Egyptian Criminal Procedure Law Bill : A Violation of Criminal Justice Standards

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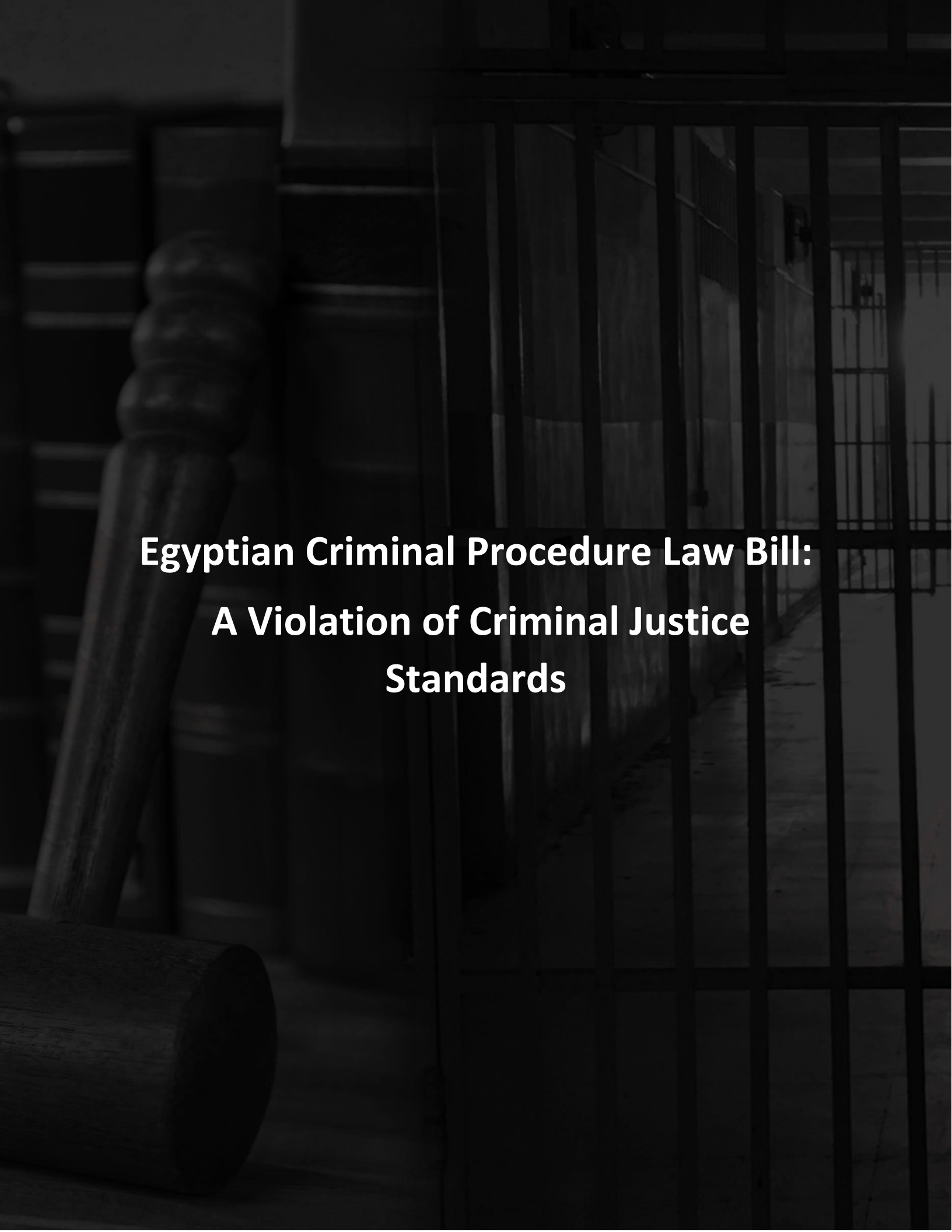

Egyptian Criminal Procedure Law Bill:

A Violation of Criminal Justice Standards

The Egyptian government has submitted a draft law to amend the Criminal Procedure Code, which includes applying fundamental amendments to the law, and adding new provisions that did not exist. The government attributed the goal of the project to several reasons, most important of which are the constitutional entitlements that require litigation at two levels, protection of witnesses, whistleblowers, and victims of crimes, in addition to achieving prompt justice through speedy resolution of cases. The bill is also to carry on other targets including reinforcing the positive role of criminal judges, and benefiting from the development of means of communication.

