

(No Protection Under Legislative Inertia and Discrepancy)

Legal Analysis Paper

On Prime Ministerial Decree No. 369 of 2023 Establishing a Protection Fund for Victims, Whistleblowers, and Witnesses



This is the RPE's second paper in its project "Studying Egyptian Public Policies on Migration and Asylum Seeking at the Borders and Inside Cities." The first paper, titled "Harsher Penalties and (Undocumented) Migration: Legal Crossroads and Everyday Problems," was issued in March of 2022 on the amendments to Law No. 82.

Glossary

People on the Move:

All individuals who move from one place to another for relatively long periods of time and require basic standard of protection. “People on the move” is an umbrella term that includes refugees, asylum seekers, internally and externally displaced individuals, migrants, undocumented migrants, climate refugees, irregular migrants, people in exile/ diaspora, and more.

Irregular Migration:

There is no universally accepted definition of irregular migration, however, the term is generally used to identify individuals who move outside regular migration channels. Entering or exiting countries by crossing state-established borders does not exempt said states from the duty and responsibility of providing people on the move -irregularly- with protection, services, or basic support.

Illegal Migration- Irregular Migration:

We reject the notion of categorizing people on the move as illegal and labeling them as criminals. Such characterization subjects these individuals on the move irregularly to harassment, arrest, detention, and deportation, in addition to exposing them to the risk of forced labor and trafficking. The term “irregular” is preferable to “illegal,” as the latter carries a criminal connotation that entails deprivation of basic rights.

Crime of Immigration- The Right to Freedom of Movement:

It is unacceptable to describe migration, regardless of its form, as a crime because the freedom to move and migrate is a fundamental human right. The Universal Declaration of Human Rights stipulates that everyone has the right to freedom of movement within a state’s borders, the right to leave any country, and to return to their country. Instead of criminalizing individuals trying to cross borders irregularly, efforts must be made to find ways to ensure that migrants and refugees are treated in humane and appropriate manners, and granted the dignity they deserve regardless of the reasons that compelled them to migrate.

Table of Contents

Introduction

- I. General Framework: The Decision to Establish the Fund is at the Intersection with Legislations Related to Border Management, Migration, Provision of Protection, and Accountability
- II. Special Framework: From 2021 to Date: Legislative and Administrative Developments that Have Adopted Security Solutions to Restrict Irregular Migration, Militarize, and Manage the Borders
- III. Arrest Campaigns and Trials Lacking Fair Trial Requirements Along with the Adoption of Measures in Cases Related to Facilitation of Irregular Migration
- IV. The Decision to Establish a Fund to “Combat ~~Illegal~~ Migration and Protect Whistleblowers and Witnesses” Between Human Rights Demands and Attempts to Issue the Decree
- V. The Refugees Platform in Egypt’s Analysis of Prime Ministerial Decree No. 369 of 2023 Establishing a Fund for “Combating ~~Illegal~~ Migration and the Protection of Whistleblowers and Witnesses”

Part I: Analysis of Resolution Text

Part II: Cardinal Justice and Protection-Related Matters Overlooked By the Legislator

Part III. The Decree’s Effectiveness Amid Legislative Contradiction and the Criminalization of Irregular Migrants in Other Laws and Decisions

Recommendations of the Refugees Platform in Egypt to the Egyptian Legislator, the Cabinet, and the Public Prosecution

Introduction

In its issue of January 22, 2023, the Official Gazette published Prime Ministerial Decree No. 369 of 2023 regarding the establishment and organization of a Fund to Combat ~~Illegal~~ Migration and Protect Migrants and Witnesses¹. This decree is issued pursuant to Law No. 82 of 2016 on Combating ~~Illegal~~ Migration and Smuggling of Migrants. The law stipulates in Article 32 that “there shall be established a fund called ‘Combating ~~Illegal~~ Migration & Protection of Witnesses and Migrants Fund’. The Fund shall have its public legal entity and shall have its own independent budget. The Fund shall be affiliated to the Prime Minister and shall have a financial year that starts and ends as per the State’s financial year. Such Fund shall be referred to in this Law as ‘the Fund’.”

“The Fund shall be concerned with providing financial assistance to victims who sustained damages as a result of all crimes listed in this law. The Fund shall have a board chaired by the head of the Committee. The by-laws of the Fund, composition of its board and its areas of competence shall be issued by a Prime Ministerial decree.”

The Prime Ministerial decision to establish a fund comes after multiple human rights demands to implement the law’s provisions and establish the fund. The demands included the activation of the fund’s role within a framework that protects the rights of both Egyptian and non-Egyptian migrants, compensates for legislative inertia in victims’ protection in law, ensures compliance with Egypt’s international obligations regarding refugees, asylum seekers, and persons on the move, irrespective of nationality, and ensures special protection of the most vulnerable, such as women and children.

However, the decision was issued and published without assessing the effectiveness of its provisions and its failure to provide protection for victims and witnesses while overlooking significant issues and conflicting with existing laws and rulings. Additionally, the law employs several ambiguous and undefined terms.

