international law in the Egyptian domestic system and requested clarifications on which provision prevailed in case of a conflict between domestic and international law. The delegation confirmed that the Convention had become part of national legislation upon ratification, occupying an intermediate position just under the Constitution. If there is a conflict between domestic and international legislation, the international law will be applied, and if the domestic law is posterior the Constitutional Court can declare it unconstitutional. As an example, the delegation cited the case of railways workers who were prosecuted because they had gone on strike. Their lawyers won their case by pleading that since Egypt had ratified the *International Covenant on Economic Social and Cultural Rights* the national law could not be applied. As a result, the relevant text in the criminal code was made null and void, and the labour code was amended to include the provisions of the Covenant.

The country Rapporteur expressed further concerns regarding the two reservations placed on the Convention. He sought clarification on the real status of the reservations, pointing out that when the legislative authority accepted the Convention three years after its ratification, there was no mention of the reservations. He also deemed that the reservation on compensation was contradictory because Egypt had not placed a similar reservation on the *International Covenant on Civil and Political Rights* which contains the same provision. The delegation only replied it would provide details at a later stage. In the concluding observations, the Committee encouraged the State party to review its reservations.

The state of emergency was also raised in the discussion as an important issue regarding the implementation of the Convention. The head of the delegation tried to reassure the Committee by reiterating several times that the state of emergency had absolutely no effect on the respect and application of the Convention. The Committee nevertheless maintained its conviction that the state of emergency affected the implementation of certain laws and called into question migratory procedures. In spite of the explanations given by the delegation on a draft law on terrorism aiming at replacing the state of emergency, the prevailing feeling among Committee members was that it would not change the situation as far as the rights of migrant workers were concerned. These concerns were clearly expressed in the Committee's concluding observations.

Promotion of the Convention

The Committee was curious about the efforts undertaken by Egypt to promote the Convention, particularly in other Arab States receiving migrant workers. The country Rapporteur noted that on the Ministry's information website for migrant workers no mention was made of the Convention. The delegation promised that the latter would be added as soon as possible on the website. Regarding a more general promotion of the Convention, Mrs. Hady stated that every effort was made to include the Convention's provisions in every bilateral agreement signed by Egypt with States non-parties to the Convention. She added that Egypt has a project with the International Organisation for Migration on raising awareness of the Convention, especially among young people.

Situation of Sudanese citizens

The delegation could not give an accurate account of Sudanese nationals living in Egypt, although it estimated that there were probably between 2 and 5 million. Mrs. Hady explained that a bilateral agreement known as the "four freedoms agreement" had given a special status to Sudanese citizens, and she affirmed that many efforts were made to include them in the conduct of public affairs. She gave no concrete examples however. The delegation said several times that Sudanese living under special status in Egypt were not the same as those seeking refugee status. However, the country Rapporteur found that, according to the report, it was not clear if Sudanese nationals were considered immigrants or refugees. He also highlighted the lack of information regarding their total number, those who are working, and those who are seeking refugee status from UNHCR. He was also worried about information from civil society regarding cases of racially-motivated detention and ill-treatment of Sudanese nationals, which contradicted the State's view. The Committee's concluding observations recommended that the State provide adequate training to all judicial and law-enforcement officials in order to avoid human rights violations and discrimination.

Regarding the event of 30 December 2005 which led to the death of 27 Sudanese demonstrators, the Egyptian delegation vehemently dismissed any allegation of murder and abuse of force by law-enforcement personnel. According to them the deaths were the result of a tragic stampede, for which they expressed regrets. They claimed that responsibility for the dire living conditions of Sudanese refugees and asylum seekers which triggered the demonstration was on the side of donor countries, since Egypt does not have the means to provide the necessary assistance. The Committee did not insist on this serious issue during the dialogue, however, in its concluding observations it recommended that the State party reopen investigation to clarify the circumstances of those deaths.

Families of migrant workers

The topic of the education of migrant workers' children was already contained in the Committee's list of issues, and was raised again in the plenary by several Committee members. They underlined that children of illegal migrant workers do not have access to education, contrary to the Convention's provisions. It was therefore recommended that the law be amended accordingly. The country Rapporteur claimed that there were cases in which children of legal migrant workers had been turned away from public schools, which makes him doubt that migrant workers are entitled to free public service.

The delegation did not comment on the situation of children of illegal migrant workers. As regards legal migrant workers' children, they just stated that they had access to private schools if they belonged to the category which cannot enrol in public schools. The Committee reiterated that rules governing access to schools had to be changed in order to comply with article 30 of the Convention.

