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**The American University in Cairo**

**School of Global Affairs and Public Policy**

**SECURITY OF TENURE IN EGYPT:  
POLICIES AND CHALLENGES**

**A Thesis Submitted to the**

**Public Policy and Administration Department**

**in partial fulfillment of the requirements for the degree of  
Master of Public Policy**

**By**

**Arig M. Eweida**

**Under the supervision of**

**Dr. Noura Wahby  
Assistant Professor of Public Administration**

**Spring 2023**

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## **List of Acronyms**

CAPMAS	Central Agency for Public Mobilization and Statistics
ESC	Egyptian State Council
GOPP	General Organization for Physical Planning
ICESCR	International Covenant on Economic Social and Cultural Rights
ISDF	Informal Settlement Development Fund
NUCA	New Urban Communities Authority
OHCHR	Office of the United Nations High Commissioner for Human Rights
SCC	Supreme Constitutional Court
SDGs	Sustainable Development Goals
UDF	Urban Development Fund
UN CESCR	The United Nations Committee on Economic Social and Cultural Rights

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**Arig M. Eweida**

## **Abstract**

This thesis explores a set of urban laws and policies adopted in the past decade in Egypt regarding their possible effect on security of tenure as an element of the right to housing. The past decade has witnessed a legislative focus on formalizing tenure rights coupled with policies aiming at redevelopment of informal settlements, infrastructure projects and lately a goal of eliminating unplanned areas by 2030. This research attempts to untangle what these laws and policies could mean for a country with 40% of its housing being informal. It builds on a rich literature on titling programs in developing countries to offer a deeper understanding of the limitations of such programs and their effect on the informal of security of tenure and perceived security. The thesis relied on semi structured interviews with experts and stakeholders and content analysis of laws, reports, and court decisions to investigate how Egypt fares regarding internationally accepted indicators of security of tenure. The findings suggest a lack of institutional competency to carry out titling procedures and a possibly negative effect on perceived security of tenure. The results show good achievements on structural indicators and access to justice in cases of loss of tenure but raise concerns regarding their application on the ground.

## **1. Chapter One: Introduction**

### **1.1 Global Urbanization and Housing Trends**

The right to housing is both a human right and a development goal. Housing not only provides shelter but is the center of social and sometimes economic growth for individuals and families. As a human right it is part of the right to an adequate standard of living stipulated in the 1948 Universal Declaration of Human Rights and in the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR); as well as being enshrined in Article 78 of the Egyptian 2014 Constitution. The United Nations Committee on Economic, Social and Cultural Rights (UNCESCR) in its general comments No. 4 (1991) on the right to adequate housing and No. 7 (1997) on forced evictions, has identified the following pillars to the right to adequate housing: security of tenure, availability of services, materials, facilities and infrastructure, affordability, habitability, accessibility, location and cultural adequacy (OHCHR, 2008).

As a development goal, the access of everyone to “adequate, safe and affordable housing and basic services and upgrade slums” is the first target of the 11<sup>th</sup> goal, Sustainable Cities and Communities, of the Sustainable Development Goals (SDGs), which were adopted by the United Nations in 2015 (UNDP, 2017). In addition, housing was found to be an integral part of seven of the SDGs, a direct contributor to six SDGs and an indirect contributor to two SDGs (Habitat for Humanity, 2021). For example, access to housing was found to build resilience and generate sustainability, it helps ensure access to safe water and sanitation, equality in access to tenure rights increases equality, specifically gender equality, it has a transformational impact on social and economic outcomes and therefore is an integral aspect to the building of sustainable cities and communities, and finally, the recognition of tenure right, the consultation with vulnerable interest groups and the methods of addressing slum development are crucial for achieving peace justice and strong institutions (Habitat for Humanity, 2021).

Following this global commitment, the tenth goal of the National Plan Egypt 2030 is devoted to urban development. Some of the indicators of this goal are related to housing, such as the housing gap indicator, the rate of residency in new cities, the percentage of residents in unsafe and informal areas, and the access to safe water and sanitation (GOPP, 2016).

Urbanization is a global phenomenon. According to the World Bank, around 54% of the World's population live in urban cities (World Bank 2018). Egypt is not an exception to this phenomenon, as 42% of the Egyptian population live in cities (World Bank 2018). But even this percentage is considered an underestimation, since the informal sprawl on the fringes of cities is considered by the government to be rural (Farha, 2019). Egypt is one of the most populous countries in Africa and the Middle East (World Population Review 2020). According to the 2017 census carried out by the Egyptian Central Agency for Public Mobilization and Statistics (CAPMAS), the Egyptian population reached over 94 million: among which 18 million live in Cairo and Giza alone (CAPMAS, 2018). Informal housing in Egypt is estimated to constitute 40% in the country and 60% in Greater Cairo of the total number of housings (Sims et al., 2020).

Although a high urbanization rate might have positive developmental relevance in sectors such as providing better healthcare, education, income, etc., the inability of governments to provide housing for the urban poor has led to informality and sometimes homelessness. In every developing country the disparity between informal housing and high-income housing and neighborhoods is huge (Esquirol, 2008). Aerial photos taken from several cities in the developing world show how more crowded and less green informal low-income neighborhoods are. The situation in Egypt is no different. In down-town Cairo and other city centers you can see both high-end housing and ashwaiyat or slums.

As a response to the widespread urbanization with its less desired side-effect of informality, international human rights as well as development organizations have had different ways of dealing with the phenomenon. Responses by the governments of developing countries have had a huge impact on the security of tenure. Recent international reports argue that informality cannot be seen as separate from the prevailing legal systems, markets and resource allocation policies which make formal housing inaccessible to low-income individuals in the society (Farha, 2018).

## **1.2 Security of Tenure**

It is difficult to define security of tenure, as this thesis discusses later, but for the purpose of this research we can rely on the following definition by reports to the UN General Assembly stating

that “Security of tenure is understood as a set of relationships with respect to housing and land, established through statutory or customary law or informal or hybrid arrangements, that enables one to live in one’s home in security, peace and dignity.” (Rolnik, 2013, p.2).

Security of tenure is translated to Arabic by international organizations as “*amn al heyaza*”. Linguistically, “*heyaza*” comes from the root word “*haz*”, which generally means to acquire or possess. Legally, the word “*heyaza*” is usually understood as possession, the subject matter of which may be a movable, immovable or a real right (right in rem). In the context of land and housing it is closest in meaning to adverse possession. Thus, “*heyaza*” is not ownership, “*melkeya*”, but may be acknowledged by the law as a reason for acquiring ownership under certain conditions. While tenure may be achieved through rent, for example, rent legally is not ownership nor adverse possession. Therefore, the official UN translations of security of tenure as “*amn el heyaza*” may imply adverse possession for many Egyptian legal professionals. In the interviews, I had to explain that for international organizations it may include, ownership, rent, adverse possession or permission to use by the owner. In addition, I had to explain that security in this context includes safety from government action, which may include eviction decrees, decrees of removals of building violations or decrees of expropriation for public interest.

However, this is not to say that the word “*heyaza*” cannot bear the same meaning as the word “*tenure*”. For example, in the National Housing Strategy of 2020 the Arabic version refers to “*regulating tenure*” as “*tanzim al heyaza*” (p.23), and, in the latest population, housing and establishments census (CAPMAS, 2017), tenure typology is referred to as “*naw’ al heyaza*”, which includes ownership, rent and gift. In brief, the translation of security of tenure to “*amn el heyaza*” is a valid one but is not common to legal professionals who are exposed to the issue domestically, rather than internationally.

Ten years ago, the UN Special Rapporteur on the right to housing submitted her report to the General Assembly describing the situation in the world as a “*global tenure insecurity crisis*”, manifested in the increasing rates of forced evictions and displacements caused by different reasons, be they developmental, natural disasters or conflicts and land grabbing (Rolnik, 2012, p.1).

The source of this tenure insecurity crisis can be in part traced back to the different perspectives of looking at security of tenure. Security of tenure may be looked at as an element of the human right to adequate housing from one side, and as a property right from another (Pattillo, 2013). As a human right, security of tenure may be achieved through formal or informal tenure rights alike. While as a property right, it needs to be formalized and this leads often to granting the property rights to certain members of the society with the exclusion of others. The first approach to security of tenure is encouraged by international human rights organizations, while the second approach is encouraged by international financial organizations.

Developing countries, like Egypt, are often caught in between these two perspectives. International financial institutions advocate that the stability of titles, achieved through formalization, may encourage business and therefore is important to the economy (Shawkat, 2021). Some researchers argue that titling programs can push up the prices of housing units leading to gentrification of informal neighborhoods and are usually more accessible to the rich and powerful (Payne et al., 2012). This may negatively affect security of tenure as an element to the right to housing.

One of the strong advocates of formal tenure rights is Hernando DeSoto, who argued that formal tenure may start a circle of positive outcomes, such as increasing investment in housing improvements, thereby improving housing quality, and allowing access to financial markets through taking loans with housing as a collateral, thereby increasing the chances of investment by households (2000). However, various studies on the security of tenure in developing countries have found that investment in housing takes place even when households possess only informal titles, if the tenants do not fear eviction (perceived tenure) and that even when having formal titles, tenants may be reluctant to risk putting their housing as a collateral for taking loans (Porio & Crisol, 2004; Van Gelder, 2009).

Accordingly, international human rights organizations today acknowledge that there is a continuum of tenure rights, rather than a formal/informal dichotomy but acknowledge that formal tenure offers the higher degree of tenure security (UN-Habitat, 2008). Studies that focused on Egypt have shown that despite the prevalence of informal tenure titles (around 40%), perceived

tenure, or the lack of fear of eviction, has been significantly high (more than 90%) (Sims et al., 2008).

Despite this international recognition of and the Egyptian states formal adherence to the right to housing and the centrality of the security of tenure to this right, the last ten years in Egypt have witnessed multiple government policies which may effect the security of tenure as an element to the right to housing, such as development of informal neighborhoods, expropriation for public interests to build roads or bridges, and confrontation in the cases of building violations.

Therefore, this thesis focuses on housing security of tenure in Egypt in light of these recent developments.

### **1.3 Problem Statement**

In addition to the different perceptions of looking at security of tenure as a human right and as a property right mentioned in the previous section, there is another level of complexity to the topic rooted in the different disciplines and approaches studying it.

Urban studies have been of interest to practitioners, sociologists, public policy specialists and international development experts to name a few. Legal studies tend to look at the “law” as that which is formal only. However, recently the field of legal geography is growing and attempting to look at how space and law interact and how social norms and the law interchangeably affect each other (Gillespie, 2016).

Despite the fact that the legislative tool is widely used in Egypt to govern urban development (Shawkat, 2016), in Egypt, legal urban studies have been quite scarce. In addition, the Egyptian urban reality is strongly influenced by informal arrangements. Thus, legal studies may benefit from other disciplines and the new trend in legal geography which looks at the law as both formal and informal (Robinson & Graham, 2018).

Titling programs in Egypt used to focus on certain projects mostly in slum areas and with financing from international development organizations (Tadamun, 2015). However, the approach by the



Egyptian government in the last decade is targeted at titling untitled property nationwide. In addition, tools such as expropriation for public interest may affect those with formal and informal titles alike. Further, according to the Informal Settlement Development Fund (ISDF), Egypt has developed 357 slum areas with the goal of eliminating all slum areas by the end of 2021 and all unplanned areas by the end of 2030 (ISDF, 2021). Thus, the recent direction of the Egyptian government starts with slum areas but extends towards informality in general. In line with this trend, the ISDF has been given a new mandate and is now the Urban Development Fund (UDF).

In short, studying security of tenure in Egypt requires dealing with various layers of the concept. First, there is the human right v. property right perspectives of tenure. Second, there is the formal law v. legal pluralism (includes the informal and social norms) approaches to security of tenure. Finally, the Egyptian government approach to informality, which in the last decade, has become a nationwide approach and targets not only unsafe informal settlements but unplanned areas as well, calls for a study of the effect of these policies on security of tenure.

#### **1.4 Research Aim**

This research aims at untangling the different approaches to promoting security of tenure as a human right and as a property right. It tries to benefit from the different disciplines contributing to urban studies with the goal of acquiring a more complete understanding of how the law interacts with other social factors. Finally, it tries to study the recent developments in Egypt's policies, which due to their far-reaching aims and fast pace have a strong and tangible effect on security of tenure not only in informal settlements but in the largely informal housing sector.

#### **1.5 Research Questions**

The main question of this thesis is:

“To what extent do housing policies in Egypt uphold security of tenure as an element of the right to housing?”

To answer this question, the following sub-questions need to be addressed:

1. How do the main regulatory and customary policies interact to determine tenure rights in Egypt?

2. What is the effect of Egypt's latest housing policies on the formal and informal and elements of security of tenure?
3. What are the perceptions of legal practitioners and homeowners involved in the process of formalizing titles under the new laws?
4. What motivates the government to undertake the far-reaching formalization projects and what constitutes incentives for homeowners to pursue formalization of their titles?
5. How may the stark division between what the government's aims for and the experiences of homeowners be handled?
6. To what extent is it effective to contest government decrees in courts in the cases of loss of tenure? What is the average duration for adjudication, the offered remedies and the degree of execution of court decisions?

## **1.6 Thesis Outline**

This thesis aims at investigating the effects of policies and legislations in the last ten years in Egypt on security of tenure. It attempts to untangle the different approaches to security of tenure and to benefit from the different disciplines studying it. Thus, it is divided into the following six chapters.

First, this introduction discusses the problems of global urbanization and security of tenure, the problem statement, research objective and research questions.

The second chapter is dedicated to the literature review. It discusses six main themes, the right to housing, the housing crisis and informality, legalization theory, security of tenure, international approaches towards security of tenure and housing and tenure debates in Egypt.

Chapter three discusses the research design of the thesis including the research methodology used to conduct this study, the selected sample, the research limitations and ethical considerations.

In chapter four, the contextual background of security of tenure in Egypt is presented, explaining the different institutions, laws and policies which have led to and continue to affect the state of security of tenure in the country.

In chapter five, I present the main findings of this research in the light of the elements of security of tenure as identified by the literature and the different indicators set by international organizations to evaluate the degree of security of tenure.

Finally, in the last chapter I present a conclusion of the research and the policy recommendations.

## **2. Chapter Two: Literature Review**

There are two ways in which the issue of security of tenure is approached (Payne et al., 2012). In international financial organizations the discourse used is that of property rights, while the UN and civil society use that of housing rights. While the first discourse is established based on an economic theory of development, the latter is grounded on economic, social and cultural rights doctrines. These differences in the philosophical foundation are expected to lead to differences in the recommended policies. In this section, I start by the human rights approach followed by the property rights approach. Next, I tackle the discourse on a number of relevant issues that impact the conceptualization of tenure such as informality and the different approaches to defining and enhancing security of tenure.

### **2.1 The Right to Housing**

This section deals with the definition of the right to housing and informality in the housing sector.

#### ***2.1.1. Definition of the Right to Housing***

The right to housing is often defined through its different elements as recognized by international organizations. For example, it may be defined as “having secure tenure—not having to worry about being evicted or having your home or lands taken away. It means living somewhere that is in keeping with your culture, and having access to appropriate services, schools, and employment” (OHCHR, 2014).

In her review of the literature on housing as a commodity versus as a right, Mary Pattilo presents the conceptual and theoretical work on housing as a right (2013). She notes that the literature may be divided into two trends. In the first, housing as a right is based in the context of critical urban theory grounded in Marxist tradition and extended to cover the right to the city as developed by Henri Lefebvre (p.519). An example of this authorship is that of Brenner et al. in ‘Cities for People, Not for Profit’(2012). In this book the authors argue that the scarcity of adequate housing is due to the accretion of capitalist processes which lead to the exclusion of the poor from access to housing (p.519). Pattilo argues that this view originates from Engels’ series of essays titled The Housing Question (1872), in which he argues that a solution to the housing question lies in the abolition of the capitalist mode of production. The second trend searches for a more pragmatic

solution for the housing crisis. An example of this trend is *A Right to Housing*, by Bratt et al. (2006), in which Hartman argues for a right to housing based on a normative theory of justice and on the harms borne by individuals and society due to the lack of adequate housing.

Another way to look at housing as a right is to study social movements which centralize around the right. As Asef Bayat explains in his social non-movement concept, social dissent can take the form of violating laws or occupying public spaces (Richards and et.al, 2013). Patillo has presented different literature on social movements in relation to the right to housing in various cities including Shanghai, Mumbai and different states in the United States which range from cooperation with government agencies and establishing land trusts, to writing letters to MPs or taking dissent to the streets (Patillo, 2013). But not everyone is enthusiastic about the results of social movements on the right to housing. Ananya Roy argues that the informal settlers are themselves part of the regime because they have received their claims to this land through political loyalties and thus cannot be counted upon to change it (Roy, 2009).

### ***2.1.2 The Housing Crisis and Informality***

Slums are quite often used as a generic term for informality and there is a strong relation between informality and weak tenure rights (Payne et al., 2012). Esquirol summarized the approaches of international organizations towards urban informality (Esquirol, 2008). First, informal settlements were viewed as harboring social ills and crime. Then they were viewed as practical fixes to the failure of the government's formal legal solutions, where state law was viewed as backward. As such development advocates in the 60's and 70's demanded governments to learn from the more flexible solutions of legal informality. Later in the 90's the view changed to argue that the solution to informality is to turn it into formality (pp.255-262).

The global urbanist Ananya Roy challenges the argument that developing countries fail to plan for development and claims that urban planning has a different meaning in each country (Roy, 2009). She therefore coined the term "idiom of urbanization" which suggests that urbanization has various meanings for each country (p. 80). Roy suggests that in the country of her study, India, informality is an integral part of the idiom of urbanization and explains informality to be a state of "deregulation". Such informality allows the state to determine what is legal or illegal at any time or place, which allows the state considerable authority. Therefore, such informality is not strictly

present in low-income neighborhoods but is rather applicable to all strata of the society. It should be noted that informality as a planning strategy also has a by-product of establishing claims for informal settlers. Thus, when the government decides to intervene and take away the land, for example, and sell to foreign investors to encourage them to invest in the country, informal settlers are likely to revolt. However, according to Roy this form of mobilization cannot be relied upon to create a just city because the informal settlers have received their claims to this land through political loyalties and thus cannot be counted upon to change it (p. 84-86).

When informality is mentioned, it may refer to occupation of land and housing which “is either illegal, quasi-legal, tolerated or legitimized by customary or traditional laws, which can either be recognized or simply ignored by the authorities.” (Payne et al., 2012, p. 6).

## **2.2 Security of Tenure**

The right to housing as a human right and as a development goal has also been explained by international bodies to encompass, among other things, the security of tenure. This section presents some of the literature on defining security of tenure, the property rights paradigm in dealing with security of tenure and its criticism.

### ***2.2.1 Definition***

It is not possible to speak of housing tenure without speaking of land tenure. Usually, the former depends on the latter. In the context of land, UN Habitat defines tenure as:

The way land is held or owned by individuals and groups, or the set of relationships legally or customarily defined amongst people with respect to land. In other words, tenure reflects relationships between people and land directly, and between individuals and groups of people in their dealings in land. (UN-Habitat, 2008, p.5)

It is difficult to define security of tenure, and this has had its effect on the ability to measure the amount of people who lack security of tenure and who are sure to exceed the number of those who live in slums (Payne et al., 2012). UN Habitat proposes three definitions for security of Tenure;

“the degree of confidence that land users will not be arbitrarily deprived of the rights they enjoy over land and the economic benefits that flow from it”, “the certainty that an individual’s rights to land will be recognized by others and protected in cases of specific challenges” or “the right of all individuals and groups to effective government protection against forced evictions.” (UN-Habitat, 2008, p.5). The previous definitions show that security of tenure is not simply a matter of legal arrangements (“rights”) but also relates to perception (degree of confidence) and experience (certainty) (Payne et al., 2012). It follows that insecure tenure may take various forms ranging from clear illegality, tolerated occupancy to customary rights not recognized by the authorities (Payne et al., 2012).

### ***2.2.2 Property Rights Paradigm- Legalization Thesis***

The question of property rights related to housing has been an important component to housing studies. UN Habitat defined property rights as:

Recognised interests in land or property vested in an individual or group and can apply separately to land or development on it. A recognised interest may include customary, statutory or informal social practices which enjoy social legitimacy at a given time and place (UN-Habitat, 2008, p.5)

Given the domination of Western thought and ideology over international development and financial institutions, it was recommended for a long period of time, starting from the 1990s, that formalizing property rights will enhance the market and create a series of positive externalities capable of pushing the cycle of development (Esquirol, 2008). Payne et al. summarize the desired effects of formalization in increasing investor confidence, reducing transaction costs, establishing land markets and secondary markets (rental markets, etc.) and establishing land-based taxation systems (2012). Above all, these convictions gained further ground by a famous study by Hernando De Soto, which argued that legalizing titles would allow for taking credit against land or housing as collateral (2000).

De Soto argues that what is hindering developing countries from following the path of developed countries is their inability to produce capital (2000). This inability to produce capital is due to the failure of the legal systems of the developing countries to create and protect private property. One of the examples that De Soto uses to explain his concept is that of housing. In developing countries houses are built quite often on government or unowned private land, as such the owners of these houses do not possess official property rights of their possession. This makes the house only a place to live, while in the developed countries a house also serves another purpose which is that it is an asset against which loans may be given and therefore it helps in the creation of capital (De Soto, 2000). This has led to movements of titling untitled housing in several developing countries (Esquirol 2008).

However, studies which examined these titling programs in developing countries, found no strong relation between credit and titling (Porio & Crisol, 2004; Van Gelder 2009). Their research proves that absence of a strong financial market in most developing countries and given the poor's vulnerability to risk their only asset, which is their housing, titling has not led to access to credit.

By 2012, the UN Special Rapporteur on the right to housing has criticized the prevalent reliance on the property rights paradigm in the context of security of tenure and called for another approach more conforming with and reliant on international human rights framework, which acknowledges and protects other forms of tenure (Rolnik, 2012).

### ***2.2.3 Typologies of Tenure beyond the Property Rights Paradigm***

One of the criticisms of the legalization theory is that it ignores the existence of different tenure typologies. In the last ten years the United Nations has started to recognize all the different forms of tenure as legal and equally important to protect as ownership rights, thus in her report to the General Assembly, the Special Rapporteur, Raquel Rolnik, called for recognition and promotion of the following tenure typologies; possession rights, use rights, rental, freehold and collective arrangements (Rolnik, 2013).

