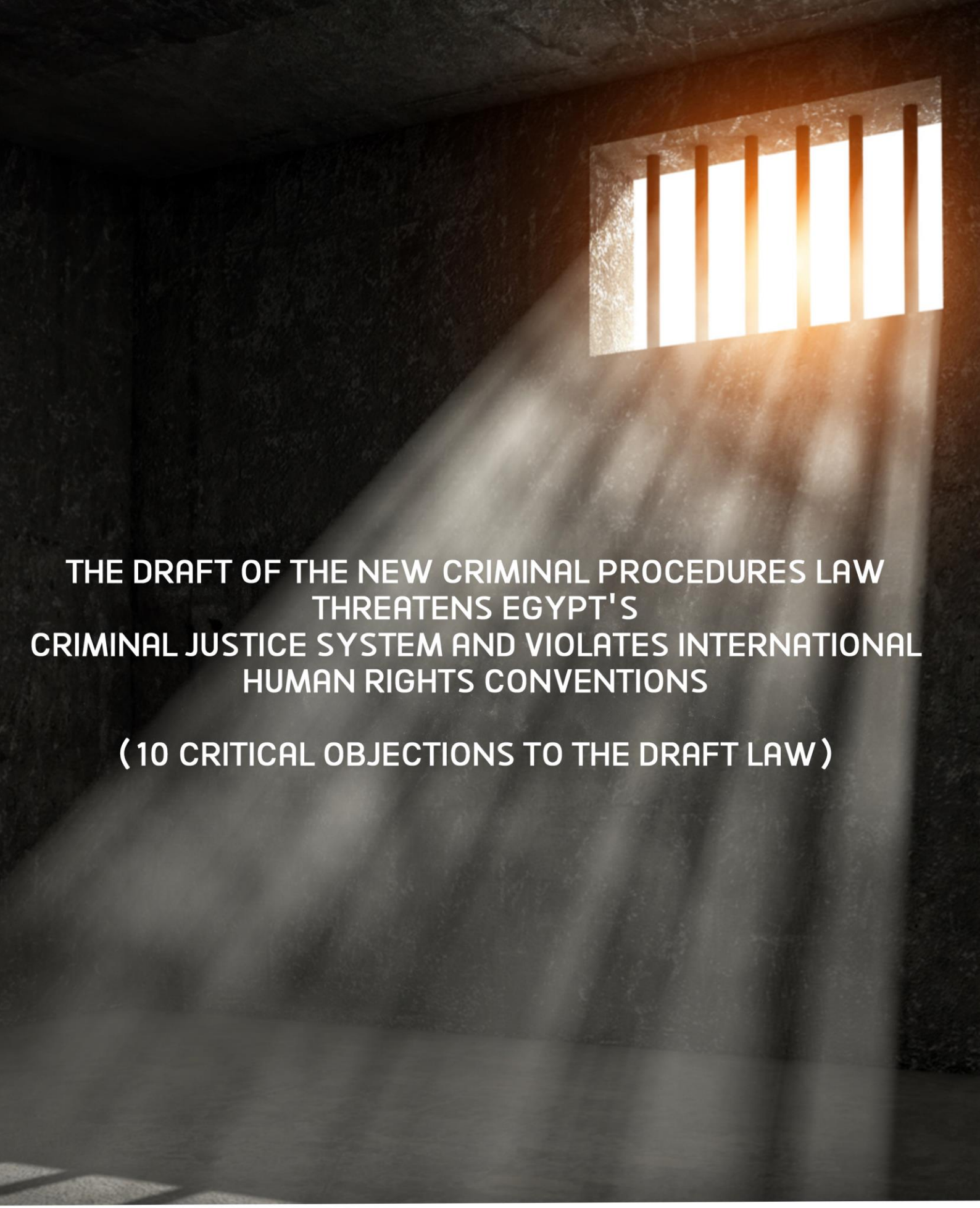

# THE DRAFT OF THE NEW CRIMINAL PROCEDURES LAW THREATENS EGYPT'S CRIMINAL JUSTICE SYSTEM AND VIOLATES INTERNATIONAL HUMAN RIGHTS CONVENTIONS

## (10 CRITICAL OBJECTIONS TO THE DRAFT LAW)


المركز العربي لاستقلال القضاء والمحاماة
THE ARAB CENTER FOR THE INDEPENDENCE OF THE JUDICIARY AND THE LEGAL PROFESSION (ACIJLP)

مؤسسة دعم العدالة
JUSTICE SUPPORT FOUNDATION (JSF)

**The draft of the new Criminal Procedures Law threatens Egypt's criminal justice system and violates international human rights conventions**

**(10 critical objections to the draft law)**

**Introduction:**

The relevant parliamentary committee has completed its discussions on the draft of the new Criminal Procedures Law, which is currently under review by the Legislative Committee in Parliament as this paper is being written. We view this draft as lacking significant value and importance, particularly in light of the ongoing expansion of the powers granted to the Public Prosecution in this domain. There is a clear sidelining of the judicial authority in supervising and monitoring the actions of the Public Prosecution during the procedures it undertakes in accordance with the law. This undoubtedly impacts the course of criminal trials and the fates of defendants, who must be presumed innocent until the judiciary renders a final ruling.

A review of the historical legislative amendments to the Criminal Procedures Law reveals a consistent trend among lawmakers to tighten and enhance the authority of police officers and the Public Prosecution. This reflects a clear and systematic philosophy that aligns the proposed amendment with a series of changes advocated by jurists, lawyers, and others.

Consequently, this paper will focus on the key aspects addressed by the draft law and explain their implications for the structure of the Egyptian criminal justice system, as outlined below.

**First: Undermining the Guarantees of Lawyers' Roles During Investigation and Eroding the Right to Defense**

The legal profession is the backbone and essence of justice; it is not merely a partner in achieving justice whose involvement can be diminished or dismissed. Rather, the legal profession serves as a crucial tool for monitoring the actions of authorities in all their procedures concerning the defendant, those in custody, or those convicted. It is responsible for overseeing the implementation of investigation and trial procedures, as well as addressing potential constitutional violations in certain laws.

