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Egypt: Engineering Authority & Domination of 'National Projects'

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The role of the Egyptian armed forces in public affairs has remarkably increased since the overthrow of late President Mohamed Morsi, where such role is in no way the same as it had been before the January revolution. Since then, the army has come to govern the nation directly, utilizing any available space to obtain new advantages. After the army's participation in thwarting revolutionary action attempts and anti-regime protests, the military further boosted its position in the ruling alliance, and almost dominated both political and economic affairs.

Accordingly, the Armed Forces Engineering Authority (AFEA) has become present in all state projects, as it implements most major national projects, including infrastructure, roads, avenues, bridges, land reclamation projects, health, educational and judicial facilities, transportation, housing, and others. During 2013 and 2014, AFEA's role grew and expanded significantly at the expense of public and private sector companies alike. Many major projects have been assigned to the Armed Forces Engineering Authority, most notably the One-Million-Housing-Unit Project¹, the development of 47 slums in Cairo and Giza², as well as other projects in the fields of transport, roads, public services and others. As of May 2014, these projects amounted to 437 strategic and service projects, according to what was announced by AFEA Chairman Major General Taher Abdullah³. This expansion of the Engineering Authority's activity was culminated in August 2014 by assigning it general supervision of the new Suez Canal project⁴.

The concerns of businessmen close to the new authority towards this expansion did not succeed in stopping the infringement of the army's economic apparatus, especially AFEA on the Egyptian economy. On the contrary, the frequency of infringement escalated, and its intertwining complications

¹ A press conference by AFEA to discuss the provision of the needs of one million housing units, Al-Shorouk, <https://cutt.us/i5fdP>

² AFEA is developing 47 slums in Cairo and Giza, Youm7, <https://cutt.us/kz6z5>

³ The Minister of Defense inspects a number of projects of AFEA, Al-Masry Al-Youm, <https://cutt.us/axqp7>

⁴ AFEA: In this way, the Suez Canal project will be completed within a year. Masrawy, <https://cutt.us/Qn5y2>

increased, where the projects assigned to AFEA reached nearly 2,800 projects in June 2020, according to a statement by AFEA Chairman Major General Ihab Al-Far⁵.

National projects

The term “national project” is alien to the political environment, given that it is mainly related to the financial and trade environment. Despite the fact that the use of this term started in the fifties of last century, it was not used as much as it is used now, especially since 2013.⁶

Although the term “national project” used to be formally based on a law or an official decree, it is currently used to define all the projects undertaken by the state. Furthermore, pro-regime media attributes these “national projects” to a certain party, AFEA, other than real parties responsible for their implementation. For example, in July 2020, the Egyptian media covered a consolidated report released by the official Middle East News Agency, titled “The Mega National Projects in Egypt Are the Pillar of the Present and the Legacy of Our Children and Grandchildren”. According to the report, Prime Minister Dr. Mustafa Madbouly stated, “Egypt has completed implementation of 14,762 gigantic “national projects”, in addition to 4,164 other projects under implementation, at a cost exceeding four thousand, five hundred billion Egyptian pounds”.⁷ Although Madbouly’s statement so ended, however, the Egyptian media attributed this same number of projects to the Armed Forces Engineering Authority⁸, despite the AFEA Chairman’s announcement that the projects that AFEA has implemented amounted to only 2,800 projects⁹. This may be due to absence of accurate official data, or to the abundance of government decisions to assign ‘national projects’ to the Armed Forces Engineering Authority, where almost all ‘national projects’ are assigned to AFEA.