Within the framework of studying and analyzing public policies, including local laws and decisions related to migration and asylum and their issues within the Egyptian legal system, and in light of the rules of international law and human rights, as well as Egypt’s obligations under international and regional conventions – by signature and ratification– on the rights of refugees and migrants, which are constitutionally binding², the Refugees Platform in Egypt (RPE) issues this paper to analyze the aforementioned decision. It examines and analyzes the framework of public policies, including local laws and decisions related to migration and asylum and their issues within the Egyptian legal system, and in light of international law and human rights rules, and Egypt’s obligations under international and regional conventions by signature and ratification.

¹Official Gazette - No. 3 (bis) on January 22, 2023, Prime Ministerial Decree No. 369 of 2023.

²“The state is committed to the agreements, covenants, and international conventions of human rights that were ratified by Egypt. They have the force of law after publication in accordance with the specified circumstances.” (Article 93 of the Egyptian Constitution, amended 2019)

The paper starts by clarifying the specific and general legal framework of this decision and the laws and decisions related to it, underscoring the contradictions between them and the obligations imposed on Egypt by international conventions. Furthermore, the paper emphasizes the lack of clarification in the decree regarding some definitions and procedures and its failure to impose genuine protection policies.

This is the RPE's second paper in its project "Studying Egyptian Public Policies on Migration and Asylum Seeking at the Borders and Inside Cities." The first paper, titled "Harsher Penalties and (Undocumented) Migration: Legal Crossroads and Everyday Problems,"³ was issued in March of 2022 on the amendments to Law No. 82.

(General Framework)

The Decision to Establish the Fund is at the Intersection with Legislations Related to Border Management, Migration, Provision of Protection, and Accountability

Before delving into the analysis of the aforementioned decision, this brief introduction outlines the developments in public policies and governmental practices over the past few years regarding border management and irregular migration. It also aims to explore the intersection of these policies and practices with the provision of protection, accountability, and the implementation of human rights principles. This context is crucial for understanding how the provisions of the resolution under review are implemented within the framework of implementing other legislations applicable in the same context and circumstances.

On November 29, 2014, Presidential Decree No. 444 was published in the Official Gazette regarding the designation of areas adjacent to the borders of the Arab Republic of Egypt and the regulations governing them⁴, amending the designated areas in Law No. 204 of 2010⁵ on the same matter, and repealing it. At the same time, the legislator inadvertently omitted the enclosure of the part concerning the rules regulating the designated areas in the decree, prompting the Cabinet to issue a rectification in February 2015⁶ stipulating the inadvertently omitted regulations at the time of issuing Decree No. 444. The rectification stipulates recognizing the designated areas in the decree as adjacent to the borders, subject to the jurisdiction Code of Military Justice No. 25 of 1966, as well as categorizes respective designated areas to restricted and prohibited areas.

Decree No. 444 has led to an ongoing series of violations against migrants and local civilians, as periodic statements from the Egyptian Border Guards Corps between January 2017 and

³["Harsher Penalties and \(Undocumented\) Migration: Legal Crossroads and Everyday Problems,"](#) The Refugees Platform in Egypt, March, 2022.

⁴Official Gazette - No. 48 (A) (bis) on January 29, 2015, Presidential Decree No. 444 of 2014.

⁵Official Gazette - No. 29 (cont.) on July 22, 2010, Presidential Decree No. 2004 of 2010.

⁶Official Gazette - No. 8 (C) (bis) on February 22, 2015, Prime Ministerial Rectification- General Secretariat

December 2021 indicate the arrest of more than 90,000 individuals of various nationalities in operations related to irregular migration along the Egyptian border axes. However, legal measures taken against them following their arrest, and any information regarding their nationalities, ages, genders, measures taken to protect the victims, or the treatment of asylum seekers within this context were not disclosed.

As part of its monitoring and documenting efforts, the RPE has noted a lack of new statements by the Egyptian Border Guards Corps regarding arrest operations at the Egyptian borders since December of 2021. This follows previous criticism by the RPE regarding the lack of transparency in these statements on several occasions, demanding information or details regarding the nationalities and ages of the detainees, as well as the procedures undertaken following their arrest.

Around the same time, human rights organizations documented hundreds of military trials for civilians⁷ across all border axes outlined in the decree. Additionally, the decree brought about arbitrary measures against migrants and asylum seekers either seeking refuge in Egypt or transiting through it to another country. Furthermore, several human rights organizations have documented instances of illegal detention⁸ and trials lacking fair trial requirements, and extremely poor detention conditions for individuals apprehended by the Egyptian Border Guards Corps affiliated with the Egyptian Army, including Egyptian locals and migrants.