Importantly, the presence of a lawyer is "a necessary safeguard, acting as a deterrent to public authority officials who might deliberately violate the law, reassured by the absence of oversight of their actions. This means that the

guarantee of defense is not confined to the trial stage alone; its protective scope also extends to the preceding stages, which can ultimately determine the fate of the arrested or detained individual, thereby rendering the trial a mere formal framework in which no harm can occur."[1]

Thus, the role, influence, and importance of the legal profession extend from the moment any action is taken by any authority that affects or restricts the freedom of citizens.
However, we observe that the draft law significantly undermines this vital role of the legal profession and lawyers in multiple articles, as follows:

**1- Article 69 of the draft law states:**

"The defendant, the victim, the defendant, 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**. Once that necessity ends, he may enable them to review the investigation. In urgent cases, he may conduct some investigation procedures in the absence of the opponents, and they have the right to review the documents proving these procedures. The opponents have the right to take their representatives with them to the investigation."

First, it should be noted that the wording of this article is not new; it replicates Article 77 of the existing law. The significant difference lies in that the original article empowered the investigating judge to oversee these matters, whereas the draft article grants this authority to a member of the Public Prosecution—without specifying the rank of that member. This lack of specification raises concerns, as the member could potentially be an assistant prosecutor, who may have only one year of experience.

The difference in qualifications between an investigating judge and a member of the prosecution—whether assistant or deputy—is considerable. The investigating judge typically possesses the experience, acumen, and independence necessary to make sound judgments regarding when it may be appropriate to conduct investigations in the absence of opponents.

Moreover, the legislative ruling articulated in the article is rejected, whether in its original or revised form. The phrasing is vague, and the condition of "necessity to reveal the truth" lacks clear legal standards that can be easily defined or

1. Supreme Constitutional Court, Appeal No. 6 of Judicial Year 13, hearing of May 16, 1992.

understood. The fundamental principle must be that the defendant should not be investigated in the absence of their lawyer, regardless of the justifications provided. Transferring this authority to a member of the prosecution makes the matter worse, particularly due to the failure to specify their rank and the absence of clear criteria for what constitutes the "necessity" that the article refers to.

**2- Article 72 of the draft law states:**

"The opponents and their representatives may submit to the member of the Public Prosecution the defenses and requests 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 permission, this must be recorded in the minutes."

This article undermines the right to defense, as it restricts the ability to speak to matters that can only be effectively articulated by an experienced lawyer. Stripping the lawyer of this right effectively nullifies the right to defense and deprives the defendant of essential protections. The current wording of the article is oppressive, leading to a distorted notion of justice where only one voice is heard. This constitutes a blatant violation of Article 98 of the Constitution, which guarantees the right to defense—whether by the defendant personally or through a lawyer. If the challenged article enforces silence on the lawyer by law, what then happens to the defendant in such circumstances?

In its stead, Article 81 of the current Criminal Procedure Code, states: "The Public Prosecution and the rest of the opponents may submit to the investigating judge the defenses and requests that they see fit to submit during the investigation."

This text establishes an equitable standing between the prosecution and the opponents before the investigating judge, aligning with the principles of justice and fair trial. Here, the prosecution acts as the opponent—the accusing authority—in contrast to the defendant and their defense. This structure maintains a balanced dynamic, ensuring that both sides can present their arguments without undue restriction.

In contrast, the draft article imposes silence on the defense, reflecting a shift aimed at diminishing the role of the legal profession and lawyers. It effectively places the defendant at the mercy of the Public Prosecution, without anyone at their defense.

3. For the legal profession to effectively fulfill its role, it must possess comprehensive awareness of the incident, along with all relevant papers and documents, to adequately prepare a defense and present a compelling argument before the court. This is essential for disputing and refuting the charges and providing useful insights in that regard.

However, the draft law presents a different perspective. After outlining the rights of the defendant during their initial appearance before the member of the Public Prosecution—obliging the latter to state the charge against the defendant and informing them of their right to remain silent, as well as the right to contact family and legal counsel (Article 103)—the draft continues with Article 104, which stipulates that the defendant may not be interrogated or confronted with other defendant individuals and witnesses without the presence of their lawyer.

**Article 105 states:**

"The defendant's lawyer must be able to review the investigation at least one day before the interrogation or confrontation **unless the member of the Public Prosecution decides otherwise**. In all cases, the defendant may not be separated from their lawyer present during the investigation."

This article is essentially a copy of Article 125 of the current law, which states:

"The defendant's lawyer must be able to review the investigation at least one day before the interrogation or confrontation **unless the judge decides otherwise**. In all cases, the defendant may not be separated from their lawyer present during the investigation."

In fact, the phrase "unless... decides otherwise" is a confusing and perplexing clause that seriously undermines the role of the legal profession. If the lawyer is not allowed to review the investigation—meaning they do not know the details of the accusation, the statements made by the defendant, witnesses, and experts—what can they effectively present or argue? On what basis can they determine their defense, formulate their arguments and requests, and subsequently stand before the court? This raises serious questions about the integrity of the trial itself and the standards it can possibly meet when the defendant's right to review the evidence is stripped away.

The new article has replaced the minimal guarantee present in the original article—the presence of the judge—with a member of the prosecution, which is a far worse and more oppressive arrangement that violates Article 98 of the Constitution. In this new legislative framework, the legal profession has become a mere formality, as the Supreme Constitutional Court previously cautioned in the abovementioned ruling. The philosophy of law here leans toward strictness and a disavowal of constitutional provisions, rather than a genuine commitment to uphold the principles and standards enshrined in the Constitution.

**4- Article 531 of the draft law (newly introduced article) stipulates that:**

"The defendant shall appear before the court without restraints or shackles and shall be subject to necessary observation. **The defendant's lawyer shall have the right to meet with the defendant, be present with them at their whereabouts, and participate in the investigation and trial procedures conducted remotely**."

The article states that the defendant and their lawyer may not be separated during these procedures. This provision seeks to eliminate any doubts about the separation between the defendant and their lawyer during trial procedures, investigations, or the extension of pretrial detention, utilizing modern technology. However, it introduces a problematic ruling that embodies arbitrariness and breaches the guarantees essential for the lawyer to perform their duties effectively.

