



Local Administration: the effect of the gap between legislation and practice on principles of Good governance

By: Nahla Mahmoud, *in* Local councils and enable of community participation: Arab Examples, Arab forum for Alternatives

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This paper deals, through research and analysis, with the effect of the gap between legislation and practice -with regard to local management- on good governance in Egypt. This paper can be divided into **four main parts**: the **first part** is a summary on the general context and current conditions in Egypt; the **second part** focuses on the gap between the new amended constitution and the applicable law No. 43 of 1979 as well as the gap between legislations and practice on the level of local management; the **third part** highlights – at the same context – the effect of such dual gap on the eight principles of good governance; the **fourth and last part** discusses the effect of such dual gap on effectiveness of localities.

First: Local administration in the framework of the current general context:

Egypt is based on a highly centralized government that has never experienced an advanced local government. In spite of those several calls for applying simplest levels of decentralization that spread by the beginning of the new millennium, the pro-revolution political regime did not respond to the same, thus, centralization remained as the basic feature of such political regime. The final account released by the local administration for the fiscal year 2010-2011 showed that only 3% of the public revenues was allocated for local administration whilst portion of the latter from public funding is 15%. The average of investments for local administration during the period (2006-2007, 2010-2011)³⁴ did not exceed 9% of local funding. Thus, local administration had no role in achieving local development. In Egypt, the local administration system is based on local units starting from governorates, districts, cities, towns to villages. Each local unit is an artificial person and has a local popular council whose members are chosen through direct election. ³⁵

When those elected local popular councils were dissolved upon the outbreak of the 25th January Revolution, it was expected that the condition of the local government in Egypt would witness complete change, particularly as most Egyptian governorates participated in such revolution calling for change. But those hopes were dashed because of the rapid change in political leadership that began with the military council then holding parliamentary and presidential elections that came with former president Mohamed Morsi and Muslim Brotherhood to power. Then, Egypt witnessed another interim period following the 30th July Revolution in 2013, during which period, the chairman of the High Constitutional Court, Justice Adly Mansour, assumed power till June 2014 when Abdel Fattah El-Sisi was elected as Egypt president. This was in

parallel with changes in the legislative framework with regard to the constitution and applicable law. Following the 25th January Revolution, an interim constitutional declaration was issued and it remained effective till December 2012 when the new constitution was put to popular referendum. Then, the applicable constitution was amended on the backdrop of June 30th Revolution as the new amended constitution was approved in January 2014 (36). This means that the legislative institution (parliament) was quasi absent during this period since February 2011 to date except for the period (23rd January – 16th June 2012). Municipalities were not, during this period, on the list of priorities of the political leadership because the interim period was complicated, particularly as such complicated political framework was accompanied with difficult economic conditions demonstrated by downgrading rating, decline in foreign currency, cutting subsidy to petroleum products, rise in both unemployment and inflation rates...etc.

Concerning the current condition of local administration in Egypt, the law No. 43 of 1979 is still applicable although it is no longer appropriate to the new amended constitution that confirms supporting administrative and financial decentralization and in light of dissolution of local popular councils. Thus, a new bill for local administration was prepared which is supposed to adopt the philosophy of expanding decentralization to serve citizens and protect their rights. In addition, the new bill authorizes local popular councils to control officials at governorates and heads of localities, including governors, through questions, requests for information, requests for discussions, proposals and even interpellations. But this bill has not been forwarded to societal discussion to date of this paper; consequently, it has not been passed. 37

Further, municipalities suffered, since Mubarak rule, from spread of corruption and dissatisfaction of citizens with performance, which condition has not witnessed a change since the outbreak of the January 25th Revolution to date. Reports released by, HRDO Center to support digital expression within the framework of “wiki corruption” initiative, “estimated corruption volume during June of 2015 at LE3.4 Billion, whilst, the corruption volume reached LE3.2 Billion during May of 2015, taking the corruption volume during those two months to LE6.6 Billion, i.e., equivalent to \$770 million” 38. According to this report, municipalities have the lion share at this corruption. Different opinions refer that performance of municipalities has several defects including the fact that governors have no real authorities while opinions of local popular councils are consultative only without having tools to control and hold the executive authority accountable. This comes in light of a defective legislative framework, lack of political will and transparency, weak tools and systems form control, accountability and the gap between legislations and practice which are

deemed, by several experts at local administration in Egypt, as the most prominent reasons of the local administration weak system. 39

