From Rhetoric to Reality: Enforcement of Socio-Economic Rights in Egypt, Colombia, and South Africa

By

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To my parents ….

My father, the first lawyer in my life

My mother, the most amazing teacher in the world

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Acknowledgement

Foremost, I would like to express my deep and sincere gratitude to my research supervisor, Dr Renáta Uitz, professor and head of the Legal Studies Department at Central European University for her invaluable guidance. This thesis could not have been accomplished without her inspiring thoughts and comments.

Additionally, I would like to extend my sincere thanks to my friend Islam Khalifa for his support throughout this research. Our long discussions and brainstorming were the key for many ideas.

Last but not least, I would like to thank my mentor Mr. Khaled Ali. The experience and knowledge I received from him during my early career were professionally foundational for me as a lawyer and legal researcher.

Executive Summary

The foundation of human rights is the notion that everyone should live in dignity, equality, and freedom. But when people cannot afford their basic needs of food, housing and healthcare, all other rights and freedoms can be compromised. Social and economic rights guarantee that everyone should live in conditions that cover all these basic needs. My main claim in this thesis is that the implementation of social and economic rights had been taken away from courts' supervision for many years, for many reasons. Meanwhile, there are examples of some jurisdictions that opened the door for the judiciary to monitor and involve in the enforcement process of social and economic rights. For instance, the South African and Colombian models proved that there is a place for an effective role for the judiciary in the development of social welfare in a country. Therefore, studying the theoretical framework of the enforcement of socio-economic rights and analyzing the case-law of these two jurisdictions, in addition to observing the development of the Egyptian constitutional system regarding social and economic rights, were essential elements for this study.

The first chapter of this thesis is composed of three sections. The first section observes the specific nature of the obligations that arising from socio-economic rights and the nature of these rights. The second section shows the classic concerns against the judicial enforcement of socio-economic rights, such as the argument of separation of powers and court's competence and legitimacy to examine these matters. The third section illustrates the legal standing conditions before courts for a constitutional adjudication, within the compared jurisdictions.

The second chapter presents the constitutional framework of social and economic rights in Egypt, South Africa, and Colombia. It shows the specific features of each constitution and the formulation of socio-economic provisions. Also, it analyses the role of constitutional courts in the three countries regarding the interpretation of socio-economic rights.

The third chapter of this dissertation studies housing adjudication as a case study for judicial enforcement of socio-economic rights. The first section addresses the background of housing problems and forced eviction operations in the three countries. The second section illustrates how the three constitutions grants the right to housing, and the states' obligations to realize it. The third section presents an analysis of court's conduct toward housing problems. The fourth section shows the competing interests between the right to housing from a side and property rights and states' development plans from the other side and the reflection of these concerns in the comparative jurisprudence. The fifth section focuses on housing adjudication in Colombia.

The fourth chapter presents an analysis of three different approaches that had been adopted within the compared jurisdictions. In addition, shows the methods and challenges of each approach and its impact on the development of socio-economic rights adjudication.

Introduction

"*Bread, freedom, and social justice*" these three simple words were the slogan of the Egyptian revolution in 2011. Poverty, poor health services, and deterioration of the quality of public education were the main reasons for the uprising of Egyptians. Therefore, providing decent living standards and improving the basic services were on the top of the people demands' list. Many considered that protection of social and economic rights to be the first step to achieve such purpose[1]. In 2014, after numerous political changes over three years, a new Constitution had been adopted. In the meanwhile, the drafters of the new Constitution were aware of the importance of including specific provisions that protect and guarantee social and economic rights.

As a lawyer, my main motive behind this study was a very simple question: how to convert the constitutional texts that grants social and economic rights into reality? Coming from a background where the scope of judicial enforcement of social and economic rights is very limited and does not have a concrete impact, drove me to believe that answering such a question can change the future of a country. Doing a comparative law study was my entrance to a better understanding of this issue. To do so, my goal was studying different jurisdictions that consider as successful models in the area of judicial enforcement of social and economic rights. Hence, understanding their methods and approaches in establishing an effective role for the judiciary in achieving social welfare.

Due to the significant contribution of constitutional courts of South Africa and Colombia regarding enforcement of social and economic rights, I have chosen those jurisdictions as a comparison with Egypt. Meanwhile, I took into consideration the similarities and differences between the three different legal systems. Indeed, this dissertation is an attempt to understand

[1] The Arab Center for the Independence of the Judiciary and the Legal Profession organizes a panel discussion about the feature of socio-economic rights after the Revolution, *Al Ahram Newspaper*, 31 March 2011. (In Arabic), https://bit.ly/2k9kPNG

and analyse the necessary elements that should be available to translate the rhetorical texts of social and economic rights to an applicable model. As it became clear, the constitutional text alone is not enough. Consequently, the texts need an active and independent judiciary that can interpret these texts considering people's rights. At the same time, courts should respect the boundaries that had been drawn between their competence and other branches functions.

As housing problems and forced evictions operations are a common feature within the three compared jurisdictions, I chose housing adjudication as an explicit example for how courts achieved remarkable social reforms and changed the reality of people in South Africa and Colombia. On the other hand, despite the difficulties and challenges that make enforcement of housing rights very difficult in the Egyptian context, courts succeeded to a certain point to protect the right to housing of thousands of people in many occasions as we will explain.

In Egypt, evictions by the government have occurred in the name economic development, as with displacements where the government has planned massive development and modernization projects[2]. At the same time, during the relocation process that has done by the government in the wake of such projects, thousands of people have suffered from "a lack of appropriate compensation for dispossessed property and have not been provided adequate access to services in their new communities"[3]. According to the Egyptian laws, the government does need permission from a court before conducting such evictions, however, courts had involved in examining these evictions decisions and established a considerable jurisprudence regarding the requirements and conditions of evictions operations.

Further, because of the nature of the right to adequate housing which needs states to make national plans and adopt long-term strategies, enforcement process always requires courts to

[2] TIMEP Brief: Right to Housing in Egypt, the Tahrir institute for middle east policy, Dec17,2018, https://bit.ly/2OEYIdh

[3] *Ibid*.

examine and monitor such plans. This study addresses the possible tension between judiciary and executive regarding housing policies, in addition to the conflict with the state's right in development and urbanization. In fact, each legal system of the three compared jurisdictions adopts a specific approach different than others. For instance, while the transformative vision of the South Africans to end poverty and inequality was the cornerstone of the whole system, the judicial activism of the Constitutional Court in Colombia considered the backbone of social and economic rights development.

This thesis aims to present a guideline for how Courts in Colombia and South Africa have handled the fears of the judiciary's incursion concerning enforcement social and economic rights. Also, it investigates the possibility of exporting some of the methods that had been adopted by both courts to the Egyptian context.

Chapter One: The Judicial Enforcement of Social and Economic Rights: Theoretical Framework

Since the adoption of the Universal Declaration of Human Rights (UDHR) in 1948, Social, Economic, and Culture rights have been recognized as part of the language of international human rights. However, ESC rights had not received enough attention compared to civil and political rights, especially regarding the content, nature, and enforcement mechanisms of these rights[4]. Consequently, the concept of the justiciability and the possibility of judicial enforcement of ECS rights have been ignored for a long time, and many arguments have been used to distinguish them from civil and political rights[5]. Hence, during the last two decades, the judicial enforcement of ECS rights had been one of the most debated issues in legal literature.

Indeed, several objections against the notion of the justiciability of ESC rights have been presented, and till now there are still many discussions about an appropriate judicial role regarding ESC rights. For instance, some commentaries saw ESC rights as too "vaguely worded" to allow courts to justify decisions on whether violations had occurred or not[6]. Further, others raised the claim that the implementation of ESC rights depends mainly on states' economic policies. They argued that the nature of socio-economic rights and the state's obligations arising therefrom require specific consideration due to the budgetary aspect and the necessity of resources, thus, there is no place for courts in a such process[7]. In fact, these concerns raised the question of the legitimacy of such adjudication and brought the separation of powers principle to the core of the debate as well[8].

[4] Christian Courtis and International Commission of Jurists, *Courts and the Legal Enforcement of Economic, Social and Cultural Rights: Comparative Experiences of Justiciability* (International Commission of Jurists 2008) p.1. https://goo.gl/fSYpZ7

[5] *Ibid.*

[6] *Ibid*.

[7] 'OHCHR | Can Economic, Social and Cultural Rights Be Litigated at Courts?'. https://goo.gl/agYjJi

[8] Malcom Langford, The Justiciability of Social Rights: From Practice to Theory, Social Rights Jurisprudence Emerging Trends in International and Comparative Law, Cambridge University Press 2008, P.31.

Nevertheless, ESC rights became protected as justiciable rights in many national Constitutions across the world and at the international and regional levels. In addition, the very different case law from domestic courts, regional human rights courts, and international monitoring bodies that are competent to review individuals' petitions showed how the judiciary has successfully adjudicated ESC rights, despite all these alleged obstacles[9].

This chapter examines the content and the nature of the obligations arising from ESC rights, in its first section. The second section of this chapter illustrates the concerns related to the role of courts regarding ESR rights, such as separation of powers concerns and the questions of institutional legitimacy and competence. Finally, the third section shows the legal standing conditions before courts for a constitutional adjudication, in the three compared jurisdictions.

1. The Content of Socio-Economic Rights and the Nature of State's Obligations

As a result of the long-time neglect of socio-economic rights in the legal discourse and the interpretative platforms, the development of the content of these rights had been harmfully affected compared to the other classic human rights. Indeed, the lack of legal regulations or jurisprudence in the area of socio-economic rights that define the content of these rights, was not because of the non-justiciable nature of the rights, rather because of the ideology that motivated such development[10]. Many reports observed that "during the eighteenth and nineteenth centuries, law, as we now understand it, developed principally to give a legal underpinning to the capitalist market structure"[11]. Thus, the fact that the dominant legal discourse was more concerned about other areas of law, such as property and business law, left its negative impact on developing the content of socio-economic rights.

Furthermore, the great attention that has been given to the labour-related rights and the development of their contents considered as another relevant factor in the late growth of socio-

[9] *Supra note* 4, p.2.
[10] *Supra note* 4, p.13.
[11] *Ibid*.

economic rights[12]. The strong position of workers and labour organizations led to the adoption of many conventions and the expansion of the International Labour Organization (ILO) recommendations[13]. While these conventions and other instruments clarified the content of workers' rights in details, such as the right to strike and the right to join trade unions, other socio-economic rights had been ignored. Therefore, these steps have negatively reflected on the progress of conceptualizing the other socio-economic rights by postponing it for a long time.

On the other hand, there were many attempts to clarify and conceptualize the content of socio-economic rights. Mainly, at the international level, the Committee on Economic, Social and Cultural Rights (CESCR)[14] had played and is still playing an important role to give a substantive meaning for the content of the ICESCR and explain states' obligations. One of the remarkable contributions of the Committee is the concept of the minimum core obligation, which was mentioned for the first time in its General Comment No.3 that had been adopted in 1991[15].

1.1 The minimum core obligation

Two years after the collapse of the communist economies and before the major steps that have been taken to adopt new neoliberal policies to restructure these systems, in 1991 the Committee had introduced the concept of the minimum core obligation[16]. The main goal behind the establishment of this concept was facing "the notoriously indeterminate claims of economic and social rights"[17]. According to the Committee, the minimum core obligation means that,

[12] *Ibid*, p,14.
[13] *Ibid*. For instance, the adoption of the Freedom of Association and Protection of the Right to Organise Convention No.87 in 1948 and the Convention No.98 on the of Right to Organise and Collective Bargaining in 1949.
[14] The Committee on Economic, Social and Cultural Rights (CESCR) is the body of 18 independent experts that monitors implementation of the International Covenant on Economic, Social and Cultural Rights by its States parties. The Committee was established under ECOSOC Resolution 1985/17 of 28 May 1985 to carry out the monitoring functions assigned to the United Nations Economic and Social Council (ECOSOC) in Part IV of the Covenant. More info about the Committee https://bit.ly/2zopr6E
[15] CESCR General comment 3, *The nature of States parties' obligations* (Art. 2, par.1), 01 Jan 1991, https://goo.gl/AQbjqt
[16] Katharine G. Young, The Minimum Core of Economic and Social Rights: A Concept in Search of Content, 33 Yale J. Int'l L. 113 (2008), p.120.
[17] *Ibid*, p.113

every state should "ensure the satisfaction of, at the very least, minimum essential levels of each of the rights" included in the ICESCR[18]. Further, the minimum core obligation is "meant to apply irrespective of the availability of resources of the country concerned or any other factors and difficulties"[19], which make it unrealistic from the point of view of many legal scholars who considered this concept as just a theory or a context-blind approach.

However, many critiques had been drawn against the concept of the minimum core. Most notably, the adoption of such an approach is paring down socio-economic rights to an essential core, thus, threaten the wider goals of these rights[20]. Moreover, several controversial questions related to the concept of the minimum core were left unanswered, such as who should determine this minimum? And if it is the same in the developing and developed countries[21]? At the same time, other voices were calling for of the notion of the minimum core, especially because of the immediate enforceability that delivered from the adoption of such a concept[22]. They argued that, the minimum core approach serves "as a benchmark against which government programs can be temporally oriented and assessed"[23]. Additionally, applying the minimum core approach would be helpful in solving the problematic aspects of the progressive realization standard mentioned in the Covenant[24]. This standard allows states to not implement socio-economic rights immediately, rather depending on the availability of resources.

At the constitutional level, the implementation of the minimum core was never an easy task for any court, even if a court delivered its decision in favour of the applicant who sought for the

[18] *Supra note*,15, CESCR General comment 3.
[19] Maastricht guidelines on violations of economic, social and cultural rights, Maastricht, January 22-26, 1997. Par.9, http://hrlibrary.umn.edu/instree/Maastrichtguidelines_.html
[20] *Supra note* 16. P,114.
[21] *Ibid.*
[22] *Ibid*, p.115.
[23] *Ibid*, see also, Pierre de Vos, The Essential Components of the Human Right to Adequate Housing-A South African Perspective, in Exploring the core content, Protea Book House, 2002.
[24] *Ibid* p.121, see also, article (2) of the International Covenant on Economic, Social and Cultural Rights. https://bit.ly/2MOWMwA

enjoyment of one of the essential socio-economic rights. For instance, in *Grootboom*[25], the South African Constitutional Court saw itself "as not equipped to determine what the minimum core standards should be"[26], and refused to adopt the concept of the minimum core obligation. However, *Grootboom* considers as the first case becomes an evident that the judicial enforcement of socio-economic rights could affect the lives of the citizens, by providing a relief to those in desperate need. Further, *Grootboom* opened the door to many discussions between legal scholars regarding the minimum core approach, which resulted in many developed arguments in favor and against the concept. According to Bilchitz, the judgment was disappointing, he argued that "[t]he judgment errs in its failure to interpret the right of access to adequate housing as including the idea of a minimum core obligation to provide for basic needs"[27].

On the other hand, in his argument against the minimum core concept, the Judge Yacoob claimed that identifying the needs and opportunities for the enjoyment of a right should come first before determining what the minimum core of this right is[28]. Hence, the lack of this information that a court requires to do this task is a significant obstacle. Also, in *Grootboom*, the diversity of the needs in the context of the right to adequate housing made the mission of putting a definition for the minimum core of such a right is very difficult[29].

1.2 The Nature of the Obligations arising from socio-economic rights

Historically, in human rights law, a distinction had been made between the positive and negative obligations or duties of the states regarding the implementation of human rights. Mainly, the negative obligation requires a state to refrain from any acts that could affect the

[25] Government of the Republic of South Africa and Others v Grootboom and Others (CCT11/00) [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 1169 (4 October 2000)
[26] Lillian Chinwe, 'Unpacking "Progressive Realization", Its Relation to Resources, Minimum Core and Reasonableness, and Some Methodological Considerations for Assessing Compliance' (2013) 46 De Jure, page.13
[27] David Bilchitz, 'Giving Socio-Economic Rights Teeth: The Minimum Core and Its Importance Note' (2002) 119 South African Law Journal, P.484.
[28] *Ibid,* p, 486.
[29] *Ibid*, P. 487.

practice of rights. In other words, a state should not interfere by any conduct could violate the rights and just afford the necessary means to practice the right, or as the South African Constitution termed it, the state should "respect" the right. On the other hand, the positive obligation needs the state's intervention to protect, enhance and ensure the full enjoyment of the rights[30]. According to De Vos and Freedman, in the context of socio-economic rights, the classical distinction between positive and negative obligations is "not a simple semantic distinction", the same act of the government can be considered as a violation of both the positive and negative duty.[31]

At the same time many scholars stated that the enforcement of the negative obligations does not need a court to interfere in the state's financial policies[32]. In their response to this argument, De Vos and Freedman argued that even the implementation of the negative duties requires the Court involvement in "the policy-making powers of the executive or the legislature" the same as it's involving in examining the state's positive obligations[33].

Although, the distinction is still important for "strategic reasons", courts exercise more scrutiny when they are dealing with negative obligations interference than positive duties due to the separation of powers concerns, which are lesser when a court engages with violations of negative obligations[34].

2. Courts and socio-economic Rights: The role of the judiciary in the enforcement process

Since socio-economic rights became justiciable in many constitutions all over the world, many debates have been held about the appropriate role for the judiciary in the enforcement process of these rights. Indeed, there were many concerns about the legitimacy and the

[30]Pierre De Vos and Warren Freedman, South African Constitutional Law in Context (Cape Town, South Africa: Oxford University Press, 2014) p.675.
[31] *Ibid*. P,673.
[32] *Ibid*.
[33] *Ibid.*
[34] *Ibid.* P,674.

institutional competence of the judiciary in the socio-economic matters, in addition to the separation of powers concerns[35]. It had been argued that courts do not have "the institutional and technical capacity" to deal with social and economic policy questions, likewise, they do not have the "democratic legitimacy" to answer these questions and interfere in the policies of the elected branches of government[36].

However, the role of the judiciary regarding socio-economic rights has been expanded in many jurisdictions. For instance, after the 1996 South African Constitution, courts became responsible for interpreting socio-economic rights included in the Bill of Rights. Also, courts played a major role in assessing the government compliance with its duties and obligations, deciding on the validity of any legislation regarding socio-economic rights matters, and establishing appropriate remedies for state violation's as well[37]. Whereas in other jurisdictions, the performance of the judiciary regarding socio-economic matters is still under examination. For instance, in Colombia, one of the most notable debates is "whether judicial activism distorts priority setting and undermines the role of administrative and legislative bodies"[38].

2.1 The separation of powers concerns

First, to understand the connection between the separation of powers doctrine and the judicial enforcement of socio-economic rights, it will be necessary to introduce the definition and the historical background of this doctrine. The separation of powers as a concept had been created in the 17th century as a "formal distinction between the legislative, executive and judicial

[35] Marius Pieterse, 'Coming to Terms with Judicial Enforcement of Socio-Economic Rights' (2004) 20 South African Journal on Human Rights P.383.
[36] *Supra note* (30), P.675.
[37] *Supra note,* (35).
[38] Alicia Ely Yamin and Oscar Parra-Vera, 'How Do Courts Set Health Policy? The Case of the Colombian Constitutional Court' (2009) 6 PLOS Medicine, P.147.

functions of the state", which means that each organ of those three organs has its own functions[39]. Thus, no branch of them can interfere in the other branches' competence.

Therefore, during the debates about the role of courts in the implementation of socio-economic rights, many voices argued that such interference from the judiciary in the executive's economic policies could consider a violation of the separation of powers doctrine. Indeed, these concerns were not exclusively for socio-economic rights, same challenges also had occurred during the implementation of other rights[40]. As De Vos stated, "all rights instead fall somewhere along a [justiciability spectrum] where some are more easily justiciable than others"[41].

However, the doctrine had been developed over the years and the original restrictions defined by the doctrine "are shifting in order to reflect contemporary problems and challenges"[42]. For instance, the creation of the principle of checks and balances which allows the different organs of the state to intervene in the area of each other's[43]. According to the South African Constitutional Court, the principle of checks and balances "mandates necessary intrusion of one branch into the other" and prevents the state branches from "usurping power" from each other[44].

Nonetheless, courts still respect the separation of powers doctrine and take it into consideration when interpreting socio-economic rights, while at the same time try to establish different approaches to deal with these rights without interfering in the executive's polices. For instance, in *Grootboom*, the South African Constitutional Court regarded itself as "bound by separation of powers constraints and developed the reasonableness test as a review standard, to assess the compliance of the government conduct with the Constitutional obligations in the area

[39] Mbazira, Christopher, 'Enforcing the Economic, Social and Cultural Rights in the South African Constitution as Justiciable Individual Rights: The Role of Judicial Remedies', university of the western cape, 2007, P.102.
[40] *Supra note* (30), Pierre De Vos and Warren Freedman, South African Constitutional Law in Context, P,688.
[41] *Ibid*.
[42] *Supra note* (39), P,103.
[43] *Ibid*.
[44] *Ibid* .104.

of socio-economic rights[45]. Indeed, the South African Constitutional Court had declared its view regarding the separation of powers doctrine from the early beginning. In 1998, in *De Lange v Smuts NO and others*[46] the Court concluded that:

> [C]ourts will develop a distinctively South Africa model of separation of powers, one that fits the particular system of government provided for in the Constitution and reflects a delicate balancing, informed by South Africa's history and its new dispensation, between the need on the one hand, to control government by separating powers and enforcing checks and balances and, on the other hand, to avoid diffusing powers completely that the government is unable to take timely measures in the public interest[47].

2.2 The legitimacy and institutional competence

One of the most debatable issues regarding the judicial review of socio-economic matters is the legitimacy of courts as institutions that can conduct this task. In fact, in addition to the separation of powers concerns that we already mentioned above, there are some other "ideological arguments concerning democracy, majoritarianism and judicial accountability"[48]. In most judicial systems all over the world judges are not elected, rather they are directly appointed[49]. Thus, it has been claimed that the lack of democratic practices in the institution of the judicial review could affect its legitimacy. Remarkably, these anti-democratic arguments had never raised when courts dealt with civil and political matters, however, because of that socio-economic rights cases have a huge impact on the population and the usage of states' resources, all criticism has been addressed to it[50].

