



Legalization Frameworks in Building Regulations and Their Relationship with the Reconciliation Law in Egypt

Received 7 August 2021; Revised 1 October 2021; Accepted 1 October 2021

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Keywords

Reconciliation law;
Legalization; Building
violations; Building laws;
Built environment.

Abstract

The issuance of the Building Reconciliation law no.17/2019 has imposed a new reality, allowing legalization for illegal constructions which Egypt has been facing its challenges since decades. New policies require in-depth research especially with the scarce availability of data concerning this topic. Therefore, this paper is an attempt to study the law issuance context and drivers from a legislative point-of-view, seeking answers to the following questions both nationally and internationally. Nationally, how formerly issued building laws in Egypt addressed illegal construction? Did they allow for any type of legalization? How does the reconciliation law differ from those laws in dealing with illegal constructions? Internationally, Are there any similar international examples of reconciliation laws? If yes, how do they differ from the Reconciliation Law 17/2019 legalization's framework? And how can we benefit from those experiences?

The research starts by demonstrating the picture of the long-existing phenomenon, analysing the formerly issued building laws together with the reconciliation law, in terms of the measures of dealing with illegal constructions using an inductive methodology. Then, conducting a comparative analysis between those laws, regarding the allowed and disallowed items for legalization, to understand the difference in the dealing measures. Then an analytic discussion of the law's framework is conducted, paired with a comparison between the Reconciliation Law and other similar international examples in terms of the process framework and mechanisms. Results show that; former building laws in Egypt had all set the mechanism for legalization within their frameworks but with varying proportions. All formerly ruling building laws, with their amendments failed to contain or deter the increasing building violations at their times which is the reason why the phenomenon continued and thus law 17/2019 was later introduced.

The Law allowed for legalizing most of the building violations in a rather flexible manner than before, but multiple issues appeared throughout its analysis. Therefore, recommendations include the

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necessity of making quick action plans to maintain and strengthen the rule of law, combining both deterrence-based and incentive-based mechanisms, especially with the delay in the reconciliation process, defining the reasons for the process delay to be eliminated. Plans should be made to protect the rights of law-abiders and special consideration should be made for vulnerable and disadvantaged group. Plans should be made on dealing with unlegalized buildings, those which didn't apply for legalization, as well as dealing with similar future violations after the law's process completion to facilitate the incorporation of acceptable violations in the formal realm. Comprehensive studies should be made to find practical means of achieving better urban integration of the legalized buildings, upgrading quality of life, and preserving the planned urban and architectural character of neighbourhoods to overcome the effect of the law's generalization in dealing with violations of different natures and contexts, as well as overlooking of various important factors such as quality of life indicators, environmental impact controls, sanitation, natural lighting, ventilation, and energy consumption. Supervision and monitoring mechanisms should be included in the law's framework for higher transparency and increase public trust of the process and the issued decisions.

1. Introduction

Building legalization opens a legal, political, environmental, and social debate. The results of this process can be ambiguous, bringing positive and negative consequences [[1], [2]. In this paper the topic will be discussed from its legislative dimension only, in light of its adoption by the Egyptian government in 2019 (Law no.17/2019 and its amendments) and the ruling building laws and regulations. Informal housing first became widespread in the 1960s and 1970s, mainly on the peri-urban and desert fringes of the main cities. [3]. According to CAPMAS, at least 65% of all housing units produced in urban areas over the ten-year period 1996-2006 were informally built, ignoring the huge amount of informal housing units built in rural peri-urban areas around cities over the same period [3]. Egypt has been facing the challenges of illegal building and slum formation since decades, and most of intervention policies practiced have failed to effectively solve those problems [4]. Since March 1881, there have been a cascade of laws and regulations issued to control the building acts and prohibit and penalize illegal construction, both which contravenes building and subdivision rules and that which is constructed on agricultural land [5], [6]. Building laws were and continuously overruled by presidential decrees, and temporary regulations along the Egyptian history [7], [5], [8], [9]. They were also characterized by their unified nature in all their stipulations which resulted in missing objectivity when dealing with violations of different nature, different activities and in different regions and contexts with the same measures, irresponsive to the different needs and requirements [5], [8], [10], [11]. Enforcement of these regulations fell upon weak and corrupt-prone to local authorities, inducing more illegal building acts, sprawl over agricultural lands and slum formation. After the 2011 Revolution, all attempts of control evaporated, and therefore illegal construction, both horizontal and vertical, has exploded [3]. The Built Environment Observatory in 2019, has tracked down 8.2 million housing units that have been built without permits since 2007, comprising 77%, a phenomenal about three quarters of housing production contravening one or more laws governing the built environment. [3], [12].

2. Materials and methods

This research starts by data collection for demonstrating the picture of the long-existing phenomenon of building violations, then analyzing the previous building laws in Egypt regarding their measures of dealing with illegal construction, together with the newly issued reconciliation law and its mechanisms, using an inductive methodology. Data was also gathered and analyzed concerning similar international examples. Formal interviews were handled with Eng. Rania Mounir, General Manager of General Administration of regulations and permits at the housing and utilities sector at MHUUC, and Eng. Nafisa Hashem, First Undersecretary, Head of the Housing and Utilities Sector, Ministry of Housing, Utilities and Urban Communities (MHUUC), on September 2nd, 2021, as well as Dr. Raafat Shemais, the Head of the Authority of Technical Inspection over construction works in a formal interview on October 24th, 2021. The aim of those interviews was to seek answers to inquiries about the available statistics of building violations and legalization process in Egypt, former-ruling building laws and their relation to the Reconciliation Law, and the evaluation of the implementation of the Reconciliation Law's framework. Finally, a comparative analysis is conducted between the three laws with their amendments, regarding the dealing mechanisms with 'allowed' and 'disallowed' items for legalization as defined in the Reconciliation Law, to point out how it differs in terms of the dealing measures within the legalization framework. Also, an analytic discussion of the law's framework is paired with a comparison conducted between the Reconciliation Law and other similar international examples in terms of the process framework and mechanisms.

3. Legalization measures as addressed by the Egyptian building laws

How previous building laws addressed illegal construction? Did they allow for any type of legalization? Ever since building regulations were issued, contractors and owners committed violations either by ignorance of the law or for beneficial purposes. Legalization mechanisms have been introduced since then in form of reconciliation between the State and the violator and halting of the violation status [13]. The following is a brief background of the law status before the building codes, in the 1970s.

3.1 Law 259/1956:

It forbids issuing decisions or decrees to demolish/restitute buildings violating the following laws: Law 51/1940 and Law 63/1945 concerning building regulations, and/or Law 52/1940 concerned with the subdivision of plots. Therefore, all violations before 1956 had been revoked [5], [7], [13]. That freeze was exclusively for informal construction built on informal subdivision of private-owned land, usually agricultural land, and didn't extend to that on state-owned land, or that contravened regulating lines. It was a temporary emergency measure taken due to the severe housing crisis. It was then acknowledged that the leniency has encouraged many individuals to contravene zoning and building laws [7]. For public health reasons, the law had also allowed for the extension of formal infrastructure to public areas as well as to the private homes, though for a fee paid for by the owners. [7].

3.2 Law 29/1966

Law 29/1966 entered into force and revoked all the decisions prior to that date. It forbids issuing decisions or decrees to demolish/restitute buildings in violation with the following laws: Law 52/1940 regulating the subdivision of plot, Law 656/1954, and law 45/1962 concerning building regulation, Law 55/1964 regulating construction works with its amending laws. Moreover, it halted the enforcement of decisions and court orders before 1966 in violation of previous laws. [5] , [13] , [14]

3.3 Law no.106/1976

Law no.106/1976 it defined building violations as any building work construction, expansion, increase of height, modification, restoration, demolition or finishing any existing façade with any

finishing material, done without obtaining a permit from the specified authority at first whether from the public or private sector. (Law no.106/1976, Art. No.4). In terms of the enforcement methods, four categories of building violations have been specified and described in law no.106/1976; the ceased actions to be reinstated, the works that require demolition, the null building actions & the violations that could be exempted from demolition (Legalized).

Legalization was introduced in article no.18 of the executive regulations of law no.106/1976 where it stated that without breaching the criminal responsibility, the committee formed by article no.15 can exempt some of the building violations from demolition in case it caused no harm to the public health, the residents/passers-by/neighbours' security in return for paying usufructuary/ development fees in specific cases as specified in the executive regulations. Law no.106/1976 allowed for historical, cultural, touristic or for national security, an economic benefit or considering the special conditions of a city, village, a sector, or even a specific building, exempting them from applying all or some of part 2 rulings that regulates building construction and its executive regulations. That is to be considered only in case of no harm to any citizen's rights, and its proposal is to be made by the specified authority and to be approved by the exemptions committee, and the final decree to be issued by the minister of housing and utilities (Law no.106/1976, Art. No.29).

3.3.1 Subsequent actions

Article no.18 has been amended in 1996 so that exemptions committee⁴ is cancelled and the exemption from demolition is only approved through issuing a governor's decree in specific cases mentioned in article no.30 of the executive regulations of law no.106/1976: 1) 10% of the allowed protrusions for building facades facing roads and courts; 2) 5% of the visible length of the staircase steps; 3) 5% of the dimensions of rooms, kitchens and bathrooms on condition that the area is not less than 95% of the required area; 4) 3% allowance on measuring the maximum allowed heights without increasing the permitted number of floors. In part 1, Art.1 which regulates the private sector's engagement in building construction, the public sector is exempt from an extra preliminary approval from the public sector, whereas this approval is considered a precondition for issuing the building permit. A usufruct cost/fine must be paid for those exemptions when approved, valued as a percentage of the land price as a development fee, however this article was cancelled in the amendment law no.101/1996 for law no.106/1976. A new part was added in amendment to article no.13, stating that the prime minister can in case of urging needs; for a national goal, economic benefit or considering the special conditions of a city, village, a sector, or even a specific building, exempting them from the height ceilings. It also allowed in case of building without permit, and if no demolition or reinstatement order was issued from the specified committee, the violator is to be fined double the value of the required taxes, besides submitting complete building drawings to the competent authority for certification. (Law no.106/1976, part 3, art.22, bis 1-1). Within five years law 106/1976 was suspended with a new issuance of Informal Subdivision Reconciliation Law 135/1981, similarly to what happened before law 106/1976 issuance [7]. Contrarily, in 1982 another updated law was passed, strengthening penalties even more while separating building and urban planning legislation as they grew more detailed, including Laws 2/1982 and 30/1983 in amendment to Law 106/1976 [5], together with the Urban Planning Law 3/1982 [7]. Also, Article 3 of law 30/1983⁵, allowed violators to submit before June the 7th, 1987 a request to the competent administrative local unit to suspend any procedures against the violations and the violator so that the procedures are stopped until the violation examination. If it proved to endanger lives or properties or breach the regulating lines or height restrictions set by the Civil Aviation Law, it is then reported and re-examined to issue a demolition/restitution decree. Otherwise, penalties were specified in terms of fines unless a final sentence had been issued. This law was only applied till June 7th, 1987 and was only eligible to violators who submitted a form before that date [7], [13]. Other laws were issued afterwards such as Laws 54/1984 and 99/1986, legalizing informal

⁴ Formed according to article no.30 of Law 106/1976

⁵ The amendment for the implementation of Law 106/1976

subdivisions and construction [7], and the housing minister decree 360/1995 that exempts the city of Ashman from the height ceilings. [5]

Other indirect/quasi legalization mechanisms include Cairo Governor Decree 75/1990 which allowed the formal electricity to the `Ashwaeyat (informal settlement areas), but with no further legalization of the subdivisions nor the construction [3],[7]. Also, the Cabinet Decree 129 of 26 October 2005 which allowed the Egyptian Electricity Holding Company to extend formal electricity to the `Ashwaeyat, while Governors' Council Decree of 1 November 2005 allowed the same to the illegal buildings, in response to about half-a-million requests made to the electricity companies. [7].