By requiring the lawyer to be present with the defendant in prison or rehabilitation centers during these procedures, the article places the lawyer under undue pressure, as they find themselves in a setting that could intimidate both the defendant and their lawyer. This arrangement isolates the lawyer from the courts in which they operate, restricting their freedom of movement and limiting their ability to speak freely without fear of repercussions in the courtroom.

Additionally, the logistical challenges of transporting lawyers to distant facilities are significant, as prisons and rehabilitation centers are often far from court locations across the republic. In seeking to reduce the expenses incurred by the state in transporting the defendant to appear before their natural judge, the draft law unjustly transfers this burden to the lawyers, contravening the constitutional principle of ensuring access to litigation authorities for all citizens.

**Second: Violation of the Right to Privacy and Its Constitutional Standards**

The right to privacy is an inherent human right that cannot be diminished or modified. This principle is reinforced by Article 57(1) of the Egyptian Constitution, which states:

"Private life is inviolable, safeguarded and may not be infringed upon. Telegraph, postal, and electronic correspondence, telephone calls, and other forms of communication are inviolable, their confidentiality is guaranteed and they may only be confiscated, examined or monitored by causal judicial order, for a limited period of time, and in cases specified by the law."

Additionally, Article 17 of the International Covenant on Civil and Political Rights states:

"No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation."

The Committee emphasizes that this right must be safeguarded against all forms of interference and attacks, whether executed by state authorities or by individuals and entities. The obligations imposed by this article require the state to implement legislative and other measures necessary to prohibit such interferences and attacks, as well as to protect this fundamental right.[2]

However, the draft Criminal Procedures Law presents another perspective. Article 79 stipulates that:

"An official of the Public Prosecution, after obtaining permission from a magistrate, may issue an order to seize all letters, messages, telegrams, newspapers, printed materials, and parcels. They may also order the monitoring of wired and wireless communications, social media accounts, websites, applications, and their various contents that are not publicly accessible, as well as email, text messages, or audio or visual messages on phones, devices, or any other technological means. This includes seizing the media containing such communications or recording conversations that take place in a private location, provided that these actions are beneficial in uncovering the truth in a felony or misdemeanor punishable by imprisonment for more than three months.

**The order for inspection, surveillance, or recording must not exceed thirty days.**

The judge shall issue the aforementioned authorization with justification after reviewing the documents and investigations and **may renew the authorization for a similar duration or durations**."

**Article 116/1 of the draft stipulates that:**

"Public Prosecution officials of at least the rank of chief prosecutor shall have the authority to investigate the felonies stipulated in **Chapters One[3], Two[4], Two bis[5],**

2. Committee on Civil and Political Rights, Session 32 (1988) General Comment No. 16
3. Felonies harmful to the security of the government from abroad.
4. Felonies and misdemeanors harmful to the government from within.
5. Crimes involving explosives.

**Three[6], and Four[7]** of Book Two of the Penal Code. In addition to the powers assigned to the Public Prosecution, they may, by reasoned order for a period not exceeding thirty days, authorize the seizure of letters, messages, telegrams, newspapers, publications, and parcels. They may also monitor wired and wireless communications, social media accounts, and their various contents that are not publicly available, including email, text messages, audio or video messages on phones, devices, and any other technical means, as well as seize the media containing such communications or record conversations that occurred in private settings **whenever this is deemed useful in revealing the truth**. **The order mentioned in the first paragraph of this article may be renewed for an equal period or additional periods**."

These provisions impose significant restrictions that violate the sanctity of citizens' private lives and their inherent personal rights. Such rights cannot be diminished or restricted except by a reasoned judicial order for a specific period.

1- Article 79 lacks any restrictions or conditions regarding the authority of officials of the Public Prosecution to request permission from the magistrate. This absence of safeguards raises significant concerns, especially given the potential for job exchanges between the prosecution and the judiciary. A member of the prosecution can arbitrarily deem the procedures necessary for revealing the truth and seek approval from the magistrate without clear limitations. Additionally, there is no specified time limit for these requests, allowing for the possibility of indefinite renewals. This effectively transforms what should be a temporary measure into a continuous intrusion into the lives of citizens. Moreover, this provision extends to the seizure of personal devices and technical means.

2- Article 79 permits such intrusive measures for all crimes and misdemeanors punishable by imprisonment for three months or more. This broad applicability opens the door to excessive and unjustified interference in the lives of a large number of individuals, as it encompasses nearly all offenses outlined in the Penal Code.

3- Article 116/1 removes the requirement for obtaining permission from the magistrate entirely. Instead, it grants officials of the Public Prosecution, starting from the rank of Chief Prosecutor, the authority to issue orders independently, without judicial oversight. The article also specifies that the offenses must fall within certain serious categories, such as state security violations from abroad or within, explosives-related crimes, bribery, embezzlement of public funds, and treachery, as detailed in Articles 77 to 119 bis of the Penal Code.

6. Bribery.
7. Embezzlement of public funds, assault on public funds, and betrayal of trust.

4- The provisions of these two articles contradict Article 57 of the Constitution (stated above) and Article 92 of the Constitution, which states that:

“Inalienable rights and freedoms of citizens may not be suspended or reduced. No law regulating the exercise of rights and freedoms may restrict such rights and freedoms in a manner prejudicing the substance and the essence thereof.”

5- The two articles and similar provisions suggest a legislative philosophy leaning towards

Codifying the surveillance of citizens, recording private conversations, and accessing letters, messages, and parcels. This indicates a tendency towards repression rather than freedom, regardless of how the draft may attempt to embellish this with certain rhetorical provisions or by echoing constitutional principles in some sections.

**Third: Most Alarming Incorporation of Provisions of the Anti-Terrorism Law**

The draft law’s invocation of Article 43 of the Anti-Terrorism Law, which has faced widespread calls for abolishment from human rights organizations and legal professionals, is particularly concerning. By integrating such provisions into the general legal framework, specifically in Articles 116/2 and 116/3, the draft transforms an exceptional law designed for combating terrorism into a general legal principle that could apply broadly to all citizens in all cases.

**Article 116/2 and 116/3 states that:**

“These officials shall also have, in the investigation of felonies mentioned in the first paragraph of this article, except for the felonies stipulated in the third chapter of the second book of the Penal Code, the authority of the magistrate concerning the duration of pretrial detention.”