On the other hand, the linkage between the creation of constitutional courts in Colombia and South African as a result of the establishment of a new political regime helped a lot in dispelling this criticism. The fact that these institutions had been created, among other measures to

[45] *Supra note* (30), Pierre De Vos and Warren Freedman, South African Constitutional Law in Context, P,689.
[46] De Lange v Smuts NO and Others (CCT26/97) [1998] ZACC 6; 1998 (3) SA 785; 1998 (7) BCLR 779 (28 May 1998)
[47] *Ibid*, Para 60.
[48] *Supra note* (35), Marius Pieterse, 'Coming to Terms with Judicial Enforcement of Socio-Economic Rights, P.390.
[49] *Ibid*.
[50] *Ibid.*

promote democracy and the rule of law had a significant impact on accepting the judicial review on social and economic matters.

Further, even though most judges are not elected, there are many other mechanisms that keep them accountable. Measures of accountability are reflected through several procedures such as "the public nature of judicial hearings, the deliberative nature of civil procedure, judicial reason-giving in judgments, the judicial appointment process and the doctrine of stare decisis"[51]. Moreover, in a response to the short-sighted view of representative democracy as the only shape of democracy, one can argue that once the judicial review had been mandated by the Constitution, the non-majoritarianism objection against the judicial review becomes out of place. On the ground that this Constitution is a product of a democratic process that everyone had been represented on it[52], especially in the three compared jurisdictions where the participatory in the Constitution-making process was considerable.

Furthermore, regarding judicial competence in socio-economic rights cases, one of the most debatable concerns is the limits of judicial skills[53]. Indeed, most of the courts' decisions in socio-economic matters affects a vast number of interested parties and establishes unpredictable social and economic consequences[54]. Thus, the real concern is the residentiation diversity, this society-wide impact raises many questions about judicial competence to conduct such a task. These concerns had left its reflection on courts' performance, especially in the South African context.

Since the adoption of the 1996 Constitution, the South African Constitutional Court had dealt with several cases that related to socio-economic matters. However, after the so-called "second wave" of socio-economic jurisprudence, in particular, as regards urban local governments

[51] *Ibid,* P.391.
[52] *Ibid*.
[53] *Ibid,* P.392.
[54] *Ibid.*

policies, many commentators realized the Court's tendency to alter disputes to other branches to deal with it[55]. Katherine Young's described the Court's approach as "being aimed at catalysing rights conducive political solutions to social rights disputes"[56].

According to Pieterse, the Court's approach was appropriate and argued that such tactic will result in "strengthening institutions, systems, and processes of urban service delivery"[57]. This approach has been clearly shown in *Occupiers of 51 Olivia Road*[58], instead of just delivering its judgment, the Constitutional Court made an interim order requiring the local government to engage with the occupiers, in attempting to find an acceptable solution to the dispute[59]. In contrast, courts in Colombia and Egypt did not adopt similar approaches, and continued examining socio-economic disputes, however, in Egypt courts may resort to an expert institution as a counsel in some technical matters.

3. Who can bring a case on socio-economic rights? constitutional standing conditions:

One of the issues that should be present in any discussion about constitutional adjudication is, the scope of *locus standi*, as the first step to determine who can bring a case before the Constitutional Court. The concept of standing is "concerned with whether the person who approaches the court is a proper party to present this matter to the court for adjudication"[60]. Also, taking into consideration the fact that usually the party who brings public law cases before a court, does so not for a personal gain, rather for the public interest[61]. More often, NGOs,

[55] Marius Pieterse, 'Socio-Economic Rights Adjudication and Democratic Urban Governance: Reassessing the "Second Wave" Jurisprudence of the South African Constitutional Court' (2018) 51 Verfassung in Recht und Übersee 12, page.13.
[56] *Ibid*, also, Also, see generally Katharine G. Young, Constituting Economic and Social Rights, Oxford 2012, pp. 125, 153, 154.
[57] *Ibid*, P.14.
[58] Occupiers of 51 Olivia Road, Berea Township and 197 Main Street Johannesburg v City of Johannesburg and Others (24/07) [2008] ZACC 1; 2008 (3) SA 208 (CC); 2008 (5) BCLR 475 (CC) (19 February 2008)
[59] Supra note (55), P.25.
[60] Cheryl Loots, *Standing, Ripeness and Mootness*, Woolman S. Constitutional Law of South Africa, Second edition, Volume 1, 7-1, 2013.
[61] *Ibid.*

activists, and pressure groups. Hence, examining the legal standing conditions of the related jurisdictions is a significantly relevant issue, especially, when it comes to socio-economic rights adjudication since it has a society-wide effect.

Before the 1994 Interim Constitution of South Africa, courts applied a very restrictive approach toward standing conditions. Courts required a personal interest in the matter of adjudication from the person who approaches the Court for relief[62]. However, the situation had changed after the adoption of the 1996 Constitution. According to section 38 of the South African Constitution, the right to approach a competent court to alleges that a right in the Bill of Rights has been infringed or threatened, had been extended to include wider criteria. Nowadays, anyone acting in their own interest, or on behalf of another person who cannot act in their own name, or as a member of a group or in the interest of this group, or acting in the public interest, can directly bring a case before a competent court and alleges a violation of the Bill of Rights[63]. It is important to note that, this extension in standing provisions only applies for the actions that violate rights mentioned in chapter 2 of the Bill of Rights. Hence, such provisions left a huge impact in the rights-based litigation and helped in wider enforcement of these rights, especially socio-economic rights which is mentioned in the Bill of Rights.

Further, while the Constitutional Court must confirm the Supreme Court of Appeal and the High Court of South Africa's orders, article (167) of the Constitution and the rules of the Constitutional Court[64] granted the direct access to the Constitutional courts in some situations. It stated that "the Constitutional Court must allow a person, when it is in the interests of justice and with leave of the Constitutional Court to bring a matter directly to the Constitutional Court; or to appeal directly to the Constitutional Court from any other court"[65]. However, this

[62] *Ibid.*
[63] Section (38) of the South African Constitution. Titled "*Enforcement of rights*".
[64] Rule 18 of the Constitutional Court rules.
[65] Article (167) of the South African Constitution.

procedure had been permitted only in exceptional circumstances[66], which is never happened in any socio-economic adjudication.

On the other hand, the 1991 Colombian Constitution is very generous as well, when it comes to who can bring a case to a court asking for protection for his constitutional rights. Article (86) of the Constitution stated that "every individual may claim legal protection before the judge, at any time or place, for himself/herself or by whoever acts in his/her name"[67]. Indeed, the establishment of the *action de tutela* was a remarkable development not only in the history of the Colombian Constitutional Court and its jurisprudence, but also all courts on the area of fundamental rights litigation.

The *tutela* is "a writ that can be filed by anyone in an informal way before a judge for immediate protection of his/her fundamental constitutional rights in the case of an action or omission by any public authority"[68]. Moreover, the Colombian Constitutional Court played a significant role through its wide interpretation and broadening the scope of the rights that can be protected by a *tutela*[69]. Article (86) of the Constitution mentioned the right to file a *tutela* seeking the protection of the fundamental constitutional rights, at the same time these fundamental rights have been listed in the Constitution in a specific chapter[70]. However, the Court delivered a judgment declaring that it's the Court task to classify any rights as fundamental or not[71]. Subsequently, the Court expanded the list of fundamental rights from its point of view, thus, those rights became enforceable[72]. In fact, social and economic rights had

[66] For instance, in *Dudley v City of Cape Town and Another* (CA 1/05) [2008] ZALAC 10; [2008] 12 BLLR 1155 (LAC); (2008) 29 ILJ 2685 (LAC) (21 August 2008). See also, How cases reach the Constitutional Court, South Africa History Online, https://bit.ly/2rjuOTB.
[67] Article (86) of the Colombian Constitution.
[68] Katrin Merhof, Building a bridge between reality and the constitution: The establishment and development of the Colombian Constitutional Court, Oxford University Press and New York University School of Law, 2015, P. 719.
[69] *Ibid*, P.720.
[70] Fundamental rights are those rights listed in the Constitution in the chapter "fundamental rights" (Título II, Capítulo 1 "De los Derechos Fundamentales" (arts. 11- 41)
[71] Colombian Constitutional Court, T-002/92, May 8, 1992.
[72] *Supra note* (68), Katrin Merhof, Building a bridge between reality and the Constitution, P.720.

been mentioned in a different chapter in the Constitution, but the Court considered them as fundamental rights. So, it is important to note that, without such a development by the Constitutional Court, social and economic rights would not be enforceable in the Colombian Context. Meanwhile, the Colombian Constitution grants to all citizens a direct access to the Constitutional Court. Petitions of unconstitutionality could be brought by citizens against the laws, both for their substantive content as well as for errors of procedure in their formation[73].

Differentially, the judicial review in Egypt takes other forms. First, the review of constitutionality which is an exclusive task for the Supreme Constitutional Court (SCC). The main object of such a review is "securing the conformity of legislation with the Constitution"[74]. Second, the review of the legality of acts that became the main function of the State Council[75]. Mainly, this judicial review of administrative actions aims to "maintain the compliance of governmental activities with the applicable laws and public regulations"[76]. It must be noted that, there is no direct access to the Supreme Constitutional Court in Egypt.

In the context of constitutional adjudication, article 29 of Law no 48 of 1979 stated the two procedures that can bring a constitutional case before the Constitutional Court[77]. The first scenario is where a court is deciding a case on the merits, and *prima facie* founds that a provision of a law on which depends the settlement of the dispute is unconstitutional, the case should be forwarded to the Supreme Constitutional Court[78]. The second possible procedure is where a party in a case challenges the constitutionality of a provision in a law before a court, and the grounds have been found plausible by that court, the alleged party has the right to file his

[73] Article (241) of the Colombian Constitution.
[74] Ed. K. Boyle & Adel Omar Sherif, Human rights and democracy: the role of the Supreme Constitutional Court of Egypt, Kluwer Law International, SOAS, The Hague p.23.
[75] Administrative courts in Egypt are represented in the State Council of Egypt (*Conseil d'Etat*), which is exclusively competent to adjudicate in public and administrative claims. The structure of the judicial section within the State Council or the administrative courts' system is composed of: Administrative Courts, Courts of Administrative Justice, The Supreme Administrative Court, and The Unit of the Commissioners of the State.
[76] *Supra note* (74).
[77] Law No.48 of 1979 (The Supreme Constitutional Court Law), *Al- Jarida Al-Rasmiyya*, 6 September 1979 (Egypt).
[78] *Ibid*. Article 29 sub-paragraph (a).

constitutional claim within three months before the Supreme Constitutional Court[79]. Therefore, as the State Council is the public law judiciary in Egypt, bringing a case before the State Council is the first step in the constitutional adjudication. Hence, examining the standing conditions before the State Council is more than relevant.

Indeed, standing conditions in the Egyptian judicial system are very restrictive, thus, the enforcement of the constitutional rights had been remarkably affected. According to article (12) of the State Council law, a claimant has to prove a *personal and direct interest* to be able to issue any legal petition before administrative courts[80]. These requirements reflected in the Supreme Administrative court (the State Council) judgments, which stated "annulling an administrative decision requires that the claimant be in a special legal status vis-à-vis the challenged administrative decision which in turn affects the personal interests of the claimant in a direct way"[81].

Conclusion

For many years, studying the content of socio-economic rights has been ignored. The attention that has been given to civil and political rights and other areas of law that more concern about establishing the structure of the capitalist markets, resulted in late development for socio-economic rights. However, one of the most important approaches concerning the content of socio-economic rights is the concept of the minimum core obligation. This notion has been presented as an attempt to ensure the minimum level of a dignified life for everyone. While many scholars welcomed the minimum core approach and argued in favour of it, several objections were raised against this notion. The South African Court refused to adopt the minimum core approach and found many difficulties to determine these minimum standards.

[79] *Ibid*. Article 29 sub-paragraph (b).
[80] Law No. 47 of 1972 (State Council Law), 40 Al-Jarida Al-Rasmiyya, 5 October 1972 (Egypt). See more, Dr. Heba Hazzaa & Silke Noa Kumpf, Egypt's Ban on Public Interest Litigation in Government Contracts: A Case Study of "Judicial Chill", Stanford Journal of International Law, July 2015, p.13.
[81] Case No. 18868/51- year 2007, The Supreme Administrative Court, Egypt.

On the other hand, a lot of questions were raised concerning the role of courts regarding the enforcement of socio-economic rights. The main reason behind these concerns was the special nature of the obligations arising from these rights and the necessity of dealing with the state's economic policy. The fear of judicial interference in the executive's functions, which threats the principle of the separation of powers, was a huge concern. In return, courts developed the doctrine of separation of powers and enforced checks and balances between the different governmental branches, to be able to examine the government's actions, and do not tie the executive's hands to take its required measures as well. Also, the legitimacy and institutional competence of courts to deal with socio-economic matters were questioned, however, these concerns did not prevent the judiciary to function as a safeguard for the constitutional rights in South Africa and Colombia.

Finally, the wide constitutional standing conditions in Colombia and South Africa had a significant impact on socio-economic adjudication in both countries. The direct access to the Constitutional Court in Colombia helped the Court to develop and extend the scope of these rights. Also, the *tuttlea actions* that been filed before the different courts allowed to everyone to ask for a protection to his fundamental rights. Meanwhile, the very restrictive standing conditions in the Egyptian legal system and the absence of a direct access to the Supreme Constitutional Court limited the scope of socio-economic litigation to the administrative courts.

Chapter Two: The Constitutional Framework for The Protection of Socio-economic Rights

1. Egypt

1.1 Socio-economic rights in the 2014 Constitution

In fact, Egypt's 1971 Constitution had already included several socio-economic rights; however, these provisions were formally enforceable, it did not have any practical impact because of many reasons related to the political and economic situation in Egypt during Mubarak's Era. Mubarak's regime had adopted very neoliberal policies that marginalized most of the population in favor of the high classes[82]. Thus, these policies had its reflection on social or economic reforms, in addition to the full control over the parliament and the judiciary which negatively affected any attempts to enforce these rights.

On the contrary, the new Constitution prioritizes social and economic rights and expands its list further[83]. The formulation of the provisions that deals with the right to health, education, and housing is very different and included new state's obligations, that did not exist before. For instance, article (18) which regulates the right to health consists to two-part structure, the first part stating that "*Every citizen is entitled to health and to comprehensive health care with quality criteria*", while the second part is outlining the obligation of the state to realize the right[84]. Precisely, the state's commitment to allocate a percentage of government expenditure that is no less than 3% of Gross Domestic Product (GDP) to health, in addition to the state commitment to establish a comprehensive health care system for all Egyptians covering all diseases. The same approach continues in article (19), first part states "*the right of every citizen*

[82] Neoliberalism and Revolution in Egypt, E-International Relations (E-IR), APR 24, 2015, https://bit.ly/2lCDou7
[83] Egypt: in depth analysis of the main elements of the new Constitution, Directorate-General for External Policies of the Union, Policy Department, the European parliament, 2014, p.12, https://goo.gl/sbxZja
[84] Article (18) of the Egyptian constitution.

to education". Then, the state commitment to allocate a percentage of government expenditure that is no less than 4% of (GDP) for education.

It's important to highlight the strong intent of the constitution drafters toward the approach of allocation specific percentages of GDP for health services and education. Indeed, they considered these numbers as a minimum and "It will gradually increase until it reaches global rates[85]". Also, these commitments were never a guidance or a philosophical idea the government should apply, rather it is a constitutional commitment that should be enforced. During the new Constitution writing process, several debates had place regarding this approach. For instance, one of the members of the Constituent Committee, suggested to postpone the effectiveness of the allocation commitment for five years to give the government proper time to provide the financial resources. The majority of the Committee refused such suggestion, and most of the members addressed the importance of these measures and consider it as a public demand[86].

However, the Constitution is silent regarding the mechanism of implementing these commitments, which makes monitoring the implementation of these provisions stays not an easy task. Keeping in mind, there are some technical and procedural problems in counting the "Gross Domestic Product". In Egypt, the adoption of the of the yearly budget comes only one month earlier than the new financial year, thus, there is no enough time for ministries to discuss their own new budgets with the ministry of the finance or with the parliament. Indeed, this was the case of the ministries of health and education during the discussion of the 2019 yearly budget. The two ministers have made critical statements about the government allocating

[85] Articles (18-19) of the Egyptian constitution.

[86] According to the records of the meetings of the Constituent Committee that was responsible for writing the new constitution- also, as known as "the Fifty Committee" because it was contains of fifty members. Namely, the records of meeting number (35), Sunday 17Nov, 2013. Pages (5-22).

insufficient funds to health and education, however, these statements did not change the status quo[87].

On the other hand, the right to housing has mentioned in two places in the 2014 Constitution. According to article (78), "*The state guarantees citizens the right to decent, safe and healthy housing, in a way that preserves human dignity and achieves social justice*". As well, this article obliges the state to adopt national housing plan and another plan to address the problem of the "informal areas"[88]. Also, article (41) commits the state to implement a "housing program", while, this program is limited to the available resources[89].

It should be noted that, the Constitution's drafters were aware that the most common violation of the right to housing is the forced eviction operations that happens in several areas around Egypt[90]. For this reason, article (63) prohibited "*All forms of arbitrary forced migration of citizens*" and considered such violation is a "crime without a statute of limitations"[91]. According to the 2014 Constitution, the only two crimes without a statute of limitation are the arbitrary forced migration and torture[92]. This confirms how the new Constitution considers the violation of the right to housing, especially forced eviction a very serious crime.

Further, the new Constitution also included many other rights that have social and economic nature. For instance, article (12) guaranteed the right to work, article (17) obliges the state to provide social security to all citizens, article (35) protecting private property, and the right of each citizen to health food and clean water had been also addressed, according to article (79).

[87] Egyptian ministers' statements on public budget raise controversy, Al-Monitor News, 18 June 2019, https://bit.ly/2KHnLLq
[88] Article (78) of the Egyptian constitution.
[89] Article (41) of the Egyptian constitution stated that: "The state commits to the implementation of a housing program that aims at achieving balance between population growth rates and the resources available…"
[90] Omnya Khalil, From Community Participation to Forced Eviction in the Maspero Triangle, the tahrir institute for middle east policy, jun14,2018, https://goo.gl/6G9BSj
[91] Article (63) of the Egyptian constitution.
[92] Article (52) of the Egyptian constitution.

Indeed, in 2014 a huge step had been taken in the way of the constitutional protection of socio-economic rights in Egypt, comparing to the 1971 Constitution. However, the absence of an effective enforcement mechanism for the rights mentioned in the Constitution is still a significant problem. Comparing with the South African and Colombian Constitutions[93], in Egypt there no specific provision in the Constitution regulating a direct and immediate form of judicial review that may help in enforcing rights. Only the two regular forms of the judicial review that we mentioned in the previous chapter, and we already showed the difficulties of enforcing the constitutional rights through such forms.

1.2 Methods and sources of interpretation of socio-economic rights

Over the years and even before the 2014 Constitution, despite the limited standing conditions administrative courts in Egypt had remarkable activism in the scope of interpretation and enforcing constitutional rights, especially socio-economic rights. While the Supreme Administrative Court was examining the legality of the eviction procedures of the illegal neighborhood's residents, the Court adopted the notion of "balancing between the benefits and harms"[94]. The Court evaluated the benefits that will come from such eviction and balanced it with harms that will affect the residents. For instance, the Court found some benefits like the re-control of the state's lands, but such eviction will leave the residents without homes or any basic facilities to live. According to the Court "the public interest must be achieved without infringing the rights and freedoms of citizens which have priority in protection"[95]. Ideally, to understand the Court's approach in finding such a notion, one should rethink about the main sources of legislation and interpretation of the Egyptian legal system at all.

[93] Section (38) of the South African Constitution and article (86) of the Colombian Constitution.
[94] لمحكمة الإدارية العليا (the Supreme Administrative Court) , قضية عزبة خير الله (*Ezbet khair Allah case*), القضية رقم 1875 و 1914 لسنة 30 قضائية, (the Case no 1875 and 1914 year 30. Judiciary), March 9. 1991. – Unofficial Translation
[95] *Ibid*

Despite the political change that had happened in Egypt during the last years and the adoption of a new constitution, Article (2) of the Constitution did not change. According to article (2) of the New Egyptian Constitution and the 1971 Constitution as well, "the principles of Islamic Sharia are the principle source of legislation". At the same time, the 2014 Constitution's preamble stated that "the reference for interpretation these principles are the relevant texts in the collected rulings of the Supreme Constitutional Court"[96].Truly, as Nathan Brown mentioned, "the Supreme Constitutional Court of Egypt has over the last twenty years developed a creative new theory of Islamic law. Employing this method, the Court has interpreted sharia norms to be consistent with international human rights norms and with liberal economic policies"[97]. Hence, courts usually refer in their interpretation of rights to concepts and notions that emerged from the Islamic law.

In *El-Bohi market case*[98], under the mandate of the 2014 Constitution, the Cairo Administrative Court explained the reasoning of the notion of "balancing between the benefits and harms", and the legal sources of such interpretation. In this case, the government issued a decision regarding the removal of a market in Cairo due to continuing the construction of the third line of Cairo metro. seventy-four vendors have usufruct contracts with the government to stay and use this street as a market. They submitted a lawsuit before the Cairo Court of Administrative Justice asking for protecting their right to work. The court issued its judgment in favor of the applicants by obligating the state to provide the vendors with suitable alternative booths before the removal of *El-Bohi* market. The Court built its judgment on the Islamic principle of "Pushing harms away is better than bringing benefits"[99]. And stated that, keeping

[96] The 2014 Constitution preamble.