Second: The gap between legislation and practice as of local management:

The gap between legislation and practice means (the difference between drafted laws and enforcement method). In the Egyptian case, this gap is dual. There is a gap between the new amended constitution of 2014 and the applicable law No. 43 of 1979. The new law for local administration has not been put forward to societal discussion. The amended constitution of 2014 is best as compared to other Egyptian constitution with regard to local management. The articles from (175-183) confirm that it is important for the state to ensure not only administrative, financial and economic decentralization but to provide scientific, technical, administrative and financial assistance for localities. Meanwhile, the current applicable law does not provide for any mechanisms through which the state can support decentralization. In addition, this amended constitution conferred on the law – that has not be issued yet- powers to regulate the whole matter with regard to mechanisms and warranties (to organize enforcement mechanisms to empower administrative units; to put a schedule to transfer powers and budgets so municipalities will have independent budgets; to ensure equitable distribution of utilities and services; to achieve social justice between local units; to determine choosing mechanism of governors (election-appointment) and to determine powers, budgets and final accounts of localities) 40. Moreover, the article No. 180 of this constitution provides – for the first time – for allocating quotas to ensure participation by all parties. Such article allocates 25% of seats of local popular councils to youth under age of thirty-five, 25% for women whilst percent of labors and farmers shall not be less than fifty percent of total seats, which percent shall include reasonable representation for Christians and those who have special needs. Such quota is not stipulated into the law No. 43 of 1979 but this does not cause a problem on the ground that it is not expected that elections for local popular councils will be held soon. In addition, such elections will not be held before the new law is issued.

Moreover, the new amended constitution confers on local popular councils necessary tools to control executive bodies, including putting forward proposals, interpellations, requests for information and the like. Local popular councils have suffered for a long time from ineffectiveness of those tools of accountability stipulated into the law No. 43 of 1979, namely, inquiries, requests for information and interpellations together with giving chairmen of local popular councils (executive councils) the right to object to decisions by local councils which violate the plan, approved budget or regulations. At the

same context, the new constitution makes those decisions taken by councils within their powers as final without intervention by the executive authority except for certain cases stipulated into this new constitution. This means that the role of the due to be issued law will be regulation only. Those cases are: to prevent municipalities from going beyond limits of its powers, causing harm to public interest or interests of other localities. In case of conflict over powers of municipalities for villages, districts or cities, the locality for the governorate shall decide on such conflict. 42

In case of conflict with executive bodies over powers of municipalities of governorates, the constitution provides that the general assembly of legal opinion and legislation at the state council shall immediately decide on the same. This differs from the currently applicable law as per which the elected local popular councils do not have the power to take decisions binding on executive bodies, consequently, they can't hold executive bodies accountable. The amended constitution provides that local popular councils may not be dissolved through an administrative procedure and this is in contrary to provisions of the currently applicable law No. 43 of 1979 which gives the executive authority the power to dissolve the elected local popular councils in certain cases. 43

Thus, the new law for local government is supposed to take the aforesaid points into account to be in line with provisions of the constitution and published statements that the new law adopts a philosophy to extend scope of decentralization with the purpose of serving citizens and to extend control of local popular councils over all officials at the governorate to include inquiries, early day motions, requests for information, suggestions and even interpellations as well as to confirm such quota for youth and women together with giving some warranties to combat corruption at municipalities including (an employee at a locality may not run for elections to be a member of the local popular council of the same district). But, this law still has some controversial issues such as providing for appointing (electing) governors (which is the previous system). The law, also, ignores how the state can ensure equitable distribution of utilities, services, resources, addressing gaps between levels of development and achieve social justice between such units. In this context, experts put forward an important controversy saying "that even if the new law comes completely in line with the constitution and supporting decentralization, what are those warranties that such practices will be in line with provisions of the law as the case is with the law No. 43 of 1979. 44"