Furthermore, they are granted the authority of the Court of Misdemeanour Appeals, convening in the consultative chamber as outlined in Article 122 of this law. This applies specifically to the investigation of offenses delineated in the initial section of the second chapter of the second book of the Penal Code, provided that the total period of detention does not surpass fifteen days on each occasion.

As per this provision, all chief prosecutors are vested with the power of pretrial detention akin to that of a magistrate (allowing detention for a cumulative period not exceeding 45 days), followed by the authority of the Court of Misdemeanour Appeals in an advisory capacity. This essentially means that they possess the capacity to detain the defendant for the maximum durations stipulated in the

proposed legislation. This undermines the principles of justice and the right to a fair trial.

This arrangement seems contradictory within the draft law itself. While the law mandates the case to be referred to the Public Prosecutor if the defendant's detention surpasses 90 days without the conclusion of the investigation, the Public Prosecutor and the subordinate chief prosecutors retain the authority to order detentions that far exceed this duration.

The Arab Center for the Independence of the Judiciary and the Legal Profession has highlighted two essential reforms necessary for the draft to be deemed acceptable. First, there is an urgent need to abolish procedural articles from the Anti-Terrorism Law that infringe upon fundamental rights. Second, there must be guarantees against the practice of recycling defendants into new cases while in detention. With the inclusion of this provision, discussions surrounding the Criminal Procedures Law seem moot, especially if the procedural aspects of the Anti-Terrorism Law are now seeping into the framework of the Criminal Procedure Code.

**Fourth: Insufficiency of Pretrial Detention Texts to Legitimize the Proposed Draft Law**

The provisions regulating the issue of pretrial detention in the draft of the Criminal Procedure Law—widely praised by the media and committee members for amending and reducing the duration of pretrial detention—are stated in Chapter Seven, titled "On Detention," corresponding to Chapter Nine with the same title in the current law. The changes are as follows:

1. In Article 112 of the draft, corresponding to Article 134 of the current law, two key amendments were made:

a. The phrase "Investigating Judge" was removed from Article 134 and replaced with "member of the Prosecution."

b. The phrase "sufficient indications" in Article 134 was altered to "sufficient evidence" in Article 112.

c. The rest of the article, concerning the justifications for pretrial detention, remains unchanged in its wording.

d. According to Article 112, the prosecutor is authorized to order the detention of the defendant for four days.

The only notable improvement here is the shift to "sufficient evidence." While "indications" or "signs" imply a conclusion that is likely but not certain (at best, they are presumptive), "evidence" refers to definitive, conclusive proof[8]. Therefore, issuing a pretrial detention order based on presumptive indications is different from doing so based on conclusive evidence.

2. Changes to Pretrial Detention Order Requirements: Article 136 of the current law, which outlines the necessary data for a pretrial detention order, corresponds to Article 115 of the draft law. Notably, the phrase "the investigating judge must hear the statements of the Public Prosecution and the defense of the defendant before issuing a detention order" has been removed from Article 136 and has no equivalent in the corresponding draft article. This removal effectively cancels an important safeguard. Under the new provisions, a pretrial detention order can be issued without hearing the defense of the defendant, placing the authority for issuing such orders almost entirely within the jurisdiction of the Public Prosecution, except in exceptional cases.

3. Pretrial Detention Periods: Article 142 of the current law, which addresses the duration of pretrial detention, corresponds to Article 120 of the draft law. Under the draft, if a member of the prosecution deems it necessary to extend the pretrial detention period, they may refer the matter to a district judge (as opposed to an investigating judge, as specified in Article 142). The judge may then order pretrial detention for a period or successive periods, not exceeding forty-five days each.

4. Extension of Pretrial Detention Beyond 90 Days: If the investigation is not completed and the member of the Public Prosecution decides to extend the pretrial detention, Article 121 of the draft law requires that the matter be referred to the Misdemeanor Appeals Court, sitting in a consultative chamber. This court must issue a reasoned order to extend the pretrial detention for a period or successive periods, each not exceeding forty-five days. If the total detention period exceeds 90 days, the matter must be referred to the Public Prosecutor, who will take whatever measures are necessary to complete the investigation. The draft law offers no significant changes or differences from the current provisions regarding these articles.

5. Article 123 of the draft bill sets specific limitations on pretrial detention. According to its first paragraph, pretrial detention is not permitted for more than three months in misdemeanor cases unless the defendant has been referred to the competent court within that period. In felony cases, this period extends to five

8. Dr. Hoda Qashqoush, Explanation of the Criminal Procedures Law, Part One, p. 240.

months. Beyond these periods, pretrial detention is only allowed if an order is obtained from the competent court.

**Article 123 concludes by stipulating that:**

"In all cases, the total duration of pretrial detention during the preliminary investigation and throughout all stages of the criminal case must not exceed one-third of the maximum penalty of deprivation of liberty. Pretrial detention should not exceed four months in misdemeanor cases, twelve months in felony cases, and eighteen months if the prescribed penalty is life imprisonment or death.

Accordingly, the stages of pretrial detention are as follows:

- Public Prosecution Stage: A maximum of four days.

- Magistrate Stage: Up to 45 days.

- Misdemeanor Appeals Court Stage (sitting in a consultative chamber): This stage may extend the detention period to a maximum of three months in misdemeanor cases and five months in felony cases.

- Competent Court Stage: This stage allows for a maximum of four months in misdemeanors, twelve months in felonies, and eighteen months if the prescribed penalty is life imprisonment or death.

Finally, the law allows, as an exception, for the Criminal Appeals Court and the Court of Cassation to extend the pretrial detention period from 18 months to 24 months if the prescribed penalty for the crime is life imprisonment or death.

