

# **NATIONAL INTEGRITY SYSTEM STUDY**

## **EGYPT 2009**

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# I INTRODUCTORY INFORMATION

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The team would like to thank participants of three focus groups held in Cairo in June 2009 to discuss a preliminary draft of the report, as well as the people interviewed to assess some aspects of the report.

The report depended on desk research that was complemented by interviews with an average of two people for each of the pillars of the study. Moreover, the focus groups helped to improve the quality of the first draft, clarified many issues and added insights on the presentation of the final study. Additionally, the report underwent a process of peer review, as well as reviews by an external expert and the NIS Programme Coordinator at the Transparency International Secretariat.

# II LIST OF ABBREVIATIONS

ACA	Administrative Control Authority
ACAs	Anti-corruption agencies
ACIJLP	Arab Centre for the Independence of the Judiciary and the Legal Profession
AGES	Automated Government Expenditure System
AOHR	Arab Organisation for Human Rights
APA	Administrative Prosecution Authority
BAHRO	Budgetary and Human Rights Observatory
BOT	build-operate-transfer
BTIA	Building Technical Inspection Authority
CAO	Central Auditing Organisation
CAOA	Central Authority for Organisation and Administration
CAPMAS	Central Authority for Public Mobilization and Statistics
CASE:	Cairo and Alexandria Stock Exchange
CBE	Central Bank of Egypt
CDL	Central Depository Law
CIHRS	Cairo Institute for Human Rights Studies
CMA	Capital Market Authority
CMF-MENA	Centre for Media Freedom, Middle East and North Africa
CPA	Consumer Protection Agency
CPJ	Committee to Protect Journalists
CSOs	Civil society organisations
CSR	Corporate social responsibility
ECA	Egyptian Competition Authority
ECCG	Egypt Code of Corporate Governance
ECHR	Egyptian Centre for Human Rights
ECMA	Egyptian Capital Market Association
ECOSOC	Economic and Social Council of the United Nations
EEUCPRA	Egyptian Electric Utility and Consumer Protection Regulatory Agency
EGP	Egyptian pound
EGX	Egyptian Stock Exchange
EHDR	Egypt Human Development Report
EIMA	Egyptian Investment Management Association
EIOD	Egyptian Institute of Directors
EISA	Egyptian Insurance Supervisory Authority
EMLCU	Egyptian Money Laundering Combating Unit
EOHR	Egyptian Organisation for Human Rights
ERSAP	Economic Reform and Structural Adjustment Program
ETUF	Egyptian Trade Union Federation
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
GAFI	General Authority for Investment and Free Zones
GAGS	General Authority for Government Services
GAPS	General Authority for Public Services
GASC	General Authority for Supply Commodities
GC	Global Compact
GDP	Gross domestic product

GFMIS	Government Financial Management Information System
GFS	Government finance statistics
GNI	Gross national income
GOE	Government of Egypt
GPAC	UNODC Global Programme against Corruption
HCs	Holding companies
HEC	Higher Elections Commission
IDSC	Information and Decision Support Centre of the Cabinet of Prime Minister
IFC	International Finance Corporation
IFJ	International Federation of Journalists
IMF	International Monetary Fund
INGOs	International non-governmental organisations
INTOSAI	International Organisation for Supreme Audit Institutions
IPA	Illegal Profiting Apparatus
LEPC	Local Elected People's Council
LLSG	Law on Local System of Government
MCDR	Misr for Clearing, Central Depository and Registry
MOF	Ministry of Finance
MOU	Memorandum of understanding
MPs	Members of Parliament
MSAD	Ministry of State for Administrative Development
NCHR	National Council for Human Rights
NDP	National Democratic Party
NHBRC	National Housing and Building Research Centre
NGOs	Non-governmental organisations
NIS	National Integrity System
NTRA	National Telecommunications Regulatory Authority
NWCR	New Woman Research Centre
OECD	Organisation for Economic Cooperation and Development
PA	People's Assembly
PEC	Presidential Election Commission
PPAC	Political Parties Affairs Committee
PPB	performance-based budgeting
PPP	public-private partnership
SFD	Social Fund for Development
SROs	Self-regulatory organisations
TI	Transparency International
TIC	Transparency and Integrity Committee
UNCAC	United Nations Convention Against Corruption
UNDP	United Nations Development Program
UN-EOSG	United Nations Executive Office of the Secretary-General
UNODC	United Nations Office of Drugs and Crimes



**III**  
**ABOUT THE NIS**  
**COUNTRY STUDIES**

## What is the NIS?

The National Integrity System encompasses the key institutions, sectors or specific activities (the 'pillars') that contribute to integrity, transparency and accountability in a society. When it functions properly, the NIS combats corruption as part of the larger struggle against abuse of power, malfeasance and misappropriation in all its forms. Strengthening the NIS is about promoting better governance across all aspects of society.

The concept of the NIS has been developed and promoted by Transparency International as part of TI's holistic approach to combating corruption. While there is no blueprint for an effective system to prevent corruption, there is a growing international consensus as to the salient institutional features that work best to prevent corruption and promote integrity. The NIS studies are based on an assessment of the quality of institutions relevant to the overall anti-corruption system.

## Why Conduct NIS Studies?

The purpose of each NIS study is to assess the National Integrity System, in theory (law and regulatory provisions) and practice (how well it works). The studies provide both benchmarks for measuring further developments and a basis for comparison among a range of countries. Their findings can also serve as a pointer for areas requiring priority action or can form the basis from which stakeholders may assess existing anti-corruption initiatives. NIS studies help explain, for example, which pillars have been more successful and why, whether they are mutually supportive and what factors support or inhibit their effectiveness. The studies also assess where the emphasis should be placed on improving the system and what factors are required to support the overall development of the integrity system.

The studies create a sound empirical basis that adds to our understanding of strong or weak performers. Within a region, in which several countries may function with similar economic, political or social frameworks, the results of the study can create a sense of peer pressure for reform as well as an opportunity for learning from those countries that are in similar stages of development.

For Transparency International, NIS country studies are an important measurement tool. They complement TI's global indices and surveys, such as the Corruption Perceptions Index, Bribe Payers Index and Global Corruption Barometer, as well as national surveys, by exploring the specific practices and constraints within countries and providing qualitative empirical results about the rules and practices that govern integrity systems. More than 70 such studies have been completed as of September 2009.

TI believes that it is necessary to understand the provision for and capacity of the integrity pillars, as well as their interaction and practices, to be able to diagnose corruption risks and develop strategies to counter those risks. The NIS country studies are a unique product of Transparency International, as they reflect the systemic approach TI takes to curbing corruption and the independence of analysis that can be offered by the world's leading anti-corruption NGO.

# Methodology

The NIS studies offer a qualitative assessment of the integrity system in a country or region. They are based on both objective and subjective sources of data, which differ in quantity in each country or region evaluated. The studies therefore require both desk research and field research.

At least one focus group is convened as part of the country study. Focus group participants include anti-corruption and governance experts drawn from government (including donors, where relevant), the private sector, the professions (e.g. lawyers, accountants and engineers), media and civil society. The aim of the focus groups is for a broad base of stakeholders to evaluate the integrity system and to comment on the draft country study. The results of the meeting then inform further revision of the country study. In addition, each NIS study is reviewed by an external expert referee.

# IV EXECUTIVE SUMMARY

Over the past few years, Egypt's National Integrity System (NIS), which is made up of the key institutions that contribute to integrity, transparency and accountability in society, has undergone a number of positive developments. As a consequence, the current NIS in Egypt is based on a considerable set of rules, regulations and mechanisms which seek to prevent corruption in the country. This strong intention to address corruption is reflected in many articles of the Constitution and existing laws and regulations. Moreover, several new mechanisms have been included to ensure an effective NIS, including the National Council for Human Rights and the Ministry of State for Administrative Development's Transparency and Integrity Committee. Nevertheless, corruption is perceived to be on the increase, and the existing mechanisms, laws and regulations are seen as largely inadequate to deal with the corruption challenge in Egypt.

Based on a thorough review of existing provisions and expert input via interviews and focus groups, the NIS report assessed the performance of the following 'pillars' of the Egyptian governance system: Executive, Legislature, Political Parties, Electoral Management Body, Supreme Audit Institution, Judiciary, Public Sector, Law Enforcement Agencies, Public Contracting System, Ombudsman, Anti-Corruption Agencies, Media, Civil Society, Business Sector, Regional and Local Government and International Institutions. The findings of the study point to major corruption loopholes in the country's governance system. The study identifies that, although the number of mechanisms for fighting corruption is increasing, there are several problems with the functioning of these mechanisms. Major problems include the widespread phenomena of conflict of interest, political interference in the work of anti-corruption agencies, lack of effective and well-functioning whistle-blowing mechanisms, weak enforcement of laws and regulations, weak transparency and lack of access to public information, insufficient follow-up systems, excessive government limitations on the freedom of civil society organisations (CSOs), and in some areas media entities as well. The main results for each pillar can be summarised as follows:

In the case of the executive, there are several mechanisms seeking to hold the executive accountable in front of the Parliament, such as the system of checks and balances where the Parliament may, at the request of one-tenth of its members, decide to hold a vote of non-confidence, which passes if it is supported by a majority of MPs; however, such mechanisms are rarely exercised in full. Moreover, no specific law for holding ministers accountable exists. Whistle-blowing mechanisms suffer from cumbersome procedures that result in the lack of their application. On the positive side, the constitutional amendments of 2005 and 2007 require the budget to be balanced and presented to Parliament no later than three months before the beginning of the budget year. Such changes are likely to make the executive more accountable by increasing the Parliament's oversight.

The legislature is well-empowered with mechanisms for monitoring the executive, yet it appears that such mechanisms are not fully utilised. Moreover, insufficient access to information, frequent conflicts of interest of parliamentarians who are prominent figures in the business community, and the absence of monitoring mechanisms for budget allocations seem to be the major loopholes in the integrity mechanisms that govern the legislature's relationship with the executive and the private sector.

Positive aspects of the current NIS include the performance of the judiciary, which is perceived as being one of the least corrupt and most independent public authorities in Egypt, and which enjoys widespread respect from the public. However, this is not to say that there is no room for improvement, particularly regarding the strengthening of integrity mechanisms for judges in areas such as asset disclosure, conflict of interest, as well as in terms of reinstating the judiciary's primary role in monitoring elections in the country.

Political parties, with the exception of the ruling National Democratic Party (NDP),

do not play a major role in the governance of Egypt. This is partially due to restrictions of their activities (e.g. freedom of assembly, access to public TV), which do not apply to the NDP. Internal integrity challenges relate to the lack of clarity of decisions by the Political Parties Affairs Committee regarding the acceptance of new parties and the monitoring of funding sources for political parties. Other problems include the phenomenon of buying political votes and the existence of public media bias in favour of the ruling party.

The electoral management body suffers from an ineffective voter registration system, which is an institutional issue requiring urgent treatment to ensure the integrity of elections in Egypt on all levels (presidential, legislature and local). Progress has been made in improving the monitoring of elections at the presidential level following the latest constitutional amendments, but not at the local and parliamentary levels. A positive step was the amendment to Article 76 of the Constitution which provided for the establishment of a Presidential Election Commission (PEC) charged with the supervision of the presidential election process, particularly since it functions as an independent election commission –separate from the Ministry of Interior.<sup>1</sup>

The Central Auditing Organisation (CAO) functions in an effective manner when it comes to monitoring the behaviour of the executive and other public agencies, especially in terms of public spending. However, the CAO has neither the capacity nor the authority to monitor the implementation of its recommendations. It also suffers from a lack of transparency, as its reports are not available to the public. This lack of transparency weakens its effectiveness in general. Furthermore, the CAO (as well as other anti-corruption agencies) lacks full independence from the institution of the Presidency, which is often seen as compromising its role.

The bloated Egyptian public sector, which is perceived by some to be highly corrupt, is characterised by rather weak performance standards, including in relation to integrity, accountability and transparency issues. Specifically, regulations defining conflict of interest and procedures for accepting gifts among civil servants, public sector employees, judges and other public officials are deficient and contain loopholes which permit corrupt behaviour. Similarly, law enforcement agencies, particularly the police, are perceived by some to be engaged in petty corruption and other forms of abuse of power. These should be addressed by instituting procedures that would make it easier to file a lawsuit against a police officer.

Given the significant share of state-owned enterprises within overall business activity and the large size of the public sector, the public contracting system represents a major potential site of corruption. Indeed, the NIS assessment highlights the need for further improvements in the laws governing public procurement. Among the most pressing issues is the need for provisions to ensure that time limits are set for decisions taken by financial and technical committees involved in bidding processes and for final acceptance of bids, since such delays negatively affect bidders/contractors. Moreover, there is an urgent need for reform of the existing complaint mechanism that applies to the bidding process and for the establishment of a complaint mechanism applicable during the execution of contracts.

Anti-corruption agencies are generally seen as effective, but need to be shielded from political interference that has blocked their investigations in a number of cases. Concerning the independent watchdog agencies, the media has seen more room to manoeuvre in the past years, while CSOs still suffer from major restrictions on their advocacy work. Thus, repealing the legal restrictions for CSOs, coupled with intensified efforts for self-regulation would greatly strengthen civil society's positive contribution to Egyptian governance. The media is also affected by problematic issues, such as limited access to government information,

<sup>1</sup> Article 76 of the Constitution, [www.egypt.gov.eg/english/laws/Constitution/chp\\_five/part\\_one.aspx](http://www.egypt.gov.eg/english/laws/Constitution/chp_five/part_one.aspx)

the lack of a balanced mechanism that takes into consideration both the freedom of the press and the duty to act responsibly as a publisher.

Several initiatives have been undertaken by the government to strengthen the rules governing the integrity system in the private sector, streamline business regulations and regulate the lawful interventions of the state in the economic sphere. Moreover, a sound regulatory system has recently been put in place to prevent abuses by companies in the financial system. Progress has also been made in corporate governance through the adoption of corporate governance codes. However, there is a need for stronger rules governing conflict of interest for businessmen holding executive or legislative positions.

In the case of the local administration, corruption is perceived to be widespread. There is an urgent need for an effective system of checks and balances to monitor employees of the local administration and prevent the abuse of their authority. A number of government initiatives have recently been launched to enhance local transparency and combat corruption at the local level. Their rate of success can only be ascertained in some years to come.

Revisiting the performance of the NIS pillars and their interconnections, it becomes clear that the NIS in Egypt benefits from the existence of several mechanisms that ensure an appropriate checks-and-balance system in theory. The Constitution, many laws and regulations, as well as a number of different anti-corruption organisations provide a sound framework for the functioning of an effective NIS. In practice, however, missing or ineffective application of many rules and regulations, cumbersome procedures and the weak enforcement of constitutional and other legal provisions prevent this framework from being used fully. Therefore, a wide gap between the de jure and de facto situation of integrity in Egypt remains. Closing this gap is likely to require the concerted efforts of all stakeholders, from all ranks of government, business, civil society, media and international institutions.

**V**

**PRIORITIES AND  
RECOMMENDATIONS**



The following key priorities and recommendations emerged from the NIS assessment, particularly from discussions with key stakeholders in focus groups:

- Amend regulations concerning whistle-blowing, conflict of interest and access to information, so that their implementation is made more effective.
- Change some of the procedural aspects of the NIS system, because while existing laws and regulations are set in theory, several impediments prevent the efficient functioning of these laws and regulations in practice. Examples include the need to strengthen Parliament's powers in holding the executive responsible, which does rarely take place since the parliamentary majority and the government are from the same party. In a system where parliamentary elections are perceived to suffer from corruption in favour of the ruling party, and in a country characterised by one party rule, a stronger role for the parliamentary opposition is required to ensure greater accountability.
- Enhance the public awareness of how to fight corruption by using existing mechanisms. Lack of awareness among the public, when accompanied by inadequate regulations related to whistle-blowing, imply the absence of an effective NIS.
- Transparency mechanisms should be enforced. For example, CAO reports should be made available to the public and a clear follow-up mechanism for its decisions regarding the monitoring of the government should be set in place.
- Integrity mechanisms governing public officials including laws and regulations (e.g. Illicit Enrichment Law (Law 62/1975)) need to be effectively implemented. Strict and enforceable definitions for conflict of interest, gifts and presents should be provided, as the absence of such definitions in law provides significant opportunities for circumventing the existing laws and regulations. In this regard, there is a need to speed up the process of issuing the law of prosecution of ministers while amending the existing laws to clearly differentiate between what is considered a small acceptable gift and what is considered a bribe.
- A transparent public system should be created for decisions undertaken by the Political Parties Affairs Committee (PPAC) regarding the acceptance or rejection of new parties, as the current rules governing such decision are vague.
- Judiciary independence should be strengthened by reducing the interference of the Minister of Justice through the Judicial Inspection Committee, and reforming the process of appointing members of the Supreme Council so that at least 50 per cent of its members are elected.
- Discipline related to the conduct of law enforcement officers and fighting petty corruption among law enforcement agencies are urgent matters to combat corruption. For example, there is a need to facilitate the process of reporting misconduct by police officers while transmitting such a mechanism to the public and ensuring that the system is accountable.
- The state of emergency, which gives law enforcement authorities the right to search persons and places, intercept e-mails, tap telephones without warrants and detain suspects without charges, should be dismantled completely.
- For public contracting systems, there is a need to set time limits for decisions undertaken by committees and for final acceptance, as such delays negatively affect bidders/contractors.

- There is a need to reach a decision on creating an ombudsman or amending existing organisations with similar functions to undertake the role of ombudsman.
- Political interference that blocks investigations by anti-corruption agencies should be avoided. Moreover, there is an urgent need to increase the oversight by designated control and monitoring authorities over the behaviour of legislature members, in light of the increasing cases of corruption.
- The vote-buying phenomenon should be curtailed by strengthening the legal framework, while simultaneously improving the voter registration system and ensuring effective supervision of elections.
- There is an urgent need to issue the law of freedom of access to information, which has been debated for years without issuance, and without a clear reason for such delay. Also, punishing journalists by imprisonment (for publishing incorrect information) should be abolished and replaced with monetary fines. Moreover, a law making the media accountable for the information they provide but also emphasising the freedom they have should be issued.
- CSOs need more freedom to operate by changing and amending existing laws, namely Law 84/2002, which provides strict control by the government of all CSOs' activities and funding. There is therefore a need to lessen such control and intervention of the government, while at the same time a code of conduct for CSOs should be established. Weak CSOs can be a main cause of the fragile governing system of integrity. CSOs, if working properly, can be an active and influential voice in the integrity system. Hence, there is an urgent need to strengthen the role of CSOs in tackling issues of corruption.
- In the case of the private sector, there is a need to establish rules to prevent conflict of interest for businessmen that hold executive and legislative positions. An enforceable law should be enacted to prevent the abuse of power and conflict of interest.
- An enforceable system of checks and balances on local administration officials should be developed, and such a system should be operating efficiently before decentralisation moves forward in Egypt.
- The effective and sustainable fighting of corruption requires a structural change in the wages and incentives system for public employees in Egypt. Corruption is likely to take place when wages cannot cover basic living expenses.

# VI COUNTRY PROFILE

### Economic Aspects:

Egypt's economic system has undergone three major phases since the 1952 revolution. The 23 July revolution of 1952 led to the abolishment of the constitutional monarchy in Egypt and the establishment of a republic. The new system was in the socialistic mould, based on a centralised economic system and a one-party system. The public sector was meant to be the main engine of growth, investment and employment. The state spent heavily on public infrastructure and social services, and engaged in land reform. Egypt adopted a series of large-scale nationalisation steps in 1961 that effectively restricted private sector activity. In addition, the government exercised high protective measures over the economy and pursued import-substitution policies. In the Nasser era, the economic system was of a closed economy type, with strong control by the state and a highly limited role of the private sector. In general, Nasser's era (1956-1970) was characterised by waves of nationalisation and increasing power of the state.

Nasser's closed economic system was then followed by the open-door policy of Sadat. Sadat's era (1970-1981) contrasted with Nasser's approach as Sadat aimed to open up the Egyptian economy and became a strong ally of the United States, in contrast to Nasser, who was an ally of the Soviet Union. The open-door policy of Sadat was matched by increased consumerism, which was accompanied by major migration flows of Egyptians to the Arab Gulf countries. High rates of growth of the Egyptian economy were experienced due to high oil prices. Egypt's economic structure remained dependent on oil and agricultural products during Nasser's and Sadat's eras.

When Mubarak came to power in 1981, he experienced several difficulties due to the bad economic situation (e.g. high foreign debt, balance of payment problems). Mubarak's era has been considered the era of transition of the Egyptian economy from a closed system to a market economy, as Sadat's era suffered from increased consumerism without a major shift in economic policies to reflect the change to a market economy environment.

Starting in 1991, Egypt embarked on major economic structural reforms after entering into an economic reform and structural adjustment program (ERSAP) designed and implemented jointly with the World Bank and International Monetary Fund (IMF). Throughout most of the 1990s, Egypt succeeded in implementing a reform program that managed to slow inflation and make progress in restoring internal balances, as macroeconomic indicators improved during the period 1991-1998. Since 1991 the GOE has adopted a number of reform measures including devaluing the Egyptian pound and unifying the existing exchange rate systems, reducing trade barriers, initiating an ambitious privatisation program (though it slowed down in the latter part of the decade), adopting a tightened fiscal policy, reducing subsidies on some strategic commodities including petroleum products, and upgrading and expanding physical infrastructure.

Consequently, economic performance improved during the 1990s. The real GDP growth rate increased from 2.1 per cent in 1991 to 5.4 per cent in 2000, and the private sector's share of GDP rose from 64.3 per cent in 1994/1995 to 70.4 per cent in 1999/2000.<sup>2</sup> In fact, Egypt has been praised for its success in implementing the program, as the reports of international organisations have revealed.<sup>3</sup> Such positive macroeconomic trends were reversed in 2000/01 as a result of the stagnation of the economic reform process, which was further aggravated by a slowdown in the international economy and the impact of the September 11, 2001 terrorist attack. As a result of such repercussions, real GDP growth rate declined and reached its lowest level in a decade in 2003 (3.1 per cent).<sup>4</sup>

<sup>2</sup> Ministry of Finance, Egypt, [www.mof.gov.eg/english](http://www.mof.gov.eg/english); Central Bank of Egypt, [www.cbe.org.eg/cbe.htm](http://www.cbe.org.eg/cbe.htm). See also Ministry of Economic Development, the national plan follow up report, various issues, available at: [www.moed.gov.eg](http://www.moed.gov.eg)

<sup>3</sup> "By the standards of recent experience with economic stabilization, Egypt in the 1990s is a remarkable success story." See: IMF, "Egypt Beyond Stabilization, Toward A Dynamic Market Economy", IMF Occasional Paper No. 163, Washington, DC: IMF, 1998.

<sup>4</sup> Ministry of Finance, Egypt, [www.mof.gov.eg/english](http://www.mof.gov.eg/english); Central Bank of Egypt, [www.cbe.org.eg/cbe.htm](http://www.cbe.org.eg/cbe.htm). See also Ministry of Economic Development, the national plan follow up report, various issues, available at: [www.moed.gov.eg](http://www.moed.gov.eg)

Alarmed by the slowdown of the economy and the negative economic indicators, the GOE sought to revive the economic reform program. A wide-ranging set of economic reforms were undertaken after the appointment of a new Cabinet in 2004. Among the reforms undertaken were those related to trade, exchange rates, customs, taxes and a more market-oriented macroeconomic policy. The reforms undertaken by the 2004 Cabinet addressed the macroeconomic imbalances and resulted in high economic growth rates reaching 7.2 per cent in 2007/2008, higher reserves and the conversion of a balance of payments deficit into a surplus.

Despite such macroeconomic improvements, the social and institutional reforms dealing with economic aspects still lagged compared to the pace of economic policy reforms. As a result the general impression among the public was that the reform did not trickle down to them. This has been among the major drawbacks of the economic reform in Egypt. The inflation rate in the last few years has skyrocketed, reaching 18 per cent in 2008, whereas increases in nominal wages have not kept pace. In addition, official unemployment figures remain high, reaching around 12 per cent in 2007/2008.<sup>5</sup> Income inequality has remained almost stagnant, with the Gini coefficient reaching 34 in 2004 compared to 33 in 1995.<sup>6</sup>

Moreover, crucial institutional pillars of a market economy have been introduced recently, including the competition law 3/2005<sup>7</sup> and consumer protection law in 67/2006.<sup>8</sup> The late introduction of such important pillars had positive social repercussions due to the negative impact of high concentration of several key industries (such as cement) and the possible prevalence of anti-competitive behaviours.

#### Political Aspects:

While the development of Egypt's political system has mirrored to a large extent the economic system's trajectory, i.e. moving towards more liberalisation (openness and democracy), its pace of reform has always been seen as being considerably slower.

The constitutional development in Egypt was closely linked to the country's struggle for independence and liberation, with its first Constitution being put in place in 1923 after the dissolution of the British Protectorate. After being suspended in 1930, the Constitution went into effect again for some time until the outbreak of the July Revolution in 1952. In 1956 Nasser introduced a new Constitution, which pronounced Egypt as a Socialist Arab State. The first permanent Constitution was created under the Sadat Regime in 1971. Since then, Egypt has witnessed some constitutional developments, including the latest 2005 and 2007 amendments.

After the 1952 revolution and the emergence of the Nasser regime in Egypt, the economic and political landscape changed dramatically. To increase his grip on power, Nasser changed the Constitution, dissolved all political parties and banned the creation of new ones, except for the Arab Socialist Union Party, over which he presided. Under the new Constitution, the executive gained more power compared to the legislature. The public space, especially unions and associations, came under direct government control, which further enhanced the executive's domination of power.

In 1970 Sadat introduced a shift in both economic and political strategies compared to his predecessor. Sadat's open door economic policy was complemented by introducing certain political reforms, such as a controlled multiparty system and allowing the Muslim Brotherhood and the liberal New Wafd Party to re-enter

<sup>5</sup> Central Agency for Public Mobilization and Statistics (CAPMAS, 2009), available at: [www.msrintranet.capmas.gov.eg](http://www.msrintranet.capmas.gov.eg)

<sup>6</sup> Based on the latest household consumption survey of 2004/2005. World Bank (2007) available at: [web.worldbank.org/WEBSITE/EXTERNAL/COUNTRIES/MENAEXT/EGYPTEXTN](http://web.worldbank.org/WEBSITE/EXTERNAL/COUNTRIES/MENAEXT/EGYPTEXTN)

<sup>7</sup> Egyptian Competition Authority, <http://www.eca.org.eg/EgyptianCompetitionAuthority/Static/Message.aspx?MainNav=About&SubNav=Message>. See also [www.egypt.gov.eg](http://www.egypt.gov.eg)

<sup>8</sup> Consumer Protection Agency, [www.cpa.gov.eg/english/legislations\\_rules.htm](http://www.cpa.gov.eg/english/legislations_rules.htm) See also [www.egypt.gov.eg](http://www.egypt.gov.eg)

Egyptian politics. He further dismantled the Arab Socialist Union and allowed some political parties to be created under state control. However, when political opposition increased after the signing of the peace treaty with Israel, Sadat suspended some opposition parties and cracked down on many prominent Egyptian figures who opposed his policies.

When Mubarak came to power, he introduced changes to Sadat's policies with the interest in subverting the political discontent against the regime. He enacted more "careful" political liberalisation measures through co-opting political opposition. However, by the 1990s, Egypt's liberalisation process had stalled and its economy witnessed major setbacks. Since the mid-1990s Egypt has been subjected to increasing internal and international pressure for reform. As a consequence, the regime introduced further political reform measures, such as increased women's rights, increased political participation for the opposition, and more freedom for government-owned, opposition and independent media. More recently, political reform in Egypt has witnessed an accelerating pace; constitutional reforms in 2005 and 2007 represent two major landmarks in Egypt's path towards democratisation and reform. In 2005 the constitutional reforms introduced multi-party presidential elections for the first time in Egypt. Until February 2005 the system of presidential elections in Egypt took the form of a national referendum. In February 2005 Article 76 of the Constitution was amended with the aim of replacing this indirect mechanism by a direct multi-candidate electoral system.

The amendments also tried to enhance parliamentary powers vis-à-vis the Cabinet. Recent legislative reforms have attempted to create a healthy legal framework in which political parties can operate freely. The banned Muslim Brotherhood is an active player in the Egyptian political system despite its inability to be transformed into a legal political party. The active role played by religion-based groups in the political system is partially a reflection of the weak social safety net in Egypt; such religion-based groups (Muslims and Christians) fill this gap by extending their services to the poor. This has been evident in the latest parliamentary elections, in which the Muslim Brotherhood gained a large number of seats as independents. Moreover, the evident role played by such religion-based group reflects the weak status of political parties in Egypt; the ruling party (National Democratic Party) is hegemonic and other parties are unable to compete with it, leaving space for religion-based groups.

However, despite the major reforms undertaken, the current regime is still widely viewed as an authoritarian regime. For example, the Economist Intelligence Unit 2008 democracy index ranked Egypt 119th out of 167 countries, putting it among the 50 countries in the index considered "authoritarian".<sup>9</sup> Egypt is towards the higher end of these countries, and it scores higher in the democracy index than most other countries in the Middle East apart from Lebanon, Jordan and Iraq. Egypt's weakest points remain in curtailed civil liberties as perceived by the Economic Intelligence Unit index, despite the major liberal reforms undertaken. One of the main critiques of the political system in Egypt is the vast powers the Constitution bestows in the hands of the President. The constitutional amendments have tried to establish more balance inside the executive itself by curtailing such powers, yet they remain vast.

The legislative power is vested in two chambers: the Parliament (People's Assembly) and the Shura Council. The People's Assembly is comprised of 444 directly elected members and 10 presidential appointees. The People's Assembly is responsible for passing laws and approving the State's overall policy, as well as the socio-economic development plan and the state's public budget.<sup>10</sup> The

<sup>9</sup> *The Economist Intelligence Unit, The Economist, The Index of Democracy, 2008; graphics.eiu.com/PDF/Democracy%20Index%202008.pdf. See also UNDP- POGAR (2008) UNDP Programme on Governance in the Arab Region (POGAR PROGRAM) (2008), available at: www.pogar.org*

<sup>10</sup> *new.sis.gov.eg/En/Story.aspx?sid=2338*

Assembly's constitutional term is five years, starting from the first meeting. The recent constitutional amendments in 2007 tried to empower the Parliament and increase its powers vis-à-vis the executive branch. However, there are certain impediments that could hinder an effective monitoring role of the legislature over the executive; this includes the dominant role played by the ruling National Democratic Party (NDP) manifested in its control over the majority in the parliament.

The other chamber is the Shura (Consultative) Council, which is mandated with "studying and proposing whatever it deems fit to reinforce national unity and social peace, and protect the basic components of the society".<sup>11</sup> Until March 2007, the Council was seen as a consultative body with much less authority compared to the People's Assembly. The constitutional amendments agreed upon on 26 March 2007 increased the powers vested in the Shura Council.

According to the Constitution the judicial authority is an independent authority, and it is composed of different types of courts (such as courts of First Instance, Appeal, Cassation) as well as Administrative Courts (State Council) and the Supreme Constitutional Court, which is considered an independent judicial body concerned with determining the constitutionality of laws.<sup>12</sup> The judiciary's role in promoting democracy and political liberalisation is always highlighted by political commentators, especially its positive role during elections (presidential and parliamentary).

Egypt is a unitary system divided into 29 administrative units (governorates) of juridical entities, each comprising a number of markez (rural districts), cities and villages. These units are charged with the task of managing the entirety of public services within their jurisdiction.<sup>13</sup> There has been an increased movement towards adopting decentralisation as means of enhancing the efficiency of the local administration on the one hand and to ensure wider participation on the other hand.

As for political parties, Egypt moved to a multi-party system in the mid-1970s. From the 1952 revolution to the mid-1970s, all political parties were banned except for the ruling Arab Socialist Union. However, late President Sadat allowed for a multi-party system in the mid-1970s. As of now, there are about 24 registered political parties, though when assessing their effectiveness in terms of representation in the Parliament and their limited constituency, it can be concluded that there are only six significant active parties. The ruling NDP is the dominant party. This is reflected in its control over the majority in the parliamentary as well as local elections. In addition, the NDP can draw on a large and interconnected party machine which is spread across the entire country.

Civil society has been steadily gaining strength in Egypt. This is reflected by the increased number of CSOs that are active in the political arena, especially in human rights issues as well as anti-corruption. The new law on associations number 84/2002 has endorsed a series of reforms aimed at easing the operation of CSOs. However, their performance remains short of what is expected. CSOs are still hindered by some legal obstacles, some of which are related to Law 84/2002, whereas others are caused by the state of emergency. The state of emergency gives the right to law enforcement authorities to search persons and places, intercept e-mails, tap telephones without warrants and detain suspects indefinitely without charges.<sup>14</sup>

The media has taken on an increased role in the political system. The private sector role in the media has expanded during the last two decades, compared to the previously dominant role of the government. Moreover, the media have been

<sup>11</sup> [www2.sis.gov.eg/En/Publications/226/538/552/554.htm](http://www2.sis.gov.eg/En/Publications/226/538/552/554.htm)

<sup>12</sup> [www2.sis.gov.eg/En/Publications/226/538/552/554.htm](http://www2.sis.gov.eg/En/Publications/226/538/552/554.htm)

<sup>13</sup> [www2.sis.gov.eg/En/Publications/226/538/552/554.htm](http://www2.sis.gov.eg/En/Publications/226/538/552/554.htm)

<sup>14</sup> Business Anticorruption Portal, "Egypt Country Profile," 2009; [www.business-anti-corruption.com](http://www.business-anti-corruption.com)

viewed as a major actor in the last parliamentary and presidential elections, as the state-owned media were committed by law to guarantee equal time for all presidential candidates to broadcast their campaigns. The media and press have played an increased role in achieving transparency, and the unveiling of corruption has expanded in a very healthy way. This could be explained in terms of the accelerating pace of reform towards granting a wider space for political freedom of the press and media. In general, it could be said that the media's freedom in Egypt has been enhanced lately. This is reflected in the increased number of independent and party-affiliated newspapers that are being published. Both new and long-standing newspapers have enjoyed more freedom in assessing and criticising the performance of the government including the President, which previously was a red line that could not be crossed. There has also been an increasing number of political programs that have tackled the government's performance and heavily criticised the Cabinet.



# VII

## CORRUPTION PROFILE

Corruption in Egypt has gained increased attention. In the early 1990s it was difficult for civil society to tackle the issue of corruption, as it was perceived that delving into this issue could lead to problems. Additionally, the government was hardly talking openly about corruption at that time. However, since the mid-1990s and especially since the year 2000, corruption is being discussed extensively and openly by media, civil society and academic organisations. On a parallel level, efforts undertaken to combat corruption by the government and anti-corruption agencies have increased. As a result, corruption has become the focus of attention by many stakeholders. The following corruption profile starts by describing the status of corruption in Egypt via a review of the results of international reports. The second part focuses on the roles played by the government as well as domestic independent and non-governmental organisations, mainly CSOs and the media, in combating corruption. The third part identifies the main impediments facing corruption-combating efforts in Egypt. The fourth part describes recent anti-corruption activities.

### 1. Status of Corruption in Egypt

*The first report of the Transparency and Integrity Committee*,<sup>15</sup> published in 2007, defines the main forms of corruption in Egypt. They include: issuing certain decisions in favour of a certain group other than the public interest, the lack of transparency in public procurement, receipt of certain payments/bribes in return for facilitating access to governmental services, and misusing or wasting public funds or/and public property. The report also identified the main areas that are most vulnerable to corruption in Egypt. They include: payments/bribes to facilitate public access to government services, customs and taxes, documenting and specifying fines, misuse of public property, government employment opportunities and public procurement.

Most reports of international organisations dealing with corruption in Egypt state that corruption is rather common, while many also notice improvements in anti-corruption efforts over the past years.

For example, Egypt's score on *Transparency International's Corruption Perception Index (CPI)*<sup>16</sup> improved from 1.1 in the late 1990s to 3.3 in 2003. The government has initiated various anti-corruption measures; however, they remain inadequate in curtailing corruption, and since 2003 Egypt has stagnated in the Transparency Index (3.2 in 2004, 3.4 in 2005, 3.3 in 2006). Egypt ranked 70th out of 163 countries in Transparency International's CPI 2006. Egypt's rank witnessed a slow backslide in 2007, scoring 2.9 and ranking 105 out of 180 countries. In 2008 Egypt's score stagnated at around 2.8, with a lower rank (115 out of 180).

*The Global Integrity Report*<sup>17</sup> (2008) recorded that Egypt's status in terms of integrity is considered weak. Egypt's overall score in 2008 was 54 out of 100. The 2008 score represented a slight improvement from 2007 (53 out of 100). Having a closer look at the main pillars of the Integrity Indicators Scorecard,<sup>18</sup> positive developments have been achieved in areas such as anti-corruption and rule of law.

<sup>15</sup> *Transparency and Integrity Committee, First Report 2007*; [www.ad.gov.eg/About+MSAD/Transparency+committee/](http://www.ad.gov.eg/About+MSAD/Transparency+committee/)

<sup>16</sup> A country or territory's CPI Score indicates the degree of public sector corruption as perceived by business people and country analysts, and ranges between 10 (highly clean) and 0 (highly corrupt). *Transparency International, Corruption Perception Index*; [www.transparency.org/policy\\_research/surveys\\_indices/cpi](http://www.transparency.org/policy_research/surveys_indices/cpi)

<sup>17</sup> *Global Integrity Report, Egypt, 2008 Assessment*; [report.globalintegrity.org/reportPDFS/2008/Egypt.pdf](http://report.globalintegrity.org/reportPDFS/2008/Egypt.pdf). The index assesses the existence, effectiveness and citizen access to key anti-corruption mechanisms at the national level in a country. It does not measure corruption per se or perceptions of corruption. It also does not measure governance "outputs" – statistics of service delivery, crime or socio-economic development. Instead, the index is an entry point for understanding the anti-corruption and good governance safeguards in place in a country that should ideally prevent, deter or punish corruption.

<sup>18</sup> Civil society, public information and media, elections, government accountability, administration and civil service, oversight and regulation, in addition to anti-corruption and rule of law.

*The Bertelsmann Transformation Index (BTI) 2008 Report* focused more on the market economy and democratic development; however, it examined corruption as well. BTI identified that Egypt's market framework is deficient in a number of areas, such as corruption at different governmental levels including grand and petty corruption.<sup>19</sup>

In their 2007 *Enterprise Survey*<sup>20</sup> the World Bank and IFC identified the status of corruption affecting the business environment in Egypt. According to the World Bank and IFC, the private sector in Egypt perceives corruption as a major constraint affecting its business. However, the percentage of firms paying informal payments to get things done in Egypt is reportedly lower than the equivalent percentage in the Middle East and North Africa (MENA) region as well as in other low/middle-income countries. In terms of specific activities, Egypt ranked better than the MENA region and low/middle-income countries in terms of bribes paid for tax inspectors, construction permits, operating permits and import licenses. However, it ranked worse in terms of securing a government contract.

Egypt's score in transparency and combating corruption on the *Freedom House Index*<sup>21</sup> has fallen slightly, from 1.76 in 2005 to 1.72 in 2007 (on a scale of 0 to 7, from weakest to strongest). The Freedom House Index highlighted a number of weak aspects of the integrity system in Egypt, including the phenomenon of vote buying that prevailed in the parliamentary elections, weak control of the legislature over the executive due to domination of the ruling party (NDP), detention of some members of political opposition groups, and the continuous tension between law enforcement agencies (mainly police) and the public.

## 2. Roles of Government and Non-Governmental Domestic Organisations

The current government has undertaken several initiatives to combat corruption and enhance transparency. For example, a Transparency and Integrity Committee was formed by the Minister of State for Administrative Development in 2007, and a transparency unit was established in 2007 at the Ministry of Investment.

At the domestic level some initiatives have been undertaken to measure corruption. For example the Information and Decision Support Centre of the Cabinet of Prime Minister (IDSC) undertook a poll in all Egyptian governorates to measure the perception of administrative corruption. The IDSC's methodology to construct the Egyptian Corruption Index was based on modern methodologies in constructing composite indices, which are similar to TI's CPI methodology but differs in some statistical aspects. The most important results highlighted that the Egyptian Corruption Index amounts to about 66 points out of 100 maximum. The results showed that Qalioubia, El-Gharbia, Red-Sea, Cairo, and Suez governorates are the highest five governorates in terms of index value. IDSC results also showed that the perception of administrative corruption increases with the level of education.<sup>22</sup>

Civil movements combating corruption and enhancing transparency have also grown over the past years; while there is increased freedom for such advocacy, their space is still constrained, as arrests of political groups and bloggers are still exercised.<sup>23</sup> However, it is worth noting that such arrests are not focused

<sup>19</sup> Bertelsmann Transformation Index (BTI), "Egypt Country Report," 2008; [www.bertelsmann-transformation-index.de/fileadmin/pdf/Gutachten\\_BTI\\_2008/MENA/Egypt.pdf](http://www.bertelsmann-transformation-index.de/fileadmin/pdf/Gutachten_BTI_2008/MENA/Egypt.pdf)

<sup>20</sup> World Bank and IFC, *Enterprise Survey: Egypt Country Profile 2007*; [www.enterprisesurveys.org/documents/EnterpriseSurveys/Reports/Egypt-2007.pdf](http://www.enterprisesurveys.org/documents/EnterpriseSurveys/Reports/Egypt-2007.pdf)

<sup>21</sup> Freedom House, "Countries at the Crossroads, Egypt," 2007; [www.freedomhouse.org/uploads/ccr/country-7170-8.pdf](http://www.freedomhouse.org/uploads/ccr/country-7170-8.pdf)

<sup>22</sup> Information and Decision Support Centre, "Methodology and Results of Administrative Corruption Perception Index at the Level of Governorates", 2007; [www.eip.gov.eg/Upload/Documents/363/corrupt.pdf](http://www.eip.gov.eg/Upload/Documents/363/corrupt.pdf)

<sup>23</sup> Global Integrity Scorecard: Egypt 2008 and MAAT for Peace, Development and Human Rights (MAAT) "On the sidelines of the report of the U.S. State Department --- The United States is still lament the darkness", [www.maat-law.org/Statements/2008/2009/2009E/28022009.htm](http://www.maat-law.org/Statements/2008/2009/2009E/28022009.htm)

on combating corruption activities. They are more focused on activities dealing with the political system and human rights. A few movements have been created with a focus on corruption. For example, “Egyptians against corruption” is a new movement against corruption. The movement has published reports on corruption cases in Egypt. The movement has also launched public campaigns against corruption, such as the “One Million Pins” campaign. It also has a website ([www.nadafa.org](http://www.nadafa.org)) that has opened a forum for anyone who seeks to report corruption with proof and evidence. The Egyptian Transparency Network<sup>24</sup> was created in June 2008 under the auspices of the Development and Institutionalization Support Centre (DISC). The network publishes a series of studies and papers tackling corruption in Egypt. The network also conducts polls regarding citizens’ opinions on the main issues related to corruption in Egypt. Yet international reports, such as the Country Report on Human Rights Practices released by the US Department of State,<sup>25</sup> shows that there are cases of constraining civil liberties in Egypt.

Among the significant positive steps undertaken to improve transparency and accountability within Egypt’s governance system was the establishment the National Council for Human Rights (NCHR) in 2003.<sup>26</sup> The main objectives of establishing the NCHR was to further the protection, set the values, raise the awareness and ensure the observance of human rights. The NCHR prepares an annual report concerning its efforts and activities, and it also makes recommendations that the Council perceives as appropriate to enhance human rights protection in Egypt. The report provides a general outlook on human rights violations in Egypt based on the analysis of the complaints received by the NCHR complaints committee. The Council presents such reports to the President of the Republic, the head of the People’s Assembly and the head of the Shura Council. The council has submitted four reports since its inauguration. The most important topics the council reports have tackled include: mistreatment of prisoners and detainees, abuse of power by some policemen in the treatment of prisoners and citizens, and the need to modernise and develop the legal framework governing the operation of CSOs. In addition, the council has prepared detailed reports on the 2005 parliamentary elections as well as the 2007 presidential elections, in which the council highlighted both the positive and negative practices that affect the integrity of the election process. Hence, the NCHR deals with corruption and touches upon several areas that have human rights and corruption dimensions.<sup>27</sup>

Regarding engagement in international conventions to combat corruption, Egypt is becoming highly active. For example, Egypt is in the process of signing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and in 2005 the Government of Egypt ratified the United Nations Convention Against Corruption (UNCAC)<sup>28</sup>, signalling the increased interest in tackling the issue of corruption in a more effective manner. The country is also a signatory of the OECD Declaration on International Investment and Multinational Enterprises<sup>29</sup>, participates in the MENA Anti-corruption and transparency network<sup>30</sup> and is also a founding member of the Middle East and North Africa Financial Action Task Force, established in November 2004 as a voluntary regional association to combat money laundering and terrorist financing.<sup>31</sup> The government, together with the general prosecutor’s office, has been cooperating with concerned international organisations to fulfil its obligation in regard to the UNCAC. The process of ratification of the African Convention on Preventing

<sup>24</sup> [www.nazaha-eg.net/en](http://www.nazaha-eg.net/en)

<sup>25</sup> US State of Department, *Egypt Report on Human Rights Practices, 2007*; [www.state.gov/g/drl/rls/hrrpt/2006/78851.htm](http://www.state.gov/g/drl/rls/hrrpt/2006/78851.htm)

<sup>26</sup> *National Council for Human Rights*; [www.nchr.org.eg/en/home.asp](http://www.nchr.org.eg/en/home.asp)

<sup>27</sup> *Ibid.*

<sup>28</sup> *United Nations Office on Drugs and Crime UNODC, United Nations Convention Against Corruption UNCAC*; [www.unodc.org/unodc/en/treaties/CAC/index.html](http://www.unodc.org/unodc/en/treaties/CAC/index.html)

<sup>29</sup> *Organization for Economic Co-operation and Development OECD, OECD Declaration and Decisions on International Investment and Multinational Enterprises*; [www.oecd.org/document/24/0,3343,en\\_2649\\_34887\\_1875736\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/24/0,3343,en_2649_34887_1875736_1_1_1_1,00.html).

<sup>30</sup> [www.undp-pogar.org/about/docs/gfd-uncac.pdf](http://www.undp-pogar.org/about/docs/gfd-uncac.pdf)

<sup>31</sup> *Middle East and North Africa Financial Action Task Force, MENAFATF*; [www.menafatf.org](http://www.menafatf.org). See also UNDP- POGAR (2008) *UNDP Programme on Governance in the Arab Region (POGAR PROGRAM) (2008)*. available at: [www.pogar.org](http://www.pogar.org)

and Combating Corruption started in May 2008 but is still not yet completed. Finally, Egypt has also been participating in formulating and supporting the draft of the Arab League Convention on Combating Corruption which will constitute the Arab League commitment to the UNCAC.<sup>32</sup>

### 3. Impediments for Initiatives to Combat Corruption

One of the main features of the integrity system in Egypt is that it has a large number of laws and regulations that deal with different aspects of corruption. However, in many cases such rules and regulations remain ineffective and not well enforced. Reasons differ for such relatively weak law enforcement, including procedural impediments that deter full application of laws, weak punishments and difficulties in proving cases. Moreover, the lack of full independence of anti-corruption agencies is likely to have a negative impact on the rule of law in terms of combating corruption. As a result, and despite the existence of several anti-corruption agencies in Egypt, their job becomes complex, and the inefficient laws and regulations prevent them from undertaking their job in a more efficient manner. There are also some impediments that hinder the effective role of civil society organisations and opposition parties and movements in playing an effective role in fighting corruption.

Some provisions in Law 84/2002 governing the operation of non-governmental organisations (NGOs) have been seen as hindering the free operation of the NGOs. According to the Egyptian Organisation of Human Rights (EOHR), the law prohibits NGOs from engaging in political issues; since the adoption of the law, some human rights organisations have suffered delays in receiving their registration or have been denied registration.<sup>33</sup> In addition, there exist internal limitations inside civil society organisations. Egyptian CSOs often fall short of international best practices in terms of internal governance and management. Common problems include an unduly strong role of a charismatic leader in the running of the organisation, making the diffusion and delegation of power almost impossible, and affecting authorisation, participation and empowerment. In other cases, decision-making is limited to a few members.<sup>34</sup>

Opposition parties have many difficulties that affect their ability to play an effective role in combating corruption. For example, they have very limited representation in the Parliament and on local councils. They also suffer from a small constituency and public base. In addition, most of the opposition parties face serious problems in defining successors after the death of the party's founder. In addition, there are financial problems related to their limited public base and, accordingly, to limited financial support from their members.

There have been positive developments in the last few years, as the media has been targeting corruption in an extensive way. However, there are still many restrictions, such as Law 2/1975, which forbids the publishing of official documents, and Law 58 (Penal Code and its modifications, especially number 29/1982, 199/1983, 97/1992, 93/1995). The Penal Code still contains many provisions that could be seen as hindering freedom of opinion and expression. The Emergency Law 162/1958 is considered a restriction on these rights; it gives the administration the authority to confiscate, delay and shut down newspapers. In addition, the attorney general has the authority to prohibit publishing content that concerns certain crimes.

It is worth emphasising that fighting corruption cannot be achieved and sustained only by punishing corrupt parties and undertaking more stringent measures, without tackling the roots of corruption. There must be fundamental changes

<sup>32</sup> Ministry of State for Administrative Development, Transparency and Integrity Committee (2008), *Action Priorities and its Mechanisms, Second Report*, Cairo: Ministry of State for Administrative Development.

<sup>33</sup> Egyptian Organisation of Human Rights (EOHR), "Assessment of the Electoral Framework Final Report the Arab Republic of Egypt," 2007; [www.eohr.org/report/2007/re0514.shtml](http://www.eohr.org/report/2007/re0514.shtml)

<sup>34</sup> Mohamed Agati, "Undermining Standards of Good Governance: Egypt's NGO Law and Its Impact on the Transparency and Accountability of CSOs," *International Journal of Not-for-Profit Law*, Volume 9, Issue 2, April 2007, [www.icnl.org/KNOWLEDGE/ijnl/vol9iss2/special\\_4.htm](http://www.icnl.org/KNOWLEDGE/ijnl/vol9iss2/special_4.htm)

in the bureaucratic system and machinery of the society. In Egypt there exist several agencies that deal with corruption and fraud, as corruption in Egypt is considered a criminal act. Nevertheless, the roots of corruption are embedded in the weak system of checks and balances, weak procedures for public reporting on corruption, an absence of measures tackling nepotism and favouritism, a lack of full independence of anti-corruption agencies, an absence of whistle-blowing mechanisms, weak if any legal protection provided for whistle-blowers, and a proliferation of conflicts of interest. Moreover, there must be a complete reform of the wage system in the civil service as well as measures to close the gap between discrepancies in wages.

#### 4. Recent Anti-corruption Activities

The political will to combat corruption was reflected in the Cabinet's resolution No. 24 of 1 February 2007, which lists the objective of fighting corruption high on the government's working agenda.<sup>35</sup>

Combating corruption as seen by the government is focused on four main pillars:<sup>36</sup>

- Eradicating the causes of corruption through administrative and legislative simplification and improving the standard of living for civil servants
- Improving monitoring and corruption detection tools
- Launching a media campaign
- Establishing a mechanism for receiving and analysing citizens' complaints

It can be argued that Egypt is well-endowed with anti-corruption agencies in several fields and covering different areas; however, there remain a number of gaps, as identified in the main body of this report. Moreover, fighting corruption lately has received considerable attention from the Egyptian governing regime. Reforms and initiatives undertaken include the following:

- Constitutional Reforms in 2007 to strengthen the system of checks and balances among the three arms of the governance system in Egypt, especially the legislature and executive. The March 2007 constitutional amendments added to Article 133 of the Constitution stipulates that the Prime Minister presents within 60 days of the President's nomination a "government program" to the People's Assembly. In case the program is not approved, the nominated Cabinet must resign and another Prime Minister is to be nominated by the President. This is aimed at strengthening the legislative power to check on the executive authority – in other words, to make the Cabinet more accountable before the Parliament. Revised Article 115 of the Constitution stipulates that the government budget must be presented to Parliament at least three months before the end of the fiscal year (instead of two months, as had been the practice in Egypt) and that the Parliament has the right to amend the budget proposal without necessary government approval. Article 127 of the Constitution gives the Parliament the right to give or withdraw confidence from the Prime Minister, without having to submit the decision to a public referendum.

There has been some progress toward enhancing accountability. This was reflected in the anti-corruption campaign adopted since 2003, which has resulted in convictions of some prominent figures, including a former minister, a former governor and leading figures in the ruling party. In some cases, the perception of some is that such campaigns are politically motivated and that opposition figures are prosecuted in order to undermine the challenge they pose to the ruling elite.<sup>37</sup> It is difficult to be in full agreement with such a judgment, as it requires in-depth,

<sup>35</sup> A Presentation on The Transparency and Integrity Committee (TIC), Arab Republic of Egypt; [www.arabgov-initiative.org/publications/GfDII/corruption/AmmanConference08/ghada%20moussa-en.pdf](http://www.arabgov-initiative.org/publications/GfDII/corruption/AmmanConference08/ghada%20moussa-en.pdf)

<sup>36</sup> UNDP-POGAR, UNDP Programme on Governance in the Arab Region (POGAR PROGRAM), 2008; [www.pogar.org](http://www.pogar.org)

<sup>37</sup> Business Anticorruption Portal, "Egypt Country Profile," 2009; [www.business-anti-corruption.com](http://www.business-anti-corruption.com)

case-by-case legal analysis. Also, Egyptians Against Corruption (EAC)<sup>38</sup> grew out of the Afro-Egyptian Human Rights Organisation (AEHRO). The EAC is mainly concerned with fighting corruption in Egypt as well as raising people's awareness of their role in standing up against corruption. People can report incidences of corruption in Egypt via the EAC website.<sup>39</sup>

The Transparency and Integrity Committee was formed by a decree, No. 86 of 2007, issued by the Minister of State for Administrative Development.<sup>40</sup> The major function of this committee is to suggest anti-corruption policies and strategies, raise public awareness and carry out studies and research pertinent to integrity and transparency. The committee is supposed to coordinate its efforts closely with other anti-corruption agencies. The members of the committee include public figures, senior government officials and NGO representatives. The diversity of the membership of the committee clearly enhances its credibility. The committee also cooperates closely with international organisations working in the field of combating corruption. The committee began its work by issuing its first report at the end of October 2007, and it has since started to issue reports on an annual basis. Its first report examined conceptual and methodological issues on corruption; the second report focused on the current situation of corruption and integrity in the country. In addition, recommendations were made regarding the role of the committee and other actors in combating corruption.<sup>41</sup> The report draws attention to transparency and integrity in the management and expenditure of state resources through a transparent process of making, declaring and discussing the State's General Budget. This process draws its importance from the significant role that fiscal policy plays in the national economy in allocating resources among different economic sectors.

The second report, prepared in 2008, focused on increasing the committee's effectiveness in fighting corruption and monitoring transparency and integrity in Egypt. The report proposed some mechanisms to promote transparency, accountability and anti-corruption efforts, especially in the administrative and government institutions. The report stressed Egypt's implementation of international commitments in this regard.<sup>42</sup>

The report also gave considerable weight to strengthening legislative and legal frameworks, as Egypt is rich in laws, decrees and relevant regulations concerned with fighting corruption, and promoting integrity and transparency. The report mentioned that the strategy of fighting corruption requires continuing the legislative and regulatory reform, and reviewing existing anti-corruption legislation and making it clear, simple and appropriate for their respective cause. Following the 2008 report of the Transparency and Integrity Committee, a number of laws and regulations that aim to enhance transparency have entered the legislative pipeline, including: a) a draft new law on public civil servants to enhance the role of checks and balances; b) a proposal for a new law on the freedom of access to information; c) the possibility of creating an ombudsman position in Egypt and; d) a revision of laws and regulations governing government procurement. In addition, a new program was developed to promote a culture of upholding the rights of citizens.