The following are examples of the gap between legislation and practices with regard to the applicable law for local management:

1- First example: about competences of local popular councils:

Legislation: The law gives local popular councils broad competences in several fields (article 12 of the law No. 43 of 1979) about approving general plans, projects and rules; approving projects and borrowing with specific percentages; giving proposals and supervision and control over performance of executive bodies. 45 **With regard to practice:** it shows that local popular councils are, in reality, deprived of powers. They have no power to issue decision binding on the executive bodies. Local popular councils have the power only to issue recommendations or put forward proposals to executive bodies while the latter control those local popular councils and their decisions. A governor is the liaison between all local popular councils on all levels and executive bodies, thus, he practically decides whether to enforce decisions taken by the local popular councils or not. 46

2- The second example: about control mechanisms adopted by local popular councils:

Legislation: The law provides for mechanisms as per which local popular councils supervise and control executive bodies. Members of local popular councils have the power to submit interpellations or requests of information to executive officials on the level of a locality as long as the same are about matters within the competence of local popular councils. Interpellations and requests of information shall be about a local matter. **With regard to practice:** those tools did not have any effective role toward executive bodies owing to lack of any punishment mechanism, thus, those tools were rarely used to the extent that they have not been used at all in some governorates. In the contrary, the executive authority has the power -under law -to dissolve elected local popular councils. In addition, elected local popular councils are under the control of the executive authority because the latter controls allocations for the former. A governor, also, may ask the local council to approve or amend a certain local decree to enable the governor to perform his duties for local interest. 47

3- The third example: about the effectiveness dividing economic regions and their authorities:

Legislation: The article No. 7 of the law provides for dividing the state into economic regions with each region having a regional planning committee charged with coordinating between plans of governorates and considering periodic reports to follow-up executing such plans. In addition, each region shall have a regional planning board charged with conducting necessary researches and studies to determine abilities and natural resources of the

region as well as to prepare necessary technical bodies to conduct studies, researches and planning activities for the region. Both the said committee and board shall report to the higher council of local management. **With regard to practice:** it shows that the idea of economic regions or committees or authorities charged with regional planning is ineffective. They rarely hold meetings because members of the same are busy with their positions and when they meet, they are unable to coordinate between plans of governorates, thus, ministries usually become interested in incidental projects of the governorate. Consequently, regional planning authorities did not present any serious studies on identifying economic abilities and resources of economic regions. This, also, applies at the higher council of local government that rarely holds meetings aiming at planning or participating in laying down policies. 48

4- The fourth example: about duties and competences of a governor:

Legislation: it elaborated on position and competences of a governor and the relationship between the latter and the local council and center (ministries) in his capacity as the representative for the executive authority in the governorate that supervises enforcing the public policy of the state and both service and productive utilities within limit of his governorate. **Practice:** it proved that powers of a governorate are extremely limited with regard to central authority. The local administration in Egypt is close to “administration of branches”. For example, a governor may not redistribute items of such budget approved by the minister of finance even if there is a surplus at a certain project and shortage at another. Redistribution requires the approval of both the ministry of finance and the people’s assembly. 49 In addition, there is dual between responsibilities of a governor and the ministry, as some decisions taken by the former may be cancelled by the latter. Some governors confirmed, at more than one context, not having clear vision about how to perform their duties and competences within such governorate they are charged with as stipulated into law. They said that in most problems they face, they have to wait for intervention of the responsible ministry, a matter which causes slow response to such problems, thus, causing dissatisfaction of citizens and making local leaders feel unable to solve problems, a feeling that negatively affects their performance in general. 50

5- The fifth example: about local elections:

Legislation: provides that members of local popular councils – with different levels – are chosen through direct elections that all citizens -meeting applicable conditions- may run for. **Practice:** demonstrates that more than 50% of seats are determined before elections. For example, more than 52% won unopposed

in elections of 2002 when the majority party, at that time, (the National Democratic Party) won more than 95% of seats. The same scenario repeated in 2008 when the said party won 97% of seats, most of which unopposed in light of absence of judicial supervision and without announcing the percent of participation that did not exceed 3% under most optimistic scenarios.

