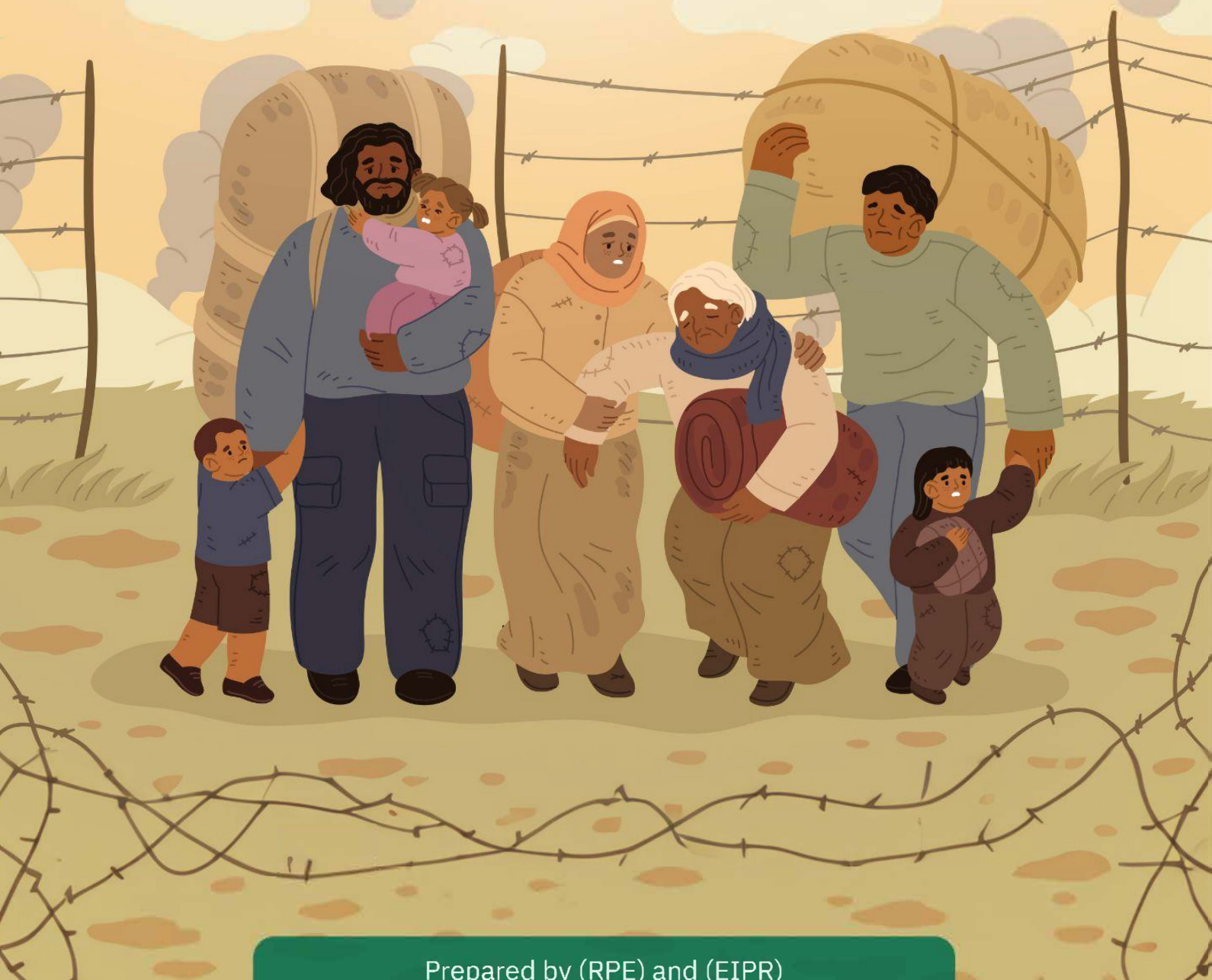
# A REGRESSION ON THE LEGAL STATUS QUO:

## Bill undermines basic refugees' protections

A joint policy brief from RPE & EIPR on the government's asylum bill



Prepared by (RPE) and (EIPR)

# A regression on the legal status quo: Bill undermines basic refugees' protections

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prepared by the Refugees Platform in Egypt (RPE) and the Egyptian Initiative for Personal Rights (EIPR) [1]

## Introduction

On the 22nd of October, 2024, the Parliament's Defense and National Security Committee hastily approved the government's draft asylum law. The government had first announced its intention to promulgate a new asylum law in June 2023, after it issued Prime Ministerial Decision 243/2023 [2]. At the time, the government did not disclose details about its bill, which was intended to replace the existing refugee status determination system. The announcement only signalled its intention to submit a bill to the parliament. A year and a half later, the bill surfaced after the Defence and National Security Committee approved it.

