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The American University in Cairo

School of Global Affairs and Public Policy

DEVELOPMENT AND ECONOMIC AND SOCIAL RIGHTS:
THE BRETTON WOODS INSTITUTIONS IN EGYPT POST-2011

A Thesis Submitted to the

Department of Law

In partial fulfillment of the requirements for the degree of
Master of Arts in International Human Rights Law

By

Mahinour El-Badrawi

December 2017

The American University in Cairo
School of Global Affairs and Public Policy

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DEVELOPMENT AND ECONOMIC AND SOCIAL RIGHTS:
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Mahinour El-Badrawi

ABSTRACT

Based on the hypothesis that there exists continuing tension between development and economic and social rights (ESR), where the latter end up principally skewed once they enter the development realm, this research explores why fields of development and ESR remain constantly at odds. Using Pierre Bourdieu's theory of practice to define both fields and understand the continuous struggles and contradictions between them, this research argues there is a structural bias that leads to the struggle and always ends in favor of economic development targets at the expense of realization of ESR. The research begins by unpacking the development and ESR fields to understand the roots of the tension, and then moves on to study the struggle between ESR legal norms as they conflict with the founding principle of Bretton Woods development model. It continues by examining how those dynamics play out in the struggle between the contending demands for ESR realization and the economic development crisis in Egypt post-2011 revolution, which had economic and social right deprivations as a major root cause. This research opens the door for further study of how human rights can be realized despite the current structural bias in place by looking at the continuing struggles between the fields, the dominant doxas, and the limitations that play out once human rights enter the development habitus.

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I. Introduction

The United Nations (UN) recently adopted a post-2015 development agenda: the sustainable development goals as part of the agenda 2030. While the state of world economic development seems to be recovering from the 2008 financial crisis, basic human dignity concerned with the economic and social well-being of people remains in question.

Overall, economic development indicators of countries seem to entail progress in aggregate economic performance. The human development indicators suggest there are overall lower mortality rates and that human capital is doing generally well. Nevertheless, there seems to be a level of incoherence between macroeconomic development indicators, the status of people's standards of living, and the overall enjoyment of their economic and social rights (ESR) on the ground.

In Egypt, the Mubarak regime adopted a classic post-Washington Consensus Economic Reform and Structural Adjustment Program (Washington Consensus) in the 1990s that resulted in an increase in development performance (showing a 7% gross domestic product (GDP) growth in 2007/2008¹ and a 5% growth in 2009/2010²). This led Bretton Woods Institutions to cite Egypt as a leading case of a country on the path to development.³ However, despite the economy

¹ AMINA GHANAM, EGYPTIAN ECONOMIC MONITOR: DECEMBER 2010, MINISTRY OF FINANCE, at 11 (2010), http://www.mof.gov.eg/mofgallerysource/english/pdf/monitor_dec_web.pdf.

² *Id.*

³ Klaus Enders, *IMF Survey: Egypt: Reforms Trigger Economic Growth*, IMF NEWS, Feb. 13, 2008, <https://www.imf.org/en/News/Articles/2015/09/28/04/53/socar021308a> (last visited May 10, 2017). In 2008, the IMF published a study demonstrating the alleged steadiness of Egypt's progress on the economic development path. It praised the per capita growth since 2004 and forecasted "the Egyptian economy will continue to grow at 7-8 percent if ongoing improvements in the business environment succeed in raising investment to more than 25 percent of GDP." Nevertheless, improvements in the business and investment sector were but examples of crony capitalism, and the trickle-down affect proved not materialize. The economy crashed in 2011, after which capital flight has been astounding. Public interested lawyers continue to struggle in retrieving Egypt's embezzled and stolen assets via corrupt deals with investors that the international financial institutions (IFIs) and Multilateral Development Banks (MDBs) never criticized. The economy continues to worsen every day, leading the IMF to lower its GDP growth projection from the time of the signing of the \$12 billion USD loan until the latest Middle East and Central Asia Economic outlook report.

supposedly performing well, poverty increased and the status of ESR deteriorated.⁴ In January 2011 a revolution broke out on the streets of Egypt demanding “bread, liberty, and social justice.” Thus, the development models were not necessarily fulfilling, and the compromise of people’s economic and social needs and rights were an obvious root cause of the uprisings.⁵ Not only in the Arab Spring countries, but also in southern Europe, Spain, Greece, Italy, and parts of Eastern Europe, there continued to be public discontent that highlights the incoherence between development policy and people’s enjoyment of rights. This leads to public uprisings in times of despair and a lack of political channels to direct the social and economic aggregations that lead to economic and social deprivations as major root causes to revolutions in many times—coupled, of course, with political repression.

Coming from the position of an ESR researcher and advocate after years of lobbying for the respect, protection, and fulfillment of ESR among agents of both human rights and development fields, and with the hope for a dent in ESR policy in Egypt post-2011, this research is borne out of the curiosity of why such policy has never materialized. Quite the opposite is true; postrevolution Egypt and its citizens today are wedded to a set of classic economic development policies that have caused further deprivations of ESR of citizens, as will be discussed in Chapter III. Coming at the research question with the curiosity to answer the question as to why ESR and

⁴ EGYPTIAN CENTER FOR ECONOMIC AND SOCIAL RIGHTS, JOINT SUBMISSION: PARALLEL REPORT ONTO EGYPT’S 4TH REVIEW BEFORE THE ESCR COMMITTEE (2013), http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/EGY/INT_CESCR_NGO_EGY_15308_E.pdf (last accessed Dec.5, 2017).

⁵ In his book *THE AUTUMN OF DICTATORSHIPS: FISCAL CRISIS AND POLITICAL CHANGE IN EGYPT UNDER MUBARAK*, Samer Soliman highlighted that the patterns of economic “liberalization” in Egypt, discussed in the earlier sections of the paper as measures of governmental misuse of power and acting outside of the legal framework of bids and tenders of publically owned assets, were accompanied by a dramatic rise in power and centrality of police forces in Egyptian society. The number of forces increased from 150,000 in 1974 to 1 million in 2002. This can explain the massive, increasing state brutality and excessive use of force that have worsened over the past decade as the government’s way to suppress opposition and “contain” protests. Before the January 25 revolution, it was commonplace to see the central security forces personnel outnumber protestors in a demonstration. The persistence on the neoliberal models and the continuation of the Mubarak economic legacy to even more aggravated levels, as some would argue, can be directly tied to the increased state violence and violations of ESR. In that sense, Egypt is a case study for the indivisibility of rights in which the root causes of the revolution were economic and social deprivations that substantiate state violence and violations of civil and political rights. The book was first published in Arabic as *AL-NIZAM AL-QAWI WAL DAWLA AL-DAEIFA* by Merit Publishing House in Cairo 2006. It was later translated into English as *THE AUTUMN OF DICTATORSHIPS: FISCAL CRISIS AND POLITICAL CHANGE IN EGYPT UNDER MUBARAK* and published in 2011 by Stanford University Press.

development policy are inherently at odds, and all attempts to reconcile them end in vein, this research thus began.

This research is important because it attempts to offer an explanation for those who believe in the legal rigor of ESR as to how and why is it that while “human rights have become the lingua franca right left and center,” ESR, in particular, remain marginal to the international institutional economic conversations and that “the politics of economic globalization cause it to be eroded.”⁶ The modest contribution it attempts to make to this area of study is its observation of the interplay of powers as this marginalized field of ESR struggles against the contending demands for crisis economics in Egypt, which has recently concluded a deal with the International Monetary Fund (IMF).⁷

This research adopts Pierre Bourdieu’s theory of practice and his contributions to understanding the social field to explain the continuous struggles of and incoherence in the vision and conflict between development, on the one hand, and ESR, on the other. This question is most pressing because, with the new economic development agenda that follows IMF recommendations to the government of Egypt, the leading mainstream economic development model seems to continue to lead to violations of ESR. The research argues there exists a structural bias that has evolved as a result of the history evolution of both fields, which leads to human rights and development continuing to be at odds. Even after revisions in the classic development field, a new hybrid field between human rights and development was born: the human development field. The interplay of power within the current hybrid space between development and human rights is managed by the same implicit rules of the orthodox development field: the neoliberal orthodoxy.

Through the specific case study of Egypt in transition, this structural bias and induced tension among the different agents within these human rights and development field(s) (or the hybrid space in between) become apparent. The research finds direct conflicts between the human rights

⁶ JOE WILLIS, CONTESTING WORLD ORDER?: SOCIOECONOMIC RIGHTS AND GLOBAL JUSTICE MOVEMENTS 83–85 (2005).

⁷ Signed in November 2016, the Extended Fund Facility Agreement with the International Monetary Fund (IMF) built on the negotiations started in 2012. A number of World Bank (WB) technical assistance development finance loans (DFL) complemented it.

advocacy of nongovernmental organizations (NGOs) as agents of the development field; the UN accountability mechanisms as practitioners, on the one hand; and the practices of the IMF and the World Bank (WB) as development agents, on the other hand, as studied through the IMF loan to the Egyptian government and related policy advice. The research finds that despite the persistent and continuous efforts of ESR agents to realize ESR in Egypt post-2011 revolution, all ESR institutional efforts face *ex ante* limitations of the expected dominance of Bretton Woods Institutions' policy advice to the government of Egypt, which, along with the Egyptian technocrats, operate in a neoliberal doxa.

The added value of the research is that it brings human rights practitioners, researchers, and advocates to understand the structural bias within their respective fields of practice, which, in its own terms, affects the realization of their goals in principle. It makes the modest contribution of applying Bourdieu's understanding of the social field to the Egyptian context in order to decipher the struggles between the demands for ESR realization in postrevolution Egypt and the tension of pressures that follow a certain economic development model. By studying the evolution of the human rights and the development fields, the continuing tension between the two and the recurring failure to realize ESR become understood as the outcome of historical circumstances and current dispositions of both fields, which started and continue to be inherently at odds. This research opens the door for further study of how human rights can be realized within the current structural bias, power struggles, and limitations that play out once human rights enter the development habitus.

Emerging as separate fields out of World War II (WWII), economic development and human rights were created as separate fields, where they remain incoherent in vision and orientation until today. Based on the hypothesis that development and ESR have an adverse relationship, this thesis questions why it is that when ESR face development priorities, attempts for a human rights approach to development fail to materialize. The research finds there is a neoliberal structural bias in the development field that leads to ESR being violated *a priori*. In an attempt to understand the interactions between both fields, and how interventions from the development field affects the realization of ESR, the research adopts Bourdieu's theory of practice and field

interactions to understand why ESR are skewed in a neoliberal development model and why ESR are violated once realized under a development paradigm.

To answer this question, Chapter I studied the historical evolution of the fields of development and human rights (ESR in particular) to understand the origin of the tension between the two and which strands of ESR in practice became skewed by neoliberalism. Chapter II studies the struggles between those vigilant strands that uphold the ESR normative legal theories, as they are conflicted by the neoliberal development framework. Chapter III explains the normative framework of the human rights as the rules for that specific field. Finally, Chapter IV examines Egypt post-2011 and the interplay of power between international ESR institutions' recommendations for the realization of ESR and Bretton Woods Institutions' recommendations for postrevolution development programs in Egypt. The research finds that the IMF and the WB technical assistance programs for loans to Egypt contradict the legal norms of the state's duty to take steps towards the progressive realization of ESR and mobilize the maximum resources available. The programs show evidence of gender discrimination and are a retrogressive step in the status of rights to adequate living, accessibility, affordability, adaptability, and quality of rights to health, food, and social protection—and the human rights norms that surround them.

II. Understanding the Tension Between the Development and ESR Fields

To understand why ESR end up violated *a priori* when they operate in a development field, the thesis starts by studying the historical roots of the tension between economic development and ESR through the theoretical framework of Bourdieu's theory of practice and analysis of "the field." Bourdieu's theory will continue to be used throughout this research to answer the question of why ESR end up violated *a priori* whenever they enter or operate the development realm.

With that in mind, Chapter II.A starts by presenting Bourdieu's theory of the social field and situates it in the context of the research question. It then presents and analyses the evolution of the ESR and the development fields and how both came together as they are today: forming a "human development field." The narrative provides brief historical context of the processes that brought together the discussions on human rights and development as one conversation. This

prepares for the analysis of development agents' policies in practice, and how the fundamentals of the development theory that governs the mainstream economic model is at odds with the ESR norms, as demonstrated in Chapter II.B. Then Chapter II.C provides empirical research and analysis of Bretton Woods Institutions' policies in Egypt, as an example of the struggle between ESR and development, and how structural bias in this space ends up favoring classic development institutes and their doxas at the expense of Egyptian citizens' ESR.

As stated in Chapter I, by “development field” this research is referring to the area or field where both disciplines interact in practice. Both the human rights and the development fields were born as separate social fields, with separate agents, orthodoxies, and implicit rules and doxas, all of which are explained in the next chapter of the chronology. At a point in their short, yet dynamic, history of sixty years, both fields merged together and faced a series of struggles. The struggles encompass not only what would be the orthodoxy within this new hybrid field, but also each field had its own internal struggles within its habitus of practices and power dynamics that continue to affect the “human development” field.

Initially, the classic development field included the primary agents of the allies and their technocrat economists, bankers, and financial leading figures, as explained below. The doxas—implicit rules and dispositions within the development field—underwent some level of reform and evolved over time. However, while classic market fundamentalism reforms itself over the course of the decade to incorporate the social, this consideration always happens *ex ante* rather than *ex post*; it is evidence of the prevalence of market values, even in the new face of the development field, or it is off the field of human development. This will be explained in the chronology below.⁸

The habitus of the field is the structures of power interactions among a group of practitioners, based on a set of dispositions and implicit rules of practice, which Bourdieu calls the “doxa.”

⁸ B.S. Chimni, *International Financial Institutions and International Law: A Third World Perspective*, in INTERNATIONAL FINANCIAL INSTITUTIONS AND INTERNATIONAL LAW 32–62 (B.S. Chimni ed., 2010). Chimni argues that IFIs serve the interests of the global capitalist class in a continuation of the colonial practice in third world. Primarily antirealist, Chimni calls for a third world approach to international financial institutions role in developing countries.

This all happens within the habitus, as explained below. Some disciplines or parameters are obvious and agreed upon; they are not implicit forces of power within the magnetic fields of the habitus and are called “orthodoxies.” The orthodoxies of the classic development field—the field of macroeconomic development policy—change over time to include development economics, namely economics with a human face.

The orthodoxies of the human rights field are international human law and norms, as explained in Chapter II.B. The agents of the field who engage in the power struggles among the conflictive doxas are, in the case of the development field, influential economists and development technocrats of Bretton Woods Institutions and national administrative bodies. The classic agents within the human rights field are human rights advocates from within inter-governmental organizations or NGOs, i.e., UN experts within UN treaty body committees who interpret international law. The rules of the development field undergo waves of reform in response to economic, social, and political crises that occur in the fields of practice within their respective countries. Those crises and subsequent waves of reform are explained in the below section on the chronology of the evolution of the development and human rights.

The latest wave of reforms, most importantly, gives birth to a subfield (a hybrid field) that becomes known as the “human development field.” The implicit rules of practice of this new hybrid field remain the same as those of the classic development field, while the new orthodoxy (openly discussed) rules of play is a human development approach with new discourse for shared prosperity and inclusive growth. Shared prosperity and inclusive growth, as demonstrated below, do not entail redistribution of resources or state regulations to ensure progressive realization of ESR, but rather a set of mitigation steps for the limitations of the classic trickle-down theory to safeguard only the poorest from becoming even poorer. “Inclusivity” translates into inclusive efforts for marginalized communities to enter the market and become clients. We understand that the social is considered; interventions are allowed only in so far as they do not disrupt free market principles and eliminate market distortions. The agents in the hybrid field space are a mixture of agents from both the classic development and the human rights fields; these agents are economic theorists who adopted the human development approach and became known as

“development economists”; some human rights practitioners of either state or interstate or nonstate parties; and some even belong to the Kansan economists and Global South enthusiasts.

