

CHAPTER FOUR

GOVERNANCE ISSUES AND INSTITUTIONAL ISSUES

1. Introduction and Methodology

1.1 Introduction

The concept of good governance has gone beyond the financial principles of responsible and transparent management. It now includes political rules and conditions that increase the chances for participative, competitive, and accountable exercise of power, as well as strengthen the rule of law. For some time in the 1980s and early 1990s, the convergence of countries toward good governance was expected to happen by the power of example (imitation), the power of embarrassment (emulation), and by technical capacity building (democracy promotion projects). Now it has become evident that the process of enhancing accountability is too subtle and requires a better understanding of the entire macroenvironment of economics, politics, and civil society in order to enhance the business environment and overall growth performance.¹ This chapter of the profile will keep to the understanding of good governance as explained above, particularly with respect to economic decision making. It is a process by which to establish rules that ensure responsible and competent exercise of power and management of economic resources in a fair and transparent manner. This process is interactive with political institutions and interpretations.

With respect to Arab countries, there has been a debate on how their Islamic-ness may constrain or promote "good" governance. Samuel Huntington, Lawrence Harrison, and David Landes have represented the pessimistic group. In contrast, the less pessimistic group² has claimed that Islam is no impediment to democracy and good governance in

Arab countries.³ The focus in this chapter highlights the need to understand the intimate processes of constitutional design, lawmaking for economic reform, law enforcement, and the expansion of political accountability mechanisms rather than religion per se.

Thus, in spite of the fact that the subject matter of this chapter is governance as it relates in particular to economic decision making, the following narrative will discuss in some length the broader governance framework represented by the constitutional system, as well as the legal foundations for the legislative, executive, and judicial authorities. This will permit the discussion on economic governance to be placed in the right overall context of political and institutional governance and will highlight the inseparable link between both spheres.

1.2 Why Governance Matters

This chapter is based on the assumption that good governance matters when considering the economic profile of a country. Good governance ultimately is about how a country is governed, how decisions are made, how policy is implemented, and the extent to which people feel that such policy is fair and therefore believe themselves compelled to abide by it. Good economic policy may not necessarily be a result of good governance as the latter is not a guarantee for good economic policy. Indeed, the world has seen several cases throughout the 1980s and 1990s—particularly in Asia and Latin America—which made economic progress in the absence of good governance.

However, it is argued here that good governance is a necessary component and prerequisite for long term, sustainable, and enduring economic success. On the one hand, good governance is what ensures that better policies and decisions are made, including those affecting the economy. On the other hand, the participation of various stakeholders in the decision making process is likely to allow the decisions and the policies adopted by government to be more comprehensively accepted, especially when these policies overhaul an existing (and malfunctioning) social contract. And finally, the observance of good governance in economic policymaking ensures an environment of accountability where those responsible for sound decision making are rewarded and those behind bad policies are checked, corrected, and/or replaced.

1.3 Methodology

The Kaufman et al dataset will be used (Section 2) to give a quantitative impression of where Egypt stands in relationship to other countries in the MENA region and outside it since 1996. Though not definitive and largely subjective, reflecting businessmen's perceptions, the Kaufman et al dataset encompasses a reasonably comprehensive definition of governance and a wide synthesis of other indicators and data sets (Annex B, Table B4.1). Its findings are therefore presented to provide an overview of how Egypt is generally perceived and ranked in comparison to other countries.⁴

The review of Egypt's ranking in the Kaufman et al dataset will be followed by a qualitative narration of the key aspects of governance in Egypt, especially those that pertain to economic decision making and the business environment (Sections 3-8). The focus will be on the constitutional framework, the political

system, the investment climate, and finally, civil society organizations. The narrative sections have relied primarily on primary sources such as laws, decrees, and decisions forming the overall legal and legislative framework.

2. Egypt's Rank over Time and Comparative Perspective

2.1 Over Time

Dividing the total number of countries in the Kaufmann dataset into three groups according to rank (lowest quarter, middle group, and uppermost quarter), we realize that Egypt has occupied the lowest quarter in the case of voice and accountability since 2000 with the lowest score being in 2002. Since 1998 Egypt has been in the middle group with respect to regulatory quality, rule of law, control of corruption, and government effectiveness; however, its rank deteriorated between 1996 and 2002. If one looks at the estimate scores, it appears that Egypt has consistently scored in the negative with respect to voice and accountability, political stability, and control of corruption (except for 1996 when the control of corruption score was 0.11). In contrast, Egypt's score on rule of law has constantly been positive, though never crossing the 0.25 mark. Government effectiveness and the regulatory framework left the negative range in 1998 and 2000 to return to it again in 2002 (see Annex B, Tables B4.1 and B4.2).

2.2 In Comparative Perspective

Egypt's scores since 1996 are compared to those of Morocco, Tunisia, Jordan, Mexico, and Poland. The reasons for the comparisons are as follows:

- Inside the MENA region-excluding the Gulf countries-Morocco, Tunisia, and Jordan have witnessed extensive

reform efforts especially on the economic front.

- Outside the MENA region, Mexico has had 70 years of one-party rule but managed to end such monopoly and join NAFTA, while facing a challenge to reduce poverty. Poland is another comparator that has a well-known history of vibrant political transition from communist rule and became a member of the EU in May 2004, while facing a challenge of modernizing its industries in a vastly agricultural economy.

How does Egypt compare to the selected MENA countries in terms of rank and estimate score? Morocco and Jordan occupy predominantly the middle group of percentile ranks, with no exception. Tunisia, like Egypt, has constantly occupied a rank in the lowest quarter with respect to voice and accountability. However, Tunisia occupied a higher rank than the other three countries (Egypt, Morocco, and Jordan) with respect to government effectiveness and control of corruption since 1998. As to the estimated scores of Morocco, Jordan, and Tunisia, all three have constantly maintained negative scores on voice and accountability. Morocco and Jordan returned to negative scores on political stability in 2002. On all other accounts, the three countries have maintained positive scores, albeit never crossing the 0.9 mark. However, Morocco and Tunisia have dropped to negative scores on control of corruption and the regulatory framework respectively in 2002 (Annex B, Table B4.2).

Comparing Egypt and Mexico, the latter outperformed Egypt on voice and accountability, on political stability and regulatory quality both in rank and score. Mexico took large strides in controlling corruption (both in terms of rank and score) while Egypt's rank

and score worsened. As to rule of law, Egypt outperforms Mexico in rank and score though both worsened their performance since 1996. As to Poland, which has been doing noticeably better than Mexico on all accounts except regulatory quality, the distance to Egypt widens even more. Poland tends to be in the uppermost quarter with the exception of rule of law and control of corruption where it still maintains a better position than Egypt.

While the above indicators capture how Egypt is generally perceived in opinion polls and surveys of businessmen, we now turn in the next sections to an analytical narrative of the institutional environment of economic reform. This should allow for an appreciation of the political and institutional context in which economic decisions are made, and to explain the perceptions captured in the aforementioned ranking.

3. Constitutional Framework

3.1 Background

Constitutions tend to be deceiving. In spite of the fact that most constitutions in the world include language that is similar in establishing and guaranteeing basic rights, including rights of freedom, belief, association, expression, ownership, and fair trial, the extent of variation in practice and frequent abuse of such rights illustrates the extent to which constitutional principles are not in themselves a sufficient guarantee. Judicial independence and the role of civil society in monitoring such practices are equally important in determining the final outcome. Hence, this chapter does not confine itself to Egypt's constitutional provisions, but rather addresses the context by which such provisions are complemented by laws and regulations and are put into practice.

