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

**GOOD GOVERNANCE AND CIVIL SERVICE REFORM IN  
EGYPT**

**A Thesis Submitted by**

**Ahmed Atef Labib**

**To the Department of Law**

**Fall 2021**

**in partial fulfillment of the requirements for the degree of  
Master of Arts in International Human Rights Law and Justice**

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GOOD GOVERNANCE AND CIVIL SERVICE REFORM IN EGYPT

Ahmed Atef Labib

Supervised by Professor Hani Sayed

### **ABSTRACT**

Governments in different states and even different governments within the same state may pursue different goals. To achieve their goals they apply administrative reforms, including civil service reforms, to adjust the government for achieving the intended goals. Pursuing different goals entails applying different administrative reforms. In the 2000s, the World Bank and the International Monetary Fund (IMF) suggested the Egyptian government, through loan conditionality, an administrative and civil service reform to promote economic growth based on their concept of good governance. In this paper, I argue that the suggested reform does not target economic growth but targets debt repayment. To demonstrate the contradiction between the suggested reform and the alleged goal, in the first chapter I review the history of civil service reform in Egypt from the time of Mohamed Ali Pasha until the suggested reforms by the World Bank and the IMF. This review shows that different Egyptian rulers reformed the civil service to play a certain role while the foreign creditors of the 19<sup>th</sup> century applied similar reforms to those of the international financial institutions to secure debt repayment. In the second chapter, I explain the role of the civil service according to the concept of good governance upon which the World Bank and the IMF suggested the administrative and civil service reform in Egypt. In the third chapter, I tackle the critique of the suggested civil service reform to show that its main goal is making savings to ensure debt repayment, not improving the civil service to perform the assigned role.

**KEY WORDS:** Good Governance, Civil Service Reform, Administrative Reform, World Bank, IMF, Egypt, Debt.

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## I. Introduction

In 1982, the Egyptian writer Nazih N. M. Ayubi wrote describing the performance of the Egyptian civil servants. He mentioned that many of the Egyptian civil servants were not punctual as they used to arrive at work at 10 or 10:30 in the morning and get ready to leave at 12 or 12:30 at noon.<sup>1</sup> Yet, the time they spent actually working during work hours was estimated to range from twenty minutes to two hours.<sup>2</sup> This is because while being in the office they enjoyed visiting and talking to each other, drinking tea, coffee, and soft drinks, reading newspapers, and knitting.<sup>3</sup> They also bought snacks, perfumes, and shoelaces from the vendors who passed by.<sup>4</sup> He added, the administrative performance suffered from carelessness and negligence along with routine and red tape, and repetitiveness of formalities and procedures.<sup>5</sup>

Ayubi did not expect the performance of the Egyptian civil service to improve in the near future.<sup>6</sup> He expected that because the salaries of the civil servants, which were already low, would become less attractive than the salaries offered by the projects of the then-new open-door policy.<sup>7</sup> Furthermore, the salaries would not be able to cope up with the rate of inflation.<sup>8</sup>

Ayubi's expectations were not wrong. The situation of the Egyptian civil service has become worse.<sup>9</sup> The Egyptian civil service still suffers from oversized and low efficiency of performance.<sup>10</sup> Low salaries still lead to inflation and low productivity.<sup>11</sup> Corruption is widespread across the departments of the Egyptian civil service.<sup>12</sup>

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<sup>1</sup> Nazih N. M. Ayubi, *Bureaucratic inflation and administrative inefficiency: the deadlock in Egyptian administration*, 18 MIDDLE EASTERN STUDIES, 292 (1982), <http://www.tandfonline.com/doi/abs/10.1080/00263208208700512> (last visited Apr 25, 2021).

<sup>2</sup> *Id.* at 292.

<sup>3</sup> *Id.* at 293.

<sup>4</sup> *Id.* at 293.

<sup>5</sup> *Id.* at 295.

<sup>6</sup> *Id.* at 297.

<sup>7</sup> *Id.* at 297.

<sup>8</sup> *Id.* at 297.

<sup>9</sup> IN DEPTH-PROS AND CONS OF THE CIVIL SERVICE LAW DEBATED, AMCHAM , <https://www.amcham.org.eg/publications/business-monthly/issues/237/September-2015/3334/pros-and-cons-of-the-civil-service-law-debated> (last visited Jul 26, 2021).

<sup>10</sup> Amr Adly, *Civil Service Reform in Egypt: Between Efficiency and Social Peace*, CARNEGIE MIDDLE EAST CENTER , <https://carnegie-mec.org/2016/03/27/civil-service-reform-in-egypt-between-efficiency-and-social-peace-pub-63442> (last visited Jul 26, 2021).

These long-lasting problems of the Egyptian civil service require a reform strategy to improve the situation. To do so we need to know what is meant by the "civil service" so we can know precisely the object of the reform. We also need to know what the problems that we need to fix are. Finally, we need to figure out the best way to fix these problems.

There is no agreement on what is meant by the civil service as it is different from one state to another. Some states count health employees as civil servants; other states consider teachers as civil servants, while others consider the police as civil servants.<sup>13</sup> Therefore, as long as reform is concerned, what is meant by civil service shall depend on what needs to be reformed through the reform strategy.

Civil service reform is not a target in itself because there is no role model of civil service.<sup>14</sup> Therefore, civil service reform is dependent on the problems that need to be fixed. Thus, the definition of the civil service is dependent on the reform strategy and the reform strategy is dependent on the problems that need to be fixed, being structural, fiscal, or both. Usually, reform strategies are either structural or fiscal. Structural reforms are concerned with the efficiency of the civil service. Efficiency means the ability of the civil service to perform the role that it was entrusted to perform. Fiscal reforms are concerned with the financial burdensome of running the civil service. The fiscal aspect of running the civil service is mainly related to the wage bill that includes the salaries of the civil servants, their pensions, rewards, bonuses, allowances, etc.

Throughout history, different reform strategies have been put for the Egyptian civil service by the rulers and by the foreign creditors. Each reform strategy was set to adjust the civil service to perform the role assigned to it according to the role played by the government and its goals. Hence, different goals entail different reform strategies. In this thesis, I focus on the reform strategy suggested to Egypt by the World Bank and the IMF.

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> NICK MANNING & NEIL PARISON, INTERNATIONAL PUBLIC ADMINISTRATION REFORM: IMPLICATIONS FOR THE RUSSIAN FEDERATION 23 (2003), <http://elibrary.worldbank.org/doi/book/10.1596/0-8213-5572-4> (last visited Mar 9, 2021).

<sup>14</sup> INTERNATIONAL MONETARY FUND, II THE GOALS OF CIVIL SERVICE REFORM, <https://www.elibrary.imf.org/view/books/071/16020-9780821350959-en/ch02.xml> (last visited Sep 19, 2021).

International financial institutions like the World Bank and the IMF help countries in making development and economic growth.<sup>15</sup> They do so by providing financial products and technical assistance, and by promoting financial stability and monetary cooperation.<sup>16</sup> Starting from the 1980s, they started advising governments in developing countries about the best way of governance to promote development and economic growth.<sup>17</sup> They differentiated between good governance and bad governance. Bad governance was identified as the mode of governance where the government plays a big role in leading the economy, which was the situation in the 1960s and the 1970s.<sup>18</sup> On the other hand, the main element of good governance is the government's assignment of a bigger role to the private sector in leading the economy.<sup>19</sup> Since the role played by the government in the economy became the key element in defining good governance, international financial institutions became interested in defining the right size of the public sector.<sup>20</sup> The size of the public sector is dependent on the role assigned to it in the state and since this role is minimal, the size of the public sector ought to be minimal.<sup>21</sup> But the size of the public sector in the developing countries that receive help from the international financial institutions is already big because of the economic policies of the 1960s and the 1970s that were state-centric<sup>22</sup> and also due to political factors like using recruitment in the civil service by rulers as means to reward supporters or to please the public.<sup>23</sup> Therefore, helping those developing countries in promoting development and economic growth necessitated reforming their public sectors to reflect the new minimal role assigned to the government.<sup>24</sup>

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<sup>15</sup> What We do, WORLD BANK , <https://www.worldbank.org/en/what-we-do> (last visited Apr 9, 2021); The IMF at a Glance, IMF , <https://www.imf.org/en/About/Factsheets/IMF-at-a-Glance> (last visited Apr 9, 2021).

<sup>16</sup> *Id.*

<sup>17</sup> International Monetary Fund, *The Role of the Fund in Governance Issues - Review of the Guidance Note - Preliminary Considerations - Background Notes*, 17 POLICY PAPERS 12 (2017).

<sup>18</sup> Richard Ponzio & Sakiko Fukuda, *Governance: Past, Present, Future - Setting the Governance Agenda for the Millennium Declaration* 3 (2002).

<sup>19</sup> International Monetary Fund, *supra* note 17 at 12.

<sup>20</sup> Stephanie J Rickard, *International demands for austerity: Examining the impact of the IMF on the public sector* 38 (2018).

<sup>21</sup> Kerry Rittich, *Theoretical Antecedents of Neoliberalism*, 3 in RECHARACTERIZING RESTRUCTURING: LAW, DISTRIBUTION AND GENDER IN MARKET REFORM 122 (2002).

<sup>22</sup> Ponzio and Sakiko Fukuda, *supra* note 18 at 3.

<sup>23</sup> WORLD BANK, *Middle East and North Africa Public employment and governance in MENA* 4 (2016).

<sup>24</sup> Kerry Rittich, *The Future of Law and Development: Second Generation Reforms and the Incorporation of the Social*, 26 MICH. J. INT'L L. 208 (2004).

According to the concept of good governance embraced by the international financial institutions, the government should focus on improving the infrastructure and providing social services especially health and education services.<sup>25</sup> To be able to do its role, the government needs to reform its civil service that shall perform that role. Reforming the civil service, according to the concept of good governance, means downsizing, freezing wage increase to control the growth of the wage bill, changing the civil service law to combat corruption and rent-seeking activities, and enhancing transparency and efficiency.<sup>26</sup> Changing the civil service law should also allow for hiring civil servants through fixed-term contracts instead of hiring them permanently.<sup>27</sup> Furthermore, the government should contract out providing many of its services to the private sector.<sup>28</sup>

Literature on evaluating the success of these reforms, including in-house evaluations by the World Bank and the IMF, shows that these reforms did not succeed in achieving their targets in the countries where they were applied. The targets of the reforms were found to be contradictory, not sustainable, disregarding political constraints, and inefficient. It was even suggested that developing countries might need exactly the opposite of the reforms suggested by the World Bank and the IMF.<sup>29</sup> Yet, the World Bank and the IMF keep pushing developing countries to apply these reforms through incorporating them in their conditionality.<sup>30</sup>

In this thesis, by focusing on Egypt, I explain that the suggested reform strategy is defective and its main goal is to secure debt repayment. I also argue that the reform

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<sup>25</sup> WORLD BANK, *Egypt Country Assistance Strategy (CAS) for FY 2002-2004* iii (2005).

<sup>26</sup> *International Monetary Fund, Request for Extended Arrangement under the Extended Fund Facility*, IMF PRESS RELEASE 56 (2016).

<sup>27</sup> WORLD BANK, *supra* note 25 at 13.

<sup>28</sup> *Id.* at 13.

<sup>29</sup> *See generally*, Nadeem UI Haque and Ratna Sahay, *Do Government Wage Cuts Close Budget Deficits? Costs of Corruption*, 43 PALGRAVE MACMILLAN JOURNALS ON BEHALF OF THE INTERNATIONAL MONETARY FUND (1996), CIVIL SERVICE REFORM: STRENGTHENING WORLD BANK AND IMF COLLABORATION, (World Bank & International Monetary Fund eds., 2002), Stephanie J Rickard, *International demands for austerity: Examining the impact of the IMF on the public sector* (2018), Wouter van Acker, *CIVIL SERVICE RECRUITMENT: RECRUITING THE RIGHT PERSONS THE RIGHT WAY* (2019), Wouter van Acker and Zahid Hasnain, *WAGE BILL AND PAY REFORM: A FIRST GLANCE AND A LOOK FORWARD* (2019), and NICK MANNING & NEIL PARISON, *INTERNATIONAL PUBLIC ADMINISTRATION REFORM: IMPLICATIONS FOR THE RUSSIAN FEDERATION* (2003).

<sup>30</sup> *See generally*, *International Monetary Fund, Request for Extended Arrangement under the Extended Fund Facility*, IMF PRESS RELEASE (2016), WORLD BANK, *Egypt Country Assistance Strategy (CAS) for FY 2002-2004* (2005), and WORLD BANK, *COUNTRY PARTNERSHIP FRAMEWORK FOR ARAB REPUBLIC OF EGYPT FY2015-2019* (2015).

strategy suggested by the World Bank and the IMF is not different from the previous reform strategies; it deals with the structural and fiscal aspects of the civil service while ignoring the role of the state as a service provider for the public and guarantor of welfare through the civil service.

To support this claim I divided the thesis into three chapters. The first chapter addresses the history of the civil service reform in Egypt. It starts with the time of Mohamed Ali Pasha, followed by the time of his successors during the debt crisis and the intervention of the foreign creditors. Then it moves to the time of Nasser and Sadat after the independence of Egypt and finally the present time when the civil service reform was initiated in 2015 after the loan agreements with the IMF and the World Bank. This chapter emphasizes that there is a relationship between the role of the government and the strategy of the civil service reform. It explores the civil service reform strategy suggested by the IMF and the World Bank according to their good governance policy to reach, in the following chapters, an understanding of the role of the government according to the good governance policy and how effective this reform strategy is. This chapter also points out how through history the beneficiary of the civil service was the ruler and the civil servants without enough consideration for the obligations of the state towards the public, especially its obligation to respect, protect, and fulfill their human rights through the civil service.

The second chapter tackles the history of the concept of good governance. It explains how different modes of governance were followed in the 1960s and the 1970s then moves to the emergence of the concept of good governance in the 1980s. It also lists some of the different definitions of good governance adopted by different institutions with a special focus on the IMF and the World Bank. Further, it addresses the relationship between good governance and the civil service. Because of this relationship and the effect of bad civil service on good governance, I discuss corruption in the civil service and accountability of the civil servants, especially through ombudsperson bodies.

The third chapter discusses the critique of the World Bank's and the IMF's reform strategy of the civil service. The first part of the chapter deals with the internal critique. It addresses the inefficiency of controlling the public wage bill and freezing salaries, and amending the civil service law to allow for downsizing, using a merit-

based system for recruitment and promotion, using fixed-term contracts for hiring civil servants, and contracting out public services. Then it moves to the World Bank's and the IMF's in-house critique where they acknowledge many of the downsides of the good governance reform policy. The second part, the external critique, deals with the similarity between the reform strategy of the World Bank and the IMF and the previous reforms. It emphasizes that all of them dealt with the structural and fiscal aspects of the civil service reform while ignoring the public as the main beneficiary of the public services provided by the civil service.

Finally, I conclude that the suggested reforms by the World Bank and the IMF based on their concept of good governance are defective and their main goal is to secure debt repayment. The World Bank and the IMF claim that their reform strategy should help the state achieve its economic goals by minimizing the role of the state and maximizing the role of the private sector in the economy. To achieve the prescribed economic goals the government should cut unnecessary expenditures and limit its spending to improving the infrastructure and providing social services, especially health and education. And for the state to do so it needs a small and efficient civil service. However, because debt repayment is the highest priority of the World Bank and the IMF their reform strategy neither succeeds in improving the efficiency of the civil service nor leaves enough revenues to spend on the social services.



## **II. History of the Civil Service Reform in Egypt**

The civil service is the government's tool to implement its policies. The effectiveness of that tool is related to its ability to perform the role that it was entrusted to do.

Reforming the civil service means adjusting it to perform its role well. Therefore, the content of the civil service reform is subject to the goals that the government wants to achieve. In other words, there is no one strategy for the civil service reform, as each government shall reform its civil service according to the role it is going to play.

This chapter traces the different approaches that were taken in dealing with the Egyptian civil service starting from 1810 to 2016. It shows how different rulers of Egypt and its foreign creditors used the civil service for different goals. It starts with the time of Mohamed Ali Pasha, followed by the time of his successors during the debt crisis. Then it moves to the time of Nasser and Sadat after the independence of Egypt and finally the present time when the civil service reform was initiated in 2015 after the loan agreements with the IMF and the World Bank. Tracing these different approaches shows that each of the previous reform initiatives had its own purpose. The chapter also sheds the light on the reform strategy of the IMF and the World Bank to figure out, in the following chapters, the purpose of the suggested reform and its efficiency.

### **A. The Time of Mohamed Ali Pasha**

According to the Egyptian historian Khaled Fahmy, Mohamed Ali Pasha wanted to build a strong disciplined army in Egypt.<sup>31</sup> In the 1810s, he relied mainly on Albanian troops but they resisted his efforts to impose discipline.<sup>32</sup> Therefore, in the 1820s, he resorted to building the army by bringing slaves from Sudan.<sup>33</sup> Yet, this step also did not succeed so he thought of depending on the Egyptians by conscripting them.<sup>34</sup> In the beginning, Mohamed Ali hesitated in conscripting Egyptians because they were not accustomed to the military life and because his government was not strong enough to enforce conscription like western governments but as it later proved to be successful, he started to depend mainly on this method.<sup>35</sup>

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<sup>31</sup> KHALED FAHMY, *ALL THE PASHA'S MEN - MEHMED ALI, HIS ARMY AND THE MAKING OF MODERN EGYPT* 78 (2002).

<sup>32</sup> *Id.* at 80.

<sup>33</sup> *Id.* at 80.

<sup>34</sup> *Id.* at 89.

<sup>35</sup> *Id.* at 93–96.

