Position Paper

on the New Draft of the Criminal Procedure Code

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1. Introduction

In the context of the legal and social developments taking place in Egypt, the new draft Criminal Procedure Law, which unexpectedly emerged from the Legislative Committee of the House of Representatives in August 2024, represents an additional step by the legislative and executive authorities towards undermining the judicial system under the pretext of keeping pace with modern requirements, addressing the pretrial detention crisis, and confronting the challenges facing the state. This draft is considered disastrous for the human rights situation in Egypt. It is among the most controversial legislative initiatives currently, as it retains major issues in the existing Criminal Procedure Law, legalizes current illegal practices, and negatively addresses sensitive matters affecting individual rights, guarantees of a fair trial, the rights of defense, the role of lawyers in achieving justice, and the duration of pretrial detention, among other topics discussed in this paper.

This draft comes at a time when the Egyptian government is under increasing pressure to improve its image and confirm its commitment to international human rights standards, especially in light of growing criticism from local and international human rights organizations regarding the worsening crisis of using pretrial detention to punish peaceful opponents for exercising their basic freedoms.

Considering the importance of the Criminal Procedure Law as one of the complementary laws to the constitution and as a procedural law that forms the public order concerning the procedural legitimacy of the criminal justice system, the legislator should have addressed its issues and flaws related to fair trial standards, the concentration of powers in the hands of the Public Prosecution and judicial officers. The current Criminal Procedure Law has failed to prevent the recycling of defendants in new cases after judicial decisions to release them and

has failed to protect detainees from torture or to punish those responsible for it and enforced disappearance, as well as failing to address illegal practices against lawyers.

The draft law is not an attempt to correct the current law and reform it to address what human rights and legal voices have been calling for over many years, but rather it is a completely new law that perpetuates the same problems present in the current law and exacerbates them. It was also prepared in a short period with vague details, without specifying the mechanism followed in preparing a law of such gravity, the circumstances surrounding its issuance, or the party pushing in this direction.

As usual, the draft Criminal Procedure Law was prepared in the corridors of the House of Representatives and the government in complete secrecy without any discussions or consultations with the concerned parties, such as the Bar Association, human rights organizations, or other experts concerned with achieving justice in Egypt. In fact, those who participated in the so-called recent national dialogue sessions, which primarily discussed several recommendations regarding pretrial detention and the restructuring of the Egyptian penal system, said they were surprised by the leak of the new draft Criminal Procedure Law without it being discussed during the national dialogue sessions and without their opinions being taken, which suggests that the recent national dialogue sessions were aimed at paving the way for issuing the new law, not addressing the detainee crisis in Egypt as it was promoted.

The draft includes substantial amendments related to regulating pretrial detention and reducing its duration in some crimes, which is a formal response to repeated demands to limit the excessive use of this legal tool, which is often exploited to arbitrarily detain individuals for long periods without trial. In addition, the draft

introduces new mechanisms related to restricting freedom of movement by banning travel and monitoring arrivals. Although these amendments may be necessary in some contexts, they raise many questions about their compatibility with the Egyptian constitution and international obligations, particularly concerning guarantees of a fair trial and preventing human rights violations.

This paper aims to shed light on the most important amended and added texts in the new draft law with a brief analytical perspective, focusing on the potential impact of these amendments on individual rights and fair trial guarantees. The Egyptian Commission for Rights and Freedoms is currently working on issuing a detailed, in-depth study that addresses all the articles of the law and analyzes them comprehensively to clarify the shortcomings and flaws of the presented draft.

We will briefly review the shortcomings of the current draft, what essential guarantees it might overlook, and discuss possible alternatives that could enhance justice without compromising constitutional rights.

Issues Retained in the New Draft Criminal Procedure Law:

A. Continuation of Legal Immunity for Judicial Officers from Legal Accountability in Cases of Torture and Other Violations

The draft law continues to shield judicial officers from legal accountability by maintaining the prohibition on the victim or their family from directly filing charges against police officers. It also preserves the guarantee that criminal cases in misdemeanors can only be initiated by a chief prosecutor or higher.

As an exception to the general rules in the Criminal Procedure Law, which allows the direct filing of charges in misdemeanors and violations by the injured party

(the civil plaintiff) to defend their interests and provide them with an opportunity to appear before the court if the Public Prosecution fails to initiate the criminal case, the legislator has exceptionally prohibited the victim and their family from directly filing charges in crimes (such as torture) committed by judicial officers or public officials in general. This is stipulated in Article 232 of the current Criminal Procedure Law, which has been retained in Article 226 of the new draft law[1].

Furthermore, Articles 162 and 210 prevent the civil plaintiff from appealing or contesting decisions by the investigating judge or the Public Prosecution not to initiate criminal proceedings against judicial officers, except for certain crimes specified in Article 123 of the Penal Code, such as the failure to execute judicial rulings and orders issued by the government. The new draft law retains this provision while replacing the "investigating judge" with the "Public Prosecution" in Article 162, and it allows the defendant to appeal decisions not to initiate criminal proceedings while maintaining the same exceptions found in the original article[2].

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[1] Article 232 of the current Criminal Procedure Code states that " the civil rights plaintiff may not bring an action to the court by directly summoning the accused person to appear in two cases. First: If the investigating judge or the public prosecution decided that there was no case to answer, and the civil rights plaintiff did not appeal such ruling in due time, or did challenge the decision, and the misdemeanor court of appeal sitting in chambers sustained the decision. Second: If the lawsuit is against a public officer, a civil servant, or an arresting officer, for a crime committed during the course of performing his duties or on account thereof, save for crimes referred to in Article 123 of the Penal Code. Moreover, Article 226 of the new Criminal Procedure Code states that "the civil rights plaintiff may not file a lawsuit directly with the court, summoning the defendant to appear before it, if an order has been issued by the investigating judge or the Public Prosecution that there is no basis for filing a criminal lawsuit, and the civil rights plaintiff has not appealed this order within the specified period, or has appealed it and it was upheld by the Misdemeanor Appeals Court convened in chambers, or if the lawsuit is directed against a public official or employee or one of the law enforcement officers for a crime committed by him during or because of the performance of his duties, unless it is one of the crimes referred to in Article 123 of the Penal Code.

[2] The first paragraph of Article 162 of the draft of Criminal Procedure Code states that "The accused and A civil rights plaintiff may appeal the order issued by the Public Prosecution stating that there is no basis for filing a lawsuit, unless it was issued in a charge against a public employee, worker, or law enforcement officer for a crime committed by him during the course or as a result of performance of the job thereof except if the crime is prescribed for under article 123 of the Penal Code". While Article 162 of the current Criminal Procedure Code states that "A civil rights plaintiff may appeal orders issued by the investigating magistrate stating that there are no grounds to file a lawsuit unless the order is issued with respect to an accusation made against a civil servant, public employer or a law enforcement officer for a crime committed thereby during the course or as a result of performance of the job thereof except if the crime is prescribed for under article 123 of the Penal Code"
The first paragraph of Article 210 also states that "The civil claimant may challenge the order issued by the Public Prosecution to dismiss the case, unless such order is issued against a public official/civil servant or an impounding/ a law officer regarding a crime committed during or as a result of performing their duties, as long as the said crime is not among the ones referred to in Article 123 of the Penal Code".

The new draft Criminal Procedure Law also retains provisions that limit the authority of Public Prosecution members to initiate criminal proceedings against public officials, including police officers, thus providing them with a safeguard. This is outlined in Article 9 of the new draft law, which combines the third paragraph of Article 63 and Article 8 bis of the current Criminal Procedure Law. However, in the new draft law, felonies are excluded from this safeguard, thereby allowing a Public Prosecution member below the rank of chief prosecutor to initiate criminal proceedings in felonies, but not in misdemeanors, according to Article 9[3].