The truth is that the current Criminal Procedure Law No. 150 of 1950 has undergone many amendments over the past decades, and there is an objective need to enact a new law, especially after the promulgation of the new constitution of 2014. The new constitution guaranteed new entitlements that are not included in the current law, the most important of which are: two-level litigation in felonies, compensation for pre-trial detention. However, the enforcement delay during the past years, from 2014 until now, represents a flagrant violation of the constitution, and the rights it guarantees for the accused citizens. However, this does not mean rushing to make amendments that disturb the stable conditions in litigation or diminish the procedural guarantees of a fair trial.

Passing new legislation for criminal procedures is not an easy task; it’s rather a task greater than the Parliament itself, while recognizing that it is the legislative authority. However, the importance of the law requires in-depth study and great expertise, especially at the comparative level, and full compliance with human rights covenants as an integral component of the Egyptian legislative system. In view of the extreme importance of the subject, we will approach the most important fundamental observations that need to be addressed without drowning into the details of the proposed broad amendments, which require a comprehensive study that tackles all the draft proposed articles in comparison to the constitution and international legitimacy.

The concept of Criminal Justice:

The Criminal Procedure Law represents a balance between society's right to protection from crimes and the rights of the accused citizen, who is presumed innocent until he is convicted by a final judgment. Criminal procedure law protects the accused from the arbitrariness of the authority and also protects them from legal mistakes. Therefore, the criminal procedure law must include substantive safeguards to preserve the inherent human dignity, and ensure that the trial procedures are fair, starting from the arrest of the accused, the investigation procedures, up to the acquittal or conviction verdict. The concept of justice, in this sense, means adherence to constitutional legitimacy so that the law adheres to constitutional rights, as well as to the standards stipulated in international covenants the state has signed and has become one of the components of its legal system.

Before approaching the observations on the proposed draft amendments, we must first point out a major problem in the Egyptian legal system, which is the ramification and multiplicity of laws regulating the same subject matter.

The legal system is supposed to include several basic laws: penalties law, civil law, procedure law, and civil pleadings. After that comes the specific laws that include provisions for specific issues such as insurance, personal status, or pertaining to specific groups such as women, children, workers, and others.

However, the Egyptian legal system is witnessing a major distortion, as the state passed many laws that already fall within the basic laws jurisdiction; there are many criminal cases outside the Penal Code such as: The Cybercrime Law and the Terrorism Law. It also includes penal laws, which is a situation that has produced an unnecessary state of dispersion. The Penal Code must be amended whenever the need arises to criminalize specific acts instead of issuing special laws. Unfortunately, the matter has extended to the Code of Criminal Procedure despite its extreme specificity as the law responsible for protecting freedom and preserving the rights of citizens in the case of accusation. The Anti-Terrorism Law 49 of 2015 is one of the most serious laws that violated fair trial standards, and we must address it first thing before the proposed draft amendments. Therefore, the paper will address two main axes:

1. Violating procedural legality principle through other laws(Anti-Terrorism Law as a model)
2. The most important fair trial guarantees that were compromised in the draft law submitted by the government.

First: Violating Procedural legality through other laws (Anti-Terrorism Law as a model)

The right to immediately appear before Judicial authority:

In normal situations, Criminal Procedure Law should include everything related to a fair trial, ensuring the safety of procedures. However, the legal system has witnessed, in recent years, promulgation of criminal legislations that include specific procedures that have nothing to do with the Law of Legal Procedures, especially the power of detention, which is one of the most dangerous procedures ever where citizens are subjects to a non-judicial authority.

Therefore, the law specified the period of detention so that it does not exceed 24 hours. Before its expiration, the accused must be brought to the Public Prosecution Office to first consider the legality of his detention. The 24-hour-period has become a constitutional right according to Article no. 54 of the Constitution. The constitution and the law are consistent with human rights covenants, especially Article no. 3/9 of the International Covenant on Civil and Political Rights; “Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release…etc.”.

The above-mentioned right is confirmed by many human rights charters, including the Arab Charter on Human Rights (Article 14/5) and The International Convention on Migrant Workers(Article 16/6). In addition to Principle no. 3 of the Fair Trial principles in Africa.

However, this established and inherent right was violated by the Anti-Terrorism Law no. 49 of 2015, Where Article no. 40 stipulates that "In the case of an eminent terrorist crime that needs to be confronted, law enforcement officers shall have the right to collect information on such crimes, search for the perpetrators, and keep them in custody for a period not exceeding 24 hours. Law enforcement officers shall prepare reports on the procedures and the detainee(s) shall be referred along with the report to the public prosecutor or the relevant investigating authority, according to the case. For the same necessity set forth in the first paragraph of this Article and before the expiration of the period specified, the Public Prosecution or the relevant investigating authority may order the extension of custody once for a period not exceeding 14 days, unrenewable unless for once. The order shall be issued with the causes by at least an Attorney General or the equivalent…etc.".