[97] Lombardi, Clark B. and Nathan J. Brown. "Do Constitutions Requiring Adherence to Shari'a Threaten Human Rights? How Egypt's Constitutional Court Reconciles Islamic Law with the Liberal Rule of Law." American University International Law Review 21, no.3 (2006), p.380.

[98] محكمة القضاء الإداري (Cairo Court of Administrative Justice) قضية سوق البوهي (El Bohi Market case) القضية رقم 69651 لسنة 70 قضائية (case no.69651 year. 70 judiciary), Feb.25,2017.

[99] *Ibid.*

the applicants in their places even if they do not have the legal right, is better than evict them and using the land in another project[100].

Furthermore, the Court referred to the French administrative jurisprudence as a historical source for interpretation because of the huge influence of the French legal theories in the Egyptian legal system. The principle of "balancing between the benefits and harms" had been adopted by the French administrative courts as well, hence, the Court accepted the same concept[101].

On another hand, courts used to mention international human rights treaties that were ratified by Egypt in their reasoning and considered them as a source to interpret the content of rights in several occasions. For instance, in one of its cases the Cairo High Emergency State Court delivered a judgment that recognize the right of workers to strike, even though there was no law at this time regulate the strike process. The Court used the ICESCR and the ILO conventions to interpret the content and the meaning of the right to strike[102].

The 2014 Constitution is the first document that mentions the hierarchy of the international human rights treaties in the Egyptian legal sytem. Article (93) of the Constituions states that "the state is committed to the agreements, covenants, and international conventions of human rights that were ratified by Egypt. They have the force of law after publication in accordance with the specified circumstances"[103]. Hence, in the *El-Bohi market case*, the Court considered the removal of the market as a violation of (ILO) convention N.122 concerning employment policy[104], and expressed that such removal will deprive around 70 vendors and their families from their right to work.

[100] *Ibid.*
[101] *Ibid.*
[102] Cairo High Emergency State Court, Case no 4190-year 1986. .1986 لسنة 4190 قضية رقم محكمة أمن الدولة العليا طوارئ القاهرة.
[103] Article (93) of the Egyptian Constitution.
[104] ILO, Employment Policy Convention, 1964 (No. 122), https://goo.gl/BokJFT

2. South Africa

Since the entrenchment of social and economic rights in the post-apartheid Constitution of 1996, South Africa became a significant case study of learning about the potentials and challenges of justiciable social and economic rights[105]. In general, the constitutional design of South Africa was strongly reflecting the international covenant on civil and political rights. However, the Constitution's drafters were aware to emphasize the meaning of dignity and equality and the inclusion of a number of socio-economic rights[106]. Notably, the formulation of socio-economic rights in the Constitution followed the language of the International Covenant on Economic, Social, and Culture Rights (ICESCR)[107]. For instance, using terms like the state is required to "respect, protect promote and fulfil all the rights[108]", or "take reasonable legislative and other measures" within "its available resources"[109], shows how the drafters were inspired by the ICESCR[110].Nevertheless, "the use of the term -*socio-economic*- rights has a narrower meaning in the south African context than that of ICESCR"[111]. For example, the right property rights and workers' rights had been slightly excluded from the social rights discourse.

2.1 The formulation of socio-economic rights in the South African Constitution

Indeed, the South African Constitutional Court had listed all socio-economic rights that guaranteed by the Constitution which are; the right of access to land (section 25-2), rights to adequate housing and to health care, food, water and social security (sections 26 and 27), the rights of the child (section 28), and the right to education (section 29).

[105] Katharine G. Young, Constitution Economic and Social Rights, Oxford University Press, 2012, p. 19.
[106] Lanford and Dugard, Socio-Economic Rights in South Africa Symbols or Substance? Cambridge University Press, 2014. P.5.
[107] *Ibid.*
[108] Article (7) of the South African constitution.
[109] Article (26,27 and 29) of the South African constitution.
[110] *Ibid.*
[111] Kirsty McLean, Constitutional Deference, Courts and Socio-Economic Rights in South Africa, Pretoria University Law Press (PULP), 2009. P.17.

According to McLean, a distinction may be made between two different categories of constitutional provisions that deals with socio-economic rights in South Africa[112]. The structure and formulation of each category define the content of the right and the exact beneficiaries of it. First, the primary category, which are found in sections (26) dealing with the right to housing, and section (27) that guarantees the rights of health care, food, water and social security. These provisions contain two parts, the right to the relevant social need, and another part clarifying the state obligation to implement this right, Only the right to education is that right which mentioned without any restrictions and afforded to everyone[113].

For instance, the first part of section (26) stated that "everyone has the right to have access to adequate housing", while the second part outlining that "the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of this right"[114]. It should be noted that, the main feature of this category of rights is that its extended to everyone and not limited to a special group.

On the other hand, there is another category of provisions that deal with socio-economic rights in the South African Constitution. The approach of these provisions is that limiting the scope of the rights to specific groups and reduce the content of the right as well. Such approach was found in section (28) which was directed to children and section (35) to people in detention[115]. In fact, these provisions offer the same rights that are set out in the first category but at the same time restrict the content of rights itself, for instance, giving the detained person the right to get "nutrition" instead of "sufficient food", and providing a "shelter" not "adequate housing" to every child[116]. Indeed, "the constitutional drafters chose to limit the scope of the right by

[112] *Ibid*. p.18.
[113] Section (29) of the South African constitution
[114] Section (26) of the South African constitution
[115] *Supra note* (111*)*, p.19.
[116] Sections (28) and (35) of the South African constitution.

providing a more restrictive right, rather than by making the obligation to provide the right subject to, and limited by, available resources and progressive realization" McLean stated[117].

Finally, there are other different rights with economic nature had been included in the South African Constitution. Section (25) provides a constitutional protection for property and regulates the compensation if the property had been expropriated. As well, section (23) of the Constitution guarantees fair labor practices for both employers and employees.

2.2 The Constitutional Court is the ultimate interpreter of Socio-economic rights.

According to article (39) of the Constitution, the South African Constitutional Court is the ultimate interpreter of the Bill of Rights. Such interpretation must occur in the light of the values of human dignity, equality, and freedom. In addition, courts must consider international law and may consider foreign law as well. Consequently, courts are obliged to give meaning to socio-economic rights through interpretation and evaluate government compliance with its duties[118].

Once the South African Constitution has been adopted, the Constitutional Court conducted its interpretive role effectively. The first challenge for the Court was interpreting this category of rights which are found in sections (26) and (27). The relationship between the right itself and the imposing state's obligations was questioned[119].

In *Soobramoney v Minister of Health*[120], the appellant was diabetic and need to dialysis treatment, the hospital refused to conduct this treatment because there is no possibility for improving the health statue. The hospital had argued that the priority should be for people who could be cured within a short period. Based on the purposive interpretation approach, the

[117] *Supra note* (111). p.19.
[118] Marius Pieterse, 'Coming to Terms with Judicial Enforcement of Socio-Economic Rights' (2004) 20 South African Journal on Human Rights, P,.383.
[119] *Supra note* (111), p.176.
[120] Soobramoney v Minister of Health (Kwazulu-Natal) (CCT32/97) [1997] ZACC 17; 1998 (1) SA 765 (CC); 1997 (12) BCLR 1696 (27 November 1997)

Constitutional Court found a link between the right to life and the principle of dignity with other rights such as the right to health. However, the Court held that, "this right could not be construed outside the context of availability of health services generally"[121]. Further, the Court interpreted these provisions in the way of, "the obligations imposed on the state by sections 26 and 27 in regard to access to housing, healthcare, food, water and social security are dependent upon the resources available for such purposes"[122]. The treatment had to be provided to Mr Soobramoney it would also have to be provided to all other patients who in a similar position and the resources available to the hospital could not accommodate the demand, Therefore, these rights are limited by reason of the lack of resources[123].

In *Grootboom*[124], when the Court examined the housing policy of the government, the same availability of resources approach was adopted, and the court accepted the interpretation that held in *Soobramoney*. Again, the Court stated that the obligation in section (26-2) "does not require the state to do more than its available resources permit"[125].

Also, one of the most debated issues in South Africa and in the constitutional law discourse regarding socio-economic rights, is the issue of "the minimum core obligation" of these rights. The South African Constitutional Court considered the question of the minimum core for the first time in *Grootboom* case. The applicants asked the Court to adopt an interpretation of section (26) to provide the "minimum core" of the right to housing to everyone[126]. The Court refused the minimum core approach due to the absence of information which would enable the Court to determine the minimum core[127]. However, the Court considered the concept of the

[121] Dennis Davis, socio-economic rights in south Africa: the record after ten years, New Zealand Journal of Public and International Law, 2004, p.51.
[122] Soobramoney v Minister of Health, para.11.
[123] *Ibid.*
[124] Government of the Republic of South Africa & Others v Grootboom & Others 2001 1 SA 46 (CC)
[125] *Ibid*, Para 46.
[126] *Ibid.*
[127] *Ibid,* para.33.

minimum core could use as a factor to determine whether the measures undertaken by the state are reasonable or not[128].

In *TAC*[129], the Constitutional Court dealt again with the argument of the minimum core obligation. The applicants this time argued that the right to access to health care services[130] "should be interpreted to mean that the state should provide a minimum level of services consistent with a dignified human existence"[131]. The Court addressed its method clearly and stated that based on the purposive interpretation of sections (26) and (27) "It is impossible to give everyone access even to a 'core' service immediately. All that is possible, and all that can be expected of the State, is that it acts reasonably to provide access to the socio-economic rights identified in sections 26 and 27 on a progressive basis"[132].

However, some scholars argued that there is no contradiction between considering the minimum core approach and the purposive interpretation that the Court adopted. Shortly after *Grootboom* and *TAC*, Bilchitz argued that, "a purposive interpretation of the Constitution, giving effect to the foundational values of equality, dignity and freedom, would result in a minimum core interpretation.[133]"

Indeed, the South African Constitutional Court established a specific framework in its early jurisprudence regarding socioeconomic rights. The Court began to mention the possibility of reading socio-economic questions in wider lens through the constitution as a whole not just "limited to a narrow reading of the specific socioeconomic rights provisions"[134]. For instance, in *Khosa v Minister of Social Development*, the Court found that the new social security

[128] *Ibid*, p.182.
[129] Minister of Health and Others v Treatment Action Campaign and Others (No 2) (CCT8/02) [2002] ZACC 15; 2002 (5) SA 721; 2002 (10) BCLR 1033 (5 July 2002).
[130] This case concerned a government policy which appeared to be based upon a refusal to make an anti-retroviral drug called Nevirapine available in the public sector so as to prevent mother-to-child transmission of HIV.
[131] *Supra note* 129, p.183.
[132] *Supra note* 129, p35.
[133] David Bilchitz, Toward a Reasonable Approach to the Minimum Core: Laying the Foundations for Future Socio-Economic Rights Jurisprudence, South African Journal on Human Rights,2003, p.15.
[134] DM Davis, 'Socioeconomic Rights: Do They Deliver the Goods?' (2008) 6 International Journal of Constitutional Law 687, page703

program which excluded the permanent residents from the scope of social security, violated their right to equal enjoyment of the rights and freedoms. Thus, that may have "a serious impact on their dignity"[135]. In sum, the Court considered using different provisions in the Constitution like "equality" and "human dignity" provisions to deal with socioeconomic matters[136], that left a remarkable impact on the scope of these rights and its expansion.

3. Colombia:

In 1991, Colombia adopted a new constitution, which is considered one of the most progressive constitutions in Latin America. Article (1) of the Constitution stated that, Colombia is a "social state" and addressed three main principles which the state based on; "the respect of human dignity", "the work and the solidarity of the individuals", and the predominance of the public interest. These principles combined with a whole chapter of constitutional provisions regarding socio-economic rights, considered the cornerstone of the remarkable constitutional protection for these rights in Colombia[137].

The Colombian Constitution divides the rights and duties to three main chapters; first, the fundamental rights, which included the classical civil and political rights[138]. The second chapter, which is concerned mainly with socio-economic rights, exactly, in 36 constitutional provisions. In addition to, the third chapter that includes the environmental and collective rights[139].

The list of socio-economic rights included in the Colombian Constitution was very extensive and detailed. Almost all known social and economic rights were mentioned. The right to

[135] *Ibid*

[136] **Article (9):** "Everyone is equal before the law and has the right to equal protection and benefit of the law. Equality includes the full and equal enjoyment of all rights and freedoms…….". **Article (10):** "Everyone has inherent dignity and the right to have their dignity respected and protected".

[137] Malcolm Langford, Social rights jurisprudence: emerging trends in international and comparative law, Cambridge University Press, 2008, p.144.

[138] Articles (11-41) of the Colombian constitution.

[139] Articles (78-82) of the Colombian constitution

adequate housing (Art.51), the right to health care and environmental protection (Art.49), the right to education (Art.67), the right to work (Art.25), and the right to property, including intellectual property (Art.58). In addition, many other rights have a social or economic nature, like workers' rights, the right to rest and leisure, equal pay for work and right to reasonable standards of living[140].

3.1 The doctrine of the constitutional block

The Colombian Constitution gives international human rights law a very high statues within the domestic legal order[141]. According to Article (93) of the Constitution, all the international treaties and agreements ratified by Congress that recognize human rights a have domestic priority. Thus, rights that recognized in the International Covenant on Economic, Social, and Culture rights (ICESCR) and the additional protocol to the American convention in the area of economic, social, and culture rights are part of the Colombian legal order and have the same constitutional protection[142]. Moreover, international labor agreements that were ratified by Colombia are part of domestic legislation, according to article (53) of the constitution.

Consequently, the Colombian Constitutional Court adopted in its judgments the doctrine of "the Constitutional block"[143]. Pursuant to this doctrine, the Colombian Constitution "includes not only the constitutional text, but also certain principles of international law"[144], especially the international human rights law. The concept of the constitutional block had a significant impact on the jurisprudence of the Court. In addition, it helped the Court to recognize socio-economic rights as progressive rights in nature[145]. Furthermore, the Constitutional Court stressed that the constitutional recognition of these rights requires that the state should adopt a

[140] Article (53) of the Colombian constitution.
[141] Manuel Cepeda and David Landau, Colombian constitutional law: leading cases, Oxford University Press, 2017, p.42.
[142] *Supra note* (137), p.145.
[143] *Supra note* (141) – Also, the concept of the constitutional block is French; the French Constitutional Council used this concept to incorporate into the 1958 Constitution fundamental principles drawn from other texts, such as the Declaration of the Rights of Man and of the Citizen. See John Bell, French Constitutional Law 64– 73 (1992).
[144] Ibid, p.43.
[145] *Supra note* (137), p.146.

plan of actions for the implementation of these rights and considered the lack of such planning would be a violation to the Constitution[146].

Indeed, the role of the Constitutional Court in the rise of the constitutional protection of socio-economic rights in Colombia is remarkable. Since its creation in 1991 with the new Constitution, the Court proved that the constitutional text will never be sufficient without a progressive interpreter. Similar to its counterpart in South Africa, the Colombian Constitutional Court adopted a systematic and teleological interpretation of the Constitution and built many of its judgments on the values that enshrined in article (1) of the Constitution, such as the protection of individual dignity and the principle of the "social state"[147]. Also, what is notable about the Court's work regarding the socio-economic cases, the court accepted *tutela action*[148] concerning these rights in certain circumstances.[149] Thus, the huge number of cases helped the court in developing its jurisprudence of Socio- economic rights.

3.2 The Constitutional Court approach toward socio-economic rights

The Colombian Constitutional Court played its interpretive role regarding socio-economic rights principally through three practices: (a) *a broad interpretation of "fundamental rights*", such as the right to life, dignity and physical integrity; (b) the concept of "*minimum conditions for a dignified life*"; and (c) the concept of "*unconstitutional state of affairs*"[150].

First, according to article (86) of the Constitution, the right to submit a claim before a judge seeking for legal protection is only limited to the "fundamental rights". The Court rejected the formalistic and the textual interpretation of the Constitution and extended the right of protection

[146] *Ibid*, p.147.
[147] *Ibid*.
[148] The main mechanism for the judicial protection of rights in the Colombian constitution the Constitution and It is the right of every person to file a writ of protection before any court or tribunal for the immediate protection of her or his 'fundamental constitutional rights'. This process of review has enabled the Court to develop an important body of jurisprudence on the protection of socio-economic rights.
[149] *Supra note*.137, p.147.
[150] *Ibid*.

to all the rights that are fundamental "by nature". Thus, it opened the door for the judicial protection of socio-economic rights[151]. Second, the Court developed the concept of minimum conditions for a dignified life, which means that every person has the right in minimum life conditions and the state should afford these conditions. A one can see the similarity between this approach and the concept of the minimum core obligation that had been refused by the South African Constitutional Court. Indeed, this right in minimum life conditions is not mentioned in the Constitution by any means, while the Court recognized this concept from other rights in the Constitution, such as the right to life, right to health, and the right to work[152], based on the systematic and teleological interpretation.

The third tool was developed by the Court for more protection to the constitutional rights is the concept of "the unconstitutional state of affairs". When the Court finds a systematic violation of specific right or several Constitutional rights that affect a huge number of people, it considers them as unconstitutional state of affairs[153]. In this case, the Court does not wait for more people claiming the same violations but renders appropriate remedies for all individuals in the same circumstances, not just people who submitted their claims. Moreover, the Court may order the state authorities to adopt or design new plan of action to deal with this problem[154].

Further, the Constitutional Court developed other tools in that gives the judiciary more powers, one of these tools is the concept of *the conditionally constitutional* [155]. According to this concept "the Court interpreted that its competence to decide upon the constitutionality of a law includes not only its power to either maintain it in the legal order by declaring its

[151] *Ibid*.
[152] *Ibid*.
[153] *Ibid*, p,148.
[154] *Ibid*.
[155] Javier Franco, Pablo Medrano, Constitutional courts and economic policies the Colombian case, Revista Prolegómenos. Derechos y Valores de la Facultad de Derecho, Universidad Libre (Bogotá), Volumen XIII - No. 26 - Julio - Diciembre 2010. P,205. ***See also***, public action of unconstitutionality is the tool that "any citizen can demand the Court that a law or decree be declared unconstitutional, without him or her being a lawyer or having any particular interest in the issue", P.204.

constitutionality or annul it but also its power to declare it *conditionally constitutional*, by maintaining it in the legal order and offering the only constitutional interpretation the text can be given"[156]. In fact, by such an approach, the Court extended its power to modify laws not just interpret and enforce it, which caused a lot of criticism for such judicial activism in Colombia.

Conclusion

After observing the constitutional framework of socio-economic rights in the three compared jurisdictions, and showing the methods of its interpretation, it is important to see the impact of these strategies from a bigger perspective. While the South African Constitutional Court was aiming to achieve the progressive realization of socio-economic rights by adopting the purposive interpretation approach, it was aware of the separation of powers concerns that had been raised as well. Therefore, establishing a method that allows the Court to conduct its progressive realization of rights without interfering in the executive's policies was its main task, the reasonableness test was this method. Also, the Constitutional Court used the reasonableness approach in assessing the government's compliance with its obligations toward socio-economic rights[157].

Further, the Court used to wait for the state's policies to enter into force and then interfere by examining the reasonableness of this policy. This method helped the Court to avoid the separation of powers objections that used to be raised regarding socio-economic adjudication. Further, the formulation of socio-economic provisions in the South African Constitution, precisely, the reasonable condition in most of the constitutional provisions, was the entrance for the Court to adopt such an approach. Indeed, the remarkable success of this approach in South Africa was inspiring for the drafters of the Optional Protocol to ICESCR and had been

[156] *Ibid*.
[157] Supra note (30), p.757.

reflected in the text of article 8 (4) of the Protocol that considered the reasonableness of the steps taken by the State as a part of examining communications[158].

In Colombia, the active interpretive role of the Constitutional Court was the main reason behind the expansion of the protected socio-economic rights, and one of these activism inventions is the concept of the unconstitutional state of affairs. From one hand, this approach assisted the Court to expand the scope of its protection to socio-economic rights, on the other hand, brought considerable criticism to the Constitutional Court. Some opinions considered using the huge numbers of *tuttela action* to determine the unconstitutionality of a law or a policy is kind of judicialization of politics, which could affect the national government's plans[159].

In Egypt, although the 2014 Constitution included numerous socio-economic rights, yet, no one can see any development in socio-economic matters adjudication. The limited access to the Supreme Constitutional Court did not allow any chance to develop the Court's jurisprudence regarding socio-economic rights under the mandate of the new Constitution. Also, the new Constitutional commitments towards education and health rights stayed only as texts without any applicable aspect, because of the absence of an enforcement mechanism for these obligations. Meanwhile, administrative courts continued in its approach of relying on the principles of the Islamic Sharia and other notions from international law in its interpretation process of socio-economic rights. However, we cannot generalize this approach as an agreed method for all administrative courts, indeed, it could consider as an individual approach for many judges, who succeeded to leave an impact on the whole system.

[158] *Ibid*, P. 755. ***See Also***, Article (8-4) of the OP- ICESCR: "When examining communications under the present Protocol, the Committee shall consider the reasonableness of the steps taken by the State Party in accordance with part II of the Covenant. In doing so, the Committee shall bear in mind that the State Party may adopt a range of possible policy measures for the implementation of the rights set forth in the Covenant".

[159] Rodrigo Uprimny Yepes, Judicialization of politics in Colombia: cases, merits and risks, Sur - Revista Internacional de Direitos Humanos, São Paulo, n.6, p.53-69, 2007.P.5.