The field is studied by examining the primary materials the platforms produce, where the interaction between development economics⁹ and international human rights law happen. “Development economics” is used here as the branch of economics that deals with economic aspects of the development process in low income countries/developing countries that are focused on methods of promoting economic growth and structural fiscal reform as a recipe for development.

In a classic form, development economics were understood to be the economics of the transformation of countries, from agricultural to industrial economies. Today, it is also understood to include improving the potential for human living conditions through public or private channels, as employed in the principles of “human development” that came after the Washington Consensus. These include IMF and WB loan agreements and structural reform programs, operational safeguard policies, and UN treaty bodies’ general comments and Special Rapporteur reports.

References to the human rights and development discourse are made a few times, especially in this chapter. Although the study of discourse¹⁰ is not the focus of the thesis, this chapter mentions changes in discourse within the Bretton Woods Institutions when discussing the interplay between development and human rights after the 1980s debt crisis. However, mainly the operational policies that came out of the Bretton Woods reforms are the subject matter of this study.

¹⁰ An example of discursive study of social rights is Iara Lessa’s work “*Discursive Struggles Within Social Welfare: Restaging Teen Motherhood.*” She explains “discourse” in social welfare to include “systems of thoughts composed of ideas, attitudes, courses of action, beliefs and practices that systematically construct the subjects and the worlds of which they speak.”

Another example of discursive study in ESR is Katie Young’s “Rights and Queues: On Distributive Contests in the Modern State,” in which she examines and analyzes the conceptual tension between rights and queues. She argues that queues and “queue talk” present a unique challenge to rights and “rights talk.”

B. Bourdieu's Theory of the Social Fields and the Development and Economic and Social Rights Question

Bourdieu's writings are chosen to offer a theoretical framework for the question of his longstanding interest of connecting theoretical ideas with empirical research. His seminal work, *OUTLINE OF A THEORY OF PRACTICE*,¹¹ served as the theoretical foundation for his analysis of the practice of the judicial field,¹² neoliberalism, theory of state¹³ and even of public governance in France as a whole.¹⁴ Bourdieu's theory of practice serves as a useful tool to understand the human rights and development fields, as a set of structures or interplay of power struggles among agents acting with intrinsic dispositions. Bourdieu conceptualizes a field of practice as "an area of structured, socially patterned activity or practice." The field for Bourdieu can be professionally and disciplinarily defined, as in the judicial field that he describes in his article "Force of Law." Even if a field is disciplinarily defined, as is the development field as enshrined into fiscal and economic discipline, the "field" and its "practices are used by Bourdieu in his definition of the juridical field as a 'broadly inclusive term referring...to the structures and the characteristic activities of an entire professional field';¹⁵ by that meaning, a judicial one. Each field is defined by a set of implicit rules and dispositions that the agents of the field follow without conscious recognition. Such rules become dogmatic, implicit rules through which the agents of the field view the world, or doxa. It is important to note that doxa are unique to each field.

Structures and interactions within a specific field then form what Bourdieu calls "habitus." Each habitus has its own set of doxas, and each doxa is unique to each field. Bourdieu's conception of a social field is that it is "always a site of struggle."¹⁶ In this practice, there is a continuous

¹¹ PIERRE BOURDIEU & RICHARD NICE, *OUTLINE OF A THEORY OF PRACTICE* (2015).

¹² Pierre Bourdieu, *The Force of Law: Toward a Sociology of the Juridical Field*, 38 *HASTING L.J.* 806–853 (1987), <http://derechocambiosocial.pbworks.com/f/bourdieu%5B1%5D.pdf> (last accessed Mar. 13, 2017).

¹³ See Rohit Chopra, *Neoliberalism as Doxa: Bourdieus Theory of the State and the Contemporary Indian Discourse on Globalization and Liberalization*, 17 *CULTURAL STUDIES* 419–444 (2003).

¹⁴ Although initially against philosopher's intervention in public life, Bourdieu used his theory of practice to analyze how the micro habitus level of neoliberalism affected French society and public policy.

¹⁵ Bourdieu, *supra* note 13.

¹⁶ *Id.* at 806.

struggle between agents and fields; while coming together, some practitioners fall under the power of the orthodoxy, remaining relevant and speaking of human rights through a market approach.¹⁷ Other human rights practitioners want these rights to be given *ex post* consideration, while they remain at the periphery of the field, struggle to reach gains for their goals as the field is dominated by neoliberal doxa.¹⁸

Although doxa rules are implicit, they produce practices of “common sense” writings in the juridical field. In the development field, this is analogous to the neoliberal approach to development: intrinsically enshrined in the open market and fiscally consolidated as the ultimate truth that agents of “the field” already know. However, those doxas that are already known are what need to be put into question, according to Bourdieu.¹⁹

This same critique of “commonsensical”²⁰ is how this paper arrives at the conclusion that the Bretton Woods development model leads to human-rights violations. Because of the commonsensical status of neoliberalism, with its existence as doxa, human rights norms will always end up violated. The open market orthodoxy that forms the underlying foundation of the development field is inherently at odds with the duties and obligations of states enshrined in the normative legal principles of human rights. Orthodoxy by Bourdieu is defined as the “correct, socially legitimized belief which is announced as requirement to which everyone must conform.”²¹ In the case of development and human rights, the dominant orthodoxy is what the doxa prioritizes *ex post*, namely, the open market as a form of international trade and fiscal consolidation as fiscal policy, along with other principles described below. Once human rights enter the development field, they become *ex post* considerations that can be considered as long as they fit within the doxa.

¹⁷ See ISABEL ORITZ, SOCIAL PROTECTION FOR OLDER PERSONS: KEY POLICY TRENDS AND STATISTICS, SOCIAL PROTECTION DEPARTMENT, INTERNATIONAL LABOUR OFFICE (2014), available at http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_310211.pdf (last accessed Jun. 21, 2017) (describing ILO’s principles of social protection floors and the right to social security)

¹⁸ See Philip Alston’s letter referred to later on human rights at the WB as discussed in Chapter II.

¹⁹ Bourdieu, *supra* note 13, at 810.

²⁰ Richard Terdiman explains Suspicion of Commonsensical in his translation of Bourdieu’s article, *Force of Law*, as a notion that is at the heart of much social and cultural theory.

²¹ *Supra* note 12, at 812.

Development and human rights, namely ESR, did not always have a standing relationship. Starting each in its own world, the process that led to their simulation took place over a complex battle between the institutions and the actors in both fields evolved over the past six decades. This chapter tells the narrative of the evolution of how development and human rights came to exist in each other's realms, starting from the 1940s until the 2000s.

Both fields developed in parallel in a postwar deconstructionist moment from the 1940s through the 1960s, a period when Bretton Woods economic growth and reconstruction theorists had a complete monopoly over the development field, and the human rights system was enshrined as a separate endeavor by the Universal Declaration of Human Rights (UDHR). The 1970s to the 1980s were a period of "rapprochement" stirred by a postcolonial movement in the Global South towards a more inclusive regime of international trade and sovereignty over resources that aimed to restructure the Bretton Woods system. It was successful in creating a short-lived new international economic order (NIEO), which approached concepts that captured the essence of ESR to a degree.

Followed by the debt crisis and its repercussions in the 1980s, the 1990s was a period of "confrontation" when the disciplines divorced and the field seemed polarized. The only idea of "rights" that Bretton Woods Institutions seemed to be willing to accept was property rights: a fundamental pillar of free market economy that formed the neoliberal development model. The 2000s saw some revisions in which development and human rights seemed to converge on some level: development studies attempted to incorporate a "social" element into their work. This era was marked by the concept of Bretton Woods "safeguards" to social and economic policy, and the development of new concepts, such as "human development," by UN actors and scholars, such as Amartya Sen and Mahbub ul-Haq.²²

²² See Annex 1 diagram of the intersection between the development field, the human rights field, and the creation of the human development field, with an illustration of the structural bias (doxa) that govern each and the composition of agents and their positions across the fields.

The next section in this chapter tells the narrative of how the development and human rights field progressed over the last six decades, in preparation for the discussion chapter which offers an analysis of the impacts of Bretton Woods Institutions' policy on the realization of ESR.

C. The Birth of Development and ESR From the Mid-1940s to the 1960s: The Separation Phase

In the aftermath of World War II, the Bretton Woods system and the human rights field were both created under the umbrella of the UN. Although they came out of the same historical momentum of postwar struggles, and both initiatives were championed by the same nation states, they were founded separately from each other.²³ Each involved a different caliber of statesmen and diplomats, with different rhetoric, focuses, and aims to achieve separate goals.

The Bretton Woods system, which dominated the development field between the mid-1940s and the 1960s, was born out of the postwar UN Monetary and Financial Conference, known as the Bretton Woods Conference. Taking place in New Hampshire in the United States in July 1944, all 44 countries of the allied nations attended the conference, which resulted in the Bretton Woods Agreement that introduced the Bretton Woods system. The purpose of the conference was to create an international system to reconstruct the postwar European economy and stabilize the global economic order.

The Bretton Woods Agreement set the new world monetary system. Championed by the United States, the agreement ensured the world economy would be pegged to the price of gold (the gold standard), with a fixed exchange rate and the US dollar (USD) as the reserve currency linked to the price of gold.²⁴ The engineers of the agreement and conference participants were technocrats; they included treasury staff and macroeconomic theorists²⁵ who worked for national

²³ Peter Uvin, *From the Right to Development to the Rights-based Approach: How "Human Rights" Entered Development*, 17 DEVELOPMENT IN PRACTICE 597, 597–606 (2007).

²⁴ The USD at the time controlled two-thirds of the world's gold.

²⁵ The sample of the conference attendees included the Secretary of Treasury Henry Morgenthau Jr., and Assistant Secretary of Treasury Harry Dexter White, bankers from several national delegations (who were sometimes also private investors), heads of economic departments, and some congressmen and foreign affair statespersons. A list of all country delegations is available at <http://www.lootedartcommission.com/bretton-> (last accessed Apr.10, 2017).

bureaucracies. The IMF was created at the same time to bridge gaps in countries' balance of payments and ensure monetary order and stability. The International Bank for Reconstruction and Development (IBRD), later to become part of the WB,²⁶ was also created to finance postwar reconstruction efforts, including infrastructure projects.²⁷ Both Bretton Woods Institutions—the IMF and the WB—became functional in 1945, a year after enough member states ratified the Bretton Woods Agreement.

In contrast, UDHR was adopted in December 1948, in Palais de Chaillot, Paris. Following the Nazi atrocities of WWII, the Charter of the United Nations did not seem sufficient, nor did the “four freedoms,”²⁸ which the Allies adopted as their main message out of the world wars. Unlike the Bretton Woods Agreement, UDHR, although nonbinding, was drafted by the finest legal minds, including leading jurists, philosophers, and academics²⁹ of the time. Intended to safeguard the “inherent rights of human beings,” UDHR included the foundation for what later became known as civil and political rights, and economic, social, and cultural rights (ESCR). Development economics scholar Sakiko Fukuda-Parr would go even further to say that it included the foundations for development as a human right, as UDHR refers to the enabling international order for development as a human right.³⁰

Nevertheless, UDHR remained a nonbinding agreement, without any implementation institutions or frameworks to ensure legal rigueur for the principles, until two decades later, when the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) were created. This can be attributed to the

²⁶ IBRD expanded to include the IDA, and became known as the WB, which later joined its private arm and other funding facilities to become known as the World Bank Group since 2013.

²⁷ MICHAEL D. BORDO & BARRY EICHENGREEN, A RETROSPECTIVE ON THE BRETTON WOODS SYSTEM: LESSONS FOR INTERNATIONAL MONETARY REFORM (1993).

²⁸ The four freedoms are “the freedom of speech, freedom of worship, and freedom from fear.” See JOHN BODNAR, THE “GOOD WAR” IN AMERICAN MEMORY 11 (2010).

²⁹ The drafting committee of the UDCR included René Cassin, a French jurist, law professor and judge; Charles Malik, a Lebanese academic, diplomat, and philosopher; and Peng Chun Chang, a Chinese academic, philosopher, and playwright.

³⁰ Sakiko Fukuda-Parr, *The Right to Development: Reframing the New Discourse for the Twenty-First Century*. 79 SOCIAL RESEARCH 839-864, (2012), available at <https://muse.jhu.edu/article/528081/pdf> (last accessed Dec. 6, 2017).

reality of the Cold War at the time, when world power was polarized and the many postwar conflicts meant it could have had been difficult to get states to sign onto legally binding principles of this nature.

The 1950s and 1960s were the decades of the import substitution industrialization (ISI) strategy. The Global South moved towards renegotiating its position on international economic and political governance. This strategy coincided with the emergence of the Non-Aligned Movement (NAM), which were postcolonial endeavors for more equitable trade relations in the 1970s and 1980s.

On the human rights front, the UN adopted ICCPR and ICESCR in 1966, independent of the economic development field. This initial separation of fields was largely attributed to the tension between the Allied and Axis powers post-WWII. The Cold War realities dictated that while the US lead the economic development field, Russia and the Eastern block were leading agents of the ESR conversation on the international arena. The US and its allies became antagonistic towards ESR as human rights, an animosity still present as the US has not ratified the ICESCR, and they continued to lead the classic economic order under the Bretton Woods system until today. Coming out of the economic crisis, the Global South proposed a new international economic order that, for once, attempted to created a moment of “rapprochement” in which the economic development field and ESR came closest to one another on an international institutional level. The following section explains how the rapprochement and confrontations between both fields happened in the following four decades, demonstrating the continuous struggle(s) within the field(s).

D. The Development Lost Decade and Attempts for Rapprochement: 1970s to 1980s

Following decades of reconstruction, developing world industrialization, and ISI strategies, the developing world found itself in continuing debt. It seemed that once again the Global South still struggled with the same questions of development as under colonial times. At this moment, the Global South began to merge the notion of economic development and ESR. This phase was known as the “rapprochement phase,” when both disciplines approached each other for the first

time before breaking apart again in the late 1980s and early 1990s and entering into a period of confrontation. This section will explain the Group of 77 (G77) and NAM shift towards an initial “state-focused,” rights-based approach to development and its achievements.

During the early 1970s, developing countries used their majority at the UN to negotiate a new global economic order of development. This included trade and investment, finance, aid, resource, and information flows. Led by nationalists of the developing world, these efforts were emboldened by the oil embargo, which at the time was thought to be the beginning of the restructuring of the world’s economic order and power.³¹

Established in 1964, the G77 called for the first UN Conference on Trade and Development (UNCTAD).³² From the fourth session of UNCTAD came the call for the establishment of the NIEO in resolution 45 (III) of May 1974.³³ NIEO was set to establish generally accepted norms to govern international economic relations and pave the way for “a charter to protect the rights of all countries” to a “just order and a stable world,” in particular, that of developing states.³⁴ Also known as the “North–South Dialogue,” NIEO was a comprehensive framework consisting of three main documents: Declaration on the Establishment of New International Economic Order; Programme of Action on the New International Economic Order; and Charter of Economic Rights and Duties.³⁵ The framework was seen as the Global South’s comprehensive action plan to restructure the international economic order as set forth by the Bretton Woods system. It invoked what was seen as “injustices and threats to sovereignty” revolving around questions of self-determination, territorial integrity, effective control of natural resources, technology transfer, and fiscal and economic upheavals of the debt crisis and its repercussions on social realities in

³¹ Uvin, *supra* note 24, at 597-598.