Here, the law gives the judicial control authority the right to detain the accused for a period of 24 hours after issuing a record of the procedures alone, then referring the accused along with the record to the prosecution, which has the authority to continue the detention for 14 days, to be renewed for once again, so that the detention period reaches 29 days without conducting an investigation into the charge, and verifying the legality of the detention.

This represents a flagrant violation to the principle of presuming the innocence of the accused, and the right to appear before a judicial authority that investigates the legality of detention. It also detracts from the guarantees of a fair trial included in the Criminal Procedure Law, which is that pre-trial detention is not permissible except after investigation, confronting the accused and hearing his defense in accordance with Article no. 134 of the Criminal Procedure Law. The investigation here represents a guarantee for the accused, and a condition for the legality of the detention.

The law did not stop at that, since Article no. 42 stipulates that "During the period of custody provided for in Article (40) of this Law and before its expiration, law enforcement officers shall report on the procedures, hear the statements of the accused, and refer them along with the report to the Public Prosecutor or the relevant investigating authorities to question him within 48 hours of submission to order precautionary detention or release.

This means that the period of detention is up to 31 days before investigation, consideration of the legality of detention, and ordering release or pre-trial detention. That is, the accused remains for 31 days in the hands of the arresting authority without a judicial investigation, which makes him vulnerable to the arbitrariness of the authority, and exposes him to many other violations other than illegal detention.

In addition to these violations, the law granted, in Article no. 43, the Public Prosecution, the authority of the investigating judge, and the authority established for the Court of Appeal Against

Misdemeanors convened in the counseling room. This authority includes defining periods of pre-trial detention, which we will approach later when addressing the draft amendment of the Criminal Procedure Law, since the project aims to transform this exception into a rule enforced by the Procedural Law. At this juncture, we will only point out to the need to unify the procedures into one law, which is the Criminal Procedure Law as the multiplicity of laws that include special procedures opens a space to violations of the rights of the accused.

Articles 40, 41, and 42 of the Terrorism Law must be abrogated for conflicting the constitution and contradicting human rights charters, as these articles represent a flagrant violation of the principle of innocence presumption and the right to freedom. Likewise, no special law should include procedures that violate the law of legal procedures.

Second: The Most Important Guarantees for Criminal Justice Compromised by the Bill:

1- The Right to Release Pending Trial:

The proposed bill has granted the public prosecution a broad authority where it would exclusively be dominant over the investigation procedures. While these amendments are logical, by far the most, however, it should not be disregarded that the Public Prosecution, despite being one of the judicial authority components, remains an accusing authority. Moreover, it is administratively and financially subordinate to the executive authority represented by the Ministry of Justice, which requires a legal amendment to make the Public Prosecution Office completely independent of the executive authority.

The Bill also included amendments in article no. 120, granting the public prosecution broad authority in pre-trial detention; which is one of the dangerous measures that affect the freedom of the accused, and the principle of the innocence of the accused, which must be supported by judicial guarantees. The proposed amendment granted the Public Prosecution the authority of the Magistrate in crimes of state security internally and externally, crimes of possessing explosives, and crimes involving Public Funds, where the prosecution's authority reaches out to pretrial detention, detaining the accused for periods up to forty-five days without being brought before a judge.

Article no. 128 of the draft law has also widely expanded the authority of the Public Prosecution, granting it the authority of the Court of Appeal, convened in the counseling room for crimes of State Security, where it can imprison the accused for ninety days without bringing them before a judge.

These amendments are similar to the powers granted to the Public Prosecution by the Anti-Terrorism Law, contradicting the right of every person deprived of his liberty to challenge the legality of his detention before a court of law. This right is stipulated in many human rights treaties, for example: Article no. 9/3 of the International Covenant on Civil and Political Rights, Article no. 17/2 of the International Convention for the Protection of All Persons from Enforced Disappearance, Article no. 37/d of the Convention on the Rights of the Child, Article no. 16/8 of

the Migrant Workers Convention, Article no. 14/6 of the Arab Charter on Human Rights, and the principles of fair trial in Africa.

Although the prosecution is a judicial authority, it is not a court of law, and remains an accusing authority, which is fundamentally different from the court of law. The court of law considers detention decisions as a ruling authority, i.e. judging the legality of the detention decision, its necessity, and the seriousness of the accusation, which is not applicable in the case of Public Prosecution.

These proposed amendments also violate Article no. 54 of the Constitution, especially the fourth paragraph "Every person whose freedom is restricted, as well as others, shall have the right to file an appeal before the court against this procedure. A decision shall be made on such appeal within one week as of the date of action; otherwise, the person must be immediately released".

