

# Trial of the Privatization Path in Egypt

A critical review from an economic & legal perspective



Prepared by: Mohamed Gad - Emad Mubarak  
Editing and Introduction: Amr Adly  
Publisher: Memory & Knowledge for Studies



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Emad Mubarak

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**Editing and Introduction**

Amr Adly





## About the Authors

### Amr Adly

Amr Adly is an assistant professor in the Department of Political Science at the American University in Cairo. His research focuses on the political economy and sociology of economics in Egypt and the Middle East. He has published “Cleft Capitalism: The Social Origins of Failed Market Making in Egypt” with Stanford University Press (2020), and “The Political Origins of Institutional Reform: The Cases of Egypt and Turkey” (Safsafa House, 2013), a translation of the English version issued with Routledge Publishing House (2012). He has also published several academic and press articles in Bloomberg, Zawya-Araby and Al-Shorouk newspaper.

### Mohamed Gad

A journalist specialized in covering the Egyptian economy. He has worked since 2003 in local and international newspapers and Egyptian websites, including Al Shorouk and Al Sharq Al Awsat newspapers. He edited several books about the history of Egyptian economy, the most recent of which was “What happened to Talaat Harb project? Egypt and the global financial system in a hundred years” published by Dar El Maraya in 2021.

### Emad Mubarak

Legal researcher. In 2006, he founded the Association for Freedom of Thought and Expression, and remained its executive director until 2015. In 2021, he established the Memory and Knowledge Center for Studies, which addresses the history of the justice system in Egypt, both from the judicial and legislative angles. Over the course of 20 years, he participated in preparing and editing many studies, reports and legal papers concerned with the human rights situation in Egypt.



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# Introduction



Amr Adly



**Privatization can be defined as a process of transferring the ownership of economic assets from the public sector, i.e., the state and its affiliated institutions, agencies, and companies - to the private sector with its various types, whether local or foreign, large or small. Transfer of ownership adds a legal dimension to the privatization process related to the redefinition of property rights and the return on revenue. At the same time, privatization is an issue with direct economic consequences because it determines the rules for allocating physical, monetary or other productive assets. This makes privatization a first and foremost political issue in terms of its origins and ramifications and considering the details of the process itself as an unambiguous manifestation of actions by the public authority through which resources and values are allocated in society. Based on this overlap between law, economy and politics, this report acquires its approach in an attempt to understand privatization as a political process that has legal manifestations, whether legislative or, especially, judicial, and of course has economic repercussions at the macro level as it affects the institutional frameworks governing the management of the economy and thus development opportunities, its sectoral composition and the presence of foreign investors etc., as well as at the micro level in view of the redistribution of assets that were once owned by the state - and consequently by the people whose will and interests it is supposed to embody - in favor of new owners who belong to the private sector and receive the return from their acquisition, use or disposal.**

**This report includes two research papers, the first written by Emad Mubarak on the legal and judicial aspects of the privatization process in Egypt since its inception in the early nineties of the last century, while the second, authored by Mohamed Gad, focuses on the economic aspects of privatization in terms of its effects on development opportunities in Egypt, especially the process of industrialization that expanded with the establishment of the public sector during the Nasser era, in an attempt to assess the impact of privatization on the overall economic performance.**

**This report, with its two constituent papers, gains importance in the discussion of the privatization file in Egypt over the past thirty years from three angles:**

**The first is that it is a research work that seeks to create a bigger picture that gathers legal, judicial and economic details and traces what has happened in Egypt since the launch of the privatization path in 1991 following the adoption of the economic reform and structural adjustment program, in order to understand the content of that complex multidimensional process, which had profound effects on Egyptian political economy. Hence, the two researchers engage with academic and semi-academic literature that has accumulated in the study of the various aspects of privatization, and they build on many of the details contained therein, whether in how the privatization process was managed, including factors such as corruption, nepotism and lack of transparency, or with regard to taking the constitutional and then the highest administrative courts as arenas to resolve the conflict that developed in the process of redefining property rights and the effects of this distribution on workers and the general public. Here, it can be said that we really need to form a wholistic picture of the privatization process in terms of its origins and repercussions in order to allow re-framing the public debate at the current stage, which brings us to the second angle of the importance of this report, which is the timing of its publication.**

**The timing of the issuance of this report represents the second angle of its importance because it provides a comprehensive, thorough and integrated study of the legal and economic aspects of privatization in view of the two major phases of that path during the era of Hosni Mubarak (1981-2011) in view of the first period that began with the issuance of Law No. 203 of 1991, which laid the legislative foundations to restructure, sell and liquidate the public sector (transferring a large part of it to public business sector companies), which allowed the first phase under the government of Kamal Al-Ganzouri (1996-1999) and then the second, more extensive phase in terms of the number and value of privatization deals under the government of Ahmed Nazif (2004- 2011). The first and second phases exhausted the largest balance of public business sector companies and witnessed a significant expansion in the allocation of state-owned lands to private investors in important sectors such as construction, manufacturing, tourism and agricultural reclamation. In the past few years, interest in the privatization file has been revived again within the framework of restructuring the Egyptian economy, especially after the International Monetary Fund agreement at the end of 2016.**

**This interest included the re-establishment of the Ministry of Public Business Sector with the aim of selling the remainder of the previous two phases, passing a new investment law (No. 72 of 2017) and starting to activate the partnership between the private and public sectors in sectors and activities that were not the subject of total or partial privatization before, especially in the fields of public utilities and services such as transportation, water and electricity, up to the state ownership document issued in 2022, which specified the ways and means of state exit from certain economic activities. Although this stage is different from its predecessors, whether with regard to the sectors subject to privatization or the legal and regulatory tools that are designed or employed, the essence of the privatization**

**process remains the same, which is the transfer of property rights from the public to the private, which makes understanding and analyzing, and rather forming a big picture of the previous stages, a very important matter in order to provide the public debate - and what remains of it - with the necessary material at the level of information and analysis. This is what this report seeks.**

**The third angle of importance of this report is that it revolves around public policy in its substance, structure, language and target audience, where it clearly starts out from a base of earlier academic work that addressed privatization in great depth, whether in the field of political science, political economy or macroeconomics, in addition to law studies, of course.**

**While the preface deals with the subject of the current report in relation to the previous academic and semi-academic literature that dealt with the privatization process in Egypt, the next two sections will seek to address an overview of each of the two papers as an introduction to the reader.**



## **Privatization As A Political Process With Legal Manifestations**



**It has already been pointed out that privatization is a process of redefining property rights, which involves transferring them from public ownership - which usually means state ownership - to private ownership, making it a primarily political issue with legal manifestations. From this point of view, the first paper deals with both the legislative and judicial aspects of the process as representatives of the legality of privatization, with a focus on the judicial aspect, whether constitutional or administrative. This is due to the fact that the privatization process - and for political reasons related to the ruling regime under Mubarak - was not framed in a legislative framework except in the narrowest sense through Law 203 of 1991, which came as general and vague as will be explained in the paper explains, and which opened the way to change the status of public sector companies by separating them from the ministries they were affiliated with financially and administratively, an arrangement inherited from the Nasser era, and transformed them into the public business sector. However, this change was not necessarily limited to privatization by transferring ownership to the private sector, but also included restructuring and organizing the public sector with the state retaining its ownership until liquidation. Perhaps this legislative ambiguity at the time was due to the Mubarak regime's assessment of the risks of economic transformation in general, including privatization. In contrast to the pressures of the World Bank towards privatization - which is the context in which the legislation was drafted - the system was facing other pressures from workers concentrated in some business sector companies, organized by unions and who were mobilized in the face of the risks of changing their situation for the worse as well as preferring the system to keep its options - thus leaving options for reconsideration.**

**According to the research paper, this legislative ambiguity has produced a situation in which the privatization file as a political process - conflictive in many aspects in view of its distributive consequences - has moved to the courts. This started with the constitutional judiciary, and the Supreme Constitutional Court was at that time a relatively new actor that took its final form in 1989, an evolution from the formula of the Supreme Court whose law was promulgated in 1979. This did not mean a crude politicization of the judiciary in the sense of using it as a tool**

to pass policies that the regime does not want to translate into legislation because the constitutional court at that time enjoyed significant degrees of independence and even retained a relatively large margin of maneuver in the face of the regime. It is true that the court granted constitutionality to the path of privatization in its historic ruling in 1997, but this reflected a liberal orientation of its judges and the ability to express this as actors relatively independent from the regime. So, while some rulings of the court at that time were aligned with the plans of the regime, such as the taxes to be paid by Egyptians working abroad or the sales tax - the court also went in opposite directions against those of the regime to the point of depriving it at times of financial resources. This means that the judiciary was indeed a space that functionally replaced politics in launching the privatization process, but it was effective in itself as much as it was a space for expressing its own orientations, convictions, and capabilities.

It is very interesting to consider that what the regime started with referring privatization to the judiciary was reversed at a later stage with the acceleration of privatization during the era of Ahmed Nazif's government when opponents of the privatization of business sector companies resorted to activists in the field of economic and social rights, representatives of workers affected by privatization deals and officials in some company offered for privatization to the administrative judiciary - the State Council – as a space for resistance with legal tools aimed at undermining the privatization path by challenging the administrative decisions under which contracts were signed to privatize public business sector companies or to allocate state-owned land to local or foreign private investors. Once again, the judiciary was effective, and not just an arena for conflict between supporters and opponents of privatization. The State Council issued a series of rulings that led to the invalidation of several privatization deals and land allocations starting in 2008. This pace accelerated after the 2011 revolution. Emad Mubarak's research paper sheds light on the judicial aspects of privatization as a manifestation of the economic-political conflict. To my knowledge, it is one of the first attempts to create a bigger picture that addresses both the constitutional and administrative judiciary in their relationship to privatization in a way that combines knowledge of the techniques of law and judicial work, and the literature of political science on the judiciary as part of the political system.



## Privatization As A Political Process With Economic Repercussions



The paper addressing the economic aspect of privatization, by researcher Mohamed Gad, makes an excellent contribution to the discussion of path of the privatization, whether at the level of focusing on its developmental impact in the industrial sector on the overall Egyptian economy, or at the level of its results. As for the approach, Gad posed a new question, which is how the privatization of the public sector - focusing on the manufacturing sector - affected the development path. This perspective differs from what occupied most of the studies and comments on privatization, which focused on the micro aspect on how to manage the privatization process and associated corruption, nepotism<sup>1</sup>, lack of transparency and accountability, or rebuilding networks of nepotism and corruption, through which ownership was transferred from the state to certain actors in the sector, the private sector or the impact of privatization on workers and their attempts to adapt or resist in various ways<sup>2</sup>. However, few scholars have been interested in trying to extrapolate the results of the privatization process thirty years after its launch at the sectoral (industry) and macro (development) levels. Gad focuses on industrialization, as it has settled in most economic and political economy literature as the locomotive of economic modernization, raising the added value achieved in the economy as a whole. However, it was also the focus of the expansion of the public sector during the Nasser era, whether through the nationalization of private companies that were owned by Egyptians or foreigners, or by entering into new sectors of heavy industries such as iron, steel, aluminum, fertilizers, cement and engineering industries. Hence, the contribution of this paper can be considered as a continuation of and addition to an ongoing discussion.

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1 See for example:

Heydemann, Steven. *Networks of privilege in the Middle East: the politics of economic reform revisite*. Springer, 2004.

El Tarouty, Safinaz. *Businessmen, clientelism, and authoritarianism in Egypt*. Springer, 2016.

Adly, Amr Ismail. "Politically-embedded cronyism: The case of post-liberalization Egypt." *Business and Politics* 11, no. 4 (2009): 1-26.

Chekir, Hamouda, and Ishac Diwan. "Crony capitalism in Egypt." *Journal of Globalization and Development* 5, no. 2 (2014): 177-211.

2 See for example: Beinin, Joel. "Workers' Protest in Egypt: Neo-liberalism and Class Struggle in 21st Century." (2009): 449-454.

**Mohamed Gad does not reach a final conclusion regarding the developmental impact of privatization. The data he provides or extracts shows that the industrial sector did not witness a major contraction as some reckon after the successive privatization deals in the nineties and the first decade of the twenty-first century. It may be true that the beginning of the sixties was exceptional in generating growth compared to all the periods that followed, but mostly this was due to the launch of heavy industrialization from a very low baseline in Egypt in the fifties, as the process of industrialization itself was soon disrupted and declined even in light of the leadership of the he public sector with the faltering of the second five-year plan. The author here attempts to put the privatization decisions in their historical context by addressing the crisis of the import substitution model in Egypt, and how privatization as a process of transfer of ownership from public to private came after years of declining investment and growth in many public sector facilities.**

**Gad does not seek thereby to consider the privatization path - or the way in which it was carried out - inevitable. Rather, he considers it to have come to express the hegemony of neoliberalism as a global ideology that found its way to countries in the global south such as Egypt in the midst of debt crises and through the conditionality of the International Monetary Fund and the World Bank. The data contained in the paper indicates that the privatization of the industrial sector - in the broad sense of the transfer of weight in growth, employment and investment from the public sector to the private sector and not only the transfer of ownership of assets - did not lead to a general decline in manufacturing as a percentage of GDP compared to the previous period. This means that privatization as part of the neoliberal transformation was not linked to wasting industrialization or shifting towards parasitic activities marred by speculation and other non-productive activities, as indicated by the critical discourse of the transformations that the Egyptian economy has witnessed since the nineties. However, at the same time the privatization of the industrial sector did not solve the problems of economic transformation in Egypt in favor of a more developmental formula, whether at the level of industrial exports with higher added value or by deepening the industry and increasing its competitiveness. The conclusion, then, is that privatization - at least in the industrial sector - may not be the disease, but neither was it the cure, contrary to what its advocates and supporters in the international financial institutions promoted.**

**Although the paper dealing with the economic aspect of privatization does not reach definitive answers, it certainly raises important and urgent questions at the current stage, which calls for developing a future research agenda to assess the path of privatization and its repercussions at the macro and sectoral levels.**

**Finally, the report provides an excellent opportunity to open the discussion about the privatization file in Egypt by starting from evaluating the previous path of privatization processes from the economic and legal angles by placing it in its historical context. To this end it presents analyses based on data and documents in a way that feeds the public debate and evaluates it on objective bases without underestimating the political nature of the privatization process.**

# I Part



## The Legal Framework Of Privatization Policy: The Legislative And Judicial Path

Emad  
Mubarak

### Introduction

In May 1991, the Egyptian government signed an agreement with the International Monetary Fund to gradually cancel about 50% of the external debt, in line with the Egyptian government's implementation of what it committed to in the letter of intent signed in May 1991, in addition to what the agreement stated of providing funding to Egypt, on condition that the structural adjustment agreement with the World Bank is implemented. The government was required to: liberalize the exchange rate, and reduce the state budget<sup>3</sup>.

The World Bank included the agreement within the “program of economic reform and structural adjustment”, which was set for implementation during the period between 1991 and 1993. Later it was proposed to extend the comprehensive economic reform program for another three years from 1993 to 1996<sup>4</sup>.

In implementation of these agreements, the Egyptian legislator, in an attempt to create a legislative environment for the implementation of these new policies, issued Law No. 203 of 1991 regarding the public business sector.<sup>5</sup>

Therefore, in the first section of this part of the report, we discuss the legislative and regulatory framework for privatization policies, the purpose of issuing Law 203 of 1991 and the administrative decisions that it entailed.

On the other hand, the Egyptian courts came to the forefront in two stages. The first stage was in 1997, when the Supreme Constitutional Court issued the controversial ruling that granted power, according to a statement by the President of the Supreme Constitutional Court, Counselor Awad El Morr, to interpret the constitution in a way that paves the way for privatization. Therefore, in the second

3 Fatima Ramadan, the development of trade union legislation from the Monarchy until now - Dar Al-Maraya Magazine, the eighth issue, issued in.....p. 118

4 Presidential Decree No. 534 of 1993 regarding the approval of the privatization project grant agreement between the governments of the Arab Republic of Egypt and the United States of America, published in the Official Gazette No. 18 on May 5, 1994.

5 Published in the Official Gazette No. 42 bis, on June 19, 1991.

**section of the report, we review the justifications of the Supreme Constitutional Court regarding this ruling and its interpretation, and whether the ruling was the result of pressures that the Constitutional Court was subjected to, or whether the ruling expressed the view of the court at that time.**

**As for the third section, we review the second phase, the beginnings of which were in 2008, that is, eleven years after the ruling of the Supreme Constitutional Court, where the Administrative Court issued a ruling canceling the Prime Minister's decision to establish the Health Care Holding Company and transferring health insurance hospitals and clinics to affiliated companies. It was a ruling upheld by the Supreme Administrative Court.**

**In 2010, the administrative judiciary issued a ruling to cancel the contract to sell the land of Madinati city, and the Supreme Administrative Court upheld the ruling in September 2010. The ruling had a snowball effect. On 21 December of the same year, a lawsuit was filed calling for the annulment of the contract selling the Omar Effendi company. In January 2011, workers began to resort to the Administrative Court to reclaim their companies, as the years following the revolution witnessed the issuance of many rulings recognizing the invalidity of privatization contracts, due to corruption and waste of public money, the absence of transparency, oversight, and accountability, in addition to conflicting interests and violating existing laws.**

## Section I

### Legal Regulation Of Privatization: An Attempt To Create A Legislative Climate

**In an attempt to create a legislative climate for the implementation of these new policies, the Egyptian legislator issued Law No. 203 of 1991 regarding the public business sector<sup>6</sup>, according to which holding companies replaced public sector bodies subject to the provisions of Law No. 97 of 1983. Accordingly, the nature of their funds changed from public funds that could not be sold or disposed of except by law into private state property<sup>7</sup>, which it may dispose of by administrative decisions.**

**According to the explanatory note, the issuance of the law aimed to separate ownership and management, as the role of the state, as the owner of the public sector, is limited to exercising accountability for results, while the management continued to exercise its investment activities in the same method and approach in which private investments were managed away from the control of government agencies and administrative complexities. That required reducing the role of government agencies that exercise some form of supervision, intervention and control over economic units, so that supervision was limited to one party represented by the owner. Thus, public sector companies could reform their financing structures through self-reliance.**

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6 Published in the Official Gazette No. 42 bis, on June 19, 1991

7 - State private property in accordance with Law No. 10 of 1987 AD regarding public and private state property is real estate and movable property owned by the state or by a public legal person, which is not designated for a public benefit or whose allocation for the public benefit has ended.