The Committee members also asked if there existed any barriers or restrictive conditions to family reunification. The reply of the delegation was that nothing prevented workers residing legally in Egypt to bringing their families, but this did not apply to illegal workers. The Egyptian authorities claimed to have received no complaints regarding family reunification.

Domestic and seasonal workers

The country Rapporteur expressed his concerns regarding information about Indonesians coming through Jordan and working illegally in Egypt as domestic workers. The delegation explained that it was difficult to deal with domestic work issues since it is not covered by the law. Indeed, a labour inspector cannot enter a household because of the principle of privacy. The delegation further explained that the issue is currently being discussed internally, with the view of bringing back dignity to domestic labour. The issue of domestic workers is contained in the concluding observations, where the Committee recommended amending or adopting new legislation in order to include both national and foreign domestic workers.

Mr. El Jamri also noted that no questions were asked on the issue of seasonal workers. He wondered if this type of activities was included in the Labour Code and requested quantitative and qualitative statistics on seasonal workers and their origin. The delegation briefly replied that issues regarding seasonal workers did not concern foreign manpower since they are all Egyptian workers.

Assistance to Egyptians abroad

The Committee criticised what they saw as a lack of assistance provided by Egypt to their nationals working abroad. The country Rapporteur asked if the Egyptian government was trying to have some influence on the “sponsorship” system⁵, especially since in some Arab Gulf countries the situations of workers under sponsorship was close to slavery. The delegation explained that Egypt had to adopt a realistic attitude towards the sponsorship system. Mrs. Hady said that her own government respects the rules governing the treatment of migrant workers, but that it could not interfere in the domestic affairs of the States receiving migrants. She added that the Egyptian authorities were trying to negotiate on a bilateral basis agreements in favour of a more flexible sponsorship system. For instance, during the last visit of the Minister of Labour to Saudi Arabia, he had obtained the right for migrant workers to move from one “kafeel” to another without being submitted to any fine. Mr. El Jamri reminded the delegation that even though the treatment of migrant workers belongs to the domestic policies of receiving States, a sovereign State was entitled to defend the rights of its nationals regardless of where they were. The delegation reiterated that they could not interfere in the internal affairs of another State, but that they did not feel precluded from acting to defend their nationals’ dignity. In its concluding observations, the Committee insisted on the fact that Egyptians migrant workers victims of abuses under this system should be provided with better assistance by their consular services.

The country Rapporteur also mentioned the specific situation of Egyptian immigrants detained in Israel. He noted that the Egyptian authorities allegedly discriminated against those detainees because they are Bedouins by delaying the needed administrative actions and therefore prolonging their stay in Israeli jails. The delegation promised that, even though there were very few cases of migrants in custody abroad, experts would look into this alleged phenomenon. It however strongly denied any occurrences of ethnic discrimination or racism from the part of the Egyptian consular authorities in Israel. The delegation explained that they would not interfere in the application of justice when migrant workers had committed offences. They added that the consular officer followed every case and provided necessary assistance. The Committee nevertheless recommended in its concluding observations that Egypt improve response of its consular services, as well as the mechanisms for receiving complaints from migrant workers.

In addition, the Committee requested more information on plans of action to include Egyptian migrant workers in the political life of the country. The delegation acknowledged that they still needed to improve the registration of Egyptians abroad. Dr. Shehata said it is a very important political issue in the context of a democratic culture, which still needs to be enhanced and encouraged in Egypt. Mrs. Hady added that a union of Egyptians abroad will be reactivated, and that President Mubarak had guaranteed that participation of

⁵ Under the sponsorship system, a migrant worker is tied by the contract he/she signs with his/her employer (the sponsor) who will provide him/her with work and the needed papers to stay in the country. Under this system, and unlike nationals, migrant workers are not allowed to change jobs. Employers have considerable control over their foreign manpower and abuses are frequent.

nationals abroad in the political affairs of Egypt was a matter of great importance. In its concluding observations, the Committee encouraged the State party to pursue its efforts to facilitate the exercise of their voting rights by Egyptians migrant workers residing abroad.

Information on emigration

The Committee requested clarifications regarding the existence and operation of the Higher Committee for Emigration mentioned in the report, and what measures Egypt was taking to inform potential Egyptian migrant workers. The concluding observations stated that Egypt should provide adequate support to the High-Level Committee for Emigration, so that it could function properly. Several Committee members requested more information on any reintegration plan for migrant workers coming home. They also questioned Egypt regarding the measures taken to tackle the issue of Egyptians emigrating illegally.