B. Lack of Mandatory Provisions for Protection from Enforced Disappearance and Retention of Discretionary Supervision by the Public Prosecution over Reform and Rehabilitation Centers

Article 42 of the current Criminal Procedure Law grants the Public Prosecution the authority to supervise detention facilities to ensure that no one is held without legal justification. However, given the increasing occurrence of enforced disappearances of political opponents and criminals, the legislator should have imposed a strict obligation on the Public Prosecution to supervise detention facilities and to follow up on and investigate reports of enforced disappearances. The supervision of reform and rehabilitation centers should not be left as a discretionary power for the Public Prosecution to either exercise or refrain from

[3] Article 9 of the draft of Criminal Procedure Code stipulates that "a criminal action may not be brought in the crimes stipulated in Article 116 bis (a) of the Penal Code except by the Public Prosecutor or the Attorney General. With the exception of the crimes referred to in Article 123 of the Penal Code, a criminal lawsuit may not be brought against a public employee, public worker or one of the law enforcement officers for a misdemeanor committed by him during the performance of his duties or because of them except by at least one chief prosecutor." Article 8 bis of the current Criminal Procedure Code states that "for crimes stated under article 116 (bis -- a) of the Penal Code, no criminal lawsuit may be filed except by means of the Attorney General of State Attorney. Article 63, Paragraph 3 of the Criminal Procedure Code also states that "With the exception of the crimes specified under Article 123 of the Penal Code, no person other than the Attorney General, State Attorney or head of the Public Prosecution may file a criminal lawsuit against a civil servant, public employer and/or law enforcement officer for crimes or misdemeanors perpetrated thereby during the course of or as a result of performance of the duty thereof.

exercising. Although the wording of Article 44 in the new draft Criminal Procedure Law has been modified, it retains the essence of Article 42[4].

c. Retention of the Accumulation of Powers by the Public Prosecution, Combining the Powers of Investigation, Indictment, and Referral

The new draft law retains the accumulation of powers by the Public Prosecution, combining the powers of investigation, indictment, and referral of cases to court after the investigation is completed. This is evident in Articles 1, 62, and 172 of the new draft law. Moreover, the new law expands the powers of the Public Prosecution by transferring some of the powers previously granted to the investigating judge to the Public Prosecution. For instance, Article 68 of the new draft law grants the Public Prosecution the authority to accept or reject a civil claim filed by the victim of a crime, a power that was previously held by the investigating judge. This expansion of the Public Prosecution's powers poses a threat to the principle of neutrality that Public Prosecution members should adhere to and undermines the principle of separation of powers, which contradicts international agreements and guidelines on the role of prosecutors[5].

[4] Article 44 of the draft of the Criminal Procedure Code states that "the Public Prosecutor, members of the Public Prosecution, and the presidents of the Courts of Appeal and the Courts of First Instance may enter places designated for the detention of detainees within their jurisdiction, in order to ensure that no one is being detained illegally, and that investigation orders, court rulings and decisions are being implemented in the manner specified therein and in accordance with the provisions stipulated by law. They may review the registers, execution orders, arrest and detention orders, take copies thereof, contact any inmate, and hear any complaint from him." Article 42 of the current Criminal Procedure Code states that "Any member of the Public Prosecution and any chief justice of a court of first instance or a court of appeal and any vice president thereof may visit public and central prisons located within the jurisdiction thereof and make sure no person is detained therein illegally. Said may inspect the records of the prison and the warrants of arrest and incarceration and may take a copy thereof. Said may also communicate with any detainee and listen to any relevant complaints therefrom. Prison wardens and employees shall assist said in obtaining any information requested

[5] Article 7 of the draft Criminal Procedure Code states that "the Public Prosecution shall undertake the investigation, initiation, and prosecution of criminal proceedings, and shall not take these measures by others except in the cases specified by law." Article 62 of the draft also states that "the Public Prosecution shall conduct an investigation into felonies, and may conduct it into misdemeanors or other cases if it deems it appropriate. The investigation shall be conducted in accordance with the provisions stipulated in this chapter." In addition to Article 172 of the draft law, which stipulates that "if the Public Prosecution sees in felony or misdemeanor cases that investigating the case by the investigating judge is more appropriate in light of its special circumstances, it may, at any stage of the case, request the President of the competent primary court to delegate one of its judges to conduct this investigation. The delegation shall be by decision of the General Assembly of the court or whomever it authorizes at the beginning of each judicial year. In this case, the delegated judge shall be the only one competent to conduct the investigation from the time he conducts it." Article 68 of the draft law also

D. Retention of the Denial of an Appeal Level for Defendants Sentenced to Death If They Do Not Appeal the Judgment

At the beginning of 2024, the Egyptian legislator introduced the right to appeal judgments issued by criminal courts through Law No. 1 of 2024. However, Article 419 bis 8 of this law obliges the Public Prosecution to file an appeal before the Court of Cassation if the defendant sentenced to death fails to appeal within the prescribed period. This effectively denies the defendant a level of appeal, namely the appellate review. The legislator should have addressed this issue, but the new draft law retains the essence of the aforementioned article in Article 407[6].

E) Retention of Provisions That Undermine the Right to Defense and Affect Fair Trial Guarantees

The current draft law raises concerns about reducing the right to effective legal representation and legitimizing judicial practices that undermine fair trial guarantees. These include limiting access to case files[7], denying the presence of a lawyer with the defendant[8], and violating the right to a public trial[9]. Article 73 of the draft law grants the Public Prosecution the right to deny lawyers and litigants access to information and case files if it deems it necessary for the investigation[10].

In practice, especially in cases before the State Security Prosecution or politically sensitive cases, lawyers and defendants are often denied access to case files. The draft law also codifies the practice of interrogating defendants without their

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stipulates that "Anyone who has suffered harm from the crime may claim civil rights during the investigation of the case, and the Public Prosecution shall decide on his acceptance in this capacity in the investigation within three days of submitting this claim."

[6] Article 407 of the draft of the Criminal Procedure Code, as well as Article 418 bis 8 of the Criminal Procedure Code, stipulate that "if the judgment is issued in the presence of the person sentenced to death, and it is not appealed within the legally prescribed period, the Public Prosecution must follow the provisions of Article 46 of the Law on Cases and Procedures for appeal before the Court of Cassation issued by Law No. 57 of 1959."

[7] See paragraph b/3 of article 14 of the International Covenant on Civil and Political Rights.

[8] See paragraph d/3 of Article 14 of the International Covenant on Civil and Political Rights.

[9] See article 14, paragraph 1, of the International Covenant on Civil and Political Rights.

[10] Article 73 of the draft of the Criminal Procedure Code: "The accused, the victim, the civil claimant, the person responsible for civil rights, and their representatives may obtain, at their own expense, copies of documents of any type during the investigation, unless the interests of the investigation require otherwise."

lawyer present and commencing investigations in the absence of both the defendant and their lawyer, in violation of the constitution[11]. Article 54 of the constitution states: "Personal freedom is a natural right, and it is inviolable. Except in cases of flagrante delicto, no one may be arrested, searched, detained, or have their freedom restricted in any way except by a reasoned judicial order required for the investigation. The person whose freedom is restricted must be informed immediately of the reasons, be notified of their rights in writing, be enabled to contact their family and lawyer immediately, and be brought before the investigating authority within twenty-four hours of their freedom being restricted. No investigation shall begin with them until their lawyer is present; if they do not have a lawyer, one shall be appointed for them, with necessary assistance provided to persons with disabilities, according to procedures established by law..."

In the majority of politically sensitive cases, defendants are interrogated without a lawyer present, and in some cases, the investigation proceeds without a lawyer or any legal justification for this[12]. As for Article 72 of the draft law, it allows the Public Prosecution to refuse lawyers the right to present defenses and comments during investigations[13]. Additionally, Article 92 permits the Public Prosecution to protect prosecution witnesses from defense questioning. Regarding asset freezing, the Attorney General and the court still have the right to issue orders to

[11] Article 69 of the draft of Criminal Procedure Code: "The accused, the victim, the civil claimant, the person responsible for the civil rights, and their representatives may attend all investigation procedures. The member of the Public Prosecution may conduct the investigation in their absence whenever he deems it necessary to reveal the truth. As soon as that necessity ends, they may be allowed to review the investigation."