The report suggests an Action Plan Framework for enhancing transparency and integrity in Egypt that consists of the following priority action areas:

38 [www.nadafa.org/en/aboutus/](http://www.nadafa.org/en/aboutus/)

39 [www.business-anti-corruption.com/country-profiles/middle-east-north-africa/egypt/initiatives/private-anti-corruption-initiatives/](http://www.business-anti-corruption.com/country-profiles/middle-east-north-africa/egypt/initiatives/private-anti-corruption-initiatives/)

40 [www.ad.gov.eg/NR/rdonlyres/1667E19E-DC90-4C7F-A315-7175AE7B4A52/1746/ExecutiveSummary2ndTICreportenglish2.pdf](http://www.ad.gov.eg/NR/rdonlyres/1667E19E-DC90-4C7F-A315-7175AE7B4A52/1746/ExecutiveSummary2ndTICreportenglish2.pdf)

41 [www.ad.gov.eg/NR/rdonlyres/1667E19E-DC90-4C7F-A315-7175AE7B4A52/1746/ExecutiveSummary2ndTICreportenglish2.pdf](http://www.ad.gov.eg/NR/rdonlyres/1667E19E-DC90-4C7F-A315-7175AE7B4A52/1746/ExecutiveSummary2ndTICreportenglish2.pdf)

42 Ministry of State for Administrative Development, Transparency and Integrity Committee (2008), *Executive summary of the second report on Action Priorities and its Mechanisms, Second Report*; [www.ad.gov.eg/NR/rdonlyres/1667E19E-DC90-4C7F-A315-7175AE7B4A52/1746/ExecutiveSummary2ndTICreportenglish2.pdf](http://www.ad.gov.eg/NR/rdonlyres/1667E19E-DC90-4C7F-A315-7175AE7B4A52/1746/ExecutiveSummary2ndTICreportenglish2.pdf)

- Promoting the institutional framework for fighting corruption
- Strengthening and formulating the legal framework for prosecution and criminal justice
- Increasing the extent of international cooperation
- Activating and enhancing the role of the media in combating corruption
- Strengthening cooperation between government institutions and civil society organisations

Though the Action Plan Framework does not represent a full-fledged strategy for fighting corruption, it is a positive step.

At the level of specific government agencies, several initiatives have been launched to enhance transparency and combat corruption.<sup>43</sup> For example, a Centre for Transparency at the Ministry of Investment was established in 2007, which benefits from a financial donation from the Dutch government. The purpose of this project is to support the Ministry of Investment in battling corruption and mismanagement of public resources with the aim of improving its relations with the private sector and foreign investors. The project provides the following: a) support the drafting and issuing of the legal document on Freedom of Information; b) public awareness and stakeholder engagement; c) capacity-building and knowledge management and; d) investment promotion through enhancing transparency. The Centre has been active since June 2007, and it has already produced the first transparency review of the privatisation process in Egypt and the status of the companies following the process. In partnership with the Egyptian and Danish Federation of Industries, it translated the anti-corruption manual produced by the Danish Federation of Industries into Arabic. Moreover, the Ministry of State for Administrative Development signed a Memorandum of Understanding (MOU) with the Central Audit Organisation in 2008 to cooperate in areas related to transparency and integrity. The MOU focuses on cooperation in developing administrative structures and suggesting legislation that reflects the new role of the administrative body.

- More academic and research studies on corruption in Egypt are being undertaken. A number of academic studies have started to tackle the issue of transparency and combating corruption. For example, the al-Ahram Centre for Political and Strategic Research has launched a research program on the status of corruption in a number of economic activities including governmental budget process, customs and tax administration.
- Attempts to enhance respect of law enforcement agencies for human rights:
  - As mentioned before, there has been an increased interest in enhancing the relationship between the society and the Ministry of Interior (police and security forces). The aim is to prevent these agencies from abusing their powers. Many steps have been undertaken by the government to promote the respect for human rights among the police, prison officers, prosecutors and law enforcement agencies. Such efforts include:
    - The formation within the ministry of a human rights committee to investigate any violations of human rights committed by police staff against citizens, and to ensure any complaints to this effect are examined and the necessary action taken.
    - Training and awareness-increasing programs on human rights and freedoms organised in collaboration with the UN Centre for Human Rights in Geneva.
    - The curricula and training courses of the police academy include subjects on human rights.
    - Officers are being sent to training courses organised by institutes and centres for human rights in Western countries (France, Italy and Sweden) with a view to increasing their awareness of human rights.
    - There is an ongoing process to raise the performance of the police staff

<sup>43</sup> Information in this paragraph relies on an interview with a senior official at the Ministry of Investment; [www.investment.gov.eg](http://www.investment.gov.eg); as well as the Ministry of State for Administrative Development; [www.ad.gov.eg](http://www.ad.gov.eg)



through modernising their educational and training program and their methods of investigation and crime detection to ensure the legality of the methods used for these purposes.

- In addition, there is constant support for the ministry's surveillance departments concerned with tracing and investigating any violations of human rights or freedoms.



**VIII**

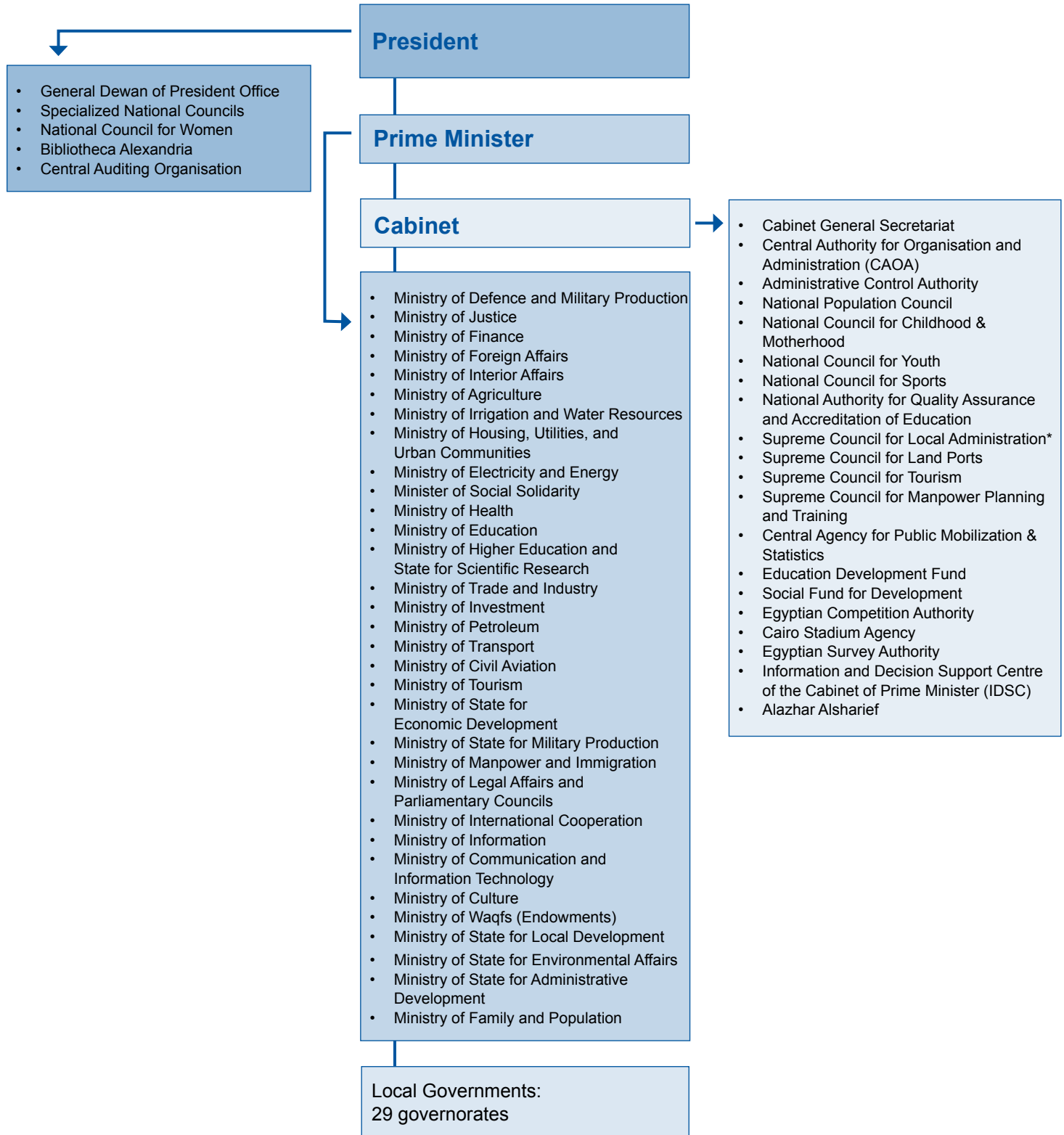
**THE NATIONAL INTEGRITY SYSTEM**

# 1. EXECUTIVE

**Resources/structure**

Egypt is a centrally governed unitary system. The central government holds most of the power. However, an amendment to the Constitution introduced in 2007 states the commitment to decentralisation, calling not only for delegating but also devolving more power to local authorities. Figure 1 illustrates the two main actors of the executive branch: the President and the Cabinet.

**Figure 1  
Organisational Structure of the Executive Body in Egypt**



\*Replaced by Governors' Council in real practice.  
Source: Prepared by the authors

Until 2005 the system of presidential elections in Egypt took the form of a national referendum, which presented to voters only one candidate chosen by the People's Assembly. In 2005 an amendment to the Constitution (based on a proposal by the President) was issued (Article 76) that changed the national referendum to a direct multi-candidate electoral system, hence providing the opportunity for political parties to put forward one of their leaders to run in the presidential election.

The President of Egypt is at the top of the executive authority (Article 77 of the Constitution). The presidential term is for six years and the President may be re-elected for successive terms.<sup>44</sup> The last election held was on 7 September 2005, and Mr. Mohamed Hosni Mubarak won with 86.6 per cent of the vote.<sup>45</sup>

The Government of Egypt (GOE), represented by the Cabinet of Ministers,<sup>46</sup> is the supreme executive and administrative body managing the State's affairs. According to the Constitution, the government consists of the Prime Minister, his deputies, ministers and their deputies. The Prime Minister is responsible for supervising the work of the government.<sup>47</sup> The government, in conjunction with the President, lays down the State's public policy and supervises its implementation. Based on the results of public policies, the Cabinet members are responsible before the People's Assembly individually and collectively. Several administrative bodies assist the government in performing its functions, such as the Central Authority for Public Mobilization and Statistics (CAPMAS), the Information Decision Support Center (IDSC) and the Central Authority for Organisation and Administration (CAOA). According to the Ministry of State for Administrative Development (MSAD), the total number of government administrative units reached 665 in January 2009. This number includes the President's office, cabinet, ministries, local administration and their affiliates.

The political party that wins the public election of the People's Assembly has a great deal of control in the Egyptian system. The National Democratic Party (NDP) has been the ruling party since the late President Anwar El-Sadat (1970-1981), who inaugurated a new era of the multi-party system by legalising the formation of political parties in June 1976.

### **Budgetary process**

Recent constitutional amendments require the budget to be balanced and presented to Parliament no later than three months before the budget year begins (before the beginning of April).<sup>48</sup> Previously, it was presented within two months of the fiscal year's end. The budgeting process is highly centralised around the Ministry of Finance (MOF). Annually in September, the MOF issues a circular for preparing a budget proposal for the next year to ministries, governorates/local administration, and service and economic public agencies. Each has to prepare its budget proposals for the next fiscal year and send it to MOF by December of the same year, after which there are rounds of negotiations between these ministries, governorates and public agencies on one side and the MOF on other side. Public entities usually prepare their budget proposals separately, with no or weak coordination with one another. As a consequence, much power is left with the MOF. For instance, at the ministerial level, the budget is fragmented in the sense that ministries submit budget proposals to the MOF on an independent basis, usually with limited inter-ministerial coordination. There is no fixed budget ceiling communicated to ministries in the budget circular. Rather, ministries submit budget proposals whose total costs are well above the overall expenditure budget in the fiscal framework, taking into account how the requested amounts will be

<sup>44</sup> Article 77 of the Egyptian Constitution was amended in 1980, and instead of allowing the President to serve only two consecutive terms, this became unlimited.

<sup>45</sup> The Egyptian Organization for Human Rights, "The 2005 Presidential Election: A critical Analysis"; [www.eohr.org/report/2005/re0910.shtml](http://www.eohr.org/report/2005/re0910.shtml)

<sup>46</sup> There is no fixed number of the size of the Cabinet, which is currently 32 ministers.

<sup>47</sup> Article 153 of the Egyptian Constitution.

<sup>48</sup> Article 116 of the Egyptian Constitution.

cut during the negotiation phase with the MOF.<sup>49</sup> The budgeting system does not allow for any substantive public accountability. For instance, the role of citizens in the process is unclear and certainly there is no role for CSOs or local media. Another problem is the weak governmental capacity in handling the process, as some ministries lack a solid internal budget review process to ensure that a justifiable ministerial consolidated budget request is proposed.

### Role(s) of Institution/Sector

According to the Constitution of 1971 and its amendments (1980, 2005 and 2007), the President of the Republic is the head of State. “He shall assert the sovereignty of the people, respect the Constitution and the supremacy of the law, protect national unity and social justice, and maintain the boundaries between authorities in a manner to ensure that each shall perform its role in the national action”.<sup>50</sup> Also, the President has tremendous power in times of crisis, disasters and threats to national security, according to the Constitution (Articles 74, 148 and 150). Together with the Cabinet, he supervises the process of drafting public policies. The President is also the Supreme Commander of the Armed Forces and head of both the Supreme Police Council and the National Defence Council.

The President is accountable before the Parliament (People’s Assembly) and in theory can be suspended from exercising his duties if found guilty on a charge of high treason or committing a criminal act. The accusation should be proposed by one-third of the People Assembly’s members; however, the charge should be approved by two-thirds of Assembly members. Additionally, the President of the Republic shall be tried by a special tribunal set up by law if needed (Article 85 of the Constitution).

The president nominates his deputies, and the prime Minister, who heads the government and selects members of the government (ministers), and relieves them of their posts. There are no term limits on the prime Minister, his deputies or ministers. Additionally, the president nominates the governors who run the local affairs in the twenty-nine governorates. The Cabinet’s role following the Constitution is to assist the head of the State in making public policies, implementing policies, monitoring the implementation of such policies and the performance of governmental bodies, drafting the State’s socioeconomic plan and budget, and following up on their execution.

Additionally the government, according to Article 156 of the Constitution, is responsible for: a) directing and coordinating the activities of ministries and other public entities, b) issuing administrative and executive orders/regulations and monitoring their implementation, c) contracting and granting loans, and d) implementing laws, maintaining national security and protecting citizens’ rights and interests.<sup>51</sup> According to the Constitution, the minister is the highest administrative executive within the designated ministry. The minister is responsible for formulating the policy agenda of the designated ministry, in compliance with the State public policies and implementing it through its administrative body.<sup>52</sup>

In terms of staffing key institutions in the executive branch, the Constitution organises the appointment of a Cabinet member (minister), whereas several laws organise the conditions for hiring top officials such as Law 5/1991. According to Article 154 of the Constitution, whoever is appointed minister or deputy-minister must be an Egyptian, not less than 35 years of age, and enjoy full civil and political rights. Appointing deputy-prime ministers, ministers, governors and deputy-governors, and removing them from their posts, is done by presidential decree subject to consultation with the Prime Minister. In practice, political and personal

<sup>49</sup> The same is correct for proposed budgets of local administration and economic and service agencies.

<sup>50</sup> Article 73 of the Egyptian Constitution.

<sup>51</sup> Article 156 of the Egyptian Constitution.

<sup>52</sup> Article 157 of the Egyptian Constitution.

ties are the major factors in hiring such positions. As for hiring advisors to ministers, it is less controlled since the advisors and the technical office staff of the minister do not fall into the governmental staff hierarchy. Moreover, they do not enter the payroll of the civil service, but are paid based on a separate scale.

For top government officials (up to the rank of first undersecretary) and heads of autonomous agencies and authorities, seniority in addition to qualifications and successful participation in mandatory training programs are the basic conditions in filling such positions. Notably, personal connections still play a vital role in holding some high-ranking positions. Likewise, seniority is a major factor in getting top civil service positions.

Taking good governance into account, the Constitution states that the salary of the President of the Republic shall be fixed by law and any amendment to the salary shall not come into force during the presidential term in which it is decided upon, and the President should not receive any other salary or remuneration. The President is prohibited from exercising any free profession or undertaking any commercial, financial or industrial activity with the State. Additionally, he may not acquire or take on lease any State property, or sell to or exchange with the State any property of his whatsoever.<sup>53</sup> Law 100/1987 and its amendments by Law 8/1989 state the salary scale of the Vice-President, head of the People's Assembly, head of Shura Council, Prime Minister and his deputies, and ministers. Also, Law 47/1979 organises the salary scale for the Egyptian government staff. It is important to mention that salaries paid by the government to public employees are usually insufficient to cover living expenses for junior and mid-level staff.

The government has made the corruption issue a priority,<sup>54</sup> as several senior government officials and ministers have spoken about corruption and the importance of fighting it.<sup>55</sup> The major elements of the governmental reform to combat corruption are restructuring or reinventing government, legislative reform, improving the public service delivery system, using advanced management techniques and advanced information systems, scaling-up the application of e-government, simplifying procedures and reengineering work shifts, improving service quality and performance, better time management, activating the grievance and complaint system, enhancing human resources capacities through training, better evaluation systems and other methods including e-government.

The Transparency and Integrity Committee (TIC) which is affiliated to the Ministry of State for Administrative Development (MSAD) published two reports about corruption in Egypt in 2006 and 2008, and the third one will be published soon. Also, the Minister of MSAD issued a decree (Number 86/2007) to establish and define the competencies of the Transparency and Integrity Committee (TIC). The TIC is a permanent committee comprised of public figures, representatives of the opposition, politicians, researchers and NGOs that aims to study means and suggest mechanisms to enhance transparency, accountability and combating corruption. Among its other functions, the committee is responsible for institutionalising government efforts to fight corruption as well as proposing a set of national indicators and criteria to assess and evaluate corruption.<sup>56</sup>

Additionally, in July 2007 the Information and Decision Support Centre (IDSC), affiliated with the Cabinet, conducted a study to assess the level of administrative

<sup>53</sup> Article 81 of the Egyptian Constitution.

<sup>54</sup> The Cabinet issued Resolution 24 on 1 February 2007 to list the objectives of combating corruption and placing the issue at the top of the government agenda.

<sup>55</sup> The Egyptian Cabinet, Recommendations of Session 24 in 11/2/2007; Minister of State for Administrative Development, Combating Corruption at the Top of the Government Agenda; [www.masrawi.com](http://www.masrawi.com), 28 January 2009; Fathi Sayed Farag, 'Who Can Fight Corruption: Government or Civil Society Organisation?' *Civilized Dialogue*, No. 2416, 26 September 2008.

<sup>56</sup> Information in this paragraph is based on interview with a senior official at the Ministry of Investment; [www.investment.gov.eg](http://www.investment.gov.eg); as well as the Ministry of State for Administrative Development; [www.ad.gov.eg](http://www.ad.gov.eg). See also Ghada Musa, Presentation on the Transparency and Integrity Committee (TIC), MSAD, 2009.



corruption at the local level (the governorate) and to evaluate the level of citizen awareness of the problem by measuring the Corruption Perception Index. The IDSC's methodology to construct the Egyptian Corruption Index was based on modern methodologies in constructing composite indices, which are similar to TI's CPI methodology but differs in some specific technical aspects. The Egyptian Corruption Index scores 66 out of 100 points and showed that Qalioubia, El-Gharbia, Red-Sea, Cairo and Suez governorates are the five highest-ranking governorates in terms of index score. The IDSC found a significant positive correlation between the perception of administrative corruption and the level of citizen education. In terms of the causes of corruption, the participants attributed this to unemployment, low salaries, social and income gaps (13.3 per cent), Wasta and greediness of public officials and civil servants (7.2 per cent), and weak values (20 per cent), among other reasons. The surveyed individual citizens stated that they bribe public officials in the form of money and gifts to get their business done (about 3 per cent), or use relatives (10 per cent) or people they knew (1.5 per cent). Also, about 65 per cent of them mentioned that civil servants use public property as if it were their own.<sup>57</sup>

Egypt, according to the TIC, is considered a pioneer among Arab countries in issuing legislation and laws related to the monitoring, accountability, investigation, and not only penalising but also criminalising corruption. As a result "it was one of the first Arab countries to sign and ratify the United Nations Convention on Fighting Organized Crime in 2004, it ratified the United Nations Convention against Corruption in 2005, and it became a founding member of the working group concerned with fiscal procedures in the Middle East and North Africa in 2004".<sup>58</sup>

### Accountability

Both the powers and oversight responsibilities of the executive are mentioned in the Constitution. Chapter Five of the Constitution states the powers of the executive (Articles 137 through Article 160). Also, Article 157 deals with issues and activities that are prohibited for any minister to conduct during his office term. Articles 159 and 160 describe the process of how to investigate a minister of crimes committed during his tenure. Such regulations are effective – that is, they are enforced, when applicable. The Constitution stipulates that the executive is accountable to the President of the State as well as the Parliament (People's Assembly).<sup>59</sup> Moreover, constitutionally, the judiciary can review the actions of the executive. In practice, the judiciary reviews the actions of the executive when necessary, and so does the Parliament, though it is widely believed that the Parliament does not seriously review the performance of the executive in many cases.<sup>60</sup> Moreover, a law for holding ministers accountable has not yet been enforced, although the issue has been raised several times in the media lately.

There exists a system of checks and balances in which the Parliament may, at the request of one-tenth of its members, hold the Prime Minister accountable. Such a decision should be taken by the majority of members of the Parliament. It may be taken only subject to an interpellation addressed to the government and after at least three days from the date of its presentation. According to Article 127 of the Constitution, "if such accountability is determined, the Parliament shall submit a report to the President, including the elements of the subject, the conclusions reached on the matter and the underlying reasons. The President may accept the resignation of the government or return the report to the Assembly within ten days. Should the Assembly, by a majority of two thirds of its members, once again endorse its decision, the President has to accept the resignation of the government."<sup>61</sup>

<sup>57</sup> IDSC, 'Methodology and Results of the Egyptian Corruption Index at Local Level,' (Cairo: IDSC, August 2007).

<sup>58</sup> Arab Republic of Egypt, Ministry of State for Administrative Development, Transparency and Integrity Committee, *Action Priorities and its Mechanisms, Second Report, August 2008.*

<sup>59</sup> Article 159 of the Egyptian Constitution.

<sup>60</sup> Raghad El-solh, *The Monitoring Role of the Arab Parliaments*, UNDP, POGAR, available at the UNDP website at <http://www.undp-pogar.org>

<sup>61</sup> Article 127 of the Egyptian Constitution.

Moreover, the 2007 constitutional amendments stipulate that the Prime Minister must present to the Parliament within 60 days of the President's nomination a "government program," which requires an absolute majority quorum by Parliament in order to be approved.<sup>62</sup> In case the program is not approved, the nominated Cabinet has to resign and another Prime Minister should be nominated by the President. This is aimed at strengthening the legislative power to check on the executive authority – in other words, to make the Cabinet more accountable before the Parliament (People's Assembly).

In general, ministers are collectively responsible for the public policy of the executive before the Parliament (People's Assembly) and every minister is responsible for the acts/decisions of his/her ministry. Article 159 of the Constitution states that the President of the State and People's Assembly have the right to bring a minister to trial for crimes committed by him in the performance of his duties. The charges against a minister must be adopted by at least one-fifth of the members of People's Assembly. However, indictment must be approved by two-thirds of Assembly members.

In practice, these checks-and-balance systems are modest in their application due to the presence of exceptional laws (e.g. an emergency law that has been in effect since 1981) that have pre-empted such checks-and-balance systems from functioning fully. However, over the last 10 years the checks-and-balance system has improved significantly. Thus, while the overwhelming majorities held by the NDP make it extremely unlikely that the Parliament will bring down a government, it can still embarrass ministers with probing questions, bring scandals to light and apply pressure on matters of specific interest.<sup>63</sup>

Moreover, the President of the Republic can call a referendum of the people on important issues "affecting the supreme interest of the country".<sup>64</sup>

### Integrity Mechanisms

Egyptian laws and regulations contain several anti-corruption provisions. For example, Law 62/1975 dealing with illegal profiting stipulates that the head of State and all government officials are required to fill out and submit a regular asset disclosure form once every five years, which includes all of their possessions and those of their spouses and underage children. The asset disclosure forms are reviewed by judicial committees and a specific body is established for that purpose (the Illicit Enrichment Apparatus) to help the review committees in their function. Presidential candidates are also required to submit an asset disclosure form. Moreover, Law 47/1978 prevents state employees from accepting any gifts – by themselves or through intermediaries – for executing their job. However, in practice there is modest application of such anti-corruption provisions<sup>65</sup> and there is conflict of interest in many high-ranking government positions.

Nevertheless, the regular asset disclosure form was a main document used to reveal several cases of corruption in the executive and the advisors of three ministers in the last five years. The increased number of corruption cases among the top government official ranks can be seen as a positive indicator of the increased interest of the executive in revealing such cases, and at the same time can be viewed as a negative indicator of the lax rules governing corruption. In fact both the positive and negative indicators seem to apply in reality. There is a lot of debate about the marriage between economic power (private business) and political power (political positions). The current Cabinet has several businessmen

<sup>62</sup> Article 133 of the Egyptian Constitution, [www.egypt.gov.eg/english/laws/Constitution/chp\\_five/part\\_two.aspx](http://www.egypt.gov.eg/english/laws/Constitution/chp_five/part_two.aspx)

<sup>63</sup> Nathan J. Brown, 'Mechanisms of Accountability in Arab Governance: The Present and Future of Judiciaries and Parliaments in the Arab World,' 2008; [www.undp-pogar.org/publications/governance/nbrown/potential.html#p6](http://www.undp-pogar.org/publications/governance/nbrown/potential.html#p6)

<sup>64</sup> Article 152 of the Egyptian Constitution.

<sup>65</sup> Based on focus group discussions held in Cairo, June 2009.

holding ministerial positions, and at the same time they and their families have their own business. Though in theory they have ceased running their business, it is never clear in practice whether they still have an influence on running their business or not.

### Transparency

Law 62/1975 traces any increase in the wealth of a public official and/or his or her family, which in fact enhances the transparency and integrity of the system. However, the system still has some loopholes. For example, the executive branch asset disclosures (especially at the ministerial level and higher levels) are not audited and are difficult to trace. Two explanations could be presented, namely the possession of assets, especially real estate, are not often officially registered or the assets are registered but under different names; according to the court of cassation, proving the possession of a civil servant's real estate is the responsibility of the supervising institutions and not the accused public employee. The accuser must provide evidence that proves the legality of his wealth.<sup>66</sup>

However, there formerly existed the so-called "El-Hesba" claims, in which any citizen could sue any public decisions or public institutions, or even any public figure related to public purposes.<sup>67</sup> This process no longer exists. Hence, it is no longer valid that any citizen can take public officials to court claiming their decision(s) negatively affect the society or are contrary to society's interest. Only affected citizens have the right to do so. This has reduced the degree of transparency of the system.

There is no explicit article in Egyptian law that obliges information on government officials' assets to be publicly accessible. On the contrary there are laws and decrees that prevent citizens from accessing government information and records, such as Law 121/1975 concerning the use of official documents, Presidential Decree 472/1979 concerning preserving of official documents, Law 313/956 concerning the prohibition of the dissemination of news of the armed forces, and Law 100/1971 concerning general intelligence. Moreover, in practice there are many obstacles, laws and institutions that restrain the free access to information, such as the Law of the Central Auditing Organisation (CAO), the Emergency Law (Law 162/1981) and Law 121/1975 on official documents, which bans the use or publishing of official documents. Loose arguments are used to restrict a citizen's right to access undisclosed assets.

So far, no law obliges government officials to act in a transparent manner. However the government has announced since 2004 that it is preparing a new law of information disclosure, though this has not taken place. Also, the Constitution gives journalists the right to ask for information and news (Article 210), though this is not fully exercised in practice. However, people working in the press and media usually claim they have undisclosed documents when they discover a corruption case.<sup>68</sup>

In terms of the integrity of the budgetary process, Article 86 of the Constitution states that the budget proposal should be presented to the Parliament (People's Assembly) at least three months before the fiscal year (July 1 to June 30). The budget process involves its preparation by the Ministry of Finance (MOF), in

<sup>66</sup> *Global Integrity, Independent Information on Governance and Corruption, Country Reports, 2006, Egypt: Integrity Scorecard Report, Sub-Category: Executive Accountability; www.globalintegrity.org/reports/2006/egypt/scorecard.cfm?subcategoryID=30&countryID=9*

<sup>67</sup> *The People's Assembly has passed a law to ban "Elhesba" in 1996 after the case of Dr. Nasr Hamid Abozaid; for more details please see: Abdel-hasab Radwan, "Drasat fi Alhesba" [Studies in Elhesba, in Arabic], (Cairo: Alzhray for Printing, Publishing and Distribution, 1998); Hassan Elbedy, "Da'oua Alhesbah" [Claim of Elhesba, in Arabic] Cairo: Dar Elfeker Elaraby, 1998; and Mahmoud Elsayed Altehawy, Da'oua Alhsbah a'la dou'a almadah 3 men elkanon almorafa' at elmsry [Claim of Elhesba in the Light of Article 3 of the Egyptian Code of Procedures, in Arabic], (Cairo, Dar Elfir Elgameay, 2006).*

<sup>68</sup> *Mohamed Yuseif, Searching for the Maestro of Corruption in the Wasted Countries, Elhwar Elmotamad, No. 1852, 12-3-2007. See also, mhmuodradwan.makoobblog.com*

collaboration with other government agencies and ministries in addition to local administration, by asking for their requests. The budget proposal is then submitted to the Cabinet and then to the Parliament, which evaluates it and has the right to amend and return it to the government. The Central Auditing Organisation (CAO) follows and oversees the achievements of the budget by different ministries and public institutions and presents its reports to the Parliament.<sup>69</sup> Thus, transparency exists in the system. There are several pieces of legislation that organise issues related to managing public funds/assets, and protecting them against corruption – among them, Law 53/1973 and its amendments concerning the utilisation of public funds. Additionally, there is the Government Accountability Act 1127/1981, which sets the rules the administrative apparatus is to abide by in implementing the state's budget.<sup>70</sup> Finally, in practice, the MOF publishes the State budget on its website.<sup>71</sup>

### Complaints/enforcement mechanisms

Egypt has had a law for prosecution of ministers since 1958, but this is no longer applicable because it was issued during the unity between Egypt and Syria.<sup>72</sup> As of yet, this law has not been replaced by a new one. However, a bill for the prosecution of ministers recently has come under deliberation among members of the Parliament. This bill came as a result of the amendments to Articles 159 and 160 of the Constitution in 2007.

In theory, officials can report on wrongdoing in the executive, though Law 62/1975 sets penalties for cases of false whistle-blowing, and in general it is complicated to pursue such actions in which people are discouraged from reporting. Civil servants can be legally punished just for reporting corruption if the report proves to be incorrect or if they fail to prove it. Failing to prove what somebody reports against any public employee could cause that person to spend not less than six months in jail and be fined EGP 100-500 (USD 18-90) (Article 22). Such sanctions hinder people from reporting wrongdoing. Moreover, citizens can sue the government for infringement of their civil rights following the Constitution Article 71 and Criminal Procedures Law 150/1950 Articles 162 and 210.

Egyptian laws have many powerful sanctions that punish misconduct and members of the executive are not immune from prosecution according to the law. For example, Article 85 of the Constitution points to the possibility of accusing the President of the Republic of impeachment or criminal offenses. Also, ministers can be prosecuted for crimes they commit (Articles 159 and 160 of the Constitution). The sanctions are gradual but decisive and could reach life imprisonment. In practice such sanctions have been invoked through the courts. In some cases higher courts have upheld the sentences issued by lower-level courts, whereas in other cases higher courts issued an abatement of action or dropped the case and all charges against the accused person(s). Senior executive officials such as ex-governors, ex-ministers, first undersecretaries and deputy ministers have been accused. However, political considerations might prevent prosecution of corruption cases, creating some type of immunity. The process is vague in this regard.<sup>73</sup> In practice citizens are able to sue the government for infringement of their civil rights with the help of CSOs such as the Egyptian Organisation for Human Rights (EOHR).

### Relationship with Other Pillars

The executive branch has strong relationships with almost all other pillars, though the most relevant relationship in terms of transparency and integrity is with the legislature, the Central Auditing Organisation (CAO) and the business sector. The

<sup>69</sup> *The Egyptian Constitution of 1971 and Its Amendments, March 2007.*

<sup>70</sup> *Arab Republic of Egypt, Ministry of State for Administrative Development, Transparency and Integrity Committee, Action Priorities and its Mechanisms, Second Report, 2008.*

<sup>71</sup> *Ministry of Finance, State Budget, 2008;*  
[www.mof.gov.eg/English/Main+Topics/The+State+Budget+2007-2008.htm](http://www.mof.gov.eg/English/Main+Topics/The+State+Budget+2007-2008.htm)

<sup>72</sup> *Law 79/1958.*

<sup>73</sup> *Elyoum Elsabea News Paper, 30/11/2009; Elssiyasi electronic newspaper, available online at*  
<http://elssiyasi.com>, 12/6/2008; "People Assembly without teeth", available online at [elbashayer.net](http://elbashayer.net), 24/12/2009.

CAO has played an effective role in monitoring government behaviour and its decisions regarding the spending of public money, which in some cases has created a friction between the head of the CAO and some of the ministers. As for the legislature and its relationship with the executive, it is difficult to identify a trend in their relationship. In some cases the legislature has played an effective role in monitoring the behaviour of the government, but in other cases political interventions seem to have played a role in preventing the legislature from fully exercising its authority. Finally, the increasing trend of marriage between the business sector and the government by appointing ministers from the private sector without clear rules on conflict of interest has created doubt on the transparency of the system and weakened the integrity of the executive branch.

While Egypt no longer has a traditional single-party system in place, it also has not moved to a fully pluralistic system in which a multitude of political parties are allowed to operate freely. Other political groups such as Muslim Brotherhood and some social movements (e.g. Kefaya movement) are also active in the political field. Parliament is therefore generally dominated by the governing party and the opposition ones currently can express themselves but generally with little effect on policy.

### Recommendations

- Though the constitutional amendments undertaken in 2005 and 2007 decreased the power and authority of the head of the executive branch, the room for reducing the existing power is still large. This is needed to make the checks-and-balance system more effective and decentralised, while strengthening the role of the legislature in effectively monitoring high government officials.
- The procedures of whistle-blowing in the executive branch should be made easier and more accessible.
- Better enforcement of the illegal enrichment law, and building the capacity of the public officials in charge of fighting illegal enrichment.
- Raising the salary scales of the public employees, to enable them to combat corruption effectively and efficiently.
- Establish an institutional and legal framework for conflict of interest, especially when businessmen hold government offices.
- Speeding up the process of issuing the law of prosecution of ministers.
- Setting clear functions of the ministers, their assistants, and affiliate organisations and agencies.
- Providing legal protection to whoever reports corruption cases and even provide incentives for this act by amending the existing laws and regulations that deter whistle-blowing.
- Setting criteria for selecting ministers' assistants and advisors, and announcing their salary scales.

## **2. LEGISLATURE**

### Resources/structure

The Egyptian legislative system is bicameral and consists of the People's Assembly (PA) (the Parliament or *Majlis El-Shaab*) and the Advisory Council or Shura Council (*Majlis El-Shura*). While the Constitution organises both chambers,<sup>74</sup> Law 38/1972 and its amendments Law 175/2005 on the People's Assembly organise the work of the legislative branch of the government<sup>75</sup>.

#### People's Assembly:

According to Article 87 of the Constitution, the People's Assembly must have no fewer than 350 members; at least half of whom must be farmers or workers. The number of members increases in accordance with the increase in the number of voters. As a result, the number of the People's Assembly members is now 454; 444 are directly elected and 10 are appointed by the President. The President always uses this right to grant some seats for politically marginalised and minority groups such as women and Christians.

Regardless of political party affiliations, any citizen has the right to run for the People's Assembly as long as s/he meets the following conditions:<sup>76</sup>

- A An Egyptian citizen born of an Egyptian father
- B At least 30 years old as of Election Day
- C Registered voter and holding a voting card
- D Perform the national military duty or have a legal exemption
- E The person has a certificate that s/he completed the basic education, for those who were born after January 1970. For those who were born before January 1970, the person has to prove that s/he knows how to read and write.
- F The person has not been dismissed during the same term unless the term that the member was dismissed within has been terminated, or the house issued a decree to eliminate the dismissal consequences based on the proposal of 30 members and the approval of the majority of the house.

The term of the People's Assembly is five years, starting from the date of the first meeting after Election Day. The election of the new Assembly should be held 60 days before the termination of the existing one. The current People's Assembly is expected to serve until 2010 (the election was held in 2005). Since President Mubarak took office, three People's Assemblies have completed their terms; 1990, 1995 and 2000. However, the People's Assembly of 1984 and 1987 did not complete their terms because the Supreme Constitutional Court called elections for these two Parliaments unconstitutional.<sup>77</sup>

According to the Constitution, the People's Assembly cannot be dissolved unless there is a case of necessity.<sup>78</sup> Likewise, members are immune from prosecution in performing their membership duties. According to Article 98 of the Constitution, members are free to express their views, ideas and opinions on any public issue being discussed before the Parliament or by one of its committees. Additionally, only in cases of *flagrante delicto* may any legal proceedings be taken against any

<sup>74</sup> There is no clear distinction between the two chambers in Egypt in terms of a lower and upper chamber or house. Egypt has a bicameral system. The Shura Council is closer to the President, and one-third of its members are appointed. Thus it deserves to be the upper council, at least from a political standpoint. The People's Assembly has legislative authority (the constitutional amendment of 2007 gave the Shura Council legislative power), it is final destiny for any bill, and it has the power to raise the legislation after approval to the President for signature. In other words, the Shura Council discusses the bill then passes it to the People's Assembly to approve it and have it signed by the President, so this also makes the People's Assembly the upper chamber. As a result, it is very difficult to consider either of the two chambers in Egypt the upper or lower chamber. Source: Interview with Professor Ali El-Sawi, director, Parliamentary Studies Centre, FEPS, Cairo University, 18 July 2009.

<sup>75</sup> According to the Egyptian Constitution, Article 134, the Prime Minister, his deputies, the Ministers and their deputies may become members of the People's Assembly, and those who are not members may attend the sessions and committees of the Assembly.

<sup>76</sup> People's Assembly Law 38 of 1972 and its amendment 175 of 2005.

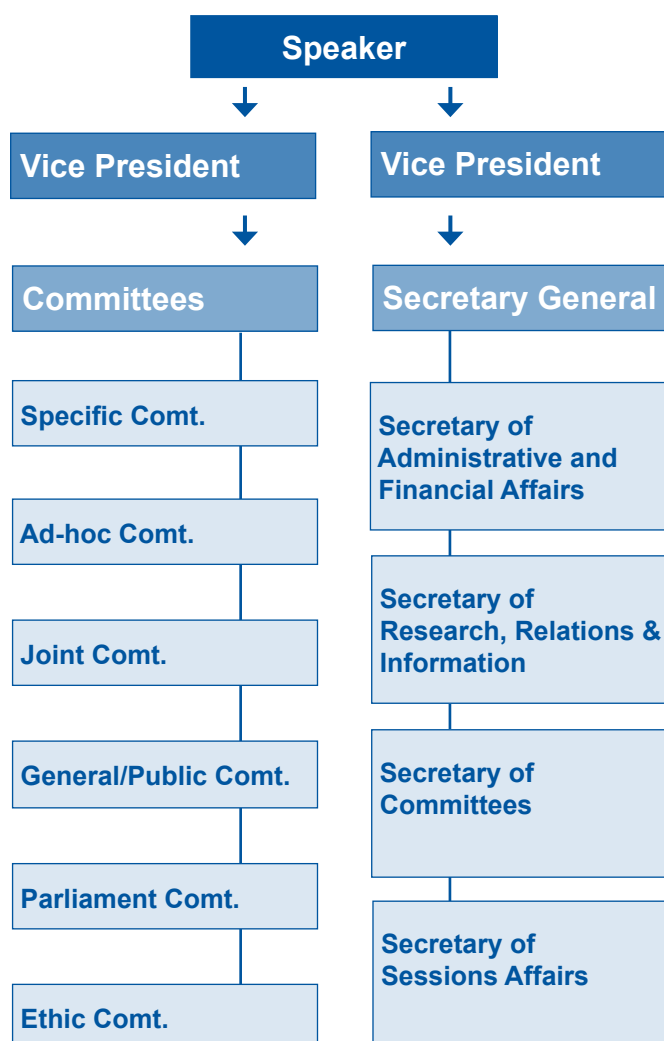
<sup>77</sup> Ali Eldeen Helal, "The Political System Development in Egypt from 1805-2005", Cairo University, FEPS, Center for Political Studies and Research, 2006.

<sup>78</sup> According to Article 136, 'the President of the Republic shall not dissolve the People's Assembly unless it is necessary. Should the Assembly be dissolved over a certain matter, the new Assembly may not be dissolved for the same matter.'

People's Assembly member without prior permission of the Parliament (Article 99 of the Constitution). Moreover, only the People's Assembly has the right to accept the resignation of one of its members (Article 97 of the Constitution).

Work inside the People's Assembly is organised as shown in Figure 2. There is the Speaker at the top of People's Assembly and two vice speakers, at least one of whom must be a farmer or worker. Each should be elected for one year at the beginning of the Assembly's annual ordinary session. Additionally, there are several parliamentary bodies, each of which has its own members and roles. The People's Assembly is responsible for its orders and has the right to issue its Rules of Procedures.<sup>79</sup>

**Figure 2**  
**Structure of People's Assembly**



Source: People's Assembly; [www.Parliament.gov.eg/Arabic/PublicSec/WorkHirarchy/](http://www.Parliament.gov.eg/Arabic/PublicSec/WorkHirarchy/)

These bodies include:<sup>80</sup>

**Specific Committees:** These specialised committees are formed at the beginning of each ordinary session based on a proposal of the Assembly Bureau. According to the educational background or profession or experience, each Member of Parliament (MP) must join one committee. S/he may, with approval of the Assembly Bureau, join another committee to benefit from his or her qualifications and experience. These committees work as an arm of the Assembly in practicing its legislative and oversight competences. Each committee studies and

<sup>79</sup> [www.parliament.gov.eg/English/AboutTheParliament/Role/](http://www.parliament.gov.eg/English/AboutTheParliament/Role/)

<sup>80</sup> For more information on these bodies, review the official website of the People's Assembly at: [www.Parliament.gov.eg/Arabic/PublicSec/WorkHeirarchy/](http://www.Parliament.gov.eg/Arabic/PublicSec/WorkHeirarchy/)



expresses its opinion on the issues referred to it by the Assembly in accordance with their specific competences. The assembly has 19 specific committees, such as Constitutional and Legislation Affairs, Budget and Planning, Suggestions and Complaints, Defence, National Security, and Mobilisation, Local Administration and Popular Organizations, and Human Rights Committees.

The first two committees are particularly important. The first specialises in constitutional and legislative affairs, the Rules of Procedures, supplementary legislation to the Constitution, bills, motion of bills, and assisting the Assembly and its other committees in drafting legislative texts. The committee is also responsible for reviewing membership validity and immunity. The Second Committee, Budget and Planning, is considered the most powerful committee in the Assembly. It specialises in studying the annual budget proposal submitted to the Parliament by the government, other complementary budgets, legislation pertaining to taxation, issues related to fees or fiscal policies such as subsidies, prices and salaries or rewards, and the socioeconomic development plan of the State. This committee is also responsible for studying the CAO's regular accounting reports.

**Ad hoc Committees:** The People's Assembly forms ad hoc committees at the suggestion of the Speaker or a request by the government to study bills, bill motion, decreed law or any specific issue of concern and to report back to the Assembly. Sometimes these ad hoc committees are set up to investigate specific incidents and prepare a report to the Assembly. Members of these committees are selected by the Speaker.

**Joint Committees:** These committees are formed based on a suggestion by the Speaker or a request by the government. The request could also come from members of two or more specialised committees. The aim of the joint or combined committees is to study a particular issue of concern. Any joint committee must be headed by one of the Speaker's two deputies. It makes its decisions by majority. All the arrangements of such committees are covered in chapter 6 of the second unit of the Rules and Procedures.

**General/Public Committee:** This committee is formed at the beginning of every ordinary session and headed by the Speaker, his two deputies, specialised committee heads, representatives from different political parties in the People's Assembly, and five other members selected by the Bureau. The independent members should be represented in this committee as well. This committee undertakes public and crucial issues referred by the President of the State, People's Assembly or the Speaker. This committee is responsible for carrying out many tasks, including studying periodic reports submitted to the Assembly on the effectiveness of the governing regulations and the administrative system. It also discusses important petitions and complaints that are subject to public concern. Further, it probes reports compiled by control or monitoring bodies on any general phenomenon that could affect society's values and norms. Additionally, it studies the reports of the Ethics Committee.

**Ethics Committee:** The committee is headed by one of the two deputies of the Speaker and is set up based on an Assembly decision at the beginning of each ordinary session. The membership of this committee includes: chairmen of three specialised committees (Constitutional and Legislation Affairs; Religious, Social and Religious Endowments "Awkaf" Affairs; and Proposals and Complaints). It also includes five General Committee members, two of whom should be opposition parties' MPs and independents. Moreover, it has five members selected by casting, one of whom should be a woman. The role of this committee is crucial not only for keeping order inside the People's Assembly but also for holding its members accountable. It probes members' violation of religious, moral and ethical values or norms of the society as well as the fundamental political and economic principles of the State. It is also penalises proven guilty MPs according to the People's Assembly's Rules of Procedures.

**Parliament Chapter:** The People's Assembly, not the Shura Council, is the Egyptian representative to regional and international inter-parliamentary conventions.<sup>81</sup> The Parliament Chapter seeks to develop and promote relations and ties with other parliamentary chapters or groups all over the world, in tandem with the major objectives and principles of Egyptian policy. The structure of the chapter is comprised of the General Assembly and an Executive Committee. While the General Assembly of the chapter includes all the People Assembly's members, the Executive Committee consists of the Speaker, the Bureau and three members selected by the Bureau, at least one of whom should be from the opposition parties.

**Shura Council:**

The Shura Council was established in 1980 according to the first constitutional amendment. The council has no fewer than 132 members; two-thirds of them must be elected directly by voters through secret and direct ballot, and one-third is appointed by the President. At least half of the elected members must be farmers or workers. Currently the Shura Council has 264 members; 176 of them are elected and 88 are appointed.<sup>82</sup> The President's appointments are usually the heads of opposition political parties, university professors, members of the ruling party and representatives from politically marginalised groups. The National Democratic Party holds the majority of the Shura Council's seats. The Shura Council has several organisational bodies such as speaker, bureau, general committee, ethics committee, specific and joint committees.

The term of the Shura Council is six years, and renewal of half of the members takes place every three years (Article 198). The last midterm renewal, for both elected and appointed members, took place in June 2007, and the next renewal will take place in June 2010. The Constitution has provided many guarantees to the Shura Council, including not to dissolve it except by Presidential decree and only in case of necessity.

In accordance with the law of the Shura Council No. 120 of 1980 and its amendment 176 of 2005, any citizen who enjoys full political rights and meets the following conditions can run for election:<sup>83</sup>

- Hold Egyptian nationality as well as be the son of an Egyptian national
- Registered voter and holding a voting card
- Not less than 35 years old as of Election Day
- Completed or be exempt from military service
- Has knowledge of writing and reading for those who were born before January 1970, or has completed the basic education for those who were born afterward.
- The person has not been dismissed during the same term unless the term that the member was dismissed within has been terminated, or the house issued a decree to eliminate the dismissal consequences based on the proposal of 30 members and the approval of the majority of the house.

Members of the Shura Council enjoy immunity in terms of their performance of public duties. A person cannot be a member of both houses (People's Assembly and Shura Council), according to Article 200 of the Constitution. The Shura Council has the right to study and suggest any proposals that ensure the national unity and social harmony and protecting the basic foundations of the society and its public values, rights, freedoms and duties. The following pieces of legislation must be approved by the Shura Council:

- Proposals for the amendment of one or more articles of the Constitution.

<sup>81</sup> *Inter-parliamentary conventions include the Arab Parliamentary Union, the Union of African Parliaments, and particularly the Inter-Parliamentary Union, which plays an important role in advancing world peace and stability, and activating parliamentary institutions worldwide.*

<sup>82</sup> *Law 120 of 1980 and its amendments 176 of 2005.*

<sup>83</sup> *Ibid.*

- International treaties and all agreements that have an impact on the territory of the State and sovereignty of State.<sup>84</sup>

### Role(s) of Institution/Sector

The Egyptian Parliament exercises the legislative power and approves the public policy of the State by deciding on the State budget and any supplementary budgets or taxes.<sup>85</sup> It also approves the State socioeconomic development plan.<sup>86</sup> It oversees the activities of the executive, monitors the performance of the governmental and administrative bodies, and practices control over executive authorities in accordance with the manner prescribed in the Constitution (Article 86). It can pass a vote of no-confidence for the Cabinet or any of its members.

The Assembly has its own budget, which is listed as one item in the State budget. The Rules of Procedures state that the Assembly prepares, discusses and approves its draft budget. It also prepares and approves its annual final accounts. The Bureau lays down the rules regulating the Assembly accounts, such as disbursing and inventories. The Speaker may ask the head of the CAO to assign an audit to prepare a report on the Assembly accounts, implementing the budget and any other financial affairs and present it to the Speaker.

According to Law 175/2005, MPs receive a monthly honorarium of EGP 1,000 (USD 180) starting from the date the member swears the oath until he leaves office at the end of the parliamentary term or for any reason before that. The honorarium is not subject to assignment or seizure and is tax-exempt. Likewise, the Speaker of the People's Assembly as well as the Speaker of the Shura Council receive a remuneration equivalent to total remuneration paid to the Vice-President of the State and the Prime Minister. According to a top official at the Ministry of State for Administrative Development, there is a plan to raise the amount of the remuneration.<sup>87</sup>

To summarise, the functions or the competencies of the People's Assembly are:

#### 1. Legislation:

People's Assembly practices this function according to the following constitutional framework:

- The President of the Republic and every member of the People's Assembly have the right to propose laws.<sup>88</sup>
- Once the draft is received by the Assembly, it shall be referred to a committee of the Assembly, and the committee must study it and submit a report about it to the Assembly. However, draft laws submitted by one PA member shall not be referred to this committee unless they are first referred to a special committee to study them and give an opinion on the suitability to be considered by the Assembly and after the Assembly decides to consider them.<sup>89</sup>
- In case of a rejection of a draft law proposed by a member, this draft law cannot be presented again to the Assembly in the course of the same session.<sup>90</sup>
- The President of the State has the right to promulgate laws or object to them.<sup>91</sup>
- If the President of the State objects to a draft law ratified by the PA, he has to refer it back to the Assembly within 30 days from the PA's communication of it. However, if the draft law is not referred back within this period, it is considered a law and is promulgated. In case the President of the Republic's objection is within the time stated, the PA has to vote on the law again and it

<sup>84</sup> Egyptian Constitution of 1971 and its amendments, Article 194.

<sup>85</sup> Articles 115, 116 and 119 of the Egyptian Constitution.

<sup>86</sup> Article 114 of the Egyptian Constitution.

<sup>87</sup> Over the phone meeting with an advisor to the Minister of MSAD on 29 October, 2009. Law 100 of 1987 and its amendment law 8 of 1989 governs the remuneration of the Vice-President, Speaker of PA, Speaker of Shura Council, the Prime Minister and his Deputies and Ministries.

<sup>88</sup> Article 109 of the Egyptian Constitution.

<sup>89</sup> Article 110 of the Egyptian Constitution.

<sup>90</sup> Article 111 of the Egyptian Constitution.

<sup>91</sup> Article 112 of the Egyptian Constitution.

shall be considered a law to be promulgated if the draft law is approved by a two-thirds majority of the members.<sup>92</sup>

- The President of the State has the right, in case of necessity or in exceptional cases, and based on the authorisation of the PA upon the approval of a two-thirds majority of its members, to issue a resolution having the force of law (decreed laws). However, the authorisation must be for a limited period, and the subjects of it and the grounds upon which it is based should be clear. Additionally, the resolution should be submitted to the PA in the first meeting after the end of the authorisation period. If resolutions are not submitted or if they are submitted but not approved by the Assembly, they shall cease to have the force of law.<sup>93</sup>

## 2. Approving the State Budget and Socioeconomic Development Plan:

- The PA should approve the State plan for socioeconomic development according to the law.<sup>94</sup>
- The draft of the State budget should be submitted to the PA at least three months before the beginning of the fiscal year (July 1 to June 30)<sup>95</sup> and it shall be considered in effect after approval. The draft State budget shall be voted upon title-by-title and shall be promulgated by a law. The PA may modify the expenditures contained in the draft budget, excluding those proposed to honour a specific liability on the State. If the modifications result in an increase in the total expenditure, then the PA must come to an agreement with the government on the methods and means to secure additional resources to rebalance the State budget (revenues and expenditures).<sup>96</sup>
- The budget shall be issued by a law, which may include modification of any of existing law to the extent necessary to achieve such a balance.<sup>97</sup>

## 3. Approval of the Government Program:

- The Prime Minister must submit the program of government within 60 days after formation of the Cabinet or in the first meeting of the PA if it was not in ordinary session. The program should be approved by a majority of the Assembly. If the program of the new Cabinet does not pass, the President of the Republic may dissolve the Assembly or accept the resignation of the Cabinet. The Prime Minister, ministers and other government members have the right to be heard at the Assembly and its committees about any issues related to their jurisdictions.<sup>98</sup>

## 4. Fiscal and Financial Oversight:

- The final account of the State budget shall be submitted to the PA within a period not exceeding six months from the date of the expiration of the fiscal year (formerly it was one year, before the 2007 amendment). The final account should be voted title-by-title and issued by a law.<sup>99</sup>
- The Central Auditing Organization (CAO) should prepare an annual report about the State budget, and the fiscal and financial activities of the executive authorities and governmental bodies and submit it to the PA. The PA has the right to demand from the CAO any data or other pertinent reports.
- The executive cannot contract a loan or bind itself to a project entailing expenditure of fund from the State Treasury without the approval of the People's Assembly.<sup>100</sup>
- The PA has the right to use its parliamentary control and oversight means to check on governmental activities.

<sup>92</sup> Article 113 of the Egyptian Constitution.

<sup>93</sup> Article 108 of the Egyptian Constitution.

<sup>94</sup> Article 114 of the Egyptian Constitution.

<sup>95</sup> Before the 2007 amendment of the Constitution, the period was two months, not three. Also, another major change resulting from this amendment was granting the PA the right to modify the budget. According to Article 115 before the 2007 amendment: "PA may not effect any modification in the draft budget except within the approval of the government".

<sup>96</sup> Article 115 of the Egyptian Constitution.

<sup>97</sup> Ibid.

<sup>98</sup> Article 133 of the Egyptian Constitution.

<sup>99</sup> Article 116 of the Egyptian Constitution.

<sup>100</sup> Article 121 of the Egyptian Constitution.

### 5. Monitoring Executive Activities:

- The PA, based on a proposal by at least one-third of its members, may address charges against the President of high treason or committing a criminal act. However, no impeachment shall be issued except upon approval of a two-thirds majority of Assembly members.<sup>101</sup>
- Every member of the People's Assembly has the right to address questions to the Prime Minister or any of his deputies, or the ministries or their deputies in issues related to their jurisdiction. They or their delegated individual(s) should answer the questions raised by members. The member may withdraw the question at any time. Notably, the question may not be transformed into an interpellation in the same session.<sup>102</sup>
- Every member of the PA has the right to address an interpellation to the Prime Minister or any of his deputies or the ministries or their deputies on issues related to their jurisdiction. However, the debate on an interpellation should take place after at least seven days after its submission, unless there is a case of emergency or urgency as decided by the Assembly and with the government's consent.<sup>103</sup>
- The ministries are collectively responsible for the public policy of the State before the PA, and every minister is responsible for the acts of his own ministry.<sup>104</sup> The PA may decide to withdraw confidence from any executive (Prime Minister or any of his deputies or the ministries or their deputies). The request of no confidence should not be submitted except after an interpellation and based on a proposal by one-third of PA members. Additionally, the PA should not decide on such a motion until after three days from the date of its submission. Of course, withdrawal of confidence should be pronounced by the majority of the PA.<sup>105</sup>
- The determination of the responsibility of the Prime Minister by the PA, based on a proposal by one-tenth of its members, should be taken by the majority of the Assembly. It may not be taken except after an interpellation addressed to the Cabinet and after at least three days from its submission. If this responsibility is determined, the PA should submit a report about this to the President of the Republic that includes the elements of the subject, conclusion reached and reasons behind it. The President has the right to accept the resignation of the Cabinet or return the report back to the PA within 10 days of the date of its submission. If the President returns the report and the Assembly ratifies it (once again by two-thirds of its members), the President shall accept the resignation of the Cabinet. If the Assembly rejects a proposal to withdraw confidence, the request may not be resubmitted in the same session.<sup>106</sup>
- If the Assembly decides to withdraw its confidence from any of the Prime Minister's deputies or of the ministers or their deputies, they must resign their office. Likewise, the Prime Minister must submit his resignation to the President if he is found responsible before the Assembly.<sup>107</sup>
- Any 20 members, at least, of the PA may ask for discussion of a public question to ascertain the government policy regarding such a question.<sup>108</sup>
- Members of the PA have the right to express their opinion concerning any public issue before the Prime Minister or any of his deputies or of the ministers.<sup>109</sup>

<sup>101</sup> Article 85 of the Egyptian Constitution.