Examples of a private state property:

Lands that have no owner, which are located within or outside the boundaries of cities and villages.

- The “uncultivated” wastelands, desert lands and pastures, which lie outside the boundaries of cities and villages.
- Agricultural and fallow lands that the state has granted on the condition that they be cultivated or invested for a specific purpose, and their owners have stopped implementing this condition for a period of five consecutive years, provided that these owners are compensated for the facilities they have built on them if the conditions for compensation are met.
- All real estate, real estate by specialization, and movable property owned by the state or public legal persons that are not designated for a public benefit

**The purpose of this change in the structure, management and prescription of state-owned companies by transferring them from the public sector to the business sector was to separate them financially from the state treasury so that they were independent with their losses and profits, and to separate them administratively from the ministries to which they were subject, in addition, of course, to opening the door to their restructuring, liquidation or selling as companies owned by holding companies.**

**Under this law, the rights of workers that were established by the public sector workers' law also became negotiated rights, and the workers' share of corporate profits was reduced. The government was not able to move forward with the privatization of companies, until after implementing the policy of early retirement.<sup>8</sup>**

**Since the government was aware that its policy would increase the impoverishment of the vast majority of the Egyptian people, including workers, and that it was expected that workers would protest against the attacks on their rights, the government amended the Trade Unions Law in 1995 to ensure that its same elements remained at the top of the union hierarchy to be bale to pass those policies and tighten its grip on the grassroots unions and workers.<sup>9</sup>**

**Here, it must be noted that constitutional and legislative regulation is obligatory and necessary, as its absence would invalidate the privatization process. The constitutional organization and the integrated legislative organization based on constitutional foundations have been completely absent. If nationalization can only be by law, then it should follow that privatization too should also be by law pursuant to the rule of equality of jurisdictions.**

**The importance of the constitutional and legislative regulation of privatization lies in the fact that it is a necessity for the transfer of ownership of public projects that were originally established by law, as well as defining the rules and conditions that the executive authority must abide by and not set them by itself according to its whims.**

**Despite the shift in Egypt to a policy of economic liberalization, of which privatization was a part in the early nineties, the thought of legislative intervention has not occurred to the executive authority since that time until now. The Public Business Sector Law No. 203 of 1991 did not contain any regulation of privatization, nor did it contain any explicit or implicit reference to it.**

**We believe that the reason behind the absence of the legislative framework is the desire of the highest authority to provide the greatest flexibility to the executive authority in determining the scope and methods of privatizing public business sector companies, as it has maintained a degree of legislative and regulatory ambiguity, to facilitate circumvention of existing laws and the absence of oversight and accountability. The same ambiguity and uncertainty that allowed the executive**

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8 Fatima Ramadan, *ibid.* p. 118.

9 Fatima Ramadan, *ibid.*

authority to be flexible, turned into a source of resistance with the activation of the role of the State Council and the start of judicial disputes over privatization since 2008.

This allowed the executive authority to develop and implement the privatization program on its own. In pursuance of this, the Technical Office of the Minister of Public Business Sector developed, on February 14, 1993, a manual of procedures and general guidelines for the government's program to expand the ownership base, despite the fact that this program was nothing more than an action plan or directives from the executive authority that it adhered to in the exercise of its competence, and therefore did not amount to legislative action.

The government had declared that privatization in itself is not an economic policy that it is pursuing, but rather a method that its followers believe would raise the efficiency of the performance of the national economy by withdrawing the government from economic activity and leaving it to the private sector.<sup>10</sup>

The issuance of Law No. 203 of 1991, which its issuers thought would allow privatization, as well as the issuance of the Capital Market Law by Law No. 95 of 1992, which created the institutions that will carry out privatization operations in the capital market and the systems and methods of supervising them, did not help, as neither of them regulated the privatization process and its controls in a manner consistent with the constitution and the law.<sup>11</sup>

Law No. 203 came as an announcement of the real beginning of the ownership expansion program, as it reorganized the business sector companies through 27 holding companies representing 27 activity sectors and 314 subsidiary companies. Those companies were considered the base that will be subject to the privatization program, which included industrial, service and commercial sectors, for example, chemical, metallurgical, mining and food industries, the foreign and internal trade company, service sectors such as cinema, tourism and hotels, and other sectors such as construction and housing<sup>12</sup>, with the complete exclusion of others such as extractive industries, transportation, vital facilities and roads, which remained under the umbrella of the public sector with its economic and service bodies

In what may represent an announcement of an exceptional development in the history of the privatization program, a statement issued by the Presidency of the Council of Ministers, on November 15, 2021 said that a study prepared by the Cabinet Information Center proposed “a set of mechanisms to empower the private sector, including identifying the main sectors in which the state will persist as well as those from which it will withdraw, and the sectors that will be gradually exited, in addition to reforming the public sector by retaining major companies in the strategic and most important sectors, and abandoning companies in the lower

10 Gamal Mahmoud Al-Kurdi, *The Legal Regulation of Privatization in Comparative Law and Private International Law*, Dar Al-Nahda Al-Arabiya 2018, pg. 47. Law, Dar Al-Nahda Al-Arabiya 2018, pg. 47.

11 Counselor Hamdi Yassin Okasha. *Corrupt privatization and plans to sell Egypt 2022* p 118

12 Elhamy Al-Marghani and Ragaai Moussa, *Privatization of Services and Neoliberal Policies*, Study issued by the Development Support Center for Consulting and Training 2007, p. 12

priority sectors<sup>13</sup>

Back in 2000, Prime Minister Atef Ebeid issued Resolution No. 1765 forming the Ministerial Privatization Committee<sup>14</sup>, which stipulated in its first article the formation of a ministerial committee headed by the Prime Minister, and in its second article defined the committee's terms of reference as follows:

“The committee is concerned with studying everything related to privatization issues in various fields, and in particular it will:

- Determine the projects and companies that can be proposed for privatization, and what should remain under the control of the state.
- Develop a comprehensive plan for privatization supported by a timetable in light of the data or reports provided by competent authorities.
- Propose criteria and standards on the basis of which privatization is carried out.
- Propose aspects of expenditure or investment in privatization outputs.
- Adopt the recommendations of the relevant ministers regarding the value of the companies and assets offered and the timetable for auctioning these companies and assets.

According to the above, the Ministerial Committee for Privatization was the only body with the competence to determine the projects and companies that can be proposed for privatization, and to propose the criteria and controls on the basis of which privatization will be carried out.

In 2004, the President of the Republic issued Resolution No. 231 of 2004 regulating the Ministry of Investment, which stipulated in the second paragraph of its first article<sup>15</sup>:

“The Ministry of Investment works to develop and encourage investment in the Arab Republic of Egypt through:

1. ....
2. Expanding the ownership base of public business sector companies through the implementation of the privatization program, turning towards the private sector and the development of companies' performance within the framework of the state's general policy.

It also stipulated in the second clause of its second article that among the competencies of the Ministry of Investment was the: “Implementation of all competencies and responsibilities stipulated in the Public Business Sector Companies Law promulgated by Law No. 203 of 1991 and its executive regulations, in particular:

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13 Bissan Kassab, “A government plan inspired by the “Fund” to empower the private sector. Will the privatization train return to the 1990s? Mada Masr on November 16, 2021.

14 Prime Minister's Decision No. 1765 of 2000 published in the Official Gazette No. 197 dated August 30, 2000.

15 Presidential Decree No. 231 of 2004 organizing the Ministry of Investment, published in the Official Gazette No. 31 continued on July 29, 2004.

- Taking the necessary decisions to preserve the rights of the state in the business sector companies.
- Setting the standards for the formation and operation of the general assemblies of holding and affiliated companies, their boards of directors, the system and formation of the relevant committees, and the approval of their decisions.
- Correcting the financing structures of business sector companies, depending on their own abilities.
- Supervising the implementation of the program of transferring ownership to the private sector and the method of sale, and the restructuring programs of affiliated companies, restructuring the workforce, and proposing ways to use the sale proceeds.
- Supervising the utilization of grants to assist in the implementation of the ownership transfer program to the private sector, programs for restructuring subsidiaries, and human development programs for leaders of public business sector companies”.

In the same context, Article 26 bis of the Executive Regulations of the Public Business Sector Companies Law issued by Prime Minister’s Resolution No. 1590 of 1991 and complemented by Prime Ministerial Decree No. 980 of 2006 necessitated offering affiliated companies within the framework of the approved asset management program, irrespective of the means of sale, to be offering the subsidiary company in full or with the majority of its shares by way of subscription or through the purchase offers system through the stock exchange - after its presentation by the competent minister’s to the ministerial group for economic policies in the presence of the Minister of Manpower and Immigration, provided that the presentation is made to the aforementioned group to complete the sale procedures to one or more major investors final.

Hence, the procedures for privatizing any project or selling any of the subsidiaries, given that its capital is wholly owned by the state, went through a series of administrative stages:<sup>16</sup>

**The first stage:** It is the stage of the sale report by defining the company under sale to be the object of privatization, and its exit from the control of the state, proposing criteria and controls on the basis of which the privatization of that company is carried out, and proposing aspects of disbursement or investment resulting from the privatization of that company, which is undertaken by the “Ministerial Committee for Privatization,” which adopts the recommendations of the competent Minister of Investment regarding the value of the company and the assets offered, and then forwards it to the Council of Ministers for approval.

**The second stage:** the stage of delegating the Minister of Investment to the competent company to take the procedures of offering the company for privatization and the procedures for concluding the sales contract on behalf of the state, which owns the

16 Counselor Hamdi Yassin Okasha, *ibid.*, p. 840

**company's capital in full, in accordance with Presidential Decree No. 231 of 2004 concerning the Ministry of Investment, and the Minister of Investment Resolution No. 342 of 2005.**

**The third stage: the stage of approval by the Ministerial Group for Economic Policies headed by the Minister of Finance to complete the procedures for selling the company in implementation of the provision of Article 26 bis of the Executive Regulations of Law No. 203 of 1991, which required the group's approval to complete the sale of companies to a main investor before presenting the matter to the General Assembly of the Holding Company for Trade.**

**Fourth stage: The stage of approval by the General Assembly of the holding company on the sale in accordance with the Public Business Sector Law No. 203 of 1991.**

**Fifth stage: Presenting the details of the company's sale process to the Ministerial Committee for Privatization and the Council of Ministers for endorsement and approval of sale.**

**Sixth stage: The authority authorized to sell by the Minister of Investment (the competent holding company) provides the Asset Department at the Ministry of Investment in full with the sale documents and evidence of transferring the proceeds (the proceeds from the sale of state-owned assets) to the designated account in the Central Bank immediately after the completion of the sale process in accordance with the decision of the Minister of Investment No. 342/2005 to be recorded in the state treasury account represented by the Ministry of Finance after deducting the selling costs and expenses approved by the selling entity in accordance with the Prime Minister's Resolution No. 1506 of 2005 regarding regulating the proceeds of the state-owned asset management program.**

## Section II

### High Constitutional Court: Paving The Way Towards Privatization

In his book “The Struggle for Constitutional Power”, Dr. Tamer Moustafa says: “In the early nineties, the Supreme Constitutional Court became an important force in the Egyptian political system. In the political field, the Supreme Court surprised many by issuing resounding rulings that forced the dissolution of the People’s Assembly twice and the establishment of a new system for local and national elections. During the eighties, the interests of civil societies, opposition parties and the Constitutional Court began to converge, and this synergy increased with the court issuing more categorical rulings headed by Counselor Awad El-Morr in the period between 1991 and 1997. AL-Morr headed a new group of judges, appointed according to the recruitment mechanism that allowed the Supreme Constitutional Court to choose its judges from within the judiciary replacing the older judges who had been referred from the Higher court, which was subject to the domination of the regime, to work in the Supreme Constitutional Court in 1979. The court also began under the leadership of Al-Morr to refer to international law to strengthen its provisions, and also built institutional relationships with foreign legal experts and international human rights organizations. Also, the Supreme Constitutional Court turned itself into the nucleus of reform efforts by continuing to allow political activists to file cases, which provided it with the constitutional cases needed to expand its oversight over the constitutionality of laws and produced a judicial support network that publicly advocated the independence of the Supreme Constitutional Court. This synergistic relationship was a key factor in the rapid expansion of constitutional power in the 1990s<sup>17</sup> .

In a study entitled “The Deviation of the Legislative Structure in Egypt based on Judgments of the Supreme Constitutional Court” prepared by Essam El-Din Hassan, Hassan reviewed and analyzed rulings issued by the Supreme Constitutional Court over the period from 1980 to 1996. According to the study, the court invalidated 93 legal and regulatory texts in view of their unconstitutionality,

17 Tamer Mostafa. The Struggle for Constitutional Power - The Role of the Supreme Constitutional Court in Egyptian Politics. Tadawun House for Printing and Publishing Lebanon. 2017 p. 125

where public rights and freedoms have been violated by the legislator 66 times. This revealed 34 texts that violated the principle of equality of citizens before the law, a violation of the right to liberty and personal security, two laws that violated the sanctity of the private life of citizens and the sanctity of the home, five laws that violated freedom of opinion and expression, two laws violating the right of citizens to establish trade unions and federations on a democratic basis, and eight laws that violated the right of citizens to vote and run for office. Among the texts that were invalidated by the court, there were also 6 laws that violated the principle of equal opportunities, laws that violated social and health insurance guarantees, and five laws that violated the principles of social and tax justice.<sup>18</sup>

However, by the late 1990s, the regime began to become increasingly concerned about the activity of the Constitutional Court. Opposition parties, human rights groups, and political activists found in it a formal institution with sufficient capacity and determination to gradually limit the powers of the executive authority. A clear synergy emerged between the Supreme Constitutional Court and the emerging judicial support network. As the regime began to become increasingly concerned about the gains achieved by the opposition through the Supreme Constitutional Court, it sought to confront all those developments. Within five years, the regime implemented a series of legal and extra-legal measures aimed at weakening the judicial support network and ultimately limiting the independence that the Supreme Constitutional Court had enjoyed for two decades. Political activists have sought to undo the new restrictions imposed by the regime in and outside the courts, but they have not succeeded, given the huge disparity in power between the state and social forces.<sup>19</sup>

## Orientation Of The Supreme Constitutional Court Towards Economic Reform

**”The constitution explicitly stated that seniority is for the public sector and that the latter leads the process of progress in Egypt... Can the Supreme Constitutional Court accept this? It has been proven that the public sector has failed miserably in our society. None of its aspects was effective. It failed in management and failed In the generation of revenues,**

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18 Essam El-Din Hassan, “The Deviation of the Legislative Structure in Egypt According to the Judgments of the Supreme Constitutional Court,” Center for Human Rights Legal Aid, Cairo, June 1996.

19 Tamer Mostafa, *ibid.*, p. 19

as it failed in all aspects of life...The World Bank declared that the only solution is to amend the constitution, but the government refused to do so. So, the Supreme Constitutional Court faced a real problem: Either Egypt advances or regresses. That is the circumstance that prompted us to take our decision. We were facing a government that refused to amend the constitution, while the World Bank was repeating that the only way to move forward was to amend the constitution. We were forced to interpret the constitution in a way that would pave the way for privatization<sup>20</sup> «.

**Judge Awad Al-Morr**

The policies of the economic reform file are controversial, so the regime tried to avoid opposition and resistance by groups threatening the implementation of these policies, by creating a loose legislative and regulatory framework that allowed it to be flexible in taking appropriate measures. The regime refused to amend the constitution at that time, so it decided to circumvent the issue, taking into account those political risks. It issued Law No. 203 of 1991 regarding privatization without introducing any reforms to the constitution. The task of addressing the contradictions between that law and the constitution was thus left to the Supreme Constitutional Court.

In 1993, a worker at the Egyptian Company for Paper and Stationery (Romney) filed Alexandria suit No. 372 of 1993, requesting a ruling to settle his dues according to the incentives and financial rewards he was receiving for production. Explaining his claim, he said that he was a printing worker at the Egyptian Company for Paper and Stationery (Romney) and he had remained there until a decision was issued to merge it with the Egyptian Company for Stationery. Before the trial court, the plaintiff, in its session held on November 16, 1993, argued the unconstitutionality of the Public Business Sector Companies Law promulgated by Law No. 203 of 1991, and the court allowed him to take action to challenge the unconstitutionality.<sup>21</sup>

This challenge put the Constitutional Court in an awkward position, since the constitution was full of with references to the importance of the public sector and socialist-oriented growth; among them we mention the texts of the following articles:

Article 4 of the 1971 constitution states that:

“The economic basis of the Arab Republic of Egypt is the democratic socialist system based on sufficiency and justice, in a way that prevents exploitation and leads to bridging the differences between incomes, protects legitimate earnings, and ensures the fair distribution of public burdens and costs”.

Article 30 also stated that:

»Public ownership is the ownership of the people, and it is confirmed by the

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20 Ibid. page 135

21 Judgment of the Supreme Constitutional Court in Appeal No. 7 of the Constitutional Year 16 dated February 1, 1997.

continuous support of the public sector; the public sector leads progress in all areas and bears the main responsibility in the development plan«.

Article 33:

”Public property has its sanctity, and its protection and support is the duty of every citizen in accordance with the law, as it is a pillar of the nation’s strength, a basis for the socialist system, and a source of people’s well-being“.

Finally, article 59 stated that:

“Protecting, supporting and preserving socialist gains is a national duty”.