These developments took place against the backdrop of official discourse that is increasingly hostile to displaced people and refugees seeking protection from Egypt. Official statements also disregard that there is a legal system in place to receive and register asylum seekers, process claims and conduct status determination and that generally governs their legal status. This responsibility is shared between the United Nations High Commissioner for Refugees (UNHCR) and the Egyptian government, namely

[1] The policy brief is based on a joint analysis paper issued by the two organizations on the bill

[2] "بيان مجلس الوزراء المصري، "مجلس الوزراء يوافق على عدة قرارات خلال اجتماعه رقم 243

the Ministries of Foreign Affairs and Interior. The legal basis of this system is the international and regional conventions related to the status of refugees that Egypt has ratified, particularly the 1951 Refugee Convention, its complementing 1967 Protocol, and the 1969 Organization of African Unity (OAU) Convention (governing the specific aspects of refugee problems in Africa). These agreements have equal status with national legislation under the Egyptian constitution. Furthermore, the MOU between the Egyptian government and the UNHCR in 1981, outlines the UNHCR's role in determining the status of refugees in Egypt and provides structure to this system.

The Egyptian government is attempting to overhaul the existing legal framework by replacing it with a national mechanism, and it was hoped that such an undertaking would at least address the legal challenges refugee communities currently face. However, the draft law contravenes the Egyptian constitution and international conventions in more than one area, while overlooking crucial protection concerns for refugees and asylum seekers. Furthermore, its provisions are heavily securitised, expanding the powers of the committee (replacing UNHCR) established under that law without adequate oversight or safeguards. Regrettably, the draft law represents a regression from the established legal status quo that has proven reasonably functional for several decades, despite its shortcomings. If passed, the current bill could lead to legislative chaos and a legal vacuum during the transitional period, potentially resulting in the erosion of basic rights established for moving people, with broad scope for criminalisation and with most decisions being made on an executive basis rather than a legal basis – and without proper judicial recourse.

The following policy brief presents commentary and a few recommendations from the RPE and EIPR regarding the most important as well as the most alarming provisions of the draft law. The organisations have serious reservations and concerns about the draft law's current form and urge for the postponement of its parliamentary debate to allow for a more comprehensive and thoughtful re-drafting process. They emphasize the need to ensure that the law is not presented to the Plenary Session of the House of Representatives until after careful consideration, consultation and redrafting with relevant stakeholders.

RPE and EIPR reiterate their primary demand for the inclusion of experts and relevant stakeholders and interested parties in the bill's preparation, primarily UNHCR, partner organizations, and target communities. This collaborative approach is the only way to enable the development of legislation that effectively addresses the existing challenges and aligns with Egypt's international obligations and constitutional framework.

## Issues of concern in the draft law:

1. **Sidelining key stakeholders in the discussion and drafting process; hastily introducing the proposal for parliamentary discussion:** Despite repeated requests

from human rights organizations for over a year and a half to the relevant authorities to permit stakeholders (including experts, civil society organizations, specialized lawyers, international organizations working on refugee issues, target communities to review the draft law and participate in discussions around it; these requests were ignored. Relevant stakeholders and experts can help develop a draft that addresses the challenges and issues arising from the current asylum system that they are more familiar with. In the end, the proposed draft law was conceived solely from a security perspective, completely disregarding the existing legal framework and failing to provide safeguards for the basic rights of asylum seekers.

2. **Transitional vacuum:** The draft law lacks a mechanism for a seamless transition from the existing legal system to the new one, almost assuming an immediate and automatic implementation upon the issuance of the law. Consequently, it has no provisions defining the status of asylum seekers already registered with the UNHCR or whose files are still under examination. The absence of such provisions creates a legislative and procedural vacuum between the date of the law's enactment, the date of the publication of its bylaws, the formation and training of the Committee, and the allocation of judicial and financial resources. Drawing from the experiences of countries that have managed a successful transition from UN mandates to national asylum systems, it is evident that parallel collaboration with UNHCR was necessary during a transitional period; until the national system can effectively carry out these functions in a manner that is consistent with legal and humanitarian obligations.