⁵ AFEA Chairman: AFEA has implemented 20 thousand projects at a cost of EGP 4.5 trillion, video clip, <https://cutt.us/Ci6NM>

⁶ The Meaning of the National Project, Amr Adly, Al-Shorouk <https://cutt.us/cE4GC>

⁷ The mega national projects in Egypt are the pillar of the present and the legacy of our children and grandchildren, Youm7, <https://cutt.us/Uqbm7>

⁸ AFEA Chairman: We have implemented 20 thousand projects at a cost of EGP 4.5 trillion, Al-Ahram, <https://cutt.us/OND9c>

⁹ AFEA Chairman: AFEA has implemented 20 thousand projects at a cost of EGP 4.5 trillion, video, <https://cutt.us/OvuUP>

Legislative immunity

In April 2015, a presidential Decree/Law No. 23 of 2015¹⁰ was issued to amend the building law No. 119 of 2008¹¹. This amendment is considered a turning point that granted the Armed Forces Engineering Authority (AFEA) a special status, distinguishing it over all state civil bodies concerned with planning and organizing construction works. This amendment granted a kind of legislative immunity to the work of AFEA, as well as several exceptions with regard to the policies and controls of urban planning and construction in force, which all other state bodies abide by.

The law amendment considered the Armed Forces Engineering Authority a body concerned with planning and organizing construction work for both strategic areas of military importance, lands allocated to or owned by the armed forces, and the 'national projects' that AFEA implements based on a ministerial decree¹². In fact, this grants it the exclusive and monopolistic jurisdiction for planning over the entire Egyptian territory, as it is responsible for vast areas that may represent (according to press reports) about 90 to 97% of the lands of Egypt¹³.

Accordingly, the Armed Forces Engineering Authority is - in effect - the authority entrusted with planning all Egyptian lands. As for the rest of state bodies concerned with planning as defined by the building law (the New Urban Communities Authority, the Tourism Development Authority and the Industrial Development Authority), they operate only within the urban framework of populated geographical areas, which, according to the report of the Central Agency for Public Mobilization and Statistics, amount to only 6.2% of the area of Egypt¹⁴.

¹⁰ The law was published in the Official Gazette issue 16 bis (B) of 2015

¹¹ The Building Law is the basic law that regulates urban planning, demolition and construction work in Egypt

¹² Amendments of the Building Law No. 119 of 2008 through: Law 23 of 2015

¹³ After cement ... this is how the Egyptian army controls the real estate market, Al-Jazeera, <https://cutt.us/umYnb> - Not including the military .. Learn about 8 areas that the Egyptian army takes over, Rassd News Network, <https://cutt.us/L6Pkd> - It is not an Egyptian heresy ... world armies possess economic power and compete in markets, Al-Watan, <https://cutt.us/vUWuZ>

¹⁴ Statistics: Only 6.8% of Egypt is inhabited, Al Bawaba, <https://cutt.us/ZFhTo>

AFEA projects immunized retroactively

Chapter 3 of the building law No. 119 of 2008 regulated all construction and urban works on Egyptian lands, including issuance of the building and demolition licenses, preparing engineering charts, the licensee's obligations, implementation methods, and other terms of reference and detailed controls.

Section 1 of Chapter 3 states general provisions that apply to all sections as general rules for organizing construction work.

Article 38 of the law added the following: "Strategic areas of military importance, lands designated or owned by the armed forces, and national projects that they implement based on a ministerial decree"¹⁵ to the areas subject to the provisions of the law, in addition to local administration units, tourist and industrial areas, and urban complexes.

Article 39 which regulates the ban on construction and demolition without prior authorization from the competent authority for planning and organizing affairs was not amended.

The law added Article 39 (bis) which granted an exception to the 'national projects' that are assigned to AFEA to immunize its activity retroactively, stipulating that: "Without prejudice to the previous article, excluding national projects issued by a ministerial decree established by AFEA, which prove their structural integrity and conformity for planning and building requirements approved based on a certificate issued by AFEA, where this certificate is considered as a license with its attributable effects"

Therefore, according to the amendment of the building law,

First, AFEA has become genuinely competent in all planning and organization work on the lands of the armed forces within the strategic areas assigned to it.