[12] Article 72 of the draft of Criminal Procedures Law: "The opponents and their representatives may submit to the member of the Public Prosecution the defenses and requests that they deem necessary to submit. Other than that, the opponent's representative may not speak unless the member of the Public Prosecution gives him permission. If he does not give him permission, this must be recorded in the case files."

[13] Paragraph 3 of Article 92 of the draft Criminal Procedure Code: "The member of the Public Prosecution may always refuse to direct any question to the witness that is not related to the case or is worded in a way that harms others. He must prevent the witness from making any explicit or implicit statements, or any indication that would cause confusion or intimidation in his thoughts."

freeze assets in the absence of the person whose assets are being frozen or their legal representative[14].

Finally, despite the criticisms directed at Law No. 1 of 2024, which introduced the right to appeal judgments issued by criminal courts whether regarding the denial of the right to appeal before a higher court[15], or the violation of the defendant's right to a personal trial or the selection of their lawyer[16], the law allows the Public Prosecution and the court to appoint a lawyer for the defendant without their consent. If the defendant or their lawyer fails to attend any of the appeal sessions, the law permits the court to appoint a lawyer to represent the defendant in the appeal without their knowledge or presence. The legislator in the draft law did not amend these provisions but retained them as they were in the previous law.

New Provisions Introduced in the Draft Law That Constitute Violation of Fair Trial Guarantees

A. Granting Judicial Officers Discretionary Authority to Investigate Defendants

One of the new provisions in the draft law is Article 63, which grants judicial officers much broader powers than they currently have. The article allows

[14] Article 143 of the draft of Criminal Procedure Code: "In cases where sufficient evidence is established from the investigation of the seriousness of the accusation in any of the crimes stipulated in chapter 4 of book two of the Penal Code and other crimes committed against funds owned by the state or public bodies and institutions and their affiliated units or other public legal persons, as well as in crimes in which the law requires the court to rule on its own initiative to return the amounts or value of the objects subject to the crime or to compensate the injured party, and in which the Public Prosecution determines that the matter requires taking precautionary measures against the accused's funds, including preventing him from disposing of them or managing them, it must submit the matter to the competent criminal court requesting a ruling to that effect to ensure the implementation of any fine, return or compensation that may be ruled upon."
The Public Prosecutor may, when necessary or in a state of urgency, temporarily order the accused to be prevented from disposing of or managing his funds. The order preventing management must include the appointment of someone to manage the seized funds. In all cases, the Public Prosecutor must present the order of prevention to the competent criminal court within seven days at most from the date of its issuance, requesting a ruling to prevent disposal or management, otherwise the order will be considered null and void…."

[15] See paragraph 5 of Article 14 of the International Covenant on Civil and Political Rights.

[16] See Article (419 bis 9) of the Criminal Procedure Code.

assistants of the Public Prosecution to conduct a complete investigation of a case and permits a member of the Public Prosecution, at the rank of Assistant Prosecutor or higher, to delegate one of the judicial officers to carry out investigative tasks, including questioning the defendant, in cases where time is of the essence and the delegated task requires it.

While Article 70 of the current Criminal Procedure Law permits an investigating judge to assign a member of the Public Prosecution or a judicial officer to perform a specific investigative task, it excludes the questioning of the defendant. However, the new draft law expands this delegation and allows judicial officers to question the defendant, which conflicts with the principle of separation of powers. If we already criticize the current law for allowing the Public Prosecution to combine powers such as investigation, indictment, and referral, granting judicial officers the authority to investigate and question the defendant, even as an exception, undermines the guarantees of a fair trial. This is especially concerning since judicial officers, according to Article 23 of the Criminal Procedure Law, include police officers, security personnel, as well as local chiefs and elders, the Director of the General Administration of Railway and Transportation Police, and inspectors from the Ministry of Tourism[17].

B. Allowing Individuals Other Than Public Prosecution Clerks to Draft or Record Investigation Reports After Swearing an Oath

Article 66 of the draft law permits the investigating Public Prosecution member to delegate any writer, not necessarily from the Public Prosecution clerks, to draft the investigation report. The current law requires the investigating judge or Public

[17] Article 63 of the draft of Criminal Procedure Code states that "one of the Public Prosecution's assistants may be assigned to investigate an entire case. A member of the Public Prosecution, at least at the rank of Assistant Public Prosecutor, may also delegate one of the judicial police officers to carry out one or more specific investigation tasks other than interrogating the accused. The delegated judicial police officer shall have, within the limits of his delegation, all the powers granted to the one who delegated him, and he may carry out any other investigation task and interrogate the accused in cases where there is a fear of running out of time, provided that it is related to the task delegated to him and necessary to reveal the truth."

Prosecution member to be accompanied by a court clerk who signs the reports along with them. Article 73 of the current law states: "The investigating judge must be accompanied by a court clerk in all proceedings, who signs the reports with him, and these reports, along with the orders and other documents, are kept in the court registry."

However, the draft law allows the Public Prosecution member to, when necessary, delegate any person, after administering an oath to them, to draft and record the reports. Article 66 of the draft law states: "The Public Prosecution member must be accompanied by a Public Prosecution clerk during the investigation to draft or record the necessary reports, and when necessary, may delegate another person to do so after administering an oath. The Public Prosecution member and the clerk must sign each page of these reports."

From reading Articles 63 and 66 of the draft law, it becomes clear that judicial officers are allowed to question the defendant and delegate any person to draft the interrogation and investigation report with the defendant—after swearing them in! The danger of this amendment lies in the potential use of police officers to draft reports in cases where they are considered adversaries, which compromises the neutrality of the investigation.

C. No Obligation for the Public Prosecution to Interrogate the Defendant Within 24 Hours of Arrest

Article 36 of the current Criminal Procedure Law requires the Public Prosecution to interrogate the defendant who was arrested by a judicial officer within 24 hours. Afterward, the Public Prosecution must either issue an arrest warrant or release the defendant. Article 36 states: "The judicial officer must immediately hear the statement of the arrested defendant, and if the defendant does not provide evidence of innocence, the officer must send them within 24 hours to the

competent Public Prosecution. The Public Prosecution must interrogate the defendant within 24 hours, then either order their arrest or release."

However, the new draft law deletes the last paragraph of Article 36. Article 40 of the draft law states: "The judicial officer must immediately inform the arrested defendant of the reason for restricting their freedom, the charges against them, hear their statement, inform them of their rights in writing, and allow them to contact their family and lawyer. If the defendant does not provide evidence disproving the charges, the judicial officer must send them within 24 hours of their detention to the competent investigative authority."

There is no obligation for the Public Prosecution to interrogate the arrested defendant within a specified time frame, which violates Article 54 of the constitution, which requires the investigative authority to begin the investigation with the detained individual within 24 hours of their detention.

Moreover, even in cases of terrorism, Article 40 of the Anti-Terrorism Law obliges the judicial officer to present the detained individual along with the report to the Public Prosecution or the competent investigative authority within 24 hours. The article states: "The judicial officer, when a threat of a terrorist crime arises and when necessary to confront this threat, has the right to collect information about it, search for its perpetrators, and detain them for no more than 24 hours. The judicial officer must record these actions in a report and present the detained individual along with the report to the Public Prosecution or the competent investigative authority, as the case may be..."

D. Prohibition on the Lawyer Speaking, Except for Presenting Defenses and Requests, Without Permission from the Public Prosecution Member

Article 72 of the draft law prohibits the defendant's lawyer from speaking without the permission of the Public Prosecution member. The article states: "Parties or their representatives may present their defenses and requests to the Public

Prosecution member. Apart from that, the representative may not speak unless permitted by the Public Prosecution member, and if permission is denied, this must be recorded in the report."

This provision undermines the independence of the legal profession, which the constitution guarantees in Article 98, stating: "The right to defense, either in person or by proxy, is guaranteed. The independence of lawyers and the protection of their rights are guarantees for the right to defense. The law ensures access to justice and legal defense for those who are financially unable."