   The legislative and executive vacuum poses a significant risk to the lives of thousands of registered persons awaiting in the midst of the asylum process or those who have submitted applications and are awaiting decisions. This leaves them in an uncertain legal status without clarity about which legal and procedural framework they are subject to.

3. **Legal Inadequacies and Irregularities in the Definition of Refugees and Asylum Seekers:** The draft law's definition of refugees initially appears to align with the definition established in Article 1 of the 1951 Refugee Convention, while also positively expanding on it to include "stateless persons." Additionally, the proposed definition conforms to the definition in the African Charter on Human Rights and the Organization of African Unity Convention (governing the specific aspects of refugee problems in Africa) of 1969.

   However, the text fails to explicitly include the fundamental provision of temporary protection to asylum seekers and fails to equate them with refugees who have already been determined as far as protection is concerned. This wording deprives individuals of protection in numerous instances and eliminates it entirely for individuals who qualify as "prima facie "refugees but have not yet been able to submit applications for asylum. The draft law, in this aspect, contravenes the text of the 1951 Convention,

which does not distinguish between the two categories of refugees. The bill took a different approach to the convention, by setting out to define the two categories (refugees and asylum seekers) differently, and then differentiating between them in terms of rights and protections, unlike the 1951 Convention - the foundational text of international conventions governing refugee affairs.

The draft law's definition of a refugee or an individual entitled to asylum introduces a novel term (serious) to the clause defining the grounds for seeking refuge outside the country of origin or habitual residence. The text reads as follows: "Anyone who is outside their state of nationality or their state of habitual residence for reasonable grounds based on a 'serious' and well-founded fear of persecution." The addition of this word (serious) to the 1951 Convention's definition may lead to an abuse of the process of determination by unnecessarily increasing the burden on asylum seekers to demonstrate their entitlement to protection. There is no legal clarity about what this addition means or requires that is different from "well-founded fear", which would suggest that it is simply increasing the burden of proof.
This stands in contradiction with international jurisprudence in refugee law which consistently proposes a reduced burden of proof required on refugees, partly due to the circumstances surrounding the asylum process and displacement from the country of origin or residence, which typically occur in contexts of violence and systems breakdown. In many cases, for instance, the asylum seeker may lose some or all personal documents. Therefore, it is entirely unfitting to elevate the burden on asylum seekers to obtain protection. We propose that the definition should be altered to match the original wording of the 1951 Convention which is more than sufficient.

4. **Lack of clarity on the composition and constitution of the proposed Standing Committee for Refugee Affairs (the Committee); expansion of its powers in a manner exceeding powers afforded to decision-making bodies in international conventions and practice:** The composition and jurisdiction of the committee, as defined by the draft law, raises many concerns regarding the criteria and reasonable timeframes for selecting and building the capacity of the committee's staff to receive, register, examine, and decide on asylum applications. The draft law expands the committee's powers in a way that is inconsistent with binding international standards and without a clear system of monitoring and evaluation that protects refugees and asylum seekers.

   The draft law adopts a punitive approach that treats refugees as suspect by default, and the protection it affords to them seems retractable and fragile, ignoring the basic obligations of host states towards individuals who seek protection. The articles concerning the Standing Committee (Articles 2-6), fail to clearly outline its composition and operational framework; fail to establish the basis of legal framework regulating its powers in a manner consistent with international obligations. On the other hand, those

articles and other articles give the committee excessive executive powers which undermine the guarantees granted elsewhere to refugees. This includes those who have already been granted refugee status and thus a more durable form of protection.

Article 10 alarmingly provides the Committee with the power to seek "measures as deemed appropriate" towards refugees in various emergencies such as "combating terrorism, war, dangerous or exceptional circumstances" or based on "considerations of national security and public order," without any legal limitations or clear definitions of that these measures might be. Such wildly broad language opens the door to wide and divergent interpretations that are ultimately of an executive rather than judicial nature. The text fails to restrict them or attempt to tie them to the minimum legal protections imposed by international conventions on the refugee-hosting state. This provision - which we consider the most dangerous in the bill - removes any real legal obligation from the (proposed) Committee that will decide on asylum applications and facilitate protection, and renders any previously granted protections meaningless in practice. Moreover, there does not seem to be any mechanism for redress or for challenging such exceptional measures.