- It is important to note a significant paradox regarding pretrial detention in cases where the defendant faces life imprisonment or the death penalty. If the defendant is tried before a criminal court, their detention cannot exceed eighteen months. However, if the trial is before a criminal appeals court, the detention may extend to twenty-four months. This discrepancy constitutes discrimination without a constitutional basis, resulting in an unconstitutional distinction between defendants who are otherwise in similar legal circumstances.
- Additionally, the purported reduction in pretrial detention periods from twenty-four months to eighteen months is largely superficial. An eighteen-month pretrial detention period still constitutes a punitive measure in the legal sense, rather than serving as a precautionary or preventive measure.
- Traditionally, the authority to order pretrial detention resides with the investigating judge, followed by the Court of Misdemeanor Appeals, sitting in the deliberation chamber. However, under the draft law, this authority

shifts to the magistrate and, in certain cases—such as felonies against state security, bribery, embezzlement of public funds, and treason—to the head of the public prosecution. By excluding this group from judicial oversight and placing pretrial detention within the purview of the public prosecution, there arises a legitimate concern and suspicion regarding the protection of the rights and freedoms of the defendant.

**Fifth: Travel Bans and Seizure of Funds Without Time Limits—Perpetual Punishment Without Oversight**

The draft law permits the Public Prosecution, when it deems necessary, to **impose precautionary measures** on the funds of the defendant in cases of embezzlement, treachery, or other crimes involving state-owned or public assets. This includes any crime where the law mandates the court to order the return of assets or compensation to the injured party. In such cases, the Public Prosecution must refer the matter to the competent criminal court to issue an order to seize the defendant's funds and prevent their disposal. The Public Prosecutor also holds the authority to take such measures in cases of urgency or necessity, provided that the matter is presented to the competent criminal court within seven days from the issuance of the order (Article 143 of the draft law).

Individuals affected by such orders have the right to file a grievance before the competent criminal court three months after the issuance of the judgment. If the grievance is rejected, they may file another after a further three-month period, and this process can continue indefinitely (Article 144 of the draft law).

The court may, upon the Public Prosecution's request, enforce a judgment involving fines, compensation, or restitution against the assets of the defendant's spouse or minor children (Article 145 of the draft law).

If the defendant passes away, the court may extend this enforcement to the assets of their heirs (Article 146)[9].

9. Upon comparing the aforementioned articles with Articles 208 bis (a), 208 bis (b), 208 bis (c), and 208 bis (d) of the existing Criminal Procedure Code, it becomes apparent that they contain identical provisions. This observation contradicts the purported enhancements in regulating asset seizure and curtailing their disposal within the draft proposal, as these articles have remained unaltered since their modification in accordance with the stipulations of Law No. 174 of 1998.

In a statement released by the subcommittee, as reported in the Al-Ahram newspaper on June 3, 2024, concerning the finalization of the draft Criminal Procedure Code, it was stated:

"The regulation of travel restrictions and the prevention of asset disposal are delineated with explicit clauses that uphold all constitutional safeguards to serve their intended purpose. Simultaneously, these measures are designed to respect individuals' constitutional rights to freedom of movement,

The Public Prosecutor or their delegate, either on their own initiative or upon the request of interested parties, as well as the competent investigating judge, may issue a reasoned order to prevent the defendant from traveling outside the country or to place their name on the arrival watch lists for a period of one year. This period can be renewed for one or more similar periods if required by the needs of the investigation, the proper conduct of trial procedures, or to ensure the enforcement of any potential penalties (Article 147 of the draft bill).

- While precautionary measures are inherently temporary, the draft law has notably exempted these measures—whether related to the seizure of funds or the restriction on their disposal and management—from any explicit time limitations. This absence of time restrictions is evident from an initial reading of the relevant articles.

- The initial reservation at the beginning of the article is related to the order from the competent court, ensuring that due process, including the right to defense, is respected. However, the draft law introduces an exception for the Public Prosecutor, who is authorized to issue a reasoned order and present it to the court within a maximum of seven days from its issuance. Although this period is short, it still allows for the deprivation of an individual's control over their property—seizing it, restricting its management, and even appointing another party to manage it—without a prior court order. This constitutes a form of seizure and expropriation, which stands in violation of constitutional guarantees that protect private property (Article 35 of the Constitution).

- The draft law further exacerbates this issue by permitting the execution of financial judgments—should the defendant die—against the assets of their heirs. This provision contradicts the well-established legal principle that punishment is personal and should not be imposed on anyone other than the defendant (Article 95 of the Constitution).

- The travel ban, which in recent years has impacted numerous prominent human rights activists and political figures, is primarily within the discretion of the Public Prosecutor, as outlined in Article 147 of the draft law. The competent investigating judge, based on the evidence related to misdemeanor and felony cases, is authorized to issue a travel ban for a period of one year, with the possibility of indefinite renewals. This

residency, and protection of private property, which should only be restricted within the bounds of necessity and under specified guidelines."

effectively constitutes a punishment without trial, potentially extending for an unlimited duration, which contravenes several constitutional provisions. The right to travel, which is inherently linked to the right to freedom of movement, is enshrined in Article 62 of the Egyptian Constitution. This right is fundamental and inseparable from personal liberty, and as such, it cannot be lawfully diminished or suspended (Article 92 of the Constitution). However, the draft law does not merely diminish this right; it effectively nullifies it.

The draft law also includes provisions for the seizure of assets and the prevention of their disposal, as specified in Article 368. According to this article, any in absentia conviction automatically results in the defendant being stripped of their right to manage or dispose of their assets, as well as their right to initiate legal action in their own name. Moreover, any commitments or transactions undertaken by the convicted person are rendered null and void.

This provision imposes a punishment without a corresponding crime. A defendant who was unaware of the trial or chose not to attend and subsequently had a judgment issued against them in absentia is further penalized by being deprived of their property rights. This not only violates their constitutional right to property, as guaranteed by Article 35 of the Constitution, but also imposes a punishment for a non-crime. The absence of a legal crime called “judgment in absentia” in the General Penal Code underscores the unconstitutionality of this provision.

Additionally, this provision infringes upon Article 95 of the Constitution, which clearly states that there can be no crime or punishment without legal provision.