³² The conference was institutionalized to meet every four years with intergovernmental bodies (UNCTAD). Meeting between sessions and a permanent secretariat providing the necessary substantive and logistical support, and became later what is known today as UNCTAD. See UNCTAD history available at <http://unctad.org/en/Pages/About%20UNCTAD/A-Brief-History-of-UNCTAD.aspx> (last accessed Apr.8, 2017).

³³ The new international economic order: a selective bibliography = Le nouvel ordre économique international: bibliographie sélective, The new international economic order: a selective bibliography = Le nouvel ordre économique international: bibliographie sélective (1980).

³⁴ U.N. Charter Preamble.

³⁵ Adopted seven months after the first two documents.

developing countries.³⁶ It was not until the Declaration on the Right to Development, however, that a more vague idea of “social realities” was entertained.

As such, we can understand that NIEO was the first manifestation of the power struggle between the notion of “rights” and development. However, it was concerned with the rights of development for state sovereignty and self-determination, rather than individual human rights; the subject and the object of “the human right to development” or the rights-based approach to development as we understand it today, was different. In 1986, the Declaration on the Right to Development (RTD) was adopted. It drew upon the ESR enumerated in ICESCR. In that sense, this era was a *mélange* of novel issues in international relations, development economics, and international law in a declaration and an application framework that reflect the Global South’s concern in a postcolonial momentum that did not stand for long.

As ISI strategy played out, growing concerns took the place of developing countries in international trade and sovereignty over domestic economy and raw material. NIEO addressed both fiscal and market and development economic questions. Its articles enumerated questions of “equity, sovereign equality, interdependence, common interest and cooperation among all States.”³⁷ Its purpose was to “eliminate the widening gap between the developed and the developing countries and ensure steadily accelerating economic and social development and peace and justice for present and future generations,”³⁸ with the final aim to remove disequilibrium in international trade power.³⁹ NIEO discussed issues such as technological advancement and world income distribution as shared among developed and developing countries, saying that the latter comprised only 30% of the worlds’ population yet compromise 70% of income.⁴⁰ Coming out of the ISI strategy, the movement considered neocolonialism,

³⁶ Reginald Herbold Green & Hand Singer, *Toward a Rational and Equitable New International Economic Order: A Case for Negotiated Structural Changes*, 2 YALE L.J. 88, 88–181 (1975), available at <http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1009&context=yjil> (last accessed Apr.8, 2017).

³⁷ *Supra* note 35, at Preamble.

³⁸ *Id.* at art. 3.

³⁹ *Id.*

⁴⁰ *Id.* at art. 2.

discrimination, and apartheid as the main state–state impediments to development.⁴¹ The resolutions to those issues were detailed in the action plan.⁴²

For the first time, the action plan discussed in Chapter II.A required “Full and effective participation of developing countries in all phases of decision-making for the formulation of an equitable and durable monetary system and adequate participation of developing countries in all bodies entrusted with this reform and, particularly, in the proposed Council of Governors of the International Monetary Fund.”⁴³ Among the highlights of the action plan is a detailed mechanism governing debt relief that would be unconditional to any political or economic requirements. This was later altered in the Debt Relief Under the Heavily Indebted Poor Countries (HIPC) initiative to be market driven and conditional upon the Washington Consensus policy plans. It also stated that Bretton Woods lending policies should serve the development goals outlined in NIEO.⁴⁴ Debt relief also was adopted as a human-rights based approach and is now advocated among some ESR practitioners as a necessity for the realization of ESR.

Nevertheless, there are various degrees of approaches that range from debt restructuring and debt swap to debt forgiveness, abolition, and debt audit. The existence of such variant approaches demonstrates the tension and incoherence in the hybrid field space that exists for human development to be applied. Some approaches would be argued as antihuman rights by human rights practitioners coming from the international human rights field rules, while others could seem against the development train according to agents coming from the classic development field.

⁴¹ *Id.* at art. 1.

⁴² “(I) the Fundamental problems of raw materials and primary commodities as related to trade and development; (II) the International monetary system and financing of the development of developing countries; (III) Industrialization; (IV) Transfer of technology; (V) Regulation and control over the activities of transnational corporations; (VI) the adoption of the Charter of Economic Rights and Duties of States ; (VII) Promotion of co-operation among developing countries; (VIII) Assistance in the exercise of permanent sovereignty of States over natural resources; (IX) Strengthening the role of the United Nations system in the field of international economic cooperation; and (X) the adoption of a Special Programme.”

⁴³ *Id.*

⁴⁴ See groups like “Righting-Finance,” Center of Concern, Center for Economic and Social Rights, Third World Network, Arab NGO Network for Development, and Egyptian Center for Economic and Social Rights Advocacy on IFIs and ESR.

The next milestone in the evolution of the field was the adoption of the Charter on Economic Rights and Duties of States in December 1974 to create what was thought to serve the purpose of a legal rigueur to the principles of debt relief conditionality and a shield from cold war political polarization. Among its highlights was stating the right of developing countries to choose a social and political governance system best suitable for the development of their individuals without any political or economic sanctioning. The Charter also pinned down the states' rights to effective monitoring, supervision, and exercise of national jurisdiction over transnational corporations, nondiscrimination in trade, and preferential treatment for landlocked and developing countries. It also stated that the international economic order must prevent and remedy all "social injustice."

Although not without resistance,⁴⁵ NAM succeeded in achieving another victory towards its goal of states-based right to self-determination and established the RTD. Although still primarily concerned with the postcolonial struggles that were the focus of NIEO, its action plan, and overall framework, the RTD came the closest to the current rights-based approach to development in some areas. Though discussions about NIEO lasted for years, they did not result in any concrete outcomes except for "the signing of a few weak international commodity agreements."⁴⁶ Some scholars would say that the RTD was always weak, that it was nothing but verbatim, and that it has never had any real resonance on the ground, nor was it used until today among rights defendants, activists, or NGOs.⁴⁷

E. Confrontation Phase of the 1990s: The Death of the NIEO and the Birth of the Washington Consensus

Neoliberal economic thought and its bias towards market interest at the expense of redistribution and other principles form the philosophy behind ESR⁴⁸ and date back to before the institutional

⁴⁵ US President Ronald Regan unilaterally dismantled the NIEO Framework as he declared its death at the Cancun Summit on International Development Issues in 1981. See Adam Snyed, *The New International Economic Order, Globalization and Autonomy Online Compendium*, available at http://www.globalautonomy.ca/global1/glossary_entry.jsp?id=EV.0027

⁴⁶ Uvin, *supra* note 24, at 597.

⁴⁷ See *supra* text accompanying note 29.

⁴⁸ WILLIS, *supra* note 6, at 85.

birth of both ESR and the institutional economic development field.⁴⁹ The 1990s, however, witnessed the birth of the “Washington Consensus” which marked a historical moment of international institutionalism adopting a vision for a market fundamentalist development movement to openly prescribe to indebted and developing countries as the way forward to sustain the world economic order.

Following the attempts for NIEO, by 1989 the “political pendulum had swung dramatically rightwards,”⁵⁰ and the moment of rapprochement in the ESR field and the classic economic field officially ended. As NIEO negotiations did not materialize, the 1990s witnessed the birth of the Washington Consensus,⁵¹ whereby classic agents of the development field led by Washington were ready to unveil to the world a set market fundamentalist principles that rivaled those of NIEO. They formed the “structural adjustment policies” prescribed to indebted and developing countries in the aftermath of the development lost decade.⁵² This confrontation phase in the early 2000s, during which some revisions were due to incorporate “the social” back into development as the promises of the structural adjustment policies failed to deliver, will be discussed in the next section.

The primary focus of the Washington Consensus was adopting a fiscal consolidation approach to development, an approach in which economic growth was the main road to economic development and, rather than NIEO propositions, structural adjustment policies became the openly prescribed agenda for countries in crisis and borrowing developing countries. The

⁴⁹ KARL MARX, ON THE JEWISH QUESTION: PART 1 (2000).

⁵⁰ Uvin, *supra* note 24, at 597.

⁵¹ Economist John Williamson first coined the term, and the engineers of the policy were the Bretton Woods technocrats, the US treasury staff, and the Washington Congressmen. In a paper commissioned for the Institute for International Economics, Williamson stated that “The Washington of this paper is both the political Washington of Congress and senior members of the administration and the technocratic Washington of the international financial institutions, the economic agencies of the U.S. government, the Federal Reserve Board, and the think tanks.” JOHN WILLIAMSON, A SHORT HISTORY OF THE WASHINGTON CONSENSUS (2004), available at <https://piie.com/publications/papers/williamson0904-2.pdf> (last accessed Apr.8, 2017).

The era was also associated with what became known as “Reganomics,” which was characterized by the introduction of “trickle-down economics” and reduction of federal income tax and capital gains tax. By 1971, Nixon has already divorced any links between the gold standards and the USD set forth in the Bretton Woods Conference Act.

⁵² *Id.*

Washington Consensus enshrined the following 10 principles as the priorities for the Washington institutions and the new work economic vision to go forward: (1) fiscal discipline, (2) increased [private] investment on social services and infrastructure,⁵³ (3) tax reform to broaden tax bases and reduce marginal tax rates, (4) market-determined interest rates, (5) unified and competitive exchange rates, (6) import liberalization, (7) openness to foreign direct investment, (8) privatization, (9) deregulation, and (10) secure property rights.

Fiscal discipline meant that governments should work first and foremost towards decreasing large fiscal deficits in relation to GDP (by and large it meant any number above two figures) through decreased public spending and increased state revenue. Decreasing public spending is the purpose of principle (2), which is sometimes presented as “pro-poor/pro-growth” spending, which in practice meant the move from universal subsidy to targeted government support. Tax reform was meant to decrease its value and increase its base (decreasing federal income tax and capital gains tax under the rationale of widening the tax base for more revenue) by introducing value-added tax. Free market meant facilitating labor “hiring and firing,”⁵⁴ as well as controlling the growth of the public sector wage bill in relation to inflation as a means for market discipline. Privatization of state enterprise i.e., telecommunication and electricity, was also encouraged as well as removing all barriers towards foreign direct investment, tariffs, and import bans.

The only “right” recognized in the Washington Consensus was the “right to property,” but not the right to housing, which is not a human right but a market mechanism necessary for the introduction of directed credit systems, also known as “financial liberalization,” which are supposed to guarantee financial freedom, but do not guarantee the realization of any ESR as understood by the legal normative framework of human rights. If anything, it leads to counterintuitive outcomes. This became clear as the “trickle down effect of the neoliberal prescribed agenda failed to materialized to the average citizen in poor and indebted countries,

⁵³ This principle enshrined the market as the number one beneficiary of social “investments” and affordability and accessibility of rights. This is later explained in Chapter III as the normative framework for ESR, translated in the development policies as access to market credit and right holders became market clients.

⁵⁴ http://press.princeton.edu/chapters/reinert/13article_lora_washington.pdf

which lead to the birth of the “human development field” in the 2000s as will be explained below.

It may seem that events took a drastic turn from the postcolonial order that the G77 was trying to set, but a new system of market fundamentalism, in which developing countries were in a position to follow a one-size-fits-all prescriptive economic agenda, confronted the somewhat social-focused attempt in the 1980s. The policy agenda of the Washington Consensus did not come out of a political or economic vacuum, however. In the 1960s and 1970s, Latin American countries borrowed large amounts of money from Bretton Woods Institutions for industrialization and reconstruction,⁵⁵ as well as from private creditors.⁵⁶ This ended in large debts that the countries were unable to repay.

This became evident in the early 1980s, but also in late 1970s, when Latin American countries, mainly Argentina, Brazil, and Mexico, relied on the policy advice of the Bretton Woods system, following a fiscal consolidation approach that later became known as structural adjustment programs. These programs, which formed the core of the Washington Consensus, were proven not to lead to the best of economic health, as participating countries “experienced negative growth and high rates of inflation. The same policies were, however, consolidated as the mainstream economic model. This is explained by the fact that the Bretton Woods Institutions took part in a movement gaining steam in the background that served as the pretext for the Washington Consensus and the birth of market fundamentalism, while NAM worked on the RTD as a postcolonial “state right.” At that time, “structural adjustment had replaced international reform [of the NIEO] as the talk of the day.”⁵⁷ The Washington Consensus did not come out of nowhere; it succeeded in carrying over from the 1980s into the 1990s and survived for another decade.

⁵⁵Manual Jastor Jr., *Latin America, the Debt Crisis, and the International Monetary Fund*, 16 LATIN AMERICAN PERSPECTIVES 79, 79–110 (1989).

⁵⁶ OSVALDO SUNKEL & STEPHANY GRIFFITH-JONES. DEBT AND DEVELOPMENT CRISIS IN LATIN AMERICA: THE END OF AN ILLUSION (1st ed. 1986).

⁵⁷ *Id.*

F. Conversions and Incorporations: The 2000s and the Emergence of the Human Development Field

In the 2000s, “human development” consolidated into a new model of development in which the “social” was incorporated into the mainstream economic development model. This was done through the Bretton Woods Institutions’ incorporation of a number of “safeguards” into their operational practices, frameworks, and policies to add “social safety nets” to fiscally consolidate their policies. At this point, however, the powerful agents within the human development field maintained the doxa, the rules of the field, the same in principle: free market, as per the 1980s neoliberal model, was the route to development. The doxa, the orthodoxy here, however, changed a bit and amended its vision in an attempt to mitigate the repercussions of the development lost decade. This meant that the “social” can be considered and that intervention can be allowed—but only to correct market distortions and not to protect human rights and the state’s duty to respect, protect, and fulfill ESR. Who agents of the human rights field would see as “rights holders” in the human development field and in the eyes of the players within the human development field that come from the economic development one, they are “market clients.” The UN human rights and development institutions also joined the efforts by creating a number of indices and other mechanisms to ensure that “development” had a “human face.”

The 2000s witnessed the birth of the seminal work that served as the bible of “human development.” Amartya Sen’s *Development as Freedom* argued that development was not merely economic growth, but stretched to include freedom from social and economic need, as well as civil and political freedoms. This field was established by “development economists” who worked with Sen, like Mahbub ul-Haq and others. Although Sen supported the free market, wherein he saw the economic freedom to include access to credit, he recognized that “the far-reaching powers of the market have to be balanced by the creation of policy opportunities for social equity and justice.”⁵⁸

However, as the development field habitus adopted Sen’s work, it turned his scheme into an *ex ante* safeguard of social interests within the market system, as opposed to an *ex post* robust

⁵⁸ AMARTYA SEN, *DEVELOPMENT AS FREEDOM* 81 (1999).

framework for human rights and “dignity.” The Human Development Index (HDI), which was “inspired” by his works, or others would say his work was coopted to form a social safety net to the reincarnation of the neoliberal economic model, ensuring its sustainability. Agents from within the human development field, who fell more onto the human rights and/or the social development side of the field rather than the economic development one, would have their voices heard within the structures of power and productions within the human development field. In 2000, the UN Development Programme Human Development Report stated, “there is no direct or automatic link between economic growth and human development, and that “special policies are needed to ensure that the pattern of growth benefit the poor, and that the resources generated are invested in building human capacities.”⁵⁹

The conversion around policies’ incorporation of the social and the human factor received mixed reactions and spurred opposing views among the human rights and development practitioners and economists in the field community until today. Some within the field praise the conversions, including the Bretton Woods economists,⁶⁰ the human rights advocates,⁶¹ and academics.⁶² However, there is a movement within the UN Special Mechanisms,⁶³ as well as among NGOs

⁵⁹ UNDP Human Development Report 2000 81 (2000), <http://hdr.undp.org/en/reports/global/hdr2000> (last accessed Apr.8, 2017).