Thus, the draft law undermines the defendant's right to defense, the independence of their lawyer, and the right to ask questions during the investigation with the client (the defendant).

E. Granting the Public Prosecution Member Discretionary Authority to Deny the Defendant's Lawyer the Right to Question the Witness Based on Vague Criteria

Article 92 of the draft law states: "The Public Prosecution member may always refuse to allow any question to be directed to the witness that is unrelated to the case or that, in its form, is harmful to others. The Public Prosecution member must prevent the witness from making any statements, direct or indirect, or any gestures that would disturb their thoughts or intimidate them."

The Public Prosecution member has the discretion to refuse any question directed to the witness if they deem it unrelated to the case or harmful to others. This is a vague and imprecise criterion that grants the Public Prosecution member the authority to refuse any question to the witness.

This also undermines the defendant's right to defense, the independence of the legal profession, and the right of the lawyer to question the witness, which is constitutionally guaranteed in Article 98 of the Egyptian Constitution.

F. Granting the Public Prosecution Member the Right to Deny the Defendant's Lawyer Access to the Investigation

Article 105 of the draft law states: "The defendant's lawyer must be allowed to review the investigation at least one day before the interrogation or confrontation unless the Public Prosecution member decides otherwise."

Although the law requires that the defendant's lawyer be allowed to review the investigation at least one day before the interrogation or confrontation, the text concludes with an exception that grants the Public Prosecution member the authority to deny the lawyer this access, based on their discretion, which opens the door to abuse and misuse of power.

Therefore, the draft law grants the Public Prosecution member the right to deny the defendant's lawyer access to the investigation before the interrogation or confrontation, without stating the reasons for this, which undermines the defendant's right to defense. This allows the defendant to be interrogated or confronted with other defendants or witnesses without their lawyer having access to the investigation conducted with them, which constitutes a violation of the right to defense and fair and just trial standards.

G. Granting the Public Prosecution Broad Authority to Issue Orders for Recording Conversations in Private Places

Article 116 of the draft law grants the Chief Prosecutor, in investigations related to felonies harmful to state security from both external and internal threats, explosives, bribery, embezzlement, misappropriation of public funds, and treachery, the authority to issue orders for recording conversations that take place in private places. The first paragraph of the article states: "Members of the Public Prosecution at the rank of Chief Prosecutor or higher, in investigations related to felonies specified in the first, second, second bis, third, and fourth chapters of the second book of the Penal Code, in addition to the powers granted to the Public

Prosecution, have the authority to issue a reasoned order, for no more than thirty days, to seize letters, messages, telegrams, newspapers, publications, and parcels, monitor wired and wireless communications, social media accounts and their various contents that are not available to the public, email, and text, audio, or video messages on phones and devices and any other technological means, seize the media containing them, or record conversations that took place in a private place whenever this is useful for revealing the truth..." This infringes on the privacy protected by the constitution.

Under the current law, the authority to issue an order to record conversations that took place in a private place is held by the investigating judge. However, the new draft law grants this authority to the Chief Prosecutor, compromising impartiality and violating Article 57 of the Constitution, which states: "Private life is inviolable and protected. Postal, telegraphic, electronic communications, and telephone conversations, and other forms of communication are confidential, and their confidentiality is guaranteed. They may not be confiscated, examined, or monitored except by a reasoned judicial order for a specified period and in cases specified by law. The state is also committed to protecting the right of citizens to use public communication means in all its forms, and it may not be arbitrarily suspended, disrupted, or denied to citizens. The law regulates this."

H. Reduction of the Maximum Duration of Pretrial Detention

The maximum duration of pretrial detention has been reduced in the new draft Criminal Procedure Law. The maximum duration is now set at four months for misdemeanors instead of six months, twelve months for felonies instead of eighteen months, and eighteen months if the penalty for the crime is life imprisonment or death instead of two years, according to the last paragraph of Article 123 of the draft law[18].

[18] The last paragraph of Article 123 of the draft of Code of Criminal Procedure states that “In all cases, the period of pretrial detention during the preliminary investigation stage and all other stages of the criminal case may not exceed

Reducing the maximum duration of pretrial detention is the primary topic the Egyptian government is promoting as evidence of the state's commitment to fair trial guarantees and human rights standards. However, reducing the duration alone will not have a significant impact on the practical application of pretrial detention, which the state uses as a punishment rather than as an exceptional measure for the benefit of the investigation, particularly to oppress political opponents. Additionally, the draft law retains the broad powers of the Public Prosecution to extend pretrial detention, especially those found in Article 206 bis, which grants the Public Prosecution at the rank of Chief Prosecutor the same authority as the misdemeanor court of appeal convened in the chamber regarding the durations of pretrial detention for crimes specified in the first section of the second chapter of the second book of the Penal Code, including terrorism and overthrowing the government. The draft law retains this provision in Article 116. Moreover, we cannot overlook the continued application of special laws that limit the application of the Criminal Procedure Law, such as the Anti-Terrorism Law No. 94 of 2015, which complicates judicial jurisdiction for terrorism circuits—these circuits violate many fair trial guarantees, treat pretrial detention as a punishment, and do not adhere to the maximum duration stipulated in the current Criminal Procedure Law. Therefore, the Anti-Terrorism Law, which includes severe violations of the constitution and international human rights charters, remains in force and will continue to do so even after the issuance of the new Criminal Procedure Law, in addition to the Law on the Protection of Public and Vital Facilities, which expands the prosecution of civilians before military courts[19]. In

one-third of the maximum custodial sentence, so that it does not exceed four months in misdemeanors, twelve months in felonies, and eighteen months if the penalty prescribed for the crime is life imprisonment or the death penalty."

[19] Article 116 of the draft of Criminal Procedure Code stipulates that "members of the Public Prosecution Office, at least at the level of Chief Prosecutor, shall have the authority to investigate the felonies stipulated in Chapters 1, 2, 2 bis, 3 and 4 of Book 2 of the Penal Code, in addition to the powers assigned to the Public Prosecution Office, to authorize, by reasoned order, for a period not exceeding thirty days, the seizure of letters, messages, telegrams, newspapers, publications and parcels, and to monitor wired and wireless communications, social media accounts and their various contents that are not available to the public, e-mail, text messages, audio or video messages on phones and devices and any other technical means, and to seize the media containing them, or to make recordings of conversations that took place in a private place

addition to circumventing the texts of the law and the constitution, which is clearly evident in recycling convicts in cases of a political nature in new fictitious cases before the expiry of their sentences, so that the accused finds himself facing a never-ending stream of cases. Therefore, the problem was not in the laws as much as the basic problem lies in the will of the authority itself, which for ten decades has been issuing amendments and new laws that violate the guarantees of a fair trial guaranteed by the constitution as well as the international charter of human rights.

I. Compensation for Pre-trial Detention

The bill introduces a special chapter on compensation for pre-trial detention, located in Chapter 2 of Book 6, in Articles 523 to 524. It stipulates that anyone who has been remanded in custody is entitled to compensation in the following cases:

1- If the offense charged is punishable by a fine or a misdemeanor punishable by imprisonment for less than one year, and the accused has a fixed and known residence in the Arab Republic of Egypt.
2- If a final order is issued that there is no reason to initiate criminal proceedings due to the invalidity of the incident.