On February 1, 1997, the Supreme Constitutional Court issued its ruling, adopting a liberal interpretation of the provisions of the Constitution. The Constitutional Court may have thought that the constitutional challenge in this case was based on opposing privatization as an idea, and capitalism as an economic bias or choice, and that this was in opposition to the socialist system stipulated in the Constitution of 1971. Therefore, the most prominent approach the court took on in its ruling was not to indicate the extent to which the legal text agreed with the constitutional text, but to clarify its interpretation of the constitutional texts and their relationship to reality and the law.<sup>22</sup>

In justifying its position, the court relied on two things: On the one hand, the court considered that the public sector has failed miserably in management and making profits, which prompted the need to preserve state resources from squandering and achieve development. On the other hand, the court considered that the term “public sector” in the constitution meant “public investment”, and therefore investment in its various forms (public and private) is nothing but a distribution of roles between both. So, the court held that:

»The continuation of development and enrichment of its outputs - as stipulated in Article (30) of the Constitution - represents an asset developed by public investment. Although this investment paved the way to private investment, and was attractive to its forces, it was earlier in existence and farther in impact, as it extends to multiple fields, which private investment does not accept or hesitates in approaching, even if the flow of public investment is necessary to confront it, in order to ensure the continuation of life and development of its movement. As a result, both public and private investments have a role in development, even if the first is a major force for progress with multiple inputs, not necessarily a form of economic unit that the state establishes or expands, and it does not have to be sustained even if its default is evident, the money invested in it does not yield a remunerative return, or it poses the possibility of a better restart. This is not a breach of the constitution, but rather an enforcement of the values it calls for, foremost that the best investment and the most deserving of protection is always linked to the circle in which it

22 Khaled Ali, an article entitled “Reading in the books of Privatization 2: Facing Privatization”, published on the Legal Agenda website: <https://legal-agenda.com/%d9%82%d8%b1%d8%a7%d8%a1%d8%a9-%d9%81%d9%8a-%d8%af%d9%81%d8%a7%d8%aa%d8%b1-%d8%a7%d9%84%d8%ae%d8%b5%d8%ae%d8%b5%d8%a9-2-%d9%85%d9%88%d8%a7%d8%ac%d9%87%d8%a9-%d8%a7%d9%84%d8%ae%d8%b5%d8%ae%d8%b5%d8%a9/>

operates, and based on the assessment that the public and private investments are complementary partners, so that they do not compete, contradict or disperse, but rather each undertakes tasks for which it is more qualified and capable. It may be said that public investment raises the capacity, vigilance and distinction of citizens, especially through the transfer, adaptation and dissemination of technology.”

The court also acknowledged: “Investment in its various forms - public and private - is nothing but money that flows, and whether the state mobilizes it or it belongs to the private sector, in both cases it complements each other. Its collection is considered necessary to ensure a broader and deeper production base, the neglect of which is nothing but a luxury, and a betrayal of the values that development calls for and requires. What Article (29) of the Constitution stipulates in terms of forms of ownership, preceded by public ownership, and alongside it both cooperative ownership and private ownership, is nothing but a distribution of roles between both, that not prevent their mutual support and their subjection to the oversight of the people. Public investment is a fuel for progress, paving the way to it; it is not limited to certain fields, but extends to major fields through which the state works to implement its political and social tasks, under which fall its requirements in the fields of defense, security, justice, health, education, protection of its environment and resources, preservation of its infrastructure, limiting the growth of its population, and generally its performance of services for the most needs, and it is necessary for it to strengthen this leadership by supporting burdens that private investment fails to bear“.

The court also commented on the text of Article 59 of the Constitution and the reference it contains to socialist gains by saying that: “The Constitution, even though the text of Article 59 guarantees what it calls “socialist gains,” and considers their support and preservation as a national duty, but it is devoid of any specification that defines their content and scope. Rather, it has left them vague, and he did not even refer to a law to explain its components, and therefore it is not imagined that the constitution will guarantee workers other than those rights and benefits that it stipulates in their regard“.

According to this logic, the regime had the right to liquidate all state-owned companies, notorious for their inefficiency, and use those resources for other forms of public investment in the best interests of the people. The court considered that the constitution’s provisions on the economy should be read “in light of the current contexts and current development goals”, which prompted leftists to accuse the court of having nullified the entire constitution through this interpretation. Even the Court’s longtime supporters denounced what they saw as the Court once again overstepping its powers by manipulating the Constitution and performing a legislative task. Counsellor Awad Al-Morr, head of the court at that time, responded to his critics, saying<sup>23</sup> :

...»No constitution can impose on a society a definite method of making progress.

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23 Tamer Mostafa, *ibid.*, pg. 136.

**Since these methods are variable and scientific in nature, they are in constant motion. What is seen as a step towards progress at a particular time may be quite the opposite at a different time. So, if we accept that the ways of development are variable and scientific in nature, none of these means should be imposed on our society. The state must have alternatives to invest its money in areas consistent with the public interest.”**

**He also said that:<sup>24</sup>**

**”Constitutional provisions are full of life, and cannot be interpreted in a way that hinders our society. There should be nothing in our constitution that hinders society. Nor should the constitution be interpreted as holding back our quest for progress. Thus, while the court decision comes as a complete deviation from the provisions of the constitution, it falls within the framework of our legitimate aspirations. Therefore, I will not regret what I did, no matter how criticized this ruling was. This ruling was not only just, but was an urgent necessity in our society«.**

**Finally, the Supreme Constitutional Court supported the basic economic interests of the system by canceling the socialist-oriented legislation from the era of Abdel Nasser. The economic liberalization program, which was launched in 1991, was met with strong resistance from the broad social and economic groups targeted by Nasser’s socialist development model, the context of which had allowed them organized trade union activism which in turn allowed them to exercise their legitimate right of protecting the interests of its members and supporters of the policies of redistribution of wealth established during the Nasser era. However, dozens of rulings issued in the field of privatization, reform of housing operations, and reform of the labor law enabled the regime to abolish these policies without causing direct opposition from groups that felt threatened by economic reform in favor of the capitalist crony class. Thus, the provisions and the liberal orientation of the Constitutional Court enabled the executive authority to justify its actions by claiming that all it was doing was preserving the rule of law, and thus concealed its application of controversial reforms through explicit political channels.<sup>25</sup>**

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24 Tamer Mostafa, *ibid.*, pg. 137

25 Tamer Mostafa, *The Struggle for Constitutional Power - The Role of the Supreme Constitutional Court in Egyptian Politics*. Tadawun House for Printing and Publishing Lebanon. 2017 p. 19

## Section III

### State Council Judiciary And Privatization Program

#### State Council: A History Of Struggle With The Authority And Extension Of Jurisdiction

The Egyptian judicial system did not settle on a conclusive opinion on the extent to which the constitutionality of laws may provide an oversight prior to the establishment of the Supreme Court in 1969. The Court of Cassation had ruled the permissibility of such oversight in one of the cases, but its ruling was brief, and the issue was not addressed as adequately as it should have been. That was followed by a ruling issued by the National Court of Egypt on May 1, 1941 which explicitly decided the right of the courts to consider the constitutionality of laws, but the National Court of Appeal of Egypt canceled it, adopting the opposite opinion that it is not permissible to monitor the constitutionality of laws. It was a ruling that its authors supported by extending its reasons in clarity and force, and thus it overshadowed the contradictory rulings that preceded it<sup>26</sup>

On February 10, 1948, the Administrative Court of Justice decided this issue in a famous ruling, and the court held that there is nothing in Egyptian law that prevents Egyptian courts from addressing the examination of the constitutionality of laws, whether in terms of form or substance. ... The Egyptian constitution, when it established the principle of separation without explicitly declaring it, has combined it with another principle that it implicitly affirmed when it decided in Article 23 that the use of authorities shall be in the manner indicated in the constitution, and thus made the use of the authorities' powers always regulated by mutual cooperation between them on the basis of each of them respecting the principles established by the Constitution. After that, the court rulings were based on the principle established by the ruling<sup>27</sup>.

**The clash with the authority began after orchestrating the attack on Al-Sanhouri,**

26 Farouk Abdel-Bar, *The Role of the Egyptian State Council in Protecting Public Rights and Freedoms*, Part One, 1988, p. 446.

27 *Ibid.*, p. 447.

**the head of the State Council at his workplace on March 29, 1954. Al-Sanhouri did not return to the council after that incident. On April 15, 1954, the Revolutionary Command Council issued a decision to deprive the former partisan ministers - including Al-Sanhouri - of all political rights and holding public office.**

**Barely a year had passed since the shock that terrified the State Council caused by the physical attack on its president, it was horrified by another new shock on March 23, 1955, when Law No. 165 of 1955 was issued regarding the State Council. In 1969, all judicial bodies were attacked, by issuing Decree Law No. 83 of 1969 regarding the permissibility of reappointing some members of judicial bodies.**

**Counselor Tariq al-Bishri says in his book “Democracy and the July 23 System<sup>28</sup>”: “the legislative authority under the July 23 system not only lost its independence, but also lost its very existence, and merged with the executive authority, which is assumed by the Council of Ministers. As for the judiciary - whose independence was recognized by the interim constitution - the origin of its independent existence stems from the establishment of a balance between the powers of legislation and implementation. If the legislative authority loses its independence, the judiciary would have succumbed as well, because the organizational subordination comes from two organizational factors, that the followed be entitled to appoint and dismiss the subordinate (or pay or withhold his wages), and that the follower be forced to follow the instructions of the followed”.**

**Counselor Tariq Al-Bishri continues: “The state apparatus, in which the legislative and executive authorities merged in practical terms, had constrained judicial authorities and besieged their independent existence«.**

**After the defeat of 1967, the moral influence of the ruling regime weakened, and the political opposition began to proliferate in all its directions. Public opinion no longer accepted the establishment of special courts. After the political legitimacy of the regime in general was shaken, the function inherent in the ordinary judiciary began trying through its daily judicial activity to expand its derogated mandate through some provisions that began to discuss from afar the constitutionality or legitimacy of some of the previous measures, whether political or economic, even if its jurisdiction expanded beyond the scope imposed on it.**

**Al-Bishri continues: “The state became aware of this, so it began trying to include the judiciary and judges in the political framework of the state and trying to influence the judicial system itself. This took two forms, namely, the call to include judges in the political organization (the Socialist Union), and the call to reformulate the judicial structure itself by calling for popular justice, that is, an attempt to include elements other than the judges in the courts.**

**In his book “The Struggle for Constitutional Power<sup>29</sup>,” Tamer Mustafa says: Records dating back to the fifties of the last century show that the regime’s consolidation**

28 Tariq al-Bishri, *Democracy and the Regime of July 23, 1952-1970*, Arab Research Institute 1987 p. 105 et seq.

29 Tamer Mostafa, *The Struggle for Constitutional Power - The Role of the Supreme Constitutional Court in Egyptian Politics*. Tadawun House for Printing and Publishing Lebanon. 2017 p. 17 onwards

of its authority and its undermining of judicial institutions indirectly incurred heavy prices. The nationalization of the greater part of the private sector and the removal of all restrictions before the executive power led to a massive exodus of capital from the country. With the death of Nasser in 1970, the economy was in a dire state, the public sector was completely inefficient and needed a constant injection of capital, and the country's infrastructure was collapsing.

Tamer Moustafa adds: In the face of economic stagnation and increasing pressures from international lenders during the 1970s, Anwar Sadat, successor to Abdel Nasser, linked the regime's survival to attracting direct foreign investments and investments by Egyptian citizens who own assets worth tens of billions of dollars outside the country. However, given the regime's record of nationalizing most of the private sector in the past, it turned out to be difficult to convince investors that the state would not confiscate their properties or enact laws that would impede their entry into the Egyptian market. After failing to attract investments for a decade without providing effective institutional guarantees of property rights, the regime established an institutionally independent Supreme Constitutional Court, giving it the power to review laws. The new court was designed to reassure investors and impose de facto institutional constraints on executive power, but it provided a new arena for political activists to challenge the state.

Sadat used the new Supreme Constitutional Court and the reformed administrative courts as two main pillars for formulating a new ideology aimed at giving legitimacy to the regime, based on the importance of "the rule of law" and transforming Egypt into a "state of institutions." Sadat used institutional reforms and the rhetoric of the rule of law to distance his regime from the flagrant failure of the Abdel Nasser regime, and to formulate a new narrative that would give him legitimacy and be different from the foundations of the populist state.

Although judicial reforms helped the government demonstrate its commitment to guaranteeing property rights, the Supreme Constitutional Court and administrative courts did not explicitly serve the interests of the regime. Rather, judicial reforms produced institutional channels that enabled political activists to battle the executive authority in ways that upended patterns of state-society interaction. For the first time since the military coup in 1952, political activists could rightly repeal the regime's legislation by simply filing constitutional lawsuits. It is a process that requires few financial resources and enables activists to get around the system's constraints. Litigation became the primary strategy used by political activists to challenge the state. And they have succeeded surprisingly well in ways that were never possible through the People's Assembly in the past.

The main factor that has allowed the expansion of the judiciary over a period of two decades is the synergy of efforts between the Supreme Constitutional Court, the Administrative Courts and three active civil society groups - associations of legal experts, opposition parties and human rights organizations.

## Signs Of The New Phase Of The Struggle With The Authority

**”Privatization policies and the means of implementing them have had a very serious impact on investment, unemployment, waste of public money and widespread corruption<sup>30</sup> “.**

**Indications of this important stage began in the State Council’s response to the measures taken by the executive authority to privatize and sell public sector companies, in 2007, when five lawsuits were filed by politicians and human rights organizations to challenge the Prime Minister’s decision No. 637 of 2007 to establish the “Healthcare Holding” company. The objective of this decision was to prepare a legislative environment for the privatization of the Public Authority for Health Insurance.**

**The Egyptian Initiative for Personal Rights (EIPR) filed lawsuit (No. 21665/61) in April 2007, immediately after the decision was issued. Other organizations have joined forces with the lawsuit under the umbrella of the Committee for the Defense of the Right to Health, a committee that included more than 20 organizations and bodies, and was formed in May 2007, immediately after the Prime Minister’s decision was issued in order to confront it and resist plans to privatize health insurance in general. EIPR, in cooperation with Hisham Mubarak Law Center (HMLC), coordinated and led the legal aspect of the committee’s work<sup>31</sup>.**

**The establishment of a holding company on citizens’ enjoyment of the right to health was a dangerous step, since according to the decision social health insurance was transformed into commercial health insurance, which constitutes a great harm to beneficiaries, especially the poor. Contrary to the provisions of previous laws that were keen to deal with health insurance and health care for beneficiaries of a social nature that provides integrated health care to the patient without regard to the percentage of his participation, through non-profit structures, the contested decision allowed the service to be provided through a profitable company with investment functions, where it had the right to buy and sell shares, manage a financial portfolio (Article 5 of the resolution), manage assets and investments in a way that maximizes operating returns (Article 7), target profit (Article 11) and provide standard service at an acceptable price (Article 7 Clause 6, 3). All this benefits the addition of a margin of profitability to the price of the cost of the service in a way that will inevitably lead to an increase in its prices, as the difference between the service at the cost price and the service at the profit price was large. And the difference was very large between the prices of some health services as provided in insurance hospitals and the prices provided in private hospitals.<sup>32</sup>**

30 Administrative Judiciary Court ruling No. 40510 of the judicial year 65, session of September 21, 2011, invalidating the sale of the steam boiler company and supporting the ruling of the Supreme Administrative Court in Appeals Nos. 1976, 2677, 2688 and 2699 of the Supreme Judicial Year 58, session of December 17, 2012.

31 Introductory paper “Our case against transferring health insurance to a holding company” Egyptian Initiative for Personal Rights 2008.

32 Ibid.

**On September 4, 2008, the Administrative Court of Justice issued its ruling suspending the implementation of the contested decision. The court also established new legal foundations regarding the relationship between citizens and the state with regard to health insurance, the impact of which went beyond the decision to establish the holding company to apply more generally to all government plans related to health sector reform.**

**The success in this case represented a qualitative leap, because it prevented the privatization train from moving from the station of privatizing the public sector (commercial, industrial and agricultural) to the station of privatizing public bodies, as well as overcoming the failure of the first attempt before the Constitutional Court regarding Law 203 of 1991, and its success in establishing a number of judicial principles for the protection of social health insurance.<sup>33</sup>**

**On June 22, 2010, the Administrative Court of Justice issued its ruling to cancel the contract to sell the land of “Madinati”, which was drawn up by the Ministry of Housing in favor of the Talaat Mustafa Company, a ruling that was supported by the Supreme Administrative Court on September 14, 2010, and based its ruling on the fact that the contract was made by direct order, and without following the rules the Law of Bids and Tenders, as well as the contractual and financial imbalance in favor of the company.**

**This ruling contributed to drawing the attention of the workers of the companies that had been privatized to resort to the Administrative Court to resist the privatization procedures and to challenge the sales contracts. On October 21, 2010, the workers of the Omar Effendi Company filed a lawsuit to challenge the privatization procedures of their company. On May 7, 2011, the court ruled that the company’s privatization was invalid. Thus, the State Council’s judiciary became an arena of resistance and confronting the procedures and privatization contracts during subsequent years.**

**Ultimately, the privatization process took different forms and contracts according to the circumstances the country was going through, according to the stage of the restructuring process, and also according to the level of resistance of opponents of privatization.**

**Therefore, in this part of the report, we try to review the legal violations approved by the State Council Court, the manifestations of corruption, waste of public money, and the absence of transparency, oversight, and accountability revealed by the issued rulings.**

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33 -Khaled Ali, an article entitled “Reading in the books of privatization 3: the state’s ways to waste public money and confronting it. It was published on the legal website of the Legal Agenda. <https://legal-agenda.com/%d9%82%d8%b1%d8%a7%d8%a1%d8%a9-%d9%81%d9%8a-%d8%af%d9%81%d8%a7%d8%aa%d8%b1-%d8%a7%d9%84%d8%ae%d8%b5%d8%ae%d8%b5%d8%a9-3-%d8%b7%d8%b1%d9%82-%d8%a7%d9%84%d8%af%d9%88%d9%84%d8%a9-%d9%84%d8%a7%d9%87/>

## **Review Of The Provisions Of The State Council And Exposing The Corruption Of The Privatization Program**

**”The decision issued by the administration to conclude a contract represents the administration’s disclosure of its will with the intention of creating a legal effect. By analyzing the legal process that ends with the conclusion of the contract into its component parts, it becomes clear that the decisions prior to or subsequent to the contract, such as the administration’s setting of the terms of the tender or auction, the decisions of the Bid Examination Committee, the decisions of the Deciding Committee, and the decision to award the tender or auction, are undisputed administrative decisions separate from the contract, and therefore may be challenged with cancellation due to overstepping the authority<sup>34</sup>” .**

**The first attempt to resist privatization before the Supreme Constitutional Court in 1997 failed when the court issued its ruling on the constitutionality of the Business Sector Law No. 203 of 1991, which paved the way for privatization and supported the economic liberalization program in line with its liberal orientations.**

**In 2007, a new judicial process began, as politicians and human rights organizations resorted to the State Council Court to resist and challenge privatization procedures for violating laws and decisions.**

**The judiciary of the State Council played an important role in exposing the manifestations of corruption that marred the privatization procedures and the sale of public business sector companies, the absence of transparency, freedom of competition and equal opportunities, in addition to conflict of interests and ordered the state to restore the sold assets.**

**When the Military Council announced its intention to assign Kamal Al-Ganzouri to head the Council of Ministers<sup>35</sup>, fate willed that the Administrative Court ruling be issued on December 3, 2011 in one of the clearest cases of privatization corruption and waste of public money, which is the case of selling and privatizing the “Arab Foreign Trade Company,” of which 90 % of shares were sold in August 1999 - under Al-Ganzouri’s presidency of the government - and without real financial consideration. In addition, the investor was granted an additional 11,582 thousand Egyptian pounds. Although the value of the assets of this company were not less than 400 million pounds, it was sold for an amount of 13 million and 680 thousand pounds. Upon signing the contract, the buyer paid only 50% of the value of the deal, which amounted to 6 million and 840 thousand pounds, and the rest was paid after a full year<sup>36</sup>.**

34 Judgment of the Administrative Court in Case No. 11492 for the year 65, session 7 May 2011.

35 Military Council Decision No. 6 of 2011 appointing Kamal Al-Ganzouri as Prime Minister September 14, 2011, published in the Official Gazette No. 50 continued on December 15, 2011.

