Right to Information And National Security in Egypt
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1. Introduction

Reviewing the different Egyptian laws that regulate access and exchange of information, in addition to other rights, we shall find a repetition, almost routine repetition, of certain terminologies\(^1\), which constitute red lines that require withholding of information, including the term national security which is constantly repeated as such without any specification or elaboration, a matter that contradicts related international standards, even those addressing exceptional periods such as times of crises or war.

The term national security is not only being used in national laws, but has recently become a commonly used term beginning with “strategic experts\(^2\)”, advocates of conspiracy theories, fourth and fifth generation laws, state officials and last but not least the media and citizens. It has also become a topic for many seminars and conferences organized by state representatives and the security and military authorities to discuss “pending dangers” that threaten Egyptian national security, and how to face them through uniting the internal front, which in their opinion means silencing opposition voices, overlooking human rights violations, including right to freedom of expression and right to information. Since April this year and the present time, eleven conferences and seminars discussed national security in general and its relation to the media\(^2\) in Egypt, in addition to a vast amount of opinion articles and poplar shows. With a few exceptions, outputs of those meetings feed not a vague notion of something called national security, or the Egyptian state, as if the Egyptian state was an entity on its own and not the collective of Egyptians whose rights must be respected at all times, peace and war. Absent from those meetings, and from the public space in general, are voices who call for a more encompassing human rights definition of national security, which involves sustainable development and respect for the state of law and human rights.

It is therefore very important, now more than ever before, to present a different view that puts an end to this madness, especially at the beginning of a parliamentary term that is expected to draft laws that complement the constitution, among them the law for exchange of information.

\(^1\) Among other terms that are repeated: public order, public interest, defense of the homeland and supreme interests, the secrets of the defense of the country, and disturbing the peace.

\(^2\) For example: (The Fourth and Fifth Generation Wars and their Effect on the Egyptian National Security) symposium - the University of Ganoub Alwady - October 2015/ A seminar on (media, freedom of expression and national security) – Cairo Club for the Press, of the Public Authority for Information – September 2015/ A session entitled (Media, National Security and Foreign policy issues) in the framework of the conference that was held by the National Center for Social and Criminological Research entitled (Media and Social Issues - Between Professionality and Social Responsibility) in April 2015/ A symposium on the challenges facing the Arab and Egyptian national security held in Matrouh Media Center, in the presence of Nasser Military Academy counselor, in December 2015, and more.
This paper seeks to elaborate on the concept of national security in relation to human rights, based on the premise that the default regarding governmental information is to make it accessible to citizens and that this is a fundamental democratic right, since it is required for accountability and obliged the government to be transparent and hence fighting corruption, granting freedom of expression and ensures the realization of all human rights through awareness with related international standards, in addition to examples of legislations from other countries comparing them to the Egyptian context.
2. Concept of national security in relation to human rights.

Development of concept of national security

For many years the concept of national security revolved around the protection of state sovereignty against external threats which might harm the countries' interests and those of its people. Those external threats were limited to military attacks and aggressions by one state against the other. Hence the concept of national security was closely linked to the armed forces of the state concerned, its military, security and intelligence authorities. Since the end of WWII this concept developed to include a wider framework that involved human rights and sustainable development as fundamental components of any successful strategy or policy related to national security. Paradoxically, former US minister of defense “Robert McNamara”, who occupied his position in the sixties of the last century in the aftermath of the Vietnam war, was among the first to call for a change of international view of the concept of security, from artillery and arms to greater attention to sustainable development and improving economic conditions of individuals in a state, to the effect that it secured them dignity and met their expectations of an honorable living; otherwise they would resort to violence to impose their demands on their governments, and consequently the eruption of armed conflicts and civil wars, which will definitely affect national security of those states as well as international peace and security.

National security and human security

We cannot address the modern concept of national security without addressing the close link it has with human security.³ Human security refers to protection of fundamental freedoms and rights which protect individuals from feeling threatened or violated and at the same time promotes their abilities and expectations. It seeks to reduce probabilities of conflict, and help bypass obstacles to development and human rights for all. It is based on the premise that the rationale behind the existence of state institutions and their laws is to serve individuals and their communities and not the other way around. The concept of human security is based on a number of principles:⁴

1. The individual is the center of its concern:

Thus it focuses on survival, dignified living foremost among the most vulnerable groups.

2- Comprehensive

Through understanding how a specific threat could negatively impact freedoms, which are universal and interconnected. It calls for a comprehensive, multidisciplinary and collaborative approach.

3- Context specific

Human security adopts solutions that are specific for the local context, based on actual needs, points of weakness, governmental and individual abilities.

4- Preventive:

It addresses root causes of a specific threat, to address them and prevent future threats.