Payne et al. divide tenure typologies into three main categories, statutory, customary and religious (Payne et al., 2012). Statutory relies either on private or public ownership of land. There are



countries where private ownership is the norm and others where public ownership is the norm (p. 11). Customary tenure is where a certain community with a shared culture customarily holds the land and determines its usage. While governments might not officially recognize this customary hold of land, it often tolerates it and the transactions carried out in relation to it (p.12). Finally, there is the religious tenure; in some Muslim countries you find the recognized forms of public and private ownership but you also find a tenure type known in Islamic countries as “waqf”, which Payne and Durand-Lasserve describe briefly as “held for God” and find it as an obstacle to efficient land management. Communal land in Muslim countries, “musha”, which is closest to customary land ownership is declining (p.13).

Within each of these major categories, there are different forms of tenure. For example, statutory tenure may be divided into freehold (ownership), delayed freehold (conditional ownership), registered leasehold (ownership for a specific period), public and private rental, shared equity (mortgage) and shared ownership (cooperatives and Community Land Trusts). Informal tenure falls outside of these three main categories and is such either because the land was legally obtained but buildings violate the law (lack of permits or violation of heights, etc.), or the squatter settlements took place on public or private land not owned by the squatters. In their opinion, each of these tenure types has advantages and disadvantages (Payne et al. 2012).

Despite the variety in tenure typologies, the legalization theory usually uses a dichotomy between legal and illegal or formal and informal. Van Gelder criticizes the assumptions of the legalization thesis (2009). Through his study of a low-income land subdivision in Buenos Aires, Argentina, he claims that legalization of tenure and security of tenure should not be equated. Instead of a legal-illegal dichotomy, he claims that there is a continuum of tenure rights. He compares between three categories, namely formal title holders, those missing some (but not all) legal requirements (informal owners) and completely illegal settlers (squatters). The study confirms the relationship between formal rights and housing improvement but shows that between the first two categories of formal and informal owners, the differences were not significant. In addition, there were squatters who undertook housing improvements.

Van Gelder explains this by the idea of “perceived tenure security”, which may be described as the idea that informal settlements simply improve over time as people invest in their housing even

in the absence of rights as long as they think that they will not be removed by the authorities(2009). He measures perceived tenure as a variable by two elements, a cognitive one, namely the perceived probability of eviction, and an emotional one, namely the fear of eviction (p.737).

There are other aspects which may positively affect housing improvements, such as years of residence and household income. The study found that perceived security of itself encourages investment in housing but increases more in the presence of legal status (Van Gelder, 2009). As for the question of credit, the study found that formal titles had no effect on credit but it was rather the formal income that had this effect. In the cases in which credit was sought, it was a small sum and was used mostly for housing improvements not for starting or expanding a business (Van Gelder, 2010).

The existence of different tenure typologies has led the UN to recognize the existence of a tenure continuum rather than a formal informal dichotomy (UN-Habitat, 2008). Payne et al., however, criticize the use of the idea of a continuum on the ground that it confuses tenure status and rights, thus linking the degree of security to the degree of rights, and for considering customary tenure to be an informal type. In their opinion this makes freehold the most desired tenure type, since it is the most secure (2012). Thus, ignoring the disadvantages of this tenure system, which is unaffordable for low-income members of the society, especially in the absence of efficient financial markets in many developing countries.

Payne et al. also claim that proponents of freehold as the ultimate tenure type tend to forget that the prevalence of this type took place in developed countries over hundreds of years and requires the development of legal and institutional systems, which might not be available in developing countries, as well as ignoring the financial crises that ensue the burst of property bubbles (2012). In addition, the lack of efficient institutional infrastructure will most likely work against the most vulnerable groups of the society; the more powerful will be able to go through the daunting and expensive registration process, which allows them to have claims over the same land which the vulnerable occupy, eventually driving them away. Thus, in some cases market forces rather than forced evictions result in the loss of security. However, the exact degree of such market driven “voluntary evictions” is not empirically proven. Therefore, programs that target reforms in one

land delivery system often negatively impact other delivery channels, which is a point many government policies fail to recognize and plan for.

Another problem with measuring the effects of property rights on poverty alleviation is that its allocation is typically endogenous; meaning that those who hold property usually have the financial resources to invest in their homes or achieve other improvements associated with secure tenure (Galiani & Scharrodsky, 2010). In social sciences it is very difficult to have a control group against which to measure the effect of secure tenure. Quite interestingly a natural experiment took place in Buenos Aires when the government decided to expropriate the private property of some owners in order to grant the informal settlers in that neighborhood formal tenure. Some of the property owners accepted the decision by the government and took the offered compensation, while others decided to challenge the decision in courts. As a result, the informal settlers became divided into two groups; those whose tenure was regularized and those who lacked informal tenure. Accordingly, it became possible to measure the effects of formal tenure due to the exogenous distribution of property among the squatters. Several researchers made use of this natural experiment (Van Gelder, 2013). In one of these studies the results showed that granting titles had no effect on access to credit but that it may have a positive effect on poverty reduction through physical and human capital investment. The study carried out more than 20 years after the granting of formal titles revealed that households with formal titles have better rates of investment in housing, household size and children's education (Galiani & Scharrodsky, 2010).

#### ***2.2.4. Legal Geography Approaches to Studying Security of Tenure***

Legal geography is an interdisciplinary approach to studying the relation between law and space (Cuomo & Brickell, 2019). Early legal geographers have focused on property and tenure as an important intersection of law and space and this interest continues today (Gillespie, 2016).

The field of legal geography can be useful to studying security of tenure from several perspectives. First, it helps with better understanding of land rights through investigating how social norms affect the laws establishing these rights and regulating their negotiation and adjudication, and how these laws further affect the society by determining who becomes entitled to property rights and who becomes excluded (Gillespie, 2016). Second, legal geographers tend to look at law in a

pluralistic view; they take into consideration not only state law, but all the informal norms created by the society (Robinson & Graham, 2018). As such it is helpful to understand how the formal and the informal interact in society to determine security of tenure. Third, it may offer a way to examine how the existing formal rules may be contested both legally in courts and informally, through occupying public spaces, by those who are excluded and want to defend their right to the city (Wideman & Lombardo, 2019).

### **2.3 International Practices and Alternatives to Formal Titling**

The previous section showed that despite the existence of different tenure typologies, there has been a focus by international financial institutions on the enhancement of formal tenure at the expense of other typologies. In addition, there were criticisms that tenure formalization programs often do not consider the lack of institutional competency and cultural differences in developing countries. Thus, some literature focused on alternatives to formal tenure in developing countries.

For example, in Pune, India, housing improvements were partly achieved through alternative to titling programs, namely, slum declaration, which “guarantees occupancy but not full property rights” (Nakamura, 2017, p. 1). This program has been found to increase the probability of adding a second floor to informal housing by threefold and increased spending on housing improvements.

Payne et al. present a brief of such alternatives in the global south (2012):

In Botswana, Certificates of Rights are given to members of vulnerable groups, which allows them to hold and use lands while retaining ownership of the government. However, this type of tenure was not recognized by the local financial market as a collateral.

In Kenya, Community Land Trusts entrust the ownership of land to communities which permit use for individuals of the community. Thus, giving a degree of security to the members of the community while reducing the threat of speculation by private ownership by individuals.

In Bolivia, a system called “against credit” is widely used, where tenants pay in advance the total amount of rent to the owner for a specified period. This payment is an alternative to the owner taking a loan at a high interest rate and for the tenants it is usually less costly than ownership or regular rent. Of course, the system requires high trust between the parties of the agreements and

the tenants must be able to raise the amount of this deposit, which will be reimbursed to them when they return the unit at the same condition.

In many countries, including Egypt, tenure is held against certain documentation accumulated over the time of residency, such as payment of property taxes, utilities, or having some kind of ID with the said address. The system increases perceived security but is subject to fluctuations in government policies.

In Thailand, the urban poor rent land from its private landowners for agreed periods until the latter decide to develop it. This secures the access of the poor to the city centers and to utilities supplied by the authorities. In addition, when the private landowners decide to develop the land, the poor are given proper notice to search for another such agreement with a different owner.

In Trinidad and Tobago, Certificates of Comfort are considered as first steps, which allow squatters to legally use government owned land until they are able to complete the registration process to a full legal title. However, the squatters may not have the incentive to pursue the registration process.

In Rwanda, starting from 2004 the government began to recognize private ownership of land, however the registration of land through the Land Tenure Regularization Program is proving to be a difficult task given the inefficiency of government institutions and is criticized for increasing rather than decreasing social inequality.

In Cambodia, following the constitutional recognition of private ownership of land in 1993, programs related to issuing land titles ensued. However, the urbanization policies led to a number of evictions which in some cases led to a World Bank investigation, which held that the government did not comply with the Bank's safeguard policies, which were part of a multi-donor national land management and registration program in 2011.

Recent international reports regret that housing financing systems to promote ownership have become the prevailing policy used by countries to ensure the right to housing (Rolnik, 2013). The report encourages the use of rental options whether public or private as a much more affordable

type of tenure than ownership. Private rent may be encouraged through several means including tax incentives and supply-based subsidies. Also, governments may support the demand side by providing rent allowances, etc. In all cases the legal systems governing rent must recognize security of tenure for these options. In addition, collective, communal and cooperative forms of tenure must be encouraged through legal recognition and different incentives. Finally, the use and improvement of vacant housing stock to make it suitable for housing should also be supported by the state.

In different reports, the UN Special Rapporteur, Raquel Rolnik, suggested the following guidelines for governments to follow in order to increase security of tenure according to a human rights, rather than property rights, paradigm (Rolnik, 2013). First, proper consultations should be carried out with the residents concerning development of their neighborhoods and the legal and institutional reforms must be carried out to ensure proper protection of different forms of tenure and participatory registration of units and mapping of neighborhoods should be encouraged. Second, in situ upgrading is preferable to other forms of dealing with informal areas. Third, the social function of property should not be overlooked. Thus, creative ways to include vacant housing in the housing market, allocation of public land for social housing projects, and adopting measures to decrease speculation and regulate markets should be encouraged. Fourth, combating discrimination in the form of unequal access to services according to tenure typologies. Moreover, women and other vulnerable groups' access to secure tenure must be ensured. Further, ensuring security of tenure in business and international cooperation must be encouraged and regulated. Finally, state accountability to its citizens must be ensured through participation, transparency and access to justice.

The approaches of different countries regarding recognizing security of tenure in their legislations varies but usually laws do not comprehensively deal with the element of security of tenure (Thiele 2012). Most countries make references to the principle of security of tenure in laws dealing with various issues, such as homelessness as in the case of Scotland, forced evictions as in the case of Kenya and Philippines and in reference to regularization of informal tenure as in Kenya. Likewise, the approaches of the national judiciary to protecting security of tenure varies. It has been successful in South Africa and India and less so in the Philippines. One of the interesting models

is that of Brazil, where the City Statute stresses on the social value of property and recognizes the conferring of secure tenure on the urban poor living in informal urban areas through the legal concepts of adverse possession and prescription. In some countries constitutions recognize communal tenure for communities, which have traditionally claimed tenure of certain regions. In the United States despite the clear system of tenure, security of it usually varies according to the socio-economic status.

## **2.4 Debates on Security of Tenure in Egypt**

An analysis of the literature on the right to housing and security of tenure in Egypt shows that it is characterized by more focus on the elements of the right to housing other than security of tenure, that within tenure studies there has been more focus on eviction of informal settlements, and that nationwide quantitative studies of tenure typologies have been mostly conducted by international financial institutions and have not been updated since. In this section, I present some of the literature on housing and tenure in Egypt.

### ***2.4.1 The Right to Housing***

In Egypt some researchers have studied the different elements of the right to housing as recognized by the Committee on Economic Social and Cultural Rights (CESCR) in its General Comment Nr. 4 on the right to adequate housing. For example, the issue of **availability** of housing for middle and low-income families in Egypt was addressed and it was concluded that the great majority of formal housing does not address the demand for middle and low-income households (El-Shenety 2019). Others have attended to the issue of **affordability** of housing and have reached a conclusion that even social housing in Egypt is not affordable for low-income households given the prevailing income levels (Ahmed et al., 2018). The element of **acceptability** or quality has also been studied, for example the lack of restoration as a reason for the high number of building collapses in Egypt has been studied, such as tenant landlord relations under old rent laws and the slow adjudication in restoration disputes (AbdulSabur, 2009).

There is only limited research in Egypt on **theoretical and ideological backgrounds** to the right to housing. An example of these scarce inputs is a thesis by Norhan Mokhtar, which studies the focus in Egypt in recent years on homeownership as a means of financial investment rather than

housing as a right and human need (Mokhtar, 2017). In her view, this commodification of housing is a result of speculation of private entities as well as the state leading to unaffordable housing prices for the poor. In addition, Joseph Schechla examines the prospects of using the right to the city as a theory to encourage a more inclusive urban planning in Cairo after the Egyptian revolution of 2011 (Schechla, 2015). On the question of social mobilization, there is a contribution by Hatem Zayed focusing on two case studies of informal settlements in Cairo which sought to influence government action to secure their right to housing and investigates the elements which affect the success of such movements on the ground (Zayed, 2014).

#### ***2.4.2 Literature on Housing Policies***

Several approaches have been central in the Egyptian governments' urban development policies, such as development of informal areas, the rent control legislation and the increased investment in building new cities in the desert. This section gives examples of the literature tackling these policies.

Several researchers focus on the informal settlements and how the Government of Egypt has dealt with them over the years (Khalifa, 2015) from ignoring, to recognition to resettlement.

Sims has studied the different solutions that Cairenes have found for their housing and other urban needs in face of what he calls a “neglectful government” (Sims, 2012).

McCall has studied the effects of rent control laws (McCall, 1988) and Attia has studied the effects of the division of the housing market between old rent control laws and new rent laws (Attia 2016).

The succeeding governments in Egypt seem to have lost hope in bringing order to old cities through formalizing the informal and have instead focused on building new cities in the desert and have injected billions of pounds in their infrastructure and the roads that connect them to the old cities, yet many researchers doubt the importance and success of this policy, which has not until now been successful in attracting families to the still half full new cities (Sims, 2015; El-Hakeh, 2021; Tadamun, 2015; El-Shakhs, 1994).



### **2.4.3 Security of Tenure**

In Egypt the question of security of tenure has been mostly covered through the special focus given to **evictions** carried out by the government in ashwaiyat (informal settlements) (Khalil, 2019; Zaazaa, 2019).

Studies on **tenure typologies** are relatively old. Soliman has pointed towards the increasing number of semi-informal housing, which is informal in its methods of construction but with formal property rights to the land (1996). Later, Soliman has studied the different typologies of informal housing, which he divides into semi-formal, squats and ex-formal, and points out the importance of taking these differences into account when dealing with informality (2002). Along the same lines, Sims has divided residential areas into informally started and developed and formally started but informally developed, pointing out to the lack of a formal/informal dichotomy in the context of Egypt (Sims, 2002).

Nationwide quantitative studies on housing tenure typologies were conducted through studies conducted by the USAID and by the World Bank. However, these studies took place fifteen years ago and perhaps needs to be updated in light of recent policies (Sims et al., 2008; World Bank, 2008). In a recent study there was also focus on the different typologies of land rights (Shadow Ministry of Housing 2013).

As for **titling programs**, a published document by Tadamun (The Cairo Urban Solidarity Initiative, a Cairo-based urban research initiative) also contains an account of the different projects aiming at regularization of tenure and funded by International Development Agencies (Tadamun 2015). The projects which began in the 1970's and continued until the early 2000's and targeted informal settlements were mostly unsuccessful due to reasons ranging from the unaffordability of buying the titles for settlers, administrative delays and conflicts, and reluctance by residents to regularize since they enjoyed de facto security of tenure. There are opinions that titling benefits maybe overrated in Egypt, since many residents of informal areas feel that they have de facto security of tenure, through adverse possession, utility contracts and connection to public services. In addition, titling programs may be too costly and require institutional capacities beyond the abilities of the Egyptian government (Ibrahim & Khalil, 2016).

When it comes to **legislative approaches to tenure**, Shawkat presented how legislation dealt with informality over sixty years (2019). The article suggests that building laws have usually been too unrealistic in setting high building standards, which led to violations of the law. The author describes the government response as moving between idealism; seeking to enforce the law through setting deterring sanctions, and realism; suspending the unrealistic laws or connecting violative buildings to public services (Shawkat, 2019). In another article, Shawkat considers informality in Egypt to be “manufactured” through legislative tools governing tenure, such as the state owning privately the majority of lands in Egypt, which it then privatizes to cover the fast-growing budget deficit (Shawkat, 2016, p. 10). Other legislative tools, which lead to deregulating the property market and driving up prices are laws which allow selling lands to foreign investors, selling state-administered assets. In addition, the government used legal methods to evict informal dwellers, such as eviction orders for unsafe areas, expropriation for public interest or banning connecting utilities to these areas.

## **2.5 Research Gap**

After this review of the literature, one can note that although the topic of housing and urban development has gained interest in Egypt, the element of security of tenure is not adequately covered. In the limited studies on tenure, evictions in informal settlements have gained more interest, and thus, this thesis attempts to take a more general view towards security of tenure to encompass different income-level housing. Further, studies which focus on tenure security nationwide are more than fifteen years old. Therefore, this research attempts to update these studies, specifically in light of the existence of several new laws and policies and their possible effect on tenure security. Finally, legal studies on tenure in Egypt have usually focused on private tenure relations, such as rental relations, and usually look at the formal aspect of the law alone. Thus, this research attempts to look at the role of the state in housing relations and makes use of other disciplines to capture the role of informal rules governing tenure in Egypt.

### 3. Chapter Three: Research Design

This chapter presents the research design, starting with the conceptual framework and explaining the rationale of a qualitative research approach. These sections are followed by the data collection plan, the sampling plan, data analysis, ethical considerations and limitations.

#### 3.1 Conceptual Framework

As explained in the literature review, security of tenure as a concept has been studied from different perspectives by researchers. While international financial organizations tend to advocate for formal titles as the most secure form of tenure (Esquirol, 2008), the recent trend in the literature and in international human rights organizations acknowledges that security of tenure may be achieved through informal tenure rights or perceived tenure (Payne et al. 2012). This thesis attempts to evaluate the consequences of laws and policies in Egypt in the last decade on formal, informal and perceived aspects of the concept of security of tenure.

UN-Habitat accepts the existence and importance of different tenure typologies but considers them to constitute a continuum; with more formal tenure typologies leading to more security (UN-Habitat, 2008, p. 8).

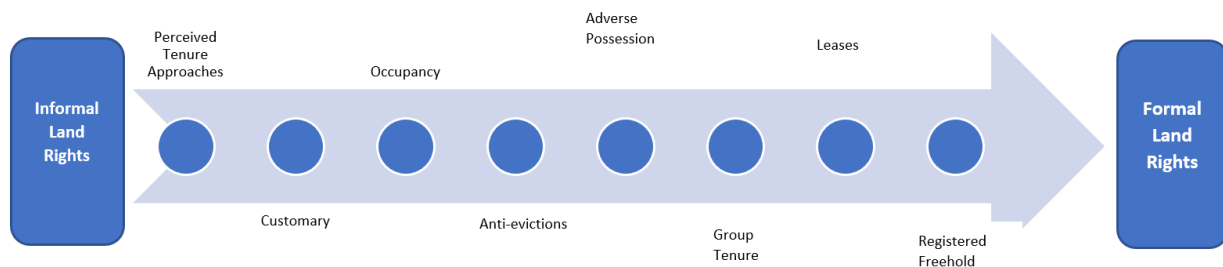


Figure 1 Tenure Continuum

Adapted by researcher from: UN-Habitat, *Secure Land Rights for All* (2008)

In addition, Payne et. al differentiated between statutory, customary and religious tenure (Payne et al., 2012). However, in Egypt the roles of customary and religious tenure are diminishing. Therefore, this research visualizes security of tenure as resting on two pillars- formal and informal tenure. Each of these pillars is affected by a foundation of laws and policies. For example, formal

tenure is being encouraged lately in Egypt through laws which allow for reconciliation over building violations and encouraging registration. However, this means that holders of informal tenure will be forced to pay sums in reconciliation or face consequences. Formal tenure is also affected by the widespread use of the law of expropriation for public interest to carry out public interest development projects. Moreover, informal tenure is affected by government policies focusing on developing slum areas, leading in many cases to relocating the settlers to new neighborhoods. Finally, perceived tenure is dealt with as a dependent variable, which may be affected by all the previous policies.