Egypt's current constitution was issued in 1971, and has only been amended once since

that time, in 1980. In spite of the fact that it is not Egypt's first constitution, it was an early sign of the regime's determination to return to a state of normalcy and of institutional rule of law following the 1960s during which the legitimacy of the regime was derived from its revolutionary credentials, its achievements in liberating the nation from foreign occupation, and its record in achieving social transformation. The 1971 constitution, however, was careful in also preserving the status quo, and thus its provisions reflect mixed messages and ideologies as will be described below.

3.2 Basic Rights

The Egyptian Constitution embodies a number of fundamental principles. These include multiparty political system (Article 5), equality of citizens and non-discrimination (Article 40), personal freedom (Article 41), religious freedom (Article 46), freedom of expression (Article 47), press freedom (Article 48), freedom of association and of forming organizations, syndicates, and unions (Articles 54 to 56), and judicial independence (Articles 65, 165, 166, and 168). The Constitution embodies the separation of three powers: legislative, executive, and judicial. The political system is a presidential, highly centralized, one. Even the de jure autonomy of certain State organs remains de facto a legal construction that is often not substantively observed.

3.3 Economic Foundations

The Egyptian Constitution carries a significant bias toward socialist principles and central planning. Egypt is described as a socialist democratic country and its economic system as socialist democracy (Articles 1 and 4). The economy is to be organized in accordance with development plans that guarantee fairness of distribution, the elimination of unemployment, guaranteed minimum wages, and the tying of wages to production (Article 23).

More broadly, each citizen is deemed to have the right to participate in the country's national product (Article 2), based on the overall notion that the means of production are controlled-albeit not owned-by the People (Article 24).

Property is recognized as private, public, and cooperative (Article 29). Public property is the most prominent as the public sector is considered to "lead progress in all fields" (Article 30), whereas private ownership-although protected (Article 34)-is represented by "non-abusive" capital (Article 32). Only one specific restriction on private property is explicitly stated in the case of land ownership, although it is stated as being regulated by law without further specification in the Constitution (Article 37). General sequestration of property is forbidden (Article 36) although nationalization remains an option within the restrictions that it be regulated by law, for the public interest, and against fair compensation (Article 35).

The Constitution provides certain social and welfare guarantees. Employment, for example, is deemed "a right, a duty, and an honor guaranteed by the State" (Article 13). Employees are entitled to participate in the management and profits of projects in which they are employed (Article 26). Cultural, social, and health services are guaranteed by the State (Article 16), although not explicitly stated to be freely provided. Every citizen has the right to be educated (Article 18) and education, provided by State institutions, is free (Article 20).

3.4 Higher Constitutional Court

One of the most valuable additions made in the 1971 Constitution is the establishment of a Higher Constitutional Court (Articles 17-178). This is the court with the sole jurisdiction to review and decide upon the constitutionality of laws and decrees. It is also entit-

led-although not on an exclusive basis-to interpret laws. The introduction of the Higher Constitutional Court into the Egyptian legal system is one of the most remarkable and effective developments in upholding the spirit and letter of the Constitution. Since its establishment, this Court has acquired a reputation of independence and integrity which has continuously been reinforced by its readiness to declare laws unconstitutional even when they were strongly advocated and supported by the government. This has been the case both with laws pertaining to the overall political and civic governance of the country as well as more specifically in matters of economic legislation. Relevant examples include the decision by the Court to declare unconstitutional various parliamentary elections laws, Law No. 84 of 2002 regulating the establishment and operations of civil non-profit organizations, and Law No. 208 of 1994 concerning the imposition of an income tax on Egyptians working abroad.

3.5 Islamic Law and the Constitution

The whole basis and philosophy of the Egyptian legal system seemed to be heading toward a complete change as a result of the amendment of Article (2) of the Constitution. Previously, this Article stated that the principles of Islamic Shari'a (Islamic Jurisprudence) were a source of legislation. The 1980 amendment altered the wording of this Article so that principles of Islamic Shari'a became the principal source of legislation. The amendment-part of a limited referendum on a number of changes in the Constitution, including allowing the president of the Republic an unlimited number of renewals of presidency-is now considered to have been an articulation of the growing tendency to legitimize the State's policies and standing on Islamic terms, appease the growing Islamic movement, and lure mass support for a leadership whose popularity was severally

reduced. In the end, very little in substantive legislation was affected by it. It did, however, confuse the nature of Egyptian law and shed doubt on the legality and constitutionality of many laws and policies. Addressing this issue, the Higher Constitutional Court did not face the problem head on, but rather succeeded in limiting the effect of the amendment by asserting that it was a principle directed at the members of the legislature when considering and issuing new laws, but was not in itself a reason to strike out any laws on the basis of unconstitutionality.

3.6 The Debate on the Amendment of the Constitution

Provisions of any constitutional text are intended to be broad and on the whole unspecific in order to provide the overall basis for the legal system in the country and to establish the principal foundations for the organization of the state and its governance institutions. It is not surprising that the articles of the Egyptian constitution adopt the same approach in laying down the broad principles and avoiding details of legal treatment. However, in doing so, the Constitution adopts language that is often not merely broad but too unspecific, thus conveying contradictory messages. The Constitution undoubtedly is based on the premise that socialism and central planning are the basis of economic policy. But it expresses this position in language that is also careful in respecting private property, then again ensuring that it is referring to "non-abusive" capital. The same attitude may be identified with regard to other matters. Freedom of expression is protected, but only "within the limits of the law, of self criticism, and of constructive criticism" (Article 47). In the same manner, each citizen has a right to the national product of the nation but with respect to his/her work or "non-abusive ownership" (Article 25) and the State "guarantees the

conciliation of women's duties toward their families and their work in society, and their equality with men in political, social, cultural, and economic fields, without prejudice to the provisions of Islamic Shari'a" (Article 11).

It is this unspecific, non-committal language that has perhaps allowed the Egyptian constitution to survive with limited alteration for more than three decades. This is particularly remarkable in view of the fact that those three decades have witnessed a radical shift in economic policy, expressed in measures and laws that allowed the gradual opening up of the economy and even a certain amount of privatization. This transformation has not gone unchallenged. But in 1997, the Higher Constitutional Court ruled in favor of the Public Business Sector Law (more commonly known as the Privatization Law) No. 203 of 1991 on the basis that references to socialist principles in the Constitution are not in contradiction with a policy that aims at expanding the basis of asset ownership among the People.

No less controversial is Article (148), which grants the president of the Republic the power to declare a state of emergency, provided it is submitted to the parliament within fifteen days (Article 148). Although the principle of granting the president such powers in itself is widely accepted, the length and perpetuity of the state of emergency and the unspecific determination of its nature in the Constitution are often the subject of criticism as they render what should normally be an exceptional situation more of a general condition.

It is in this light that the debate concerning the amendment of the Constitution should be seen. A debate has been forming recently around the whole subject of constitutional review. Traditionally, opposition parties have

made the focus of such request Article (148) of the Constitution as discussed above, as well as Article (76), which provides for the selection of the president through a two-stage process and not through a directly contested election. More recently, the debate has included wider reforms for the political system.