36 Judgment of the Administrative Court in Case No. 37540 of 65 invalidating the contract of sale of the Arab Foreign Trade Company

**This was not the only ruling issued during that month. There were many rulings that declared the privatization contracts invalid, including the ruling invalidating the privatization of the “Shebin El-Koum Spinning and Weaving Company,” “Tanta Linen Company,” “The National Cotton and Trade Company,” and finally, “The Holding Company for Cotton and Trade.” “.**

**Al-Ganzouri, who held several state positions during Sadat’s rule, including governor of the governorates of Beni Suef and Al-Wadi Al-Gadid and director of the Planning Institute, was assigned by his predecessor Mubarak to the Ministry of Planning in 1982, to become in 1984 its minister in its new formulation (Planning and International Cooperation) whose work was to link internal economic policies to the plan and the prescription of the International Monetary Fund, the World Bank, the Paris Club, donors and lenders. Al-Ganzouri retained this position even after his appointment as Deputy Prime Minister until he was assigned to head the government on January 4, 1996. He was not far from the ruling regime whose people revolted against its policies and instruments of rule and did not come for a government of national salvation, but rather to save the ruling regime to which he belonged and he remained one of the main players in its political and social decision-making circle for more than twenty years<sup>37</sup>.**

**He also was the one whose first term in government witnessed one of the highest rates of activity in the privatization program of public sector companies. The international financial institutions that Ganzouri was working with as Minister of Planning saw that crossing the bottleneck of developing economies lies in the removal of subsidies for the poor and the abandonment of the state-owned companies, which must be privatized to encourage investment and get rid of their burden and losses. As a result, he achieved about 30% of the total sales that took place within the privatization program since its inception in 1991 up to the figures available in 2009.<sup>38</sup>**

## **First: Manifestations Of Corruption And Waste Of Public Money**

**1. It is established from the papers of the case of the sale of the Shebin Spinning Company that it witnessed models of wasting public money, including the presentation of the conditions’ booklet, which included the retention of the 5,482 workers. All purchase offers were made on this basis. During the stage from the announcement of receiving the envelopes on June 29, 2005 until the completion of the sale on December 1, 2006, the holding company - without logical justification -**

<sup>37</sup> Heba Khalil al-Ganzouri and privatization, a report issued by the Egyptian Center for Economic and Social Rights on December 7, 2011 p. 2

<sup>38</sup> Ibid.

took measures to restructure the workforce, and announced the early retirement of the company's employees. The number of workers who received early retirement reached 1465, which means that the holding company bore the cost of restructuring, and wasted more than 73 million pounds. This should have required re-evaluation of the company and putting it up for bidding again after this fundamental change. The continuation of the sale in that way indicated that the public money supported this transaction with the same value equivalent to the value of the early pension that was paid to the workers, considering that the company was sold for 174 million pounds<sup>39</sup>. Thus, the real value of the privatization of this company was carried out in an amount equal to one hundred and one million only, of which the investor paid only 70 million. The matter did not stop there, but it was reflected on wages, which decreased due to the exit of those workers by about 24.8 million pounds annually.

Those who took the decision to sell were not satisfied with its evaluation at such a low price and selling it accordingly. Rather, they added 1,465 workers to the unemployment queue, in a way that overloads the pension funds, as all of them turned from insurance payers to pension recipients.

The comparison between the actual amounts paid by the Indian investor to purchase this company (70 million pounds) and its economic value, according to the company's assets assessment in 1993, which confirmed that the economic value of the company's assets on June 30, 1993 was estimated at 607.017,000 million pounds) reveals the amount of public funds that have been wasted in that deal<sup>40</sup>.

2. The "dummy deal"; <sup>t</sup><sup>41</sup> his is how the Administrative Court described the sale of the "Arab Foreign Trade Company" as a fictitious deal, as 90% of its shares were sold to the "Investia Investment Holding Company" for an amount of 13 million and 680 thousand pounds on August 4, 1999. That was the only purchase offer that was made. submit it. The bid should have been postponed to another time, especially since there was no urgent need to sell the company in that way, as the sale contract reveals that the buyer obtained a wealth of public money in exchange for obtaining that company and did not pay anything, as follows:

- The value of the deal in the contract was (13 million and 680 thousand pounds), of which the buyer paid 50% at the time of signing the contract, which is equivalent to (6 million and 840 thousand pounds). He did not pay the remaining amount.

- At the contract's signing session, the buyer received an amount of (one million and 300 thousand pounds) the value of the workers' housing share for previous years before privatization, and the fate of that amount was described by the court as unknown, and it wondered why it was granted to the investor even though it

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39 Judgment 34517 and 40848 for the year 65 BC nullifying the privatization of Ghazl Shebin issued on September 21, 2011 and supporting the Supreme Administrative Court ruling 1834 and 2678 of the year 58 BC, the session of January 21, 2013.

40 Ibid.

41 Judgment of the Administrative Court in Case No. 37540 of 65 BC invalidating the contract of sale of the Arab Foreign Trade Company. See also the judgment of the Supreme Administrative Court supporting the judgment of the Administrative Court. See also Khaled's article on "Reading in the books of privatization 3, aforementioned reference«.

belonged to the workers.

- The buyer received an amount of (11 million and 900,000 pounds) indebtedness from the “Port Said Industries and Engineering” company (Abdel-Wahab Kouta) in favor of the “Arab Foreign Trade Company” in the form of bank facilities granted by public sector banks to the Arab Company for Foreign Trade in its capacity before privatization. It would have been better to pay that sum to the banks than to hand it over to the investor who seized the amount.

- The same buyer was in debt to the Arab Foreign Trade Company before its privatization of an amount of (6 million and 437 thousand pounds) and continued to procrastinate in paying it until it reached the amount of (7 million pounds) after adding the interest of the delay, and he did not pay the amount until the company was sold and handed over to him, according to the report of the Central Auditing Organization.

- The sixth clause of the contract states that the surplus for the fiscal year ending on June 30, 1999 shall be transferred to the seller in return for bearing the losses incurred for the same year, despite the fact that the contract was issued on August 4, 1999, that is, after the end of the fiscal year and the budget’s realization of the surpluses. How can public money be forfeited and the investor be given the company’s profits for a period, in which he was not the owner of the company and during which the company was owned by the public sector?

- In the fifteenth clause of the contract, it was stated that the two parties agreed to transfer the commissions and all the company’s dues in Iraq to the seller in return for his bearing all the costs of lawsuits, compensation and contracts that arise in a dispute, before the Gulf War, August 2, 1990, without clarifying whether there were lawsuits filed since the war until the sale, which took place in 1999. Also, the number of commissions and dues was not clarified.

**3 . Conflict of interest:** It is established from the documents of the sale of “Al-Nasr Steam Boilers Company” that it witnessed a conflict of interests and facilitated the appropriation of public money, according to the court ruling that stated: The selling decision should be annulled on grounds of corruption and breaches. The selling of the assets of Al-Nasr Steam Boilers Company, which was approved by the Board of Directors of the Holding Company for Engineering Industries, was tarnished by a defect of conflict of interest, as it was established from the lawsuit papers that Eng. Mohamed Abdel Mohsen Hilal Sheta was, at the time of the sale, a member of the Board of Directors of the Holding Company for Engineering Industries (the selling company), and he agreed to sell to “Babcock and Wiplex Inter National Investment Inc” and “Babcock and Wilcox Egypt” - an Egyptian joint stock company - whose establishment was issued by the decision of the Minister of Economy and Foreign Trade No. 649 of 1994. The documents reveal that the two sons of Mohamed Abdel Mohsen Sheta, Hesham Mohamed Sheta and Khaled Muhammad Sheta held shares in the two buying companies, and they were signatories to the purchase contract for the Nasr Company for Steam Boilers and Pressure Vessels (fourth

and fifth parties) 49% of shares, which was amended by a decision of the head of the General authority for Investment No. 354 of 2001 amending the company's name to "International Company for Manufacturing Boilers and Metal Works", the full shares of which (23579 ) were owned by (Mohammed Abdel Mohsen Hilal Sheta), (Hisham Mohamed Abdel Mohsen Hilal Sheta) and (Khaled Mohamed Abdel Mohsen Hilal Sheta). It was also the company that was later divided into two companies by the decision of the Chairman of the General Investment Authority No. 1184 of 2006, so that the first company became the International Company for the Manufacture of Steam Boilers and its board of directors was headed by (Khaled Mohammed Sheta); the second company was Al-Kholood Company for Real Estate Development and Tourism headed by Mohamed Abdel Mohsen Hilal Sheta) and that proved that the member of the Board of Directors of the Holding Company for Engineering Industries, Eng. Mohamed Abdel Mohsen Hilal Sheta, was a member of the Board of Directors of the National Company for Engineering Industries, when the Nasr Company for Steam Boilers and Pressure Vessels was sold, and contributed to its sale to Babcock and Wilcox, to which his two sons Hisham Mohamed Sheta contributed and who later became the sole owners of the company after the foreign partner's exit, then their father joined them, a member of the board of directors of the seller's Holding Company for Engineering Industries..... Accordingly, the sale procedures were flawed by corruption, abuse of authority, conflict of interests, and waste of disclosure and transparency rules.<sup>42</sup>

## **Second: Ignoring Legal Rules: The Law Of Tenders And Auctions And The Law Of Expropriation For The Public Benefit**

### **1. Violation of the Tenders and Auctions Law and the violation of the rules of equality, transparency and equal opportunities**

**The Law Regulating Tenders and Auctions No. 89 of 1998 "constitutes a general law regarding all contracts made by units of the state's administrative apparatus, public legal persons, and contracts related to the disposal of public money, as it has included a comprehensive organization of all administrative units that make up the state's administrative apparatus. It also includes all types of contracts concluded by these bodies, as well as the dispositions that the state conducts in public money through holding companies, and prohibits the application of any other legal provisions to these contracts."<sup>43</sup>**

<sup>42</sup> Court ruling in Case No. 40510 of Judicial Year 65 nullifying the sale contract of the Steam Boiler Company, upheld by the Supreme Administrative Court in Case No. 1976, 2677, 2699 of Judicial Year 58.

<sup>43</sup> Appeal No. 9820 for the year 48 BC, session 6/7/2003.

**The rule in public bidding is that it is based on the principles of openness, equality and freedom of competition, allowing the participation of the largest possible number of bidders and offers to reach the best terms and the highest prices in the auction or the lowest prices in the bidding.**

**- What was confirmed from the privatization papers of the Nasr Company for Steam Boilers and Pressure Vessels<sup>44</sup>, which the court relied on as one of the reasons for invalidating the privatization procedures in that company, was its conversion from a public auction to a practice in violation of the Egyptian Law of Bids and Tenders, where 6 international companies submitted their offers, and none of the offers reached the basic value at which the company's value was estimated at \$16 million.**

**It was necessary to cancel the auction in view of the fulfillment of one of the obligatory reasons for cancellation in accordance with the Law of Auction and Bidding, which is that the value of the bid offers did not reach the price and basic value. Also, all offers were accompanied by reservations, and this gave an additional reason for canceling the bid. But those in charge of the sale process turned the procedures into a practice where they disclosed the estimated price of the company's assets in violation of the law that requires the price of the assets to remain secret, in case one of the bidders would offer a higher price than the estimated one. They negotiated with the six bidders to increase the price of each of them separately, chose from among them 3 offers, then renegotiated with each of them individually.**

## **2. Violation of the law of expropriation for the public benefit and nationalization**

**In its ruling on the privatization of the nationalized companies Shebin Spinning, Tanta Linen, and Nile Cotton Ginning as well as the steam boiler company, as one of the expropriated funds for the public benefit, the Administrative Court ruled that:**

**"The administrative authority that owns expropriated or nationalized public money is not a company and is not a trader, and it is not entitled to depart from the specific purpose of expropriation for the public benefit in pursuit of its financial interest, even if it is to pay the debts of the losing subsidiaries according to the privatization program. It is not allowed to change the activity for which it has been decided to expropriate for the public benefit, or the purpose for nationalization, or to dispose of the lands and buildings of the assets that were decided to be nationalized or expropriated for the public benefit. This would be illegal because of the wasting of the guarantees set by the constitution for expropriation and nationalization, and the deviation of these two means from the purpose for which they were legislated. It is not correct in this regard to us as justification the matter of public interest that calls for following the method of privatization, since there is no public interest that can be achieved by violating the provisions of the law and the constitution.**

**Therefore it is not permissible in privatization policies for the nationalized**

<sup>44</sup> Court ruling in Case No. 40510 of Judicial Year 65 nullifying the sale contract of the Steam Boiler Company, upheld by the Supreme Administrative Court in Case No. 1976, 2677, 2699 of Judicial Year 58.

or expropriated land on which stand a project or its buildings or an affiliated company which is to be privatized or offered for sale by the state represented by the cabinet of ministers, the minister of investment, the minister of finance or holding companies to the investor, or the buyer of the project of company< nor to be sold by the investor or the buyer to a third party, whether this third party maintained the activity of the company or project or not. The funds that have been subjected to nationalization or resulting from expropriation has become part of the general ownership of the state, specified for a purpose set by the law or decree. There is nothing in the law that allows the state – irrespective of whom represents it – to change that form of ownership into private ownership of the buyer, investor or the buying private company. Accordingly, therefore it is not permissible for funds that are expropriated for public benefit or that are the subject of nationalization, as they are considered state funds, to be subject to real estate registration, real estate registry, or mortgage of any kind to other than the state, and it does not entail for others any of the in-kind rights, whether as official mortgage, possession mortgage, personal jurisdiction or franchise right”<sup>45</sup>.

### **Third: Selling In Violation Of Law 203 And Then Amending The Law After The Sale Is Completed**

In 1997 and 1998, the sale of the “Nile Cotton Ginning Company” was floated on the stock exchange without a corresponding in Law 203 of 1991 permitting this. In 2006, the executive regulations of the Public Business Sector Law were amended to allow subsidiaries to sell all their shares.

The Supreme Administrative Court, in its ruling on the support of the Administrative Court’s ruling invalidating the privatization of the Nile Cotton Ginning Company, stated that the administration “acknowledged the right of the private sector to participate in production and to contribute to the local national product as a pretext to undermine the right of the public business sector to exist.... and that this policy is without a legal basis and was done by fraudulent methods that indicate corruption and lack of transparency... by selling it cheaply, whether to the main investor in violation of the text of Article 10 of this law, which limits the disposal of the sale to an asset only to the exclusion of the main production lines,

<sup>45</sup> See in this regard the judgment in case No. 34517 and 40848 of the year 65 BC nullifying the privatization of Ghazal Shebin issued on September 21, 2011 and supported by the Supreme Administrative ruling of 1834 and 2678 of the year 58 BC, the session of January 21, 2013. See also Judgment 34248 for the year 65 BC nullifying the privatization of Tanta Linen Company, issued in the session of September 21, 2011 and confirmed by the Supreme Administrative Court with provisions Nos. 196, 1977, 2679, 2541 for the year 58 BC issued on April 15, 2013

or by selling all the shares of the subsidiary company, which leads to reducing the capital of the holding company or public legal persons and public sector banks to zero, in violation of Articles 20 of the Public Business Sector Law and Clause 25, item 5 of its Executive Regulations<sup>46</sup>, as they do not allow selling in this way.”

Those in charge of the privatization program later realized the reality of this violation. The Prime Minister issued Resolution No. 980 of 2006 adding the text of Article 26 bis to the executive regulations of the aforementioned law, which for the first time permitted the offering of all subsidiaries or the majority of their shares by way of subscription or by the purchase offer system through the stock exchange after the its presentation by the competent minister to the ministerial group of economic policies.