The aforesaid examples show that legislation alone is not adequate guarantee to reform the local administration system in Egypt. The philosophy of reform must be amended to be in line with the constitution, i.e. to support the administrative and financial decentralization within a time schedule to enforce such reform via clear procedures-that can be taken by municipalities -and to ensure effective participation by the private sector, civil society organizations and citizens in the reform process, particularly as, the interim stage is an appropriate climate for success of this process. This comes within the framework that both the political leadership and Egyptian elite expressed their desire to develop the local administration system. In this context, the minister of state for local development, Adel Labib, stated that the local administration development is based on two pivots: the first is to amend the law for the local administration to support decentralization. The second is to build abilities of employees at local administration to keep up with current requirements. Labib stressed more than one time on the effective and efficient development of local services would not happen without preparing a generation of local employees with expertise in both the academic and scientific fields. Consequently, he pointed out that it is important to have new bodies to support employees at the ministry of state for local development and to combat corruption. In that regard, Labib announced a plan to develop Sakkara center for local development as a prelude to transforming the same to a national institute for local administration to train the first rank of leaders and other several levels. In the same context, training centers will be established at the seventh economic regions to serve local employees nationwide and to train both the second rank leaders and other leaders. 52

At the same context, some members of the secretariat of some Egyptian parties stated that the development of local administration and municipalities - with its general concept – shall be high on the list of priorities of the next parliament because such sector has a direct effect on life quality of citizens, particularly as achieving sustainable development – which is one of the objectives of the political regime in Egypt – requires setting quality standards for the political authority to ensure honesty and accountability. The latter results are known as good governance and its principles. This good governance is the focus of the third part of this paper, as the third part focuses on the

effect of the gap between legislation and practice on principles of good governance. 53

Third: The effect of the gap between legislation and practice on principles of good governance:

Good governance is the practice of political power to manage affairs and resources of the society and to achieve economic and social development. This includes the constitutional establishments (legislative and executive authorities), civil society organizations and the private sector. The United Nations development program defines good governance as the political power performing its duties within specific standards to achieve sustainable development and to develop and increase the short and long run natural resources of the state in a manner that ensures honesty and accountability as well as respecting and serving public interest. According to this definition, the most important characteristics of good governance are: participation, accountability, transparency, responsiveness, efficiency and effectiveness, equity and inclusiveness, and rule of law. Those characteristics are correlative and lead to each other. Efficiency and effectiveness will not be achieved without high responsiveness, accountability and transparency. This applies at active participation and sovereignty of rule of law to achieve equity and inclusiveness. 54

- **(Equity & Inclusiveness):** the ineffectiveness of the idea of economic regions and their committees and boards affects equitable distribution of resources, thus, affecting principles of equity and inclusiveness between districts and regions concerning the distribution of financial resources and governmental services. This reflects on citizens of municipalities that feel their role and they are excluded from available opportunities to improve and develop their conditions. This is caused due to lack of optimum utilization of resources because of weak coordination between those regions 55. At the same time, practice affects duties of governors, knowledge of competences and control by the executive government. At this context, some governors may have such expertise and influence that enable them to deal with this gap better than others, thus, they are more able to fulfill needs of such governorate they are charged with and to take decisions to face daily problems of citizens of the same governorate, a matter which deepens the gap between governorates and affects principles of equity and inclusiveness.