⁶⁰ SIOBHÁN MCÍNERNEY-LANKFORD & HANS-OTTO SANO, HUMAN RIGHTS INDICATORS IN DEVELOPMENT: AN INTRODUCTION, WORLD BANK (2010).

http://siteresources.worldbank.org/EXTLAWJUSTICE/Resources/HumanRightsWP10_Final.pdf

⁶¹ PHILIP ALSTON ET AL., HUMAN RIGHTS AND DEVELOPMENT TOWARDS MUTUAL REINFORCEMENT (2005).

⁶² David Hulmes, of the University of Manchester, in his work *The Millennium Development Goals (MDGs): A Short History to the World’s Biggest Promise* outlines the history of the making of the MDGs. He gives an account of the influence of the final negotiations of IFIs, IMF/WB on drafting the millennium declaration into the MDGs in 2001 highlighting the positive role a group of passionate female WB Directors negotiators on poverty reduction, including the British ED whose name is alluded to in the start of the piece, Short.

⁶³ Eight years after Sen’s work, and with the 2008 financial crisis, the OHCHR appointed a Special Rapporteur on extreme poverty, under a 2008 resolution, whose main mandate is to produce reports and studies; and to conduct visits to countries undergoing economic and social hardships that, at the same time, are implementing structural adjustment measures to incorporate “the social” into the economic model. Such programs and countries included Guatemala’s CCT, for example, and a number of Latin American states. SP Magdalena Sepulveda Carmona wrote a critique on CCT available at <http://www.ohchr.org/EN/Issues/Poverty/Pages/AnnualReports.aspx> (last accessed Mar.13, 2017).

and human rights advocates, and academics⁶⁴ that criticize it. They all draw on the discipline of international law and economics to hold the current “human development” discourse to account before the internationally recognized normative legal framework for ESCR. This movement is mainly present at the UN, i.e. the Special Rapporteurs’ work, and the follow-up mechanisms of the committees on the binding covenants, i.e., the works of the Committee on Economic Social and Cultural Rights (CESCR).

In sum, the free market fiscal consolidation approach to development with social safety net mitigation demonstrates a structure of power in which liberal doxas are the dominant rules of the interplay of power in the current development field. Those rules, or doxas, are *a priori* in violation of or at odds with the normative framework that forms the rules needed to realize human rights. Chapter III explains the normative framework of the human rights as the rules for that specific field, whereas Chapter IV analyzes what happens to human rights once they enter the development field at its current hybrid status that has a “human” face.

Philip Alston, the successor of Carmona as Special Rapporteur on extreme poverty and human rights, wrote the 2015 critique of the WB safeguards mechanisms. The critique was cosponsored by a number of Special Rapporteurs covering special issues and particular ESR rights. The report is available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/274 (last accessed Feb.10, 2017).

⁶⁴ Kerry Rittich wrote *The Future of Law and Development: Second Generation Reforms and the Incorporation of the Social* wherein she outlines the second generation reforms of IFIs, namely the WB, and less so the IMF, in incorporating social concerns and questions into economic development as a major model. Ranging from theory to normative rhetoric/framework to legal, Rittich finds that they “fail to materialize” if analysis is focused away from the “overall consequences of reforms in the long term to their more proximate effects on different sectors and populations.”

III. The Normative Legal Framework to a Rights Based Assessment of Bretton Woods Development Plans in Egypt

While the overall research attempts to understand the relationship between the mainstream development field and ESR, this question arises from an interest in finding out why human rights norms were violated, almost always or *a priori*, once the duty bearers adopted other international financial institutions' (IFI) policies. This chapter examines the normative framework of ESR and explains the incompatibility between them and their neoliberal counterparts, which then contributes to understanding the structural bias in the intersectional field of human rights and development that leads to ESR violations.

Before presenting the normative framework of governing ESR and its points of struggle and conflict with the economic development model, it is important to state that the framework presented below represents a specific stream within the field of ESR that adopts this normative framework as the ideal *modus operandi*. Building on Bourdieu's theory, the human rights field has been skewed towards neoliberal principles. Scholars such as Upendra Baxi illustrate how today the human rights "paradigm," which we can understand as a "field," has steadily and surely shifted towards a trade-related, market friendly human rights.⁶⁵ While human rights have skewed or emptied their meaning into a neoliberal paradigm, becoming the *lingua franca* of the international monetary and development order, ESR has, as a field, suffered marginalization.⁶⁶ In that setting, the legally rigorous ESR norms remain marginal to the economic conversation; thus, there exists strands within the ESR field that have coopted a neoliberal twist of rights as services and "targeted goods." This is explained in detail in the different safety net programs and social protection floors in the example of Egypt.

Not only in the development of institutional recommendations, adopted by state executives, do we see the weakening of ESR rigueur in practice, but also in fields of the national and state governance where ESR rigueur is marginalized. In his work, *The Death of Socio-Economic*

⁶⁵ UPENDA BAXI, *THE FUTURE OF HUMAN RIGHTS* (2002).

⁶⁶ *See supra* text accompanying note 48.

Rights, Paul O’Connel speaks to how ESR are commonly in judicial practice.⁶⁷ However, although it is common for courthouses to dismiss ESR as constitutional rights, this practice is not universal. O’Connel refers to cases of the Hungarian Constitutional Court ruling against the reforms of IMF-recommended welfare programs, as well as a number of South American countries and Latvian and German constitutional courts.⁶⁸ This incoherence within the field, according to Bourdieu, testifies to the struggle of power and the continuous dynamic attempts for the dominant orthodoxies to triumph.

Just as they are strands within the ESR field that are coopted or subsumed in practice, consciously or subconsciously, by the neoliberal orthodoxy, there remains those agents that are at the vanguard of the field; they set the rules and continue to struggle for complete legal liability for ESR and obligations. According to the normative legal framework that today stands for ESR, not only state executives but also international development institutions are liable to ESR obligations.

This incoherence in the judicial field regarding the justiciability of ESR can be explained by Bourdieu as a manifestation of the continuous struggles, between and within each specific field of practice—and, in our case, the ESR field. If anything, it testifies to the fact that ESR are still alive and battling. As we understand via Bourdieu, when fields intersect, multiple doxas and orthodoxies intersect and struggle as well. The judiciary is a secondary, rather than a primary, actor in the ESR field; the judiciary is a field in itself, one that Bourdieu himself devotes an entire study towards. However, it is an important player that lies in the intersectional space between classic development and ESR power struggles in a state. Depending on which field has the power to exercise stronger doxa based on its social capital and the field that succeeds to extend its influence, the judiciary’s decisions will be influenced and rule in line with that social field’s influence. At the same time, some judiciary members may be zealous actors of the ESR field themselves⁶⁹, This, is a way to explain the incoherence or the conflictive

⁶⁷ Paul O’Connel, *The Death of Socio-Economic Rights*, 74 THE MODERN L.R. 532–554 (2011)

⁶⁸ *Id.*

⁶⁹ Magdalena Sepulveda Carmona the previous Special Rapporteur on Extreme Poverty and Human Rights, a strong advocate against conditional cash transfers as mitigation efforts of the development actors

Not only the judiciary, but also other practitioners of the ESR field, including academics, play according to the neoliberal dominant rules over the ESR field. Most notable of these is Isabel Ortiz, who presents her arguments for universal ESR under the International Labor Organization's (ILO) framework for social protection, which is itself a neoliberal platform.⁷⁰ Ortiz is a notable scholar and defending practitioner of ESR. She was the Director of Global Social Justice Program at Joseph Stiglitz's Initiative for Policy Dialogue, based at Columbia University, and she has undertaken a comprehensive study on the shortcomings of IMF-led austerity policies in developing countries. However, she currently presents her arguments for universal rights to social protection under the ILO framework as a UN expert; a field space that is heavily subject to the trade-related, market friendly reality. According to Bourdieu's theory of practice, we can understand this behavior as a struggle to remain relevant. How much this really does justice to the cause and how genuine are the practitioners within a field that uses a Machiavellian practice for ESR realization depends on where they stand within the parameters of the field and what are their beliefs on the legal rigor of ESR.

With that background of the contestations within the ESR field, and its skew towards neoliberalism, this chapter provides a specific set of rules that present the legal normative framework of the strand in ESR realization, enshrined by the institutions and institutional agents that are vanguards of the legal rigor of those rights according to international law. This strand represents today's the vanguards of the puritan field, so to speak: the few that would be considered the counterparts of the neoliberal technocrats that develop the Bretton Woods Institutions' orthodoxy and uphold it at the institutional level. It assesses the practices of Bretton Woods Institutions and other IFIs, as well as their economic policies that end in violations of state duties according to international law and from a human rights perspective. In doing so, the chapter first identifies the Bretton Woods development policy, the Egyptian government's

to remedy the effects of ESR violations of fiscal consolidations ex ante, is also an justice emeritus of the inter-American court of human rights.

⁷⁰ See http://www.ilo.org/newyork/events-and-meetings/WCMS_237980/lang--en/index.htm

application of the IFI recommendations, and the social safety net measures used to mitigate the social and economic shock on the population—all working within the neoliberal doxa. Then, it identifies and explains the existing principles within human rights norms that speak to the Bretton Woods development policy in Egypt that will be used in the following Chapter IV to assess the development policy’s impact on ESR. In constructing (or identifying) the normative framework, it looks at articles within the ICESCR, general comments of the CESCR, and Special Rapporteur reports.

A. The Normative Framework on ESR Standards and Obligations

Throughout the past few decades, the human rights community—including the UN Human Rights Council (UNHCR), UN Economic and Social Rights Council (ECOSOC), their subbodies and special mechanisms, i.e., the ICESCR, and the Special Rapporteurs—developed a set of norms and principles explaining the obligation to realize ESCR. These norms and principles provided interpretations of ICESCR Art 2 (1), stating that:

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

The earliest developed interpretation of Art 2 (1) was the interpretation of the duty to respect, protect, and fulfill. Later, the UNHCR and ECOSOC mechanisms contributed to further defining the scope and the breakdown of duty to realize ESR, as well as the nature of duty-bearers or entities capable of violating the duty. Stating and explaining those norms is essential to the assessment of the role of the Bretton Woods development policy advice to Egypt that will be carried out in the next chapter.

1. The obligations to respect, protect, and fulfill ESR

In 1986, a group of experts in international law⁷¹ considered the nature and scope of the obligations of States parties to the ICESCR. The Limburg Principles on the Implementation of the ICESCR⁷² (Limburg Principles) was adopted in 1986. Its 20th anniversary was marked with the complementary Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (Maastricht Guidelines).⁷³ Together, these two documents preserve three types of obligations on states—respect, protect, and fulfill—to comply with their ESCR obligations, which also evoke negative and positive duties.

Firstly, the obligation to respect requires states to refrain from interfering with the enjoyment of ESCR. Thus, the right to housing is violated if the State engages in arbitrary forced evictions, for example, or violates or harms its citizens' ESR status. Secondly, the state's obligation to protect enshrined under Guideline 6 of the Maastricht Guidelines requires "prevent[ing] violations of such rights by third parties." For example, the failure to ensure that private employers comply with basic labor standards may amount to a violation of the right to work or the right to just and favorable work conditions. Third parties also include intergovernmental organizations that involved Bretton Woods institutions, as outlined by the UN Special Rapporteur on the Realization of ESR, as will be further explained below under the duty-bearers and violators section. Lastly, the obligation to fulfill requires that states "take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realization of such rights" as we understand by the Committee on ESCR General Comment No.3. Thus, the failure of states to provide essential primary social services to its citizens, e.g., primary health care, may amount to a violation of the state duty under the covenant.

The breakdown of the duty to fulfill involves the ICESCR's obligations to progressively realize ESR by taking steps that are defined within a set of certain criteria in a nondiscriminatory

⁷¹ The International Commission of Jurists; the Faculty of Law of the University of Limburg, Maastricht, the Netherlands; and the Urban Morgan Institute convened these experts for Human Rights, University of Cincinnati.

⁷² The Limburg Principles were submitted by the Permanent Mission of the Kingdom of The Netherlands to the UN other International Organizations in Geneva in form of a paper published in an official document under agenda item 8 of the forty-third session of the Commission on Human Rights. Available at <http://www.refworld.org/docid/48abd5790.html> (last accessed Apr.15, 2017).

⁷³ See Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, U.N. DOC. E/C/2000/13 (2000).

manner, thereby ensuring that a minimum core level of ESR is provided to all citizens, which mobilizes the maximum available resources (MAR) of a state. Before explaining the breakdown of the duty to fulfill, it is necessary to identify the norms that define the involvement of Bretton Woods Institutions and other IFIs in the human rights policy development.

2. The scope of the duty to realize ESR and IFIs obligations in the area of ESR

Whether International Organizations (IGOs) and IFIs, including Breton Woods Institutions, have human rights obligations has been a matter of contestation for a long time. The WB, as an entity with a legal personality, has long dismissed any human rights obligations. It maintains that the matter of international human rights law is outside its mandate and that its purposes are solely financial and developmental.⁷⁴

Following the original Maastricht Guidelines, a second document, Maastricht Principles on the Extra Territorial Obligations of States in the Area of Economic Social and Cultural Rights (Maastricht Principles), was adopted in 2011, reaffirming that IGOs and IFIs both have ESR obligations. The Maastricht Principles explicitly state in its preamble that the lack of accountability mechanisms or reference point for IFI's and IGO's ESR obligations is a driving force. The Maastricht Principles establish that IGO's ESR obligations are twofold: first, the obligations of member states to the Covenants that are members of the IGO and, second, the IGO's obligation as a legal entity and the member states in their legal personalities that constitute the members of the IGOs.

First, the state has an obligation as a member of an international organization. Under Para 15 of the Maastricht Principles, states are responsible for their conduct in relation to their human rights obligation, as a member of an IGO within its territory and extraterritorially.⁷⁵ Second, the

⁷⁴ See Letter of special rapporteurs and special mandate holders to world bank director, available at <http://www.ohchr.org/Documents/Issues/EPoverty/WorldBank.pdf> (last accessed Feb.10,2017).

⁷⁵ See MAASTRICHT PRINCIPLES ON EXTRA TERRITORIAL OBLIGATIONS OF STATES IN THE AREA OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS, page 7, para 15 (2013), available at <https://www.ilsa.org/jessup/jessup17/Batch%202/Maastricht%20Principles%20on%20Extraterritorial%20Obligations%20of%20States%20in%20the%20Area%20of%20Economic,%20Social%20and%20Cultural%20Rights.pdf> (last accessed Apr.15, 2017).

principles further apply to international organizations. Para 16 of the Maastricht Principles states that they apply “without excluding their applicability to the human rights obligations of international organizations under general international law, and international agreements to which they are party.”⁷⁶

The ETO consortium wrote a commentary in 2012 on the meaning of the Maastricht Principles. It reaffirmed that Principle 15 entails that states have obligations as members of IFIs to “take all reasonable steps to ensure that, in its decision-making processes, the international organization acts in accordance with the pre-existing human rights obligations of the State.” This commentary reaffirms that even through IGOs “have no territory and generally do not exercise 'jurisdiction' by enforcing their own decisions, the Maastricht principles may be applicable to their activities.” This similarly applies to the general comments of the ICESCR on the implications of structural adjustment programs of the IMF and the enjoyment of ESR “insofar as such institutions impose on indebted States certain austerity programs as a condition for access to the international financial markets.” The assessments of the Committee on the impact of IMF programs on the enjoyment of ESR and the state duty to fulfill, which will be addressed in more detail in the next chapter on Egypt’s case study.