Regardless of the initial success of the conscription, it faced some obstacles when Mohamed Ali expanded its application.<sup>36</sup> This was because Egyptians were reluctant to leaving their villages to join the army and the shaykhs of the villages helped them to evade conscription.<sup>37</sup> Also, the officers responsible for gathering men from the villages did not follow standards in choosing them so they chose unfit men for the army.<sup>38</sup> Moreover, pulling too many men from working in agriculture to join the army had a bad impact on agriculture.<sup>39</sup>

To overcome these obstacles, new techniques had to be found.<sup>40</sup> In 1830, Mohamed Ali issued *qanun al-filaha* (the law of farming) which listed mainly the responsibilities of the farmers concerning different crops along with some responsibilities of civil servants.<sup>41</sup> Among the reasons for issuing that law was facing the non-compliance of the shaykhs of the villages concerning conscription, however, the law was not successful notwithstanding its harsh penalties.<sup>42</sup> The failure of that law regardless of the harsh penalties shows that punishment is not always effective in reforming the civil service. Disciplinary procedures are one of the tools of reforming the civil service but they are not always successful especially if applied alone. Furthermore, the failure of that law because of the non-compliance of the shaykhs of the villages shows how important the role of the civil servants was in applying the policies of the government. Therefore, it was important for Mohamed Ali to find other ways to implement his policies.

Mohamed Ali realized that without clear precise data about the population concerning its size, age composition, locations, and professions, conscription could not succeed.<sup>43</sup> To collect this data Mohamed Ali made many registers to write down the number of conscripted men, their names, and their villages.<sup>44</sup> He also made other registers to include the number of houses and the numbers of its inhabitants.<sup>45</sup> Furthermore, he

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<sup>36</sup> *Id.* at 100–104.

<sup>37</sup> *Id.* at 100–104.

<sup>38</sup> *Id.* at 100–104.

<sup>39</sup> *Id.* at 100–104.

<sup>40</sup> *Id.* at 104.

<sup>41</sup> Gabriel Baer, *Tanzimat in Egypt—the penal code*, 26 BULLETIN OF THE SCHOOL OF ORIENTAL AND AFRICAN STUDIES 2 (1963).

<sup>42</sup> KHALED FAHMY, *supra* note 31 at 105.

<sup>43</sup> *Id.* at 107.

<sup>44</sup> *Id.* at 107.

<sup>45</sup> *Id.* at 107.

made a national census to know the number of residents.<sup>46</sup> Holding the numerous registers that were made and performing the census required a strong bureaucracy.<sup>47</sup> Hence, in 1837, Mohamed Ali issued *qanun al-siyasa al-malakiyya* or the *Siyasatname* law, which dealt primarily with the offenses of the civil servants.<sup>48</sup> That law was issued by Mohamed Ali to combat corruption and increase the efficiency of the civil servants after a consultation with a French expert who wrote a report for that purpose based on his interviews with high-ranking civil servants.<sup>49</sup> Yet, this law did not succeed in combating corruption of the civil servants because they used to pay bribes to be appointed in their positions so they had to take advantage of their jobs and earn as much as they could from it to compensate for what they had paid to be appointed in the first place.<sup>50</sup> That law did not only fail in combating the corruption of the civil servants but also failed in solving the problem of inefficiency of the government.<sup>51</sup> The failure of that law points out how the organization of the civil service affects its effectiveness. The method of choosing and appointing the civil servants is much related to how they act later. So when corrupt civil servants are responsible for choosing and appointing the new staff they do not choose the most qualified personnel but choose corrupt people who pay bribes to be appointed and the latter start rent-seeking activities to earn back what they have already paid to be appointed.

In 1844, another law was passed organizing the civilian bureaucracy, especially, holding, and keeping the registers.<sup>52</sup> In 1847, Mohamed Ali asked the same French expert to put another report to improve the situation of the government.<sup>53</sup> The French expert suggested setting an annual budget for the government and not allowing departments of the government to exceed the limits of the budget. He also suggested lowering the number of civil servants, introducing a new system for promotions, and eliminating corporal punishment.<sup>54</sup> Again, these new amendments failed to achieve

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<sup>46</sup> *Id.* at 107.

<sup>47</sup> *Id.* at 109.

<sup>48</sup> HILMI AHMAD SHALABĪ, *AL-MUWAZZAFŪN FĪ MISR : FĪ ‘ASR MUḤAMMAD ‘ALĪ*, 71 (1989).

<sup>49</sup> Raouf Abbas Hamed, *The Siyasatname and the Institutionalization of Central Administration Under Muhammad ‘Ali, in THE STATE AND ITS SERVANTS*, 79 (Nelly Hanna ed., 1995).

<sup>50</sup> SHALABĪ, *supra* note 48 at 72.

<sup>51</sup> Hamed, *supra* note 49 at 84.

<sup>52</sup> KHALED FAHMY, *supra* note 31 at 109.

<sup>53</sup> Hamed, *supra* note 49 at 84–85.

<sup>54</sup> *Id.* at 85.

the expected results; however, they remained applicable until the introduction of the ministerial system in 1878.<sup>55</sup>

### **B. The Beginning of the Debt Crisis**

From 1862, the number of civil servants in the Egyptian government continued increasing due to the expansion of public works because of the production of cotton. Cotton production led to many public works like building ports, enhancing irrigation systems, and extension of railways. New civil servants were appointed to work in these public projects and new administrative units were established to run the projects.<sup>56</sup>

Ironically, 1862, the year the government started recruiting new civil servants, was also the year when it could not pay their salaries because it needed to pay for 176 thousand shares of the Suez Canal company, which it had guaranteed to buy.<sup>57</sup> Therefore, the government started taking loans from the Europeans. The first loan was taken by Khedive Sa'id, and then Khedive Isma'il asked for more loans to finance the public works.<sup>58</sup> In 1875, it became clear that the Egyptian government is unable to repay its debts and that led to the European intervention in the Egyptian administration to make Egypt repay its debts.<sup>59</sup>

According to Robert Hunter, among the reasons for the Egyptian public debt was the determination of the Khedive Sa'id, and the Khedive Isma'il to modernize Egypt by using the Egyptian administration as the main tool to face the control of the foreign merchants over the financial resources after breaking the monopoly that was practiced by Mohamed Ali.<sup>60</sup> To provide the Egyptian administration with the needed trained men the Khedive Isma'il opened schools all over Egypt and sent youth to learn in Europe.<sup>61</sup> Isma'il also flourished the Egyptian industry by extending railways, establishing a paper factory, a textile factory, seventeen sugar factories, and enhancing irrigation systems among other things.<sup>62</sup>

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<sup>55</sup> *Id.* at 85.

<sup>56</sup> F. ROBERT HUNTER, EGYPT UNDER THE KHEDIVES, 1805-1879: FROM HOUSEHOLD GOVERNMENT TO MODERN BUREAUCRACY. 52 (Badr Alrefa'i tran., 2005 ed.).

<sup>57</sup> *Id.* at 54.

<sup>58</sup> *Id.* at 52–54.

<sup>59</sup> *Id.* at 249.

<sup>60</sup> *Id.* at 56.

<sup>61</sup> *Id.* at 56.

<sup>62</sup> *Id.* at 56.

However, the revenues of the Egyptian government could not cover the expenses of those projects.<sup>63</sup> Hence, starting from the 1850s the government started issuing short-term bonds followed by contracting eight loans from Europe secured with state revenues but the revenues could not cover the debt.<sup>64</sup> Therefore, Isma'il asked the British to send two advisors to help in managing the state finances.<sup>65</sup> Upon that request, the British established the first fact-finding mission, which in turn resulted in a French intervention.<sup>66</sup> The negotiations between Egypt, Britain, and France concerning the Egyptian debt resulted in the establishment of Caisse de la Dette Publique (Commission of the Public Debt).<sup>67</sup>

The Commission could not function well because of some reasons that include the competing points of view of the foreign creditors and insufficient Egyptian political cooperation.<sup>68</sup> However, one of the major obstacles that faced the Commission was its inability to deal with the local information order because the Egyptian fiscal and accounting systems were not similar to what the Europeans had back home.<sup>69</sup> These obstacles made the Europeans realize that dealing with the Egyptian situation through the establishment of commissions was not fruitful.<sup>70</sup> Hence, they figured out that a comprehensive administrative reform would be the guarantee of debt repayment.<sup>71</sup>

Cromer alleges that England was not interested in occupying Egypt in order not to damage its relationship with other European countries, but given the financial situation in Egypt in 1879, it had to interfere in the internal affairs of Egypt to ensure that it is administered well to save the British interests in Egypt.<sup>72</sup> Hence, the good administration was not sought to help the Egyptian economy or make development in Egypt but rather to save the British interests represented in debt repayment. This means that, according to Cromer, the main goal of good administration or good governance was collecting the debt.

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<sup>63</sup> Malak Labib, *The Unforeseen Path of Debt Imperialism: Local Struggles, Transnational Knowledge, and Colonialism in Egypt*, in *A WORLD OF PUBLIC DEBTS* 157 (Nicolas Barreyre & Nicolas Delalande eds., 2020), [http://link.springer.com/10.1007/978-3-030-48794-2\\_7](http://link.springer.com/10.1007/978-3-030-48794-2_7) (last visited Mar 7, 2021).

<sup>64</sup> *Id.* at 157.

<sup>65</sup> *Id.* at 157.

<sup>66</sup> *Id.* at 157.

<sup>67</sup> *Id.* at 158–159.

<sup>68</sup> *Id.* at 160.

<sup>69</sup> *Id.* at 160.

<sup>70</sup> *Id.* at 163.

<sup>71</sup> *Id.* at 163.

<sup>72</sup> THE EARL OF CROMER, *MODERN EGYPT* 157–158 (Sabry Mohamed Hasan tran., 2014).

Cromer's theory about the British motive for occupying Egypt is just one of many theories about the real motive behind the British occupation of Egypt. These theories include the fear of the French challenge to the British supremacy in the region, demands of the British industry to save the interests of the British merchants, and saving the security of the Suez Canal.<sup>73</sup> All these theories are centered on British interests, whether based on strategic or economic considerations. This shows how the reform of the civil service does not necessarily target the interest of the citizens who deal with the civil service. Furthermore, the reform of the civil service does not have to protect the interests of the people or enhance the civil service as a service provider but in some cases, the reform targets the interests of the government or the reformer who suggested the reform.

Cromer explains that the British noticed that the way the Egyptian government governed Egypt was the main reason behind the deteriorating financial situation and to change that situation some reforms must be introduced.<sup>74</sup> They started by identifying the reasons that led to the debt to decide the suitable reforms. The identified reasons were the government intervention in the economy by playing a role that is better to be assigned to the private sector,<sup>75</sup> the bad tax system,<sup>76</sup> and not applying the existing laws.<sup>77</sup> The recommended reforms were to restrain unnecessary expenditures,<sup>78</sup> reform the tax system,<sup>79</sup> and use an annual budget.<sup>80</sup> Hence, it was necessary to reform the Egyptian administration to make it able to apply the reform policy.<sup>81</sup> It was also necessary to have efficient civil servants to apply these reforms.<sup>82</sup> Therefore, in 1878, the ministerial system replaced the Khedive's Privy Council and became responsible for applying the new policy.<sup>83</sup> That institutional reform program was a fundamental element of the creditor states' policy in Egypt to ensure that Egypt repays its debts.<sup>84</sup> Because these reforms were difficult for the Egyptians, the British

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<sup>73</sup> See generally, John S. Galbraith & Afaf Lutfi al-Sayyid-Marsot, *The British Occupation of Egypt: Another View*, 9 INT. J. MIDDLE EAST STUD. 471–488 (1978).

<sup>74</sup> THE EARL OF CROMER, *supra* note 72 at 112.

<sup>75</sup> *Id.* at 120.

<sup>76</sup> *Id.* at 91.

<sup>77</sup> *Id.* at 111.

<sup>78</sup> *Id.* at 124.

<sup>79</sup> *Id.* at 119.

<sup>80</sup> *Id.* at 119.

<sup>81</sup> *Id.* at 222.

<sup>82</sup> *Id.* at 119.

<sup>83</sup> Labib, *supra* note 63 at 164.

<sup>84</sup> *Id.* at 163.

suggested that they should be given some aids to mitigate the effects of the reform.<sup>85</sup> The British also suggested that Egyptian citizens must be convinced of the importance of the reform to obey the policies of the Europeans.<sup>86</sup>

The Europeans did not apply in Egypt a reform program to develop the country and enhance its political, economic, and social situations. They did not apply the principles they use in their own countries. The reform program aimed to make Egypt repay its debt with no real interest in helping the country. Malak Labib explains that

The European-led “administrative revolution” made no room for an independent parliamentary institution. As noted earlier, European critique of khedival rule was made in reference to the liberal political model, and the discourse of financial controllers and advisors such as Cromer, Wilson, and Blignères strongly emphasized the link between the financial crisis and the “despotic” nature of the government ... Yet, in practice, it was a very different model that European administrators ultimately sought to implement in the context of Egypt. [They sought] a policy based on the collaboration of a small circle of local politicians, identified by their Western financial advisors as “reformers.”<sup>87</sup>

However, the reform policy did not work well because Khedive Isma'il impeded the council of ministers.<sup>88</sup> According to Cromer, the Khedive proved that the Eastern context must be taken into consideration when implementing the reform policy because disregarding that context impedes the application of the policy even if it is a good policy.<sup>89</sup>

In 1879, Khedive Isma'il Pasha was exiled from Egypt.<sup>90</sup> Robert Hunter explains that one of the reasons for the fall of the rule of Isma'il Pasha was the emergence of the civil bureaucrats who became very powerful and shared Isma'il in ruling Egypt. He adds that those high-ranking civil servants had their own interests either with the ambassadors of the European countries or with Isma'il Pasha or with the people.<sup>91</sup>

In 1881, Sherif Pasha, the Egyptian prime minister, wrote a report to the Khedive Tawfiq asking him to form a committee to propose a law that regulates the civil service.<sup>92</sup> Sherif Pasha wrote that the civil service needs attention from the

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<sup>85</sup> THE EARL OF CROMER, *supra* note 72 at 180.

<sup>86</sup> *Id.* at 239.

<sup>87</sup> Labib, *supra* note 63 at 165–166.

<sup>88</sup> THE EARL OF CROMER, *supra* note 72 at 147.

<sup>89</sup> *Id.* at 147.

<sup>90</sup> HUNTER, *supra* note 56 at 49.

<sup>91</sup> *Id.* at 49.

<sup>92</sup> AL-DUKTŪR SULAYMĀN MUḤAMMAD AL-ṬAMĀWĪ, QAḌĀ' AL-TA'DĪB 18 (1987).

government and laws should be enacted to organize recruitment and promotion of the civil servants to protect them from any arbitrary powers that might hinder their progress and promotions.<sup>93</sup> Sherif Pasha added that the new laws should stipulate the conditions for promotions and should grant periodical raises for non-promoted civil servants.<sup>94</sup> Therefore, a committee should be formed to indicate the stipulations for appointment and promotions, categorize jobs into a hierarchy, and regulate the disciplinary procedures for civil servants.<sup>95</sup> The committee was formed and based on its report issued the khedival high order dated 10 April 1883 regulating the civil service in Egypt.<sup>96</sup>

The high order of 10 April 1883 organized appointing, promoting, and dismissing the civil servants.<sup>97</sup> The high order stipulated that in each ministry or department, a council should be formed and to be called the administrative and disciplinary council in addition to a unit for human resources.<sup>98</sup> That council should have branches in the different governorates and the decisions of those branches could be appealed before the main council in the ministry while the decisions of the main council in the ministry cannot be appealed.<sup>99</sup> The high order also provided that for each civil servant a file should be made to include his papers, previous jobs, previous reports concerning his administrative behavior, and anything related to his service time.<sup>100</sup> Furthermore, the high order mentioned the possible disciplinary sanctions to be imposed on civil servants, which include warning, deduction from salary for no more than fifteen days, suspension, lowering the rank, and dismissal.<sup>101</sup> The high order excluded the high-ranking civil servants from its application.<sup>102</sup> It also stipulated that civil servants who were dismissed by a judicial verdict cannot be appointed again in the civil service.<sup>103</sup>

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<sup>93</sup> *Id.* at 18.

<sup>94</sup> *Id.* at 18.

<sup>95</sup> *Id.* at 18.

<sup>96</sup> *Id.* at 18.

<sup>97</sup> ANṬŪN ṢAFĪR, MAJMU‘AH TATAḌAMMAN JAMĪ‘ AL-QAWĀNĪN WA-AL-LAWĀ’IH WA AL-QARĀRĀT AL-MA‘MŪL BI-HĀ FĪ MIṢR WA KADHĀ AL-ITTIFĀQĀT AL-THUNĀ’IYAH WA AL-MU‘ĀHIDĀT AL-DAWLĪYAH AL-MURTABĪTAH MIṢR BI-HĀ MA‘A AL-ISHĀRAH ILĀ AḤKĀM MAḤKAMATĪ AL-NAQD WA AL-QADĀ’ AL-IDĀRĪ 1856 - 1952. LI-WĀḌĪ‘IHI AL-DUKTŪR ANṬŪN ṢAFĪR, MUḤĀM AMĀM MAḤKAMAT AL-NAQD WAMUSTASHĀR BI-MAJLIS AL-DAWLAH SĀBIQAN. 828 (1952).

<sup>98</sup> *Id.* at 828.

<sup>99</sup> *Id.* at 828.

<sup>100</sup> *Id.* at 828.

<sup>101</sup> *Id.* at 828.

<sup>102</sup> *Id.* at 828.

<sup>103</sup> *Id.* at 828.