According to the human development report dated 2015, which is released by the ministry of state for local development and the ministry of planning's national planning institute, most citizens see most local services as falling short the required level to improve their life. In addition, they confirm that a number of villages suffer from lack of cleansing services, sanitary, natural gas, education, unavailability of electricity and transportation means in light of high prices. The report stressed that 80% of municipalities heads are unsatisfied with the share of their governorates at investments. They believe that allocated shares are inequitable compared to other governorates. 64% of officials see that the share of districts is inequitable as compared to other districts of the same governorates, whilst 88% see a gap in resources between the adopted plan and allocations for districts. Thus, the inequitable distribution of allocation among governorates has a negative impact on equity and inclusiveness which are of the most important characteristics of good governance 56.

- **(Rule of law):** the aforesaid five examples of the gap between legislation and practice generally affect the rule of law principle as a characteristic of good governance. Although local popular councils have broad competences, they may not issue decisions binding on executive bodies. Proposals or recommendations by the same are often disregarded. In addition, those councils do not use control mechanisms due to the influence of executive bodies that control allocations for those councils, consequently, it is difficult to enforce provisions of legislations because there are no mechanisms or bodies responsible for imposing enforcement in light of the large number of cases and slow litigation procedures. In the same context, with regard to the feasibility of economic regions and their works as well as concerning competences and powers of a governor within their governorates and the relationship between governorates and the executive authority at the level of districts and local popular councils, this affects satisfaction of citizens and their feeling of not having their economic and social rights because of living challenges they face daily such as health and educational services. Governorates do not exert adequate efforts to enhance life quality and develop utilities and services 57. There is no doubt that the aforesaid facts affect the principle of rule of law. The enforcement of the latter requires legislative frameworks that can be imposed with full protection of human and minority rights. There is no doubt that law enforcement requires independent judiciary and honest police 58.
- **(Participation):** it is one of the key principles of good governance. It includes not only direct participation by men and women as candidates or voters, but

also such indirect participation (citizen- private sector- civil society organizations) in making policies. With regard to local elections in Egypt, the percent of participation is extremely low to the extent of zero as stated at the fifth example pertinent to local elections. 50% of local seats were won unopposed in 2002 and 2008 whilst the turnout did not exceed 5%. Even political parties did not run for such elections believing that it is useless to run for elections whose results are known prior to voting process. The participation of parties is required for making policies on the local level, particularly as representative democracy does not necessarily mean that interests of society will be taken into account upon decision making 59.

- **(Anti-corruption)** high corruption rates are one of obstacles that hinder development and affect accountability, transparency, availability of information and easy circulation of the same. All those matters are related to good governance. The aforesaid examples, either about competences of local popular councils, tools of control over executive officials, competences of governorates, local elections and lack of official statements about percent of participation ...etc. Egypt suffers from widespread of corruption at most establishments, a matter which makes Egyptian economy incur losses up to LE50 Billion per annum. Domestic, international and governmental reports point out that Egypt was ranked, in September 2009 and as shown by corruption indices released by Transparency International, at 155 out 128 worldwide compared to 105 in 2007, which rank declined in 2010 to be 98 but in 2010 it was ranked at 112 as compared to 118 in 2011. In 2014, Egypt was ranked at 94. 60. Governmental and non-governmental reports point out that corruption in municipalities is the most dangerous. According to the pro-revolution report released by the Central Auditing Organization, the corruption volume at municipalities reached about 390 million Egyptian pounds. A number 54 thousand engineers working at engineering departments of governorates, cities and districts were referred to the administrative prosecution. The same report referred to carelessness, bad planning, random funding without constraints and unsuccessful project and lack of funding rationalization with regard to accounts and private funds. 61

Experts attribute corruption at municipalities to: 1-undisciplined behaviors by employees, citizens, businessmen and politicians, 2- lack of political will to deal with corruption, 3- weakness of civil society, 4- Ineffectiveness of mass media. In addition, there are institutional reasons which are lack of transparency, unavailability of information to citizens, weak accountability and punishments,

low wage rates, bad work circumstances and employment not based on abilities and skills⁶².