In spite of the importance of the issues mentioned above, a more important debate needs to take place and to be a public and transparent one concerning not merely the political governance process but also the economic foundations of modern Egypt, the relation between State and religion, the role of women in society, and the level of welfare to be provided to people. This debate may have to draw attention to the need to differentiate between rights and their regulation, for as it stands, the Egyptian constitution tends to guarantee rights and regulate them in the same breath and thus has given much leeway for their over-regulation by the state.

4. The Law Making Process and the Quality of Regulatory Reform

4.1 Composition

The legislative authority in Egypt is represented by Parliament, itself consisting of two chambers: the People's Assembly and the Shura Council. The People's Assembly is the elected body of representatives-except ten members appointed by Presidential Decree-entrusted with issuing laws. The Shura Council is a consultative body, the members of which are two-thirds elected and one-third appointed by Presidential Decree. The Shura Council was instituted as part of the 1980 amendment to the Constitution.⁵

The People's Assembly fulfills various functions in addition to issuing laws. These include reviewing the State's budget and appro-

ving its closing yearly accounts (Articles 86 and 118), supervising the performance of the Executive Authority (Article 86), and determining the validity of its own membership (Article 93).

The Constitution does not specify any particular election system or procedures. However, it does state that at least half of the members of the People's Assembly must be workers or peasants as defined by the law (Article 87), that voting must be through a direct, public and secret process (Article 87), and must be undertaken under supervision of members of the judiciary (Article 89). The lack of specific reference to a particular type of electoral system, rules, or principles has led to some legal confusion (and constitutional challenges) concerning which best system to adopt. The current Election Law, No. 13 of 2000 has not faced the same kind of constitutional challenge. The elections conducted in 2001 under this law were the first to be entirely under the direct supervision of the judiciary, although the degree of fairness and transparency seemed to have varied from one place to the other depending on local circumstances. Recently, however, the president of the Republic announced that a new election law may be forthcoming, but no further details were offered. How the country proceeds on this matter will undoubtedly affect Egypt's ranking in terms of voice and accountability.

The fact, however, that the People's Assembly itself is by virtue of Article (93) of the Constitution empowered to decide on the validity of its membership is an unusual and unsatisfactory position, as it allows the members themselves to decide on matters that pertain to the validity of their own election, thus casting doubt on the potential conflicting interests that may be involved in such a situation.

4.2 The Law Making Process

Laws are proposed by the GOE and communicated to Parliament by the president of the Republic, or are proposed by members of the parliament. A draft law prepared by the government will typically be accepted in principle by the Cabinet of Ministers, then reviewed by State Council and the Ministry of Justice. Upon the final approval of the draft law by the Council of Ministers, it will be formally sent to the President of the Republic who has the power to refer it to Parliament. Recently the ruling party-the National Democratic Party-has started to play a significant role in the debate that precedes the formal proposition of legislation to Parliament. Once approved by Parliament, the draft law is sent back again in its final form to the president of the Republic, who will either approve the law and formally issue it, or will disapprove it. In the latter case the President may return the draft law to Parliament within 30 days. If Parliament again votes on it favorably by a two-thirds majority, then the law is deemed approved.

The president of the Republic, in addition to formally issuing laws approved by Parliament, has some significant powers in issuing presidential decrees that have the force of law. Such powers are used in two cases: during the parliamentary recess provided exceptional and emergency conditions warrant the use of such powers; in this case, such decrees have to be rectified by Parliament or else they are deemed null and void. The second case where the president has the authority to issue such decrees is upon the delegation of Parliament itself by a two-thirds majority vote.

4.3 Effectiveness of Law Making for Regulatory Reform

The process described above is based on clear and specific procedures which ensure that laws are reviewed and discussed in a transparent manner in Parliament. The practice, however, leaves a lot to be desired, especially with respect to economic legislation.

In recent years, economic legislation has suffered from a number of problems which have had a negative impact on the quality of regulatory reform (both in the sense of policy making and policy execution). The first of these problems is the relative detachment of economic policy from the legislation that accompanies it, as was, for example, the case with the recent enactment of the Mortgage Finance Law No. 148 of 2001 which was issued in isolation from the rest of the policies, institutions, and rules required to put its provisions in application. The result is that more than two years after its enactment, the law has not been applied. The second problem is the lack of sufficient basic legal and market research in the possible effects that a new law may have, leading to continuous changes and amendments even in newly enacted laws.⁶ The third problem is the lack of coordination between the various entities entrusted with the preparation of the draft laws within the governmental system, leading to competing drafts for the same subject matter, as is the case with efforts to issue a law governing small and medium enterprises and with the efforts to issue a competition law. Alternatively, this confusion may also lead to laws conveying conflicting signals and policies, as was the case with the Special Economic Zones Law Number 83 of 2002 which liberalized the labor regime for projects established within the new economic zones whereas the newly enacted Labor Law No. 12 of 2003 reiterated the traditional

employee protective provisions which the Economic Zones Law attempted to circumvent. Irrespective of which attitude is the better one, the mere existence of two systems with regard to such an important social issue represents an unhealthy duality. The whole lawmaking process also suffers from the lack of organized and institutional mechanisms for providing the law makers—especially members of the parliament—with the continuous technical support and expertise that allows them to properly assess and contribute to the debate in a constructive manner. A forthcoming study by the Center for Development Research (ZEF) at the University of Bonn in Germany has looked into these issues in detail.

4.4 The Law Making Process and Inclusiveness

The process of design and formulation of laws and regulations lacks benchmarks of inclusiveness. As much as the participatory dimension is measured during the process of government selection, there is little in terms of measurement of the participatory dimension of the law making process. Laws and less so-regulations are embedded in a process of design, formulation, issuance, implementation, and corrective feedback.

In each stage of this process there could be room for various stakeholders to voice their opinion on the process, its outcome, and its impact. The law making process can be made more inclusive when it becomes more representative of public interests and more open to public deliberation, i.e. when more interested parties are allowed to express their views. The best of all worlds is one in which not only the few would have the opportunity to voice their opinion but as many stakeholders as possible could do so and in as transparent and accountable a manner as could be. The aforementioned forthcoming study

by ZEF also looks into these issues.

The ruling party has recently been contributing positively to widening the debate on future policies and draft laws. There is an increasing tendency to involve think tanks (e.g. Egyptian Centre for Economic Studies and Economic Research Forum), interest groups (business associations and chambers), professional associations (lawyers, accountants), and individual experts in the process of deliberation on new or amended laws. The process is being gradually institutionalized. However, Egypt has still some way to go to achieve equal opportunity-especially for the less privileged-in a transparent process of deliberating laws and regulations.

5. Government Effectiveness and Accountability

Government effectiveness in running daily operations and delivering services is measured in most polls and surveys by asking questions related to public utilities and infrastructure, bureaucratic service, economic management, and commitment to policy. In this section, we trace the characterizing features of bureaucratic effectiveness in Egypt and their role as impediments to accountability of the government process.