<sup>102</sup> Article 124 of the Egyptian Constitution.

<sup>103</sup> Article 125 of the Egyptian Constitution.

<sup>104</sup> Article 126 of the Egyptian Constitution.

<sup>105</sup> *Ibid.*

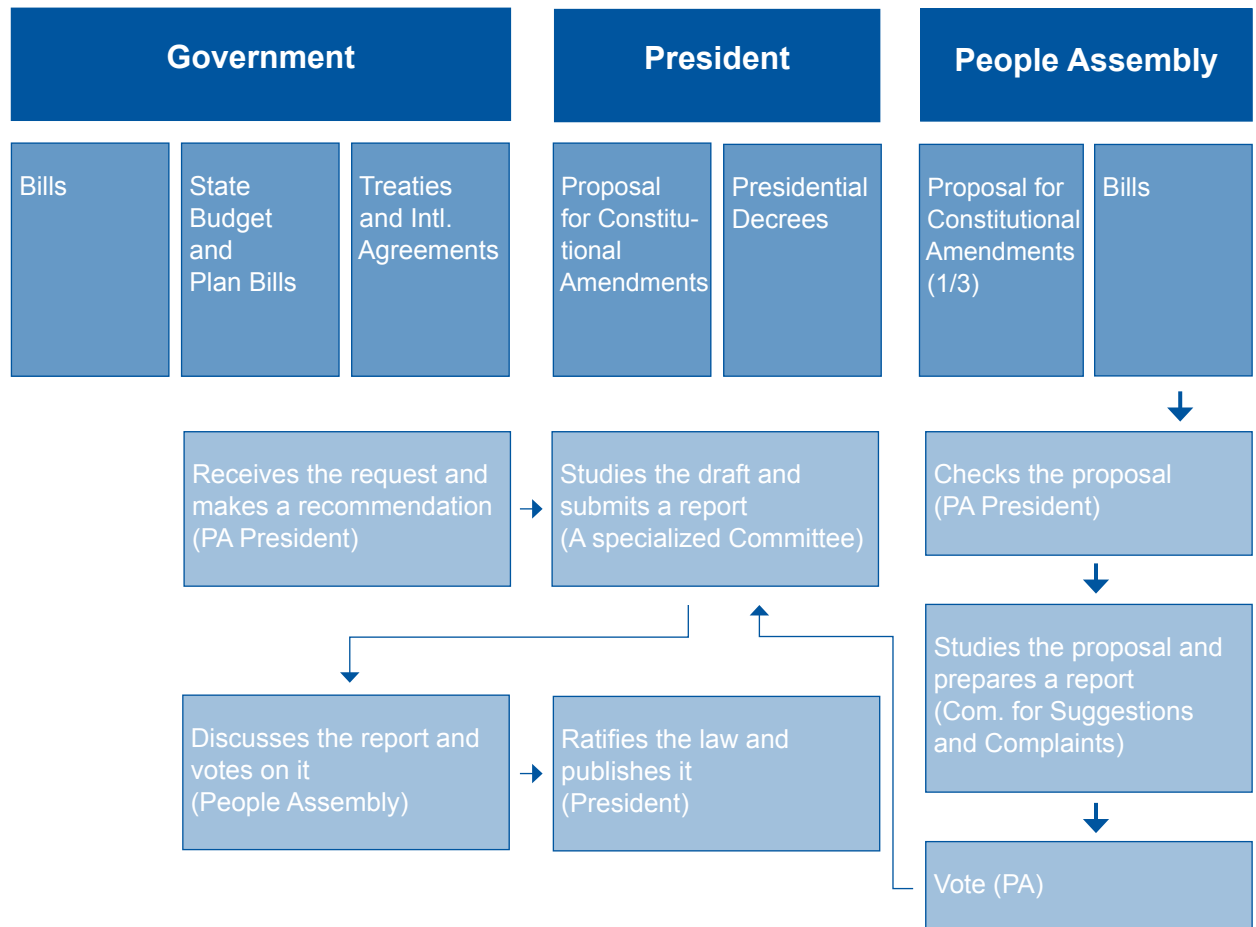
<sup>106</sup> Article 127 of the Egyptian Constitution.

<sup>107</sup> Article 128 of the Egyptian Constitution.

<sup>108</sup> Article 129 of the Egyptian Constitution.

<sup>109</sup> Article 130 of the Egyptian Constitution.

**Figure 3  
Legislation Procedures**



Source: Prepared by the authors based on information published on the website of the People’s Assembly; [www.Parliament.gov.eg/Arabic/PublicSec/WorkHeirarchy/](http://www.Parliament.gov.eg/Arabic/PublicSec/WorkHeirarchy/)

In terms of the relationship between the executive and the legislature, an expert panel survey showed that 63 per cent believed that there are checks and balances between the different branches of government, whilst slightly more than one-quarter considered these checks and balances to be effective.<sup>110</sup>

The Egyptian legislature has established a set of criteria which represents the legal framework to fight corruption, such as Combating Money Laundering of 2002, New Tax Law of 2005, reforming the investment system and proposing the bill of civil service.<sup>111</sup> Also, regulations and indicators concerned with supervising, defining competencies, prevention and criminalisation, which are all close to the requirements of the UNCAC, were identified. The Parliament has also issued several other pieces of legislation that aim to organise work in various sectors, such as the Central Bank Law, Stock Market Authority Law and the Incentives and Investment Guarantees Law, in addition to other fields and sectors.<sup>112</sup>

**Accountability**

Part two of chapter 5 of the Egyptian Constitution organises the legislature’s for-

110 Economic Commission for Africa, *Governance Profile for Egypt: Measuring and Monitoring Progress towards Good Governance in Africa* (Addis Ababa: Economic Commission for Africa, 2004).

111 Ali El-Sawi, *The Basic Infrastructure of Corruption in Egypt*, Cairo University, Parliamentary Studies Centre, 2006.

112 Arab Republic of Egypt, Ministry of State for Administrative Development, Transparency and Integrity Committee Report, 2008.

mation, powers and oversight issues. Articles 86 through 136 ensure the principle of checks and balances between the executive and the legislative branches. Article 88 undertakes the necessary conditions for a citizen to run for PA election. The following regulatory framework governs the accountability issues of PA members:

- State employees and those of the public sector have the right to nominate themselves for membership of the PA. The members of the PA must devote themselves to PA membership except in cases specified by law.
- PA members must take the oath of the office before exercising his/her duties. The oath promotes the values of working for the interest of the Egyptian people, not one's self, to respect the Constitution and the laws of the State, and before all to preserve the safety of the nation and the republican regime.<sup>113</sup>
- PA members receive a remuneration, as mentioned before, to enable them to perform their duties effectively.<sup>114</sup>
- Article 89 states: "The PA shall be the only authority competent to decide upon the validity of its members. A court of Cassation shall be competent to investigate the validity of contestation presented to the Assembly after being referred from the Speaker. The contestation should be referred to the Court of Cassation within 15 days as from the date on which the Assembly was informed of it and the investigation should be completed within 90 days from the date on which the contestation is referred to the Court. The result of the investigation and the decision reached by the Court should be submitted to the Assembly to decide the validity of the contestation within 60 days from the date of submission of the investigation's results to the Assembly. The membership will not be deemed invalid unless a majority of two-thirds of the Assembly members approve it".<sup>115</sup>
- The PA is the only authority that accepts the resignation of its members<sup>116</sup>
- PA members are not allowed, during their term(s) in the Parliament, to purchase or rent any State property, or lease or sell to the State or barter with it any part of their properties. Also, they are prohibited from concluding a contract with the State in their capacities as entrepreneur, importer or contractor.<sup>117</sup>
- The PA has the right to revoke the membership of any of its members in case of loss of confidence or status or one of the conditions of membership. This can also occur in case of the loss of the member's status as a worker or farmer upon which s/he was elected, or the violation of the member's mandate. Such a decision should be taken by a majority of two-thirds of the Assembly.<sup>118</sup>
- Additionally, PA members are not subject to criminal prosecution without prior permission of the Assembly, except in cases of *flagrant delicto*.<sup>119</sup> In case the Assembly is not in session, the permission must come from the Speaker, and the Assembly must be notified of the procedures taken against a member in its next subsequent session.<sup>120</sup>

There is a system of internal reporting for the activities of the legislature, such as objection of a representative's membership. If someone questions the goodness of the membership of any representative, that representative has the right to defend him/herself, and the People's Assembly votes in his/her absence regarding his/her dismissal from the Parliament. Also, each member is subject to investigation by the Ethics Committee for his/her behaviour as a member of the Parliament, which takes place in practice.

The legal framework of the budget, which includes mainly the Constitution,

<sup>113</sup> Article 90 of the Egyptian Constitution.

<sup>114</sup> Article 91 of the Egyptian Constitution.

<sup>115</sup> Article 93 of the Egyptian Constitution.

<sup>116</sup> Article 97 of the Egyptian Constitution.

<sup>117</sup> Article 95 of the Egyptian Constitution.

<sup>118</sup> Article 96 of the Egyptian Constitution.

<sup>119</sup> Article 99 of the Egyptian Constitution.

<sup>120</sup> *Ibid.*

budget law (Law 53/1973 amended by Law 87/2005) and local administration law (43/1979), organises the participation of the public in the budgetary process. First, the local popular councils as the representatives of the people at the local level set the priorities of spending according to the local citizens' needs. Moreover, they are the key institutions that monitor the spending of governmental units. Second, in the Parliament, MPs monitor the behaviour of public institutions and use the oversight of the CAO to fight corruption. In brief, citizens' participation in anti-corruption is organised through the legal institutions set up by different laws. However, in practice, due to the weak role of the local popular councils, the fight against corruption is not that effective.

### Integrity Mechanisms

Law 62/1975 deals with illegal profiting. Among its regulations, the law requires members of the legislature to file asset disclosure forms. According to the aforementioned law (Article 5 items a and b), a judicial committee is formed to investigate asset disclosure forms. However, "[i]n practice, national legislative branch asset disclosures are not audited frequently".<sup>121</sup> The Illicit Enrichment Apparatus helps these committees by receiving asset disclosure forms and asking for clarifications about complaints. It has the right to ask the ACA to investigate cases of suspected illicit enrichment. In practice, it is obligatory to periodically trace any increase in the wealth of any public officials or his/her family members (spouse and underage children), comparing income with wealth. Moreover, the CAO is authorised to audit the asset disclosures of legislators at the beginning and at the end of their term limits as well as every five years, if they stay in office. In 2007, the Illicit Enrichment Unit took 108 MPs to the court because of their failure in filing asset disclosure forms from 1990 to 2000.

There are neither regulations governing gifts and hospitality offered to members of the legislature nor regulations restricting post-government employment for legislators. However, legislators are prohibited from undertaking investment transactions with the State during their term of office.<sup>122</sup> Article 95 of the Constitution states, "No member of the People's Assembly shall, during his tenure, purchase or rent any State property; lease or sell to or barter with the State any part of his property, or conclude a contract with the State in his capacity as vendor, supplier or contractor."<sup>123</sup>

No constitutional text obliges MPs to disclose/record contacts with lobbyists or interest groups. Moreover, legislators are not prevented from switching parties mid-term. There is a set of examples of such practices. For instance, some independent MPs have joined the NDP, and similarly some MPs of other parties have joined the NDP during their term.

The current speaker of the PA has more than once expressed his anger toward members who place the PA logo on their car license plates. Such behaviour goes against the Traffic Law. No one should be above the law, and even though they are members of the PA, in the end they are citizens and must abide by the law. The Speaker has threatened to refer these members to the Ethics Committee, though in reality nothing has occurred to stop such acts.

### Transparency

According to Article 95 of the Constitution, national legislators are not allowed (during their Parliamentary term) to buy, sell, rent or make any deals using public money, nor can they be suppliers or contractors in any business related to public money. Additionally, according to Article 32 of the Law 38/1972 concerning People's Assembly, and Article 21 of Law 121/1980 concerning Shura Council, the

<sup>121</sup> *Global Integrity Scorecard, Egypt 2008, report.globalintegrity.org/Egypt/2008/scorecard/39*

<sup>122</sup> *Ibid.*

<sup>123</sup> *Article 95 of the Egyptian Constitution.*



heads of the People's Assembly and Shura Council are not allowed to buy, rent, or sell any material that includes public money.

GOE has enacted several laws in line with international agreements concerning the free access to information such as Money Laundering Combat Law (Law 80/2002) and its amendment (Law 181/2008), Law of the Central Bank, Banking and Exchange (Law 88/2003) and National Council for Human Rights (Law 4/2003). Additionally, Egypt subscribed to the IMF's Special Data Dissemination Standards (SDDS) on 31 January 2005 to become the 59th subscriber to the SDDS. Yet, Egyptian laws do not contain any explicit article that obliges MPs to make their assets publicly accessible. The issue is even more difficult in practice; MPs are not obliged to publish their assets or those of their families. Also, there are several laws that protect the privacy of citizens, such as related bank information; banks are not allowed to reveal citizens' accounts to anyone but the account holder or investigation authorities. The People's Assembly and Shura Council are not among the institutions that are subject to the auditing of the CAO. They also have their own independent budget, and their allocation appears as one figure in the national budget (Article 35, Law 38/1972). However, they are subject to internal audit and the Illicit Enrichment Law.

In practice, the MOF publishes the budget sheet on its website to be available to the public, but citizens are neither aware of such an action nor have enough knowledge to understand it. Opposition parties often raise concerns related to allocating large amounts of money to the MPs in addition to other benefits. Each MP has a specific number of shares in pilgrim state visas (5-10 people on annual basis),<sup>124</sup> enjoys the right to appoint a certain quota of individuals in several ministries and governmental agencies, and receives funds to help some of the needy in his/her region. The amount is not consistent; in practice, the allocation of money, positions to appoint, and other advantages are not the same among all MPs and it varies based on their political powers and the levels of their personal ties and, of course, their political affiliations. For instance it is expected that members of the powerful political parties have more access to such funds.

The Committee of Plan and Budget, one of the Parliament committees, discusses the budget proposal and suggests the necessary amendments. It is also authorised to request any further data and have discussions with concerned institutions. Then, it presents its report on the budget proposal to the Parliament. It is important to mention that only MPs can access information on budget allocations. Citizens can access this information only through the mass media and available knowledge of course is always insufficient.

Transparency and integrity in the Egyptian legislature suffer from an increasing number of businessmen sitting in the legislature with no clear rules on conflict of interest. A case of a businessman who was accused of anti-competitive behaviour and who used his position in the Parliament to block amendments to a business-related law in 2008 is an example of the lack of rules on conflict of interest.<sup>125</sup>

### Complaints/enforcement mechanisms

Article 22 of the Illicit Enrichment Law (Law 62/1975) refers to the possibility that anyone has the right to report on the illicit enrichment of anyone, including members of the Parliament. In practice there have been few cases of MPs playing a devil's advocate role against others. In such cases, these reports do not extend beyond exchanging accusations in the press and media. Penalties on misconduct in the legislature are internal; however, the legislative chambers can lift immunity so that the member can be prosecuted.

<sup>124</sup> United Kingdom of Saudi Arabia designates a quota to each country each year for the number of pilgrims (Haj).

In Egypt the government gives each MP 5-10 people to go to Haj on their own expenses.

<sup>125</sup> [www.nazaha-eg.net](http://www.nazaha-eg.net)

In both chambers of the legislature there is an Ethics Committee, which discusses members' violations of religious, moral or social values as well as the foundations of the political and economic principles of the Egyptian society. It also penalises MPs proven guilty of any of the aforementioned violations consistent with the chamber bylaws. The fourth chapter of the second unit of bylaws lays out all the rules that organise the Ethic Committee and its activities.<sup>126</sup> Sanctions range from a warning to dismissal. The People's Assembly in January 2008 dismissed one MP because the court found him guilty of killing someone and burying his body in the desert (365 members voted yes).<sup>127</sup>

According to the Egyptian Constitution, members of the legislature have immunity in many forms:

- They are not accountable for their thoughts and opinions that are expressed inside the Parliament and related to their duty as representatives of the people (Article 98 of the Constitution).
- If a member commits a crime, the member will not be prosecuted unless permission is given by the chamber (Article 99 of the Constitution).
- In the case of an arrest at a crime scene, there is no need to get permission from the chamber.

### Relationship with other pillars

The legislature has a strong relationship with the executive and the private sector. Its monitoring of the government is sometimes viewed as being biased towards the decisions and ideas of the NDP. Moreover, having ministers as MPs in many cases blurs the distinction between their roles.

The increasing number of businessmen in the current legislature has thrown doubts on the integrity of the mechanism, especially since businessmen are commonly seen as using their positions in the legislature to serve their private interests.<sup>128</sup> Two cases of corruption have been identified in the last two years of two businessmen in the legislature who were convicted of killing and corruption.<sup>129</sup>

### Recommendations

- Enhance the rules governing conflict of interest in the legislature. Clear distinction should be made between self interest and public interest.
- Enhancing the capacity of MPs in the roles, responsibilities and the functions of the legislative branch of government. Legislature members should act as a representative of the whole nation, not the people who elected him/her in a specific electoral area or region.
- Raising citizen awareness of the role of the legislature's members
- Establish an efficient mechanism governing money allocations for MPs, since there are widespread accusations of giving public money to MPs.<sup>130</sup> Neither the rules nor the methods of obtaining this money are clear to the public.
- Set rules on gifts accepted by the legislature's members and enact laws that trace the wealth accumulation of MPs.
- Set rules governing the relationship between MPs and lobbying groups, and establish a system for registering lobbying activities.
- Increase the oversight by designated control and monitoring authorities over the behaviour of the legislature's members in light of the increasing cases of corruption.

### Resources/structure

<sup>126</sup> People's Assembly, Parliament Divisions, Ethics Committee;

[www.parliament.gov.eg/English/ParlmanetDivisions/Ethics%20Committee/](http://www.parliament.gov.eg/English/ParlmanetDivisions/Ethics%20Committee/)

<sup>127</sup> [www.masrawy.com/News/Egypt/Politics/2008/January/14/memeber\\_parliament.aspx](http://www.masrawy.com/News/Egypt/Politics/2008/January/14/memeber_parliament.aspx), 14/1/2008.

<sup>128</sup> Focus group meeting held 8 June 2009.

<sup>129</sup> Eleven interpellations accusing the government of corruption, humiliating citizens and protecting businessmen, Alyum Elsabea, 22 March 2009.

<sup>130</sup> [www.islamonline.net](http://www.islamonline.net), 29/11/2007

# **3.**

## **POLITICAL PARTIES**

There are 24 registered political parties in Egypt today. However, only six political parties are active and significant in Egyptian politics: the ruling National Democratic Party (NDP), Al-Ghad party, the Progressive National Unionist Party, the New Wafd Party, the Liberal Party (al-Ahrar) and the Nasserist party.

The most important active party is the ruling NDP, which has the majority of seats in the Parliament. In the 2005 parliamentary elections, the NDP won 317 out of 444 seats in the People's Assembly. However, the first results of these elections indicated a dent in the political power base of the NDP, as it won only 145 seats from its main list of contestants, amounting to 32.3 per cent of the seats in Parliament. It only secured the rest of its seats by integrating 166 independent members who left the party and contested the elections on their own, since they had been excluded from the Party's first list.<sup>131</sup> Thus, even though the party has the majority of seats in Parliament today, its position as the most powerful party in Egyptian politics has weakened.<sup>132</sup>

The Muslim Brotherhood has become a strong political force in Egyptian politics even though religious-based parties and any religious-based political activities are banned by the Constitution. It won 88 seats in the 2005 elections, when its members ran as independents. The secular political parties were not able to acquire more than a total of 12 seats in the 2005 Parliament.

The amount of financial and human resources available to these parties varies widely. For instance, the NDP has the largest budget and staffing. During the 2005 parliamentary elections, the ceiling for the election campaign of each political party was EGP 10 million (USD 1.8 million), part of which was provided by the government.<sup>133</sup> The details on the funding of political parties and their expenditures are unavailable. However, since a large part of the funding comes from members it is presumed that a large part of the NDP's funding comes from the private sector, as businessmen lately have played an active role and have acquired leading positions in the NDP.

State funding of political parties in Egypt started in 1977, after Sadat allowed for the creation of three political parties instead of three political forums. Public funding was allowed under Law 40/1977 and came mainly in the form of tax exemptions on the holdings of political parties.<sup>134</sup> According to Article 18 of Law 177/2005, the State provides political parties with annual financial support, and these appropriations are included in the budget of the Shura Council. The Political Parties Affairs Committee (PPAC) shall undertake the following allocations: EGP 100,000 (USD 18,000) annually for every party for the first 10 years after its establishment. After this period, for the party to be eligible for this amount of money, at least one of its members must have a seat in either in the People's Assembly or the Shura Council. An additional EGP 5,000 (USD 900) is given for each seat won in either the People's Assembly or Shura Council, up to a maximum of EGP 500,000 (USD 90,000) for each party.

In addition to public funding, political parties seek funds from membership fees, party newspapers and other party publications, and private contributions from Egyptian citizens. However, foreign funds and financial contributions are outlawed. Since the amount of public funding provided is negligible, the debate around this is less important than the role of private contributions from businessmen, especially to the NDP. In practice, some of the small political parties in Egypt have been nurtured simply due to the receipt of public funds, while richer ones such as Al-Wafd declined public funds. The government was able to utilise

<sup>131</sup> *Of these seats, six were won by the New Wafd, two by the Progressive Nationalist Party, two by Al-Ghad Party, and two by the Dignity Party.*

<sup>132</sup> Vivian Salama, 'Egypt Behind the Scenes of the NDP,' 2005;

[viviansalama.wordpress.com/2005/07/31/egypt-behind-the-scenes-of-the-ndp%E2%80%99s-secret-weapon/](http://viviansalama.wordpress.com/2005/07/31/egypt-behind-the-scenes-of-the-ndp%E2%80%99s-secret-weapon/)

<sup>133</sup> *Ibid.*

<sup>134</sup> Abdel Moneim Al-Mashat, 'Political Finance Systems in Egypt: Regulation and Disclosure: The Way Out,' 2008; [www.13iacc.org/files/Political\\_Finance\\_Systems\\_in\\_Egypt.doc](http://www.13iacc.org/files/Political_Finance_Systems_in_Egypt.doc), p. 10

public funds as a means to pressure smaller parties and receive their support for its policies and reforms.<sup>135</sup>

One might categorise the abuses of public funds and financial resources in election campaigns as follows:

- **Buying voters' political will:**<sup>136</sup> The legislative elections of 2005 and 2007 and the local elections in 2008 witnessed widespread election bribery and buying of votes. These were considered electoral bribes, whose value depended on the candidate's competition level.<sup>137</sup> A bribe for one vote in the 2005 People's Assembly elections was believed to range between EGP 500-1,000 (USD 90-180), whereas in the Shura Council elections of 2007 it was believed to be almost EGP 300 (USD 54). The lower value for the Shura Council is believed to be due to the fact that these elections were conducted after the 2005 and 2007 Constitutional amendments, which made the opportunities for independent candidates to compete freely very dim.<sup>138</sup>
- **Monopoly of the NDP over state resources:** In reality all public facilities such as public transportation have been utilised by the NDP in presidential, legislative and local elections. Public buses and buses owned by different ministries were used in the election campaigns. Employees who worked for candidate ministers were taken by public transport to voting places. Many violations were reported by CSOs as well as media observers.<sup>139</sup> The use of public properties such as premises in election campaigns was extended to mosques (and churches), which were utilised by both NDP and Muslim Brotherhood candidates. They approached preachers and prayer leaders, especially on Friday prayers, to promote their candidacy and improve their image as candidates who are clean and transparent.<sup>140</sup>
- **Public media bias in election campaigns:**<sup>141</sup> Reports concerning the role of the media in covering presidential campaigning have contended the public media are neutral.<sup>142</sup> However, it is believed that government media expressed bias toward Mubarak and the NDP during the legislative elections. Government-controlled media are mostly utilised to promote NDP candidates in different elections, most importantly when ministers enact new projects or new citizen-friendly decisions. It is believed that coverage of NDP members reached 69 per cent in the 2005 Parliamentary elections, whereas the Progressive National Unionist Party, al-Ghad Party and Al-Wafd were only able to receive from 1 to 9 per cent. It is reported that this bias occurs not only in state-owned media, but also in private-owned media.<sup>143</sup>
- **Unaccounted and unaccountable fund disbursement:**<sup>144</sup> There are no clear regulations for financial accounts or bookkeeping except for Article 28 of Law 174/2005. There are also no clear regulations concerning the overseeing of fund disbursement by candidates or political parties. Thus spending on election campaigns including voter bribery, cannot be accurately accounted for. Though the threshold of election campaign expenditures is EGP 100,000 (USD 18,000), the cost of campaigns and media coverage is expensive, and most candidates expend resources far beyond this ceiling. This, among other things, explains the increasing number of businessmen candidates compared to candidates from other types of professions. The lack of a reliable account-

<sup>135</sup> Doha Debates, *Fighting for Democracy*, October 2008;

[clients.squareeye.com/uploads/doha/press/OX67\\_101-102\\_World%20Affairs\\_2.pdf](http://clients.squareeye.com/uploads/doha/press/OX67_101-102_World%20Affairs_2.pdf)

<sup>136</sup> Abdel Moneim Al-Mashat, 'Political Finance Systems in Egypt: Regulation and Disclosure: The Way Out,' 2008; [www.13iacc.org/files/Political\\_Finance\\_Systems\\_in\\_Egypt.doc](http://www.13iacc.org/files/Political_Finance_Systems_in_Egypt.doc), p. 12

<sup>137</sup> Wahid Abd al-Mejeed, 'The Report of the National Campaign for Monitoring the Parliamentary Elections 2005,' in: Wahid Abdel-al-Mejeed (Ed.), *Two Steps Forward and Seven Backward: The Report of National Campaign for Monitoring the Elections*, The Human Rights Centre for Helping Prisoners, 2005.

<sup>138</sup> *Ibid.*

<sup>139</sup> See, for example, EOHR's 2005 reports on the parliamentary elections and 2007 reports on the Shura Council elections, 'Future Parliament? - Not yet'; [www.eohr.org/report/2005/re1214.shtml](http://www.eohr.org/report/2005/re1214.shtml); 'The Candidacy of Semi-renewal elections for Shura Council ..... Restrictions & Violations'; [en.eohr.org/?p=32](http://en.eohr.org/?p=32)

<sup>140</sup> Abdel Monem al-Mashat, 'Political Finance Systems in Egypt: Regulation and Disclosure: The Way Out,' 2008; [www.13iacc.org/files/Political\\_Finance\\_Systems\\_in\\_Egypt.doc](http://www.13iacc.org/files/Political_Finance_Systems_in_Egypt.doc) p. 13.

<sup>141</sup> *Ibid.*, p. 13.

<sup>142</sup> *Ibid.*, p. 13.

<sup>143</sup> *Ibid.*

<sup>144</sup> *Ibid.*, p. 13.

ing system and the absence of accountability open the doors to political corruption and non-transparent political activities.<sup>145</sup> “The lack of a reliable accounting system and the absence of accountability open the doors to political corruption and non-transparent political activities.”<sup>146</sup>

In June 2007 the High Election Committee (HEC) issued resolution 5/2007 to limit the abuse of political finance systems to organise the Shura Council elections. Among the important rules which should be observed are the following:

- The expenditure of each candidate should not exceed EGP 100,000 (USD 18,000). State buildings and public transportation should not be used in election campaigns.
- Public funds or funds owned by public corporations and companies are prohibited from any election campaigns.
- Mosque, church and school premises should not be used as campaign sites.
- Funds from foreign institutions, countries or agencies are prohibited in election campaigns.<sup>147</sup>

However, the monitoring process for these rules is not specified under HEC rules. Moreover, it does not set any rules for penalties or punishment associated with violations.<sup>148</sup>

### Role(s) of Institution/Sector as Pillar of NIS

The first party law was created in 1977 (Law 40/1977), which stated that all Egyptians have the right to establish political parties, and every citizen has the right to be a member of a political party (Article 1). Many provisions of the law are very general with the exception of the PPAC, which was established under Law 40/1977. The PPAC had the power to “refuse the registration of new parties, to freeze existing parties’ licenses, to close parties’ newspapers, to reverse parties’ decisions or halt parties’ activities based on the ‘national interest,’ and to ask Cairo’s Supreme Administrative Court to dissolve parties and redistribute their funds.”<sup>149</sup> This provision was amended by Law 177/2005, which marginalised the PPAC’s role. Article 7 stipulates that the PPAC recognises the establishment of a party after it is joined by at least 1,000 constituent members from at least 10 governorates, with no less than 50 members from each governorate. According to Article 8 of Law 177/2005, the PPAC shall have the competence to examine and consider notices of the establishment of parties according to the provisions of the law,<sup>150</sup> as well as a statement of the amount and sources of funds raised to establish the party and the name of the members’ agent acting on their behalf in the party-establishing procedures. Article 8 also stipulates that the PPAC must issue its decision for the establishment of a party within 90 days following the date of submitting the notice of establishment. If the PPAC objects to the establishment of a party, this decision should be supported by reasons after hearing the necessary clarifications from concerned parties. The PPAC chairman shall notify the political party’s applicants about the decision behind the objection to its

<sup>145</sup> Abdel Moneim Al-Mashat, ‘Political Finance Systems in Egypt: Regulation and Disclosure: The Way Out,’ 2008; [www.13iacc.org/files/Political\\_Finance\\_Systems\\_in\\_Egypt.doc](http://www.13iacc.org/files/Political_Finance_Systems_in_Egypt.doc)

<sup>146</sup> *Ibid.*

<sup>147</sup> *Ibid.*, p. 11.

<sup>148</sup> *Ibid.*, p. 11.

<sup>149</sup> Human Rights Watch, *Monopolizing Power: Egypt’s Political Parties Law*, 4 January 2007; [www.unhcr.org/refworld/docid/45a4e0a92.html](http://www.unhcr.org/refworld/docid/45a4e0a92.html)

<sup>150</sup> Article 4 Law 177/2005:

*For a political party to be established or maintained, it shall satisfy the following conditions:*

*i: The party’s title should not be identical or similar to that of an existing party.*

*ii: The party’s principles, goals, platforms, policies or modalities of exercising its activities shall not contradict the Constitution or requirements of maintaining national unity, social peace and the democratic system.*

*iii: The party’s platform shall constitute an addition to the political life according to specific methods and goals.*

*iv: In its principles or platforms or in practicing its activities or selecting its leaderships or members the party shall not be based on religious, class, sectarian, categorical, geographical grounds or on manipulating religious feelings or discrimination on account of origin or creed.*

*v: The party’s tools shall not imply the creation of any military or para-military formations of any kind.*

*vi: The party shall not pose as a branch of a foreign party or political Organisation.*

*vii: The party’s principles, goals, methods, Organisations and means and sources of funding shall be made public.*

establishment through a registered letter under the acknowledgment of receipt. This decision has to be issued in the official gazette and in two renowned daily newspapers. Applicants from the respective political party have the right to challenge this decision before the first circuit of the Supreme Administrative Court, which is chaired by the head of the State Council.

Political parties can be established in Egypt with some limitations, as aforementioned. The problem, however, is unfair competition by the ruling NDP. Egyptian law (Law 20/1914) restricts the right to assembly of political parties (stipulating that the police have the sole right to dismantle any meeting of more than five persons), meaning that opposition political parties do not have the power to hold public hearings in clubs or unions to call for their agendas, whereas the NDP has this power.<sup>151</sup> The reason behind this is that NDP holds a large amount of power in its hands, and its members use their influential positions in society to work around State regulations.

The latest localities elections, held in April 2008, saw a “localities contract”<sup>152</sup> between the NDP, al-Wafd Party, Democratic Front Party and Nationalist Unionist Party. Hence, opposition political parties have an understanding that without their alliance with the NDP, they will not advance. Such a deal ensured that six opposition contestants won the localities elections.<sup>153</sup> Four seats were given to the Nationalist Unionist Party, and one to each of the al-Wafd Party and the Democratic Front. However, even though this deal assured these parties seats in the Parliament, it made all of them lose the little public support they had. It showed they do not have any influence with citizens or power within the political arena in Egypt. The opposition parties lost their credibility because instead of supporting the masses, they bargained for seats in localities under the government’s umbrella.

In theory, political parties are independent according to Egyptian law, but they suffer from a small constituency and public base. None of the political parties have made issues of transparency and integrity their main motto or slogan, though they all call for more integrity in Egyptian society. Many parties are concerned with fighting corruption. Anecdotal examples include the following. The Democratic Front Party commits itself to enhancing political democracy and fighting corruption, unfair social structures, political authoritarianism and securing the right to equality of opportunity for all Egyptian citizens (al-Jabha “our message”). The al-Wafd Party’s political agenda asserts that the Parliament should regain full authority over the State budget. “Parliament members cannot be government employees at the same time, enhancing democracy, election law, amending the consultative council’s law to give it legislative power, and asserting judicial independence...”.<sup>154</sup> Though al-Ghad’s political agenda focuses on good governance, respect for human rights and the combat of corruption, its leader was jailed on charges of forging official documents that were presented to the PPAC in order to secure the formation of the al-Ghad party. The al-Ghad’s leader denied the charges. Similarly, the NDP’s political agenda also includes the promotion of principles of transparency and accountability, freedom of the press and encouragement of political participation at all levels. In reality, some powerful members of the NDP have been charged with corruption, such as the cases of “the loan deputies” in 2000 and the “drug deputies” in 1995.<sup>155</sup> More recent cases of abuse of power and corruption include those against a member of the Shura Council, appointed by President Mubarak, who is the owner of the al-Salam 98 ferry, for the loss of almost 1,000 lives in a ferry accident. Also, in April 2009, the Court

<sup>151</sup> Amr Hashem Rabie, ‘Electoral Systems and Parliamentary Elections in Egypt’, In: Hala Moustafa, et al (Eds.), *Building Democracy in Egypt: Women’s Political Participation, Political Party Life and Democratic Elections* (Cairo: IDEA and ANND, 2005).

<sup>152</sup> Al Masry al Youm, 13 April, 2008.

<sup>153</sup> Interview with an NDP member.

<sup>154</sup> UNDP Parliamentary Development Initiative in the Arab Region “ Arab Parliaments: Arab Political Parties Database: Egypt”, available at [www.arabparliaments.org/countries/bycountry.asp?pid=62&cid=5](http://www.arabparliaments.org/countries/bycountry.asp?pid=62&cid=5)

<sup>155</sup> Gamal Essam El-Din, ‘Not business as usual,’ 4-10 September 2008; [weekly.ahram.org.eg/2008/913/fr1.htm](http://weekly.ahram.org.eg/2008/913/fr1.htm)

of Cassation annulled the membership of many MPs as a result of evidence of vote-rigging.<sup>156</sup>

Hence, it can be safely argued that there is a wide gap between fighting corruption in theory and in reality, and that the issue of fighting corruption is among the weakest elements of the political party system in Egypt.

### Accountability

According to Law 40/1977, amended by Law 177/2005, the establishment of political parties is conditioned on the consent of the PPAC. Article 11 of Law 177/2005 stipulates that at the end of every year political parties shall notify the Central Audit Organisation (CAO) of the contributions they have received as well as the details of all donors. The amount of contributions given to parties shall not be from any tax income. Moreover, Article 12 of Law 40/1977 holds that the CAO has to produce an annual report concerning all monetary issues of all political parties. According to interviews, all political parties do send their budgets to the CAO, which conducts an annual audit of their financial information.<sup>157</sup>

In general, the public is not consulted in the work of political parties, as most political parties in Egypt suffer from unclear programs and vague political messages, an inability to attract youth, centralised decision-making and poor financing.<sup>158</sup>

### Integrity Mechanisms

There are no regulations concerning internal party governance, and it was found that most political parties are rather elitist, dominated by males and lacking members of younger generations.<sup>159</sup> They are mostly dominated by long-term leaders. This causes internal splits between younger and older generations. There is no explicit exclusion of particular social groups, though most parties are characterised by certain social backgrounds. For instance, the NDP is regarded as the government party, the Wafd is a representative of the upper liberal and entrepreneurial elite, and the Unionist Party represents the radical left.<sup>160</sup>

The NDP tried to revise its internal governance after the 2000 elections, and some internal revisions to party structures have taken place. One of the reportedly major changes was the creation of a “policy formulation” council.<sup>161</sup>

The liability for financial irregularity covers both individual officials and the party. According to Law 73/1956, which was amended by Law 177/2005, the monitoring of financial aspects of parties concerns the party in general and not just individuals. Law 177, Article 11 requires political parties to submit their financial reports to the CAO.<sup>162</sup>

Information on the rules of parties regarding codes of conduct is not readily available. The main parties that have disclosed codes of conduct for their members, as seen on their websites, are the NDP ([www.ndp.org.eg](http://www.ndp.org.eg)) and Democratic Front Party ([www.democraticfront.org](http://www.democraticfront.org)). For example, according to Chapter 4, Article 63 of the NDP Charter, “The General Secretariat has the right to revoke the membership of any of the members upon a demand by the steering office of the Centre governorate for one of the following reasons:

- If the member loses one of the qualifications for membership

156 Mahmoud Al-Muslim, ‘77 MPs Declared Invalid By Cassation Court,’ 26 April 2009; [www.almasry-alyoum.com/article2.aspx?ArticleID=208682](http://www.almasry-alyoum.com/article2.aspx?ArticleID=208682)

157 Interview with a former member of Parliament, and former member of the Democratic Front Party.

158 Ahmad Abdel Halim, ‘Supporting Public Participation in Egypt,’ 2005; [www.cipe.org/pdf/publications/fs/ahalim.pdf](http://www.cipe.org/pdf/publications/fs/ahalim.pdf)

159 Economic Commission for Africa, ‘Measuring and Monitoring Progress Towards Good Governance in Africa: Governance Profile of Egypt,’ 2007, p7.

160 Ibid. [www.uneca.org/eca\\_programmes/development\\_policy\\_management/publications/countryprofiles/Egypt-Final.pdf](http://www.uneca.org/eca_programmes/development_policy_management/publications/countryprofiles/Egypt-Final.pdf)

161 Ibid.

162 Global Integrity Report, 2007 Assessment, Egypt; [report.globalintegrity.org/reportPDFS/Egypt.pdf](http://report.globalintegrity.org/reportPDFS/Egypt.pdf)



- If the member supports the candidates of another party
- If the member does anything that is harmful to the party, his/her membership is revoked upon the decision of the steering office of the Centre
- If this member abstained from paying membership fees for two consecutive years.”

The rules on conflict of interest are applied in case an individual is a member of two political parties at the same time. This has been mentioned, for example, in the charters of NDP and the Democratic Front Party. But there are no rules governing gifts and presents, with the exception of banning foreign funding as mentioned above. There are no post-employment restrictions. Moreover, there have been several cases in which members of Parliament have won elections as a member of a certain political party and then switched parties afterwards.

### Transparency

Law 40/1977 amended by Law 177/2005 regulates political parties' funding. Accordingly, contributions from individuals and political party members must be registered in party records. The same law holds that donors' names and contribution amounts must be announced in daily newspapers within two months after the money is received, if the amount is EGP 500 (USD 90) or more.

In practice, data concerning donations and monetary contributions to parties is not announced. Moreover, party expenditures are also not announced. For the NDP, for instance, financial data is considered to be of highest secrecy.<sup>163</sup> The CAO's mandate includes monitoring the funding of political parties and keeping these records, but they are not made available to the public.

According to Law 40/1977, money allocated to political parties can only be spent for purposes listed in the party's bylaws. Political parties must deposit their money in an Egyptian bank. Political parties' expenditures must be recorded, to enable the CAO to review them. The CAO prepares an annual report concerning the financial status of political parties and submits it to the head of the PPAC. In practice, access to financial records of political parties by the public is denied.<sup>164</sup> However, membership meetings of political parties are disclosed publicly. For instance, beginning in 2003, the NDP began conducting an annual party conference, at which it sets its agenda for the upcoming year and holds public discussions regarding the party's accomplishments. Moreover, according to Mr. El-Sadat the financial secretary of the party presents at the party's yearly general conference a statement concerning the finances and the budget of the party. The members have the right either to agree or disagree regarding the finances and budget of the party. However, they do not take part in the general proceedings of the decision-making process in allocating the money. They only agree or disagree about the final decision.<sup>165</sup>

### Complaints/Enforcement Mechanisms

According to Law 40/1977, Article 24, any individual who discloses information to the authorities regarding the existence of illegal organisations or illegal actions within any political party is relieved from imprisonment. Law 40/1977, amended by Law 36/1979 and Law 177/2005, provide for the legal framework concerning the wrongdoing of political parties. The head of the PPAC has the power to call on the Higher Administrative Court to dismantle a political party if it is proven that it acted against the law.

In practice, political parties are rarely dismantled, though the PPAC has blocked the creation of some parties, such as the Islamist al-Wasat party and Nasserite

<sup>163</sup> *Ibid.*

<sup>164</sup> *Ibid.*

<sup>165</sup> *Interview with a former member of Parliament, and former member of the Democratic Front Party.*

al-Karama party. This was done with no clear basis but rather for purely political reasons, as the Karama party is believed to have radical political beliefs, and the al-Wasat party is believed to have affiliations with the Muslim Brotherhood.

Each party has its own rules concerning integrity inside the party, and in practice such rules are followed. However, monitoring related to finances is difficult to access by the public.

### Relationship to other pillars

Political parties have relationships with the judiciary, legislature, media and civil society. Recently there has been a strengthening of the relationship between non-NDP political parties and civil society organisations that deal with human rights and political issues. Political parties' main focus is on the behaviour of the executive; however, there is a lack of cooperation, and the relationship is confined to confrontation and criticism. The NDP has a strong relationship with the executive, as the NDP's slogan since 2000 has been "the government of the ruling party" rather than "the party of the government," with the intention of increasing the power of the ruling party. The political parties, with the exception of the NDP, have weak relationships with television channels. On the contrary, the official channels of television are considered NDP channels, as all of its important events are broadcast. In fact, it can be argued that all political parties are considered as a unitary "non-government block" in programmes by Egyptian television channels. Still, several political parties have their own newspapers.

### Recommendations

- There should be more transparency and integrity concerning the funding of political parties, especially the NDP, since much of its funds, especially funding for elections campaigns, are not publicly disclosed.
- Providing clear criteria for rules governing the approval of the establishment of political parties by the PPAC.
- The executive should not interfere in the affairs of political parties by weakening the rules governing their functioning.
- The rules and definitions regarding the establishment of a political party need to be clearer (for instance, an explanation of the concept of "radical"), to enable different political parties such as al-Wasat and al-Karama to be established.
- The media, especially the state-owned media, should increase their coverage of political parties' activities and decrease their bias in favour of the NDP and the executive. A specific code of conduct should be established to govern such types of relationships.
- Restrictions on political parties' right to assemble should be dismantled to allow political parties more influence in the public sphere.

# 4. ELECTORAL MANAGEMENT BODY

### Resources/structure

Different types of elections take place in Egypt that are managed by different electoral bodies, as shown in Table 1.

**Table 1:  
Elected Bodies in Egypt**

Electoral	Term (years)	Next Election	Number of elected members	Number of appointed members	Monitoring of Electoral Process
President of the Republic	6	2011	1	-	Presidential Election Commission
People's Assembly	5	2010	444	10	Higher Elections Commission
Shura Council	6	2012	176	88	Higher Elections Commission
Local Popular Councils (at governorate, district, city, neighbourhood and village levels).	4	2012	53010	-	Ministry of Interior

#### Presidential Election Commission (PEC):

The amendment to Article 76 of the Constitution provides for the establishment of the PEC, which is charged with supervising the presidential election process. The establishment of an independent election commission – separate from the Ministry of Interior – was perceived as a positive step. The committee is composed of five judges and five public figures. The amendment to Article 76 and Law 174/2005 states that PEC decisions are “final and subject to no appeal”. The PEC is under the chairmanship of the head of the Supreme Constitutional Court and includes: the oldest member of the Supreme Constitutional Court, the oldest member of the Court of Cassation and the oldest member of the State Council. In addition the PEC includes five public figures known for their neutrality and good reputation.<sup>166</sup> The Shura council chooses two members and the People's Assembly chooses three.

#### Parliamentary Elections

The judiciary supervised the parliamentary elections of 2000. This was based on the Supreme Constitutional Court ruling of 2000 and the former wording of Article 88 of the Egyptian Constitution, which stipulated direct judicial oversight of the elections. The ruling stated: “*The Law shall determine the conditions which members of the Assembly must fulfil as well as the rules of election and referendum, while the ballot shall be conducted under the supervision of the members of a judiciary organ.*” The judicial supervision of the 2000 parliamentary elections contributed to increasing the integrity and fairness of the electoral process.<sup>167</sup> However, the recent constitutional amendments of 2005 and 2007 introduced an amendment to Article 88 that replaced the stipulation regarding judicial oversight of the elections with a stipulation that a supreme supervisory committee be established – whose membership includes but is not limited to current and former members of judicial bodies – to manage oversight of the elections.

<sup>166</sup> [new.sis.gov.eg/En/LastPage.aspx?Category\\_ID=204](http://new.sis.gov.eg/En/LastPage.aspx?Category_ID=204)

<sup>167</sup> Based on the discussion that took place at the focus group meeting in Cairo, June 2009.

The amended Article 88 stipulates:

*“The ballot shall be conducted in one day. A supreme commission characterized by independence and impartiality will supervise the elections as regulated by Law. The Law shall define the functions of the commission and the way it is formed and ensure its members are either current or retired judges. The commission will take charge of forming the general committees to supervise the elections at the level of voting districts and committees which will supervise polling and vote-counting. The general committees should be formed of members of the judicial authorities in accordance with rules and measures regulated by Law.”*<sup>168</sup>

Following the amendment of Article 88 of the Constitution, the parliamentary elections were to be supervised by the High Elections Commission (HEC) under the chairmanship of the Minister of Justice.

Amendments to Law 73/1956 regulating the exercise of political rights, which took place in 2007, changed the composition of the HEC. The amendments removed all members of the executive branch from the commission and appointed the President of the Cairo Court of Appeals as Chairman, rather than the Minister of Justice. “In addition, the number of sitting and retired members of the judicial agencies has increased from six to seven, with four sitting judges being designated by law and not through a selection process. The number of public figures was increased from three to four.”<sup>169</sup>

- The HEC includes as members, according to Article 3 RPT (A) of Law 73 (1956) on the Exercise of Political Rights:<sup>170</sup>
- The President of the Alexandria Court of Appeals
- A Vice-President of the Court of the Cassation chosen by the Supreme Judicial Council, which shall also choose a substitute
- A Vice-President of State Council chosen by the Special Council for Administrative Affairs, which shall also chose a substitute
- Seven members, including three retired members of the judicial agencies and four public figures, all of whom must be regarded as neutral and must not be members of political parties. The People’s Assembly shall choose four of the above, which shall include two retired members of the judicial agencies, and the Shura Council shall choose three of the above, including one retired member of the judicial agencies. Each chamber shall choose two substitute members, one of whom shall be a retired member of the judicial agencies. All the above shall be nominated by the plenary committee of each chamber.

Article 3 RPT (C) of Law 73 (1956) on the Exercise of Political Rights stipulates that the term of office of HEC members, other than those who are current members of the judicial agencies, shall be three years, beginning on date of issuance of the President’s commission appointment order.

According to the Law 73 (1956) on the Exercise of Political Rights, the commission is a public juridical person and independently exercises its duties. The commission has a technical secretariat and an independent budget. The commission has the right to issue regulations and decisions as may be necessary for regulating its work. Commission decisions should be issued by the majority of eight votes. In coordination with the Minister of Interior, the chairman of the HEC has the right to decide upon the composition of the general committee and subcommittee and their secretaries.<sup>171</sup>

<sup>168</sup> Article 88 of the Egyptian Constitution.

<sup>169</sup> Egypt State Information Service and Ministry of Information Egypt, “Media Briefing On Amendments Passed by the Parliament To the Exercise of Political Rights Law”; [shura.sis.gov.eg/html/English\\_Briefing\\_Document.pdf](http://shura.sis.gov.eg/html/English_Briefing_Document.pdf)

<sup>170</sup> Ministry of Information, Egypt State Information Service, Media Briefing: Activities of the High Elections Commission June, 2007; [shura.sis.gov.eg/html/HEC\\_Activitie.pdf](http://shura.sis.gov.eg/html/HEC_Activitie.pdf)

<sup>171</sup> In elections, the Republic is divided into a number of constituencies, referred to as districts (General Committee), and each district is divided into a number of polling stations (Subcommittee).

Law 173 (2005) and Law 73 (1956) state:<sup>172</sup> “Each electoral district is assigned a general committee, and a series of subcommittees are established that act as polling stations. The number and location of these committees are decided based upon an Interior Ministerial decree in coordination with the HEC. All committees must be made up of a chairman, a secretary and at least two other members. The composition of the general committee is specified by a decision of the chairman of the HEC in coordination with the Minister of Interior from a list of available officials drawn up by each judicial agency. The committee must include: a member of a judicial agency to act as chairman, a secretary who is a state or public sector employee, and no fewer than two members who are state or public sector employees. The general elections committees are mandated to oversee the balloting process to ensure it is in compliance with the law, announce the results for their respective districts and register official candidate representatives.

In terms of the composition of the subcommittees that act as polling stations, the chairman of the HEC has the right to choose them in coordination with the Minister of Interior from a list of available officials drawn up by each judicial agency. While the law does not require the chairmen of subcommittees to be judges, the GOE has established a policy whereby each subcommittee is chaired by a judge. As with the case of general committees, the composition of these committees includes: a judge to act as chairman, a secretary who is a state or public sector employee, and no fewer than two members who are state or public sector employees.

There was a critique to the amendment of Article 88 of the Constitution, which puts the supervision of Parliamentary elections under the HEC. The criticism was mainly due to the fact that although the Commission is highly dominated by judges, the judges’ authority is mainly confined to counting votes and displaying results, and that their supervisory powers are not extended over the polling stations.<sup>173</sup> Another point of criticism referred to the fact that the Ministry of Interior plays a significant role in elections. The Ministry of Interior appoints the mayors and heads of villages. The Ministry has an influential role in directing the people’s votes in these rural areas, so it could be expected that mayors and heads of villages would tend to be biased toward ruling party candidates.<sup>174</sup>

#### **Regarding local elections:<sup>175</sup>**

The mandate of the HEC includes supervising both presidential and parliamentary elections. However, it does not include local elections. In the local elections of 2008, Presidential Decree (55/2008) on local elections invited citizens to participate in elections. The Ministry of Interior published a series of decrees to organise the election process, but there was no mention of the HEC. Ministry of Interior Decree (358/2008) stipulates the documents needed to be submitted by candidates who are willing to run for local elections. The candidates submit their documents to the governorate or the local administration units. Decree (359/2008) set the rules for the election process and campaigning.

#### **Role(s) of the Institution**

Article (3) of Law No. 173 of 2005 regulating the practice of political rights states that the HEC is responsible for undertaking the following tasks:

- Set out rules for compiling election rosters, their contents and method of their revision, screening and updating
- Suggest rules of determining electoral constituencies
- Develop general rules for regulating election campaigns
- Contribute to awareness and orientation efforts pertaining to elections and draw up guidelines for the electoral process

<sup>172</sup> [www2.sis.gov.eg/En/Politics/Parliamentary/pross/041301000000000001.htm](http://www2.sis.gov.eg/En/Politics/Parliamentary/pross/041301000000000001.htm)

<sup>173</sup> Following the discussion that took place at the focus group meeting in Cairo, June 2009.

<sup>174</sup> Ibid.

<sup>175</sup> Sameh Fawzi, Ayman Zohry and Ayman Okail, “The voter’s voice project: 2008 Municipal Election final report,” *Maat for Juridical and Constitutional Studies*, Cairo, 2008.

- Monitor compliance with codes of ethics related to elections
- Declare the general result of elections and referendums
- Express opinions on the draft laws related to elections

In both legal texts governing the PEC and HEC, it is emphasised that the government should be under an obligation to assist the commission(s) with carrying out its tasks and implementing its decisions, and to provide it with any information related to these tasks as might be required. The commission(s) may enlist the services of any agency in performing its missions.<sup>176</sup>

Election laws prohibit election crimes. Law 175/2005 has a special chapter on election crimes. Crimes such as using force or violence against the head or any member of the election or referendum committee, or threatening using force or threatening to prevent someone from casting his vote in the election or referendum or to force him to cast in a certain way, are prohibited by law and these acts are subject to the penalties.

Law 175/2005 on the People's Assembly organises election propaganda and political campaigns. The law prohibits violating the sanctity of the private life of any candidate, using religious mottos or slogans, and the threat of using or actually using violence. The law also does not allow the offering of gifts, aid or any type of direct or indirect benefits. Regarding financial matters, the law prohibits the use of any state-owned, public or parastatal-owned facility. Foreign funding is banned by law as well.<sup>177</sup>

This complements the rules related to the means and methods governing electoral campaigns, including the maximum amount of spending on campaigns that should not be exceeded, which is determined by an HEC decision and should be published in two widely circulated daily newspapers..

Any person who violates the provisions of Item 6 of the rules should be penalised by no less than one year imprisonment and/or a fine of EGP 50,000-100,000 (USD 9,000-18,000). Moreover, the funds received should be confiscated. Violators of any other rules should be penalised by at least three months imprisonment and/or a fine of EGP 5,000-20,000 (USD 900-3,600).

In practice it is viewed that elections in Egypt, especially parliamentary elections, could be subject to some government intervention due to the role played by the Ministry of Interior in all types of elections. As viewed by some experts, the ruling party (NDP) has aimed to guarantee the victory of NDP nominees in order to ensure its majority in Parliament. The experts referred mainly to parliamentary elections, as the HEC only had the authority over counting and not over the entire election process.<sup>178</sup>

On the other hand, the noticeable role of the judiciary in supervising presidential elections (which was extended to polling stations) was a main source of trust in the integrity of the presidential elections. This view is supported by experts including judges who participated in supervising the presidential elections, as well as NGOs.<sup>179</sup>

Among the positive features reported in the presidential elections of 2005 was the absence of attempts to interfere with the polling process by security forces, the fact that opposition voters were allowed to enter polling stations, and that candidate representatives from a number of parties were allowed inside to observe the voting process, as well as enhanced public participation.<sup>180</sup>

<sup>176</sup> [www2.sis.gov.eg/En/Politics/PElection/election/Laws/040202040000000001.htm](http://www2.sis.gov.eg/En/Politics/PElection/election/Laws/040202040000000001.htm)

<sup>177</sup> [www.sis.gov.eg/En/LastPage.aspx?Category\\_ID=204](http://www.sis.gov.eg/En/LastPage.aspx?Category_ID=204)

<sup>178</sup> Mohamed Abdel Salam, *Egypt's Bewildering Parliamentary Elections*, <http://arab-reform.net/spip.php?article136>

<sup>179</sup> Based on the discussion of the focus group held in Cairo, June, 2009.

<sup>180</sup> *Ibid*; [www.iri.org/mena/Egypt.asp](http://www.iri.org/mena/Egypt.asp)

### Accountability

**Higher Elections Commission (HEC):** Law 173/2005 regulating the practice of political rights organises the HEC, which is responsible for parliamentary elections. Related articles organise the composition and mandate of the HEC in the different areas related to the HEC's role in supervising parliamentary elections.

**Presidential Election Commission (PEC):** The amendment to Article 76 of the Constitution, Law 174/2005 on presidential elections, as well as Decree 1/2005 for the PEC, provide for the establishment of a PEC charged with supervising the presidential election process. However, it does not include local elections. In the 2008 local elections, the Ministry of Interior published a series of decrees to organise the election process, but there was no mention of the HEC and PEC.<sup>181</sup>

It is not clear from the relevant laws which body is in charge of oversight of the election commissions. This could be considered a point of weakness in the governance of both commissions governing the presidential and parliamentary elections. However, the idea that the judiciary dominates both commissions was considered as a main safeguard against corruption. This could explain why the mandate of the commissions did not clarify the body to which the commissions are accountable, a matter which has been confirmed by experts.<sup>182</sup>

The public is consulted according to the provisions of laws and regulations determining the work of HEC. For example, the HEC's mandate includes receiving, investigating and responding to complaints or reports of alleged breaches of election law or HEC regulations. "The HEC has released a preliminary statement on complaints and reports it had received until June 2007. The HEC had received 100 complaints related to candidate registration, breaches of campaign content regulations, illegal use of public property and prevention of campaigning."<sup>183</sup> In addition, any citizen can directly report complaints to the National Council for Human Rights (NCHR) related to any violations that occur during elections, and the NCHR accordingly directs these complaints to the HEC.