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whenever this is useful in revealing the truth. The order referred to in the first paragraph of this article may be renewed for one or more similar periods.
These members shall also have, in investigating the felonies referred to in the first paragraph of this article, except for the felonies stipulated in Chapter 3 of Book 2 of the Penal Code, the authority of a partial judge with regard to the period of pretrial detention.
In addition, they shall have the authority of the Court of Misdemeanor Appeal, sitting in the deliberation chamber, as stipulated in Article 122 of this law, when investigating the crimes stipulated in the first section of the second chapter of the second book of the Penal Code, provided that the period of imprisonment does not exceed fifteen days each time.
Article 206 bis of the current Criminal Procedure Code stipulates that "members of the Public Prosecution Office, at least at the rank of Chief Prosecutor, shall have - in addition to the powers assigned to the Public Prosecution Office - the powers of an investigating judge in investigating the felonies stipulated in Chapters 1, 2, 2 bis and 4 of Book 2 of the Penal Code. They shall also have the powers of a misdemeanor appeals court sitting in the advisory chamber set forth in Article (143) of this law in investigating the crimes stipulated in the first section of the aforementioned Chapter Two, provided that the period of detention shall not exceed fifteen days each time. These members of that rank shall have the powers of an investigating judge, except for the periods of pretrial detention stipulated in Article (142) of this law, in investigating the felonies stipulated in Chapter 3 of Book 2 of the Penal Code."

3- If a final judgment is issued acquitting him of all charges attributed to him, based on the fact that the incident is not punishable, or is not true, or any other reasons other than cases of nullity or doubt about the validity of the accusation or reasons for justification or exemption from punishment or pardon, or the absence of responsibility.

The bill also stipulates the right of someone who has served a custodial sentence and then a final judgment is issued to annul this judgment, to compensation, in the event that the incident is not punishable, or is not true, or any other reasons other than cases of nullity or doubt about the validity of the accusation or reasons for justification or exemption from punishment or pardon, or the absence of responsibility.

In addition, the draft law stipulates that the Public Treasury shall bear the compensation for pre-trial detention and set a condition for the applicant to obtain compensation, provided that the period for which compensation is claimed was not spent in pre-trial detention or serving a custodial sentence in connection with another case or cases and that the execution of the sentence is the subject of the compensation request.

The Public Treasury shall bear the compensation referred to in this Article, provided that the claimant has not been remanded in custody or has served a custodial sentence in connection with another case or cases for a period similar to or exceeding the period of pre-trial detention or the execution of the sentence that is the subject of the compensation request. Article 523.

J. Granting Judicial Officers Discretionary Authority to Investigate Defendants

The new draft law includes Article 63, which grants judicial officers much broader powers than they currently possess. This article allows Public Prosecution assistants to investigate an entire case and permits a member of the Public Prosecution, at the rank of Assistant Prosecutor or higher, to delegate a judicial

officer to carry out investigative tasks, including questioning the defendant, in situations where time is of the essence and the task at hand requires it.

While Article 70 of the current Criminal Procedure Law permits an investigating judge to delegate certain investigative tasks to a member of the Public Prosecution or a judicial officer, it excludes the questioning of the defendant. However, the new draft law expands this delegation, allowing judicial officers to question the defendant, which conflicts with the principle of separation of powers. If the current law is already criticized for allowing the Public Prosecution to combine powers such as investigation, indictment, and referral, granting judicial officers the authority to investigate and question the defendant—even as an exception—undermines the guarantees of a fair trial. This is particularly concerning since, according to Article 23 of the Criminal Procedure Law, judicial officers include police officers, security personnel, local chiefs, and elders, the Director of the General Administration of Railway and Transportation Police, and inspectors from the Ministry of Tourism.

K. Allowing Individuals Other Than Public Prosecution Clerks to Draft or Record Investigation Reports After Swearing an Oath

Article 66 of the draft law permits the investigating Public Prosecution member to delegate any writer, not necessarily from the Public Prosecution clerks, to draft the investigation report. The current law requires the investigating judge or Public Prosecution member to be accompanied by a court clerk who signs the reports. Article 73 of the current law states: "The investigating judge must be accompanied by a court clerk in all proceedings, who signs the reports with him, and these reports, along with the orders and other documents, are kept in the court registry."

However, the draft law allows the Public Prosecution member to, when necessary, delegate any person, after administering an oath to them, to draft and record the reports. Article 66 of the draft law states: "The Public Prosecution member must

be accompanied by a Public Prosecution clerk during the investigation to draft or record the necessary reports, and when necessary, may delegate another person to do so after administering an oath. The Public Prosecution member and the clerk must sign each page of these reports."

From reading Articles 63 and 66 of the draft law, it becomes clear that judicial officers are allowed to question the defendant and delegate any person to draft the interrogation and investigation report with the defendant—after swearing them in! The danger of this amendment lies in the potential use of police officers to draft reports in cases where they are considered adversaries, which compromises the neutrality of the investigation.

L. No Obligation for the Public Prosecution to Interrogate the Defendant Within 24 Hours of Arrest

Article 36 of the current Criminal Procedure Law requires the Public Prosecution to interrogate the defendant who was arrested by a judicial officer within 24 hours. Afterward, the Public Prosecution must either issue an arrest warrant or release the defendant. Article 36 states: "The judicial officer must immediately hear the statement of the arrested defendant, and if the defendant does not provide evidence of innocence, the officer must send them within 24 hours to the competent Public Prosecution. The Public Prosecution must interrogate the defendant within 24 hours, then either order their arrest or release."

However, the new draft law deletes the last paragraph of Article 36. Article 40 of the draft law states: "The judicial officer must immediately inform the arrested defendant of the reason for restricting their freedom, the charges against them, hear their statement, inform them of their rights in writing, and allow them to contact their family and lawyer. If the defendant does not provide evidence disproving the charges, the judicial officer must send them within 24 hours of their detention to the competent investigative authority."

There is no obligation for the Public Prosecution to interrogate the arrested defendant within a specified time frame, which violates Article 54 of the constitution, which requires the investigative authority to begin the investigation with the detained individual within 24 hours of their detention.

Moreover, even in cases of terrorism, Article 40 of the Anti-Terrorism Law obliges the judicial officer to present the detained individual along with the report to the Public Prosecution or the competent investigative authority within 24 hours. The article states: "The judicial officer, when a threat of a terrorist crime arises and when necessary to confront this threat, has the right to collect information about it, search for its perpetrators, and detain them for no more than 24 hours. The judicial officer must record these actions in a report and present the detained individual along with the report to the Public Prosecution or the competent investigative authority, as the case may be..."

M. Prohibition on the Lawyer Speaking, Except for Presenting Defenses and Requests, Without Permission from the Public Prosecution Member

Article 72 of the draft law prohibits the defendant's lawyer from speaking without the permission of the Public Prosecution member. The article states: "Parties or their representatives may present their defenses and requests to the Public Prosecution member. Apart from that, the representative may not speak unless permitted by the Public Prosecution member, and if permission is denied, this must be recorded in the report."

This provision undermines the independence of the legal profession, which the constitution guarantees in Article 98, stating: "The right to defense, either in person or by proxy, is guaranteed. The independence of lawyers and the protection of their rights are guarantees for the right to defense. The law ensures access to justice and legal defense for those who are financially unable."

Thus, the draft law undermines the defendant's right to defense, the independence of their lawyer, and the right to ask questions during the investigation with the client (the defendant).

N. Granting the Public Prosecution Member Discretionary Authority to Deny the Defendant's Lawyer the Right to Question the Witness Based on Vague Criteria

Article 92 of the draft law states: "The Public Prosecution member may always refuse to allow any question to be directed to the witness that is unrelated to the case or that, in its form, is harmful to others. The Public Prosecution member must prevent the witness from making any statements, direct or indirect, or any gestures that would disturb their thoughts or intimidate them."

The Public Prosecution member has the discretion to refuse any question directed to the witness if they deem it unrelated to the case or harmful to others. This is a vague and imprecise criterion that grants the Public Prosecution member the authority to refuse any question to the witness.

This also undermines the defendant's right to defense, the independence of the legal profession, and the right of the lawyer to question the witness, which is constitutionally guaranteed in Article 98 of the Egyptian Constitution.

O. Granting the Public Prosecution Member the Right to Deny the Defendant's Lawyer Access to the Investigation

Article 105 of the draft law states: "The defendant's lawyer must be allowed to review the investigation at least one day before the interrogation or confrontation unless the Public Prosecution member decides otherwise."