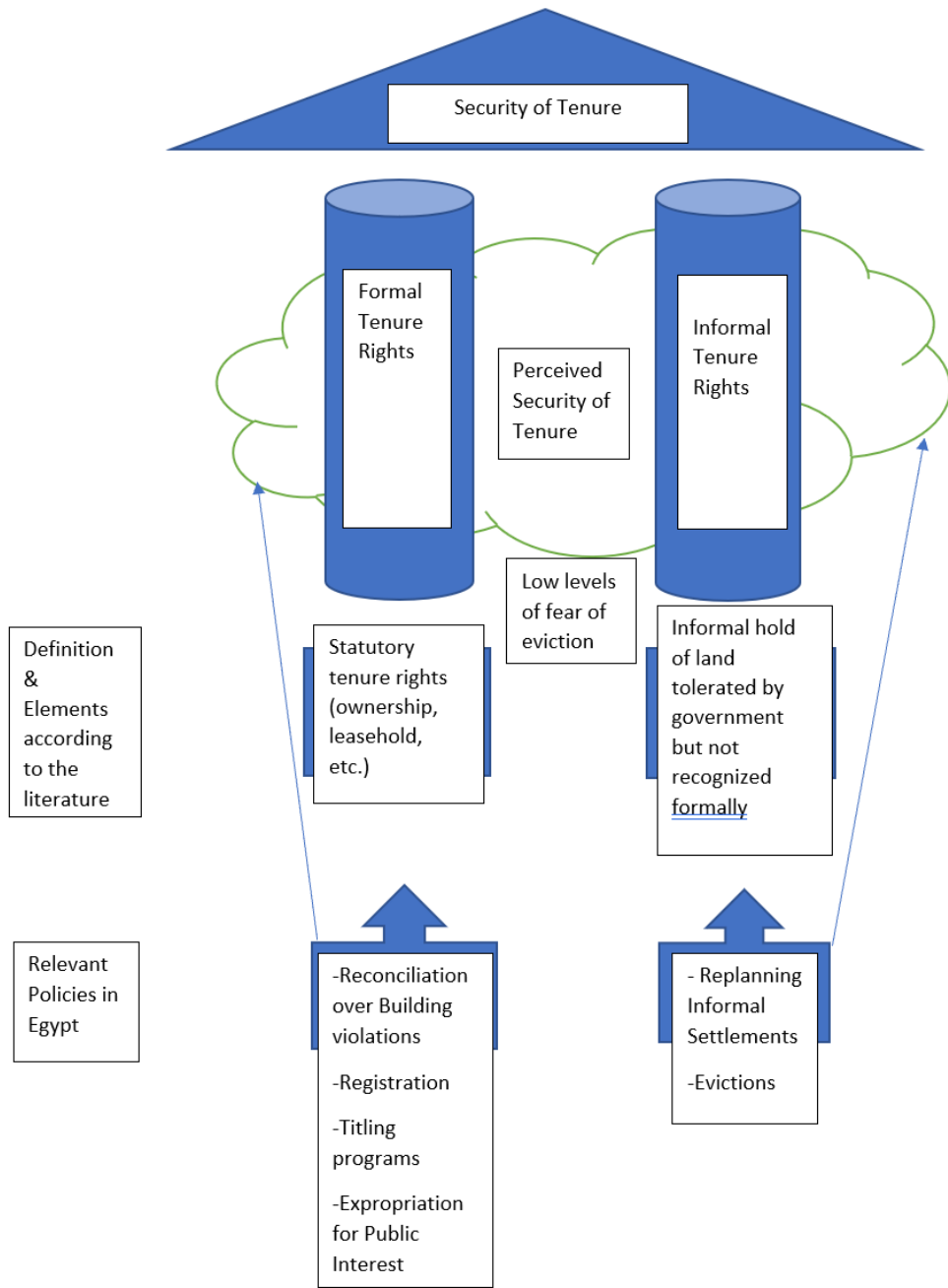


Figure 2 Conceptual Framework developed by researcher.

In addition to the previous concept developed based on the literature on the topic, this study also relies on the indicators recognized by OHCHR for measuring security of tenure. According to OHCHR security of tenure as an element to the right to housing may be measured through a number of structural (legal protection of the right), procedural (access to justice) and outcome (proportion of secure tenure) indicators, as follows (OHCHR, 2008, p.29).

Structural	<ul style="list-style-type: none"> <li>● International human rights treaties, relevant to the right to adequate housing, ratified by the State</li> <li>● Date of entry into force and coverage of the right to adequate housing in the Constitution or other forms of superior law</li> <li>● Date of entry into force and coverage of domestic laws for implementing the right to adequate housing</li> <li>● Type of accreditation of National Human Rights Institutions by the rules of procedure of the International Coordinating Committee of National Institutions</li> <li>● Number of registered and/or active non-governmental organizations (per 100,000 persons) involved in the promotion and protection of the right to adequate housing</li> <li>● Date of entry into force and coverage of legislation on security of tenure, equal inheritance and protection against forced eviction</li> </ul>
Procedural	<ul style="list-style-type: none"> <li>● Proportion of received complaints on the right to adequate housing investigated and adjudicated by the national human rights institution, human rights ombudsperson or other mechanisms and the proportion of these responded effectively by the government</li> <li>● Number of and total public expenditures on housing reconstruction and rehabilitation by evicted/displaced persons during the reporting period</li> <li>● Net official development assistance (ODA) for housing (including land and basic services) received or provided as proportion of public expenditure on housing or GNI</li> <li>● Average time taken to settle disputes related to housing and land rights in courts and tribunals</li> <li>● Number/proportion of legal appeals aimed at preventing planned evictions or demolitions ordered by court in the</li> </ul>

	<p>reporting period</p> <ul style="list-style-type: none"> <li>● Number/proportion of legal procedures seeking compensation following evictions in the reporting period, by result after adjudication</li> <li>● Number and proportion of displaced or evicted persons rehabilitated or resettled in the reporting period</li> </ul>
Outcome	<ul style="list-style-type: none"> <li>● Reported cases of “forced evictions” (e.g. as reported to UN special procedures), in the reporting period</li> <li>● Reported cases of “forced evictions” (e.g. as reported to UN special procedures), in the reporting period</li> <li>● Proportion of women with titles to land or property</li> </ul>

Figure 3 Indicators of Security of Tenure

Adapted by researcher from: OHCHR Report on Indicators for Promoting and Monitoring the Implementation of Human Rights (2008)

To investigate the effect of the recent laws and policies on security of tenure, I conducted interviews with academia, legal professionals, civil society practitioners and homeowners asking them about the formal, informal and perceived aspects of tenure witnessed from the field of interest of each of them. To evaluate the indicators for security of tenure, I relied on the content analysis of laws, reports and court decisions covering the different indicators. I used triangulation between the results of the interviews and the content analysis to reach a better understanding of the tested elements of tenure and their indicators.

**3.2 Research Methodology:**

**3.2.1 Qualitative Methods**

As explained in the conceptual framework, security of tenure may be divided into formal, informal and perceived aspects. In the literature these aspects of tenure may be explored both quantitatively and qualitatively. As for the indicators adopted by the OHCHR, some of them are quantitative and others are qualitative, as well.

This study relied on qualitative data only for a number of reasons. First, some of the quantitative data, which the researcher sought to analyze at the onset of the research, were already available in the latest 2017 census, such as the percentage of the different tenure typologies and the housing

conditions. Second, most of the quantitative data required by the OHCHR indicators had to be obtained from the Egyptian judiciary, which proved to be very difficult for several reasons, as will be discussed in the limitations. Finally, an update on the existing data would require obtaining nation-wide data, which is beyond the scope of this research.

This thesis used two qualitative methods. For the primary data, it used semi-structured interviews with experts or stakeholders involved in the process of studying or adjudicating tenure rights. The sampling method will be further explained in the next section.

For the secondary data, it relied on content analysis of relevant laws, national strategies, reports and court decisions. The study used purposive sampling to reach laws, reports and cases which are particularly informative to the topic of security of tenure (Neuman, 2011, p. 279). I have chosen the analyzed laws based on the date of their issuance or amendment in the last ten years and their relevance to one of the topics of building, housing, reconciliation or registration. I obtained the text of these laws from government websites such as Egyptian government portal (<https://www.egypt.gov.eg/arabic/home.aspx>) or Egyptian legal search engines, such as Manshurat Qanuneya (<https://manshurat.org/>). The choice of national strategies and international reports was based on their covering of the structural indicators set by OHCHR mentioned in the conceptual framework and were obtained from the official websites of the Egyptian government or those of the various international organizations that issued them. Finally, court cases were chosen based on one of the themes of building, housing, eviction orders, building removals or tenant landlord relations. SCC decisions were obtained from the search engine on its website using relevant keywords (<https://www.sccourt.gov.eg/SCC/faces/PortalHome.jsp>). ESC decisions were secured from its issued reports which include its established principles rather than the full decisions. The report I relied on covered the period from 1991 to 2016. Therefore, for the full decisions or for more recent decisions I sought the help of legal practitioners in my networks or searched for media coverage of the cases.

### ***3.2.2 Sample***

This research used four methods of nonrandom sampling. First, I used quota sampling, which involved determining the different categories of experts or stakeholders dealing with the concept



of security of tenure and then determining the appropriate number, for the scale of this research, I need to interview within each category (Neuman, 2011, p. 249). The categories I chose were academia, lawyers, homeowners and judges. The number of interviews in each category was determined to be 2 to 3 interviews. During the research, I had several questions which remained unanswered, so I reached out to one civil society practitioner, one banker and one citizen who witnessed a case of expropriation for public interest. I used purposive sampling in targeting academics and lawyers according to their field of expertise. For interviewing homeowners, I used a convenience selection method, where I asked in my network for those who underwent the process of reconciliation or registration of housing units. To reach judges, I began by convenience and continued with snowballing, in which the interviewed judges referred me to the next until I reached the sample (Neuman, 2011, p.273). The informants were chosen based on their knowledge and experience regarding the researched topic and based on the researchers' personal and professional network within the different cohorts.

Overall, 12 semi-structured interviews were conducted with the different cohorts, as follows:

Cohort	Aim	Interview Number	Sampling Technique	Interview Method & Duration
Academia	chosen according to their research in the field, who gave a MACRO perspective in answering holistic level questions on policy and theory	Interviews 1 & 6	Purposive	Zoom meeting, 30 to 45 minutes each
Judges	Give information on the availability of data and sources of data related to judicial remedies	Interviews 5, 7 & 8	Snowballing	Short phone calls 10 to 15 minutes

Lawyers	Involved in real estate and land registration, who explained the recent developments in registration and reconciliation laws and procedures and shared the obstacles of their implementation from a professional and practical perspective	Interviews 3 & 12	Purposive	Interview 3: face to face, 45 minutes Interview 12: phone call 15 minutes
Homeowners	shared their experience from a bottom-down perspective and shared their insights on the procedures, duration and cost of registration.	Interview 9 & 11	Convenience	Phone calls, 15 minutes each
Civil Society Practitioner	gave a bottom-up perspective and pointed out implementation gaps in the laws and policies.	Interview 4	Purposive	Zoom meeting 45 minutes
Witness	shared experience from a village in which expropriation of private property was conducted for the purpose of	Interview 10	Convenience	Phone Call 15 minutes

	carrying out public interest development projects.			
Banker	gave a perspective on housing financing issues and the role of formal titles in obtaining loans	Interview 2	Purposive	Phone call 20 minutes

Figure 4 List of Interviews

The interviews were conducted in Arabic and translated to English during transcribing. None of the interviews were taped and I took notes instead. The names were anonymized from the beginning in an excel sheet. The notes were kept confidentially in a locked compartment in my home. Age and gender were not conditional to the choice of sample. The interviews were conducted with 6 females and 6 males.

**3.2.3 Data Analysis**

In this research, I relied mainly on deductive content analysis, where I look for certain themes related to the concept of security of tenure as identified by the literature and the internationally accepted indicators. In the deductive approach, theory guides our interpretation of the results we get (Neuman, 2011, p. 87).

I used triangulation between the interviews and the content analysis data to enhance the accuracy of the data (Neuman, 2011, p. 166-167) and to offer an improved understanding of how laws and policies are implemented.

**3.2.4 Ethical considerations and Limitations**

### **Ethical Considerations**

Since data was obtained from human subjects, the researcher received an approval from the Institutional Review Board IRB at the American University in Cairo (AUC). Given the difficulty and sensitivity of conducting interviews with the households affected by eviction orders, the researcher chose to conduct the interviews with the civil society and legal practitioners who are working with such households. However, there are also ethical considerations to be taken into account when working with such practitioners. The interviewees were informed of the nature and purpose of the research in Arabic so they may voluntarily decide whether to participate. All participants either signed the consent form or gave their oral consent.

According to the recommendations of the IRB all data was anonymized from the beginning and no recordings were made in order not to make the interviewees identifiable.

### **Limitations of the Study**

One limitation was that the researcher was not able to conduct interviews with tenants in slum areas who faced eviction or had to move to other neighborhoods due to development projects, as well as those who faced expropriation of their property for public interest projects. Instead, the researcher relied on the data provided by civil society practitioners, witnesses or reports on the issue.

Another limitation lies in the unavailability of a search engine of the decisions by the Egyptian State's Council. Instead, the State's Council issues its reports which include its established principles rather than the full decisions. I relied on these reports in my analysis, but it is difficult to understand the full circumstances of a certain case just relying on the established principles issued in the reports. Therefore, I sought the help of legal professionals to access the full decisions of several selected cases. In addition, it proved hard to interview judges since they cannot speak of specific cases they have viewed and do not feel entitled to speak on behalf of the State's Council as a whole. Three judges agreed to give an account on the availability of data only. Although the State's Council now has a unit that possesses data on the number and duration of cases, these numbers are aggregate and not specific to certain themes. Thus, I was not able to analyze data

specific to tenure rights, which constitute part of the indicators set by OHCHR to assess tenure security.

## **4. Chapter Four: Contextual Background on Security of Tenure in Egypt**

This chapter covers several issues of importance to understanding the status of security of tenure and how the recent developments in laws and policies fit in the complete picture governing urban development and housing in Egypt. The chapter is divided into subsections discussing the institutional framework of urban planning, public financing of housing, alternatives to public financing, the prevailing tenure typologies, the public policies affecting security of tenure and access to justice in cases of loss of tenure.

### **4.1 Institutions of Urban Planning**

This subsection aims at explaining how institutions at the central and local levels interact together to manage the duties of urban planning. This background is of high importance for the sector of urban development, which in many countries offers a significant role for the local administration. Therefore, it is important to shed light in this section on how the different planning, financing and implementation powers related to urban development are exercised in Egypt.

#### ***4.1.1 Background on the Egyptian Geography***

The following basic indicators are obtained from the latest national report submitted by the government of Egypt to the third United Nations Conference on Housing and Sustainable Urban Development (Habitat III) (GOPP, 2016, p.5). Egypt has 27 Governorates consisting of 231 cities. The total land area is one million square kilometers, and the populated area is 78990 square kilometers, or about 7.8% of the total area. Egypt's annual population growth rate is 2%. The population is 43% urban. Gross population density is 83.8 persons per square kilometer and net density is 1055.6 persons per square kilometer. 97% of families are connected to the public water network, 90% of families are connected to the sewage system network, 95.04% of houses are connected to the electricity network, and 11.13% of houses are connected to the natural gas network.

#### ***4.1.2 The Central Level***

Several government bodies play an important role in urban planning at the central level in Egypt (Chung et al., 2009). These include the Ministry of Housing, Utility and Urban Development (MHUUD) as one of the most critical players in developing national projects in the housing and utilities sector. A number of key agencies in the sector are affiliated to (MHUUD), such as the New Urban Communities Authority, the General Organization of Physical Planning, the National Housing and Building Research Center, the General Building and Housing Cooperative Authority and the Building Technical Inspection Authority, as shown in figure 5.

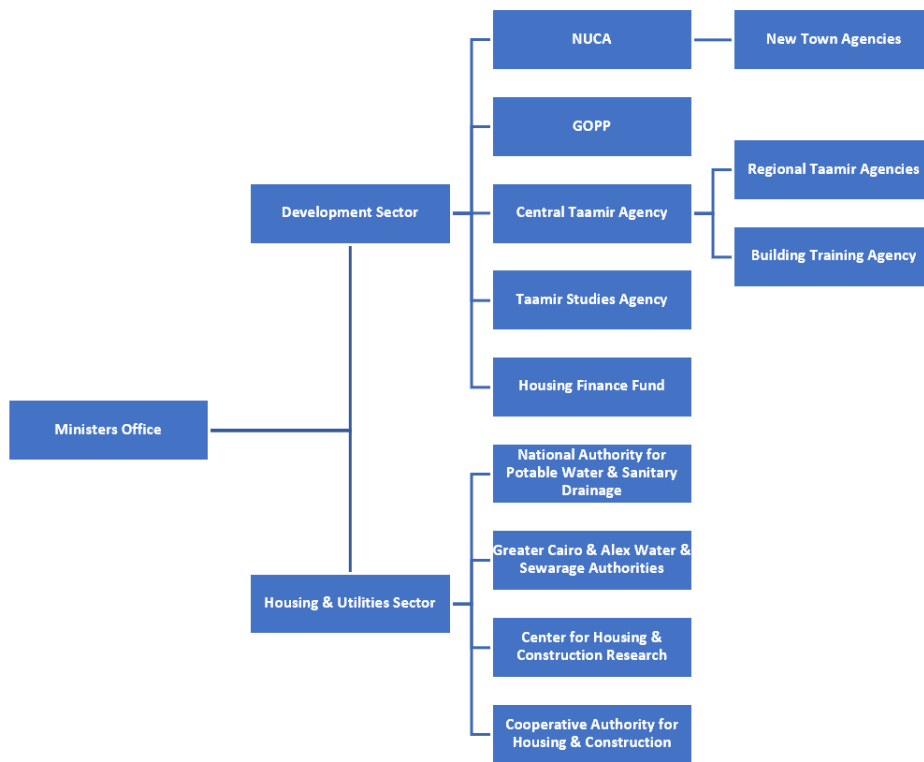


Figure 5 Organization of Ministry of Housing, Utilities and Urban Development and Affiliated Bodies

Adapted by researcher from: World Bank, Arabic Republic of Egypt: Urban Sector note (2008).

Several other ministries also play important roles, and thus add to the overlapping of competencies, such as, the Ministry of Economic Planning, the Ministry of Defense, the Ministry of Tourism and the Ministry of Agriculture and Land Reclamation (World Bank, 2008).

Other authorities also play a role in the different regions of the nation, such as conducting studies and developing plans. These authorities are the Greater Cairo Development Authority, the Northwest Coast and the North Middle Coast Development Authority, the Red Sea Development Authority, the Sinai Development Authority and the New Valley Development Authority.

Another important player is the Informal Settlements Development Fund (ISDF), which was created by virtue of the presidential decree No. 305 for the year 2008. The ISDF is affiliated to the Council of Ministers and its mandate is to determine the different types of slum areas and the type of intervention appropriate for each one. The decree considers dealing with unsafe areas to be a priority for the fund. However, as will be discussed in the findings section, the mandate of the Fund has been recently amended to deal with urban development of unplanned areas; a much wider scope than its initial goal.

#### ***4.1.3 The Local Level***

The law governing local administration in Egypt is the Law 43 of 1979, which divides local units into governorates, markaz, city, district and village (Amin Abou El-Zahab, 2005). There are 27 governorates in Egypt which are either simple, meaning that they are completely urban, or they are complex, meaning that they include both urban and rural communities. Simple governorates are made of cities and districts, while complex governorates are made of all five types of local units.

According to the 2014 constitution, the local administration constitutes the third pillar of the executive authority after the president and the cabinet. Articles 175-183 stipulate the rules governing these units. The constitution aims at giving important authorities and autonomy to the local units; however, it leaves it to ordinary legislation to organize such powers. Thus, many of these powers may be curtailed in the ordinary legislation. For example, article 176 stipulates that the state supports administrative, financial and economic decentralization. Yet, it refers to the law to set the mechanism and the time frame for transferring powers and budgets to the local units. The same can be seen with regards to financial decentralization as article 178 holds:

Local units have independent financial budgets. Local units' resources include, in addition to the resources allocated to them by the state, original and additional taxes and

fees of a local nature. The unit follows the same rules and procedures in the collection of public funds as followed by the state. The foregoing is regulated by law. (Constitute Project, 2015)

Along the same lines, the constitution introduces in article 179 the idea that governors may be elected or appointed but leaves the final determination to the law. Further, according to article 180 local councils must be elected by direct universal suffrage and hold important responsibilities such as "... developing and implementing the development plan, monitoring the activity's different aspects, exercising the tools of monitoring the executive authority such as proposals, and submitting questions, briefing motions, interpellations and others, and withdrawing confidence from the heads of local units ..."(Constitute Project, 2015) but all of this is also organized by the law. Unfortunately, after 8 years of the constitution coming into force, the law has been unduly delayed. And the old law of 1979 remains in force. Until now the members of the local councils are not elected and are unable to play the important role designated to them in the constitution. Therefore, Egypt's dreams of decentralization have not materialized.

The last time that Law 43 of 1979 governing local administration was amended was in 2011 by the Supreme Council of the Armed Forces. The local councils elected in 2008 were dissolved after the 2011 revolution by the administrative judiciary because of violations in the electoral process. Since then, no new elections were held in the wait for a new local administration law, which has been unduly delayed. The lack of competencies and financial independence constitutes a serious setback to the application of the new laws on reconciliation and registration. The current local administration bodies, which are neither elected nor enjoy serious competencies do not have enough incentives to carry on the daunting and difficult procedures of reconciliation and registration.

First, it is important to know that despite the subdivision of power between central and local administration, most decisions in the sector of urban development are either issued or need prior approval by the central government or the governor as its representative (World Bank, 2008). There are a number of central ministries and their local directorates which are responsible for different phases in the planning and implementation process, such as issuing permits, etc. This



leads to a duplication, overlapping and sometimes contradictory decisions. International reports describe this system as “deconcentration rather than decentralization” (World Bank, 2008, p. 12). Until a new local administration law is issued, the cabinet has the authority to overturn the decisions of local popular councils or even dissolve them.

On the local level, there are supposed to be appointed officials and committees, namely the Local Executive Councils, and elected councils, namely the Local Popular Councils. However, as we have seen above the process of election has been delayed for many years and in general the appointed officials, specifically the governor, play a much greater role in urban development in Egypt. For example, the governor is responsible for overseeing the implementation of the national policy in the sector in his governorate, supervises over safety and violations issues and, after agreement with local popular council, determines the rules related to disposing of public land or housing units (Chung et al., 2009).

As explained by Article (12) of the Building Law 119 for the Year 2008 local authorities set local plans which are revised and coordinated by regional urban development agencies which are finally submitted to GOPP for revision and adoption (Eweida, 2020). The local authorities play an important role in issuing permits and supervise over the building process to ensure that no violations are committed. However, the administrative incompetence of the officials and sometimes the corruption has led to many violations (Tadamun, 2015).

#### **4.2 Public Financing of Housing**

In Egypt several government agencies finance housing project (Shawkat & Khalil 2016). The Ministry of Housing and the Social Housing Fund (SHF) finance the Social Housing Program. The General Authority for Cooperative Construction and Housing (GACCH) finances the Cooperative Housing Program. Other Housing projects (undefined allocations) are either financed by the Ministry of Housing or the Central Agency for Construction. The New Urban Communities Authority (NUCA) finances Social and Middle-Income Housing in New Cities. (GACCH) and (NUCA) are economic entities, whose budgets are exclusive to the General State Budget. The

other competent agencies are included in the State Budget, either under the Central Administration or under services authority.