Moreover, the NCHR and CSOs coordinated with the HEC during the parliamentary elections of 2005 regarding the involvement of CSO monitoring of elections. The NCHR and CSOs have been active in issuing comprehensive reports containing analyses of different aspects and results of the election process as a whole. This was evident in the last parliamentary elections as well as the presidential elections of 2005.<sup>184</sup> Examples include the establishment of a coalition of 16 CSOs to monitor the parliamentary elections of 2005. A total of 5,000 observers were deployed to monitor the electoral process and a report was issued assessing the parliamentary elections. CSOs played the same role in the presidential elections of 2005; three coalitions were formed and monitored the candidate registration process, media coverage of candidates during the campaign period and voting on Election Day, with more than 2,000 monitors throughout Egypt's governorates. In addition, the NCHR issued two reports evaluating the 2005 parliamentary and Presidential elections.<sup>185</sup>

<sup>181</sup> Fawzy, Sameh, Ayman Zohry and Okail (2008) "The voter's voice project: 2008 Municipal Election final report", Cairo: Maat for juridical and Constitutional Studies, [http://209.85.229.132/search?q=cache:vfjbo7anAwJ:www.maat-law.org/Researches%2520%26%2520Studies/Studies\\_EN/THE%2520ENGLISH%2520RELEASES/The%2520Voter%E2%80%99s%2520Voice%2520Project%2520-%2520Final%2520Report.pdf+Presidential+decree+\(55/2008\)+on+local+elections&cd=1&hl=en&ct=clnk&gl=eg](http://209.85.229.132/search?q=cache:vfjbo7anAwJ:www.maat-law.org/Researches%2520%26%2520Studies/Studies_EN/THE%2520ENGLISH%2520RELEASES/The%2520Voter%E2%80%99s%2520Voice%2520Project%2520-%2520Final%2520Report.pdf+Presidential+decree+(55/2008)+on+local+elections&cd=1&hl=en&ct=clnk&gl=eg)

<sup>182</sup> *Ibid.*

<sup>183</sup> Ministry of Information, Egypt State Information Service, Media Briefing: Activities of the High Elections Commission June, 2007, [shura.sis.gov.eg/html/HEC\\_Activities.pdf](http://shura.sis.gov.eg/html/HEC_Activities.pdf)

<sup>184</sup> For example, the Independent Committee for Election Monitoring (ICEM), a coalition of 16 NGOs led by the Ibn Khaldun Center deployed a total of 5,000 observers to monitor the electoral process for the parliamentary elections in 2005 to provide for the integrity and the credibility of the election process. The ICEM issued a report assessing the Parliamentary elections. [www.eicds.org/english/activities/news/preliminaryreport05](http://www.eicds.org/english/activities/news/preliminaryreport05)

<sup>185</sup> National Council for Human Rights, Report on Parliamentary Elections: November–December 2005, (Cairo: National Council for Human Rights, 2005). *Ibid.* National Council for Human Rights, Report on Presidential Elections: 2005 (Cairo: National Council for Human Rights, 2005).



### Integrity mechanisms

Article 3 RPT (E) of the amended Law 73/1956 regulating the Exercise of Political Rights asserts that the HEC, which is responsible for parliamentary elections, exercises its mandate with full independence and neutrality. However, legal texts governing the work of both the HEC and PEC do not specify clear or direct provisions covering integrity issues such as conflict of interest and acceptance of gifts. However, looking at the composition of both bodies, which are mainly dominated by judicial figures as well as public figures known for their excellent reputation and societal trust, it is unlikely that any fraudulent acts take place in practice. In addition, the composition of the HEC was recently amended to remove members who hold executive positions, which enhanced the integrity of the HEC.

Vote-buying is a current phenomenon in Egypt that is spreading significantly. This is one of the important problems encountered in the parliamentary election process. As cited by the NCHR report on parliamentary elections and many reports by NGOs that monitored the latest Parliamentary elections, vote-buying is still a major problem.<sup>186</sup> This phenomenon is especially evident in poor and remote areas where socioeconomic conditions are weak and political awareness is low.

### Transparency

Regarding the HEC, its organisational decisions are published in the Egyptian Gazette, and the summary is published in two widely distributed daily newspapers. In terms of the HEC's finances, the amendments of Law 73/1956 specifically stipulate that its budget is "independent", and it is granted the authority to independently issue financial regulations for its operations, and for the remuneration and benefits of its members and staff. However, the law does not commit the commission to publicly publish its budget in a certain format. PEC Decree 1/2005, which organises the PEC, stipulates that the deliberations of the commission are secret.

Neither the PEC and nor HEC play a role in disclosing party affairs, as political parties are mainly organised and governed according to Political Parties Law 40/1977, amended by Law 177/2005. This law created a Political Parties Affairs Committee to oversee the establishment and functioning of political parties. The PEC's role is confined to checking the accuracy of documents needed to run for elections, including party approval to allow candidates to run in elections; the fulfilment of conditions related to having votes of Shura and People's Assembly members;<sup>187</sup> and checking on other issues that apply both to party as well as independent candidates related to setting the rules of campaigning, choosing candidate slogans in elections, funding sources of elections, polling, vote counting and announcing results.

However, some points of weakness still hinder the transparency of the overall election process in Egypt. They include:

- Voter registration, which is a considerable problem in Egypt. This is inevitably raised during election time and when reform policies are discussed. The registration system and procedures in Egypt are complicated and cumbersome. Three major ministries are involved: Interior, Health and Justice. The key dilemma of any reform initiative lies in the lack of a nationwide, consistent and comprehensive ID system. A few years ago the government launched a central campaign to urge citizens to obtain a "national ID number". So far the entire population has not been covered and, according to official statements, two to three years of hard work are still needed. One of the reasons elections are difficult to monitor and assess is that there is no reliable source of information on the total number of registered voters.<sup>188</sup>

<sup>186</sup> *Ibid*; Independent Committee on Election Monitoring (ICEM) (2005)

<sup>187</sup> Article 26 of the Constitution sets the criteria for candidates for presidency, where each candidate needs to secure the support of a certain number of members of the People's Assembly, Shura Council, and Local Councils. Such support must be proven by each presidential candidate, and approved by the PEC.

<sup>188</sup> Background Report on Egypt for the Regional Report on Governance in Africa, Economic Commission for Africa (ECA), 2007.

- Other problems include vote-buying, which is directly related to a lack of political awareness, especially among the lower economic and social strata in the society.

### Complaints/enforcement mechanisms

The legal texts and rules governing the work of HEC and PEC do not include any provisions on whistle-blowing.

The HEC is entitled to supervise and monitor the electoral process but not to start investigations by itself into electoral wrongdoing or to impose sanctions. However, it can direct a request to start an investigation to the authorised agency. In cases of candidate violations of campaigning rules, the HEC chairman is mandated to request the striking of the candidate's name, in such a case, from the Supreme Administrative Court, which decides on the request in a speedy manner. There are no evident cases that the HEC has used its powers in this regard. This was confirmed by experts who criticised the fact that the HEC does not have concrete and real authority to tackle nominees' violations.<sup>189</sup>

The mandate of the PEC, according to Decree (1/2005) on the Presidential Elections Commission, includes monitoring campaign rules, especially pertaining to equality of media access and campaign financing, as well as taking the proper action if such rules are violated. The PEC is also entitled to decide on all petitions and appeals related to elections and deciding on all issues referred to the PEC by the general committees. However, the decree does not clearly mention the exact procedures the PEC would follow in investigating and deciding on election violations.

The public has the right to submit their complaints related to elections to the PEC and HEC, as well as through the NCHR. In practice, this does take place.

The mandate of the HEC includes receiving and responding to complaints or reports of alleged breaches of election law or HEC regulations. The HEC has released a preliminary statement on overall complaints and reports it had received until June 2007. "The HEC had received 100 complaints related to candidate registration, breaches of campaign content regulations, illegal use of public property and prevention of campaigning."<sup>190</sup> In addition, any citizen can directly report complaints to the NCHR related to any violations during elections. The NCHR accordingly directs these complaints to the HEC and other related authorities.

### Relationship with other pillars

The electoral management body represented by the HEC and PEC has a strong relationship with the judiciary and NGOs. The composition of the HEC and PEC implies there is strong domination by current and former members of the judicial branch.

### Recommendations

- The system of elections must be fixed regarding voter registration, which is a considerable problem in Egypt. The registration system and procedures in Egypt are complicated and cumbersome. There is also a strong need to construct a nationwide consistent and comprehensive ID system.<sup>191</sup>
- Enhancing political awareness to stop the problem of vote-buying. Further cooperation between the PEC, HEC, NCHR, NGOs and the media can play a

<sup>189</sup> Following the discussion that took place at the focus group meeting in Cairo, June 2009.

<sup>190</sup> Ministry of Information, Egypt State Information Service, Media Briefing: Activities of the High Elections Commission June, 2007; [shura.sis.gov.eg/html/HEC\\_Activities.pdf](http://shura.sis.gov.eg/html/HEC_Activities.pdf)

<sup>191</sup> A similar recommendation was mentioned in the Background Report on Egypt for the Regional Report on Governance in Africa, Economic Commission for Africa (ECA), 2007.

role. This would spill over into increased citizen participation in elections and rising voter turnout, which is very low in Egypt. Moreover, a special provision with strong sanctions can be included in the penal code to criminalise vote-buying, in addition to the invalidation of elections if such cases are confirmed by competent control bodies.

- There is a need to undertake a comprehensive reform of the election process so that the judiciary would play the major role in monitoring and supervising elections. The interviews stressed this would act as a guarantee for the integrity and fairness of elections. Accordingly, this would be reflected by increased voter turnout.
- Despite the fact that both the HEC and PEC are highly dominated by judges, which acts as a major guarantee for their integrity, there needs to be a system to ensure their accountability. It is important to ensure there is a certain body to which they report, without jeopardising their independence.
- Enhance internal democracy and governance inside different political parties to activate and revive political life. No doubt, weak governance of these political parties leads them to suffer many internal problems that prevent them from providing convincing policy alternatives to citizens.

# **5. SUPREME AUDIT INSTITUTION**

### Resources/structure

The Central Auditing Organisation (CAO) is the body responsible for the auditing process of the public sector and some other entities. The CAO was established in 1942. Its name was changed to the *Diwan of Auditing* in 1960, before acquiring its current designation in 1964. The CAO monitors the management of public sector companies and government departments, as well as other entities as explained below. It is an independent body as it does not follow any ministry. However, it is directly subordinate to the President of Egypt, whereas it reported to the People's Assembly until 1998. According to Article No. 1 of the Law of CAO (Law 144/1988, amended by Law 157/1998), "The CAO is an independent organisation with public legal personality subordinated to the president of the Republic." The law of the CAO is Law 144/1988, amended by Law 157/1998. The CAO is responsible for the external audit of public sector entities, including about 130 central government departments and administrative units, 120 service agencies, 29 governorates, 50 economic authorities and more than 160 state-owned enterprises, political parties, trade unions, national and party news media, and all units subsidised by the State.<sup>192</sup> The CAO may also audit and examine the work and accounts of any other entity, as assigned by the President of the Republic, the People's Assembly or the Prime Minister.<sup>193</sup>

The organisational structure of the CAO is specified by Article 19 of Law 157/1998. As stated by the law, at the top of the organisational structure of the CAO is a head who has two deputies in addition to agents (*wakeel*) and advisors (professional members). The head of the CAO is appointed upon the resolution of the President of the Republic for four years, renewable for another period or similar periods. The head of the CAO cannot be relieved from his position. The CAO's board sets up the CAO's organisational structure, determining line and staff units. The CAO has approximately 12,000 staff, the majority of whom hold accountancy qualifications.<sup>194</sup>

The CAO receives regular funding from the state. CAO financing requirements are included as a lump-sum in a separate section of the State budget. Then, the head of the CAO sends a detailed draft budget directly to the People's Assembly for its final approval. The basic law protects the CAO's financial independence, as Article No. 27 of Law 144/1988 amended by Law 157/1998 states: "The head of CAO has prerogatives authorized to the Minister and Finance Minister as stipulated by laws and statues concerning CAO's budget endorsed appropriations application, organisation and activities administration." The issue of budget adequacy has never been raised as a problem in practice; however, it is important to note that CAO staffers remain civil servants who generally suffer from low wages.

### Role(s) of institution/sector as pillar of NIS

The role of the CAO is not mentioned in the Constitution. Rather, it is stated through primary legislation (Law 144/1988 amended by Law 157/1998).<sup>195</sup> The independence of the CAO is guaranteed by the conditions of tenure of its head and its separate budget, as stated above. Moreover, its separation from the executive and judiciary provides it with immunity against any kind of pressure. It is worth noting that the process of assigning the head of the CAO by the President was only undertaken in Law 144/1988 and was retained in Law 157/1998. Article 20 of the law made it possible for the President to extend the term of service of heads of the CAO. Before this, and according to Law No. 129/1964, the leadership of the CAO was given to the legislature. Such a change can be perceived as affecting the independence of the CAO, weakening the protection of its head against political interference implied by Law 129/1964.

<sup>192</sup> World Bank, 'Country Financial Management Accountability Assessment,' 2008.

<sup>193</sup> [www.cao.gov.eg](http://www.cao.gov.eg)

<sup>194</sup> For details see: [www.cao.gov.eg](http://www.cao.gov.eg)

<sup>195</sup> World Bank, 'Country Financial Management Accountability Assessment,' 2008.

The CAO's financial and reporting independence is well established by law. The CAO carries out financial control (including both accounting and legal aspects), performance control and plans implementation follow-up, as well as legal control of resolutions concerning financial violations. It is important to stress that the CAO's audit opinions on financial statements do not fully comply with international standards in terms of content, format and presentation.<sup>196</sup> Also, the lack of certain transparency measures may limit the CAO's contribution to the accountability of public servants. The CAO's operational independence is affected by a general perception that it sometimes does not publicly report (negative) findings that are too critical of the executive or powerful members of the legislature.<sup>197</sup> According to a report by the World Bank,<sup>198</sup> CAO audit opinions do not meet the essential criteria set by the INTOSAI<sup>199</sup> for audit opinions to assist readers of financial statements. Moreover, the audit opinions do not clearly distinguish what type of opinion is being issued – specifically, whether it is qualified or unqualified. In brief, with the exception of the commercial banks' audit opinions, CAO audit opinions have been neither concise nor standardised in form. However, some experts argue the audit standards of the CAO and the Egyptian system rise to international standards, as they have been under review and development since the 1990s.<sup>200</sup> Thus, they consider the deviation from international standards to be an exception to the rule and limited to four issues, namely the valuation of fixed assets, leasing contracts, bad debt treatment and the profit share of stocks.

The CAO does not use anonymous, competitive entry examinations or a formal process that would guarantee that the recruitment of its staff is based solely on merit. Recruitment mainly depends on interviews. This raises a question about selections that depend upon the recommendation of powerful individuals in the executive or legislative branches.<sup>201</sup>

In general, the perception of the CAO is very positive in terms of performing its role, and in several cases its reports on findings of the financial operations of the executive have embarrassed the government and created friction with the head of CAO.<sup>202</sup>

All public expenditures are under internal oversight by the Ministry of Finance via the internal audit system and under external oversight by the CAO. The CAO also audits and examines the work and accounts of any other entity assigned to it by the President of the Republic, the People's Assembly or the Prime Minister. The CAO has to report the audit's findings for such entities to the President and to the Parliament.

### Accountability

The role, mandates and oversight of the CAO are given by Law 144/1988, amended by Law 157/1998. These two laws have been assessed to be reasonably effective in terms of allowing the CAO to undertake its mission. The CAO sends its reports mainly to the President. In practice, CAO reports do take place. It also reports to the Parliament its findings of auditing administrative departments, executive agencies, public corporations and organisations, public sector companies, cooperative societies, mass organisations under State supervision, enterprises to which the State contributes, provides subsidy or guarantees

<sup>196</sup> According to focus group discussions held in Cairo, June 2009, the CAO is in full compliance with international standards with the exception of very few issues for which the specific nature of the Egyptian context requires room for divergence. This does not affect the transparency and integrity of entire process.

<sup>197</sup> World Bank, 'Country Financial Management Accountability Assessment,' 2008.

<sup>198</sup> *Ibid.*

<sup>199</sup> According to the INTOSAI auditing standard, an audit opinion is normally in a standard format relating to the financial statements as a whole, thus avoiding the need to state at length what lies behind it but conveying by its nature a general understanding among readers as to its meaning.

<sup>200</sup> This is based on the focus group meeting held in June 2009, where an expert stated that CAO standards of auditing have been under significant review regarding compliance with the international standard.

<sup>201</sup> World Bank, 'Country Financial Management Accountability Assessment,' 2008.

<sup>202</sup> *Ibid.*

minimum profits, public utility enterprises or operations, and activities performed by such entities. The CAO also has to report such special assignments to the Parliament. The Parliament may also ask the CAO to prepare reports about its findings on plan implementation follow-up and objective achievement, and express its opinion on follow-up reports prepared by the Ministry of Economic Development.<sup>203</sup>

The public is not required to be consulted on the work of the CAO, and reports of the CAO are not made available to citizens. Only two institutions receive these reports, namely the President of the Republic, as the CAO reports to him, and the legislature, if it demands reports on specific agencies.<sup>204</sup>

### Integrity mechanisms

Law 144/1988 stipulates that in performing its functions, the CAO must comply with public accounting profession principles, duties and ethics that particularly include disclosure, when necessary, of audit-discovered events that do not appear in endorsed papers and accounts, and whatever comes to the auditor's attention regarding what is missing, falsified or distorted in these papers and accounts. This also includes any constraints that affect the auditor's financial position and results of operations, consideration of examination and reporting professional standards, and obtaining all explanations that enable him to discover any error or fraud in accounts. In 2008 the head of the CAO introduced accredited Codes of Conduct issued by the Permanent Technical Committee on Auditing Standards, which went into effect 1 January 2009. Such a code of conduct assures that auditors will not be unjustly removed and must operate within the framework of a complete set of rights and obligations.<sup>205</sup>

The work of the CAO is organised in a manner that restricts inside employees from being involved in any operations that could lead to conflicts of interest. For instance, Law 157/1998 prevents any CAO employee who is involved in a process of oversight of any public institution from working as a consultant or advisor to such an institution. Moreover, according to Law 157/1998, employees are prevented from accepting any gifts – by themselves or through intermediaries – for executing their job. Moreover, CAO employees are very restricted in this respect compared to public employees in other areas of the governmental sector. Finally, following Law 157/1998, retired CAO employees are allowed to take up work in another institution only after three years of their retirement. In practice, post-employment restrictions are applied to a great extent.<sup>206</sup>

### Transparency

Reporting on government audits is kept up to date by law. Law 144/1988 amended by Law 157/1998 includes deadlines for the CAO to submit its findings/reports to the concerned authorities after receiving them from auditors. This stipulates that the “CAO shall send its related report to both the public body (that CAO audits its operations) and concerned authorities within two months once the CAO received the comptrollers' report, data, statements and documents.” Concerning the State general budget, observations on the final account of the State general budget should be sent by the CAO to the President of the Republic and the Parliament within a period not exceeding one month from the date of receiving the final account from MOF.

In practice, the process of reviewing the accounts and finalising expenditure estimates begins immediately upon the completion of the fiscal year in June. Before December, the line ministries forward their accounts to the Ministry of Finance to be reviewed and finalised by the end of February or early March. The CAO audits

<sup>203</sup> [www.sis.gov.eg/En/Story.aspx?sid=459](http://www.sis.gov.eg/En/Story.aspx?sid=459)

<sup>204</sup> For more details see: [www.cao.gov.eg](http://www.cao.gov.eg)

<sup>205</sup> For more details see: [www.cao.gov.eg](http://www.cao.gov.eg)

<sup>206</sup> This is based on an interview with a senior employee at the CAO and the Law 157/1998.

these statements and prepares its own final report. By the end of March the official final accounts and the CAO's final report are sent by MOF to the Parliament. These documents are then discussed by the Parliament. Under the 2005 and 2007 Constitutional amendments, the report on final accounts must be sent no later than six months of the end of the fiscal year, i.e. in December.<sup>207</sup>

According to the law, CAO reports on entities assigned to it must be discussed by the legislature – namely, the budget and planning committee. In practice, reports are examined by the legislature's committees and comments on accounts are discussed. All public expenditures must be declared in the official budget. Law 53/1973 stipulates that the state budget must include all resources and all public expenditures for State activities carried out through public agencies and authorities, public administrations, local administration units or any other public utility (Principle of Budget Comprehensiveness). The CAO's findings on the State's general budget final account report should be sent to the President of Republic and People's Assembly not more than one month after receiving the final account from the MOF.<sup>208</sup>

There is no legal obligation for the CAO to make its reports available to the public. In practice the crucial findings of CAO reports are usually disclosed via newspaper or other media outlets.

### Complaints/enforcement mechanisms

There are no specific provisions regarding whistle-blowing stated by the law, though in practice one of the CAO's key mechanisms is whistle-blowing on alleged misconduct.<sup>209</sup> The CAO considers all information available by the whistle-blowing tool as essential in the oversight process. However, there is no information available on the use of whistle-blowing inside the CAO itself.

There is no legal provision regarding the right of the public to report grievances; however, since the CAO considers whistle-blowing a key mechanism in its oversight process, the public can use this tool to complain about budget irregularities.

Regarding the process of whistle-blowing inside the CAO itself, the CAO examines the complaints of supervised entities with respect to the misconduct of its employees according to normal procedures, as any governmental body. Furthermore, there is another reporting mechanism inside the CAO that assesses the performance of CAO employees, taking all of these aspects into consideration.

### Relationship to other Pillars

The CAO is one of the most important NIS pillars in Egypt. Its main relationship and interaction is with the President, the executive and the legislature. In fact, the CAO is perceived as the main watchdog of the executive and public sector. Its reports have always pointed out shortcomings in the performance of the executive. However, the follow-up mechanism is considered to be insufficient. The relationship with the legislature has been confined to submitting regular reports as stipulated in the CAO's mandate; the Parliament has not asked the CAO to prepare any specific reports.

### Recommendations

- Establish a mechanism to make CAO reports readily available to the public as a means to enhance transparency
- Ensure an effective system of follow-up to CAO findings
- Increase CAO adherence to international auditing standards as long as they

<sup>207</sup> The Egyptian Constitution, Articles 115-118, and the Budget Law 53/1972 amended by the Law 87/2005.

<sup>208</sup> The Egyptian Constitution, Articles 115-118, and the Budget Law 53/1972 amended by the Law 87/2005.

<sup>209</sup> Based on an interview with a key employee in the CAO.



fit Egyptian circumstances (namely, with INTOSAI standards and International Standards on Auditing for the issuance of opinions on financial statements)

- Widen the scope of the CAO's mandate to handle the efficiency and effectiveness of budget execution and the delivery of public services
- The legislative subordination of the CAO to the President should be reconsidered as a mean to strengthen its independence. A possible alternative would be to revert to the Napoleonic model, in which the CAO would be independent from both the executive and the legislative authorities, and become part of the judiciary.<sup>210</sup>

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<sup>210</sup> For a similar argument see World Bank, 'Country Financial Management Accountability Assessment,' 2008.

# 6. JUDICIARY

### Resources/structure

The structure of the judiciary in Egypt consists of three main tiers: the lowest-level courts, high courts of appeal and the Supreme Court. The lowest-level courts are the Summary Tribunals (*Mahakim Guz'iya*) and Summary Tribunals of First Instance (*Mahakim Kulliya*). These two courts are subdivided into civil and criminal courts. The courts of appeal (*Mahkamat al-Isti'naf*) rule in cases of appeals from Tribunals of First Instance. There are seven courts of appeal distributed throughout different governorates. They are subdivided into civil and criminal courts. The highest judicial authority lies in the Supreme Court, or the Court of Cassation, which is composed of 30 justices including the Chief Justice. This court is located in Cairo and is the final court of appeals. Judges, law professors, barristers and public prosecutors are eligible to become judges, with years of experience determining the tier in which they are appointed.<sup>211</sup>

The State Council (*Majlis id-Dowla*), according to Article 172 of the Constitution, shall be an independent judicial organisation competent to make decisions in administrative disputes and disciplinary cases. The Supreme Council, according to Article 173 of the Constitution, is presided over by the President of the Republic, and shall supervise the affairs of judicial organisations. It should be consulted with regard to draft laws organising the affairs of the judicial organisation. The Supreme Council is concerned with judges' appointments, promotions and transfers. It is headed by the Chief Justice, and is composed of two justices from the Supreme Court, the President of the Court of Appeal and of the Tribunal of First Instance in Cairo, the Attorney General, and the Under-Secretary of State for Justice.<sup>212</sup>

The Supreme Constitutional Court, according to Article 174 of the Constitution, shall be an independent judicial body in the Arab Republic of Egypt, having its seat in Cairo. It should undertake the interpretation of legislative texts alone, in the manner prescribed by law. Recently, specialised economic courts have been created. Such tribunals were established under Law 120 /2008.

Regarding the budget allocated for the judiciary, data obtained from the Ministry of Finance shows the budget increased from EGP 3 billion (USD 535 million) for the year 2008/2009 to EGP 3.6 billion (USD 645 million) for the year 2009/2010. Out of the total budget allocated for the judiciary, the budget allocated for public prosecution and judges increased from EGP 1.2 billion (USD 215 million) in 2008/2009 to EGP 1.7 billion (USD 305 million) for the year 2009/2010.<sup>213</sup> It is difficult to assess whether this budget is sufficient; however, judges' salaries are relatively modest and extra in-kind benefits remain insufficient, which has caused many judges to seek jobs as legal advisors in Arab countries.<sup>214</sup> Judges holding special offices are entitled to extra special allowances, which formerly was under the discretionary power of the Minister of Justice. As of 2008, however, the judiciary was given a separate budget and its finances were taken out of direct control of the Ministry of Justice. This has been considered a positive step toward financial independence.

### Role(s) of Institution/Sector as pillar of NIS

The independence of the judiciary is guaranteed by Chapter Four, Articles 64 and 65 of the Constitution. According to Book 1 of the Constitution, entitled "Supremacy of the Law," the independence of the judiciary and its immunity are two basic guarantees for protecting the rights and freedoms of all Egyptian citizens.

<sup>211</sup> POGAR 2007, [www.undp-pogar.org/publications/judiciary/nbrown/egypt.html](http://www.undp-pogar.org/publications/judiciary/nbrown/egypt.html)

<sup>212</sup> In July 2009 the Minister of Justice issued a draft law that entails increasing the number of Supreme Council members from seven to 11, providing this shall be issued by the President of the State in a decree as effective as the law. This draft law is widely contested amongst judges. As of mid-July the President had not issue a decree.

<sup>213</sup> Ministry of Finance, unpublished data

<sup>214</sup> As revealed by an interview in June 2009 with Judge from Alexandria Court of Appeals.

In practice, the decisions of the judiciary cannot be changed, which guarantees its independence. However, some argue that external powers may interfere in the internal decisions and processes of the appointments or nominations for judiciary positions, which could have an impact on judicial independence.<sup>215</sup>

Concerning disciplinary measures against judges, Article 99 of Law 142/2006 stipulates they can be filed by the General Prosecutor, the Minister of Justice or the President of the Court to which the judge belongs. Disciplinary measures for all judges are under the power of a council composed of the oldest presidents of the Courts of Appeal, who are not members of the Supreme Council. The Council should also encompass the oldest two judges in Court of Cassation and oldest two vice presidents of the Court of Appeal (Article 98 Law 142/2006).

In practice there is no evidence that political appointments have affected judicial independence. On the contrary, the heads of the Court of Cassation, Supreme Administrative Court and Supreme Constitutional Court have called electoral laws and other legislative procedures unconstitutional, and other court rulings have denounced human rights violations, indicating that a large degree if not full independence is enjoyed by the judiciary.<sup>216</sup> Moreover, the Court of Cassation in April 2009 nullified the membership of 77 Parliament members, 58 of whom belonged to the NDP.<sup>217</sup>

Judges are appointed by presidential decrees following a set of criteria determined by the Constitution and laws (e.g. Law 46/1972, Law 72/1947 and Law 35/1984). The laws grant vast powers to the Executive, not only regarding the appointment of judges but also in terms of controlling their qualifications and ethical behaviour. In general, judges are protected from removal as guaranteed by Law 46/1972 and its amended provisions in Law 142/2006, which regulates the accountability of judges and their subjection to disciplinary measures.

Concerns do exist, as calls for more independence of the judiciary are being challenged by intimidation of pro-reform judges. For instance, disciplinary action was taken against two judges, both vice-presidents of the Court of Cassation, for their outspoken criticism of irregularities that occurred in the 2005 parliamentary elections. They appeared before a disciplinary panel in Cairo on 27 April 2006. One of them was cleared but the other was reprimanded and denied his upcoming promotion.<sup>218</sup> In this sense, there are questions about the independence of the judiciary in practice.

Corruption has never been raised as an issue reaching the judiciary. The judiciary has always been perceived as being among the country's best organisations in terms of integrity. Nevertheless, based on interviews, it was pointed out that some cases of misconduct (but not corruption) have taken place among judges.<sup>219</sup>

### Accountability

Judicial oversight is to be found in Law 46/1972 and its amendments. Article 93 holds that the Minister of Justice has the right to supervise all courts and judges. Article 78 stipulates the Ministry of Justice is the body that oversees proceedings of the judiciary through the Judicial Inspection Committee, and that judicial oversight should be conducted at least once every two years. The committee's role is the oversight of all judges and all heads of primary courts. The committee,

215 .IFES, *State of the Judiciary Report: Egypt 2004*, IFES State of the Judiciary Report Series, April 2004; [www.ifes.org/pubsearch\\_results.html?format=print&keyword=judiciary](http://www.ifes.org/pubsearch_results.html?format=print&keyword=judiciary)

216 Holger Albrecht and Oliver Schlumberger, 'Waiting for Godot: Regime Change Without Democratization in the Middle East,' *International Political Science Review*, Vol. 25, No. 4, p. 371-392, 2004.

217 Mahmoud Al-Muslim, '77 MPs Declared Invalid By Cassation Court,' 26 April 2009; [www.almasry-alyoum.com/article2.aspx?ArticleID=208682](http://www.almasry-alyoum.com/article2.aspx?ArticleID=208682)

218 Wahid Abd al-Mejeed, 'The Report of the National Campaign for Monitoring the Parliamentary Elections 2005,' in: Wahid Abdel-al-Mejeed (Ed.), *Two Steps Forward and Seven Backward: The Report of National Campaign for Monitoring the Elections, The Human Rights Centre for Helping Prisoners*, 2005.

219 Interview with a judge from the Alexandria Court of Appeals and a retired judge, June 2009.

appointed by the Minister of Justice, investigates cases of complaints against any judge. In practice the most famous example of oversight against judges is the case of the two judges who have been outspoken about irregularities and corruption related to the 2005 parliamentary elections. They were both referred to the Discipline Committee by the Judicial Inspection Committee due to their allegations.<sup>220</sup> Disciplinary trials of judges must be kept secret, according to Articles 117 and 120 of Law 47/1972. The accused judge has the right to be present in person, may submit his/her defence in writing and has the right to appoint a council member as part of his/her defence. The final decision of the court must give reasons for its verdict. Moreover, the judgment of any disciplinary action is final and not subject to appeal.<sup>221</sup>

There have been some steps forward and drawbacks related to the amendments introduced to Law 46/172 by Laws 142/2006 and 17/2007. For instance, Article 1 of Law 142/2006 holds that the Supreme Council should be asked for consultation concerning any legal manner, as opposed to “after the Supreme Council’s agreement.” This change purports to enhance the independence of the judiciary. As for the powers of the Minister of Justice, these changed from having full power of observing all courts and judges (Article 93 Law 46/1972) to having only the right to observe the courts through an administrative role (Article 93 Law 142/2006). On the negative side, however, is the fact that the Supreme Council is not an elected body and remains an appointed one.<sup>222</sup>

According to Law 46/1972 judges are obliged to give the reasons behind their rulings. No court decision may be issued without proper written justification for the ruling’s rationale. Moreover, according to Article 269 of the Code of Criminal Procedure, a member of the public prosecution must be available in all criminal court hearings. The accused is allowed to attend all hearings unchained and may not be excluded from any hearings of his/her case, unless he/she disrupts the orderly proceedings of the court. Following Article 18 of Law 46/1977 on the Judiciary and Article 268 of the Code of Criminal Procedure, public hearings and proceedings are required. However, according to the same laws, the court in some cases may decide to hear a full case or a part of a case in a closed hearing. Moreover, the court may prevent certain persons from attending certain cases to preserve “morality”.

### Integrity Mechanisms

There are codes of conduct and ethics for members of the judiciary. For example, Article 71 of Law 142/2006 stipulates that judges shall swear, “I swear by Allah the Almighty to rule by justice and to honour the laws between the people.” All judges (except the President of Court of Cassation) are sworn in before the Supreme Council.

Moreover, Article 73 of Law 46/1972 bans any courts from having political opinions. It also bans judges from engagement in any political activity. They are not allowed to be nominated to elections in the People’s Assembly or to regional or political organisations except after resignation. According to Article 74 judges are not allowed to release information regarding the proceedings of any case. Such codes of conduct are enforced in practice and sometimes are used against judges for speaking out in the media about specific cases or stating their opinion on certain political matters.

There are strict rules preventing conflict of interest. For example, according to Article 72 of Law 46/1972, no judge is allowed to be employed or perform any commercial act, or perform any act that could threaten the independence and dignity of the judiciary. The Supreme Council of the Judiciary can decide to pre-

<sup>220</sup> *Ibid.*

<sup>221</sup> IFES, *State of the Judiciary Report: Egypt 2004*, IFES *State of the Judiciary Report Series*, April 2004; [www.ifes.org/pubsearch\\_results.html?format=print&keyword=judiciary](http://www.ifes.org/pubsearch_results.html?format=print&keyword=judiciary)

<sup>222</sup> *Interview with a judge from the Alexandria Court of Appeals.*

vent any judge from performing any act which is believed to be inconsistent with his/her duties and functions. Moreover, courts are forbidden from expressing any political opinions. Moreover, Article 75 stipulates: “Judges who are related to each other by ties of parenthood or alliance by marriage, up to the fourth degree, may not sit in the same judicial circuit. Further, the public prosecutor, or one of the parties to the case or defence counsel in charge of his defence may not be one who is tied up by such relationship with any of the judges examining the case. The proxy of an attorney at law, who entertains such relationship with the judge, shall be disregarded unless the proxy was given after examination of the case by the judge.”<sup>223</sup> Such rules are strictly applied in practice.

Regarding the acceptance of gifts, Law 47/1978 for State employees prohibits members of the national-level judiciary from taking gifts, hospitality, commissions or advances from people for whom they deliver State services. However, this rule may not be fully applied in practice.<sup>224</sup> Regarding working in other courts or international bodies while serving as judges, Article 65 of Law 142/2006 permits this, although with a presidential decree, after taking the opinion of the general board of the court to which the judge belongs or the Prosecutor General, and with the consent of the Supreme Council.

Moreover, a judge is not allowed to be appointed to any international position for more than four consecutive years. The only exception to this rule is if the appointment supports the general well-being of the nation. There are no restrictions in the law for judges to enter the private sector after they leave office. However, Article 77 (14) of Law 47/1978 prohibits State employees from disclosing any information deemed secret to another job. In practice, many judges retire before they reach the age of formal retirement in order to work in the private sector or have businesses of their own.

### Transparency

There is no specific provision concerning members of the judiciary and the disclosure of their assets. However, asset disclosure forms are required to be filled out by civil servants every five years in accordance with Law 11/1968 and Law 2/1977, Article 5, related to illegal profiting. Auditing of illegal profiting is conducted through the Illegal Profiting Apparatus but the forms are not made public. The system of asset monitoring is applied in practice, though according to interviews the asset monitoring system is not widely effective.<sup>225</sup>

### Complaints/Enforcement mechanisms

There are no provisions regarding whistle-blowing within the judiciary. However, the judiciary is monitored by the Judicial Inspection Committee, at least once every two years according to Article 78 of Law 46/1972. Judges should be notified about everything added to these files. Their efficiency should be rated as efficient, above average, average, below average. As for the Court of Cassation, Article 24 of Law 46/1972 stipulates that it has to be inspected by an independent attorney general. The inspection regulations for both cases are set by the Minister of Justice, and are agreed upon by the Supreme Judicial Council. Moreover, there are no provisions in Law 46/1972 on the judiciary concerning the protection of prosecutors and/or judges in cases of corruption. One of the important cases of judges being investigated for corruption charges occurred in 2007, when 20 judges were sent to the disciplinary committee for failing to perform their duties according to high standards, although this was perceived by some as politically manipulated as these judges had openly criticised the integrity of elections.<sup>226</sup>

<sup>223</sup> POGAR (2004), *op.cit.*

<sup>224</sup> As revealed by an interview with a retired judge.

<sup>225</sup> As revealed by an interview with a judge from Alexandria Court of Appeals.

<sup>226</sup> Mona El-Nahhas, ‘Threat to the press?’ *Al-Ahram Weekly online*, 13-19 December 2007; [weekly.ahram.org.eg/2007/875/eg3.htm](http://weekly.ahram.org.eg/2007/875/eg3.htm)

Citizens have access to justice and the courts in general. For example, in 2007 a case was presented to the Administrative Court of Egypt, which held a hearing concerning the right of two 14-year-old children who belong to the Baha'ii religion to obtain birth certificates.<sup>227</sup> Another case by the Association for Human Rights Legal Aid was brought to the Cairo Administrative Court against the government's decision to dissolve the association. In October 2008 the court overruled the government's decision and reinstated the association.<sup>228</sup>

### Relationship to Other Pillars

The judiciary is certainly related to all other pillars. It is perceived as being among the least corrupt and most independent authorities in Egypt.<sup>229</sup> Its independent stance is evident by several decisions undertaken against the will of the government and the ruling party. The Court of Cassation's rulings related to corruption in parliamentary elections is the prime example of its independence. According to Article 175 of the Egyptian Constitution, the Supreme Constitutional Court has the power to oversee the constitutionality of all legislation and executive laws, which gives it oversight power over the executive and legislative branches. However, this power was undermined in 2007 when Presidential Decree 158/2007 established the higher committee for elections, which is now in charge of monitoring elections, instead of the judiciary. The majority of the committee's members are judges, though they are appointed by the executive.

### Recommendations

- The Supreme Council should go through an election process; at least 50 per cent thereof should be elected judges and they should elect their own President of the Supreme Council
- The monitoring of elections should be referred back to the judiciary in an effective manner by giving it the responsibility of full supervision of the election process
- The asset monitoring system should be more effective
- Draw lines to distinguish what is meant by misconduct of judges to avoid the misuse of disciplinary action so as to politically manipulate judges
- Set rules for gifts and presents to avoid corruption, while increasing the salaries of the judiciary
- Further enhance the independence of the judiciary by reducing the interference of the Minister of Justice (through Judicial Inspection Committee) and granting it formal power to monitor elections

<sup>227</sup> [www.seekingjustice.wordpress.com](http://www.seekingjustice.wordpress.com)

<sup>228</sup> Amnesty International, *Egypt: Legal Concern*, 14 September 2007; [www.amnesty.org/en/library/info/MDE12/030/2007/en](http://www.amnesty.org/en/library/info/MDE12/030/2007/en)

<sup>229</sup> Holger Albrecht and Oliver Schlumberger, 'Waiting for Godot: Regime Change Without Democratization in the Middle East,' *International Political Science Review*, Vol. 25, No. 4, p. 371-392, 2004.

# 7. CIVIL SERVICE/ PUBLIC SECTOR AGENCIES<sup>231</sup>



## Resources/structure

### Civil Service

Egypt, according to Max Weber, has the oldest bureaucratic system in history.<sup>231</sup> Since 1952 Egypt has undertaken several civil service reform initiatives. Table 2, below, shows the organisational units of the administrative body of the GOE. The table indicates there is a need to restructure the civil service system.

**Table 2:**  
**Organisational Units of the Egyptian Civil Service\***

Governmental Units	# of Affiliates
Ministry of Agriculture	12
Ministry of Defence and Military Production	2
Ministry of Information	14
Ministry of Foreign Affairs	1
Ministry of Justice	12
Ministry of Culture	22
Ministry of Education	6
Ministry of Trade and Industry	20
Ministry of Legal Affairs and Parliamentary Councils	2
Ministry of Tourism	3
Ministry of State for Administrative Development	3
Ministry of Housing, Utilities, and Urban Communities	13
Ministry of Manpower and Immigration	3
Ministry of Waqfs (Endowments)	4
Ministry of Health and Population	33
Ministry of State for Higher Education and Scientific Research	63
Ministry of Irrigation and Water Resources	8
Ministry of State for Environmental Affairs	2
Ministry of Interior Affairs	3
Ministry of Electricity and Energy	8
Ministry of State for Military Production	4
Ministry of Transport	15
Minister of Social Solidarity	4
Ministry of State for Economic Development	3
Ministry of Investment	8
Ministry of Finance	11
Ministry of Communication and Information Technology	5
Ministry of Petroleum	2
Ministry of Civil Aviation	4
Ministry of State for Local Development	4
Ministry of International Cooperation	1
Ministry of Family and Population	4

\* There are 380 additional organisational units at the local level representing the local administration (28 governorates and City of Luxor). Each has 12 affiliates/directorates except Cairo, Giza and Alexandria, each of which has 13, plus the governorate main office or headquarters, which is called the *Dewan*.

Source:  
Local Government Law, 43/1979.

\*\* Luxor was made into a governorate as announced on 14 December 2009

<sup>230</sup> The terms administrative system and public administration in the Egyptian context refer to three branches:

- Public administration, which is the *Dewan* of the central ministries (i.e. ministerial offices in the capital) and other central authorities and agencies (e.g. the Central Agency for Public Mobilization and Statistics, CAPMAS, and the Central Authority for Organisation and Administration, CAO).
- Public enterprises, which emerged through the process of privatising public sector firms or state-owned enterprises (SOEs) and adopting a market-oriented management system (i.e. Law 203/1991). Public enterprises are gathered in 17 large holding companies with various affiliates and are directed by free-handed managers responsible before a general assembly consisting of both officials and professional experts.
- Local administration, which refers to the local units at sub-national levels. The local administration units are the arms of the government to implement its public policies in the localities.

<sup>231</sup> Saleh Ahmed, 'Egyptian Political Parties Perspective of the Administrative Reform' (Cairo: Public Administration Training and Consultation Centre, 2006).

In terms of the size of the civil service, as shown in Table 3, the number of civil servants is about 6 million, including more than 300,000 working as temporary employees. It is estimated that the work of the civil service can be undertaken in a more efficient manner by employing only one-third of this number.<sup>232</sup> There is no doubt that the long-lasting political commitment to hire all school and university graduates from the 1950s to the mid-1980s has impacted the size of the civil service.

**Table 3:**  
**Number of Civil Service Employees in Egypt**

Public Organisation	Number of Employees
Administrative Body	1,962,073
Local Administration	2,922,173
Public Service Agencies	468,961
Public Economic Entities	335,223
<b>Total</b>	<b>5,688,430</b>

Source: Ministry of State for Administrative Development (2009), unpublished statistics.

There is also no doubt that the size of the civil service negatively affects the level of wages and salaries in the civil service, which in turn affects the performance of public employees – even though the GOE applies a policy of increasing wages of government employees at the start of every fiscal year. Although the increase is made based on the basic salary of public employees, there is no fixed increase of the basic salary given each year. As shown in the table below, the increase started in 1987 and was 20 per cent. It was then lowered to 15 per cent for four consecutive years and rose to 20 per cent in 1992. It then remained at 10 per cent for 14 years before going up again in 2007 (15 per cent). It reached its highest point in 2008 (30 per cent) due to the international financial crisis. In 2009 the increase went back to 10 per cent.

**Table 4:**  
**Development of the Annual Increase of the Basic Salaries in Egypt**

Year	Percentage of increase of the basic salary
1987	20%
1988	15%
1989	15%
1990	15%
1991	15%
1992	20%
1993-2006	10% (yearly)
2007	15%
2008	30%
2009	10%

Source: MSAD, unpublished reports, 2009.

In addition, there has been a kind of selective targeting of government employees for salary increases, following the commitment of the President's program in the latest elections. For example, teachers' wages witnessed a significant increase in 2007/2008. However, as the inflation rate increases, other government employees have demanded similar raises. Collective bargaining has started to become a

<sup>232</sup> Saleh Ahmed (Ed.), *Civil Service Policies in Egypt* (Cairo: Public Administration Training and Consultation Centre, 2005).

key tool for adjusting the wages of public sector employees. The life of civil servants has become difficult in times of economic crisis and financial difficulties.

Law 5/1991, concerned with leadership civil service jobs, organises the promotion to top civil services offices (from General Director to Undersecretary). The law clearly emphasises the capacity of candidates and their merits to get a job and not seniority, which is considered the most important factor for promotions within the lower levels of civil service. Yet, political influence affects the hiring process at that level, in particular for top local government executives, as most of them come from a non-civil background.<sup>233</sup>

In terms of tenure, the civil service abides by the rules and regulations stated in the law. Tenure is protected by the law and practices have proven this to be effective, since no one can fire a public employee without exhausting all required procedures and steps. Also, the administrative court is very rigorous in terms of protecting civil servants' rights. A new bill for the civil service lays different foundations for public employment, replacing tenure by temporary employment, which led to a hot debate in Egyptian society. Egypt has guaranteed jobs to tertiary (and secondary school) graduates, though the cost of this policy has become increasingly difficult to sustain.<sup>234</sup> Due to changes in the environment of public administration, Egypt has started to change the legal framework of the administrative system. A new bill was proposed by the MSAD. One of the main issues in this bill is hiring people on a temporary basis rather than permanently. The MSAD minister once stated he will not give a contract to someone for 38 years (the period from graduation and getting a civil service job to retirement – 22 to 60). However, according to the current civil service law, temporary employees are not allowed to handle public property such as money, equipment or even offices.<sup>235</sup> Also, a state cannot fully depend on temporary jobs and employees.

In a survey conducted by IDSC on the perspective of civil servants on the new bill, 63 per cent of civil servants surveyed object to the proposed law. The major reasons for objecting to the proposed law are job instability (15 per cent) and that it opens the doors to *Wasta* (11 per cent).<sup>236</sup>

### Public Sector

The public sector dominated the Egyptian economy until the early 1990s when the GOE adopted an economic reform program. This reform program introduced a set of measures to restructure public sector management by Law 203/1991. This law allows for some sort of financial and managerial independence for public companies. Similarly, other public entities organised by other laws (such as the Laws 159/1981 and 97/1983) have significant managerial and financial management independence. However, in practice all public sector entities are witnessing a set of government interventions that guarantee that such entities are in line with government policies. Moreover, the public sector experiences political intervention. For instance, political and security criteria play an important role in assigning chiefs for public entities.

Public employees are governed by the civil service law (Law 47/1978). The law does not explicitly stipulate merit criteria for recruitment/career development. Rather, Article 20 on the conditions for recruitment includes being “eligible for job requirements”. On the other hand, reports on “performance efficiency” are annu-

233 Ali El-Sawi and Samy Mahran, *Problems of the Local System in Egypt* (Cairo: Public Administration Consultation and Training Centre, 1999).

234 Geoffrey Shepherd, ‘Civil Service Reform in Developing Countries: Why is it Going Badly?’, paper presented at the 11th International Anti-Corruption Conference, 25-28 May, 2003, Seoul, Republic of Korea; H. E. Valsan, ‘Civil Service Systems in Comparative Perspective: Country Study Egypt’, paper prepared for presentation at Civil Service Systems in Comparative Perspective, School of Public and Environment Affairs, Indiana University, Bloomington, Indiana, 5-8 April 1997.

235 The Minister of MSAD took several ministerial decrees in terms of same treatment for all employees fully hired or contracted ones.

236 IDSC, *Survey of Civil Servants on the Proposed Law of Civil Service*, 2007.

ally issued, based on three reports that are carried out through the year. Ranks based on such reports determine career development, bonuses and allowances for civil servants. Such regulations are followed in practice to a large extent.

Although the government in the mid-1980s stopped hiring all graduates and adopted a logical connection between hiring new civil servants and actual government needs, it was observed that temporary employment has been abused by some officials who use it as a back door to hire their relatives and acquaintances.<sup>237</sup> In brief, the process of selection of qualified individuals is constrained to a large extent by unclear rules. Social background and networks are part of the selection criteria. Moreover, the sons and daughters of public sector employees have priority to be employed in the sector even if they are less qualified than better educated and qualified individuals. In addition, MPs, basically those belonging to the ruling party (NDP), have the right to employ their relatives in the government and public sector. There is a type of hiring quota for each MP in government entities, including the public sector. Similarly, promotion in the government and public sector essentially depends on seniority (through the system of wage increments) and also budget constraints, which may restrict the number of positions allocated each year to various employment grades. In this case, the employee receives the same wage (the grade-wage limit) until budget conditions allow for a promotion. On the other hand there is no such limit in public enterprises, where budgets are more flexible.

Regarding the targeting of corruption in the public sector, there are a number of agencies, authorities and institutions entitled to combat corruption. The most important agencies are the ACA, CAO and APA. The ACA (governed by Law 54/1964 and its amendments) is in charge of exposing administrative and financial violations and criminal offences committed by employees during the performance of their duties, working to prevent such violations and arresting wrongdoers. The authority is also assigned to investigate citizens' complaints related to law violations, negligence in performing work duties, studying complaints published in newspapers, and investigations that deal with laxity, negligence, mismanagement or profiteering. The Authority performs its responsibilities within the government machinery and its branches, public organisations and institutions, as well as affiliate companies, public and private associations, and private sector entities that perform public work. The APA (governed by Law 117/1958) monitors and checks complaints, and conducts investigations of public sector employees.

### **Role(s) institution/sector**

#### **Civil Service**

The civil service is the administrative body responsible for implementing and executing all State laws, regulations and policies. The civil service works independently though under the supervision of the government (ministers and their deputies). In reality, because the civil service is oversized, it is impossible for any government to control the behaviour of this gigantic body.

A recent World Business Environment survey documented widespread corruption in interactions between business and government, with most firms interviewed indicating that "informal payments" are frequently paid for services, in particular to tax and customs officials.<sup>238</sup>

The free education system has been accompanied by deteriorating quality, leading to an inefficient civil service. Moreover, the fact that a small portion of the budget is assigned to civil service training and capacity-building activities has further weakened its performance. In addition, a lack of performance-based programs and unclear evaluation indicators has hampered the performance of public employees.

<sup>237</sup> *Algomhoria NewsPaper*, 23/5/2009; *Alshoruk Newspaper*, 16/5/2009.

<sup>238</sup> *Enterprise Survey*; [www.enterprisesurveys.org](http://www.enterprisesurveys.org)

According to Law 203/1991 the public sector (both holding and all affiliated companies) works autonomously, though under the overall supervision of the Ministry of Investment. The public sector is the government unit responsible for implementing the economic and development aspects of public policies of the government. The public sector has suffered from many problems, as mentioned above, and at the top of the list are wasted public funds.

It is worth mentioning that the MSAD has adopted several reform initiatives to improve the performance of the civil service, such as:

- Reforming the civil service law and connecting job stability with performance. The government has finished preparing a draft law on the civil service that aims to provide a new salary structure based on competence and areas of qualification, initiate new retirement systems, grant incentives for productivity and establish new systems for measuring performance, as well as addressing issues that generate corruption at the lower levels of the public sector.
- Reviewing the wage scale for all public employees and introducing continuous increases.
- Reforming training system and processes.
- Launching the e-government project, which will not only enhance the performance of the government but will also curb corruption and improve the relationship between government offices and citizens.
- Encourage cities and governorates to adopt the same reform processes; for instance, the City of Alexandria has one of the best and most updated, accessible and automated public services system in the country.
- Instituting the early retirement scheme and stopping the hiring of new public employees unless there is a need for new hires.
- Reorganising the governmental structure to support decision-making, decentralisation and delegation of responsibilities.
- Launching projects to improve governance in public entities and civil services.
- Enhancing leadership skills and initiating programs that encourage competition among leaders of different public organisations.

Nevertheless, taking into consideration that the perceptions of corruption differs from one sector to another, a study shows that 7.5 per cent of the sample of the people surveyed believes the civil service is completely corrupt, 49.1 per cent believes it is largely corrupt, and 28.3 per cent considers it fairly free from corruption. Less than 10 per cent believes the civil service is largely free from corruption and only 3.8 claims it is definitely free from corruption. Based on the results of the survey, the management of public finances rarely enjoys the confidence of the public, as more than 40 per cent of those surveyed believe. Only 5.9 per cent considers that the management of public finances enjoys the full confidence of the public.<sup>239</sup>

**Table 5:**  
**Corruption and the Civil Service in Egypt**

Percentage	The Response
3.8	Definitely Free From Corruption
9.5	Largely Free From Corruption
28.3	Fairly Free From Corruption
49.1	Largely Corrupt
7.5	Completely Corrupt
1.8	Don't Know
<b>100</b>	<b>Total</b>

Source: Forum for Development and Human Rights [Moltaka Elhewar Ieltanmia wahkok elensan], *Corruption in Localities [in Arabic]*; [www.mltaka.org](http://www.mltaka.org), 10 January 2009.

<sup>239</sup> Forum for Development and Human Rights [Moltaka Elhewar Ieltanmia wahkok elensan], *Corruption in Localities [in Arabic]*; [www.mltaka.org](http://www.mltaka.org)

The causes of corruption in Egypt's civil service can be summarised as follows:<sup>240</sup>

- High concentration of State power at the centre results in a huge civil service
- Opening the doors to temporary employment, assisting some people at public entities and organisations to use this as a back door for hiring.
- The civil service is burdened by a legacy of hiring as a cushion against the promise to guarantee full employment, then as a cushion against unemployment and economic difficulties, resulting in a seniority-based service that undermines competency
- A weak system of monitoring and accountability
- A weak system of promotion based on seniority not merit
- Low salaries, wages and other types of rewards
- A high cost of living and the need for money to meet basic needs
- Negative organisational culture and weak value system
- An oversized civil service in public offices
- A weak system of building generations of leaders

### Public Sector

The issuing of Law 203/1991 was coupled with the establishment of the Public Enterprise Office (PEO), which is the technical office responsible for establishing plans and monitoring the restructuring and privatisation program. The holding companies each manage a portfolio of affiliated public sector firms. Any holding company is granted the right to sell and buy companies without government interference and also can restructure the affiliated companies before selling them. In Egypt there are 17 holding companies, (not all of them follow law 203), including:

- Egyptian Electricity Holding Company
- Holding Company for Water and Wastewater
- Egyptian Petrochemical Holding Company
- Holding Company for Biological Products and Vaccines
- Holding Company for Airports and Air Navigation
- Egyptian Natural Gas Holding Company
- Insurance Holding Company
- Holding Company for Maritime and Land Transportation
- Construction Product Holding Company
- Egyptian Holding Company for Housing, Tourism and Cinema
- Metallurgical Holding Company
- Drug Holding Company
- Food Industries Holding Company
- Cotton and Textile Holding Company

However, the privatisation process has faced many challenges and the pace of the sell-off has slowed. Many government officials defend the slow rate of privatisation, saying it was expected that once top-tier companies were sold in 1997 and shortly thereafter, less profitable companies would look less attractive to foreign and domestic investors. They also point to a number of related factors affecting the sale of these companies, such as high unemployment rates and the over-employment problem in these companies. Another factor is unemployment, a common dilemma when public firms are privatised. The government places Egypt's unemployment at about 8 per cent, though some organisations estimate it is as high as 15 to 18 per cent. With more than 800,000 new job-seekers entering the market annually, the government feels it cannot afford to add to the job market vast numbers of unemployed people trimmed from newly privatised companies. Another factor affecting the sale of the remaining state companies slated for privatisation is the general global economic downturn and repetitive international financial crises. One can safely add the unstable environment in the region – in Sudan, Iraq, Gaza and West Bank, and Lebanon. Additionally, the government is unwilling to sell State assets for less than what government economists perceive is a fair market price. Also, the privatisation policy has raised many arguments

<sup>240</sup> Government of Arab Republic of Egypt and United Nations Development Program, "Supporting the Ministry of Investment in Enhancing Transparency and Fighting Corruption", p. 5.

among individuals and even political groups and parties, from the value of selling the State's assets to using the privatisation revenues. Many of the ruling party's political opponents have accused the government of wasting public money and the systematic destruction of the public sector.