Although the law requires that the defendant's lawyer be allowed to review the investigation at least one day before the interrogation or confrontation, the text concludes with an exception that grants the Public Prosecution member the

authority to deny the lawyer this access, based on their discretion, which opens the door to abuse and misuse of power.

Therefore, the draft law grants the Public Prosecution member the right to deny the defendant's lawyer access to the investigation before the interrogation or confrontation, without stating the reasons for this, which undermines the defendant's right to defense. This allows the defendant to be interrogated or confronted with other defendants or witnesses without their lawyer having access to the investigation conducted with them, which constitutes a violation of the right to defense and fair and just trial standards.

P. Granting the Public Prosecution Broad Authority to Issue Orders for Recording Conversations in Private Places

Article 116 of the draft law grants the Chief Prosecutor, in investigations related to felonies harmful to state security from both external and internal threats, explosives, bribery, embezzlement, misappropriation of public funds, and treachery, the authority to issue orders for recording conversations that take place in private places. The first paragraph of the article states: "Members of the Public Prosecution at the rank of Chief Prosecutor or higher, in investigations related to felonies specified in the first, second, second bis, third, and fourth chapters of the second book of the Penal Code, in addition to the powers granted to the Public Prosecution, have the authority to issue a reasoned order, for no more than thirty days, to seize letters, messages, telegrams, newspapers, publications, and parcels, monitor wired and wireless communications, social media accounts and their various contents that are not available to the public, email, and text, audio, or video messages on phones and devices and any other technological means, seize the media containing them, or record conversations that took place in a private place whenever this is useful for revealing the truth..." This infringes on the privacy protected by the Constitution.

Q. Court of Appeal's Right to Waive the Hearing of Witnesses Not Heard by the Trial Court

The draft law empowers the appellate court to forgo the hearing of witnesses who should have testified before the trial court. Previously, Article 413 of the Criminal Procedure Code states that: "The Court of Appeal shall, itself or through a delegated judge, hear the witnesses who should have been heard before the court of first instance and shall rectify any other deficiencies in the investigation procedures." However, Article 392 of the bill now grants the appellate court the discretion to dispense with hearing such witnesses. It empowers the court to assess the necessity of hearing these witnesses and the relevance of their testimony to the case's resolution. The article states: "The Court of Appeal shall, itself or through a delegated judge, hear the witnesses who should have been heard before the court of first instance, whenever it deems it necessary for adjudicating the case. It may also rectify any other deficiencies in the investigation procedures."

R. All Misdemeanor Judgments Are Considered to Be Judgments of the Presence

It is clear from reading Articles 71, 235, and 238[20] of the draft law that the accused who could not be notified in person and failed to attend the session will be notified at his residence (as stated on the national ID card) or via mobile phone

[20] Article 71: The victim, the civil claimant, and the person responsible for them must designate a chosen address in the place where the headquarters of the Public Prosecution Office is located where the investigation is being conducted, or designate a mobile phone number or e-mail address to notify him. The accused must, upon his appearance in any procedure taken by the investigating authority, designate a chosen address, a mobile phone number, or an e-mail address to notify him. If any of the persons stipulated in the first and second paragraphs of this article do not designate the data stated therein, or if this data is incomplete or incorrect, or if it has changed and he has not been notified of it, then his notification to the clerk's office shall be valid. Article 235 of the bill states that: "If the party who is required to appear according to the law does not appear in person on the day specified in the summons paper, or if a representative does not appear on his behalf, a judgment may be rendered in his absence after reviewing the papers, unless the summons paper was delivered to him in person or in the manner stipulated in the first and second paragraphs of Article 71 of this bill and it becomes clear to the court that there is no justification for his failure to appear, then the judgment shall be considered in his presence." Article 238 states that: "In the cases stipulated in Articles 235, 236, and 237 of this law, in which the judgment is considered to be in the presence of the parties, the court must investigate the case before it as if the opponent were present."

or e-mail, and as a result the ruling will be considered in absentia, which does not allow him to appeal the ruling issued against him according to Article 376[21] of the draft law, which deprives the accused of a degree of litigation. The notification methods stipulated in Article 71 do not guarantee the accused's real knowledge, which results in all misdemeanor rulings being considered in absentia, thus clearly violating the presumption of innocence, as the accused who is not guaranteed the right to defend himself will, in most cases, be convicted with the doors of appeal closed in his face, if he does not know the ruling issued against him before the expiry of the deadlines[22].

S. Regulation of travel ban orders in Articles 147 to 149

The Egyptian Constitution is keen on the citizen's freedom of movement and stipulates that he may not be prevented from leaving the country's territory, except by a reasoned judicial order in the cases specified by law. The Constitution requires in Article 62 that the ban on movement and travel be in specific cases pursuant to law. The current legal basis for issuing travel ban orders is the decision

[21] Article 376 of the bill stipulates that: "The objection to judgments in absentia issued in misdemeanors shall be accepted by the accused or the person responsible for civil rights within ten days following his notification of the judgment in absentia, other than the distance period stipulated in the Civil and Commercial Procedures Law. This notification may be in summary form on a form issued by a decision of the Minister of Justice. In all cases, the notification to the administrative authority shall not be taken into account. However, if the notification of the judgment has not been made to the accused, the time limit for objection with respect to the penalty imposed shall begin from the day he learns of the notification, and the objection shall be permissible until the case expires with the passage of time. The notification of judgments in absentia and considered in person may be made by a public authority officer in the cases stipulated in the last paragraph of Article 61 of this bill."

[22] The first paragraph of Article 238 states that: "In the cases stipulated in Articles 235, 236, and 237 of this law in which the judgment is considered in absentia, the court must investigate the case before it as if the opponent were present." The first paragraph of Article 235 states that: "If the opponent who is required to appear according to the law does not appear in person on the day specified in the summons paper, or if a representative does not appear on his behalf, the judgment may be rendered in his absence after reviewing the papers, unless the summons paper has been delivered to him in person or in the manner stipulated in the first and second paragraphs of Article (71) of this law and it becomes clear to the court that there is no justification for his failure to appear, then the judgment shall be deemed in absentia." Article 71 of the draft law states that: "The victim, the civil claimant, and the person responsible for them must designate a chosen address in the place where the prosecution office is located where the investigation is being conducted, or designate a mobile phone number or email address to notify him. The accused, upon his appearance in any procedure taken by the investigating authority, must designate a chosen address, a mobile phone number, or an email address to notify him. If any of the persons stipulated in the first and second paragraphs of this article do not designate the data stated therein, or if this data is incomplete or incorrect, or if it has changed and he has not been notified of it, then his notification to the clerk's office shall be valid."

of the Minister of Interior Decree No. 2214 of 1994, which is a constitutional violation because the constitutional legislator is required to specify the cases of travel ban pursuant to law.

(A) Legal regulation of travel ban It was necessary for the legislator to regulate travel ban orders in the Criminal Procedure Code. Despite the seriousness of the travel ban order due to its restriction of the freedom of movement stipulated by the Constitution, in light of the current situation, we find that there is a legislative vacuum regulating these orders, as there is no law regulating it currently. In light of this situation, the executive authority, represented by the Minister of Interior, issued a decision regarding the organization of lists of banned persons (Decision of the Minister of Interior No. 2214 of 1994 regarding the organization of lists of banned persons), by virtue of which a number of entities and individuals were granted the authority to include them on lists of those banned from travel or waiting to arrive.

(B) Request to issue a travel ban order In light of this decision, the various courts, the Public Prosecutor, the Assistant Minister of Justice for Illicit Gains, the General Intelligence, the Military Intelligence, the Administrative Control Authority, the Military Public Prosecutor, and the National Security and Public Security agencies at the Ministry of Interior may request the inclusion of any name on the lists of those banned from travel, by sending it to the Travel Documents, Immigration and Nationality Authority, which is responsible for following up on the implementation of the decisions, and informing those agencies of any amendments to those lists. As for the new draft Criminal Procedures Law, the legislator has expanded the definition of who has the right to submit a request to ban travel, allowing any interested

party to submit a request to the Public Prosecutor or his delegate to request the issuance of a travel ban order. (Article 147 of the draft)[23].