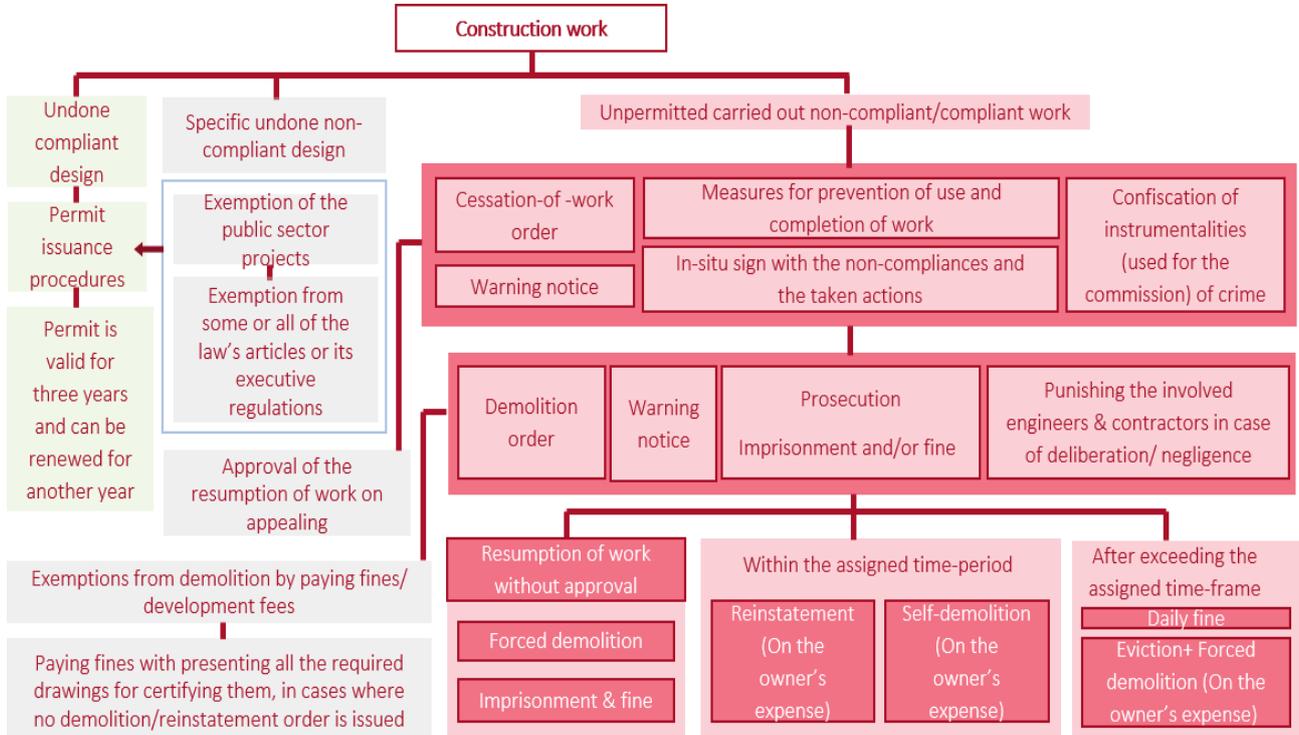


Fig 1. Process flow diagram of dealing with construction work according to law 106/1976. (Source: Author)

3.4 Law no.119/2008

The law has defined the violating building actions as any buildings or constructions commencement, expansion, increase of height, modification, alteration, reinforcement, restoration, or demolition of buildings that are not subject to the building demolition law and which are not partially or fully ramshackle, or carrying out any exterior finishing works, without obtaining a permit from the specified authority at first. All those acts require cessation of work and demolition, or reinstatement orders as specified by the law's regulations. (Law no.119/2008, chapter1, Art.39). The law no.119/2008 has also criminalized any breach over the strategic plans at the national, regional, and local levels. It is distinguished by widening the spectrum of building violation acts compared to the previous building laws and imposing stricter sanctions on violators.

In terms of enforcement methods, four categories of building violations have been specified and described in law no.119/2008; the ceased actions to be reinstated, the works that require demolition, the null building actions and the violations that could be exempted from demolition (Legalized).

3.4.1 Subsequent actions

In 2010, article no.135 (bis), which allowed exemptions from demolition by paying fines in specific cases mentioned before, was added to law no.119/2008 by the ministerial decree no.200/2010 and then amended by decree no.397/2010 and decree no.272/2013, specifying the following six cases: 1) 15% of the allowed protrusions for building facades facing roads and courts; 2) 5% of the visible length of the staircase steps; 3) 5% of the dimensions of rooms, kitchens and bathrooms on condition that the area is not less than 95% of the required area; 4) 15% allowance on measuring the

dimensions and areas of all types of courts; 5) 10% allowance on measuring the maximum allowed heights without increasing the permitted number of floors; 6) 10% of the minimum setback allowed on measuring the setback dimensions so that the increased building area is not more than 5% of the allowed building area.

Another move was in decree no.109/2013 issued in 20/3/2013 by the minister of housing, utilities and urban communities, article no.121 bis. stated that in case the necessity during construction lead to making some modifications that don't affect the building structure such as changing the opening place or moving an interior wall, in a way that doesn't breach the codes and regulations, those modifications can be then certified by the meant local authority. Also, article no.39 bis of law no.23/2015, the amendment to law no.119/2008, has exempted the national projects built upon a ministerial council decree, by the engineering authority of the armed forced, that are of safe structural state and complying to the certified planning and building regulations as indicated in a certificate issued by the authority, from building permit issuance as that certificate is instead considered as a building permit.

After the issuance of law no.119/2008 which didn't allow for exempting building violations from the imposed demolition/reinstatement orders, unlike law no.106/1976 which allowed it by paying fines, and according to the principle of non-retroactivity of laws, the ministerial committee responsible for the supervision over the building law's application has decreed in its periodical letter 413029 in 6/9/2016- based on periodical letters in 9/7/2009, 18/2/2010 and 18/9/2014- that the building violations that took place before 12/5/2008 the date law no.119/2008 was put into action, are dealt with according to the formerly applied laws and regulations. On the other hand, the building violations that took place after 12/5/2008 are subjected to the law no.119/2008 regulations. This opened the legalization door in front of the building violations that were executed before the law's issuance in 12/5/2008, and benefit from the reduction of the violation value decreed for the building violations that are subject to law no.106/1976 and its amendments before the issuance of law no.119/2008.

Whereas at NUCA, in 2009, the ministerial decree 6060 of 23/9/2009 by the minister of housing, utilities and urban communities, stated that based on the applied requests from owners of cutting down the violation value for building without permit to 10% of its value in the new urban communities, similar to this same condition in case of building an extra floor before the permit issuance where the violating work is in accordance with the issued permit and the law's regulations. The decree delegated new cities' governors for legalizing building violations with an affirmed decrease to 10% of the violation work value for buildings that are subject to law no.106/1976 and its amendments before the issuance of law no.119/2008, and defined those violation works to those stated in the ministerial decree no.60/2006 (article no.135 bis) to be in accordance with the allowable building regulations.

Other indirect/quasi legalization mechanisms were introduced, such as the Cabinet Decree 129 of 26 October 2005 and the Governors' Council Decree of 1 November 2005, continued to be carried out, even that law 119/2008 clearly banned the extension of formal utilities to buildings constructed without a permit according to Article 62, whereas by 2011 has connected formal electricity almost 900,000 informal buildings, according to MoEE 2010/2011 [7], [15]. According to MoEE, 2011/2012 [16], the ministry of electricity had received more than one million requests for formal electricity throughout the months following the January 2011, whereas about 880,000 semi-formal connections were made through the so-called 'coded meters'⁶ instead of the usual formal connections. According to the Prime Ministerial Decree 886/2016, and Minister of Electricity Decree 254/2016, those coded meters could be converted to formal meters if in case of legalization from the competent authorities, or else they would be removed in case of demolition court orders. The time for receiving requests was set for June 2018 then it was later extended to January 2019. [7]

⁶ Those coded meters are ones that used a numerical code for identification instead of the property owner's name when no formal contract exist, leaving the door ajar in case of possible future demolitions

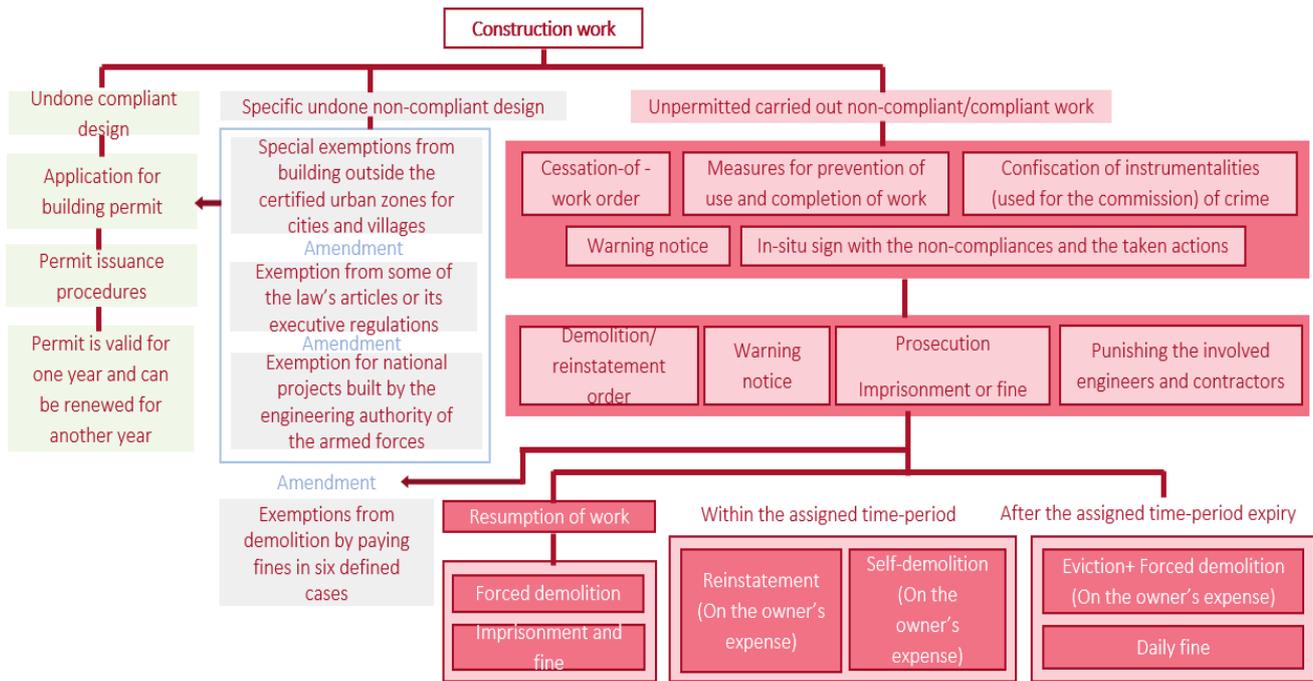


Fig 2. Process flow diagram of dealing with construction work according to law 119/2008 with its amendments. (Source: Author)