Later it was amended by the khedival high order dated 24 May 1885 concerning disciplinary procedures.<sup>104</sup> That high order changed the name of the administrative and disciplinary council to the disciplinary council.<sup>105</sup> The high order gave the heads of the different departments and institutions the power to inflict minor disciplinary sanctions like warning and deduction from salary while preserving the more serious sanctions to the disciplinary council.<sup>106</sup> It also provided the regulations for grievances.<sup>107</sup> Furthermore, the high order formed a new council to decide when a dismissed civil servant should be deprived of the pension.<sup>108</sup> It limited the deprivation of the pension to the cases when the civil servant caused financial damage or was convicted of a felony or misdemeanor.<sup>109</sup>

Then it was followed by supplementary khedival high order on 19 February 1887 concerning submitting the disciplinary procedures of high-ranking officials to an administrative court.<sup>110</sup> This high order formed a high administrative court subject to the prime minister.<sup>111</sup> The high administrative court was specialized in the cases against high-ranking officials filed by the council of ministers when the former committed financial violations.<sup>112</sup> The verdict of the high administrative court was not appealable.<sup>113</sup>

On 7 February 1888 was issued a high order concerning the dismissal of civil servants and stipulated that dismissed civil servants should be handed the decision of their dismissal.<sup>114</sup>

Later was issued the high order dated 24 December 1888 concerning the formation of a high disciplinary court.<sup>115</sup> Unlike the high administrative court, this court was

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<sup>104</sup> *Id.* at 831.

<sup>105</sup> *Id.* at 831.

<sup>106</sup> *Id.* at 831.

<sup>107</sup> *Id.* at 831.

<sup>108</sup> *Id.* at 831.

<sup>109</sup> *Id.* at 831.

<sup>110</sup> *Id.* at 833.

<sup>111</sup> *Id.* at 833.

<sup>112</sup> *Id.* at 833.

<sup>113</sup> *Id.* at 833.

<sup>114</sup> ANṬŪN ṢAFĪR, MUḤĪṬ AL-SHARĀ'Ī. MAJMU'AH TATAḌAMMAN JAMĪ' AL-QAWĀNĪN WA-AL-LAWĀ'IH WA AL-QARĀRĀT AL-MA'MŪL BI-HĀ FĪ MIṢR WA KADHĀ AL-ITTIFĀQĀT AL-THUNĀ'YAH WA AL-MU'ĀHIDĀT AL-DAWLĪYAH AL-MURTABĪTAH MIṢR BI-HĀ MA'A AL-ISHĀRAH ILĀ AḤKĀM MAḤKAMATĪ AL-NAQD WA AL-QAḌĀ' AL-IDĀRĪ 1856 - 1952. LI-WĀḌĪ'IHI AL-DUKTŪR ANṬŪN ṢAFĪR, MUḤĀM AMĀM MAḤKAMAT AL-NAQD WA-MUSTASHĀR BI-MAJLIS AL-DAWLAH SĀBIQAN. AL-MUJALLAD AL-KHAMIS 4718 (1955).

<sup>115</sup> Ṣafīr, *supra* note 97 at 834.

specialized in cases against non-high-ranking civil servants concerning their administrative work only.<sup>116</sup> The court could dismiss civil servants with or without deprivation of pension without ruling over his civil and criminal liability.<sup>117</sup>

Then the decree dated 1 June 1893 regulating the ranks of the jobs in governorates.<sup>118</sup>

Then the decree dated 23 March 1901 concerning disciplinary sanctions for civil servants, which were warning, deduction from salary for no more than a month, suspension with no salary for no more than three months, lowering the rank, and dismissal without deprivation of pension.<sup>119</sup> The decree stipulated that the heads of the departments and institutions could only sanction their inferiors by warnings and deduction from salary for no more than fifteen days while higher sanctions could only be applied according to the applicable laws and high orders in that regard.<sup>120</sup>

On 24 June 1901 was issued a khedival decree ratifying the regulations of the Egyptian and foreign civil servants in the Egyptian government along with temporary workers. Then the law number 15 was issued on 15 May 1913 concerning the financial rights of civil servants who were dismissed by disciplinary procedures.<sup>121</sup>

Then the decree dated 8 February 1920 concerning appointing civil servants by decrees.<sup>122</sup> Then the decree dated 22 September 1930 regulating the dismissal of civil servants who were appointed by decrees.<sup>123</sup> Those civil servants included deputy ministers and their assistants, judges and prosecutors, counselors of the king and their assistants, the general secretaries of ministries and the council of ministers, governors, and the general managers whose annual salary is not less than 1750 Egyptian pounds.<sup>124</sup>

Then was issued the decree dated 15 December 1941 concerning some disciplinary sanctions for civil servants.<sup>125</sup> Later, was issued law 210/1951, which represented a new evolution in the history of the civil service laws in Egypt because it was

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<sup>116</sup> *Id.* at 834.

<sup>117</sup> *Id.* at 834.

<sup>118</sup> AL-ṬAMĀWĪ, *supra* note 92 at 20.

<sup>119</sup> ṢAFĪR, *supra* note 97 at 836.

<sup>120</sup> *Id.* at 836.

<sup>121</sup> AL-ṬAMĀWĪ, *supra* note 92 at 20.

<sup>122</sup> *Id.* at 20.

<sup>123</sup> *Id.* at 20.

<sup>124</sup> ṢAFĪR, *supra* note 114 at 4733.

<sup>125</sup> AL-ṬAMĀWĪ, *supra* note 92 at 20.

comprehensive.<sup>126</sup> It was comprehensive because it covered almost all the aspects concerning the civil servants like appointment, promotion, and disciplinary proceedings, instead of issuing a separate decree for each concern or aspect.

The succession of these decrees starting from the letter for Sherif Pasha in 1881 shows that they were issued for the sake of the civil servants. Sherif Pasha expressed it clearly in his letter that civil servants need laws to protect them from any arbitrary power. Hence, all the decrees were issued to protect the civil servants and grant them raises and rewards. Although some decrees organized the disciplinary procedures for the civil servants when they commit violations, they were issued as a protection for the civil servants not as a way to increase the efficiency of the civil service. Therefore, the administrative and disciplinary council was formed then it was replaced by an administrative court to guarantee judicial protection for the civil servants. The concept of the civil service as a provider of public services did not exist in these decrees. The civil service was just a relationship between the civil servants (the employees) and the government represented in the ruler (the employer).

Because these previous decrees came to provide the civil servants with protection and grant them more financial rights, they cared for the personal interests of the civil servants more than the civil service itself as an institution.<sup>127</sup> Hence, it was necessary to enact a new law to organize the civil service based on modern objective rules that make a balance between the interests of the civil servants and the interests of the government.<sup>128</sup> In other words, there was a need to balance the relationship between the employer and the employees. Therefore, in 1949, Egypt invited the British expert A. P. Sinker (later Sir Paul Sinker) to study the Egyptian civil service and suggest how to solve its problems. Sinker, who was the Director-General of the British Council in Egypt and formerly the first civil service commissioner in the U.K, wrote his report in which he pointed to the inflation of the size of the civil service and based on that report was issued the law 210/1951 concerning the civil service.

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<sup>126</sup> *Id.* at 20.

<sup>127</sup> The explanatory note of Law 47/1978, <http://site.eastlaws.com/GeneralSearch/Home/ArticlesTDetails?MasterID=3524&related> (last visited Apr 22, 2021).

<sup>128</sup> *Id.*

### C. The Independence of Egypt and the Start of Development

Starting from 1952, the Egyptian government under Nasser's regime adopted policies for expanding public industrial activities and nationalizing industries along with providing social services and free education.<sup>129</sup> Nasser's regime also adopted a full employment policy for graduates.<sup>130</sup> All these policies led to a serious increase in the number of civil servants.<sup>131</sup> That increase was in conformity with the role played by the government in the economy at that time. "The administrative units grew from a few dozens in 1952 to nearly 1600 administrative units in 1969. That included 29 ministries, 50 public authorities, 64 public organizations, 381 public companies, 6 independent bodies, 120 urban councils, and 1000 rural councils."<sup>132</sup> Of course, the increase in the number of administrative units was followed by an increase in the number of civil servants. According to A. P. Sinker, 2.2% of the Egyptians worked in the government and that consumed around 35% of the budget.<sup>133</sup>

There have been initiatives for reforming the civil service starting from 1951; however, the primary tools of those initiatives were legislations and ad-hoc committees. The results of those legislations were contradictory and overlapping regulations. The final outcome was inefficient and disorganized civil service.<sup>134</sup> Some of those overlapping regulations created different institutions with overlapping competence and jurisdiction. Therefore, in Egypt, concerning agencies with anti-corruption powers, we can find four institutions responsible for conducting studies about corruption and civil service, which are Transparency Unit, Transparency and Integrity Committee, Information and Decision Support Center, and Central Auditing Organization.<sup>135</sup> Furthermore, there are five institutions responsible for detecting and controlling corruption, which are the Administrative Control Authority, Central Auditing Organization, Public Funding Investigation Police, Illegal Gains Department, and Administrative Prosecution.<sup>136</sup> Moreover, there are four institutions

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<sup>129</sup> Ayubi, *supra* note 1 at 286.

<sup>130</sup> *Id.* at 290.

<sup>131</sup> *Id.* at 286.

<sup>132</sup> NAZIH N M AYUBI, BUREAUCRACY & POLITICS IN CONTEMPORARY EGYPT 239 (1980).

<sup>133</sup> *Id.* at 239.

<sup>134</sup> *Id.* at 239.

<sup>135</sup> OECD, *Business Climate Development Strategy: The Assessment of Egypt's Business Climate Key Findings from Phase 1*, in COMPETITIVENESS AND PRIVATE SECTOR DEVELOPMENT: EGYPT 2010 4 (2010), [https://www.oecd-ilibrary.org/finance-and-investment/competitiveness-and-private-sector-development-egypt-2010/business-climate-development-strategy\\_9789264087408-9-en](https://www.oecd-ilibrary.org/finance-and-investment/competitiveness-and-private-sector-development-egypt-2010/business-climate-development-strategy_9789264087408-9-en) (last visited Oct 30, 2020).

<sup>136</sup> *Id.* at 46.

responsible for receiving complaints, which are Citizens Relations Management, Administrative Control Authority, Illegal Gains Department, and Administrative Prosecution.<sup>137</sup> And there are five institutions responsible for conducting corruption-related investigations, which are Administrative Control Authority, Public Funds Investigation Police, Public Prosecution, Illegal Gains Department, and Administrative Prosecution.<sup>138</sup> Finally, there are two institutions responsible for prosecutions, which are Public Prosecution and Administrative Prosecution.<sup>139</sup> The Organisation for Economic Co-operation and Development (OECD) mentions the overlapping jurisdiction and lack of cooperation between these institutions as the most important reasons for their ineffectiveness in fighting corruption.<sup>140</sup> However, in my opinion, the most important reason for the ineffectiveness of these institutions in fighting corruption is that they work on detecting violations more than working on studying the reasons that led to the violation in the first place to change it. During Nasser and Sadat's regimes, four institutions were created to detect and investigate corruption – the Administrative prosecution, the Administrative Control Authority, the Central Auditing Organization, and the Illegal Gains Department – while there was no single institution whose main purpose was to conduct studies about corruption until the creation of the Information and Decision Support Center in 1985 during Mubarak's regime.<sup>141</sup> This pattern is not new in the history of reforming the Egyptian civil service, as mentioned earlier the first initiative by Mohamed Ali when he issued *qanun al-filaha* (the law of farming) failed notwithstanding the harsh penalties.<sup>142</sup> Mohamed Ali's second initiative when he issued *qanun al-siyasa al-malakiyya* or the *Siyasatname* law, which dealt primarily with the offenses of the civil servants<sup>143</sup> also did not succeed in combating corruption of the civil servants because it did not change the causes of the corruption.<sup>144</sup> The reform should address the root cause of the corruption, not just arrest or terminate the violators.

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<sup>137</sup> *Id.* at 46.

<sup>138</sup> *Id.* at 46.

<sup>139</sup> *Id.* at 46.

<sup>140</sup> *Id.* at 29.

<sup>141</sup> *Id.* at 46.

<sup>142</sup> KHALED FAHMY, *supra* note 31 at 105.

<sup>143</sup> SHALABĪ, *supra* note 48 at 71.

<sup>144</sup> *Id.* at 72.

One of the methods of reforming the civil service is worth shedding the light on. This method is establishing the Administrative Prosecution by the law 480/1954 to improve the accountability of the civil servants.

The goal of establishing the Administrative Prosecution is to guarantee the integrity and independence of the administrative investigations.<sup>145</sup> This fulfills a twofold goal. First, the administrative prosecutor is not subordinate to the head of the institution within which the investigation occurs, which means that the prosecutor is not afraid of retaliation in case the convicted person was a high-ranking official. The second goal is to protect low-ranking officials from being arbitrarily tried by their superiors.<sup>146</sup> The role of the Administrative Prosecution is similar to the role of the Administrative Inspection Bureau (AIB) in Japan or the Swedish ombudsman or French mediator and the parliamentary commissioner systems in other countries.

The law of Administrative Prosecution 480/1954 was amended later by Law 117/1958. According to the explanatory note of Law 117/1958, the competence or the jurisdiction of the Administrative Prosecution was limited under Law 480/1954 because it was a new method of reform but since that method proved to be efficient, the legislator is encouraged to expand its jurisdiction.<sup>147</sup> Therefore, the jurisdiction of the Administrative prosecution was expanded again by Law 19/1959 to cover public organizations and institutions. Then later the president of Egypt issued decision number 1456/1959 expanding the jurisdiction of the Administrative Prosecution over public companies, and in 1960 the president issued decree number 2062 expanding the jurisdiction of the Administrative Prosecution over some associations. Due to the success of the Administrative Prosecution in the field of accountability and disciplinary procedures for civil servants, the legislator expanded its jurisdiction again. Hence, issued law number 115/1983 making the Administrative Prosecution the only institution competent with investigating with high-ranking civil servants along with other exclusive powers for the Administrative Prosecution to make it powerful before administrative units. Expansion of the jurisdiction of the Administrative Prosecution continued by the laws number 203/1991 and 142/1994.<sup>148</sup>

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<sup>145</sup> Counselor Islam Ehsan, *Mjld al'edalth alsadr 'en almrkz alqwmy llbhwth alajtma'eyh waljna'eyh – almsh alajtma'ey alshaml llmjtm'e almsry*, 140 (2016).

<sup>146</sup> *Id.* at 140.

<sup>147</sup> *Id.* at 140.

<sup>148</sup> *Id.* at 140.

The importance of the role of the Administrative Prosecution stems from the fact that it performs a role that otherwise would not be properly performed. The Administrative Prosecution, being an ombudsperson body, fulfills the objectives of accountability, which are improving the quality of administration, protecting the rights of citizens dealing with the administration, and increasing the legitimacy of the government.

Although the role of the government was diminished in the seventies after the adoption of the open-door economic policy,<sup>149</sup> the increase of the number of the civil servants continued under its own momentum.<sup>150</sup> That continuous increase because of the recruitment of graduates policy represented a problem to the government in the seventies because the role of the government was diminishing giving more space to the market economy and making less need to a large civil service.<sup>151</sup> Yet, altering that policy by leaving the employment of the educated youth subject to the market would create a social and political dilemma.<sup>152</sup> By the mid-seventies, the government became aware that the inflated inefficient civil service represented an obstacle in front of the open door economic policy as it was frequently highlighted by the then Prime Minister Mamduh Salim.<sup>153</sup>

According to the explanatory note of Law 47/1987 that was written by Mamduh Salim, Law 210/1951 was issued to regulate the civil service based on objective rules instead of the previous ones that were subjective and serving the interests of the civil servants more than the state.<sup>154</sup> The private interest of the civil servants was clear in the rules concerning pricing the certificates.<sup>155</sup> These rules set certain salaries and compensations for civil servants based on their educational certificates regardless of the job they were performing.<sup>156</sup> Hence, it was normal to find two civil servants doing the same job but receiving different salaries because they had different certificates.<sup>157</sup> However, the Egyptian government could not stop that system because of the power of the civil servants as an interest group. Not only the government could not stop that

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<sup>149</sup> Ayubi, *supra* note 1 at 288.

<sup>150</sup> *Id.* at 288.

<sup>151</sup> *Id.* at 289–290.

<sup>152</sup> *Id.* at 289–290.

<sup>153</sup> *Id.* at 295.

<sup>154</sup> The explanatory note of Law 47/1978, *supra* note 127.

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

system, but it also enacted Law 371/1953 that ensures the continuity of that system of pricing the certificates.<sup>158</sup> That law was meant to apply for a short period until the issuance of Law 46/1964 but the Law 46/1964, which came to represent the social ideology of that time, did not stop that system.<sup>159</sup> Yet, Law 158/1964 and 26/1966 were issued to keep the pricing system in place even after the issuance of the civil service law number 58/1971.<sup>160</sup> Because the civil service laws kept responding to the requests of the civil servants, a system existed where the private interests competed with the public interests.<sup>161</sup> The succession of these laws that enacted financial exceptions for the system of pricing the certificates shows how civil servants can be an interest group that interferes in the decisions of the state including the laws concerning reforming the civil service. Hence, it was necessary to issue a new law to regulate the civil service based on objective rules, and to that end was issued Law 47/1978.<sup>162</sup>

Given the vital role played by the civil service throughout history in helping different governments and foreign creditors to implement their policies, and given the continuous inflation in its size along with its inefficiency, Egypt's partners from international organizations and international financial institutions became interested in reforming the Egyptian civil service. The World Bank and the IMF cooperate with Egypt to enhance governance and boost economic growth. Hence, each institution studied the Egyptian situation and wrote reports diagnosing the causes of the poor performance of the Egyptian civil service and prescribing how to enhance and improve it.

## **D. The IMF's and the World Bank's Reform Strategy of the Egyptian Civil Service**

### **1. The IMF's Reform Strategy:**

According to Article IV of the IMF's Articles of Agreement, the IMF holds bilateral discussions with its members every year.<sup>163</sup> In its discussion with Egypt in 2014, the

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<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> International Monetary Fund, *Arab Republic of Egypt: 2014 Article IV Consultation-Staff Report; Press Release and Statement by the Executive Director for the Arab Republic of Egypt*, 15 IMF STAFF COUNTRY REPORTS 1 (2015).