The text clearly and unequivocally confirms the right to appeal on pre-trial detention decisions before the court within a week, otherwise the accused must be released. The constitution also granted the right to file appeals for others against pre-trial detention, and well done. Precautionary detention harm often exceeds its accused reaching others, including the family. Of course, what is meant here is the judiciary in the sense of the court of law. It is unreasonable to file grievances before the decision-making authority. The proposed amendments lacked any form of appeal before a court of law.

The proposed articles to expand the authority of the prosecution in pretrial detention should be abolished, and the upcoming amendments should include more guarantees restricting pre-trial detention and not expanding it. Pretrial detention is a major problem that thousands of defendants and their families suffer from, as it has in itself become a punishment and a tool of arbitrariness depriving the accused of their legitimate rights.

2- The Right to Humane Treatment in Detention:

Detainees and prisoners have the right to humane conditions of detention according to the international conventions, and this right includes ensuring that people enjoy their human rights and have full protection against abuse. Among these rights are the detention facilities being subject to periodic inspection, keeping records of everything related to prisoners, and enabling grievances against any violation, and immediately carrying out investigations.

The proposed amendments have compromised the inherent detention rights, specially the amendment stipulated at article no. 24 of the Bill which limits the task of monitoring prison conditions and places of detention to the Public Prosecution exclusively, in contrast to the current situation, which expands control to include magistrates, prosecutors, and court presidents.

Likewise, the right of the complainant to be notified with the updates in case of dismissing his complaint about prison conditions, which is a right established by the current law, in article no. 44, and was also revoked. The draft law also lacked a prescription to the investigating

mechanisms of complaints in a timely manner, and the mechanism of appealing on the decision to dismiss the complaint.

These amendments violate the right to humane treatment in detention and imprisonment. For example: places where people are deprived of their liberty must be subject to monitoring by independent bodies, inspection rounds must be regular, and independent mechanisms must be established enabling individuals to file their complaints about the treatment they receive while their freedom is restricted. These complaints are subject to investigation and the right to remedy and reparation.

This was stipulated in many human rights charters that are part of the Egyptian law, including, for example, principle no. 33 of the set of guidelines, and Article no. 7 / g / h of the principles of fair trial in Africa.

Accordingly, the law must, therefore, organize strict procedures for periodic inspection of prisons and places of detention, and do everything necessary for effective supervision to ensure that places of detention are free of any human rights violations. Every detained person must be able to complain about the inhumane treatment he is subjected to during detention, and the complaint must be subject to investigation and fairness. The amendments must include more guarantees consistent with international legality and not violating it, by canceling article no. 24 of the draft, adding new articles guaranteeing the right to humane treatment in detention, and guaranteeing the right to file complaints and investigate them.

3- The Right to Confidential Contact with Lawyers:

The right of the accused to the assistance of a lawyer includes many elements, such as the right to confidentiality of communication, which abides to keeping documents and files. This is confirmed by article no. 1/2 of the Principles of Fair Trial in Africa, and article no. 67/1/b of the Rome Statute, and other international covenants.

The draft included a peculiar text in Article no. 96, which stipulates that it is not permissible to seize documents that were handed over to the lawyer or the consultant expert to perform their duties. The draft added, in Article no. 83, an exception making sure that what was handed over to the lawyer or the expert must be related to the crime. This unreasonable exception violates the role of the defense, whether the lawyer or the consultant expert. Knowing whether or not the documents relate to the case falls within the relationship of the accused to the defense, whether the lawyer or the consultant expert. This article opens the door to unjustified interference in the relationship between the accused and the lawyer, a relationship that must be surrounded by complete confidentiality, and this applies to the consultant expert. Therefore, Article no. 96 of the proposed bill should be abolished so that the defense-accused relationship is kept in absolute secrecy.

4- The right to be presumed innocent:

Pre-trial detention represents a major problem in the Egyptian judicial system, especially in recent years, which witnessed an unprecedented expansion of pre-trial detention for prolonged periods. Pre-trial detention contradicts the principle of the presumption of innocence, which has been an internationally established principle since the declaration of the principles of the French Revolution in 1798. Which was then confirmed in many human rights charters, such as Article no. 11 of the Universal Declaration of Human Rights: "Everyone charged with a penal offence has the right to be presumed innocent until proven guilty according to law in a public trial at which he has had all the guarantees necessary for his defense".

Likewise, Article 14/2 of the International Covenant on Civil and Political Rights which stipulates that: "Everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law."

The principle of the presumption of innocence is also constitutionally established in Article no. 96 of the Constitution: "the accused has the right to be presumed innocent until proven guilty according to law in a public trial at which he has had all the guarantees necessary for his defense…"

Although the problem of pre-trial detention is one of the most important issues raised in the political and legal arena, the project proposed by the government did not aim to address the problem and rather left the situation as it is under the current law. The proposed draft addressed pre-trial detention in Articles no. 116 to 131. It did not make substantial changes to the provisions of pre-trial detention, despite the urgent need for that. The draft kept the same reasons for current pre-trial detention, despite the many criticisms of it, especially the fourth reason: "maintaining security and public order", which is an unrestrained reason that's difficult to estimate accurately due to the use of unclear vocabulary. Moreover, this reason contradicts the principle of innocence presumption.