(C) Crimes for which a travel ban order may be issued

The legislator also expanded the definition of crimes for which a travel ban order may be issued in the draft law, stipulating that an order may be issued to prevent the accused from traveling outside the country or to place his name on the watch lists in felonies or misdemeanors punishable by imprisonment. (Article 147 of the draft law)

(D) Appeal against a travel ban order

The legislator recognized the right of the person against whom a travel ban order or inclusion on the watch lists was issued to appeal this order before the competent criminal court, within fifteen days from the date of his knowledge of the issuance of the decision. However, he stipulated that the appeal may not be re-filed if it is rejected before three months have passed from the date of rejection of the previous appeal (Article 148 of the draft law)[24].

[23] Article (147) of the draft stipulates that: The Public Prosecutor or his delegate may, of his own accord or upon the request of the interested parties, and the competent investigating judge, when there is sufficient evidence of the seriousness of the accusation in a felony or misdemeanor punishable by imprisonment, issue a reasoned order to prevent the accused from traveling outside the country or to place his name on the watch lists for a period of one year, renewable for one or more similar periods, for a matter required by the requirements of investigations or the proper conduct of trial procedures, and to ensure the implementation of any penalties that may be decided. The Public Prosecutor or his delegate may, of his own accord or upon the request of any interested party, issue a reasoned order to include on the lists of those prohibited from traveling or watch lists the convicted persons against whom execution is requested, and the accused and convicted persons whom the competent foreign judicial authorities request to be extradited or tried.

[24] Article (148) of the draft stipulates that: "A person banned from travel, or a person on the watch lists, or his representative may appeal this order before the competent criminal court, held in the consultation chamber, within fifteen days from the date of his knowledge. The appeal against the ban or listing order may not be re-applied before three months have passed from the date of rejection of the previous appeal. The appeal shall be made by a report deposited with the clerk of the competent criminal court. The president of the court shall set a session to consider the appeal, to which the appellant and the Public Prosecution shall be notified. The court shall decide on the appeal within a period not exceeding fifteen days from the date of the report, with a reasoned ruling after hearing the statements of the appellant or his representative and the Public Prosecution. To this end, it may take whatever measures or investigations it deems necessary in this regard."

(E) Permissibility of reversing the travel ban order or inclusion on the watch lists

The legislator authorized the investigating authority issuing the decision to revoke it at any time, even for a specific period. The Public Prosecutor may, for health reasons, authorize the person against whom a travel ban has been issued to travel to a specific country or countries for a specified period, if he provides guarantees that he will return to the country upon the expiration of the permit period. (Article 149 of the draft)[25].

(F) End of the travel ban

The travel ban ends with the issuance of a decision that there is no reason to file a criminal case or with the issuance of a final judgment of acquittal, whichever is closer (Article 149 of the draft).

T. Protection of victims, witnesses, accused and informants

"The legislator's regulation concerning the protection of victims, witnesses, accused, and informants arrived over a decade after the constitutional mandate. Article 96 of the constitution obligated the legislator to enact a law whereby the state would furnish protection to these individuals. The draft law's introduction of a dedicated section on protecting victims, witnesses, defendants, and informants within the first chapter of the sixth book (Articles 517 to 522) represents the Egyptian criminal legislator's inaugural attempt to establish rules governing how to provide the utmost protection to witnesses. This fulfills the constitutional obligation enshrined in Article 96, which states: "The accused is innocent until

[25] Article (149) of the draft law states that: "The investigating authority that initially issued the order may at any time revoke the order issued by it, and it may also amend it by removing his name from the travel ban or arrival watch lists for a specific period if necessary. The Public Prosecutor may, for considerations he deems appropriate, including health conditions, grant any of those whose names are included on the travel ban lists, based on his request, his agent, or one of his relatives up to the fourth degree, a permit to travel to a specific country or countries for a specific period, if he provides guarantees that will allow him to return to the country upon the expiration of the permit period. In all cases, the travel ban ends with the issuance of a decision that there is no reason to file a criminal case or with the issuance of a final judgment of acquittal, whichever is closer."

proven guilty in a fair court of law, which provides guarantees for him to defend himself. The law shall regulate the appeal of felony sentences. The state shall provide protection to the victims, witnesses, accused and informants as necessary and in accordance with the law".

Under the current law, the authority to issue an order to record conversations that took place in a private place is held by the investigating judge. However, the new draft law grants this authority to the Chief Prosecutor, compromising impartiality and violating Article 57 of the Constitution, which states: "Private life is inviolable and protected. Postal, telegraphic, electronic communications, and telephone conversations, and other forms of communication are confidential, and their confidentiality.

The legislator had previously stipulated - albeit timidly - to provide such protection through Article 113 bis of the current law, which was added by Article 1 of Law No. 177 of 2020.

It prohibited judicial officers or investigation authorities from disclosing the data of victims in crimes of indecent assault and corruption of morals stipulated in Chapter Four of Book Three of the Penal Code, or sexual harassment crimes stipulated in Articles 306 bis A and 306 bis B, as well as crimes of child endangerment stipulated in Article 96 of the Child Law.

However, the legislator in the current law did not stipulate any penalty or sanction in case judicial officers or investigation authorities violate this prohibition.

In the currently proposed bill, the legislator allowed the witness to use the police station of their place of residence or workplace as their address in cases where there is fear that one of the accused or their relatives might know the witness's

place of residence and thus may intimidate or harm them due to their testimony (Article 518 of the bill)[26].

It also allowed, in cases where hearing a person's testimony may pose a danger to their life or expose them to a definite risk, to hear their statements "without mentioning their data at all", provided that a sub-file of the case is created that specifically identifies the true identity of the witness and their complete data, and that this file is under the authority of the court or the competent investigation authority only (Article 519 of the bill)[27].

In addition, it allowed the use of all technical means that allow hearing witnesses' statements remotely, in cases where the accused requests to confront or discuss with the person whose data is ordered to be concealed, to ensure their identity is not revealed.

The bill allowed the accused or their agent to appeal the order issued by the Public Prosecutor or the investigating judge to conceal the witness's data, in cases where revealing the person's identity is indispensable for exercising the rights of defense, before a first-instance criminal court convened in a consultation room, within ten days from the date of being confronted with the content of this testimony. The court decides on the appeal after hearing the concerned parties with a final reasoned decision, without prejudice to the right of the trial court to cancel this order or summon this person to hear their statements (Article 520 of the bill)[28].

[26] Article 518 of the bill stipulates that: "A witness may, based on the permission of the Public Prosecution or the competent investigating judge, take the police department to which he belongs as his place of residence or his place of work as his address."

[27] Article 519 of the bill stipulates that: "In cases where hearing the statements of any person would expose his life, safety, or the safety of a member of his family to danger, the court of subject matter, the public prosecutor, or the investigating judge may, upon the request of this person or one of the judicial police officers, order that his statements be heard without mentioning his information, provided that a sub-file for the case is created that includes a specification of his identity and information.

[28] Article 520 of the bill stipulates that: "In cases where revealing the identity of a person is indispensable for exercising the rights of defense, the accused or his representative may appeal the order issued by the public prosecutor or the investigating judge to conceal his information before a first-degree criminal court convened in a consultative chamber, within ten days from the date of confronting him with the contents of this testimony. The court shall decide on the appeal after hearing the interested parties with a final, reasoned decision, without prejudice to the right of the subject court to cancel this order or summon this person to hear his statements."

The bill allowed the accused to request to confront or discuss with the person whose data is ordered to be concealed, in a way that does not reveal their identity, according to remote investigation and trial procedures (Article 521 of the bill)[29].

The bill addressed the legislative shortcoming in the current law by stipulating a penalty for anyone who discloses any data about the person whose identity is ordered to be concealed, with imprisonment and a fine of not less than fifty thousand pounds or one of these two penalties. The penalty shall be rigorous imprisonment if the crime is committed in execution of a terrorist purpose, and in all cases, its penalty shall be death or life imprisonment if the act results in the death of a person (Article 522 of the bill)[30].