**Sixth: Broadening the Powers and Authorities of the Public Prosecution**

In a revealing statement[10], the subcommittee previously established to amend and draft provisions of the Criminal Procedures Law expressed: "Recognizing the House of Representatives' assumption of its constitutional role and national duty, taking the responsibility to reform the legislative framework of the Egyptian state... In light of this, the committee worked over a period of fourteen months, guided by the Constitution and Egypt's international human rights obligations... culminating in the creation of the new draft Criminal Procedures Law," highlighted by:

**"Strengthening the Public Prosecution's authority to investigate, initiate, and prosecute criminal cases, being the custodian thereof and possessing inherent jurisdiction for this purpose, representing Egyptian society."**

In the initial enactment of the Criminal Procedures Law, the investigation (along with its procedures, actions, and conduct) was confined to investigating judges exclusively, who held original jurisdiction over it. Consequently, Article 64 of this legislation specified:

"A sufficient number of investigating judges shall be designated to each primary and partial court. The assignment of investigating judges and the distribution of responsibilities among them shall be determined by the General Assembly. The investigating judge's jurisdiction shall be defined as per Article 217[11]."

This principle ensures the investigator's impartiality and their execution of duties independently, subject only to their conscience and the law. Simultaneously, it safeguards the rights of the defendant to defend themselves and be informed of their rights, ensuring representation for all parties involved in the early stages of a criminal case. An unbiased, neutral judge refrains from issuing orders in the investigation until hearing from all parties, including the Public Prosecution (the accusing authority) or the defense attorney representing the defendant. The investigating judge may assign a member of the Public Prosecution or a police officer specific investigative tasks beyond interrogation (as outlined in Article 70 of the law in its original version before any modifications).

Subsequently, in accordance with Law No. 353 of 1952, the previously mentioned Article 64 was amended and replaced with the following:

10. Elzmann website, the media statement of the subcommittee formed to draft the new Criminal Procedure Law, dated 3/6/2024.
https://www.elzmannews.com/477796
11. Article 217 establishes the parameters of local jurisdiction.

"If the Public Prosecution deems it more suitable to have a case investigated by a judge due to its unique circumstances in felony and misdemeanor cases, it can, at any phase of the case, engage with the President of the Court of First Instance, who will assign one of the court's judges to conduct the investigation.

**The defendant or the civil rights plaintiff may petition the President of the Court of First Instance for a decision on this assignment.** The President shall issue this decision upon fulfillment of the criteria outlined above after hearing from the Public Prosecution, and this decision is final. The Public Prosecution will carry on with the investigation until the assigned judge completes it if a decision to that effect is made.

Investigations into bankruptcy crimes or offenses committed through media outlets will exclusively be undertaken by a judge delegated by the Court's President."

This amendment marked the initial broadening of the prosecution's authority, merging the investigative and accusatory functions, empowering it to handle cases where it assumes the role of the investigating judge and to refer cases, at its discretion, to an investigating judge. However, crimes committed through media outlets and bankruptcy offenses remain under the original jurisdiction of the investigating judge, ensuring that the defendant or plaintiff possess an equal right to the Public Prosecution.

Subsequently, Law No. 121 of 1956 further amended the text to restrict the defendant and civil rights plaintiffs' right to request a judge's investigation solely in cases where "the lawsuit is against a public official, employee, or a police officer for a job-related offense," denying them this right in such instances.

This amendment underscores, particularly at that time, the close proximity between the executive authority and the Public Prosecution, demonstrating the authority's inclination to separate the neutral and independent investigating judge from handling lawsuits directed against public officials and law enforcement officers.

The article, as it stood in the draft, found its place under Article 172 in the fourth chapter on investigations conducted by the investigating judge. The prerogative to assign specific cases to investigating judges now rested with the Public Prosecution, having become the primary competent authority for investigations.

Noteworthy indications of the breadth of authority and powers vested in the Public Prosecution within the draft include the following examples:

- It is permissible to delegate the entire investigation into a case to an assistant of the Public Prosecution (Article 62).
- **Authorization, upon a justified order, to scrutinize seized letters, messages, documents, and recordings** in the presence of the defendant and relevant individuals, documenting observations on them (Article 82).
- Ability for a Public Prosecution official to command the seizure or examination of deemed necessary possessions from an individual (Article 84).
- Requirement for summoned witnesses to appear before the prosecution; failure to comply may lead to the issuance of a reasoned order for their arrest and attendance (Article 94).
- Validity of orders issued by prosecution members nationwide (Article 110).
- Permission for a prosecution member to oversee an expert's activities, with the expert allowed to work without the presence of opposing parties (Article 100).
- Empowerment of public prosecution members with the authority of the Court of Misdemeanor Appeals, gathered in a consultative assembly for pretrial detention orders, provided they hold at least the rank of Chief Prosecutor in specified felonies outlined in Chapters One, Two, Two bis, and Four of Book Two of the Penal Code.

**Seventh: Cancellation of Judicial Oversight Over the Actions and Conduct of the Public Prosecution**

There is a significant shift easily observed when comparing the draft of the project with the existing Criminal Procedures Law. This shift is evident in the provisions that establish the authority of the Public Prosecution while neutralizing judicial authority, aiming to free the prosecution from judicial supervision, particularly concerning the monitoring of pretrial detention orders issued by the prosecution.

Article 116 of the draft notably removes the judiciary's jurisdiction over instances where a member of the prosecution deems an extension of detention beyond four days necessary. Instead, this authority is exclusively granted to the Public Prosecution for crimes outlined in Chapters One, Two, Two bis, and Four of the Penal Code. For other crimes, the matter is referred to the magistrate. Judicial oversight was eliminated by diminishing the powers of the investigating judge in favor of the Public Prosecution. Furthermore, the addition of paragraphs 2 and 3 to Article 116, drawn from the Anti-Terrorism Law, further solidified this shift within the Criminal Procedures Law.

Chapter Three of the law, titled “Investigation by the Investigating Judge,” contained fifteen chapters. Chapter Thirteen, “The Referral Counselor,” and Chapter Fourteen, “Appealing the Orders of the Referral Counselor,” have been eliminated. The remaining thirteen chapters cover various aspects such as appointing the investigating judge, conducting investigations, involving civil rights plaintiffs, appointing experts, search and seizure procedures, witness testimony, interrogation processes, arrest warrants, detention orders, release procedures, case conclusion and disposition, appealing investigating judge orders, and resuming investigations in light of new evidence.

All the subcommittee did was change the title of the chapter from “Investigation by the Investigating Judge” to “Investigation by the Public Prosecution”, cutting out the words “investigating judge” from each article in this chapter.