Meanwhile, Decree No. 444 prohibits and criminalizes any presence or activity unauthorized by competent military authorities, thereby impeding the work of relief organizations and criminalizing the work of human rights advocates, researchers, journalists, and any individual assisting irregular migrants, irrespective of nationality, in the areas outlined by the decree. Despite suspicions of its unconstitutionality, the decree remains in effect, prompting a number of Nubian citizens to appeal the decree for violating their right to return to their lands based on the provisions of the Egyptian constitution

On September 21, 2016, a boat carrying between 450 to 600 irregular migrants from Sudan, Syria, Somalia, Eritrea, and Egypt capsized off the coast of the Egyptian city of Rashid. The passengers were left without rescue operations in Egyptian waters, amid threats from the coast guards warning locals not to conduct any rescue operations. According to official statements by the Ministry of Health and Egyptian authorities on September 30, 2016, the tragedy claimed the lives of 204 people. However, residents of Rashid, who remained on the Mediterranean coast for days, claimed to have retrieved more than 300 bodies. Despite numerous human rights demands, Egyptian authorities have not launched a serious investigation into the failure of competent authorities to carry out rescue operations in Egyptian waters⁹.

⁷ "[Death Road Report "Syrian Migration to Egypt Between Reunification, Imprisonment and Death."](#) Egyptian Commission for Rights and Freedoms, July 2018.

⁸ "[UNHCR: 3,306 Reported Arrests at Egyptian Borders, 14% Increase Compared to Last Year,](#)" Refugees Platform in Egypt, December 2022.

⁹ "[Five Years After Rashid Boat Disaster, No Accountability for Failure to Rescue,](#)" Refugees Platform in Egypt, September 2021.

Then, on November 7, 2016, the Official Gazette published Law No. 82 of 2016 on Combating ~~Illegal~~ Migration and Smuggling of Migrants¹⁰. The law stipulates in Article 2 that “the smuggled migrant shall not bear any criminal or civil liability for the crimes of smuggling of migrants provided for in this law,” and that “the consent of the smuggled migrants or the consent of the person responsible for them or their guardian shall not be considered in the crimes of smuggling of migrants provided for in this law.” However, it neglected to clearly stipulate the protection conditions guaranteed by law for smuggled migrants, especially in the case of “minors, unaccompanied children, or women.” The law also did not stipulate specific protection conditions for asylum seekers, including the provision of obligations on authorities to refrain from conducting any arrests on the charge of irregular entry, the prohibition of expulsion and forced deportation, and ensuring access to national asylum procedures.

On January 2017, the Official Gazette published Prime Ministerial Decree No. 192 of 2017 on the Composition of the National Coordinating Committee on Combating and Preventing ~~Illegal~~ Migration and Human Trafficking¹¹, determining the members of the committees from representatives of some ministries, authorities, security agencies, government funds, and the determination of its headquarters.

In May of 2018, the Official Gazette released Prime Ministerial Decree No. 983 of 2018¹² on Promulgating the Executive Regulations of Law No. 82 of 2016 on Combating ~~Illegal~~ Migration and Smuggling of Migrants. The decree included the same definitions covered by Law No. 82 of 2016, in addition to seven objectives for what it described as “combating ~~illegal~~ migration and smuggling of migrants.” However, it failed to identify practical enforcement mechanisms for these objectives or establish a framework for protection against potential violations that might occur due to implementing these objectives.

The executive regulations also emphasized lifting criminal liability from the smuggled migrant and not considering their consent, the consent of the person responsible for them, or their guardian’s. However, they did not specify guarantees, protection conditions, the status of asylum seekers regarding their exemption from accountability and punishment due to irregular crossing, and the use of alternative measures to detention pending verification of asylum requests. Furthermore, they ignored the obligation to enable asylum seekers to access asylum procedures.

Although Article 5 included some protection measures concerning unaccompanied migrant children, it neglected the emphasis on prohibiting the detention of children due to irregular entry or exit. Moreover, it completely overlooked the status of non-Egyptian children among migrants and asylum seekers, the obligation of local authorities to announce the outcome of their periodic anti-~~illegal~~ migration and anti-smuggling operations, and the measures taken

¹⁰ Official Gazette - No. 44 (A) (bis) on November 7, 2016, Law No. 82 of 2016.

¹¹ Official Gazette - No. 3 (B) (bis) on January 23, 2017, Prime Ministerial Decree No. 192 of 2017.

¹² Official Gazette - No. 19 (G) (bis) on May 15, 2018, Prime Ministerial Decree No. 983 of 2016.

against detained children, irrespective of nationality, especially those detained in border areas subject to the provisions of Decree No. 444 of 2014 and its amendments.

The Egyptian government had launched what it called the “National Strategy on Combating ~~Legal~~ Migration,” which presented broad definitions and unspecified objectives, while lacking a standard for measuring success or for monitoring, protecting, and respecting the rights of victims and survivors. While the Egyptian Border Guards Corps announce the arrest of thousands of migrants of different nationalities, local and international human rights organizations and UN special rapporteurs have issued reports and condemnation statements over the past few years regarding the Egyptian authorities detaining asylum-seeking children in poor and inhumane detention facilities and conditions due to attempts of irregular entry or exit. Some were deported to their countries of origin without being allowed to seek asylum or enabling the UNHCR to conduct interviews with them or visit them in the detention facilities, contradicting and violating all protection measures and procedures stipulated by the decree.¹³

(Special Framework)

From 2021 to Date: Legislative and Administrative Developments Have Adopted Security Solutions to Restrict Irregular Migration, Militarize, and Manage the Borders

On September 23, 2021, the Official Gazette published Presidential Decree No. 420 of 2021¹⁴, amending some provisions of Presidential Decree No. 444 of 2014 defining the areas adjacent to Egypt's borders and the rules governing them. The amendments to the law increased the space of prohibited areas near the borders, designating them as no-entry military areas, as shown in the maps attached to the text of the law. Despite the violations of the original Decree No. 44 of 2014, the human rights objections raised against it, and its negative impact on the rights of local citizens residing in areas adjacent to the borders and the rights of people on the move, no protection measures or adjustments were stipulated in the new amendments.