IMF went through the difficult situation of the Egyptian economy after the revolution of 2011. The discussion identified the reasons behind the double-digit budget deficits as the delayed reforms, low revenue, and rising wages and subsidies.

The report of the discussions highlights the procedures that have been taken by Egypt to reduce the fiscal deficit. The report states,

The government recently set a ceiling for public sector wages, subjected bonuses to income taxes and discontinued the automatic inclusion of bonuses in basic wages after five years. New hires have been centralized and require approval by the finance ministry, and the use of public entities' own resources for additional rewards to employees has been discontinued. The authorities are also working on a thorough revision of the public pay system and introducing an attrition scheme limiting the number of retirees to be replaced.<sup>164</sup>

However, further steps need to be taken to control the wage bill.<sup>165</sup>

On November 11, 2016, the IMF approved a three-year extended arrangement under the Extended Fund Facility (EFF) to grant Egypt about US\$ 12 billion to support the economic reform program.<sup>166</sup> The program should help Egypt restore macroeconomic stability and promote growth. The identified challenges of the Egyptian economy that the program is going to address include a balance of payment problem, foreign exchange shortage, large budget deficits, and low growth with high unemployment.<sup>167</sup>

The large budget deficits led to rising public debt, and to reduce the fiscal deficits, the government should apply certain policies. These policies are the introduction of VAT, reducing energy subsidies, and the optimization of the public sector wage bill.<sup>168</sup>

The optimization of the public sector wage bill should be applied through strict hiring rules and civil service reform.<sup>169</sup> The IMF claims that the civil service reform to be applied is a break from the past because it is designed to reverse the growth of the public wage bill.<sup>170</sup> According to the IMF, this reverse effect is expected to happen through: " a) the new budget law eliminates indexation of bonuses and allowances of public employees and defines them in nominal terms as opposed to a percentage of

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<sup>164</sup> *Id.* at 18.

<sup>165</sup> *Id.* at 19.

<sup>166</sup> International Monetary Fund, *Request for Extended Arrangement under the Extended Fund Facility*, *IMF PRESS RELEASE No. 16/501 1* (2016).

<sup>167</sup> *Id.* at 1.

<sup>168</sup> *Id.* at 2.

<sup>169</sup> *Id.* at 13.

<sup>170</sup> *Id.* at 18.

the base salary before; b) the current practice of scrutinizing new hiring and not automatically filling vacant positions; c) the new civil service law, passed by Parliament in August, will modernize the entire public employment framework."<sup>171</sup>

In the First Review under the Extended Arrangement under the Extended Fund Facility, published in September 2017, it was acknowledged that some savings have been made due to the wage bill reforms but still, more should be done.<sup>172</sup>

In the Second Review under the Extended Arrangement under the Extended Fund Facility, published in January 2018, again lowering public wages was considered fruitful and should be maintained, regardless of the local pressures to increase the wages.<sup>173</sup>

The Third Review under the Extended Arrangement under the Extended Fund Facility, published in July 2018, continued the plan of the program concerning the wage bill, which is reducing the wage bill through the "containment of the growth of base salaries, tight control of bonuses and allowances, control on the hiring process, and continuing modernization of the public employment framework in line with the new civil service law, passed by Parliament in August 2016."<sup>174</sup> The Fourth Review under the Extended Arrangement under the Extended Fund Facility, published in April 2019, followed the same path as the previous reviews.<sup>175</sup>

In October 2019, the IMF completed the fifth and final review under the Extended Arrangement under the Extended Fund Facility. Concerning the public wage bill, the review mentioned that Egypt is about to achieve the target of the program.<sup>176</sup>

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<sup>171</sup> *Id.* at 56.

<sup>172</sup> International Monetary Fund, *First Review under the Extended Arrangement Under the Extended Fund Facility and Requests for Waivers for Nonobservance and Applicability of Performance Criteria*, 17 IMF STAFF COUNTRY REPORTS, 51 (2017).

<sup>173</sup> INTERNATIONAL MONETARY FUND, *International Monetary Fund, Second Review Under the Extended Arrangement Under the Extended Fund Facility, and Request for Modification of Performance Criteria*, 18 IMF STAFF COUNTRY REPORTS 9 (2018).

<sup>174</sup> INTERNATIONAL MONETARY FUND, *Third Review Under the Extended Arrangement Under the Extended Fund Facility, and Request for Modification of Performance Criteria*, 18 IMF STAFF COUNTRY REPORTS 47 (2018).

<sup>175</sup> *See generally*, International Monetary Fund, *Fourth Review Under the Extended Arrangement Under the Extended Fund Facility*, 19 IMF STAFF COUNTRY REPORTS (2019).

<sup>176</sup> INTERNATIONAL MONETARY FUND, *Fifth Review Under the Extended Arrangement Under the Extended Fund Facility, and Request for Modification of Performance Criteria*, 18 IMF STAFF COUNTRY REPORTS 9 (2019).

## 2. The World Bank's Strategy:

Egypt is a World Bank member since 1945.<sup>177</sup> Since then the World Bank has been assisting Egypt in improving its economic performance. In 2005, the World Bank published its report on the Country Assistance Strategy (CAS) with Egypt for the period FY06-FY09. The Bank proposed to help Egypt achieve its development objectives, which are high and sustainable GDP growth and alleviation of poverty. These objectives are to be achieved through the private sector with a complementary role from the public sector. The complementary role of the public sector is to be accomplished by improving the provision of public services such as infrastructure, health, education, and macroeconomic stability.<sup>178</sup>

The plan to enhance macroeconomic stability was to control the fiscal deficit by reducing public expenditures and increasing public revenues. To reduce expenditures plans were set to control appointing civil servants and to cut subsidies and unnecessary expenditures in the government.<sup>179</sup>

Since the quality of the human resources in the civil service and the cost of keeping a large size civil service affect the quality of the provided public services, the World Bank set plans to enhance that situation. The plans include contracting out some public services, limiting new hiring, long-term and short-term contracts for new hires instead of permanent employment, and increasing accountability through performance monitoring systems.<sup>180</sup>

Education in Egypt is one of the public services that need to be enhanced to achieve the development objectives.<sup>181</sup> The Bank noticed that most of the budget of the education goes to the salaries of the teachers and the administrative staff, which leaves little for investment and maintenance. Nevertheless, all are paid low salaries and that represents an obstacle for improving the quality of the service, a problem that exists concerning other public services too.<sup>182</sup>

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<sup>177</sup> Member Countries, WORLD BANK , <https://www.worldbank.org/en/about/leadership/members> (last visited Mar 8, 2021).

<sup>178</sup> WORLD BANK, *supra* note 25 at iii.

<sup>179</sup> *Id.* at 8.

<sup>180</sup> *Id.* at 13.

<sup>181</sup> *Id.* at 11.

<sup>182</sup> *Id.* at 11.

Enhancing the health service in Egypt is also an important factor to achieve the development objectives. Egypt faces a big challenge of providing health care to the poor while raising the quality and efficiency of the service. Therefore, the Bank advised the government to "(a) improve the quality and efficiency of the existing government health care delivery system by reducing fragmentation, introducing greater managerial autonomy and accountability, and contracting of services where appropriate; (b) place greater emphasis on prevention and primary care; and (c) enhance management of public funds."<sup>183</sup>

Ten years later, since the earlier report of 2005, in 2015, in the Bank's report for Egypt for the period FY 2015-2019, the Bank acknowledges that political, social, and economic reforms have been applied, yet more needs to be done.<sup>184</sup> Although Egypt has implemented reforms to reduce the fiscal deficit through controlling the wage bill and increasing revenues, the fiscal deficit remains and its reform policies need to be continued.<sup>185</sup> Therefore, Egypt's strategy for sustainable development is focused on three main points: economic development, improving governance, and social justice.<sup>186</sup> The Bank's support for this strategy is focused on improving governance among other points.<sup>187</sup> Improving governance should happen by enhancing transparency and efficiency of the public institutions through increasing the citizens' ability to hold the state accountable by giving feedback on the quality of the services provided by public institutions.<sup>188</sup>

The Bank explains that governance is important because it strengthens the relationship between the state and the citizens, and because it leads to achieving sustainable growth and reducing poverty.<sup>189</sup> Improving governance in Egypt shall happen through a new civil service law. Therefore,

In March 2015, [the Egyptian government] issued Law 18/2015 on Civil Service, replacing Law 47 of 1978 regulating the recruitment, dismissal, promotion of civil servants, as well as performance-related salary-increases, leave options, and bonuses. The new law is a central element in the ambitious action plan of the Ministry of

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<sup>183</sup> *Id.* at 12.

<sup>184</sup> WORLD BANK, *supra* note 30 at i.

<sup>185</sup> *Id.* at i.

<sup>186</sup> *Id.* at ii.

<sup>187</sup> *Id.* at ii.

<sup>188</sup> *Id.* at ii.

<sup>189</sup> *Id.* at 8.

Planning and Administrative Reform<sup>190</sup> to introduce performance measurement criteria and for meritocratic recruitment and promotion of staff. The action plan also includes actions to reduce graft and steps towards improving the responsiveness and quality of public services. These measures should contribute to greater accountability in service delivery and more efficient PIM [Public Investment Management system] in the medium to long term.<sup>191</sup>

Civil service reform is considered a fundamental step towards reducing the chronic fiscal deficit.<sup>192</sup> To reduce that chronic deficit, some measures have been undertaken regarding the wage bill of the civil service, which include setting a limit for bonuses and rewards and preventing the automatic increase of the salary by delinking variable payments from basic salary.<sup>193</sup> In addition to that, a three-year plan was set for administrative reform to combat corruption and enhance the efficiency of the civil service. The plan aspires to "(i) streamline the legal framework of all public administration units/bodies; (ii) enhance the effectiveness and efficiency of public administrative bodies and the quality of public services; (iii) enhance the capacity of civil servants; (iv) reinforce equity and transparency of public services; (v) strengthen accountability and citizen engagement; and (vi) ensure efficient management of public assets and buildings by establishing a unified database."<sup>194</sup>

According to the Bank, low levels of transparency and accountability, and the absence of sanctions make it hard for individuals and entrepreneurs to gain access to public services or hold civil servants accountable.<sup>195</sup> Therefore, citizens should be equipped with mechanisms that enable them to provide feedback on the quality of the services to improve the accountability of the civil servants and to increase the citizens' trust in the public institutions.<sup>196</sup> For instance, the absence of parent meetings and weak supervision over the performance of the teachers in Egyptian public schools means that they are immune from being fired or disciplined for poor performance. This in turn negatively affects the educational process by resulting in teacher absenteeism and less teaching time in classrooms.<sup>197</sup>

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<sup>190</sup> Ministry of Planning, Monitoring and Administrative Reforms then, now it is the Ministry of Planning and Economic Development.

<sup>191</sup> WORLD BANK, *supra* note 30 at 27.

<sup>192</sup> *Id.* at 3.

<sup>193</sup> *Id.* at 7.

<sup>194</sup> *Id.* at 17.

<sup>195</sup> *Id.* at 8.

<sup>196</sup> *Id.* at 9.

<sup>197</sup> *Id.* at 9.

Poor governance and lack of citizens' engagement in monitoring the quality of the public services, which lead to absenteeism, are not exclusive to the education sector but also exist in the health sector.<sup>198</sup> In another work published by the Bank, it was noted, "Public sector teachers and health workers tend to offer some services as private efforts for a fee, which can create a conflict of interest. In Egypt, for example, 89 percent of private physicians also work in public facilities where they may be absent or extend little effort during official hours while giving their best performance at their private practice."<sup>199</sup> According to the Bank, the reasons behind absenteeism are low pay, weak supervision, and lack of meaningful job content. Since the administrative unit productivity is low, absenteeism is not a problem.<sup>200</sup>

To improve the fiscal management, Egypt requested a proposed programmatic Development Policy Financing (DPF) from the Bank.<sup>201</sup> The main points of the Bank's policy are "(i) advancing fiscal consolidation, through higher revenue collection, moderating the growth in the wage bill, and strengthening debt management; (ii) ensure sustainable energy supply through private sector engagement; and (iii) enhance the business environment by facilitating investment laws, simplifying industrial licensing requirements and increasing competition."<sup>202</sup> As usual, controlling the wage bill is a fundamental element in reducing the fiscal deficit.

The importance of the civil service wages and performance for improving governance led the Bank to prepare a report dedicated to public employment and governance in Egypt, Tunisia, and Morocco. The objective of the report is to study the dynamic of the civil service to understand the reasons behind the growth of the wage bill and its effect on the quality of the performance.<sup>203</sup> To achieve that objective, the report reviews the previous reform programs to extract lessons concerning a better control of the public wage bill and improving the efficiency of the government.<sup>204</sup>

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<sup>198</sup> *Id.* at 12.

<sup>199</sup> BRIXI, HANA, ELLEN LUST, AND MICHAEL WOOLCOCK, TRUST, VOICE, AND INCENTIVES: LEARNING FROM LOCAL SUCCESS STORIES IN SERVICE DELIVERY IN THE MIDDLE EAST AND NORTH AFRICA 7 (2015).

<sup>200</sup> WORLD BANK, *supra* note 23 at 19.

<sup>201</sup> WORLD BANK, *supra* note 30 at 25.

<sup>202</sup> *Id.* at 25.

<sup>203</sup> WORLD BANK, *supra* note 23 at 5.

<sup>204</sup> *Id.* at 5.

The report explains that the problem of the civil service in Egypt started in the 1960s when the "public sector job was considered the right of every Egyptian."<sup>205</sup> Since then the Egyptian civil service has kept growing. In 1987, there were 1.6 million civil servants and by 2008, the number reached 5.7 million civil servants.<sup>206</sup> The main reason behind the public employment growth, according to the report, is political.<sup>207</sup> Political leaders used recruitment in the civil service as a reward for supporters, or to please the public, or for social protection purposes by creating jobs in the civil service regardless of actual need.<sup>208</sup> Other reasons behind the public employment growth include allowing new hires beyond the limits of the budget, and poor application of staff performance assessment systems.<sup>209</sup> In addition to that, people prefer public jobs because they are less demanding and more rewarding than private-sector jobs. Moreover, public jobs provide high job security, low possibility of dismissal, and they are considered more respectable.<sup>210</sup> The large size of the civil service does not only constitute a burden on the budget because of the large wage bill but also the larger it is the greater its power as an interest group protecting its own rights.<sup>211</sup>

The high job security and the low possibility of dismissal come from the fact that the civil service law provides for a tenured civil service, with strong guarantees against arbitrary dismissal.<sup>212</sup> The tenured civil service or career-based civil service means that employees are not hired to perform a certain job but given a rank within a hierarchy. Later they are promoted based on rank and seniority instead of merit and performance.<sup>213</sup> To change the permanent status of the career-based civil service, the Egyptian government started hiring employees using short-term contracts according to Law 47/1978. However, the Parliament later changed the law to allow converting the short-term contract into a tenured service after three years.<sup>214</sup>

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<sup>205</sup> *Id.* at 5.

<sup>206</sup> *Id.* at 16.

<sup>207</sup> *Id.* at 4.

<sup>208</sup> *Id.* at 4.

<sup>209</sup> *Id.* at 4.

<sup>210</sup> *Id.* at 6.

<sup>211</sup> *Id.* at 15.

<sup>212</sup> *Id.* at 12.

<sup>213</sup> *Id.* at 13.

<sup>214</sup> *Id.* at 13.

Formally, promotion requires an annual performance assessment but in fact, the assessment is meaningless since there is no job description.<sup>215</sup> Therefore, performance assessments are used as rewards, and because of the low wage, managers give all their staff high scores to allow them to receive the bonus that is tied to the assessment.<sup>216</sup> Hence, 97% of the Egyptian civil servants are rated "excellent."<sup>217</sup> Linking promotions to rank and seniority blocks the way before the younger energetic staff and creates weak incentives for better performance.<sup>218</sup>

Although previous civil service laws employed competitiveness based on educational qualifications, informal selection approaches through connections and patronage existed as well.<sup>219</sup> The Bank expects the new civil service law (Law 18 of 2015) to counter the informal selection approaches by running a nationwide entry exam.<sup>220</sup>

The report states that civil service reform initiatives and programs usually start by reviewing and revising the existing laws, which results in periodic new laws without a major change in the civil service.<sup>221</sup> The report adds that the existing civil service laws already require merit for appointments and promotions, which means that it is not the absence of the legal framework, which is responsible for the public wage bill growth and poor performance but the content of the laws and the way they are applied.<sup>222</sup> Creating a gap between the law and its application, especially in areas such as appointments, promotions, and performance assessments makes the provisions of the law that stipulate merit inoperative.<sup>223</sup>

The report continues,

What is striking for all of [public service reform initiatives] is that the diagnosis on which they are based is not new. Most of the problems they are addressing were recognized several decades ago and featured in earlier, if not sustained, reform programs. Reformers have long recognized the inadequacies of the staff performance assessment process, and the negative consequences for merit based promotion and entity performance. Another target of reform has been pay structures, acknowledging that base pay is too low and allowances too numerous and nontransparent. There is

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<sup>215</sup> *Id.* at 13.

<sup>216</sup> *Id.* at 13.

<sup>217</sup> *Id.* at 13.

<sup>218</sup> *Id.* at 13.

<sup>219</sup> *Id.* at 13.

<sup>220</sup> *Id.* at 13.

<sup>221</sup> *Id.* at 15.

<sup>222</sup> *Id.* at 12.