Among government expenditures on urban development, housing comes in third place after electricity and transportation. The table below shows the different areas of government expenditure on urban development in the year 2015/2016, as adapted from the built environment budget by Shawkat and Khalil (2016):

Urban Development Sector	Electricity	Transport	Housing	Waste-water	Water	Other	Total
Government Expenditure	28,303,404	25,558,809	23,307,225	9,860,219	5,262,804	6,593,882	98,886,343

Figure 6 Government Expenditure on Urban Development by Sector 2015/2016 (Table)

Adapted by the researcher from the Built Environment Budget 2015/2016

Graphically the above-mentioned numbers may be presented in the following form:

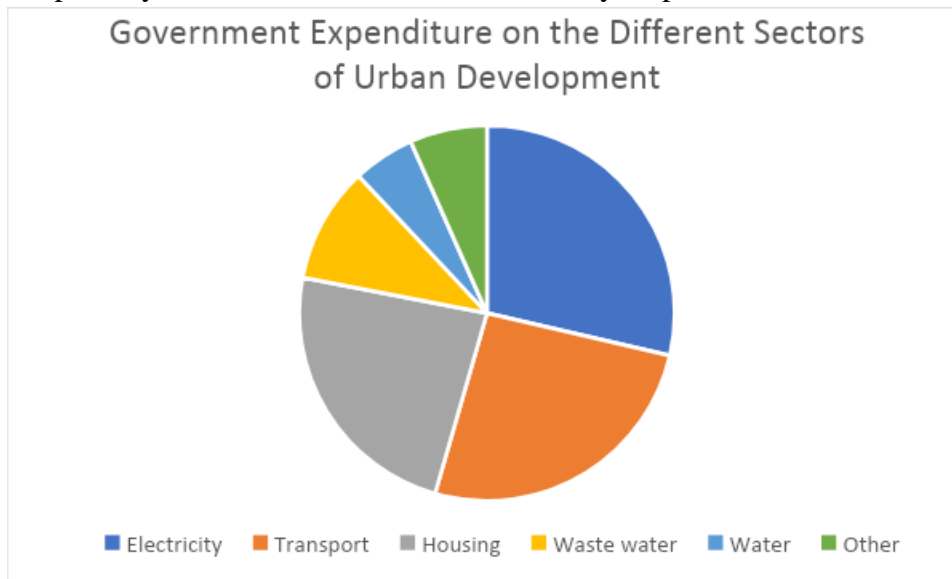


Figure 7 Government Expenditure on Urban Development by Sector 2015/2016 (Pie chart)

Adapted by the researcher from the Built Environment Budget 2015/2016.

Finally, another issue that may be raised in the financial context is that of capturing the appreciation of value from land and housing. In most areas of the world, governments use this

appreciation value to reinvest and finance more urban development. In Egypt this appreciation is absorbed by private pockets (World Bank, 2008). This increases land and housing speculation and has many negative effects on the economy and the affordability of housing for low-income families (Alternative Policy Solutions, 2020). The recent attempts to formalize housing tenure and the frequent amendments of the law on property taxes, the latest of which was in 2014, may be seen as attempts to capture the appreciation value. In addition, the old Betterment Levy Law No. 222 for the year 1955 has been revived and owners of units in neighborhoods where urban development projects are constructed are required to pay a percentage of the estimated increase in the prices of their units. The recent application of the law has been criticized on a number of grounds (The Built Environment Observatory, 2022). First, the levy is charged whether the unit is used for housing or not and before it is being sold, which means that the owners may be required to pay the levy from their own savings not from an income generated by the development projects (The Built Environment Observatory, 2022). Second, some of these projects are already controversial because they focus on removing neighborhood aesthetic trademarks, such as parks and trees, to build roads and bridges. Third, the levy is another type of wealth tax added to numerous other wealth taxes. Finally, the levy being a wealth tax will be applied to low-income families, since in Egypt the majority of houses (85%) are owned (The Built Environment Observatory, 2022).

#### **4.3 Alternatives to Government Financing**

Before addressing alternatives to government financing, it is important to note the prevailing role of self-help in the housing sector in Egypt. David Sims, an expert on housing issues in Egypt, in his book “Understanding Cairo: The Logic of a City out of Control” has studied the different solutions that Cairenes have found for their housing and other urban needs to compensate government neglect (2012). Over the past thirty years 60% of housing built is informal. From the remaining 40% of formal housing, only 35% has been provided by the government and 65% has been provided by the private sector (Sims et al., 2020).

Although the government's role in recognizing the right to housing does not necessarily mean that it must build or finance the housing, excessive relying on the private sector creates shortages in the supply of low- and middle-income housing (El-Shenety 2019); thus, increasing the percentage of informal housing as we have seen. Private contractors claim that since the government owns the

majority of land and sells it to the investors at high prices, their business is only profitable if they target high-income housing (Mokhtar 2017). Along the same lines, Yehya Shawkat studied the different types of land tenure and spotted several reasons affecting the lack of access of low-income families to legal land tenure (Shadow Ministry of Housing 2013), such as government speculation on state-owned land (the great majority of Egyptian land is privately owned by the government) and corruption in the process of land allocation to the private sector.

This reliance on the private sector might be changing. According to the Central Agency for Public Mobilization and Statistics (CAPMAS) in its most recent “Bulletin of Housing in Egypt” in the year 2019/2020 government supply of housing has exceeded the private sector and now both sectors build more economic housing than high-end housing (CAPMAS, 2021). However, these numbers should be further investigated.

Affordability of housing according to UN CESCR General Comment number 4 means that the cost of housing does not compromise the consumption of other basic needs. Yet, we know from previous research that what has been labeled as social housing during Mubarak’s era when compared to the income levels of low-income families could not be labeled as affordable (Ahmed et al., 2018).

When it comes to financing housing, it is important to note that around 60% of housing units are informal. Informal housing is financed privately from the savings of individuals, remittances of workers in the Gulf, loans from friends and family or sale of other assets. The remaining 40% of housing units is either financed by the private sector or the public sector. Private Developers use their own capital to buy the land then start the sale of units and use the installments to finance the building process. Public Housing is financed by the central government through long-term loans from the National Investment Bank, while Governorate economic housing is financed by housing funds from local taxes and fees and land sale revenues.

Among the challenges recognized by Egypt’s Housing Strategy for government and private financing of housing is the tendency towards ownership rather than leasing, which pushes up the price of housing and jeopardizes affordability as an element to the right to housing. This may be

another reason for the growth of informal housing. In addition, this tendency leads to bad distribution between Egyptian families, where the richer smaller segments of the society own the higher percentage of housing surplus. In this section I point out the existing shortcomings in the alternatives to government financing.

#### ***4.3.1 Mortgage***

Although a mortgage law has been passed in 2001, Law No. 148 on the “Real Estate Financing System”, its application is not effective, since it only applies to formal housing and the majority of housing takes place informally (World Bank, 2008). Studies also show that several reasons lead to low borrower demand for mortgage, such as the high interest rates and complicated process. In addition, there are institutional setbacks, such as the unavailability of secondary mortgage markets and prohibition of financing buildings under construction by the law of the Central Bank of Egypt (Sims et al. 2020). Despite several amendments to the Law’s executive regulation in 2005 and to the law itself in 2014, the mortgage market share to GDP is low and continues to decrease (Stefanos 2015).

However, according to Egypt’s Housing strategy, recent amendments to the law allow for the creation of a Mortgage Financing Fund, which facilitates borrowing for low income and social housing through more flexible rules, subsidy interventions and offering different financing mechanisms more suitable for the different income strata (Sims et al. 2020). In 2019, Egypt’s mortgage market amounted to 0.36% of GDP (Sims et al. 2020). This rate is much lower than the mortgage rate in developing countries, which sometimes exceeds 80% as in the Netherlands (Badev, et al. 2014).

#### ***4.3.2 Cooperatives***

Cooperatives may be defined as groups of people who unite their efforts to realize their economic, social and cultural needs (Abdul-Fattah et al., 2019). Cooperatives are mostly run through democratic and good governance principles and aim to satisfy needs rather than realize profits (Abdul-Fattah et al., 2019). Article 78 of the Egyptian Constitution of 2014 recognizes the role of cooperatives in fulfilling housing needs. At the same time, Egypt’s Housing Strategy considers cooperative housing projects an important means of supplying low-income housing and

cooperative associations are a source of financing housing units, lands and loans (Sims et al., 2020). Among these associations are the General Authority for Construction & Housing Cooperatives or the Housing and Development Bank, which have budgets independent from the General State Budget. Cooperatives are different from mortgages in that they mostly target low- and middle-income housing and the interest rates are lower.

After a significant role for cooperatives in the provision of housing in the 1970's and 1980's, they began to lose their importance due to decreasing government support in financing and policy issues (Sims et al., 2020), and due to a change in the demand driven by different lifestyles and increased corruption in cooperative institutions (Mokhtar 2017). Although the housing strategy stresses on the role of cooperatives, it is obvious that it envisions this role to take place in new cities, which has several problematic results as will be discussed in the next section.

Cooperatives as an alternative way to producing affordable housing in Egypt enjoys an institutional and legislative foundation. However, its role is limited since the management of the system of cooperatives resembles a state organization, making it difficult to form co-ops or start projects (Abdelsamad, 2020). The current rules governing co-operatives in Egypt make them not as affordable as desired and increase the probability of speculation in their resale (p. 168). Another possible alternative is self-help housing, of which the project "Ibny Beita" is a model. Again, under this model success was limited, due to the small role played by participants, the inadequate choice of location and delays in the infrastructure (p. 168).

## **4.4 Prevailing Tenure Typologies**

### ***4.4.1 Land Tenure Typologies***

Around six land tenure typologies may be recognized in Egypt (Shadow Ministry of Housing 2013, p.43). The first is private ownership of individuals or companies, this type of tenure is mostly found in the 6% of Egyptian lands in Delta and other cities but does not exhaust the whole 6% as some of it is owned by the state. The second type is privately owned land by the state, which can be found in desert lands, which constitute about 94% of Egyptian lands as well as within the 6% of lands within old cities boundaries. These include vacant desert lands whose ownership has not

yet been allocated or which have been allocated to certain government agencies, such as NUCA, etc. Third, there are lands owned by the state, but which have been legally leased to private individuals or entities, usually for purposes of agricultural cultivation or industrial development. The lease is usually long term and may result in ownership after a long time. Next, there is public ownership of lands by the state, which are lands allocated for public service utilities and which may not be sold. In addition, there is ownership by prescription (wada'a al yad) of state-owned lands which has been generally considered illegal in 1958 but there have been several incidents in which the state accepted reconciliation. Finally, there is waqf as a form of land tenure but is in decline.

Thus, it is quite clear that the state privately owns the vast majority of Egyptian land. Allocation to private individuals or entities takes place through any of the following: direct agreement (government-set prices), auction (competitive prices), usufruct, public private partnership or allocating lands to certain public agencies.

State control over the vast majority of lands and the methods of allocation have been recognized by some researchers as a main factor leading to commodification of housing leading to unaffordability of formal tenure options and the spread of informality (Mokhtar, 2017; Shadow Ministry of Housing 2013).

#### ***4.4.2 Housing Tenure Typologies***

Tenure typologies refer to the three main categories of security of tenure: formal, customary and informal as well as the different types within each category, such as lease, ownership etc. (Payne et al., 2012).

The latest Statistical Yearbook issued by CAPMAS in December 2021 includes in its seventh Chapter on Housing a number of statistics on relevant issues but does not include data on tenure typologies (CAPMAS 2021). Among the included data are the percentage of public versus private investments in housing, the number of housing units built between the years 2008 and 2020 and the share of public and private contributions, as well as their geographic distribution and which income categories they target. It also includes data on usage of the different buildings and the

percentage of vacant buildings, the connection of buildings to public utilities and the renovation status of buildings.

The latest population, housing and establishments census by CAPMAS conducted in 2017 studied among other things the housing tenure typologies. It divides tenure into ownership, lease (which is divided into old rent, new rent and furnished rent), gift, in kind benefit and other. The census shows that ownership is the prevailing tenure typology (75.9% of Egyptian families). Gift constitutes 10.2% of tenure typologies. Old rent constitutes 7% of tenure of Egyptian families, while new rent constitutes 6.2%. Finally, tenure as furnished rent, an in-kind benefit and other came last, constituting altogether the remaining 0.7%.

Typology	Old Rent	New Rent	Furnished Rent	Ownership	Gift	In-kind Benefit	Other
Households	1,642,870	1,453,631	21,214	17,797,274	2,400,223	131,162	8,705
Individuals	6,133,570	5,693,817	69,380	72,741,366	9,554,542	532,066	32,340

*Figure 8 Housing Tenure Typologies.*

*CAPMAS Egypt Population, Housing and Establishments Census, 2017*

However, this division of typologies tells us little about the formality or legality of tenure, since most buildings in Egypt are not registered or constitute some kind of building violation. As mentioned above, a study by the USAID conducted in 2008 60% of respondents considered their tenure to be informal (Sims et al., 2008). More recently, in her visit to Egypt in 2018, Leilani Farha the UN special rapporteur on the right to adequate housing estimated that about 40% of Egyptians live in unplanned areas and informal settlements (Farha, 2019).

Thus, informal tenure constitutes between 40 to 60% of housing in Egypt and the prevailing tenure typology is ownership (more than 75%) followed by gift, old rent and new rent.

#### **4.5 Public Policies that Impact Tenure Security**



The previous sections have shown that the government participation in the provision of housing has been low compared to private provision. This section discusses a number of redistributive policies adopted by the subsequent Egyptian governments, which are supposed to benefit low-income families in their attempt to obtain housing in the formal sector.

#### **4.5.1 Old Rent Laws**

Rent control laws may be defined as “government mandated law(s) that place(s) a ceiling on the rent imposed by landlords on tenants” (Attia, 2016, p.1). In the long run, rent control may be seen as a subsidy to the tenants but which is carried by the house owners rather than the state.

Rent Control is a type of government policy which aims at setting a price for housing services other than that prescribed by market mechanisms. The government usually intervenes when there are housing shortages which set the market price for housing services above the rates which many renters may afford (Attia 2016). However, usually rent control is very hard to remove after it has been set and has been criticized by many for its effects on the housing market.

In the wake of the two World Wars, many countries applied rent control legislation because housing shortages drove up the market price for housing. Egypt is no exception to this phenomenon. However, Egypt may be considered as a unique example since rent control has a long history with great effects up till now, where rent control laws not only fix the rates for rent but also allow tenants to pass down the rent to their children, leading up to about 11% of housing in the whole country and 33% in Metropolitan Egypt to be under rent control legislation (Ibarra et al., 2017). The use of rent control legislation usually comes with costs and in the case of Egypt this cost is quite significant for the housing market.

One obvious effect that rent control tends to have is that it reduces tenant *mobility*. In Egypt, only 4 % of households move every year, a percentage although very low compared to other countries is considered normal given the high percentage of rent-controlled units (Sims et al., 2008). The problem with low mobility is that it could cause other problems such as travel congestion since people will travel long distances to reach their workplaces rather than change their rent-controlled residence. Lack of mobility also leads to economic distortions in the form of over and

underconsumption, since some small households might hesitate to leave their large units under rent control and big households also hesitate to move to bigger homes (McCall, 1988).

In Egypt, as well, rent control laws resulted both in informal building and in an increase in ownership as a type of tenure (McCall, 1988). It is known that rent is supposed to be a more affordable housing option than ownership. However, as research shows rent control might cause an overall reduction in the number of rented units, and hence can reduce affordability.

Since the main goal of rent control is ensuring affordability and reducing inequality, some research focused on efficiency of rent control as a redistribution mechanism. Egypt is also an interesting model today, since the market is split into controlled and uncontrolled units. Therefore, a recent study found that the existence of rent control pushes the price of uncontrolled units, and it discriminates in favor of already occupying tenants at the expense of those still looking for housing (Attia 2016).

#### ***4.5.2 Social Housing***

Social housing may be defined as adequate housing in which the cost-benefit ratio is low and therefore is suitable for low-income families (Abdelwahed & Hanafy, 2020). A study shows that between the years 1996-2005 the government was only able to provide 20% of the required social housing units, giving rise to informal housing as we have seen before (Abdelwahed & Hanafy, 2020). As for the "National Housing Project" applied between 2005 and 2011, the problem was its unaffordability to low-income families compared to their levels of income (Ahmed et al., 2018). In addition, the project relied mostly on ownership as a form of tenure, while the more affordable rent option was under-supplied and constituted only 14% of the project's unit. The "Social Housing Project" 2012-2017 was still not suitable for low-income families and its policies and implementation strategies were lacking effectiveness (Abdelwahed & Hanafy, 2020).

Direct expenditure is not the only way to use fiscal policy in the provision of social housing. For example, there may be tax cuts for private sector construction companies which participate in social housing projects. In addition, consumers may also be granted tax cuts from their income taxes for their housing expenses and soft loans may be provided to finance ownership of social housing (Abdelwahed & Hanafy, 2020).

Some international studies encourage policies by governments that support homeownership because they believe that it increases political participation because they increase the feeling of belonging to the society. However, these benefits are disputed, and other research shows that such support is less distributive because it encourages those who are already able to buy houses to spend more on buying a house (Gruber 2013).

#### ***4.5.3 Subsidies***

Egypt's Housing strategy considers increasing subsidies and delivering them to those most in need to be a top challenge (Sims et al., 2020). The strategy considers two types of subsidies: cash and in kind. It describes the new policy as subsidizing the citizens, not the unit, by which they mean giving cash subsidies to those most in need. There are also indirect subsidies, in which the government sells land at a lower price to developers willing to construct low-income housing or offers lower interest rates.

#### ***4.5.4 New Desert Cities***

The succeeding governments in Egypt have focused on building new cities in the desert and have injected billions of pounds in their infrastructure and the roads that connect them to the old cities. However, many researchers doubt the importance and success of this policy, which has not until now been successful in attracting families to the still half full new cities (D. Sims, 2015; El-Hakeh, 2021; Tadamun, 2015; El-Shakhs, 1994). As a result, billions of pounds have been invested in these projects and the so-called “ghost cities”, while the old cities are decaying due to the decreased attention paid to them by the government (Tadamun, 2015).

Although, the new cities policy is not primarily meant to be a redistribution policy, I included it here because it has a negative effect on spatial equity. For instance, Sims considers the new cities policy to be a complete “disaster” (Sims, 2015). In his point of view, this policy has cost Egypt a lot of money, which could have been invested in the existing towns where Egyptians really live. Moreover, he accuses the agencies managing these projects to be privately profiting from the sale of lands and calls for not simply reforms but total “shaking-up” of the system (Sims, 2015). Along the same lines, reports show that the billions of pounds spent on these new cities have not yielded any result in terms of citizen migration to these cities (Tadamun, 2015).

The only agency which has the right to “retain and reinvest revenues and thus auto-finance development” is the New Urban Communities Authority (NUCA) (World Bank, 2008), while local government units do not enjoy this right and any proceeds from sale of land or units are returned to the central government. Moreover, a study of government expenditure on housing in the 2015/2016 budget shows that 11,329,000,000 EGP have been paid on government investment in housing in the old cities, while 11,978,225,000 EGP have been spent in new cities (Shawkat & Khalil, 2016). The numbers seem close, but they are shocking when they are divided by the number of inhabitants in old and new cities; in the old cities the share of the individual is 128 EGP and in new cities the share is 6249 EGP (p.32). This disparity reflects the spatial inequality created by the insistence of the government on the new cities’ policy.

Unfortunately, the new Housing Policy reflects this insistence, despite recognizing the tendency of investors in these areas to build luxury housing. What is worse is that in Egypt’s 2030 strategic plan urban development indicators focus mostly on maximizing construction in new cities (GOPP, 2016). It fails to recognize other aspects which are keeping Egyptians from moving to these cities.

#### **4.6 Access to Justice in the Cases of Loss of Security**

In keeping with Latin law tradition, Egypt has three court systems (Abdel Wahab, 2019). First, there are the so-called “ordinary” courts (*al qadaa al a’ady*), which are specialized in all matters except administrative and constitutional matters. The highest court in this system is the court of cassation. With regard to the right to housing, disputes between two private entities, such as tenants and landlords will be subject to ordinary courts. As an exception the law sometimes decides that certain relations in which the state is a party, such as when the state is a leaseholder of a unit owned by a private individual or entity, are subject to the ordinary courts as well. Second, there are the administrative courts, also known as the Egyptian State’s Council, at the top of which lies the Supreme Administrative Court (SAC). The administrative courts have jurisdiction in all administrative matters, such as administrative contracts and administrative decrees. With regard to the right to housing, administrative decrees on evictions or expropriation for public interest will be subject to the jurisdiction of the administrative judiciary. However, sometimes the law mandates

that a petition be raised before the administrative agencies which issue a certain decree, before a case may be brought before the administrative judiciary. Finally, the Supreme Constitutional Court (SCC) is the only competent court in determining the constitutionality of laws and regulations. Thus, if a certain article whether in a law or a regulation is thought to violate the right to housing, the case must be brought before the SCC for scrutiny.

Thus, ordinary courts have jurisdiction in private law matters (tenant-landlord relations), the administrative judiciary has jurisdiction regarding the annulment of government decrees (eviction orders) and the SCC has jurisdiction to decide whether a law or regulation violates the constitution (right to housing).

## 5. Chapter Five: Findings and Analysis

The interviews in this study targeted four main cohorts including expertise and stakeholders, namely academia, judges, lawyers and homeowners. The main data findings of this study are presented thematically according to the three (formal, informal and perceived) variables of security of tenure recognized in the conceptual framework. In addition, content analysis of laws, cases and reports was carried out to present findings regarding the indicators recognized by OHCHR for measurement of security of tenure.

### 5.1 The Two Pillars of Security of Tenure in Egypt

The current trend in comparative studies and in international organizations recognizes several forms of tenure and looks at tenure security as a continuum rather than a legal/illegal dichotomy (UN-Habitat, 2008). However, it is still a widespread conviction and reality that formal titles guarantee higher security than other forms of tenure (UN-Habitat, 2008; (Porio & Crisol , 2004). Although OHCHR indicators recognize different forms of tenure security, some indicators focus on the legal enforceability of tenure, thereby stressing the importance of formal tenure (OHCHR 2008). In this section, I study the three variables of security of tenure in Egypt and the possible effects of recent policies and legislations on each one.

#### 5.1.1 Formal Tenure

According to a study on the housing sector conducted by the USAID in 2008, among those who owned housing units about 49.3% had a final contract registered with the Real Estate Registration Agency, and about 9.9% had a sale contract ruled valid and binding in court then registered with the Real Estate Registration Agency (Sims et al., 2008). Hence, about 40% of owned units were not registered in 2008. Although I was not able to reach new statistics on the percentage of informal housing in Egypt, recent international reports speak of the same percentage (Farha, 2019). One of my interviewees from academia noted that the spread of informal housing in Egypt is not exclusive to low-income households.