On April 11, 2022, the Official Gazette published Law No. 22 of 2022¹⁵ amending some provisions of Law No. 82 of 2016 on Combating ~~Legal~~ Migration and the Smuggling of Migrants¹⁶. The amendments to the law fixated on toughening the penalties for those who engage in, attempt, mediate, facilitate, or participate in irregular migration, including owners of boats used in irregular migration operations. The amendments also imposed penalties on those providing services or assistance to smuggled migrants. The Egyptian Parliament gave its final

¹³“ [Egypt's Violation of the Principle of Non-Refoulement by Deporting an Eritrean Family Seeking Asylum](#)”, Statement by the OHCHR, November 2021

¹⁴ Official Gazette - No. 38 (B) (cont.) on September 23, 2021, Presidential Decree No. 420 of 2021.

¹⁵ Official Gazette - No. 14 (C) (bis) on April 11, 2022, Law No. 22 of 2022.

¹⁶ “[Harsher Penalties and \(Undocumented\) Migration: Legal Crossroads and Everyday Problems](#)”, Refugees Platform in Egypt, March 2022.

approval to the amendments to both laws in its general session on March 29, 2022¹⁷, despite human rights demands targeting the law after its issuance for not including protection measures or obligations regarding the local authorities' duty to rescue, in addition to ignoring the status of non-Egyptian irregular migrants.

The RPE also demanded the prioritization of human rights protection in the amendments, outlined in a position paper it issued before the final ratification of the amendments to the law. The paper underscored that the amendments' primary focus is on toughening penalties and criminalizing assistance of migrants rather than providing suitable protection conditions for migrants, victims, and witnesses. Furthermore, the legislator did not address the legislative inertia in the law per continuous requests by human rights organizations since 2016. The RPE also clarified in its paper that the solutions to irregular migration issues cannot be done through toughening penalties and criminalizing the work of human rights defenders.

On June 27, 2021, the "National Coordinating Committee for Combating and Preventing ~~Legal~~ Migration and Trafficking in Persons" (NCCPIM & TIP), affiliated with the the Cabinet of Ministers, launched what it called "the third National Action Plan for Combating and Preventing ~~Legal~~ Migration (2021-2023)," with its objectives focusing on the prevention of irregular migration through criminalization. Ambassador Naela Gabr, Chairperson of NCCPIM & TIP, highlighted during the plan launch event that "the efforts and achievements provide clear indicators of what the state has done to combat and prevent this phenomenon, as there has been no recorder departure of any ~~illegal~~ migration boats from Egyptian shores since September 2016."¹⁸

In 2021, the International Organization for Migration (IOM) and European institutions recorded a significant surge in the number of irregular migrants from Egypt to the European Union, particularly Italy, via sea. The figure stood at 8,877 individuals, followed by the arrival of 21,753 individuals in 2022¹⁹, which prompted European authorities to change their approach to irregular Egyptian arrivals, targeting them with criminalization. As of 2023, at least 60 Egyptians are facing trial in Italy on smuggling charges, adding to a total of 300 Egyptian detainees in Italian prisons since 2020 on charges related to irregular migration and accusations of involvement in smuggling migrants.²⁰

¹⁷ ["Severe Penalties Include Those Who Aid Victims: Parliament Gives Final Approval on Amendments to Law on Irregular Migration"](#), Refugees Platform in Egypt, March 2022.

¹⁸ [The National Coordinating Committee for Combating and Preventing Illegal Migration and Trafficking in Persons](#), January 2024.

¹⁹ [Matrix Tracking Displacement and Sea Arrivals to Europe](#), International Organization of Migration, February 2024.

²⁰ ["Without Frontiers: The criminalization of migrant boat drivers in 2023"](#), Borderline-Europe in cooperation with the Refugees Platform in Egypt, February 2024.

Arrest Campaigns and Trials Lacking Fair Trial Requirements Along with the Adoption of Measures in Cases Related to Facilitation of Irregular Migration

On September 30, 2021, the Egyptian Public Prosecutor General issued a statement announcing the establishment of specialized prosecutions to investigate “crimes related to combating human trafficking and illegal migration” at the headquarters of each appellate court. The decision, however, did not include any details regarding the scope of work of all prosecution offices and the procedures governing them, the necessity of such offices, and their jurisdiction in investigating incidents that occurred in areas subjected to the provisions of Presidential Decree No. 44 of 2014.