Articles 208 bis A, B, C, and D, concerning the prohibition of disposal and fund seizure from Chapter Four of the existing law, were transferred to Chapter Three, now titled Chapter Ten.

The subcommittee’s decisions, as per their statement on March 6, 2024, positioned the Public Prosecution as the primary authority for investigations and related procedures. Approximately 20% of the articles in the draft law (Articles 62 to 171) outlined the responsibilities and powers of the Public Prosecution, encroaching upon the traditional domain of the investigating judge.

The Public Prosecution is free from suspicion or accusation, but given that it serves as both an investigative and accusatory body, operating under the Attorney-General and Minister of Justice within the executive hierarchy, it is better to assign these extensive powers to the judiciary due to its independence from hierarchical structures and its non-dual function as a neutral arbiter rather than a party to the case.

In alignment with the constitution and its principles regarding the presumption of innocence, the nature of punishment, and the legal principle that there is no crime or punishment without a legal provision, it is essential to reconsider the powers granted to the Public Prosecution in matters of pretrial detention, travel bans, and asset freezes, as these powers effectively amount to punitive measures under the provisions of the draft law. These specific powers should be removed from the Public Prosecution and returned to the judiciary. This shift would ensure that orders issued are judicial, following thorough consideration of accusations, defense, evidence, and procedural guarantees that the Public Prosecution may lack.

**Eighth: Expanding the Power and Authorities of Judicial Police**

The draft law not only strengthened the authority of the Public Prosecution but also extended similar powers to the judicial police, as evidenced by the following:

**1. Article 47 states:**

"As an exception from the regulations outlined in Article 46 of this law, **public authority personnel are permitted to access residences and other inhabited premises in situations of danger or distress**."

The text fails to specify the circumstances under which public authority personnel can enter homes and other inhabited spaces, leading to ambiguity regarding the criteria for necessity that can be objectively assessed or judicially scrutinized. It is essential to note that while the constitution establishes overarching principles, laws serve to elaborate and elucidate these principles, the text should identify the necessities in order to establish criteria or effect judicial oversight.

Regarding the sanctity of homes, as well as the previous ruling by the Supreme Constitutional Court on the unconstitutionality of Article 47 of the Criminal Procedures Law, it was stated that "this constitutional provision mandates the issuance of a well-founded judicial order in all instances of home searches. This requirement is in place to safeguard the sanctity of the home, which is intrinsically linked to personal freedom, individual privacy, and the dwelling where one seeks refuge and solace. The Constitution, at the time of its enactment, underscored the importance of preserving the inviolability of the home except upon the issuance of a reasoned judicial order, except in cases where an individual is caught in the act of committing a crime. In such instances, as per Article 41 of the Constitution, only the arrest of the individual and a search of their person are permissible, without extending to a search of their residence[12]."

The corresponding text in the current law is much clearer and more precise, as it details the specific circumstances under which authorities are permitted to enter homes and their number. For instance, Article 45 states:

"Authorities may not enter any inhabited place except in cases specified by law, or **in response to a request for assistance from within, or in cases of fire, drowning, or similar emergencies**."

In contrast, the current text is unrestricted and lacks the necessary safeguards, allowing for unspecified cases of danger that could be exploited to unjustifiably enter homes and shops. This would violate Article 58 of the Constitution, which

12. Supreme Constitutional Court ruling in Case No. 5 of Judicial Year 4, June 2, 1984.

upholds the sanctity of homes and prohibits their entry without a reasoned judicial order. Additionally, it contravenes Article 59 of the Constitution, which guarantees every citizen a safe life.

This concern was highlighted by the Fatwa and Legislation Department in its commentary on an earlier version of the draft, noting the potential unconstitutionality of the text. The Department emphasized the need for the law to define the specific dangers that would justify the public authority's entry into inhabited homes and shops as a guideline.

**2. Article 49 of the draft law states:**

"If, during the search of the defendant's home, compelling evidence emerges that the defendant or **any person present is concealing something critical to uncovering the truth, the judicial police officer may implement appropriate precautionary measures** and must immediately inform the Public Prosecution to take the necessary measures."

This article extends the powers of the judicial police in a manner that infringes on two key principles: firstly, it allows the officer to exceed the authorized limits of searching the defendant's home by permitting the detention of any other person based merely on evidence—short of actual proof—that this individual may be hiding something relevant to the investigation.

While detention may not equate to an arrest, it remains a significant action that impacts the freedom of someone other than the defendant. Therefore, it is impermissible to impose precautionary measures based on mere suspicion, as this represents a blatant violation of personal liberty, which is protected under Article 54 of the Constitution that forbids the arrest, search, or restriction of any person's freedom without a judicial order grounded in sound reasoning.

The Fatwa and Legislation Department has also raised concerns about this article, questioning the nature of the precautionary measures it allows and suggesting that the current wording may be in conflict with the Egyptian Constitution.

**3. Article 39, Paragraph 2, states:**

"In cases other than those mentioned in the aforementioned Article 28, if there is sufficient evidence to suspect a person of committing a felony or misdemeanor involving theft, fraud, or serious assault, including resisting public authority officers by force and violence, the judicial police officer may take appropriate precautionary measures and immediately request the Public Prosecution to issue an arrest warrant."

- The article implies that, outside of situations of flagrante delicto, judicial police officers are authorized to take "appropriate precautionary measures"—a term that remains undefined and vague within the text—and the discretion for these measures is left entirely to the officer, based on presumptions rather than concrete evidence, and in connection with charges that could be alleged without necessarily having occurred, such as resisting public authority or committing severe assault.

- The third paragraph assigns the responsibility for arrest and detainment to enforcement assistants and public authority officers.

- Any precautionary measure inherently restricts the freedom of the defendant or suspect. According to the Constitution, such measures are strictly prohibited except in cases of flagrante delicto. Therefore, the article's second and third paragraphs raise a clear and undeniable suspicion of unconstitutionality.

**4. Article 63, Paragraph 2, states:**

**"A Public Prosecution official with a minimum rank of assistant public prosecutor may also delegate a judicial police officer to carry out one or more investigative actions, excluding the interrogation of the defendant."**

This article is one of the most concerning in the draft Criminal Procedures Law, as it permits an assistant public prosecutor to delegate a judicial police officer to conduct various investigative actions, except for interrogation. This effectively allows judicial police officers to independently carry out all investigative procedures, aside from interrogation.