<sup>223</sup> *Id.* at 12.

also recognition that organizational structures have proliferated and staffing levels are too high – though without a clear picture of what staff are doing, it is impossible to tell whether a department is overstaffed and by how much.<sup>224</sup>

The Bank noticed that the previous initiatives for civil service reform looked like each other. They were based on the same diagnosis and prescribed the same solutions for decades. They kept amending civil service laws without noticing that the problem lies in the application, not the law itself. They recognized that the staffing levels are too high. They also recognized that the pay is too low and allowances too numerous and nontransparent, along with inadequate staff performance assessments. Therefore, the Bank proposed what the government should do to reform the civil service.<sup>225</sup> The government should reduce the wage bill.<sup>226</sup> It should freeze new hiring and restrain pay awards even if the salary of critical categories of staff remains lower than the private sector.<sup>227</sup> It should do systematic assessments of skills in terms of the required tasks.<sup>228</sup> It should amend the civil service law to allow for early retirement, voluntary retirement, and retrenchment.<sup>229</sup> It should also enhance citizens' engagement by providing them with the opportunity to give feedback on the service.<sup>230</sup>

### **E. Concluding Remarks**

Tracing the history of the civil service in Egypt shows that the different rulers and the foreign creditors used it for different purposes. Mohamed Ali used it to support conscription while Isma'il used it to run the expanding public projects. The British and French creditors used the civil service to apply their administrative reform for the sake of debt repayment. To that end, they wanted to minimize the role of the state in the economy and maximize the role of the private sector. However, their plan failed, according to Cromer, because they disregarded the Eastern context and did not consider the local political factors.

Then Nasser used the civil service to support the expanding public industrial activities and nationalizing industries along with providing employment for graduates. Sadat adopted the open-door economic policy, which meant that he wanted to diminish the role of the state and give more space to the market economy; hence, he did not need a

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<sup>224</sup> *Id.* at 22–23.

<sup>225</sup> *Id.* at 24.

<sup>226</sup> *Id.* at 24.

<sup>227</sup> *Id.* at 24.

<sup>228</sup> *Id.* at 24.

<sup>229</sup> *Id.* at 25.

<sup>230</sup> *Id.* at 25.

large civil service. However, he kept using the civil service for providing the young educated graduates with jobs to avoid social and political problems.

Finally, the World Bank and the IMF set plans for the civil service reform based on the concept of good governance. They wanted to minimize the role of the state and to give more space to the private sector; hence, they found that there is no need for a big civil service but unlike Sadat, they did not care for the social and political factors and chose to control the public wage growth and to downsize the civil service. This fact suggests the existence of a slight similarity between the reform strategy of the World Bank and the IMF and the reform strategy of the British and French creditors, which failed, according to Cromer, because of disregarding the local political factors. This similarity raises a concern about the reasons that made the World Bank and the IMF reapply a previously failed reform strategy. Therefore, in the following chapter, I explore the concept of good governance and its relationship with the civil service.

### III. Good Governance

The World Bank's and the IMF's reform strategy of the Egyptian civil service is based on their concept of good governance. Hence, to understand why they chose this reform strategy we need to understand the concept of good governance and its relationship with the civil service.

#### A. History and Evolution

International financial institutions, like the International Monetary Fund (IMF) and the World Bank, provide states with loans and policies to promote development. The policies are provided as the conditions to grant the loans. Since the 1980s and until now, good governance is a part of the conditions of those institutions to grant loans. According to them, good governance is important for the states to achieve development. To understand what they mean by good governance, it is important to go through the historical evolution of the concept.

In the 1960s, 1970s, and the beginning of the 1980s, development policies were state-led and focused on strengthening public institutions to lead the economy and make them able to apply the development policies.<sup>231</sup> As these policies did not succeed, the reasons for their failure became a rich field for studies. In a conference on the Latin American debt crisis, the economist John Williamson submitted a ten-point policy to help developing states achieve development. The policy is based on the ideas of free-market capitalism.<sup>232</sup> Government intervention in the market was identified by neoliberal economists as the reason behind the failure of development policies of the previous decades that were state-centric. Hence, they suggested a market-centric approach instead of the state-centric approach.<sup>233</sup> The market-centric approach is based on governance through the market.<sup>234</sup> Governance through the market means that allowing competition, supply and demand, and price mechanisms to govern the markets and lead the development without government intervention and its arbitrary, corrupt public officials and civil servants.<sup>235</sup> That policy, which is submitted by John Williamson, was supported by the World Bank, the International Monetary Fund, the

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<sup>231</sup> Ponzio and Sakiko Fukuda, *supra* note 18.

<sup>232</sup> Sarah Babb, *The Washington Consensus as transnational policy paradigm: Its origins, trajectory and likely successor*, 20 REVIEW OF INTERNATIONAL POLITICAL ECONOMY 268–297 (2013).

<sup>233</sup> *Id.*

<sup>234</sup> Muhammad Iqbal, *Is Good Governance an Approach to Civil Service Reforms?*, 45 PDR 621–637 (2006).

<sup>235</sup> *Id.*

Inter-American Development Bank, and the US Executive, and since all of them are located in Washington, it was called the Washington Consensus.<sup>236</sup> After Washington Consensus, the IMF and the World Bank started adopting structural adjustment policies in their aid conditions. These policies focused on boosting economic growth and minimizing the role played by the state in the economy.<sup>237</sup>

Following plan-economy instead of market-economy was identified by neoliberal economists as the reason behind the slow economic growth in the 1960s and the 1970s. Hence, they found the separation between politics and economy to be the ideal solution for economic growth. The problem with the state intervention in the economy, according to neoliberal economists, is that the state seeks to redistribute the wealth in the society.<sup>238</sup> It does so through taxes, but with time, taxes become punitive and this, in turn, distorts the incentive structure of the market economy.<sup>239</sup> Consequently, people lose interest in working and this leads to the decline of the total production.<sup>240</sup> This is because they have lost the desire to work and this in turn negatively affects the economy as it causes a decline in total production.<sup>241</sup> Therefore, the state should abstain from intervening in the economy. The good state then is a state that knows the limits of its role and separates between the fields where it should interfere and the fields that are out of its scope. A state that is independent of exploitation by interest groups and equipped with highly skilled civil servants who are small in number and have ethics.<sup>242</sup>

Although the new policies, which are market-centric, were set to fix the failure of the previous policies, which were state-centric, they did not make the expected success.<sup>243</sup> They neither made economic growth nor reduced poverty. They even damaged the welfare of the societies where they were applied.<sup>244</sup> Among the obstacles identified by the World Bank that led to the failure of the market-led policies were poor public

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<sup>236</sup> Babb, *supra* note 232.

<sup>237</sup> Klaus Frey, *Development, good governance, and local democracy*, 3 BRAZ. POLITICAL SCI. REV. (ONLINE) 40 (2008).

<sup>238</sup> Rittich, *supra* note 21 at 111–112.

<sup>239</sup> *Id.* at 111–112.

<sup>240</sup> *Id.* at 111–112.

<sup>241</sup> *Id.* at 111–112.

<sup>242</sup> *Id.* at 111–112.

<sup>243</sup> International Monetary Fund, *supra* note 17 at 12.

<sup>244</sup> Rittich, *supra* note 24 at 201.

administration and a crisis of governance.<sup>245</sup> Therefore, the importance of the role of the state and its institutions was recognized by the World Bank. Hence, the World Bank changed the old concept of a minimal state or watchperson state to an effective state.<sup>246</sup> In this phase, governance policies focused on the public institutions for the benefit of the market. "Key aspects of the agenda for governance development and reforms included: rule of law, such as the enforcement of contracts and property rights; eliminating corruption and other rent-seeking activities; transparency in public services to ensure efficiency and effectiveness; reducing uncertainties and instability in the economic and political environment; ensuring efficient public services for basic social services such as schools and healthcare centers."<sup>247</sup> The World Bank realized that markets cannot work alone without government because they may not be able to provide sound incentive structures. Therefore, the markets should be supported by effective institutions to promote growth. Instead of dismantling the state or making a rigid separation between the government and the market, they are seen now as complementing each other.<sup>248</sup>

This new interest in the role of the state to support the market is explained by Kerry Rittich as she states, "because transaction costs, information deficiencies and incomplete markets are pervasive rather than exceptional, the conditions under which pure market solutions are optimally efficient rarely obtain in practice. Consequently, correcting market inefficiencies through various mechanisms, including state regulation, would appear to be crucial to arguments about the superiority of market allocation of resources."<sup>249</sup> However, since neoliberal economists believed that the failure of development policies in the 1960s and 1970s was due to government intervention, they became skeptical of any kind of government intervention. They are constantly alarmed by the inefficiency of state institutions, and their regulations to correct market failure. Therefore, they thought about good governance and best practices as means to make the government intervention market-friendly. The neoliberal policy of good governance and best practices focused on combating corruption and reforming government institutions to promote economic

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<sup>245</sup> International Monetary Fund, *supra* note 17 at 12.

<sup>246</sup> Rittich, *supra* note 24 at 208.

<sup>247</sup> Ponzio and Sakiko Fukuda, *supra* note 18 at 3.

<sup>248</sup> Good Governance and the World Bank, 8 (Vivien Collingwood ed., 2003).

<sup>249</sup> Rittich, *supra* note 21 at 115.

growth.<sup>250</sup> Consequently, government institutions should be downsized and it should support the private sector instead of impairing it.<sup>251</sup> In addition to that, the traditional services provided by the state should be contracted out.<sup>252</sup> The result of this new approach is a shift in the definition of good governance. This calls us to explore the definition of governance.

### **B. Defining Good Governance:**

According to the Organization for Economic Co-Operation and Development (OECD), there are 17 different definitions for "governance" and the term is used by international organizations interchangeably with the term "good governance."<sup>253</sup>

The United Nations Development Programme (UNDP) defines governance as "the exercise of economic, political, and administrative authority to manage a country's affairs at all levels. It comprises mechanisms, processes and, institutions through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations, and mediate their differences."<sup>254</sup>

The Organization for Economic Co-operation and Development (OECD) defines good governance as "the use of political authority and exercise of control in a society in relation to the management of its resources for social and economic development"<sup>255</sup>

The Institute of Governance in Ottawa explains, "Governance comprises the institutions, processes, and conventions in a society which determine how power is exercised, how important decisions affecting society are made, and how various interests are accorded a place in such decisions."<sup>256</sup>

The Commission on Global Governance defines it as "the sum of the many ways individuals and institutions, public and private, manage their common affairs."<sup>257</sup>

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<sup>250</sup> *Id.* at 115.

<sup>251</sup> *Id.* at 122.

<sup>252</sup> *Id.* at 122.

<sup>253</sup> International Monetary Fund, *supra* note 17 at 5.

<sup>254</sup> Thomas G Weiss, *Governance, good governance and global governance: Conceptual and actual challenges*, 21 *THIRD WORLD QUARTERLY* 797 (2000).

<sup>255</sup> *Id.* at 797.

<sup>256</sup> *Id.* at 797.

<sup>257</sup> *Id.* at 797.

UN Secretary-General Kofi Annan stated, "good governance is ensuring respect for human rights and the rule of law; strengthening democracy; promoting transparency and capacity in public administration."<sup>258</sup>

The IMF differentiates between governance and good governance. It explains that the term "governance" is a neutral term that refers to the means through which a country exercises governmental authority and manages public resources, notwithstanding the outcome of these processes, while the term "good governance" is not neutral but acknowledges the relationship between the quality of governance and its effectiveness.<sup>259</sup> The IMF continues to explain that there is no single definition for "good governance" and each international organization defines the term according to its mandate.<sup>260</sup> Because the goodness of the governance covers economic, social, and political fields, the different definitions of good governance reflect the mandates of the international organizations that put them.<sup>261</sup> International organizations that recognize the inseparability of politics from "good governance" have integrated politics in its definition, while those, which their mandate forbids interfering with politics, opted for policy-neutral definitions.<sup>262</sup>

The World Bank defines good governance as "the manner in which power is exercised in the management of a country's economic and social resources for development."<sup>263</sup> The Bank tried avoiding interference with politics and focusing only on technical matters, according to its mandate that bans interfering with politics, but with time, the Bank became more open to dealing with politics as it acknowledged that the economic sphere of governance depends on the quality of governance.<sup>264</sup> Therefore, the Bank started applying new policies for governance reform, such as civil service reform.<sup>265</sup>

The first time the Bank addressed the poor public administration as one of the reasons that affect the economic performance was in a 1989 report titled *Sub-Saharan Africa:*

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<sup>258</sup> *Id.* at 797.

<sup>259</sup> International Monetary Fund, *supra* note 17 at 5–7.

<sup>260</sup> *Id.* at 7.

<sup>261</sup> *Id.* at 7.

<sup>262</sup> *Id.* at 8.

<sup>263</sup> Weiss, *supra* note 254 at 797.

<sup>264</sup> International Monetary Fund, *supra* note 17 at 14.

<sup>265</sup> *Id.* at 14.

*From Crisis to Sustainable Growth*.<sup>266</sup> But reforming the public administration, which includes the civil service reform, raised legal questions because the Articles of Agreement of the Bank bans political interference and bans considering non-economic factors while reforming public administration is considered a political issue.<sup>267</sup> The answer to this dilemma was provided by Ibrahim Shihata who was the Vice President and General Counsel of the World Bank.<sup>268</sup> Shihata explained that the Article of Agreements of the Bank prohibits it from using the political system in a given country as a criterion for lending.<sup>269</sup> It also prohibits the Bank from using conditionality to make political changes in the borrowing countries except, according to Shihata, when the political factors affect the economy.<sup>270</sup> In this case, the Bank has the right to consider the political factors and even to change these factors to guarantee the good application of its programs.<sup>271</sup> In other words, the end justifies the means; as long as the end is economic there is no problem in dealing with politics. The economic considerations should be the only motive for the Bank's interference in politics. In this case, the Bank has not violated its Articles of Agreement.

The World Bank has set six aggregate governance indicators to measure governance within states; they are called Worldwide Governance Indicators (WGI).<sup>272</sup> The indicators evaluate six elements of governance: Voice and Accountability, Political Stability and Absence of Violence/Terrorism, Government Effectiveness, Regulatory Quality, Rule of Law, and Control of Corruption. The Bank explains the role of each indicator as follows:

1. Voice and Accountability (VA): measures the citizens' ability to select their government, along with their freedom of expression and association, and free media.<sup>273</sup>
2. Political Stability and Absence of Violence (PV): measures the possibility of destabilizing the government or overthrowing it by unconstitutional means.<sup>274</sup>

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<sup>266</sup> *Id.* at 12.

<sup>267</sup> M. A. Thomas, *The governance bank*, 83 *INTERNATIONAL AFFAIRS* 732 (2007).

<sup>268</sup> *Id.* at 732.

<sup>269</sup> *Id.* at 732.

<sup>270</sup> *Id.* at 732.

<sup>271</sup> *Id.* at 732–733.

<sup>272</sup> WGI 2020 Interactive > Home, , <https://info.worldbank.org/governance/wgi/> (last visited Apr 23, 2021).

<sup>273</sup> Daniel Kaufmann, Aart Kraay & Massimo Mastruzzi, *Governance Matters VIII: Aggregate and Individual Governance Indicators 1996-2008* 6 (2009).

3. Government Effectiveness (GE): measures the quality of the public services provided to the citizens by the government, the quality of the civil service, and the independence of the civil service from political interference and pressure. It also measures the ability of the government to formulate policies, and its ability to implement such policies.<sup>275</sup>
4. Regulatory Quality (RQ): measures the ability of the government to formulate and apply policies related to the promotion of private sector development.<sup>276</sup>
5. Rule of Law (RL): measures the level of confidence in and abidance by the rules of society, especially the quality of property rights, contract enforcement, the police, and the courts.<sup>277</sup>
6. Control of Corruption (CC): This indicator measures the level of corruption, whether petty or grand corruption.<sup>278</sup>

According to the previous indicators, the quality of the civil service, the quality of the public services provided by the civil service, and the independence of the civil service are very important for governance. Combating corruption and accountability as well is vital for governance. Therefore, international organizations and international financial institutions involved in reforming governance have set policies for reforming the civil service, combating corruption of public officials and civil servants, and increasing their accountability. Hence, there is a need to understand the relationship between governance and civil service.

### **C. Governance and Civil Service for the World Bank and the IMF**

In a report by the Public Sector Management and Information Technology Team of the World Bank, the importance of a sound civil service is linked to five areas: governance, production and distribution of public goods and services, economic policy, fiscal policy implementation, and fiscal sustainability.<sup>279</sup> The size and quality of the civil service are important factors in the analysis of public production of public goods and services.<sup>280</sup> Also, an efficient tax system is highly dependent on skilled and

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<sup>274</sup> *Id.* at 6.

<sup>275</sup> *Id.* at 6.

<sup>276</sup> *Id.* at 6.

<sup>277</sup> *Id.* at 6.

<sup>278</sup> *Id.* at 6.

<sup>279</sup> Salvatore Schiavo-Campo, Giulio de Tommaso & Amitabha Mukherjee, *GOVERNMENT EMPLOYMENT AND PAY IN GLOBAL PERSPECTIVE: A SELECTIVE SYNTHESIS OF INTERNATIONAL FACTS, POLICIES AND EXPERIENCE* v (1997).

<sup>280</sup> *Id.* at v.

motivated civil servants.<sup>281</sup> In addition to that, the size of the wage bill of the civil service is important for fiscal sustainability.<sup>282</sup> When the size of the civil service is inflated, its wage bill represents a fiscal burden on the state.<sup>283</sup> Hence, downsizing should be done efficiently. Not only the reduction of the wage bill is important but also how this reduction is managed.<sup>284</sup>

The report explains that an efficient, skilled civil service is an essential requirement for good governance, which is fundamental for development.<sup>285</sup> One of the many reasons for the excellent economic performance in East Asia is a strong civil service.<sup>286</sup> The strong civil service in East Asia is also one of the reasons they managed to realize economic growth notwithstanding the authoritarian regimes.<sup>287</sup> The report adds that the size and quality of the civil service are fundamental in the analysis of public production to secure the production of public goods and services.<sup>288</sup> In other words, having a proper number of qualified civil servants is an important factor in producing public goods and services.

