

## **Privacy under attack: Egypt must reform its draft Criminal Procedure Code**

We, the undersigned organizations, support the calls made by states during [Egypt's 4th Universal Periodic Review](#) (UPR) held at the Human Rights Council on January 28, 2025, urging the Egyptian government to ensure that the recently proposed [draft Criminal Procedure Code](#) ("the draft Code") complies with its international human rights commitments. The draft, which is currently being debated in the Egyptian Parliament and intended to replace [Egypt's 1950 Criminal Procedure Code](#), poses a serious threat to the right to privacy as it grants sweeping and abusive powers to law enforcement officials to surveil and intercept people's communication and online activities. **We urge the Egyptian Parliament to reject the proposed draft and develop a new Criminal Procedure Code that upholds the rights enshrined in the Egyptian Constitution and aligns with international human rights standards.**

Several provisions in the proposed draft Code gravely threaten the right to privacy in Egypt and legalize arbitrary and unlawful state surveillance, particularly of human rights defenders, journalists, and dissidents. For instance, **Articles 79 and 80** of the draft Code confer vague and broad discretionary powers to investigating judges to issue an order, for a period not exceeding 30 days (which may be renewed indefinitely in 30-day increments), that would permit the authorities to seize communications, letters, telegrams, newspapers, publications, and parcels; and to monitor the wired and wireless communications of individuals, their social media accounts, including private content, as well as emails and messages stored on phones and devices when it is beneficial for uncovering the truth in a felony or a misdemeanor punishable by more than three months of imprisonment.

Under the proposed draft Code, judges could also order the seizure of such phones, mobile devices, websites, or any other technological means; record private conversations if deemed necessary for investigations; or put devices and online accounts under state surveillance if the suspected acts are related to crimes cited in **Article 116 (bis)** related to intentional harm to public property or entrusted interests by public servants, and **Article 308 (bis)** related to defamation and insult via phone calls.

**Article 116** would transfer some of these powers to order the interception and monitoring of online communications to public prosecutors. Such provision would provide prosecutors with extensive authority that should be granted only to judges based on the principle of separation between prosecutorial and judicial functions. It is worth noting that this is the first time in the history of the comprehensive criminal procedure code that such powers were given to prosecutors without judicial oversight.

We agree with the UN Special Procedures, who highlighted in their [communication](#) to the Egyptian government last November that these provisions may be at odds with Egypt's international commitments and will have harmful effects on journalists, human rights defenders (HRDs), and

dissenters, preventing them from exercising their rights to freedom of expression, peaceful assembly, and association, online and offline.

### **A flagrant violation of international right to privacy standards**

Egypt has ratified the [International Covenant on Civil and Political Rights \(ICCPR\)](#). **Article 17** of the ICCPR stipulates that “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. Everyone has the right to the protection of the law against such interference or attacks.”

Under [international human rights law](#), any restriction on the right to privacy must meet [several criteria](#). First, it must be established by a law ensuring that limitations are clearly defined. Second, it must pursue one of the legitimate aims explicitly outlined in the relevant legal provisions. Third, any restriction must be necessary and proportionate to achieve the stated aim. Lastly, individuals should be notified once surveillance has ended, enabling them to challenge the decision or seek redress.

### **Legality**

The UN Human Rights Committee emphasized in its [General Comment n° 16](#) that “ the expression “arbitrary interference” can also extend to interference provided for under the law. The introduction of the concept of arbitrariness is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims, and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances.”

We note that **Articles 79, 80, and 116** of the draft Code authorizing surveillance activities are neither precise nor clear as to the offenses and individuals who may be subject to surveillance or communication interception. Therefore, they violate the principle of legality and legalize arbitrary interference with the right to privacy.

### **Necessity and proportionality**

Enabling the prosecutor to renew the duration without any limitation contradicts the principle of necessity and proportionality as it means the possibility of surveilling not only the targeted person indefinitely but also their circle of acquaintances, colleagues, friends, and family members. Any powers given to judicial officers during an investigation should be limited in time.