Second: the amendment granted AFEA an exception that gives it the right to plan and license what it establishes -outside this scope- of 'national projects' that are defined as so by a ministerial decree,

¹⁵ The amended Article 38 of Law No. 23 of 2015

and such immunity is applicable retroactively on the projects it had established before the approval of this amendment.

Based on these amendments, AFEA has completely monopolized all works of urban planning and construction in Egypt.

Violation of the Constitution

The main constitutional function of the armed forces is to defend the homeland, its territorial integrity and its borders. Based on this function, the army has acquired the land needed to carry out its mission. However, after these lands were turned into projects of a civilian nature, the army should return them to the state, as the purpose of allocating them has disappeared. Thus, civil authorities (Local Administration, the New Urban Communities Authority, the Tourism Development Authority, or the Industrial Development Authority) should undertake the planning and organization affairs in these enterprises, according to the related activity.

However, the legislative amendment contravened this constitutional fact when it restricted the task of planning and organization of these lands to the AFEA, and created an unconstitutional reality by granting the armed forces represented in AFEA legal immunity represented in maintaining ownership of lands designated for military purposes even after these lands had been used for establishment of projects of a civilian nature. .

On the other hand, the Armed Forces Engineering Authority has obtained an added legal immunity through its exclusive jurisdiction over (civil) planning and organization of the enterprises established on those lands.

According to the amendment, as soon as a government decision is issued defining a certain project assigned to the Armed Forces Engineering Authority as a national project, the civil state authorities cannot carry out the planning and organization process of the project established on their affiliated lands. Perhaps this explains the state's overuse of the phrase 'national projects' for the projects that it wants to assign to AFEA.

This situation makes the Armed Forces Engineering Authority monopolize the planning and construction activity in Egypt. After issuance of these amendments to the building law, the

government has regularly issued dozens of decrees defining the AFEA projects that have already been implemented or are still in the process of implementation as 'national projects' to be formally in line with provisions of the amended building law, which violates an established legal principle of non-application of a administrative decision retroactively.

The Case of the Administrative Capital

In fact, the New Administrative Capital is expressive of the problem that this paper has raised. The land on which the project is built had been allocated for the benefit of the Armed Forces Land Projects Organization (AFLPO), but in accordance with the presidential Decree No. 57 of 2016 regarding the establishment of the New Administrative Capital¹⁶, the jurisdiction of that land was transferred to the New Urban Communities Authority (NUCA). According to Article 2 of the decree, Administrative Authority for Urban Development (ACUD), a joint stock company, was established in partnership between the New Urban Communities Authority (NUCA), the National Service Projects Authority (NSPA) and the Armed Forces Land Projects Authority (AFLPO), to undertake the planning, establishment and development of the New Administrative Capital and the Sheikh Mohammed bin Zayed Complex, as the presidential Decree No. 57 of 2016 considered the land transferred from the army's possession as the share of the AFLPO in the Administrative Authority for Urban Development (ACUD).

Then, the Prime Minister issued Decree No. 24 of 2018, where Article 1 stipulates that: Projects that have been implemented or are being implemented by the Armed Forces Engineering Authority within the New Administrative Capital are considered national projects, in implementation of the provisions of Law No. 119 of 2008, where AFEA is the administrative body concerned with the planning and organization affairs of these projects and issues related licenses to them.¹⁷

On the other hand, the AFEA chairman is one of four members representing the armed forces in the board of directors of the Administrative Capital for Urban Development (ACUD), the joint stock company established according to the presidential decree (No. 57 of 2016). Thus, this model is a

¹⁶ It was published in the Official Gazette, Issue No. 5 bis, on February 8, 2016

¹⁷ It was published in the Official Gazette, issue 23 bis (D) on June 13, 2018

clear demonstration of how to adapt laws and decrees to serve a certain party, that is the Armed Forces Engineering Authority, and completely immunize its activity.