*“Formal titles are not common in Egypt. Even high-end housing usually lacks registration. Most owners possess only a primary contract from the seller. There are stronger proofs of titles,*

*known as red contracts and blue contracts. The strongest of which is the blue contract.”*

*(Interview 1, September 11, 2022, Housing academic in Cairo)*

Thus, there are drivers to informality other than income levels. One of these drivers is the difficulty of dealing with government agencies. For example, Hernando De Soto noted that “to acquire and legally register a lot on state-owned desert land must wend his way through at least 77 bureaucratic procedures at thirty-one public and private agencies ... This can take anywhere from five to fourteen years. To build a legal dwelling on former agricultural land would require six to eleven years of bureaucratic wrangling, maybe longer (De Soto 2000).” De Soto considers this an “obstacle to legality” (p.28).

For many years, international financial institutions recommended titling programs to enhance tenure security in developing countries (Esquirol, 2008). In Egypt, the first attempts of titling untitled property were in the late 1970’s and early 1980’s but were scattered attempts and usually unsuccessful. In one study, TADAMUN followed the recent history or regularization of titles in Egypt, which has always been the result of advocacy by international development programs and institutions (Tadamun , 2015). In the following table, I summarize this history:

Year	Neighborhood, Governorate	International Institution	Project Results
1978-1983	Al-Hikr, Ismailia	UNDP	Residents could buy their plots at relatively low prices at installments, about 7000 titles were sold, only those who could prove their property was not on agricultural land were allowed to buy their property. Regularization was halted due to disagreement between the project manager and the government.
1978	Manshiyyet Naser, Cairo	World Bank	The General Organization for Physical Planning (GOPP) resisted the regularization of titles and preferred the relocation of settlers. The project was limited to development of infrastructure and services.
1986	Helwan	USAID	Only 720 residents applied and by the time the USAID issued its end of project audit in 1988, not a single title

			was granted. The audit claims that the failure was due to a variety of administrative delays and obstacles.
1987-1991	Nasriyya, Aswan	German Development Agency	Titles were sold to 45% of the dwellers at low prices to be paid in installments. The rest of the dwellers were able to rent the land at affordable prices.
1997	Nationwide regularization	De Soto's Institute for Libération & Democracy with USAID funding	There was no government support and the project was never implemented
1998	Izbit Bekhit, Cairo	German Development Agency	The regularization project relied on a participatory approach. First, there were delays due to conflicts between Cairo Governorate and the Ministry of Housing regarding the management of the project. By 2000 the database containing the surveyed neighborhood information was ready. In 2003 the Cairo governorate formed a technical committee to supervise the process of titling. In 2004 there were changes in management of the project from David Sims to Khalil Shaath. In 2006 the project began receiving applications form dwellers. By 2008 only 200 applications were made. Sims believes it was due to high prices and that the older settlers believed they should pay lower prices than new settlers because they invested a lot in their housing over the years. Shaath believes that the dwellers began complaining about the prices before they were even announced, and that they were set at the lowest possible legal price. According to Shaath the residents were not eager to buy the titles because they mistrusted the government



			and because they enjoyed de facto security of tenure. After the Duweiqia rockslide in 2008, the project was put on hold to geologically examine the land suitability for housing.
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*Figure 6 History of Titling Programs in Egypt.*

*Adapted by the researcher from the published document “Land Titling: Is It the Solution for Egypt’s Informal Areas?” Tadamun (2015).*

By analyzing the different factors in the previous projects, one notices that projects outside Cairo were relatively successful, probably because the price of the meter was lower than in informal settlements of Cairo, which are mostly in strategic locations. Administrative delays and conflicts between agencies are a recurring cause of the failure or limited success of all projects. In one case the project manager drew the failure back to the settlers who were trying to maximize their gains or were reluctant to have formal tenure since they felt they enjoyed de facto tenure (Tadamun, 2015).

Despite these early attempts at titling, the government began only recently to aim at a nationwide titling policy (Eweida, 2020). In the last ten years two laws have been issued which seek to reconcile building violations in return for formal titles. First, there is Law No. 144 for the year 2017 which was issued to deal with reconciliation with locals who have laid hands on state-owned lands or third parties who have bought them from the locals. The law requires that a request be filed with the competent authority within three months from the day of issuance of the law. This period may be extended once. The state may give the right of ownership, lease or usufruct for an agreed upon price. After the lapse of the three months and the extended period, there are still discussions on whether this period may be extended.

Another law has been issued which is the Law No. 14 for the year 2019 on Reconciliations in Building Violations. This law allows violators to reconcile with the state, except in a number of cases such as where the violations pose a threat to safety, violate the height stipulated for by the civil aviation agency or violations on buildings with a heritage value. Mainly those who may benefit from this type of reconciliation are those who violated the building height (one and a half the width of the street) under the condition that the violation has not affected the safety of the

building and cases in which no building permit was obtained. The law gave a six-month period for requesting reconciliation; however, the period has lapsed without many violations being reconciled. Among the reasons are disagreements between the original owners or constructors and those who bought from them as to who carry the burden of reconciliation costs.

The law issued in 2019, was amended in 2020 and the Council of Ministers had approved a further amendment on the law on October 12<sup>th</sup>, 2022 which will be studied and voted on by parliament. In addition, the old law on the Real Estate Registration Agency was amended in 2019 and has been amended again by law No. 9 for the year 2022. These subsequent amendments have been criticized. In Alexandria, one lawyer mentioned:

*“The legislation process seems to be conducted in a rush without thorough studies. This is evident in the fact that the law of reconciliation has been amended three times in three years.”*

*(Interview 3, Oct 3, 2022, Lawyer, Alexandria)*

The amendments try to deal with the fact that most real estate owners and developers in Egypt do not have formal titles and real estate is mostly not registered. After its amendment, the real estate registration law No. 9 for the year 2022 no longer requires a chain of titles for each registration. A lawyer explained how the law differentiates in the procedures according to how tenancy was acquired:

*“The law of the Real Estate Registration Agency after its amendments now recognizes several procedures of registration depending on the different ways through which the tenant acquired tenancy. For example, if the housing unit was owned by someone who already registered this ownership before, a new owner will only need to register the final step by which the ownership was moved to him. Another type is where the former owner has not registered the unit and here the new owner needs to register both the old ownership and how it moved to him. A third type is to register the ownership through inheritance for example.”* ((Interview 3, Oct 3, 2022, Lawyer,

*Alexandria)*

Regarding the **motives** behind the new formalization policies, there were different points of view. A registration lawyer stated:

*“I believe the government is interested in having accurate information about the housing stock.*

*People tend to feel that it is about gathering income from citizens. Anyway, I think the government is doing it through a win-win situation; the government is able to gather accurate information about the housing stock and citizens are more assured if they have registered titles.”*

*(Interview 3, Oct 3, 2022, Lawyer, Alexandria)*

From the point of view of homeowners seeking registration, one of my interviewees mentioned that first, she wanted to have a formal proof of her ownership of the apartment that her deceased father gifted her before his death, so that other heirs do not dispute her ownership of it. Second, she wanted to give the state its dues; if the state is encouraging registration of ownership, she wants to do her part and register her property. I asked her whether she feared that if she did not register, she might face eviction, but she noted that eviction by the government was not her concern. (Interview 9, November 14, 2022, Homeowner, Alexandria).

In another interview with a homeowner seeking conciliation and registration (Interview 11, November 21, 2022, Homeowner, New Cairo), my interlocutor stated that the resale value of her apartment might drop significantly if it is not formally registered. She further explained that given the new laws, she expects the price of her unit to drop about one third or one fourth of its value because the buyers would fear going through the process of registration, which aside from being daunting uptill now no one knows how much it will cost.

Thus, none of my interviewees mentioned fear of adverse government action as a reason for seeking formal registration of their titles. However, this may not be generalized since I used nonrandom sampling methods. Thus, the case may be different for informal settlers. For example, for tenants of informal settlements interviewed by Tadamun, the main benefit of formalizing titles was ensuring their right to receive services without having to constantly negotiate with government officials or pay them gratuities (Tadamun, 2015).

According to a study by Deininger & Feder, the degree of success of registration policies depends on the status of several socio-economic factors and the governance environment (2009).

The following section recounts the experiences of my interlocutors regarding registration procedures, time and cost.

As for the difficulties of **registration**, a registration lawyer mentioned that as a first step proxies (tawkilat) need to be issued from the Real Estate Registration Agency. The demands from citizens for registration were much higher than the agencies could deal with. Thus, the president of Egypt directed the use of electronic registration services, which have been included in law No. 9 for the year 2022. According to my interlocutor the law is quite simple but there have been too many directives (administrative decrees) issued that things are getting quite complicated. Reports show that in the case of the law on reconciliation over building violations, the law has been amended once, its executive regulation has been amended twice, there are about 4 cabinet decrees extending the period of reconciliation, at least 5 governors' decrees regarding the value of registration in each governorate, and about 7 administrative booklets or circulars (administrative orders to administrative agencies) on the matter (The Built Environment Observatory 2020). Another layer of difficulty was added by the need to go through reconciliation in building violations before registration. According to the real estate registration lawyer,

*“Registration also came into hold because reconciliation commissions are too slow. In addition, some required documents are quite impossible to obtain.”* (Interview 3, Oct 3, 2022, Lawyer, Alexandria)

The interviewee further explained that for one of his clients who had bought a unit from an owner who passed away later, he needed to gather the names and ID numbers of all the heirs of the deceased seller. This was impossible because they did not have any contact with any of them and the civil registration agency refused to issue such information.

From the point of view of homeowners, registration procedures were a very difficult process. One of my interviewees said that she hired a lawyer right away and he explained to her that they will go through two routes. The first, is “expedited registration” (*tasgil sari*), which the government announced at the time could be done in about 40 days, and the second, is the traditional petition seeking execution of the contract (*seha wa nafaz*). After a year and a half, the fast registration track was not possible. Her lawyer told her that since the residential building in which the apartment was located was violative of the building law, it needed to go through the process of reconciliation

first, which has been put on hold for a long time now while waiting for it to be amended. I asked her whether the building had a permit or violated the building heights, but she stated that it did not violate the law in these matters. However, when government officials visited the building to survey it, they said the building was taking a couple of centimeters from the pavement. My interviewee felt that it was unfair to make the resident carry the burden of a violation he or she could not possibly know about. The second path of petition of execution of contract was also very daunting, taking a lot of time and costing a lot of money. All she possessed from her father was a customary contract. In the petition, the lawyer had to give notice to 17 individuals who constitute the Homeowners' Association of the building. Many of them are not residents in the building and the lawyer had to secure their ID numbers through his friendly relations within the Civil Register, but that cost a lot of money in gratuities (bribes) and a lot of time. Finally, she added,

*“I think that the process of registering your property should be very easy so that individuals can carry it out themselves, but after this experience I am confident that with the amount of papers required and the required scheduled visits (in her case three visits were made to survey not only the apartment but the entire building) no individual can go through this process ever alone, you must seek the help of a lawyer.” (Interview 9, Nov 14, 2022, Homeowner, Alexandria)*

Another homeowner found the process of registration to be extremely daunting because government employees were very difficult to deal with (Interview 11, November 21, 2022, Homeowner, New Cairo). For example, they were supposed to visit the unit to investigate whether it was violative or not, but they would not come. In one incident they claimed they made the visit, but no one was there to let them in, which my interviewee claims was not true. So, the next time, the owners had to go to the government agency and take the employees with them in their car. Another difficulty was that when they reached an agreement with the committee responsible for estimating the conciliation fine and were ready to pay it, they were told that this committee had been dissolved because they were receiving payments under the table from the homeowners and that they had to start the process all over again with the new committee.

As for the **required duration** to finish these steps, a lawyer told me that before the recent amendments, the registration steps could take around a year. Now after the amendments, it is still

too early to determine the duration but according to officials it is supposed to take around three months (Interview 3, Oct 3, 2022, Lawyer, Alexandria). The two homeowners I interviewed claimed that they initiated the registration process more than two years ago and still have not succeeded in registering their property.

As for the **cost of registration**, there are different agencies to pay to for different required documentation and administrative steps. The registration lawyer detailed the following payments, *“Different fees have to be paid and they mostly depend on the area of the property. For example, the cadastral agency takes a percentage, which should not exceed 4000 EGP, the bar association takes a percentage which should not exceed 10,000 EGP. The Real Estate Registration Agency takes a percentage which should not exceed 2000 EGP. In addition, there are about 1000 EGP fees for the different documents. The total may reach about 25000 EGP. In addition, you have to pay some gratuities along the way.”* (Interview 3, Oct 3, 2022, Lawyer, Alexandria)

Of course, if you have to reconcile there are the reconciliation fees, where you can pay 25% of the total fees and pay the rest in installments.

But the sums mentioned by the lawyer do not include all the costs that homeowners bear. From the point of view of homeowners, costs were higher. A homeowner recounted:

*“In one year and a half I have paid 50000 EGP and have not yet registered my unit.”* (Interview 9, Nov 14, 2022, Homeowner, Alexandria)

My interviewee did not know the exact distribution of the sum, but it included both lawyer fees and any fees required by the government agencies involved in the process. I asked her if she or her husband planned to register any other of their properties, she said:

*“No, I have paid so much and have not yet seen any results.”* (Interview 9, Nov 14, 2022, Homeowner, Alexandria)

Another homeowner claimed that securing the required paperwork to start the process cost them about 35,000 EGP, which was a big sum given that at the end maybe no violation was committed,

which will be determined later by the committee. When the committee determined that there was a violation, they estimated the fine to be around 300,000 EGP, which constituted about one third of the price of the unit (Interview 11, November 21, 2022, Homeowner, New Cairo).

Before the amendment of the Real Estate Registration Law in 2022, a report on the expenses of registration reveals that costs may vary between 1.1% to 11% of the value of the registered unit depending on the mode of registration. The fees are lower if the unit is already registered, and the seller cooperates with the buyer in registering his ownership (amicable registration) and becomes more expensive depending on the type of court decision needed for registration (The Built Environment Observatory 2021).

From these insights from my interviewees, several points may be concluded. First, the procedures are extremely daunting and not easy even for those who seek the help of legal professionals. Some of the repeated difficulties relate to securing certain papers, such as national IDs of previous owners and their heirs, which are quite impossible to secure. Another difficulty was the number of visits by violations' committees and the difficulty to secure them. In addition, the time for registration was much longer than that claimed by the government. Mostly, because in most cases committees on reconciliation of building violations were taking too much time or their work was put on hold because of uncertainties related to the continuous amendments of the law or in one reported incident because they were receiving bribes from homeowners seeking reconciliation. Finally, the cost was also much higher than claimed by the government and varied greatly due to the different proofs of ownership and due to the reconciliation sums, which varied greatly from one case to another. Both interviewed homeowners had no problem to pay the requested sums but were not very enthusiastic because whatever sums they paid did not result in registrations.

### ***5.1.2 Informal Tenure***

In his book 'Understanding Cairo', David Sims starts the section on registering titles by the sarcastic question "Registered Property Titles: Who Needs Them?" (Sims, 2012, p.153). Sims explains that although the law organizing the registration of personal property was issued in 1946 (Law No. 114), only about 27% of housing in Cairo was formally registered and among these some registrations were not kept up to date. He explains that the system of registration was too

cumbersome and too costly to be followed by many. Instead, the informal way of proving sale of property contracts was prevalent. These customary (‘*urfi*’) contracts between the seller and buyer and the presence of two witnesses may be later made more secure by raising a court action demanding confirmation of the contract signature (*sihat tawqi*) or the even stricter petition for execution of a contract (*dawa’a seha wa nafaz*). Alternatively, the seller may issue the buyer a power of attorney (*tawkil*) giving him the entire property rights, which can later be endorsed in the Real Estate Registration Office. He continues that even government-built housing used the same techniques of informal housing.

According to one of my interviewees, everyone in Egypt has some kind of proof of their housing tenure.

*“To issue an ID number you need to have an address, which you prove by an issued electricity bill. This is the minimum proof that every Egyptian possesses.” (Interview 1, September 11, 2022, Housing academic in Cairo)*

One lawyer acknowledged that after the amendments of the registration law, the role of informal tenure is reinforced because now you can register your property if you have enjoyed its adverse possession for five years or more and you can prove it by evidence such as electricity bills issued in your name. This is a positive step since many Egyptians do not possess a registered chain of titles but it could be risky because there were times when leaseholders were able to issue electricity bills in their name (Interview 3, Oct 3, 2022, Lawyer, Alexandria).

However, my fourth interviewee maintains that customary titles do not play a big role for tenants in an informal area. She explains,

*“Many tenants in informal areas have been paying the government utilities fees and real estate taxes for many years and they have the government bills to prove it. What is stopping the government from titling their property?” (Interview 4, October 2, 2022, Researcher and activist, Cairo)*



In its response to the comment by the UN special rapporteur concerning the lack of security of tenure for informal settlements because they cannot prove their residency if the government decides to redevelop the area and as thus may not be compensated or offered alternative housing, the government of Egypt declared that state officials accept simple documents to prove residency such as electricity bills (The Government of Egypt 2019).

### ***5.1.3 Perceived Tenure as a Dependent Variable***

In a housing study published in 2008, 92.4% of the interviewees were not worried about eviction, 1.9% did not know if eviction was possible and 5.7% acknowledged that eviction was possible (Sims et al., 2008). Thus, at that time perceived security (lack of fear of eviction) was very high despite prevailing lack of informal tenure.

One of my interviewees considers perceived tenure to be the aspect most affected by the recent policies of the Egyptian government. She says,

*“People are faced with a certain discourse every day, which revolves around the state assuming back its authority (haybat al dawla). The daily observations tell the people that no one is safe regardless of their form of tenure. Especially in Cairo and Giza whether you are a tenant in an informal area, or your property is formally titled, such as the housing in the 6<sup>th</sup> and 7<sup>th</sup> district in Cairo, the government may decide to remove your housing and there is no dialogue with the government.” (Interview 4, October 2, 2022, Researcher and activist, Cairo)*

Thus far, I have used the term informal tenure rather than customary tenure because in Egypt there are not many applications for customary tenure. However, one of these applications are desert lands, which are formally owned by the state, but customarily local residents used to have tenure rights over them (Eweida, 2020). For many years, if someone wanted to buy a piece of land in one of these areas, he had to buy it from the locals, who customarily recognize each other's ownership of vast areas of lands and pass them down to their children. Typically, a sale contract by one of the locals guarantees that none of the other locals will obstruct the buyer's possession of the land. The government has tolerated these types of transactions for many years but is now seeking formalization of such rights through the law on reconciliation in building over state-owned land.

One of my interviewees works in the registration of lands and has clients who bought pieces of land in Borg elArab as a new city adjacent to Alexandria where they can invest in new and bigger housing for personal use. These clients have bought these pieces of land from the locals, because it is cheaper than registered land and because the locals can secure their peaceful possession of the land. They seek his help to reconcile with the government and register the land. He explained that the needed documents are a reconciliation file obtained from the entity responsible, which could be the governorate or a new communities' authority, a copy of the owner's national ID, schematic plan for the building on the government land that the client wants to reconcile according to the law (it must be built before the issuance of the Law nr. 144 for the year 2017) and a proof of possession, which is usually a utility contract (Interview 12, January 13, 2023, Lawyer, Alexandria).

As for the procedures, the land registration lawyer explained that the responsible authority conducts visits to the site to compare between the schematic plan and the building on the ground, and to determine whether it is suitable for living, as this is one of the conditions of reconciliation according to the law. If the reconciliation committee approves, they proceed with the next steps. However, in many locations the authorities have paused the reconciliation activities awaiting the amendments of the laws. Therefore, the time needed for reconciliation differs from one place to another. In Borg el Arab, some of his clients have been seeking reconciliation for 8 years with no luck. As for the cost, the required documents and lawyer fees could reach around 40,000 EGP and the reconciliation fees are 25% of the value of the land. Thus, the difficulties in procedures, duration and cost apply also to reconciliation on building on state-owned land under Law nr. 144 for the year 2017 (Interview 12, January 13, 2023, Lawyer, Alexandria).

## **5.2 Structural Indicators for the Security of Tenure**

The first indicator recognized by OHCHR is related to the structural framework of the right to housing and includes the status of ratification of international treaties related to the right, constitutional protection of the right, coverage of domestic laws to the right, accreditation of Human Rights Institutions in the country and the number of NGOs working on the promotion and protection of the right (OHCHR, 2008). More specifically, OHCHR indicators on the element of

security of tenure include the date of entry into force and coverage of domestic legislations on security of tenure, equal inheritance, and prohibition of forced evictions (OHCHR, 2008).

### ***5.2.1 International Treaties***

Egypt has ratified most universal and regional treaties relevant to the right to housing. In particular, the ICESCR was ratified on 14<sup>th</sup> of January 1982 (OHCHR, 2022). The Committee on Economic Social and Cultural (CESCR) is the competent supervisory body to monitor compliance with the ICESCR and the general comments of the committee are authoritative sources of interpretation (Grant, 2007). Thus, ratifying countries are bound by the interpretations of CESCR.

### ***5.2.2 The Egyptian Constitution***

The Egyptian constitution of 2014 enshrined the right to housing in article 78 of the constitution in a manner considered consistent with the right as stipulated for by ICESCR (Farha, 2019). The article states:

“The state guarantees citizens the right to decent, safe and healthy housing, in a way that preserves human dignity and achieves social justice. The state shall draft a national housing plan that upholds environmental particularity and guarantees the contribution of personal and collaborative initiatives in its implementation. The state shall also regulate the use of state lands and provide them with basic facilities, as part of a comprehensive urban planning framework for cities and villages and a population distribution strategy. This must be done in a way that serves the public interest, improves the quality of life for citizens and preserves the rights of future generations. The state shall draft a comprehensive, national plan to address the problem of informal areas that includes providing infrastructure and facilities and improving quality of life and public health. The state shall also guarantee the provision of necessary resources to implement the plan within a specified time frame (Constitute Project 2022).”

One notices that the article covers the aspects of quality and safety of housing, both are considered part of the element of habitability of the right to housing, and puts immediate obligations on the state such as drafting a housing plan and articulates the states obligation to take progressive steps within the available resources towards the fulfillment of the right.