Chapter Three: The Right to Adequate Housing and Forced Evictions Operations

1. Background

Since the early development of the international human rights law, the right to adequate housing had been recognized as right among other social and economic rights. Housing had been included among the adequate standards of living that should provide to everyone in the UDHR[160]. Then in 1966, the International Covenant on Economic, Social and Cultural Right (ICESCR) had asserted the right[161]. Over the years, there were many attempts to define and frame the right to adequate housing. In 1991, the UN Committee on Economic, Social and Cultural Rights (CESCR) has adopted General Comment no.4 on the right to adequate housing. The Committee asserted that, "the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, rather, it should be seen as the right to live somewhere in security, peace and dignity"[162]. Further, the Committee stated certain aspects of the right to housing that should be taken in consideration to achieve the required adequacy, such as, "the legal security of tenure, affordability, availability of services, materials, facilities and infrastructure"[163].

International attention to the right to adequate housing has been increased, including by several human rights treaties and regional human rights mechanisms[164]. In 2000, the United Nations Commission on Human Rights[165] (CHR) established the mandate of the Special

[160] Article (25) of the UDHR, "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services."

[161] Article (11) of the ICESCR, "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions"

[162] CESCR General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), Adopted at the Sixth Session of the Committee on Economic, Social and Cultural Rights, on 13 December 1991, par.7 https://bit.ly/2M0kqKK

[163] *Ibid*

[164] In the 1966 International Covenant on Economic, Social and Cultural Rights included the right to adequate housing in article (11). Also, in the 1961 European Social charter, Article (16).

[165] In 2006, the commission had been replaced by the UN Human Rights Council.

Rapporteur on adequate housing, "that focus will on adequate housing as a component of the right to an adequate standard of living"[166]. As a result of all these processes, the content and the scope of the right to adequate housing has been clarified and states became more aware of its obligations[167].

In addition, several constitutions around the world had protected the right to adequate housing and stated the state's responsibilities to ensure adequate housing and living conditions, among those, the constitutions of Egypt (Arts. 41 and 78), Colombia (Arts. 51 and 64), and South Africa (Art.26). The three countries formulated and constructed the provisions of the right to housing based on their historical experiences with housing problems, besides the circumstances that surrounded the adoption of the Constitutions. For instance, both the Egyptian and the Colombian Constitutions included the long-term financing and community plans to deal with the fast-growing population and the permeant displacement problems, respectively.

1.1 the Spatial inequality and housing shortage for black people in South Africa:

In South Africa, colonialism and apartheid affected land use planning over the years and led to excessive racial segregation. At that time, apartheid laws prohibited black people from owning lands outside specific areas, these areas were around 13% of the total landscape in South Africa, most of these lands were rural and undeveloped[168]. Further, these lands that were dedicated to black communities were very distant from the economic centres that were mainly in the white urban residents. Also, ownership restrictions and curfews policies had been made to prohibit black people to live there. Thus, a huge number of black labourers were settled down

[166] Commission on Human Rights resolution 2000/9, 17 April 2000. https://bit.ly/2QaSimz
[167] Office of UN high Commissioner for Human Rights, The Right to Adequate Housing, 2009, Fact Sheet No. 21/Rev.1.
[168] Strauss, M., & Liebenberg, S. (2014). Contested spaces: Housing rights and evictions law in post-apartheid South Africa. Planning Theory, 13(4), 428–448, p.3.

in locations outside formal urban areas, these locations had been known as the *townships*[169]. Townships had been recognized by the lack of basic utilities services, such electricity and water.

Therefore, "as the formally established townships were too far from economic opportunities, blacks started to settle informally on vacant land near towns and cities"[170]. In response, mass evictions had happened against these informal settlements around the white urban areas, which were supported by very discriminatory land legislation and strong racial legal framework[171]. As predictable consequence to the collapse of apartheid at the end of the twentieth century, a remarkable housing shortage for black communities had taken a place.

Accordingly, protecting the right to adequate housing and prohibiting forced evictions was one of the priorities of the 1996 South African Constitution's drafters. Indeed, the main challenge at that moment was "the transformation of South Africa's urban housing landscape" and eliminating "the spatial inequality and promoting integrated housing development"[172]. Hence, the way that the section (26) of the Constitution had been formulated reflected the awareness about the challenges that should be faced. Section (26) recognizes the right of everyone to have access to adequate housing, declares the state obligations to achieve the progressive realisation of the right, and categorically prohibit unlawful evictions by requiring a court order before any one may be evicted from his/her home.

1.2 The fast-growing population and the mystery of state's development plans in Egypt

While in South Africa the racial segregation and the apartheid system were the background and the roots of shortage of housing and urban problems, in Egypt the situation is quite different. Over the past decades, the fast-growing population has become one of the significant challenges in Egypt. Since 2006 Egypt's population has grown by 22.2 million people and nearly 95

[169] *Ibid.*
[170] *Ibid.*
[171] *Ibid.*
[172] *Ibid*. p.2.

percent are concentrated along the Nile river[173]. According to the official statics of 2018, the current population of Egypt is 98.6 million residents[174]. Moreover, the excessive centralization of governance and the lack of economic opportunities led to huge waves of internal migration from upper Egypt and rural areas to the big cities, especially Cairo and Alexandria. Such situation put an extreme pressure on the government to provide adequate housing. At the same time, the massive corruption in the official state agencies which help in neglecting housing problems for decades has become a significant problem. As a result, during the years several informal settlements had been established all over Egypt, mainly in big cities to absorb this enormous increase numbers. In 2017, "[a]pproximately 40 per cent of all buildings in Egypt are located in unplanned or informal areas"[175].

The enjoyment of the right to adequate housing was a main demand of the Egyptian revolution in 2011, especially for the poor and marginalized residing in inadequate housing conditions. For a better understanding of housing problem in Egypt, it is important to note that the private sector and foreign investors are the main players in real estate and land market, and the state's involvement in affording social housing is very limited, according to a recent report of the Special Rapporteur on adequate housing[176]. The government shifted its priorities to luxurious housing investments rather than social housing schemes[177].

The one can see the state's vision toward housing problems in the Egyptian state's long-term plan "Cairo 2050 Vision" that was approved and had launched before the revolution[178]. This

[173] 27.8 percent of Egyptian population lives below poverty line: CAPMAS, Egypt independent news website, June 2016, https://bit.ly/2JvaruG

[174] The Egyptian central agency for public mobilization and statics, the official website, http://www.capmas.gov.eg/HomePage.aspx

[175] Report of the Special Rapporteur on adequate housing regarding her visiting mission to Egypt from 24 September to 3 October 2018 pursuant to Human Rights Council resolution 34/9, published on 28 February 2018, https://www.ohchr.org/EN/Issues/Housing/Pages/CountryVisits.aspx

[176] *Ibid*.

[177] Workshop Report "Cairo2050" The Urban Development Projects and People's Right to Adequate Housing In the light of Revolution of 25th January, Housing and Land Rights Network Habitat International Coalition, 13-14 July 2011, p.3, https://bit.ly/2WaHkTr

[178] Cairo vision 2050 The Strategic Urban Development Plan of Greater Cairo Region, p.35, https://bit.ly/2uvFyNp.

plan was part of larger economic liberalization policies that were adopted by the previous regime. One of the main principles of this vision was to "upgrade poor, deteriorate and informal existing areas, provide new adequate residential areas compatible with government plans to limit informal zones in order to create good and healthy society"[179]. However, according to the Cairo Urban Solidarity Initiative (Tadamun), the lack of clear information and transparency, or how the government will achieve these goals raised many concerns regarding the state's obligations toward housing, especially because of forced evictions operations that the government was doing in several areas[180].

Little has changed with the revolution, the government continuing its same policies under different names, however, there is a notable interest regarding affording social housing. A new sustainable development strategy under the name of "Egypt vision 2030" had been adopted as the new development plan for the country. One of the programs of this plan that related to the urban development part named "*Eliminating informal settlements and insecure areas"*[181]. Again, there is no clear information or any official statements about how the state will *eliminate* these areas.

In article (78), the Egyptian Constitution guarantees the right to decent, safe and healthy housing. Also, it obliges the state to devise a national housing plan to regulate state lands[182]. Moreover, because of the several forced eviction operations that took place in the last decade, the Constitution's drafters asserted a prohibition of all forms and types of forced displacement of citizens[183]. Unlike the South African constitutional provision regarding evictions, article (63) of the Egyptian Constitution only mentioned that "All forms of arbitrary forced migration of

[179] *Ibid*, p.35.
[180] Cairo 2050 Revisited: Cairo's Mysterious Planning — What We Know and What We Do Not Know About Al-Fusṭāṭ, "*Tadamun*" (The Cairo Urban Solidarity Initiative), https://bit.ly/2JszcYe
[181] The official website of the Egyptian sustainable development strategy "Egypt vision 2030", https://bit.ly/2VwFeJb
[182] Article (78) of the Egyptian Constitution.
[183] Article (63) of the Egyptian Constitution

citizens are forbidden", While in South Africa section (26) is more concern about mentioning the safeguards for evictions, such the requirement of a court order.

1.3 The permeant displacement of population in Colombia:

The Large-scale population displacements considered as one of the most systematic problematic issues in Colombia. In fact, the problem appeared as a result of the long-term political conflict between the government and armed rebel groups that remained in operation for many years. According to Lirio do Valle, "various paramilitary organizations operating in the country for many years, as a truly parallel power, created a reality in which armed conflicts were almost routine in some regions"[184]. Consequently, just the strategic interest of these armed groups in a place could be the reason for a massive displacement from a small village or a town[185].

Therefore, the *permeant displacement of the population* became a very widespread phenomenon in Colombia[186]. One important fact is that these displacement operations affected all Colombians not just a particular social group or specific ethnicity[187]. According to the United Nations High Commissioner on Refugees, Colombia had the highest number of internally displaced persons in the world: at the end of 2015, there were 6.9 million people, or about 14 percent of the national population[188]. This led to an important fact that, "for over a decade the Colombian Constitutional Court received thousands of claims related to problems faced by internally displaced persons (IDPs)"[189], particularly regarding the right to adequate housing.

[184] Vanice Regina Lirio do Valle, Judicial Adjudication in Housing Rights in Brazil and Colombia: A Comparative Perspective, 1 Revista de Investigacoes Constitucionais 67 (2014), p.18.
[185] *Ibid.*
[186] *Ibid.*
[187] *Ibid.*
[188] Manuel José Cepeda Espinosa, David Landau, Colombian Constitutional Law: leading Cases, Oxford University Press, 2017, p.178.
[189] Uan Gonzalez-Bertomeu and Roberto Gargarella, The Latin American casebook: courts, constitutions and rights, Ashgate, 2016, p.159.

The one can see from the formulation of the constitutional provisions that protects the right to housing that, the constitutional drafters did not give much attention to frame the right or even to address the problem of the internally displaced persons in a specific provision. However, Article (51) of the Constitution which states the right of Colombians to live in dignity, considers the protection of the right to adequate housing, by obliging the state to promote plans for public housing and to provide appropriate systems of long-term financing for these programs. Also, Article (64) of the Constitution stated that, "it's the duty of the State to promote the gradual access of agricultural workers to landed property in individual or associational form and to services involving education, health, housing…"[190]. Finally, in contrast to the other social and economic rights that constitutionally protected by the Colombian Constitution, the right to housing only extends to Colombian citizens not to everybody. In South Africa, section (26) grants the right to have access to adequate housing to everyone as well, not just citizens, while the Egyptian Constitution was more concerned about only the Egyptians.

2. Realization of the right to adequate housing

As the three countries in this study ratified the ICESCR, they have the obligation to achieve progressively the full realization of the right to adequate housing[191]. While the full realization of the right may take a long time, steps should be taken toward this goal in a reasonable short time[192]. At the same time, each constitution frames the state's obligations to realize the right to adequate housing in its own specific way.

2.1 "Access" to adequate housing and reasonable measures in South Africa

Section (26) of the South African Constitution contains three subsections relating to the right to housing. First, it states the right of "everyone to have *access* to adequate housing", second,

[190] Article (64) of the Colombian Constitution
[191] Articles (2) and (11) of the ICESCR.
[192] CESCR General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant), office of the high commissioner for human rights, adopted at the Fifth Session of the Committee on Economic, Social and Cultural Rights, on 14 December 1990, Para.2. https://bit.ly/2K5lpq2

it mentions the state obligations, which is *taking "reasonable legislative measures"* among other measures, within its "*available resources*", to achieve the realisation of the right progressively. Third, it puts an obligation on the state *to not evict anyone from his/her home*, without a court order, and after taking all the relevant circumstances into consideration[193].

Therefore, according to section (26), the state has a positive obligation to interfere through the adoption of some *reasonable* measures to ensure the realization of the right to adequate housing. However, there are also negative obligations on the state regarding housing, which is clarified by the Constitutional Court in *Grootboom* when stated that, there is ""at the very least, a negative obligation placed upon the state and all other entities and persons to desist from preventing or impairing the right of access to adequate housing"[194]. Moreover, the Court observed that section 26 (3) puts an "obligation on the state and private parties to refrain from interfering with people's existing access to housing"[195]. The Court stated that clearly, "the negative right is further spelt out in subsection (3) which prohibits arbitrary eviction"[196].

In *Grootboom*, the applicants were a group of people who were living in an informal settlement under horrible conditions, without any basic services. They "decided to move out and illegally occupied someone else's land, they were evicted and left homeless"[197]. Indeed, this land was private land, not a state land, hence, the question of the competing interests between the right to housing and property rights has been raised. Also, *Grootboom* spotted the light in the intolerable living conditions of people while they are waiting their turn to be allocated low-cost housing. The applicants asked the Court to "to provide them with adequate

[193] Section (26) of the South African Constitution.
[194] Government of the Republic of South Africa & Others v Grootboom & Others 2001 1 SA 46 (CC) para 66.
[195] *Supra note* (168), page (4).
[196] Grootboom, Para (34).
[197] *Ibid,* para.3.

basic shelter or housing until they obtained permanent accommodation and were granted certain relief"[198].

In this case, the Court affirmed the positive duty on the state to ensure that those facing homelessness gain access to adequate housing. The Court found that section (26) obliges the state not only to adopt and implement "a coherent, co-ordinated housing program, but to provide such a program for those in most desperate need"[199]. Thus, *in Grootboom,* the Constitutional Court found that the state's failure to implement a housing policy that provided relief for people with 'no access to land, no roof over their heads and who were living in intolerable conditions or crisis situations[200]' amounted to a violation of section 26(2) of the Constitution.

Indeed, the approach of the recognition of the right to housing in South Africa was unique and creative from the beginning. The language used in section (26) especially phrasing the right as "the right to have ***access*** to adequate housing" rather than the ICESCR's phraseology "the right to have adequate housing" made a huge difference in the scope of the right and the state's obligations. In *Grootboom*, the Court highlighted this difference and stated that, "this difference is significant. It recognises that housing entails more than bricks and mortar. It requires available land, appropriate services such as the provision of water and the removal of sewage and the financing of all of these, including the building of the house itself"[201].

On another hand, the South African Constitution puts an obligation on the state to provide basic shelter to every child, according to article 28. It should be noted that, the provision's approach here is different from section 26, "children's right to shelter is not qualified by access, progressive realization or available resources"[202]. However, the Court found that despite the

[198] *Ibid,* para.4.
[199] *Ibid,* para. (40-41).
[200] *Ibid,* para.99.
[201] *Grootboom* 2001 1 SA 46 (CC) para. (35).
[202] Lilian Chenwi, Implementation of Housing Rights in South Africa: Approaches and Strategies, Journal of law and Social policy, 2015, p.73.

difference in the terms and language, "shelter" in section (28) does not bear any different meaning from the term "housing" in section 26. Thus, the obligation to provide children and their parents with housing "does not exist independently of the general obligation to take reasonable legislative and other measures under section 26(2)"[203]. From the Constitutional Court's perspective, "housing and shelter are related concepts and one of the aims of housing is to provide physical shelter. But shelter is not a commodity separate from housing"[204].

It should be noted that, the *Grootboom* case has a great impact on the development of socio-economic jurisprudence in South Africa and highlighted the housing situations in the country. However, the judgment failed the expectations of litigants themselves, Mrs. Grootboom never had a home until she died. Also, despite the advantages of the participatory remedies approach that the Constitutional Court had been adopted in *Grootboom*, the settlement that made between parties did not has a time framework for action and the role of the Court in supervision the implementation of the judgment was very weak[205].

Finally, there is another obligation on the state regarding detained persons. Section 35 (2) of the Constitution provides the right to adequate accommodation, at state expenses for all prisoners[206]. Hence, through its jurisprudence, the Constitutional Court affirmed the state's obligation to provide special protection for vulnerable groups regarding the right to adequate housing. The Court found that vulnerable persons such as persons with physical disabilities[207] and persons who living with HIV/AIDS should have more protection[208].

[203] *Ibid*.
[204] *Grootboom* 2001 1 SA 46 (CC) para. (73).
[205] Kameshni Pillay, implementing Grootboom: supervision needed, ESR Review: Economic and Social Rights in South Africa, Volume 3 Number 1, Jul 2002, p.13 – 14.
[206] Section 35 (2) (e) of the South African Constitution, "Everyone who is detained, including every sentenced prisoner, has the right to conditions of detention that are consistent with human dignity, including at least exercise and the provision, ***at state expense, of adequate accommodation***, nutrition, reading material and medical treatment".
[207] *Supra note* (202).
[208] *Ibid*, p.74.

Indeed, the extension of the scope of the protection was a result of a comprehensive legislative framework and the adoption of several national policies. For instance, the adoption of the housing subsidy programme allowed persons with disabilities to have an individual housing subsidy to help them to afford a proper place to live[209]. Also, one of the target groups of the national South Africa's social housing programme was person with disabilities and living with HIV/AIDS[210]. These legislations and policies made the Court's task more easier and gave it the chance to consider other vulnerable groups[211].

2.2 State housing plans as a tool to guarantees the right to housing in Egypt:

Among all previous Egyptian constitutions, the first time that the right to adequate housing was considered as a constitutional right was in the 2012 Constitution[212]. In 2014, after numerous political changes, and the removal of the Muslim Brotherhood regime by the military, a new Constitution was adopted. The new Constitution, in turn, recognizes the right to adequate housing and addresses several obligations on the state to ensure the full realization of the right in articles (41) and (78).

As already mentioned, the high population growth rates and increasing the number of informal settlements is considered as the main housing problem in Egypt. There are around 38 million people living in informal settlements in Egypt, "where residents live on land without holding formal legal title, or whose homes do not necessarily conform with urban planning and building standards"[213]. Hence, these problems had its reflection on the Constitution's drafters' approach during their structuring the state's obligations regarding the right to adequate housing.

[209] *Ibid*, P.73.
[210] *Ibid*. P.74.
[211] Gumede v President of the Republic of South Africa and Others (CCT 50/08) [2008), In this case the Court found "non-recognition of women's right to ownership, including access to and control of family property, upon dissolution of a customary marriage, to be unfair discrimination on grounds of gender".
[212] Article (68) of the 2012 Constituion.
[213] *Supra note* (175), p.8.

Developing housing plans and focusing on long-term national policies was the prevailing approach in the 2014 Constitution regarding housing problems.

First, article (78) of the Constitution recognizes the right to housing to all citizens. Instead of using the term "adequate" housing, the state has the obligation to guarantee the right to "***decent, safe and healthy housing***, in a way that preserves human dignity and achieves social justice"[214]. Further, the state should draft a national housing plan, take into consideration the "*environmental particularity*" of some areas and "*guarantees the contribution of personal and collaborative initiatives in its implementation*"[215]. Moreover, this plan should 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*"[216].

Likewise, article (78) obliges the state to draft another comprehensive national plan specifically to address the problem of informal areas. This plan includes an obligation on the state to provide infrastructure and facilities to these areas and improve the quality of life and public health. Also, for the purpose of the implementation of these plans, the state obliges to provide the necessary resources, within a specified time frame[217].

Continuing in long-term plans approach, article (41) of the Constitution put another obligation on the state to adopt "a housing program that aims at achieving a balance between population growth rates and resources available"[218]. Also, article (236) stated that, "the state shall develop and implement a plan for the comprehensive economic and urban development of border and underprivileged areas, within ten years from the date that this Constitution comes into effect"[219].

On another hand, because of the history of forced evictions operations that happened in Egypt during the last two decades for different purposes and affected the life of thousands of

[214] Article (78) of the 2014 Constitution.
[215] *Ibid.*
[216] *Ibid.*
[217] *Ibid.*
[218] Article (41) of the 2014 Constitution.
[219] Article (236) of the 2014 Constitution.

Egyptians, article (63) of the Constitution prohibits "all forms of arbitrary forced migration of citizens", puts a negative obligation on the state to not interfere in people's existing housing rights, and considers violations of this article "a crime without a statute of limitations"[220].

In different places in the Constitution, one can find several obligations and duties on the burden of the state regarding the right to housing. For instance, article (80) protects the right of every child to have a safe shelter. Also, under the right to privacy article (58) stated that, "homes are inviolable", while article (59) protects the right of everyone to have a secure life.

In sum, the right of housing in the Egyptian Constitution has framed in more detailed terms rather "adequate". However, the Constitution's provisions put a very broad obligation on the state to adopt and develop national housing plans and policies, without framing specific, immediate, and concrete obligations towards the ongoing violation of the right to housing. For instance, there is no obligation on the state to enact legislation for the purpose of housing problems, such as the corresponding obligation in South Africa, in the Egyptian Constitution just plans and governmental policies that should be established by the relevant ministries. The problem in such approach is when the rely becomes merely on the government long-term plans, that prohibits the legislature, which is the elected representor of the people, from getting involved in one of the most massive problems in Egypt. Losing the chance to contribute in form of enacting laws, or even discussing these plans on the parliament is an unhealthy feature in a democratic society, especially when there is no obligation on the state to share these plans with the parliament. Indeed, that is the case since the adoption of the new Constitution, used to adopt its plans and then send some summaries about it to the parliament, without even formal discussion.

