

Review of Egypt's New Draft Criminal Procedure Code

The following is a non-comprehensive review of the new draft Criminal Procedure Code (CPC). The review is based on a 95-page document published on a number of pro-government websites in August 2024 following the Egyptian government's proposal to draft a new CPC. The draft features the name and logo of the Egyptian Parliament's Constitutional and Legislative Affairs Committee.

The purported draft CPC – if adopted as currently formulated (i.e., as it appears in the above-mentioned 95-document) – would entrench and extend the impunity for serious human rights violations that police and security officials enjoy today, and thus continue to violate Egypt's obligations under international human rights law to guarantee victims' rights to access justice and effective remedies.

Perpetuating Law Enforcement Officials' Impunity

Article 162 of the draft CPC retains articles 210 and 232 of the current CPC, which authorize exclusively a public prosecutor to decide whether to initiate an investigation into the conduct of public officials. For decades, these provisions have [contributed](#) to near-absolute impunity for widespread torture and abuses in detention by police and security forces. In conclusion, if adopted as currently formulated, article 162 would [deny victims and their families the right to file directly with an investigating judge a criminal complaint alleging offences by public officials, including law enforcement officers](#). Additionally, as drafted, article 162 would further strengthen impunity by limiting the right of victims to appeal a prosecutor's decision not to initiate charges against public officials.

Arbitrary Pre-Trial Detention

If adopted as currently formulated, article 123 of the draft CPC would reduce the maximum period of pre-trial detention from six to four months for misdemeanours (minor offences), from 18 to 12 months for felonies (serious offences), and from 24 to 18 months for offences punishable by life imprisonment or the death sentence.

However, even if reduced, the maximum periods of pre-trial detention that article 123 would introduce would still fall short of [international human rights law standards](#). Moreover, other draft amendments would still fail to tackle the systematic abusive practice of using pre-trial detention without proper judicial review to arbitrarily detain people in politically motivated cases. Since 2013, resort to arbitrary pre-trial detention has resulted in the jailing tens of thousands of political dissidents and critics of the government for months or even years without trial.

The amendments also fail to address the well-documented practice of extending pre-trial detention by “recycling” charges. “Recycling” consists in unlawfully keeping detainees in pre-trial detention beyond legal limits—sometimes for years and despite judicial release orders—by bringing consecutive charges against defendants. The [United Nations Working Group on Arbitrary Detention](#) has held that such practice is incompatible with the right to be tried within a reasonable time and the presumption of liberty pending trial.

The draft CPC, if adopted in its current formulation, would further increase the risk of arbitrary detention by removing the existing requirement, under article 36 of the current CPC, for public prosecutors to interrogate a detainee within 24 hours of arrest and detention. Instead, under article 40 of the draft CPC, law enforcement officers must simply transfer the case to a public prosecutor within 24 hours of arrest and detention, with no requirement to interrogate the detainee prior to transfer. The amendments also do nothing to curtail the prosecutors’ broad, discretionary powers to order and extend pre-trial detention without independent judicial oversight for up to 150 days, under article 142 of the existing CPC or articles 202 and 206 bis of the draft CPC.

Both the current code and the proposed draft fail to meet the requirement in [international human rights law](#) to bring anyone arrested or detained on a criminal charge promptly before a judge, meaning within at most 48 hours from the time of arrest. Moreover, the proposed amendments do not put an end to the practice of resorting to summary and perfunctory judicial hearing, sometimes lasting only a few minutes, to renew pre-trial detention even for up to two years. In recent years, judges [have](#) renewed pre-trial detention for [hundreds of defendants](#) in brief, mass hearings, violating the right of each detainee to contest the renewal of their detention pending trial, or to apply to be released on bail.

The UN Human Rights Committee has [found](#) that detention pending trial can be ordered only after an “individualized determination that it is reasonable and necessary in all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime or influencing victims.” The Committee has further pointed out that: “pre-trial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances. Neither should pre-trial detention be ordered for a period based on the potential sentence for the crime charged, rather than on a determination of necessity.”

With respect to certain limited cases in which a court may find pre-trial detention unjustified, Article 523 introduces the right to file civil lawsuits to seek financial compensation.