5.1 Constitutional Basis

The dominance of the president of the republic over the Executive Authority is an important feature of Egypt's constitutional basis.⁷ Not only are ministers appointed, removed and their portfolios determined by Presidential Decree (Article 141), but the Constitution is based on the assumption that the powers of the ministers are derived from those of the president. Thus the president presides over the meetings of the Council of the Ministers which he attends (Article 142). He is also accorded the power of issuing executive regulations to various laws though he

may delegate it to ministers (Article 144). The president also issues decisions necessary for the establishment and organization of public authorities (Article 146). 5.2 Local Government Government in Egypt is decentralized and divided into independent administrative units; governorates, cities, and villages. Each level has its corresponding locally elected council, half of which at least must be composed of peasants and workers (Constitution, Articles 161 and 162). Governors have the authority of the president of the republic in their respective governorates, except in matters that are deemed of a sovereign nature. However, the fact that governors are appointed and removed by presidential decree is the main factor, which for all practical purposes-reduces their independence.

5.3 Inter-governmental Cooperation

The formal venue for inter-ministerial cooperation is the Council of Ministers, where the whole government policy is determined. Specific files and subjects are often assigned to a group of ministers or ministries to pursue collectively. In addition, significant cross-representation exists on various boards and councils where different ministers would be represented, as is the case with the board of directors of the Central Bank of Egypt.

However, in terms of jurisdiction of ministries concerned with the management of the economy, some overlap and confusion exists. Until 2001, there existed a Ministry of Economy with overall responsibility for economic affairs. The Central Bank of Egypt, the Capital Market Authority, the Insurance Supervision Authority, the Companies Department, the Mortgage Finance Authority, and the Financial Leasing Register all reported to the Minister of Economy. Other ministries directly involved in the management of the economy were the Ministries of Finance,

Planning, Public Enterprise, and Foreign Trade. However, in 2001 the Ministry of Economy was abolished and its previous competences were distributed as follows: the Central Bank of Egypt was to become independent and to report directly to the prime minister (later following the issuance of the Banking Law to the president of the republic); the Capital Market Authority was to go to the Minister of Foreign Trade, the Mortgage Finance Authority to the Minister of Housing, the Insurance Supervision Authority to the Minister of Planning, and both the Companies Department and the Financial Leasing Register to the General Authority for Investments and Free Zones.

The outcome of this transition was to fragment financial regulation among various ministries and sacrifice the major method of intergovernmental cooperation that had existed through the unified supervision of one ministry. Moreover, in some cases the redistribution of supervisory authority led to unsatisfactory conclusions, as was the case with the transfer of supervision over the Mortgage Finance Authority to the Ministry of Housing. This should also be contrasted to the world trend as of the late 1990s to unify and consolidate financial supervision under one roof and to reduce the fragmentation of economic and financial regulation.

As indicated earlier, this fragmentation is expected to be averted by the establishment of the Ministry of Investment, which is now responsible for the Investment Authority, the Insurance subsector, the capital market, mortgage financing and the public enterprise sector

5.4 Parallel Systems

One of the most important developments that have occurred in the overall structure of the Executive Authority in Egypt in the last

decade has been the increasing reliance and enlargement of parallel systems within government ministries and other public organs. Parallel systems in this context signify the administrative layer that gets to be imbedded into a traditional bureaucracy, usually benefiting from additional resources not available to the traditional track and with direct access to the decision making persons, usually to the ministers themselves.

The rationale for introducing these parallel structures in Egypt was quite straightforward: the difficulty of attracting the needed kind and level of expertise, talent, and skill on the basis of the traditional employment terms of the government. To be able to hire experts with skills and knowledge and experience compatible to those available to the private sector-often to the international market-the government would need to pay private sector, international remuneration. In the absence of any possibility in the current circumstances to raise the overall level of salaries and compensation within the government bureaucracy, parallel structures are an obvious and reasonable alternative.

Parallel systems, however, need to be properly set up in order to avoid some of their potential negative consequences. Chief among these consequences are: (i) the potential fragmentation of the bureaucratic apparatus, leading to the issuance of conflicting opinions and positions by the same institution; (ii) the risk of frustration and discouragement among those in the traditional track; (iii) the risk of discontinuity of the parallel system especially when it is not sufficiently integrated into the traditional track; and (iv) the problems caused by the lack of accountability of those in the parallel system. The latter problem is particularly worth consideration. Often those in the parallel system combine two characteristics that are

inherently contradictory, one is the capacity to influence the decision makers more than those in the traditional track, and the second is the lack of formal mandate as the legal and formal responsibility remains with those in the traditional positions.

It may not be possible for Egypt in the short term to abandon the experiment of parallel system-especially since it has also provided a number of successful examples. But it is also necessary to redress some of the shortcomings of this experiment, especially by ensuring a serious degree of cooperation and integration between the traditional and parallel systems, and by ensuring that every government employee, whether in this track or the other, is accountable and responsible for his/her actions and decisions. Accountability of those in formal office to the public opinion is a necessary safeguard for government effectiveness and regulatory quality.

6. The Judicial Authority and the Rule of Law

The Egyptian Constitution guarantees the independence of the judiciary. Moreover, it provides that court hearings are public except if so decided by the court itself (Article 169), and that there is an independent track for administrative adjudication (Article 172).

6.1 Selection and Structure

The selection of members of the judiciary is based on the graduation marks of law students from the various faculties of law. This allows them to become members of the public prosecution service first, through which they progress for a few years until they are ready to either join the judiciary or proceed in their prosecution careers. The selection process is fair, in the sense that those graduating top of their classes will normally

be entitled to join the ranks of the judiciary irrespective of their personal or family connections. Whether reliance on the university grading system is necessarily conducive to the best selection outcome or not is a different matter and is one that pertains to the whole education process.

All litigation is conducted in a preliminary stage which may be followed-upon any of the party's request-by an appeal process. Ordinary litigation may then be subject to further review by the Cassation Court, whereas administrative litigation may be reviewed by the Higher Administrative Court. The Constitution provides that the accused is deemed innocent until proven otherwise (Article 67), that crimes must be defined in law and penalties are personal and may only be imposed by court decision (Articles 66 and 67), that no administrative decision or act may be immune from judicial review (Article 68), and that each individual has the right to be prosecuted by his/her "normal" judge (Article 68). The latter provision has caused significant debate in recent years in view of the jurisdiction granted to military courts over certain state security crimes.

6.2 Integrity, Consistency and Efficiency

Although the Egyptian judiciary maintains a reputation of integrity, independence, and fairness, its overall state has increasingly been the subject of criticism by observers, professionals, investors, and ordinary parties alike due to the time that it takes to resolve disputes through the ordinary judicial channels, and to the uncertainty of the outcome of litigation. This criticism has been reflected in the country's score on two specific questions in the Global Competitiveness Report of 2003-04.⁸ Observers of judiciary performance on the ground would find this criticism true; an ordinary course of civil or commercial litigation is likely to take several years

before it is finally resolved. Most of the delay is typically caused by procedural tactics adopted by whichever party is keen on maintaining the status quo. Justice delayed to this extent must in some measure be denied irrespective of its outcome. This delay has also been the cause for other ailments of the judicial system, including resorting to extra-judicial and illegal means of enforcing rights. It is this aspect of the judicial process that has probably caused Egypt's ranking in terms of rule of law, and the reform of the judicial process has become one of the most pressing issues today.