4. Discussion

Comparing law no.119/2008 to law no.106/1976- together with their amendments- it is obvious that law no.119/2008 is much stricter in dealing with building non-compliances, not allowing for formal legalization of building illegalities, and imposing harsher punishments on the violators unlike the case of law 106/1976. Which comes in line with the housing minister decree 6060 in 23/9/2009, which explicitly stated in its introduction that law 106/1976 allowed for legalization through fine payment unlike law 119/2008, which doesn't allow for any form of legalization. However, studying the later amendments to law no.106/1976, it can be noticed that those amendments have in most cases made it became stricter, in a form that was greatly similar to law no.119/2008 when it was first issued. Despite the introduced facilitations to law no.119/2008, as in article no.135 (bis) in 2010, it highly specified the cases of exemptions for regularization in only six cases of very narrow permissible limits, not responsive to the existing high rates of common building violations. Speaking about building standards and regulations; among the key critiques is that they are mostly high-standard for many of the low-income housing and their needs [3], which can be considered as an idealistic approach- from the legislators' point of view- whereas that idealism conflicted the realism represented in the various citizens' needs and different contexts that requires some sort of flexibility dealing with them, resulting in what can now be seen in Egypt's built environment from organic self-built settlements, disparate skylines, and a general sense of urban chaos. Moreover, these laws are overruled by presidential decrees, and temporary regulations along the Egyptian history [5], [7], [8] [9]. Realism in turn implies the inevitable non-compliance to those ideal laws, which thus must be properly dealt with, for sustainable urban management [7]. As to the dealing measures with those non-compliances, much controversy exists about it, whereas some authors [8],[9],[11],[17] see that legalization or imposing facilitations to regulations such as exemptions leads to increasing building violations, other scholars such as; Shawkat, Y. [7],[14] and researches such as that carried out by UNESCAP in 2012 [18], argue that a breather or relaxation to the restrictions has to exist in the ruling policies as one of the mechanisms to encourage compliance so that the informal or the non-compliant can be re-included within the formal realm and not be doomed forever as an illegal entity, or else the opposite will happen especially when the informal realm is cheaper, easier and faster. That breather could be giving more space for allowing for

paying adequate fines for legalizing acceptable⁷ violations and to be accompanied with corrective acts if needed. Also, it could be in allowing for having exceptions and exemptions from certain regulations in certain cases while being well-monitored to avoid corruption. But it must be made sure that those acts won't negatively affect the city norms and values or the approved policies and visions. They agreed that flexibility and trying to achieve balance between repression and toleration is a key in managing any social environment, while exaggerating in any of them will only result in increased turbulences [19], [20]. In the case of building laws, that can lead to forcing a halt to amend or suspend them, as can be seen in the above-explained sequence in Egypt throughout the last decades.

3.5 Law no.17/2019

In 2019, the government issued Law no.17/2019 to solve the long-existing and increasing illegal building phenomenon all over Egypt, especially after the failure of the existing building laws and

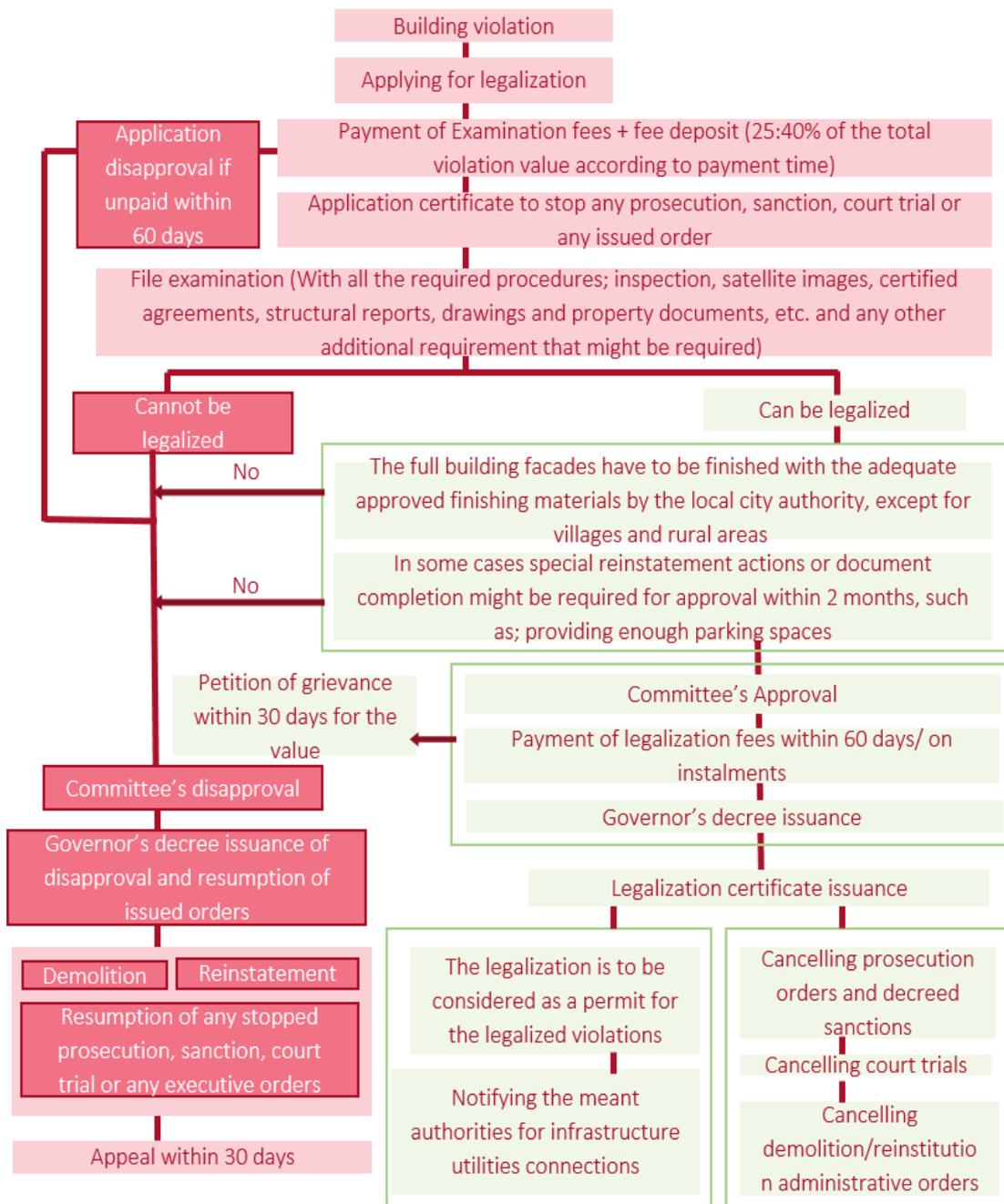


Fig 3. Process flow diagram of law 17/2019 with its amendments. (Source: Author)

⁷ For example in case when the building is compliant with building laws and regulations but lacks authorization.

regulations in containing it. On parliament hearing, several proposals to the Reconciliation law prepared by the government since 2014 were refused⁸. The law's project was prepared since 2014, but its issuance was mainly delayed for the parliament to be formulated after the elections were carried out on October 17th, 2015, as the first parliament after Egypt's Constitution of 2014⁹. Its proclaimed objectives are as follows; 1) Preservation of the real estate asset and legalizing their violations based on legal and technical foundations; 2) Stopping of judicial prosecutions related to building violations; 3) Preservation of the urban and architectural image; 4) Raising revenues to overcome the infrastructure problems that those violations have caused and the aid for adequate provision of social housing; 5) Preservation of agricultural lands.

How does this law vary from the previous laws in terms of dealing with different building violations? Does it address the shortcomings of the former-ruling building laws?

Law no. 17/2019 is a temporary exceptional law that has given the chance for legalizing for; any building violation to all building laws (Law no.1/2020), and the change of use in places where no certified detailed plans exist. But not all violations can be legalized. First off there is a cut-off period where any violations after April 8th, 2019, the date the law was passed, would not be accepted (Art. 1). Another date, July 22nd, 2017, has been stipulated for buildings in rural areas constructed outside of, but contiguous to, urban zones (cordon), as per orthophoto made by the military survey authority for the whole of the Egyptian territories (Art. 1) [14]. Eight cases were defined by law that cannot be put for legalization (Article no.1, law 17/2019 amended by law 1/2020), which will be demonstrated and discussed in the following table of comparison (Table 1).

5. Comparative analysis between the three laws with their amendments, according to the allowed and disallowed items for legalization in Law 17/2019 (Article no.1, law 17/2019 amended by law 1/2020)

	Law no.19/2017	Law 119/2008	Law no.106/1976
Allowed	Any building violation to all building laws.	Prohibited, but special exemptions exist. ¹⁰	Prohibited, but some violations can be fined for, & Special exemptions exist. ¹¹
	The change of use in places where no certified detailed plans exist.	Areas with no certified detailed plans are ruled by temporary regulations till their issuance and violating them requires cessation of work and then demolition. ¹²	Similar to law 119/2008, however on certifying their detailed plans; they must be convenient with the common existing land uses. While for uses different from the dominant ones or those violating them, to be kept as they are, while preventing their expansion or increase, determining a specific duration after which those violating uses must be stopped, and disapproving any permits for the modification, reinforcement, or refurbishment of the violating buildings. ¹³
<u>Building condition</u>			
	Law no.19/2017	Law no.119/2008	Law no.106/1976
	Buildings that fail the structural integrity tests.	Prohibited	

⁸ Atef, N. 4 Mar 2014, "Building Violations Reconciliation Law deters contraventions". Masress news. Online: <https://www.masress.com/almessa/230633>, last accessed on: 10/4/2019.