- **(Responsiveness)** The base of good governance is satisfaction of citizens, a matter which will not be achieved without quick fulfillment of their demands to win broad consensus at the society to achieve the best. The aforesaid examples especially the fourth example which is about competences of a governor that is unable- at some times – to fulfill needs or demands of citizens awaiting a response from the central government, thus, badly affecting citizens participation at local affairs. In Egypt, slow response is attributed to high centralization. The report on human resources development released, in 2015, by the ministry of state for local development pointed out municipalities losses 88% of budget because of lack of decentralization. According to the report, both the investment and current budget of local administration does not constitute more than 12% of the state public budget, i.e., about 88% of public funding is centrally directed through divans of ministries and service authorities thereof away from localities, thus, the central government controls affairs and budgets of municipalities ⁶³.
- **(Accountability):** competences and powers are unclear with regard to duties of local popular councils and governors together with ineffective tools of control adopted by local councils lead to increasing corruption rates in view of weak accountability and punishment systems, as the latter require ability to hold account and enforce at the same time to be active. In order to ensure accountability of politicians, public servants and service providers, the same shall be held accountable for their works first. In addition, there shall be a tool to punish or reward decision makers. There is no accountability without transparency. Moreover, the matter is not limited to participation with opinions by citizens, but both the state and service providers shall respond to such opinions.
They shall have the will and ability to change their acts. Accountability is conducted not only by governmental or non-governmental establishments, but by civil society organizations as well ⁶⁴.
- **(Efficiency and effectiveness):** whereas, good governance means those operations and establishments that present results satisfying needs of society in view of optimum utilization of resources. The concept of efficiency – at the context of good governance – is associated with environment protection and ensuring sustainable utilization of natural resources. The aforesaid third example on economic regions highlights lack of optimum utilization of

resources of governorates, thus, inability to satisfy needs of citizens because financial abilities of municipalities are weak together with the aforesaid corruption. 65.

Fourth: The effectiveness of municipalities in light of the gap between legislation and practice:

The aforesaid analysis shows the effect of such gap between legislation and practice and the relationship between the same and good governance. This gap makes municipalities actually ineffective. Not only experts feel that but also citizens and governmental officials who announced, more than time, that municipalities shall be necessarily reformed as a base for achieving sustainable development. This gap generally weakens ability of municipalities to perform their tasks which are political, social, administrative and economic acts. Municipalities make political administration get close to citizens as per which direct contact between citizens and government representatives is made. In addition, municipalities create opportunities for political education of citizens. Local popular councils are deemed as the pillar of local systems. They aim at weaving lines of society with its different levels to achieve democracy. This is achieved through giving all citizens to participate in making those decisions about citizens. Moreover, local popular councils contribute to achieving efficient management, reducing burdens on central authorities and overcoming problems of bureaucracy for being close to citizens as well as properly decisions making. Municipalities participate in economy through taking part in making development plans, making use of domestic economic abilities to serve productive and service projects to create job opportunities for citizens and to encourage gathering and directing local money to projects 66.

Thus, this gap affects effectiveness of municipalities although it reduces the typical nature of localities. The law for local administration is unified and does not allow classification on the ground of diversity of circumstances and local development needs. But municipalities challenge weak political participation at local elections whether running for elections or turnout. This comes in light of low participation by the private sector with regard to societal responsibility together with weak participation by civil society organizations. Besides that, municipalities are unable to prepare local leaders and cadres that can participate in not only addressing but also reforming this gap through analyzing making reforms to law and practice. Moreover, municipalities endeavor to remove overlaps between competences of both executive and local bodies, as such overlaps affects satisfaction of citizens with local performance owing to slow response. This overlap, also, leads to improper utilization of local human resources 67.

Therefore, the new law for local development shall take into account those referred to above and others to ensure non-repetition of the same problems and to translate those provisions stipulated into the new constitution about local administration system into tangible reality, especially, with regard to activating the role of local popular councils in facing executive bodies, activating the role of governors in facing the central government and applying decentralization in a methodological manner. Principles of good governance shall, also, be taken into account to ensure effectiveness of municipalities to properly perform their tasks 68.