The project also retained the same preventive measures as alternatives to pre-trial detention, which are police surveillance, restricted residence, and not leaving the house, although there are modern technological means that can be used to ensure that the accused does not escape, while not deprived of his liberty at the same time.

The project also retained, in Articles no. 129-130-131, long periods of pre-trial detention, which are not justified in most cases, and amount to two years in felonies, and imprisonment without a time limit in felonies that carry a penalty of life or death. Egypt suffers greatly from this situation as it includes flagrant violations to human rights, and is a reason for directing great criticism to Egypt at the international level.

The proposed draft, as well as the current law, violates Article 54, the last paragraph of the Constitution, which stipulates that: "the law shall regulate pre-trial detention, its duration, causes, and which cases are eligible for compensation that the state shall discharge for pre-trial

detention, or for executing a penalty, where a final ruling is issued to cancel the sentence executed".

The constitutional text objective here is for a temporary pre-trial detention with a reasonable time. The word "duration" means a specific period, which contradicts imprisonment for long periods of up to two years, and certainly contradicts open and indefinite periods.

The only logic that can justify the current catastrophic conditions of pre-trial detention is the accumulation of cases which goes beyond the human capacity of the judiciary. This is a realistic problem, however, it is certainly not the accused problem, and its solution should not be at the expense of the freedom of citizens, their human and constitutional rights. On the contrary, the solution to this problem is by reducing pre-trial detention as much as possible, activating precautionary measures to a greater degree, and above all, establishing mechanisms to resolve cases in a reasonable time, which we will return to later.

5- The Right to Prompt Justice:

Every criminal suspect has the right to prompt justice, i.e. completing investigation and trial procedures at a reasonable time. Every person accused of a criminal act has the right to be tried without undue delay. When preparing a new draft for criminal procedures, the legislator must abide by the human rights charters concerned with fair trials, especially Article 3/ 14 / C of the International Covenant: "Everyone charged with a criminal offence shall be entitled to the following minimum guarantees, in full equality: To be tried without undue delay". This right is confirmed in many international conventions, including Article no. 40 of the Convention on the Rights of the Child, and Article no. 18 of the Migrant Workers Convention, and Article 7/1/d of the African Charter.

The right to prompt justice is objectively linked to the presumption of innocence, as it is linked to the right to liberty. Deprivation of liberty affects the essence of human rights, so it must be limited in time, as time here is the most precious value that must be preserved. Unfortunately, neither the current law nor the proposed draft amendments value time.

The proposed draft devoted Articles 158-168 to completing the investigation and disposing of the case. The proposal did not specify a specific time for investigation conclusion, nor did it specify the time for the judgment after referral to trial. It is strange that the proposed amendment in Article no. 182 regarding the investigating judge obligated the judge to complete the investigation within six months. This should be limited to the Public Prosecution, taking into account, of course, the possibility of prolonging the period in case of necessity.

The legislator must define and stipulate the mechanisms of completing investigations and trials in a reasonable time, and respecting the right to prompt justice. It is absolutely unjustified to continue pre-trial detention for more than a year in felonies. A year is more than sufficient to complete investigations. Likewise, a verdict must be issued in felonies within a period of one year at most, provided that the period of investigations and trial does not exceed two years.

6- The Right to Remedy and Reparation:

The International law includes the right to redress for wrongful seizure. Compensation in such cases includes rehabilitation, monetary compensation, satisfaction, and other elements.

The right to reparation is stipulated in many articles of human rights charters, including Article no. 9/5 of the International Covenant, Article no. 24/4 of the Convention on Enforced Disappearance, and Article no. 14/7 of the Arab Charter, and other articles that all agree on the human right to reparation for harm resulting from illegal detention.

The current Procedural Code confirms the right to material and moral compensation in Article no. 312 that was added by the amendment of the year 2006. However, it is an inactive right, as the law postponed compensation until a special law is issued, which has not happened so far. In addition, this situation has continued despite the provision of Article no. 54 of the new 2014 constitution on the right to compensation for pre-trial detention.