The above problems are particularly acute and relevant with regard to disputes relating to economic and commercial activities. Here the judicial system has reached a point where it is no longer responding to the basic requirements of investors-foreign and Egyptian alike-the need for simple judicial redress. The delay in resolving commercial and financial disputes translates directly into tangible transaction and opportunity costs. Moreover, with the increasing sophistication of capital market, banking, financial leasing, and other financial transactions, it is not any longer possible to rely on the traditional unspecialized training of members of the prosecution and judiciary alike.

6.3 The Debate on Specialized Courts

The above problems have led to the emergence in the last few years of a growing trend in legal circles that argues for the establishment of specialized commercial or economic courts. The pragmatic rationale behind this approach is undeniably attractive; commercial disputes would be reviewed and resolved by specialized courts with dedicated and better-compensated commercial judges, faster procedures, lower costs, and more certain outcomes.

However, there are some drawbacks to this approach. On the one hand, there is the difficulty of determining which types of disputes deserve such fast track treatment and which do not. Under the criterion of cost of finance, banking and capital market activities would certainly come first. However, from the point of view of attracting investment, disputes relating to company law, investment law, labor law, and insurance would also qualify. Once the principle of differentiation between urgent disputes and less urgent ones is accepted, every constituency will lobby for the special treatment of its activities.⁹ On the other hand, even if it were possible to properly define and carve out an area of law which would be subject to special litigation, it would not be possible to insulate it entirely from the rest of the legal system, and parties to litigation would ultimately be brought back again in the traditional track. Another potential risk in adopting this pragmatic approach is that where special emphasis is placed on one section of the judiciary it is bound to lead-perhaps inadvertently-to the relative decline of the rest of the system.

Comprehensive legal reforms are thus unavoidable if a real change in the degree of judicial efficiency and certainty is to be achieved. And within this overall reform, there should be scope for better compensation of judges, providing specialized training programs and career paths for them, a review of the cumbersome litigation procedures, and a reform of the legal profession.

6.4 Corruption

High indicators of corruption are a reflection of weak governance, accountability, and inclusiveness.¹⁰ However, there is a debate on whether corruption greases the wheels of growth or sands them.¹¹ This argument is complex because of the variety of corruption indicators and the non-linearity of a country's

corruption rates and its economic performance. Corruption's influence on growth is often mediated through a wider institutional environment of effective bureaucracy and rule of law.

In the case of Egypt, indicators (as measured by the Global Competitiveness Report [GCR]) manifest a case of medium corruption rates, as perceived by businessmen responding to the GCR survey. Of a total of 13 questions on corruption, Egypt's score on eight questions is slightly above the mean (of the score of 102 countries), surpassing the scores of Morocco, Poland, and Mexico. On five questions its score is slightly below the mean (Annex B, Table B4.3).

However, some telling issues need to be stressed. The 13 questions on corruption in public institutions may be seen to represent two different levels of irregularity. One level is that of high corruption or political state capture. In this case, state decisions on laws, regulations, and public policy are directly influenced by big business individuals to the benefit of the business firm or individual. This includes questions about decisions favoring individuals, irregular payments in public contracts, irregular payments to influence policy or judicial decisions, and diversion of public funds to the benefit of a firm, individual, or business group. On all of these questions, Egypt's score is slightly above the mean score of the 102 countries in the data set. Nevertheless, one question is telling of the general environment of trust. When asked how much they trust political officials' financial honesty, businessmen's responses made Egypt come off worse than Morocco, Tunisia, and Jordan (Annex B, Table B4.3), indicating a prevalent sense of high level corruption and a medium sense of state capture.

The other level of corruption is that of bureaucratic corruption in which many more bureaucrats are involved. Though difficult to measure, five questions in the GCR may be used as proxies. On four of the five questions, Egypt's score is below the mean score for all 102 countries. An indicator of this lower level of corruption needs to take note of the increasing number of interlocutors who crowd the corridors of many bureaucratic agencies. Though they often get the work done, they are often intermediaries in the process of bribery and public resource diversion. Moreover, they are not accountable to anyone and no minister or head of department can reprimand them for any wrongdoing or commit them to bureaucratic reform.

Egypt's score and its performance with respect to the combating of corruption could be improved. New laws are not needed so much as greater transparency in the decision making process at all levels which would allow for the growth of a sense of responsibility and accountability.

7. Investment and Business Environment

7.1 Background

The term investment and business environment has become synonymous in the current usage and literature with a wide range of laws, regulations, policies, and customs that collectively form the environment in which business is conducted. The mere realization by the Egyptian government of this notion and what it entails is in itself a breakthrough in so far as it diverts from the long established policy of promoting one aspect of the investment environment without sufficiently considering its wider context. The following sections will describe the central idea of investment promotion in Egyptian regulation

over the last three decades. This will be followed by an assessment of capital market regulation, corporate governance standards, and will conclude with an assessment of the investment regime from a regulatory and institutional perspective. This all must be considered in the broader context of political and institutional governance described in the previous sections.

7.2 The Investment Law Regime

Since the early inception of the return to a more open market economy in the early 1970s, one central idea has dominated the thinking of policy makers in Egypt, which is that investors—originally foreign and later local—must be presented with a sufficient amount of incentives, tax and otherwise, in order to encourage them to invest in Egypt.

The first law to express this policy was the prematurely enacted Law No. 65 of 1971, which identified certain fields of investment and offered foreign investors in those fields generous benefits and privileges.¹² Following the conclusion of the 1973 military confrontation between Egypt and Israel, a subsequent investment law had a better chance of success. This was the Arab and Foreign Investment and Free Zones Law No. 43 of 1974, also known as the "Open Door Law." The law did not differ much from its predecessor. The highlighting of "Arab" capital versus "foreign" capital was a mere expression of post-war courtesy to potential Arab investors expected to reward Egypt's political and military sacrifices with significant investments. In fact, the investment law did not discriminate between nationalities, but rather between sources of capital. Thus any foreigner "hard" as it was described then—currency transferred from abroad through official channels was eligible for the benefits accorded to Arab and foreign capital, irrespective of the nationality of its owner.

This Investment Law was significantly amended in 1997—in accordance with Law No. 3—and later entirely replaced by another Investment Law No. 230 of 1989. In 1997, the current Investment Guarantees and Incentives Law No. 8 replaced the preceding one and remains the main legislation in the investment regime, and in April 2004 it was again amended, this time by Law No. 13.

Throughout these developments, the central idea that attracting investments in certain priority fields—which changed with each new law—requires the offering of tax, customs, and other benefits has not been altered.¹³ The current legislation also provides investors with certain guarantees, including immunity from nationalization, compulsory pricing, and the right to own real estate property (Law No. 8 of 1997).

There is no doubt that the investment regime has been successful in attracting local and foreign investments, albeit with varying degrees of success throughout its time. But two shortcomings have persistently plagued this regime; the first is the often unclear rationale for the inclusion of certain industries and activities in its scope in a manner that reflects particular interests; and the second is the excessive reliance on offering tax and other exemptions as a means of attracting investors. An overall investment climate that includes macro-economic stability, sound monetary policy, an effective payments system, a predictable and efficient judicial system, sound corporate governance practices, fair and predictable taxes (but not necessarily tax exemptions altogether), flexible labor regulations, adequate communications infrastructure, and general comfortable living is what constitutes an attractive investment climate.