⁹ As stated in the fifth report produced by the joint committee at the Egyptian parliament ('House of Representatives', 2019)

¹⁰ Law no.119/2008, chapter7, Art.135 bis

¹¹ Article no.18 of the executive regulations of law no.106/1976 which was then cancelled by law no. 101/1996 to only allow for special exemptions as mentioned in article 30 of the executive regulations

¹² Article 19 bis, chapter 3, law 119/2008

¹³ Articles no.5, 8 &10 of law no.3/1982

	Buildings that fail the Egyptian code for fire safety and means of egress stipulations. ¹⁴	Prohibited except for specific exempt cases. ¹⁵	Prohibited for specific exempt cases. ¹⁶
	Violations to buildings of distinguished architectural style, or modifications to heritage listed buildings.	It is prohibited any building or constructions commencement, expansion, modification, reinforcement, restoration of buildings or projects whether of fixed or mobile nature without obtaining a permit from the specified authority at first and in some areas the supreme council may require the approval of NOUH at first. ¹⁷	Heritage buildings are protected by the law of antiquities preservation no.117/1983, and no intervention can be made without a permit after the approval of the authority of antiquities. Also, law no.144/2006 prohibits the demolition or addition to any building or construction of distinguished architectural style. ¹⁸
<u>Building Location</u>			
	Law no.19/2017	Law no.119/2008	Law no.106/1976
	Violating the building regulating lines & breaching public servitude rights.	Prohibited. But the state can, for urgent social and economic considerations required for public welfare, to sell, lease, or allow exploitation of state-owned land- which include the public roads and amenities- through direct orders, based on an agreement. ¹⁹	Prohibited. But the state bodies can sell/lease/ usufruct its private lands or buildings through direct order, through governor decree, to buildings or land squatters, or to land squatters who reclaimed land- from small farmers- upon special conditions. ²⁰
	Those that infringe on civil aviation ceilings or national defines stipulations.	Violating building ceiling heights has been prohibited in both laws no.119/2008 and 106/1976, they both required demolition for breaching the allowable height ceilings set by the civil aviation authority and the armed forces for national defines stipulations in case no approval was obtained. Also, any legal action considering any building unit that exceeds the allowable heights to be null/invalid in both laws. ²¹	
	Buildings constructed on state owned land unless having applied for regularization	Impermissible without regularizing its status from the meant authority at first. Early since 1995 amendments to laws have been made to allow regularizing adverse possession of state-owned lands where the public authorities have the right to sell or lease its private lands through direct order to squatters. ²²	

¹⁴ Article 7 of the executive regulations of law 17/2019; and its amendment Law no. 800/2020

¹⁵ Such as: Residential buildings whereas; a) floor level of the building highest floor <16 m, b) area of any floor <400 m², c) floor level of the basement (if exists) >3 m from the street level. Also, the Administrative, commercial, Industrial, and storage use buildings of low risks if; a) floor level of the highest floor of the building < 4m from street level, b) area of any floor (including the basement) <200 m², c) floor level of the basement (if exists) <3 m from the street level. (Article no.39 & 49 of law 19/2008 & article no.106 of the executive regulations)

¹⁶ Such as: a) Buildings whereas the highest floor level <28 m, b) Buildings of areas <2500 m² and >1 floor, c) Buildings of areas <5000 m², d) In case of >1 building in a private site, e) Buildings of special nature such as industrial, storage, etc. (Article no.11 bis-1 of law no.106/1976 & article no.32 of the executive regulations)

¹⁷ The National Organization for Urban Harmony (Law no.119/2008, part 2, chapter 2, Art.33 &35)

¹⁸ Article no.2, law no.144/2006 Regulating the Demolition of Non-Dilapidated Buildings and Establishments, and the Preservation of Architectural Heritage

¹⁹ Article no.80, law no.182/2018, The new public contracts law

²⁰ Ministerial council decree no.2041/2006

²¹ Civil aviation law no. 28/1981 in article no.24; and the signed protocols between the armed forces and the ministry of housing, utilities, and urban communities for all certified strategic and detailed plans

²² Examples are; Law no.1107/1995, the amendment to law no.857/1985 regulating the regularization process of squatted state-owned properties; Law no.89/1998 for tenders and auctions, article no.31-bis of law no.148/2006 for adverse possession regularization which implied special conditions for regularization through the ministerial council decree no.2041/2006; Law no.144/2017, article no.2 that allowed the meant authority to sell or lease its privately owned land through direct order with the squatters or those who have reclaimed it before the law issuance; Law no.182/2018, article no.80 which stated that the state can, for urgent needs for public welfare, to sell, lease, usufruct, or allow exploitation of state-owned land through direct orders, based on the agreement between the minister of finance, and the meant minister or city governor.

Disallowed	Construction on protected areas under the law of preservation of antiquities and the Nile River.		Building or applying any changes to any building or area subject to the law no.117/1983 for antiquities preservation is prohibited, and no intervention can be made without a permit after the approval from the authority of antiquities. As for the Nile River, it has been regulated by law no.1383/2005 where in article no.4 it prohibits in article no.8 building any fixed constructions on; the Nile bridges, the islands that exist in its waterway, the areas where the water ebbs away temporarily or permanently in a range distance of 30 m from the trimming lines specified by the ministry of irrigation and water resources. Also, Special exemptions exists in defined cases. ²³
	Building outside the specified urban zones except for	The cases specified in article no. 2 in law 119/2008, that can be permitted accordingly	building outside the specified urban zones of cities & village or in areas which don't have certified national strategic plans is prohibited and regulated only through the city or village general strategic plans and their detailed plans which determines those zones and the proposed projects and land use, except for the special cases where a building permit must be obtained at first. ²⁴
		The buildings built on agricultural land for projects serving the agricultural & animal production	
	State projects & projects for the public welfare		Building state projects or projects for the purpose of public welfare outside the certified urban zones are allowed in law no.3/1982 and law no.119/2008 as special exemptions, but a building permit must be obtained at first & certified from the meant governor.
The buildings built adjacent to the urban zones, with complete connected infrastructure & where lands have become heathland		The state has executed multiple projects and initiatives for expanding and re-delineating the certified urban zones over the last decades for the containment of informal buildings for their regularization ²⁶ Such as Expanding village boundaries (al-hayz al 'omrani), Expanding city boundaries (kordon el madina), Containing informal areas (tahzim el manatiq el 'ashwa'iya) [21]. Partial/complete infrastructure to informal buildings in areas outside the specified urban zones might either be connected informally by inhabitants/extended formally according to laws issued for public health ²⁷ . [14]	

²³ Such as in cases of buildings related to drinking water and electricity stations, cable connections, and projects made for the public welfare, after approvals. Also, they can permit the constructions that are; mobile, easy to assemble and install, not blocking the vision, of building area < 10% of the area.

²⁴ Including: a) buildings built on agricultural land for projects serving the agricultural and animal production, as specified in a decree, and approved by the minister of agriculture: b) Private housing or service building built on agricultural land. (Article no.2, law no.119/2008)

²⁵ They include the following, but a building permit must be obtained at first; a) Building inside the certified building zones till 1/12/1981 without breaching those zones with any modification till then; b) Building on lands lying in the specified urban zones of villages; c) Lands on which the state build projects for the public welfare; d) Lands on which projects that serve the agricultural and animal production as certified plan and approved based on the minister of agriculture's proposal; e) Building private housing or service building on the agricultural land for the owner himself.

²⁶ Tahany Turkey (2020, 25 february) "Minister of MHUUC: expanding the certified urban zones might harm the state's economic affairs", Al-Osboa online journal. Available at: <https://www.elaosboa.news/51224>, last accessed on: 18/10/2020.

²⁷ Such as; Law 259/1956; Laws 54/1984 and 99/1986; Cairo Governor Decree 75/1990 & Cabinet Decree 129 of 26 October 2005 the Prime Ministerial Decree 886/2016, Minister of Electricity Decree 254/2016, as explained in section: 3.3.1 and 3.4.1

<u>Change of use</u>			
	Law no.19/2017	Law no.119/2008	Law no.106/1976
Disallowed	Change of use in places where certified detailed plans have been issued. Except in special cases as approved by the competent authority. ²⁸	Prohibited But in law no.119/2008, the legislator had given the governor after the approval of the supreme council formed, the right in case of urging urban conditions to approve the change of land use of all of a city or part of it, or even a single building-but not a part of a building-whether for a compensation or a usufruct cost in return for the increase of land value by the change of use & development fees for change of use are paid according to law no.222/1955 ²⁹ .	Prohibited But law no.106/1976 had given the governor the right in case of urging urban conditions, after the approval of the local council and the executive authority, to exempt some city or village regions in the specified governorate from some of the building regulations in law no.106/1976 with its executive rulings, and from the urban planning law no.3/1982 with its executive regulations.
<u>Other concluded points</u>			
(Not explicitly stated in Article no.1 Law 17/2019 & its amendments)			
Disallowed	Violations of parking spaces' codes in case the change of use of all/part of the roof/basement to the buildings' original use in cases where the local authority allows for change of use only if sufficient parking spaces are provided for the building (as in New Cairo city)	The permit applicant must provide sufficient parking spaces with the number of units, the building area, the allowed building use according to the specified regulations- and the rulings of the Egyptian code of parking spaces in case of law 119/2008. ³⁰ Violations have to be demolished and any legal action concerning the changed use of the parking spaces to be considered null/invalid. ^{31&32}	
	Building violations that can be affected by the demolition of other building violations if they are not 'legalizable' ³³ . [22]	In both laws no.106/1976 and 109/2008, if the partial demolition or reinstatement work of a building violation will affect the residents, temporary partial or full eviction must take place at first till completion of work on the expense of the owner either willingly or through confiscation. ³⁴	

Table 1. Comparative analysis between the legalization mechanisms in the three laws. (Source: Author)

6. Legalization measures of the Reconciliation Law in comparison with similar international examples

Are there any similar international examples of reconciliation laws? If yes, how do they differ from the Reconciliation Law 17/2019 legalization's framework? And how can we benefit from those experiences?

In the following section some of the main features and issues of the Reconciliation Law's framework will be analysed and discussed in comparison with similar international examples of

²⁸ Based on the competent authority's approval, whereas it defines the allowed cases of change of use such as changing the use of an area of the building to the original building use such as changing residential roofs & basements into apartments, only in case of providing sufficient parking space within the building lot. This is according to article no.1-bis in the executive regulations of the Reconciliation Law, and as carried out in the new cities such as New Cairo city, Sheikh Zayed city and others (Iskan Misr (2020, 13 March "Reconciliation decree of roof and basement violations" Iskan Misr online news portal. Available at: https://iskanmisr.com/UserFiles/Galleries/2020/03/13/8007/%D9%82%D8%B1%D8%A7%D8%B1_-_Copy_2003130720383111.jpg, last accessed on: 12/7/2021.