A number of general comments of the CESCR have reaffirmed that Bretton Woods Institutions have obligations under ESR, separate from the “mitigation” or convergence policies that came out of the post-neoliberal development phase. In General Comment No. 14: The Right to the Highest Attainable Standard of Health, adopted in 2000,⁷⁷ the Committee has an even stronger position on the role of IGOs, moving away from the affirmation of an obligation of means (or steps) of member states and towards an obligation of result. The Committee notes that “State parties have an obligation to ensure that their actions as members of international organizations take due account of the right.”⁷⁸ General Comment No. 14 specifies that states that are party to

⁷⁶ *Id.* at 8, para 16.

⁷⁷ Comm. on Economic, Social and Cultural Rights, General Comment No. 14, The Right to the Highest Attainable Standard of Health, art. 12 of the International Covenant on Economic, Social and Cultural Rights on Its Twenty-Second Session, UN DOC. E/C.12/2000/4, para. 39 (2000).

⁷⁸ *See* Comm. on Economic, Social and Cultural Rights, General Comment No. 15, The Right to Water arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights on its Twenty-Ninth Session, UN DOC. E/C.12/2002/11, para. 36 (2002).

the covenant, which are members of IFIs, “notably the IMF, the World Bank... should pay greater attention to the protection of the right to health in influencing the lending policies, credit agreements and international measures of these institutions.”⁷⁹ Similar statements are made in General Comment No. 15: The Right to Water.

The next section further explains the obligation to fulfill, as it implicated the Egyptian government’s duty while following IMF and WB development plans and programs.

3. Norms on the duty to fulfill ESR: State obligations to “take steps” towards the “progressive realization” of ESR and mobilize “maximum available resources” in a “nondiscriminatory manner” to ensure “the minimum core” enjoyment of rights

- a) The duty to take steps

CESCR explained the duty to “take steps” towards the progressive realization of ESCR, established under Art 2 (1) of the Covenant. The Committee’s General Comment No. 3 states that:

[W]hile the full realization of the relevant rights may be achieved progressively, steps towards the goal must be taken within a reasonably short time after the Covenant’s entry into force ... Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant.⁸⁰

In explaining the duty to take steps towards the progressive realization of rights, the Committee states there are immediate obligations and then there are other obligations that can be achieved progressively over time. For instance, obligations of “results,” such as the realization of relevant rights, may be seen as obligations that can be realized progressively over time. The duty to “take steps,” however, is an obligation of “conduct” and thus an “immediate” obligation. The purpose of this distinction is to emphasize the duty to “take steps” as an immediate action under the

⁷⁹ *Id.* at para. 39.

⁸⁰ *Id.*

control of the state and to set it is a primary obligation. This is to encourage duty-bearers to act towards the realization of rights and facilitate the proof of state liability in case of violation.⁸¹

ICESCR art. 2(1) defines taking steps as an “all appropriate means including legislative measures.” The Committee clarifies that “particularly the adoption of legislative measures” must lead to improving the availability, accessibility, acceptability, adoptability, and quality of the goods and services that are the object matters of rights. This is known as the AAAQ criteria. The Limburg Principles Art 18 further detail that these steps include not only legislative measures but also all appropriate measures, meaning that state parties must provide judicial remedies.^{82, 83}

The AAAQ criteria offer a quantitative guide to analyze public measures taken towards realizing ESR. The Committee defines the meaning of criteria extensively. Availability means that a “step” or a measure taken by the state must result in the necessary goods and services being available in sufficient quantity. Accessibility means that a necessary good (e.g., medicine or food) or service (e.g., education or health provision) is economically and physically accessible to all without discrimination. Acceptability is paired with adaptability to mean that measures to provide goods and service are culturally acceptable and adapted to local culture. Finally, quality means that services are appropriate in safety and in standard. This criterion will be useful in assessing the IMF’s and WB’s “social safety net” put in place to mitigate social and economic shock in terms of the structural reform program on the people of Egypt, as “social protection” is deemed a pillar of the reform program.

⁸¹ Comm. on Economic, Social and Cultural Rights, General Comment No. 3: The Nature of States Parties’ Obligations, art. 2, para. 1, of the International Covenant on Economic, Social and Cultural Rights on its Twenty-Ninth Session, UN DOC E/1991/23 (1990), available at <http://www.refworld.org/docid/4538838e10.html> (accessed Apr. 17, 2017), at para. 9.

⁸² See Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, U.N. DOC. E/cn.4/1987/17 at paras. 18–19, available at http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/UN_Limburg_Principles_1987_En.pdf (last accessed Apr.15, 2017).

⁸³ The justifiability of rights largely depends on the nature of the state duty being assessed, and whether national courts have accepted this duty in practice, even if it has been widely accepted in principle by international law and relevant opinions. For example, the principles of “minimum core” have been acceptable and even used by courts in Germany and Switzerland to translated constitutional principles of human dignity into positive national state obligations. The court of South Africa, however, has rejected the concept. See K. Young, *The Minimum Core of Economic and Social Rights: A Concept in Search of Content*, 33 YALE J. INT’LL. 1, 113–175 (2001).

b) Progressive realization

Although Art 2 (1) of the Covenant states that the realization of rights requires the necessity for resource mobilization for ESR to be fulfilled, it does not exempt less developed states from their ESR obligations. Instead, it recognizes that developed or wealthier states will make more progress on the realization of ESR than developing states with less resources.⁸⁴ Developing nations, however, have the same obligations as developed ones to fulfill ESR, according to their own economic performances.⁸⁵

To further interpret ICESCR art. 2(1), the CESCR explains in General Comment No. 3 the nature of the norm of “progressive realization.” According to the Committee, art. 2(1) establishes the duty of all states, notwithstanding their economic wealth to take both “progressive” steps as well as “immediate” measures to fulfill ESR.

Similarly, nonretrogression is also an obligation under the duty to progressively realize ESR. When a state takes a “deliberate measure” or step that directly or indirectly decreases the people’s enjoyment of their rights, it is considered to be a *prima facie* violation of the covenant. The Committee states that to not be in violation of the duty of nonretrogression (and to progressively realize rights), a state would need to adopt a retrogressive measure that “would need to be justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.”⁸⁶ The prohibition (and illegality) of retrogressive steps applies “whether or not the regression was an intended and wanted consequence of the measure.”⁸⁷

The OHCHR “Economic, Social and Cultural Rights Economic Social and Cultural Rights Handbook for National Human Rights Institutions” (2005) gives an example of a deliberate

⁸⁴ S. Leckie, *Another Step Towards Indivisibility: Identifying the Key Features of Violations of Economic, Social, and Cultural Rights*, 20 HUMAN RIGHTS QUARTERLY 1, 81–124 (1998).

⁸⁵ Development economists have established measuring mechanisms that factor the GDP per capita into the spending on rights. *See supra* note 31.

⁸⁶ CESR General Comment No. 14, *supra* note 74, at para. 32

⁸⁷ OHCHR Economic, Social and Cultural Rights Economic Social and Cultural Rights, *Handbook for National Human Rights Institutions* 60 (2005), available at <http://www.ohchr.org/Documents/Publications/training12en.pdf> (last accessed Aug.20, 2017).

retrogressive step that could be a violation of the duty of progressive realization as “a new law that makes primary education voluntary rather than compulsory, ... or cuts public expenditure on maternal health care, resulting in considerable increases in maternal and child mortality.”⁸⁸ The norm of nonretrogression is specifically relevant to evaluating the Egyptian state “austerity” policies reducing public spending, as they were identified as a primary economic solution for revenue raising for the purpose of fiscal consolidation.

c) The principle of nondiscrimination and ESR

The duty to take immediate steps to realize ESR includes the obligation to uphold the principles of “nondiscrimination.” The state duty of upholding the principle of nondiscrimination is explained in the Covenant, as the state’s duty to guarantee that the rights therein are exercised without discrimination based on “race, color, sex, language, religion, political opinion, national or social origins, property, birth or other status,”⁸⁹ and that they are enjoyed equally among men and women. Nondiscrimination is also an obligation towards which all states, irrespective of economic status, must “take steps”⁹⁰ to realize in an “immediate”⁹¹ manner.

Furthermore, some courts also have invoked the principle of nondiscrimination as a core obligation under ESR to overturn some state policy choices that resulted in (along with a combination of factors) a particular social group becoming disproportionately affected.⁹²

d) The principle of “minimum core obligations”

⁸⁸ *Id.*

⁸⁹ See ICESCR, art. 2(2).

⁹⁰ This is interlinked to the states duty under ICESCR art. 2(1), mainly to the previous point made about the obligation to progressively realize is not this of a stalled public effort, but one that necessitates immediate steps, such as non-discrimination, without which a state is in violation of its obligations.

⁹¹ See ICESCR, art. 2(1).

⁹² For more example on the justifiability of ESR, and the use of courts of the above explained legal norms, see International Council of Jurists, “Courts and the Legal Enforcement of Economic, Social and Cultural Rights: Comparative Experiences of Justiciability,” *Human Rights and Rule of Law Series No. 2*, 57–59 (2008), available at <http://www.icj.org/dwn/database/EScR.pdf> (last accessed Apr.15,2017). See also M. Langford, *Domestic Adjudication and Economic, Social and Cultural Rights: A Socio-legal Review*, 6 INT’L J. HUMAN RIGHTS 11, 91–122 (2009).

Another widely accepted principle set by the Committee⁹³ is the duty of the state to ensure the “minimum core” satisfaction of the enumerated rights under the Covenant. The committee views that the duty here is for states:

to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, *prima facie*, failing to discharge its obligations under the Covenant.

The Committee further stresses the essentiality of the minimum core obligation to the extent of stating that without this obligation the Covenant would be “largely deprived of its *raison d’être*.”⁹⁴ Scholars such as Asbjorn Eide, and Bart-Anders Andreassen have both, since the early days of the Covenant, established that the minimum core obligations entail that every right under the covenant⁹⁵ gives rise to “an absolute minimum entitlement.”⁹⁶ If not fulfilled, then the state is in violation of its international legal obligations,⁹⁷ regardless of economic wealth status.⁹⁸ This principle should be read in light of the preceding ones. A minimum core satisfaction does not intend the provision of only the minimal threshold of rights, but at the very least, without this provision, the country is in violation of its international legal obligations under international

⁹³ Philip Alston, *Out of the Abyss: The Challenges Confronting the New U.N. Committee on Economic, Social and Cultural Rights*, 9 HUMAN RIGHTS QUARTERLY 3, 353 (1987).

⁹⁴ CESCR General Comment No. 3, *Supra* note 78 para. 10.

⁹⁵ A number of UN mechanisms have defined the content of “minimum core” for specific rights. *See e.g.*, Comm. on Economic, Social and Cultural Rights, General Comment No. 12: The Right to Adequate Food, U.N. DOC. E/c.12/1999/5 (1999); Comm. on Economic, Social and Cultural Rights, General Comment No. 13: The Right to Education, U.N. DOC E/c.12/1999/10 (1999); *see supra* note 104.

⁹⁶ Asbjorn Eide, *Realization of Social and Economic Rights and the Minimum Threshold Approach*, 10 HUMAN RIGHTS L.J. 1–2, 35–51 (1989); Bart-Anders Andreassen et al., *Assessing Human Rights Performance in Developing Countries: The Case for a Minimal Threshold Approach to the Economic and Social Rights*, YEARBOOK OF HUMAN RIGHTS IN DEVELOPING COUNTRIES 341 (1987/1988).

⁹⁷ Philip Alston, *supra* note 121. Alston elaborates on the idea of the entitlement of the state obligation to provide a minimum threshold to ESR. He finds that without an entitlement, the use of the legal term “right” would be normatively meaningless. “There would be no justification for elevating a ‘claim’ to the status of a right (with all the connotations that concept is generally assumed to have) if its normative content could be so indeterminate as to allow for the possibility that the right holders possess no particular entitlement to anything,” *supra* note 121, at 352–353.

⁹⁸ CESR, General Comment No 3, *supra* note 78, at para.10.

law.⁹⁹ The progressive realization of the right towards its whole fulfillment is the object and the purpose of the Covenant.

C. Critique of Human Rights Mechanisms Critique of the Bretton Woods Institutions Ex Post Market Friendly Safeguards to ESR

1. Special procedures mandate holders of the UNHCR critique the WB's environmental and social safeguards framework

Special procedures mandate holders of the UNHCR,¹⁰⁰ coordinated by the Special Rapporteur on extreme poverty and human rights, issued a report on the human rights policy of the WB in the event of the WB safeguards review launched in 2012. Adopted as Human Rights Council resolution 26/3ad,¹⁰¹ the report critiques the “Environmental and Social Framework” (ESF) issued in June 2014 and adapted a few months later.¹⁰²

The critiques to the ESF, previously known as the Environmental and Social Safeguards, are both to the scope they cover and to the content. The ESF does not apply to all the WB's financing modalities. Most relevant to the WB programs in Egypt, the framework only applies to investment project financing (IPF) and excludes both the WB's development policy loans,¹⁰³ later known as the development policy financing and as well as the Program-for-Results

⁹⁹ Although courts have used the principle of nondiscrimination to prove the justifiability of ESR, the minimum core norm is harder to gain large-scale consent on, especially in the “content” of what a minimum core may look like, not as much as in the “principle” of the essentiality of a minimum entitlement. The Committee's inconsistent application of the minimum core principle is discussed in K. Young, *supra* note 11.

¹⁰⁰ Full list of experts contributing to the resolution includes sixteen special rapporteurs, size working groups, and five independent experts available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15429&LangID=E> (last accessed Apr.15, 2017).

¹⁰¹ Report was submitted to the General Assembly available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/274#sthash.oPz92I.dpuf (last accessed Aug.20,2017).

¹⁰² The final report was adopted with little to no amendments considering the experts critique. World Bank Safeguards Review, “Human Rights Free Zone.” The Bretton Woods Project (Feb 2016), available at <http://www.brettonwoodsproject.org/2016/02/world-bank-lack-of-human-rights-problematic-for-safeguards/> (last accessed Sep.23, 2017).

¹⁰³ Egypt currently has a number of DPL agreement with the WB since 2011, the most recent of which are the ones mentioned above relating to the fiscal consolidation loans.

Financing (PforR).¹⁰⁴ This forms a structural problem for countries in transition including Egypt which is a recipient of the DPF¹⁰⁵, as well as the Program for Results PforR vehicle.¹⁰⁶ By only applying to IPF lending programs, the WB safeguards excluded 60% of its operations in 2010, and IPF formed 40% of its total lending in 2010.¹⁰⁷

On the content level, the resolution criticizes the *ex post* consideration of ESR. When there is a potential of ESR violation, the framework does not disqualify a program implementation, but rather requires a “mitigation” effort to those vulnerable to economic and social shocks. It also gives the WB and the borrower governments the discretion to decide the mitigation programs via technical assistance. In the case of Egypt, this includes the development policy loan (DPL) financing of the “social safety net” to the fiscal consolidation of the post-2011 program: Takaful and Karama.