No further decisions were issued until February 16, 2022, when the Public Prosecutor General issued a statement ordering aforementioned prosecution offices to investigate irregular migration cases. This came after hundreds of families, from various governorates, shared testimonies detailing the arrest of their relatives and their accusation in irregular migration cases, in addition to being subjected to violations that include torture, enforced disappearance, and repeated prosecution on the same charges without fair trial requirements. The families’ complaints included: the arrest of their loved ones without evidence and their accusation in irregular migration cases. In case the prosecution orders their release, security services refuse to implement this decision, instead subjecting them to enforced disappearance and accusing them in new cases with the same charges, in violation of Egyptian Criminal Procedure Code, which prohibits double jeopardy. Testimonies also indicate that the detainees in these cases have been subjected to torture.²¹

In this context, it is evident that the policies of the so-called “Migration Governance”, adopted by the Egyptian authorities in partnership with and funding from the European Union since 2014, rely solely on security solutions and fail to consider the broader implications for the rights of Egyptians and people on the move or ensure accountability.²²

These policies reflected in the criminalization of solidarity with and assistance to migrants, the militarization of border areas and the forced displacement of its indigenous population, and widespread arrests and unfair trials on charges on smuggling or assistance thereof without evidence. These unaccountable arrest campaigns led to the murder of an Egyptian citizen in Matrouh by police gunfire²³. Meanwhile, Egyptian authorities do not provide assistance to victims, survivors, and families as stipulated by law, instead stigmatizing them and holding them

²¹“[Prosecutor General Orders Nationwide Examination of Irregular Migration Cases Amid Complaints of Fabricated Charges and Repeated Prosecutions of Defendants on the Same Charges](#)”, Refugees Platform in Egypt, February 2022.

²² “[EU funding for the Egyptian Coast Guard \(Strengthening a Partnership That Violates Human Rights\)](#)”, Refugees Platform in Egypt, October 2022

“[The EU should uphold human rights and accountability in negotiation of a strategic partnership with Egypt](#)”, Joint statement by 14 organizations in December 2023

²³ “[Monitoring Report: Egyptian Authorities Expand Violations in the Name of “Migration Control” Following “Pylos” Boat Capsizing, Resulting in Citizen’s Death in Matrouh](#)”, Refugees Platform in Egypt, July 2023.

liable. Over the past few years, these systematic policies did not only fail to address irregular migration, but also perpetuated its causes and increased the likelihood of risks along the way.

The Decision to Establish a Fund to “Combat ~~Illegal~~ Migration and Protect Whistleblowers and Witnesses” Between Human Rights Demands and Attempts to Issue the Decree

Law. 82 of 2016 has been in effect since 2016, including the amendments made to it in September 2021. However, neither the legislator nor the government has shown interest in issuing a decision to establish a fund for the protection of victims, whistleblowers, and witnesses, as stipulated in Article 32 of the law, despite repeated calls by human rights advocates to activate the provision and issue the decision to establish the fund. The latest being the report submitted by the RPE to the Special Rapporteur on migrants at the United Nations Human Rights Council on “Human Rights Violations at International Borders: Trends, Prevention and Accountability.”²⁴

However, the law did not include guarantees of exemption from punishment, as stipulated in Article 2 of the same law, for migrants and smugglers, or establish special protection conditions for asylum seekers. It also did not provide alternatives for detention in case of apprehension at Egyptian borders or nearby areas, nor did it indicate special protection conditions for women and children. Furthermore, the legislative contradictions with other resolutions and laws have led to appalling violations against Egyptian and non-Egyptian migrants. These violations include deliberate inaction regarding rescue operations, arbitrary detention without cause in harsh and inhumane conditions without access to healthcare, and military trials for civilians and civil trials lacking fair trial requirements.

The Prime Ministerial decision to establish a fund for combating ~~illegal~~ migration was not a spontaneous one, but rather came after several attempts to issue the decree by both the Egyptian Parliament and the Cabinet itself. In April 2022, the Legislative Committee of the Parliament discussed amending the Irregular Migration Law No. 22 of 2022, which regulates the establishment, working mechanisms, funding, and composition of the fund, among other aspects. However, the amendments were passed without enacting the foundation at the time. No news or statements about it were released until January 18, 2023, in a statement issued by the Cabinet via its official Facebook page, announcing the passing of the Prime Ministerial decree on establishing a fund for Combating and Preventing ~~Illegal~~ Migration and the Protection of Migrants and Witnesses²⁵ during its 225th meeting.

²⁴ “[Human Rights Violations at International Borders: Trends, Prevention and Accountability](#),” UNHCR, February 2022.

²⁵ [Cabinet Meeting No. 225, Chaired by Prime Minister Dr. Mostafa Madbouly](#), Presidency of the Council of Ministers, January 2023.

The Refugees Platform in Egypt's Analysis of Prime Ministerial Decree No. 369 of 2023 Establishing a Fund for "Combating Illegal Migration and the Protection of Whistleblowers and Witnesses"

First: Analyzing the Decree's Provisions:

A belated step that does not provide protection, nor ensures oversight of resources, and lacks specific mechanisms and clear definitions that may cause serious violations against victims.