On the other hand, concealing the witness's data and allowing the use of technical means to hear witnesses' statements remotely prevent the defense of the accused from discussing them and the possibility of confronting them with the accused. It is even possible for convictions to be issued based on the testimony of an unknown person, as evidence in the case.

U. Remote Investigation and Trial Procedures

The bill introduced regulations for remote investigation and trial procedures in Part Three of Book Six in Articles 525 to 532. The bill allowed the investigation authority or the competent court, as the case may be, to take all or some of the investigation or trial procedures remotely with the accused, witnesses, victims, experts, civil rights claimants, and those responsible for them. It also allowed taking the same procedures regarding the consideration of extending pretrial

[29] Article 521 of the bill states that: "The accused may, during the trial, request to confront or discuss the person whose information was ordered to be concealed, in a manner that does not reveal his identity, all in accordance with the remote investigation and trial procedures stipulated in this law."

[30] Article 522 of the bill stipulates that: "Anyone who provides any information about the person whose identity has been ordered to be concealed shall be punished with imprisonment and a fine of not less than fifty thousand pounds, or with one of these two penalties. The penalty shall be rigorous imprisonment if the crime is committed in implementation of a terrorist purpose. In all cases, the penalty shall be death or life imprisonment if the act results in the death of a person."

detention, measures, temporary release, and appealing their orders (Article 526 of the bill)[31].

The bill allowed the accused to object to these procedures in the first session at any degree of litigation, and the competent court decides on the objection by accepting or rejecting it (Article 530 of the bill)[32].

We note here that the competent court that issued the decision to initiate remote trial procedures is the same court that decides on the accused's objection to these procedures. Also, the bill overlooked the right of the accused to appeal the decision issued regarding their objection to these procedures, which violates the right to litigation.

Moreover, in the practical application of video conferencing or remote litigation, especially in detention renewal sessions, over the past years and since the issuance of the Minister of Justice's decision to hold remote trials - after the COVID-19 pandemic crisis[33] - the pace of abuse of defendants and preventing them from direct communication with their lawyers or judges has increased. This has led to increased suffering of defendants and violation of the right of defense, especially in cases of a political nature. Additionally, the defendant's detention is renewed in the same place of detention in a room designated for this technology, and thus they are at the disposal of the security forces of the Ministry of Interior, which poses a double danger to these defendants, especially since most of them are subjected to various forms of torture and ill-treatment by those in charge of

[31] Article 526 of the bill states that: "The competent investigation or trial authority, as the case may be, may take all or some of the remote investigation or trial procedures with the accused, witnesses, the victim, experts, the civil rights claimant, and the person responsible for them, as stipulated in this law. It may take these procedures with regard to considering the matter of extending pretrial detention, measures, temporary release, and appealing its orders. It may, as the case may be, decide to prevent the disclosure of the true identity of witnesses by all appropriate modern means and communication technologies during their testimony, all of which is subject to Article 520 of this law."

[32] Article 530 of the bill stipulates that: "The accused may, in the first session at any level of litigation, object to his failure to appear in person before the competent court, and it shall decide on the objection by accepting or rejecting it."

[33] Minister of Justice Decree No. 8901 of 2021

supervising prisons, which increases the risk of this forming a moral barrier and fear of reporting these assaults[34].

V. Violation of the Principle of Public Trials

The bill codified the violation of the principle of public trials, prohibiting in paragraph 2 of Article 266 the transmission or broadcast of session proceedings except with written approval from the court president after taking the opinion of the public prosecution[35].

Article 267 prohibited the publication of news or information or conducting dialogues and discussions about the sessions[36], and also prohibited dealing with any data or information related to judges and members of the prosecution. It imposed a penalty on those who violate this with imprisonment for a period not exceeding six months and a fine of not less than five thousand pounds and not exceeding ten thousand pounds, or one of these two penalties.

The legislator had added the text of Article 186 bis to the Penal Code, which stipulated punishing anyone who photographed or recorded words or clips or broadcast or published or displayed by any means of publicity the proceedings of a trial session designated for considering a criminal case without permission from the president of the competent court after taking the opinion of the public prosecution.

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[34] For example, detainees and prisoners in Badr Prison are subjected to numerous violations inside the prison, and during detention renewal sessions via video conferencing, as judges completely ignore their complaints and testimonies about the abuses they are subjected to. This has led to several of these detainees attempting suicide as a result of the abuses they are facing, in light of being prevented from communicating with the outside world even during detention renewals and court hearings.

[35] Paragraph 2 of Article 266 of the Draft of the Criminal Procedure Code: "The proceedings of the sessions may not be transferred or broadcast in any way except with the written approval of the head of the department after taking the opinion of the Public Prosecution."

[36] Article 267 of the draft of Criminal Procedures Law stipulates that "it is not permissible to publish news or information or conduct dialogues or discussions about the proceedings of sessions or what took place in them in a dishonest manner or in a manner that would affect the proper administration of justice. It is prohibited to discuss any data or information related to judges, members of the Public Prosecution, witnesses or defendants when the court is considering any of the crimes stipulated in the Anti-Terrorism Law issued by Law No. 94 of 2015. Anyone who violates the provisions of this article shall be punished with the penalty stipulated in Article 186 bis of the Penal Code."

This violates the principle of public trials, which is established by the Constitution in Article 187: "Court sessions are public, unless the court decides to make them secret in consideration of public order or morals. In all cases, the verdict is pronounced in a public session."

It is clear from the constitutional text that the principle is the publicity of court sessions, and the secrecy of sessions is an exception in case the court deems it necessary for public order or morals. However, the bill replaced this principle, making the default prohibition of transmitting or broadcasting session proceedings in all cases, and the exception is the permissibility of broadcasting or transmitting session proceedings after written approval from the court president and taking the opinion of the public prosecution.

4- Conclusion

The Egyptian Commission for Rights and Freedoms sees that the draft of the Criminal Procedures Code is disastrous in many aspects, despite the formal improvements it offers in a few matters, which reflects a legislative trend that may carry many dangers to fundamental rights and freedoms. While the state claims that the aim of the amendments is to expedite litigation procedures and achieve prompt justice, there are serious concerns that the proposed texts, which were submitted to the Parliament without conducting a comprehensive societal dialogue with civil society institutions and professional unions, especially the Bar Association, which is mainly concerned with most of the proposed amendments, may lead to strengthening the dominance of executive authorities at the expense of the constitutional rights of individuals. Among the most controversial points are the proposed expansions in judicial arrest powers, which may open the way for more violations under the cover of the law.

In addition, the amendments related to increasing fines and legal costs raise particular concerns about access to justice for lower-income groups. While reducing the duration of pretrial detention is considered a positive step, the proposed texts may not be sufficient to ensure that this legal tool is not misused. There are also concerns about the possibility of using some texts to restrict press and media freedom, especially regarding the coverage of politically-oriented trials.

The Egyptian Commission also emphasizes that the lack of political will to solve the problem of prolonged pretrial detention and the recycling of trials will not be addressed by reducing pretrial detention periods in the current law, as the proposed bill, despite shortening these periods, does not guarantee the application of the new periods according to it, nor does it prevent the continuation of practices of recycling defendants in new cases to remain in pretrial detention for periods that may extend to years by circumventing the law.

In conclusion, achieving a real balance between improving the efficiency of the judicial system and ensuring the protection of constitutional rights requires a careful and comprehensive review of the proposed amendments, taking into account the views of civil society organizations, legal experts, and partners in achieving justice, namely lawyers, journalists, and human rights defenders. It is necessary that the main objective of this project is to enhance justice in all its dimensions and address current human rights violations rather than increase them, including social and economic justice, and not just expedite the pace of trials. We recommend reconsidering the controversial items mentioned above and others and adopting proposals that ensure the protection of rights and freedoms, the rights of the accused, the rights of defense, and the independence of the judiciary to ensure the security and stability of society.