This is a positive approach, because it makes it more achievable to hold the state accountable in cases of violation and is a step forward compared to previous constitutional texts which did not stipulate for the right altogether, such as the 1971 constitution. The right to housing appeared for the first time in the 2012 constitution article 68 which stated: “Adequate housing, clean water and healthy food are guaranteed rights. The state adopts a national housing plan, which is based on social justice, the promotion of independent initiatives and housing cooperatives, and the regulation of the use of national territory for the purposes of construction, in accordance with the public interest and with the rights of future generations” (Constitute Project 2022). This article has been criticized by some experts because it does not define adequacy of housing, does not deal with the element of affordability and does not state clearly which entities are responsible for fulfillment of the right (Tadamun, 2013).

The same can be said about the 2014 text, which does not refer to the issue of affordability and unlike the 2012 text, does not even hint at it, since it has no reference to social justice. Both texts make reference to the role of land use in securing the right to housing. The 2014 text is more favorable in that it is explicit about the obligation of the state to provide the necessary resources for the implementation of the housing strategy. The 2014 text also makes reference to informal areas, however, the way it does so has been criticized on two grounds, first, it does not define what is meant by informality, and thus seems to deal only with slums not other types of informality, second, above all it considers it to be a “problem” a point of view which may be/ is reflected in attempts to eradicate slums as an evil equivalent to illiteracy or children mortality, and not as a mode of housing chosen by those who could not afford another type of housing (Tadamun, 2015).

Similarly, Egypt has launched the Sustainable Development Agenda 2030 which refers to “slums” but the preferable trend in human rights is to call them “informal settlements”, since the term “slums” is usually associated with stigmatization of its residents and a problem that requires elimination rather than acknowledging the need of its residents for support (Farha, 2018). This stigma is noticeable in older reports by CAPMAS, which describes “ashwaiyat” not only by the characteristics of lack of services and basic rights but also by the spread of ignorance, violence and extremism while researchers claim that this view is much exaggerated (Bayat & Denis, 2000).

Finally, it is noticeable that both the 2012 and the 2014 constitutions did not make reference to security of tenure which is the fourth element of the right to housing, and is a prevalent problem not only in slum areas but in all other housing built in violation of the building law.

There are also other constitutional articles, which are relevant to the right to housing (Farha, 2019), such as article 35 on the protection of private property which also sets boundaries to the right of the state to make expropriation for public interest. Also, article 63 states that, “All forms of arbitrary forced migration of citizens are forbidden. Violations of such are a crime without a statute of limitations (Constitute Project 2022).” However, the formulation of this article has been criticized on the ground that it does not cover the cases of forced evictions but may be useful in extending protections to Nubians or residents of the Sinai Peninsula.

### ***5.2.3 Domestic Legislation***

As for the coverage of domestic legislation to the right to housing and more particularly security of tenure, there are tens of laws dealing with different dimensions which have an impact on housing and security of tenure. However, most of these laws have been issued prior to the Egyptian constitution and have not since been adapted to match the constitutional enshrinement of the right. In its response to the UN special rapporteur report, the government of Egypt indicated that there was no need to amend the old legislations if they do not contradict with the 2014 constitution (The Government of Egypt 2019). Perhaps, what mitigates from the effect of this shortcoming is that the Egyptian 2014 constitution in article 151 stipulates that treaties “...shall acquire the force of law upon promulgation in accordance with the provisions of the Constitution (Constitute Project 2022).” (Farha, 2019).

It is important to note that according to article 152 of the 2014 constitution, international treaties in the hierarchy of rules in the Egyptian legal system are lower than the constitution and equal in force to legislation issued by the Egyptian legislature. The Egyptian judiciary tends to reconcile between the texts of international treaties and domestic legislation. However, if reconciliation between opposing texts is impossible, international treaties are not necessarily to prevail over domestic legislation. Instead, rules of interpretation require that the treaty abrogates earlier legislation and is itself abrogated by subsequent legislation and that the text that is more specific

derogates from the general. Therefore, it is not really safe to rely on the force of international treaties under the Egyptian constitution.

As for legislations issued post the adoption of the 2014 constitution, it is noticeable that they focus either on social housing, such as Law No. 33 for the year 2014, or on reconciliation of building violations, such as Law No. 144 for the year 2017 on reconciliation in building on state-owned land, Law No. 14 for the year 2019 on reconciliation in building violations and Law No. 9 for the year 2022 on real estate registration, and are tackled in different sections of this thesis.

#### ***5.2.4 Human Rights Institutions***

Another structural indicator is the existence of accredited human rights institutions. Article 214 mandates, “The law specifies independent national councils including the National Council for Human Rights, the National Council for Women, the National Council for Childhood and Motherhood, and the National Council for Persons with Disability. The law sets out their structures, mandates, and guarantees for the independence and neutrality of their members. They have the right to report to the public authorities any violations pertaining to their fields of work. These councils have legal personalities and enjoy technical, financial, and administrative independence. They are to be consulted with regards to draft laws and regulations pertaining to their affairs and fields of work.”

In relation to the right to housing the National Council for Human Rights would be the responsible entity for reporting violations and carrying out other competencies. The accreditation of the National Council for Human Rights has been deferred by the Global Alliance of National Human Rights Institutions in the period between October 2011 and May 2018. In 2018 it has been accredited with the A-status, which indicates “fully compliant with the Paris Principles” (OHCHR 2022).

In addition, there are a number of human rights institutions affiliated to the government such as the Supreme Standing Committee for Human Rights established in 2018 and human rights units and offices established in many ministries (including the Public Prosecution and Military Tribunals) and governorates (Supreme Standing Committee for Human Rights 2021).

### ***5.2.5 Non-governmental Organizations***

Among the structural indicators is the number of non-governmental organizations involved in the protection and promotion of the right to housing. It is not an easy task to put together a complete list of such organizations because of their big and continuously changing number as well as the diversity of their interests. However, in research by Joseph Schechla on the right to the city in Cairo, he recognized around 19 civil society organizations involved in issues related to the right to the city including of course housing (Schechla, *The Right to the City Cairo* 2014). These include:

- Ahmed Abdullah Ruzza Development Association
- Amnesty International (Egypt)
- Association for Health and Environmental Development
- Better Life Association for Comprehensive Development
- Committee for Solidarity with Egyptian Peasants for Agrarian Reform
- Development Support Center Consultancy & Trading
- Egyptian Budgetary and Human Rights Observatory
- Egyptian Center for Civic and Legislative Reform
- Egyptian Center for Collective Rights (ECCR)
- Egyptian Center for Economic and Social Rights
- Egyptian Center on the Right to the City
- Egyptian Initiative for Personal Rights
- Habi Center for Human Rights and the Environment
- HIC-HLRN
- New Woman Research Center
- Socialist Lawyers Committee
- Tadamun: The Cairo Urban Solidarity Initiative
- Takween
- 10 popular committees

In addition, in 2015, 10Tooba which defines itself as “an interdisciplinary group of built environment professionals with developed expertise in participatory planning and policy analysis,

working closely with communities in Egypt” with the vision of “spatial justice and fair housing in Egypt and the region”, became an active participant through research and participatory planning.

However, a civil society activist pointed out to difficulties for civil society organizations working in the field of housing, claiming that:

*“For security reasons the housing and urbanization portfolios are considered sensitive issues in Egypt. The Egyptian Initiative for Personal Rights (EIPR) closed their work on the housing portfolio.” (Interview 4, October 2, 2022, Researcher and activist, Cairo)*

Along the same lines, the UN special rapporteur indicated in her report that human rights’ lawyers and defenders complained about the difficulty of carrying out their role when they were “subject to travel bans and the freezing of their assets, when their homes and offices are raided, and when charges are laid against them for their work in the area of economic, social and cultural rights claims (Farha, 2019).” In its response the Egyptian Government denied its knowledge of any such cases and called these allegations “ill- founded perjurious allegations” (The Government of Egypt, 2019).

In addition, in her report on her visit to Egypt in 2018, Leilani Farha the UN special rapporteur on the right to adequate housing presented several factors which she considered to curtail the terms of reference for country visits and established working methods of special procedures. These terms require all country visits to be confidential and demand “unsupervised contact with witnesses and other private persons, including persons deprived of their liberty, considered necessary to fulfill the mandate of the mandate holder.” For example, she mentions insistence on sending security forces with her in her visits to different neighborhoods, the impossibility to visit el-waraq island and to visit 20 individuals detained on the background of protesting their right to housing. In addition, after she finished her visits, she received allegations from individuals who have cooperated with her that they were exposed to “forced evictions, short-term detention, harassment, intimidation and reprisals” (Farha, 2019).

### ***5.2.6 National Housing Strategy***



The CESCR in its General Comment No. 4 on the right to housing considered the adoption of a national housing strategy an invariable requirement from every state regardless of its available resources (CESCR 1991). In addition, the Egyptian 2014 constitution mandates the adoption of a national housing strategy as well. The Egyptian government has worked with UN-Habitat on the drafting of the strategy, which was released in 2020.

The new housing strategy seeks to guarantee the right to housing and to solve problems in the housing sector through four dimensions and one supporting dimension (Sims et al., 2020).

The four dimensions are concerned with housing policies in the areas of urban development, existing housing stock and vacant units, low-income housing and residential areas' goals and sustainable development. The supporting dimension is related to institutional sustainability and knowledge.

Under the first dimension, tenure is recognized as a way of empowering residents of informal areas through admitting their housing into the formal sector, which leads to a win-win situation, where the residents of informal areas can settle down and invest in their housing, and the state “regains its constitutional rights.”

In addition, regulating tenure is one of the recognized policies addressing the existing housing stock. The vision is that facilitating the granting and registration of titles allows for transfer of ownership in the secondary market, using housing as a collateral for loans and opening the door for real estate loans as a mode of financing housing. The policy of regulating tenure, is supposed to take place through formalizing titles of government housing units built over the last 45 years, granting land titles to state owned land in informal settlements, which allows for selling land plots for the purpose of building housing and finally launching a national program to register formal and informal residential properties.


<b>Housing Policies addressing Urban Development Areas</b>	<b>Housing Policies Addressing Existing Housing Stock &amp; Vacant Units</b>	<b>Housing Policies Addressing Low-income Housing</b>	<b>Housing Policies Achieving Residential Areas' Goals &amp; Sustainable Housing</b>
Upgrading Urban Areas	Maintaining the existing stock & real estate resources	Provide Public Lands for Housing	Achieving social justice /equality
		Provide Private lands for housing	Achieving participation & empowerment
Economic & Social empowerment of the residents of informal and degraded areas & the role of civil society institutions	Improve market for rent	Subsidized rent	Increasing economic efficiency in low-income housing areas
		Supporting citizens, not housing or land	Innovative Housing
	Adding vacant & closed units into the housing market	Relieved standards for affordable housing	Achieving sustainable urban form
		Financing affordable housing	Integrating uses & maximizing population density
	<b>Regulating Tenure</b>	Increasing the supply of private sector affordable housing	Providing housing that takes into account the uniqueness of the society
			

Figure 7 Dimensions of Housing Policy.

Adapted by researcher from: Egypt's Housing Strategy (2020)

To implement this policy the existing housing units should be legalized, starting with public housing units. The policy is considered a short and medium term one. The required interventions are legal, administrative and procedural in nature. The responsible entities are primarily governorates, the Real Estate Registration Office and landowners or holders.

Although the strategy recognizes tenure as an important policy to deal with the existing housing stock, it only focuses on the aspect of formal tenure rights through formalizing the informal. However, it should be noted that unless social dialogue is carried out and the opinions of residents are taken into account this process might affect perceived tenure security negatively as many households may be put between the choice of registration or eviction. Nonetheless, the step of recognizing tenure as a pivotal policy in the new housing strategy is a step forward considering that Egypt's Vision 2030 did not recognize any indicators related to tenure in the urban development dimension.

Another national strategy which deals with the right to housing is the National Human Rights Strategy (2021). This strategy does not recognize the lack of tenure as a weakness nor as a desired outcome. It also fails to make reference to the illegality of forced evictions. Instead, its focus is mainly on increasing the available housing for low-income residents through the increase of government spending on social housing, eradicating the problem of slums, increasing the percentage of rent as a more affordable option in housing, and dealing with bad practices by residents of social housing.

Thus, the duplication that exists in laws and institutions dealing with housing, also exists in national strategies. While the housing strategy drafted in cooperation with UN-Habitat seems broader and deals with more diverse problems leading to the housing crisis, other national strategies reflect that the Egyptian government's policies still focus primarily on building new cities in the desert and eradicating slums. These two policies may have a negative influence on security of tenure, specifically in its informal and perceived aspects as well as its human rights perspective, which focuses on dialogue, cultural adequacy and illegality of forced evictions.

## 5.3 Policies Affecting Security of Tenure

### 5.3.1 Land Policies

As the UNDP notes, the discussion on housing rights is strongly related to the discussion of land rights. This thesis discussed the different types of land ownership in the contextual framework. Regarding land policies and their effect on housing, an expert on land tenure in Egypt started by a brief account of the different types of land ownership. In her opinion, what many foreign researchers find difficult to understand is that the state owns privately the majority of vacant lands, because it seems like an oxymoron that public authorities have private property. She considers this a historical heritage, where the Family of Mohamed Ali used to own all the lands. She continued that among the different land tenure typologies, private ownership by individuals constitutes the smallest percentage (Interview 6, Oct 26, 2022, Housing academic, Cairo).

In my interviewee's opinion, there are new developments in the economics of the public sector which have not yet been adequately discussed.

*"Today's "public" is not of the 1960's." (Interview 6, Oct 26, 2022, Housing academic, Cairo)*

For example, New Urban Communities Authority (NUCA) as a public entity not only has an independent budget, but as of 2009 has a financial arm which is El Taamir Securitization. This trend raises accountability issues since these entities receive public money from the budget, but the contracts they make are considered private, so the public has no access to information, since the contracts usually include non-disclosure agreements.

For some researchers (Mokhtar, 2017; Shadow Ministry of Housing, 2013), government ownership of lands leads to government speculation in the market, which raises the price of lands, making them unavailable for the middle- and low-income members of the society; thus, pushing them towards informality which affects their tenure insecurity. However, my interviewee was of the opinion that there exists a correlation between the ownership of the land and the prices of housing but it is not the determinant variable; the main problem is that the real estate market is dysfunctional. She counted the causes of this market failure; the majority of land is not serviced, there is a skewed distribution of the population, the nature of the available land is not always suitable for housing, the registration fees are excessive. Most importantly, there is no free

competition or free access to information, thus raising the transaction costs (Interview 6, Oct 26, 2022, Housing academic, Cairo).

*“If this is the foundation of the land market, it will surely affect housing.” (Interview 6, Oct 26, 2022, Housing academic, Cairo)*

In her opinion speculation is not always a bad thing; the problem is if it is not rational, and the market is not regulated properly.

Another problem often quoted in the context of the land and housing is the existence of a mismatch between housing demand and supply. My respondent was of the opinion that there is nothing wrong with the demand side, but there is an over-supply of unaffordable or affordable but inadequate housing.

### ***5.3.2 Policies Dealing with Slum Areas***

The Egyptian governments' attention towards informal areas was drawn primarily after the Doweika rockslide in 2008 which caused the death of around 119 informal settlers (Abouzi, 2023). Since then, the ISDF has put a plan to deal with informal settlement, especially those in high risk.

An important set back to informal housing is that it lacks security of tenure, which puts its residents at risk of losing their housing if their negotiations with the government fail (Farha, 2019). The special rapporteur expressed her appreciation for the government's attempts to reduce the number of slums, especially unsafe areas, but was concerned that the government was excessively using relocation to remote areas rather than other more recommended policies, such as in situ upgrading programs, financial compensation or relocation to adjacent areas. Whatever the adopted policy it should be carried after consultation with the residents. In its response, the government added that already by 2019 the number of residents of unsafe areas had dropped by 35% (The Government of Egypt 2019). The government of Egypt maintained that relocation was always to a new location within the same city, as will be discussed shortly.

Although Egypt has not had a policy of mass demolition of slum areas, the Special Rapporteur expressed her concern that in 2017 the government started an initiative to remove squatters from state-owned land, which may be harmful to security of tenure if it becomes a trend. The government insisted that the mentioned campaign was aiming at vacant buildings only (The Government of Egypt 2019).

One of my interviewees pointed out that the ISDF has different scenarios in dealing with informal areas but she was not sure whether some kind of law or regulation governed these scenarios or whether they depended on the negotiations with the residents in each case (Interview 1, September 11, 2022, Housing academic in Cairo). Another interviewee believes that some kind of booklet exists, which is based on the different scenarios reached by the negotiations in Maspiro Triangle, called the relocation booklet (*kotayeb e'adet al taskin*) but the booklet is not published and up till now she has not been able to find it (Interview 4, October 2, 2022, Researcher and activist, Cairo).

In its response to the UN special rapporteur the Egyptian Government pointed out several options given to the residents of developed areas (The Government of Egypt 2019). First, they may be relocated immediately to a unit in a newly developed area within the same city. Second, they may receive a sum to secure temporary housing until they can relocate to their homes after development. Third, they may negotiate financial compensation.

### **In-Situ Upgrading**

The UN special rapporteur visited an in-situ project in Tal-Alaqqrab, which she considered a promising approach (Farha, Visit to Egypt: Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living and on the Right to Nondiscrimination in this context 2019). She was told that many residents of Maspiro Triangle also preferred to remain in situ, but it was unaffordable for most of them and those who were able to this opportunity complained that they were not consulted in the location or design of their units.

In its response, the Egyptian government insisted that in situ relocation is always an option in all projects, where among the given options residents may take a financial subsidy to secure temporary housing until they can relocate to the neighborhood after its development (The Government of

Egypt 2019). The government pointed out that the residents were consulted throughout all steps, starting from the choice to relocate or to choose in situ until the choice of the different units; their design and sizes.

One interviewee told me that in situ projects are the most recommended policy by experts to governments because there are many social and economic benefits for the residents if they remain in their neighborhoods (Interview 1, September 11, 2022, Housing academic in Cairo).

### **Evictions**

The number of reported cases of forced evictions are an important indicator recognized by OHCHR for measuring security of tenure (OHCHR 2008). Under Egypt's international obligations evictions may only be used as a last resort and should only be carried out after proper notice, consultation with the residents and with alternative new housing.

In her report on her visit to Egypt, the UN Special Rapporteur was informed that in most cases these safeguards were not provided. Although the building law requires written notice, affected residents reported they were only very shortly and orally noticed. The offered compensation was not adequate and the offered relocation sights were too remote from the original neighborhood. In its response the government pointed out that compensation was adequate but some residents were trying to maximize their gains (The Government of Egypt 2019).

*“Thank God in Egypt no one stays on the street. We cannot say we have forced evictions. Everyone takes some kind of compensation; people are either moved to new homes or receive damages.” (Interview 1, September 11, 2022, Housing academic in Cairo)*

When I asked my fourth interviewee about the issue of evictions, her opinion was that of course there are forced evictions;

*“Not everyone was compensated. What people say about this matter, only took place in Maspiro Triangle, in other informal areas many were not compensated in any way.” She recalls, “I was working with 30 families in ... only 15 of them were compensated or moved to new housing. The others were left on the street. One old lady died on the street, because the weather was cold. It*

*was only with very strong mobilization that this problem was solved.” (Interview 4, October 2, 2022, Researcher and activist, Cairo)*

According to her, former Minister Laila Eskandar was a strong believer in social dialogue and during her tenure in office the negotiations which took place with the residents of Maspairo triangle led to three scenarios, compensation, in situ replacement and alternative housing. However, after she left office many things changed, the development plans of the area were changed and the project was given by direct agreement to a certain developer. In addition, the percentage of rent was changed so only 900 hundred families were able to go back to the neighborhood. Since many plans were being changed, many residents found it safer to take compensation and leave. In order to be relocated to social housing, the residents had to prove that they would be able to pay the rent and since many of the residents in informal areas have informal jobs, they were not able to prove this. In addition, households with a single income earner, such as widows or divorced women, have official incomes lower than the required rent and some of them ended up on the street until strong civil mobilization found them homes. The families who wished to relocate had to pay a security deposit for the lease of the new units of 4000 EGP in addition to gratuities to law enforcement officers, which some households could not afford. In her opinion,

*“The problem is not just in the existing laws, there is a problem with law enforcement; the civil servants who carried out the survey of households in informal areas were accepting high gratuities (could reach 10000 EGP) to acknowledge which households are really living in the neighborhood and have a right to housing units in the relocation sights.” (Interview 4, October 2, 2022, Researcher and activist, Cairo)*

### **5.3.3 Expropriation for Public Interest**

For several institutes and researchers working in the field of urban development and housing rights, the undergoing development projects are relevant to the Master Plan of Cairo 2050 (*mokhatat al qahera 2050*). According to TADAMUN, not much information is available regarding the plan, which started off in 2006 by a Ministry of Culture plan on the development of old Cairo called “Reconsidering Al-Fustat” (Tadamun 2014). By 2010 the General Organization for Physical Planning (GOPP) issued the specifications for a consultancy agreement on preparing a plan for the development of the area of old Cairo. The winning plan involved the removal of several informal



areas, which raised many concerns and objections, and thus, was put on hold after the 2011 revolution. However, in 2012 the winning consultancy company claimed that the project was being revisited in light of undergoing social dialogue but with no further details regarding the type or scope of this social dialogue. The current Cairo Strategic Urban Development Vision includes the vision with no further information as to how it may be implemented and how the informal settlements in the area will be treated.

The wide use of expropriation for public interest may not be adequately understood without reference to the building law No. 119 for the year 2008, which as discussed in the contextual background regulates the relation between central and local authorities in matters related to planning and replanning of urban space. It is important to understand that in addition to the already wide powers enjoyed by central authorities in this regard, whatever limited powers are enjoyed by local authorities are further curtailed by the fact that no local authorities' elections have been carried under the Local Administration Law No. 43 of 1979 since 2008.

One interviewee drew my attention to the fact that the ISDF has become now the Urban Development Fund, which indicates the state's interest not only in developing informal areas or slums but in developing urban Egypt in general. Such development projects, as will be seen in this section, usually result in the expropriation of private property (Interview 1, September 11, 2022, Housing academic in Cairo).

The Special Rapporteur pointed out that several laws allow for expropriation of private property, such as article 3 of Emergency Law 162/1958, Law on Desert Land 143/1981, Law 147/1957 and Law on Local Government 43/1979 (Farha, Visit to Egypt: Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living and on the Right to Nondiscrimination in this context 2019). In its response to the report the government of Egypt indicated that the referred to articles in the Emergency law are no longer applicable since they violate the 2014 constitution (The Government of Egypt 2019).