This principle, established by the Supreme Administrative Court, is not only related to the Nile Cotton Ginning deal, but extends to all privatization operations of companies in which all subsidiaries were sold or reduced the shares of the holding company, public persons, or public business sector banks to zero, which took place before the publication of the Prime Minister’s Resolution No. 890 of 2006 amending the executive regulations of the public business sector law because the law and the executive regulations do not allow this.<sup>47</sup>

The only alternative was to reduce the shares of holding companies, public legal persons or public sector banks to less than 51%, and it was not possible to sell the entire subsidiary company or to reduce the percentage of those mentioned entities to zero until after the issuance of the Prime Minister’s Resolution No. 890 of 2006 published in the official gazette, issue 123 on 4 June 2006.<sup>48</sup>

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46 The ruling of the Supreme Administrative Court in Appeals Nos. 8259, 8263, 8735, 8818, 8816, 8808, 8763, 7862 for the year 58 BC nullified the sale contract of the Nile Cotton Ginning Company.

47 Khaled Ali, a previously mentioned reference

48 Ibid.



## Conclusion



The State Council presented a model for the role of the judiciary and its positive impact on public life in Egypt, as it revealed, through its provisions, the corruption that marred privatization processes and the invalidity of procedures for selling public sector companies.

The privatization process in Egypt also witnessed blatant models of contracts that constrain state, unleashing buyers not only to displace and expel workers, but also allow changing the nature of the company's activity to the point of executing the activity and squashing lands, and selling them without the state having the right to stop these practices, and even enabling buyers to resort to local or international arbitration under these terms, which prioritizes the rights of the buyer at the expense of the rights of the state. The main objective of applying these policies was not to expand the ownership base and open the way for the private sector. Rather, it was primarily an attempt by the state to get rid of these companies and their workers without considering the negative social and economic effects on workers and on the components of industry and production in Egypt<sup>49</sup>.

Finally, we conclude this section with what the Supreme Administrative Court's ruling on the invalidity of the sale of the steam boiler company emphasized, that: "The state is not justified in scattering or squandering its public and private funds, as it is one of the elements of national wealth, and should forfeit every exploitation that does not aim to achieve the public interest; and it is not permissible in any case to be a space for institutional corruption that bypasses legislation."

# II Part



## Political Economy In The Privatization Portfolio: Assessing The Impact Of Privatization On The Overall Performance Of The Economy

Mohamed  
Gad

### Introduction

During the 1990s, the Supreme Constitutional Court had a controversial case before it, as one of its demands was to rule unconstitutional the 1991 Business Sector Law, the main law responsible for the regulation of privatization deals since then.

The plaintiff, who is a worker in a public sector factory, saw that the law contradicts Article 30 of the 1971 constitution in force at the time, which still included the word “socialism”, and it stipulated in the respective article to the concept of public ownership as “state” ownership, and called in a second article, Article 33, for the protection of this property.

Since the business sector law facilitated the process of selling shares in public factories, the worker who filed this appeal against the President of the Republic saw that the access of investors to those shares contradicts what the constitution stipulates on the need to protect public property.

However, the court did support his opinion, and relied on the fact that the constitution did not close the door to private property, as it recognized its existence and prohibited its nationalization as well. The court considered that the final ruling on “privatization” is public benefit, meaning that if its purpose is to promote the development process, then it would not be in contradiction of the constitution, because public property is not sacred in itself but rather in the service of citizens.

The court ruled: “...and it is not necessary for this investment to take the form of an economic unit established or expanded by the state, and it is not obliged to keep it whenever its default is evident, or if the funds invested in it do not yield a remunerative return, or if it was possible to re-operate it in a better manner.”

In this paper, we seek to take the principles of the aforementioned Constitutional Court ruling, issued in 1997, as a fundamental basis for judging the privatization program that began in 1992 and continues to the present time. We try to test two

**basic perceptions about the privatization path. First, that the objective of selling the companies was providing a greater opportunity for the private sector to play a role in development that the state was unable to undertake, and the second is an opposing perception that the real goal was to rid the state of these assets in order to reap short-term profits with the support of international financial institutions, which wanted to see Egypt as a free market in which multinational companies could have a greater opportunity of profit even if at the expense of industrial growth.**

**Our focus will be on the privatization of the industrial sector in particular, given that it is the most reliable state activity in achieving development. We will start with tracing of the indicators of industrial development in Egypt before and after privatization, in order to see whether we have progressed or rather the opposite in this regard since the nineties.**

**Then we will work to refute the most important defenses of the supporters of each of the two assumptions, those supporting the conspiracy scenario, and whether the state actually deliberately undermined the public sector in order to justify selling it under the pressure of international institutions, and whether the private sector actually squandered its resources, or did it not play a corresponding role in development.**

**We will also engage with arguments of the proponents of the idea that privatization was an inevitable evil, especially with regard to the public ownership model of the industry, that was full of contradictions and impossible to sustain, especially in the environment of the global economy since the nineties.**

**We conclude, by reviewing these two views, that both of them held some. The public sector model contained contradictions that made its continuation impossible. At the same time, the solutions of the private sector contributed to disrupting the basic goals for which the public sector was established, which we summarize in “import substitution.” and “supporting citizens’ ability to consume”, which are developmental and social goals.**

**Therefore, the author of the paper believes that there is a need to go beyond this either/or scenario and to focus on the essential objectives behind the establishment of the public sector, and then discuss how/feasibility of continuing to adopt it at the present time.**



## Section I

### What Happened To The Industry After Privatization?

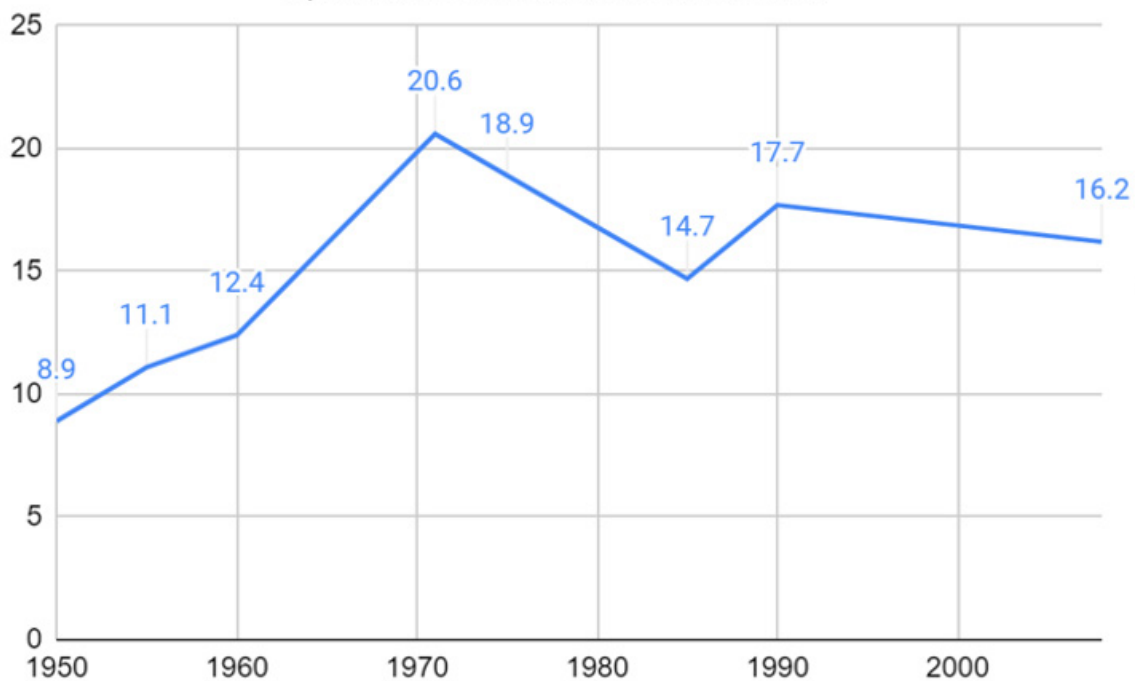
**This section aims to present a review of the development of capital accumulation in industry during the era of the public sector, which extended from the beginning of the sixties, the time of the expansion of nationalization, until the beginning of the nineties, with the state’s adoption of the privatization policy, as well as comparing the developments of the industry between that period and the following decades in which the private sector played a major role.**

**We aim to provide a background of data that gives us a preliminary picture of whether the accumulation had been more achieved under the banner of the public sector, and if it has regressed after privatization, or if the matter was just a switch of roles, according to the view of the Constitutional Court ruling.**

**In this regard, we will rely on two main indicators chosen because they clearly express the course of the accumulation process, in addition to the availability of data through which we can prepare relatively long time series of these two indicators that enable us to make the historical comparisons that we target from this section.**

**The first indicator is “contribution of manufacturing industries to GDP” and the second is “growth of manufacturing output”.**

**Starting with the first indicator, it will appear as in the following figure that the sixties was an exceptional period in our modern history, as it witnessed a remarkable pace of increase in the contribution of industry to our total output.**



Transformative industries as % of Production – Central bank statements

**All years express the value of manufacturing production according to the data of the National and Central Bank and the Ministry of Planning, with the exception of the 1985 and 1990, which include industry and mining activities, according to the data of the Ministry of Planning. The data are provided at fixed prices and the ratio was calculated by the researcher.**

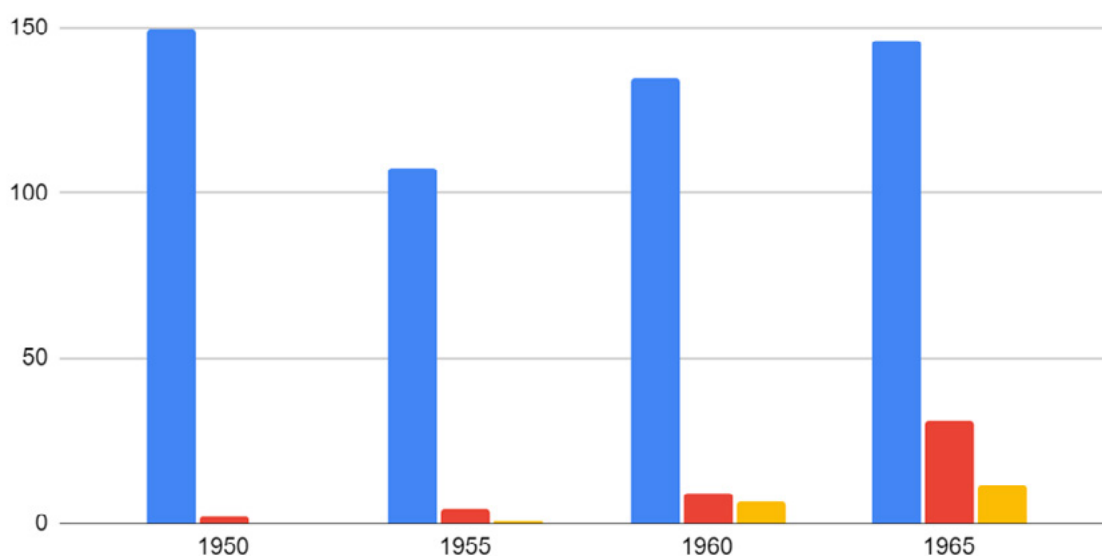
**Until the fifties of the last century, the contribution of industry was very limited, despite the great efforts of private capital regarding import substitution, but the ability of this capital to mobilize financial resources towards investments in industries that require huge long-term investments, especially heavy industries, remained limited.**

**By the 1970s, industry contributed about 20% of the total annual production. That big role played by industry was probably what drive many to feel that privatization was a conspiracy. At the beginning of the seventies, former President Gamal Abdel Nasser died, to whom was attributed the main role in building and defending the public industrial sector. While Anwar Sadat was seen as the first to pave the way for privatization through the economic open-door policy, since the contribution of industry to the total output had clearly declined during his reign.**

**The importance of industry is not limited only to its role in creating national income or creating jobs, but it was paving the way for a more stable economy. The main dilemma of the Egyptian economy before the public sector was the link between national income mainly with cotton revenues, and because setting the prices of this commodity was subject to its global prices, our economy was rising and falling depending on the rapid changes in revenue from this crop.**

Since the twenties, the industrial private sector has been striving hard to free the Egyptian economy from this rentier, but it was not able on its own to mobilize sufficient resources to establish major industries. That paved the way for the state's demand to give a more powerful push to diversify sources of national income and reduce the role of cotton in the economy, raising claims to a public sector, which focused its investments on heavy industries with high added value.

Among the best indicators that express the state's response to demands to make the economy more diversified is what is related to the types of cotton goods exported abroad. As it appears from the following figure, manufactured cotton exports were increasing during the sixties compared to raw cotton exports.



Development of industrial component of our cotton exports.

National Bank newsletter, 1970

Yellow: Cotton textile exports. Red: Cotton Yarn exports. Blue: Raw cotton exports

In contrast to these arguments, there are many evidences that show that the index of “industry’s contribution to the total GDP” does not necessarily provide an accurate picture of what happened. The decline in the contribution of industry does not necessarily mean that the state turned its back on this activity, and we do not forget here that the era of Sadat was a necessary stage to complete the industrial investments that Nasser started. It is ironic that in the same year that witnessed the issuance of the economic open-door policy Law, 1974, the state’s investments in industry increased by 80%. Half of those investments were directed to the metal industries sector, foremost the Helwan Iron and Steel Company<sup>50</sup>, the Nasserite icon that expresses a state vision to expand its heavy industries.

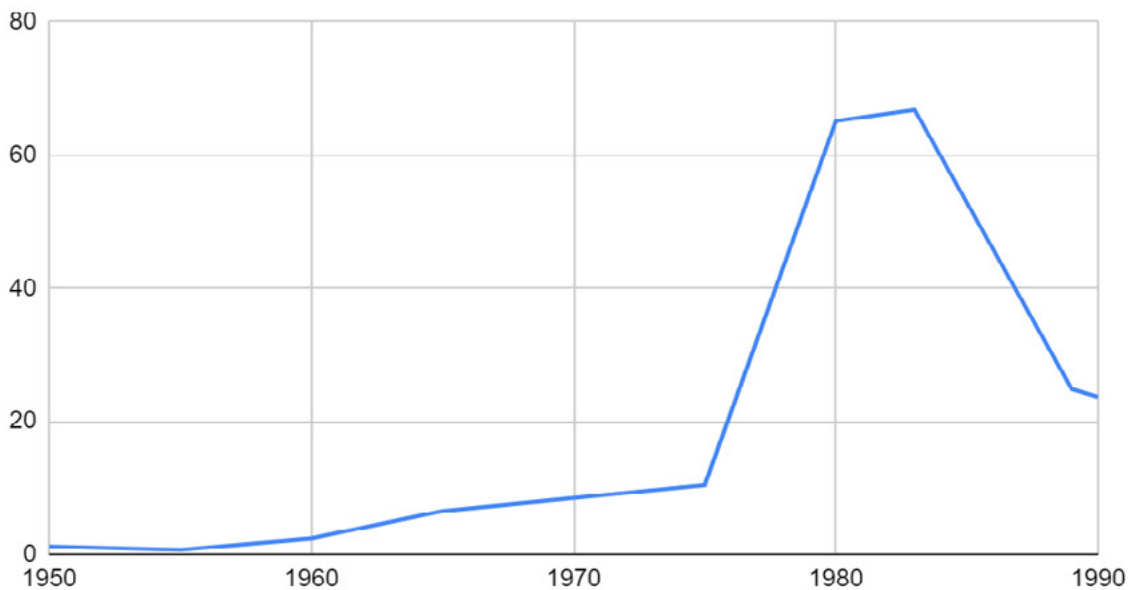
50 Report and recommendation of the president of the international bank for reconstruction and development to the executive director on a proposed loan to the Arab republic of Egypt for a textile project - 1976 - P12.

**In fact, the decline in the industry’s contribution to the GDP in the seventies did not reflect the state’s reluctance to engage in industry as much as it was reflecting the development of other components in the gross product that overshadowed the industry’s contribution, the most important of which being “oil” revenues.**

**The 1973 war contributed to the beginning of a new era for the global oil industry, as the Gulf states’ limitation of oil exports during the war period was a major motive for the rise in global prices, and since then, oil has become an expensive commodity and its role has increased strongly in generating incomes for the countries producing it.**

**Egypt was one of the countries that benefited from that, although it was not rich in oil, but it was able, through its limited resources, to create a new source of wealth that made the entire economy witness a great recovery in the growth of the GDP value during the seventies.**

**The new role of oil is clearly evident in the high contribution of Egypt’s petroleum exports since the second half of the seventies.**

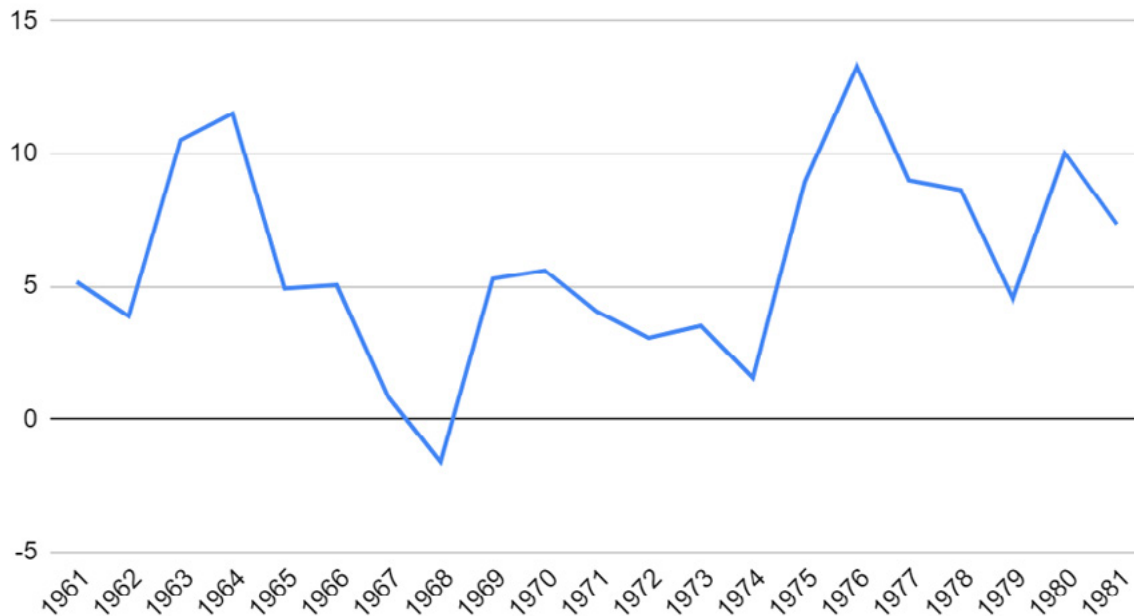


Oil exports to total exports

**The years 1950 and 1960 from the National Bank data classified under the exports of minerals, fuels, lubricant oils and others, the 1975 data from the Central Bank classified under the item exports of crude oil and its products, and the data for the following years from the Central Bank classified under petroleum industry exports.**

**As shown in the following figure, the rate of GDP growth rose strongly during the same period of the decline in the industrial contribution, the seventies. That was not only credited to oil, but also to resuming the operation of the Suez Canal and**

**the increase in the importance of remittances from workers abroad in reviving our GDP, all of which contributed to increasing the value of the domestic product, although it does not reflect a significant development in our manufacturing capabilities.**



Rate of growth of GDP during the 60s and 70s. Source: World Bank data

**In short, the luster of industry diminished during the seventies under the impact of the rise in the importance of other elements of the national income, although the state was still committed during that decade to expand in building factories. The new income elements contributed to reviving economic growth at a stronger pace than in the sixties.**

**But this revenue-enhanced growth did not last long, and drew attention once again to the importance of the industrialization-based growth of the sixties. Most importantly, with the return of rentierism to the economy, the state was repeating the sin of the nineteenth century in increased borrowing with the confidence of reaping revenues from cotton export proceeds, then entering a financial crisis with the collapse of the price of cotton and finally reaching bankruptcy.**

**The crisis recurred in the seventies, but the revenue this time was in the form of oil and Suez Canal revenues, in addition to the foreign exchange remittances provided by workers in the Gulf. Foreign aid (Arab and foreign) also represented an important weight in our foreign revenues during the years following the October War.**

**Since those revenue elements were directly or indirectly related to oil prices, as soon as global crude prices fell since the second half of the eighties, the country turned to an external debt crisis that put it on the verge of bankruptcy at the end**

of the same decade.