5. **Excessive reliance on bylaws:** The draft law relegates many of the procedural safeguards and details of basic protections to the bylaws, a document that is supposed to clarify and not supplement the law, as bylaws are subject to amendments by executive decisions and are not subject to the same degree of legislative and judicial oversight that laws are governed by. Although the draft law stipulates a maximum time limit for the issuance of the executive bylaws, which, according to the proposal, can be issued after the formation of the standing committee; our experience suggests that this limit may not be adhered to, and executive regulations are sometimes only published years after the enactment of a law. At the same time, the failure to issue or publish executive regulations within the stipulated timeframe is not a reason to challenge the laws before the courts, which potentially could increase the length of the legal and legislative vacuum.

6. **Discrimination between asylum seekers who entered the country legally or in an irregular manner:** The draft law stipulates an unlawful form of discrimination in the time limits for adjudicating applications (articles 2 - 6). It even makes irregular entry into the country punishable by imprisonment and a fine if the application is not submitted within 45 days of entering the country (Article 31).

   Such provisions explicitly contradict Article 31 of the 1951 Convention, which prohibits state parties to the treaty from imposing penalties on asylum seekers for irregular entry. It also contravenes national laws and conventions against human trafficking and Law 82 of 2016 on Combating Illegal (irregular) Migration, which protects smuggled migrants and their families from criminal liability, regardless of whether they are asylum seekers or not.

These provisions undermine the general safeguards to protect victims and survivors of human trafficking and the rights of irregular migrants to seek asylum and protection. While Article 31 requires refugees to present themselves to the relevant authorities without delay, it does not set a specific time limit and does not create a penalty for failure to adhere to this provision. Given that the largest proportion of asylum or protection seekers and forcibly displaced people are often forced to enter the host country irregularly, any grace period could be tied to objective criteria for determining whether the reasons for delay in seeking asylum were acceptable, rather than a mere time limit, .s as is the case in the 1951 Convention.

7. **Denial of the right to appeal and seek redress:** The law does not explicitly provide asylum seekers with due interim protection, which in turn denies them the legal standing to hire a lawyer and access their right to legal defence. This is important because asylum seekers, when appealing before a national court, will need a lawyer who has the capacity and training to navigate a legal and judicial system that asylum seekers are often unfamiliar with.

   The draft law puts the proposed Committee replacing UNHCR with two decision-making options: accepting the application for asylum or rejecting it; while in many cases in current practice decision-making bodies issue preliminary decisions requesting additional information or clarification from the applicant. This provision restricts the Committee this right which in many cases is likely to force it to reject the asylum application. In case of rejection, deportation seems inevitable. Although the draft law considers the committee's decisions to be administrative decisions that can be appealed before administrative courts, it does not regulate the procedures for asylum seekers to remain in the country while an appeal against the decision to deny asylum or deportation is being examined, which is the minimum basic standard of due process and protection for refugee that must be included in the law.

   This provision violates due process standards to promote the integrity of the asylum system and denies asylum seekers the right to appeal the Committee's decisions, as stipulated in UNHCR guidelines.

   The bill (Article 35) only allows for an appeal of the Committee's administrative decision to the administrative court with no internal appeal mechanism within the status determination process itself, which again presents a regression on the status quo [3]. The unchecked power of immediate expulsion provided by the bill to the committee and the Ministry of Interior in the event of rejection renders even the possibility of litigation before the administrative courts merely theoretical.

[3] UNHCR RSD Procedural Standards Unit 7: Appeal of Negative RSD Decisions https://www.refworld.org/policy/legalguidance/unhcr/2020/en/123184

8. **Expansion of grounds for denial of refugee status and revocation, in breach of international conventions:** The draft law lacks articles that provide guarantees and clearly define the criteria for refugee status determination, while at the same time dedicating a lot of words to very broadly defined criteria that deny refugee status. Article 8 of the draft law defines the grounds on which an asylum seeker can be denied refugee status. Although exclusion grounds are exclusively defined in international law in the 1951 Convention; the draft copied them and then made amendments, first by removing "non-political" from the second ground for exclusion listed in the Convention (thus making committing a political offence a ground for deprivation, which explicitly contradicts the objectives of international conventions on the rights of refugees). The text then introduced two additional grounds for exclusion: being placed on terrorist (entities) list or committing acts "likely to jeopardise national security or public order." These same grounds also provide the committee with the power to strip recognised refugees of their status and make them subject to deportation.