Prior to the issuance of the decree, there was anticipation surrounding the fund's objectives, functions, and organization, ensuring a degree of transparency, accountability, and providing protection for victims of crimes against irregular migrants. The aim was to rectify the shortcomings and deficiencies in Law No.82 of 2016 regarding the protection conditions for Egyptian and non-Egyptian migrants, obliging the state to assume the responsibility of rescue and relief operations in sea and on land, and facilitate the work of civil society organizations without criminalization. However, the provisions of the decree fell below expectations, were unclear and did not include desirable safeguards.

Upon reading the decision, we find that the legislator defined relevant crimes in Article 1 as "crimes punishable under the Law on Combating Illegal Migration and Smuggling of Migrants promulgated by Law No. 82 of 2016." It would have been more appropriate for the legislator to expand the definition of crimes, whose victims must be cared for under the fund, to include migration crimes committed under Law No. 82 of 2016 and prior to its issuance. This is due to the harm victims and witnesses of migration operations were subjected to before the issuance of Law No. 82 of 2016 due to the legislative vacuum that existed before the law and also as a result of the implementation of other legislations that affected human rights.

Article 3: Governing the Operations of the Fund:

The "first" paragraph stipulates the "provision of financial assistance" without specifying the eligibility mechanism for such assistance or the method of expenditure on the beneficiaries. Whereas the legislator discusses coordination with relevant authorities to provide necessary assistance, including psychological and legal, without specifying said relevant authorities for both Egyptians and non-Egyptians.

The legislator stipulates in the "second" paragraph the funding of care and rehabilitation programs for smuggled migrants, witnesses, and victims as part of the fund's competence. However, it did not disclose any details regarding the organizational plan for the care and rehabilitation programs, the necessity for them, the supervising authorities, its jurisdiction, or the mechanism for selecting beneficiaries of these programs.

In the "third" paragraph of the same article, the legislator outlines, as part of the fund's jurisdiction, the "coordination with relevant authorities to provide healthcare and psychological

support for women and unaccompanied women,” in collaboration with the National Council for Childhood and Motherhood and the National Council for Women. However, the legislator did not clarify the protection conditions during this referral or the coordination process between aforementioned authorities. Furthermore, the legislator overlooked clarifying the situation of unaccompanied children and women detained for ~~illegally~~ entering or exiting Egypt for irregular migration purposes on the basis of other legislative texts criminalizing irregular migrants, such as Presidential Decree No. 444 of 2014 and its amendments and Law No. 89 of 1960 on Entry and Residence of Foreigners in and Exit from Arab Republic of Egypt.

In the “fourth” paragraph of the same article, the legislator outlines another jurisdiction for the fund, which is “contributing to financing the activities stipulated in the ‘National Strategy on Combating ~~Illegal~~ Migration’ and the national action plans implemented by relevant institutions and authorities.” The strategy failed to detail the plans of the implemented activities. Similarly, the decree establishing and organizing the fund also did not specify the type of activities which the fund is going to contribute to its financing to implement the strategy and national action plans.

The “fifth” paragraph stipulates the fund’s contribution to the financing of the facilitation of safe repatriation of foreign smuggled migrants to their countries, in accordance with Article 27 of the law and regulations set by the fund’s board of directors. Nevertheless, this contradicts Article 32 of the law of Combating ~~Illegal~~ Migration, which stipulates that the fund’s jurisdiction is to financially compensate the victims for damages suffered, and what is stipulated in the Prime Ministerial Decree regarding other jurisdictions.

Additionally, Article 27 of the law refers to facilitating the safe repatriation of migrants, assigning the responsibility to the “Ministry of Foreign Affairs in coordination with relevant authorities in other countries,” excluding other Egyptian governmental entities. This ambiguous drafting of the law was criticized by human rights organizations as it does not clarify the status of asylum seekers among migrants detained in Egypt before, during, or after their attempted entry to or exit from the country, and the actions taken against them. Egypt has attempted to evade the oversight of international agreements imposed on it under the 1951 Geneva Convention Related to the Status of Refugees, which it signed on July 28, 1951, ratified and published in the Official Gazette under Law No. 331 of 1981. Although this agreement is as binding as laws and legislations under Article 93 of the Egyptian Constitution, Egyptian laws have not been amended to ensure the protection of the rights and obligations established by the convention.

Article 31 of the convention stipulates that “no penalties shall be imposed for ~~illegal~~ entry or presence on refugees coming directly from a region where their lives or freedom was threatened.” While Article 32 prohibits expulsion, return, and forced deportation of refugees and asylum seekers. Signatory and ratifying states, such as Egypt, are expected to amend their laws and legislations to align with migrant rights and the obligations established in the convention.