As the following figure shows, the external debt increased with the increase in revenues since the seventies. With the exacerbation of the crisis, the state concluded an economic reform and restructuring agreement with the International Monetary Fund and the World Bank in the early nineties, one of the most important conditions of which was the privatization of the public sector.



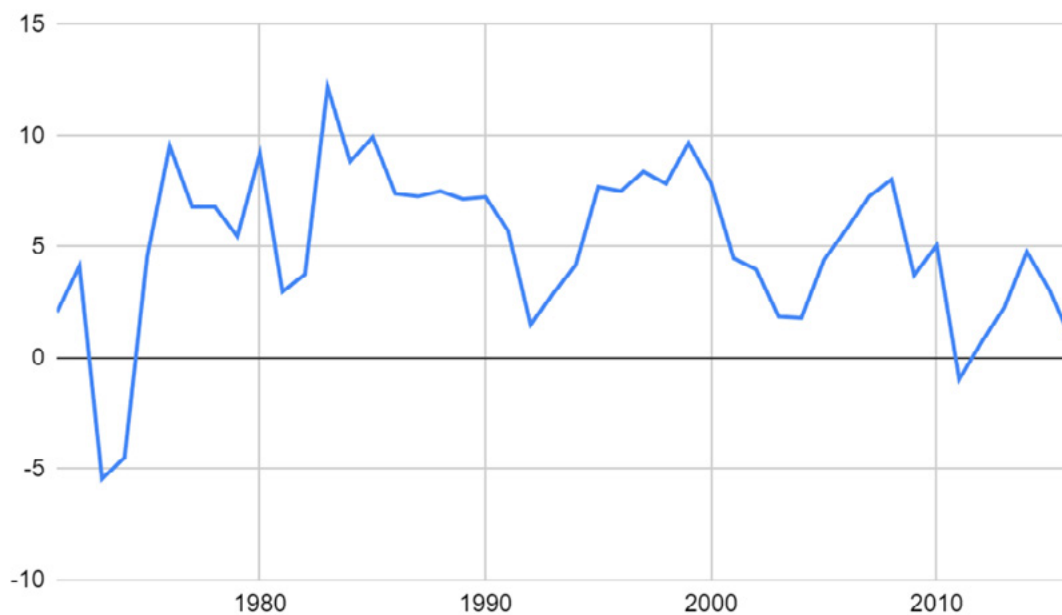
External debt as percentage of GDP

The 1990s agreement was the real beginning of the demise of the star of the public sector in Egypt. It is true that it continues to this day, but it has lost its dominant role since that time.

This brings us to the second half of the story. Did the industry die with the death of the public sector starting in the 1990s?

## The public sector did not disappear; its role merely changed

We cannot say that the state's exit from this activity meant its death. On the contrary, there are those who believe, such as political science professor Samer Suleiman, that the private sector has been able to contribute strongly to the industry since the eighties. This opinion is supported by our second indicator which is the output growth of manufacturing industries, as shown in the following figure.



Average annual increase in industrial production. Source: UN data

In this regard, Suleiman says, “The growth of industry is mainly attributable to the private sector, specifically industrial capitalism. The state's tendency to retreat from investment in industry has been balanced by the private sector's tendency to invest in industry. The share of public sector investment in industry has declined from more than 30% in the seventies to about 20% in the eighties and then to only 4% in 1995. In contrast, the share of private sector investments in industry increased from 15.9% in 1981 to 34.7% in 1991 and then to 45.9% in 1995<sup>51</sup>.

As shown in the last figure, the private sector was able to maintain approximately the same pace of industrial growth as the public sector had done. If we calculate the compound annual growth rate (CAGR) of industry output (in fixed dollar terms) between 1970 and 1990 (the era of the public sector) and between 1990 and 2010 (the era of privatization<sup>52</sup>), we will find that they are very close, as the average

51 Samer Soliman - State and industrial capitalism in Egypt - AUC - 1999 - P19.

52 The data is calculated on the basis of the Industrial Production (ISIC D) for Egypt contained in the United Nations database. GDP/breakdown at constant 2015 prices in US Dollars. <https://unstats.un.org/unsd/snaama/downloads>

annual growth in the first period was 5.5% and in the second period was 5.4%.

But if we look at the industrial added value indicator, which is more accurate in expressing the state of industrialization, as it measures the value of the final production that we produced after excluding the production inputs that we imported, we will find, according to the data available in the World Bank on Egypt, which starts from 1974, and where the added value was estimated on the basis of the market price of the dollar, we will find that the compound growth rate of this value in the period between 1974 and 1990 was 10.1% compared to only 8.1% in the period between 1990 and 2010, which is not a huge difference in growth but reflects an initial picture of the difference in the patterns of industrial growth in those two periods<sup>53</sup>.

In short, if consider our contemporary history of industry, we will find that privatization (meaning the transfer of ownership of part of the productive public sector to the private sector), may actually look like a process of exchanging roles. However, the external features are not enough to judge the experience. Thus, we will try to look at the objectives that were behind the establishment of the public sector, and its sustainability after privatization, which should enable us to judge more accurately whether it was just a switch of roles or something more than that.

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53 Researcher accounts from World Bank data Manufacturing, value added (current US\$) - Egypt, Arab Rep  
<https://data.worldbank.org/indicator/NV.IND.MANF.CD?locations=EG>

## Section II

### Privatization As An International Conspiracy

The July Revolution Charter is a comprehensive document that provides us with the main conception of the political discourse founding the public sector, from which we can conclude that there were goals behind the state's tendency to industrialization that went beyond the mere achievement of capital accumulation in the industrial field, while not denying the importance of the latter. We can summarize those objectives in the following two points:

#### First: Import Substitution

The first goal is the desire to build an Egyptian capitalism that is independent of the developed world. The charter indicates that Western capitalist systems built their production base by relying on the monopoly of industry and making their colonies mere sources for the production of raw material followed by their import of industrial products. In this regard the Charter stated: "If Britain had achieved its progress starting from its dependence on the textile industry in Lancashire, then turning Egypt into a large cotton field was a continuous artery that carried blood to the heart of the British economy at the expense of the starvation of the Egyptian farmer"<sup>54</sup>.

Although many Egyptian capitalists, whose names emerged during the first decades of the last century, had the same vision regarding dependence on the West, perhaps the most famous of whom was Talaat Harb, still the producers of the July Charter believed that leaving industry to the private sector would not guarantee a liberation from this dependence, and that the matter required a degree of macroeconomic planning and a mobilization of public resources in order to enter areas such as heavy industry or technologically advanced industries that pre-1952 capitalism was unable to expand aggressively.

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54 The July Revolution Charter - Chapter Six - The inevitability of a socialist solution.

## Second: Mass Consumption

The charter also aspired to modernize consumption patterns within society, so that modern consumer goods are made available to the largest base of citizens, which comes within a more comprehensive vision of the “social” meaning of freedom and the need to redistribute wealth within society. To achieve this objective, the private sector had to work without profit goals, as it was providing many commodities at reduced prices that suited the purchasing power of large segments.

Against that background we can understand why voices have risen to criticize the state’s policy towards the public sector since the seventies, even before the start of privatization, for although the state was still maintaining its pace of investment in manufacturing, it was gradually abandoning the objectives of the Charter.

In a research paper dating back to 1990<sup>55</sup>, Nazih Al-Ayoubi, an Egyptian professor of political science at Oxford University, presents a historical review of the state’s policies towards the public sector since the open-door policy, and tries to prove through many manifestations that there was a deliberate state from the goals of the Nasser era. He perceives the open-door policy mainly as a result of external pressures “The open-door policies developed because the state bourgeoisie chose to ally with world capital, rather than pressures from domestic industrial capitalism.”

These pressures stem from the fact that, since the beginning of the open-door policy, the state began to engage in partnerships with foreign institutions with the aim of improving the situation of the public sector, which contributed to the gradual transformation of this sector into profit-making institutions and helped start the erosion of its social role, a trend that has begun to expand in state policies in general since that time; he says: “The state bureaucracy generally follows a commercial orientation towards citizens when providing goods and services (...) goods and services that were previously subsidized and provided with standardized prices are now being sold with varying standards and at different prices; concerning food, there’s now the regular bread, the improved bread, and the luxurious bread.”

It seems that Al-Ayoubi did not believe that the public sector was in a deteriorating situation that called for it to deviate from the role entrusted to it during the Nasserist era, but that it were the state interventions that contributed to its obstruction. He says that the public sector was not a burden on the state at the time of the open-door policy, although he does not deny its inefficiency. In 1976, the number of losing companies was limited to only 44, while there were 324 companies capable of profit. He criticizes the state’s acquisition of an important share of the profits of those companies that could have been reinvested, in addition to limiting the bank financing available to them and eliminating the role of public institutions in planning.

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55 Nazih.N.Ayoubi - Etatism versus privatization: the case of public sector in Egypt-1990.

**In a subsequent book <sup>56</sup> to this study, economist Gouda Abdel-Khaleq, professor at Cairo University, presented a comprehensive vision of the impact of the economic reform policies, which Egypt practically began with the International Monetary Fund since the seventies and ended in the mid-nineties, and the role of these reforms in undermining the ability of the industrial sector to grow, which until that time had been dominated by public ownership.**

**In his book, Abdel-Khaleq tried to combine different elements of the fiscal and monetary policies that were applied in the framework of economic reform, and to analyze their impact on industry.**

**Those policies began from the point of trade liberalization, and this liberalization took place at the time through a strong retreat from the policy of non-tariff barriers, such as banning the import of goods, and replacing them with customs duties policies, at a time when the public sector was not ready for that competition.**

**This coincided with liberalization of the exchange rate, embodied in a process of devaluation of the pound in the early nineties, as well as liberalization of interest rates and openness of foreign investments in government debt.**

**In this context, Abdel-Khaleq believed that the policies of the Fund and the Bank were absolutely against industrialization, even the private sector industry. “Increasing domestic interest rates, raising energy prices, imposing the general sales tax and liberalizing trade may lead towards only one direction, which is wasting industrialization.”<sup>57</sup>**

**In more detail, Abdel-Khaleq focuses on the conditions of some public industries under economic reform, including iron and steel. In this context, he monitors the damage to this industry from many reform measures, such as the damage from the competition of imported steel products, and the high interest rate in light of strong dependence on Bank financing, in addition to being affected by the increase in electricity prices, which was one of the demands of international financial institutions also at the time.**

**In short, previous attempts at analysis consider that the decline of the public sector was strongly driven by factors outside the will of the sector itself, whether state mismanagement since the economic open-door policy, or the measures imposed by international financial institutions under the name of economic reform. Those factors combined contributed to limiting the chances of success of the public sector and hence justifying its privatization for being a burden on the state.**

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56 Gouda Abdel-Khaleq - Stabilization and Adjustment in Egypt: Reform or Waste for Industrialization - The Supreme Council of Culture - Translated by Samir Karam - 2004.

57 Quality Abdul Khaleq p. 131.

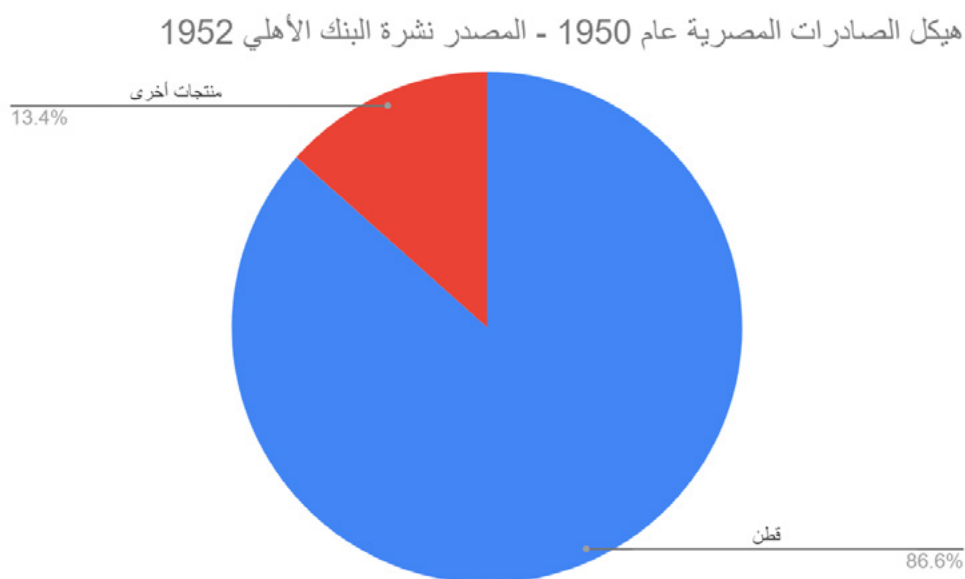
## Section III

### Replacing the private with the public sector: goals and endeavors in light of the exchange of roles

#### Not merely an exchange of roles

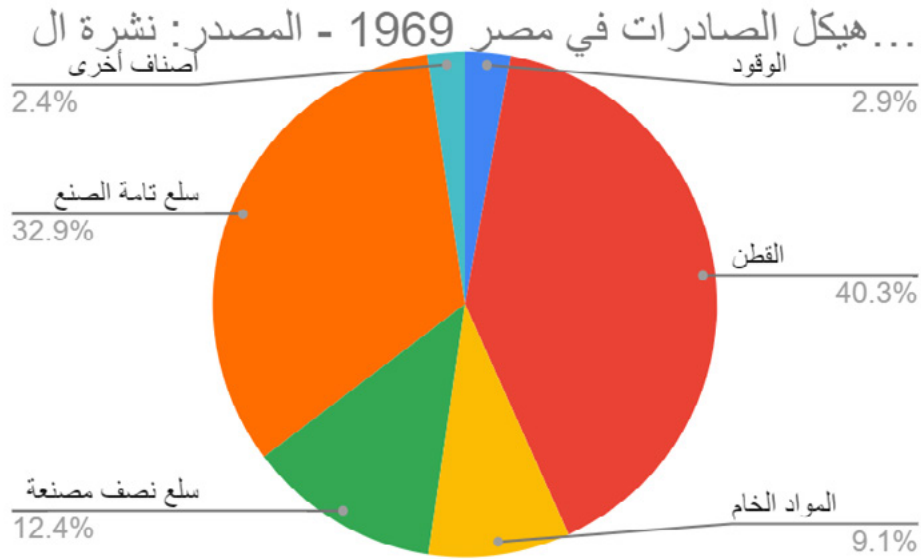
The replacement of the private sector in place of the public sector was not just a switch of roles, even if capital accumulation continued, but the main objectives behind the establishment of the public sector had not been achieved since the nineties, specifically “import substitution” and “expansion of consumption“.

Beginning with import substitution, and as it appears from the following two figures, the experience of the public sector during the sixties contributed to a profound shift of the structure of Egyptian exports to move from strong dependence on revenue-based exports represented at the time in raw cotton to manufactured exports constituting more than one third of exports.



Egyptian Exports 1950. Source: National bank newsletter 1952.