One other note about this approach, the absence of a package of various legislative dealing with housing problems, leads to a very weak judicial review and limits the opportunities to

[220] Article (63) of the 2014 Constitution.

challenge these plans, especially in a system such as the Egyptian judicial system rarely interferes in the government's policies. Further, such approach may not be the best choice for the Egyptian context. Furthermore, the freedom of information and transparency are not the favourite practice for the Egyptian government[221], the absence of specific dates in the constitutional provisions regarding when these plans should start or will end raises many concerns about the seriousness of these plans.

Indeed, no one can negate that there is a discernible effort regarding the housing problems in Egypt, at least the state now is aware of its problems after decades of denial. However, since the adoption of the 2014 Constitution, only one law had been enacted related to housing issues, the Presidential Decree Law 33/2014 on social housing. This law regulates the procedures that should be taken to apply for a unit among the state social housing program. Consequently, in 2014 a new social housing programme was announced to construct one million new units. In 2018, over 600,000 units had already been built, according to the UN Special Rapporteur on adequate housing[222]. It should be noted that, "these new houses were built on state land in very remote locations; thus, newly built housing stock does not match demand for those who live on the most modest incomes"[223]. Notably, this social housing program is Funding with the assistance of World Bank loans[224].

According to the 2014 housing program, "applicants receive a subsidised mortgage loan running for 10 to 20 years, in addition to a non-refundable cash subsidy ranging from EGP 5,000 to 40,000. To purchase a unit, beneficiaries must make a deposit of 15 to 50 per cent of the unit price"[225]. Although, statistics shows that, while "86.9% of the social housing program

[221] According to transparency International, Egypt's rank is 105/180 country around the world, 2019. https://www.transparency.org/country/EGY
[222] *Supra note* (175), p.6.
[223] *Supra note* (175), p.6.
[224] *Supra note* (175), p.13.
[225] *Ibid*. See more information: World Bank Group, Inclusive Housing finance program, The Arab Republic of Egypt, April 2015, https://bit.ly/2YRWcUs

is targeted at income levels between 1,001 EGP – 2,500 EGP"[226], only 2.2% of all beneficiaries are in the lowest income bracket below 1,000 EGP. Therefore, as UN the Special Rapporteur on adequate housing stated after her visiting to Egypt in September 2018, "the programme more accurately resembles a homeownership programme rather than a publicly funded social housing scheme for the most economically vulnerable"[227].

Since the early 1980s, "subsidized housing units have been made available through sale rather than rent, which has raised prices and put them out of the reach of the poor"[228]. Hence, such strategies do not put the most economically vulnerable groups as a priority and under the conditions of the current social housing program, around half of all Egyptians will not be eligible for the program, since the units will be made available for sale by mortgage[229].

2.3 The right to housing as an essential purpose for the state in Colombia

Since the adoption of the 1991 Constitution, the protection of the fundamental human rights become one of the main features of the Colombian Constitutional system. There is a whole chapter in the Constitution devoted to the rights of citizens, state's duties, and divided rights to fundamental, socioeconomic, and collective rights.

The right to housing is part of the socioeconomic rights package. Article (51) of the Constitution recognizes the right of all Colombian citizens to live in dignity and considers the right to housing is one of these conditions that should be provided to live in dignity. While the Constitution gave the state the freedom to determine the necessary conditions to reach the aimed effectiveness of the right to housing, it obliges the state to "*promote plans for public housing*",

[226] *Ibid.* p.13.
[227] *Ibid*.
[228] Yahia Shawkat, Housing Policies Paper II Drafting a Fair Housing Policy for Egypt, The Egyptian Initiative for Personal Rights, July 2014, p.4. https://bit.ly/2K9nLoe
[229] *Ibid*.

develop "*appropriate systems of long-term financing*", and to adopt "*community plans for the execution of these housing programs*"[230].

Moreover, Article (64) put the burden on the state to "promote the gradual access of agricultural workers to landed property in individual or associational form and to services involving education, health, ***housing***"[231]. Differently from the South African and Egyptian approaches, the Colombian Constitution expressed clearly a list of rights that have an immediate effect, none of them socioeconomic rights[232].Despite that the right to housing, as all socio-economic rights, are not associated to a clause of gradual implementation, as in South Africa's Constitution, the one can understand that the duty of the state is just the gradual realization in forms of plans of public housing and communities, as we already mentioned[233].

In Colombia, according to Lirio do Valle, "{T}he public duties related to socioeconomic rights are extracted from general clauses like article (2) of the Colombian Constitution, which establishes that the effectiveness of principles and rights sounded in it is an essential purpose of the State"[234]. Articles (1) and (2), among other articles of the Constitution, express the fundamental principles of the Colombian state. For instance, article (1) declares that "*Colombia is a social state under the rule of law*" and Article (2) puts the essential goals of the State. The fulfilment of the social duties of the state is one of the essential purposes of the state, the right to housing is one of these social duties.

On another hand, there is a unique feature in the Colombian constitutional system regarding the state's obligations and the implementation of rights. Article (13) of the Constitution obliges

[230] Article (51) of the Colombian Constitution, "All Colombian citizens are entitled to live in dignity. The State will determine the conditions necessary to give effect to this right and will promote plans for public housing, appropriate systems of long-term financing, and community plans for the execution of these housing programs".
[231] Article (64) of the Colombian Constitution.
[232] Article (85) of the Colombian Constitution, this list mainly includes various range of civil and political rights such as the right to life, protection against torture and cruel treatment, personality, intimacy, self-development, freedom of thought and religion.
[233] *Supra note* (184), p. 12.
[234] *Ibid.*

the state to "adopt measures in favour of groups that are discriminated against or marginalized"[235], further, the state should provide special protection to those who live in vulnerable circumstances because of their economic, physical, or mental condition[236]. Therefore, the state should prioritize these vulnerable groups when it comes to the implementation of the right to housing or any other right in the Constitution.

3. Housing adjudication: How courts deal with housing polices and forced evictions operations

3.1 The reasonableness review as a tool to transformative vision toward housing in South Africa:

One of the essential goals of the South African Constitution that were mentioned in its preamble is "healing the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights"[237]. Accordingly, in light of this goal and the way that the Constitution in general shapes the rights and state obligations, many authors described the South African Constitution as a project of transformative Constitutionalism[238]. This transformative approach requires continued serious engagement with all the challenges and problems in a society to achieve a real change, makes the constitutional project as "a long-term project of constitutional enactment, interpretation, and enforcement"[239]. Also, such vision explicitly rejects the current social and economic status, thus, put the transformation to a more just and equitable society a priority to all the state organs[240].

In *Grootboom*, as a part of its transformative understanding of the Constitution, the Court affirmed that there are positive obligations on the state to provide access to adequate housing

[235] Article (13) of the Colombian Constitution.
[236] *Ibid.*
[237] The preamble of the 1996 Constitution of South Africa.
[238] Pierre de Vos (2001) Grootboom, the Right of Access to Housing and Substantive Equality as Contextual Fairness, South African Journal on Human Rights, 2017, p.4**. *See also***, K Klare 'Legal culture and transformative constitutionalism' (1998) 14 SAJHR 146, 155.
[239] *Ibid.*
[240] *Ibid.*

for people who live in deplorable conditions[241]. However, section 26 does not give the right to individuals to claim shelter or housing immediately upon demand, instead, it obliges the state to devise and implement a housing programme to meet its obligation[242]. Thus, the positive duty on the states is taking steps to address the housing needs of society.

According to Pierre de Vos, in enforcing the right to housing, "a court will be required to evaluate the state's action, first, to determine whether ***any*** steps have been taken and second, whether ***appropriate*** steps have been taken"[243]. Section (26) requires the state to take ***reasonable*** measures, within its available resources, to achieve the progressive realisation of this right to housing. So, the Constitutional Court ended to that, the main question should be around ***the reasonableness*** of the state plan and the implementation of this plan.

In his analysis of the reasonableness approach that adopted by the Court, D. Bilchitz stated the requirements of the reasonable polices: "For a policy to be reasonable, it requires a consideration of the *urgency* of the need, it requires *balance and flexibility* and must take account of short, medium- and long-term needs. It must not exclude a significant sector of society and must take account of those who cannot pay for the services"[244].

Therefore, in *Grootboom*, the Court found that, for state policy to be reasonable, it had to consider the different economic levels in society and to target all classes those who could afford to pay for housing and those who could not[245]. Such a policy might be unreasonable "if it failed to respond to the needs of the most desperate and vulnerable individuals or groups in society"[246].

[241] *Ibid, p.15.*
[242] *Grootboom,* 2001 1 SA 46 (CC) para. (95).
[243] *Supra note* (238). P.15.
[244] David Bilchitz (2003) Towards a Reasonable Approach to the Minimum Core: Laying the Foundations for Future Socio-Economic Rights Jurisprudence, South African Journal on Human Rights, 2017, p.10.
[245] *Supra note* (238). P.16.
[246] *Grootboom,* 2001 1 SA 46 (CC) para. (44).

Further, the Court asserted that to measure the reasonableness of state action related to its obligation to provide access to housing, all social and economic and historical background should be taken into consideration[247].

Also, the availability of the resources is a significant factor in the process of the determination of the reasonableness of the state actions. Section (26) is clear when states "within its available resources". As Judge Yacoob stated: "There is a balance between goal and means. The measures must be calculated to attain the goal expeditiously and effectively, but the availability of resources is an important factor in determining what is reasonable"[248].

Indeed, one can see the reasonableness review approach as a part of the larger substantive reasoning approach that adopted by the Constitutional Court, or what Etienne Mureinik called "the shift toward a culture of justifications"[249]. The notion of justification becomes one of the main characteristics of constitutional adjudication in South Africa, hence, the early Constitutional Court jurisprudence emerged what so-called "value-based nature of constitutional adjudication"[250]. In other words, "'the explicit intrusion of constitutional values into the adjudicative process signals a transition from a *formal vision of law* to a *substantive vision of law* in South Africa' in terms of which judges are *required* to engage with *substantive reasons* in the form of moral and political values' as opposed to the *formal reasons* that characterised pre-constitutional adjudication"[251].

However, many criticisms against the reasonableness review as a tool for a court in constitutional adjudication has been addressed. Some authors see the reasonableness test as a very technical tool and weak approach that does not help the development of the content of social and economic rights, they are arguing that the adoption of such approach is against "the

[247] *Supra note* (238). P.16.
[248] *Grootboom,* 2001 1 SA 46 (CC) para. (46). *Supra note* (33).
[249] E Mureinik 'A bridge to where? Introducing the Interim Bill of Rights' (1994) 10 South African Journal on Human Rights 31 32.
[250] Geo Quinot, Substantive reasoning in administrative-law adjudication, Journal Constitutional Court Review, 2010, p.111.
[251] *Ibid*.

dynamic concept of law, where law is responsive to changing circumstances and socio-political contexts"[252]. Despite her position in favour of the adoption of the reasonableness review, Sara Liebenberg had stated some of this criticism, "this model is a model that is relatively process orientated and pays little regard to developing the substance of the normative content and obligations imposed by socio-economic right"[253]. Finally, in spite of these arguments which have sense to some extent, no one can ignore the fact that the reasonableness test has been one of the most significant developments in socio-economic rights jurisprudence in South Africa.

3.2 The right to housing in administrative-law adjudication in Egypt:

First, it is worth to note that the constitutional provisions have always played a significant role in administrative courts decisions, and usually judges depend on the Constitution in their reasoning **.**The right to housing was first mentioned in the Egyptian Constitutional system in 2012, however, Egyptian courts had been consistently paying attention to the right and its implementations. Over the longstanding jurisprudence of administrative courts in Egypt, the right to housing was recognized in the light of protecting other rights. This interrelated nature of the right to housing and the right to life, dignity, and security, helped the courts to elaborate its judgments regarding housing adjudication, despite the absence of a specific constitutional provision protecting the right to housing. This approach is very similar to what had been adopted by the South African Constitutional Court in *Grootboom*. Based on the principle of interdependency the Court in *Grootboom*, "the right to housing has been interpreted in the light of other constitutional provisions on equality, dignity, life, right to just administrative action, access to land, right to health care, food, water and social security, amongst others"[254].

[252] Geo Quinot1 and Sandra Liebenberg, Narrowing the band: reasonableness review in administrative justice and socio-economic rights jurisprudence in South Africa, Stellenbosch Law Review, 2011, P.2
[253] *Ibid*, P.1.
[254] *Supra note* (168), p.6.

Moreover, as a result of the lack of constitutional foundation of the right in the Egyptian system, most of the cases that were presented before administrative courts dealt with violations that already happened, mainly forced evictions scenarios.

Administrative Courts in Egypt mostly rely on the classic standards of review before the administrative adjudication. To do so, courts used to examine the substantive content of the executive's decisions and the errors of procedures. The reasonableness review, examining the legitimacy of the administration's decisions, measure the justifications, and the aim and the purpose of each decision. Such approach may affect housing adjudication as a right-based adjudication, however, it's important to highlight how administrative courts dealt with forced evictions cases.

3.2.1 Resistance the unfairness evictions: Expropriation law in Egypt

Before showing courts' approach towards forced evictions cases, it's important to illustrate the relevant legal framework. Frequently, there are two legal forms for forced evictions in Egypt. First, the form of expropriation for the public interest in case of that the people who will be evicted are owners of the land. Second, the form of the expiration of a contractual relationship related to the land between the state and the people who face the eviction. In addition, the emergency law gives the power to the president of the republic to "seize any movable or immovable property"[255].

Indeed, when it comes to the expropriation for the public interest, protecting the right of individuals to adequate housing or even providing them with an alternative shelter has never been in the agenda of the Egyptian legislator. In fact, I am not arguing here the state power in expropriation for the public interest, rather, I am showing the unfairness and non-proportionality of the Law no. 10/1990 on the expropriation for general interest. In my opinion,

[255] Article (3) of the emergency Law 162/1958. It should be noted also that, since 2013 the Egyptian government renewing the state of emergency consistently every three months, the last time was at April 2019. https://bloom.bg/2QzStYO

this law considers as a reflection of the bias of the legislator for the administrative authorities at the expense of individuals[256].

In *Ramelt Boulaq* case[257], the four applicants were residents of the Ramelt Boulak neighbourhood, one of the informal residential districts in the heart of Cairo[258]. They were challenging the Cairo governor's decision that included "a three years temporary seizure" of their homes as the first step in an expropriation process. This expropriation comes as a part of a larger development plan for the entire area. They alleged that the real purpose behind this decision was not developing the area, rather, the government wanted to sell the land to one of the famous businessmen in Egypt to establish his own investment project[259].

The Court started its judgment by examining all formal procedures that the government should take before the expropriation process according to 10/1990 Law, such as who has the authority to issue such decision and the notice requirements. Then, in its examination for the purpose of the decision, the Court stated that "there are different aims for the common good, these aims should be put in levels, and the determination of the levels of these aims should happen in accordance with the requirements of the public peace"[260]. Accordingly, in its analysis, the Court put the rights and freedoms of people in a higher level than the benefits that will come from their removal from the area, the right to housing was one of these rights. Further, the Court found many signs that confirm the applicant's allegation regarding the intention of the

[256] First, the Law designed to deal with the owners of property and neglect the right of any other categories such tenants or people who have the right to usufruct from the property. Second, no legal reference to economic and social assessment of impacts resulting of eviction. Third, the law does not put any requirement for the compensation and leave it to the discretion of the authorities.

[257] محكمة القضاء الإداري (Cairo Court of Administrative Justice) قضية رملة بولاق *(Ramelt Boulaq Case)* القضية رقم 5594 لسنة 66 قضائية (case no.55949 year. 66 judiciary), Aug.21,2013.

[258] "Housing quality in most informal areas is not necessarily worse than in older formal residential districts so living in an informally erected building does not necessarily mean living in "slum-like" conditions. Most of unplanned areas are high density but with reasonably well-built 4-9 storey houses, most of which have access to water supply and sanitation facilities", *supra note* (15). Para.33.

[259] Nada El-Kouny, Residents of Ramlet Boulaq district decry 'injustices', AlAhram online News website, 18 Mar 2013, https://bit.ly/2Ii4ldU

[260] *Ramelt Boulaq Case*, *Supra note* (257).

government to sell the land after the removal. Thus, based on the "*levels of aims of the public good*" approach that adopted by the Court, it ordered the abolition of the governor's decision.

It is worth to note that, this case was decided after the adoption of the 2012 Constitution which recognize the right to adequate housing clearly. In its reasoning, the Court mentioned that "evicting the applicants from their homes without providing them with alternative adequate homes against the nature of justice and a violation to their Constitutional right to housing"[261].

3.3 Legislative package for the development of housing policy in South Africa

In South Africa, the focus on regulating housing problems and evictions issues through specific legislation was more than it is in the Egyptian context. In addition to section 26 (3) of the Constitution that prohibit any eviction without a court order, there were a number of housing statutes that constructed the legal frame work of housing adjudication[262]: for instance, the Rental Housing Act and the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (PIE Act)[263]. One of the innovations of the Rental Housing Act is establishing a housing tribunal to decide on housing disputes and to protect from the unfair practices between non-state parties such as tenants and landlords[264].

In *Maphango v. Aengus Lifestyle Propertie*[265], the applicants were tenants from residential flats in Johannesburg, they alleged that there is unfair practice from the landlord as he wants to evict them from their homes, or they should accept the raise of rents to almost the double[266]. When the case reached to the Constitutional Court, the Court stated the mandate of the Housing Tribunal that was established by the Rental Housing Act, "the Tribunal's determination as to whether the landlords' termination of the tenants' leases was an unfair practice would be quite pertinent to a subsequent determination as to whether to grant an eviction under Section 26(3)

[261] *Ramelt Boulaq* case *supra note* (257).
[262] Lucy A. Williams, The Right to Housing in South Africa: An Evolving Jurisprudence, 45 Colum. Hum. Rts. L. Rev. 816 (2014), P.8.
[263] The Rental Housing Act 50 of 1999 (S.Afr.), and the PIE Act 19 of 1998 (S.Afr.).
[264] *Ibid*, chapter 4, Art (6-15).
[265] *Maphango v. Aengus Lifestyle Properties* (PTY) Ltd. 2012 (3) SA 531 (CC) (S. Afr.)
[266] Supra note (238). P.21.

of the Constitution because the court ruling on the eviction must consider *all the relevant circumstance*"[267]. In the light of the Housing Rental Act, regarding the right of the landlord in managing his property, the Court asserted that the right to adequate housing found in Section 26 "ripples out to private rights when the state itself takes measures to fulfil the right. These may affect private relationships"[268]. Hence, the Court considered market forces and the landlords and tenants' interests and found that any rental determinations should be just and equitable.

On the other hand, the PIE Act mainly was passed to give effect to section 26 (3) of the Constitution. Also, it made the eviction process "subject to requirements designed to ensure that homeless people would be treated with dignity while they were awaiting access to new housing development programs"[269].

Section (4) of the PIE Act distinguishes between evictions that were brought by owners of land and evictions brought by state's organs[270]. However, according to the Act, whoever is asking for an eviction order the Court must consider "*all the relevant circumstances*, including the rights and needs of the elderly, children, disabled persons and households headed by women"[271]. In *Mooiplaats*[272], Justice Yacoob insisted on the importance of taking into consideration *all relevant circumstances*, especially the availability of alternative land for people who are facing eviction[273]. He stated that, "in the face of this consequence the question whether the city was reasonably capable of providing alternative land or housing was of crucial importance"[274].

[267] *Maphango* 2012, SA, para. 61.
[268] *Maphango* 2012, SA, paras. 33-34.
[269] *Supra* note (238). P (10-11). See Also, Port Elizabeth Municipality v. Various Occupiers 2005 (1) SA 217 (CC) para.12.
[270] *Ibid*, p.11.
[271] *Ibid.*
[272] Occupiers of Portion R25 of the Farm Mooiplaats 355 JR v Golden Thread Ltd and Others, ZACC 35,2012.
[273] *Supra* note (238), p.12.
[274] *Mooiplaats* case (2012), para 16.

Section (6) of the PIE sets out the factors that should be considered to decide whether an eviction is just and equitable. It should be noted that, these factors mentioned in the Act are not exclusive, but must include "the circumstances in which the occupier came to be on the land, the length of time of the occupation, and the availability of suitable alternative accommodations"[275].

Furthermore, one of the early legislations toward housing was the Housing Act 107 of 1997, which aimed to provide sustainable housing development by giving an effect to section 26 of the Constitution. The main aim of the Act was to oblige all state organs "to give priority to the needs of the poor, to consult meaningfully with people affected by housing development and to ensure that housing development is based on integrated development planning"[276]. Another step was the adoption of the National Housing Code (NHC), which "provides the foundation for housing assistance in emergency circumstances"[277], this vision that appeared and elaborated by the Court in *Grootboom*[278].

4. Development, urbanization, and property rights: evictions and the competing interests

Always, there is a purpose behind all evictions, sometimes these purposes are lawful and sometimes they are not. Most of these purposes are related to other interests of the state or private actors. Development plans, upgrading informal settlement, management of natural disasters, and protecting the property rights of landlords are very legitimate reasons for evictions. In such cases, Courts should consider all these interests, in addition to the interests of the people who will be evicted and their right to adequate housing. As the Constitutional

[275] Supra note (238). P.12-13.
[276] *Supra note* (168), p.5. Strauss, M., & Liebenberg, S. (2014), Contested spaces: Housing rights and evictions law in post-apartheid South Africa.
[277] *Ibid*
[278] Grootboom & Others 2001 1 SA 46 (CC) para (69).

Court in South Africa adopted the approach of balancing between rights [279] , administrative courts in Egypt conducted a balancing between interests as well.

As we mentioned above, the Egyptian Constitution obliges the state to implement a number of development and housing plans to face the problem of high population growth rates**.** At the same time, it recognizes the right to housing, the right to property[280], and prohibits all forms of arbitrary forced migration. On another hand, the South African Constitution establishes its transformation vision to eliminate the post- apartheid housing problem and recognizes the right to property as well. This conflict between protecting individual rights and fulfilling state duties was very clear in the jurisprudence of both systems.