According to the report, there are two types of economic policy reforms: enabling reforms and affirmative reforms.<sup>289</sup> Affirmative reforms, like improving public expenditure management, depend on efficient civil servants for their implementation. We can formulate excellent economic policies and reform programs but they are useless without competent civil servants to implement them.<sup>290</sup>

The fact that efficient, skilled civil servants are a fundamental requirement for the implementation of sound economic policies and reform programs is again stressed in a working paper by the International Monetary Fund titled *The Quality of Governance: "Second-Generation" Civil Service Reform in Africa*.<sup>291</sup> The paper concludes that it is important to attract talented Africans to work in the governments

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<sup>281</sup> *Id.* at v.

<sup>282</sup> *Id.* at v.

<sup>283</sup> *Id.* at v.

<sup>284</sup> *Id.* at v.

<sup>285</sup> *Id.* at v.

<sup>286</sup> *Id.* at v.

<sup>287</sup> *Id.* at v.

<sup>288</sup> *Id.* at v.

<sup>289</sup> *Id.* at 2–3.

<sup>290</sup> *Id.* at 2–3.

<sup>291</sup> Nadeem Ul Haque and Jahangir Aziz, *IMF working paper: The Quality of Governance: "Second-Generation" Civil Service Reform in Africa*. 1 (1998).

of their own countries to apply the reform programs that were set for African states.<sup>292</sup> A study published by the World Bank also acknowledges the fact that the lack of skilled civil servants in the African governments is a major reason behind the failure of the implementation of good reform programs.<sup>293</sup> Additionally, the civil service needs to be corrupt-free to function properly.

#### **D. Corruption in the Civil Service:**

There is no single definition for corruption.<sup>294</sup> The World Bank defines corruption as "the abuse of public office for private gains."<sup>295</sup> This definition is adopted by the IMF and Transparency International as well,<sup>296</sup> and it conforms with the provisions of the United Nations Convention Against Corruption.<sup>297</sup> The IMF explains that this definition is concerned with the acts of public officials and civil servants only while the illegal acts committed by private citizens fall outside its scope.<sup>298</sup> The definition covers financial and non-financial gains by civil servants.<sup>299</sup> Therefore, when a civil servant awards a contract to a certain company because one of his/her relatives owns this company, this is considered a corrupt act that falls under the definition of corruption because it entails abuse of power for private gains.<sup>300</sup>

According to the IMF, corruption affects good governance negatively and this in turn badly affects economic growth.<sup>301</sup> Corruption distorts the sound application of laws and implementation of policies; this is when the civil servants responsible for that application and implementation are corrupt.<sup>302</sup> In this case, bribery, for instance, will determine the decisions of those corrupt civil servants instead of laws and regulations.<sup>303</sup>

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<sup>292</sup> *Id.* at 33.

<sup>293</sup> Giulio de Tommaso and Amitabha Mukherjee, *supra* note 279 at 3.

<sup>294</sup> Augusto López Claros, *Removing Impediments to Sustainable Economic Development - The Case of Corruption* (2013).

<sup>295</sup> Helping Countries Combat Corruption: The Role of the World Bank, , <http://www1.worldbank.org/publicsector/anticorrupt/corruptn/cor02.htm> (last visited Apr 23, 2021).

<sup>296</sup> International Monetary Fund, *supra* note 17 at 9.

<sup>297</sup> *Id.* at 9.

<sup>298</sup> *Id.* at 9.

<sup>299</sup> *Id.* at 9.

<sup>300</sup> *Id.* at 9.

<sup>301</sup> *Id.* at 10.

<sup>302</sup> *Id.* at 10.

<sup>303</sup> *Id.* at 10.

The World Bank differentiates between two types of corruption: state capture, and administrative corruption.<sup>304</sup> State capture refers to the acts of individuals, groups, and firms to formulate policies for their private gain by enacting laws and regulations for that end through corrupt public officials.<sup>305</sup> On the other hand, administrative corruption refers to the intentional wrong application of laws and regulations to provide private gains for public and private actors.<sup>306</sup>

In a World Bank staff working paper concerning the effects of corruption on administrative performance, David J. Gould and Jose A. Amaro-Reyes list five reasons for administrative and bureaucratic corruption.<sup>307</sup> The first of which is the government intervention in the development process because this provides opportunities for civil servants to abuse their powers for private gains.<sup>308</sup> The second is the instability and unresponsiveness of the political system because under such systems civil servants seek quick private gains rather than devotion for serving the public.<sup>309</sup> The third is certain socioeconomic factors that affect the behavior of the civil servants, like poverty and inequity.<sup>310</sup> The fourth is some cultural norms like kinship loyalty, which affects the public's perception of the government and the actions of the civil servants.<sup>311</sup> The fifth is organizational factors, like human resource management, accountability, and low salaries.<sup>312</sup>

### **E. Combating Corruption in the Civil Service:**

Since neoliberal economists and international financial institutions recognized government intervention in the market by its corrupt civil servants as an impediment to economic growth, mechanisms of combating corruption are directed towards civil servants and public officials to make the role played by the government corrupt-free, along with minimizing the role of the government.<sup>313</sup>

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<sup>304</sup> MANNING AND PARISON, *supra* note 13 at 14.

<sup>305</sup> *Id.* at 14.

<sup>306</sup> *Id.* at 14.

<sup>307</sup> DAVID J. GOULD & JOSÉ A. AMARO-REYES, THE EFFECTS OF CORRUPTION ON ADMINISTRATIVE PERFORMANCE: ILLUSTRATIONS FROM DEVELOPING COUNTRIES 15 (1983).

<sup>308</sup> *Id.* at 15.

<sup>309</sup> *Id.* at 15.

<sup>310</sup> *Id.* at 15.

<sup>311</sup> *Id.* at 15.

<sup>312</sup> *Id.* at 16.

<sup>313</sup> Babb, *supra* note 232 at 269; Frey, *supra* note 237 at 40.

Although the importance of the role of the government is now acknowledged, for neoliberal economists it is still better to limit this role as much as possible. They view the discretionary power of civil servants as one of the root causes of corruption.<sup>314</sup> Hence, it is important to diminish the discretionary power of civil servants to combat corruption. Therefore, if the laws and regulations require companies to obtain a license from the government before they operate or import certain products, civil servants who are in charge of deciding which company gets the license could abuse their discretionary power in taking this decision. Consequently, to avoid this corrupt intervention, the government should not require acquiring the license in the first place.<sup>315</sup> However, not requiring a license is not the ideal solution for this problem. The government could use a committee instead of a single civil servant for this mission along with clear precise regulations to minimize the discretionary power of the committee of the civil servants and to ensure that the companies follow the required standards.

Another point raised by Shang-Jin Wei as a root cause of corruption is the vagueness of laws.<sup>316</sup> The vaguer the law is the more discretionary power the civil servants have in applying the law. For instance, when tax laws are vague and hard to comprehend, this gives the civil servants responsible for its application a wide discretionary power concerning its application and this leads to corruption.<sup>317</sup>

Since corruption is highly related to civil servants and their actions, the quality of the civil servants being qualified to perform the roles assigned to them is one of the factors related to combating corruption.<sup>318</sup> The higher the quality of the civil servants the less corruption we have. The way they are recruited, promoted, and how much they are paid determine their quality.<sup>319</sup> They should be appointed based on their skills and experience not based on nepotism and patronage. Their promotion also should be merit-based not through connections. Otherwise, this internal corruption will be reflected in their performance when implementing laws and regulations.<sup>320</sup> In addition

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<sup>314</sup> Rittich, *supra* note 24 at 233–234.

<sup>315</sup> SHANG-JIN WEI, CORRUPTION IN ECONOMIC DEVELOPMENT: BENEFICIAL GREASE, MINOR ANNOYANCE, OR MAJOR OBSTACLE? 16 (1999), <http://elibrary.worldbank.org/doi/book/10.1596/1813-9450-2048> (last visited Mar 9, 2021).

<sup>316</sup> *Id.* at 17.

<sup>317</sup> *Id.* at 17.

<sup>318</sup> *Id.* at 18.

<sup>319</sup> *Id.* at 18.

<sup>320</sup> *Id.* at 18.

to that, giving civil servants high salaries is also one of the ways to combat corruption.<sup>321</sup> This point has been mentioned by the World Bank and applied perfectly in Singapore, Hong Kong, and Sweden.<sup>322</sup> According to the World Bank, there is a strong connection between the spread of corruption and the low salaries of civil servants.<sup>323</sup> In a working paper of the International Monetary Fund, it was found that to combat corruption not only the salaries of civil servants should be high but their salaries should be high in terms of the salaries of their counterparts in the private sector.<sup>324</sup>

### **F. Accountability in the Civil Service**

Accountability means, "One official or organization is required to explain and justify its actions to another body or authority, according to specified criteria, where the body or authority, to which account is given, normally has power to take remedial action when the criteria are not met."<sup>325</sup>

Objectives of accountability include improving the quality of administration, protecting the rights of citizens dealing with the administration, and increasing the legitimacy of the government.<sup>326</sup> Accountability improves the quality of administration by positively affecting the behavior of civil servants.<sup>327</sup> Also, reviewing the acts and decisions of the civil servants through courts and ombudsperson bodies may change it for the better.<sup>328</sup> In addition to that, ombudsperson's investigations in a certain case may result in a recommendation for a better practice.<sup>329</sup> Accountability ensures that the discretionary power of the civil servants is used fairly and according to laws and regulations.<sup>330</sup> It increases the legitimacy of the government by making sure that the government respects openness and transparency, and by requiring the government to become accountable.<sup>331</sup>

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<sup>321</sup> *Id.* at 18–19.

<sup>322</sup> *Id.* at 18–19.

<sup>323</sup> *Id.* at 18–19.

<sup>324</sup> International Monetary Fund, *Corruption and the Rate of Temptation: Do Low Wages in the Civil Service Cause Corruption?*, 97 IMF WORKING PAPERS 1 (1997).

<sup>325</sup> Denis Galligan, *Principal Institutions and Mechanisms of Accountability*, 31 (2001).

<sup>326</sup> *Id.* at 31.

<sup>327</sup> *Id.* at 31–32.

<sup>328</sup> *Id.* at 32.

<sup>329</sup> *Id.* at 32.

<sup>330</sup> *Id.* at 32.

<sup>331</sup> *Id.* at 32.

Accountability of the government or the administration can be ensured through many institutions like courts and ombudsperson bodies.<sup>332</sup> Ombudsperson is "an independent statutory body whose task is to investigate complaints made by individuals or groups about the actions of administrative bodies."<sup>333</sup> Ombudsperson bodies perform a role that otherwise would not be properly performed. It is created according to a law that specifies its jurisdiction.<sup>334</sup> Ombudsperson bodies must be independent of the government or the administration since its main role is to investigate them.<sup>335</sup> Ombudsperson bodies investigate the complaints of the citizens against civil servants to make sure they are performing well.<sup>336</sup> The result of the investigation could be a sanction for the civil servant or a recommendation for a better practice or both.<sup>337</sup>

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<sup>332</sup> *Id.* at 33.

<sup>333</sup> *Id.* at 38.

<sup>334</sup> *Id.* at 38.

<sup>335</sup> *Id.* at 38.

<sup>336</sup> *Id.* at 38.

<sup>337</sup> *Id.* at 39.

## IV. Critique of the World Bank's and IMF's Reform Strategy of the Civil Service

### A. Internal Critique

The Bank, being a financial institution, is concerned with good governance from an economic perspective only. The government's role in governance is to ensure the efficiency of the market and to correct its failure. The efficiency of the public institutions is measured by their ability to support the market.<sup>338</sup>

Governance was originally defined by the World Bank as "the exercise of political power to manage a nation's affair."<sup>339</sup> This definition is neutral in the sense that both good and bad governance is considered as an exercise of political power to manage a nation's affairs. Later, the World Bank started using the term "good governance." "Good" here refers to the ability of the government to implement the Bank's reform programs.<sup>340</sup> The relationship between the Bank and the country applying its conditions is a lender-borrower relationship. Hence, the conditions of the Bank are limited to ensuring the ability of the country to repay its debt through applying the programs of the Bank.<sup>341</sup> The conditions' main purpose is to mitigate the risk of non-compliance of the borrower.<sup>342</sup> They are used by the creditors to ensure the debtors' ability to repay.<sup>343</sup>

In the Egyptian context, this is not new. The interests of the international financial institutions, being creditors, in the 21<sup>st</sup> century are similar to the interests of the creditors in the 19<sup>th</sup> century. According to Cromer, in 1879, England wanted Egypt to be administered well to repay its debt.<sup>344</sup> In the 2000s, the World Bank and the IMF also wanted Egypt to be administered well to repay its debt. Although the concept of good governance is relatively new, it is not different from the concept of good administration embraced by England in 1879. Creditors in the 19<sup>th</sup> century and the 21<sup>st</sup> century both considered the government intervention in the market as the reason behind the economic crisis and it is better to limit that intervention and assign a bigger

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<sup>338</sup> Frey, *supra* note 237 at 50–51.

<sup>339</sup> GOVERNANCE: THE WORLD BANK'S EXPERIENCE, vii (1996).

<sup>340</sup> Antony Anghie, *Time Present and Time Past: Globalization, International Financial Institutions, and the Third World*, 32 *N.Y.U. J. INT'L L. & POL.*, 251 (2000).

<sup>341</sup> S. Guhan, *World Bank on Governance: A Critique*, *ECONOMIC AND POLITICAL WEEKLY* 185 (2020).

<sup>342</sup> Devesh Kapur and Richard Webb, *Governance-related Conditionalities of the International Financial Institutions* 1 (2000).

<sup>343</sup> *Id.* at 1.

<sup>344</sup> THE EARL OF CROMER, *supra* note 72 at 157.

role to the private sector. Both of them recommended a reform policy based on limiting public expenditures, reforming tax systems, and reforming the civil service. Some of these points need to be scrutinized

### **1. Controlling the Public Wage Bill**

The Bank and the IMF have been focusing on the public wage bill being a large item in the budget.<sup>345</sup> Therefore, controlling this item by reducing it helps reduce the public expenditures. To reduce the public wage bill, they advised controlling the salaries of the civil servants.<sup>346</sup> However, the extent to which the public wage bill represents the salaries of the civil servants depends on what they mean by civil servants. Yet, there is no consensus on what is meant by civil servants.

In Egypt, chapter one of the general budget of the state includes the wages and compensations of employees.<sup>347</sup> These employees include public teachers, public health workers, judges, prosecutors, police and army personnel, university professors, employees of public enterprises, and so on. Hence, controlling the public wage bill means controlling the wages or salaries of all these categories, this is because the World Bank and the IMF do not indicate what they mean by civil servants.

The World Bank in its Country Partnership Framework for Egypt for the period FY 2015-2019 counts teachers as civil servants.<sup>348</sup> While another study published by the Bank evaluating the good governance reforms, in general, differentiates between civil servants and teachers, being public employees.<sup>349</sup> In a study by the World Bank concerning the public administration reform in 34 countries, it was noted that 14 countries considered health employees as civil servants, and 16 countries considered teachers as civil servants, while 22 countries considered police as civil servants.<sup>350</sup> Therefore, in a study by the Public Sector Management and Information Technology Team of the World Bank in 1997, these differences were recognized as a methodological problem in improving the civil service and it was suggested that

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<sup>345</sup> International Monetary Fund, *supra* note 166 at 12–13, 18, 56; WORLD BANK, *supra* note 30 at 3, 7, 17.

<sup>346</sup> International Monetary Fund, *supra* note 166 at 12–13, 18, 56; WORLD BANK, *supra* note 30 at 3, 7, 17.

<sup>347</sup> Ministry of Finance, ,

<https://www.mof.gov.eg/en/posts/stateGeneralBudget/601bdc388e87100007469673/2013-2014%20General%20Budget> (last visited Apr 10, 2021).

<sup>348</sup> WORLD BANK, *supra* note 30 at 9.

<sup>349</sup> Wouter van Acker, *supra* note 29 at 1.

<sup>350</sup> NICK MANNING & NEIL PARISON, INTERNATIONAL PUBLIC ADMINISTRATION REFORM: IMPLICATIONS FOR THE RUSSIAN FEDERATION 23 (2003).

education and health services should be separated because they need a different policy.<sup>351</sup> However, this suggestion was ignored as teachers are considered civil servants in the dealings between the World Bank and Egypt. This is because when the Bank provides loans it does not separate between civil servants and public servants, it separates between the civilian government and the military. Civilian government includes civil servants, public servants, and employees in public enterprises and they all could be categorized into central government and local government.<sup>352</sup> Although public expenditures include civil and military expenses, donors focus on the civil expenses, at least in the beginning. The UNDP explains that donors focus on the civil expenditures because it is seen as the easiest item to be reduced in the budget, while they postpone discussing military expenditures.<sup>353</sup> It adds this creates high pressure on the reduction of the civil expenditures, while affects the quality of the provided services.<sup>354</sup> This can be seen in the Bank's discussions concerning improving governance through enhancing the public sector in Argentina where it started by the reduction of the civil expenditures while postponing the reduction of the military expenditures. The Bank states, "At the request of the [Argentinean] Ministry of Defense, a recent World Bank internal report analyzed military expenditure in detail. Although Bank reports in the past have touched on defense expenditures, this was the first deep analytical work on the subject in a country context."<sup>355</sup>

Worth mentioning here that, the role of the military was not part of the discussions of good governance. Yet, military expenditures, being public expenditures, subjected the military to these discussions. Therefore, concerning the public sector reform in Argentina, the Bank stated, "Argentina's achievements in stabilization and structural reform in the past two years are widely recognized. One element in the reform of the public sector has been a reduction in military spending, accompanied by a program to rationalize the armed forces in tune with the country's security needs."<sup>356</sup> So, the World Bank, which is a financial institution, advises governments not only on how to run their institutions but also advises them on their security needs and military requirements.