Blue: Cotton. Red: Other products

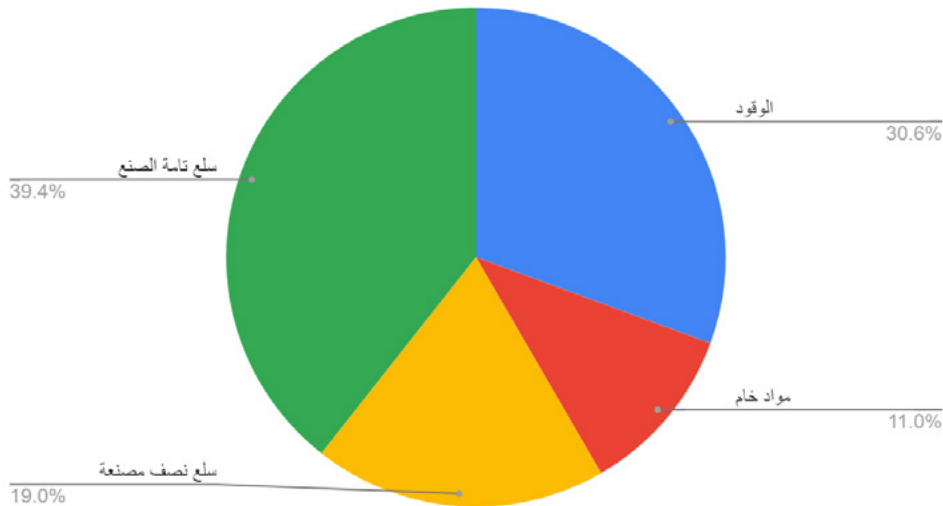


Egyptian Exports 1969. Source: National bank newsletter

Red: Cotton; Orange: Manufactured goods; Green: Semi-manufactured goods;  
 Yellow: Raw material; Blue: Fuel; Turquoise: Other products

**It appears from the data on the structure of Egyptian exports in 2021 that we are almost frozen at the situation of the 1960s, as the share of manufactured goods in total exports increased by only about 6% from its level six decades ago, while oil exports have replaced raw cotton exports.**

هيكل الصادرات المصري في 2020-2021 - المصدر: النشرة الشهرية للبنك المركزي



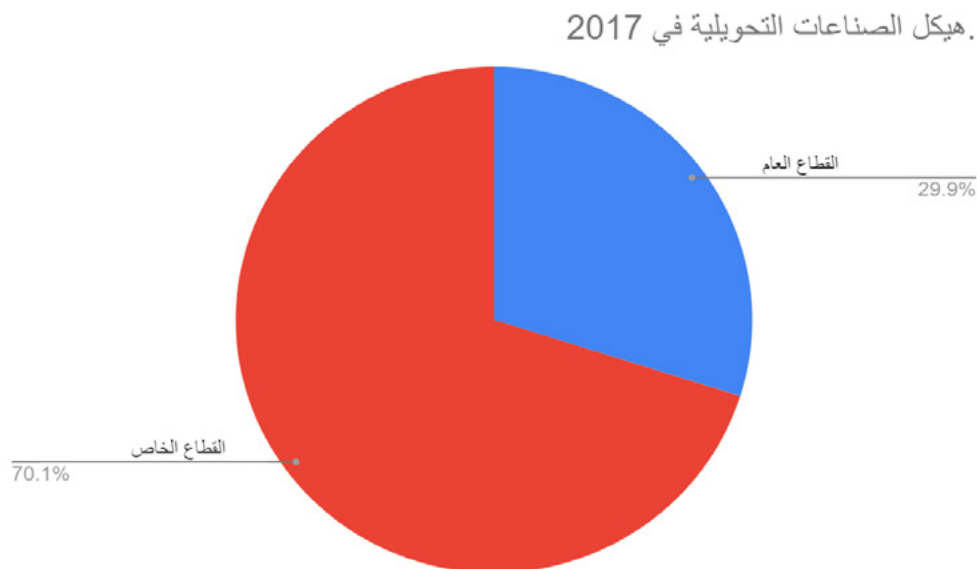
Egyptian Exports 2020-2021. Source: Central Bank monthly newsletter

Green: fully manufactured goods; blue: oil; yellow: semi-manufactured goods; red: raw material

This is in addition to the heavy reliance on importing production inputs, a situation that has been going on since the sixties. We can understand that this was the case in the sixties, as that decade was the beginning of an attempt to introduce industry, starting from assembly up to all stages of industry, but the convergence in the share of production inputs to the total imports between that decade and the present time suggests that we did not succeed in bringing about this development after privatization.

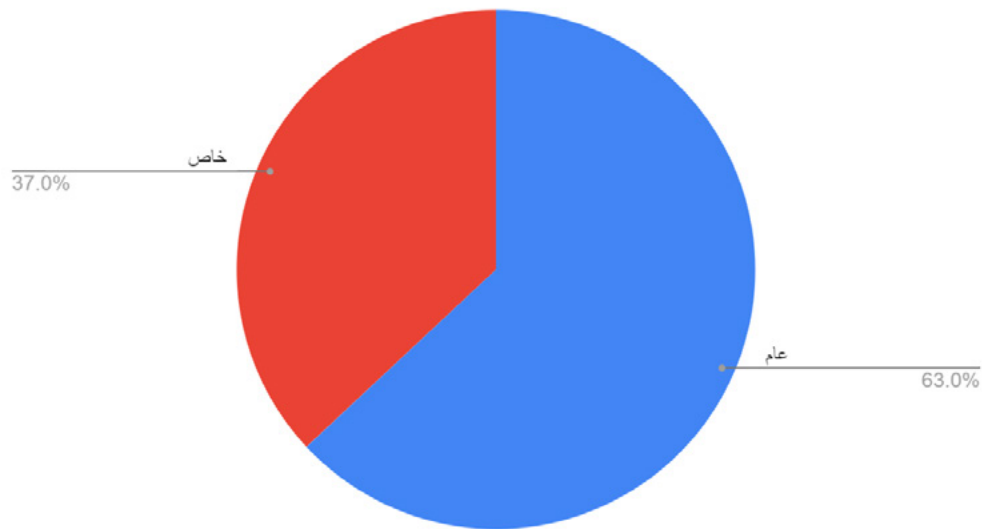
The same applies to the goal of expanding consumption. This sector has been liberated from many restrictions imposed on the pricing of its products, which is logical in the context of the procedures followed in this decade, prompted by international institutions. The public sector was deprived of the privileges it obtained in financing and provision of hard currency. Customs were opened up to external competition, so it was natural to liberalize the pricing of products in order to be able to continue. So, what remained of the public sector was its description as affiliated to the state, with no obligation to provide goods at affordable prices.

In practice, the problem was not liberating the public sector from the power of pricing. The state practically tended to pressure public companies to support the pricing of their products in order to maintain social stability. But the departure from the goal of “mass consumption” was achieved by changing the structure of industry in its entirety from the public sector’s control to private sector control, as shown in the following figure.



Transformative Industries in 2017  
Red: Private sector; Blue: Public sector

## هيكل الصناعات التحويلية 1983



Transformative Industries in 2017

Red: Private sector; Blue: Public sector

Source: Ministry of Planning data

**This does not negate the fact that the public sector (industrial companies that were subject to the Public Business Sector Law) still played a social role, but a role that was consistent with the remaining state mechanisms that were contrary to the market economy rules established by the international financial institutions in Egypt since the nineties, namely direct state ownership of production facilities and setting price ceilings on the final price for the consumer.**

**An example thereof is the pharmaceutical sector, in which the market share of public companies is currently limited to 6%<sup>58</sup>, and although public companies still place a priority on limiting the increase in the price of medicine to the final consumer over the goal of making a profit, this policy remains limited in effect in light of its limited presence on the market<sup>59</sup>.**

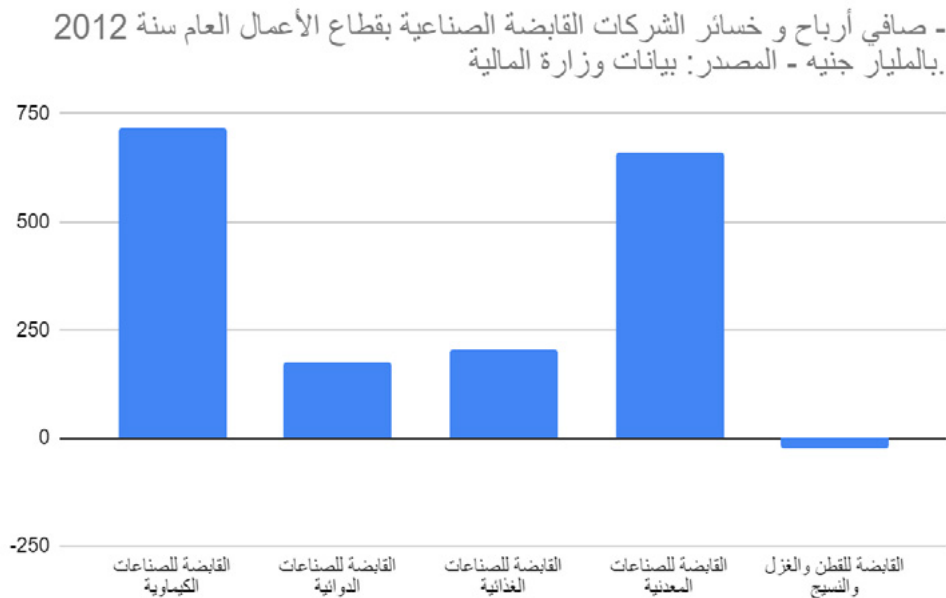
**In this regard, it is important to note that the pharmaceutical market is one of the few markets that is still under the authority of the state, where a pricing committee within the Ministry of Health is responsible for setting prices according to an administrative decision; but in practice private pharmaceutical companies have the ability to put pressure on the pricing committee given the weight of those companies on the market.**

58 The Egyptian Pharmaceutical Industry – Shua'a Capital Report - 2020.

59 The losses of the business sector companies are "illogical" and the reasons must be searched for - Walid Ramadan - Al-Ahram - 2018. <https://gate.ahram.org.eg/daily/News/202525/3/632492/%D8%AA%D8%AD%D9%82%D9%8A%D9%82%D8%A7%D8%AA/%D9%85%D9%88%D8%A7%D8%AC%D9%87%D9%80%D8%A9-%D9%85%D8%A7%D9%81%D9%8A%D9%80%D8%A7-%D8%A7%D9%84%D9%80%D8%AF%D9%88%D8%A7%D8%A1-%D9%85%D8%AD%D9%85%D9%88%D8%AF%C2%A0%D9%81%D8%A4%D8%A7%D8%AF--%D8%AE%D8%B3%D8%A7%D8%A6%D8%B1-%D8%B4%D8%B1%D9%83%D8%A7%D8%AA-%D9%82.aspx>

The fertilizer market embodies another example of the exceptions that are still under the relative control of the state, as public and private fertilizer companies are obligated to supply a percentage of their production to the state at cost price to distribute it at a subsidized price to farmers. But in light of the weak state control over agricultural associations that handle the distribution of subsidized fertilizers, part of this production is leaked to the black market and sold at free prices, undermining the role of the state.

Despite this, it is not possible to deny the importance of the social role of the public sector in the field of fertilizers, especially since government companies have made many expansions in their production capacities and have not been affected by the stagnation that afflicted public companies in other industries. Government fertilizer companies have been able to balance their social role and their ability to expand through making a profit from export activity.



Net profits and losses of industrial holding companies in the business sector, 2012 (in billion pounds). Source: Ministry of Finance data

[Left to right: Chemical industries, pharmaceutical industries, food industries, metal industries, cotton, spinning and weaving industries)

The third model for the social role of the public sector is the sugar companies, which face pressures between their commitment to buy cane from farmers at a price sometimes higher than the international price and at the same time facing strong competition with cheap sugar imported from abroad.<sup>60</sup>

60 Profit and Loss Stories in the Public Sector - Mohamed Gad - Aswat Masriya - 2015 - <http://www.aswatmasriya.com/news/details/34778>

**On the other hand, the regression from the social role is clear in the field of housing companies, where the state allowed the privatization of companies that were contributing to the provision of medium housing, such as Nasr City for Housing and Heliopolis for Housing, and these companies were transformed after privatization into luxury housing companies.**

**The Holding Company for Cotton and Spinning and Weaving is the only losing company in the public sector at the moment, not because of its social role, but because of outdated investments. The company gradually withdrew from providing cheap clothes with the strong competition from clothes imported from abroad.**

**With the state's tendency to invest in the company, the aim of those investments was not to return to its previous social role, but to enhance its capabilities to export distinguished products to foreign markets, especially bedding products<sup>61</sup>.**

**What we must point out at the end of this paragraph in critiquing the concept of "switching roles" is that the private sector taking the place of the public sector and achieving industrial growth rates does not necessarily mean that it can play the role of the state to the fullest.**

**There were serious attempts in the sixties to plan for the establishment of integrated industrial complexes, the most prominent example of which is the Iron and Steel Complex in Helwan, with the aim that this model would enhance our capabilities to establish the industry, reduce external shocks, and increase the industrial added value.**

**With the advent of the private sector, some large industrial clusters arose, but they were not the prevailing pattern. For example, the ready-made garment sector, which acquired strong support from the state for export through the QIZ agreement. However, in practice its contribution to strengthening the trade balance was limited due to its focus on cheap industries, part of which was imported, at a time when the general textile industry embodied a model of vertical industrial integration, but it was unable to continue its role due to the absence of sustainable state support.<sup>62</sup>**

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61 The plan to revive Ghazl Al-Mahalla: Goodbye to popular clothing and welcome to export - Shaima Hefzy - Al-Minata - 2021 -<https://www.almanassa.run/ar/story/16120>

62 The Egyptian Economy in the Twenty-first Century - Mohamed Gad Chapter Three (Edited by Wael Gamal) - Mirror House 2016.

## How Do We Manage Privatization Deals?

**It is evident from the previous analysis that what reinforces the perception that the private sector has replaced the public sector in the industry, is that this replacement contributed to the deviation of the latter from the goals for which it was established; i.e., it was not just a switch of roles.**

**To complement this perception, it is important to refer to the methodology of solutions itself, which many believe were made in a way that drains the assets of the public sector, which reinforces the perception that the absence of the public sector was for reasons out of its control.**

**According to what was stated in the ruling on one of the privatization cases before the administrative court<sup>63</sup>, the Ministerial Committee for Privatization introduced an amendment to the rules for selling assets to investors in 2003, allowing the buying investor “to change the purpose of using the land from industrial purposes to other purposes of his own free will” provided he “pays the state - the Ministry of Finance - the difference between the market price of the purchased lands and the price of industrial lands in the nearest new urban city.”**

**In one of its rulings, the administrative court confirmed that the expropriation of these companies in the past (nationalization) was for a specific purpose (industry), and that the fact that these establishments are nationalized obliges the state to maintain the activity for which they were nationalized. Selling it is an explicit acknowledgment of “the possibility of the buyer liquidating the company and eliminating its activity, and that there is no consequence except that borne by the difference between the valuation price and the price at market value.”**

**There are many cases of companies selling their lands to invest in real estate after privatization<sup>64</sup>, and this tendency reminds us of the symptoms of the Dutch disease. In light of the failure of the state to play its role in stimulating the industry, capital tends to search for profit from the production activity of non-exportable goods.**

**As for the company’s assets, the state chose one approach in treating the profitable, low-profit and losing companies, which is the valuation of assets at the book value<sup>65</sup>, “which is a basis for evaluation that underestimates the value of machinery,**

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63 Judgment of Tanta Linen - Court of Administrative Judiciary - Judgment No. 34248 of Judicial Year 65 - Department of Economic Disputes and Investment - Seventh Circuit - dated 09-21-2011 [Acceptance and cancellation of the contested decision].

64 Factories on the Nile for sale. How did the public sector lands turn into a “curse” for the industry? - Mohamed Gad - Al-Shorouk - 2013 <https://www.shorouknews.com/news/view.aspx?cdate=09112013&id=51e42015-6b01-45d9-bb81-0ad689945390>

65 It is an accounting term given to the balance of the asset or liability account in the statement of financial position of any economic entity, whether it is an individual, a company or a government. The method of calculating this value depends on the accounting policy used to record the asset or liability, either it is equal to its real value (such as cash and bank deposits). Or its purchase value minus the total depreciation or its estimated value. The book value of companies is also measured by calculating the difference between the total book value of assets and the total book value of liabilities, which is equal to the book value of equity, which is the book value of the company.

equipment, furniture and office equipment, and collides with the purpose and objective of selling and privatization based on the continuity of activity and on the investor's commitment to developing the company being sold. It is also a basis that does not differentiate between the modernity or antiquity of the asset being evaluated, and if this basis may be appropriate to losing companies, it is certainly not compatible with the evaluation of profitable companies or companies with low profitability”.

Furthermore, the rules allowed the general assemblies of public business sector companies to agree to a price for selling the companies (less than the book value) on the basis of interest estimated by those general assemblies, “which unleashes the holding companies with their general assemblies to sell subsidiaries - which are state-owned funds - at a price that is not restricted by a minimum limit. Those rules even allowed the book value, regardless of the percentage of their depreciation in it, to be reduced to a lesser value without any justification based on public interest”.

The evaluation rules also assumed that the minimum evaluation of low-profit companies is eight times the annual average of their profits during the three years before their sale, “with the effect that the buyer can recover everything he paid through the usual profits within eight years, while it is settled on the Egyptian Stock Exchange that “doubling the profitability or the period of capital recovery through annual profits ranges between fifteen to more than twenty-five years.”<sup>66</sup>

The administrative judiciary did not consider that the revenues resulting from privatization were a sufficient justification to get rid of the public sector in this manner. For example, the administrative judiciary compared two evaluations made by the state for the Tanta Linen Company, the first in 1996 and the second in 2003. The state sold the company in 2005 according to the second evaluation. According to the case file, the land was sold with a difference of 55.2 million pounds over the previous evaluation of the state in 1996, and the company's buildings were also evaluated with a difference of 11.9 million pounds over the previous evaluation<sup>67</sup>.

These generous facilitations in evaluating state assets at the time of sale to the private sector were most likely driven by the desire of the Egyptian administration to accelerate the privatization process to generate revenues in a way that satisfies the international financial institutions concerning Egypt, as it was not easy to sell industrial companies at a high value in an investment environment that was not conducive to industry; it was rather easier to convert them secretly into an opportunity to invest in real estate or trade in scrap.