In light of the increasing pace of the forced deportation of asylum seekers in Egypt to their countries of origin, where they face the risk of torture, forced disappearance, and arbitrary detention, international and local human rights organizations, as well as UN entities, have urged the Egyptian government immediately cease such actions. This aforementioned ambiguous drafting of the law opens the door to lifting the criminal liability for forced deportations from Egypt. Therefore, it is imperative to restrict this provision regarding voluntary repatriation, stipulate and clarify the definition and mechanism of voluntary repatriation, and the oversight entities responsible for implementing voluntary return operations.²⁶

Article four: Determining the Fund's Resources:

In elucidating the fund's resources, the legislator limited them to three categories without specifying some of the definitions referenced:

1. State appropriations to the fund in the general budget.
2. Grants, donations, and gifts provided by national or foreign entities. However, the legislator did not clarify the "necessary legal procedures" for accepting these financial resources, the "relevant national ministries and authority" in this regard, nor the "required approvals" in this regard, which the legislator failed to specify.
3. The final source of resources that the fund obtains to finance its activities is loans, according to the legislator. The legislator did not, however, specify their type, sources, the other "national authorities" to be coordinated with, or the "legal procedures followed" in this regard.

Secondly: Important Matters Related to Justice and Protection That the Legislation Failed to Address

- Despite the legislator's stipulation in Article 1 of the Decree to clarify the definitions of some of the terms included, certain important terms mentioned in other articles were overlooked and not fully explained, such as (returning Egyptians - relevant authorities - competent authorities - care and rehabilitation programs for smuggled migrants, witnesses, and victims - national action plans implemented by ministries - necessary legal procedures - loans - required approvals - relevant national authorities).
- The decree lacked a comprehensive and clear explanation of the procedures and mechanisms for achieving the goal for which it was issued, which is providing protection for smuggled migrants, victims, and witnesses.

²⁶ ["Joint statement: End arbitrary detention and forcible deportation of Eritrean asylum seekers,"](#) Joint statement by 35 organizations, October 2022.

- The decree failed to clarify the status of refugees and asylum seekers and laws and decisions related to migration management, especially concerning the decision to establish a protection fund for victims, whistleblowers, and witnesses.
- The decree lacked clear provisions on protection from punishment due to irregular entry and did not include the prohibition of the detention of migrants smuggled for the purpose of seeking asylum.
- The decree did not specify special protection measures for certain groups such as women and children.
- The decree overlooked provisions obliging authorities to allow asylum seekers among irregular migrants to submit asylum claims and enable the UNHCR to conduct interviews with them, legalize their status, and register them.
- The decree neglected the role of Egyptian civil society, including organizations and community initiatives, in providing protection for migrants and assisting in the implementation of necessary actions to ensure this protection.
- The decree also overlooked the role of UN organizations working on migrant issues in Egypt such as IOM, UNHCR, and their partners, as well as the extent of their involvement in providing protection or monitoring the extent to which executive authorities comply with Egypt's international obligations.
- The decree did not specify the official regulatory authorities authorized to monitor, evaluate, and exercise oversight over the work of the fund and its members.
- Finally, it is noted that all members of the fund's board are security and executive figures, including the head of the fund. If the fund's objective is compensating victims for the risks they face, someone with a civil background, particularly in human rights or the rights of the most targeted and at risk in migration routes should have a seat at the table. Furthermore, no human rights official, such as representatives from the National Council for Childhood and Motherhood, the National Council for Women, or the National Council for Human Rights is on board, despite being the most experienced and related to the issue.

Thirdly: The Effectiveness of the Decree Amid Legislative Contradiction and Criminalization of Irregular Migrants in Other Laws and Decrees

As previously outlined in the general framework of the paper, the legislations adopted by the Egyptian government since 2014, including the amendments made to it in recent years starting from Presidential Decree No. 444 of 2014 and its amendments, in addition to Law No. 82 of 2016 and its amendments, have violated the constitution and international agreements and obligations signed and ratified by Egypt. They have also failed to provide real protection for migrants and or impose special protection for asylum seekers and unaccompanied children in cases of irregular migration, which exposed individuals to significant risks and violations in recent years during the unaccountable implementation of these laws. Additionally, these laws have also lacked provisions ensuring the commitment to conduct rescue and search operations and provide relief, instead criminalizing any work aimed at defending the rights of refugees and migrants.

Therefore, these laws in their current form clearly contradict the purpose and objectives of establishing the fund. The decision to establish the fund came without clarification of this situation, where there is a contradiction between laws implemented in the context of irregular migration and the presence in border areas with the aim of irregular migration, as well as the protection of irregular migrants and the mechanism for doing so in the light of the implementation of these legislations.

During the writing of this paper, a tragic shipwreck occurred off the Greek coast of Pylos, where a boat carrying approximately 750 migrants capsized, allegedly by the doing of the Hellenic Coast Guard. Only 104 individuals survived, while 82 bodies were retrieved as a result of the incident. According to the families' testimonies, there were approximately 250 Egyptian passengers on board including children, of whom only 43 survived. The boat was reportedly carrying between 200-250 Egyptian migrants from various governorates. This information was unofficially obtained by the RPE amid the continuous official disregard of the incident.²⁷

The Egyptian government issued only two statements on June 17, 2023, three days after the incident. One of them was by the Ministry of Foreign Affairs, in which it extended its condolences to the victims' families and condemned what is described as "migration-organizing-gangs: which continue to exploit those who are looking to improve their life and work conditions." It also stressed that the Egyptian government is taking decisive measures against "illegal migration," clarifying that this is done through "strict penal measures and security procedures to control the borders." However, the statement did not provide any information regarding the necessary procedures for the families to follow or the measures taken by the Egyptian authorities towards a joint investigation with the Greek authorities into the capsizing of the boat.²⁸

²⁷ ["First Report: After the Tragedy, Where are the Boat's Passengers?"](#) Refugees Platform in Egypt. June 2023.