²⁹ Imposition for Improvement

³⁰ Law no.119/2008, article no.48 in chapter 5; article no.108, executive regulations, law no.119/2008

³¹ Article no. 60 & 67, law 119/2008

³² Article no. 12 bis1-1 & article no.16 &17 bis1-2 of law 106/1976

³³ This point has been added based on Article no.7, point no.5, of the prime minister decree no.800/2020 in amendment of the executive regulations of law 17/2019. Question no.5 & 56 in the MHUUC published Q&A book about the Reconciliation Law

³⁴ Law no.101/1996, amendment to law no.106/1976, Art. No. 19-2) & (Law no.119/2008, Part 3, Art. No.23

specified building legalization laws. Those examples were selected by the author whereas the primary choice of the selected countries is based on those who have applied building legalization processes, having sufficient accessible data about those experiences. Selection criteria were defined such as the geography and location, the economic situation, the political and governance situation, and the societal factors, represented through accredited indicators that can help illustrate the tendency for participating in illegal activities and the tendency for legalization. Besides, another filtration process included factors such as the problem causes and the resultant situation. Data has been gathered based on the case year of each country when the law was put into action. Among the selected examples are the following laws: Albania Law No. 9209/2004 "On the legalization of extensions to the buildings"; Albania Law no. 9404/2004³⁵; Albania Law No. 9482/2006³⁶. The Sindh buildings control (amendment) ordinance, 2001; The Sindh regulation and control (use of plots and construction of buildings) ordinance, 2002; Karachi building & town planning regulations (amendments) 2011. The Gujarat Act No. 23/2001³⁷; The Gujarat Act No.26/2011³⁸ and its amendment in 2012. Shenzhen Rules (304/2001)³⁹; Shenzhen rules (387/2009)⁴⁰; The Shenzhen optional zoning rules⁴¹. Montenegro Law on regularization of informal structures (Official Gazette of Montenegro No. 56/2016); Law on spatial planning and construction of structures, (x- Legalization of illegal structures) 2017⁴².

6.1 Scale of implementation

The Reconciliation Law is a national scale policy, over all the Egyptian territories. According to formal data obtained on September 2nd, 2021, from the general administration of housing research, the housing & utilities sector at MHUUC, the body responsible for following up building laws implementation, it shows that during the period the competent authorities in all of Egypt received the reconciliation applications, about 2,888,869 applications were submitted: 2,815,116 at the governorates and 73,753 at new cities (NUCA).

On September 2nd, 2021, the total gathered revenues formed about 29,196,351,167 EGP; 2,624,870,167 EGP at new cities (NUCA) and 26,571,481,000 EGP at the governorates, divided as

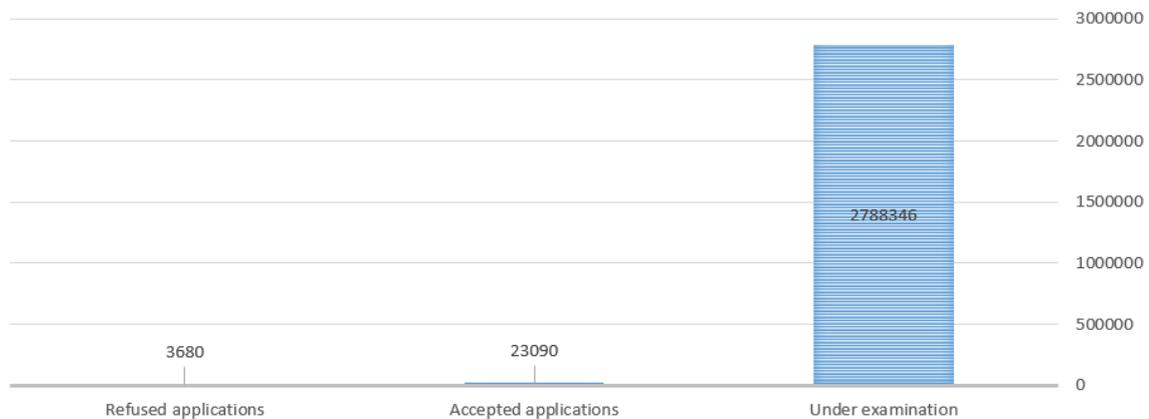


Fig 4. Numbers of submitted reconciliation applications in Egypt's governorates, according to their current state. (Source: MHUUC on 2/9/2021)

³⁵ Law No. 9209/2004 On legalization and Urban Planning of Informal Zones

³⁶ Law No. 9482/2006 On Legalization, Urbanization and Integration of Informal Settlements and the Establishment of ALUIZNI

³⁷ Gujarat Regularisation of Unauthorised Development Act, 2001 (Gujarat Act No. 23/2001)

³⁸ The Gujarat Regularisation of Unauthorised Development Act, 2011 (Gujarat Act No.26/2011)

³⁹ Rules of Shenzhen Special Economic Zone on Dealing Historical Illegal Private Houses (304/2001) and its rules of implementation (305/2002)

⁴⁰ Decision of the Standing Committee of Shenzhen Municipal People's Congress for Handling Illegal Buildings Left over from the Process of Rural Urbanization (387/2009) and its pilot implementation measures 455

⁴¹ That emerged over time through Shenzhen's various village redevelopment projects, taking into consideration; The Decision of the Central Committee of the Communist Party of China on Several Big Issues on Promoting the Reform and Development of Rural Areas, 2008; The Comprehensive Plan to Reform the Land Management System of Shenzhen City, 2012; Opinions on Optimizing the Allocation of Spatial Resources to Promote Industrial Transformation and Upgrading, 2013

⁴² Adopted at the sitting of the third extraordinary session in 2017, on 30 September 2017 and amended in 2020

follows; 1,782,573,000 Examination fees, 15,954,330,000 Legalization deposit fees and 8,834,578,000 Legalization fees⁴³.

According to the held formal interviews with Eng. Nafisa Hashem, Eng. Rania Mounir and other MHUUC in charge officials, as well as Dr. Raafat Shemais the head of the technical inspection authority, they all agreed that no prior studies were made for the law before its implementation, and no pilot projects were carried out. An example where a pilot project was carried out before the law implementation is Shenzhen pilot implementation measures 455/2013, regarding the pilot process work of illegal buildings left over from the process of rural urbanization within the selected regions selected by the municipal government. It was enacted according to the Decision of the Standing Committee of Shenzhen Municipal People's Congress for Handling Illegal Buildings Left over from the Process of Rural Urbanization 387/2009 and was put on trial implementation in the selected regions on April 1st, 2014, to test this plan in several select intra-city villages before fully implementing it, which would encourage villages not selected to develop further their land illegally.

[23]

6.2 Duration

Law 17/2019 is of temporary nature, which is the case in most of the example of legalization processes, including Albania 2006, Gujarat 2001-2011, Sindh 2001-2002-2011, etc. Duration may be extended during the implementation of legalization procedures as in the case of Law 17/2019 whereas the duration for application submission was supposed to be within 6 months from the date of the executive regulation's issuance, but it was extended for several times till March 2021⁴⁴. The prolongation of the procedures often encourages new illegal building constructions such as in Albania whereas about 80000 to 100000 new illegal constructions were built after the 2006 legalization law [24]. On the contrary, the legalization process in some cases is not time-limited such as in the optional zoning rules in Shenzhen, whereas the villagers/collective can freely decide on the suitable timing when they apply for legalization according to their interests and the market opportunities. [23]

6.3 Charges

Law 19/2017 specifies the legalization of illegal buildings in return for legalization charges as specified by law and governors' decrees in each city or governorate, like most international examples such as in Gujarat (Gujarat act no. 23 of 2001, 26 of 2011), The Sindh, India (The Sindh buildings control amendment ordinance, 2001, regulation and control -use of plots and construction of buildings- ordinance, 2002, and the amendments in 2011). An example where no fees are required for legalizing building non-compliance is in Serbia, according to the law on the legalization of buildings ("Official Gazzete of the RS", n° 96/15) and the law on amendments and supplements to the law on legalization of facilities (Official Gazette of RoS no. 83/2018), legalization is mostly free of charge [25]. Sometimes laws or by-laws, as well as decisions, contain provisions which in some cases as in Bosnia and Herzegovina, Serbia, Albania, and Montenegro, facilitate the payment of legalization costs for socially vulnerable owners. In Serbia and Bosnia and Herzegovina, the fees are exempted for housing properties up to 100 m²; this distinction in Montenegro stands at 250 m² [26]. In Egypt, the law hasn't also provided special considerations or exceptions for very poor and vulnerable groups, for example in cases where the defined measures shape high standards to most of them and as a result subject them to the risk of demolition. The law hasn't differentiated between the contraventions made of necessity or out of profitability in the eligibility for legalization, but differences existed in the price/m² of the building contravention⁴⁵. In other cases, classification of legalization is carried out according to the social status of the household is conducted based on differentiating between homes built out of necessity and others

⁴³ According to the formal statistics obtained from the general administration of housing research, the housing & utilities sector at MHUUC, 2 September 2021

⁴⁴ "Egypt extends reconciliation over building violations until March 2021" Daily News Egypt, published on: January 2, 2021. Online: <https://dailynewsegypt.com/2021/01/02/egypt-extends-reconciliation-over-building-violations-until-march-2021/>, last accessed on: 14/9/2021.

⁴⁵ Inquiry no.40, MHUUC Q&A book, July 2021

such as in; the FYR of Macedonia and Bulgaria whereas in those cases the social criteria are not applied to individual informal constructions beyond the borders of informal settlement. Also there have been efforts to differentiate between those who built a family home to satisfy their housing need (for affordable primary housing) and those who have built for commercial purposes, including luxury and secondary homes as in the case of Montenegro and Croatia. [26]

6.4 Declaration

The Law specifies that the owner/occupier of illegal building to apply for legalization through self-declaration. This voluntary participation should be based on trust from the government & willingness from people and it should be accompanied with parallel measures to deal with those who don't apply voluntarily. An example is in Albania, law no. 9404/ 29.10.2004. In 2006, it further determined that when self-declaration is not done before the legal deadline of this law in course of the 2 first months, the self-declaration in the following 2 months shall be accompanied with a fine, determined according to the building's area, its use and whether the building is built in a formal or informal area. (Article 8, Albania law 2006 and its amendments). On the contrary, other laws such as Gujarat 2001, 2011, 2012 ordinances a notice is sent by the authority to the owner/occupier of the illegal development to be followed afterwards by them submitting application to legalize their properties. In that case, complete and updated registers, with continuous monitoring is important for successful results.

