

Egypt's Constitution?

By Khaled Fouad Sherif
Special to the Middle East Times

IN LIGHT of the Egyptian government's large financial burden stemming from state-owned enterprises, a number of ministries have started to divest part of their assets across their varied portfolios. Sales have already taken place at the local government level and in tourism, while more privatization activity is expected for joint-venture industrial enterprises falling under Law 43. So far, there has been no open resistance to these privatization efforts, but a wide-ranging debate has been initiated by the Egyptian Federation of Trade Unions (EFTU) focussing on various clauses of the constitution which they feel make these types of privatization activities illegal.

Their arguments are based on articles 24, 26 and 30 of the constitution. Article 24 states that only the "people" have the right to own factors of production and that only they can make use of its surplus in accordance with the development plan of the state.

Article 26 states that employees are entitled to a given percentage of profits from state enterprises and that they must hold at least 50 percent of the seats on the managing board of any public firm.

In addition, article 30 of the constitution states that public ownership by the "people" of the means of production is the vehicle through which development is to be achieved in all sectors.

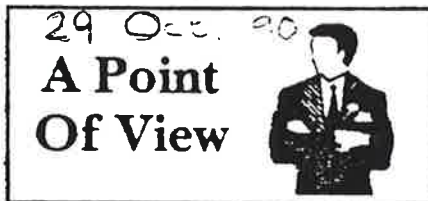
The article further states that the public sector must play the leading role in the development process in Egypt's development plan, with an additional reference to the government's requirement of continued support for all kinds of state enterprise activity.

The EFTU is basically saying that these articles effectively make privatization unconstitutional and that state enterprise reform is the only legal way for the government to get its public sector cards in order. The EFTU has also published a working paper that outlines a strategy for public sector reform and, most importantly, highlights the alleged illegality of privatization efforts.

Are current government privatization reforms really against the constitution and

thus against the law? According to the aforementioned articles, probably yes!

The constitution does state specifically that all factors of production must be owned by the "people," thus it would follow that the sale of public assets belonging to one or more individuals would be going against the provisions of article 24. In addition, article 30 clearly states that the development effort is confined to giving the public sector the lead-



ing role in sectoral development.

Then, for example, would an all-out privatization program in the tourism sector be a breach of this article? Again, probably yes!

Also, all current privatization efforts seem to be working contradictory to article 26 of the constitution because a sale of a public sector firm to the private sector implies a movement to private ownership and thus to either laws 159, 43 or 230, neither of which requires any substantial labor participation in the managing board of the divested entity!

Interesting, isn't it? The government is pursuing a privatization strategy that is running contrary to various articles of the constitution.

Being a staunch supporter of privatization, should I endorse an activity which runs contrary to my country's constitution?

Well, as always, not all parties see eye to eye on the legalities of this one. There is another group of legal analysts who do not perceive privatization as a constitutional violation. They point to the fact that state enterprises are owned by the "government" and not the "people," whom they perceive as being two distinct entities. Since labor has no equity control in any state enterprise, and since most public firms have never issued stock subscriptions, the "people" do not own these factors of production.

Since state firms are owned by the government which is a separate entity from what the

constitution defines as the "people," the clause of "people's ownership" of the means of production, in the view of these experts, has never been correctly implemented. They argue that, contrary to the other interpretation, articles 24 and 26 would really come into effect if state firms were divested and turned into employee stock ownership schemes. Are such arguments far fetched? Probably yes.

Well, what about article 30, which states that the public sector should have the leading role in development. Doesn't this run counter to every press announcement currently being made by the prime minister and several of his colleagues in the cabinet on the expanded role of the private sector in Egypt's development plan?

This whole discussion probably comes down to just one point: the constitution should either be amended to reflect the government's privatization intentions, or simply, if the government has no desire to go through this hassle, it should provide the general public with a reading of how it understands articles 24, 26 and 30.

It would probably be a mistake for the government to close its eyes to these articles of the constitution which appear to contradict its reform plans. Our constitution is a document by which we live, not a piece of vague legislation that is interpreted in different ways by different people. Does the government wish to be seen as deviating from the constitution, particularly in an area as sensitive as privatization?

If the government can turn a blind eye to the constitution, then anyone could feel free to do the same, and if this happens, the very basis of all of our laws can be questioned. Constitutions can and should be amended, especially if the government sees that such amendments are for the good of the nation as a whole. If it perceives privatization and the move to market forces in various sectors as being for the benefit of society as a whole, then it should be willing to amend the constitution and abolish legal obstacles such as articles 24, 26 and 30. If the government is unclear about what it wants, the end result could be a stalemate.