²⁸ ["Families of migrants missing in Greek shipwreck plead for recovery of bodies"](#), InfoMigrants, July 2023.

²⁸ ["Egypt Mourns Victims of Illegal Migration Boat Sinking off Greek Coast"](#), The Egyptian Ministry of Foreign Affairs, June 2023.

Then the Egyptian Ministry of Emigration issued a statement offering condolences to the victims of the incident, saying it is coordinating with the relevant authorities to determine the names of the survivors and their status. The statement also added that the total of Egyptian survivors is 43 (5 minors and 38 adults), with ages ranging between 20-40 years old, all male. Moreover, it states that 8 Egyptians have been arrested and are being interrogated on suspicion of "organizing illegal migration, causing the deaths of the victims, and belonging to an organized crime organization."²⁹

As of the publication of this paper, neither the fund, nor any of the government institutions and authorities have provided financial or legal assistance to victims and their families.

Recommendations

Based on the previous analysis, the legislative "deficiency and contradiction" in the issuance of Presidential Decree No. 369 of 2023 establishing a "Protection Fund for Victims, Whistleblowers, and Witnesses" becomes evident. Therefore, the Refugees Platform proposes recommendations to the Egyptian Parliament, the Presidency of the Council of Ministers, and the Public Prosecution Office to amend some related legislation in order to achieve the interest of "protecting victims, whistleblowers, and witnesses" in a manner that suits the meaning and content. Additionally, the Refugees Platform directs further recommendations to the Egyptian Public Prosecution and the Presidency of the Council of Ministers.

Recommendations to the Egyptian Parliament:

1. Working on amending laws related to migration issues to make them more suitable and in line with Egypt's international obligations, as well as to achieve the interest of "protecting victims, whistleblowers, and witnesses" in cases of irregular migration and human trafficking, including the aforementioned flaws in the laws addressed in the analytical paper, including the resolution under consideration.
2. Opening the floor for discussion during the process of drafting or amending legislations or laws relevant to migration issues through workshops involving actors in migration and asylum, refugee communities in Egypt represented by local community leaders, civil society organizations, international law experts, lawyers working on migration and refugee issues, and researchers working on related issues, including the situation of border communities and desert communities.

²⁹ "[Minister of Emigration Expresses Condolences for the Death of Egyptians in Illegal Migration Incident off the Coast of Libya](#)," June 2023.

3. Ceasing the labeling of people on the move as “illegal” or “unlawful”, as there is no such thing as an “illegal human being”. These terms also strip individuals of their humanity and facilitate the acceptance of violations against their rights.
4. Discussing Presidential Decree No. 444 of 2014 and its amendments in light of the violations against local communities and migrants due to its implementation. Additionally, efforts should be made to halt the expansion of the militarization of the borders and adjacent areas.
5. Discussing Law No. 82 of 2016 and its amendments; given the widespread violations during its implementation, urgent action should be taken to amend the law in accordance with the human rights observations made on the text of the original law and its amendments.
6. Enforcing transparency and accountability regarding incidents occurring at the borders involving Egyptian and non-Egyptian people on the move, and working towards conducting an extensive parliamentary inquiry into the patterns of violations occurring in border areas and their adjacent regions.
7. Workin on legislating laws that protect asylum seekers from arbitrary detention and forced deportation, especially women and children.
8. Implementing the oversight role on detention centers near borders or within cities, and monitoring the implementation of the principle of “protecting victims, whistleblowers, and witnesses” in related cases.

Recommendations to the Egyptian Cabinet:

1. Urgent action must be taken to amend the Prime Ministerial decree under consideration, to truly address the legislative issues associated with the decree’s subject matter, which is the purpose of its issuance, rather than adding to the legislative and procedural complexity involved.
2. Efforts should be made to review the Cabinet decisions issued since 2016, following the enactment of Law No. 82 of the same year, to align with Egypt’s international and legal obligations towards migrants, irrespective of nationality. Additionally, efforts should be made to address the challenges that emerged during the implementation of legislations related to migration and asylum issues.

Recommendations to the Egyptian Public Prosecution:

1. The Egyptian Public Prosecution should clearly clarify the role of the specialized prosecutions in cases of irregular migration in all instances, including the extent of their jurisdictional conflicts with other prosecutions, such as the military prosecution.

2. We also urge the Public Prosecution to announce the results of the investigations ordered by the Attorney General regarding the review of cases involving charges of smuggling and irregular migration.
3. Implementing the oversight role of the Public Prosecution, including monitoring detention centers where individuals are held and ensuring compliance with its decisions to release detainees in cases of irregular migration.
4. Opening an investigation into the cases of asylum seekers in Egypt who have been deported after the issuance of a decision of their release in cases related to irregular migration or unofficial entry.