AFEA and junta membership

The extensive tasks entrusted to the Armed Forces Engineering Authority, as above reviewed, raises an important question: Do these tasks constitute a direct reason for AFEA's removal from membership of the Supreme Council of the Armed Forces? Does this represent a kind of repositioning to delineate a new role for AFEA within the state's administrative system as a substitute for its position within the Supreme Council of the Armed Forces?

It was customary for the head of the engineering authority to be a member in SCAF formation established by Law No. 20 of 2014. However, since SCAF has been reconstituted based on Law 167 of 2020, AFEA chairman has been absent from the SCAF membership.

Does the AFEA removal from SCAF membership is aimed at allowing it to undertake other tasks as a military arm in civilian life on a full-time basis, especially in city planning and construction, and thus take care of the army's property and increase the area of its investments?

In this context, the writer expects that AFEA will acquire membership of the Supreme Council for Urban Planning and Development or the General Authority for Urban Planning to make for its removal from the SCAF membership .

Conclusion

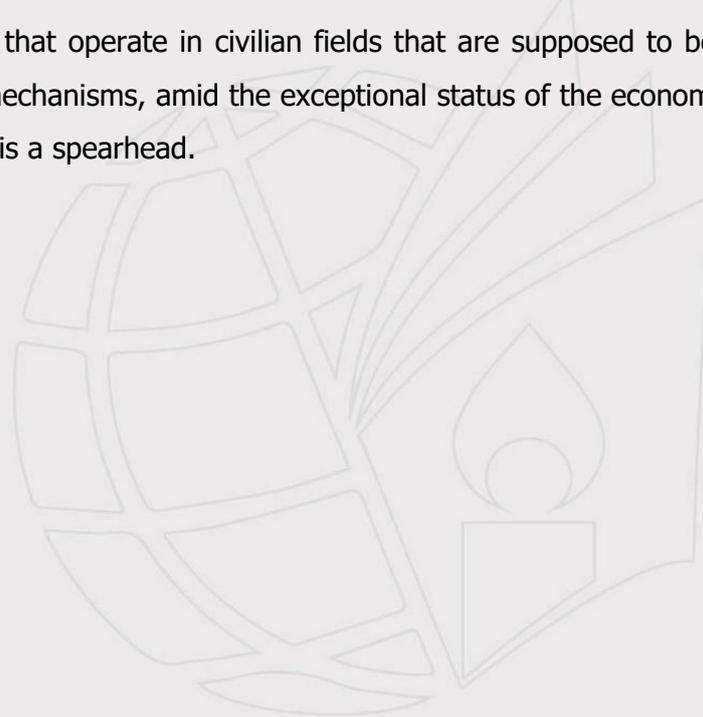
Since the January Revolution (2011), the Egyptian Armed Forces Engineering Authority (AFEA) has been implementing its projects by itself without any kind of oversight from the state' concerned bodies. However, after the 2013 coup, its infringement on the Egyptian economy has escalated thanks to conducting several amendments to Law No. 119 of 2008, known as the building law, as discussed above. AFEA has monopolized all aspects of the national projects, including the technical aspect, operation, and logistics; in addition to the political, administrative, and planning dimension.

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The frequent official meetings held by Abdel Fattah Al-Sisi to follow up on major strategic and national projects¹⁸, amid presence of only Al-Sisi, his urban planning advisor, and the AFEA chairman, without presence of any civilian official, may be indicative of such conclusion.

Add to this the financial position of the armed forces within state institutions, where the army budget is mentioned in the public budget as one figure, as well as the multiple advantages of the army's economic institutions, including tax and customs exemptions.

In addition, new legislation has been enacted to allow the armed forces to expand establishment of joint-stock companies that operate in civilian fields that are supposed to be based on competition according to market mechanisms, amid the exceptional status of the economic activity of the armed forces, of which AFEA is a spearhead.



¹⁸ Al-Sisi follows up on the map of implementing national projects ... the administrative capital on top, Akhbar Al Youm, <https://cutt.us/FzCKV>