The most general law in this regard is Law No. 10/1990, which regulates appropriation for public interest. The law has been amended in 2005, 2018 and 2020. According to one of my interlocutors,

even those residents who enjoy formal titles do not feel secure because in the face of the development projects under the Cairo 2050 Urban vision, the state is using expropriation for public interest to carry out its projects. She indicated this situation of skepticism about any development activities taking place in any neighborhood, rich or poor saying,

*“Once a road is paved in their neighborhood, my relatives call me and ask, do you think the government is intending to evacuate us from our homes?” (Interview 4, October 2, 2022, Researcher and activist, Cairo)*

The strong network of roads is something that Egyptians desire to ease their movement and cure traffic congestions but it has costed some neighborhoods partial demolitions of their homes, such as the adjacent houses to the ring road (El Baradei, 2022) or even movement of complete housing blocks, such as the residential buildings in district six and seven in Nasr City, which are not informal but officials claim they are in need of restoration and the Cairo governorate will undertake its development and replanning. It should be noted however, that many researchers, including one of my interviewees (Interview 4, October 2, 2022, Researcher and activist, Cairo), are convinced that these development projects and their impact on the housing and other livelihoods of Cairenes specifically was intended a long time ago with the launch of the Cairo 2050 urban vision.

Among the affected neighborhoods is al-Waraq island, an informal settlement in a very strategic location on the Nile. In 2017, the residents were faced with security forces supervising execution of demolition of 700 houses without prior notice. The action was halted after protests by the residents resulting in one death, several injuries (among residents and security forces) and several arrests. In 2018 the Prime Minister issued a decree No. 20 on the establishment of a new town on the island and decree No. 49 on expropriating a 100 m strip of the island bordering Rod el Farag Bridge. The expropriation is expected to affect 20,000 residents and the residents told the special rapporteur they were unsatisfied with the offered compensation of 1,400 EGP per square meter, which they considered low for such a strategic location (Farha, 2019). Alternatively, the residents were offered to relocate to distant neighborhoods.

The recent amendments to the law on expropriation for public interest, issued in 2018 and 2020, respond to the change in the constitutional text, which requires under the 2014 constitution that the compensation be paid in advance to the property owners (Shawkat, 2021). The amendments

were also recommended by the World Bank to increase Egypt's ranking on the Doing Business Index, specifically under the indicator of land tenure. The amendments deal with issues such as, paying the compensation in advance, hanging a copy of the decree of expropriation on the property to ensure proper notice, adding a 20% increase in the compensation for moral damages caused by the expropriation, and an article requiring the competent government agencies to deposit the compensation in a bank account with interest, so that if the payment is delayed interests are added to the deposited compensation. However, in practice, persistent setbacks exist (Shawkat, 2021).

For example, in some cases bridges are built right next to residential buildings; although, there is no need to expropriate property in this case, the units in the lower stories of the building below the bridge become inadequate for housing but the law does not cover this case and the residents are not eligible to receive compensation. In other cases, the government claimed that since the buildings were violative, they did not deserve compensation according to the law. Instead, the government offered a fixed compensation of 40,000 EGP for every habitable room of the unit. Further, in other cases the residents complained that the compensation was lower than the prevailing market prices or that they were not paid in advance in contradiction with the new amendments. As with other policies affecting security of tenure, here too a major problem is that no consultations are made with the residents and no social dialogue is carried out regarding planning and development projects.

Cairo is probably the most affected and talked about governorate when the issue of expropriation for public interest is raised but it is definitely not the only affected governorate. I interviewed a citizen whose family lives in one of the villages of Lower Egypt (Interview 10, November 16, Citizen, Alexandria). She recalled that more than a year ago, the government decided to extend the Mahmoudeya Axis project, a road expansion project on the sides of Mahmoudeya Canal, which starts in Alexandria to connect several villages of Lower Egypt. Government Agencies calculated 50 m from each side of the canal and asked residents who own any property in these 50 m to remove their own buildings. When the affected residents tried to negotiate with the government, they found that negotiations were not possible and found out that before the government had approached them, it had raised an action against them claiming that they were transgressing over state-owned land. She says some of the buildings were violative, but many others were private

lands for hundreds of years and have always been family houses for as long as their residents remember. Some people tried to protest but were arrested. The government was now asking people to demolish their own buildings because when the government carried out violations' removal campaigns itself, many problems arose from the confrontation with the families.

She recounts how some of the buildings were removed totally and in others a cross-section was removed. She knows two of the affected families. First, her cousins have a multi-story building which contains some commercial activity units and other residential units. They were told that they needed to remove 7 m from the depth of a total of 20 m. The building cost them millions and they insisted that it was not built on state land and that they had registered it. They sought the help of consultants and special machinery was needed to remove the 7 m and the remaining 13 m needed restorations in order not to collapse. Second, a peasant who works in their farm, was also affected and sections of his simple home needed to be removed. I asked if compensations were paid, she said the news which was circulating was that if the sections removed were bathrooms, the residents would be compensated by a sum of 70000 EGP, otherwise they were not to be compensated. She continues, that she was not sure if these sums were later paid or not. What she finds perplexing is that after all these losses, the project has not been carried out. She said,

*“Now this part of the village looks like a war scene.” (Interview 10, November 16, Citizen, Alexandria)*

The problem of just compensation in cases of expropriation for public interest is not specific only to the Egyptian case. In the United States, in which just compensation is constitutionally required by virtue of the 5<sup>th</sup> Amendment, there has been a long debate about the applicable test by the courts in this regard. In his famous article “Property, Utility, and Fairness: Comments on the Ethical Foundations of “Just Compensation” Law”, Frank Michelman argued that in such cases efficiency (public interest outweighing private harm) should not be the only concern, but the fairness of the act plays a great role in determining whether it should take place in the first place and the amount of a just compensation if it does (1967). The problem with the fairness test is that it is hard to be applied by the judiciary. He then suggests that both the legislative and the administrative authorities should assume their roles in this regard. Legislative texts may determine a way to

calculate just compensation in certain cases and the administrative authorities should be trained to weigh different policies available to them in light of the moral loss they may cause.

In light of these principles, one may argue that first, sufficient consultations with stakeholders should be made, and that where possible the administrative authorities should avoid measures, which may be seen as arbitrary by the citizens. Again, this calls for the importance of restoring the role of elected local authorities in the process of planning and replanning urban spaces.

#### ***5.3.4 Social Housing Programs***

In 2014 a Social Housing Fund was established by virtue of Presidential Decree Law No. 33 for the year 2014. The Fund relies on a loan from the World Bank to provide housing which is affordable for different income levels. Despite requests from the World Bank to provide the housing through private projects or a public private partnership, the government insisted on maintaining a not-for-profit character for the established projects, which the UN special rapporteur considered good news (Farha, 2019). Applicants to the fund (individuals earning less than 3,500 EGP or couples earning less than 4,500 EGP) receive a subsidized mortgage for a term ranging between 10 to 20 years after they deposit 15 to 50% of the unit price. Since banks are reluctant to lend those in the lowest income brackets, beneficiaries are usually in the second- and third-income quintile. The program encouraged accessibility to women, who in 2018 constituted about 20% of the beneficiaries (Farha, 2019). This is a good step forward since among the OHCHR indicators of security of tenure is Proportion of women with titles to land or property (OHCHR 2008). In addition, 5% of the units were reserved to people with disabilities. Some of the problems is that those working in the informal sector are not able to benefit from the program, since the banks usually require an employment contract among the required documents.

The response by the government indicates that a recent amendment allows for using documents by accounting offices to prove income, and that as a result the self-employed beneficiaries increased to 12.5% (The Government of Egypt 2019). Also, the ownership scheme may not be affordable to many, so now the program supports lease for the units, but only about 2% of the units are offered for lease (Farha, 2019).

I asked one of my interviewees about the prospects of Public Private Partnership (PPP) in the field of social housing. She explained different modes of PPP in this regard (Interview 6, Oct 26, 2022, Housing academic, Cairo). First, there was the agreement between the state and the development company by Ahmed Bahgat regarding the project in Dream Land. Here the government provided the land and the private sector had the responsibility to service the land and construct the infrastructure and assign a certain percentage of the housing units for affordable housing projects. Second, there was the deal with Talaat Moustafa Group in Madinaty, where the agreement was that the government provides the land for a low price, the private sector provides infrastructure and services, and the government receives back a percentage of serviced land to build social housing. The latest PPP agreements are between the state and real estate management companies, rather than building contractor companies, where the rights of usufruct are given to the private company, which contracts with real estate contractors and commercial businesses to prepare the land for industrial, touristic or housing projects.

Her evaluation of the PPP system is that the deals have been successful in the implementation of the projects, but they are not near to solving the problems of housing supply because the project results are always skewed towards luxury housing. She continued,

*“Given the new changes in the economics of public entities, we should reconsider the “public” in PPP agreements.” (Interview 6, Oct 26, 2022, Housing academic, Cairo)*

#### **5.4 Access to Justice**

The OHCHR sets a number of indicators of security of tenure related to remedies in cases of eviction (OHCHR 2008), such as the duration of adjudication, the proportion of legal appeals, the number of legal procedures seeking compensation following evictions and proportion of displaced or evicted persons benefiting from resettlement.

The judicial entity which deals with the legality of executive orders of eviction is the Egyptian State’s Council (ESC). I reached out to a commissioner in the Council (Interview 5, Oct 10, 2022,

Judge, ESC), he told me that no one judge can give a full account of cases related to the right to housing because several circuits deal with it. In addition, no judge is allowed to talk about cases he is currently viewing. As I enquired about the quantitative data regarding the number of cases and duration of adjudication, etc., he pointed out that all he knows is that the duration of all cases has decreased, since the establishment of an “Achievement Unit ” (*wehdet al ingaz*), which now follows up on different quantitative aspects, such as the duration of adjudication. I reached out to other connections, and I was successful in reaching a judge who works in the Achievement Unit. In a phone call, he indicated that up till now no one can contest the lack of right to housing, such as in asking for a housing unit. I explained to him that I was aware of this fact but since the ESC has jurisdiction over annulment of government decrees, it does oversee eviction, expropriation and removals of building violations decrees. He agreed with me on the existence of such cases but pointed out that these cases were scattered over different circuits, so it was not possible to separate them from the other cases.

*“I have aggregate data regarding the number of cases or the average time for adjudication which has dropped drastically from around a year to around 6 months. However, I don’t have a way to separate the data according to the types of cases. Maybe the technical office (al maktab al fanny) of the president of the ESC can help you with indicating the certain circuits dealing with the issue you are interested in, then they must officially allow me to share this information with you.” (Interview 7, Oct 29, 2022, Judge, ESC)*

I sought the help of another judge who could connect me to the technical office. He insisted that the type of data I needed was not possible to secure. I asked him if it was possible to have numbers for one circuit, let’s say that which works on decrees of removals of building violations in just one governorate. He explained that even that was not possible because such districts deal with all kinds of violations, not only violations of residential buildings (Interview 8, Oct 31, 2022, Judge, ESC). Finally, he asked me to share with him my IRB approval letter and consent form so he can share it with someone from the technical office to see if a meeting was possible. In about a week, he put me in contact with a judge in the technical office, who instructed me to write a formal request for data. I did so but I did not receive a response up till now.

In summary, the ESC does have quantitative data regarding its cases, but this data is not yet separable according to their subject matter. Thus, the quantitative indicators on access to justice may be difficult to assess at the moment. Therefore, instead of relying on quantitative data from the ESC, I will rely on qualitative content analysis of court decisions on housing and tenure issued by the Supreme Administrative Court of the ESC.

The UN special rapporteur indicated several concerns regarding the availability of remedies. Such as the unavailability of administrative petitions to affected citizens, the unaffordability of hiring lawyers and seeking judicial remedies for low-income citizens, the fact that no court order is required before development-based evictions and usually no written notice is required, which means that by the time a court appeal has been issued regarding the legality of the administrative decision, the eviction decision may be already carried out, and finally human rights' lawyers reported to her that they were facing different pressures from the government which were obstructing them from carrying their role (Farha, 2019).

In its response the Egyptian government pointed out that written notice was required by both the building law and the law on expropriation (The Government of Egypt 2019). The decrees must be issued in the Official Gazette and may be contested in court within 60 days. In addition, if necessary an urgent appeal may be filed to suspend the execution of the administrative decree. In the cases of expropriation, the government insisted that written notice is available and that administered petitions are possible within 15 days of notice, which may be followed by a court action before the administrative judiciary if the citizen is not satisfied. Regarding the unaffordability of attorney fees, the government indicated that the law mandates the appointment of pro bono lawyers if the citizen does not afford hiring one.

#### ***5.4.1 Cases before the Ordinary Courts***

As mentioned before, cases before the ordinary courts are mostly between two private individuals or entities such as landlords and tenants. Many cases have been brought before the courts in relation to old rent laws and the new rent law. However, since both laws fall outside the scope of this study, I will not analyze court decisions by the ordinary courts.

#### ***5.4.2 Cases before the Administrative Courts***



Appeals against government decrees which might affect the right to housing, such as eviction or expropriation or removals of building violations, are raised before the Court of Administrative Justice of the Egyptian State Council. Decisions by the Court of Administrative Justice may be appealed before the SAC. According to one interlocutor (Interview 5, Oct 10, 2022, Judge, ESC), there are several circuits which deal with the right to housing, such as the circuit of rights and freedoms, the circuit on new urban settlements and the circuit on removals of building violations (*ezalat*).

When it comes to the duration of adjudication, he explained that the last two years have witnessed an improvement in the length of procedures. In the last two years, a total of about two million cases (in a variety of administrative cases not in housing issues specifically) have been decided by the ESC. If the claimants are afraid that the administrative agency might take an action which may cause irreparable harm before the court issues its decisions, they may apply for interim measures (in which the court orders the administrative agency to hold all its actions until a final decision is reached). The State Commissioners are now required to finish their reports in four weeks maximum so that the judges may view the case. Another interviewee mentioned that she recalls that the case on the informal area of Ramlet Bulaq was decided in about 14 months (Interview 4, October 2, 2022, Researcher and activist, Cairo).

I checked the decision on the Qarsaya island, an informal area, and found the following timeline:

1. May 2008: Claimant filed his complaint
2. November 2008: Decision by the Court of Administrative Justice
3. December 2008: Filing the appeal before the SAC
4. January 2009: Submission of the report of the State's Case Authorities
5. March 2009: Submission of the report by the Circuit of Appeals of the SAC
6. November 2009: Submission of written memorandums
7. January 2010: Further submission of written memorandums
8. February 2010: Issuing the final Decision by the SAC

Thus, in this case adjudication lasted around 21 months.

Notably, there is a problem in the execution of court decisions. Naturally, it is the executive authority which carries out these decisions. Legal studies show that the executive authority avoids execution of some court decisions through delayed, partial or non-execution of court decisions and relies on different reasons, such as the effect of execution on public interest and security (Hanoush, 2016).

According to an ESC judge, the problem is prevalent in all judicial entities and is not strictly a matter of legality but also a question of executive discretionary power when it relates to the method and timing of execution, to questions of availability and distribution of resources, impossibility of execution, etc. These are all policy issues rather than legal issues, which are usually considered outside the jurisdiction of the courts (Interview 5, Oct 10, 2022, Judge, ESC).

I asked another interlocutor about the impact of the court decision issued in favor of the inhabitants of Ramlet Bulaq and her response was that it only gave the inhabitants relative power in their negotiation with businessmen who have interest in the development of the area and were able to receive compensations from them to seek housing elsewhere (Interview 4, October 2, 2022, Researcher and activist, Cairo).

### **Acknowledged Principles of the Right to Housing in Egyptian Administrative Courts' Decisions**

The famous American jurist and Supreme Court judge Oliver Wendell Holmes once claimed that the law is what the judge says it is; law is not built on logic, it is constructed on the policies which the judiciary seeks to uphold in a certain society (Holmes 1897). Therefore, it is important to understand how the Egyptian Administrative Courts applied the right to housing.

When it comes to the SAC there are many cases related to housing. SAC decisions encourage titling of housing. It held that the right to housing is a constitutional right. The state must guarantee it. If the citizens seek to guarantee this right by legalizing their positions according to the laws and regulations, their efforts should be met by acceptance of the state (Appeal No. 33272 & 37114, Judicial Year: 55, issued on 7/7/2012).

The SAC in several cases tries to limit the authority of administrative agencies in removing building violations. For example, it differentiated between different violations on agricultural lands. It held that the violation of building on agricultural land is a crime according to the law and needs to be determined by a criminal court decision, thus such violations may not be removed by an administrative agency unless a criminal court issues its decision (Appeal No. 1970, Judicial Year 45, issued in 13/6/2001). Also, if the land proves to be nonagricultural, the decision to remove buildings must be annulled (Appeal No. 6512, Judicial Year 46, Issued in 11/12/2007). Moreover, it held that decrees to remove building violations must be issued on a case-by-case basis; the competent administrative authorities may not issue a decree allowing the removal of building violations that take place in the future (Appeal No. 33631, Judicial Year 56, Issued in 23/3/2016). In addition, the state should not refuse to extend utilities if the agency did not pursue criminal proceedings against the violator (Appeal No. 40571, Judicial Year 43, Issued in 28/12/2002).

As explained above, there has been a trend to remove informal areas for gentrification purposes. The SAC has generally stood against such trends. In its decision regarding Al-Qarsaya Nile island, it held that the island which was declared a natural reserve is best preserved by its inhabitants who work in agriculture and fishing. The government plans to give it to a Saudi investor to establish a touristic project is not considered a public interest worthy of protection more than preserving social peace, preserving the right to housing and national security, which is achieved by securing the relation between citizens and their homeland materially and morally (Appeal No. 5730 & 6585, Judicial Year 55, Issued on 6/2/2010). In the opinion of the court realizing profit takes place after securing public needs. When the government opposed the position of the court on the ground that the court was intervening in policy issues, the court insisted that if the government uses the law to achieve a mean not stipulated (explicitly or implicitly) in the law the government decree is ultra vires, and the matter is not a matter of policy. In another case the court held that the numerous cases of removing residential buildings, which were established over the years with knowledge of state authorities, makes the public interest in preserving social peace more important than the public interest of preserving state ownership of lands (Appeal No. 26297, Judicial Year 51, Issued on 8/5/2010).

The court also issued several decisions regarding housing provided by the state. State authorities responsible for the right to housing should guarantee it according to the principle of equality and equal opportunity (Appeal No. 33272 & 37114, Judicial Year: 55, issued on 7/7/2012). After some hesitation the Supreme Administrative Court in its decision on 11/2/2017 finally held that decrees issued by administrative agencies to determine the citizens who have a right to buy or occupy government housing are subject to the supervision of administrative courts.

Of course, the SAC also protects the right of the state to safeguard its properties. Therefore, *Wada' a alyyad*, ownership by prescription (literally meaning laying hand), over state-owned land is illegal. Also, sheltered housing may be used by citizens during disasters but when the causes are removed the state has the right to remove the temporary housing from the state-owned property and the residents have no legal right to remain in the property (Appeal No. 6512, Judicial Year 46, Issued in 11/12/2007). In its decision on 22/3/2014 the Supreme Administrative Court held that the right of administrative agencies to remove building violations does not expire by prescription even if the criminal suit expires by prescription. Also, citizens have no right to acquire state-owned land for the purpose of enlarging the inhabited land pieces and establishing new agglomeration (Appeal No. 33272, Judicial Year 55, Issued in 7/7/2012).

In the legal struggle by the residents of Izbit Khayrallah which started in the 1980s and continued till the end of the 1990s, the issue of adverse possession was also tackled (Tadamun 2013). The struggle started when security forces tried to execute an eviction order against the squatters on the state-owned land. The residents filed a suit before the ESC and the court ordered an interim measure holding the execution of the eviction decision. However, the court refused to order the sale of land by the Cairo Governorate to the informal settlers. The settlers filed an appeal before the SAC, which held in 1999 that although adverse possession was not legal on state land, the state may decide to sell the land to the adverse possessors. The court held that the settlement, which was growing under the nose of the government, and the safety and security of the citizens was an interest more worthy of protection than that of removing building violations. However, in this case too the execution of the court decision was ignored by the Cairo governorate, which claimed that no sale of land would be possible before the entire neighborhood was replanned and later it offered

to sell it for extremely high prices, given the strategic location of the neighborhood, which the residents could not afford.

In a recent decision issued in 20/1/2021 the court considered the law on reconciliation of building violations to balance the interest of the state in containing informality and the interests of the individuals to safeguard their housing.

#### ***5.4.3 Cases before the Supreme Constitutional Court***

It should be noted that, unlike the US Supreme Court for example, the SCC is not a higher appeal court but rather has the jurisdiction of reviewing legislations and regulations to guarantee their conformity with the Egyptian constitution and to resolve conflict of jurisdiction between the ordinary and administrative courts. Thus, it has no jurisdiction in determining whether a specific individual has a right to housing or not or whether a decree issued by a government agency affecting the right to housing is legal or not.

In her report the UN special rapporteur pointed out that up till now that the SCC has not yet viewed any cases related to the right to housing as stipulated for under the 2014 constitution (Farha, 2019).

But according to the Egyptian government, the SCC has ruled on several cases which have an effect on the right to housing long before the issuance of the 2014 constitution. Also, the SCC has recently ruled that Article 18 of Law no. 136 on the Relationship between Owners and Tenants was partially unconstitutional and that article 372 of the Penal Code which states that occupation of state-owned land may result in criminal penalties was also unconstitutional. (Case No. 11. May 5, 2018” (The Government of Egypt 2019).

The SCC website has a database of all its decisions since its establishment. I conducted a search on the website with the keywords “the right to housing”, “housing” and “housing tenure” and all the results it yielded were either related to tenant landlord relations or to securing housing to the divorced wife and children as an element of the alimony.

A closer study of the two cases mentioned by the Egyptian government in its response reveals that although they may have an effect on the right to housing, the court did not rely on the right to housing as a constitutional right in its decisions. For example, a part of article 18 of law no. 136 was held unconstitutional based on violating the right to property of landlords not the right to housing tenants because it allows for inheritance of lease contracts in units which are used for commercial activities rather than for housing purposes. Also, article 372 of the penal code was declared unconstitutional by the SCC along with other articles but not in relation to their violation of housing rights but rather for procedural irregularities in the issuance of the law which led to the amendments of these articles.