### Accountability

The civil service law (Law 47/1978) has several articles that govern the oversight of the civil service. Likewise, the Public Sector Law (Law 48/1978) has several rules about the same issue. According to the MSAD minister, these rules are effective in practice.<sup>241</sup> Reports issued by the CAO and some civil society organisations confirm such laws are not applied fully in practice. For example, the law prohibits public employees from working for another employer or having another job, even after working hours. However, a large portion of public employees, regardless of the reasons, are either self-employed or work for another employer.<sup>242</sup>

The oversight of the civil service and public sector is undertaken through more than one system. In addition to the internal reporting system within each organisational unit, an external audit is conducted by several institutions such as the CAO. For instance, according to Article 77 of Law 47/1987, public employees or civil servants should abide by all the rules and regulations of that law, and they are prohibited from ignoring CAO letters that request any data or documents. Also, public employees' responses to the CAO must be expeditious and prompt. Any delay should be justified and explained, and the rationale must be accepted by the CAO. In practice there are about 27 external audits on civil service and public sectors activities, such as those by the CAO, MOF, ACA, prosecutor, attorney general, State Council and national security authorities.<sup>243</sup>

Moreover, several ministries have launched their own systems of checks and balances. For example, the MSAD has established an organisational unit within its structure called "Governance," and the minister has launched a national committee for combating corruption. Likewise, the Ministry of Investment has established, in collaboration with UNDP, a Centre for Transparency Enhancement and Anti-Corruption. The Ministry of Investment has issued guidance for investing in Egypt and a manual for corporate governance for public sector firms.<sup>244</sup> Additionally, any citizen – whether a public employee or not – has the right to appeal any administrative decisions. Citizens can go to prosecutors or the Administrative Control Authority, or even to court. In plenty of cases the court has supported citizens' or employees' petitions against government administrative units, including but not limited to cases related to excessive layoffs, unfair payment and promotions.

Regarding audit oversight, an internal financial unit inside each level of government is responsible for audit oversight. The unit is part of the MOF and receives regular reports from these units. Additionally, some civil society organisations monitor the planning and budgeting system in Egypt. One organisation, the Budgetary and Human Rights Observatory (BAHRO), published a report that revealed many interesting findings regarding the evaluation of the five-year plan of 2002/2007. These findings include the exclusive role of the Minister of Finance in loan contracts and the hidden assignments for specific public agencies such as the TV and Radio Agency. The report harshly criticised the performance of the government in the five-year plan and suggested establishing a sustainable mechanism "committee" to monitor the implementation of the government's plan. This committee should include members from civil society organisations.<sup>245</sup>

<sup>241</sup> Interview with a senior government official at the Ministry of State for Administrative Development.

<sup>242</sup> Elhany Elmerghany, 'Governmental Corruption between reality and False Reports', *Elhewar Elmotamaden*, No. 2013, 20 August 2007; [www.ahewar.org/debat/show.art.asp?aid=106525](http://www.ahewar.org/debat/show.art.asp?aid=106525).

<sup>243</sup> Interview with a senior government official at the Ministry of State for Administrative Development.

<sup>244</sup> *Alalam Alyoum*, 4 December 2008.

<sup>245</sup> Helmy El-Rawy, (Ed.) *Takrir Wasf Misr [in Arabic, Description of Egypt Report]*, 22 February 2009.

There is no legal commitment that requires public institutions (both public sector organisations and administrative units) to consult the public. In practice, some public entities consult with key public figures, both individuals and organisations (private and non-governmental), before they conduct some of their activities. This occurs in particular when the public financially participates in such activities. For example, Al-Azhar University and the Ministry of Education have consulted the public about where to build its educational institutions in cases when people share the costs of buildings. This also occurs with other departments and services such as health and other public services.

In terms of accounting in the government sector, this is governed by the Budget Law (Law 53/1973 and its amendments). The control in government units is exercised by the MOF. No payment is made unless it is authorised and revised by the representative from the MOF. This control is *ex-ante*, meaning it occurs before payments are made. Also, there is an external audit by the CAO. In practice such means of checks and balances are applied to a large extent, though with less control in the case of the local administration.

### Integrity mechanisms

Having a code of conduct is not an obligatory practice according to current laws. However, some public entities such as schools, universities and hospitals have decided voluntarily to have their own code of conduct. The MSAD has its own code of conduct. Remarkably, the proposed law of civil service developed by the MSAD contains no article obliging all public entities to have a code of conduct. Notably, the private sector and NGOs have a better record on the issue of codes of conduct compared to public administrative entities. There are no clear guidelines on conflict of interest, and the few vague rules are open to individual judgments. As a result, behaviour and actions vary tremendously from one public organisation to another.

Gifts and presents are banned by law. Chapter 10 of Law 47/1978 states the duties of public employees, and banned and prohibited behaviours and actions. A careful review of this law shows that it exclusively states the sanctions but not the banned behaviours. Some types of banned behaviours have been mentioned for illustration but they are not listed exhaustively. According to Article 77 of the above mentioned law, Item 14, it is prohibited for any public employee, directly or indirectly, to:

- Receive gifts, awards, commissions or loans as a result of fulfilling his/her duties
- Collect money for any individuals or entities, making any publicity/advertisement, or have co-workers sign any illegal or illegitimate promotional documents
- Buy any property or material being sold by his/her government entity
- Accept to work for or join the board of directors of a company, or establish a company or have a share in a company that works in the same field unless s/he is delegated by his public entity to do so
- Rent any lands or buildings to be used for his/her own private purposes related to his/her work
- Practice any type of stock market speculation

The law does not establish any rules in terms of the amount of money or gifts given to public employees, or when it is to be considered a gift or a form of corruption. On the other hand, bribery is governed by both criminal and administrative laws. According to the civil service law, bribery is a prohibited behaviour that could jeopardise one's job or position. However, in practice it is very difficult to draw the line between a gift and a bribe (if of limited value). Additionally, in practice, one cannot reject a gift of less than EGP 100 (USD 18). Rejecting a gift less than this amount<sup>246</sup> is considered socially unacceptable behaviour. However, it is

<sup>246</sup> Interview with a senior government official at the Ministry of State for Administrative Development, Cairo, 28 March 2009.



unacceptable to receive any gift that exceeds this amount. The Minister of Investment has issued a ministerial order stating that any gift above this amount should not be accepted. However, this threshold cannot be applied at all times, since the amount depends on the type of service provided by the public employee, and the social status and income of both the giver and receiver.

There are no clear rules on post-employment restrictions, and it is common to find retired public employees working as a consultant for the private sector, NGOs and even the government. Some may also establish their own businesses that work in the same field. Based on the authors' observations, a prime example are the many companies working in solid waste management that are owned by former Ministry of Environment employees.

### Transparency

According to Law 62/1975 concerning illicit enrichment, civil servants and public officials are obliged to fill out a regular asset disclosure form. The law identifies the following categories:

- Civil servants except third-level employees
- Heads and members of public institutions and their employees except the third-level category
- Heads and members any of the joint public/private institutions and their employees except the third-level category

According to this law, the Illicit Enrichment Apparatus is established to help the investigation committee (formed by the Minister of Justice) by receiving and reviewing asset disclosure forms and issuing any requests for clarifications or more details. It has the right to ask the Administrative Control Authority to investigate cases proven to be of illicit enrichment or those that look suspicious. Moreover, the Illicit Enrichment Apparatus keeps records of disclosed assets, a process that always occurs in practice. The system periodically traces any increase in the wealth of public officials or their families (spouses and underage children), comparing income with wealth. In practice, asset disclosure forms are routinely and regularly filled out, though corrupt public employees have their own methods of manoeuvring, meaning they know how to avoid abiding by the law. So it is not clear to what extent auditing takes place in practice.

No explicit article obliges information on government officials' assets to be made publicly accessible. Moreover, there are laws that prevent citizens from accessing government information and records, such as the Law 121/1975 concerning the use of official documents. In practice, information on government official assets is not made public, as there are many obstacles, laws and institutions that hinder the freedom to access government information.

There is no clear rule or regulation regarding the necessity of publishing procedures and criteria for administrative decisions and the actual practice is similarly unclear. For instance, one study revealed that real estate irregularities reached 90 per cent of the total construction licenses.<sup>247</sup> The term irregularities indicates that deals are varied and do not fully abide by the rules. Public officials sometimes follow 60 per cent of the rules in some cases and 60 per cent in other cases and so forth, but not all cases are the same. In other words, although there are rules and regulations, public officials should follow for issuing permits, they do not fully apply these rules and regulations. This creates irregularities and the absence of one consistent set of rules for all citizens.

Egypt is still in the early phases of establishing e-government, though such services have developed positively since 2006 with the introduction of such services by the MSAD. Citizens can access some services through the e-government system launched by the MSAD. Also, hotlines are commonly used for many

<sup>247</sup> [www.masrawy.com/news/2007/egypt/politics/december/6/corruption.aspx](http://www.masrawy.com/news/2007/egypt/politics/december/6/corruption.aspx)

government services. In practice, introducing e-government and e-services has reduced transaction costs and overcome petty corruption.

### Complaints/enforcement mechanism

There are no explicit provisions on whistle-blowing, though Article 22 of the Illicit Enrichment Law indicates the possibility that anyone can report illicit enrichment by individuals subject to Law 62/1975. In practice, anyone can also report on misconduct via direct complaints to the head of the corrupt department or agency, or through the APA, ACA or any other control apparatus.

Civil Servants Law 47/1978 identifies civil servants' duties and prohibited actions. According to Law 117/1958 concerning Administrative Prosecution, the Administrative Prosecution Authority investigates financial and administrative crimes, and has the authority to turn over accused persons to the criminal courts. It has a full-time staff of professional investigators. Penal Code (58/1937) and its amendments have powerful sentences against misbehaving individuals. Articles 103 through 132 deal with public employee misconduct such as bribery and embezzlement of public money. Allegations of corruption are investigated by some of the following agencies, which citizens can also approach in cases of wrongdoing by a civil servant:

- Complaint departments or legal departments within the public organisation (internal)
- Administrative Prosecution Authority (APA)
- Administrative Control Authority (ACA)
- Central Auditing Organisation (CAO)
- Illicit Enrichment Apparatus
- Public Money Investigation Authority (external)
- Media (press and television shows such as 90 minutes, Cairo Today and 10 pm (external)

These agencies, with the exception of internal departments, have full-time staff, funding and formal organisational structures. In practice, they are capable of handling their workloads and, according to one top public executive official, about 70,000 cases are investigated annually by the Administrative Prosecution, and less than half of them are "false" cases.<sup>248</sup> Unlike external control, internal control generally speaking is neither fair nor powerful. Due to the harsh economic circumstances, some civil servants and even some citizens (as customers) feel that giving more money to obtain services is a normal practice. Also, due to personal relationships and friendships, supervisors may not report wrongdoing committed by their public subordinates, and when they do, supervisors sometimes limit their actions to a warning. As a result, agencies may not report such behaviour, indicating they may not consider it wrongdoing.

### Relationship with other pillars

Civil servants are strongly related to the executive, being part of the Egyptian government. Moreover, the public sector and public business sector have strong relationships with CAO, ACA and other anti-corruption agencies. The relationship between civil servants and CSOs remains weak to a large extent. In other words, the position of civil servants as part of the central government hierarchy does not allow for various relationships with other pillars, unless stated by law as described above.

<sup>248</sup> *Al-Ahram El-Ektesady*, 5 March 2007.

### Recommendations

- Set strict and well-enforced rules on gifts in the civil service/public sector, as this is a gateway for corruption. Existing laws do not handle this properly.
- Improve internal systems of checks and balances on misconduct, corruption and wrongdoing, in terms of accepting bribes and declaring gifts or other acceptable donations. There should be clear policies on behaviour that contradicts formal behaviour and the norms of public office.
- Establish a system of codes of conduct across the board for all civil service/public sector entities.
- Give more attention to the salaries and reward system, and fill or reduce the gap between income and cost of living. In fact this is the main cause of corruption, so without serious reform of the wage system corruption is likely to increase.
- Apply a zero-tolerance policy in terms of misconduct of public employees.
- Set clear rules and regulations on conflict of interest.
- Provide public employees with intensive training programs on topics such as transparency, accountability and the legal status of civil servants and wrongdoing.
- Enhance the internal monitoring and accountability system, and establish an efficient whistle-blowing system.
- Build the capacity of civil service leaders on how to curb corruption and encourage government offices to be more active in fighting corruption.

# **8. LAW-ENFORCEMENT AGENCIES**

### Resources/structure

The Ministry of Interior is the main law enforcement institution in Egypt. The Ministry of Interior divides the functions of the police and public security among four deputy ministers: public security, personal affairs related to police, administrative and financial affairs, and special police responsible for prison administration, the Central Security Forces, civil defense, police transport, police communications, traffic police, and tourism and antiquities, while the Minister of Interior himself retains responsibility for State security (intelligence) investigations and overall organisation. The Ministry of Interior is also in charge of all security matters in all governorates of Egypt. The governor and a director of police command the police forces, maintain public order and at the same time both report to the Ministry of Interior on all security matters.

The draft budget for public order and security affairs amounts to EGP 11.3 billion (USD 2 billion), which represented 4.7 per cent of the State's public budget in 2007/2008. This percentage is 19 per cent more than in 2006/2007.<sup>249</sup> It is also important to mention that security systems have the biggest share of so-called "secret expenditures," so the agency does not depend only on the announced budget. Therefore, we think the resources are very adequate. However, it is important to know that lower police ranks suffer from low wages, despite the fact that in general this issue is not raised in public discourse.

### Role of Institutions/sector as pillar of NIS

Different aspects of regular laws as well as the emergency law are the legal instruments used for investigating cases of corruption/bribery. Law enforcement rules and regulations apply to all segments of the society with the exception of military prosecution, which is independent of law enforcement agencies in Egypt. The Ministry of Interior is not independent as it is part of the executive, whereas the general prosecutor is formally independent, though he is appointed by the President and follows the Minister of Justice (as per Law 46/1982).

Appointments of police officers following Law 109/1971 are made according to professional criteria, which include seniority as well as merit. Law enforcement officials are protected from removal without appropriate justification. However, in practice, this occurs with vague justifications.

As for fighting corruption as an internal issue in law enforcement agencies, they are well equipped with the necessary mechanisms to fight corruption and ensure integrity. The Global Integrity Country Report on Egypt for the year 2006 states that, according to Law 109/1971, a council inside the Ministry of Interior is considered a disciplinary court of police officers. It punishes those who commit any of the following crimes: corruption, torture, bribery or misusing authority. In most cases, it issues administrative punishments ranging from reduced ranks to suspension from work for a specific period. However, it rarely sends these violations and crimes to the court, and in cases where officers are punished, such verdicts are usually limited to demoting or firing the police officer. This arrangement benefits from the legal rule: "It is not allowed to pass two sentences for the same crime, and the first sentence is the one to be executed." This first sentence is usually the disciplinary military court's sentence which, in most cases, does not exceed suspension from work for more than six months. This arrangement may preclude the possibility that a sentence will be handed down by the ordinary court, which may be imprisonment or dismissal.

Regarding the control of police officers, several cases of misconduct and abuse of power still prevail, despite the aforementioned mechanisms. The police force's

<sup>249</sup> Ministry of Finance, *Statistical Statement: Draft of State General Budget for FY 2007/2008*, Cairo, April 2007; [www.mof.gov.eg/English/statistical-statement-2007-2008.pdf](http://www.mof.gov.eg/English/statistical-statement-2007-2008.pdf)

treatment of opposition groups such as *Kefaya*<sup>250</sup> and *Muslim Brotherhood*<sup>251</sup> is a good example, as well as the detaining and even torturing of Egyptian bloggers.<sup>252</sup> The latest in this series is the case of a 22-year-old blogger and activist who has expressed support for Gaza, whom Egyptian police have beaten and detained.<sup>253</sup>

### Accountability

Law 109/1971 is the main law that organises the police authority. Under the law there is a judicial council inside the Ministry of Interior that serves as an internal disciplinary tool. This council consists of high-ranking officers. The council initiates investigations into allegations of corruption or other acts by law enforcement officials. Also, Articles 162, 210 and 232 of the criminal procedures law (Law 150/1950) stipulate that initiating investigations against law enforcement officials must be done only through the office of the Attorney General.

As for reporting, police officers report to the Ministry of Interior, whereas both the Minister of Interior and the general public prosecutor report to the President of the Republic.

The public (represented by the Parliament) can either create, modify or remove laws that law enforcement agencies apply, or it can raise discussions regarding some of the actions taken by law enforcement agencies, though this rarely happens in practice.

### Integrity mechanisms

Codes of conduct apply to law enforcement officials, following Law 109/1971. For example, for anti-corruption provisions, Article 109 of Law 109/1971 establishes the aforementioned council inside the Ministry of Interior. The enforcement of anti-corruption provisions occurs in practice.<sup>254</sup> There are no rules on conflict of interest, and this is difficult to examine in practice. As for rules on gifts and presents, Law 62/1975 concerning illegal gain establishes all the rules for government officials, including those in law enforcement agencies. There are no legal restrictions on law enforcement officials entering the private sector after leaving their positions at law enforcement agencies.

The mandate of law enforcement agencies in general includes fighting grand corruption, though increased incidents of petty corruption are evident among policemen on the streets, without any action taken to address this worsening phenomenon.<sup>255</sup>

### Transparency

All public servants and State employees in Egypt, including law enforcement officials, are required to file asset disclosure forms. The system of illegal earnings initially was established by Law 11/1968 to address such earnings. The law obliges persons in question to present an asset disclosure list in three instances: 1) before entering public service; 2) after leaving it; and 3) every five years. This law was modified by Law 2/1977, the fifth article of which states that every Egyptian citizen (without any exception) should present an asset disclosure list including the property of his wife and underage children. Under this system, the lifestyle

250 'Egypt: Arrests of Kefaya movement leaders, investigation needed into police killings' Amnesty International, *AI Index: MDE 12/006/2008 (Public)*, 11 April 2008

251 'Egypt continues crackdown on Muslim Brotherhood', Amnesty International, 31 August 2007, [www.amnesty.org.au/news/comments/2619/](http://www.amnesty.org.au/news/comments/2619/)

252 Radsch, Courtney, *Core to Commonplace: The evolution of Egypt's blogosphere*, Arab Media & Society, September 2008, [www.arabmediasociety.com/UserFiles/AMS6%20Courtney%20Radsch.pdf](http://www.arabmediasociety.com/UserFiles/AMS6%20Courtney%20Radsch.pdf)

253 'Egypt police beat, detain blogger says rights group', Reuters, 9 February 2009; [uk.reuters.com/article/idUKTRE51853F20090209](http://uk.reuters.com/article/idUKTRE51853F20090209)

254 Based on focus group discussions held in Cairo, June 2009.

255 Based on focus group discussions held in Cairo, June 2009.

of public servants is monitored by the ACA.<sup>256</sup> In practice, however, it is not clear to what extent asset disclosures are audited.

Information on disclosed assets is not required to be made publicly available. According to Law 122/1975, modified by Law 22/1983, concerning the maintenance of the official documents of the State, citizens cannot have any access to the asset disclosure records of public/government employees. Moreover, other laws obstruct citizens from having access, such as Law 356/1954 and the regulation of the governmental archive, Law 35/1960 concerning numbering and statistics, and Law 47/1978 concerning public civil servants.<sup>257</sup>

Nothing in the laws concerning law enforcement agencies necessitates their work to be publicly disclosed.

### Complaints/enforcement mechanisms

There are no provisions for whistle-blowing of misconduct within law enforcement agencies, and there is no specific protection offered for civil servants who report cases of corruption, graft, abuse of power or misuse of resources. Law 2/1977 does not provide protection from recrimination or other negative consequences in cases of whistle-blowers informing responsible authorities of corruption crimes.

Sanctions invoked for misconduct in law enforcement agencies range from reduced ranks to suspension from work for a specific period. In some cases, this can rise to imprisonment of the convicted policeman.<sup>258</sup> In practice, and especially in the last three years, several police officers have been convicted of torturing innocent citizens, but not of corruption.<sup>259</sup>

As stated before, there is an independent mechanism responsible for any misconduct of police officers; following Law 109/1971, the council inside the Ministry of Interior is considered the disciplinary tool for police officers. It punishes anyone who commits any of the following crimes: corruption, torture, bribery and misusing authority.

Regarding the monitoring of asset disclosure, the illicit profits apparatus has sufficient staff to fulfil its mandate. According to the Global Integrity Report 2006-2007, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

The public has a role to play in the complaint mechanism, as citizens can file a complaint in the courts. However, according to the law of criminal procedures, in addition to the general prosecutor instructions, cases of the police are handled only through the general prosecutor's office. Moreover, according to the Global Integrity Report 2006-2007, Egyptian legislation has placed some obstacles in front of litigation against police forces. The law of criminal procedures allows these sentences to be appealed if they are issued against an official for a crime he committed while carrying out his work. Furthermore, the second article of Item 232 of the law of criminal procedures states that if a suit is brought against a public employee or policeman, he is not obliged to appear before the court in person if the crime took place while carrying out his work.

### Relationship to other pillars

One of the most important relationships law enforcement agencies have is that with the legislative authority in Egypt, mainly because judicial decisions are

<sup>256</sup> *Global Integrity Report-Egypt, 2006, 2007.*

<sup>257</sup> *Ibid.*

<sup>258</sup> *Global Integrity Report-Egypt, 2006, 2007.*

<sup>259</sup> For related cases, see 'Egypt police jailed for killing', *BBC News*, 28 November 2007, [http://news.bbc.co.uk/2/hi/middle\\_east/7117309.stm](http://news.bbc.co.uk/2/hi/middle_east/7117309.stm), and 'Egypt: Police officer imprisoned for torturing suspect', *Los Angeles Times*, 8 November 2009, <http://latimesblogs.latimes.com/babylonbeyond/2009/11/egypt-police-officer-imprisoned-for-torturing-suspect.html>

enforced by the State through the judicial rulings enforcement police, which follows the Ministry of Interior.

The power of law enforcement agencies, mainly the police, is abused in many cases due to the existence of the Emergency Law, which has created several points of friction between the police and the public in the past few years. Moreover, the Emergency Law has given police the power to undertake many actions that remain questionable from a legal point of view, including putting people in jail while bypassing the court.

### **Recommendations**

- Implement an effective mechanism to fight petty corruption by the police.
- Reduce the difficulties of filing suits against law enforcement officers and facilitate the process of reporting misconduct by police officers while transmitting such a mechanism to the public and ensuring such a system is accountable. In this regard the establishment of a special and independent inspection service might be useful.
- Establish a mechanism for whistle-blowing regarding the misconduct of police officers and provide incentives for a better integrity system within the police.
- Reduce the powers granted to the police under the existing Emergency Law if it continues to be applied, though the optimal case would be dismantling the law.

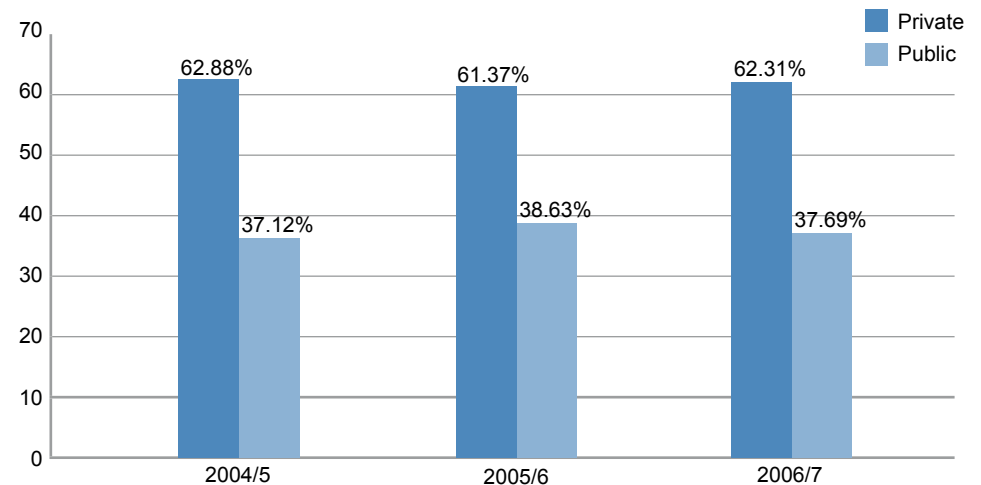


# **9. PUBLIC CONTRACTING SYSTEM**

**Resources/structure**

Until the early 1990s the Egyptian economy was dominated by the public sector. In 1991 the GOE adopted the Economic Reform and Structural Adjustment Program (ERSAP), which aimed at liberalising the economy and moving toward a free market economy. Additionally the private sector began to play a greater role in the economy. About 62 per cent of GDP in 2006/2007 was generated by the private sector, as seen in Figure 4. Nevertheless, state-owned enterprises (SOEs) still play an important role in the economy. Comprised of economic authorities, public sector economic units, public business sector companies and joint companies, SOEs encompass most significant sectors such as electricity, water and sanitation, food, aviation, transport and construction. Since the adoption of the economic reform program in 1991, public-private partnership (PPP) schemes have been extended to different sectors of the economy, such as telecommunication, transportation, gas and electricity, airports, maritime services and other infrastructure services. In 2006 the total investment of public-private partnership modules was estimated at USD 7.53 billion.

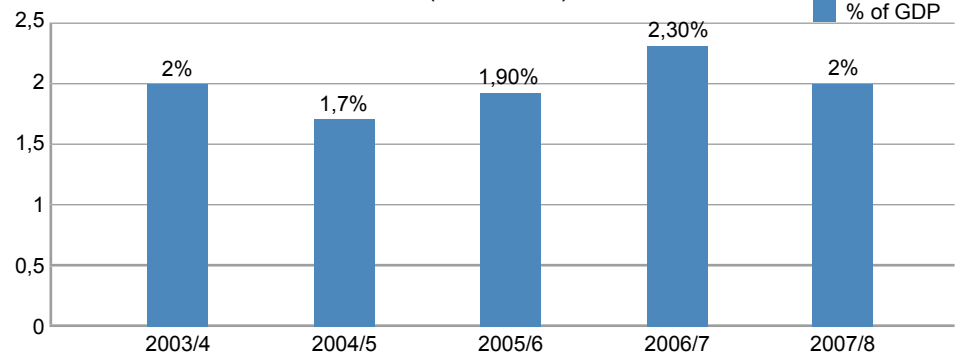
**Figure 4**  
**GDP Distribution among Public and Private Sectors (2004/2005-06/2007)**



Source: Authors' calculations based on data from the Ministry of Economic Development; [www.mop.gov.eg/english/Annual%20Chains/GDP.htm](http://www.mop.gov.eg/english/Annual%20Chains/GDP.htm)

The market for government procurement has constituted about 2 per cent of GDP over the past five fiscal years, as shown in Figure 5. The monetary value of government procurement nearly doubled from 2003 to 2008, to more than EGP 17.4 billion (USD 3.2 billion) in 2007/2008, compared to EGP 9.34 billion (USD 1.7 billion) in 2003/2004.

**Figure 5**  
**Public Procurement as % of GDP (2003-2008)<sup>260</sup>**



Source: Authors' calculation based on data from Ministry of Finance; [www.mof.gov.eg/English/statistical-statement-2007-2008.pdf](http://www.mof.gov.eg/English/statistical-statement-2007-2008.pdf)

<sup>260</sup> This estimate of public procurement covers namely chapter two of the spending side of the Egyptian state budget, entitled "Purchases of goods and services". This is due to the lack of available data on aggregate and detailed procurement figures.

Public procurement includes all procurement for the following entities:

- 130 central government departments and administrative units
- 120 service agencies
- 29 governorates
- 50 economic authorities
- more than 160 State-owned enterprises

Egypt has no central procurement body; each department has its own procurement committee that examines its tenders and practices. If the value of a bid/contract is above a certain threshold, representatives of the Ministry of Finance and Council of State should be members of technical and financial committees, and be present when opening the bid envelopes. The General Authority for Government Services (GAGS), which follows the Ministry of Finance and is funded via the State budget, controls the contracts to ensure the prescribed guidelines and directives are followed. Starting in 2003 the GAGS took charge of all public procurement tenders on behalf of five ministries, including Finance, Trade and Industry. The GAGS has been developing a national database of suppliers in order to apply the new system to other ministries as well. Moreover, the GAGS may provide technical assistance and training to departments or procurement units. It also may represent the Ministry of Finance on procurement committees. Currently there is no e-government procurement system, though amendments to the Tenders Law are being considered to include this.

### **Role of Institution(s)/Sector as Pillar of NIS**

Government procurement is governed by the Tenders Law 89/1998 and its amendments. Law 89/1998 governs the government's procurement by all civilian and military agencies (ministries, departments, local government units, and public and general organisations), unless they are exempted from this law by the Ministry of Defence. Law 89/1998, which replaced Law 9/1983, stopped the negotiation of bids after bid opening, confirmed the need to state the reason for cancelling a bid, and ensured the refunding of bid bonds upon expiry of validity of tender (public sector firms and cooperatives are exempt from bid bonds). Law 89/1998 provides a preference of 15 per cent for Egyptian bidders, with the exception of bids related to the Ministry of Defence. Among the negative aspects of Law 89/1998 is that decision-making committees on bids have no time limit to meet, or to make and announce their decisions. Law 89/1998 addresses conflicts of interest and has a mechanism to monitor assets, income and spending of public procurement officials. According to the law, procurement of a substantive magnitude requires competitive bidding, though the law allows for some exceptions such as:

- The limited auction, in which only specific competitors are selected. This occurs in the following cases: contracts related to national security matters; purchasing certain materials manufactured or produced by certain personnel or firms; technical work that needs the expertise and knowledge of specific personnel; and products that need to be purchased from their original production places.
- The local auction, in which only local competitors are selected. However, the law limits local auctions to operations whose value does not exceed EGP 200,000 (USD 36,000).
- Direct contracting is legal by obtaining permission from the head (chief) of the institution, or the concerned minister or governors.

As for licensing, concessions and build-operate-transfer (BOTs) projects, these are regulated by Law 129/1947, Presidential Decree 61/1958 and the amendments introduced to Law 12/1976 by Law 100/1996, in addition to Law 89/1998. In 2007 the MOF established a new unit for public-private partnerships (PPPs) that deals with forms of partnership with the private sector via a set of contractual arrangements such as BOTs, concessions and other contracts.<sup>261</sup>

<sup>261</sup> For more details see the MOF website: [www.mof.gov.eg](http://www.mof.gov.eg)

### Accountability

Law 89/1998 states that “the department of procurement”, inside each of the “relevant authorities” is responsible for the control of activities related to public contracting. However, the type of authority given to each procurement department depends on the capacity of the respective institution. Certain transactions are limited to specific procurement departments. For instance, the department of procurement in the education directorate of each governorate has the power to contract with the supplier for the food program designed for school children. This is not allowed in other educational procurement departments at the district level (the idarah level). In brief, these departments are responsible for public procurement processes and are considered internal control mechanisms. However, it is important to stress that there is external oversight by the CAO over any public expenses related to public contracting and procurement.

All public contracts must be executed through public bidding, though the law contains some specific exceptions including limited auction, local auction and direct contracting, each of which are subject to certain procedures and circumstances as identified above. Based on Law 89/1998 such exceptions must be fully justified by the concerned authority. Moreover, procurement processes must follow the procedures established by law. For certain exceptions, namely direct contracting, the authority is allowed to utilise this once during the fiscal year unless it is lower than the limit, in which case it can be used again.

Another form of external control mechanism is GAGS, which is responsible for different issues including maintaining registries of parties banned from participating in bids/tenders. This organisation belongs to the MOF and by law must report to the MOF and Prime Minister.

Moreover, there is set of procedures that governs contract implementation. The executive regulation of Law 89/1998 tackles supervision of contract implementation and procedures to ensure the quality of implementation and criteria for executing procurement contracts. According to the law a special committee is formed in the institution to verify whether or not procurement is delivered by bidders according to the contracts. The committee reports any type of violation that might occur in the process of contract implementation. Such procedures of contract implementation are enforced in practice, in addition to those that ensure the quality of implementation.

Related to the contracting process, publicity principles are well followed regarding the advertising/declaring phase, as well as results of the declaring phase. Law 89/1998 stipulates that public tenders and public auctions must be subject to “publicity principles.” Article No. 2 states: “Since all public bids and auctions follow the principles of rationality, equal opportunity, and free competition, they must be declared in daily newspapers and other widespread information media.” However, there are no mandatory obligations for public hearings related to other stages of the process. The existing procedures are followed in practice.

Moreover, procurement decisions must be publicly announced through an advertisement board dedicated for this purpose for the bidders and all bidders must be informed of the decision by registered letters. Unsuccessful bidders have the possibility to challenge the decision in court. The law prohibits any employee from submitting himself or through others a proposal for a bid conducted by his workplace. Additionally, companies that are guilty of major violations of procurement regulations (i.e. bribery) are eliminated from contractor and supplier lists, and the GAGS is informed of the decision to publish this in institutional bulletins. A guilty company can register again for contractor and supplier lists if the reason for its elimination is not repealed based on a decision by the General Prosecution or a determinative judgment.

Law 89/1998 does not determine any civil or social mechanism to control the process of public contracting. Rather, civil and social mechanisms to monitor the process are indirect. For instance, a complaint from the public (including other institutions) is sent to the “monitor office” at the MOF to examine. Law 89/1998 also lacks any political control mechanisms (via the legislature) to monitor public contracting. However, CAO oversight of public transactions, including procurement via the central auditor, is a key mechanism for monitoring public contracting.

### Integrity mechanisms

According to the law, the committee that decides to reject or accept the proposal of bidders consists of technical, financial and legal members that judge the applicability of such proposals. Transactions starting at EGP 250,000 (USD 45,000) require that representatives from the MOF and State Council must be members of the committee that evaluates the offers of bidders. In practice these rules are generally implemented. Members of the committees are chosen by the concerned authority, whereas representatives from the MOF and State Council are based on nominations by such authorities. In practice, such procedures are followed.

It is important to emphasise there are no specific requirements regarding qualifications for staff involved in public bidding. Rather, requirements stated in the law (or executive regulation) are restricted to the formulation of committees that accept/reject proposals. Articles No. 15, 21 and 22 of the executive regulation specify the “experiences and posts” that members of such committees must hold, as stated above.

The law does not require bidders to have ethics programs in place (e.g. anti-corruption agreements and business principles). However, the committee of the concerned authority must ascertain that bidders are honest and have never been legally punished by asking for a full profile of bidders’ histories, so those with bad reputations can be excluded. In practice these rules are applied to a large extent though in some cases they have not been fully applied, as reported by the CAO.

Law 89/1998 contains provisions regarding conflict of interest, and prevents officials and employees in agencies/authorities addressed by the law from participating, whether personally or through intermediaries, in bidding/tender offers to such agencies. In practice, and in accordance with the law, such regulations concerning public procurement officials are always enforced. However, these regulations may be considered practically suspended for exceptions, such as limited bids in which certain or nominated suppliers are allowed, and when only local suppliers are eligible for local bids. The law does not explicitly prevent officials on a certain committee from contracting afterwards, though the law (Article 39) states that public officials who participate in procurement processes or even work at the institutions are prevented from taking part either directly or indirectly (through other companies, dealers and so on) in the process of offering proposals. In cases where a participant in a procurement process benefits directly or indirectly from the companies, he may be charged according to Law 47/1978. In practice these rules are followed to a large extent, as reported by external oversight reports by the CAO.<sup>262</sup>

### Transparency

There are general rules and regulations regarding the monitoring of assets and wealth of public officials. Law 62/1975 on “illegal profiting” includes a mechanism that monitors the assets, income and spending habits of public procurement officials. Law 62/1975 obliges public officials to submit periodic affidavits (a regular asset disclosure form once every five years) on their assets and income while in office every five years, as well as before entering office and when leaving. In

<sup>262</sup> UNDP- POGAR (2008) UNDP Programme on Governance in the Arab Region (POGAR PROGRAM) (2008). available at: [www.pogar.org](http://www.pogar.org)

practice, such a monitoring mechanism is put in place. Moreover, the Authority of Illegal Profiting (gains) in the Ministry of Justice is in charge of inspecting the affidavits in coordination with the CAO.

Procurement rules are laid down explicitly in Law 89/1998, which in itself establishes the rules for transparency. Article 2 states: “Since all public bids and auctions follow the principles of rationality, equal opportunity, and free competition, they must be declared in daily papers and other widespread information media.” To a large extent practices comply with the law, as public procurement bidding is declared in national newspapers.

The executive regulation of Law 89/1998 stipulates that in case of a local auction, invitations must be disseminated to the maximum possible number of those who work in activities pertaining to the procurement process, and also within the governorate in which the contract is being implemented. In limited auctions, the governorate restriction does not exist. To a large extent such rules are applied in practice.

Procurement award decisions must be made public. The law states the results of procurement decisions – for general or limited bids or auctions, or when the tender as a whole is cancelled – are required to be publicly announced. The executive regulation of the law requires procurement departments in entities subject to the law to maintain lists and registers of procurement, suppliers, contractors and procurement process procedures. In practice, institutions usually maintain a list of suppliers, and changes are introduced to lists and registers on a regular basis. The law does not contain provisions stating that procurement documents can be made available to the public, and in practice they are never made available to the public. The law suffers from a lack of provisions regarding the publication of any modification or change in contract items during implementation, and a lack of provisions requiring the publication of the contract implementation monitoring results.

### **Complaints/enforcement mechanisms**

Law 89/1998 and other laws (e.g. Law 65/1975) do not include whistle-blowing provisions. The laws do not protect civil servants who report cases of corruption, graft, abuse of power or abuse of resources from recrimination or other negative consequences. If their claims are not adequately evidenced (as seen by investigators), the penalty for informants of corruption crimes is no less than six months in prison and a fine of EGP 100 (USD 18) to EGP 500 (USD 90). This prevents citizens from informing the authorities of corruption cases for fear of being imprisoned.

However, there are other mechanisms for ensuring compliance with the law, as the GAGS has the power to review and examine procurement decisions. Moreover, the CAO can form a committee that reviews decisions. The legislature can also examine such procurement decisions. The availability of information regarding misconduct related to procurement decisions affects to a large extent current practices. Most recently, the procurement of “Russian wheat” has been under discussion in the legislature and a committee was formed by the CAO to examine the legal procedures of procurement and report to the Parliament. A newspaper and some MPs have been the driving force behind the call for an examination of procurement decisions related to wheat.

Moreover, unsuccessful bidders have the possibility to challenge decisions in court, as stated by Law 89/1998. There is also an office in the MOF dedicated to investigating challenges raised by unsuccessful bidders against procurement decisions. Any company proven to have paid a bribe is excluded from future bidding following Law 89/1998, which states that any attempt to bribe – directly or through intermediaries – a public official results in the cancellation of the entire process as well as the deletion of the contractor’s name from the official GAGS

registers. However, in practice such a complaint mechanism does not work efficiently, is time consuming and has lengthy procedures.

According to Law 89/1998 any public official involved with contracting who violates this law is subject to “disciplinary accountability,” along with the possibility of facing civil or criminal litigation against him. Actions detrimental to public resources in public contracting qualify as criminal offences. In practice such rules are applied, as there is a set of cases in which public officials involved in corruption related to public procurement processes have been jailed. According to an official at the CAO, 90 per cent of cases of corruption are related to public procurement. This is due to a lack of transparent procurement processes, the involvement of staff in relation to some bidders and an inefficient system of whistle-blowing.

### Relationship to other Pillars

The public contracting system is related to different pillars. All procurement by the executive, legislature and other public institutions are influenced either directly or indirectly by the system of procurement. Moreover, the CAO acts as a key instrument in examining and reviewing procurement by public institutions.

### Recommendations

- Establish a more efficient system for whistle-blowing
- Increase the transparency of the public contracting system
- Ensure more competitive tendering and procurement processes
- Set time limits for decisions undertaken by committees and final acceptance, as such delays negatively affect bidders/contractors
- Reform the existing complaint mechanism that applies during the bidding process and establish a complaint mechanism that applies during the execution of contracts<sup>263</sup>

<sup>263</sup> A similar recommendation is mentioned by the report of the World Bank entitled ‘Country Financial Management Accountability Assessment,’ Egypt, 2008.

# 10. OMBUDSMAN



### Resources/structure

In Egypt there is no ombudsman, though there are several ongoing discussions among related agencies about whether there is a need to establish an ombudsman or expand the roles of an existing body to serve this purpose. Hence what we provide here is a rather subjective view of institutions that take on roles similar to an ombudsman. There has been no agreement on which institution could be considered as the equivalent of an ombudsman in Egypt. However, experts agree there are many institutions and mechanisms that in one way or another perform the various duties of an ombudsman, although not necessarily within the same entity.<sup>264</sup> Among the bodies with mandates similar to an ombudsman are the public prosecutor, who is given wide powers regarding prosecuting public cases and representing the entire society in pursuing any and all types of criminal cases. Other examples include: the National Council for Human Rights (NCHR), the complaints committee in the National Council for Women and the complaints committee of the National Council for Motherhood and Childhood. However, the point of weakness in these agencies as expressed by experts is that they lack concrete authority; they just act as a mediator between individuals and specialised agencies.<sup>265</sup> They receive complaints from individuals and direct them to the specialised authorities.

We focus here on two bodies with mandates and powers similar but not identical to those of an ombudsman:

- **Public Prosecutor:** Members of the general prosecution have a special legal status. They are members of the judiciary but are not judges. Although they are part of the executive, they are not administrative employees.<sup>266</sup> Therefore, like all civil servants and state employees, the general prosecution (the equivalent of an ombudsman agency in the Egyptian context) receives regular funding from the State.
- **Complaints Committee of the National Council for Human Rights (NCHR):** Article 11 and 12 of Law 94/2003 concerning the promulgation of the National Council for Human Rights (NCHR) states “the council has a separate budget. According to the law, the council’s resources consist of: (1) funds allocated in the general budget of the State to the council; (2) grants, donations and allowances the council accepts by a majority vote of at least two-thirds of its members; and (3) State allocations including grants and allowances directed to human rights fields, pursuant to international agreements that include Egypt. A special account is opened for the proceeds of such resources at a bank under the control of the Central Bank of Egypt (CBE). At the end of each fiscal year the surplus from such an account is carried forward to the budget of the council for the subsequent year.”<sup>267</sup>

### Role(s) of institution/sector as pillar of NIS

#### (a) The Public Prosecutor:

The public prosecutor is entrusted with prosecuting public cases, representing society in pursuing criminal cases and pursuing their course within the court system until final judgment is rendered. The public prosecutor’s jurisdiction in general consists of the authority to investigate and issue indictments for all types of crimes throughout the entire Republic. The public prosecutor himself, or by special proxy for him, carries out the following functions:<sup>268</sup>

- “Initiating a criminal action against employees, public servants or policemen for any misdemeanours committed while performing their jobs.
- Initiating a criminal action for crimes that involve public employee negligence that results in serious harm to the assets and interests of the agency the

<sup>264</sup> Focus group meeting held in Cairo, June 2009.

<sup>265</sup> *Ibid.*

<sup>266</sup> Global Integrity Scorecard: Egypt 2008

<sup>267</sup> [www.nchr.org.eg/index.php/en/about-us/establishment](http://www.nchr.org.eg/index.php/en/about-us/establishment)

<sup>268</sup> UNDP – Program on Governance in the Arab Region (POGAR) Public Prosecution Offices - National Report of Egypt (Preparatory Phase), 2004; [www.pogar.org/resources/publications.aspx?cid=5](http://www.pogar.org/resources/publications.aspx?cid=5); Background Report on Egypt for the Regional Report on Governance in Africa, Economic Commission for Africa (ECA), 2007.

- employee works for or is entrusted with.
- Initiating a criminal action for crimes related to members of boards of directors of companies subject to the provisions of the General Business Sector Law 203/1991.
  - Submitting a request for obtaining permission from the Supreme Judicial Council to arrest a judge or a member of the prosecution and place him in preventive custody, take whatever measures are needed to investigate him, or initiate a criminal action against him on a felony or misdemeanour charge.
  - Submitting a request for obtaining permission from the body from which the relevant disciplinary council was established for the purpose of arresting any member of the Council of State at the level of delegate or above and to place that delegate in preventive custody, take whatever measures are needed to investigate him, or initiate a criminal action against him on a felony or misdemeanour charge.
  - Initiating disciplinary actions against judges upon the request of the Minister of Justice automatically or upon the suggestion of the presiding judge of the court with which the judge is affiliated. In addition, he may initiate actions against members of the public prosecution upon the request of the Minister of Justice.
  - Requesting the lifting of immunity for members of the People's Assembly and Shura Council.
  - Issuing a temporary restraining order against a defendant, his spouse or minor children banning them from disposing of or managing their assets, when necessary and in cases of expediency. He will present this matter to the relevant criminal court at the legally prescribed time, moving for a judgment barring any disposal or management of such assets. “

The public prosecutor is a member of the judicial branch who, once appointed, cannot be removed. He is appointed from among the chief justices of the courts of appeals, justices of the court of cassation, or first solicitors general at the least,<sup>269</sup> pursuant to a decision by the President of the Republic. According to Article 67 of the judiciary authority, as amended by Law 35/1984, members of the general prosecution cannot be dismissed. In addition, Article 67 of Law 35/1984 gives members of the general prosecution judicial immunity.<sup>270</sup>

In practice, the fact that the public prosecutor is appointed by the President and supervised by the judiciary imposes some political pressures that could hinder his independence. However, in practice, the public prosecutor has always been viewed as one of the main defenders of the whole society against corruption crimes.<sup>271</sup> He is also a member of the Supreme Judicial Council and oversees the affairs of the office of public prosecution. He holds judicial and administrative authority over the staff of the public prosecution.

The president, upon the nominations of the Minister of Justice, appoints the members of the public prosecution. This is done in consultation with the General Public Prosecutor and approval of the Supreme Council of the Judiciary. Lawyers could also be appointed to the public prosecution if they meet the required criteria and examinations. “However, the proportion of appointments of lawyers should not fall below one-quarter for the function of deputy general prosecutor or below”.<sup>272</sup>

269 At every appeal court there is a first solicitor general, whose appointment is pursuant to a decision by the President of the Republic. The first solicitor general has -within his jurisdiction- all the judicial rights and competencies of the public prosecutor. He has the right to monitor and supervise the prosecution members who are lower in rank and report to him. See *Structure of the Public Prosecution Office in Egypt*; [www.pogar.org/publications/judiciary/prosecution/structure-egypt.pdf](http://www.pogar.org/publications/judiciary/prosecution/structure-egypt.pdf)

270 *Global Integrity Scorecard: Egypt 2008*.

271 This is supported by experts' views expressed at the focus group in Cairo, June 2009.

272 *State of the Judiciary Report: EGYPT 2003*, [www.ifes.org/publication/.../SOJ\\_Egypt.pdf](http://www.ifes.org/publication/.../SOJ_Egypt.pdf)

**(b) The Complaints Committee of the National Council for Human Rights (NCHR):**

The main aim of the NCHR is to further the protection, set the values, raise the awareness and ensure the observance of human rights.<sup>273</sup> In this regard, the council established the complaints committee of the NCHR, which is concerned with receiving and examining any complaints concerning the protection of human rights. They refer, at its discretion, any such complaints to the competent bodies and follow up on them, advise the concerned parties of the legal procedures to be followed and assist them in such regard, or settle such complaints with relevant bodies.<sup>274</sup> The NCHR ombudsman accepts complaints from any “individual” in the country including citizens, non-citizens, and refugees. This means the ombudsman’s constituency includes all citizens, non-citizens as well as refugees in Egypt.

The complaints committee began to function in February 2004. The committee carries out its functions as follows: receiving complaints concerning any human rights violations, including civil, political, economic and cultural rights; and investigating and documenting cases.<sup>275</sup> It acts as an important channel through which people can direct their complaints regarding human rights violations to the competent authorities to address them.

Article 1 of Law 94/2003 concerning the promulgation the NCHR puts the council under the auspices of the Shura Council, asserts that the council has a legal identity, and that it independently performs its duties, activities and functions. The law also states that the council has the full right to issue regulations to organise its work, its technical secretariat, and its personnel, financial and administrative affairs. The council is not bound by any governmental systems. The law states that the Shura Council is responsible for appointing members of the council for three-year terms. In practice, no member of NCHR has been urged to leave his/her position.<sup>276</sup>

The complaints committee is composed of a chairman,<sup>277</sup> one deputy chairman and 25 public figures well known for their experience and interest in human rights issues, or for their distinguished performance in the field. The Shura Council appoints the members of the council to terms of three years.<sup>278</sup>

**(c) Other bodies:**

**National Council for Women:**<sup>279</sup> The Ombudsman Office for Gender Equality of the National Council for Women deals with complaints brought forward by women from diverse socioeconomic backgrounds in order to provide women with an alternative option to address situations of gender discrimination when more traditional and formal channels have been unsuccessful. The office’s functions include: registering all complaints received, directing the complaints to the competent authorities, offering legal advice and assistance to women concerning different issues, and aiding women in getting necessary legal documents and papers. The committee also works in close collaboration with the equal opportunity units in different ministries and government bodies to support working women.

In addition to legal assistance, the office provides psychological counselling services to women who have been subjected to any form of domestic violence, whether physical, psychological or sexual. Delivered by a professional team of

<sup>273</sup> *The Internal Regulation for the National Council for Human Rights*; [www.nchr.org.eg/index.php/en/about-us/council-statute](http://www.nchr.org.eg/index.php/en/about-us/council-statute)

<sup>274</sup> [www.nchr.org.eg/index.php/en/2009-10-28-08-38-26/73-2009-07-09-09-57-58](http://www.nchr.org.eg/index.php/en/2009-10-28-08-38-26/73-2009-07-09-09-57-58)

<sup>275</sup> *Ibid.*

<sup>276</sup> [www.nchr.org.eg/index.php/en/about-us/establishment](http://www.nchr.org.eg/index.php/en/about-us/establishment)

<sup>277</sup> *The current chairman of the Council is Dr. Boutros Boutros-Ghali, the former UN secretary-general.*

<sup>278</sup> *Law No. 94 of 2003 Promulgating The National Council for Human Rights.*

<sup>279</sup> *The Council was established by a Presidential Decree in 2000 to provide guidance and consultancy regarding all issues affecting women’s lives.*

carefully selected volunteer psychologists, these services are among the very few resources available to women in Egypt.<sup>280</sup>

**National Council for Motherhood and Childhood:**<sup>281</sup> The council receives all complaints related to childhood and motherhood issues, including health, educational and housing problems with a special focus on handicapped children and the most vulnerable groups. It works to solve them through cooperation with the competent authorities. The functions of the committee also include offering aid to poor families to help them support their children, and offering legal advice and assistance. Moreover, the council has created a hotline any child can use to ask for help if he/she is subjected to any kind of violence.

The public prosecutor and NCHR have been successful in combating corruption, as their efforts have been highly visible in practice.

The public prosecutor is entitled to act on behalf of the whole society in pursuing crimes related to corruption that involve government employees and personnel – despite the fact he could face pressures that could act as obstacles to his free action against corruption. The appointment of the public prosecutor by the President empowers him to a large extent, but it is not clear how much he is shielded from political pressures. In addition, the whole general prosecution apparatus with its different levels is supervised by the Minister of Justice, who is part of the executive branch (Article 125 of Law of the judiciary No. 35/1984).

As for the NCHR, it is obliged to prepare an annual report on its activities, as well as recommendations the council deems appropriate to enhance human rights protection in Egypt. The council presents this report to the President of the Republic, the head of the People's Assembly and the head of the Shura Council. The council submitted four reports as of 2009. The NCHR reports introduce an evaluation of the human rights situation in Egypt by examining the different types of complaints submitted to the council's complaints committee.

In 2005<sup>282</sup> the committee received 6,528 complaints. As shown in Table 6, economic and social rights ranked first in 2005, followed by civil and political rights. Ranking third in 2005 and 2006 were complaints referred to as "outside council's specialization,"<sup>283</sup> which were referred to the competent authorities. These included requests for legal assistance, and assistance to find a job and to publish books. These also included complaints put aside due to a lack of seriousness or the anonymity of senders. "Legislative affairs" refers to complaints related to legal procedures of judicial disputes. "International relations" refers to complaints regarding the rights of Egyptians living abroad. The types of complaints received by the council in 2006 did not differ from those in 2005 (also see Table 5). In 2006 complaints regarding economic and social rights ranked first, followed by civil and political rights.

After receiving and registering complaints, the council's complaints committee addresses the competent authorities to assist in working out the complaints. In 2005 the competent authorities (ministers and government authorities) replied to about two-thirds of the complaints sent. This ratio increased in 2006, when the ratio of complaints answered by most ministries ranged from 50 to 90 per cent.

<sup>280</sup> Mohamed Reda Helal, *Means and Authority of the Ombudsman offices in dealing with complaints: Comparative study* (Cairo: National Council for Human Rights and SIDA, 2005); See also National Council for Women, *Progress Report 2005*, [www.ncwegypt.com/arabic/](http://www.ncwegypt.com/arabic/)

<sup>281</sup> The Council was established by a Presidential Decree in 1989 with membership of the ministers and public personnel of interest in motherhood and childhood issues.

<sup>282</sup> This section on analysing the complaints addressed to the NCHR is based on Background Report on Egypt for the Regional Report on Governance in Africa, Economic Commission for Africa (ECA) 2007.

<sup>283</sup> National Council for Human Rights, *Annual Reports 2005 and 2006*; [www.nchr.org.eg/index.php/en/publications/annual-reports](http://www.nchr.org.eg/index.php/en/publications/annual-reports)

**Table 6:**  
**Type of Violations of Human Rights in 2005 and 2006**

Type of Violation	2005		2006	
	Number	%	Number	%
Civil and Political Rights	1,851	28.35	1,762	30.2
Economic and Social Rights	2,787	42.7	2,247	38.5
Legislative Affairs	329	5.04	938	16
International Relations	117	1.8	115	1.9
General Cases	278	4.25	53	0.9
Outside Council's Specialization	1,166	17.86	890	15.2
Repeated complaints			344	5.9
Cultural rights			7	0
<b>Total</b>	<b>6,528</b>	<b>100</b>	<b>5,826</b>	<b>100</b>

Source: National Council for Human Rights, Annual Reports, 2005, 2006.

### Accountability

The laws/rules that govern the oversight of the public prosecutor are stated in Law 46/1972. According to Article 125 the general prosecution and all of its members are supervised by the Minister of Justice. The public is not required to be consulted in the work of the public prosecutor.<sup>284</sup>

As for the NCHR complaints committee, Article 1 of Law 94/2003 promulgated that the NCHR places the council under the auspices of the Shura Council. According to Law 94/2003, "The NCHR prepares an annual report that incorporates the recommendations the council deems appropriate within its functions. The NCHR presents this report to the President of the Republic, the head of the People's Assembly and the head of the Shura Council."

The public is integrated into the work of the NCHR via close cooperation between the NCHR complaints committee and CSOs. Points of cooperation include:<sup>285</sup>

- Continuous, mutual counselling and experience shared mainly through the annual conference the council holds for CSOs
- Raising awareness about the public's rights and means to defend them against any violation
- Cooperation in surveillance of human rights violations
- Conducting training programs for the police and judiciary to enhance their awareness of human rights
- Offering legal aid and counselling services related to human rights violations

### Integrity mechanisms

There are no specific codes of conduct/ethics governing the public prosecutor, as members of the prosecution are legally considered part of the judiciary. Thus, it could be considered that the code of conduct and disciplinary measures applied to the judiciary also apply to the public prosecution. The Ministry of Justice supervises judicial inspection and discipline. The inspection and disciplinary committee consists of judicial personnel seconded to the Ministry of Justice for that purpose. Their recommendations are submitted to the Supreme Judicial Council. Considered as part of the judiciary, Law 46/1972 regulates conflicts of interest to ensure independence, dignity, political neutrality, etc. Moreover, all members of the judicial authority must, upon appointment, submit a "declaration of assets" that includes their assets and those of their spouse and minor children. An updated declaration must be submitted every five years. If the committee in

<sup>284</sup> Global Integrity Scorecard: Egypt 2008.

<sup>285</sup> National Council for Human Rights, Annual Report, various issues.

charge of examining the declarations has strong suspicions indicating an illicit profit, it refers the documents to the competent body to start an investigation. If the investigation reveals evidence of an illicit profit, the matter is referred to the competent court for trial.<sup>286</sup> Practice reveals there have not been cases of corruption or illicit profit. In general, there is a widespread public perception that the public prosecution acts with honesty and integrity.

The law contains no regulations governing gifts and hospitality offered to members of the national-level judiciary in general, with the exception of submitting regular declarations of assets. It contains no restrictions on national-level judges regarding employment after leaving their position, though the law prohibits them from disclosing information that is considered secret in their former official jobs. This also applies to the public prosecution.

As for the NCHR, Law 94/2003 does not specify clear or direct provisions covering this area. However, looking at the composition of the NCHR and its complaints committee in particular, it can be concluded that the council has public figures that are well known for their good reputation, societal trust and deep interest in supporting human rights and fighting corruption. In practice, there have not been cases of misconduct or corruption among members of the council or its complaints committee. The law does not specify any provisions on conflict of interest, or gifts and hospitality. There are no rules or regulations dealing with post-employment restrictions.

### Transparency

The public prosecutor does not make reports publicly available. However, the public prosecutor can announce press reports to address certain public issues. In practice, the government has frequently followed the advice and decisions of the public prosecutor. According to Articles 61 and 62 of the Criminal Procedures Law, reports of the general prosecution are not accessible to the public. "Only in cases in which the accusation is deemed invalid can reports of the general prosecution be accessed. On the other hand, according to Article 125 of the Criminal Procedures Law, the general prosecution is required to allow defence lawyers to see investigation papers and decisions of the prosecution."<sup>287</sup>

As for the NCHR, it is obliged to prepare an annual report concerning its efforts and activities, as well as recommendations the Council deems appropriate to enhance human rights protection in Egypt. This is according to the report published on the website of NCHR.<sup>288</sup> Moreover, NCHR documents most of its events and activities, which can be easily accessed via the council's website or council library.