Recently, however, a new law was passed under the name of the Special Economic

Zones Law No. 83 of 2002. The significance of this law is that instead of being exclusively concerned with the traditional tools of attracting investment, such as tax holidays and customs exemptions, it is the first attempt to deal with the investment environment in its totality. Thus, unlike its predecessors, this law grants not a full tax exemption, but a reduced unified tax rate on all activities and incomes generated in the zone which it covers, equal to 10%. It also attempts to deal with issues of taxation and customs clearance not by merely reducing the rates, but by instituting new and alternative methods of tax and customs administration in the hope of reducing the bureaucracy involved dramatically and allowing it to function-with the help of private sector agents-in an efficient manner. Further, the law exempts employment contracts entered into between parties engaged in activities inside the designated zone from the strict constraints on downsizing the labor force found in the Egyptian Labor Law. And finally the Special Economic Zones Law sets out certain rules and provisions for the planning of the relevant zone and the construction of infrastructure in a manner intended to reduce the administrative burdens associated with traditional zoning and local council supervisory rules.

However, this law, by instituting new principles within a limited zone, raises a whole new set of issues concerning the duality of the legal system, especially in the absence of justification-except political concerns-for improving the regulatory environment inside a fenced zone and leaving the rest of the economy under traditional controls.

7.3 Capital Market Regulations

Unlike the investment law regime in Egypt, capital market regulations showed a significant development over the last decade in the

direction of strengthening the regulatory framework and encouraging investors by granting them the protection of a well regulated system.

The current capital market law was issued by Law No. 95 of 1992. This date marks the reactivation of the capital market in Egypt after almost three decades of inactivity.¹⁴ In 1992 the market was reinvigorated not by the mere issuance of a law, but by the initiation, a few years before, of a privatization program. But the reactivation of the capital market in Egypt carried a heavy burden inherited by investors and regulators alike as a result of the collapse of the Islamic investment companies in the second half of the 1980s. This experience affected the regulatory approach of legislators and regulators alike and brought about an excessive bias toward systemic risk concerns and over-constraining the market. The built-in assumptions in the capital market law are to restrict all securities activities unless explicitly authorized and licensed by the Capital Market Authority. The Authority has wide powers as regards to the licensing of securities companies, the supervision over their activities, and the canceling of illegal or suspicious trades.

That a legal system and a regulatory authority stress so much the issues of systemic risk and market failure is not in itself surprising, nor objectionable. Recently, however, this excessive bias began to make way for the recognition of the need to deregulate the market from unnecessary constraints, and to take an investor protection-based approach to regulation. This change in approach is evident in the changes in the regulatory environment in the securities market as of the late 1990s.

In 1998, new rules of conduct for brokers and portfolio managers were added to the Capital Market Law Executive Regulations. The emphasis in these rules was entirely on

strengthening the disclosure requirements, clarifying the conflict of interest rules, and providing new protections for the small investor when dealing with one of these securities companies.¹⁵ This was followed in 2000 with the establishment of a settlement guarantee fund which ensures that all transactions traded on the exchange are properly and accurately concluded until settlement without interruption or risk of default. And finally, in 2000 the Central Securities Depository Law No. 93 was issued to improve dramatically the settlement process of securities trading and eliminate some of the most risky concerns in the securities market.

7.4 Corporate Governance

Until a few years ago, governance of corporate entities was an academic concern that did not attract much attention among policy makers. Its rise to prominence has been quite remarkable and indicative at the same time of the importance accorded recently by various officials and regulators to the need to conform to international standards.

On the whole, principles of corporate governance are observed in Egyptian law. This reflects in particular the developments that took place in the area of law and regulatory reform for companies and securities trading. Moreover, the draft Unified Company Law still under discussion closes most of the remaining gaps and responds to most outstanding issues.

The weakness that will continue to exist for some time, however, with regard to corporate governance is less related to the texts of the company or capital market laws themselves than to two other related factors. The first is the need to raise public awareness with regard to the importance of good governance and minority rights among investors; and the second is to strengthen the judicial recourse accorded to those whose governan-

ce rights are infringed upon.¹⁶

7.5 Property Rights

Clear and reliable property rights allow economic agents to protect and make use of their assets, which enhances their disposable wealth and their well-being. Well-protected property rights also serve to attract investors

In Egypt, property rights are poorly recorded and therefore inadequately protected. It is rare to encounter a household in Egypt that is not either involved in real estate disputes or is unable to ascertain its rights over a certain asset. In addition to the direct economic cost for the society for failing to provide individuals with the certainty of ownership, other indirect costs that are rarely accounted for include the cost of litigation both for the parties involved as well as for the judicial system, and the psychological costs of people living in a state of uncertainty concerning what is often their most valuable asset. The reason for this failure to register and protect real estate ownership was too often associated with the high cost of registration. More recently, however, it has become clear that the registration fees are but one aspect of the problem. Informal ownership is now deemed to be the result primarily of a wholly inadequate legal and regulatory framework which relies on formal requirements that are often difficult to fulfill and are in any case of little substantive value, thus leading to the perpetuation of informality and the use of illicit payments even by those willing to pay the required fees.

The issue of informal ownership does not affect real estate assets alone, but has a bearing on ownership rights of movable assets as well, including intangible intellectual property rights. A recently enacted Intellectual Property Protection Law No. 82 of 2002 promises to improve the overall environment, but its application remains to be sufficiently

comprehensive. The GOE in any case is putting significant resources and effort in ensuring a more serious application and respect of the law.

It should also be noted that a few positive developments have taken place in this field. Research undertaken over the last few years by the Peruvian Institute of Liberty and Democracy in collaboration with the Egyptian Center for Economic Studies has had a significant impact in raising public awareness on this matter. Certain property rights, such as ownership of financial securities, are now properly recorded and protected in a manner consistent with international best practice. This was the result of a long but consistent process of legal and regulatory reform in the field of the capital market legislation as previously described. And although this type of ownership, compared to real estate properties, is but a minor "fringe" type of ownership, its protection does provide a precedent and an indication that the authorities are taking the matter seriously.

Moreover, with the gradually increasing public awareness of the need to formalize property rights in Egypt-both real estate and business-there is a great chance that this matter will be translated into policy in the near future. This would have a major impact not only on the general investment and business climate, but also on the overall rule of law perception as it will allow people to fully enjoy the fruits of their legal property and will reduce litigation and disputes concerning such property.

8. Civil Society, the Media, and Civic Liberties

An active civil society has come to represent a fundamental component of good governance. Firstly, civil society is the place where social capital is to be found, and that entails

rules and networks of collective action, cooperation, compromise, and trust. This is true of charity NGOs, of NGOs that focus on service delivery as well as advocacy, and NGOs that focus on advocating the rights of consumers and economically and politically marginalized citizens. Secondly, civil society, especially advocacy NGOs, provides the institutional infrastructure for keeping government and bureaucracy accountable to a vast majority of citizens more frequently than during elections and beyond the accountability associated with parliamentary supervision of the Executive. Thirdly, advocacy NGOs are also capable of making the private sector accountable to general welfare. This is particularly true of advocacy and consumer protection NGOs.

Although the Egyptian constitution guarantees fundamental civic liberties as mentioned under sections III.a and III.b, there are three factors that weaken the ability of civil society organizations in Egypt to fulfill that role. These factors are: (a) rules that regulate their relationship to government, to the private sector, and to each other; (b) the media; and (c), a weak culture of compromise and organizational/ managerial skills.