The proposed draft amendments attempted to address this in Article no. 562, where the first paragraph stipulated the right to compensation in case of dismissing or acquittal ruling. However, it listed many reasons for not being entitled to compensation, which are:

- If the acquittal is based on insufficient evidence, or for any reason of permission, liability abstention, punishment exemption, expiry of the criminal case, issuance of a ruling or a law decriminalizing the act, or due to incapacity.
- If a comprehensive pardon was issued for the accused.
- If the accused is imprisoned at the same time for other charges.
- If it is proved that the accused was remanded in custody or served the sentence to enable the real perpetrator to escape punishment.

The truth is that the second paragraph included some logical reasons for non-compensation, such as termination of criminal proceedings for a lawsuit, or if the accused enables the perpetrator to escape from punishment. However, it also includes illogical reasons that eviscerate the right to compensation essence, such as: lack of sufficient evidences, which is a reason that is consistent with and confirms the presumption of innocence, as well decriminalization of the act, which means that the person has committed a permissible act, especially since the constitutional text recognized the right to compensation due to the issuance of a final judgment to cancel the pre-executed judgment.

The amendment must include reparation for the damage in the broad sense, and not just compensation. Compensation must also be for the error in the procedures, and abusing law arbitrarily.

7- The Right to Equal Legal Opportunities: Equality of arms:

Equality of arms is one of the inherent principles of fair trial. In the criminal case, the prosecution has wide capabilities represented in the use of state agencies, while the defense does not have such capabilities. Therefore, the principles of a fair trial emphasize equality between the two parties of the trial, especially at the stage of the judicial trial, including the right to discuss evidence, and the

right to call witnesses and cross-examine them. This right is confirmed by General Comment no. 32 of the United Nations Human Rights Committee, Section A/2/A and Section 6/A of the Principles for Fair Trial in Africa.

In fact, the current law violates this principle, especially with regard to hearing witnesses, as Article no. 277 gives the judge the right to specify the witnesses that must be heard, and exclude those he deems unnecessary in the case.

It is the same text in the draft amendment, Article no. 277. The draft added a second paragraph that gives the court the right to read the testimony contained in the investigation report or the evidence-gathering report, and if the defense insists on the presence of the witness, the court has the right to refuse it with justification.

The current text, as well as the proposed amendment, violates The Right to Equality of Arms. The prosecution has full power to hear the witnesses it sees during the investigations, and it has the right to issue arrest warrants summoning them to hear their testimony, which is not available to the defense. Actually, in some cases, the defense has nothing but witnesses to prove the innocence of the accused, especially since the prosecution witnesses include the judicial officers who arrested the accused. Accordingly, the defense's interrogation of these officers is of great importance to test their compliance to the law, and other matters that may benefit the accused.

The amendment must include the right of equality of the defense to the prosecution so that the defense has the right to discuss evidence, interrogate witnesses, and hear defense witnesses.

The provisions of article no. 250, of the proposed draft amendments also violate the Equality of Arms principal, since it stipulates that in case the defense requests the court's recusal, a bail of 10,000 pounds is to be deposited, which is a very large amount that contradicts the right to request court recusal in cases specified by the law. Therefore, Articles no. 250 and 277 should be abolished and alternative articles should be added that guarantee the right to equality between the prosecution and the defense, as well as not to exaggerate the amount of the bail in case of requesting court recusal. Recusal here is a right of the defense, and it is not permissible to specify a large bail as an obstacle in its use in favor of the accused.

8- The Right to Freedom of Movement:

The right to movement is one of the inherent rights in international covenants, especially Article no. 12 of the International Covenant on Civil and Political Rights, and the General Comment no. 27 of the Human Rights Committee. It is also a constitutional right according to Article no. 62 of the Constitution. The travel ban is one of the grave measures that affect the right to freedom of movement. The proposed draft has regulated the travel ban in Articles no. 155 & 156.

Article no. 155 limited the maximum period for banning people from traveling or placing them on waiting lists for two years, which is a very long period that violates the right to freedom of movement, and may result in damages in many cases, especially in cases where some family members are outside the territory, or in case the work of the accused is bound to traveling to different places.

The text of Article no. 146 also regulates the right to appeal, specifying appeal expiry to be within 15 days. It also states that the accused is not entitled to re-appeal before three months from the first appeal rejected. Thus, the text narrows the right of the accused to appeal according to necessity. There are many cases that assume the need for appeal on the ban decision, such as the state of illness or the possibility of exposure to a large financial loss. The law must include the right to appeal if the need arises.

9- The Right to Private Property:

The right to property is recognized in Article no. 17 of the Universal Declaration of Human Rights, and it is a constitutional right according to Article no. 33 of the Egyptian Constitution. The proposed project regulated the prohibition of disposal and fund administration in Articles 150-154 of the proposed draft.

Decisions to seize funds represent a great danger to the accused, as they prevent him from managing his money even though he has not been convicted yet. Therefore, the accused must be given a reasonable period for appeal not exceeding one month, while the draft amendment specified it to be three months (Article no. 151 of the draft law), which is relatively a long period.