One of the cases that clearly reflects the process of converting industrial investment into real estate investment during the privatization program is the case of the Steam Boilers Company, which “produced manufactured boilers from iron pipes and sheet iron and burning fuel to produce steam at high pressure and temperature.”<sup>68</sup>

66 Ruling of Tanta for linen.

67 Ruling of Tanta for linen

68 Steam boiler ruling - unpublished rulings - Court of Administrative Judiciary - Department of Economic Disputes and Investment - Seventh Circuit. Judgment No. 40510 - for the year 65 - session date 9/21/2011] [Acceptance and cancellation of the contested decision.

**Because these boilers were important investment commodities for many industries, many viewed them as one of the achievements of the Nasser era in the field of import substitution and the strengthening of industry, as “these boilers and the company’s products were used in the food industries, fertilizers, textiles, paper, petrochemicals, and hospitals, and as driving power for ships and in parts of thermal stations to produce electricity and for other non-traditional uses in peaceful and non-peaceful industries.”**

**The idea of privatizing the Nasr Company for steam boilers and pressure vessels arose when the Ministry of Electricity developed a future plan for the establishment of a number of large electric power stations using boilers of large capacities to generate electric power. The Ministry of Electricity, in partnership with international institutions, conducted field studies on many local companies, which concluded that: “Al-Nasr Company for Steam Boilers and Pressure Vessels has the technical capabilities and potentials that qualify it to increase the proportion of local manufacturing by establishing a joint company with one of the experienced foreign companies.”<sup>69</sup>**

**In this context, the Holding Company for Engineering Industries in 1994 offered the company to a private investor, and the deal was awarded to Babcock and Wilcox Egypt for a period of 25 years. The foreign investor later left the company to the Egyptian investor.**

**In 2008, the Egyptian investor sold the company to the National company for Steel Industries, one of the Orascom Construction companies, and the latter “transferred all its assets and equipment to its company’s headquarters in the 6th of October City, and also transferred workers and administrators with the company’s dismantled equipment without work.”**

**It later turned out that real estate investment was a strong incentive to dismantle the company, which brings us back again to the dilemma of the Dutch disease, where the papers of the administrative judiciary case regarding boilers said, “The buying company, in violation of the law, transformed the company’s land into a real estate and investment market aimed at private interest, violating the reason for which the property was expropriated and without consideration for the national and social dimensions”<sup>70</sup>.**

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69 Steam boiler rule.

70 Steam boiler ruling.

## **Section IV**

### **Privatization As A Result Of The Failure Of The Public Sector Model**

**In contrast to the previous proposition, here is another reading of the history of privatization, which believes that the public sector could not have been sustainable, and therefore did not need an external conspiracy to bring it down.**

**This proposition is based on a view that the public sector was able to rise thanks to a package of supportive fiscal and monetary policies, and the defects of this sector were reflected in macro indicators such as the inflation of external debt, the inefficient distribution of financial resources or the unrealistic exchange rate and others.**

**As the contradictions of the public sector continued to worsen, these indicators continued to deteriorate until we reached the end of the eighties when we were on the verge of bankruptcy. Therefore, the Egyptian state had to adopt structural reforms in the financial and monetary environment in the early nineties. With the change in the environment surrounding the public sector since that time it was expected for state companies to wither gradually and then die.**

**In a more detailed look, we will present here some of the narratives that the World Bank presented in its description of the conditions of the industrial sector in Egypt during the period prior to the nineties, and how this narrative reflected the contradictions of the public sector in that period.**

**The beginning of the import substitution policy had a progressive perception of the necessity of liberation from the colonial model based on exporting raw materials to the West and then importing finished goods from the developed world. But the problem with this model is that this substitution should have taken place through gradual stages, and during the first stages (Assembling stages) there would have been a heavy dependence on importing production requirements, which would have resulted in a large deficit in the trade balance. That was the stage at which we stopped and were unable to move forward from.**

**The main reason behind That was that the public sector industries were mainly aimed at serving the local market, and therefore were not able to generate revenues**

**in foreign exchange. At the same time, while they were in this intermediate stage (the assembly stage) they were in dire need of foreign exchange in order to import their production requirements from abroad. This dilemma slowed the development of public industries and pushed many of them to work with very obsolete equipment. At the same time the process of modernizing them contributed to exacerbating the imbalance in our external balances, a situation that was very difficult to continue.**

**In one of its studies, the World Bank summarizes this dilemma by saying: “..the new nationalization strategy was successful, as economic growth reached 6%, exceeding most developing regions (..) However, these results proved to be illusory and unsustainable. The Nasserist policy did nothing to improve competitiveness of Egyptian products in foreign markets, as did Southeast Asia ten years later (...) and while many local products were successfully replaced by primary and consumer goods, Egypt became dependent on importing capital goods, and because Egypt suffered at the time from the difficulty of selling its products internationally, it used its reserves of foreign exchange to finance imports. After the defeat of the Six-Day War in June 1967, it became clear that Egypt was on the verge of bankruptcy<sup>71</sup>.**

**The failure of the public sector in creating dollar resources had several reasons, including the fact that imports were replaced under strong customs protection, in order for the state to ensure that the local producer would market his commodity locally without strong competition from the countries that preceded this industry and have a huge production that qualifies to offer the commodity at a low economy of scale. But this protection created a weakness in local efficiency that made Egyptian factories unable to compete on international markets, especially Western markets, which can be a major source of supply of hard currency, especially with the weak funding available to modernize machines.**

**In addition, the strong intervention of the state in the exchange rate policy and the valuation of the currency above its market value at the time was not supportive of the abilities of exporters from the private sector, because it raised the cost of their importing of production inputs, which limited the opportunities for industrial exports, even those that came from other sources than the state.**

**As a result, at the beginning of the eighties only 7% of our industrial production was exported, which is one of the lowest rates in the world compared to corresponding countries<sup>72</sup>.**

**We relied partly on exporting by dealing with the barter system of trade with markets of the Soviet Union. Those markets worked with a similar philosophy and did not import our products because they were satisfied with their quality level, but by a decision of their state. Thus, we were able to export many final goods and import other goods in exchange for them or import production equipment and industrial technology.**

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71 More Jobs, Better Jobs: A Priority for Egypt - World Bank - 2014 - P 16,17.

72 Staff appraisal report Arab republic of Egypt export industries development project-1984.

**But with the gradual decline in the role of the Soviet Union in international trade, the need was increasing to deal with Western markets, which put the public sector under mounting pressure until the Eastern bloc collapsed completely at the beginning of the nineties, and with it the barter pattern disappeared from international markets.**

**The World Bank in its studies on the Egyptian industry during the seventies and eighties provides many examples that explain or reveal the repercussions of the dilemma of the public sector and foreign exchange.**

**For example, in a study on the governmental textile industries, the World Bank says, that in the seventies the state's factories enjoyed export quotas (quotas) on European and American markets, but the local factories were not able to meet all the allowed quotas despite the high quality of Egyptian cotton, because the quality of the end product lagged behind many countries competing on those markets<sup>73</sup>.**

**The bank explains that the government textile industries in the seventies were often dependent on old equipment dating back more than a quarter of a century ago, and due to the heavy pressure on the factories, there was not enough time for gradual maintenance work. Another report of the Bank indicates the delay in technology and maintenance in the iron and steel sector during the eighties<sup>74</sup>.**

**This does not negate the fact that the state was constantly working to pump investments into the public sector, but it was not enough, as the World Bank says: "During the period between 1977 - 1981/1982, industrial investments (industry and mining) increased from 561 million pounds to 1483 million pounds ( ...) Most of the public investments were directed to the rehabilitation and expansion of existing factories. However, many sectors such as fertilizers, cement and others needed rapid restructuring in order to access new technology, improve energy use and reduce production costs<sup>75</sup>.**

**Therefore, against this background, it appears that the criterion on which public sector advocates relied regarding the financial performance of these companies was not the most appropriate criterion for judging its sustainability; even if government companies were able to profit locally, they were unable to create foreign resources that enable them to update their production lines.**

**Also, the World Bank has always questioned the feasibility of judging the public sector through financial data, because the entire economy was not operating according to the free market law, and therefore all values, from the perspective of neoclassical economy, were distorted.**

**The World Bank comments on this in the early eighties on the Egyptian industrial sector: "The analysis of the economic efficiency of industry in Egypt is a particularly complex issue, in light of the price structure of domestic products that is significantly**

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73 Report and recommendation of the president of the international bank for reconstruction and development to the executive director on a proposed loan to the Arab republic of Egypt for a textile project - 1976 - P 12.

74 Staff appraisal report Egypt El Dikheila reinforcing bar project -1983. P5.

75 Staff appraisal report Arab republic of Egypt export industries development project-1984.P5,6.

**distorted relative to international values due to tariffs, price control, distortions in exchange rate and implicit subsidies (..) only a limited number of product groups can be claimed to be economically efficient activities<sup>76</sup>.”**

**In addition to the above, the two goals set by the July Revolution Charter regarding industrialization were often in conflict, namely, the goal of import substitution and the other of enhancing citizens' ability to consume.**

**This is because industries for which there was a strong aspiration to substitute import, such as technologically advanced industries, were often not very labor-intensive<sup>77</sup>, and thus while the state struggled to provide a nationally produced car or television for the Egyptian citizen, it also needed a middle-class citizen to consume these products. However, it would not find a place therefor in its factories due to the limited job opportunities in the face of the pace of population increase. This did not encourage the state to focus on labor-intensive industries, but rather pushed it to employ citizens in low-productivity jobs such as administrative jobs, which contributed to the creation of the phenomenon known as “masked unemployment”, which was not limited to the administrative organs of the state, but was also embodied in the inflation of administrative labor within the state's factories.**

**We can demonstrate this dilemma (import substitution against increasing consumption) from the discourse of the 1960s itself. For example, a study evaluating the first five-year plan (1960-1965) indicates that the plan achieved its goals of increasing GDP by only 88%, because it did not achieve all its objectives with regard to increasing commodity production while it expanded excessively in the provision of services to satisfy the demands of popular consumption, at a rate of 170 percent of the target, a phenomenon that experts of the National Planning Institute at the time called “the increase in services at the expense of production.”<sup>78</sup>**

**These factors combined reflected on the financial system: a persistent deficit in the public budget, and on the monetary system, the exacerbation of the trade balance deficit and the black-market practices of the exchange rate, and above all working to resolve all internal contradictions through the expansion of borrowing from abroad, a tendency that increased exponentially since the seventies.**

**When the crisis reached a dead end, with the external debt reaching about 150% of GDP at the end of the eighties, it was natural for the Nasserist macro policies to be dismantled with the stabilization and structural adjustment program in the early nineties. It is true that many public factories at the time were stable, but, in view of macro-fiscal and monetary policies, were not possible to sustain.**

**With the change in the environment surrounding the public sector, financial and monetary policies, it was natural that its old role (substitution of imports and provision of consumer products at cheap prices) gradually fade away, and that**

76 Staff appraisal report Arab republic of Egypt export industries development project-1984.P7.

77 More Jobs, Better Jobs: A Priority for Egypt - World Bank - 2014

78 Abdel Aziz Sabrout - Evaluation of the Results of the First Five-Year Plan - Contemporary Egypt - 1967.

the rest of its facilities would start to operate based on an economic logic. It was not logical for the state to enforce a low cost on the final product, while it was not supporting it financially nor allowing it a better exchange rate as in the past.

As a result of the structural changes in the early nineties, it was also natural for the public sector to erode as it opened up to competition with imported products without customs protection, and to be unable to export due to the inefficiency of its management. In view of its technological backwardness, it should have died gradually, with the exception of the few industries that remained able to export.

In this context, the privatization program appears to be an attempt to restore things to normal, with the state moving to clean up its portfolio of unsustainable companies by liquidating them completely, or opening up to expanding the ownership base to other companies in order to inject new capital and enhance competitiveness since they would function from then on based on a market economy.

Finally, it is important to point out that the privatization program declined with a global trend towards reducing industrialization, or what is known as deindustrialization, meaning that we cannot claim a foreign conspiracy, since the situation was not purely an Egyptian phenomenon.

Deindustrialization is a term given to the decline in the role of industry in the economy, whether in terms of the industry's contribution to the added value added or job creation. This phenomenon emerged since the seventies of the last century, whether at the level of developed countries or emerging industrial countries<sup>79</sup>, as well as in recent decades in middle-income countries<sup>80</sup>.

There are several explanations behind this phenomenon, including the spread of industrial technology that reduces the use of technology intensive manufacturing, which leads to a decrease in the role of industry in employment. Another explanation is related to China and its role in flooding the world with low-tech industries. There are also those who attribute this to changing consumer tastes in the high-income economies which created an increased need for services instead of focusing on industrial products. Of course, there are also explanations related to trade globalization and the active movement of direct investment that changed the map of global industry and fragmented it among many countries, and other explanations<sup>81</sup>.

The problem is that developing countries are not necessarily able to replace industry with services, as developed countries did, without this affecting the standard of living of workers or the value produced by the economy as a whole.

**This is because services provided by developed countries are high-value services**

79 Robert Rowthorn and Ken Coutts - Deindustrialization and the balance of payments in advanced economies - Cambridge - 2004.

80 Andy Sumner - Industrialization and Deindustrialization in the Developing World- United Nations University - 2020

81 Khuong Vu, Nobuya Haraguchi, Juergen Amann- Deindustrialization in developed countries amid

accelerated globalization: Patterns, influencers and policy insights - UNIDO- 2020.

that are suitable as an alternative to industry, such as downstream higher value services, which include services such as marketing or upstream activities such as technology-related and scientific activities, while the services that developing countries are able to provide are concentrated in low productivity and value areas, and developing countries usually do not provide a social safety net for service workers such as those in formal industry<sup>82</sup>.

In short, there are global changes that have strongly contributed in recent decades to the decline in the role of industry in both developed and developing countries, the most important of which is globalization and its role in creating surpluses of industrial products capable of spreading and competing in local markets, meaning that this decline is not a purely Egyptian matter.

On the other hand, it is important to point out that the import substitution model has also declined strongly globally in recent decades and no longer has the same luster as the sixties.

Richard Garbowsky argues that the import substitution model is not necessarily doomed to failure. It has already contributed to moving many countries to high levels of industrialization, but its success is also not 100% guaranteed.

One of the most important factors that contribute to the failure of this model from his point of view is the limited local market. This model relies strongly on the imposition of tariffs and protectionist trade restrictions to create the space for local industries to grow away from external competition, and therefore depends mainly on its local market as a source of demand. If this market is limited, its ability to grow and develop will remain limited as well, and it will not be able to move to the stage of competition on the global market. One of the factors that contributes to the limitation of this market is the employment of large sectors of labor in low-productivity jobs or the strong disparity in the distribution of income within society. Therefore, he believes that import substitution has succeeded in countries that have been able to develop the productivity of their old traditional activities, such as agriculture, and implement reforms to redistribute income, such as the fragmentation of agricultural holdings<sup>83</sup>.

Egypt has already taken many steps in this area, but many tax policies have been unable to achieve more income distribution within society. Despite the adoption of progressive income taxes and inheritance taxes since the 1940s, their contribution to total tax revenues has remained marginal<sup>84</sup>.

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82 Andy Sumner.

83 Richard Grabowski - The failure of import substitution: Reality and myth - Journal of Contemporary Asia - 1994.

84 For more details, review "Taxes in whose interest? A reading of the political economy of taxes in Egypt" - Mohamed Gad and others - Mirrors 2019.

# Conclusion

The author of the study believes that both narratives, privatization as a conspiracy and privatization as a result of the failure of the public sector, have some validity and that the narrative closest to our historical reality is a mixture of both.

The industrial public sector was built in the sixties on the basis of monetary and fiscal policies that were the main guarantee to maintain its balance and to play the role required of it in replacing imports and enabling large sectors of society to consume modern industrial products.

Therefore, judging the extent of the public sector's ability to be sustainable must start from the study of these financial and monetary pillars. These pillars were severely weakened at the end of the eighties, especially at the level of fiscal policy in terms of the exacerbation of external debt. The main proposal of the international financial institutions at that time was the necessity of Egypt's integration in the global financial system in order to reschedule its debts. This integration required the overthrow of all policies that served the public sector, and as soon as these pillars were dismantled, the fall became inevitable.

On the other hand, privatization was not just a "switching of roles." It is true that the process of capital accumulation continued at the same pace after the nineties, but this simplified view does not take into account many factors:

- 1- The private sector did not succeed in bringing about a deep diversification in the structure of Egyptian exports or in maximizing the value of total exports, as the public sector succeeded in achieving this within a short period of time.
- 2- The public sector was able to put us on the first stage of import substitution, the "accumulation stage", and the private sector has not been able to move us to a more advanced stage so far.
- 3- The social role of the public sector cannot be neglected, since it allowed the production of a wide range of goods at low prices, as profit was not a top priority for companies.
- 4- The Egyptian state cannot be considered a mere victim of the contradictions of the Nasserist economic model or the mistakes of the seventies that led to the exacerbation of the external debt. The administrations in charge of the privatization process were often managing sales with the aim of accessing any financial resources, while other views indicate the possibility of some public companies to continue under the ownership of the state or even to be sold at a higher price.

**Therefore, based on the above, the author of the research believes that building any perceptions of strengthening the industry in the future must take place through a serious reconsideration of the current situation and an examination of the reasons for this terrible slowness in the development of industry in Egypt, and whether moving forward is possible through better planning for the private sector or new public sector companies. There is also a need to reconsider our relationship with the global financial system and search for ways in which we can provide protection and support for our fledgling industries, but according to more sustainable financial and monetary policies that are less prone to crises.**

**It is important, as we look at international experiences, and that we do not consider that there is anything sacred in economic policies. Many countries have intervened in market policies or relied on strong trade protection for some time in order to guarantee themselves a greater share in industrialization, and also relied on public ownership if that served the objectives of capital accumulation or strengthening of industry; Southeast Asian countries are a good example thereof.**

**While the world is currently dominated by a state of de-industrialization, this does not mean giving in to this state and focusing on low-value and productive services with deplorable working conditions and poor wages in many cases. There are those who advise developing countries to adopt a strategy for the return to industrialization, re-industrialization by providing incentives to local industry and foreign investment in industry so that these societies can engage in the fierce global competition.<sup>85</sup>**