   The bill empowers the committee to deny or revoke asylum status for "omitting any essential information or data." Apart from the fact that this penalty is vastly disproportionate to the legal offence and reflects a punitive and overly sceptical approach towards asylum seekers, this provision ignores the reality that a majority of asylum seekers are people who have been subjected to serious human rights violations, and in most cases are people who had to flee in exceptional circumstances and lost contact with large parts of their former lives. This naturally leads to psychological trauma as well as the loss of documents and personal papers.

   In addition to these prohibitions, the exercise of political and trade union rights, the expression of political opinion, and disturbing "public order" are also prohibited for refugees and asylum seekers. (Articles 30 and 31).

9. **A loophole in the protection of refugees from refoulement or expulsion:** While the draft law prohibits the extradition of refugees (refoulement) to the country of origin and former country of residence (Article 13), the expansion of the grounds for revocation of refugee status; the absence of clear appeal processes and the lack of clarity in language on exclusion and rejection of the asylum application, as well as provisions that provide for automatic deportation in case of rejection of the asylum application – all render this guarantee against expulsion meaningless and ineffective.

   The prohibition of expulsion or refoulement of refugees and asylum seekers is the cornerstone of the international conventions on the right to asylum (Article 33 of the 1951 Convention) and must be explicitly stated in the preamble of any proposed law and the introduction to the articles defining the responsibilities of the Standing Committee and the rights of refugees and asylum seekers. The prohibition of expulsion to any country where the protection seeker's life may be threatened or

endangered (and not just country of origin) must also be stipulated, per the original text of Article 33 of the 1951 Convention.

10. **Restricting the right to freedom of religion:** The draft law restricts the right to practice rituals only to followers of "divine (Abrahamic) religions," (this term in Egypt is used in its most restrictive definition - excluding even some denominations of Abrahamic religions). This places obvious restrictions on the right to freedom of belief and religious practice for those who do not follow less than a handful of religions, as well as allowing the denial or revocation of refugee status if a refugee practices religious rituals that are classified by the state as contrary to public order or that are no in "observance of the values and customs of Egyptian society," as stated in the proposed text (Article 14).

11. **Discriminatory provisions with no legal basis that directly contravene Egypt's international obligations:** The draft law prohibits refugees from actively participating or seeking jobs in unions and syndicates (Article 30), which undermines the additional rights granted that were provided in other parts of the text and that we welcome and have encouraged for many years regarding paid work. Notably, certain professional occupations are contingent upon membership of unions and the nature of membership should not be restricted. Furthermore, the law grants refugees freedom of movement and the right to choose a place of residence but arbitrarily restricts this right to being in accordance with the conditions listed in Article 10. This represents a serious regression from the current status quo, as Egypt is widely recognized for its comprehensive and unrestricted guarantee of freedom of movement and residence to refugees within its territory.

12. **Social groups at particular risk:** The proposed draft law's utilization of broad and undefined legal barriers, such as "public order and national security," "terrorism law," and "the values and customs of Egyptian society," poses significant risks to certain social groups. These barriers, coupled with the absence of adequate provisions on protections for asylum seekers, leave individuals susceptible to exclusion and criminalisation based on their religious beliefs, practices, sexual and gender identities, and political affiliations. Consequently, these individuals can be denied the opportunity to present compelling evidence of their well-founded fear and need for refugee protection, which is often intertwined with the aforementioned concerns. Furthermore, the draft law's application of these broad terms to criminalise refugees exacerbates the problem for vulnerable populations, with provisions that allow for disproportionate punishments including imprisonment and fines (Articles 29 and 38).

13. **Equality in taxes, not rights:** The draft law creates equality between Egyptians and refugees in taxes and fees, without equal access to public services such as education and health (Article 23). It places many obstacles to refugees' ability to work by requiring unconstitutional security measures. Furthermore, it allows for imprisonment

and fines for hiring a refugee outside of these security requirements, a penalty that completely lacks legal or constitutional basis.