4.1 Property

When it comes to the right to the owner to enjoy his property and the rights of others who stays in his land to have adequate housing, a predictable clash would happen. The clash between property right and housing rights was evident in *Port Elizabeth Municipality*. The case was concerned a group of 68 people, including 23 children, who had occupied private undeveloped land in Port Elizabeth Municipality, most of them had come there after being evicted from other land[281]. The municipality supported by 1600 people in the neighbourhood, including the owners of the property, asked the Court for an eviction order. Further, they argued that providing an alternative land to those occupiers would be a preferential treatment and will affect the whole existing housing programme. Thus, it would consider as a "a queue jumping"[282].

[279] Lilian Chenwi, "Putting Flesh on the Skeleton: South African Judicial Enforcement of the Right to Adequate Housing of Those Subject to Evictions" (2008) 8 HRLR 105, p.33.

[280] Article (35) of the Egyptian Constitution: "Private property is protected. The right to inherit property is guaranteed. Private property may not be sequestrated except in cases specified by law, and by a court order. Ownership of property may not be confiscated except for the public good and with just compensation that is paid in advance as per the law".

[281] Port Elizabeth Municipality v Various Occupiers (CCT 53/03) [2004] ZACC 7; 2005 (1) SA 217 (CC); 2004 (12) BCLR 1268 (CC) (1 October 2004), Para.1-2.

[282] Lilian Chenwi, Implementation of Housing Rights in South Africa: Approaches and Strategies. *Supra* note,42. P,16.

In her analysis to *Port Elizabeth* case, the author Lilian Chenwi found that the Constitutional Court had highlighted three notable features of the constitutional approach toward "the interrelationship between land, homelessness, hunger and respect for property rights"[283]. First, the Court stated that, "the rights of the dispossessed in relation to land are not generally delineated in unqualified terms as rights intended to be immediately self-enforcing"[284]. Second, "people living in informal settlements may be evicted, even if it results in loss of a home"[285]. Thirdly, the Court emphasized "the need to seek concrete and case-specific solutions to the difficult problems that arise"[286]. Therefore, where there is a clash between the right of people who need accommodation and property rights, Courts should not establish a hierarchical arrangement based on the different rights[287]. Rather, as the Constitutional Court stated, the judicial function in such situations is "*to balance out and reconcile the opposed claims in as just a manner as possible taking account of all the interests involved and the specific factors relevant in each case*"[288].

In *El Qursaya Island* case in 2008[289], the Cairo Administrative Court adopted the same approach of balancing between interests, but in a different way. The applicants were residents of the *Qursaya* island which is located in the Nile within the southern part of urban Cairo. It came to existence in 1964, when it appeared on the surface of the Nile after the construction of the High Dam. People soon occupied the empty land and it became the home of some 4000 farmers and 1000 fishermen. Over the years, the Giza Governorate concluded utilization contracts with residents, these contracts were regularly renewed. Accordingly, the island had been provided with all basic services, such as schools, electricity, and clean water.

[283] *Ibid*, p.31.
[284] Port Elizabeth Municipality v Various Occupiers, para 20.
[285] *Ibid*, Para. 21.
[286] *Ibid*, Para. 22.
[287] *Supra* note (279), Lilian Chenwi, "Putting Flesh on the Skeleton: South African Judicial Enforcement of the Right to Adequate Housing of Those Subject to Evictions, Human Rights Law Review, Volume 8, 2008, p.31.
[288] President of the Republic of South Africa and Another v Modderklip Boedery (Pty) Ltd and Others, para. 22.
[289] محكمة القضاء الإداري (Cairo Court of Administrative Justice) قضية جزيرة القرصاية *(El Qursaya Island case)* القضية رقم 782 لسنة 62 قضائية (case no.782 year. 62 judiciary) , Nov.16,2008.

Suddenly, in 2007 the Giza Governorate refused to renew the contracts according to instructions from the Ministry of Defence. The content of these instructions includes that, the island should be empty because it considers as a strategic point in the plan of securing the capital[290]. The applicants argued that the island has been their home from more than 40 years. Also, it is the main source of their income, since more of them are farmers and fishermen. Further, they alleged that the real purpose for such a decision is the desire of the state to sell the land to a Saudi real estate company to establish a luxury housing project.

First, the Court adopted the balancing between the benefits and harms approach and found that the re-control of the state's lands will leave the residents without homes or any basic facilities to live. According to the Court "[t]he public interest must be achieved without infringing the rights and freedoms of citizens which have priority in protection"[291]. Moreover, the Court stated that the main aim behind the administrative decisions should be achieving the common good. However, there are many faces and aspects to achieve this goal. Security and protecting the state's lands are legitimate aims, but people's rights and freedoms should be a priority[292]. Accordingly, the role of the Judiciary is establishing an order for these aims of the common good. Although the Court did not explain more regarding what this order or what is conditions that how the judgement built this order, the Court considered people's right in a higher hierarchy than anything else.

Thus, contrary to the South African approach, the Court established a hierarchical arrangement for state and individuals interests and found that the right to housing for people should be favoured. Hence, the Court obliged the Giza governor to renew the applicants' contracts based on their right to housing, security, and work[293].

[290] Court rules military should leave Qursaya island, MadaMasr, August 22, 2013, https://bit.ly/2MAm7hW
[291] Supra note (289), *(El Qursaya Island case).*
[292] *Ibid.*
[293] *Ibid*. the Court also built its judgment based on article (13) of the of 1971 Constitution, the right to work. And article (7), the right of social security.

4.2 Urbanization and development-based displacement

The issue of forced evictions for the purpose of development, urbanization, and upgrading informal settlements is one of the very complicated issues that found huge attention in international law during the last two decades. In 1997, the United Nations Economic and Social Council adopted guidelines for member states regarding the practice of forced evictions based on development[294]. First, the Council asserted that forced evictions constitute several violations of a wide range of human rights, not just the right to adequate housing, and such a practice should only be carried out under exceptional circumstances[295].

Moreover, the guidelines obliged member states to secure by all appropriate means the maximum degree of effective protection against forced evictions for all persons, with special consideration for the rights of "indigenous peoples, children and women, particularly female-headed households and other vulnerable groups"[296]. It should be noted that "these obligations are of an immediate nature and are not qualified by resource-related considerations"[297]. Further, the prevention of homelessness should be a priority for member states, which means that no groups or communities should end as homeless as a consequence of a forced eviction[298].

One of the essential functions of the judiciary is reviewing development-based eviction orders, examine all relevant circumstances, and balancing the competing interests, which is a complex question most of the time. Under the mandate of the 1971 Constitution, In *Ezzebt Khairallah* case[299], the Supreme Administrative Court examined the legitimacy and reasonableness of a decision concerning the removal of *Ezzebt Khairallah* district for the purpose of upgrading informal settlements in Cairo. All the land of this district is state-owned

[294] Expert Seminar on the Practice of Forced Evictions, Geneva, 11-13 June 1997: report of the Secretary-General. https://bit.ly/2Ite29H
[295] *Ibid*, Para (4).
[296] *Ibid*, para (9).
[297] *Ibid*.
[298] *Ibid*, para (13).
[299] المحكمة الإدارية العليا (the Supreme Administrative Court)، قضية عزبة خير الله (Ezbet khairAllah case) , 1875 القضية رقم و1914 لسنة 30 قضائية, (the Case no 1875 and 1914 year 30. Judiciary), ***March 9. 1991.*** – Unofficial Translation.

land, hence, the governor of Cairo decided to hand over the land to a state company to start the process of upgrading the area after removing all the existing buildings. There were around twenty thousand home and fifty thousand people living in *Ezzebt Khairallah* at that time. Although, there were previous decisions regulated the legal position of occupied state's lands. These decisions obliged the occupiers to only pay utilization fees and prohibited the removal of any habitat buildings[300].

First, the respondent was state's company that responsible for the upgrading projects claimed that this project is a part of the state policy toward reconstruction all informal areas on environmental and healthy bases. While, the residents claimed that this removal will violate their rights not just destroy their lives. The Court stated that it is not the function of the judiciary to legalize the residents' position in unlawful occupation, instead, the court has to review the legitimacy of the removal decision[301]. Also, the Court mentioned that the establishment of such community includes thousands of people and buildings had been done under the sight of the state over the years, and no actions had been taken to face the growing of the problem. Thus, it is not reasonable for the government to interfere suddenly to solve an unlawful position without taking in its consideration the needs of those people[302]. The Court used the balancing between the benefits and harms approach and found that such removal will harm the lives of thousands of people and will affect the security of the society in general.

In *Residents of Joe Slovo Community,* the South African Constitutional Court examined an eviction order and relocation for around twenty thousand people from a large informal settlement near to Cape Town[303]. The eviction was necessary as a part of a national housing project to upgrade the entire area. Temporary settlements units, 15 Km away on the urban

[300] For instance, the Cairo Goerner Decision no (892) year (1970).
[301] *Supra* note, (299). *Ezzebt Khairallah* case.
[302] *Supra* note, (299), *Ezzebt Khairallah* case.
[303] Residents of Joe Slovo Community, Western Cape v Thubelisha Homes and Others (CCT 22/08) (10 June 2009)

periphery, had been allocated to absorb the evicted community[304]. The applicants were concerned that this temporary accommodation could turn permanent, because they may not be able to afford the newly developed accommodation in Joe Slovo settlements[305]. Further, they challenged the eviction and argued that "the suggestion to relocate the residents failed to consider that the settlement was home to a number of well-established communities that depended on the various support networks in the area for their survival"[306].

In its review of the reasonableness of the eviction, the Court considered the state interest in upgrading a large informal settlement and at the same time the availability of alternative temporary accommodation. The Court found that the eviction was reasonable, and the state was acting according to its obligation under section (26) of the Constitution[307]. However, the Court asserted on state's duty toward the evicted people during the relocation period especially regarding schools and economic opportunities as far as possible. While in some situations According to judge Ngcobo, "all that the government can do is ameliorate the disruptive effect of relocation by providing access to schools and other public amenities"[308].

5. Housing adjudication in Colombia

The justiciability of the right to adequate housing, like the rest of economic and social rights, had a different path in Colombia. The Colombian Constitutional Court applied the concept of "fundamental right by connection", hence, housing adjudication had been built on the inherent connection with other rights[309]. In other words, "the Court considers the right to adequate

[304] Supra note (168), Strauss, M., & Liebenberg, S. (2014). Contested spaces: Housing rights and evictions law in post-apartheid South Africa. Planning Theory, P.12.
[305] Joe Slovo Community case, Para (250).
[306] Supra note (168), p.12.
[307] *Ibid*.
[308] Joe Slovo Community case, Para (257).
[309] Supra note (184), Vanice Regina Lirio do Valle, Judicial Adjudication in Housing Rights in Brazil and Colombia: A Comparative Perspective, 1 Revista de Investigacoes Constitucionais 67 (2014), p.24-25.

housing as a progressive right not directly applicable by the courts, except when its violation also entails a violation of fundamental rights such as the right to life, dignity and equality"[310].

Also, as we mentioned above in the part on the state's obligations toward housing, the Colombian Constitution divided the right to different categories, fundamental and socio-economic rights. as a result of this distinction, the socio-economic rights have no immediate effect. Thus, in Colombia, "the possibility of judicial enforcement of a housing right can only be established when all the concurring rights are understood on a systematic basis"[311].

However, one of the strategies that had been adopted by the Court to face the immediate effect obstacle, the Court expanded the effect of its judgments to "persons who have not actually filed the corresponding *tutela*, but share common circumstances with the plaintiffs, belong to the same community, and might be negatively affected by a decision that does not include them"[312].

Therefore, the Constitutional Court had been involved in protecting the right to adequate housing mainly in time of crises and in the face of systematic violations. One of these cases was concerned about the constitutionality of the financing of the social housing system[313]. While this system was relying on a mortgage system, a huge crisis had happened in the real estate market: a significant increase in interest rates and at the same time a remarkable decrease in real estate prices[314]. The Court found this system is unconstitutional and explained that in very simple words, "it made housing unattainable"[315]. Further, the Court stated that the use of this system "added to the cost of debt obligations in favour of financial institutions and to the detriment of debtors"[316]. On the other hand, regarding evictions, the Colombia Constitutional

[310] Malcolm Langford, Social Rights Jurisprudence, Emerging Trends in International and Comparative Law, Cambridge University Press 2008, p.152.
[311] *Supra* note (184), p.25.
[312] Ibid, p.27.
[313] *Supra* note (310), Malcolm Langford, Social Rights Jurisprudence, p.152.
[314] *Ibid.*
[315] *Ibid.*
[316] *Ibid.*

Court had asserted that any eviction takes by a public authority should observes by due process. This means that any citizen had been affected by such eviction should have the right to argue against it in a court[317].

In Colombia after the civil war the Colombian Constitutional Court had dealt with hundreds of cases concerning the right to housing for internally displaced persons (IDPs). Decision T-025 of 2004 included the guidelines that the Court established regarding these cases. In this decision[318], the Court aggregated 108 *tutelas* that were submitted by several displaced families against different state institutions. It should be noted that the Court relied on international law principles in its interpretation of the rights of displaced persons, such as the Guiding Principles on Internal Displacement adopted by the United Nations High Commissioner on Refugees[319]. Further, the Court considered the living conditions of displaced persons and their vulnerability, especially women and children, and found that "only between 15 and 30 per cent of IDPs were receiving government assistance, 80 per cent of the population lived in conditions of severe poverty, and 92 per cent had some basic need that was not being met"[320].

Therefore, the Court analysed public policies on assistance for IDP and found that the state failed to ensure the effective realization of the displaced persons' constitutional rights. The two main problems that the Court identified were the limitation of the institutional capacity to implement these policies and the insufficiency of funds[321]. Finally, regarding the lack of funds that were supposed to assist the IDPs, the Court asserted that Article (350) of the Constitution

[317] *Supra* note (184), p.25.
[318] The Colombian Constitutional Court, Decision T- 025 of 2004 (per Justice Manuel José Cepeda Espinosa)
[319] *Supra* note (184), Manuel José Cepeda Espinosa, David Landau, Colombian constitutional law: leading cases, Oxford University Press, 2017. P.179.
[320] *Ibid*, p.180.
[321] *Ibid*.

prioritized public social spending over any other allocation[322]. In addition to, law 387 of 1997 that acknowledged the assistance to displaced people is urgent and has priority[323].

Conclusion

For different historical reasons, housing problems and unlawful evictions are common features within the three compared jurisdictions, and each legal system has tried to solve these problems by different means. The South African approach in phrasing section (26) of the Constitution that protect the right to housing was unique by stating that everyone has "*access"* to adequate housing. This creative language approach which considers as part of the transformative vision of the South African constitutional model helped the Constitutional Court to expand the scope of the right and state's obligations as well. On the other hand, the Egyptian Constitution did not use the term "adequate", instead, it is mentioned that every citizen has the right to have decent, safe, and healthy housing. However, this explicitly in the required housing conditions did not reflect in the Supreme Constitutional Court's or administrative courts' jurisprudence yet. While article (51) of the Colombian Constitution included the right to housing among the dignity conditions that should be afforded to everyone.

On the other hand, as a solution for eliminating unlawful evictions operations, section (26) of the South African Constitution required a court order before conducting any eviction process. This approach gave courts the opportunity to examine the legality of these evictions and the evicted people living conditions, which helped in decreasing the problem to reasonable level and gave the chance to people to challenge such decisions. Differently, the Colombian Constitutional Court considered the living conditions of displaced persons and their

[322] Article (350) of the Colombian Constitution, "The Appropriations Law must have a component entitled public social expenditure that will consolidate the parts of such a nature according to a definition made by the respective organic law. Except in case of foreign war or for reasons of national security, ***public social expenditure will have priority over any other allocation"***.

[323] *Supra* note (184), p.180.

vulnerability in light of international law. Also, the Court mentioned that people have the right to have a judicial due process to observe any kind of eviction that may happen.

In Egypt, despite the fact that the new Constitution prohibited all forms of forced evictions, the absence of the requirement of court permission for evictions did not change the reality. The state is still evicting people from informal areas and then people can go to a court to challenge these decisions. Hence, even a court decided that such eviction was unlawful, people would still be suffering from losing their stable lives.

Furthermore, Both the South African Constitutional Court and the Egyptian administrative courts developed the reasonableness review as a tool to achieve the progressive realization of the right to adequate housing. The main advantages of this approach are that, Considers the urgency of the need, balances the different interests, and flexibility. At the same time, other views see that "administrative law reasonableness model of review is ill-suited for socio-economic rights adjudication"[324]. Also, administrative courts in Egypt used the reasonableness review to measure levels of aims of the public good when it is examining evictions decisions when there is a conflict between the right of people to housing and state's development projects.

Indeed, the possible conflict between the right to housing and development, urbanization, and property rights was one of the most dominated issues before courts in eviction cases, thus, all relevant circumstances should be taken into consideration. For instance, determining the status of a property if it is a public or private one. In South Africa, courts Courts refused to establish a hierarchical arrangement based on the different interests and asserted on balancing all the opposed claims and taking into account all the interests involved and the specific factors relevant in each case.

[324] Supra note (250). P.1

Further, there is a difference should be made between an eviction that meant to be temporary in light of a general plan and an eviction that happened without any planning for an unpredictable project. In the first scenario, as long as the sate provided the basics need for evicted people in the temporary place and considered their economic and educational opportunities, this eviction considers as lawful evection. On the other hand, an eviction that does not consider people's needs and provide them with their rights should be declined.

Indeed, the three compared jurisdictions have adopted different approaches regarding the realization of the right to adequate housing. These approaches are a reflection of how the three legal systems consider the importance of the judicial enforcement of social and economic rights. the next chapter presents deeper analysis for these three models.

Chapter four: The Judicial Enforcement of Social and Economic Rights: From Rhetorical to Application

1. Introduction

After examining the constitutional framework of socio-economic rights in the three compared jurisdictions, showing how courts interpreted these rights, and how they interacted with the permanent and contemporary concerns regarding the enforcement process, it is important to address some analysis, lessons, and challenges from these three different approaches. In other words, nothing more relevant than evaluating the development of socio-economic rights adjudication from a bigger lens, not only through the jurisprudence but also by illustrating the whole approach of each jurisdiction to understand these three different approaches.

In this chapter, I will present my observations regarding the transformative vision of the South African approach, its interference impact for socio-economic rights, and the possibility of exporting the South African's social rights jurisprudence to other jurisdictions. Also, I will investigate the absence of a specific and clear approach toward socio-economic rights in the Egyptian context and show the paradox between the rhetoric style of the Constitution and the reality of the application of these texts. Finally, I will show the impact of judicial activism on the development of socio-economic rights adjudication in Colombia.

2. Transformative Constitutionalism as an engine to address inequality in South Africa:

The South African experience offers a practical response to all who considers socio-economic rights are non-justiciable rights. Indeed, at the time where many claims were arguing that enforceability of the constitutional socio-economic rights "gives the judiciary far too much power and that it is ultimately unworkable"[325], the South African model provides "a novel and

[325] Paul Nolette, Lessons Learned from the South African Constitutional Court: Toward a Third Way of Judicial Enforcement of Socio-Economic Rights, 12 Mich. St. U. J. Int'l L. 91 (2003), p.92.

highly promising approach to judicial protection of socio-economic rights"[326]. I argue that the transformative vision of the Constitution which considers "redressing the injustices of the past, to create a much just society grounded in law"[327] as a priority, is the main key behind the achievements of the South African model. In fact, taking this view as a starting point of the South African Constitutional project, led to the adoption of specific and clear steps toward solving their main social problems.

Some similarities in this approach with the Colombian constitutional model could be found. In Colombia, the main goal of the constitutional project was also achieving a social change and transform the country's structure after years of civil war, however, Colombian model was different. According to Castaño and Segura, the 1991 Constitution presented "two antagonistic models of state: The Social State of right and the Neoliberal State"[328]. As a result of this new vision regarding the new Colombian state after 1991, new institutional reforms in regards "the justice administration, the structure of public power"[329] had been adopted. on the top of the branches that had been affected by these institutional reforms was the judiciary, and the Constitutional Court gained more power as a part of the view of giving citizens better access to justice[330]. Afterwards, the Colombian Constitutional Court played the main role in the development of social and economic rights adjudication and affected millions of people lives through its judgments, as we will see later in this chapter.

On the other hand, the successful application of the transformative view in South Africa "depends largely on the political will"[331] which aims for true change and address the challenges. In addition, it requires an active judiciary and considering courts as the guardians of the process

[326] Cass R. Sunstein, Designing Democracy: What Constitution Do, Oxford University Press, 2001, p. 234.
[327] Mashele Rapatsa, Transformative Constitutionalism in South Africa: 20 Years of Democracy, Mediterranean Journal of Social Sciences MCSER Publishing, Rome-Italy, 2014, P.1.
[328] Gabriel Murillo-Castaño, Victoria Gomez-Segura, Institutions and Citizens in Colombia: The Changing Nature of a Difficult Relationship, Social Forces, Volume 84, Number 1, September 2005, P.1.
[329] *Ibid*.
[330] *Ibid*. P.7.
[331] *Ibid.*

of reshaping the social welfare system. Indeed, "some constitutions are preservative, seek to maintain existing practices"[332], while the transformative constitutions "sets out certain aspirations that are emphatically understood as a challenge to long standing practices"[333]. Hence, from the beginning, there was considerable interest concerning how social and economic rights should be formulated in the Constitution, not to be rhetorical rights, but to deliver their intended target?

The basic form of constitutional social and economic rights in sections (24,26,27,29) of the Constitution was helpful for the transformative approach, and clearly guarantee specific right to everyone and then oblige the state to take reasonable legislative and other measures. Therefore, this form created a clear and unique relationship between courts and the legislature. Reasonableness as a condition in all state measures opened the door for courts to assess these measures and examine them. Also, the acknowledgement of the limited resources approach, which is present in all the provisions that protect social and economic rights, became a shield against any incursion from the judiciary in the state policies' regarding the realisation of these rights. Additionally, that shows how the South African model was aware of the obstacles of implementing socio-economic rights.