The rules governing civil society in Egypt are affected by the state of emergency, which has been regularly renewed since the 1980s (renewed in the 1990s in three-year intervals in 1994, 1997, 2000, and 2003). Such a situation confers extra discretionary power on the Executive and especially undermines the accountability of the police. Most importantly, it scares NGO activists, especially advocates. Alongside emergency laws, there are also restrictions on public demonstrations (those allowed have to be with permission and within premises of universities, political party premises, syndicates, etc.). Meanwhile, laws regulating the establishment and activities of civil society reflect a philosophy of

state control which goes back to the legacy of corporatist government-society relations. This relationship entailed subservience of civil society organizations to a state which claimed to be modernizer of society, producer and provider of most goods and services, and guarantor of the general interest. That was the spirit that guided Law 32 of 1964 regulating civil society activities until the late 1990s.

The transition period stretching over the 1970s and 1980s was a period in which the government gave up some of its revolutionary, developmental responsibilities and announced its readiness to share some of its responsibilities with the private sector. As the private sector could not promptly shoulder all responsibility, hundreds of civil society organizations (NGOs) were created to respond to the need for charity work, social development, and so on, so that now the Egyptian landscape of NGOs is said to include more than 14,000 NGOs. Most of these NGOs have been governed by Law 32 of 1964, which gave the State the right of permission, supervision, and suspension or dissolution of NGOs. Charity and service delivery NGOs were seen in better light than those of advocacy. To avoid such a situation, some civil society organizations opted to register as non-profit companies (i.e. governed by the civil law).

Law 32 of 1964 was replaced in 1999 by Law No. 153, and then by Law 84 of 2002. The government wanted to enhance its control of a mushrooming civil society that was receiving moral assistance and financial support from foreign governments and multi-lateral organizations. Law 153 of 1999 was considered unconstitutional by the Supreme Constitutional Court on procedural grounds. Thus, in June 2002, a new NGO law, which is based on Law 153, was promulgated after

being approved by the Shura Council (Law 84). The new law does remove some of the obstacles and controls characteristic of the old regime and encourages NGOs to expand their financial base (e.g. right to function as juridical entity while Ministry of Social Affairs (MoSA) considers the application, right to engage in productive and service activities to raise funds, right to own real property, and various tax exemptions). However, the new law still bears the mark of a government that insists on having discretionary power over every aspect of civil society activities. Perhaps more importantly, the law maintains the attitude of its predecessors in maintaining the right to dissolve NGOs and to impose a myriad of procedural requirements in a manner that makes compliance the major preoccupation of civil society organizations.¹⁷

The year 2003 saw one good sign of liberalization of the regulatory regime in which civil society functions. The Egyptian parliament passed a law abolishing state security courts and establishing a national council for human rights. This may help improve the relationship between the state and advocacy NGOs, especially if the national council for human rights takes on the responsibility of monitoring state action against these organizations. Moreover, recent announcements by the GOE have indicated the potential for ending the state of emergency and for reviewing the Constitution.

No civil society can properly function without a strong and independent media. That is because broadcasting and communication to the wider public is one important means of exerting pressure, which has to be available to civil society if the latter is to be effective in keeping the state and private sectors accountable. The law of the press in Egypt has been an example of the dynamic process

of liberalizing the regulatory framework of civil society. Law 93 of 1995 raised fines and prison sentences for crimes of defamation and expanded the right of detention of journalists. It was severely criticized by civil society organizations across the board, leading to its annulment by the president in 1996. The situation now leaves two organizations pushing for liberalization, at a time when both have pro-regime credentials. These are the Syndicate of Journalists and the Higher Council of the Press, which has regulatory and oversight prerogatives with respect to the "charter of honor." The latter sets the limits of how freedom of expression would be exercised. Outside of political parties, however, obtaining a license to issue a new publication or establish a broadcasting business remains extremely difficult, often due to excessive capital and other legal requirements. A gesture of good will has been recently made by the president, advocating the abolishment of imprisonment verdicts in "opinion cases" against journalists.

Aside from the legal framework in which civil societies function, a culture of trust, compromise, and organizational/managerial skills is a necessary requirement to the lively functioning of any civil society. Egypt can boast of thousands of NGOs, yet most assessments of their inner workings have spoken of strong hierarchical structures with strong personalities, weak tolerance of differing views, and problematic succession traditions (open fighting when the founding leader dies or when some board members disagree with him/her). The development model adopted since the 1950s has partially contributed to this culture of individualism, cynicism, and little willingness to change things.¹⁸

In sum, Egypt has a numerically strong civil society. The actual space available for expression of opinion and for action is, howe-

ver, influenced by how the regulatory framework is in practice understood and implemented. This is where the general will to defend national security and the international image of Egypt often overshadows the goal of defending civil liberties. Nevertheless, there are manifestations of willingness to reform on the part of some elements of the ruling elite. There are also manifestations of a civil society which can mobilize extensive support to press for more reform (when the stakes are high such as in the case of the press law and relatively so in the case of NGO law 153 of 1999).

9. Democracy, Contestability, and Accountability

The Egyptian political system has successfully closed a transition from one-party rule (1954-1976) to a multi-party system (1976-present). It has also experimented with two electoral systems: majority and proportional representation by party lists (1984-1990). This democratic transition has been marred by several weaknesses. Firstly, the political parties, which increased from 3 in 1976 to 13 in the 1990s, have remained organizationally weak. Secondly, the electoral process has been weakened by low turnouts (below 50%), by pervasive vote rigging without judicial supervision (till 2000), and by weak competitiveness among political parties (due to lopsided support for the ruling elite by the various state agencies).¹⁹

This has left its mark on one cardinal pillar of good governance, namely contestability.²⁰ Contestability is thus left with two mechanisms outside the multiparty and electoral system. One is that of political leadership selection, which entails in the Egyptian context the selection of the political party(ies) that should dominate a majority inside parliament and the selection of the president who becomes an all-powerful head

of state, appointing the prime minister and ministers. Egypt has had a weak record on both accounts. Quantitative indicators in the Kaufmann et al World Bank dataset demonstrate that Egypt had always occupied the lowest quarter of the 100-country dataset since 2000.²¹ If one looks at the estimated scores, it appears that Egypt has constantly scored in the negative.²² That is because political parties are weak in Egypt and the ruling party has enjoyed a two-thirds or more majority in parliament since the return to multiparty parliamentary elections in 1976. Presidential elections have not been any better. Sanctioned by the constitution, presidential elections in Egypt are not competitive, for the public gives a yes/no vote in a referendum in which only one candidate (nominated by Parliament) is present.

Since the parliament has always had a comfortable majority for the same ruling party (which changed names in 1979 from Misr to National Democratic Party [NDP]), there has never been any sign of competitiveness in the presidential nomination process inside parliament either.

The other mechanism of contestability is that of replacement of executive officials via parliament or popular scrutiny through media campaigns.²³ The public in Egypt has only two ways of replacing political figures, namely by exerting enough pressure on parliamentarians to push them to submit ministers to questioning and eventually to a vote of confidence. Or the public may put pressure on members of the executive via media campaigns, especially the written media. Both have occurred occasionally, though rarely have such pressure mechanisms led to the removal of political figures, and in those rare cases, public opinion was usually not credited with having achieved this result.