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<sup>351</sup> Giulio de Tommaso and Amitabha Mukherjee, *supra* note 279 at 4.

<sup>352</sup> *Id.* at 4.

<sup>353</sup> UNDP, *SUPPORTING CIVIL SERVICE RESTORATION AND REFORM IN FRAGILE AND CONFLICT-AFFECTED SETTINGS* 15 (2018).

<sup>354</sup> *Id.* at 15.

<sup>355</sup> GOVERNANCE, *supra* note 339 at 52.

<sup>356</sup> *Id.* at 52.

The conditions of the IMF and the World Bank that they set to help Egypt improve governance have two main goals; fiscal consolidation through reducing expenditures and increasing revenues, and improving public services especially health and education.<sup>357</sup> The plan is to reduce the wage bill and the subsidies to reduce expenditures while increasing and reforming tax collection then using the tax revenues to fund health and education sectors.

In a study published by the World Bank it has been noted that, concerning the adequate salary for civil servants, there is no one-size-fits-all policy that works for all countries.<sup>358</sup> Wages adequacy is a relative concept that is different from one place to another and related to the wages of the private sector in the concerned country.<sup>359</sup> Hence, in developing countries where the salary of the civil servants is already low, reducing it more leads to demotivation, inefficiency, brain drain, and corruption.<sup>360</sup> One of the used methods by governments to reduce public wages while avoiding the damaging consequences is introducing performance pay.<sup>361</sup> However, performance pay, like bonuses and incentives, was found to be only modestly effective in the public sector because it is difficult to quantify the output of the work and it is difficult to avoid patronage and favoritism, in addition to subjecting the civil service to political control.<sup>362</sup>

The Deputy Division Chief in the IMF's Research Department points out that reducing salaries and raising tax revenues are contradicting goals. This is because low public wages have been connected to corruption especially in revenue-generating administrative units.<sup>363</sup> He adds, 20-30 percent of Nepal's revenues in the 1980s were not collected because of corrupt customs officials, while 47 percent of the tax revenues were not collected in Thailand because of corrupt tax officials.<sup>364</sup> Furthermore, targeting revenue-generating administrative units with a salary increase

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<sup>357</sup> International Monetary Fund, *supra* note 166 at 13, 18, 56; WORLD BANK, *supra* note 30 at 3, 7, 17.

<sup>358</sup> Giulio de Tommaso and Amitabha Mukherjee, *supra* note 279 at xi.

<sup>359</sup> *Id.* at xi.

<sup>360</sup> *Id.* at xi.

<sup>361</sup> *Id.* at xii.

<sup>362</sup> *Id.* at xii.

<sup>363</sup> Nadeem Ul Haque and Ratna Sahay, *Do Government Wage Cuts Close Budget Deficits? Costs of Corruption*, 43 PALGRAVE MACMILLAN JOURNALS ON BEHALF OF THE INTERNATIONAL MONETARY FUND, 761 (1996), <http://www.jstor.com/stable/3867368>.

<sup>364</sup> *Id.* at 761.

to fix this problem did not prove to be effective because it attracts skills from the other units, which affects it negatively.<sup>365</sup>

Reducing salaries is not a preferable measure for governments and they choose to implement it only under the pressure of the conditions of the international donors. If it were left to them, they would choose other options for fiscal consolidation. Therefore, when Egypt received a loan from the IMF in 1991 without targeted public sector conditions it succeeded in meeting its deficit target while raising the public sector wage bill by 12%.<sup>366</sup> It managed to do so by raising domestic energy prices, increasing customs duties, and terminating some tax exemptions.<sup>367</sup> This shows that reducing the salaries of civil servants is not the only path for fiscal consolidation. It is not even an effective path, according to the Independent Evaluation Office of the IMF, which reported that public wage cuts induced by the conditions did not last because of the local pressure.<sup>368</sup> The UNDP reached the same conclusion and described the public wage cuts as 'politically near impossible'.<sup>369</sup>

In a discussion paper prepared by the Bank and the IMF in 2002, they acknowledged that their reform policies focused mainly on controlling the wage bill, which negatively affected public employment and led to brain drain in the public sector.<sup>370</sup> In 2003, the Bank realized that there is no clear evidence that savings in public expenditures contribute to public administration reform,<sup>371</sup> there is little relationship between reform programs and savings, there is no evidence that the savings are the result of the reform program, and although some reduction has been made in public expenditures, the gross public debt has increased.<sup>372</sup> Yet, the IMF and the Bank kept focusing on controlling the wage bill in the conditions of the loans given to Egypt in 2015 and 2016.

In 2019, a Guidance Note published by the Bank acknowledged again the inadequacy of controlling the wage bill because it is a politically sensitive matter, which faces

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<sup>365</sup> CIVIL SERVICE REFORM: STRENGTHENING WORLD BANK AND IMF COLLABORATION, 14 (World Bank & International Monetary Fund eds., 2002).

<sup>366</sup> Rickard, *supra* note 20 at 23.

<sup>367</sup> *Id.* at 23.

<sup>368</sup> *Id.* at 50.

<sup>369</sup> UNDP, *supra* note 353 at 3.

<sup>370</sup> CIVIL SERVICE REFORM, *supra* note 365 at 16.

<sup>371</sup> MANNING AND PARISON, *supra* note 13 at 12.

<sup>372</sup> *Id.* at 31–32.

pressure from the civil servants.<sup>373</sup> It is politically sensitive because it is used by the governments to please the public and depriving the governments of this tool harms them.<sup>374</sup> In Egypt for instance, a correlation was found between the dates of increasing special bonuses and the presidential election.<sup>375</sup> Thus, the bonuses were used by the Egyptian president Mubarak to secure votes in the presidential election.<sup>376</sup> The Guidance Note also mentioned that public wage cuts were compensated by numerous discretionary allowances and that resulted in a less transparent pay system instead of a smaller wage bill.<sup>377</sup>

The policy of reducing public wages while increasing spending on health and education entails contradictions. Since the Bank and the IMF consider public teachers and public health workers as civil servants, they are targeted by the wage cut policy. At the same time, the Bank argues that teachers in Egypt are low paid and that negatively affects the quality of the education.<sup>378</sup> Indeed the Bank recently started focusing on the social aspects of development but this does not distract the Bank away from the neo-liberal economic policies, which require privatization and liberalization programs that reduce social expenses and strengthen the power of the capital.<sup>379</sup> Therefore, reviewing the expenditures of the developing indebted countries shows that debt repayments do not leave much for social needs.<sup>380</sup> For instance, In Ethiopia debt repayments are four times more than spending on health care at a time when a hundred thousand children die every year from easily preventable diseases.<sup>381</sup> In Tanzania, debt repayments are six times more than spending on health care while the youth mortality rate is high.<sup>382</sup> Even Uganda, where the Bank and the IMF applied relief schemes to mitigate the social implications of their structural adjustment

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<sup>373</sup> Wouter van Acker and Zahid Hasnain, *WAGE BILL AND PAY REFORM: A FIRST GLANCE AND A LOOK FORWARD* 4 (2019).

<sup>374</sup> *Id.* at 4.

<sup>375</sup> Doha Abdelhamid & Laila El Baradei, *REFORMING THE PAY SYSTEM FOR GOVERNMENT EMPLOYEES IN EGYPT*, 11 *INTERNATIONAL PUBLIC MANAGEMENT REVIEW*, 63 (2010).

<sup>376</sup> *Id.* at 63.

<sup>377</sup> Wouter van Acker and Zahid Hasnain, *supra* note 373 at 2.

<sup>378</sup> *WORLD BANK*, *supra* note 25 at 11.

<sup>379</sup> Anghie, *supra* note 340 at 256.

<sup>380</sup> *Id.* at 257.

<sup>381</sup> *Id.* at 257.

<sup>382</sup> *Id.* at 257.

programs, spends on debt repayments more than on education and health sectors combined.<sup>383</sup>

## 2. Civil Service Law Reform

Reforming the civil service through changing or amending the civil service law is the oldest method used for civil service reform in Egypt. Starting from 1837 when *qanun al-siyasa al-malakiyya* or the *Siyasatname* law was issued until 2016 when Law 81/2016 was issued.

Concerning the reform in Egypt in the 19<sup>th</sup> century, Cromer pointed out that laws already existed but it was not applied.<sup>384</sup> Yet, instead of searching for the reasons behind not applying the law, reformers kept changing the civil service laws. The Bank noticed this repetition concerning the civil service reform. It points out that the previous initiatives for civil service reform looked like each other. They were based on the same diagnosis and prescribed the same solutions for decades.<sup>385</sup> In turn, the Bank proposed its reform policy, which is a new civil service law. According to the Bank, the new civil service law should allow for early retirement, voluntary retirement, and retrenchment.<sup>386</sup> It should also regulate the recruitment, dismissal, promotion of civil servants, as well as performance-related salary increases, leave options, and bonuses, in addition to introducing performance measurement criteria and for meritocratic recruitment and promotion of staff.<sup>387</sup> It should also increase accountability.<sup>388</sup> Thus, the new civil service law should help in downsizing the civil service through early retirement, voluntary retirement, and retrenchment, in addition to introducing a merit-based system for recruitment and promotion. Moreover, it should limit new hiring, allow for long-time and short-time contracts for new hires instead of permanent employment, and increase accountability through performance monitoring systems.<sup>389</sup>

Towards this end, the Bank focused on the civil service law reform and praised the issuance of Law 18/2016. However, the civil service law is not the only law that regulates civil service in Egypt. In 2010, "there [were] more than 40 different laws

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<sup>383</sup> *Id.* at 258.

<sup>384</sup> THE EARL OF CROMER, *supra* note 72 at 111.

<sup>385</sup> WORLD BANK, *supra* note 23 at 23.

<sup>386</sup> *Id.* at 23.

<sup>387</sup> *Id.* at 25.

<sup>388</sup> *Id.* at 25–26.

<sup>389</sup> WORLD BANK, *supra* note 25 at 13.

and regulations and no less than 55 decrees regulating the government employees' pay system."<sup>390</sup> Yet, only the civil service law was targeted by the legislative reform. This means that the reform of the civil service law included only those who are subject to Law 18/2016 without addressing other public employees. However, it is difficult to determine those who are subject to Law 18/2016 precisely. This is due to the fact that the civil service law in Egypt is considered the general law that organizes the relationship between civil servants and the government and next to that law exist tens of laws, regulations, and decrees that organize certain public jobs. For instance, Egyptian judges' employment is organized by the law of the judicial authority number 46/1972 that was amended by Law 77/2019, however, according to article 89 of that law their vacations are subject to the civil service law. Egyptian teachers in public schools are subject to the law of education number 139/1981 that was amended by Law 16/2019, nonetheless, according to article 70 of that law the civil service law regulates their employment in the absence of a clear stipulation in Law 139/1981. Thus, it is difficult to determine the categories of employees who are subject to the civil service law.

The new civil service law should work for downsizing the civil service. Downsizing is a relative concept; hence, determining the adequate number of civil servants is different from one country to another.<sup>391</sup> Downsizing should not be applied out of fiscal needs because it carries its own risks. The short-term risks include brain drain when skilled staff are retrenched or were encouraged to leave.<sup>392</sup> The medium-term risks include the reoccurrence of overstaffing if human resources management is not strengthened.<sup>393</sup> The long-term risks include the low quality of the provided services.<sup>394</sup> For instance, downsizing led to less access to health services in Estonia and Ireland.<sup>395</sup>

In a World Bank study Prepared by Wouter van Acker and Zahid Hasnain, they mentioned that improving the civil service in the developing countries could mean increasing the number of civil servants not downsizing.<sup>396</sup> Moreover, downsizing

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<sup>390</sup> Abdelhamid and El Baradei, *supra* note 375 at 62.

<sup>391</sup> Giulio de Tommaso and Amitabha Mukherjee, *supra* note 279 at xi.

<sup>392</sup> *Id.* at xi.

<sup>393</sup> *Id.* at xi.

<sup>394</sup> *Id.* at xi.

<sup>395</sup> Rickard, *supra* note 20 at 51.

<sup>396</sup> Wouter van Acker and Zahid Hasnain, *supra* note 373 at 2.

failed in producing a permanent effect and early retirements led to a rise in pension payments.<sup>397</sup> This means that downsizing is often counterproductive.

It could also be noticed that, concerning salaries and size of civil servants, the Bank and the IMF did not set a target for the Egyptian civil service. They did not point out the adequate salaries to be paid or the adequate size of the civil service. They just put a target for cuts in general during the time of the program, however, whenever Egypt meets the target, usually, the final evaluation is more need to be done, and further steps need to be taken.<sup>398</sup>

The new civil service law should also increase the efficiency of the civil servants and combat the informal approaches of recruitment and promotion. According to the Bank, the new civil service law shall require merit for recruitment and promotions.<sup>399</sup> However, formally, recruitment and promotion in the Egyptian civil service have always been merit-based.<sup>400</sup> The problem of poor performance does not exist because of the absence of a law that stipulates merit for recruitment and promotion but it exists because the law is not applied.<sup>401</sup> There have always been performance assessments but they are used as rewards and because of the low wages, managers give all their staff high scores to allow them to receive the bonus that is tied to the assessment.<sup>402</sup> Hence, 97% of the Egyptian civil servants are rated "excellent."<sup>403</sup> And since the wages are going to be even lower because of controlling the public wage bill, we should not expect the new civil service law to be applied differently. Wouter van Acker noted that some systems could be formally merit-based but not in practice.<sup>404</sup> Without solving the problem of the application, changing the law will not be effective.

Furthermore, the new civil service law should allow for new hires through fixed-term contracts. The World Bank noticed that the Egyptian civil service, being tenured or career-based, provides high job security and a low possibility of dismissal.<sup>405</sup>

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<sup>397</sup> *Id.* at 2.

<sup>398</sup> International Monetary Fund, *supra* note 166 at 18; WORLD BANK, *supra* note 30 at i.

<sup>399</sup> WORLD BANK, *supra* note 30 at 27.

<sup>400</sup> WORLD BANK, *supra* note 23 at 12.

<sup>401</sup> *Id.* at 12.

<sup>402</sup> *Id.* at 21.

<sup>403</sup> *Id.* at 21.

<sup>404</sup> Wouter van Acker, *supra* note 29 at 3.

<sup>405</sup> WORLD BANK, *supra* note 23 at 12.

Therefore, to reform the civil service, the Bank suggested using long-term and short-term contracts for new hires instead of permanent employment.<sup>406</sup> This solution is not new in Egypt; it has been used before twice and failed. To change the permanent status of the career-based civil service, the Egyptian government started hiring employees using short-term contracts according to Law 47/1978. However, the Parliament later changed the law to allow converting the short-term contract into a tenured service after three years.<sup>407</sup> Also, because it is hard to attract highly skilled professionals using the low wages of the civil service, the Egyptian government contracted with the needed skilled professionals as technical advisors to ministers with competitive compensation packages.<sup>408</sup> However, this system was canceled after 2011 because it created tensions and because of setting minimum and maximum wages for civil servants.<sup>409</sup> Given the failure of this mechanism in Egypt and elsewhere, the Bank and the IMF concluded that there is strong evidence that the large-scale use of fixed-term contracts is not productive.<sup>410</sup> However, using fixed-term contracts is still found in their conditions to Egypt.

The new civil service law should also allow for contracting out some public services and to increase the accountability of the civil servants through citizens' engagement but these objectives are contradicting. Contracting out is when the "government transfers supply or operation of a function to a contractor for a specified period of time, but without relinquishing program responsibility or accountability."<sup>411</sup> Contracting out is used to save public expenditures by providing public services through contractors instead of permanent civil servants. It is one of the suggested solutions by the World Bank for improving governance in Egypt.<sup>412</sup>

Citizen engagement is also a fundamental element in improving governance, according to the Bank.<sup>413</sup> Citizen engagement means empowering the citizens to hold public officials accountable and to give feedback on service delivery.<sup>414</sup> These in turn

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<sup>406</sup> WORLD BANK, *supra* note 25 at 13.

<sup>407</sup> WORLD BANK, *supra* note 23 at 21.

<sup>408</sup> OECD, *Deauville Partnership Compact for Economic Governance Stocktaking Report: Egypt* 46 46 (2018).

<sup>409</sup> *Id.* at 46.

<sup>410</sup> CIVIL SERVICE REFORM, *supra* note 365 at 14.

<sup>411</sup> MANNING AND PARISON, *supra* note 13 at 28.

<sup>412</sup> WORLD BANK, *supra* note 25 at 13.

<sup>413</sup> WORLD BANK, *supra* note 30 at ii.

<sup>414</sup> *Id.* at ii.

improve transparency, accountability, and the quality of service delivery.<sup>415</sup> The Bank explains, "Introducing and strengthening mechanisms for citizens' feedback on service delivery would also enhance the accountability of both public entities and civil servants and restore citizen confidence in the ability of the state to provide quality services."<sup>416</sup> In Egypt, there are twelve institutions responsible for transparency and accountability. Only five of them provide citizens with a mechanism to give feedback on public service quality. Only one institution of the five has the power to detect corruption, receive complaints, investigate the detected incidents and complaints, prosecute the violators.<sup>417</sup> This institution is the Administrative Prosecution Authority. The Administrative Prosecution Authority plays the role of the ombudsperson bodies that exist in other countries under different names.

Contracting out public services deprives the Egyptian citizens of the ability to give feedback on the quality of the public services provided to them through private contractors, and impedes accountability concerning public service delivery. This is because the Administrative Prosecution Authority has no jurisdiction over the private contractors, who are not subject to any other mechanism of accountability except the terms of the contract. Hence, the expansion in contracting out public services and strengthening the citizen engagement for accountability in Egypt are contradicting goals.