6.5 Tenure security

The law doesn't include in its framework any mechanisms for registration, and the legalization orders don't prove ownership over the legalized buildings/parts of buildings. Such processes provide varying degrees of political security of tenure, rather than legal security of tenure whereas the security is only to the building from eviction and no power, ownership or legal status is granted to the occupants. In practice, however, the perception within the communities concerned may well be that their level of security of tenure is quite high. However, without simultaneous regularization measures being undertaken [27]. An example is in Gujarat (2001, 2011, 2012) and in Sindh (2001, 2002, 2011) ordinances which legalize the status of the constructed building only regardless of its ownership issues or even the land on which it is built, and the legalization process ends by obtaining the building legalization certificate with no title deed registration, and the decision shall not be deemed to decide the ownership of the regularized development. Lately, a subsequent 'complementary step' to the Reconciliation Law- as described by Eng. Rania Mounir (MHUUC) in the previously mentioned formal interview- was taken by the issuance of law 186/2020 which required all citizens to register their real estate properties at the Real Estate Registration and Notarization Authority starting from 6 March 2020 in return of registration fees⁴⁶. However, the enforcement of the new Real Estate Registration Law was later postponed for facilitative reasons. Combining both the legalization with the registration process should be precisely studied and backed up with needed documentations and registers so as not to cause the delay of the legalization process, as in the case of Albania 2006, whereas January 2013, only 13,855 permits for legalization were registered with IPRO out of the 270,592 self-declared applications, which has significantly delayed the national legalization program. reasons behind that delay included incomplete registers, outdated maps of plots and building, lack of coordination between the competent governmental authorities, etc. [24]. The prolonged process of legalization led to the emergence of an informal market, where builders of illegal constructions due to the inability to sell the property through the procedure that law requires, sell the building through written agreements between them, without notarial act. [24]

⁴⁶ Ahmed Morsy " Egypt's government to amend Real Estate Registration Law, postpone enforcement till January", Ahram Online, published on: 28/2021. Online: <https://english.ahram.org.eg/News/405025.aspx>, last accessed on: 21/9/2021.

6.6 Exceptionality

The law was issued to legalize existing illegal buildings/parts of buildings that were built before the law issuance, and it hasn't provided sustainable solutions for the possible future violations for their inclusion in the formal realm, nor regulated any special deterrence mechanisms for possible building violations, contrary to what existed in the ruling building laws -in spite of the ineffectiveness of the measures which led to the reconciliation law's issuance. Similar examples of 'exceptional legalization process' include different types, an example is the Sindh ordinance, 2011 where the Sindh government allowed a 2-year (from the date of commencement of the Notification) one-time regularization of building violation for entire Sindh for building works carried out prior to commencement of this notification in contravention of Karachi Building & Town Planning Regulations-2002 on payment of regularization fee and other charges, if they cannot be regularly regularized. Another example is in Montenegro's law on spatial planning and construction of structures in 2017, where it determined that those eligible for legalization are those whose illegal structure is serving as primary residence with net construction area of up to 200 m², occupied by the illegal structure owner and his family as their permanent, only if the owner and the members of his family household are not owners of another residential structure in the territory of Montenegro. In Shenzhen, the city government, temporal stipulations on indigenous villagers' construction of non-business residential houses 105 (June 19, 2006), the legalization policy has been mainly limited to a "one household, one house" policy [28]. A special case can be found in Gujarat act 2001 where the exceptional law allowed for legalizing not only existing buildings but also newly built ones, If the development carried out before 22/11/2000 and then it was wholly destroyed by the earthquake in Jan 2001 or rendered unfit, and the owner/occupier intends to carry out development at the same place with same built-up area as existed before. In some cases, such as in Albania, Law No. 9482/2006, the citizen, who wishes to declare more than one informal building will not benefit from the program's subsidization. He may choose only one to legalize with these special tariffs, while the rest are not of subsidized nominal amounts as the first one [24]. On the contrary, regular legalization is the process when it is legally established the rules and regulations to follow in case of existing or future building non-compliances, is the Sindh ordinance 2011 published in 11 Nov 2011 in Sindh, Pakistan, where regular legalization procedures were set so that in anytime thereafter if the building works (residential or commercial) are commenced or carried out in deviation of the approved plans or specific conditions shall not be required to be altered if such construction does not violate the regulations. Here, the Sindh Building Control Authority may regularize the construction after the realization of regularization fee depending on the nature and merits of the case. Also, in Sindh ordinance no. xxxvii of 2001, where regular legalization was provided for violations reported after the period of 12 months of exceptional legalization ended, only for deviations within specified ranges of the permissible limits on the terms and conditions as prescribed by the Authority. However, the results in those examples weren't effective in cutting down the numbers of building violations, one reason is that they weren't backed up with strong effectively enforced deterrent measures against any violating acts.

6.7 Supervision and Punitive actions

Law 17/2019 with its amendments didn't include points such as supervision over the legalization process, as well as measures of dealing with illegal buildings that didn't apply for legalization or even those which were refused. That point was left to be dealt with according to the unified building law's mechanisms which are in this case: reinstatement or demolition, returning back to what was implicitly doomed as inefficient [11],[29] by its suspension whereas the same reasons which led to the Reconciliation Law issuance in the first place still exist; the difficulty of vast scale demolitions, evacuations and rehousing, as well as the possible security and social conflicts, insufficient resources, real estate asset dissipation, etc. however, in similar examples, informal settlement development continues and intensified as in the case of Shenzhen 387/2009, Albania 9482/2006 and Serbia 2013 (which entered into force on 1 November 2013), despite the fact that all the respective laws contain explicit provisions on handling and stopping informal construction.

According to Dr. Raafat Shemais, the head of the Technical Inspection Authority, he expressed that not addressing those points represented a clear deficiency in the law's framework. Because of the temporary nature of the law and since it didn't halt the implementation of building law 119/2008, the same measures and dealing mechanisms with building illegalities apply to the above-mentioned cases, which are the cessation of work for reinstatement or demolition⁴⁷. In the formal interview with Eng. Rania Mounir (MHUUC), she explained that this point wasn't addressed due to its irrelevance, as the law was issued to set the rules for legalizing the existing building illegalities which comply with its stipulations, and not to deal with those which fail or miss the legalization process, and that is because of its temporary nature. However, she explained that the issue is still under study and several proposals have been presented at the parliament and by the above-mentioned joint committee formed in the 6-month interim phase, but so far, no different mechanisms were issued. As to the supervision issue, according to law, the only way for the applicant to appeal against the legalization process is to file an appeal after the issuance of the committee decision complaining about the decision of the required legalization value, to be reviewed by the appeal committee. Dr. Raafat Shemais (Head of Technical Inspection Authority) explained that this causes the law's implementation to be more corrupt-prone with the lack of transparency and process monitoring.

6.8 Improvements/Redevelopments

The law didn't include in its framework steps for improving/developing the building's form/shape or its integration into the urban context, or even address the building's external appearance, architectural character, urban context and visual identity- in a way similar to law 119/2008 [8],[11] and other former ruling building laws [9]- except in a single point which is; the full painting of all unfinished exterior building facades as a requirement for legalizing violating buildings, that is clearly insufficient to resolve the impacts of the long-existing chaotic building state on the urban and architectural environment. No special prior studies or surveys were made to survey the existing condition and study the possible impact of the law's implementation and the legalized building violations on the architectural and urban context, unlike cases such as Albania 2006, whereas ALUIZNI⁴⁸ carried out successfully: classifying all properties according to their eligibility for legalization; conducting field surveys of almost all classified objects; Creating a database of construction plots, informal buildings, and current owners [24]. Also in Peru 1996, whereas field campaigns, legal & physical surveys, & door-to-door census were carried out to gather the required data, but the process in those cases were costly and complex. However, according to Eng. Rania Mounir (MHUUC), she demonstrated that the law wasn't issued to put solutions to improve or develop the existing building condition and so far, no special plans were made to redevelop or improve the condition of the legalized buildings or to integrate them into their urban contexts, besides directions were given to facilitate the process so as not to over-burden the citizens. She explained that the law has shaped in its articles the desired building and urban form implicitly throughout its guidelines, such as the height ceilings, preserving regulating lines, structural stability, etc. UNECE identified two approaches to legalization of informal settlements (1) legalization that is carried out independently of the urban development/ redevelopment plans; an example is in Gujarat 2001, 2011, 2012, and the Sindh 2001, 2002, 2011 whereas according to law the legalization process ends by obtaining the building legalization certificate; (2) legalization that is carried out as an integral part of renewed efforts to develop statutory plans regulating development at the local level [29],[30]. An example is the Turkish Redevelopment Law No. 2981, The redevelopment law, which offers two choices for regularizing slums and gecekondu: preservation or improvement of the squatter house. In the preservation process the slum is preserved as it is upon payment of required duties to the municipality or governorship in return for development and service provision. While in the case of improvement, the improvement of slums is carried out by the squatters with no fees to be paid. [31] [32] , [33]

⁴⁷ Inquiry no.56, MHUUC Q&A book, July 2021

⁴⁸ Agency for legalization Urbanization and Integration of Informal Zones and buildings, the process operator

Also in Albania law No. 9482/2006 “the law on Legalization, Urbanization and Integration of Informal Settlements and the Establishment of the Agency for Legalization, Urbanization and Integration of Informal Areas and Constructions”, one of its main objectives was the urbanization of informal zones, blocks and buildings, as well as their integration into the territorial and infrastructural development of the county, thus improving their living conditions (article 1, Albania law 2006 and its amendments) and it set the necessary rules for its implementation upon the conclusion of the legalization process [24]. This caused the prolongation and the delay of the legalization process in some cases such as in Albania 2006, whereas the detailed planning process was postponed due to the large investments of time and resources needed as the government aimed to complete legalization quickly and improve infrastructure, applying minimum urban planning norms and standards as possible [24]. However, on the other side achieving those goals helped provide better quality of life and set the guidelines for adequate urban environment, as in the case of Shenzhen optional zoning program [23] and in Turkey, 1984. [34]

6.9 Compliance

The Reconciliation Law allowed for legalizing building contraventions- except the cases included in Article no.1 of the law- whether they are within or exceeding the allowable limits in the building laws and regulations. Other examples such as in Serbia law 96/2015, where the law couldn't be applied to the buildings which have been built without a building permit after November 27, 2015, i.e., building approval in line with the regulations according to which the obligation of obtaining the building permit, in line with the regulations governing the registration of ownership right over immovables. Another example is the Sindh buildings control (amendment) ordinance 2001, in the regular legalization in case violations were reported after the period of 12 months from the ordinance issuance. It only allowed for specified building works such as excess covered area, commenced, or carried out of a building plan which was approved prior to the promulgation of the Sindh Building Control Amendment Ordinance 2001, of any deviation where the deviation does not exceed beyond 20% of the permissible limits on the terms and conditions as prescribed by the Authority. In the case Montenegro law of legalization of illegal structures 2018, the illegal structure has to have been constructed in accordance with the basic zoning parameters from the applicable planning document adopted prior to the entry into force of the Law or within the time limit of the Law (article 154, Montenegro law, 2018).