This is problematic for two reasons. First, by allowing the WB and the governments to adopt policies or legislations that initiate ESR risks, it is in contrast with state duties to “take steps” to better the realization of ESR.¹⁰⁸ Second, the “safety nets” often invoke a *prima facie* violation of the duty to realize ESR on a number of levels and a violation in practice. This involves violations of the principles of universality and nondiscrimination, as further described in the following chapter. More immediately, the next section will outline the human rights community's assessments of social safety net programs applied to mitigate the risk of economic social shocks, namely the conditional cash transfer (CCT) programs applied in Egypt as well as a number of Latin American countries during their economic structural reform processes.

¹⁰⁴ Letter of special rapporteurs and special mandate holders to world bank director available at <http://www.ohchr.org/Documents/Issues/EPoverty/WorldBank.pdf>

¹⁰⁵ DPL or DPF loan policy areas in Egypt have been explained briefly earlier in the chapter and will be explained in more details in the following chapter.

¹⁰⁶ PforR is used for reform in the social and financial sectors, as well as governance operations. More details on the Program for Results Financing is available at <http://www.worldbank.org/en/programs/program-for-results-financing>

¹⁰⁷ VINCE MCELHINNY, TRENDS IN WORLD BANK LENDING FORECAST FURTHER DECLINE IN SAFEGUARD COVERAGE AND SIGNS OF A RETURN TO HIGHER RISK AND HIGHER REWARD LENDING 5 (2013), available at <http://www.bicusa.org/wp-content/uploads/2013/10/Trends-in-WB-Lending-SG-decline-info-brief.pdf> (last accessed Sep.23, 2017).

¹⁰⁸ OHCHR Comments on the draft Environmental and Social Framework 8, available at <http://www.ohchr.org/Documents/Issues/EPoverty/WorldBank.pdf> (last accessed Apr.15,2017).

2. Special Rapporteur on extreme poverty and human rights' assessment of conditional cash transfer programs and their adherence to "the right to social protection"

IMF and WB social safety net program means to mitigate the effects of dismantling the universal subsidies system with a targeted system to minimize spending for the purpose of fiscal consolidation, not just in principle, but also in practice, targeting what is at odds with basic human rights norms. The Special Rapporteur on extreme poverty and human rights conducted a 2008 report¹⁰⁹ on CCT programs as safety nets to thirty-one countries.¹¹⁰ The Special Rapporteur found that CCT programs in practice involve discrimination against the elderly, unequal access to women, and access to justice mechanisms for retribution of rights violations.¹¹¹

When analyzing the interplay of structures and power within the development field, a major finding is that there exists strong and prominent struggle within the human rights and development field once they *reproached* each other. We have seen how agents of the human rights field, the Special Rapporteurs, the NGOs, and the IGOs continue to criticize and battle the influence of neoliberal doxas of IFIs in an attempt to reform the rules of the new hybrid field space where development and human rights try to exist. In sum, the human rights agents trying to achieve a "human rights approach to development" are in fact struggling to mend the rules of the new field space of human development to operate with the neoliberal dispositions of free market supremacy and fit a new set of rules that would consider their orthodoxy and norms *ex ante* as opposed to *ex post*.

¹⁰⁹ MAGDALENA SEPULVEDA CARMONA, PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL, ECONOMIC, CULTURAL RIGHTING INCLUDING RIGHT TO DEVELOPMENT (Mar. 2009), available at <http://www.ohchr.org/EN/Issues/Poverty/Pages/MSepulveda.aspx>(last accessed Mar.13, 2017).

¹¹⁰ List of countries include Albania, Algeria, Argentina, Armenia, Brazil, Chile, Costa Rica, Cyprus, Ecuador, Finland, Greece, Guatemala and Annex, Japan, Korea, Mexico, Moldova, Morocco, Oman, Peru, Qatar, Romania, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, Uganda, Ukraine, Uruguay, Vietnam, and Zambia.

¹¹¹ CARMONA, *supra* note 137.

IV. Bretton Woods Policy in Egypt and the ESR Post-2011

After the waves of evolution of the ESR and development fields, looking at the struggles of power among the vanguards of both fields in principle, this contestation plays out in practice in the case study of Egypt, particularly post-2011. With the outbreak of the Egyptian revolution in 2011, the international agents of both ESR and classic “development” fields were confronted with the perpetual question of whether there could be a reconciliation between development and human rights. On the one hand, agents of the Egyptian human rights NGOs succeeded to get those agents of ESR on the international institutional level to issue recommendations for developments that are in line with the normative framework of international human rights law. On the other hand, the dominant players within the economic development side of the field continue to practice business as usual, putting the free market first and foremost as the road to development, and continuing with considerations for the social as safeguards *ex post*.

This chapter outlines how the interplay of power practice in the ESR and development field reveals itself in Egypt’s transitional movement from 2011 until today. It studies how ESR demands in Egypt were subsumed by Bretton Woods Institutions’ roles in Egypt through an empirical study of the development institutions in Egypt. It concludes that while neoliberalism continues to be the underling foundation for the economic development vision of Egypt, the government continues violate its duties to respect, protect, and fulfill the ESR of its citizens.

F. Background on the Bretton Woods Role in Egypt Post-2011

The more the IMF has failed to prevent instability and crises, the more it has become involved in crisis management and lending. Indeed, with the increased frequency of systemic financial shocks, crisis intervention and lending had become the primary activity of the Fund so much so that at times of calm when drawing on the IMF ceased during the great global bubble of 2003–2008, its own financial viability came in to question. After every major financial crisis the IMF has sought of a new role and this has almost always been constructed in terms of

expansion of its emergency lending instruments and capacity. The current crisis is no exception- it has given rise ... tripling of IMF resources.¹¹²

With those words Yilmaz Akyüz introduced his research paper titled “Why the IMF and the International Monetary System Need More Than Cosmetic Reform.” While the above quote refers to the 2008 financial crisis, it also applies to the recent involvement of IMF in Egypt and other countries in the Middle East. Since the toppling of Mubarak on February 11, 2011, and Ben Ali just a few days earlier, it only took three months to create a new lending agreement between the Bretton Woods Institutions, Egypt, and other Middle East and North African countries. In May 2011, the Arab Countries in Transition (ACT) entered into a new partnership with the G8, and ten international financial institutions known as the Deauville Partnership. The Deauville Partnership mission rests on two pillars: first, ensuring values of freedom and democracy, and second, providing technical and financial support to ACT to stabilize their economies, support private sector growth, and improve mutual market access opportunities.¹¹³

After four years of intermittent negotiations, the IMF and the Egyptian government sealed a 12 billion USD loan in an Extended Fund Facility (EFF) in return for a comprehensive economic reform program that is expected to aid Egypt’s post-2011 revolution economic crisis. The reforms are centered on a classic fiscal consolidation approach with the primary aim to reduce the public budget deficit (currently at 10% of GDP) through reduced public spending by reforming the public sector and increasing revenues.¹¹⁴ The IMF program is supported by a

¹¹² Yilmaz Akyüz, *Why the IMF and the International Monetary System Need More than Cosmetic Reform*, THE SOUTH CENTRE (2010), available at <http://dowbor.org/ar/rp32akyuzimfreform.pdf> (last visited Apr. 15, 2017). Akyüz can be characterized as one of the dissenting voices/agents within the economic development field. A strong Keynesian enthusiast and a proponent of BRICKS and the Global South movement, Akyüz is the chief economist at The South Center; an intergovernmental think tank that supports Global South diplomats negotiating a balanced power position in the international trade system.

¹¹³ The G8 Declaration on the Arab Spring, available at <http://www.cfr.org/egypt/g8-declaration-arab-spring-may-2011/p25131> (last accessed Feb. 10, 2017).

¹¹⁴ See 2014 ARTICLE IV CONSULTATION—STAFF REPORT; PRESS RELEASE AND STATEMENT BY THE EXECUTIVE DIRECTOR FOR THE ARAB REPUBLIC OF EGYPT. The International Monetary Fund, available at <http://www.imf.org/external/pubs/ft/scr/2015/cr1533.pdf> (last accessed Sep.23, 2017); Arab Republic of Egypt: Request for Extended Arrangement Under the Extended Fund Facility-Press Release; Staff Report; and Statement by the Executive Director for the Arab Republic of Egypt, the International Monetary Fund, available at

number of DPL agreements between the WB and the Egyptian government.¹¹⁵ The reduction of public spending side of the reforms comprises a number of austerity-based measures, including reforming the role and size of the public sector,¹¹⁶ containing the wage bill,¹¹⁷ reforming and reducing spending on the subsidy system, initiating a program for energy subsidy reform,¹¹⁸ and encouraging private provision of public social services like health and education.¹¹⁹ The revenues raising side of the fiscal consolidation approach includes adopting a value-added tax

<http://www.imf.org/en/Publications/CR/Issues/2017/01/18/Arab-Republic-of-Egypt-Request-for-Extended-Arrangement-Under-the-Extended-Fund-Facility-44534> (last accessed Oct. 5,2017).

¹¹⁵ Egypt – First Fiscal Consolidation, Sustainable Energy, and Competitiveness Programmatic Development Policy Financing (Dec. 17, 2015), available at <http://www.worldbank.org/en/news/loans-credits/2015/12/17/egypt-first-fiscal-consolidation-sustainable-energy-competitiveness-programmatic-development-policy-financing> (last accessed Oct. 5,2017);Egypt - Second Fiscal Consolidation, Sustainable Energy, and Competitiveness Programmatic Development Policy Financing (Dec. 20, 2016), available at <http://www.worldbank.org/en/news/loans-credits/2016/12/20/egypt-second-fiscal-consolidation-sustainable-energy-and-competitiveness-programmatic-development-policy-financing>(last accessed Oct. 5,2017).

¹¹⁶ Arab Republic of Egypt: Request for Extended Arrangement Under the Extended Fund Facility-Press Release; Staff Report; and Statement by the Executive Director for the Arab Republic of Egypt. Pge 12 para 25, available at <http://www.imf.org/en/Publications/CR/Issues/2017/01/18/Arab-Republic-of-Egypt-Request-for-Extended-Arrangement-Under-the-Extended-Fund-Facility-44534> (last accessed Oct. 5, 2017).

¹¹⁷ 2014 ARTICLE IV CONSULTATION—STAFF REPORT; PRESS RELEASE AND STATEMENT BY THE EXECUTIVE DIRECTOR FOR THE ARAB REPUBLIC OF EGYPT. The International Monetary Fund. Pge 18, para 31, available at <http://www.imf.org/external/pubs/ft/scr/2015/cr1533.pdf> (last accessed Oct. 5,2017); Arab Republic of Egypt : Request for Extended Arrangement Under the Extended Fund Facility-Press Release; Staff Report; and Statement by the Executive Director for the Arab Republic of Egypt. Pge 13, para 25, available at <http://www.imf.org/en/Publications/CR/Issues/2017/01/18/Arab-Republic-of-Egypt-Request-for-Extended-Arrangement-Under-the-Extended-Fund-Facility-44534> (last accessed Oct. 5,2017).

¹¹⁸ *Id.* at 18, para 31; 8, para 23.

¹¹⁹ *See* Page 16 Para 26 on Promoting Social Investment to cover for underspending on education. Arab Republic of Egypt: Request for Extended Arrangement Under the Extended Fund Facility, IMF, available at <http://www.imf.org/external/pubs/ft/scr/2015/cr1533.pdf> (last accessed Apt. 15, 2017).

(VAT) system¹²⁰ and the promotion of foreign direct investment and strengthening global competitiveness through the privatization of the Egyptian energy sector.¹²¹

The above reforms were adopted after a remarkably unsteady negotiations process that started in 2012.¹²² Critical masses have mobilized against associated economic reforms proposed by the loan, including social movements, the human rights NGO community,¹²³ political parties,¹²⁴ labor unions,¹²⁵ and professional syndicates.¹²⁶ They all opposed the Bretton Woods-led reforms and financial assistance/loans for alleged violations of the state's duties and adverse effects on the citizens' ESR.¹²⁷ The international human rights community, namely the UN CESCR in 2013, issued a number of recommendations¹²⁸ to the Egyptian government to avoid the adverse effects that the then-proposed economic reforms would have on the status of ESR.

¹²⁰ See Arab Republic of Egypt : Request for Extended Arrangement Under the Extended Fund Facility- Press Release; Staff Report; and Statement by the Executive Director for the Arab Republic of Egypt Pge 6 Para 5. available at, <http://www.imf.org/en/Publications/CR/Issues/2017/01/18/Arab-Republic-of-Egypt-Request-for-Extended-Arrangement-Under-the-Extended-Fund-Facility-44534> (last accessed Oct. 5, 2017).

2014 ARTICLE IV CONSULTATION—STAFF REPORT; PRESS RELEASE AND STATEMENT BY THE EXECUTIVE DIRECTOR FOR THE ARAB REPUBLIC OF EGYPT. The International Monetary Fund.12 Para 10 available at <http://www.imf.org/external/pubs/ft/scr/2015/cr1533.pdf> (last accessed Sep. 23, 2017).

¹²¹ *Id.*, at 5, para 5; 10, para 17.

¹²² IMF Loan Branded As Odious. *Bretton Woods Project*, available at <http://www.brettonwoodsproject.org/2012/02/art-569579/> (last accessed Oct. 5, 2017).

¹²³ Drop Egypt Debt Campaign Statement on the Resumption of Negotiations with the IMF, available at <http://ecesr.org/en/2013/04/03/drop-egypts-debt-campaign-statement-on-the-resumption-of-negotiations-with-the-imf/> (last accessed Aug 8, 2017).

¹²⁴ See <http://www.dailynewsegypt.com/2016/08/14/534167/>

¹²⁵ *Muwazafu al-Dara'eib Yuqadimun Mu'tamaran 'Hawl Masawei' Tatbiq Qanun al-Qinah al-Mudafah*. available at <http://www.elfagr.org/2259040> (last accessed Aug 8, 2017).

¹²⁶ Lawyers Syndicates Protest Against VAT law, available at <http://www.dailynewsegypt.com/2016/10/01/lawyers-syndicate-protests-vat/> (last accessed Aug 8, 2017).

¹²⁷ See Drop Egypt Debt Campaign activities, available at ecesr.org/en/2013/04/03/drop-egypts-debt-campaign-statement-on-the-resumption-of-negotiations-with-the-imf/ (last accessed Aug 8, 2017).

¹²⁸ See <http://www.refworld.org/publisher,CESCR,,EGY,52d5399a4,0.html>

Listening to some of the recommendations, the Egyptian government adopted a WB-financed social safety net program¹²⁹ to mitigate the effects of austerity measures. The overall approach of the reforms, however, remains focused on fiscal consolidation and largely centered on the “economic led” development or crisis-solving techniques. The safety nets remain inadequate from a human rights perspective.

Public interest lawyers also remain displeased with the Bretton Woods reforms in Egypt for allegedly not following the proper rule of law. Those governance gaps are a main concern for the post-Washington Consensus development model that focuses on institutional building. Lawyers filed lawsuits¹³⁰ against the Egyptian government, disputing the institutional governance gaps attached to the IMF- and WB-backed reforms, including allegations of exacerbating corruption by advising the creation of a dispute settlement mechanism¹³¹ granting immunity to investors charged with corruption in the Mubarak era, opacity and lack of public participation to reform process, and supporting a government in which the military plays an increasing role in the economy without checks and balances.¹³² Those governance gaps stir public contestations that continue until today.¹³³

G. Governance, Corruption, and Maximum Available Resources and Investment Dispute Settlement

In the 2013 concluding remarks to Egypt’s review, the Committee expressed its concern over state corruption. It criticized measures taken to combat it as “inadequate” and negatively affecting the duty to mobilize available resources to the maximum extent according to Art 2 (1)

¹²⁹ Strengthening Social Safety Net Project Loan Agreement (Apr. 17, 2014), available at <http://documents.worldbank.org/curated/en/730551468234844184/pdf/RAD1427656777.pdf> ((last accessed Sep. 23, 2017).