The amendment must include procedures to ensure the proper management of the seized funds, guarantee a decent life for the accused prohibited his fund administration, and provide for his right to appeal within a short period.

10- The Right to a Public Trial, and to Ensure Remote Trial Standards:

The tremendous development in modern means of communication contributed to facing many problems such as emergencies and the Corona Pandemic, as technology helped implement many procedures remotely, which saved a lot of time and preserved public safety. Although the implementation of some remote trial procedures is not new, since it started at the beginning of the current century, it was always associated with cases of necessity, especially the protection of the accused and witnesses, and the possibility of the participation of parties at long distances, whether inside or outside the region.

The technology of remote trials has sparked widespread controversy worldwide, among its supporters, as a necessity to modernize procedures, save time, and reduce costs, and among opponents who see it as a violation to the principles of a fair trial that require publicity, confrontation, and other procedures in favor of the accused. We believe that technology always imposes its rulings, so the debate is often limited to procedural and technical guarantees for the safety of criminal procedures, including remote trial, so that fair trial standards are met. Until now, the remote trial remains an exceptional case imposed by specific necessities such as emergencies, quarantine, and the security necessity to protect parties of the case.

The proposed draft amendments adopted remote investigation and trial techniques in Articles no. 569 to 574. Article no. 569 acknowledged the fulfillment of the attendance provisions,

publicity, and confidentiality of investigations stipulated in the law if they were conducted remotely in accordance with the provisions of the law.

The text of Article no. 570 enabled the investigator and the court to use remote investigation and trial technology whenever it deems it necessary. This includes procedures for extending pre-trial detention, measures, temporary release, and appealing court rulings.

Article no. 571 came with a special provision that permits remote trials for children. According to Article no. 572 for the investigation authorities, the court may take whatever it deems necessary to record, keep all procedures, and transcribe them into records.

Article no. 573 gave the accused the right to object, at the first hearing, to the remote trial procedures, and the court may accept or reject the objection.
Article no. 574 set the rules for remote trials, so that the accused attends the hearing without shackles or handcuffs, and the necessary observation is to be taken on him.

The defendant's lawyer has the right to meet his client, attend with him at his whereabouts, and during the remote investigation and trial procedures. In all cases, the accused and his lawyer must not be separated in all these procedures.

The proposed draft amendments tried to take advantage of codifying remote investigation and trial procedures, which have become a fait accompli since the Corona pandemic, especially in extending the period of pre-trial detention, as it has become widely used despite not being codified. In spite of being a good option in some cases, the proposed draft did not take into account remote criminal justice standards, which are standards under formation. The basic rule remains the physical presence of the accused in all criminal proceedings, and remote procedures are resorted to only in cases of necessity.

The Criminal Justice Organization has published a guide for respecting the right to a remote trial throughout the period of the Corona Pandemic. It confirmed that the rule is that the accused should be able to participate personally in the procedures, and physical presence is often considered necessary. Standards of fair remote trial can be summed up in several points, taking into account that these standards are still under development, and there will probably be more accurate standards.

First: The Right to Counsel:
Defendants must be guaranteed effective and frequent access to various communication tools, and places of detention must be prepared for this. The confidentiality of communications between the accused and his lawyer must be fully guaranteed. Confidentiality must be strictly protected.

Second: The Right to Actual Participation in the Procedures:
Judicial assistance must be provided to the accused to enable him to participate effectively in the procedures, and the devices used must ensure clear and complete vision so that the accused is able to observe all those present in the courtroom. The accused must be able to examine evidences, present evidences from his side. The quality of sound and the image must be proper and continuous, and technical assistance must always be available in courts and places of detention in order to address any technical problem that may occur during the procedures. The accused must be able to communicate with his lawyer confidentiality during the procedures.

Third: The Right to Access the Case File:
The accused must be guaranteed access to the case file physically and electronically.

Fourth: Compliance with the Presumption of Innocence:
The accused must be present with appropriate outfit, and must be given access to the facilities that allow them to obtain the appropriate outfits. The picture background of them must be neutral not implying freedom deprivation.

In fact, the proposed draft amendments did not take into account any fair trial standards, and rather came with inaccurate and odd provisions. I.E. Article no. 570 granted the investigator and the court the absolute power to determine the cases in which it is permitted to carry out the procedures remotely, without specifying certain criteria for that, such as the state of emergency, the security necessity to protect the accused, the witnesses, and the state of quarantine. This, in turn, turned the exception into a rule, since the prosecution and the court have the full power to take all actions remotely.