Furthermore, the broad framework that had been given to courts when it comes to the interpretation of the Bill of Rights, had a significant impact on the success of the transformative vision of the Constitution. According to section (39), courts "must promote the values that underlie an open and democratic society based on human dignity, equality and freedom" and consider the international and foreign law as well[334]. Therefore, based on these general principles such as human dignity and equality, courts and especially the Constitutional Court established a remarkable jurisprudence that offers unique protection to social and economic

[332] *Supra Note* (325).
[333] *Ibid*.
[334] Section (39) of the South African Constitution, Interpretation of Bill of Rights.

rights. In the light of the transformative view, the South African courts "envisaged achieving legal and social change in broader terms"[335], not by constraining its role to interpret and apply the law in a very formalistic approach, instead, by "considering circumstances in each case to give effect to the transformative ideals"[336].

At the same time, the South African Constitution gives the judiciary wide powers to establish new and effective remedies to "grant appropriate relief"[337] for the breaches of rights. Indeed, this environment helped courts to adopt new enforceability mechanisms to reach its goal regarding promoting social and economic rights. However, these new enforceability techniques did not afford an immediate effect such as the minimum core obligation approach or the proportionality review approach.

Indeed, the South African Court ignored the classical doctrines and methods that deal with conflicts between competing rights or interests, such as the proportionality review approach. The proportionality approach contains two levels of review, defining the scope of the constitutional right, and highlighting the limitation and its justification, throughout investigating the purpose, rational connection, necessity and balancing of a decision[338]. Rather, the Court chose to develop a new participatory method, based on meaningful engagements between the competing parties to find a solution for the dispute under the super vision of the Court.

The meaningful engagement approach was one of these new enforceability mechanisms that had been adopted by the South African Constitutional Court as an attempt to reach to an effective remedy. The Court defined this approach for the first time in *the Olivia Road* case[339],

[335] *Supra Note* 327, Mashele Rapatsa, Transformative Constitutionalism in South Africa, 2014. P.3.
[336] *Ibid.*
[337] The South African Constitution, Section (38) -Enforcement of rights.
[338] Kai Möller, Proportionality: Challenging the critics, International Journal of Constitutional Law, Volume 10, Issue 3, July 2012, p.2
[339] Occupiers of 51 Olivia Road and Others v City of Johannesburg and Others 2008 (5) BCLR 475 (CC).

a case about the right to have access to adequate housing for a group of people who were facing the threat of eviction from rundown buildings in the inner city of Johannesburg[340]. After the hearings and instead of delivering a judgment, the court issued an interim order requiring the parties to "engage with each other meaningfully" and report back to the Court[341]. Therefore, The Court delivered its judgment after the parties had reached a settlement and submitted it to the Court[342]. Meaningful engagement simply is "a two-way process in which the city and those about to become homeless would talk to each other meaningfully in order to achieve certain objectives"[343]. According to Chenwi, this kind of participatory remedy is important to recognize the importance of participation and "surmounts concerns around separation of powers" in socioeconomic adjudication[344]. This "experimentalist approach" and the "deliberative model" of remedial decision is making another two models that emphasizes the concept of negotiation, dialogue and the importance of the "continuously revision for performance measures"[345].

Last, but not least, I want to highlight another factor that shows how the South African project considered solving the apartheid era's social problems as a starting point in its fight against inequality and to reach to its transformative vision, namely, the fast translation of the socio-economic rights that had been stated in the Constitution to applicable legislations dealing with the main social problems. For instance, the Rental Housing Act (1997) and the Prevention of Illegal Evictions from and Unlawful Occupation of Land Act (1998) that had been adopted to provide a sustainable housing development as we mentioned in the chapter (3) in detail. In addition, the adoption of the new Foundation for the Republic of South Africa Department of Education's (RASDE), the South African Schools Act (1996), and the National Education

[340] Lilian Chenwi and Kate Tissington, 'Engaging Meaningfully with Government on Socio-Economic Rights' 32, page.9.
[341] Lilian Chenwi, A New Approach to Remedies in Socio-Economic Rights Adjudication: Occupiers of 51 Olivia Road and Others v City of Johannesburg and Others, 2 Const. Ct. Rev. 371 (2009) page.372.
[342] Ibid.
[343] *Occupiers of 51 Olivia Road* para (14) - Also, Lilian Chenwi, *Supra note* 326.
[344] *Supra Note* 341, Pages 381-383.
[345] *Ibid.*

Policy Act (NEPA) in 1996, which allowed all citizens to join the public schools after decades of segregation[346]. In contrast, the absence of translation the constitutional texts to legislations that interact with the daily social problems of people was a main factor in the Egyptian legal system. In Egypt, courts found itself with new constitutional commitment without applicable instruments that can allow them to enforce social and economic rights.

In sum, the South African transformative project had used several interrelated methods that helped in the promotion and the enforceability of the Bill of Right, and on the heart of it the socio-economic rights. First, the constitutional provisions presented this transformative vision and its formulation allowed courts to examine the reasonableness of all the state measures regarding these rights, with the awareness of the limited resources concerns. While the reasonableness test is a weaker review tool than the proportionality approach, the Constitutional Court continued in its approach on using the reasonableness test and relied on the purposive interpretation to define the scope of social and economic rights and its limitation. Second, the wide authority of the Constitutional Court in the interpretation of rights based on human dignity and equality and providing appropriate relief, allowed to the Court to extend the scope of its protection and grant new remedies. Third, the adoption of new legislative packages that dealt with most of the main social problems, as a reflection to the constitutional commitment to take reasonable legislative measures to achieve the progressive realisation of social and economic rights.

Finally, I am not arguing that the South African approach had been completely successful in eliminating poverty and social injustice in the country. Indeed, South Africa still suffering from extreme inequality, racial tensions, and other social problems. For instance, nowadays some opinions are claiming that, "the ruling party's approach to land policy is reproducing

[346] Gallie, Muavia, Yusuf Sayed, and Herma Williams. "Transforming Educational Management in South Africa." The Journal of Negro Education 66, no. 4 (1997)

paternalistic relations that echo apartheid practices and represent the colonial present"[347]. Which had its reflection on the failed attempts in 2017 to amend the section (25) of the Constitution -the property clause- "to remove the requirement that the state pay 'just and equitable' compensation for land it expropriates"[348]. However, after more than 25 years of practising democracy and with the progressive jurisprudence regarding socio-economic rights, a one can say that maybe it's a new time for South Africans to develop their transformative vision and adopt a new approach that promotes and protect social and economic rights. Indeed, the transformative approach had succeeded to make a difference in the real life of thousands of people, and South Africa established it is own democratic system. The core of this approach was changing the old apartheid practices, laws, and polices, thus, now after these years the south African model should start considering the adoption of another approach.

3. Socio-economic rights without teeth: between the rhetoric constitutional texts and the absence of its application:

Contrary to the strong political will that delivered the transformative South African constitutional project; this political will was missing in Egypt afterwards. In fact, a one cannot say that the Egyptian Constitution came as a product of the revolution, indeed, the revaluation was the main factor behind all political and social changes that happened in Egypt during the last decade, but also most of Egyptian considers that the revaluation had failed to achieve its goals. Egypt is still an authoritarian country with no real democratic life, poverty and inequality are still the main features of the society. However, some scholars prefer to consider the constitutional process in Egypt as a kind of "Revolutionary Constitutionalism" process[349]. In fact, as Gardbaum notes "Egypt had all the hallmarks of revolutionary constitutionalism but has

[347] Thembela Kepe & Ruth Hall (2018) Land Redistribution in South Africa: Towards Decolonisation or Recolonisation? Politikon, 45:1, 128-137, P.127.

.[348] *Ibid*, P.128.

[349] Ahmed El-Sayed, Post-Revolution Constitutionalism: The Impact of Drafting Processes on the Constitutional Documents in Tunisia and Egypt, Electronic Journal of Islamic and Middle Eastern Law (EJIMEL), Vol. 2 (2014). P.1

so far failed to achieve the revolution's goal of constitutionalism"[350]. While the essential element of revolutionary constitutionalism that "involving the radical transformation to a constitutionalist political order brought about by means, and as a central goal, of a political revolution"[351].

In a country where a third of the population lives in poverty[352] and the basic services such as education, healthcare, and housing are severely degraded[353], the main priority of the government should be working on improving these services and reducing inequality. In post-revolution Egypt, promoting and protecting social and economic rights were in the heart of the political and legal discourse. Hence, as a result of people's demands and the pressure of public opinion during the 2014 constitution writing process, enumerated socio-economic rights found their way in the new Constitution. Further, a new and unique approach had been adopted to realize socio-economic rights, such as allocating a specific percentage of government expenditure of Gross Domestic Product (GDP) to health and education, as we explained in chapter two.

However, I argue that despite these remarkable attempts, the formulation of socio-economic rights is characterized by the rhetorical style that impedes effective judicial enforcement for these rights. Moreover, from a bigger perspective, a one can see clearly that the Egyptian legislature did not take major steps toward the adoption of new legislations that required by the Constitution to reflect the new state's commitments regarding socio-economic rights. Indeed, the motivation behind the adoption of several socio-economic rights and the attempts to establish new approaches to realize these rights was not really achieving the revolution goals,

[350] Stephen Gardbaum, Revolutionary constitutionalism, International Journal of Constitutional Law, Volume 15, Issue 1, 1 January 2017, Page 181.
[351] *Ibid*.
[352] Egypt: A Third of Population Lives in Poverty, the Voice of America News, July 30, 2019. https://bit.ly/2C2oMcr
[353] According to the Legatum Institute Prosperity Index of 2018. https://bit.ly/2C2oXo7

rather, accommodating peoples' anger. Thus, the result was an uncompleted and unclear approach toward the development of socio-economic rights in Egypt.

One clear example of this incomplete approach is the absence of any enforcement mechanism for state obligations toward socio-economic rights. For instance, since the adoption of the Constitution in 2014 all yearly budgets did not respect the allocated percentage of health and education that had been mentioned in the constitutional text[354] .At the same time, the judiciary does not have any control over the budget to examine or enforce this Constitutional commitment.

On the other hand, the Constitution obliged the state to adopt long-term national housing plans to regulate the use of state lands and to eliminate the problem of informal areas as we previously discussed in chapter three[355]. These plans had been approved only by the executive authority, even without any discussions in the parliament[356]. Further, there are no available legal mechanisms to make claims against these policies and plans. In short, the judiciary's hand had been totally tied. Consequently, the UN Special Rapporteur on adequate housing had addressed "the lack of access to justice for the right to housing claims"[357] after her visit to Egypt in September 2018. Also, she recommended that "the government should encourage rights holders to settle disputes relating to the right to housing through legal means, ensure adequate access to legal aid and assistance, and encourage people to bring such claims forward to judicial mechanisms"[358].

[354] In 2018-2019 Budget, only LE115 Billion was allocated to education, which "represents 2.4 Percent—much lower than the 4 percent constitutional requirement". See more, Dylan Johnson, Egypt's Long Road to Education Reform, The Tahrir Institute for Middle East Policy, Oct10, 2018. https://bit.ly/2JIBzop

[355] Article (78) of the Constitution.

[356] Article (101) of the Constitution states that "The House of Representatives is entrusted with legislative authority, and with approving the general policy of the state, the general plan of economic and social development and the state budget"

[357] *Supra note (175),* Report of the Special Rapporteur on adequate housing regarding her visiting mission to Egypt from 24 September to 3 October 2018 pursuant to Human Rights Council resolution 34/9, published on 28 February 2018, p.21.

[358] *Ibid*.

Another feature of the incomplete Egyptian approach to realize socio-economic rights is the lack of legislation that translates constitutional commitments from rhetoric to applicable and justiciable rights. In other words, if the real intention of the current Egyptian regime is realizing and protecting social and economic rights, reviewing the legislative, legal and regulatory structure in line with the country's new social obligations should be a priority in its political agenda. According to the current labour law[359],strike is a crime, while the Constitution guarantees the right to strike to all workers[360]. Also, at the time that the Constitution considers forced eviction as a crime, there is no law that defines the meaning of forced eviction, its conditions, or the punishment of this crime. The only new legislation that had been adapted to give effect to one of the state obligations to the right to health was the law No 2/2018 on the Comprehensive Health Insurance System. However, the application of the law will take place over six phases which will end in 2032[361].

Finally, the Egyptian courts have a long history of protecting social and economic rights over the years. A closer look at the jurisprudence of administrative courts shows how judges interpreted socio-economic rights, not only by relying on the Constitution texts, but also by referring to the international human rights instruments and the Islamic sharia principles. However, in addition to the lack of legislation, plus the institutional rhetoric and sometimes the vague style of texts' formulations, there are several reasons that limit the scope of socio-economic adjudication. Also, Strict legal standing conditions determine who can bring a claim to a court. I believe that this is the main obstacle in the way of the development of socio-economic rights adjudication in Egypt. Indeed, writing a new Constitution was a great opportunity to adopt a new adjudication model that could be more progressive in favour the human rights in general. Also, one cannot isolate the development of socio-economic rights and

[359] Law no.12 of 2003.
[360] Article (15) of the Constitution.
[361] All you need to know about Egypt's new comprehensive health insurance system, Egypt Independent News website, October.2, 2019. https://bit.ly/2qdsptc

the matter of giving the judiciary enough strength to enforce these rights, from the whole picture of the political and economic situation in Egypt. Unfortunately, till now the Egyptian government follows a specific program of International Monetary Fund (IMF), which includes removing subsidies on many products and services[362]. And the biggest loser from such policies is those millions of people who live under the poverty line.

It should be noted that, the development of social and economic jurisprudence that had happened in Colombia and South Africa was not merely because of the constitutional provisions, rather, the effective role of the judiciary was the motor of such development. The political contexts and non-strict legal standing conditions gave the chance to courts to examine such important cases that effected people's lives.

4. Judicial activism as a backbone for the development of socio-economic rights adjudication:

After 28 years of its Establishment, the Colombian Constitutional Court became an example of controversiality about the appropriate role of the judiciary in a democratic society. In fact, the debate over the competence and the legitimacy of constitutional court interventions in state policies, especially when it has economic impact never stopped. In my analysis of the development of socio-economic rights jurisprudence in Colombia, I argue that judicial activism practised by the Constitutional Court was the threshold of socio-economic rights enforceability. Precisely, I claim that without the extraordinary role of the Court in interpreting socio-economic rights in a very generous way, probably social and economic rights would not be justiciable in the Colombian context, due to an express limitation in the text of the Constitution.

As we mentioned in chapter two, the Colombian Constitution grants a long list of social and economic rights, but indeed that was not enough to make these rights enforceable. As we saw

[362] Egypt to slash fuel subsidies as it nears end of IMF program, Reuters News, April 6, 2019. https://reut.rs/2ppvoPo

earlier, without the Court's approach in considering these rights as fundamental rights by connection to other rights, and the adoption of the doctrine of the constitutional block, the judicial enforcement of these rights would be impossible.

The 1991 Constitution gives courts the tools which can be used to enforce the rights, principles, and the values of the Constitution, such a *tutela action* and the *public action of unconstitutionality*[363]. However, the Constitutional Court developed these tools in a very broad way that gives the judiciary more powers indeed.

Truly, no one can ignore the remarkable impact of judicial activism in providing more protection to socio-economic rights. For instance, between 1999 and 2008 Colombian courts had received 674,612 tutela actions asking for constitutional protection regarding health issues[364]. Although tutela action is a kind of concrete judicial review which gives its effect only to persons who submit the claim, the Constitutional Court considered this huge number of claims as a sign of a systematic violation of health rights and declared the *unconstitutional state of affairs*[365].

In decision T-760/08 the Court "gathered information from governmental and non-governmental sources, together with illustrative individual cases in order to inform its structural approach to violations in the health system"[366], and chose different twenty-one tutela form thousand to shows the systematic problems in the health system that led to this huge numbers

[363] Javier Franco, Pablo Medrano, Constitutional courts and economic policies the Colombian case, Revista Prolegómenos. Derechos y Valores de la Facultad de Derecho, Universidad Libre (Bogotá), Volumen XIII - No. 26 - Julio - Diciembre 2010. P,205. **See also, *public action of unconstitutionality*** is the tool that "any citizen can demand the Court that a law or decree be declared unconstitutional, without him or her being a lawyer or having any particular interest in the issue", P.204.

[364] Alicia Yamin, Oscar Parra-Vera, Judicial Protection of the Right to Health in Colombia: From Social Demands to Individual Claims to Public Debates, Hastings international and comparative law review, January 2010, P.432.

[365] *Ibid*.

[366] *Ibid*.P.445.

of *tutela*[367]. Finally, the Court ordered the government to restructure the whole health system[368]. Indeed, this ruling considers one of the most important decisions in the history of the Constitutional Court, till 2016 the Court was holding hearings to monitor the implementation of this decision[369]. A one can see the similarity between the Constitutional Court approach in monitoring the implementation of its decisions for years after with the meaningful engagement approach that has been adopted in South Africa. Both approaches are concerned to engage in court hearings and discussions for years after delivering a judgment to see the impact of these decisions and examine to what extent the state has changed its policies toward specific social problem.

The same kind of judicial activism had been taken regarding protecting the right to housing[370] and the right of prisoners in life and dignity[371], by using the huge numbers of the individual tutela actions as a pretext to give orders to the government that have economic and social reforms. Indeed, Explaining the reason behind judicial activism of the Colombian Constitutional Court was in the centre of discussion between many authors. Some scholars argued that there are a "new set of ideas about the judicial role" had been developed within the judiciary[372]. As stated by Medrano, "[t]he judges believe that they have the major role in a democratic society; they think that should to impulse the social change, for example, protecting social rights"[373]. On another hand, some opinions see the main problem is "the inefficiency of the legislative and executive as well as the political parties and social movements"[374].

[367] *Ibid*. 446.
[368] Corte Constitucional [C.C.] [Constitutional Court], Sala Segunda de Revisión julio 31, 2008, M.P.: Manuel José Cepeda Espinoza, Sentencia T-760/08 (Colom.)
[369] César Rodríguez- Garavito, Beyond Enforcement: Assessing and Enhancing Judicial Impact, Social Rights Judgments and the Politics of Compliance, Cambridge University Press, March 2017, P.75.
[370] The Colombian Constitutional Court, Decision T- 025 of 2004 (per Justice Manuel José Cepeda Espinosa).
[371] Case T-153/1998. See more, Riza, L., The Economic and Social Rights of Prisoners and Constitutional Court Intervention in the Penitentiary System in Colombia, Constitutionalism of the Global South: The Activist Tribunals of India, South Africa, and Colombia, Cambridge University Press, 2013, P.129.
[372] *Supra note* (363).
[373] *Ibid*.
[374] *Ibid*.

Considering the Egyptian political context and the structure of powers within the system, such activism by judges is not a realistic option. In fact, the executive branch has a huge interference in judges appointment process in Egypt. In 2018, a new law has been passed by the parliament that grant the President of the Republic the power to appoint the most senior members within the justice system, and the heads of all judicial institutions[375]. Many opinions were against this law and considered as unconstitutional. In 2019, a new constitution amendment had taken a place in Egypt and included these rules regarding the appointment of the heads of judicial institutions to be constitutional provisions not just a law. According to the new amendment, the president has the power to "appoint the heads of judicial bodies, the president of the Supreme Constitutional Court, and the prosecutor-general. The amendments also gave the president the chairmanship of the Supreme Council for Judicial Bodies and Entities"[376].

Thus, this new constitutional reality considers a huge threat for all judges who can be active in the area of protecting the fundamental rights if the executive branch did not like this kind of activism. At the same time, the full control over the parliament by the executive power does not give any chance to discuss any new legislations that can expand judiciary powers. For instance, in light of the activism of the Colombian Constitutional Court toward the huge numbers of tutela actions, it will be a good proposal to allow administrative courts in Egypt to take an action toward the huge number of petitions regarding a specific social problem.

Conclusion

Finally, I am not arguing in favour of judicial activism as a tool for effective enforcement of social and economic rights. Indeed, as we saw in the Colombian context, the Constitutional Court's activity raised the classical concerns regarding judicial protection of socio-economic

[375] New legislation threatens judicial independence in Egypt, Amnesty International, 27 April 2017. https://bit.ly/34BG7pj

[376] TIMEP Brief: 2019 Constitutional Amendments, the Tahrir Institute for Middle East Policy, 17 April, 2019. https://bit.ly/33pjuTv

rights, such as the separation of powers principle and the competence of the judiciary. However, the Colombian Constitutional Court inspired many other countries in Latin America to take the same direction. In the past two decades, judicial activism became more prominent in Brazil, Argentina, and Costa Rica[377]. In my opinion, judicial activism is a double-edged sword. As it can be a huge push in favour of enforcement of socio-economic rights, it also opens the door to judicial incursion in the executive policies. Judicial activism depends only on how judges use the available legal tools, their beliefs, and ideologies, thus, it cannot be a sustainable approach that recommended to adopt.

[377] *Supra note* (369). César Rodríguez- Garavito, Beyond Enforcement: Assessing and Enhancing Judicial Impact, P.76-77.

Conclusion

Indeed, the question that had been raised by Justice Yaacob in *Grootboom* is similar to my main question in this thesis, he stated that, "socio-economic rights are expressly included in the Bill of Rights . . .. [t]he question is therefore not whether socio-economic rights are justiciable under our Constitution, but how to enforce them in a given case"[378]. The process of converting social and economic rights to reality and the role of the judiciary in pumping the blood to constitutional texts was my concern. To do so, in the first chapter of this thesis, I observed the specific nature of the obligations that arising from socio- economic rights and the nature of these rights. Then, I showed the classic concerns against the judicial enforcement of socio-economic rights, such as the argument of separation of powers and courts competence and legitimacy to examine these matters. Finally, I illustrated the legal standing conditions before courts for a constitutional adjudication, within the compared jurisdictions.