¹³⁰ See ecsr.org/en/2012/08/29/imf-lawsuit/

¹³¹ 2014 ARTICLE IV CONSULTATION—STAFF REPORT; PRESS RELEASE AND STATEMENT BY THE EXECUTIVE DIRECTOR FOR THE ARAB REPUBLIC OF EGYPT. The International Monetary Fund. Page 15, para 24, available at <http://www.imf.org/external/pubs/ft/scr/2015/cr1533.pdf> (last accessed Oct.5, 2017).

¹³² The Egyptian military is exempt from the VAT Law. see *Approval of the VAT is a historic achievement: IMF*, available at <http://www.dailynewsegypt.com/2016/08/30/vat-implementation-egypt-means/> (last accessed Sep. 23, 2017).

¹³³ See www.madamasr.com/news/economy/political-parties-public-figures-urge-sisi-suspend-imf-talks

of the Covenant. It recommended that the state take measures to “strengthen its national legislation to combat corruption at national, governorate and municipal levels and to ensure that the legislation is effectively implemented.”¹³⁴ It further urged the state “to ensure commensurate sanctions, including criminal sanctions, for perpetrators of corruption.”¹³⁵

Instead of ensuring sanctions against perpetrators of corruption, the WB has proposed and congratulated the Egyptian government on amending its national laws according to the economic reform plan currently in place associated with the 12 billion USD loan to limit the administrative court involvement in issues of investment disputes. Investment disputes in the Egyptian Administrative Courts have been associated with charges of corrupt acquisition of state-owned enterprises via privatization since the first wave of structural adjustment programs in the 1990s. The number of disputes increased in the last few years of the Mubarak rule, when a number of members of his cabinet ministers were charged with embezzling state resources.¹³⁶ The Bretton Woods Institutions congratulated reforms, including amendments of the investment legal framework, mainly law 32 year 2014, which limits court access to dispute state–investor agreements to the parties of the agreements,¹³⁷ thereby obstructing a major channel for public oversight. Law 32 year 2014 has stirred a wave of dissent among public interest lawyers and the ESR community, and it is currently in the constitutional court for review.¹³⁸

¹³⁴ UN Committee on Economic, Social and Cultural Rights, *Concluding Observations on the Combined Second to Fourth Periodic Reports of Egypt*, para 7, U.N. Doc. E/C.12/EGY/CO/2-4 (2013), available at <http://www.refworld.org/docid/52d5399a4.html> (last accessed Jul. 9, 2017).

¹³⁵ *Id.*, at 7 para 7

¹³⁶ Estimates are of 52 billion EGP lost due to impunity laws reconciling with investors. See State Council Report on “Kuwait Portal Land Case,” al-Ganzouri and Privatization” The Egyptian Center for Economic and Social Rights. 7 Dec 2011. Available in Arabic at <http://ecesr.com/report/4929> (last accessed Apr.15, 2017); Omar Affandi Court Decision. Administrative Court Case 11492 year 65. Available in Arabic at <http://ecesr.com/report/4352> (last accessed Apr.15); Ghazl Shebin Court Decision. Available in Arabic at <http://ecesr.com/report/23905> last accessed Apr.15; ECESR, *Shebein Weaving Company Court Ruling* Available in Arabic at <http://ecesr.com/report/23905> (last accessed Apr.15) 2011/09/21 in the case no. 34517 for year 65. pp. 2–3; Omar Affandi Court Decision. Administrative Court Case 11492 year 65. Available in Arabic at <http://ecesr.com/report/4352> last accessed Apr.15; Ghazl Shebin Court Decision. ECESR, *Shebein Weaving Company Court Ruling*, 2011/09/21 in the case no. 34517 for year 65. pp. 2–3.

¹³⁷ Heba Hazzaa & Silke Noa Kumpf, *Egypt's Ban on Public Interest Litigation in Government Contracts: A Case Study of 'Judicial Chill'*, 51 STAN.J.INT'L L. 1–25 (2015) available at <https://ssrn.com/abstract=2578819> (last accessed Dec.5, 2017).

¹³⁸ See Press Release, Egyptian Center for Economic and Social Rights (ECESR), ECESR Challenges Constitutionality of Corrupt Contracts Law (Jul. 8, 2014), available at <http://eccsr.org/cn/?p=421976> (last accessed Apr. 15, 2017).

H. The Right to Work: The New Civil Service Law, Principles of Nondiscrimination, and Nonretrogression

The Committee found the Egyptian government to be in violation of the duty of nondiscrimination regarding the right to work. It expressed concerns with what it identified as a “serious widespread discrimination against women, particularly with regard to their low representation in the workforce, [and] disadvantageous wide wage gap.”¹³⁹ It recommended that the government “take steps to enhance the participation of women in the labor force... ensur[ing] adequate legislation to guarantee ...fair and equal remuneration for women that is in compliance with the Covenant.”¹⁴⁰ The Committee even went a step further to urge the government to “adopt comprehensive legislation on non-discrimination to eliminate formal and substantive discrimination... to ensure that its laws effectively prohibit and provide sanctions for discrimination in all fields of economic, social and cultural rights, in line with the Covenant provisions,” thus referring the state to the Committee’s General Comment No. 20 (2009): Nondiscrimination in Economic, Social, and Cultural Rights.

The fiscal consolidation program agreement between the IMF and the WB advised and applauded the Egyptian government for taking steps that are directly opposite to the above recommendations by advising the necessity to control the wage bill.¹⁴¹ Through adopting a new labor law, the Egyptian state regressed in its provision of proper work conditions, particularly with regard to wage discrimination based on sex and wage provision of a minimum essential level of dignified life.

¹³⁹ See *supra* note 167.

¹⁴⁰ *Id.*

¹⁴¹ 2014 ARTICLE IV CONSULTATION—STAFF REPORT; PRESS RELEASE AND STATEMENT BY THE EXECUTIVE DIRECTOR FOR THE ARAB REPUBLIC OF EGYPT. The International Monetary Fund. Pge 18, para 31, available at <http://www.imf.org/external/pubs/ft/scr/2015/cr1533.pdf> (last accessed Oct. 5, 2017); Arab Republic of Egypt: Request for Extended Arrangement Under the Extended Fund Facility-Press Release; Staff Report; and Statement by the Executive Director for the Arab Republic of Egypt. Pge 13, para 25 available at <http://www.imf.org/en/Publications/CR/Issues/2017/01/18/Arab-Republic-of-Egypt-Request-for-Extended-Arrangement-Under-the-Extended-Fund-Facility-44534> (last accessed Oct. 5, 2017).

Law 18 of 2015¹⁴² was enacted by Presidential Decree in 2015 and, after much controversy, approved by parliament in August 2016. Egypt's public service employs 6 million workers; according to the government, only 3.5 million are needed. The law grants the state the power to terminate any employee's contract within a six-month probation period, with no more than a "notice" if determined unfit. After six months, an employee may be relocated, subjected to a salary reduction of 50%, or terminated after two consecutive weak performance reviews. This IMF-backed¹⁴³ downsizing puts millions of state workers at risk of mass layoffs and disproportionately disadvantages women for being forced to compete in an discriminatory private market, as well be explained below. It hence contradicts the Committee's recommendations that the "State party take steps to enhance the participation of women in the labor force...and ensure adequate legislation to guarantee employment conditions and fair and equal remuneration for women that is in compliance with the Covenant."¹⁴⁴

Nevertheless, with the new civil service law, women will be forced to compete in a discriminatory, unregulated private sector where they earn 35% to 40% less than their male counterparts,¹⁴⁵ compared to only 2% less in the public sector. The government has failed, therefore, to honor its obligation of conduct while following the IMF recommendation to shrink the public sector and control the wage bill, without ensuring that adequate steps are taken to illuminate discrimination. The wage bill also contradicts the recommendation of the Committee to adopt an employment legislation to increase employment. While there are sporadic efforts made across different executive offices of the government, the civil service law has a strong tendency to cause mass layoffs, which is strengthened by its legal nature, while executive initiatives remain weak. No legislation has been adopted, and the law itself does not include

¹⁴² Ayman Nour, *Egypt Fighting Corruption: A New Law on Civil Service* Egypt Fighting Corruption: A New Law on Civil Service, AL TAMIMI & COMPANY (2015), available at <http://www.tamimi.com/en/magazine/law-update/section-11/junejuly/egypt-fighting-corruption-a-new-law-on-civil-service.html> (last accessed Oct. 5, 2017).

¹⁴³ Arab Republic of Egypt: Staff Report for the 2014 Article IV Consultation, Arab Republic of Egypt: Staff Report for the 2014 Article IV Consultation (2015), <http://www.imf.org/external/pubs/cat/longres.aspx?sk=42692.0> (last accessed Aug. 8, 2017).

¹⁴⁴ UN Committee on Economic, Social and Cultural Rights, *Concluding observations on the combined second to fourth periodic reports of Egypt*, *supra* note 113, at para 9.

¹⁴⁵ Egypt's Private Sector: A Driving Force for Job Creation, World Bank (2014), available at <http://www.worldbank.org/en/news/feature/2014/09/18/egypts-private-sector-a-driving-force-for-job-creation> (last accessed Aug. 8, 2016).

clause that prevent mass layoffs from occurring. Several labor unionists and public interest lawyers, like Khaled Ali, and other workers' movements have spoken about this concern, while the state fails to defend it or take steps to meet its immediate obligations of conduct in that regard. Law 18 2015 thus violates the immediate obligation of conduct of the state to enact legislations or other forms of "steps" to end discrimination in the realization of ESR.

I. Economic Policy Resulting in the Rising Cost of Living and the AAAQ Criteria of the Duty to Take Steps Towards Realizing the Right to Food and the Right to Health

As part of the IMF loan agreement, the Central Bank finally responded to a long-demanded structural adjustment condition to liberalization of the currency exchange rate allowing it to fluctuate with market forces.¹⁴⁶ Resulting in the devaluation of the Egyptian Pound (EGP), the liberalization of the currency negatively affected the affordability and availability of basic economic goods and services, including food and medicine, and exacerbated inflation. Starting in March 2016¹⁴⁷ and again in November 2017, the ratio of the USD to EGP became 18:1. This section analyses the fiscal consolidation measures resulting in the rising cost of living, namely currency devaluation, subsidy dismantling, and wage depreciation, and measures their results against the AAAQ criteria of the duty to take steps towards realizing the rights to food and health.

Wage policy, coupled with the monetary policy, led to an overall decrease in the affordability of goods and services necessary to the realization of ESR. While the human rights community warned against the wage policy effects on the adequacy of standards of living, the Bretton Woods agreement with the Egyptian government goes directly against the recommendations on how the state should act to better comply with its ESR duties in that regard. In 2014, the Committee found that the wage policy in Egypt does not guarantee a decent standard of living on

¹⁴⁶ Arab Republic of Egypt: Staff Report for the 2014 Article IV Consultation, Arab Republic of Egypt: Staff Report for the 2014 Article IV Consultation (2015), available at <http://www.imf.org/external/pubs/cat/longres.aspx?sk=42692.0> (last accessed Aug. 8, 2016).

¹⁴⁷ Nikhil Lohade, *Bets on Egypt Currency Devaluation Rise*, THE WALL STREET JOURNAL (2016), available at <https://www.wsj.com/articles/bets-on-egypt-currency-devaluation-rise-1469462259> (last accessed Apr. 15, 2017).

two grounds: first, wage is not linked to inflation, and second, “minimum wage only applies to public sector workers (art. 7).”

The Committee recommended that the wage policy be amended to “provide all workers and their families with a decent standard of living, and strengthen its efforts towards the progressive increase of the minimum wage.”¹⁴⁸ Instead of tying minimum wage to inflation and applying it to all sectors, the government passed a retrogressive measure that decreases annual salary raises while inflation increases exponentially, leaving minimum wage untied to inflation. The reforms also do not address the scope of the minimum wage and leave it inapplicable to the private sector. The reforms applauded by the IMF also do not address the wage gender gap. The reforms to civil service law made in Law 18 of 2015 reduce annual salary raises in the public sector from 10% to 7%, representing a clear of retrogression on the realization of ESR. By contrast, the end of year inflation rate stood at 24.3% in December 2016, leaving the average Egyptian with less to spend as the cost of living spirals—a clear contradiction of the norms on affordability.

The right to food has been clearly affected by the fiscal consolidation reforms, both by the removal of universal food subsidies and by the overall increase in food prices. In December 2014, the Committee warned the Egyptian government about the increasing rates of food insecurity in the country, and asked the state to “expeditiously assess the human rights impact of the reduction in food subsidies and undertake immediate measures to address the retrogression” in the affordability of food. Nevertheless, the 2016 IMF reforms have further exacerbated this crisis and failed to respond to the human rights community’s requests to undergo a human rights assessment to the austerity measures’ impact on the right to food. For example, since the first wave of currency devaluation, food prices increased exponentially, food and drink prices increased by 20.1% in August 2016.¹⁴⁹ Detailed inflation rates of basic food products as set out by the Food and Agriculture Organization of the United Nations (FAO) are found to be alarming when vegetable prices increased by 42.6%, cereal prices by 30%, and meat and poultry prices by

¹⁴⁸ UN Committee on Economic, Social and Cultural Rights, *Concluding observations on the combined second to fourth periodic reports of Egypt*, *supra* note 113, at para 9.

¹⁴⁹ CAPMAS Monthly Inflation Report August 2016, available at https://www.alexbank.com/Cms_Data/Contents/AlexBank_En/Media/Publication/Weekly/waaen.pdf (last accessed Aug. 8, 2017).

9.5%.¹⁵⁰ According to the Central Agency for Mass Mobilization and Statistics' end of year reports, food and beverage prices were 29.3% higher in December 2016 than the year before.¹⁵¹ A number of basic food items have also faced availability crisis in Egypt during the last quarter of 2016, including baby formula, sugar, oil, and rice.¹⁵²

The right to health has equally been affected by the fiscal consolidation reforms. Currently, devaluation and inflation also affected the affordability and availability of medicine and caused the deterioration of the quality of health care services. In 2014, the Committee recommended that the state “increases public spending on health with a view to [increase] the provision of essential medicines,” including medicine to infectious diseases.¹⁵³ Nevertheless, the government failed to meet its constitutional commitment to increase spending on health, affecting the overall affordability of medicine. In addition, the fiscal consolidation reforms lead to the further deterioration in affordability and accessibility of essential medicines. The second quarter of 2016 witnessed a price hike in generic medicines, applied by an order of 20% by the Ministry of Health.¹⁵⁴ In the last quarter of 2016, the Ministry of Health approved even more drastic increases, amounting to 104.5% increase in the price of Ketosteril, a medication for the Hepatitis C epidemic.

As a result of increasing inflation and currency devaluation, a crisis in medicine availability¹⁵⁵ erupted when pharmaceuticals and importers had difficulties importing primary material used for the manufacturing of generic medicines domestically and imported medicines. Reports cite

¹⁵⁰GIEWS - Global Information and Early Warning System. FAO (November 2016), available at <http://www.fao.org/giews/countrybrief/country.jsp?code=EGY> (last accessed Aug. 8, 2017).

¹⁵¹ CAPMAS End of Year Statistics (December 2016), available at www.capmas.gov.eg/Pages/IndicatorsPage.aspx?page_id=6130&ind_id=2542 (last accessed Aug. 8, 2017).