The delegation declared that the Ministry of Manpower and Migration had set up a joint hotline with the Ministry of Foreign Affairs providing information on many issues regarding Egyptian migrant workers. A unit providing assistance to Egyptians abroad was set up in the context of the hotline. This unit also provided help in the case of workers returning home.

The delegation explained that the State acted through bilateral agreements in combating illegal emigration and companies misleading and abusing young Egyptian workers. In this context, Egypt signed a treaty with Italy with the view of limiting illegal migration of workers to Italy via Libya. Egyptian workers who want to travel to Italy register on an internet website, and companies looking for manpower in Italy do the same on an Italian website. The offer and supply of work is then compared, and the result is around 90% compatibility. Under the convention, training sessions are organised on the language and culture of the country, the rights and opportunities of migrant workers, and the meaning of the contract they sign. Mrs. Hady said that the first workers having gone through this process will leave for Italy in May this year. She added that the authorities were contacting Greece to see if they could implement a similar programme.

Human trafficking

The Committee requested more information on actions taken by the State party and the existing legislation to combat human trafficking, arguing that Egypt stands as a transit point for trafficking of all kinds. It welcomed the recent proposal for Egypt to host a conference on trafficking of persons, but confronted the view of the State party in claiming that trends in human trafficking show that Egypt is a waiting area, especially in the case of women going into prostitution. Mr. El Jamri also questioned the delegation on the practice of “summer weddings”⁶, which he saw as a kind of trafficking. Mrs. Hady vehemently denied that Egypt constituted a waiting area for women entering into prostitution. She did recognise however that with the flow of tourists visiting Egypt every year there were some rare isolated cases. The delegation informed the Committee that Egypt had ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and Protocol against the Smuggling of Migrants by Land, Air and Sea, both supplementing the United Nations Convention against Transnational Organized Crime,⁷ and that a ministerial taskforce had been put into place to tackle the matter. However, in its concluding observations the Committee, noting the lack of specific anti-trafficking legislation in force in Egypt, recommended that the State take appropriate steps to detect illegal movements of migrant workers and punish individuals or organisations orchestrating such movements.

⁶ A practice that sees Egyptian men abandon their newlywed wives after only a summer.

⁷ United Nations Convention against Transnational Organized Crime and following protocols: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime; Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime; available at http://www.unodc.org/unodc/en/crime_cicp_convention.html#final

Statistics

Several members of the Committee strongly insisted upon the lack of reliable and detailed statistics in the report. Egypt does not have sufficient knowledge about the flows of people, the size of the population affected and their specificities. They said that the government has to develop a better method if it wants to be able to allocate resources and have an impact on controlling migration flows. These severe criticisms were humbly accepted by the delegation, and Mrs. Hady called on international financial and technical assistance to realise the needed improvements. Later in the meeting, she announced to the Committee that a project was agreed upon between the International Labour Office and the central bureau of statistics with the view of improving databases and reliability of information. The Committee recalled the indispensability of sound statistics in its concluding observations, encouraging Egypt to pursue its efforts to improve its databases.

NGO participation

The Committee noticed with concern that the report was prepared without NGO participation and input. The delegation replied that instead of consulting with NGOs for drafting the report, they had decided with the view of respecting NGOs' independence to leave them to write their own alternative reports. They added that the civil society is considered a partner in the follow-up and implementation of recommendations, which is why they are discussing how to disseminate the report and the concluding observations. In its concluding observations, the Committee nevertheless noted its concerns regarding restrictions on the activities of non-governmental organisations, and reiterated how important partnership with the civil society was.

Conclusions and Next Steps

The Chairman concluded the examination of the report by saying that the dialogue had been constructive. He said to be impressed by the willingness of the delegation to address implementation issues where there were gaps. He recalled that Egypt could become a model for other countries.

The country Rapporteur stated in his conclusion that the discussion had been fruitful and provided the Committee with important information for the formulation of its recommendations. He reiterated his concerns regarding the state of emergency. He recommended that the State party increase good practices (as in the Italian case). In addition he made two appeals on issues that were not dealt with during the discussion. First, he pointed to the serious discrimination suffered by persons living with AIDS and hepatitis C in having to take a mandatory test. This issue was taken up in the Committee's concluding observations, which recommended that the medical tests of migrant workers be in conformity with international law. Second, Mr. Abdelhamid El Jamri appealed to the head of the delegation to reopen trade unions that were allegedly recently closed.

The Committee recommended that the State party submit its second periodic report by 1 July 2009, and that the report provide detailed information on how laws and regulations, described at length in the initial report, are implemented in practice.

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