In 2005 the NCHR submitted its first report examining the human rights conditions in Egypt. The report presented about 60 recommendations regarding human rights in Egypt. The government has adopted about one-third of these recommendations. They include: teaching human rights subjects in universities and schools to enhance awareness; simplifying and facilitating procedures for payment of pension and assistance to guarantee human dignity and protect social and economic rights; organising a process for immigration and travelling workers through the conclusion of bilateral cooperation agreements with countries receiving the manpower; enhancing women rights; enhancing children's rights with a special focus on handicapped children; and facilitating government provision of services to individuals in an atmosphere of dignity and respect. In addition, the NCHR has established a national plan to promote human rights in Egypt, which the Ministry of Economic Development has adopted. The ministry is currently working to

<sup>286</sup> *Global Integrity Scorecard: Egypt 2008.*

<sup>287</sup> *Ibid*

<sup>288</sup> [www.nchr.org.eg](http://www.nchr.org.eg)

incorporate the plan into the coming five-year socioeconomic development plan (2007/2008 - 2011/2012).<sup>289</sup>

### Complaints/enforcement mechanisms

The public prosecutor is specialised in investigations as well as prosecution regarding all crimes, representing society in pursuing criminal cases and “pursuing their course in the court system until final judgment is rendered.”<sup>290</sup> In general his jurisdiction consists of the authority to investigate and issue indictments for all types of crimes covering the entire Republic. In addition, the general prosecution is authorised to inspect prisons and make reports on their condition. The Ministry of Interior is required to implement all observations and demands by inspecting members of the general prosecution.

“After the public prosecutor receives a report or notification of an incident, or a report on evidence gathered for a case in which an investigation was conducted into a matter that warrants investigation, an action is initiated if the evidence to indict is sufficient to make a conviction likely. But if the case’s papers are devoid of indicting evidence, or if the evidence is not likely to obtain a conviction, the case is dismissed or a decision is made indicating a lack of grounds to initiate an action.”<sup>291</sup>

The investigation process is initiated by the preparation of a report by a prosecution member. The defendant is questioned about the charge against him. First, the prosecution member concludes the interrogation of the defendant. This is followed by hearing the witnesses. The investigation could be completed by conducting surveillance and inspection if necessary.<sup>292</sup>

Any person can file a complaint before the public prosecutor. However, a complaint made to the public prosecutor cannot be anonymous, and the public prosecutor has complete power to investigate a wide range of areas, which gives him no need for whistle-blowing. In practice, the public prosecutor receives society’s appreciation and trust in fighting corruption.

Submitting complaints can be done via post, e-mail, fax or personal attendance to the council. Complaints do not need to be supported with all needed documents in order to prove the subject of complaints; this is acceptable in cases of torture, as it is difficult to submit sufficient proof. However, the committee does not accept complaints from individuals who do not declare their names and identity. The council assures individuals the confidentiality of all information they submit.

Looking at the recommendations offered by the council and the government’s attitude towards them, it can be concluded that this process has been effective, as evidenced below.

There have also been several forums where council members and different government authorities and entities have come together to discuss several topics and issues deemed important for enhancing human rights in Egypt. These included conducting workshops on unemployment and illegal immigration with government representatives from the Ministry of Manpower and Immigration and the Ministry of Foreign Affairs.

289 National Council for Human Rights, *Fourth Annual Report 2008*, [www.nchr.org.eg/index.php/en/publications/annual-reports-and-Background-Report-on-Egypt-for-the-Regional-Report-on-Governance-in-Africa-Economic-Commission-for-Africa-ECA-2007](http://www.nchr.org.eg/index.php/en/publications/annual-reports-and-Background-Report-on-Egypt-for-the-Regional-Report-on-Governance-in-Africa-Economic-Commission-for-Africa-ECA-2007)

290 UNDP, POGAR, *Modernization of Arab Public Prosecution Offices: Egypt: Fact Sheet*, [www.arab-niaba.org/english/countries/country.asp?cid=5](http://www.arab-niaba.org/english/countries/country.asp?cid=5)

291 UNDP, POGAR, “Structure of the Public Prosecution Office in Egypt”; [www.pogar.org/publications/judiciary/.../structure-egypt.pdf](http://www.pogar.org/publications/judiciary/.../structure-egypt.pdf)

292 [www.arab-niaba.org/english/countries/country.asp?cid=5#course](http://www.arab-niaba.org/english/countries/country.asp?cid=5#course)

### Relationship to other pillars

The NCHR is viewed as a highly reputable body in fighting human rights violations that have an element of corruption. Both the public prosecutor and NCHR interact with all NIS pillars. The system of reviewing NCHR recommendations remains not fully clear, as it is not detailed in the law that governs its functions.

### Recommendations

- Reach a decision on whether or not to create the institution of an ombudsman based on analysing international experiences. There is a need to benefit from such efforts and open a wide debate about the structure and authorities of the ombudsman, taking into consideration the resistance that could be exerted from other agencies that could have similar roles.
- Further enhance the independence of ombudsman-like agencies and shield them from political pressures.
- Establish a clear mechanism to monitor the implementation of recommendations made by ombudsman-like agencies to the executive or any other bodies monitored by ombudsman-like bodies.



# 11. ANTI-CORRUPTION AGENCIES (ACAs)

### Resources/structure

There are multiple agencies designed to address and fight corruption,<sup>293</sup> both in the public and the private sector. Some of these agencies have direct and inherent jurisdiction, while others have complementary roles. The list of anti-corruption agencies in Egypt includes:<sup>294</sup>

#### Administrative Control Authority (ACA)<sup>295</sup>

This agency is Egypt's anti-corruption watchdog.<sup>296</sup> It was established in 1964 as an independent organisation affiliated with the Prime Minister following Law 54/1964. Its activities were frozen in 1980, and were resumed again after a presidential decree in 1982. The ACA is responsible for detecting as well as fighting corruption in the government, the public business sector and the private sector that accomplishes public work – by exercising all types of control (financial, administrative, technical and criminal). Further, the ACA is responsible for ensuring the implementation of enforced laws, applied regulations and systems.<sup>297</sup> However, it suffers from several pitfalls. The agency, for example, requires presidential permission in order to arrest a public official who is under suspicion.<sup>298</sup> Also, it lacks the authority to investigate charges of corruption against certain categories of State employees<sup>299</sup>. The ACA undertakes its responsibilities through four central control sectors, two regional sectors and four support sectors.<sup>300</sup>

#### Central Auditing Organisation (CAO)

This has been discussed in a separate pillar.

#### Administrative Prosecution Authority (APA)<sup>301</sup>

The APA is governed by Law 117/1958, which authorises the agency to monitor and investigate all civil servants in all ministries and agencies at all levels. “The APA, which is supported by a large and professional staff, investigates administrative and financial crimes, and has the mandate to hand over perpetrators to criminal courts. The APA also serves as an internal reporting mechanism to which public officials may direct their complaints or reports of corruption.”<sup>302</sup>

#### General Department of Public Funds Crimes' Investigation Police

On 12 June 1933 the Ministry of Interior issued a decree on establishing an agency concerned with “Combating Money Counterfeit Offences” to be affiliated with the Public Security Department. In 1963 a unit responsible for combating money smuggling offences was established within the office's structure. In 1965 a ministerial decree was issued to change the title of the agency to “Monetary, Money Falsification & Counterfeit and Anti-Tax Evasion Section.” In 1972 a ministerial decree upgraded the level of the section to a department called “Public Fund Offences Combat Department.” A new section (established as a part of the department) called “Bribery and Embezzlement Offences Combat and Investigations on Illicit Earnings,” while the department continued to be affiliated with the Public Security General Department. In 1979 the department was affiliated with the Economic Security Sector, until a Presidential Decree was issued in 1984 that established the “Public Fund Offences Combat General Department.” In 1985

293 *Business Anti-Corruption Portal, Egypt Country Profile, Public Anti-Corruption Initiatives*; [www.business-anti-corruption.com/index.php?id=649](http://www.business-anti-corruption.com/index.php?id=649)

294 *Second Report of the Transparency and Integrity Committee, 'Action Priorities and its Mechanisms'*, Ministry of Administrative Development; [www.ad.gov.eg/NR/rdonlyres/1667E19E-DC90-4C7F-A315-7175AE7B4A52/1731/TIC\\_Report2\\_v32.pdf](http://www.ad.gov.eg/NR/rdonlyres/1667E19E-DC90-4C7F-A315-7175AE7B4A52/1731/TIC_Report2_v32.pdf)

295 *Administrative Control Authority (ACA) website*; [www.rekaba.com/english/Chairman.html](http://www.rekaba.com/english/Chairman.html).

296 *Freedom House*; [www.freedomhouse.org/template.cfm?ccrcountry=154&ccrpage=37&edition=8&page=140&section=84](http://www.freedomhouse.org/template.cfm?ccrcountry=154&ccrpage=37&edition=8&page=140&section=84)

297 *Administrative Control Authority (ACA) website*; [www.rekaba.com/english/Chairman.html](http://www.rekaba.com/english/Chairman.html)

298 *Business Anti-Corruption Portal, Egypt Country Profile, Public Anti-Corruption Initiatives*; [www.business-anti-corruption.com/index.php?id=649](http://www.business-anti-corruption.com/index.php?id=649)

299 *Freedom House*; [www.freedomhouse.org/template.cfm?ccrcountry=154&ccrpage=37&edition=8&page=140&section=84](http://www.freedomhouse.org/template.cfm?ccrcountry=154&ccrpage=37&edition=8&page=140&section=84)

300 *Administrative Control Authority (ACA)*; [www.rekaba.com/english/Chairman.html](http://www.rekaba.com/english/Chairman.html)

301 *This part draws heavily on information available from Business Anti-Corruption Portal, Egypt Country Profile, Public Anti-Corruption Initiatives*; [www.business-anti-corruption.com/country-profiles/middle-east-north-africa/egypt/initiatives/public-anti-corruption-initiatives/](http://www.business-anti-corruption.com/country-profiles/middle-east-north-africa/egypt/initiatives/public-anti-corruption-initiatives/)

302 *Ibid.*

Ministerial Decree No. 167 was issued to organise the Public Fund Offences Combat General Department.<sup>303</sup>

The General Department is governed by Law 61/1964 promulgating the Police Authority Law.<sup>304</sup> It has several jurisdictions with the aim of keeping pace with the developments witnessed in the field of combating traditional and modern economic crimes. Although there is room for improvement in the department's efforts, it is attempting to prevent the negative consequences of these crimes on the investment climate. The state's goal of economic stability and greater international investment has not yet been met, but these efforts by the department are in line with that goal.<sup>305</sup>

### **Illegal Profiting Apparatus (IPA)<sup>306</sup>**

This agency was established by Law 11/1968 and is governed by Law 95/1980 on Guardian Protection.<sup>307</sup> It has the mandate to investigate suspected illegal income. Upon taking office, officials are required to disclose their assets and those of their spouses and children. The IPA receives reports concerning corruption from members of the general public, and private and public employees. However, the IPA does not have the mandate to investigate cases of corruption, but rather passes cases on to investigative authorities. If investigative authorities do not find evidence to support the charges, Law 2/1977 imposes penalties on people who report corruption falsely or with bad intentions. In cases where asset disclosures are proven to be fraudulent, the IPA passes cases to specialised Criminal Courts.<sup>308</sup>

### **Egyptian Money-Laundering Combating Unit (EMLCU)<sup>309</sup>**

The Egyptian Money Laundering Combating Unit is the Egyptian Financial Intelligence Unit in charge of combating money laundering and terrorist financing in Egypt. It was established in 2002 by virtue of Law 80/2002. Its basic task is to improve the Anti-Money Laundering and Combating the Financing of Terrorism systems in financial institutions in Egypt with the aim of preventing them from being used to process criminal proceeds or finance terrorism. The Egyptian Money Laundering Combating Unit is responsible for receiving, analysing and disseminating financial disclosures to the competent authorities. The EMLCU receives suspicious transaction reports from financial institutions and conducts necessary examinations and investigations in coordination with the competent authorities.<sup>310</sup>

### **Public Prosecution**

The public prosecution is considered as the public attorney before criminal courts with the right to file criminal actions. It was given the right by Egyptian legislation to initiate an action even if a plaintiff has abandoned his right to do so.<sup>311</sup>

<sup>303</sup> [www.moiegypt.gov.eg/english/departments%20sites/publicfunds/historicaldevelopment/](http://www.moiegypt.gov.eg/english/departments%20sites/publicfunds/historicaldevelopment/).

<sup>304</sup> *Second Report of the Transparency and Integrity Committee, 'Action Priorities and its Mechanisms', Ministry of Administrative Development;*

[www.ad.gov.eg/NR/rdonlyres/1667E19E-DC90-4C7F-A315-7175AE7B4A52/1731/TIC\\_Report2\\_v32.pdf](http://www.ad.gov.eg/NR/rdonlyres/1667E19E-DC90-4C7F-A315-7175AE7B4A52/1731/TIC_Report2_v32.pdf)

<sup>305</sup> *Public Funds Investigation, The General Department's Functions,*

[www.moiegypt.gov.eg/english/departments%20sites/publicfunds/generaldepartment/](http://www.moiegypt.gov.eg/english/departments%20sites/publicfunds/generaldepartment/)

<sup>306</sup> *Business Anti-Corruption Portal, Egypt Country Profile, Public Anti-Corruption Initiatives;*

[www.business-anti-corruption.com/index.php?id=649](http://www.business-anti-corruption.com/index.php?id=649)

<sup>307</sup> *Ministry of State for Administrative Development, Transparency and Integrity Committee, Action Priorities and its Mechanisms, Second Report, 2008.*

<sup>308</sup> *Business Anti-Corruption Portal, Egypt Country Profile, Public Anti-Corruption Initiatives;*

[www.business-anti-corruption.com/index.php?id=649](http://www.business-anti-corruption.com/index.php?id=649).

<sup>309</sup> *Money Laundering Combating Unit; [mlcu.org.eg/index\\_english.htm](http://mlcu.org.eg/index_english.htm)*

<sup>310</sup> *Ibid.*

<sup>311</sup> *Egypt State Information Service;*

[www.sis.gov.eg/En/Politics/Judiciary/PPProsecution/04100800000000001.htm](http://www.sis.gov.eg/En/Politics/Judiciary/PPProsecution/04100800000000001.htm)

### Mechanisms of Ministry of Finance

These mechanisms consist of certain laws that regulate the activities of the public sector, including:<sup>312</sup>

- **Government Services Authority:** Law 89/1998 on the organisation of tenders and auctions; President of the Republic Decision No. 2126 in 1971
- **Financial and administrative inspection:** Law 127/1981 on government accounting; Law 53/1973 on the State budget
- **Financial Controller:** Law 53/1973 on the State budget; Law 127/1981 on government accounting

### National Council for Human Rights (NCHR)<sup>313</sup>

The NCHR was established on 19 June 2003 by Law 94/2003. The Council aims to promote and develop human rights, spread awareness of these rights and ensure their practice. The NCHR is independent in exercising its functions. The Council is seen as a tool that seeks to enhancing democracy, ensure public freedom and safeguard human rights.<sup>314</sup> It aims to:

- Protect Egyptian rights at home and promote Egypt's image abroad by seeking to abolish all freedom-restricting legislation
- Cooperate with human rights NGOs in Egypt<sup>315</sup>

Concerning the agencies with complementary roles in fighting corruption, they include the Consumer Protection Agency (CPA) and the Egyptian Authority for the Protection of Competition and the Prohibition of Monopolistic Practices (ECA).

In addition there are a number of regulatory bodies, including the National Telecommunications Regulatory Authority (NTRA) and Egyptian Electric Utility and Consumer Protection Regulatory Agency (EEUCPRA). Moreover, there are mechanisms applied by ministries, such as the Ministry of Health, which concentrates mainly on health control and standards;<sup>316</sup> the Ministry of Trade and Industry, which concentrates mainly on industrial control and standards, and commercial fraud;<sup>317</sup> and the Ministry of Housing including the Building Technical Inspection Authority (BTIA)<sup>318</sup> which was established by Presidential Decree 29/1993 and is affiliated with the National Housing and Building Research Centre (NHBRC). BTIA assumes all inspection, control and monitoring of all administrative entities of planning and organisation in local units throughout the country.<sup>319</sup>

Like all civil service agencies, anti-corruption agencies receive regular funding from the government. For example, the CAO gets all of its resources from the national budget and does not accept any grants or gifts. As for the budgetary process that governs ACAs, they present a preliminary budget to the government, which allocates funds to them according to their availability and priorities.

### Role(s) of institution/sector as pillar of NIS

As indicated above, there are multiple agencies designed to address corruption in both the public and private sectors. Some are government ACAs affiliated with certain ministries, while others are independent and/or not related to the

<sup>312</sup> Ministry of State for Administrative Development, Transparency and Integrity Committee, *Action Priorities and its Mechanisms, Second Report, 2008.*

<sup>313</sup> National Council for Human Rights; [www.nchr.org.eg/en/home.asp](http://www.nchr.org.eg/en/home.asp)

<sup>314</sup> Egypt State Information Service; [www2.sis.gov.eg/En/Politics/HRights/041200000000000001.htm](http://www2.sis.gov.eg/En/Politics/HRights/041200000000000001.htm)

<sup>315</sup> *Ibid.*

<sup>316</sup> Ministry of State for Administrative Development, Transparency and Integrity Committee, *Action Priorities and its Mechanisms, Second Report, 2008.*

<sup>317</sup> *Ibid.*

<sup>318</sup> Building Technical Inspection Authority; [www.housing-utility.gov.eg/english/taftesh.asp](http://www.housing-utility.gov.eg/english/taftesh.asp)

<sup>319</sup> *Ibid.*

government. In addition, enhancing transparency and fighting corruption has been the target of an increasing number of private and non-governmental organisations.<sup>320</sup>

Some ACAs are dedicated to overseeing the public sector, including the CAO and ACA, which is authorised to monitor and investigate all civil servants in all ministries and agencies and at all levels, and the General Department of Public Funds Crimes' Investigation Police, which is affiliated with the Minister of Interior and concerned with fighting and combating different types of traditional and modern economic crimes.

Some organisations are concerned with the private sector, including the Building Technical Inspection Authority (BTIA), CMA and Egyptian Insurance Supervisory Authority (EISA). The CMA and EISA were merged in 2009 and fall under the jurisdiction of the newly established General Authority for Financial Supervision (GAFS), which began operating 1 July 2009.

Many anti-corruption institutions in Egypt are part of or affiliated with government structures. This could contribute negatively to their independence. However, the law grants certain privileges to most of these agencies to guarantee their independence.

**According to Law 54/1964, the ACA is authorised to:**<sup>321</sup>

- Study and reveal causes of negligence in work and production, and suggest means to prevent it and ensure that applied laws are adequate to achieve the goals
- Follow up the implementation of laws, decisions and regulations
- Reveal defects in administrative, technical and financial systems
- Detect and prevent administrative and financial violations, and tendencies to abuse authority
- Examine published media reports concerning deficiency in work or abuse of authority
- Investigate public fund crimes committed by public servants
- Examine citizens' complaints
- Conduct investigations into candidates for top management posts or candidates to be awarded
- Submit reports to the Prime Minister

According to Law 92/1975, "the ACA is also authorised not only to investigate and examine the financial disclosures of public servants if they are suspected of illegal gain, but also to hand over suspects to the Illegal Gain Department to carry out its work in this regard."<sup>322</sup>

In general, (government) anti-corruption agencies have the right to make arrests; they are also authorised to initiate investigations. But, in these cases, they first must obtain the consent of the President or the executive agencies which they have to report to. In practice, some of the ACAs' subordination to the executive branch could be a point of weakness that restricts their effectiveness in combating corruption.

Regarding the staff working in the anti-corruption agencies, the ACA is usually successful in selecting professional, well-prepared staff who enjoy good reputations. The staff of the ACA receives regular training.<sup>323</sup>

<sup>320</sup> Ministry of State for Administrative Development (2008) *Executive Summary of the second report of the Transparency and Integrity Committee, "Action Priorities and its Mechanisms"*; [www.ad.gov.eg/NR/rdonlyres/1667E19E-DC90-4C7F-A315-7175AE7B4A52/1746/ExecutiveSummary2ndTICreportenglish2.pdf](http://www.ad.gov.eg/NR/rdonlyres/1667E19E-DC90-4C7F-A315-7175AE7B4A52/1746/ExecutiveSummary2ndTICreportenglish2.pdf)

<sup>321</sup> [www.rekaba.com/english/chairman.html](http://www.rekaba.com/english/chairman.html)

<sup>322</sup> *Ibid.*

<sup>323</sup> *Global Integrity Scorecard: Egypt 2008.*

ACAs affiliated with the government and different ministries receive regular funding from the government but they manage their own budget.

Most government-affiliated ACAs work on investigations but do not deal with prevention, education, awareness and prosecution.

The role of ACAs is greatly appreciated by the public due to the increasing number of corruption cases tackled by these agencies.<sup>324</sup> Moreover, the neutrality in presenting the findings of these agencies adds to their credibility.

### Accountability

There are many laws that govern ACAs, including Law 117/1958 establishing the Administrative Prosecution Authority (APA) as a monitoring and investigating authority; Law 54/1964 and Law 92/1975 concerning the reorganisation of the ACA; Law 144/1988, amended by Law 157/1998, concerning the issuing of the CAO law; and Law 46/1972 organising judicial power. Also, officials in public ACAs are recognised as public servants subject to the provisions of the State's civil service Law 47/1978.

It is important to indicate that ACAs, which are responsible for monitoring public employees, have within their organisation internal control elements to monitor the ethical and behavioural conduct of its staff. For example, the Administrative Control Authority has established a number of internal regulations and measures with which it can monitor the activities and sound performance of its officials.<sup>325</sup> Moreover, ACAs supervise and oversee each other. For example, the CAO oversees the funds of any anti-corruption agency, such as the ACA and APA, and it is granted full access to their registers, accounts and documents. Also, if any public official in these agencies is convicted of corrupt acts, the Administrative Prosecution conducts an appropriate investigation and has the mandate to hand over perpetrators to the criminal courts.

According to the law, the Administrative Control Authority is an independent organisation affiliated with the Prime Minister, to whom it must submit its reports. Also, according to Law 54/1964, ACA members have the authority to provide reports that contain any required studies, information and data to the Prime Minister, ministers and governors, and to submit reports that include results of studies and remedial proposals to the Prime Minister, ministers and State officials.<sup>326</sup> The CAO is an independent auditing institution subordinate to the President but which submits its audit reports to the People's Assembly. In addition, the APA is a government authority following the Ministry of Justice that is charged with fighting corruption in government agencies and authorised to send suspected civil servants to the Criminal Court. The members of this authority have the status of judiciary arrest officers.<sup>327</sup>

The public prosecutor does not report to a certain body, but he is a member of the judicial branch and the Supreme Judicial Council, which has the jurisdiction to review all matters concerning the appointment, promotion, transfer, delegation and secondment of judges and attorney generals, as well as all their affairs. The public prosecutor is appointed from the chief justices of the courts of appeals, justices of the court of cassation, or first solicitors general at the least, pursuant to a decision by the President of the Republic. The Minister of Justice shall have the authority of administrative oversight over the public prosecution.<sup>328</sup> The general prosecution is the link between the judicial and executive branches. "Members of the general prosecution, therefore, have a special legal status. They are

<sup>324</sup> This was confirmed in focus groups held in Cairo, June 2009.

<sup>325</sup> [www.mafhoum.com/press4/128S64.pdf](http://www.mafhoum.com/press4/128S64.pdf)

<sup>326</sup> Administrative Control Authority (ACA); [www.rekaba.com/english/chairman.html](http://www.rekaba.com/english/chairman.html)

<sup>327</sup> Global Integrity Report, 2007 Assessment, Egypt; [report.globalintegrity.org/reportPDFS/Egypt.pdf](http://report.globalintegrity.org/reportPDFS/Egypt.pdf)

<sup>328</sup> Programme on Governance in the Arab Region, UNDP, Structure of the Public Prosecution Office in Egypt; [www.pogar.org/publications/judiciary/prosecution/structure-egypt.pdf](http://www.pogar.org/publications/judiciary/prosecution/structure-egypt.pdf)

members of the judiciary but are not judges. Though they are part of the executive branch they are not administrative employees".<sup>329</sup>

In practice, reporting takes place and ACAs submit their reports on a regular basis. For example, the CAO submits its reports by end of March to the People's Assembly, and the presentation of the report as well as discussions related to its submission are covered widely by the media.

In general, the public is not required to be consulted in the work of ACAs. The public prosecutor is not required to make his reports publicly available. But in some cases he can issue press statements to clarify some general opinion issues. However, he has the right and authority to prevent the publication of any information about a specific issue. Also, citizens cannot access reports of the CAO; they are only delivered to the President of the Republic and the legislature.<sup>330</sup>

However, complaints are considered a means to engage the public in the ACA's activities. For example the Administrative Control Authority examines citizens' complaints concerning law violations and negligence of duty of post, and it examines press articles regarding complaints of abuse of authority, negligence and mal-administration, and the submitter is notified of the results of the examination afterwards.<sup>331</sup> The CAO receives and examines any complaints from employees working in public entities under the CAO's jurisdiction. In addition, the IPA is required to investigate complaints raised by citizens pertaining to unreasonable and unjustifiable increases in one's wealth. It can also require the assistance of the APA to examine these complaints.<sup>332</sup>

In practice, anti-corruption agencies have usually proven to be efficient in undertaking their role in fighting corruption. However, regardless of the effectiveness of these institutions, they still suffer from weaknesses in terms of their independence, as witnessed by a curtailing of the CAO's role in the privatisation program, by the fact that presidential permission is required for starting judicial proceedings against government officials, and last but not least, since the budget and powers of these institutions is decided by the government.<sup>333</sup> Therefore, one could say one of the main weaknesses of government ACAs is their subordination to the executive branch.

Among the examples of the public prosecutor acting successfully as an anti-corruption agency is his major role in several important cases that attracted public attention, and which were related in one way or another to important and highly connected people. For example, the public prosecutor reopened the important case of the 2006 sinking of the ferry boat Al-Salam 98, in which more than 1,000 passengers drowned, most of them Egyptians working in Saudi Arabia. The disaster was one of the deadliest in modern maritime history. The owner of the ship was accused of being responsible for the disaster. This was due to the ferry's lack of many safety measures as well as the violation of a ban on its sailing for more than 20 nautical miles. The case attracted wide public attention not only because so many people lost their lives, but also because the owner of the ferry is known to be a widely connected businessman and a member of the Parliament and ruling party. "The public prosecutor conducted an investigation accusing the owner of the ferry of gross negligence and overloading the boat with too many passengers".<sup>334</sup> In August 2008 the Safaga Felonies Court issued a verdict acquitting the owner of the Al-Salam 98 ferry of charges of causing the deaths of the passengers. Press reports reflected public anger and rejection of the court

<sup>329</sup> *Global Integrity Report, 2007 Assessment, Egypt; report.globalintegrity.org/reportPDFS/Egypt.pdf*

<sup>330</sup> *Ibid.*

<sup>331</sup> *Administrative Control Authority (ACA); www.rekaba.com/english/Chairman.html*

<sup>332</sup> *Global Integrity Report, 2007 Assessment, Egypt; report.globalintegrity.org/reportPDFS/Egypt.pdf*

<sup>333</sup> *Egyptians against Corruption, A Preliminary Shadow Report;*

*www.nadafa.org/en/index.php?subaction=showfull&id=1200039600&archive=&start\_from=&ucat=1&cstart=12*

<sup>334</sup> 'Negligence sank Al-Salam 98', *Al-Ahram Weekly*, 6-12 July 2006;

*weekly.ahram.org.eg/2006/802/eg4.htm*

decision.<sup>335</sup> “However, the public prosecutor reopened the case and introduced an appeal to the ruling. The public prosecutor demanded a retrial because of violations in documented records, corruption in investigation, shortcomings in validating and arbitrary conclusions”.<sup>336</sup> The case was reopened and the owner of the ferry boat was sentenced to seven years in prison. Although he fled to the UK, the public prosecutor has undertaken serious efforts to have him returned to Egypt.<sup>337</sup> Another case in which the public prosecutor played an important role in defending society’s interests against corruption was a debatable wheat shipment imported recently by Egyptian authorities. The debate followed complaints that wheat unfit for human consumption entered the country without proper quality control approvals. The shipment was imported by a private sector company for the General Authority for Supply Commodities (GASC), the government’s main wheat buyer. After the public prosecutor ordered all wheat imports to be checked for quality,<sup>338</sup> a decision was made to send back the unfit shipment and ban its entry into the Egyptian market. In addition, the public prosecutor urged the importing company to pay back the cost of the shipment, which the GASC had paid to the company.<sup>339</sup>

### Integrity mechanisms

ACAs are governed by strict rules. Rules related to conflict of interest, gifts and presents which apply to government employees are applied to ACA employees, though they are implemented in a stricter manner. In addition, strict monitoring is applied to new employees for a full year before they receive tenure in their jobs.<sup>340</sup>

In practice, personnel in ACAs are selected according to specific professional standards. Having a good reputation and being honest, impartial and competent are major and important prerequisites for new members.<sup>341</sup>

Law 47/1978 organising civil servants stipulates the rules on conflict of interests as well as rules on accepting gifts. Article 77 of Law 47/1978 stresses conflict of interest as a legal basis that should be applied to the various types and levels of government jobs. Article 77 of Law 47/1978 prohibits civil servants and government employees from accepting gifts, hospitality or rewards, or taking commissions or loans in return for carrying out their duties and tasks. Moreover, Law 11/1968 for illegal profiting amended by Law 2/1977 urges all employees of ACAs to file asset disclosure forms showing their own properties as well as the properties of their spouses and children.

### Transparency

Under the law, reports of ACAs are not required to be published. In practice, such reports are submitted either to the President, Prime Minister or the PA, and they are not published for the public.<sup>342</sup> For example, reports of the CAO are only delivered to the President of the Republic and the legislature. Also, according to the Egyptian law of criminal proceedings, Articles 61 and 52, the public prosecutor is not required to make his reports publicly available. But in some cases he can issue press statements to clarify some general opinion issues.<sup>343</sup>

335 ‘Dash for freedom’, *Al-Ahram Weekly*, 13 August 2008; [weekly.ahram.org.eg/2008/909/pr1.htm](http://weekly.ahram.org.eg/2008/909/pr1.htm)

336 ‘Lawyers blame ferry verdict on referral to misdemeanours court’, *Daily News Egypt*, 8 March 2008; [www.dailystaregypt.com/printerfriendly.aspx?ArticleID=15492](http://www.dailystaregypt.com/printerfriendly.aspx?ArticleID=15492)

337 Elesbou, 12 June 2009; [www.id3m.com/D3M/View.php?image=p08-019-12062009.jpg&Number=1&ID=280277](http://www.id3m.com/D3M/View.php?image=p08-019-12062009.jpg&Number=1&ID=280277)

338 ‘Against the grain’, *Al-Ahram Weekly*, 21-27 May 2009; [weekly.ahram.org.eg/2009.htm](http://weekly.ahram.org.eg/2009.htm)

339 Elesbou, 12 June 2009; [www.id3m.com/D3M/View.php?image=p08-019-12062009.jpg&Number=1&ID=280277](http://www.id3m.com/D3M/View.php?image=p08-019-12062009.jpg&Number=1&ID=280277)

340 *Global Integrity Scorecard: Egypt 2008*.

341 *Ibid.*

342 *Global Integrity Report, 2007 Assessment, Egypt*; [report.globalintegrity.org/reportPDFS/Egypt.pdf](http://report.globalintegrity.org/reportPDFS/Egypt.pdf)

343 *Ibid.*



### Complaints/enforcement mechanisms

Most government ACAs have various powers that even go beyond whistle-blowing, undertaking investigations and turning over corruption cases to the competent court. In practice, CAO reports on government performance and budget remain the most influential tool, whereas the public can submit complaints to the attorney general, who receives society's appreciation and trust in fighting corruption.

However, in practice, making public complaints is not sufficiently protected, as Law 2/1977 establishing the illegal profiting apparatus imposes penalties on people proven to have lied or acted with bad intentions in the reporting of corruption, whether or not the information resulted in legal proceedings.<sup>344</sup>

There are no special provisions regarding whistle-blowing, though ACAs have strict regulations and moral codes that should be followed. They also have internal monitoring and disciplinary codes for their members.

### Relationship to other pillars

ACAs in Egypt have a strong relationship with the President, legislature and executive according to their affiliation and reporting status. On the other hand, there is a growing number of private associations and non-governmental organisations operating in the area of integrity, transparency and corruption fighting in Egypt.

However, because the anti-corruption campaign in Egypt is entirely government-run and does not seek to include input from CSOs, the government has set itself up for criticism of being strongly affected by political interference.<sup>345</sup>

### Recommendations

- Shield ACAs from political interference by enhancing their independence and ensuring that no political interference takes place in their decisions, as has been the case in several incidents. One suggestion is to make the appointment of the public prosecutor by election from inside the judicial branch. This could strengthen the independence of the public prosecutor and thus increase the effectiveness of his role in fighting corruption.
- Enhance the transparency of ACAs' findings and reports by making them available to the public after investigations have been carried out.
- Establish an effective mechanism for whistle-blowing and follow up on the investigations and decisions of ACAs in a more transparent manner to the general public.

<sup>344</sup> *Global Integrity Scorecard: Egypt 2008.*

<sup>345</sup> *Focus group meeting held in Cairo, June 2009.*

# 12. MEDIA

### Resources/structure

The key media entity in Egypt is the Egyptian Radio and Television Union (ERTU). Television remains the most popular medium in Egypt and its audience is increasing rapidly. Moreover, according to BBC News, nearly two-thirds of Egyptians also listen to the radio on a daily basis, with news and religious programming being particularly popular.<sup>346</sup> The number of newspapers in Egypt soared to more than 500 in 2005,<sup>347</sup> in 2005, most of which are independent (i.e. non-State owned, but including political parties' newspapers and local newspapers as well as newspapers published both in Egypt and outside Egypt).<sup>348</sup>

The launching of the first Egyptian satellite (Nilesat 101) in 1998 allowed for the establishment of several specialised TV channels, in addition to the Egyptian Satellite Channel (ESC) and Nile TV. All of these channels are owned by the Egyptian State. In addition, there are a total of more than 25 other privately owned channels.

Law 96/1996, which organises the press, forbids individuals from possessing a publishing company or distributing newspapers. This contradicts Article 209 of the Constitution regarding freedom of issuing newspapers and the right of individuals and entities to possess them. It also places restrictions on issuing newspapers by entities and grants the right to possess a newspaper to companies with a minimum of EGP 1 million (USD 180,000) in capital. After these lengthy procedures, an entity that requests permission must first obtain a license from the Supreme Council of Press. In addition, according to Law 13/1979 (modified by Law 223/1989), the State monopolises the radio and television networks, and forbids the ownership of radio and television entities by individuals except through limited companies backed by large amounts of capital.

Journalists' economic security is not guaranteed in Egypt, as their salaries are generally very low. The average annual salary for a journalist ranges from USD 100 to USD 600, while well-known journalists' salaries can reach USD 4,000.<sup>349</sup> Since they do not have an efficient social safety network, many journalists have additional jobs for other media outlets and as advisors to businessmen. In many cases this creates a conflict of interest, since such a journalist has the ability to publish articles that could serve the personal interest of another individual.

### Role(s) of institution/sector as pillar of NIS

Article 47 of the Constitution states: "Everyone can express himself through several means (publishing, drawing, speaking etc.) in accordance with the law." Article 48 of the Constitution states that "freedom of the media is guaranteed and the censorship of newspapers and closing or blocking them is prohibited. There are two exceptions; during war and emergency case, a limited censorship can be imposed by law to protect the national security." Hence Egyptian laws and the Constitution guarantee freedom of the media and speech, though this is subject to restrictions. For example, the legislation department (Fatwa) of the State Council stated the Supreme Council for Islamic Affairs has the right to review artistic works related to religion.<sup>350</sup> Moreover, there are some impediments to the right of freedom of speech, such as:

<sup>346</sup> BBC News, 'The Media in Egypt', 2 September 2005; [news.bbc.co.uk/1/hi/world/middle\\_east/4199054.stm](http://news.bbc.co.uk/1/hi/world/middle_east/4199054.stm)

<sup>347</sup> The categorisation of these newspapers is not mentioned. The number of newspapers in Egypt as of 2009 is also not known, and attempts to get the exact number from the higher council of journalism proved to be unfruitful

<sup>348</sup> The focus group meeting held in Cairo in June 2009 identified that the exact number of newspapers distributed in Egypt is debatable and that the overall number ranges between 500 and 600 newspapers. The difficulty of counting newspapers lies in the existence of a huge number of provincial newspapers in Egypt. Such newspapers have limited geographical distribution and are hard to monitor by regulatory authorities in Egypt. There are also many newspapers that are licensed and printed in other countries. Such offshore newspapers often circumvent certain constitutional rules, such as the restriction of the establishment of newspapers to legal entities, corporate bodies or political parties. Over 200 titles are registered abroad, mostly in Cyprus, and are brought back in Egyptian. (Press Reference website, 2009).

<sup>349</sup> These salaries are based on several newspaper articles dealing with journalists' economic conditions.

<sup>350</sup> Global Integrity Country Report: Egypt, 2006.

- Freedom of speech is restricted through the Penal Code 162/1958 and the Press Law 96/1996, which contain vaguely worded statutes. This latter prohibits publishing anything that may be construed as “undermining the dignity” of the Head of State. This article is used to forbid any direct attack on the President. The Penal Code and libel laws also forbid criticism of the military or foreign leaders.<sup>351</sup>
- Al-Azhar, the biggest religious institution, was given the right to monitor and confiscate religious publications by the Egyptian Ministry of Justice.<sup>352</sup>

Regarding the degree of independence, the GOE controls the largest share in the three largest newspapers – *Al-Ahram*, *Al-Gomhuria* and *Al-Akhbar*. It should be noted that most chairmen of government newspapers are members of the ruling party (NDP). Over time, the number of independent newspapers in Egypt has increased, particularly under the current regime.<sup>353</sup> For example, the daily *Al-Dostor* newspaper criticises the government and raises issues related to corruption and human rights abuses. In addition, Egyptian political parties are entitled to issue their own publications.

In Egypt, a license must be obtained for any media outlet to be established. Until 1996 no media license could be obtained unless a private-joint stock company was created and it had the consent of eight different government authorities. The first (and primary) condition for obtaining a media license is citizenship.<sup>354</sup> Reasonable access to various media outlets has improved in Egypt, as there are numerous satellite channels available in homes, cafes and village squares, and it is generally considered to be inexpensive. However, according to the Global Integrity Country report on Egypt published in 2006, since the GOE controls the three largest newspapers – *Al-Ahram*, *Al-Gomhuria* and *Al-Akhbar* – these national newspapers sided strongly with candidates of the ruling party (NDP) in the last parliamentary elections (2005) and provided large-scale coverage of their conferences. The report also finds that they marginalised other political parties and leaders. This occurred as other private and independent newspapers have been more neutral than the national mass media in terms of coverage space given to competing parties in the elections. The State television channels have also tended to side with NDP and its candidates without much objectivity and balance, as shown by news satellite channels such as *Al-Jazeera* and *Al-Arabia*. According to the Global Integrity Country Report, these private channels have shown violence, police interference, depriving electors of voting and attacking judges, while the Egyptian State television channels have not reported on these events.<sup>355</sup> However, it can be stated affirmatively that despite the alleged bias of State-owned media outlets for the NDP and GOE, there has been an increasing space of freedom both in State-owned media outlets and especially in the aforementioned newspapers and television channels that provide objective criticism of the GOE. Additionally, private media outlets have been allowed greater space for criticism.

Although Egypt has constitutional, legal, customary and conventional guarantees of media independence, the media is subject to two kinds of censorship: government censorship and self-censorship. This is the result of various laws that are used, whether directly and indirectly, to inhibit free speech. By the end of 2007 the number of laws that had been used to restrict media independence reached 186.<sup>356</sup> This is possible because of contradicting provisions in the Constitution, Penal Code, Emergency Law, Media Law and religious-related regulations as aforementioned (as well as laws specific to associations, unions, Ministry of Information and Higher Council) that impede freedom of the media and press.

351 Freedom House, *Freedom of the Press 2008 - Egypt*, 29 April 2008, available at: [www.unhcr.org/refworld/docid/4871f60c.html](http://www.unhcr.org/refworld/docid/4871f60c.html) [accessed 11 November 2009]

352 *Global Integrity Country Report: Egypt*, 2006.

353 Sassan Assaf, ‘Comparative report on the state of the media in Egypt, Jordan, Lebanon and Morocco’, *Promoting the rule of law and integrity in Arab countries project*, UNDP, May 2007;

[www.ifes.org/publication/afa896d49cfcb8fe19420c639c1481b0/Media%20Comparative%20Report%20FINAL.pdf](http://www.ifes.org/publication/afa896d49cfcb8fe19420c639c1481b0/Media%20Comparative%20Report%20FINAL.pdf)

354 *Ibid.*

355 *Ibid.*

356 *Ibid.*

The Emergency Law gives authorities extensive powers to restrict civil liberties and order censorship or closure of the print media. In short, the law is used to enforce government censorship and make the media financially dependent on the government. In addition to these legal restrictions, government authorities encourage the media, in the interest of national security and integrity, to adopt professional criteria that effectively impose self-restrictions on the media. These government officials are in regular contact with the media to ensure these professional standards are followed.<sup>357</sup>

There are no formal rules that govern political advertising, though there is an evident bias of State-owned media toward NDP figures.<sup>358</sup> According to the Egyptian Organisation for Human Rights's annual report for 2007, numerous cases have been reported of mistreatment of journalists who tackled corruption issues, abuses by police forces and secret service, or criticised political figures. The number of such cases from 2000 to 2007 was around 27. While there were only few cases in 2006 and 2007, the peak was about 11 cases in 2000.<sup>359</sup>

There have been positive developments in the last few years, as the media has been targeting corruption in an extensive way. Still, there are many restrictions journalists and news broadcasters face when investigating corruption cases which involve influential individuals related to the government or the NDP. However, some newspapers (e.g. *Al-Dostor*) focus on such political and corporate scandals, and pursue them as their main publishing material.

Regarding the commitment to integrity, transparency and good governance, in 2006, the Egyptian Journalists Syndicate has mounted an extensive campaign to pressure the President to fulfil a February 2004 promise to decriminalise press offences. More than 20 newspapers went on strike for a day in July of the same year as part of the campaign, which many journalists credit with leading to the last-minute deletion of a controversial amendment to the Penal Code. The President agreed to remove a provision that would have stipulated prison sentences of up to three years for journalists who defame public officials by alleging corruption. The provision was aimed at silencing independent and opposition newspapers that carried more reports on corruption scandals.<sup>360</sup> The government rhetorically supports freedom of the press while curtailing it in practice. High-visibility cases include Egypt's April 2006 arrest (and subsequent release) of Al-Jazeera's bureau chief for false reporting, and a separate crackdown on Al-Jazeera in which the State issued criminal charges against a producer for her work related to a documentary about torture.<sup>361</sup> In May 2007 the producer was convicted of "harming Egypt's national interest" and "falsely depicting events,"<sup>362</sup> and was sentenced to six months' imprisonment and fined.

The Constitution protects press freedom. It forbids censorship except during war or a state of emergency, which has been in place since 1981. However, several laws undermine this constitutionally enshrined freedom of expression and make defamation, the publishing of false information and the undermining of national institutions punishable.<sup>363</sup>

State-owned newspapers and TV stations do not target or broadcast any news about internal corruption in the media if it touches influential people in authority.

357 Sassan Assaf, 'Comparative report on the state of the media in Egypt, Jordan, Lebanon and Morocco', Promoting the rule of law and integrity in Arab countries project, UNDP, May 2007;

[www.ifes.org/publication/afa896d49cfc88fe19420c639c1481b0/Media%20Comparative%20Report%20FINAL.pdf](http://www.ifes.org/publication/afa896d49cfc88fe19420c639c1481b0/Media%20Comparative%20Report%20FINAL.pdf)

358 Al-Mashat, Abdul-Monem, 'Political Finance Systems in Egypt Regulation and Disclosure:

*The Way out*, 13th International Anti-Corruption Conference (IACC), Athens, Greece, 30 Oct. - 2 Nov. 2008

359 Egyptian Organization for Human Rights, 'Annual Report 2007', Cairo, Egypt. <http://en.eohr.org/?p=43#more-43>

360 Committee to Protect Journalists, 'Attacks on the Press 2006: Egypt', 5 February 2007;

[cpj.org/2007/02/attacks-on-the-press-2006-egypt.php](http://cpj.org/2007/02/attacks-on-the-press-2006-egypt.php)

361 Freedom House, 'Countries at the Crossroads 2007: Country Report - Egypt', November 2009.

[www.freedomhouse.org/template.cfm?page=140&edition=8&ccrcountry=154&section=83&ccrpage=37](http://www.freedomhouse.org/template.cfm?page=140&edition=8&ccrcountry=154&section=83&ccrpage=37)

362 *Ibid.*

363 *Ibid.*

At the same time, opposition newspapers in fact do target such kinds of corruption, as when the editor-in-chief of the *Al-Osboa* newspaper started a campaign in 2005 accusing the ex-Egyptian Journalists Syndicate chairman of using his authority, and position as the head and editor-in-chief of the *Al-Ahram* newspaper, to get money out of the *Al-Ahram* newspaper.<sup>364</sup>

Finally, although the law gives journalists the right to obtain news and information, there are several laws that restrict the freedom of news and information sharing, including Law 2/1975 (modified by Law 22/1983), Law 356/1954 (prohibiting citizens from accessing any government archives, records and documents), the Penal code Item 80 and Law 162/1958 (the emergency law), giving the President authority to censor media.

### Accountability

According to the Global Integrity Country Report on Egypt of 2007, there are many restrictions placed upon newspapers as aforementioned, especially if corruption-related stories are being investigated. This surely diminishes the freedom of newspapers and all information media. Although the law and Constitution guarantee the right of journalists to find news and information, in practice this is hindered by several laws and regulations.<sup>365</sup>

It can also be said that no legal texts oblige the government to present information to anyone. The legal system also restrains the right of citizens, the press and NGOs to access information. In addition, the main media organisations in Egypt are controlled by the government. Moreover, among the laws that govern media oversight, Article 33 of the 1996 press law stipulates all press institutions should send their annual budgets to the Central Auditing Organisation (CAO).<sup>366</sup> This is viewed by many as a new attempt on the part of the government to undermine press freedom. Recently an independent newspaper refused to submit its budget to the CAO, and it won a legal case in this regard. Ironically, the Egyptian Radio and Television Union (ERTU), the main media body in Egypt, does not present its annual budget for ratification to the People's Assembly.

### Integrity mechanisms

The Press Law prescribes professional standards and ethics for journalists. The law states: "In regard to what is published, the journalist has to respect the standards and ethics provided for by the constitution and the provisions, keeping in all his activities to the necessities of honour, loyalty, honesty and the ethics of profession and its traditions to preserve society's ideals and values, without violating any of the citizens' rights or harming any of their liberties."<sup>367</sup> Moreover, according to the Code of Journalistic Honour,<sup>368</sup> journalists' adherence to ethical standards is enforced through the laws of their associations and their codes of honour. These standards include:

- the search for the truth
- honesty
- loyalty
- accuracy
- objectivity
- respect for news sources
- the avoidance of defamation

<sup>364</sup> For further information on this campaign, see articles of editor-in-chief of the *Al-Osboa* newspaper (Mostafa Bakry) dated 22/8, 29/8, 5/9, 12/9, 19/9, 3/10 and 10/10/2005. <http://mostafabakry.com/anothermakalat.asp?page=8>

<sup>365</sup> Global Integrity Country Report: Egypt, 2007.

<sup>366</sup> Mona El-Nahhas, 'Threat to the press?', *Al-Ahram Weekly* online, 13-19 December 2007; [weekly.ahram.org.eg/2007/875/eg3.htm](http://weekly.ahram.org.eg/2007/875/eg3.htm)

<sup>367</sup> Sassan Assaf, 'Comparative report on the state of the media in Egypt, Jordan, Lebanon and Morocco', Promoting the rule of law and integrity in Arab countries project, UNDP, May 2007; [www.ifes.org/publication/afa896d49cfcb8fe19420c639c1481b0/Media%20Comparative%20Report%20FINAL.pdf](http://www.ifes.org/publication/afa896d49cfcb8fe19420c639c1481b0/Media%20Comparative%20Report%20FINAL.pdf)

<sup>368</sup> The initiative for an open Arab internet website, code of journalistic honor in Egypt, Cairo, 1983. retrieved on 13 November 2009; [www.openarab.net/laws/2006/laws4.shtml](http://www.openarab.net/laws/2006/laws4.shtml)

- the refusal of bribes, either in the form of money or gifts
- the fight against corruption
- the refusal to submit to others' views
- respect for pluralistic views
- separating advertising and editorial matters
- respect for privacy
- high quality work
- professional solidarity and collective assistance
- protection of the profession's dignity and members
- rejection of external interference and enticement
- protection of journalistic independence
- no plagiarism or stealing of articles
- not to provoke malice, vice or crime

The Code of Journalistic Honour states that "any violation of the regulations mentioned will be considered a breach of Egyptian Journalists' Syndicate Law 76/1970 and Press Law 96/1996."<sup>369</sup> However, only some of these codes are integrated into the press law, and breaking these codes can subject the journalist to punishment ranging from a monetary penalty to imprisonment. However, codes that are not integrated into the press laws or that do not have any legal punishment are dealt with exclusively in the sphere of the press and the Journalists Syndicate. Journalists who break such codes are subject to criticism from other journalists and sometimes – in cases where the issue reported is sensitive – the Journalists Syndicate can condemn such reporting or opinion that breaks the Code of Journalistic Honour. For example, when the editor-in-chief of the independent daily *Al-Dostor* was sent to court for allegations of "publishing false information and rumours" about the President's health, he demanded to have a trial in the Journalists Syndicate and not through a formal trial.<sup>370</sup>

There are professional organisations governing media ethics, including the Journalists Union and the High Council for the Press. However, there are neither rules on conflict of interest, nor on gifts and hospitality. There are also no rules on post-employment restrictions. In fact, there are not even rules on current employment restrictions, as in reality many journalists work as advisors to businessmen or ministers while retaining their jobs as journalists.

### Transparency

In-kind donations or reduced rates made by media organisations to political interests are not required to be disclosed. The political system in Egypt does not depend on donations from certain entities that have interests that correspond with those of a given political party (as is the case with elections in the US). Therefore, in-kind donations/reduced rates do not substantially exist under the aforementioned circumstances. The need for this procedural safeguard is particularly acute given that the main media organisations in Egypt are controlled by the government, which is formed of ministers who are influential members of the ruling party. Thus, bias may result in their reporting on ruling party activities. For example, when the NDP holds its annual conference, many public newspapers and media channels cover it, whereas the annual conferences of other Egyptian parties are not covered to the same extent. It must also be mentioned that Egyptian laws contain regulations governing private contributions to political parties. These contributions are registered in the financial records of the political parties, and donors are given receipts. According to Law 40/1977, amended by Law 177/2005, private and member contributions are registered so as to be subtracted from the taxable income of the donors.

There is no law on freedom of information in Egypt, though the Egyptian Constitution includes the right to access to information, which obliges authorities to give

<sup>369</sup> *Ibid.*

<sup>370</sup> *Mail and Guardian online, Editor to face trial over Mubarak 'health scare', Cairo, 11 September 2007. Retrieved: 13 November 2009; www.mg.co.za/article/2007-09-11-editor-to-face-trial-over-mubarak-health-scare*

and publish this information. This is not granted in practice, as the list of exceptions has increased to include national security information, personal data and central institutions. There are no legal texts that oblige the government to present information to anyone despite the fact that this right is granted by the Constitution. The legal system also restrains the right to access to information of citizens and the press, as demonstrated in the laws mentioned above. It should also be mentioned that since 2003 there have been talks about introducing a freedom of information law, though this has not yet occurred. Since 2008 attempts have been undertaken to introduce a law or memorandum of understanding to ensure information transmitted by media channels is correct, but nothing concrete has evolved as of yet.

### Complaints/enforcement mechanisms

The right to file a complaint against any media or news organisation is open to every citizen, according to Articles 162 and 210 of the Egyptian criminal procedures law (Law 150/1950). For example, complaints were filed by several members of the ruling NDP against the editor-in-chief of the daily newspaper Al-Dostor for publishing false news about the President's health, as explained above. The editor-in-chief was sentenced to two months in jail. However, the President pardoned him in October 2008.<sup>371</sup>

### Relationship to other pillars

The media in Egypt play a vital role in transmitting information as well as forming a consensus throughout Egypt and sometimes the Arab world. The media can become more integrated with other pillars of the NIS, mainly CSOs that can help fight corruption and censorship. CSOs can exert pressure on policy-makers to a certain extent to force them to review laws and regulations that govern the media in Egypt. The Egyptian media need more freedom, as 186 laws have been issued that directly or indirectly restrict the independence of the media. In short, the law is used to impose government censorship and make the media financially dependent on the government. Therefore, the media should form a permanent link with CSOs that can, to a certain extent, voice the demands of the Egyptian media.<sup>372</sup>

### Recommendations

- Enact laws and codes of ethics that ensure accountable, responsible reporting, including right of journalists to protect their sources.
- Enact a law on freedom of information.
- Identify the relationships between the political parties and the media in a more transparent manner.
- Increase the collaboration between CSOs and the media to fight corruption by facilitating contacts between them. CSOs working on media issues are mainly human rights advocacy groups, which themselves are in a precarious legal situation. International NGOs such as the International Federation of Journalists (IFJ) and Committee to Protect Journalists (CPJ) produce detailed reports on the state of media freedom, but their function is "reactive."<sup>373</sup> Other regional NGOs such as the Centre for Media Freedom-Middle East and North Africa (CMF-MENA) are not subject to the risks that face local NGOs,

371 United Nations Refugee Agency (UNHCR), 'Egypt: Outspoken editor's jail sentence pardoned', 6 October 2008; [www.unhcr.org/refworld/publisher/CPJ,,EGY,48fd8545c,0.html](http://www.unhcr.org/refworld/publisher/CPJ,,EGY,48fd8545c,0.html)

372 Sassini Assaf, 'Comparative report on the state of the media in Egypt, Jordan, Lebanon and Morocco', Promoting the rule of law and integrity in Arab countries project, UNDP, May 2007; [www.ifes.org/publication/afa896d49cfcb8fe19420c639c1481b0/Media%20Comparative%20Report%20FINAL.pdf](http://www.ifes.org/publication/afa896d49cfcb8fe19420c639c1481b0/Media%20Comparative%20Report%20FINAL.pdf)

373 Nada Mobarak Ibrahim, Aurélie Lachant and Lara Nahas, 'NGOs as Civil Society Actors on Media Policy Change in Egypt Capacity Building within a Contextual Framework', Report produced for Stanhope Centre for Communications Policy, London School of Economics, Development Studies Institute, 2003; [www.stanhopecentre.org/research/mdps\\_egypt.pdf](http://www.stanhopecentre.org/research/mdps_egypt.pdf)



but their role is limited and unlikely to go beyond a consultative one for local groups, as well as beyond publicising media developments in Egypt and the rest of the Middle East to the outside world.<sup>374</sup>

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<sup>374</sup> *Ibid.*

# **13. CIVIL SOCIETY ORGANISATIONS (CSOs)**

### Resources/structure

Egyptian CSOs have gone through three main phases since their creation in the 19th century. The first phase dates from the 19th century through the 1952 coup d'état. This era was characterised as the Liberal era with many diverse CSOs. The second phase was from the 1952 coup d'état until the 1970s, which was characterised by heavy-handed government intervention and the co-opting of CSOs into government-initiated programs. The third phase dates mainly from the 1970s until today. It began with Sadat's introduction of an open market economy and its accompanying political liberalisation measures.<sup>375</sup> However, only businessmen's associations grew dramatically during Sadat's era. With the advancement of the Mubarak regime in 1982, no major policy changes were enacted concerning CSOs. Through the 1990s, the number and activities of CSOs expanded dramatically, especially with the hosting of the United Nations International Conference on Population and Development in 1994 and the accompanying high degree of NGO participation.<sup>376</sup> Their activities were mainly the result of the retreating role of the State in financing social activities. The number of CSOs increased from 7,593 in 1985 to 16,000 in 1999.<sup>377</sup> Advocacy organisations concerned with the promotion of and respect for human rights and civic culture numbered around 30 by 1999. Organisations active in empowering women rose from 19 in 1985 to almost 2,000 by 1995. Business associations grew tremendously; now there are 64 as opposed to 21 in the 1980s.<sup>378</sup> With the increasing number of CSOs, greater pressure has been exerted on the government to reform Law 32/1964, with all of its restrictions on CSOs. Accordingly, a new CSO law was enacted in 1999, though it was deemed unconstitutional. The latest CSO law was enacted in June 2002, becoming the current law governing CSOs today.<sup>379</sup>

The concept of CSOs as discussed in this report is based on the definition of the United Nations Egypt Human Development Report for Egypt (EHDR), with a special emphasis on NGOs. According to the 2008 Egypt Human Development Report (EHDR), CSOs are classified into four groups:

- Non-governmental organisations (development, welfare and service delivery organisations).
- Advocacy organisations that promote the public benefit, including human rights organisations, which seek to influence legislation and public opinion on various issues.
- Associations reflecting business interests.
- Professional groups and labour unions that include physicians, engineers, teachers and other professions. In the case of Egypt, syndicates are considered a special case by scholars because membership is a prerequisite for practicing these professions and it is not voluntary. Further, in Egypt and in a number of other Arab countries, labour unions experience government intervention that reduces their autonomy.<sup>380</sup>

According to the Central Agency for Public Mobilization and Statistics (CAPMAS), as of 2008 there were 1,641 associations that work in the field of environmental protection and 153 working in social defence. All other associations fall under several categories according to CAPMAS' classifications, and they are believed to number 24,449, with the majority based in Cairo.