6.10 Unification/Generalization

The Reconciliation Law has inherited from the former ruling laws the wide scope and the unified nature in all their stipulations which resulted in missing objectivity when dealing with violations of different nature, different activities and in different regions and contexts with the same measures, irresponsive to the different needs and requirements [5], [8], [10], [11]. For example; the law addresses different activities such as; residential, commercial, industrial, administrative, institutional, touristic, service buildings and others regardless of the fact that it is used for profitable or non-profitable reasons, targeting the legalization of violations of all natures such as; slums (Ashwa'iyat), squatter settlements, sprawl on agricultural lands, dense city buildings, low, mid and high-rise buildings, luxurious gated communities, ..etc. in all of Egypt's regional sectors such as; coastal, rural, agricultural, desert regions, dense city centres, new urban communities, which is considered a central shortcoming [5], [10],[8], [11]. The only difference is made between urban and rural areas considering the legalization price and the exception from finishing the exterior building facades. Thus the spectrum widening is only numerical but not an objective one, with the aim of targeting the largest number of building violations in the least amount of time, such as the case of Albania Law no. 9404/2004, Law No. 9482/2006, Montenegro Law on regularization of informal structures (Official Gazette of Montenegro No. 56/2016), Law on spatial planning and construction of structures, (x- Legalization of illegal structures) 2017, Turkey Law No. 2981 of 1984 (Redevelopment Law) with its amendments (Law No. 3290 and Law No. 3366), Peru Land Titling Program 26687/1996. However, that is unlike the cases of Gujarat Act No. 23/2001, 26/2011, Sindh

ordinance 2002, 2011 and Shenzhen Rules (304/2001) and (387/2009), whereas the law was specified for a certain region/province/state of the country, having specified characteristics, and especially Shenzhen which had the law specified for dealing with illegal private housing buildings only. However, Eng. Rania Mounir (MHUUC) explains that in her opinion, the process is the same at permit issuance process, so it would be senseless asking for their provision in those illegally built. She explains that to MHUUC, the law's generalization is not a shortcoming, but on the opposite, it aims at imposing equality values among citizens by unifying general mechanisms, while enhancing decentralization through leaving points such as building heights and street widths to the city/governorate to their special condition and as reflected in the detailed plans. She added that the non-categorization of regions based on their environmental factors is not valid, as all building codes address the building itself and not within a special context. Concerning this point, Dr. Raafat Shemais, the Head of the Authority of Technical Inspection over construction works made it clear that special code for fire safety to existing buildings was prepared by HBRC to be applied throughout the examination process of the reconciliation applications⁴⁹, with minimum allowed specifications to increase the efficiency of existing building fire safety and protect people's lives. He explained that this was due to the inapplicability of the applying the existing code to the already existing buildings, the matter that tripped many of the submitted applications and risking the lives of many people. He added that will be added to the existing fire safety code, as special section for the case of existing buildings. Other factors such as factors such as quality of life indicators, environmental impact controls, sanitation, ventilation, and energy consumption factors weren't addressed by the law or its complementary decrees.

Another generalization issue was the amendment in law 1/2020 which allowed legalization for all building violations in anytime, not only those in the time of law 119/2008, but the matter also which forced all unlegalized building violations to apply for legalization or else they will have to face actions like demolitions or reinstatement, the dealing measures of the ruling building law 119/2008. However, based on the principle of non-retroactivity of laws, according to what came in the Supreme Administrative Court order 6252/63 buildings built before the issuance of law 119/2008 don't submit to its stipulations. That means that not all buildings can be demolished, and some can pay fines instead, speaking about those which were built before law 119/2008 issuance, and therefore every building or part of a building will be handled case by case⁵⁰.

7 Conclusions

Surveying the former building laws in Egypt, their amendments and how they dealt with building violations, they had all set the mechanism for legalization within their frameworks but with varying proportions, therefore the Reconciliation Law cannot be considered as the first Law to introduce building legalization. All formerly ruling building laws, with their amendments failed to contain or deter the increasing building violations at their times which is the reason why the phenomenon continued and thus law 17/2019 was later introduced. It can be easily read that the Law issuance has come in line with the typical cycle which took over throughout the decades as explained above, between restriction and toleration, issuing strict regulations then halting them for reconciliation repeatedly.

Comparing Law 17/2019 with the legalization mechanisms within the former building laws' frameworks, it has provided higher flexibility in dealing with building violations than the building law 119/2008 in terms of; widening allowed violation types and non-restriction to certain allowed

⁴⁹ Published in the official gazette, issue no.10, on January 13th, 2020 based on the ministerial decree no.682/2019 on 28/8/2019, 842/2019 on 17/10/2019 and its amendment in decree 871/2019 on 9/11/2019. Online: <http://laweg.net/Default.aspx?action=ViewActivePages&ItemID=115107&Type=6>

⁵⁰ Qaranshaw, S. 28 Feb 2021, "Surprise in the Supreme Administrative court decree: The state does not have the right to remove the violating buildings that were established before the approval of the "Unified Building Law." The Court confirms: Building without a license is a "temporary and not continuous" action.. Exclusive". AL-Masry Alyoum news portal. Online: <https://www.almasryalyoum.com/news/details/2271027>, last accessed on: 29/1/2022.

limitations, quite similar in that to the legalization mechanisms in law 106/1976 before it was amended in 1996 regarding facilitating the measures of dealing with building violations and the allowed cases for legalization; even that law 106/1976 predominates with the sustainability of its legalization measures, not being temporary ones. According to both Eng. Rania Mounir (MHUUC) and Dr. Raafat Shemais (Head of Technical Inspection Authority), they agree that one of the main reasons that caused the existing condition is the allowance of law 106/1976 the regular legalization of most of building violations which tempted many to build illegally with the aim of having those

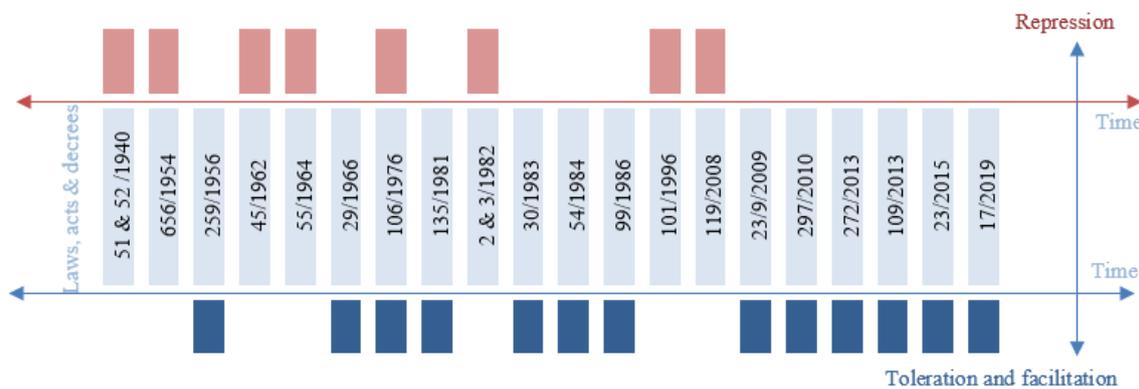


Fig 5. The legislative variation among building laws, acts and decrees between repression and toleration, chronologically. (Source: Author)

acts legalized afterwards, unlike the case in law 109/2008, which is the reason why an initial proposal, by the regulations committee at the housing sector, of combining both the reconciliation law with law 109/2008 was refused. Other officials and scholars such as Riad, M. A. 2018 [35] and Dr. Elgabry, the HBRC materials institution dean⁵¹ see that law 119/2008 has played the main role in the increase of building violations since its issuance.

Drawing upon the above similarity and based on cases from similar examples such as Albania 2004 and 2006 laws, which led to increased building densities, encouraging urban sprawl especially after the allowance of land use changing in 2006, and that was intensified with the inability of the government enforcing demolition/confiscation of illegal developments and the prolongation of the procedures and the multiple extended periods [24]. The same happened in the Sindh province as the number of illegal buildings continued to increase in the form of densification of existing slums and the subdivision of existing dwellings and in most cases the government procrastinated to avoid taking lawful actions and in September 2009, the supreme high court issued a notice to the authority to restrain from demolishing any part of the building that could regularized under the law and that impacted the amount of new illegal building & its future demolishing after being inhabited illegally⁵². Also, in Gujarat 2011 whereas even after the extension of deadline of Gujarat act 2011, was ruled out, the government could not go ahead with demolitions due to the large numbers, with the lack of police protection, that is besides the high number of refused applications⁵³. Therefore, it can be expected the possibility of the continuity in building violations occurrence upon the issuance and application of the Reconciliation law, and not cutting down or putting an end to the existing situation, especially that the process isn't backed up with strong and effectively enforced deterrent measures against any violating acts. That proved right, tracking down the numbers of reported building violations after the Reconciliation Law issuance on April 8th, 2019, and comparing it with

⁵¹ Amr Kamal (2021, 6 Feb) "The ghost of the violating towers threatens millions of lives" Al-Gomhuria Online news portal. Available at: <https://www.gomhuriaonline.com/PrintNews-773511>, last accessed on: 15/7/2021.

⁵² Dawn online newspaper, 11 Sep 2009 "KARACHI: SHC stays demolition of building" Dawn newspaper online platform published on: September 11, 2009. Available at: <https://www.dawn.com/news/973892>, last accessed on: 17/3/2021.

⁵³ The Indian express online newspaper, 20 Aug 2013 "Impact fee drive fails to regularize illegal structures" The Indian Express news journal, published on: August 20, 2013. Available at: <http://archive.indianexpress.com/news/impact-fee-drive-fails-to-regularise-illegal-structures/1157518/>, last accessed on: 21/3/2021.

the numbers since back at 2011, whereas they noticeably exploded after the January 2011 revolution and continued with high rates as shown in (Figure 6⁵⁴). It can be noticed that; the declaration of building reconciliation laws is always accompanied with relative increase in the number of building violations with the aim of getting them legalized, as in 2014 and 2019. However, it can be noticed that building violations continued to occur after the law issuance since mid-2019, but with lower rates especially in urban areas, which is a positive indicator and relevant measures should be taken to protect those results.