Two other interrelated areas have negatively affected contestability: political rights and administrative structures. Political rights entail liberal rights that expand freedom of expression and organization. Though allowed by constitution, such rights are often curtailed by an overall sense that national security is in jeopardy and that political activists, whether individuals or organizations, are guilty of jeopardizing national security until proven innocent. The best example of this is the law regulating the formation of civil society organizations. This law still requires a ministerial approval, which often is connected to a security clearance, before an organization is allowed to function.

A highly centralized administrative structure has negatively affected contestability. This type of political structure hampers citizens' ability to keep the bureaucracy accountable by reducing their ability to question and replace provincial leadership (governors) and communal government. Provincial governors are appointed by the president and are often former members of the military-police-security complex. This reduces the overall ability of the political system to have breeding grounds for popularly elected leadership. But most importantly, this reduces the ability of citizens to believe in their ability to change matters of most direct impact on their daily lives. The same goes for the communal level of political action. Though communal elections do exist, competitiveness is limited to the various members of the ruling party. Political parties often are weakly represented or weakly interested to running for local (as opposed to national) elections. Freeing up the provincial and local levels for more competition and contestability is often weighed against the possibility of a radical Islamic figure coming to power or a figure ill-suited to deal with a perceived Islamic danger (if this figure is not from within the police-military-security complex).

10. Conclusion

This chapter has manifested that the process of reform in Egypt's governance structure is partially dynamic and partially too slow. This has been demonstrated both quantitatively and qualitatively. The constitutional framework has been shown to contain some positive elements and others that must be subject to revision. The regulatory environment of laws of investment, capital market, and property rights has manifested a healthy ability to correct itself and respond to market needs. However, where signs of slow reform are still to be seen, there needs to be deep institutional reform in the law-making and law enforcement processes. This chapter has shown why and how could be accomplished. Finally, the political context of accountability and contestability has been shown to similarly exhibit vibrance and self-corrective power, though less so than in other areas. More opening of political positions for competition and a more enabling liberal environment to support NGOs, especially those advocating citizen and consumer rights, could go a long way to improve the environment of accountability of government, bureaucracy, and private sector alike.

Notes

- 1 See World Bank Report of 2003 "Better Governance for Development in the Middle East and North Africa" Washington.
- 2 L. Harrison and S. Huntington (2000) Culture Matters. New York: Basic Books; D. Landes (1998) The Wealth and Poverty of Nations. London: Abacus.
- 3 A. Stepan and G. Robertson (2003) "An Arab more than Muslim Electoral Gap" Journal of Democracy, vol 14, #3, p. 30-43.
- 4 The dataset of Daniel Kaufmann et al

produces indicators which cover three cardinal areas of governance: 1) political rights and civic liberties which determine the processes of selection, monitoring and replacement of government (called voice and accountability); 2) the ability of government to formulate and implement policy (called regulatory quality and government effectiveness); 3) citizens' respect for and government's commitment to the rules of the game (called control of corruption and rule of law).

- 5 The role of the Shura Council, as stated in the Constitution, is merely consultative. Moreover its constitutional role is limited to reviewing laws that have an effect on the basic political and constitutional rights. Based on both considerations, few of the laws passed by Parliament were actually reviewed by the Shura Council in the last few years. This situation changed when, in 2001, the Higher Constitutional Court decided that the newly enacted Law for Non-Government Organizations was unconstitutional because the Government did not send it for review by the Shura Council in spite of it being a law that affects political rights. The consequence of this decision was that now the Government is much more careful to send draft laws to the Shura Council, even if they are not obviously related to political rights, in order to avoid the risk of unconstitutionality. It should, however, be noted that such procedure does not alter the fact that the Shura Council's opinion remains consultative and non-binding.
- 6 An example that may illustrate this problem is the new Code of Commerce issued by Law No. 17 of 1999 which set out new rules governing commercial papers (particularly bank checks), but

- which was amended every two years since that time in order to postpone the application of that part of the Law until the market is ready for it.
- 7 According to Articles (137) and (153) of the Constitution, the Executive Authority is the Government headed by the President of the Republic.
 - 8 World Bank (2003) Better Governance for Development in the Middle East and North Africa, p.93. The Global Competitiveness Report of 2003/04 shows Egypt's score on the question of independence of the judiciary of political influence falling below the mean score of the 102 countries that have participated in the survey as well as her score about the quality of the legal framework to settle disputes and challenge government (p. 470)
 - 9 As happened recently with arguments made in favor of special courts for small and micro-enterprises, export related activities and special economic zones investments.
 - 10 World Bank Report 2003 "Better Governance for Development in the Middle East and North Africa", p. 32.
 - 11 Forthcoming paper by Pierre Guillaume Meon and Khalid Sekkat (2004) "Does Corruption Grease or Sand the Wheels of Growth?" Public Choice.
 - 12 The chosen fields included banking, tourism, industry, as well as agricultural and land reclamation projects.
 - 13 The current benefits include five, ten, or twenty year income tax exemption depending on the project's location, a five year exemption from certain stamp duties, a flat 5% import duty on all necessary machinery and equipment, as well as other less significant tax benefits.
 - 14 The stock exchange, following the nationalizations of the 1960s was never formally closed, but the absence of traded paper meant that it went in a dormant stage.
 - 15 Executive Regulations to the Capital Market Law No. 95 of 1992.
 - 16 In 2004, an Egyptian Institute of Directors was established and its primary focus and mandate is to promote corporate governance in Egypt.
 - 17 Center for Strategic Studies (2004) Strategic Economic Trends Report, Cairo: al-Ahram, pp. 287-302.
 - 18 I. Harik (1997) Economic Policy Reform in Egypt. Gainesville: University Press of Florida
 - 19 Noha El-Mikawy (1999) Building Consensus in Egypt's Transition Process. Cairo: American University in Cairo Press.
 - 20 World Bank Report (2003) Better Governance for Development in the Middle East and North Africa, Washington..
 - 21 Since 1998, Egypt has occupied a place within the middle group with respect to regulatory quality, rule of law, control of corruption and government effectiveness; however, its rank has been deteriorating between 1996 and 2002..
 - 22 In contrast, Egypt's score on rule of law has constantly been positive, though never crossing the 0.25 mark. Government effectiveness and the regulatory framework seem to have left the negative range in 1998 and 2000 to return to it again in 2002.
 - 23 In response to Dollar's and Kraay's claim that growth is enough to improve the life of the poor, Luebker, Smith and Weeks insisted that the growth package is not neutral in its distributional orientation. A lot depends on the country's social structure and power relations (Luebker, Smith and Weeks 2002; (Dollar and Kraay 2000). That meant

that there is a need to couple growth packages with pro-poor internal institutional reforms (Giovanni Andrea Cornia, 2003). Now the argument is for opening up the political system for civil society to participate in policy design, policy implementation and public goods provision in order to encourage economic accountability and transparency. This debate has been encouraged by a more encompassing definition of economic development which has come to include growth, choice and empowerment. Rule of law to protect citizens' and firms' rights, rule of law to enforce contracts, the freedom of information, and the existence of mechanisms of accountability- all have become crucial components of an enabling environment for economic growth (World Development Report Building Institutions for the Market 2002).

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