This situation presents catastrophic challenges:

- While the existing law entrusts the investigating judge, not a judicial police officer, with assigning investigative tasks, the draft law suggests that a judicial police officer (a member of the Public Prosecution) could delegate

such tasks to a judicial police officer—unless this means assigning a regular police officer?

- Investigation and its procedures are fundamental to the responsibilities of the Public Prosecution and investigating judges, rather than falling within the purview of judicial police officers.
- The limited number of Public Prosecution members in comparison to the volume of cases they handle may result in an increased reliance on judicial police officers (including those from National Security and police personnel) in conducting investigations.

**5. Article 63/3 states:**

**"The delegated judicial police officer, within the scope of his delegation, shall possess all the powers granted to the delegator. He may also undertake any necessary investigative work and interrogate the defendant in cases where there is a risk that delay may compromise the investigation, provided that these actions are directly related to the delegated tasks and are essential to uncovering the truth."**

This provision effectively grants the judicial police officer the full authority of the Public Prosecution, even including powers excluded by the preceding paragraph of the same article, namely (interrogation). As a result, interrogation becomes a right and authority of the judicial police officer under this paragraph, with the sole criterion being the "fear of time passing," a vague and undisciplined standard seemingly designed to mask the harsh and oppressive nature of this flawed provision. In its current form and wording, this paragraph essentially serves as a legal endorsement of unchecked police authority in certain cases and against specific individuals, without subjecting the judicial police officer to any disciplinary or criminal accountability, and without any possibility of subsequent legal invalidity or judicial review of his (legally flawed) actions.

**Ninth: Protection of Witnesses and Complainants or Undermining the Defendant's Right to Self-Defense?**

The concept of protecting witnesses and complainants is not new, but the recent draft introduces a more structured approach to this protection. Article 96 of the Constitution states:

"The defendant is innocent until proven guilty in a fair legal trial, in which they are guaranteed the right to defense. The law regulates the appeal of judgments issued in felonies. **The state provides protection to victims, witnesses, the defendant, and complainants when necessary, in accordance with the law**."

It took the Egyptian legislature six years to translate this constitutional principle into a single legislative article, added to the Criminal Procedures Law through Law No. 177 of 2020. This addition, Article 113 bis, prohibits judicial police officers and investigative authorities from disclosing the identities of victims in crimes of indecent assault and moral corruption, as outlined in Chapter Four of Book Three of the Penal Code. It also applies to crimes of sexual harassment as specified in Articles 306 bis A and 306 bis B, as well as to crimes of endangering children under Article 96 of the Child Law.

The draft law further extends this constitutional principle by incorporating it into a full chapter—Chapter One of Book Six—which includes Articles 517 through 522.

> If we examine this alongside Chapter Three of Book Three concerning witnesses in the Public Prosecution's investigative process, starting Article 86, several significant issues emerge:

- The Public Prosecution has the authority to hear any witness it deems necessary, which implies that it may refuse to hear witnesses requested by the defendant to defend against the charges. This limitation prejudices the defendant's defense and does not contribute to uncovering the truth (Article 86).

- Confrontation between the witnesses and the defendant is optional for the Public Prosecution, despite being a fundamental aspect of a fair trial (Article 88).

- A witness may designate a police station as their address, with permission from the Public Prosecution or the investigating judge (Article 518).

- A witness can be heard without their identity being disclosed in the case file, at their own request or that of a judicial police officer (Article 519).

- The defendant or their representative may appeal to the Criminal Court of First Instance within ten days of being confronted with the testimony of an anonymous witness—whose identity has been concealed. The court must decide on the appeal **after hearing the relevant parties, providing a final reasoned decision**.

> Based on the above, concealing witness information may, if applied, lead to judicial rulings that restrict freedom for many years based solely on testimony from unidentified individuals. Currently, the law allows for

appeals against court rulings that arise from the concealment of information about an officer's secret sources or the details of any covert operations involving the officer during the arrest and search of the defendant.

"The testimony of the investigating officer, which claims to have revealed an intent to kill on the part of the convict, does not specify the sources of this investigation. This omission prevents any determination of the reliability of the conclusions drawn, rendering it merely an opinion of the officer, subject to validation or invalidation. Until the source is identified, and its nature verified by the judge, this testimony lacks the evidentiary weight needed for judicial consideration[13]."

Moreover, concealing witness identities and allowing their testimony to be read via technical means prevents the defendant and their defense team from confronting and questioning the witness to clarify the truth in any criminal case. This practice undermines the rights of the defense and the defendant, negatively impacting the standards of fair trials.

**Tenth: The Contradiction in Nullity in the Draft Law Leads to the Elimination of the Role of the Court of Cassation**

The draft law exhibits several contradictions, particularly concerning the provisions related to nullity. For instance, Article 333 of the draft states:

**"Nullity results from failure to observe the provisions of the law related to any essential procedure."**

In contrast, Article 336 of the same draft provides:

**"The judge may correct, even on their own initiative, any procedure they find to be invalid."**

This means that nullity can be corrected by the judge on their own initiative, without any request from the parties involved.

According to established legal principles, the invalid procedure was enacted in favor of the defendant. Invalid procedures invalidate any proceedings based upon them. If the invalid procedure is essential, this renders the procedure as if it never occurred, as it cannot be rectified. Hence, essential invalidities cannot be corrected[14].

13. Appeal No. 25951 of Judicial Year 85, hearing of February 6, 2016.
14. Review Article 331 of the current Criminal Procedures Law.

Here’s an improved version of your text:

The invalidity that a lawyer may raise as a plea in the session minutes—if the court neither accepts nor addresses it—becomes a significant basis for challenging rulings before the Court of Cassation, as is the established practice in Egyptian courts. However, throughout the history of the Egyptian judiciary, if the draft law is passed and the judge is granted the authority to correct invalid procedures, it will undermine the very foundations of the Court of Cassation. This court has a long-standing tradition of upholding proper legal principles and developing numerous jurisprudential rules to clarify legal ambiguities.

The draft law is riddled with other contradictions and conflicts between its articles.