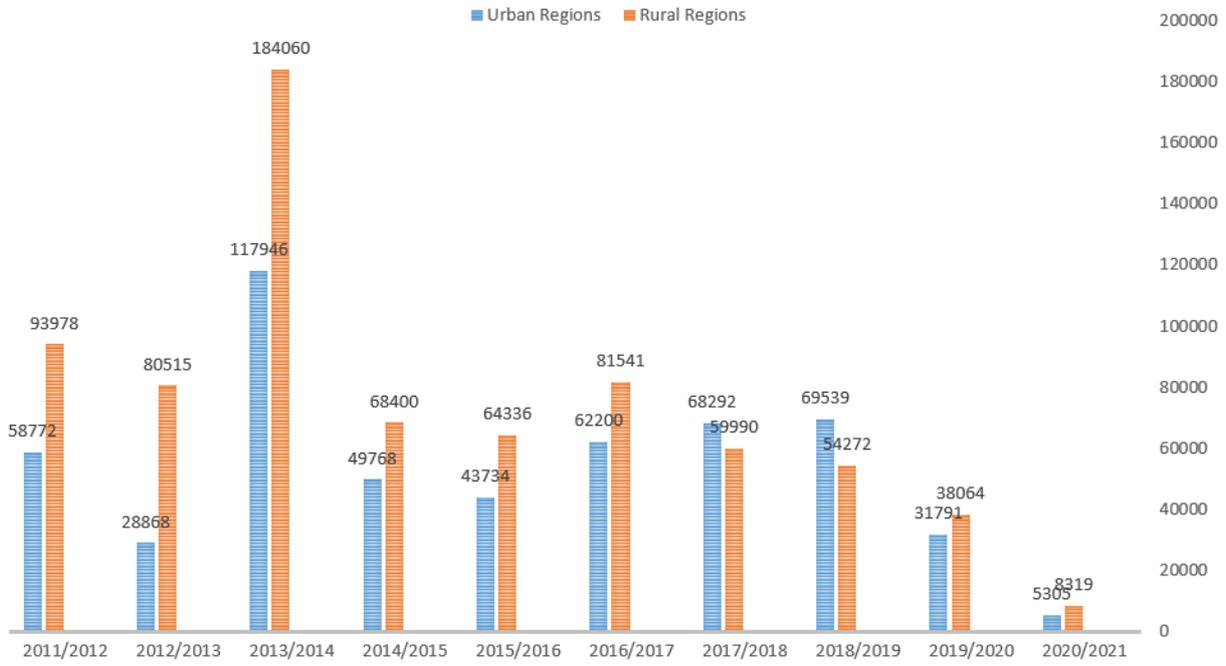


Fig6. Numbers of building violations in Egypt (Rural+ Urban regions) between 2011 and 2021. (Source: MHUUC on 2/9/2021)

As to comparing between the allowable and the disallowable building violations for legalization in the studied laws -from the legislative point of view- the law came as an exceptional situation to widen the spectrum of the allowable violations for legalization. It allowed for legalization for all building violations except for specified cases. Dealing with those cases changed between the three laws; 106/1979, 109/2008 and 17/2019; whereas dealing with them in the new law became more flexible in some cases, stricter in others and unchanged in the other cases.

Stricter as in the cases of; the change of use in places where no certified detailed plans exist, like law 119/2008 and contrary to law 106/1076 which dealt with the case in a more objective way, aiming at preserving the built environment and the existing real estate asset. Also, in the case of breaching the building regulating lines which was clearly prohibited, but mechanisms were put afterwards for its regulation through direct agreement with the state in return for money as in the case of building on state-owned land; contrary to law 17/2019 which completely prohibited any violation to the building regulating lines or breach of the public servitude rights without mentioning any other possible solution for regularization. Another case is, the applied violations that can be affected by the demolition of other building violations which have not all applied for legalization, the matter that leads to refusing the application because of the necessity of demolishing the unapplied, contrary to the previous laws in specified cases whereas it allowed fine payment in return for demolition exemption or requiring restitution if necessary. The measures remained unchanged in the cases of; failing the structural stability tests, fire safety measures, violations to buildings of distinguished architectural style and heritage listed buildings, infringement of civil aviation ceilings or national defines stipulations, construction on protected areas under the law of

⁵⁴ According to the formal statistics obtained from the general administration of housing research, the housing & utilities sector at MHUUC, 2 September 2021

preservation of antiquities and the Nile River, in addition to violations of parking spaces' codes and regulations. Change of use in places which have certified detailed plans, as allowed in several cities, was prohibited but law 17/2019 allowed for changing the use of service areas –parking, basement, and roof areas- into the building's allowed use, only if sufficient parking space is provided for those converted areas, within the building lot. Also, in case of legalizing building violations that can be affected by the demolition of other building violations if they are not 'legalizable', the mechanisms remained unchanged.

Drawing upon the comparison with the similar international examples, it can be concluded the following; Probability of increasing numbers of building violations is high, therefore the situation must be studied and quick action plans must be made to maintain the rule of law, combining both deterrence-based and incentive-based mechanisms, especially with the delay in the reconciliation process as demonstrated in the above (Figure 4), which encourages non-abiders to commit further violations, and even also encourages those who applied for reconciliation to commit new violations throughout the long process, for higher profits. Therefore, quick actions should be made to define the reasons for the process delay to be eliminated, together with strengthening monitoring and control measures over building acts, especially throughout that phase. Plans should be made to protect the rights of law-abiders or to compensate them adequately and incentivize the respect for laws and regulations. Also, special consideration should be made for vulnerable and disadvantaged groups for their housing legalization or providing them with alternative ones in case of their impossible legalization. Studies and plans should be made on dealing with similar future violations after the law framework completion, and mechanisms should be put, not only to legalize existing informal structures, but also to encourage the incorporation of new unavoidable structures that can be easily incorporated in the formal sector [24]. Cost effectiveness studies shall be carried out before the law implementation to find out ways to balance between affordability of fees to low- and middle-income residents, and at the same time not cheap that it encourages illegal building rather than following formal procedures for building, buying, or even renting a house. Also, multiple steps should be taken to provide affordable social housing covering the increasing housing needs, as the lack of social or affordable housing can exacerbate the problem of illegal development. The new built environment will be affected after the legalization process, especially that in the absence of urban integration and redevelopment plans for the legalized buildings, and the absence of any prior studies. Therefore, comprehensive studies must be made to address those issues and find practical means of achieving better urban integration, quality of life and preserving the planned urban and architectural character of neighbourhoods as the requirement of finishing the exterior building facades to complete the legalization process is not enough on its own to achieve that. Those studies shall also cover the different development requirements of all of Egypt's regional sectors such as coastal, rural, agricultural, desert regions, etc. The structural safety besides fire safety of the building is required for legalization, whereas factors such as natural ventilation and lighting weren't addressed by the Reconciliation Law, regardless of their permit-reliance in the ruling building laws and detailed plans, the matter which can have unfavorable effects on living quality and health conditions. Also, environmental impact controls, and sanitary factors are also overlooked, despite its variable effects in each activity such as residential, commercial, industrial, touristic, service, and other, which might cause future problems especially with the increasing levels of environmental pollution and the missing formal prior or post planning of those projects and their impact on their surrounding environment and utilities. Supervision and monitoring mechanism should be set and included in the law's framework to provide higher transparency, decrease possibilities for corruption, and increase public trust of the process and the issued decisions.

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أطر التقنين في تشريعات البناء وعلاقتها بقانون التصالح في مصر

الملخص بالعربي:

إن سن قانون التصالح على مخالفات البناء رقم ١٧ لسنة ٢٠١٩ بتعديلاته قد فرض واقعاً جديداً وحلاً مختلفاً لظاهرة المخالفات البنائية التي طال أمدها في البيئة العمرانية في مصر، وذلك عن طريق السماح بتقنين أوضاع تلك المباني المخالفة التي تضم حوالي ثلثي نسبة المباني السكنية في الحضر والتي قد عانت البلاد من مواجهة التحديات الناتجة عنها طوال عقود مضت. السياسات المستجدة تتطلب بحثاً وفهماً عميقاً، خاصةً مع ما يتسم به هذا الموضوع من شح ونقص البيانات والمعلومات المتعلقة به. لذلك فإن هذه الورقة البحثية هي محاولة لتسليط الضوء على العوامل التي أدت لسن القانون ونطاق تطبيقه من وجهة نظر تشريعية، بهدف الوصول لإجابات عن الأسئلة التالية محلياً ودولياً. محلياً: كيف تعاملت قوانين البناء السابق إصدارها مع مخالفات البناء؟ هل سمحت بأي شكل من أشكال التقنين أم لا؟ ما علاقة قانون التصالح بقوانين البناء السابق إصدارها قبل سنه؟ هل كان سنه ضرورياً لحل أزمة مخالفات البناء؟ كيف اختلف القانون عن قوانين البناء السابق إصدارها فيما يخص آليات التعامل مخالفات البناء؟ دولياً: هل توجد تجارب مشابهة لتجربة التصالح في مصر؟ إذا نعم، كيف اختلفت عن التجربة المصرية؟ وكيف يمكن الاستفادة من تلك التجارب؟

يبدأ البحث بعرض لصورة ظاهرة المخالفات البنائية في مصر، ثم تحليل لقوانين البناء السابق إصدارها لسن قانون التصالح تحليلاً استقرائياً، فيما يخص آليات وإجراءات التعامل مع مخالفات البناء، بالإضافة إلى آليات القانون الجديد. ثم بعد ذلك يأتي دور التحليل المقارن بين الثلاث قوانين بتعديلاتهم فيما يخص البنود التي سمح والتي لم يسمح بتقنينها قانون التصالح، وذلك لمعرفة إذا اختلفت آليات التعامل مع تلك الحالات أم لا. من ثم يتم تناول إطار تطبيق القانون في مصر ومقارنته بالأطر التنظيمية للقوانين المشابهة وآليات تفعيلها.

النتائج تشير إلى أن جميع قوانين البناء السابقة والحالية قد وضعت آليات لتقنين المخالفات، ولكن بنسب متفاوتة. كل تلك القوانين أخفقت في إيقاف أو احتواء المخالفات المتزايدة، الأمر الذي كان عاملاً أساسياً فيما وصلت إليه حالة المخالفات البنائية في مصر والتي بدورها أدت لسن قانون التصالح ١٧ لسنة ٢٠١٩ في محاولة لحل تلك الحالة من الفوضى في البيئة العمرانية. فبشكل عام قد سمح القانون بتقنين أغلب المخالفات البنائية بطريقة تتسم بالمرونة أكثر من ذي قبل، ولكن عدد من المشاكل قد تم رصدها خلال عملية التحليل ولذا ضمت التوصيات كالتالي: ضرورة وضع خطط عمل سريعة لتأكيد وتعزيد سلطة القانون باستخدام كلاً من الآليات القائمة على الردع والقائمة على الحوافز، خاصةً في ظل التأخير الحاصل في سير عمل القانون وتحديد أسبابه والقضاء عليها. يجب وضع خطط لحماية حقوق الملزمين بالاشتراطات والقوانين كما يجب مراعاة الفئات الضعيفة والمعدومة. يجب أيضاً وضع خطط للتعامل مع من لم يتقدموا للتصالح والذين تم رفض طلباتهم، بالإضافة إلى المخالفات المشابهة التي يمكن أن تقع في المستقبل بشكل يسهل تقنين وضع المباني المخالفة التي تحترم الاشتراطات ولا تضر بالسياق أو البيئة العمرانية. يجب عمل دراسات شاملة لإيجاد حلول عملية لدمج المباني التي تم التصالح عليها بالسياق العمراني، رفع كفاءتها، الحفاظ على الطابع المعماري والعمراني طبقاً للمخططات المعتمدة، وذلك لمحاولة تخطي أثر تعميم وتوحيد بنود القانون على جميع المخالفات على اختلاف طبائعها وسياقاتها وتجاهل العديد من العوامل الهامة في تلك المباني كعوامل الاستقرار في حالة الزلازل والعوامل الصحية وضوابط التأثير البيئي لتلك المباني المخالفة. وأخيراً يجب العمل على تحديد مهام رقابية على آليات تطبيق القانون لتحقيق الشفافية وزيادة ثقة العامة في عمل القانون والقرارات الصادرة عنه.