Human rights organisations are crucial in advancing good governance and transparency in Egypt. They are concerned with alleviating human rights abuses. However, some of these organisations have changed their legal status from an NGO to a "social" law firm in order to continue their operations, as did the Association for Human Rights and Legal Aid.

<sup>375</sup> CIVICUS Egypt Civil Society Index Report, 'An Overview of Civil Society in Egypt', Cairo, 2005, p. 17.

<sup>376</sup> CIVICUS Egypt Civil Society Index Report, 'An Overview of Civil Society in Egypt', Cairo, 2005.

<sup>377</sup> Amani Kandil, 'A Mapping of Civil Society in Egypt', In: UNDP Egypt Human Development Report, 2008; [www.undp.org/Portals/0/2008%20Egypt%20Human%20Development%20Report%20Complete.pdf](http://www.undp.org/Portals/0/2008%20Egypt%20Human%20Development%20Report%20Complete.pdf)

<sup>378</sup> *Ibid.*

<sup>379</sup> CIVICUS Egypt Civil Society Index Report, 'An Overview of Civil Society in Egypt', Cairo, 2005.

<sup>380</sup> Amani Kandil, 'A Mapping of Civil Society in Egypt', In: UNDP Egypt Human Development Report, 2008; [www.undp.org/Portals/0/2008%20Egypt%20Human%20Development%20Report%20Complete.pdf](http://www.undp.org/Portals/0/2008%20Egypt%20Human%20Development%20Report%20Complete.pdf)

Funding for CSOs is allocated through diversified sources, including the government, the business sector, foreign foundations and agencies, individuals and membership fees. A regional stakeholder survey showed the government represents the biggest source of funding. Another survey of 1,200 NGOs showed that membership fees represent the main source of their funding, followed by donations.<sup>381</sup>

### Role(s) of institution/sector as pillar of NIS

CSOs are not capable to act freely and independently of the State due to restrictions put on them by a number of laws, specifically Laws 32/1964 and 84/2002. At the end of the 1990s, a liberal Association Law was introduced (153/1999). However, it was ruled unconstitutional and was followed by a much more restrictive law (84/2002). Law 84/2002 established two main forms of non-profit organisations: associations (*jam`iyyat*) and civic foundations (*mu`assassat ahliyya*). This law stipulates that all non-profit groups consisting of 10 or more members and that work in the field of social development must be registered with the Ministry of Insurance and Social Affairs, or else face criminal penalties including up to one year's imprisonment (Article 76). Under this law the scope of permissible CSO activities was widened and human rights associations can apply. Under this law, associations can have more than one field of activity, though they must acquire approval from the Ministry of Social Solidarity.

Still, the scope of permissible NGO activities remains limited due to Article 11, which forbids the creation of associations that threaten the unity of the nation or violate public order or morals. However, there is no clear-cut definition of these concepts, which may hamper the creation of many associations. Registered groups are entitled to significant tax privileges, as well as discounted telephone and utility charges (Article 13). Registration of associations is compulsory and groups are forbidden to conduct any activity without registration.

Even though Law 84/2002 limits the ministry's powers over associations more than the previous law, it still gives the green light for government officials to intervene in the internal affairs and governance of associations. This includes the power of the Ministry of Social Solidarity to dissolve any association by decree. The grounds on which the Ministry of Social Solidarity can dissolve groups are vast – for instance, receiving foreign funds or being affiliated with foreign organisations without the permission of the ministry (Article 42). In 2007 the Ministry of Social Solidarity decided to dissolve the Human Rights Association for Legal Aid because it received funding from foreign sources without its approval. However, the association filed two cases in the Administrative Court (Majlis al-Qadaa al-Idary in Majlis al-Dawla) and, according to its head, won the case in October 2008.<sup>382</sup>

Thirteen Egyptian CSOs collaborated in 2007 under the initiative of the New Woman Foundation, with the slogan “in Defence of the Right of Association”. According to the campaign, and as allegedly claimed by CSOs, this is a reaction to violent attacks by the government and security officials against CSOs, including allegedly “false accusations in the media as well as other types of harassment on behalf of the administrative and security authorities.”<sup>383</sup> In May 2009 a standstill developed between the Ministry of Social Solidarity and the EOHR, with officials from the ministry threatening to dissolve the organisation. In response, EOHR built a coalition with 40 other Egyptian and Arab human rights organisations, including the Committee for Defence of Liberty Democracy and Human Rights in Syria, the Tunisian League for Defence of Human Rights and the Palestinian Women Association.<sup>384</sup> This coalition took the occasion to call on the Ministry of

<sup>381</sup> CIVICUS Egypt Civil Society Index Report, ‘An Overview of Civil Society in Egypt’, Cairo, 2005.

<sup>382</sup> Interview with the head of the association in July 2009.

<sup>383</sup> The NGOs Campaign for the Right of Association, *Between Legislation and Reality: Second Report on Violations*. Cairo, 2008.

<sup>384</sup> EOHR, ‘EOHR Received a Response from the Ministry of Social Solidarity on the threat of Dissolution, It calls for Passing an Alternative Bill Replacing Law No. 84/2002’, 11 May 2009; [en.eohr.org/?p=105](http://en.eohr.org/?p=105)

Social Solidarity to take into consideration a proposed bill by a coalition of 150 different Egyptian CSOs in drafting its final amendments for the law.<sup>385</sup>

Another fundamental problem with this law is the minister's ability to object to the proposed board of directors of any association (Article 34). If a new board of any association is being elected, the ministry must be notified of the nominees at least 60 days before the election. The ministry has the power to decide whether certain candidates should not be nominated. All associations must obtain approval of invitation lists for conferences. The ministry also has the power to object to any decision undertaken by an association if the ministry considers it to be illegal (Article 23). Associations registered in one governorate may not work in another governorate without seeking the ministry's approval (Article 22).

The role of CSOs in fighting corruption has been increasing, though it remains short of their potential. Studies indicate that CSOs in Egypt have more impact on people's lives by providing social, welfare and citizen empowerment services than acting as government watchdogs by lobbying on certain politically oriented issues.<sup>386</sup> Moreover, civil society members face several constraints. For example, in 2007 some civil society activists were physically harmed at Al-Azhar University. Students were physically harmed and arrested when they protested against their colleagues in the student council.<sup>387</sup> In 2008 there were attacks by soldiers from the central security forces against the medical team of Al-Nadeem Centre in Kafr El-Dawwar.<sup>388</sup> Additionally, in Aswan the Association of Health and Environmental Development's Board of Trustees was dismissed by Aswan's governor in 2004. The court overruled the governor's decision in 2007.<sup>389</sup>

### Accountability

The Civic Association Law (Law 84/2002) establishes the rules that govern the oversight of CSOs. Article 2 of this law stipulates that the Ministry of Social Solidarity is the administrative authority that oversees CSOs in Egypt. The office of the State Security is within the Ministry of Social Solidarity and plays an important role in the oversight of CSOs. Article 1 stipulates that groups that have at least 10 members and do not seek monetary profit must register with the Ministry of Social Solidarity.

Article 8 holds that CSOs cannot engage in or form military groups, carry out activities that threaten national unity, or violate public morals and order. They are also not allowed to perform any political activities. Article 25(d) stipulates that after an organisation is registered, the Ministry of Social Solidarity can send representatives to any CSO to attend its meetings. The Ministry of Social Solidarity also has the power to call for a General Assembly meeting of any CSO. All registered CSOs are obliged to provide the ministry with a copy of the minutes of their General Assembly meetings within 30 days after convening the meeting.

Article 4 requires all CSOs to have an odd number of members on its board of directors. The names of board nominees must be provided to the Ministry of Social Solidarity one day after their nomination and 60 days before the election. The Ministry of Social Solidarity has the authority to remove a board nominee for "non-fulfilment of nomination requirements." For example the ministry removed two political activists from the board of directors of Bashayer for Integrated Development.<sup>390</sup>

<sup>385</sup> EOHR, 'The Ministry of Solidarity Should Stop the Procedures of Dissolving EOHR,

A statement of 41 organisations in 8 Arab Countries', 13 May 2009; [en.eohr.org/?p=109](http://en.eohr.org/?p=109)

<sup>386</sup> CIVICUS Egypt Civil Society Index Report, 'An Overview of Civil Society in Egypt', Cairo, 2005.

<sup>387</sup> Amnesty International, Egypt: Legal Concern, 14 September 2007;

[www.amnesty.org/en/library/info/MDE12/030/2007/en](http://www.amnesty.org/en/library/info/MDE12/030/2007/en)

<sup>388</sup> The NGOs Campaign for the Right of Association, *Between Legislation and Reality: Second Report on Violations*. Cairo, 2008

<sup>389</sup> The NGOs Campaign for the Right of Association, *Between Legislation and Reality: Second Report on Violations*. Cairo, 2008.

<sup>390</sup> Mohamad Agati, 'Undermining Standards of Good Governance: Egypt's NGO Law and Its Impact on CSO Capacity', *The International Journal of Not-for-Profit Law*, Vol 9, No. 2, 2006, p.66

According to Articles 43 to 47, CSOs can be penalised by being dissolved if any member commits any law infringement.<sup>391</sup> For instance, the government shut down the Ahalina organisation, which worked in Shubra al-Khima, because of the publishing of some executive actions in its newsletter in 2007.<sup>392</sup>

The extent of CSO accountability to its constituents is unclear. However, an important indicator is the public trust in CSOs. According to the World Values Survey data from 1999-2000, public trust in Egypt towards CSOs is very high, with 86 per cent of the surveyed population trusting CSOs. The most trusted CSOs are faith-based organisations, which top the trust list, followed by environmental groups and women's groups. Two out of three citizens trust trade unions, according to the study.<sup>393</sup>

In 2008 the EHDR found out that 67 per cent of sampled CSOs had 5 to 10 members on their boards of directors. However, women represented a small number on these boards of directors. In 2005, the Civil Society Index report for Egypt argued that CSOs feel more accountable to their donors rather than their constituency or the public in general.<sup>394</sup>

### Integrity Mechanism

Elements of good governance have not been well-integrated into the work of CSOs in Egypt. "Field work indicators unveil limited democracy and a lack of transparency and accountability inside some civil society institutions. This sometimes leads to the personalisation of the institute (being known by the name of its founder, manager, or head of the board), making the circulation of power almost impossible, and affecting authorisation, participation and empowerment. In other cases, decision making is limited to a few members."<sup>395</sup>

Though some CSOs have tried to make good governance part of their everyday conduct by widening the decision-making process and member participation therein, corruption and the misuse of their directors' and participants' own power have been reported in a number of CSOs. Scholars have argued this deficiency is due to the heavy government control over CSOs. For example, CSOs must obtain permission to conduct their work, instead of just notifying the Ministry of Social Solidarity. Similarly, Article 17's restrictions on sending money abroad or receiving money from abroad without prior approval make operating by the letter of the law more cumbersome.<sup>396</sup>

Articles 30, 35 and 36 of Law 84/2002 address the issue of conflict of interest. Accordingly, members of CSO boards of directors are not allowed to hold administrative posts, vote on issues that directly affect their personal interests, or get paid from the CSO on whose board they serve. The law does not state CSOs should publish their budgets. It does not establish rules for the beneficiary groups of any CSO. The law does not mention anything that applies to good governance. The intensification of the Ministry of Social Solidarity's power over CSOs threatens good governance. For example, some CSOs keep their activities secretive and do not publish information on them so they will not be penalised under the law.

<sup>391</sup> *Ibid.*

<sup>392</sup> *Global Integrity Report, 'Egypt: Integrity Indicators Scorecard', 2007; report.globalintegrity.org/Egypt/2007/scorecard/2*

<sup>393</sup> *CIVICUS Egypt Civil Society Index Report, 'An Overview of Civil Society in Egypt', Cairo, 2005.*

<sup>394</sup> *Ibid.*

<sup>395</sup> *Mohamed Agati, 'Undermining Standards of Good Governance: Egypt's NGO Law and Its Impact on CSO Capacity', The International Journal of Not-for-Profit Law, Vol. 9, No. 2, 2006.*

<sup>396</sup> *Ibid.*

### Transparency

According to Law 84/2002, Article 25 (d), the Ministry of Social Affairs (now Ministry of Social Solidarity) may send representatives to any CSO to attend its meetings. Furthermore, CSOs must provide the Ministry of Social Solidarity with the minutes of their General Assembly meetings within 30 days of the meetings. CSOs must obtain permission from the Ministry of Social Solidarity before they can cooperate with international CSOs. According to Law 84/2002, Article 16, CSOs may affiliate with international organisations or conduct activities in cooperation with foreign CSOs.<sup>397</sup> Since permission is required in order to conduct their activities, CSOs must be transparent concerning their activities and affiliations, or they risk being closed.

In general, CSOs publish their activities and the names of their donors in their pamphlets and on their websites. For example, the Egyptian Centre for Women's Rights discloses information concerning their activities and donors on their website ([www.ecwronline.org](http://www.ecwronline.org)). According to Law 84/2002, Article 34, nominated individuals for the board of directors first must obtain permission from the Ministry of Social Solidarity. Thus, membership of any CSO is public knowledge and provided to the Ministry of Social Solidarity.

As for funding, Law 84/2002, Article 17 stipulates that CSOs may not accept foreign funding without authorisation from the Ministry of Social Solidarity. Funding by national organisations is governed by certain regulations under the provisions of the same law, Articles 42 and 72. Accordingly, CSOs must provide a report with details of its revenues, funding sources and donations to the Accounting Auditors Register. If a CSO acquires or distributes funds without proper authorisation, it may be dissolved and its members may face criminal penalties or imprisonment.<sup>398</sup>

According to a survey conducted by the Centre for Development Studies in 2005, 70 per cent of CSO members said they provide their general assemblies and constituents with an annual report including budget details. However, a large proportion of respondents believed they are not obliged to do so. They believe it is more important to disclose this information to their donors rather than constituents.<sup>399</sup> According to the same survey, CSOs do not perceive themselves as “watchdogs” over the government, and thus the role of CSOs in this area is very limited, apart from human rights organisations.<sup>400</sup>

### Complaints/Enforcement Mechanisms

There is no specific information on the processing of complaints. However, the channels of processing complaints against CSOs are mainly through the NCHR and the media.

### Relationship to other pillars

CSOs maintain a relationship with the judiciary, since in many instances CSOs file complaints against the government upon which the judiciary rules either in favour or against CSOs. They are also closely linked to the executive, especially the Ministry of Social Solidarity, which oversees their activities and in many instances limits their independence. The media and the business sector have close relationships with CSOs as well. For example, more than 20 CSOs partnered with the National Council for Childhood and Motherhood in media campaigns regarding awareness of female genital mutilation, child labour and street children.

<sup>397</sup> *Ibid.*

<sup>398</sup> *Ibid.*

<sup>399</sup> CIVICUS Egypt Civil Society Index Report, 'An Overview of Civil Society in Egypt', Cairo, 2005.

<sup>400</sup> *Ibid.*

The scope of CSO monitoring of the government's performance is difficult to assess precisely, as "some CSOs prefer not to engage in open confrontations with the government when making their demands. Rather, they seek to negotiate and mediate their demands behind the eyes of the media, and often behind closed doors."<sup>401</sup> However, some CSOs, mainly human rights organisations, have publicly condemned the Egyptian government's policies.<sup>402</sup> Lately, CSOs have supported some of the judiciary's reformists in their positions against the government. Relatively speaking, CSOs maintain a stronger relationship with the judiciary and executive than business and the media. However, their main focus has been on the government when it comes to fighting corruption.

### Recommendations

Reduce the constraints established by Law 84/2002 regarding the control of the government for CSOs through the following measures:

- Enhancing the dialogue between government officials and CSOs regarding the proposed new amendments for Law 84/2002.
- The Egyptian Alliance for the Freedom of NGOs, which consists of nearly 140 Egyptian CSOs, should be allowed to debate the proposed changes to the CSO law.
- Clear guidelines and concept definitions should be enacted to restrict the closure of CSOs in the future.
- Allow more freedom for CSOs to operate in the fields of anti-corruption and transparency.

In addition, the following internal recommendations were made:

- Set clear transparency guidelines for the financial management of CSO budgets.
- Stop the presence of Ministry of Social Solidarity representatives in the general assemblies of the CSOs.
- Establish codes of conduct for CSOs for those that lack one, in addition to general guidelines for a common code of conduct that should be initiated as a joint effort within CSOs themselves, without interference from the government but perhaps with engagement of the judiciary, media and other societal actors.

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<sup>401</sup> *Ibid.*

<sup>402</sup> *Ibid.*



# 14. BUSINESS SECTOR

### Resources/structure

The private sector is regarded as the main pillar on which the Egyptian economy has depended in recent years. It acts as the main engine of growth and the main body of generating job opportunities. So far the private sector's experience has been considered successful, as its importance in the Egyptian economy is growing and it represents about 60-70 per cent of GDP. The private sector's investments reached about EGP 134 billion (USD 24 billion) in 2007/08, representing 67 per cent of implemented investments, a 38 per cent increase from 2006/07.<sup>403</sup>

The types of business firms allowed in Egypt are determined by the Law of Commerce (Law 17/1999) and the Companies Law (Law 159/1981), which contain the rules, procedures, accounting and reporting requirements for companies. Law 17/1999 mainly deals with the sole proprietor and simple partnerships. Law 159/1981 regulates joint stock companies, limited partnerships by shares and limited liability companies. Foreign branches, representation offices, franchising, commercial agents and contractors are also allowed following additional regulations that might discriminate against foreign partners in some fields of economic activity, such as import agencies as well as some specific maritime services.<sup>404</sup>

The private sector is prevalent in a large number of sectors, including agriculture, real estate and construction, food and beverages, milling, pharmaceuticals, cement, chemicals, fertilisers, engineering, retail, textiles, housing, tourism and telecommunications.<sup>405</sup> The government has tried to boost privatisation since 2004. A new Ministry of Investment was established in 2004 and is playing a major role in this process. Accordingly, a key policy of the GOE has been to encourage the private sector to invest in different projects in all sectors and lead the process of economic growth and development.<sup>406</sup>

The leading sectors in the Egyptian economy are petroleum, non-petroleum manufacturing and transportation, which achieved growth rates of 8.4, 8 and 8.1 per cent, respectively, in 2007/08.<sup>407</sup> Also, building and construction, communications and information technology, Suez Canal and tourism maintained high growth rates, ranging between 14 and 24 per cent in 2007/08. The private sector is present in almost all sectors of the economy, to varying degrees. Even in public utilities such as electricity, water and wastewater, the private sector has begun to play a larger role.

In light of deregulation, privatisation and the gradual withdrawal of government ownership, fears grew over economic concentration and the dominant positions of a few business players leading to market distortions, which can negatively affect economic activity. In this context, and in line with government policy, a number of regulatory bodies were established to regulate and maintain service/product standards and availability at reasonable prices. Therefore, there was a strong need for a law to establish the rules for a free market based on true competitive forces and preventing abuse of market power that obstructs productivity and growth.<sup>408</sup> Law 3/2005 on the Protection of Competition and the Prohibition of Monopolistic Practices and its executive regulations is the main law governing competition in the Egyptian market. The law provides for the establishment of an authority (Egyptian Competition Authority, ECA) that is responsible for monitoring the market and enforcing the provisions of the law. It receives complaints and notifications, and can initiate inspections in cases of malpractice that may harm competition and that violate provisions of the law. It also prepares databases and information about economic activities and undertakes research and studies.<sup>409</sup>

<sup>403</sup> Ministry of Economic Development (2008).

<sup>404</sup> American Chamber of Commerce in Egypt, "Doing Business in Egypt"; [www.amcham.org.eg/DBE/Incorporation05.asp](http://www.amcham.org.eg/DBE/Incorporation05.asp)

<sup>405</sup> *Ibid.*

<sup>406</sup> Bertelsmann Stiftung, *Bertelsmann Transformation Index BTI 2008, Egypt Country Report*; [www.bertelsmann-transformation-index.de/139.0.html?&L=1](http://www.bertelsmann-transformation-index.de/139.0.html?&L=1)

<sup>407</sup> Ministry of Economic Development, 2008.

<sup>408</sup> Egyptian Competition Authority, 2009; [www.eca.org.eg/EgyptianCompetitionAuthority/Static/Message.aspx?MainNav=About&SubNav=Message](http://www.eca.org.eg/EgyptianCompetitionAuthority/Static/Message.aspx?MainNav=About&SubNav=Message)

<sup>409</sup> *Ibid.*

Moreover, there are sectoral regulators in different fields, such as the Central Bank (banking), National Telecommunications Authority (telecommunications), an electricity regulator, and a water and wastewater regulatory body.

The number and influence of interest groups have been growing over the last two decades. Of all interests, the business sector has made the most use of the widened scope for interest group activity. Organisations such as the Chambers of Commerce and the Federation of Industries have spoken with increasing power for their interests and against the State sector and labour unions. Businessmen's associations and different foreign chambers of commerce have united the most powerful business interests and facilitated their access to State resources. The government has supported the formation of new business organisations, such as a joint venture investors' association and an exporters' union.<sup>410</sup> Finally, there has been an increasing trend of partnering between business and other pillars of the NIS, as several powerful businessmen are members of Parliament or have been appointed ministers.<sup>411</sup>

### Role(s) of institution/sector as pillar of NIS

Under the law, all people can apply for a business license. The Guarantees and Incentives Investment Law (Law 8/1997) and Companies Law (Law 159/1981) and their amendments are two key laws that regulate the investment environment in Egypt. Law 8/1997 was designed to encourage domestic and foreign investment in targeted economic sectors and promote decentralisation of industry from the crowded Nile Valley area. When enacted, the law and its executive regulations and amendments offered exemptions, guarantees and advantages to all individuals and companies registered in the companies' department, according to Law 159/1981 organising joint-stock companies. It also provided more than 20 investment incentives.<sup>412</sup> The Income Tax Law, enacted in June 2005 (Law 91/2005), eliminated some of the incentives in the Investment Incentive Law, namely all corporate tax exemptions and tax holidays authorised for newly established companies. The 2005 tax law also repealed tax deductions extended to companies listed on the stock exchange. The tax incentives were not eliminated retroactively, however, so all existing companies continued to receive their tax incentives until the end of the period stipulated by when the company was established.<sup>413</sup> The main body implementing Law 8/1997 is the General Authority for Investment and Free Zones (GAFI). It allows 100 per cent foreign ownership of ventures and guarantees the right to remit income earned in Egypt and repatriate capital.<sup>414</sup>

Law 8/1997 also established a one-stop shop at GAFI for investors to facilitate and simplify the processes of approval, registration, licensing and certification for new projects instead of having to go to several ministries.<sup>415</sup> Law 3/1998, amending Law 159/1981, deals with investors in any sector not covered by Law 8/1997, including shareholders, joint stock and limited liability companies, and representative and branch offices. The law also covers the liquidation of companies.<sup>416</sup> Also, Law 94 of 2005 amended the Investment Incentives Law and Law 159/1981 to make companies incorporated under the Investment Incentives Law subject to the relatively simpler incorporation requirements of Companies Law 3/1998.<sup>417</sup> There are other laws that govern business sector activities in Egypt, including

410 Helen Chapin Metz (ed.), *Egypt: A Country Study*. (Washington, DC: GPO for the Library of Congress, 1990); [countrystudies.us/egypt/117.htm](http://countrystudies.us/egypt/117.htm)

411 Samer Soliman, "Egypt's Political Economy: Unholy Coalition Between Bureaucracy and Business", November 2008; [www.islamonline.net/servlet/Satellite?c=Article\\_C&cid=1226471419306&pagename=Zone-English-Muslim\\_Affairs%2FMAELayout](http://www.islamonline.net/servlet/Satellite?c=Article_C&cid=1226471419306&pagename=Zone-English-Muslim_Affairs%2FMAELayout)

412 American Chamber of Commerce in Egypt, "Doing Business in Egypt"; [www.amcham.org.eg/dbe/lawsofbus.asp](http://www.amcham.org.eg/dbe/lawsofbus.asp)

413 U.S. Commercial Service Egypt, *Doing Business in Egypt*, Country Commercial Guide, 2008, [www.buyusa.gov/egypt/en/doingbusinessinegypt.html](http://www.buyusa.gov/egypt/en/doingbusinessinegypt.html)

414 American Chamber of Commerce in Egypt, "Doing Business in Egypt"; [www.amcham.org.eg/dbe/lawsofbus.asp](http://www.amcham.org.eg/dbe/lawsofbus.asp)

415 Ibid.

416 Info-Prod Research (Middle East) Ltd, *IPR Country Guide, Egypt*; [www.infoprod.co.il/country/egypt2b.htm](http://www.infoprod.co.il/country/egypt2b.htm)

417 U.S. Commercial Service Egypt, *Doing Business in Egypt*, Country Commercial Guide, 2008;

[www.buyusa.gov/egypt/en/doingbusinessinegypt.html](http://www.buyusa.gov/egypt/en/doingbusinessinegypt.html)

the Commercial Register Law (Law 34/1976) and its amendments (98/1996), the Capital Markets Law (Law 95/1992) and its executive regulations that regulate the operations of the capital market in Egypt, and the competition law (Law 3/2005), as well as sectoral regulators. In practice all laws are applied, though the competition law is still not very effective due to difficulties associated with its new establishment and the paucity of information on business activities.

There are no specific articles in business laws that cover private sector corruption directly, though they contain some articles concerning supervision and regulation of companies that consider any action contradicting these laws – if proved – to be illegal. They also report penalties that must be applied in these cases according to the penalty law. These laws are effective in practice.

Under the law attempted corruption is illegal, similar to bribery, blackmailing, money laundering and favouritism. These are all considered violations of relevant laws. The law criminalises all these practices and imposes a specific penalty for each of them. Although there is no specific law in Egyptian legislation for corruption by name, there are many other laws that criminalise and fight corruption.<sup>418</sup>

The Penal Code criminalises both active and passive bribery, as well as using public resources for private gain. The law only refers to public sector and private-public sector corruption, whereas business-to-business corruption is not covered. As the law does not list bribing foreign officials as an illegal act, Global Integrity 2007 concludes it is not considered illegal to bribe foreign public officials in Egypt.<sup>419</sup>

Under the law, offering a bribe (i.e. active corruption) is illegal. Egyptian lawmakers devoted the third chapter of the second book of the penalty law to this crime (Articles 103-111), hence emphasising its dangerous effect. Article 107 stipulates penalties for bribe-givers, takers (civil servants) and mediators, when all sides of the crime are complete. But the same article does not impose penalties on the giver and mediator if they confess, so as to encourage them to disclose the crime.<sup>420</sup>

Penalty Law 58/1937, Article 111 of the third chapter on bribery defines the individuals for whom bribery crimes apply as: (1) civil servants in government agencies or agencies under government supervision, (2) local and national legislators, (3) arbiters, experts, members of prosecution, judges, (4) members of boards of directors of public agencies. Foreign officials and private employees are not included.<sup>421</sup>

Egyptian law criminalises the use of public resources for private gain. In addition, Penalty Law 58/1937, Article 112 of the third chapter on bribery extends public resources beyond state-owned resources to include all resources cited in Article 110 of the penalty law, such as syndicates, unions and economic companies, associations and units. Using all of these resources, in addition to public resources, for private gain is illegal.<sup>422</sup>

In May 2002 Egypt passed an anti-money laundering law (Law 80/2002) that prohibits money laundering. Article 2 of the law defines the different aspects of money laundering crimes. It criminalises the laundering of funds from narcotics trafficking, prostitution and other immoral acts, terrorism, antiquities theft, arms dealing, organised crime and numerous other activities. Article 5 gives employ-

<sup>418</sup> *Global Integrity Report, Assessment, Egypt, 2007*; [report.globalintegrity.org/reportPDFS/Egypt.pdf](http://report.globalintegrity.org/reportPDFS/Egypt.pdf)

<sup>419</sup> *Business Anti-Corruption Portal, Egypt Country Profile, Public Anti-Corruption Initiatives*; [www.business-anti-corruption.com/index.php?id=649](http://www.business-anti-corruption.com/index.php?id=649)

<sup>420</sup> *Global Integrity Report, Assessment, Egypt, 2007*; [report.globalintegrity.org/reportPDFS/2007/Egypt.pdf](http://report.globalintegrity.org/reportPDFS/2007/Egypt.pdf)

<sup>421</sup> *Ibid.*

<sup>422</sup> *Ibid.*

ees of the Central Bank of Egypt's money laundering fighting unit the status of judiciary arrest officers. Article 14 imposes penalties on those who commit or attempt to commit a money laundering crime: a period not exceeding seven years in prison, a fine equal to twice the amount of money involved in the crime, and in all cases the seized funds shall be confiscated or an additional fine equal to the value of these funds shall be imposed if such funds cannot be seized or have been disposed to others in good faith.<sup>423</sup>

The anti-money laundering law 80/2002 established the Egyptian Money Laundering Combating Unit (EMLCU) as Egypt's financial intelligence unit (FIU) within the Central Bank. Money laundering is effectively contained in practice, as money laundering investigations are conducted by one of the three law enforcement agencies in Egypt, according to the type of predicate offence involved. The Ministry of Interior, which has general jurisdiction for the investigation of money laundering crimes, has established a separate anti-money laundering department. The ACA has the specific responsibility for investigating cases involving the public sector or public funds. The third law enforcement entity, the National Security Agency, plays a more limited role in the investigation of money laundering cases, where the predicate offence threatens national security.<sup>424</sup> In January 2005 the National Committee for Combating Money Laundering and Terrorist Financing was established within the EMLCU to coordinate policy implementation among the various responsible agencies.<sup>425</sup>

Some studies have calculated that around USD 5 billion is laundered in Egypt (about 4 per cent of GDP). USD 3 billion of this is generated by drug trafficking.<sup>426</sup> Accordingly, the anti-money laundering law was proposed due to the increasing concern of the government over the danger of this phenomenon and its detrimental effect on Egypt's economy. Also, concerns were expressed by the OECD Financial Action Task Force (FATF) on Money Laundering regarding the absence of a comprehensive legal regime in Egypt to oppose this globally recognised illegal activity.<sup>427</sup> In its 2005 country profile report, the United Nations Office of Drugs and Crimes (UNODC) indicated that in 2004 the FATF removed Egypt from its non-cooperating countries or territories list, owing to Egypt's continued efforts to effectively combat money laundering.<sup>428</sup>

The business sector in Egypt enjoys formal independence to operate in the country without any government intervention. Also in practice, the business sector is independent from any intervention. However, there are obstacles that may hinder citizens from obtaining necessary business licenses. Because this procedure can take a long period of time, bribes and unofficial payments may occur to overcome red tape and expedite government procedures.<sup>429</sup>

The structure of the capital market in Egypt includes the following: Capital Market Authority (CMA), Egyptian Exchange (EGX) (formerly known as Cairo and Alexandria Stock Exchange, CASE), Misr for Central Clearing, Depository and Registry (MCDR) (which was replaced by the General Authority for Financial Supervision in July 2009; see below), capital market companies including the Egyptian Capital Market Association (ECMA), Egyptian Investment Management Association (EIMA), Securities Brokers Association and self-regulatory organisations (SROs).<sup>430</sup>

<sup>423</sup> *Ibid.*

<sup>424</sup> [www.unodc.org/pdf/egypt/egypt\\_country\\_profile.pdf](http://www.unodc.org/pdf/egypt/egypt_country_profile.pdf)

<sup>425</sup> IBA Anti-Money Laundering Forum (2009).

<sup>426</sup> *ECONOMY*, Al-Ahram Weekly, No. 680, 2004; [weekly.ahram.org.eg/2004/680/ec4.htm](http://weekly.ahram.org.eg/2004/680/ec4.htm)

<sup>427</sup> American Chamber of Commerce in Egypt, "Doing Business in Egypt"; [www.amcham.org.eg/db/Financial05.asp](http://www.amcham.org.eg/db/Financial05.asp)

<sup>428</sup> eStandards Forum, Country Profiles, Egypt; [www.estandardsforum.org/jhtml/country/Egypt/sp/66/13](http://www.estandardsforum.org/jhtml/country/Egypt/sp/66/13).

<sup>429</sup> *Global Integrity Report, Assessment, Egypt, 2007*; [report.globalintegrity.org/reportPDFS/2007/Egypt.pdf](http://report.globalintegrity.org/reportPDFS/2007/Egypt.pdf)

<sup>430</sup> Capital Market Authority, *The Experience of the Egyptian Capital Market Authority, March 2004*, Cairo; [www.uneca.org/eca\\_resources/major\\_eca\\_websites/emdl/workshop/northafrican/presentations/Egypt%20Regulator%20Pres.ppt](http://www.uneca.org/eca_resources/major_eca_websites/emdl/workshop/northafrican/presentations/Egypt%20Regulator%20Pres.ppt)

The Capital Markets Law (Law 95/1992) regulates the operations of the capital market in Egypt. Under the Capital Market Law, any company intending to issue securities must notify the CMA.<sup>431</sup>

A new law (Law 10/2009) concerning organisation of the supervision of non-bank instruments and markets, and Presidential Decree 192 of 2009 were issued with the purpose of uniting policies, rules and measures that regulate work in the field of the non-bank financial sector by establishing a single authority to be named “General Authority for Financial Supervision” (GAFS), which started its work on 1 July 2009. The new law and presidential decree regulate the organisational structure for the new authority and provide the legal framework for it.

The establishment of the new authority comes within the framework of the eagerness to increase effectiveness and improve the efficiency of supervision of non-bank financial services with the aim of being always updated with the latest developments, improve financial discipline and protect the rights of investors. The new authority aims to ensure the stability and soundness of non-bank financial markets, and issue various means, systems and rules to ensure efficiency and transparency of these markets.<sup>432</sup>

“The mandate of the GAFS includes supervising all non-bank financial activities to develop and maximise their competitiveness in order to attract more local and foreign investments. The new authority will assume the responsibilities specified by the Egyptian Insurance Supervisory Authority, the CMA and the Mortgage Finance Authority”.<sup>433</sup> The legislative framework governing the operation of the authority (Law 10/2009), as well as Presidential Decree 192/2009, states that the Board of Directors has the ultimate authority concerning all aspects of operation and is responsible for setting and supervising the operating strategy and executive policy. It also states the decisions of the board are final and do not need any approval from any other administrative authority of higher standing. The GAFS was also given all legal authorisations to activate rules of financial supervision and control.<sup>434</sup>

The new authority will enjoy an independent budget and defer its bank balances from year to year as per the current system. Its resources would be derived from funds and charges the State would collect in return for the new services, in addition to fines to be imposed according to the rules organising the non-banking financial activities and from loans to be endorsed by official sides. In addition, Law 10/2009 states that the assets of the three control bodies to be cancelled shall return to the new authority.<sup>435</sup>

Also, Presidential Decree No. 191/2009 was issued to regulate the Egyptian Exchange (EGX) and its financial affairs. The decree stipulates that the Egyptian Exchange shall assume its specialisations according to laws and regulations, thus ensuring the soundness of securities trading, the efficiency of dealers’ performance, and the proper functioning and stability of transactions in the market. The presidential decree stresses the Egyptian Exchange should take all necessary measures and procedures to avoid violations of provisions regulating dealings in the market, monitor violations, and exert efforts to correct them and address their impact.<sup>436</sup>

Decree 191/2009 establishes the competences and missions of the EGX Board of Directors. Among these missions is the issuance of decisions and rules

431 32 American Chamber of Commerce in Egypt, “Doing Business in Egypt”; [www.amcham.org.eg/dbel/Financial05.asp](http://www.amcham.org.eg/dbel/Financial05.asp)

432 Ministry of Investment;

[www.investment.gov.eg/en/Media/PressReleases/Pages/General%20Authority%20for%20financial18-06-2009.aspx](http://www.investment.gov.eg/en/Media/PressReleases/Pages/General%20Authority%20for%20financial18-06-2009.aspx)

433 Ibid.

434 Ministry of Investment;

[www.investment.gov.eg/MOI\\_Portal/en-GB/Announcements/General+Authority+for+financial18-06-2009.htm](http://www.investment.gov.eg/MOI_Portal/en-GB/Announcements/General+Authority+for+financial18-06-2009.htm)

435 ArabFinance; [www.arabfinance.com/news/newsdetails.aspx?Id=125486](http://www.arabfinance.com/news/newsdetails.aspx?Id=125486)

436 Ministry of Investment;

[www.investment.gov.eg/en/Media/PressReleases/Pages/President%20Decision%20Stock%2015-6-09.aspx](http://www.investment.gov.eg/en/Media/PressReleases/Pages/President%20Decision%20Stock%2015-6-09.aspx)

essential for the proper functioning, soundness and stability of transactions in the Egyptian Exchange. This is in addition to forming committees to list securities on EGX tables, and committees of trading and membership, among others; setting up a system of membership; and establishing procedures of members' listing and monitoring. It also includes rules for conduct of work and providing information necessary for dealers in the stock exchange.<sup>437</sup>

The general public is vested in the stock market through the rules established by different governing laws. For example, according to the Egyptian Exchange EGX Securities Listing & De-listing Rules (Decree of the CMA's Board of Directors No. 30 of 2002, amended by Decision No. 94 of 2008), securities are to be listed in the Egyptian Exchange lists if they meet the specific legal requirements dealing with public offering percentage in the company's total shares.

The GOE is currently working to outline a new method for running State-owned assets. The new method will include public participation in the ownership of the State's assets through an equitable distribution of shares of public business sector companies to citizens. This new method will be governed by a legal framework currently under study.<sup>438</sup>

In 2004 the World Bank conducted an assessment of corporate governance implementation in Egypt. According to the report, protection of shareholders' rights is observed in practice,<sup>439</sup> since secure methods of ownership registration are present, listed shares are freely transferable, shareholders can obtain relevant information on corporations on a timely and regular basis, and shareholders have the right to participate and vote at general meetings. In addition, shareholders elect members of the board of directors according to the bylaws and share in the profits of the corporation. Shareholders at the annual general meeting (AGM), at which they approve the distribution of dividends, have the power to propose higher dividends than those proposed by the board.<sup>440</sup>

The business sector does not have any voluntary anti-corruption initiatives and there are no general rules to deal with corruption, though some sectors may have policies concerning whistle-blowing. Also, the corporate social responsibility (CSR) concept is becoming widespread in the business sector, as many companies are beginning to recognise that practicing CSR is important for their public image. This is an important factor if they want to conduct business abroad or with foreign corporations.

In addition, there is no company in Egypt that has policies addressing anti-corruption in a direct way. However, the UN Global Compact was introduced in 2004 in Egypt.<sup>441</sup> This initiative asks companies around the world to voluntarily commit to internalising principles in the areas of human rights, labour, environment and anti-corruption, and to enter into partnerships that help advance UN goals, such as the Millennium Development Goals.<sup>442</sup> More than 60 Egyptian companies have joined the Global Compact. The companies have joined on a voluntary basis and are working to translate the Global Compact's nine principles into concrete activities.<sup>443</sup> The Egyptian network is currently working to establish what will be called the National GC and CSR foundation in Egypt. The newly created institution will become a vehicle to encourage businesses' contribution to developing internal

<sup>437</sup> *Ibid.*

<sup>438</sup> *Egypt State Information Service, November 2008;*

[www.sis.gov.eg/En/EgyptOnline/Economy/000010/020200000000000009203.htm](http://www.sis.gov.eg/En/EgyptOnline/Economy/000010/020200000000000009203.htm)

<sup>439</sup> *Report on the Observance of Standards and Codes (ROSC), Corporate Governance Country Assessment, EGYPT, March 2004;* [www.worldbank.org/ifa/rosc\\_cg\\_egyp2.pdf](http://www.worldbank.org/ifa/rosc_cg_egyp2.pdf)

<sup>440</sup> *Ibid.*

<sup>441</sup> *Business Anti-Corruption Portal, Egypt Country Profile, Private Anti-Corruption Initiatives;* [www.business-anti-corruption.com/country-profiles/middle-east-north-africa/egypt/initiatives/private-anti-corruption-initiatives/](http://www.business-anti-corruption.com/country-profiles/middle-east-north-africa/egypt/initiatives/private-anti-corruption-initiatives/)

<sup>442</sup> *Global Compact;* [www.unglobalcompact.org/NewsAndEvents/speeches\\_and\\_statements/Kell\\_Chatham2008\\_12March.pdf](http://www.unglobalcompact.org/NewsAndEvents/speeches_and_statements/Kell_Chatham2008_12March.pdf)

<sup>443</sup> *Business Anti-Corruption Portal, Egypt Country Profile, Public Anti-Corruption Initiatives;* [www.business-anti-corruption.com/index.php?id=649](http://www.business-anti-corruption.com/index.php?id=649)

compliance for the sector in Egypt. Also, most companies in Egypt try to comply with the code of corporate governance, issued in 2004. This does not address anti-corruption directly, but it combats corrupt practices through principles dealing with disclosure and transparency, protecting shareholders' rights and conflict of interests.

Anti-corruption does not figure in the corporate governance agenda of the private sector in a direct way, but most corporate governance principles are designed to combat corruption through rules regarding disclosure and transparency, protecting shareholders' rights and conflict of interests. "Good corporate governance is a counterbalance to corrupt practices in the private business. Sound corporate governance practices attack the supply side of corrupt relationships by increasing transparency, reducing discretionary power and holding decision-makers accountable."<sup>444</sup> The rapid development of rules of corporate governance is also prompting companies to focus on anti-corruption measures as part of their mechanisms to protect their reputation and the interests of their shareholders. Their internal controls are increasingly being extended to a range of ethics and integrity issues, and a growing number of investment managers are looking to these controls as evidence that companies undertake good business practices and are well managed.<sup>445</sup>

There is no sector or business association in Egypt that has mandatory anti-corruption rules. They only adhere to and apply laws issued by the government in this respect, though business associations in general exert efforts to combat corruption. This is done by addressing economic issues and problems that face the business community through an effective dialogue with government officials and authorities, and by strengthening the role of the business community in economic decision-making policy with the aim of a better application of laws and regulations.

Small- and medium-sized enterprises suffer from corruption, as it impedes their business. Entrepreneurs have to deal with a myriad of obstacles which they can only overcome through bribes or other time- and money-consuming confrontations with the system. According to the Egypt Enterprise Survey of 2007 conducted by the World Bank, 59 and 57 per cent of small and medium enterprises, respectively, identified corruption as a major constraint to their business.<sup>446</sup>

### Accountability

"The laws that govern the incorporation of companies in Egypt are: (1) Companies' Law (Law 159/1981), which regulates joint stock companies, limited liability companies and partnerships limited by shares; and (2) Investment Law (Law 8/1997)."<sup>447</sup>

"The laws and rules governing public and private sector companies listed on the EGX are:

- Capital Market Law (CML 95/1992) and its amendment (Law 123/2008), which is the main replace by is considered the main law regulating the Egyptian financial market in terms of monitoring the market status in general and maintaining steadiness and growth.
- Central Depository Law (CDL 93/2000), which aims to reduce risks associated with trading physical securities, enhance market liquidity and assure fast securities exchange. In other words, the law maintains all registration,

<sup>444</sup> [pdc.ceu.hu/archive/00001434/01/Corporate\\_Governance.PDF](http://pdc.ceu.hu/archive/00001434/01/Corporate_Governance.PDF)

<sup>445</sup> *Global Compact* (2009).

<sup>446</sup> World Bank, *Enterprises Survey, Egypt Country Profile 2007, Enterprise Analysis Unit (FPDEA); www.enterprisesurveys.org/CustomQuery/Country.aspx?economyid=61 & year=2007 & characteristic=size*

<sup>447</sup> Khaled Dahawy, 'Developing Nations and Corporate Governance: The Story of Egypt', Paper presented at Emerging Markets Workshop, New Haven, Connecticut, USA, The Millstein Centre for Corporate Governance and Performance at the Yale School of Management, 2008; [millstein.som.yale.edu/documents/Dahawy\\_Kahled.pdf](http://millstein.som.yale.edu/documents/Dahawy_Kahled.pdf)



- clearance and settlement procedures associated with trading transactions.”<sup>448</sup>
- Securities Listing & De-listing Rules of Egyptian Exchange (EGX), with which all companies listed on the stock exchange shall comply.
  - Egyptian Exchange Membership Rules, which aims to enforce governance principles and limit the risks related to dealing in the stock exchange through managing and controlling such risks.
  - Trading Rules applied by the stock exchange. Moreover, there is the banking law (Law 88/2003), tax law (Law 91/2005), competition law (Law 3/2005), and the anti-money laundering law (Law 80/2002).<sup>449</sup>

Moreover, the Code of Corporate Governance (ECCG) was introduced in 2005 by the Ministry of Investment and the General Authority for Investment and Free Zones (GAFI) as the first code of governance in Arabic based on OECD codes. Although the code started as non-binding guidelines, the Capital Market Authority converted it into binding rules in January 2007. This code is composed of nine chapters, covering issues related to general assemblies, boards of directors, auditors, internal audit and conflicts of interests. The main purpose of the code is ensuring long-term success of businesses and safeguarding the rights of shareholders. The code is also used to describe the rules, regulations and procedures that achieve the best protection of and balance between the interests of corporate managers, shareholders and other stakeholders.<sup>450</sup>

In practice, all of the above-mentioned laws and rules are effective and have a major role in the regulation and supervision of companies, leading to growth, continuity and sustainability of their business. Under the law, the public is not required to be consulted in the work of businesses in any way. In addition, the public as a stakeholder is not regularly consulted in developing or improving companies' anti-corruption policies and practices.

### Integrity Mechanism

“The process of registration, whether for agents or companies, is governed by the Commercial Register Law 34/1976 and its amendments (98/1996)”.<sup>451</sup> The registry process is done through commercial registry offices located in all governorates of the Republic.

The CMA was the securities market regulator, subject to the supervision by the Minister of Investment. The CMA is governed by a board of directors. The capital market law (95/1992) and its amendment Law 123/2008 states this board of directors is to be formed of the Chairman of the Authority as President, the Deputy Chairman as Vice President and four experienced members. The CMA, as stated above, was replaced by the General Authority for Financial Supervision (GAFS) as of July 2009.

The CMA formerly played a crucial role in market organisation and investor protection through ongoing surveillance of all market participants. “The authority’s primary mandates were to protect investors and encourage the development of efficient, orderly and well-regulated primary and secondary markets for securities.”<sup>452</sup> In law, there is no unique body or authority to which the business sector must report, as companies in Egypt are governed by different laws and supervised by various authorities. However, according to Law 10/2009, the General Authority for Non-Banking Financial Supervision replaced the Egyptian Insurance Supervisory Authority, the CMA and the Mortgage Finance Authority in July 2009. “It will supervise and control capital markets, commodities, forward contracts, insurance and real estate business, finance leasing and factoring, as well as protect freedom of competition and information dissemination, protect

<sup>448</sup> *Ibid.*

<sup>449</sup> *Ibid.*

<sup>450</sup> *Ibid.*

<sup>451</sup> American Chamber of Commerce in Egypt, “Doing Business in Egypt”; [www.amcham.org.eg/dbelawsofbus.asp#4](http://www.amcham.org.eg/dbelawsofbus.asp#4).

<sup>452</sup> Capital Market Authority; [www.cma.gov.eg/cma/content/english/about\\_cma\\_en/cma\\_about\\_en.htm](http://www.cma.gov.eg/cma/content/english/about_cma_en/cma_about_en.htm)

dealer rights, and supervise worker training to raise their efficiency. The authority will also be in a position to undertake investigative procedures and lodge general lawsuits related to crimes committed in non-banking financial markets. And it will investigate crimes, even if they were judged by court rulings, in return for payments that shall not be smaller than the penalty imposed or larger than twice this amount, in addition to the value gained by the defendant or the harm the victim suffered due to the crime.<sup>453</sup>

In general, companies registered with the stock exchange must report its financial position and operational performance to the CMA and publish it in two daily newspapers (Article 22, Securities Listing & De-listing Rules of the Egyptian Exchange). This disclosure takes place annually and quarterly. The annual reports must be submitted no later than three months after the end of the fiscal year, while quarterly reports must be submitted within 45 days of the end of each quarter. Information that must be disclosed in the financial position and income statements includes changes in equities, cash flows, complementary clarifications of the statements and the report of the board of directors. In addition, annual reports must include the audit report, and quarterly reports must be accompanied by the review report.<sup>454</sup>

The CMA has the right to ask a company to disclose and publish more items than in previous years. If a company fails to meet this condition, the CMA publishes its comments in the company's financial statements at the cost of that company. Companies are also obliged to publish complete summaries of their annual and semi-annual reports in two widely circulated daily newspapers, at least one of which must be in Arabic. Companies must prepare their financial statements according to Egyptian accounting standards issued by the Ministry of Investment and mostly in harmony with international accounting standards. Companies also must immediately disclose to the CMA and EGX all the important events that may affect the company's financial position or its operational turnover. As soon as the stock exchange is informed, it must publish the information immediately on the monitors and inform brokerage companies.<sup>455</sup>

In addition, companies have to submit their annual and biannual financial statements following the review and approval of the auditor. Quarterly financial statements are to be submitted together with a review report. In this context, it is worth noting that the new registration rules require the company's upper management, executive manager and financial manager to verify that there is no unrecorded information that may affect the company's financial position, and that there are no lawsuits than those filed against the company that may require building up additional allocations other than those mentioned in the financial statements. The annual general assembly has the mandate and authority to appoint the auditors and determine their fees. It is not necessary to disclose information on the fees for consultative services at the annual general meeting. However, the new rules of governance stipulate that auditors cannot provide any consultation to a company they examine and audit unless they obtain a license from the Audit Committee. An auditor cannot be one of the company's founders, board members or employees, or be related by any other means to the company or its board of directors.<sup>456</sup>

Also, if a company needs to issue a capital increase, it has to determine the fair value of the shares. This fair value will depend on the financial position of the company on the date of issuance. The fair value of the shares must be determined by an independent financial advisor among those qualified and listed financial advisors in the register of the Capital Market Authority.<sup>457</sup>

<sup>453</sup> ArabFinance; [www.arabfinance.com/news/newsdetails.aspx?Id=125486](http://www.arabfinance.com/news/newsdetails.aspx?Id=125486)

<sup>454</sup> Decree of the Capital Market Authority's Board of Directors, No. 30 - Dated June 18, 2002, Securities Listing & De-listing Rules of Egyptian Exchange (EGX); [www.egyptse.com/index.asp?CurPage=rules\\_regulations.html](http://www.egyptse.com/index.asp?CurPage=rules_regulations.html).

<sup>455</sup> Ibid.

<sup>456</sup> Focus group meeting held in Cairo, June 2009.

<sup>457</sup> Ibid.

Recently the EGX started to demand that the most active companies – which number about 30 and form EGY 30 index – disclose their ownership structure where ownership exceeds 5 per cent of the company. Under all circumstances, this practice is not considered mandatory either under the law or current regulations. The new Capital Market Law as well as the new registration rules aim to promote ownership disclosure.

Furthermore, according to Presidential Decree No. 191/2009, the Chairman of the stock exchange should instantly report to the Chairman of the General Authority for Financial Supervision with any key developments or influential events on the stock exchange, besides violations and breaches of brokerage companies and those operating in the field of securities.<sup>458</sup>

As for the banks registered with the CBE, they are required to submit reports to the CBE either weekly, monthly, quarterly, semi-annually or annually.

In practice, the reporting of companies and banks to specified bodies takes place, which enhances the investment climate and fosters business sector growth in Egypt.

Besides implementation of and commitment to corporate governance guidelines, most companies – especially large-scale and multinational companies – have their own codes of conduct or codes of ethics that are applied to their staff (e.g. board, financial officers, employees). These codes are designed by each company to guide all employees on how to incorporate their company values, commitments and standards of behaviour into their day-to-day work and into individual and corporate decision-making. They also aim to align employees' behaviour, actions and decisions with their corporate culture, which is represented by a shared set of values, expectations, standards and policies.<sup>459</sup>

Though not all companies' codes of ethics and conduct are accessible, many of these codes have anti-bribery and anti-corruption provisions. These provisions are stated either in a direct way or indirectly by combating bribery and corruption through stressing the values of honesty, trust, integrity, transparency, accountability, etc., and by including some rules governing gifts and hospitality. In general these provisions extend and are actively communicated to subcontractors.

In general, many business organisations and companies in Egypt (mainly large and multinational companies) provide their employees with specialised training in order to develop their skills, and they may train them to take a no-bribery stance. Also, companies create awareness of their code of ethics/conduct through clear and accurate communication of values, commitments and standards, which would help improve organisational effectiveness and overall performance of company employees.

In addition, the Egyptian Institute of Directors (EIoD), an affiliate of the Ministry of Investment designs and delivers a wide variety of training courses and certificate programs covering all areas of corporate governance. These courses and programs are targeted at directors, board members and managers, but also sometimes at other interested parties. Training is designed and delivered to specifically meet the practical needs of participants from listed companies, smaller family-owned enterprises and State-owned enterprises.<sup>460</sup>

In general, facilitation payments are “a form of bribery made for the purpose of expediting or facilitating the performance by a public official of a routine governmental action, and not to obtain or retain business or any other improper

<sup>458</sup> Ministry of Investment; [www.investment.gov.eg/en/Media/PressReleases/Pages/President%20Decision%20Stock%2015-6-09.aspx](http://www.investment.gov.eg/en/Media/PressReleases/Pages/President%20Decision%20Stock%2015-6-09.aspx)

<sup>459</sup> Mobinil Code of Conduct; [www.mobinil.com.eg/aboutmobinil/Code\\_of\\_Conduct\\_Eng08.pdf](http://www.mobinil.com.eg/aboutmobinil/Code_of_Conduct_Eng08.pdf)

<sup>460</sup> The Egyptian Institute of Directors (EIoD); [www.eiod.org/services.asp](http://www.eiod.org/services.asp)

advantage".<sup>461</sup> Facilitation payments are prohibited by Civil Servants Law 47/1978. Facilitation payments are typically demanded by low-level and low-income officials in order to obtain levels of service to which one would officially be entitled without such payments.<sup>462</sup>

Although there are legal regulations governing facilitation payments offered to civil servants and penalties are imposed on persons breaching these regulations, they are not effective in practice. Traditions and conventions developed over the past three decades have established such illegal acts by civil servants as accepting gifts, hospitality and facilitation payments in return to speeding up the process of carrying out governmental action. These conventions became stronger than the laws criminalising such corrupt practices.<sup>463</sup>

Facilitation payments may sometimes help to get some things done in Egypt.<sup>464</sup> Despite the fact that the government has improved its performance in relation to obtaining licenses and permits, obtaining utility connections, and completing required notifications and inspections, it still lags behind other countries in the region. Companies should note that facilitation payments are allegedly required sometimes when dealing with licenses.<sup>465</sup>

Although Egyptian companies and shareholders strive to implement and abide by corporate governance principles, which include rules and procedures concerning avoiding conflicts of interest, the business sector in practice is still suffering from this problem. In addition, cronyism is still common in Egypt and has been amply discussed by the local press and more recently by scholars.