¹⁵² Several news agencies have reported the manifestation of product services. See

¹⁵³ UN Committee on Economic, Social and Cultural Rights, *Concluding observations on the combined second to fourth periodic reports of Egypt*, *supra* note 113, Para 21

¹⁵⁴ Mohamed Ayyad, *Health Ministry Increases Prices of 3,000 Drugs*, DAILY NEWS EGYPT, Jan. 11, 2017, available at http://www.highbeam.com/doc/1G1-478022582.html?refid=easy_hf (last accessed Apr. 16, 2017).

¹⁵⁵ Luiz Sanchez. *In Search for Medication in Egypt*. MADE MASSR, Nov. 29, 2016, available at <https://www.madamasr.com/en/2016/11/29/feature/society/in-search-of-medication-in-egypt/> (last accessed Marc.13, 2017).

examples of the chronic shortage of chronic medications, including leukemia treatments¹⁵⁶ and basic medicine. In protest of medicine unavailability, several civil society and social movements launched a campaign named “Medicine is a Right” which the Pharmacists Syndicate supported in a statement.

The quality of health care has deteriorated overall as a cumulative effect of the lack of availability and price increase of medical supplies. Secretary General of the Doctors’ Syndicate, Mona Mina, made alarming public statements on the deterioration of practices in public health safety protocols; for example, cases were reported to the syndicate of public hospitals management instructions of the reuse of syringes to combat shortages.¹⁵⁷ Mina was subsequently summoned for investigation and accused of spreading false news—allegations that were later cleared.

The shortage in basic foods and services has opened the way for the Egyptian military to further expand its economic activities in producing and trading items effected by shortages, a major phenomenon that took place in Egypt’s transition path since 2013. This shows a failure of one of the major convergence techniques of the Bretton Woods Institutions’ attempt to incorporate “the social” into its economic policy, as one of the major resolutions of Washington Consensus was “good governance.” In the case of Egypt, the army is exempt from VAT;¹⁵⁸ monitoring its economic activities is not possible as it is classified a matter of national security. Its intervention to allegedly remedy the effects of the economic policy on the unavailability of basic economic and social goods and services presents a pattern of distorted governance that lacks basic checks and balances.

¹⁵⁶ Leena el Deib. *Shortage in Leukaemia Medicine Triggers Cyber-campaign, Authorities Boost Supplies.* DAILY NEWS EGYPT, Oct. 29, 2016, available at <http://www.dailynewsegypt.com/2016/10/25/shortage-leukaemia-medicine-triggers-cyber-campaign-authorities-boost-supplies/> (last accessed Mar.13, 2017).

¹⁵⁷ *Mona Mina Released on 1000 LE Bail.* MADE MASS, Dec. 3, 2016, available at <https://www.madamasr.com/en/2016/12/03/news/u/mona-mina-released-on-le1000-bail-after-questioning/> (last accessed Mar.13, 2017).

¹⁵⁸ Nicholas Mehling, *Approval of the VAT is a Historic Achievement*, IMF DAILY NEWS EGYPT (2016), <http://www.dailynewsegypt.com/2016/08/30/vat-implementation-egypt-means/> (last accessed Apr. 16, 2017).

In this situation, the misuse of power is left unchecked; while the army profits from basic goods, like syringes and baby formula (as well as other services like renting its facilities as recreational centers for the public for example), not paying is a case of wasting public resources that contradicts with the state's duty to mobilize maximum available resources for ESR. Here, the state is in violation of its duty of conduct. As previously stated, obligations of conduct are immediate obligations measured by the state's public efforts, including legislations as mentioned above. The fact that the army is exempt from VAT legislation all while its economic activities are in a continuous expending role in the civilian economy, while its budgets are secretive, is a clear example of the state's violation of the duty of conduct requiring the mobilization of the maximum available resources to ESR.

J. Subsidy Dismantling, Social Safety Nets, and Principles of Universality: The Provision on Minimum Core ESR, Nonretrogression and AAAQ on the Right to Social Protection in Egypt Post-2011

Prior to the current economic reforms, Egypt had a universal, but weak, social protection scheme that did not meet international human rights norms. The current reforms take Egypt further away from meeting those norms and duties by shifting towards a targeted system. In the Committee's latest review, human rights experts among the committee members and within civil society established that the state must address the "insufficiency of social assistance and support programs for socioeconomically disadvantaged individuals and families (art. 9)."¹⁵⁹ The Committee recommended that the state "take steps to adopt national legislation and establish an implementation strategy to ensure universal access to social security, providing for a minimum essential level of benefits to all individuals and families."¹⁶⁰ Nevertheless, IMF and WB agreements move away from the recommended reforms, replacing a universal social protection scheme with a targeted one.

¹⁵⁹ UN Committee on Economic, Social and Cultural Rights, *Concluding observations on the combined second to fourth periodic reports of Egypt*, *supra* note 113, paras. 21 & 14.

¹⁶⁰ *Id.*

The shift towards targeted social protection system is problematic on several levels. First, the overall efficacy of the program in contributing to the state duty to take steps towards the realization of ESR according to the AAAQ criteria is questionable. Second, the targeted program's coverage and the state's commitment to its budget from its overall budget expenditure raise concerns of retrogression in the realization of ESR. The WB technical assistance program to the government of Egypt supports two social safety net programs: Takaful and Karama. While both are built on a CCT system, the first targets poor families with children and the second targets the elderly and severely disabled living in poverty. Although the WB found that both programs have substantial risk to their success, their implementation has started without any human rights assessments taking place.¹⁶¹

Briefly, Takaful can be explained as a mechanized CCT system that targets the poorest households with children between the ages of five to eighteen enrolled in schools. The CCT is transferable via smart card to families who prove child enrolment at schools to a maximum of support for three children per household. This is problematic as it leaves younger children and families with more than three kids without any support or access to social security, as well as households who have more children in that age group. For neutrality purposes, according to the Ministry of Social Solidarity (MOSS), a third party determines program eligibility.¹⁶² However, it is unclear what the selection criteria of eligibility are, or what "poor and vulnerable" translates to in terms of tangible criteria of eligible households. This explanation of poor and vulnerable is unclear, leaving room for inefficiency and corruption. One reference line to what the state considers as vulnerable households was set out by the World Food Programme and Information and Decision Support Center of the Egyptian Cabinet in 2013 to be 700EGP/month income,¹⁶³ a very low number that is 50% less than the minimum wage of EGP1200 which leaves the average household right on the poverty line. Furthermore, the coverage of Takaful program is limited to

¹⁶¹ Strengthening Social Safety Net Project (P145699), Strengthening Social Safety Net Project (P145699) (2016), available at <http://documents.worldbank.org/curated/en/983471468024247314/pdf/ISR-Disclosable-P145699-04-13-2016-1460576128040.pdf> (last accessed Aug. 11, 2017).

¹⁶² Safiaa Mounir, *Egypt launches new programs to address poverty*. AL-MONITOR (June 2015), <http://www.al-monitor.com/pulse/en/originals/2015/06/egypt-cairo-social-solidarity-dignity-poverty-assyut-sohag.html> (last accessed Apr. 16, 2017).

¹⁶³ 21 May 2013, Food Security And Nutritional Status In Egypt Worsening Amidst Economic Challenges | WFP | United Nations World Food Programme - Fighting Hunger Worldwide UN World Food Programme (2013), <https://www.wfp.org/node/443992> (last accessed Apr. 16, 2017).

only four of the poorest southern governorates in Egypt during its first phase, which is also the phase at which the universal subsidy system is to be completely phased out by 2019. The other CCT program, Karama also has limited coverage of five governorates in Upper Egypt, in addition to rural areas of Giza. Eligibility is also limited to those not covered by a pension plan, those who are 65 years of age and older, and those who are currently unemployed.

In detail, both CCT programs have a margin of error in the selection process used to determine eligibility of beneficiaries. The eligibility assessment system of the CCT has a very high margin of error, which makes the accessibility of the system inefficient by leaving those who deserve coverage unidentified, and also risks misallocation of resources which contradicts the obligation of mobilizing maximum available resources for the realization of ESR. Takaful and Karma use “proxy means test” to identify eligible household within selected districts.¹⁶⁴ According to the MOIC, the program has an exclusion error of up to 59%.¹⁶⁵ The exclusion error entails that a large percentage of those eligible for the program will not have access to it by default. It also suggests that the program is subject to manipulation and corruption, a major concern for CCTs, according to Magdalena Sepulveda Carmona.¹⁶⁶ This concern is of special relevance to Egypt bearing in mind its rating on the international corruption index, and its overall bureaucratic limitations, all of which allow for resource misuse, contrasting with the state duty to allocate the maximum available resources to ESR.

Regarding the government resource allocation for the programs, its funding commitments are unclear. According to the Ministry of International Cooperation (MOIC), the government intends to set aside 10% to 15% of the total savings made from the cuts on resources previously allocated towards the universal subsidy system towards social investments. This forms only a partial sum of the estimated cost of the programs¹⁶⁷. Where the rest of the financing will come

¹⁶⁴ Barnamej Karama wa Takaful, al-Aam'aa al-'Amma lil Este'lamat, <http://www.sis.gov.eg/section/809/7588?lang=ar> (last accessed Feb. 1, 2017).

¹⁶⁵ *Id.*

¹⁶⁶ CARMONA, *supra* note 137.

¹⁶⁷ PROJECT APPRAISAL DOCUMENT ON A PROPOSED LOAN IN THE AMOUNT OF US\$400 MILLION TO THE ARAB REPUBLIC OF EGYPT FOR A STRENGTHENING SOCIAL SAFETY NET PROJECT, PROJECT APPRAISAL (2015), available at <http://www.moic.gov.eg/MopRep/ProjFiles/PAD6110PAD0P14010Box385454B00OUO090.pdf> (last accessed Jan. 10, 2017).

from is unknown. If the government is to reduce its spending on social protection, this would be a clear measure of retrogression. The current design of the CCT leaves a number of the population that would originally be covered by the universal subsidy system uncovered. The programs aim to cover about 1.5 million households by 2019. This represents about 40% of the poor, meaning another three fifths will be left to face the impact of fiscal consolidation measures without any support.

The adaptability of targeted systems to the local culture is problematic. According to an evaluation of MOSS, a number of sample citizens reported not clearly understanding how the electronic card system transfer works. They also testified that the bureaucratic requirement that the state necessitate for the issuance of the CCT electronic cards were inaccessible, as well as the cash machines themselves. This is problematic as the program has already replaced the universal system and is currently in place. The bureaucratic nature of the administration necessary to prove eligibility for the program is also another example of how the nature of the programs is not adaptable to the bureaucratic nature of the Egyptian public institution. Participants reported travel burdens and inaccessibility challenges while trying to issues medical records (al-qomission al-tibi): an outdated medical records paper system. The appraisal exercise also showed how certain segments of the population, i.e. farmers, did not understand their exclusion from the social security safety net programs on the basis of agricultural land tenancy.

The affordability and adaptability of the CCT programs is in question when considering the registration system conflict with the work hours of its applicants. According to The Ministry of Social Solidarity (MOSS), participants in the program evaluation reported that registering for it caused them a deduction in their workday salary. Program registration procedures are not designed in line with the work schedule of the affected communities. As public institutions involved in administrating the programs operate on a schedule that conflicts with working hours, heads of affected households are forced to take unpaid leave to complete the procedures.

The above relates to the state's obligation of conduct, rather than obligation of result, which is an immediate obligation related to public policies that contributes to realizing ESR. This is in

contrast with the obligation of result, which can be realized over time. In this case, the state could easily avoid contradicting international norms if it were to respect the AAAQ criteria in the rights to social protection.

With the high inflation rates, the state has been unable to universally protect its citizens from the socioeconomic shocks, implicating the government in acting against the principle of providing minimum essential core of goods and services necessary for basic food and health needs. This can be seen through the protests that organized parents in search for baby formulas, by citizens of rural governorates breaking into MOSS locations to find basic food while the CCT did not cover them, and by statements of the different political parties against the Bretton Woods-related reforms—all of which has been mentioned in this research.

In sum, although Egypt is a developing country facing economic crisis, international human rights norms reaffirm that, like all other states, it has obligations of conduct that can be fulfilled immediately, regardless of the country's economic wealth. The Bretton Woods policies in Egypt leave the state in direct conflict with the human rights norms outlining its duties under the ICESCR. In particular, they contrast with the state's duty to take steps towards the progressive realization of ESR and mobilize the maximum resources available. The programs show evidence of gender discrimination and are a retrogressive step in the status of rights to adequate living, accessibility, affordability, adaptability, and quality of rights to health, food, and social protection—and the human rights norms that surround them.

V. Conclusion

Through adopting Bourdieu's theory on field practices, and applying it to analyze the interaction between the development and ESR fields, this paper concludes that there exists a structural bias that governs the interactions of ESR's in the field of development, which always ends up in favor of development priorities, on the expense of ESR, due to the strong doxa of the neoliberalism in practice. As there has been revisions to the classic development field, the interaction between both development and human rights fields end up in the creation of this biased off-shoot field of human development, where development agents create ex post market friendly measures to cushion the deprivations of ESR and to ease public discontent.

Analyzing the Bretton Woods approach to development in Egypt post-2011, the fiscal consolidation approach associated with the post-revolution financial and technical assistance was assessed through a human rights approach. Applying norms of state duties and obligations developed by the human rights community, the dismantling of the universal subsidy system and its replacement by CCT programs was found inadequate, inadaptable, and costly on the affordability criteria of the state's duty to take steps to realize ESR. This leads to the conclusion that this particular austerity measure leaves the state at risk of not fulfilling its duties towards the right to social security. The currency devaluation is another fiscal consolidation measure found to have adverse effects on the right to adequate standards of living, according to the AAAQ criteria applied to the right to food and the right to health. Coupled with the skyrocketing and unprecedented inflation rates for decades, the state has been unable to cushion its citizens universally and provide their socioeconomic rights. This implicates the Egyptian government in acting against the principle of providing minimum core of essential goods and services for health and food needs. Curbing the wage bill is another reform recommended by the IMF that leads to retrogressive workers' rights and retrogressive affordable standards of living, leaving women subject to gender discrimination in the wage market.

The IMF and WB programs in Egypt go against the abovementioned norms of the rights to work, health, food, and social protection. This is included in both elements of the fiscal consolidation

approach to development, the revenue raising activities, and the cuts in public spending via austerity. Curbing wage bills, dismantling universal subsidies, and the giving of fiscal policy advice of currency liberation contributed to Egypt's derailment from international recommendations and immediate obligations of conduct on the norms of universality of social protection, nonretrogression, and nondiscrimination, as well as the duty to mobilize maximum available resources.

According to this research, we find that, according to the vanguards of ESR legal norms, neoliberalism is doxa is a *prima facie* violation of states' to realize ESR. Nonintervention as a pillar of neoliberalism, unless for expanding the market and to restore its distortions, violate of the state's duty to respect, protect, and fulfill ESR through its obligations of conduct on affordability, mobilizing maximum available resources, and the continuous progressive realization of rights. Hence, until the human development field and its agents on the global level realize the fundamental odds between the object and the purpose of both fields, economic and social inclusion is but a verbatim according to a human rights standards and norms. Until the human rights advocates understand they continue to fall at the periphery of the "human development field," there will be no mainstream *ex ante* rights based assessment to global development policy, and development policy will continue to happen according to business as usual doxa of market fundamentalism.

Annex 1:

Venn diagram illustrating the development and human rights field(s)