In the second chapter I presented the constitutional framework of social and economic rights in Egypt, South Africa, and Colombia. I highlighted the specific features of each constitution and the formulation of socio-economic provisions. Also, I gave some analyses for the role of constitutional courts in the three countries regarding the interpretation and enforcement of socio-economic rights. In the third chapter, I studied housing adjudication as a case study for judicial enforcement of socio-economic rights. First, I addressed the background of housing problems and forced eviction operations in the three countries. Then, The I illustrated how the three constitutions granted the right to housing, and the states' obligations to realize it. Also, I presented an analysis of the Court's conduct toward housing problems, showed the competing interests between the right to housing from a side and property rights and states' development

[378] *Grootboom*, Para.20.

plans from the other side, and gave some reflection of these concerns in the comparative jurisprudence.

In the fourth chapter, I conducted analysis of the three different approaches that had been adopted within the compared jurisdictions. In addition, showed the methods and challenges of each approach and its impact on the development of socio-economic rights adjudication.

As C. Christiansen stated, "Similar constitutional goals may grow out of distinctive histories"[379], each constitution of the three compared constitutions in this study had written in different historical circumstances. Whereas the South African Constitution had come after decades of racial segregation and living under the apartheid system, the Colombian Constitution was the sign that the civil war had been ended. On the other hand, the adoption of the Egyptian Constitution was a result of a revolution against authoritarian and inequality. However, protection and promoting social and economic rights is a common goal for all of them.

Indeed, many differences had been observed between the three jurisdictions, beginning with the formulation of the constitutional texts until the structure of the legal system and methods of litigation. First, very important lesson we can learn from the South African and the Egyptian constitutions that the phrasing of the constitutional texts matters and can make a difference in defining the scope of such right. The South African model was aware of that and social and economic constitutional rights had been written in a very careful and creative manner, and the structure and formulation of each category defined the content of the right and the exact beneficiaries of it. At the same time, it was aware of the practical problems that may consider an obstacle to enforce a right, such as the available resources. on the other hand, the Egyptian Constitution adopted more rhetoric approach in phrasing social and economic rights as attempt to absorb people anger after three years of very tremendous political changes.

[379] Eric C. Christiansen, Exporting South Africa's Social Rights Jurisprudence, 5 Loy. U. Chi. Int'l L. Rev. 29 (2007). P.38.

On the other hand, judicial creativity in interpreting social and economic right provisions is a very important element that can reshape the social system for a country. For instance, the very effective interpretive role regarding social and economic rights that the Colombian Constitutional Court had played it is possible that being inspiring in the Egyptian Context, especially, the notion *of fundamental by connection*.

This principle had been adopted to extend the definition of the fundamental rights list in the Colombian Constitution to include social and economic rights as well. Despite the absence of such a distinction in the Egyptian Constitution, rejecting the formalistic and textual interpretation as a method is a possible approach for exportation. Also, this principle had been built on connecting an enforceable right to other rights, such as connecting the right to life and dignity with the right to housing. Indeed, such approach will be a great addition to the Egyptian context. Especially with the absence of the immediate effect of social and economic rights in the Egyptian Constitution.

Similar to the Colombian approach, the South African Constitutional Court relayed on equality and human dignity provisions to extent its protection of social and economic rights. In other words, the purposive interpretation of the Constitutional texts was the method that helped the court to develop its jurisprudence and deliver real social impact. Moreover, the remarkable position of international human rights law in the Colombian jurisprudence and the adoption of the doctrine of the Constitutional block makes the Colombian Constitutional Court as a model that shows how the human rights law can leave a huge influence in the domestic legal order. Ironically, article (93) of both the Egyptian and the Colombian constitutions are regulating the position of human rights treaties in the legal system. Both articles consider human rights law as a part of the domestic legislation once the ratification of such a treaty had done. However, the Colombian Constitution added that any interpretation for the fundamental rights should be in accordance with international treaties on human rights ratified by Colombia. It is important to

note that, the creative role of the Colombian Constitutional Court was not limited to socio-economic rights, rather, it was more systematic and applied to all other fundamental rights cases.

On the other hand, Judicial activism that became an essential feature in the Colombian Constitutional Court work, helped a lot in expanding the scope of socio-economic rights. However, I argue that judicial activism could be a dangerous tool that opens the door to the clash between judiciary and other branches. Courts can play a corrective function and encourage using the participatory remedies that will lead to more involvement of political branches in social and economic rights enforcement process. The meaningful engagement approach that had been adopted by the South African Court and the participatory approach in Colombia are clear examples of bringing the other political branches in an effective enforcement process. Such a role of a court cannot be existing without a case to decide on it, this is the case in Egypt because of the narrow standing conditions that make the possibility of constitutional adjudication very hard. In my opinion, the absence of direct access to the Supreme Constitutional Court and the very strict standing conditions before administrative courts are the main obstacles of the development of socio-economic jurisprudence in Egypt.

Furthermore, the drafting process of a constitution is a very important factor that can affect the future of socio-economic litigation and the way of protecting a right. For instance, when the South African Constitution prohibited the unlawful evictions, the drafters were aware to mention a practical solution, which is the required court's order before conducting any kind of eviction. On the other, in Egypt, the drafters just prohibited forced eviction and stated that it's a crime, without mentioning by which procedure should this crime be stopped, especially because of the fact the state here is the one who violates the right. Thus, while litigants in South African can challenge evection decisions before an eviction take a place, hence, they take their

chance to raise their concerns and how such eviction can affect their lives, in Egypt only after an eviction occurred, litigants can go to a court and challenge this decision.

Finally, given to all problems that we mentioned previously in chapter four regarding the absence of effective enforcement mechanism for state obligations in Egypt, the main task now on court's shoulders, using different interpretation methods such as the purposive method could be the start. It’s important to highlight that, without adopting new legislations that translate the constitutional texts into laws, this task will be very hard.

Bibliography

Books

• Malcom Langford, Social Rights Jurisprudence Emerging Trends in International and Comparative Law, Cambridge University Press 2008.

• Pierre De Vos and Warren Freedman, South African Constitutional Law in Context (Cape Town, South Africa: Oxford University Press, 2014)

• Katharine G. Young, Constituting Economic and Social Rights, Oxford University Press 2012.

• Cheryl Loots, Woolman S. Constitutional Law of South Africa, Second edition, 2006.

• Ed. K. Boyle & Adel Omar Sherif, Human rights and democracy: the role of the Supreme Constitutional Court of Egypt, Kluwer Law International, SOAS, The Hague,1996.

• Lanford and Dugard, Socio-Economic Rights in South Africa Symbols or Substance? Cambridge University Press, 2014.

• Kirsty McLean, Constitutional Deference, Courts and Socio-Economic Rights in South Africa, Pretoria University Law Press (PULP), 2009.

• Manuel Cepeda and David Landau, Colombian constitutional law: leading cases, Oxford University Press, 2017

• Uan Gonzalez-Bertomeu and Roberto Gargarella, The Latin American casebook: courts, constitutions and rights, Ashgate, 2016.

• Cass R. Sunstein, Designing Democracy: What Constitution Do, Oxford University Press, 2001.

• César Rodríguez- Garavito, Malcolm Langford, Social Rights Judgments and the Politics of Compliance, Cambridge University Press, March 2017.

• Daniel Bonilla Maldonado, Constitutionalism of the Global South: The Activist Tribunals of India, South Africa, and Colombia, Cambridge University Press, 2013.

Journal Articles

• Katharine G. Young, The Minimum Core of Economic and Social Rights: A Concept in Search of Content, 33 Yale J. Int'l L. 113, 2008.

• Lillian Chinwe, 'Unpacking "Progressive Realization", Its Relation to Resources, Minimum Core and Reasonableness, and Some Methodological Considerations for Assessing Compliance', 46 De Jure, 2013.

• David Bilchitz, 'Giving Socio-Economic Rights Teeth: The Minimum Core and Its Importance Note', 119 South African Law Journal, P.484, 2002.

• Marius Pieterse, 'Coming to Terms with Judicial Enforcement of Socio-Economic Rights' 20 South African Journal on Human Rights, 2004.

• Alicia Ely Yamin and Oscar Parra-Vera, 'How Do Courts Set Health Policy? The Case of the Colombian Constitutional Court', 6 PLOS Medicine, 2009.

• Mbazira, Christopher, 'Enforcing the Economic, Social and Cultural Rights in the South African Constitution as Justiciable Individual Rights: The Role of Judicial Remedies', university of the western cape, 2017.

• Marius Pieterse, 'Socio-Economic Rights Adjudication and Democratic Urban Governance: Reassessing the "Second Wave" Jurisprudence of the South African Constitutional Court' 51 Verfassung in Recht und Übersee 12, 2018.

• Katrin Merhof, Building a bridge between reality and the constitution: The establishment and development of the Colombian Constitutional Court, International Journal of Constitutional Law, Volume 13, Issue 3, 2015.

• Geo Quinot and Sandra Liebenberg, Narrowing the band: reasonableness review in administrative justice and socio-economic rights jurisprudence in South Africa, Stellenbosch Law Review, 2011.

• Dr. Heba Hazzaa & Silke Noa Kumpf, Egypt's Ban on Public Interest Litigation in Government Contracts: A Case Study of "Judicial Chill", Stanford Journal of International Law, July 2015.

• Lombardi, Clark B. and Nathan J. Brown. "Do Constitutions Requiring Adherence to Shari'a Threaten Human Rights? How Egypt's Constitutional Court Reconciles Islamic Law with the Liberal Rule of Law", American University International Law Review 21, no.3, 2006.

• Marius Pieterse, 'Coming to Terms with Judicial Enforcement of Socio-Economic Rights, 20 South African Journal on Human Rights 383, 2004.

• Dennis Davis, socio-economic rights in south Africa: the record after ten years, New Zealand Journal of Public and International Law, 2004.

• David Bilchitz, towards a Reasonable Approach to the Minimum Core: Laying the Foundations for Future Socio-Economic Rights Jurisprudence, South African Journal on Human Rights, 2003.

• DM Davis, 'Socioeconomic Rights: Do They Deliver the Goods?' 6 International Journal of Constitutional Law 687, 2008.

• Strauss, M., & Liebenberg, S. Contested spaces: Housing rights and evictions law in post-apartheid South Africa. Planning Theory, 13(4), 428–448, 2014.

• Vanice Regina Lirio do Valle, Judicial Adjudication in Housing Rights in Brazil and Colombia: A Comparative Perspective, 1 Revista de Investigacoes Constitucionais 67, 2014.

• Lilian Chenwi, Implementation of Housing Rights in South Africa: Approaches and Strategies, Journal of law and Social policy, 2015,

• Pierre de Vos (2001) Grootboom, the Right of Access to Housing and Substantive Equality as Contextual Fairness, South African Journal on Human Rights, 2017.

• K Klare 'Legal culture and transformative constitutionalism' ,14 SAJHR 146, 1998.

• David Bilchitz (2003) Towards a Reasonable Approach to the Minimum Core: Laying the Foundations for Future Socio-Economic Rights Jurisprudence, South African Journal on Human Rights, 2017.

• E Mureinik 'A bridge to where? Introducing the Interim Bill of Rights' 10 South African Journal on Human Rights 31 32, 1994.

• Geo Quinot, Substantive reasoning in administrative-law adjudication, Constitutional Court Review, 2010.

• Lucy A. Williams, The Right to Housing in South Africa: An Evolving Jurisprudence, 45 Colum. Hum. Rts. L. Rev. 816, 2014.

• Lilian Chenwi, "Putting Flesh on the Skeleton: South African Judicial Enforcement of the Right to Adequate Housing of Those Subject to Evictions",8 HRLR 105, 2008.

• Paul Nolette, Lessons Learned from the South African Constitutional Court: Toward a Third Way of Judicial Enforcement of Socio-Economic Rights, 12 Mich. St. U. J. Int'l L. 91, 2003.

• Lilian Chenwi and Kate Tissington, 'Engaging Meaningfully with Government on Socio-Economic Rights', Community Law Centre, University of the Western Cape, 2010.

• Gallie, Muavia, Yusuf Sayed, and Herma Williams. "Transforming Educational Management in South Africa.", The Journal of Negro Education 66, no. 4, 1997.

• Thembela Kepe & Ruth Hall, Land Redistribution in South Africa: Towards Decolonisation or Recolonisation? Politikon, 45:1, 128-137, 2018.

• Ahmed El-Sayed, Post-Revolution Constitutionalism: The Impact of Drafting Processes on the Constitutional Documents in Tunisia and Egypt, Electronic Journal of Islamic and Middle Eastern Law (EJIMEL), Vol. 2, 2014.

• Kameshni Pillay, implementing Grootboom: supervision needed, ESR Review: Economic and Social Rights in South Africa, Volume 3 Number 1, Jul 2002.

• Stephen Gardbaum, Revolutionary constitutionalism, International Journal of Constitutional Law, Volume 15, Issue 1, January 2017.

• Kai Möller, Proportionality: Challenging the critics, International Journal of Constitutional Law, Volume 10, Issue 3, July 2012.

• Gabriel Murillo-Castaño, Victoria Gomez-Segura, Institutions and Citizens in Colombia: The Changing Nature of a Difficult Relationship, Social Forces, Volume 84, Number 1, September 2005.

• Javier Franco, Pablo Medrano, Constitutional courts and economic policies the Colombian case, Revista Prolegómenos. Derechos y Valores de la Facultad de Derecho, Universidad Libre (Bogotá), Volumen XIII - No. 26, Julio, Diciembre 2010.

• Alicia Yamin, Oscar Parra Vera, Judicial Protection of the Right to Health in Colombia: From Social Demands to Individual Claims to Public Debates, Hastings international and comparative law review, January 2010.

• Eric C. Christiansen, Exporting South Africa's Social Rights Jurisprudence, 5 Loy. U. Chi. Int'l L. Rev. 29, 2007.

• Rodrigo Uprimny Yepes, Judicialization of politics in Colombia: cases, merits and risks, Sur - Revista Internacional de Direitos Humanos, São Paulo, n.6, p.53-69, 2007.P.5.

Legal Sources

• The Constitution of the Egyptian Arab Republic, 2014.

• The Constitution of the Republic of South Africa, 1996.

• The Constitution the Republic of Colombia, 1991.

• Law No.48 of 1979 (The Supreme Constitutional Court Law), Al- Jarida Al-Rasmiyya, 6 September 1979, (Egypt).

• Law No. 47 of 1972 (State Council Law), 40 Al-Jarida Al-Rasmiyya, 5 October 1972, (Egypt)

• Law No. 162 of 1958 (The Emergency Law), (Egypt).

• Law No. 12 of 2003 (Labour Law), (Egypt).

• The Rental Housing Act 50 of 1999, (S.Afr.).

• The PIE Act 19 of 1998, (S.Afr.).

• General Comment No. 3: The Nature of States Parties' Obligations, UN Committee on Economic, Social and Cultural Rights (CESCR), 14 December 1990.

• Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, January 1997.

• ILO Convention (No. 122), Employment Policy Convention, 1964.

• The official records of the Egyptian Constituent Committee’s meetings. Namely, the records of meeting number (35), Sunday 17 Nov 2013.

Cases

• Government of the Republic of South Africa and Others v Grootboom and Others (CCT11/00) [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 1169 (4 October 2000).

• Occupiers of 51 Olivia Road, Berea Township and 197 Main Street Johannesburg v City of Johannesburg and Others (24/07) [2008] ZACC 1; 2008 (3) SA 208 (CC); 2008 (5) BCLR 475 (CC) (19 February 2008).

• Minister of Health and Others v Treatment Action Campaign and Others (No 2) (CCT8/02) [2002] ZACC 15; 2002 (5) SA 721; 2002 (10) BCLR 1033 (5 July 2002).

• Maphango and Others v Aengus Lifestyle Properties (Pty) Ltd (CCT57/11) (CC) [2012] ZACC 2; 2012 (3) SA 531 (CC); 2012 (5) BCLR 449 (CC) (13 March 2012).

• Port Elizabeth Municipality v Various Occupiers (CCT 53/03) [2004] ZACC 7; 2005 (1) SA 217 (CC); 2004 (12) BCLR 1268 (CC) (1 October 2004).

• Occupiers of Portion R25 of the Farm Mooiplaats 355 JR v Golden Thread Ltd and Others (CCT 25/11) [2011] ZACC 35; 2012 (2) SA 337 (CC); 2012 (4) BCLR 372 (CC) (7 December 2011).

• Residents of Joe Slovo Community, Western Cape v Thubelisha Homes and Others (CCT 22/08) [2009] ZACC 16; 2009 (9) BCLR 847 (CC) ; 2010 (3) SA 454 (CC) (10 June 2009).

• Case No. 18868/51- year 2007, The Supreme Administrative Court, Egypt.

• المحكمة الإدارية العليا (the Supreme Administrative Court), قضية عزبة خير الله (Ezbet khair Allah case), القضية رقم 1875 و 1914 لسنة 30 قضائية, (the Case no 1875 and 1914 year 30. Judiciary), March 9. 1991. – Unofficial Translation.

• محكمة القضاء الإداري (Cairo Court of Administrative Justice) قضية سوق البوهي (El Bohi Market case) القضية رقم 69651 لسنة 70 قضائية (case no.69651 year. 70 judiciary), Feb.25,2017. Unofficial Translation.

• Cairo High Emergency State Court, Case no 4190-year 1986.محكمة. قضية رقم 4190 لسنة 1986 أمن الدولة العليا طوارئ القاهرة

• محكمة القضاء الإداري (Cairo Court of Administrative Justice) قضية رملة بولاق (Ramelt Boulaq Case) القضية رقم 5594 لسنة 66 قضائية (case no.55949 year. 66 judiciary), Aug.21,2013. Unofficial Translation.

• محكمة القضاء الإداري (Cairo Court of Administrative Justice) قضية جزيرة القرصاية (El Qursaya Island case) القضية رقم 782 لسنة 62 قضائية (case no.782 year. 62 judiciary), Nov.16,2008. Unofficial Translation.

• The Colombian Constitutional Court, Decision T- 025 of 2004 (per Justice Manuel José Cepeda Espinosa)

• The Colombian Constitutional Court, Decision T- 025 of 2004.

• The Colombian Constitutional Court, Decision T-153 of 1998.

• The Colombian Constitutional Court, Decision T-760 of 2008.

Other Sources

• Christian Courtis and International Commission of Jurists, Courts and the Legal Enforcement of Economic, Social and Cultural Rights: Comparative Experiences of Justiciability (International Commission of Jurists 2008)

• OHCHR | Can Economic, Social and Cultural Rights Be Litigated at Courts? https://goo.gl/agYjJi

• The Arab Center for the Independence of the Judiciary and the Legal Profession organizes a panel discussion about the feature of socio-economic rights after the Revolution, Al Ahram Newspaper, 31 March 2011. (In Arabic). https://bit.ly/2k9kPNG

• Neoliberalism and Revolution in Egypt, E-International Relations (E-IR), APR 24, 2015, https://bit.ly/2lCDou7

• Egypt: in depth analysis of the main elements of the new Constitution, Directorate-General for External Policies of the Union, Policy Department, the European parliament, 2014, https://goo.gl/sbxZja

• Omnya Khalil, From Community Participation to Forced Eviction in the Maspero Triangle, the Tahrir Institute for Middle East Policy, Jun 2018, https://goo.gl/6G9BSj

• Report of the Special Rapporteur on adequate housing regarding her visiting mission to Egypt from 24 September to 3 October 2018 pursuant to Human Rights Council resolution 34/9, published on 28 February 2018, https://www.ohchr.org/EN/Issues/Housing/Pages/CountryVisits.aspx

• Workshop Report "Cairo2050" The Urban Development Projects and People's Right to Adequate Housing In the light of Revolution of 25th January, Housing and Land Rights Network Habitat International Coalition, 13-14 July 2011, https://bit.ly/2WaHkTr

• Cairo vision 2050 The Strategic Urban Development Plan of Greater Cairo Region, https://bit.ly/2uvFyNp

• Cairo 2050 Revisited: Cairo's Mysterious Planning—What We Know and What We Do Not Know About Al-Fusṭāṭ, "Tadamun" (The Cairo Urban Solidarity Initiative), https://bit.ly/2JszcYe

• The official website of the Egyptian sustainable development strategy "Egypt vision 2030", https://bit.ly/2VwFeJb

• Yahia Shawkat, Housing Policies Paper II Drafting a Fair Housing Policy for Egypt, The Egyptian Initiative for Personal Rights, July 2014, https://bit.ly/2K9nLoe

• Nada El-Kouny, Residents of Ramlet Boulaq district decry 'injustices', Al-Ahram online News website, 18 Mar 2013, https://bit.ly/2Ii4ldU

• New legislation threatens judicial independence in Egypt, Amnesty International, 27 April 2017. https://bit.ly/34BG7pj

• TIMEP Brief: 2019 Constitutional Amendments, the Tahrir Institute for Middle East Policy, 17 April, 2019. https://bit.ly/33pjuTv

• Expert Seminar on the Practice of Forced Evictions, Geneva, 11-13 June 1997: Report of the Secretary-General. https://bit.ly/2Ite29H

• Dylan Johnson, Egypt's Long Road to Education Reform, The Tahrir Institute for Middle East Policy, Oct10, 2018. https://bit.ly/2JIBzop

• All you need to know about Egypt's new comprehensive health insurance system, Egypt Independent News website, October.2, 2019. https://bit.ly/2qdsptc

• Egyptian ministers' statements on public budget raise controversy, Al-Monitor News, 18 June 2019, https://bit.ly/2KHnLLq

• How cases reach the Constitutional Court, South Africa History Online, https://bit.ly/2rjuOTB