The code of corporate governance tried to solve the problem of conflict of interest by emphasising the necessity of a compliance officer (or internal controller), an internal auditor and an audit committee in each company. In general, the main task of the compliance officer is to ensure the commitment of the company to legal aspects, and that all the transactions taking place within the company are in accordance with laws. He must prevent any illegal actions. In addition, he must take necessary corrective actions in case any problems are discovered. He also receives complaints from customers and shareholders, and lists them in the record of customers' complaints. If the board of directors takes no action concerning these complaints, the compliance officer has the right to report this to the CMA. At the same time the compliance officer may also work as an anti-money laundering officer to ensure no money used in the company is from illegal sources. In this regard he reports to the anti-money laundering unit.<sup>466</sup>

As for the audit committee, it should consist of three non-executive board members. In the case of a company with a board of directors that does not include three non-executive members, it must add at least one non-executive member (and the audit committee must be headed by this non-executive member), in addition to two other experienced members. The audit committee must not have any executive authorities inside the company. The committee has the authority to supervise the work of the internal auditor and compliance officer/internal controller, and to listen to their comments about the company's performance.<sup>467</sup>

The internal auditor is considered the "eye" of the audit committee inside the company because he has access to all documents and work of the company, and he must report to the audit committee in case he discovers a problem and fails to solve it.<sup>468</sup>

<sup>461</sup> *Business Anti-Corruption Vocabulary*; [www.business-anti-corruption.com/about-corruption/vocabulary/#Facilitation](http://www.business-anti-corruption.com/about-corruption/vocabulary/#Facilitation)

<sup>462</sup> *Ibid.*

<sup>463</sup> *Global Integrity Report, 2008*; [report.globalintegrity.org/Egypt/2008/scorecard/54](http://report.globalintegrity.org/Egypt/2008/scorecard/54)

<sup>464</sup> *Business Anti-Corruption Portal, Egypt Country Profile, Corruption Levels*; [www.business-anti-corruption.com/country-profiles/middle-east-north-africa/egypt/corruption-levels/licences-infrastructure-and-public-utilities/](http://www.business-anti-corruption.com/country-profiles/middle-east-north-africa/egypt/corruption-levels/licences-infrastructure-and-public-utilities/)

<sup>465</sup> *Ibid.*

<sup>466</sup> *Focus group meeting held in Cairo, June 2009.*

<sup>467</sup> *Ibid.*

<sup>468</sup> *Ibid.*

Additionally, insider trading is an illegal act and considered a form of conflict of interest. So the CMA has issued rules concerning transparency to prevent this problem, and the EGX is obliged to adhere to them. Most important is the necessity to notify the EGX when any person related to a company (board member, employee, any relatives of board members, etc.) trades on the company's shares. This insider notice helps the EGX prevent any insider trading, so other company shareholders will not be harmed.<sup>469</sup>

The recent Egyptian corporate governance codes (for listed companies and SOEs) are broadly in conformity with OECD instruments. The World Bank and IMF in 2001 began their first assessment of corporate governance in Egypt, which became the first Arab country to undergo a Report on the Observance of Standards and Codes (ROSC) analysis. The assessment evaluated Egypt's corporate governance practices as compared to requirements of the OECD Principles of Corporate Governance. "The ROSC results indicated that 62 per cent of the principles were applied by Egyptian companies that were studied. As a result of the ROSC, Egypt started issuing new rules to guarantee companies' implementation of corporate governance practices." The most important of these rules were the new CASE listing rules which were issued in 2002. Moreover, the EGX issued new listing rules that reflect further strengthening of corporate governance practices of companies listed on the exchange.<sup>470</sup>

"In 2004 the World Bank conducted a reassessment of corporate governance implementation in Egypt, concluding that Egypt applied 82 per cent of the OECD principles. This indicates Egypt is continuously improving in the area of corporate governance. The report observed that major areas of improvement included: basic shareholders rights, cost/benefit to voting, and disclosure standards. However, all items of the third principle – "Role of stakeholders in corporate governance" – remained the same in both assessments, thus signalling an area for improvement".<sup>471</sup>

Under the leadership of UNDP, the Global Compact was formally launched in Egypt on 9 February 2004, with the Chief of Staff of the UN EOSG representing the UN Secretary-General. Some 200 participants from government, the private sector, chambers of commerce, academia and civil society attended the event. Egypt became the first Arab country to join the Compact, with 55 companies joining the Global Compact Network (now 63). The companies joined on a voluntary basis and are working to translate the Global Compact's nine principles into concrete activities.

### Transparency

General data on registered companies was formerly available to the public through the Commercial Registry Organization and Internal Trade Development Authority, which maintains a database of economic activities in order to conduct commercial transactions on a sound basis of trust and confidence in order to protect consumer rights and interests. But after the issuance of the Capital Market Law No. 95/1992, all data on the companies also became available at the CMA. Also, the EGX publishes the disclosure book, which contains basic information, company management, shareholder structure, financial spread, and financial ratios for the last three years for the 50 most active companies on the Egyptian

<sup>469</sup> *Ibid.*

<sup>470</sup> *The Egyptian Exchange, Listing Rules of EGX:*

[www.egyptse.com/index.asp?CurPage=rules\\_regulations.html](http://www.egyptse.com/index.asp?CurPage=rules_regulations.html); Khaled Dahawy, 'Developing Nations and Corporate Governance: The Story of Egypt', Paper presented at Emerging Markets Workshop, New Haven, Connecticut, US, The Millstein Centre for Corporate Governance and Performance at the Yale School of Management, 2008; [millstein.som.yale.edu/documents/Dahawy\\_Kahled.pdf](http://millstein.som.yale.edu/documents/Dahawy_Kahled.pdf)

<sup>471</sup> *Report on the Observance of Standards and Codes (ROSC), Corporate Governance Country Assessment, EGYPT, March 2004; www.worldbank.org/ifa/rosccg\_egyp2.pdf; Khaled Dahawy, 'Developing Nations and Corporate Governance: The Story of Egypt', Paper presented at Emerging Markets Workshop, New Haven, Connecticut, USA, The Millstein Centre for Corporate Governance and Performance at the Yale School of Management, 2008; millstein.som.yale.edu/documents/Dahawy\_Kahled.pdf*

Exchange. The EGX provides this book at reasonable prices to the public. All companies registered at the stock exchange are also obliged to publish complete summaries of their annual and biannual reports in two widely circulated daily newspapers, at least one of which must be in Arabic. The new registration rules impose financial penalties on companies that do not observe the rules of transparency and periodical disclosure of material information, financial statements and non-financial information.

Article 4 of the Listing Rules and Article 36 of the Executive Procedures stipulate that relevant personal information on all board members and senior directors of companies, as well as their remuneration, must be disclosed. Article 4 of the Listing Rules states the résumés of each board member and senior manager shall be attached to the Listing Application. In addition, the Listing Rules state that information on executive members' payments – including salaries, allowances, in-kind benefits, incentive shares and other financial items – should be disclosed. Performance-related payments should form the largest portion in order to motivate members' improvement.<sup>472</sup>

The Egyptian Exchange has imposed stricter standards and rules for exchange listing and delisting, requiring more disclosure and transparency in addition to improving the quality of listed companies on the EGX. Disclosure provisions included in these rules are applicable to all companies with securities listed on stock exchange lists.

The Disclosure Department of the stock exchange supervises companies to ensure they make the required disclosures. According to the new registration rules, the stock exchange may impose penalties and sanctions on companies that deliberately disclose incorrect or misleading information in their financial statements. The penalty for failing to conform to disclosure rules is elimination from registration tables.

The listing rules of the Egyptian Exchange necessitate that each company must submit with the listing application a document that includes the capital structure indicating the percentage of shareholders owning 5 per cent or more in the holding or affiliate companies. Also, the company shall immediately notify the stock exchange of any modifications in the capital structure or ownership structure that entails an increase or decrease of more than 5 per cent of the capital in the shares of any board members.

The standard of CSR reporting within the business sector is on a voluntary basis and is not obligatory. However, the guide to corporate governance principles in Egypt, to which most companies try to adhere, states that at least once a year the company should disclose environmental, social, safety and health policies to shareholders, customers and employees. Also, the policies disclosed should be clear and unambiguous. The role of CSR in the Egyptian private sector is still weak though improving. The broader national picture suggests the majority of Egyptian businesses and companies are still unfamiliar with this new concept.

Every company registered at the Egyptian Exchange is obliged to disclose its financial position and operational performance to the CMA (replaced by General Authority for Financial Supervision, GAFS) and the EGX. This disclosure takes place annually and quarterly.

Not all companies disclose/report their efforts in countering corruption and procedures taken against corrupt employees, as this is done on a voluntary basis. There is no third-party verification of such reporting, and reports are not made available to the public.

Only major corruption scandals, in which generally high-ranking officials and

<sup>472</sup> *The Egyptian Exchange, Listing Rules of EGX; [www.egyptse.com/index.asp?CurPage=rules\\_regulations.html](http://www.egyptse.com/index.asp?CurPage=rules_regulations.html)*

wealthy businessmen receive jail terms and fines, are reported publicly.<sup>473</sup> Most often such reporting of corruption cases is done through the media, e.g the daily *Al-Masri Al-Yom*, which launched its own anti-corruption campaign focusing on the links between political and business elites.<sup>474</sup>

### Complaints/enforcement mechanisms

Some companies may have in their codes of ethics/conduct provisions for whistle-blowing, especially multinational corporations. The objectives of these whistle-blowing provisions are: encouraging employees to bring ethical and legal violations of which they are aware to an authority (internal or external) so action can be taken immediately to resolve the problem; minimising the organisation's exposure to damage that can occur when employees circumvent internal mechanisms; and letting employees know the organisation is serious about adherence to codes of conduct. However, there is no evidence that these provisions are used in practice.

The chamber of commerce does not serve as an arbiter. Its main role is promoting and developing the business sector and defending the general interests of traders, manufacturers and servicemen throughout Egypt. There is no other type of special ombudsman for the business sector.

### Relationship to Other Pillars

While the role of the State in the economy has been declining, the role of the private sector in the economy has been on the rise. Egypt's businessmen hold increasing amounts of financial assets and economic resources. To mention just two indicators, 20.7 per cent of the 179 deputies elected in 1995 to the People's Assembly for the first time were businessmen. The Assembly included 66 businessmen, 59 of whom belonged to the National Democratic Party (NDP) and one to the Liberal Party; the other six were independents. Businessmen totalled over 16.5 per cent of all deputies. This led many observers to predict that the 1995 Parliament would herald the beginning of an age of liberalisation in Egypt.<sup>475</sup> The presence of businessmen in the Parliament then rose to 17 per cent in 2000 and 22 per cent in 2005. Since 2004 there has also been an increasing trend of businessmen occupying ministerial positions.<sup>476</sup>

### Recommendations

- Establish an institutionalised integrity mechanism to be adopted obligatorily by the private sector, including, for example, a code of conduct
- Establish a system to control conflict of interest for businessmen holding executive or legislative positions
- Enhance public awareness on corporate governance by undertaking several actions, such as including business integrity and responsible business conduct in the curricula of business schools, and increasing awareness-raising campaigns by business associations on the importance of internal audit and control procedures within companies to raise the level of integrity
- Develop systems of protection for whistle-blowers within the private sector

<sup>473</sup> [www.thedailynewsegypt.com/article.aspx?ArticleID=2963](http://www.thedailynewsegypt.com/article.aspx?ArticleID=2963)

<sup>474</sup> *Al-Ahram Weekly*; [weekly.ahram.org.eg/2006/803/eg2.htm](http://weekly.ahram.org.eg/2006/803/eg2.htm)

<sup>475</sup> *Al-Ahram Weekly*, 7-13 June 2001; [weekly.ahram.org.eg/2001/537/fe1.htm](http://weekly.ahram.org.eg/2001/537/fe1.htm)

<sup>476</sup> Samer Soliman, 'Egypt's Political Economy: Unholy Coalition Between Bureaucracy and Business', November 2008; [www.islamonline.net/servlet/Satellite?c=Article\\_C&cid=1226471419306&pagename=Zone-English-Muslim\\_Affairs%2FMAELayout](http://www.islamonline.net/servlet/Satellite?c=Article_C&cid=1226471419306&pagename=Zone-English-Muslim_Affairs%2FMAELayout)

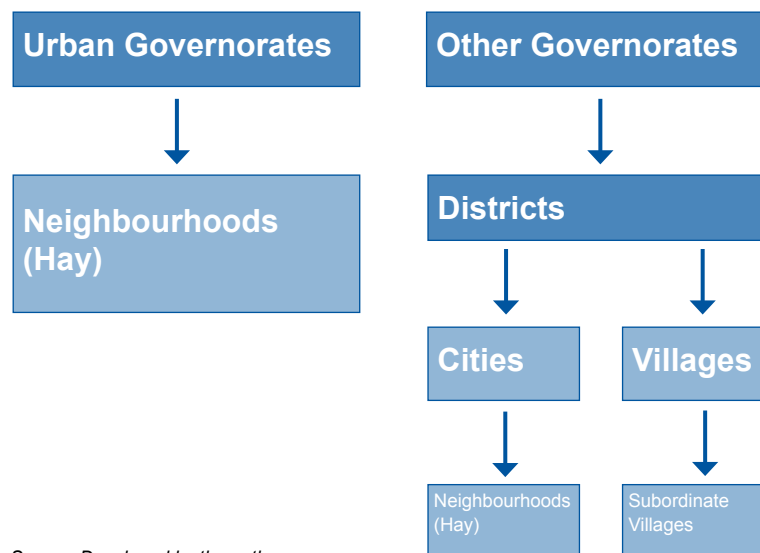
# **15. REGIONAL AND LOCAL GOVERNMENTS**



### Resources/structure

Egypt is a unitary system. The 1971 Constitution states the country shall be divided into governorates and other local administrative units (Article 161). The Constitution left the elaboration of the system to ordinary law. Law 43/1979 provides the structure of the basic units of local administration: governorates, districts, cities/villages and urban quarters (neighbourhoods or *ahyaa*). The figure below illustrates the local system in Egypt.

**Figure 7:**  
**Multi-Level Local Authority**



Source: Developed by the authors

Each basic unit includes two councils: LPC and LEC. The local elected people's council, which is called the Local Popular Council (LPC), is elected every four years following Law 43/1979. A Local Executive Council (LEC) includes appointed local officials and administrative staff, and it has representation of the line ministries called *Mudriyat* at the governorate levels and *Idarat* at the district level.

The local system in Egypt combines representative and administrative functions. Each local unit is governed through the collaboration of an elected LPC and a local executive council whose chief is appointed by the central government (in the case of governorate, *Hay*, *Markaz* and city) or by the governor (in the case of village). The two councils are responsible for carrying out public policies at the local level. The local units (according to Article 2 of the Law 43/1979) are entitled to establish as well as run all public facilities in their geographic jurisdiction in accordance with the state policy. The local units are entitled to carry out the functions and mandate of the ministries within their geographic jurisdiction.<sup>477</sup>

Egypt was divided into 26 governorates. However, recent modifications in the administrative borders of some governorates were made in 2008. This resulted in increasing the number of governorates to 28, as two new governorates, Hilwan and The 6th of October, came into being. In addition Luxor was given the status of a governorate, though with a unique or special status, in December 2009. At the next level, there are 184 districts for administrative purposes. Although there are elected popular councils at both the governorate and district levels, their powers are still limited vis-à-vis the executive councils. At the lower levels there are 225 cities and 4,673 villages.<sup>478</sup> Additionally, there are 79 hays in both urban governorates and in large cities in some rural governorates, such as the City of Ismailia in Ismailia governorate, which has three hays, and the City of Zagazeek in Sharkeya governorate, which has two hays.<sup>479</sup>

<sup>477</sup> Background Report on Egypt for the Regional Report on Governance in Africa, Economic Commission for Africa (ECA), 2004.

<sup>478</sup> [www.pogar.org/countries/theme.aspx?t=6&cid=5](http://www.pogar.org/countries/theme.aspx?t=6&cid=5)

<sup>479</sup> The number will be 85 after adding six hays to the Giza governorate to become an urban governorate with 14 hays

**Table 7:  
Egypt's 29 Governorates**

Cairo	Kafr Elsheikh	Aswan
Alexandria	Gharbeia	Assuit
Suez	Menufia	Sohag
Port Said	Behera	Red Sea
Helwan	Ismailia	El-Wadi El-Gedid
6 <sup>TH</sup> October	Giza	North Sinai
Damietta	Beni Suif	South Sinai
Dakahelia	Fayoum	Matrouh
Sharkeya	Menya	Luxor
Kalyuibia	Qena	

**Figure 8**



Source: Developed by the authors based on William Fox and El-Sayed Ghanim, *Decentralization in Egypt: The First Steps have been Taken*, UNDP, August 1998.

Seven economic regions are designated to cover the 29 governorates. Though an institutional structure has been set up to support the functioning of these regions, it is not effective. Administrative officers are all appointed. The President nominates governors; the Prime Minister nominates heads of Markaz/districts, cities and neighbourhoods; and respective governors nominate village heads.

According to fiscal year 2007/08 budget figures, local government's share of total government expenditures represented only 13 per cent. In terms of wages, on the other hand, local government's share accounted for 46 per cent of total government expenditures on wages, which is due to the large number of public employees at the local level (about 61 per cent). Other current expenditures are channelled primarily through central government. For investment expenditures, only 7 per cent of total government investment expenditures are decided at the local government level.<sup>480</sup>

Local governments raise money through urban real estate, agricultural land, motor vehicle registration and licensing. Most regional and local funds are

<sup>480</sup> *instead of eight hays.*  
480 Ministry of Finance, 'Statistical Statement: Draft of State General Budget for FY 2007/2008', April 2007.

allocated to existing expenditures, such as salaries and debt management. Real estate tax is the key source of financing for local governments. It reaches up to 30 per cent of local government sovereign revenues. Real estate tax revenues during the period 2001-2005 represented about 0.5 per cent of government tax revenues.<sup>481</sup>

**Adequacy of funds allocated:** The local authority usually tends to request increased funds in setting total draft budgets, sometimes unrealistically. However, due to austerity measures and reduced public expenditures/central funds, the majority of popular councils are now inclined to rely on an increase in local resources for funding. On the other hand, the distribution of resources across the different local levels and governorates depends to a large extent on the negotiating powers of a governor at the governorate level and the support he receives from the central government. The more a governor is development-oriented and committed to decentralisation, the more he allows for cooperation between local institutions (appointed and elected), motivates the popular council to raise funds locally and activates community participation, instead of being greatly dependent on the central government.<sup>482</sup>

**Move towards decentralisation:** There has been a growing awareness that limited fiscal powers at the local levels have negative impacts on the economy as a whole. Consequences include an inefficient provision of services, poor utilisation of human resources in local government (whose employees represent 61 per cent of all government employees) and faulty implementation of local public projects.<sup>483</sup> Accordingly, there have been increased efforts to push for more autonomous actions by local government regarding revenue and spending assignments. The new local administration law, which is currently being developed, aims to increase the authority of local governments over public servants, revenues and spending.

Each year, the Ministry of Economic Development reviews investment proposals from different ministries and local governments to determine the budget. The ministry may also propose investment projects on its own accord, since it is responsible for drafting and implementing the Five-Year Plan (FYP). Executive councils (i.e. sectoral/departmental directorates) receive governmental directives for preparing the budgets and then submit these budget drafts to popular councils for approval. The central government and line ministries, as well as the governor and governorate financial directorate, play important roles in the budgetary process. However, a participatory budgeting approach is not fully applied, as most of the projects are determined centrally.

To conclude, on the expenditure side, the level of autonomy of local government to execute its budget is restricted. This is manifested in the limited share of local government in total spending as well as on spending on investments. Only 13 per cent of aggregate investment expenditures is conducted at the local government level, and the allocation of the bulk of aggregate investment is directed to the local level by decisions made by the Ministry of Economic Development and line ministries. Wages are determined centrally by the number of workers in public services in each governorate and the approval of new projects requiring additional workers.<sup>484</sup>

Nonetheless, Egypt has been moving recently toward establishing decentralised local government, allocating more powers to local units, encouraging popular participation as well as motivating community participation instead of being dependent on the central government. The last decade witnessed a gradual movement toward decentralised local government. "The pillars of this transformation include: supporting autonomous finance for local government, enabling local units to

<sup>481</sup> *The real estate tax is no longer a local tax; it became central according to the Single Treasury Account.*

<sup>482</sup> *Background Report on Egypt for the Regional Report on Governance in Africa, Economic Commission for Africa (ECA), 2004.*

<sup>483</sup> *Egypt Human Development Report, UNDP and Ministry of Planning, 2004.*

<sup>484</sup> *UNDP and Institute of National Planning, Egypt Human Development Report 2004: Choosing Decentralization for Good Governance, 2004.*

manage and market their local products, adopting decentralisation mechanisms versus policy centralisation regarding the relation between the governorates and the central authority, undertaking adequate amendments to the law of local administration to ensure effective local decentralisation system, and encouraging and deepening community participation.<sup>485</sup>

There have also been increased attempts to enhance the role of the community in local development. The “Shorouk Program for Rural Development” is a typical model. Begun in 1994 as an integrated approach toward village development, the project depends mainly on popular participation in rural areas. Community participation varied from donating land, materials and personal work, to participating by contributing ideas and opinions to planning and follow-up. The project’s total implemented investments during the last decade reached about EGP 2.24 billion (USD 400 million). More than 100,000 projects were implemented under this program through 2005.<sup>486</sup>

### Role(s) of institution/sector as pillar of NIS

Legally, all officials of local government authorities are considered government employees and thus are subject to all anti-corruption agencies authorised to monitor and oversee government employees. Moreover, since local and regional employees are government employees, they are also subject to the CAO and the Illegal Profiting Apparatus (IPA).

Notably, one of the main objectives of decentralisation in Egypt is to enhance accountability and transparency across the different local levels. This is reflected in government reform steps and initiatives regarding local government in Egypt. The government has been more concerned with enabling local government officials to determine local public choices and needs, and to plan projects and govern their implementation. The MSAD coordinates capacity-building with the MOF to assist local governments in raising funds for their projects as well as increasing their accountability.

The last decade witnessed a gradual movement toward a decentralised local government, in which the local units and local community have greater powers and more say in deciding on their developmental objectives, local goals, needs and funding. The pillars of this transformation include:

- Undertaking adequate amendments to the law of local administration to ensure an effective local decentralisation system, as well as encouraging and deepening community participation (draft in process).
- The 2005/2006 socioeconomic plan endorsed a Unified Plan to promote fiscal and administrative decentralisation. The Unified Plan targeted avoiding the overlap resulting from having three levels of fund allocation at the local level. The Unified Plan is designed to make the distribution and collection of funds classified according to priority and urgent needs at the village level, and then ascend to the “*Markaz*” level to finally reach a comprehensive and combined

picture at the governorate level. The adoption of the Unified Plan aims to achieve several positive impacts:<sup>487</sup>

- Enabling local administration – represented by the governorates – to participate in project identification, formulation and implementation without delays.
- Enhancing the role of community participation in identifying and financing the plan’s projects and mobilising autonomous local funds to reduce the State’s financial burden.
- Meeting the principal requirements of key projects that positively contribute to the achievement of national goals.

<sup>485</sup> *Background Report on Egypt for the Regional Report on Governance in Africa, Economic Commission for Africa (ECA), 2007.*

<sup>486</sup> *Local Rural Development; www.sis.gov.eg/Ar/Pub/yearbook/ybook2006*

<sup>487</sup> *Ministry of Economic Development, socio-economic development plan for the year 2005/2006.*

- Granting flexibility to governorates for reallocating investments enlisted in the plan, or interchanging project priorities according to actual needs.
- Ensuring a balanced distribution of investments based on the local needs of each locality.
- Supporting the planning and follow-up departments in the governorates to participate in planning investments, determining priorities and monitoring execution, with direct contacts with executive bodies.
- Mobilising local savings and providing financial resources, as actual practice indicates governors can exert notable efforts to provide such resources through community participation, governorates' service funds, governmental bodies and NGOs.
- Activating the role of local units in governorates to identify needs, priorities and sources of project finance.
- Expanding governors' jurisdiction concerning the distribution of project funds by component according to needs and with priority emphasis on project completion and implementation of pre-approved projects.

Moreover, the MOF and the Ministry of Economic Development have been working on cutting down excess government spending and increasing the accountability of local government units. Continuous efforts have been carried out that aim to enhance transparency in terms of pinpointing the fiscal deficits among the various government branches. The Ministry of Finance adopted an initiative that targeted promoting decentralisation in several ministries. They included the Ministries of Education, Finance, Health, Higher Education and Scientific Research, and Economic Development. The initiative established log-frames for public expenditures to guarantee sustainable fiscal decentralisation. In addition, there have been efforts to establish "a disciplinary environment, strict budget constraints and a shift from input to output management."<sup>488</sup>

As already mentioned, Egypt has a unitary system in which the central government has a high degree of authority over the local level. There are many constraints that prevent more autonomy of the local administration vis-à-vis the national government, including:

- All administrative positions are filled through appointment. The President nominates governors; the Prime Minister nominates heads of Markaz, cities and districts; and the respective governors nominate village heads.
- Despite the fact that governors represent the executive/central authority within their geographic borders or jurisdictions, they do not have sufficient authority over public employees in their governorates. There are three types of personnel working in governorates and accordingly three types of authority for the governor:
- Personnel working at "sovereign" ministries (e.g. Ministries of Judiciary, Police and Armed Forces). The governor does not enjoy authority over them, as they are directly under the administrative, technical and financial supervision of the central authorities.
- Civil servants who work in "service" ministries (e.g. electricity, petroleum, and water and sanitation). They are under the direct supervision of the governor (except for the positions of the head and the deputy). "Accordingly, if the governor wants, for instance, to contract with a construction company, he should follow the financial regulations of the Ministry of Finance as implemented by the Under-Secretary of Finance in his governorate, who must adhere to standard orders issued by the national minister. A lack of cooperation from the latter's side can only be followed up by a complaint from the governor to the Minister of Finance."<sup>489</sup>
- The last group is the group of civil servants over whom the governor enjoys full authority as the minister (e.g. youth, education and social affairs).

"The issue of governors' competence is thus problematic. Although they represent the central government, governors have asymmetrical patterns of relationships

<sup>488</sup> *Egypt Human Development Report, 2004.*

<sup>489</sup> *Law of Local Administration No. 43 of 1979 and its amendments.*

with central ministries and agencies. Moreover, it is sometimes hard to identify the organisations at the local level that are competent to make decisions, as opposed to those that only implement directives of central agencies.<sup>490</sup>

The local levels have limited control even over the financial resources collected at the local level. These resources must be collected at the Ministry of Finance, which then redistributes them among the governorates. A good step of reform was taken recently to allow the governorates to raise local funds (for example, local contributions) to support local development.<sup>491</sup>

The government has already adopted many reforms and targeted enhancing the balance of power between the local and central government. These include:

- Enhancing the role of local levels in formulating and setting budget proposals. Financial directives are to be sent to the local administration by October to allow sufficient opportunity to discuss and agree on the budget proposal. The logic is that the local administration is more capable and estimating the needs of local communities.
- Transferring the regional planning sector from the Ministry of Economic Development to the jurisdiction of the Ministry of Local Development. The sector has seven administrative units covering the seven economic regions that comprise all governorates. This is expected to contribute to the fulfilment of decentralisation regarding preparing and monitoring budgets and development plans at the governorate level.
- Transferring the local planning and budgeting in the local development sector from the Ministry of Local Development to Governorates and Districts.
- Transferring some of the funds allocated at the central level to the local level in the sectors of education, health and youth.

A central government Minister of Local Development is responsible for the coordination and supervision of the governorates. Nomination of the governors' appointment is usually initiated by this minister. The Supreme Council for Local Administration (with governors as members) is designated by the law and headed by the Minister for Local Development. This council was replaced in practical terms by the Council of Governors, created and headed by the Prime Minister. The Minister of Local Development thus became just one of many members of the Council of Governors. The Ministry of Interior exercises exclusive control over security matters throughout the structure of local administration down to the village level.

The Law on Local Government System (LLSG, Law 43/1979 as amended in 1981, 1987, 1988, 1989, 1996 and 2003) regulates the elections of Local Popular Councils. There is an elected council for each local unit at the governorate, districts/*Markaz*, city, *hey* and village. Based on the last local elections in April 2008, there are 53,010 representatives or members of LPCs at all levels of local government.

The local administration system has undergone several reforms regarding both the institutional and legislative levels in order to enhance integrity, transparency and good governance. This is reflected by the actual steps taken as well as the reform agenda the government has been adopting regarding local government. Two major pillars of reform can be cited: decentralisation and administrative reform. The importance of the latter is manifested by the fact that local government employees represent 61 per cent of all government employees.

#### **Decentralisation:**

There has been a growing awareness that limited fiscal as well as political and administrative powers of local bodies, both elected and appointed, have negative impacts on development as a whole. Consequences include an inefficient provision of services, poor utilisation of human resources in local government

<sup>490</sup> *Background Report on Egypt for the Regional Report on Governance in Africa, Economic Commission for Africa (ECA), 2007.*

<sup>491</sup> *Egypt Human Development Report, 2004.*

(whose employees represent 61 per cent of all government employees) and faulty implementation of local public projects.<sup>492</sup> Accordingly, there have been increased efforts to push for a more autonomous local government regarding revenue and spending decisions. The new local administration law, which is currently being developed, aims to increase the authority of local governments over public servants, local revenues and spending. Also, the decentralised system reserves a larger role for LPCs in the planning process and oversight in local decisions. In addition, the new proposed law gives local citizens a strong role in monitoring local governments and their employees, either individually or collectively through local NGOs, CSOs, the media, think-tanks and local institutions.

**Program of enhancing the efficiency of Egypt's administrative agencies:**

As mentioned above, employees of local governments in Egypt are considered to be public employees. Accordingly, it could be expected that reforming the public administrative body could have positive spill-overs in enhancing the efficiency and integrity of local governments. Recently the Ministry for Administrative Development announced a program to enhance the efficiency of Egypt's administrative agencies. Merit criteria have become an essential component for administrative reform programs. The reform program is implemented through major areas: improving the performance of government civil employees, introducing systems of modern management and developing the organisational structure of governmental agencies.<sup>493</sup>

As mentioned above, the two main pillars of reform aimed at increasing efficiency at the local level and fighting corruption have been the move toward decentralisation and the implementation of administrative reform.

In addition, the government has adopted several reforms regarding the budgetary process aimed at increasing the transparency of government fiscal operations and fighting corruption. In 2005 budget law 53/1973 was amended, enacting the budget for 2005/2006 according to the IMF's 2001 Government Finance Statistics (GFS) classification in order to match international standards. The new system of budget classification was introduced to ensure more consistent reporting during the fiscal year.<sup>494</sup>

According to the new system, there will be clear macroeconomic and financial objectives and constraints that will lead the budget in the medium term. The new standard reclassified many budget lines; for example, the indirect petroleum subsidies will be explicitly treated as budget lines. The new system set clear lines between economic, administrative and functional classifications; revenues, expenditures and financing transactions; and transfers and exchange transactions. The fiscal policy stance is monitored on the basis of the cash/surplus deficit and the overall fiscal balance.<sup>495</sup>

"Preparation of the budget is now fully automated according to the GFS classification. The Ministry of Finance is in the process of implementing an Integrated Automation project (MOFIA), which includes an Automated Government Expenditure System (AGES). The MOFIS and AGES projects eventually should be subsumed within the framework of a Government Financial Management Information System (GFMS) covering all ministries, service authorities, governorates and districts."<sup>496</sup>

Another step was taken to push forward the decentralisation of public expenditure and revenue mobilisation. This was manifested by implementing the Public Expenditure Review (PER) in four sectors: education, health, water and transport. PER is also related to the current work on performance-based budgeting (PBB).

<sup>492</sup> Institute of National Planning (INP) and UNDP, *Egypt Human Development Report, 2004: Choosing Decentralization for Good Governance*

<sup>493</sup> Ministry of Administrative Development, "Program of enhancing the efficiency of Egypt's administrative agencies"; [www.ad.gov.eg/English/Programs/AdminResult.aspx](http://www.ad.gov.eg/English/Programs/AdminResult.aspx)

<sup>494</sup> Amcham, "Egypt reforms", 2006; [www.amcham-egypt.org/BSAC/ustrade/pdf/egyptReform06.pdf](http://www.amcham-egypt.org/BSAC/ustrade/pdf/egyptReform06.pdf)

<sup>495</sup> Ministry of Finance, *Activities and Achievements*, [www.mof.gov.eg/english/pdf/activity.pdf](http://www.mof.gov.eg/english/pdf/activity.pdf)

<sup>496</sup> *Ibid.*

Pilot projects have been carried out in the education and health sectors, with the aim of setting a framework for developing performance management and budgeting within these sectors. The pilot projects also aim to initiate the development of indicators and other performance data in selected entities.<sup>497</sup>

Nevertheless, there are still numerous obstacles that hinder achieving integrity, transparency and good governance at the local level, including:

- There are multiple control and regulatory bodies over local administration units from the executive, People's Assembly and judiciary at the central or local level. This multiplicity of control and regulation reduces local administration units' autonomy in administering their affairs and using their resources in the service of development.
- The relationships between Popular and Executive Councils are typically ambiguous. The role of Elected Popular Councils is not very effective and non-binding for Executive Councils, which have the right to reject resolutions and recommendations of the former.
- The inability of local administration units to secure ample financial resources to implement their own local plans and policies is becoming one of the most significant obstacles to local administration action. In addition, local administration units are not totally independent in making their draft budgets or plans.
- Local citizen political and developmental participation is still lower than the aspired level.

### Accountability

Law 43/1979 and its amendments organise the work of local institutions in both wings: Local Executives Councils (which are appointed) and Local Popular Councils (which are elected). Also, local institutions are subject to other laws that govern all other sectors such as the Law of Education, Civil Service Law and Unified Housing Law. These laws are not fully effective in practice. For instance Law 43/1979 gives power to the LPC. Yet, these powers are not being practiced. For instance, the law has an umbrella organisational unit for all local administration institutions called the Supreme Council for Local Administration. This council consists of the Prime Minister as its head and the Minister of Local Development, governors and the heads of governorate-level local popular councils in the twenty nine governorates. This council has the right to discuss and study matters related to local bodies. It can play a role in solving problems that may arise between them. Unfortunately, this council has held only one meeting since it was established.<sup>498</sup>

In practice, instead of the Supreme Council of Local Administration, the Council of Governors holds regular monthly meetings with the Prime Minister. The membership of this council includes only the governors of the twenty nine governorates. Additionally, it is worth mentioning that Law 43/1979 has no section for sanctions to ensure accountability issues. For public employees at local levels, the Law of Local Administration leaves all the sanctions against them to the civil service law.

According to the law, the elected wing of local bodies is structured in a pyramid shape. As a result, decisions of the lower level of the LPC have to be approved by higher levels before they become effective. Additionally, local executive councils and local administrative bodies are subject to all national and local laws that govern their work. There is sectoral reporting from local government to the assigned ministry in the central level. For instance, the Directorate of Education sends regular reports to the Ministry of Education. Also, the local executive councils should report regularly to the popular council, though in practice this reporting system is ineffective. Local popular councils have several monitoring methods to question the decisions and actions of local executives. Additionally, governors and local administrative and executive bodies are obliged to report

<sup>497</sup> *Ibid.*

<sup>498</sup> *Interview with ex-Minister of Local Development.*



their activities to certain governmental offices and authorities, such as the Ministry of Local Development, CAO and ACO. These reports take place in practice. The Ministry of Local Development is entitled to regularly submit reports about the performance of localities to the Parliament. Notably, governors are not subject to questioning by the Parliament. Instead, the Parliament questions and holds the Minister of Local Development accountable for the state of local affairs.

Consultation with the public occurs in practice but is not required by law. The Ministry of Local Development has launched several projects that require public participation, not just only consultation, such as Shorouk plans and Misr project. The ministry also encourages international donors and NGOs to implement projects related to participatory planning in governorates. Additionally, although it is not required by law, some local elected popular councils hold hearing sessions on a regular basis, while others do not.

### Integrity mechanisms

Unlike other governmental administrative bodies, there is no statutory obligation requiring local government bodies to have codes of conduct in place. As a result local officials do not have such codes. There are no clear rules related to conflict of interest at the local levels. The Law of Local Administration has some articles about banned practices of local popular councils' members. Additionally, in terms of the internal behaviour of the institutions, the Internal Model Bylaw of the Local Popular Council of 1980 states in many areas the forbidden actions that represent some types of conflict of interest. For instance, the bylaw states that whoever commits these forbidden actions should be punished. The bylaw lists the types and degrees of sanctions.

There are no rules on gifts and hospitality such as the duty to maintain registries. Exchanging gifts may occur among local officials themselves, and between these officials and local citizens. The types of bribery at the local level are known by different names, such as *ikramia* (it comes from generosity), *hedia* (gift), *shay* (money to buy a cup of tea), *bakshish* and so on.<sup>499</sup>

The extent of corruption at the local level led a top official in the President's office to say "corruption in local government has reached our knees."<sup>500</sup> The opposition built upon this statement to develop one of its own: "Corruption at local government has reached our throats." There is a big difference between these two statements. While both statements provide a confession that there is corruption at local level, the former views solving corruption as possible while the latter views this as unachievable and infeasible.

There are no post-employment restrictions at the local level. It is common for local officials to work at any organisation – governmental, non-governmental or even private – after they leave their position.

### Transparency

According to the Law 62/1975 concerning illicit enrichment, heads, deputies and members of local popular councils and mayors are obliged to file asset disclosure forms regularly. According to the law, the Illicit Enrichment Apparatus is established to help the investigation committee (formed by the Minister of Justice) by receiving asset disclosure forms and requesting clarifications about complaints. It has the right to ask the ACA to investigate cases proven to be of illicit enrichment.

In terms of monitoring lifestyles, the Illicit Enrichment Law (Law 62/1975) peri-

<sup>499</sup> Abdelghafar Shokor, 'Transparency, Corruption and the relations with the local system', paper presented at the conference of 'Toward Enhancing Transparency in Localities: For Better Business Environment', 10 July 2007, Cairo.

<sup>500</sup> A highly senior government official who is also a Parliament member (NDP) said this at the People's Assembly while it was discussing the issue of building and housing in Egypt, Arab Attorneys Forum; [www.mohamoon-montada.com](http://www.mohamoon-montada.com)

odically traces any increase in the wealth of local officials themselves or their family members (spouses and underage children), comparing wealth with level of income.<sup>501</sup>

In practice, asset disclosure forms are regularly filled out, though sometimes this procedure seems routine without any genuine effect on these officials and their families. Hidden or veiled wealth is always a major cause for investigation by assigned authorities. No explicit article obliges information on government officials' assets to be publicly accessible. In fact, there are laws that prevent citizens from accessing government information and records, such as Law 121/1975 concerning the use of official documents. Under the law, the illegal gain department keeps records of disclosed assets.

The law has no clear requirement that local government activities should be transparent. However, the government is proposing a new law of information disclosure. Also, Article 210 of the Constitution gives journalists the right to ask for information and news.<sup>502</sup> Nevertheless, as previously mentioned, certain laws are used against transparency, such as Emergency Law 162/1958 and Law 121/1975. Additionally, the three articles about local administration in the Constitution do not refer to the question of transparency of the local system.

Notably, the GOE has launched a progressive initiative to decentralise its local system to achieve good governance at the local level, which includes getting local citizens more involved in public affairs through different methods such as hearing sessions and publishing all local institutions' decisions on a website for each local unit (governorates, districts, cities, villages and neighbourhoods).

On a yearly basis, governorates prepare the budget, get approval from local popular councils and send it to the Ministry of Local Development, which in turn sends it to the MOF and Ministry of Economic Development. The Ministry of Finance introduces the budget to the Cabinet and then to the Parliament three months before the beginning of the new fiscal year (30 June). Thus, the people's representatives review the budget and approve it. Assignments and different issues related to the budget become the subject of public discussion in the press and different media outlets.

Additionally, the CAO is responsible for controlling and overseeing the implementation of the budget, and at the end of the fiscal year it presents a report to the Parliament. So transparency can be found in regards to this report, as the MOF publishes the budget sheet on its website to be available to the public. However, most citizens lack the knowledge to read and analyse the budget.

According to Article 101 of Local Administration System Law 43/1979, meetings of local popular councils are held publicly, unless a request is submitted by the head of the council, one-third of the council members or the head of the local unit to hold a session in private.<sup>503</sup> Also, according to Article 54 of the Internal Model Bylaw of the Local Popular Council of 1980, meetings of the local popular councils are open to the public, and within the councils certain seats are reserved for the media and journalists, with the approval of the head of the council.<sup>504</sup> Most media institutions have their own delegates in local units that cover all events that take place in these institutions. There are neither criteria nor circumstances identified in the LLSG 43/1979 that identify when the media can be excluded or prevented from attending such meetings. However, there are three situations in which the press and people can be excluded from the meetings of local councils. According to Article 101 of the Law 43/1979, a session can be held in private if the head of local executive council or one-third of the local executive council members request it.

<sup>501</sup> *Law of Illicit Enrichment or Illegal Gain No. 62 of 1975.*

<sup>502</sup> *The Egyptian Constitution of 1971 and Its Amendments, March 2007.*

<sup>503</sup> *Law of Local Administration System No. 43 of 1979.*

<sup>504</sup> *The Internal Typical Regulation of Local Popular Councils of 1980.*

To enhance local transparency and combat corruption at the local level, the GOE recently launched a reform program in the local planning and budgeting system. The Ministry of State for Local Development, in cooperation with the Ministry of State for Economic Development, has set new criteria for budgetary allocations for governorates based on clear criteria that take into consideration population and the human development index. Also, all local units must announce to their citizens the funds allocated to them and the projects expected to be pursued using such allocations. These criteria will feed into the ranking of governorates in terms of governance and transparency issues.

### Complaints/enforcement mechanism

According to Article 22 of the Illegal Gain or Illicit Enrichment Law, there is an implicit indication that anyone may report on illegal gains by anyone, though there is no explicit mentioning of whistle-blowing. In practice, anyone can also report on misconduct directly to the head of the local unit where it took place, through the Administrative Prosecution Authority, or through the ACA or any other control apparatus. Whistle-blowers have played a considerable role in revealing many corruption cases at the local level.

According to Article 107 of the LLSG 43/1979, an Ethics Committee is to be established within each local popular council at all local levels to investigate members' violations of their duties, according to rules and norms previously identified by the council of governors. Article 13 of the Internal Model Bylaw of the Local Popular Council of 1980 identifies four penalties against misbehaving members:<sup>505</sup> warning, blaming, denial to attend council meetings (not more than four months) and, finally, dismissal from the council.

The Internal Model Bylaw of the Local Popular Council of 1980 organises duties and prohibited activities. Article 10 states that members are not allowed to participate in any council meetings or committees if the member or any of his/her relatives (up to fourth degree) have personal interests in the issues discussed. Also, members are not allowed to contact local units, either directly or indirectly (Article 11).

In addition, Articles 76 and 77 of the Civil Servants Law 47/1978 identifies several duties and prohibited actions of local public employees. According to Law 117/1958 concerning Administrative Prosecution, the Administrative Prosecution Authority investigates financial and administrative crimes, and has the authority to turn the accused person over to the criminal courts. It has a full-time staff of professional investigators.

The Penal Code contains powerful sanctions regarding (local) employee misconduct. Articles 103 through 132 deal with public employee misconduct such as bribery, and public money defalcation and waste. These sanctions have been implemented in practice. For instance, the Criminal Court in the Governorate of Minya jailed 14 people for their involvement in a plot to leak details of important high school examination papers. The man described by the press as the ringleader, who heads the local examination board, was sentenced to 15 years in prison. Thirteen other people were jailed from three to 10 years. The court dropped charges against five public employees, stating their innocence.<sup>506</sup> No single official, elected or appointed, is immune from prosecution. Article 95 of the Internal Model Bylaw of the Local Popular Council of 1980 deals with immunity of local popular councils' members in terms of performing their functions and duties as representatives of their local communities. Nevertheless, they are subject to investigation and they are not immune from being prosecuted for wrongdoings. They are not legally liable for their opinions and information during council meetings, but they can be arrested without obtaining permission from the

<sup>505</sup> *Ibid.*

<sup>506</sup> 'A smell of Corruption', *Al-Ahram Weekly*, 19-25 June 2008.

council for crimes beyond their duties as council members. The council should be notified within two days of the arrest by the designated authority.

Many senior officials at the regional and local levels have been investigated and prosecuted in the last five years.<sup>507</sup> The Forum for Development and Human Rights Dialogue issued a report in 2006 entitled, "Corruption in Localities: Defects in the Bases of Democracy." The report, based on an analysis of the content of newspapers for 2005 reveals several findings regarding this issue, including:<sup>508</sup>

- The number of corruption cases in local units reached 69.
- The amount of wasted money in local units reached more than EGP 431 million (USD 78 million).
- The number of public officials who committed corruption crimes in localities was 275.
- The total amount of bribery in governorates was around EGP 6 million (USD 1.1 million).
- The same institution conducted two more reports on the same issue. According to the 2007 report,<sup>509</sup> the number of corruption cases in local units reached 83.
- Total amount of stolen public money in governorates was around EGP 15 million (USD 2.7 million).
- The housing sector was the second-most corrupt unit at the local level, following the local administration units. These were followed by agriculture (third), *awkaf* (fourth), social solidarity, irrigation and youth (jointly at fifth).
- The sectors of water and sanitation, culture, transportation and LPC were the least-corrupt units at the local level.
- Twenty-five per cent of the corruption cases were in Giza governorate, while 14 per cent were in Cairo.
- Fifty-eight per cent of the accused public employees at the local level were high-ranking officials.
- Different types of corruption cases were reported, ranging from bribery and law violations, to wasting public money and property.

According to Article 71 of the Constitution, citizens have the right to sue and complain in cases of infringement. The General Prosecution Office acts as the public protector of citizens' rights, and the public prosecutor acts on citizens' complaints within a reasonable time period. Citizens have sued regional and local governments for infringement of their civil rights. Several cases have been filed against police officers and the courts have supported citizens' claims.

### Relations to other pillars

Local government has a strong relationship with the government (executive and public sector, and civil servants). In fact, local government plays an integral part in the governmental system, as decentralisation is still in its relative early stages. Moreover, local government has a strong relationship with the legislature, being subject to its monitoring (being part of the government). Local government has also a strong relationship with the private sector through the issuance of licences needed to start and run a business.

### Recommendations

- Enhance checks and balances on local employees, as local administration is perceived as a highly corrupt part of the government, through better control of construction licenses, basic public service delivery and other areas in which corruption is perceived to be high.
- Enhance community and citizen participation in local boards and supervisory

<sup>507</sup> Abdelghafar Shokor, 'Transparency, Corruption and the relations with the local system', paper presented at the conference of 'Toward Enhancing Transparency in Localities: For Better Business Environment', 10 July 2007, Cairo.

<sup>508</sup> Forum for Development and Human Rights Dialogue, [www.moltaka.org/en/issues/06/1031.htm](http://www.moltaka.org/en/issues/06/1031.htm)

<sup>509</sup> Forum for Development and Human Rights Dialogue, 'Corruptions in Localities', Cairo, 2008.

bodies for public services.

- Remove the duplication and command in supervision of local employees between governors and ministers, and place all local employees under the direct supervision of governors and not ministers, including directors of directorates and their deputies.
- Enhance local administration discretion to increase its local revenues through levying user fees with a firm and effective monitoring and accountability system.
- Encourage local CSOs (NGOs, think-tanks, media, syndicate branches, etc) and individual citizens to participate effectively in local affairs.
- Encourage local government to adopt codes of conduct, citizen charters, citizen budgets, e-services and other methods of enhancing transparency at the local level.
- Set clear criteria for conflict of interest at the local level, for instance, regarding an individual who is a member of an LPC while being a public employee supervised by an individual (executive) he should monitor and hold accountable.
- Enforce strict rules and regulations on gifts, presents and conflict of interest for local government employees.

# 16. INTERNATIONAL ACTORS

### Resources/structure<sup>510</sup>

In general, international actors are active in the country through various means. They work in Egypt in three forms: international non-governmental organisations (INGOs); international organisations; and donors/foundations, which often pursue collaboration with the government or CSOs and hence have no stand-alone type of programs or organisations confined to anti-corruption. In this section we focus on regional and international programs and organisations that have tackled issues of transparency, integrity and anti-corruption. Most organisations include transparency as one of their activities but not their sole activity. The three types of international actors that operate in Egypt are: INGOs that focus on the Arab world including Egypt; international organisations that focus on human rights and include combating corruption as one of their activities; and donors and/or foundations, which are aid donors and include combating corruption among their activities.

INGOs include organisations such as the Cairo Institute for Human Rights Studies (CIHRS), Arab Organisation for Human Rights (AOHR), Arab Program for Human Rights Activists, Arab Penal Reform Organisation, as well as the Arab Centre for the Independence of the Judiciary and the Legal Profession (ACIJLP). CIHRS and AHOR are independent regional NGOs that focus mainly on human rights and democracy advocacy. CIHRS and AOHR enjoy consultative status with the United Nations ECOSOC and are affiliated with a number of international organisations, including the African Commission on Human and Peoples' Rights, Euro-Mediterranean Human Rights Network and the International Freedom of Expression Exchange. ACIJLP mainly aims to strengthen the independence of the judiciary in the Arab world. The means of funding of such organisations differ. For example, AHOR depends mainly on membership fees and selling its publications and does not accept government donations. On the other hand, ACIJLP depends mainly on donations from international donors.

International organisations include the United Nations Office for Drugs and Crime (UNDOC) Regional Office, which is a worldwide leader in the fight against illicit drugs, corruption and international crime. UNDOC aims to enhance capacity-building and public awareness of societies in fighting corruption, among its other activities.

The third type of international actors includes agencies as the Ford Foundation, Konrad-Adenauer-Stiftung, Friedrich-Ebert-Stiftung and CARE EGYPT, which are mainly donor agencies that focus on development at large, including the promotion of gender, equality, and other issues including anti-corruption.

Information on the budgetary processes governing international actors is unavailable due to the nature of their activities which are likely to be set in their headquarters; hence it was difficult to trace the amount allocated for anti-corruption.

In general, international actors work in a prudent manner when it comes to issues of corruption and transparency to avoid friction with the government. Corruption issues are considered to be of national sovereignty and hence it is not expected that international actors will explicitly tackle these issues. Their efforts are focused on strengthening the capacity of the Egyptian society with strong involvement in these matters domestically.

<sup>510</sup> Information provided in this section is from the official websites of the organisations discussed at:

[www.cihrs.org/English/Aboutus.aspx](http://www.cihrs.org/English/Aboutus.aspx)  
[www.unodc.org/egypt/index.html](http://www.unodc.org/egypt/index.html)  
[www.unodc.org/unodc/en/corruption/index.html](http://www.unodc.org/unodc/en/corruption/index.html)  
[en.wikipedia.org/wiki/Arab\\_Organization\\_for\\_Human\\_Rights](http://en.wikipedia.org/wiki/Arab_Organization_for_Human_Rights)  
[aohr.org/](http://aohr.org/)  
[www.acijlp.org/about.goals.asp](http://www.acijlp.org/about.goals.asp)  
[www.fordfound.org/regions/middleeastnorthafrica/overview](http://www.fordfound.org/regions/middleeastnorthafrica/overview)  
[www.fordfound.org/pdfs/impact/regional\\_cairo.pdf](http://www.fordfound.org/pdfs/impact/regional_cairo.pdf)  
[www.kas.de/proj/home/home/18/2/index.html](http://www.kas.de/proj/home/home/18/2/index.html)  
[www.fes.de/international/nahost/inhalt/publ\\_aegypt.php](http://www.fes.de/international/nahost/inhalt/publ_aegypt.php)  
[www.care.org.eg/egypt/careegypt.htm](http://www.care.org.eg/egypt/careegypt.htm)

### Roles of Institutions<sup>511</sup>

Formally speaking, international actors are mainly independent and non-governmental. The board members and directors of such actors have no governmental representation, except the regional office of the United Nations Office for Drugs and Crime (UNDOC). None of the actors have explicitly attested there are governmental influences or interferences in their work.

International actors are committed to promoting respect for the principles of human rights and anti-corruption measures in the public sphere and private sector through proposing and promoting policies, legislation and constitutional amendments. Some actors periodically publish information, newsletters, magazines or annual reports on their activities, or books concerning human rights and the rule of law. Some actors also offer courses on human rights for the public to promote human rights education. Others hold scientific and academic seminars, and develop studies aimed at supporting and strengthening the independence of the judiciary and the legal profession. Furthermore, the UNODC Global Programme against Corruption (GPAC) acts as a focal point for the UNODC field office network (operating in all regions of the world) in the development and implementation of anti-corruption projects designed to build up local capacities over the long term. GPAC also contributes through programs and projects that identify, disseminate and apply good practices in preventing and restraining corruption, and it has produced multiple technical and policy guides including the Anti-Corruption Handbook.

### Accountability

International actors are treated differently depending on their type. INGOs registered in Egypt function according to Law 84/2002 for INGOs in Egypt working in the Arab world. Such INGOs by law are subject to government monitoring by both the Ministry of Social Solidarity and Ministry of Foreign Affairs. INGOs are requested to submit an annual financial and technical report on their activities to both ministries. The organisations are not allowed to accept money from local or foreign sources unless they get permission from the Ministry of Social Solidarity.

Other international actors including international organisations and donors report to the Ministry of Foreign Affairs, which exercises some general oversight role over these institutions to ensure they adhere to the agreement of their establishment, and that the privileges and immunities they enjoy are not misused.

Situations of conflict of interest are unlikely to emerge in the work of international donors. The public is not directly consulted in designing their work agenda, though some international actors undertake brainstorming meetings with different stakeholders including the public, NGOs and the government to design their work agendas.

### Integrity Mechanisms

There is no general rule of conduct for the staff of international actors. It is very likely that each international actor has its own code of conduct, including anti-corruption provisions and rules on gifts and conflict of interest.<sup>512</sup>

<sup>511</sup> Information provided in this section is from the official websites of the organisations discussed at:  
[www.cihrs.org/English/Aboutus.aspx](http://www.cihrs.org/English/Aboutus.aspx)  
[www.unodc.org/egypt/index.html](http://www.unodc.org/egypt/index.html)  
[www.unodc.org/unodc/en/corruption/index.html](http://www.unodc.org/unodc/en/corruption/index.html)  
[en.wikipedia.org/wiki/Arab\\_Organization\\_for\\_Human\\_Rights\\_aohr.org/](http://en.wikipedia.org/wiki/Arab_Organization_for_Human_Rights_aohr.org/)  
[www.acijlp.org/about.goals.asp](http://www.acijlp.org/about.goals.asp)  
[www.fordfound.org/regions/middleeastnorthafrica/overview](http://www.fordfound.org/regions/middleeastnorthafrica/overview)  
[www.fordfound.org/pdfs/impact/regional\\_cairo.pdf](http://www.fordfound.org/pdfs/impact/regional_cairo.pdf)  
[www.kas.de/proj/home/home/18/2/index.html](http://www.kas.de/proj/home/home/18/2/index.html)  
[www.fes.de/international/nahost/inhalt/publ\\_aegyp.php](http://www.fes.de/international/nahost/inhalt/publ_aegyp.php)  
[www.care.org.eg/egypt/careegypt.htm](http://www.care.org.eg/egypt/careegypt.htm)

<sup>512</sup> Based on interviews with two international organisations.



### Transparency

Each international actor has institution-specific disclosure rules. In addition, most international actors produce an annual report covering their activities undertaken each year and highlighting achievements. These reports may also include audited financial statements with revenues and expenditures incurred during the reporting year.<sup>513</sup>

In their home country, operating international actors must provide the authorities with an annual expenses financial report and a report on received funds. In addition, for many international organisations, a mandate or charter defining their objectives and general rules may also include broad lines of how decisions are made. This may also include clauses pertaining to grants and loans, which vary from one organisation to another.

In addition, international actors produce an array of publications pertaining to their activities, such as newsletters, thematic reports, volumes or research papers, mostly produced in English as well as Arabic. Moreover, different activities carried out by international actors, as well as selected publications, are available on their official websites for free public online access.

### Complaints/enforcement mechanisms

Each international actor has its own rules on whistle-blowing that probably follow their home country or charter of establishment. Moreover, the Ministry of Foreign Affairs exercises some general oversight role over these international institutions to ensure the MOU or Headquarters Agreement is respected, and that the privileges and immunities are not misused.

International actors try to promote anti-corruption activities by enhancing capacity-building and public awareness in the Egyptian society. International actors are never involved in revealing cases of anti-corruption, as this is considered an issue of national sovereignty and even the Egyptian public would not welcome such an intervention into domestic affairs.

### Relationship to other Pillars

International actors' main relationships are with Egyptian civil society. They usually refrain from being involved with political parties or the government, in order to ensure their independence. However, some international actors work with the judiciary and legislature to enhance their capacity to tackle issues related to anti-corruption.

### Recommendations

- More transparency is needed on the main motivations, aims, sources of funding and budgetary processes of international actors.
- Confine the role of international actors to enhancing capacity-building and public awareness, rather than being involved in anti-corruption activities themselves, in order to avoid friction and dealing with sensitive issues with authorities and the public.
- An increased role is needed for international actors to bring in the anti-corruption experiences of other successful countries.

<sup>513</sup> Based on an interview with a Cairo Ford Foundation representative, as well as the official websites of other regional NGOs that have technical annual reports.