Remote Video Hearings to Extend Pre-trial Detention

In recent years, the Egyptian authorities have further compounded the practice of resorting to abusive and arbitrary pre-trial detention by holding renewing pre-trial detention hearings via videoconference, without physically bringing detainees before the judge presiding over such hearings. Human Rights Watch has [documented](#) how in Egypt this practice severely undermines due process. It hinders a judge from assessing the legality and conditions of detention, as well as the detainees' wellbeing, and violates several fair trial guarantees, including the right to adequate facilities for the preparation of a defence as reports suggest that prison officers are often present during defendants' video consultations with lawyers ahead of remote hearings.

If adopted as presently formulated, articles 525 to 532 of the proposed amendments, under a section titled "Remote Trial and Investigation", would not only fail to remedy the serious violations of the right to a fair trial resulting from the implementation of the videoconference system in Egypt to date, but would, instead, codify its use across the entire prosecutorial and judicial system and significantly expand its permitted uses to all hearings throughout the various stages of criminal investigation and trial.

Undermining Defendants' Right to a Fair Trial

If adopted as currently formulated, numerous provisions of the draft amendments would further restrict defendants' right to a fair trial. In the context of criminal investigations, article 72 would grant public prosecutors the authority to deny defendants the right to have lawyers make representations on their behalf, including to present a defence, in prosecutorial hearings. In addition, article 73 would provide the public prosecution with vague powers to deny defendants and their lawyers access to prosecution documents, if "deemed necessary for the investigation." Article 105 would also grant prosecutors the right to deny defence lawyers access to investigation files ahead of interrogations and confrontations or only make them available to defence counsel 24 hours beforehand.

The draft CPC's entrenchment of prosecutorial power and further erosion of defence lawyers' role violate Egypt's international human rights law obligations to guarantee the right to equality of arms, which is part and parcel of the right to equality before courts. The Human Rights Committee has [stated](#) that the right to equality of arms requires that, "the same procedural rights are to be provided to all the parties unless distinctions are based on law and can be justified on objective and reasonable grounds, not entailing actual disadvantage or other unfairness to the defendant." By granting prosecutors the authority to ultimately deny defendants' lawyers the right to question prosecution witnesses, to access case files, and to make representations during proceedings, the draft amendments, if adopted as currently formulated, would place prosecutors in a privileged position with the capacity to hinder defence lawyers in their preparation and

presentation of their cases, and ultimately violate the right to equality before courts and tribunals and to a fair trial.

Enhancing Prosecutors' Role

Article 92 would transfer some of the investigating judges' current role to public prosecutors, such as granting them the power to refuse lawyers' requests to cross-examine prosecution witnesses at trial. This is in addition to prosecutors' power to order and extend pre-trial detention, as mentioned above.

Together, these provisions would provide prosecutors with extensive, enhanced authority, ordinarily granted only to judges, contrary to [international human rights law standards](#), which require separation between prosecutorial and judicial functions. Such enhanced authority, combined with prosecutors' power to determine matters of evidence and pre-trial detention, violates defendants' right to a determination of the criminal charges against them in a hearing before an independent and impartial tribunal.

Trial Secrecy

Article 266 of the draft CPC would broaden the existing prohibition, enshrined in the Penal Code in 2021 ([Law No. 71 of 2021](#)), on the "reporting or broadcast of session proceedings except with the written approval from the court president." This prohibition undermines article 187 of the Egyptian Constitution, which guarantees the principle of public trials, and violates defendants' rights to a public trial. Furthermore, it stymies the means by which lawyers, journalists and civil society members can seek to expose and hold the Egyptian authorities accountable for fair trial violations.

Enforced Disappearances

Egypt's penal code lacks a definition—or punishment commensurate to the gravity of the offence—for the crime of enforced disappearance, in violation of its international law obligations to protect anyone from enforced disappearance.

Despite the well-documented, widespread use of [enforced disappearances by the](#) Egyptian authorities, including the Interior Ministry's National Security Agency, the draft code fails to introduce safeguards to protect individuals against such disappearances. Article 42 of the existing CPC, the essence of which would be retained if article 44 of the draft amendments is adopted in its present formulation, provides public prosecutors, investigative judges and presidents of courts with discretionary authority to supervise detention facilities. However, to protect against enforced disappearances, these inspections must be mandatory and coupled with a legal obligation on law enforcement officials to respect, protect and guarantee the right of detainees to access to the

outside world, including the right to prompt access to families, legal counsel and doctors, as well as the right of detainees to be held only in official places of detention.