These remarks are also valid for cases viewed before the issuance of the 2014 constitution. In general, while the SAC has been skeptical about Egypt's economic reforms, the SCC is known for its liberalism and being influenced by the jurisprudence of the American Supreme Court, (Odeh 2011). Thus, when the new rent law was contested, the SCC stood with its liberal trends upholding the law. In case number 177 for the 22<sup>nd</sup> judicial year, the Supreme Constitutional Court upheld the constitutionality of this law. It refused the claims that the law violates article 32 of the 1971 constitution which stipulates that private ownership has a social role and article 40 on equality. The court held that since the law allows for gradual change from the old rent laws to the new law it has not violated article 32. Moreover, equality in article 40 only prohibits arbitrary discrimination between citizens, it does not prohibit the application of different laws on citizens whose legal status is different from others.

In brief, while the Egyptian government is right about the existence of SCC decisions which may affect the right to housing, the UN special rapporteur is also right that the SCC has not issued decisions in which it relies on the right to housing as a constitutional right.

## **5.5 Evaluation of the Advantages of Formal Tenure**

As mentioned in the literature review the property rights thesis argues that several positive outcomes may be achieved if we grant tenants formal titles to their homes. Among these outcomes is an increase in housing quality and access to credit. While research in developing countries has

found an increase in housing quality to be related to tenure security (formal or perceived), no strong effect has been found on access to credit (Van Gelder, 2008; Porio & Crisol, 2004). In this section, I present results from Egypt on the effect of tenure on housing quality and access to credit.

### 5.5.1 Improving Housing Quality

According to the 2017 census 75% of regular buildings are in a good condition and require no renovations, 15 % of buildings require minor renovations, 6% of buildings require medium renovations, 3% of buildings require major renovations and 1% must be demolished.

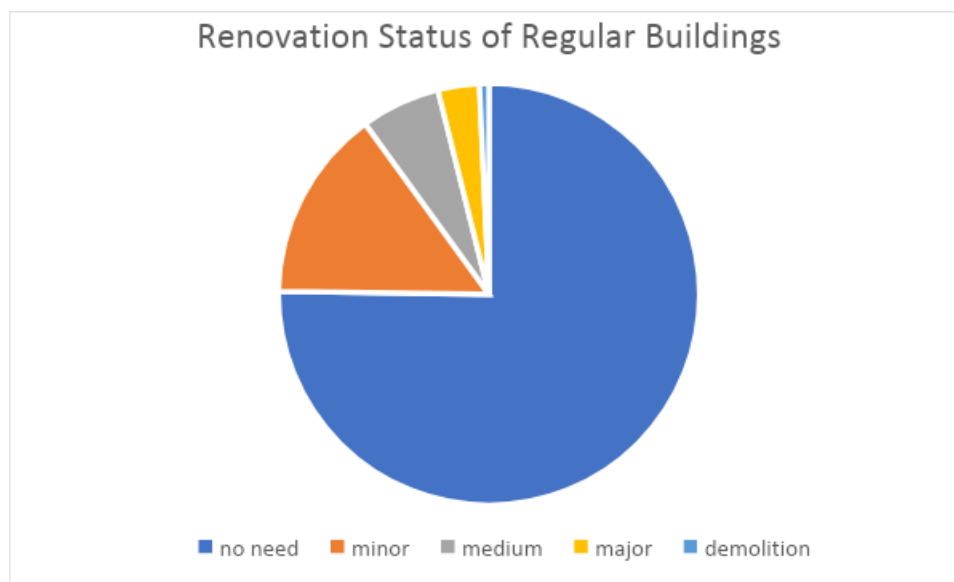


Figure 8 Renovation Status (Pie Chart).

Adapted by researcher from the data contained in the 2017 Census

Thus, in Egypt where 40-60% of the housing is not formally registered there seems to be no strict correlation between formal registered titles and the quality of buildings as reflected in their need for restoration. This has been explained by researchers by the fact that very often the housing is built by the individuals who intend to use it personally or for their family. Therefore, they make sure that the building standards are safe. The informality of the housing may be due to other reasons which do not obstruct its safety, such as the lack of a building permit, violation of building heights, building on agricultural land, etc.

In the peculiar case of old rent housing, secure tenure has an adverse effect on the quality of buildings. Old rent constitutes about half of the rental market. Although, it assures the residents high tenure security, since the rents are very low and the rents are for life, it has led to the deterioration of buildings. Since landlords do not receive enough money in rent to carry out the necessary restorations and tenants are usually only interested in investing in their units but not the rest of the residential building (AbdulSabur 2009).

One of my interviewees (Interview 11, November 21, 2022, Homeowner, New Cairo) stated that regardless of the fact that both her old and new home were not formally registered, she decided to make two investments. First, she decided to move from the old house to the new house because she considered the former to be located in an unsafe neighborhood. Second, when she moved to a new city, she invested in the finishing of the new home because she knew that this would raise the resale value of the apartment.

#### ***5.5.2 Access to the Financial Market***

My second interview was with a banker (Interview 2, September 30, 2022, Banker, Cairo). I explained to him what was meant by formal tenure and that one of the desired outcomes is that it may become a collateral to loans. I asked him about the importance of housing as a collateral to loans in the Egyptian financial market, the necessity of formal titles for accessing the market, and the role of banks in financing housing. He gave me the following insights about the realistic role of formal titles and banks in financing housing in the existing Egyptian context. Regarding the access of Egyptians to the banking system he noted that only about 24 million Egyptians have ever had any dealings with a bank and this is a very small percentage compared to other countries in the region. On the importance of formal tenure as a collateral to loans, he explained that:

*“When it comes to taking credit about 70% of loans are personal loans taken with income as a collateral. The remaining 30% are called surrogates, which are forms of assurance other than income, which includes housing, membership in expensive social clubs, etc. As for housing as a proof for taking a loan, the rules applicable at the moment is that if you are an owner of a unit in a gated community, you do not need any other document to take a loan. The bank will contact the developer to make sure that you are the owner and will give you the loan once this fact is established. If you own or rent a unit in a building built by informal developers or contractors*



*(ahali buildings), the bank will conduct a field visit to check among other things, whether the neighbors confirm that you live in this place and for how long in the case of rent, whether the street has a name and building carries an official number. This means that it is not possible to take a loan with housing as proof if you live in a slum area. However, it is common to take a loan even if your unit is not registered.” (Interview 2, September 30, 2022, Banker, Cairo)*

Regarding housing mortgages in Egypt, he indicated that there are three ways for taking a mortgage:

*“The first is if the unit you want to take a mortgage to buy is in a specific project designated by the presidential initiative. In this case you have to be eligible to take a unit in this project. In this case, the interest rate will be as low as 5%. The second way to take a mortgage is if you are not eligible for the abovementioned social housing projects you can take a mortgage, but the interest rate may reach around 17%. The final way to take a mortgage is through the Housing and Development Bank but it requires that the unit you want to buy be a registered one (blue contract which is the highest form of formality required), which is not applicable to most units in Egypt.” (Interview 2, September 30, 2022, Banker, Cairo)*

In short, most Egyptians do not deal with the banking system. Personal loans secured by income are the most widespread in Egypt. Having a formal tenure type will only make it easier to get a loan but it is not a precondition. A formal title is only required by one bank for taking a mortgage loan, which is the Housing and Development Bank.

In a USAID study on housing in Egypt in 2008, only 29% of the interviewees expressed their interest in taking a bank loan to buy housing (Simset al., 2008). The majority who were not interested in taking loans either feared being unable to repay the loan, did not want to be indebted, did not like that interest increased the cost or taking a loan with interest contradicted with their religious beliefs.

When I asked my third interviewee whether he believes that with the increasing registration of housing homeowners would be encouraged to take loans with their housing as a collateral, he expressed that he believes that the majority of Egyptian acquire housing for their or their families’

personal use and would be reluctant to risk to lose it if they are unable to repay the loan to the bank (Interview 3, Oct 3, 2022, Lawyer, Alexandria).

My interviewee number 11 (November 21st, 2011) said that she did not know a lot about the mortgage market in Egypt and therefore, she did not consider it an option when she sought to make an investment by moving to a home in a safer and better neighborhood. When she inherited her father, she decided to sell her old apartment, add the value of her inheritance and buy the new home. She considered this a much better investment than saving her inheritance in the bank. She was happy with this decision because in about 10 years, her apartment has tripled in price, which was clearly much higher than any interest which the bank may give her.

When she decided to make a home improvement in finishing her kitchen according to the highest standards, which she considers as an important reason for the increase in the price of the apartment, she did not think about taking out a loan to cover the relatively high cost (around 50,000 EGP). Instead, she made a deal with her friends and colleagues to save together a certain sum of money each month and each month one of the members of the group takes the entire sum to achieve a certain goal. She decided that this method was better than a loan because no interest was involved.

Thus, the results of my interviews confirm that access to credit is not conditional on formal titles and that in general there is no strong reliance on banks for financing home improvements or other projects.

## 6. Chapter Six: Conclusion and Policy Recommendations

### 6.1 Conclusion

This section begins by a summary of the chapters two to four and then presents a conclusion on the findings of this research. The literature review displayed how various international institutions view the right to housing as a property right or as a human right and how this background influences the recommended policies. Further, it presented how for international financial institutions this view, which focuses on an economic theory of development, favored the property rights paradigm and encouraged formalization of tenure as a policy. However, research in developing countries proved that the desired outcomes of formality usually are not achieved due to the incompetence of financial markets and government institutions. In contrast to the legalization theory, international human rights organizations tend to encourage acceptance of other forms of tenure beyond the formal/informal dichotomy which looks at tenure as a continuum and looks for more inclusive policies towards vulnerable groups. The literature review also presented literature on the right to housing and tenure in Egypt, which focuses more on other aspects of the right to housing, such as affordability and acceptability than on tenure and focuses more on weak tenure security in informal settlements (slums) rather than as a nationwide problem. Thus, the goal of this research was to offer better understanding of security of tenure in Egypt, to cover developments which affect housing of various income levels, and to analyze the most recent developments in laws and policies and their influence on security of tenure.

Building on this literature, I developed a concept for security of tenure which looks at security as resting on **two pillars (formal, informal)**, where each pillar rests on a number of laws and policies and thus is affected by them. A dependent variable, which is perceived tenure, is automatically affected by the same policies. I chose the pillars model rather than a continuum, because a continuum suggests that security of tenure is necessarily better under formal tenure, which is not necessarily the case in Egypt. In addition, I relied on internationally recognized indicators for security of tenure to guide my choice of secondary data and search for answers through the content analysis. The international **indicators** focus on **structure**, i.e existence of legislative (international, constitutional & parliamentary) entrenchment of security of tenure as an element to the right to housing, **procedure**, i.e., the existence of remedies and access to justice to defend security of tenure, and **outcome**, i.e., degree of enjoyment of secure tenure.

As a result of this conceptual approach, I chose to conduct a qualitative study, relying on semi-structured interviews with four main expert and stakeholder cohorts (academia, judges, lawyers, homeowners) to investigate their views on the recent laws and policies and how they affect the formal, informal and perceived aspects of security of tenure. In addition, I conducted content analysis of various law, reports and cases to provide a better understanding of the structural, procedural and outcome indicators of security of tenure as recognized by international organizations.

The contextual background chapter focused on providing a background on the central and local-level institutions governing urban development in Egypt and the government's role in provision of housing. The chapter also presented an account of the prevailing land and tenure typologies and introduced the issue of access to justice in the cases of loss of tenure. In summary, this contextual background showed a duplication in urban planning tasks, a reliance on central institutions rather than local ones and a prevailing role for self-help in housing provision. As for tenure typologies, the majority of vacant land is privately owned by the state and ownership was the prevalent tenure typology in housing.

The discussion and findings chapter displayed the main results of the interviews and content analysis with the aim of understanding how the issuance or amendment of a number of laws, such as reconciliation in building violations, reconciliation in building on state-owned land, the real estate registration law and the expropriation for public interest law may affect security of tenure and how policies, such as developing slum areas or development projects may influence the formal, informal and perceived aspects of security of tenure and its structural, procedural and outcome indicators.

### ***6.1.1 The Pillars of Security of Tenure***

#### **Formal Tenure**

The Egyptian government has experimented, with the aid of international organization, with the formalization of tenure since the late 1970's. However, this took place regarding specific neighborhoods through limited scale projects. The projects have been mostly unsuccessful. However, the past decade has witnessed a turning point in the government's attitude towards

formalization. The issuance and numerous amendments in reconciliation (Law No. 144 for the Year 2017 on reconciliation in building over state-owned land and Law No. 14 for the Year 2019 on reconciliation in building violations) and registration (Law No. 9 for the Year 2022 on real estate registration) laws targets all building violations and lack of registrations nationwide. These laws acknowledge the fact that informal tenure is prevalent in Egypt and deals with this reality.

However, the feedback from a number of my interlocutors shows that there are procedural difficulties with the implementation of these laws. Among the mentioned reasons are the difficult requirements set by the law, the complexity of the steps and the institutional incompetence. All this also increased the duration and cost of formalization. Thus, leading to dissatisfaction of stakeholders with the system.

### **Informal Tenure**

Despite an obvious trend towards formalization, informal tenure still plays an important role in Egypt. This is manifested in the fact that the laws seeking formalization have been amended a number of times to deal with the fact of the widespread informal titles and to allow using them as a proof of ownership to proceed with the formalization process and that in slum areas the government claims that it has accepted evidence of informal tenure, when giving settlers rights to compensation and units in resettlement projects or in situ. However, the UN special rapporteur in her 2018 report on housing in Egypt and one of my informants claimed that this approach has not been all inclusive in all slum areas or with regard to all settlers.

### **Perceived Tenure**

The study of perceived tenure has been a limitation in this research. It requires interviews with a big number of stakeholders, which was not possible for the scale of this study. One study by the USAID in 2008 reported a very high percentage of perceived security in Egypt, despite the lack of formal tenure. This is in line with studies in other developing countries which have found that security is not limited to formal titles. However, one of my informants was of the opinion that the aspect of perceived security was the one mostly affected by the recent government policies, due to the prevailing discourse regarding restoring the state authority, the lack of dialogue and the fact that even formal titles may be expropriated for public interest projects. Nonetheless, none of my

two interviewed homeowners mentioned fear of eviction as a reason for seeking registration of their units.

### ***6.1.2. Indicators of Security of Tenure***

#### **Structural Indicators**

Egypt seems to fare well on the structural indicators. Egypt has ratified the most important conventions relevant to security of tenure, has a constitutional article on the right to housing and several legislations for its implementation. It has recently adopted a housing strategy which acknowledges security of tenure among its goals but focuses mostly in this regard on formalization of tenure rights. However, as several interviewees and reports show, there seems to be a problem with law enforcement rather than the law itself.

#### **Procedural Indicators**

As for procedural indicators, such as the number of appeals aimed at preventing eviction orders and the duration of adjudication or the available remedies, it was difficult to possess exact numbers for cases related to security of tenure. However, the study shows that remedies do exist and that indeed the ESC has been very active in protecting tenure rights. A number of circuits, such as the rights and liberties circuits, the removals of building violations circles or the new communities circle deal with administrative orders which may lead to eviction. In general, experts claimed that the duration of adjudication dropped drastically in the last two years, from 12 months to around 6 months. The remedies are mostly annulment of administrative decrees. In the jurisprudence of the ESC, administrative decrees include both positive (explicit) and negative (implied) decrees and the courts may annul both. Thus, remedies may include for example annulling eviction orders or the negative decree of the administration refusing to sell land to informal settlers. However, compensation is not among the remedies in such cases. The SCC has issued a number of decisions which may indirectly affect the right to housing but none of these decisions actually relies on the constitutional right itself yet, but rather on principles of equality or procedural irregularities.

#### **Outcomes Indicators**

When it comes to indicators related to outcomes, such as the number of evictions, proportion of households with enforceable tenure rights and proportion of women with tenure rights, no exact

numbers are available. However, the study shows a conflict regarding the cases of evictions. On one hand the government narrative and one of my informants insist that there is no forced eviction in Egypt, since the government is reconciling with building violations and there are always remedies available to slum dwellers, such as compensation or relocation etc. On the other hand, the UN special rapporteur claimed that in most cases relocation was to far away neighborhoods and no proper consultations were carried out with the stakeholders. One of my informants also claimed that remedies were not available to all settlers, many did not receive any compensation of any kind, that consultations were very limited and in different incidents the government violated the terms of agreement reached in the negotiations. As for the proportion of households with enforceable tenure rights, despite some turbulence due to the new laws seeking formalization, the vast majority of households possess some form or another of proof of tenure and the government usually acknowledges these. It is only in cases of expropriation of private property where the government offered less or no compensation when the owners were not able to prove their ownership formally. There are no exact numbers on the proportion of women with access to tenure titles, but nothing in the law discriminates against women and the state has tried to mitigate some of the conditions in the rules regulating access to social housing to increase the access of women.

### ***6.1.3 Limitations of the Formalization Theory in Egypt***

As for the desired outcomes of formal tenure, the study shows that access to credit is not related strictly to formal tenure and that in general Egyptians do not rely on mortgage systems to finance housing. Also, despite the lack of formal tenure, previous studies, reports and the latest 2017 census showed that the quality of housing was fairly satisfactory despite the prevalence of informal tenure. This resonates with comparative studies which value the role of perceived tenure in increasing housing quality. In the interesting case of old rent, which guarantees high security of tenure, there are disagreements between landlords and tenants regarding bearing the costs of restorations, which has led to the deteriorating conditions in some buildings.

The fact that the housing market has been functioning without formal registration and bank financing raises questions about the goals of formalization in Egypt. One of my interviewees was of the opinion that the government seeks to have better data and understanding about the composition of the housing market. Some researchers are of the view that the state may be seeking

titling for the benefit of the state not the citizen (Ibrahim & Khalil, 2016), for example it may be using it to finance its budget deficit (Shawkat, 2016). In Egypt's Housing Strategy (2020), the regulation of titles aims at a balance between the rights of the citizen to enjoy the fruits of formal title, as envisioned by the formalization theory, and the right of the state to regain its "constitutional rights" (p.24).

However, it should be noted that absence the adequate institutional organization, as the interviews with homeowners and registration lawyers show, the benefits to the citizen will be very hard to achieve.

## **6.2 Policy Recommendations**

In short, despite high proportions of informal tenure in Egypt, this far the Egyptian government has been tolerating informal rights, offering remedies in cases of eviction and accommodating for the status quo in its new legislations seeking formalization. In this section I recommend certain policies, based on the findings of this research, which should be adopted simultaneously with the current trends to preserve and enhance tenure security.

As shown in the previous section, informal and perceived tenure are valid forms of tenure for many researchers and international human rights organizations. Furthermore, studies on housing in Egypt show that the desired outcomes of formal tenure are either already achieved through informal and perceived tenure, such as housing quality or are not possible to achieve in light of other market incompetencies, such as access to credit. However, there are other justifiable reasons to seek a more formalized housing sector, such as capturing the appreciation rate from investment in housing to finance housing projects for the more vulnerable and applying safety measures through building controls, to name a few. Yet, these goals are hard to achieve through formalization policies alone. The good results on structural indicators, show that the spread of informal tenure is not primarily caused by lack of legislative tools but rather many other policies.

Therefore, I begin by recommendations which deal with government policies which may be working against the government formalization approach.



1. **Reassessing policies of ownership and sale of lands.** One of the reasons for informality is the high cost of obtaining registered land. The vast majority of land in Egypt is privately owned by the state. Therefore, the government needs to reassess its policies governing sale of lands which is causing the increased prices.
2. **Diversifying the housing supply.** The government and the private sector tend to focus on housing for high income families, which reduces the supply of housing for low-income families, thus forcing them to satisfy their housing needs in the informal sector. Government policies should encourage investment in low income housing, if not through the government and private sector, then through cooperatives and social initiatives.
3. **Encouraging investment in sectors other than housing.** Failures in the investment apparatus is making speculation in housing a major source of investment, leading to increased prices and vacant housing stocks. The Egyptian government needs to revisit its policies discouraging investment in other sectors.
4. **Reevaluating the current mode of public expenditure on urban development.** The current mode of public spending on urban development is distorted and needs to be adjusted. The focus on new cities in the desert is negatively affecting spending on old cities and does not accommodate for the housing preferences of many Egyptians.

Second, in its venture to **formalize the informal**, the Egyptian government should take into account a number of policies, which are still lacking.

5. **Restoring the role of elected local authorities.** While several formalization laws have been issued and amended several times over the last decade, no progress has been made in the issuance of the local authorities' law. This has a negative influence, both due absence of elected officials and the lack of influential competencies and financial independence. In light of the current condition of local authorities, it will be difficult to successfully apply the formalization laws.
6. **Improving the capacity of responsible institutions.** The current laws seeking reconciliation and registration are still not very practical and some requirements are very difficult to fulfill. The numerous amendments are seeking to deal with these shortcomings, but another important aspect is missing, which is the institutional foundation, which according to homeowners and commentators has not been able to handle the process

efficiently. Thus, the institutions responsible for enforcing these laws need to be trained and well equipped.

7. **Reconsidering the element of fairness in urban replanning.** The excessive use of expropriation for public interest may cast doubt on the fairness of such procedures. Rather than waiting for remedies by the judiciary, the administrative authorities should carry out themselves an evaluation of the different policies available to it, to avoid whenever possible measures, which may be considered arbitrary by large segments of the society.
8. **Enhancing stakeholder consultations.** Despite continuous government reassurances that slum relocation projects take place after consultations with stakeholders, there is evidence that in recent years these consultations have been limited in their scale and effectiveness.
9. **Reevaluating the excessive use of expropriation for public interest.** Despite the existence of remedies and compensations in such cases, the frequent use of this law may lead to loss in perceived tenure even among those who possess formal tenure rights.

In summary, in the last ten years, the Egyptian government is focusing on formalization as an approach to counter informality in the housing sector. This has started in unsafe areas but now the process clearly targets milder forms of informality (such as lack of permits or violations of building heights) and is thus expected to affect a great segment of the society. The government has been quite successful in its structural indicators but there are still many other drivers for informality. The state itself is an active participant in these drivers and therefore it should revisit its policies leading to speculation in land and housing prices. The legislative approach towards formalization is becoming more realistic towards the widespread informality and accommodates for that but it still lacks the institutional competency to carry out nationwide formalization projects. Finally, enhancing consultation with stakeholders and prioritizing the right to housing over other development projects may become a safeguard to the perceived aspect of tenure as Egypt seeks to formalize security of tenure.

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