The unlimited renewal of surveillance periods violates **Article 57** 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 a justified judicial order, for a limited period of time, and in cases specified by law.”

### **Right to be notified and seek remedies**

The aforementioned articles of the draft Code do not establish any notification mechanism to inform the targeted individual about surveillance measures once conducted, thereby denying them the opportunity to challenge these decisions or seek an effective remedy.

This, combined with the unlimited renewal of surveillance periods, could subject individuals and their associates to lifelong surveillance, leaving them without any opportunity to challenge the decision or seek redress for violations of their right to privacy.

### **Surveillance as a weapon: the dire impact on human rights defenders, journalists and dissidents**

Human rights are interconnected. [Without robust legal protections for the right to privacy](#), journalists, human rights defenders, and political activists cannot freely seek and receive information, express their opinions, or exercise their right to peaceful assembly.

[Access Now](#) and [other partner organizations](#) have documented how states misuse spyware to target journalists, dissidents, and activists for political purposes. Instead of being used to combat serious crimes, these surveillance tools have been repurposed as instruments of state digital repression, justified under the guise of national security.

The Egyptian Government [has a long history of using spyware](#) and other surveillance technologies to monitor online communications and target dissidents. For example, between May and September 2023, former Egyptian MP Ahmed Eltantawy [was targeted with Cytrox's Predator spyware](#) after publicly announcing his intention to run in the 2023 presidential election.

**Given Egypt's human rights record, the draft Code would effectively legalize unlawful surveillance by granting authorities overbroad powers to intercept private communications and risk arbitrary and abusive practices.** The vague wording of its provisions, coupled with the lack of adequate safeguards, creates significant risks of abuse. For example, it could empower authorities to target journalists, compromising source confidentiality without considering the specific nature of journalistic work and potentially exposing both journalists and their sources to threats to their safety and even leading to arbitrary detention and possibly torture. To [protect journalists](#) from such violations, any measure that risks breaching confidentiality [should only be taken](#) after all alternative means to obtain the necessary information have been exhausted, and when a clearly overriding public interest justifies the disclosure.

During Egypt's latest [UPR](#) in January, several states issued recommendations to ensure a safe and enabling environment for civil society organizations, journalists, and other activists, emphasizing the need for their protection. However, the draft Code, if passed in its current form, would hinder human rights defenders and political activists from carrying out their work without fear of arbitrary interference with their right to privacy. This is especially concerning given that criticism of the [President](#) or other [officials](#) has led to imprisonment under a raft of repressive laws such as the [Anti-Cybercrime Law](#), the [Anti-Terrorism Law](#), and the [Penal Code](#).

### **We, therefore, urge the Egyptian authorities to:**

- Reject the proposed draft Code, and develop a new Criminal Procedure Code that aligns with international human rights standards;
- Conduct a serious, transparent, open, and inclusive consultation with diverse stakeholders in Egypt;
- Ensure that provisions related to surveillance, interception of communications, and monitoring of online content are clear and precise, as well as proportionate and limited in duration;
- Ensure that powers of surveillance and interception of communications should always be subject to judicial approval and review;
- Forbid the employment of surveillance activities when less invasive techniques are available or have not yet been exhausted;
- Ensure adequate protection of the confidentiality of journalistic sources;
- Ensure that individuals subjected to surveillance have the legal right to be notified and to seek an effective remedy;
- Introduce strong and effective transparency and oversight mechanisms to all matters related to mass surveillance and the acquisition of surveillance technology; and
- Amend the Personal Data Protection Law No. 151 of 2020 in compliance with international standards and publish its executive order.

### **Signatories**

1. Access Now
2. ARTICLE 19
3. Association for Freedom of Thought and Expression
4. Committee to Protect Journalists (CPJ)
5. Egyptian Front for Human Rights
6. Egyptian Initiative for Personal Rights (EIPR)
7. EgyptWide for Human Rights
8. El Nadeem Center
9. Masaar
10. Refugees Platform in Egypt- RPE
11. Sinai Foundation for Human Rights
12. SMEX