Dr. Cheselden George V. Carmona explains that the expansion of contracting out public services deprived the citizens of their right in holding service providers accountable, especially in poor countries where they cannot afford to file lawsuits against the service providers who are not subject to the ombudsperson body.<sup>418</sup> Hence, accountability of the service providers should not be secured through the market only but also through state accountability channels, especially the ombudsperson bodies.<sup>419</sup> Therefore, some states expanded the jurisdiction of their ombudsperson bodies to

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<sup>415</sup> *Id.* at ii.

<sup>416</sup> *Id.* at 9.

<sup>417</sup> OECD, *supra* note 135 at 46.

<sup>418</sup> Dr. Cheselden George V. Carmona, *Ensuring Accountability in Privatized and Decentralized Delivery of Public Services: The Role of the Asian Ombudsman*, 3 (2012).

<sup>419</sup> *Id.* at 7.

cover the private contractors that provide public services, like Japan, Malaysia,<sup>420</sup> and Argentina.<sup>421</sup>

In Egypt, for instance, contracting out public services, like managing the system of the smart cards of the Ministry of Supply to private companies that earn around 44 million Egyptian Pounds a month,<sup>422</sup> led to the inability of the Administrative Prosecution Authority to handle the citizens' complaints against those providers. The jurisdiction of the Administrative Prosecution Authority that kept growing along the history reflecting the growing role of the government and the civil service in the economy is now diminishing under the concept of good governance that calls for minimal governmental intervention in the market. Hence, in September 2020, was issued Law 185/2020 amending Law 203/1991 concerning the companies of the public business sector. The new law subjected the disciplinary procedures of all public servants in the holding and subsidiary public companies to Labor Law. They are no longer subject to the Administrative Prosecution Authority unless requested by the minister or the board of directors. In other words, the new law deprived the Administrative Prosecution Authority of investigating citizens' complaints against public servants in those companies and banned the Administrative Prosecution Authority from voluntarily investigating the violations of those public servants. This new situation means that public servants who work in those companies will be subject to the arbitrary powers of their superiors with no recourse to an independent institution that handles their grievances and it also leads to less accountability since the disciplinary procedures shall be handled internally.

### **3. The World Bank and the IMF Self-critique**

Given the implications of reforming the civil service through reducing salaries, downsizing, amending the civil service law, limiting new hires, hiring employees by fixed-term contracts, and contracting out public services, in 2002, the World Bank and the IMF reevaluated the efficiency of their reform policies. They realized that:

Their civil service reform programs have not been very successful in achieving the fiscal and structural targets. This is because the fiscal and structural targets are

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<sup>420</sup> *Id.* at 11.

<sup>421</sup> *Id.* at 22.

<sup>422</sup> Developed By Heba Musa, *سبوبة «الأون لاين» في التموين تحرق سيستم السلع والخبز*, بوابة اخبار اليوم (2020)), <https://m.akhbarelyom.com/news/newdetails/3129604/1/-في-التموين-تحرق-سيستم-السلع-والخبز> (last visited Mar 23, 2021).

contradicting. Controlling the wage bill to reduce the fiscal deficit through reducing salaries and downsizing led to the loss of skilled civil servants who are needed for the success of the structural reforms. They acknowledge that controlling the wage bill is not sustainable in the medium term.<sup>423</sup>

Transforming the career-based or tenured civil service into contractual employment through short-term and long-term contracts, and introducing a performance-based pay system both proved to be not productive.<sup>424</sup>

Their programs did not consider the political constraints. The stability of the government applying the reform is very important for the success of the reform. However, when the government uses public employment as a social safety net, downsizing may lead to its destabilization and its inability to implement the reform program.<sup>425</sup>

They do not usually have enough clear data concerning the wages breakdown and concerning comparisons of public sector wages with those of the private sector. This in turn leads to misguided policies.<sup>426</sup>

In 2003, based on a request from the Russian Federation to check which reform policies are better suited for it, the Bank made another reevaluation of its administrative reform policies and found that:

Although the importance of the institutions for the market and development has been recognized, "it is not at all clear which institutions are the most crucial and there is very little evidence that the specific details of government structure and accountability arrangements affect growth. There is also only modest evidence that administrative reform is an 'independent variable'. A reasonable argument can be made that it is the consequence rather than the cause of other aspects of liberalization."<sup>427</sup>

The reform policies had four targets; reducing public expenditures, improving the implementation of policies, improving the civil service, and improving the quality of the public services. However, according to the Bank, these targets were not sought as

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<sup>423</sup> CIVIL SERVICE REFORM, *supra* note 365 at 14.

<sup>424</sup> *Id.* at 14.

<sup>425</sup> *Id.* at 15.

<sup>426</sup> *Id.* at 15.

<sup>427</sup> MANNING AND PARISON, *supra* note 13 at 12.

ends but only as means to make savings. Yet, it is not clear how these targets contributed to the public administration reform.<sup>428</sup>

Reforming the management of the civil servants include, *inter alia*, improving job security, enhancing protection from political interference, standardized implementation of the promotion and reward rules, and encouraging career-based civil service.<sup>429</sup>

There is no clear evidence that the reform programs have achieved the targets they sought. Even there is no clear evidence that the reform programs managed to address the fiscal deficit because the gross public debt as a percentage of the GDP has increased.<sup>430</sup>

There is a weak link between the reform programs and any savings made. This is due to the inability to confirm that the identified savings are the result of the reform program. Hence, it cannot be decided whether the reform led to the savings or the savings from almost arbitrary cuts led to the reform.<sup>431</sup>

The evaluation concluded that there is no one-size-fits-all reform policy that applies everywhere. What succeeds in a certain country does not necessarily succeed in another country. The historical, political, and economic contexts must be taken into consideration.<sup>432</sup>

In 2019, a study published by the Bank revising its experience in wage bill and pay reform explains that the Bank's main interest concerning the public wage bill reform is improving a country's fiscal sustainability.<sup>433</sup> Nevertheless, this policy has its consequences. Civil servants are vital for providing high-quality public services. In developing countries, improving the quality of public services may mean increasing the number of civil servants. Hence, it is important to find a balance between the cost and the efficiency, and it is important to take the political economy of pay reform into consideration but reviewing the previous evaluations reveals that the reform policies

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<sup>428</sup> *Id.* at 12.

<sup>429</sup> *Id.* at 20.

<sup>430</sup> *Id.* at 31.

<sup>431</sup> *Id.* at 32.

<sup>432</sup> *Id.* at 40–44.

<sup>433</sup> Wouter van Acker and Zahid Hasnain, *supra* note 373 at 1.

take a one-size-fits-all approach.<sup>434</sup> This is due to the fact that the World Bank teams rarely carry out political-economic analyses before advising governments.<sup>435</sup> This explains why the wage freeze and the downsizing policies failed to produce a permanent effect and in some countries, they were counterproductive.<sup>436</sup> Although this study was published sixteen years after the previous one, it highlights the same pitfall of the Bank's policies.

## **B. External Critique**

The first chapter of this thesis shows how the consecutive civil service reform initiatives in Egypt had different goals. For instance, Mohamed Ali's civil service and administrative reform initiative was to, among other things, build a strong army. His successors, Khedive Sa'id and Khedive Isma'il applied their reforms to aid the new public projects and so did Nasser's regime. The subsequent regimes applied civil service reform initiatives to aid the application of the open-door policy. During the debt crisis, the foreign creditors of Egypt applied a civil service and administrative reform to be able to collect their debt back. The World Bank and the IMF also allege that the civil service reform is needed to mitigate the chronic fiscal deficit.

Although those reform initiatives had different goals, they can be categorized into two categories; proceduralist or structural reforms and fiscal reforms. Structural reforms are concerned with the efficiency of the civil service. Efficiency means the ability of the civil service to perform the role that it was entrusted to perform. An example of the structural reforms can be Mohamed Ali and his successors increasing the number of the civil servants and the administrative units to enhance the performance of the civil service.

On the Other hand, fiscal reforms are concerned with the financial burdensome of running the civil service. The fiscal aspect of running the civil service is mainly related to the wage bill that includes the salaries of the civil servants, their pensions, rewards, bonuses, allowances, etc. An example of the fiscal reforms can be the World Bank and the IMF suggesting freezing the public wage bill to face the fiscal deficit.

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<sup>434</sup> *Id.* at 2.

<sup>435</sup> *Id.* at 3.

<sup>436</sup> *Id.* at 2.

It is not easy to make a distinction between the structural aspects and the fiscal aspects of the civil service reform.<sup>437</sup> This is because a single aspect could be structural and fiscal at the same time. For instance, the number of the civil servants could be a structural aspect of the reform when deciding the appropriate number of civil servants needed for the civil service to function well, while the same aspect could be fiscal when deciding the ability to afford to have that number of civil servants.

In the internal critique, I tackled how the World Bank and the IMF give priority to the fiscal aspects of reform over the structural aspects, which in turn badly affects the effectiveness of the civil service. In the external critique, I tackle the impact of the effectiveness of the civil service, being an element of good governance, on the quality of the public services and human rights.

Enhancing the effectiveness of the civil service does not necessarily enhance the quality of the public services provided for the citizens. This is because the role of the civil service has not always been providing the public with services. For instance, when Mohamed Ali applied the civil service reform it was mainly to enhance the role of the civil service in supporting conscription not to provide citizens with public services and to protect their human rights.

However, with the evolution of the role of the state, it started to bear the main responsibility to respect, protect, and fulfill human rights,<sup>438</sup> hence the effectiveness of the civil service became related to that responsibility. Therefore, we can relate many roles of the civil servants within the different ministries in Egypt and elsewhere to human rights responsibilities. For instance, the Egyptian Ministry of Supply and Internal Trade is responsible for food security, which relates to the human right of everyone to adequate food according to Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The Egyptian Ministry of Education should ensure the right to education according to Article 13 of the ICESCR. The Egyptian Ministry of Health should ensure the right to health according to Article 12 of the ICESCR.

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<sup>437</sup> INTERNATIONAL MONETARY FUND, *supra* note 14.

<sup>438</sup> Manisuli Ssenyonjo, *The Applicability of International Human Rights Law to Non-State Actors: What Relevance to Economic, Social and Cultural Rights?*, 12 THE INTERNATIONAL JOURNAL OF HUMAN RIGHTS 762 (2008).

The World Bank explains how its civil service reform programs kept pace with that evolution of the role of the state by stating that "civil service reform programs supported by the World Bank have responded to three sets of concerns. Some reforms, particularly those pursued in the 1980s, were primarily concerned to address the fiscal concerns arising from overstaffing and unsustainable wage bills. Other, more recent reforms, were intended to facilitate policy agility in government and to ensure that legitimate policies could in fact be implemented. Most recently, reforms have tended to focus on improving operational efficiency and service quality."<sup>439</sup>

Yet, the civil service reform programs supported by the World Bank and the IMF, which give priority to the fiscal aspects, do not always enhance the service quality but sometimes they worsen the situation and negatively affect the human rights of the beneficiaries. Policies like privatization, contracting out public services, and controlling the public wage bill had a negative impact on human rights in many countries.<sup>440</sup> The Committee on Economic, Social and Cultural Rights (CESCR) raised these concerns regarding Egypt by stating that "The Committee regrets that the State party does not take its obligations under the Covenant into account in its negotiations with international financial institutions."<sup>441</sup> CESCR raised similar concerns regarding Zambia by stating that "The Committee is concerned about the fact that privatized social security schemes in the State party have not been financially sustainable, thereby leaving its beneficiaries without adequate social protection."<sup>442</sup>

The reason behind these concerns is that the perspective of the World Bank and the IMF concerning the civil service reform is a fiscal perspective. Instead of trying to make a balance between the structural and the fiscal aspects of the civil service reform to provide the citizens with high-quality public services within the financial ability of the state to respect their human rights, the Bank and the IMF outweigh the side of the fiscal aspects. Therefore, although the Bank argues that teachers in Egypt are low paid

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<sup>439</sup> Working on Administrative & Civil Service Reform, , THE WORLD BANK GROUP , <http://www1.worldbank.org/prem/acr/ad.html> (last visited Sep 21, 2021).

<sup>440</sup> Ssenyonjo, *supra* note 438 at 742–743.

<sup>441</sup> United Nations High Commissioner for Refugees, *Refworld | UN Committee on Economic, Social and Cultural Rights: Concluding Observations: Egypt*, REFWORLD , <https://www.refworld.org/docid/3f6cae6f4.html> (last visited Sep 21, 2021).

<sup>442</sup> United Nations High Commissioner for Refugees, *Refworld | UN Committee on Economic, Social and Cultural Rights: Concluding observations: Zambia*, REFWORLD , <https://www.refworld.org/docid/43f3067911.html> (last visited Sep 21, 2021).

and that negatively affects the quality of the education,<sup>443</sup> it still targets them by the controlling of public wages policy.

By outweighing the side of the fiscal aspects of the civil service reform, the initiatives of the World Bank and the IMF are not different from the previous initiatives for reforming the Egyptian civil service. All of them focus either on the structural and/or fiscal aspects with different degrees. None of those initiatives reflects the role of the state and its civil service as the guarantor of the welfare and human rights of all citizens.

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<sup>443</sup> WORLD BANK, *supra* note 25 at 11.

## V. Conclusion

Governments use the civil service for different goals. Throughout the history of Egypt, the different rulers and foreign creditors used the civil service for different purposes. Mohamed Ali used it to support conscription<sup>444</sup> while Isma'il used it to run the expanding public projects.<sup>445</sup> The British and French creditors used the civil service to apply their administrative reform for the sake of debt repayment.<sup>446</sup> Nasser used the civil service to support the expanding public industrial activities and nationalizing industries along with providing employment for graduates.<sup>447</sup> On the other hand, Sadat adopted the open-door economic policy, which meant that he did not need a big civil service but he used the civil service for social and political purposes.<sup>448</sup> The different purposes of using the civil service entailed different reform strategies. Hence, the size of the civil service, for instance, was subject to the role it played.

Starting from the 2000s, the World Bank and the IMF suggested an administrative reform strategy for Egypt based on the concept of good governance to help Egypt achieve its economic goals.<sup>449</sup> Their administrative reform strategy explained the goal of using the public sector while their civil service reform strategy explained how to make the civil service able to achieve that goal.

The World Bank claims that the role of the government should be limited to improving the infrastructure and providing some social services like health and education.<sup>450</sup> Yet, it did not adjust the civil service according to that role. Rather, the goal of the civil service reform was to make savings.<sup>451</sup> The administrative reform policies had four targets; reducing public expenditures, improving the implementation of policies, improving the civil service, and improving the quality of the public services. However, according to the Bank, these targets were not sought as ends but only as means to make savings.<sup>452</sup>

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<sup>444</sup> KHALED FAHMY, *supra* note 31 at 109.

<sup>445</sup> HUNTER, *supra* note 56 at 52.

<sup>446</sup> THE EARL OF CROMER, *supra* note 72 at 119.

<sup>447</sup> Ayubi, *supra* note 1 at 290.

<sup>448</sup> *Id.* at 289–290.

<sup>449</sup> WORLD BANK, *supra* note 25; WORLD BANK, *supra* note 30; International Monetary Fund, *supra* note 26; International Monetary Fund, *supra* note 166.

<sup>450</sup> WORLD BANK, *supra* note 25 at iii.

<sup>451</sup> MANNING AND PARISON, *supra* note 13 at 12.

<sup>452</sup> *Id.* at 12.

This explains the contradiction between the alleged goals of the administrative reform and the civil service reform strategy. The civil service reform strategy was not set to achieve the administrative reform but to make savings. This can be seen in the reports concerning the situation in the countries where the World Bank and the IMF applied their reforms, which explain that spending on debt repayment outweighed other expenditures of the governments.<sup>453</sup>

Being creditors, the World Bank's and the IMF's relationship with the borrowing country is a lender-borrower relationship. Hence, they give priority to debt repayment over promoting economic growth. This explains why they keep pushing developing countries to cut expenditures by controlling the public wage bill and downsizing the civil service regardless of their acknowledgment that their civil service reform strategy is not effective.

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<sup>453</sup> Anghie, *supra* note 340 at 257–258.

## APPENDIX A

### IMPORTANT LAWS IN THE HISTORY OF THE EGYPTIAN CIVIL SERVICE

The law	Reason of issuance
<i>Qanun al-filaha</i> (the law of farming) – 1830	Was issued by Mohammed Ali to regulate the responsibilities of the civil servants and to face the non-compliance of the shaykhs of the villages concerning conscription.
<i>Al-siyasa al-malakiyya</i> or the <i>Siyasatname</i> law – 1837	Was issued by Mohammed Ali to regulate the disciplinary procedures of the civil servants.
The high order of 10 April 1883	Organized appointing, promoting, and dismissing the civil servants.
The high order of 24 May 1885	Organized the disciplinary procedures of the civil servants.
The high order of 19 February 1887	Concerning submitting the disciplinary procedures of high-ranking officials to an administrative court.
The high order of 24 December 1888	Concerning the formation of a high disciplinary court specialized in administrative cases against non-high-ranking civil servants.
The decree dated 1 June 1893	Regulating the ranks of the jobs in governorates.
The decree dated 23 March 1901	Concerning disciplinary sanctions for civil servants.
The decree dated 24 June 1901	Ratifying the regulations of the Egyptian and foreign civil servants in the Egyptian government along with temporary workers.
Law number 15 was issued on 15 May 1913	Concerning the financial rights of civil servants who were dismissed by disciplinary procedures.
Law number 210/1951	It covered almost all the aspects concerning the civil servants like appointment, promotion, and disciplinary proceedings. It was enacted to stop the system of pricing educational certificates.
Law number 47/1978	It was issued because of the failure of the previous law in stopping the pricing system and its failure in regulating the civil service based on objective rules.
Law number 81/2016	It was issued to apply the administrative reform plan that was suggested by the World Bank and the IMF.