14. **Criminalization of refugee assistance and employment and unconstitutional prison sentences**: The draft law penalises providing assistance and shelter to refugees "without informing the police" and punishes violators with imprisonment and fines (Article 37). There is no legal or constitutional basis for criminalising an act such as "sheltering" a refugee or helping them obtain housing. Indeed, the very term "sheltering" used in the draft is associated in Egypt's legal tradition with concealing and hiding criminals, giving the impression that a refugee is by default a criminal or a fugitive until proven otherwise.

    This extremely dangerous provision contradicts the very legal foundations of international refugee protection stipulated in international conventions, particularly Article 31 of the 1951 Refugee Convention. The draft law also extends the same restrictions and grounds for penalisation to the employment of refugees, hindering their access to employment and the enjoyment of their rights stipulated elsewhere in the draft law. Furthermore, it creates additional obstacles to the work of development organizations, support groups, and even individual activism or solidarity motivated solely by humanitarian motives, which could be penalised under the proposed law.

15. **Lack of clarity on data management policies:** The draft law fails to establish a comprehensive framework or any controls whatsoever to safeguard the data submitted to the Committee, collected by the Committee itself, or through auxiliary institutions. It also lacks a clear mechanism to determine how this data will be managed, preserved, and shared. This omission significantly compromises the privacy of refugees, as the Committee is entrusted with collecting sensitive information about them without a legal framework to ensure its confidentiality or restrict its use. This absence of a legal framework may expose refugees to the risk of their personal data being leaked or misused for security or administrative purposes, which contravenes international standards that guarantee refugees' right to privacy. Furthermore, this omission may lead to discrimination and potentially even forced deportation in some cases, if their information is lost or mismanaged, particularly since no legal liability is stipulated in the event of such mismanagement.

    More pressingly, the law does not attempt to establish a general framework for organizing and protecting data during the transitional phase when refugee data is expected to be transferred from the UNHCR to the Committee.

## Conclusion and recommendation

The draft legislation proposed by the government directly contravenes numerous international obligations Egypt has undertaken with regard to safeguarding the rights of

refugees and asylum seekers. This legislation creates opportunities for potential expansion of problematic practices of criminalisation and deportation of refugees and asylum seekers, as well as the criminalisation of support groups, membership organisations, and even individuals who provide humanitarian or who simply help individuals out of sheer solidarity or concern for human life.

The draft law was developed in near complete isolation from international institutions tasked with refugee rights, Egyptian and international human rights organisations, and other relevant stakeholders. It was produced during a highly sensitive political moment characterized by an increasing influx of displaced persons and those in need of protection from Egypt. Problems arising from this have been exacerbated by escalating anti-migrant and anti-refugee rhetoric, including from official or state-affiliated parties, and official messaging that misrepresents the facts by insisting on wildly inflating the number of refugees or those seeking protection in Egypt, besides exaggerating the nature and amount of rights they have access to (rights that they typically do not enjoy in Egyptian territory).

This comes at the same time that the partnership between Egypt and the European Union is being upgraded as part of an agreement that puts the management of the migrant movement at its centre. All of this means that the current legal status quo, despite its deep, structural flaws and shortcomings - which a national asylum law is meant to address - is actually more capable of safeguarding the rights of refugees and asylum seekers in Egypt than the proposed alternative.

Based on the analysis conducted, RPE and EIPR recommend postponing the discussion of the draft law in the House of Representatives General Committee until it is redrafted and is properly and more broadly discussed. Furthermore, any asylum bill should be drafted carefully with the participation of all stakeholders and institutions that have been overseeing the process of determining refugee status and the management of refugee issues in Egypt for decades, particularly the UNHCR.

RPE and EIPR emphasise that there is no reason to rush the promulgation of a refugee bill and that it is more sensible to wait, learn from similar experiences (of countries that are of a similar socio-economic profile and have managed the transition), and to consider and plan the transitional phase. This should be done while a new draft law is developed that guarantees and actually strengthens the basic guarantees of the rights of refugees in Egypt, and that is consistent with the Egyptian Constitution and the legal obligations placed on Egypt and its international partners and explicitly mentioned in multiple human rights conventions - including the conventions governing the rights of migrants and refugees.