

## Egypt what needs to be done

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I want to start by saying that as a legal professional that specializes in Middle Eastern law and as an Arab American Egypt holds a special place in my heart.

Egypt was historically and still is to a large extent the sole exporter of legal knowledge and legal professionals to the Arab world. Legal professionals from Egypt drafted the codes of the Gulf countries and Iraq, and influenced the laws of other countries in the region.

So when one criticizes the legal system in Egypt one does it with a great deal of due respect.

The decision whether to invest in a country or not does not hinge on one element there are various reasons that contribute to that decision, albeit they differ in their importance.

As the former chairman of the Federal Reserve Mr. Greenspan so eloquently put it:

"The single most important element that contributes to the United States being the largest recipient of foreign investment is its constitution and its legal system".

This element translates into political and legal stability which are the cornerstones of *visibility* in economic terms. The greater the visibility the larger is the willingness to invest substantial funds in projects that become profitable over a longer period of time.

Without the stability and predictability that result from a constitution and a robust legal system it becomes very difficult to assess the future of true economic opportunities.

Of course no system is perfect the relevant question is : Does the system provide mechanisms to repair and heal itself without jolts and jerks.

On the constitutional level there is sufficient relevant debate in Egypt at the moment without the need for me to add my irrelevant voice to the debate.

On the rule of law issue the situation is different and there is a lot to be said.

I stated earlier that Egypt has been and to a large extent still is the sole exporter of legal knowledge and professionals to the Arab world. It has also been the exporter of the methodology for large and ineffective bureaucracy.

Egypt under Nasser followed a highly regulated economic policy with state control over significant parts of the economy this has created a huge bureaucratic maze that was also exported to Arab countries.

This maze is manned in Egypt by 5.7 million civil servants. They are at the center of all complaints about the Egyptian system and institutions. They create inefficiencies and uncertainty and therefore reduce the visibility so needed for investment.

The petty bribery system that is entrenched in their midst cannot be missed by anyone and begs to be addressed.

One of the great minds of Egypt who was instrumental in writing the laws of many countries and can be found in all legal references, judgments, and laws in the Middle East is Abdul Razak Al Sanhoury. He fought long and hard for an administrative law system in Egypt without success.

The result is that the huge bureaucratic maze runs without a written procedural or substantive administrative law.

This entire area is left to jurists' writings and precedent in a system that is used to codified law.

The net effect of this is an arbitrary enforcement of an inefficient set of rules. The credibility of a legal system depends on the thoughtfulness of the legislation and its consistent implementation.

Nothing short of a state of the art modern procedural administrative law that affords due process and creates a mechanism for interested parties input into administrative rule making and decisions would lubricate this huge machine and make it homogenous and cohesive. This is a battle that Al-Sanhouri lost but one that Egypt must win.

The success achieved by Egypt in the reform of its Taxation system can and must be replicated in all administrative institutions.

This area spills over many other areas.

In Egypt the courts are inextricably linked to an Experts Department that acts as the finder of facts. Some would say they are neither experts nor do they find the facts, at least not in a reasonable time with any stretch of imagination.

The judicial system also had its fair share of policies during the Nasser era from which the system did not recuperate. There is a dire need for qualified highly motivated judges.

A great deal has been done in terms of reform of the substantive laws in the past three years in Egypt. Of course Arab investors and Europeans also have the advantage of the geographic proximity and more comprehensive bilateral and multilateral agreements that are far more comprehensive than what the US has with Egypt.

We should be pressing our government for a Free Trade Agreement with Egypt.

On a substantive level it is still difficult to establish a branch for a foreign company in Egypt as it still requires a ministerial decision. On a Trade

level a recent regulation issued by the Ministry of Foreign Trade and Industry No. 362/2005 puts a chill on distributors' relationships and creates an unnecessary burden on foreign principals who find themselves unable to terminate an agent or a distributor according to the terms of their agreement. This decree I understand also has constitutional issues.

I want to end by saying that of all the points I raised the only one that haunts the discussion on the Egyptian market is the bureaucratic maze that must be set straight if Egypt is to become the destination of choice for foreign investment that it wants to be and that it can be.