Article no. 573 stipulated the right of the accused to object to the remote trial procedures in the first hearing, while the court may accept or reject the objection without giving a reason, which is odd and violates the standards of a fair trial. It is possible that the reasons for the objection arise after the first hearing, where the accused is deprived of his right to object. The most dangerous thing is that the right of the accused to object to the investigation procedures remotely is completely banned. Hence, the accused is completely subject to the investigation procedures, while being deprived of his right to object, no matter how harmful it is to him.

Likewise, Article no. 574 pertaining to the rules of remote trial included remotely debating the accused, which is difficult to imagine conducting it accurately. Then it came with a strange ruling, asserting the presence of the lawyer with his client wherever he is, that is, the prison. This is a strange matter, turning the normal place for a lawyer from a court to a prison. The strangest thing is that there is no provision for any guarantees that guarantee the lawyer to carry out the task of defense. The draft lacked any text to facilitate the work of the lawyer, especially confidential communications.

The draft completely lacked any remote trial criteria, as it did not stipulate the right of the accused to communicate with his lawyer, the confidentiality of communications, and their frequency. It was also void of provisions of legal and technical assistance.

In the case of codifying remote procedures, the legislator must ensure the protection of the accused right to a fair trial, and guarantee compliance with remote fair trial standards, which requires

research and benefit from international experiences, especially the standards of the European Court of Human Rights, the French Code of Civil Procedures, and other comparative laws. Also, remote procedures must remain an exceptional case imposed by specific circumstances, and not a general rule, as the principle remains the physical presence of the accused in all criminal proceedings.

Conclusion:

There is a factual need to prepare and promulgate a new Code of Criminal Procedures that is consistent with the new constitution and does not violate international covenants on human rights, fair and equitable trial rules. That's to achieve a delicate balance between the right of society to fight crime, and the rights of citizens in case of accusation. This requires a great effort, and benefit from the experts, especially university professors, human rights organizations, and parties. The proposed draft must be reviewed and reformulated to ensure the following:

- Abolishing any articles that include criminal procedures outside the Code of Criminal Procedure, especially articles no. 40, 41, and 42 of the Terrorism Law because they contradicts the constitution and human rights covenants. These articles represent a flagrant violation of the principle of the presumption of innocence and the right to freedom. No special law should include procedures that violate the Procedures Law.

- The proposed articles expanding the authority of the Public Prosecution Offices in pre-trial detention should be abolished. The proposed amendments should include more guarantees to limit the abuse of pre-trial detention rather than expanding it.

- The law must include strict and effective procedures for inspecting places of detention. It must guarantee the right to complain about what detainees are subjected to during detention, making sure that the complaint is subject to investigation and fairness. Inspection should not be limited to the Public Prosecution as stated in Article no. 24 of the draft proposed by the government. Complaints about ill-treatment or poor conditions of detention must also be subject to the right to remedy and reparation by stipulating that the complaint must be investigated, a ruling must be promulgated in this regard, and the detainee has the right to appeal the decision if it is not in his favor.

- The confidentiality of the relationship between the lawyer and the accused, as well as the consultant expert, must be guaranteed. This includes documents delivered by the accused, so they may not be viewed or confiscated, as Article no. 83 provides an exception (except what was handed over to the lawyer or expert who is not involved in the crime). This quite opens the door to the authority to have the right to interfere in the confidentiality of the relationship between the accused and the lawyer. Documents are necessarily confidential, and the assessment of its pertaining to the crime or not is a private matter between the lawyer and the accused.

- The articles of pre-trial detention must be amended, and a different philosophy should be adopted based on the principle of the presumption of innocence and the right to freedom, so that the period of pre-trial detention does not exceed one year in all cases. The periods

of open pre-trial detention must be abolished in felonies that carry the death penalty for violating Article no. 54 of the Constitution.

- The proposed amendment must guarantee the right to prompt justice, as it specifies sufficient time for investigation, not exceeding six months, and trial not exceeding one year.

- The proposed amendment must guarantee the right to reparation for pre-trial detention, in case of a decision that there is no basis for initiating a criminal case or an acquittal ruling. The compensation must be comprehensive for the moral and material aspects, and no exceptions should be made that voids the right from its essence as stated in the draft.

- The amendment must guarantee the right to equal opportunities between the prosecution and the defense (Equality of Arms) so that the defense has the right to hear and discuss, and cross-examine the witnesses he sees.

- The proposed amendment must guarantee the proper management of the seized funds, and the right of the accused to appeal on the seizure decision within a period not exceeding one month. Travel ban should be minimal and for a short period not exceeding six months and not two years, as stated in the draft.

- The draft should include criminal justice standards in the case of a remote trial, including the right of the accused to object to the investigation or trial remotely, ensuring easy communication between the accused and his lawyer in strict confidentiality, and other standards for ensuring criminal justice.

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