5- Protection (top to bottom) and empowerment (bottom – up)

Meaning the coordination of institutional efforts from top to bottom including establishment of early warning measures, good governance, social protection mechanisms, rights protection, together with participatory mechanisms (bottom – up) which value and uphold the role of individuals in defining and exercising freedoms as well as fundamental responsibilities, with consequent improvement of local potentials, strengthening social cohesiveness and ensuring justice in resource distribution.

The constitution of South Africa is famous for adopting the modern concept of national security. The first and second paragraphs of its article 198 state that:

a- National security must reflect the resolve of South Africans, as individuals and as a nation, to live as equals, to live in peace and harmony, to be free from fear and want and to seek a better life.

b- The resolve to live in peace and harmony precludes any south African citizen from participating in armed conflict, nationally or internationally, except as provided for in terms of the constitution or national legislation.
National Security and International Human Rights Law

International human rights law (IHRL) foresees the restriction on some freedoms and rights for the protection of national security, which led human rights experts and concerned international organization to make an effort to draw standards that regulate the relation between fundamental rights and national security. International law is not static nor is it not subject to change; it develops with the change of times and upon developments that call for adaptation. Since its adoption after WWII with the declaration of human rights in 1948 IHRL has been constantly updated. For example, the emerging need for international human rights documents to accommodate the technological leap in means of communication, etc.

“National security” was mentioned in the international covenant for civil and political rights (ICCPR) in a number of articles as one of the reasons to justify imposing restrictions on rights included in those articles, such as article 12 “right to movement”, and article 19 “right to freedom of expression and exchange of information”, article 21 “right to peaceful assembly”, article 22 “right to formation of associations and trade unions. National security was also mentioned in article 13 regarding expulsion of foreigners and article 14 concerning public trials.

Article 19 of the ICCPR states that:

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

   (a) For respect of the rights or reputations of others;

   (b) For the protection of national security or of public order (ordre public), or of public health or morals.

In view of the looseness in the language of the covenant, allowing too many interpretations that are no necessarily compatible with the objective of international human rights law, which is primarily meant to prevent the governmental encroachment on rights of individuals, there appeared the need for clear and specific descriptions of the restrictions on freedoms and rights mentioned in those
documents to the effect that they can ensure the rights of individuals versus state legislations, which may be incompatible with the objective of international human rights law. The official public discourse and its media mouthpieces in non-democratic countries may insist that the right of individuals to information contradicts requirements of state national security; the vague language which lacks specificity regarding permissible exceptions may allow for restriction of freedoms and rights mentioned in international documents, especially under exceptional circumstances which may be true or imagined to impose more restrictions, such as declaration of state of emergency or combat of terrorism.

Actually, the right to access information constitutes a crucial element in the protection of national security and democratic participation. Also the excessive abuse by the government of the notion of national security can weaken measures that challenge governments’ abuse of authority, including abuse of the judiciary, media freedom and oversight by legislative institution.\(^5\)

Among those international standards developed to organize the relation between requirement of national security on the one hand and human rights on the other is the Siracusa document, in addition to the Tshwane document, The Johannesburg principles, etc. which focused on the rational of national security to the right of access to information, which is the subject of this paper.

**Siracusa principles**\(^6\)

The Siracusa principles are a constellation of principles that have been agreed upon by 31 international experts in international law, of various nationalities including Egypt, in their meeting in Siracusa, Italy in the spring of 1984. They have been then approved by the UN commission for human rights in September 1984. The introduction to the document states that those principles have been drawn to closely examine of the conditions and grounds for permissible limitations and derogations enunciated in the ICCPR in order to achieve an effective implementation of the rule of law. As frequently emphasized by the General Assembly of the United Nations, a uniform interpretation of limitations on rights in the Covenant is of great importance. The participants were agreed that there is a close relationship between respect for human rights and the maintenance of international peace and security; and that the systematic violation of human rights undermines national security and public order and may constitute a threat to international peace\(^7\)

\(^5\) Tshwane principles, page 2

\(^6\) [http://www.refworld.org/docid/4672bc122.html](http://www.refworld.org/docid/4672bc122.html)

\(^7\) Ibid, page 2
In the introduction to the document published by the American Association for the International Commission of Jurists, which is the organization that called for the expert meeting, it said that the rationale for the document lies with the “The abuse of applicable provisions allowing governments to limit and derogate from certain rights contained in the International Covenant on Civil and Political Rights has resulted in the need for a closer examination of the conditions and grounds for permissible limitations and derogations in order to achieve an effective implementation of the rule of law”.

On the issue of national security, the Siracusa document stated that:

29. National security may be invoked to justify measures limiting certain rights only when they are taken to protect the existence of the nation, its territorial integrity or political independence against force or threat of force.

30. National security cannot be invoked as a reason for imposing limitations to prevent merely local or relatively isolated threats to law and order.

31. National security cannot be used as a pretext for imposing vague or arbitrary limitations and may only be invoked when there exist adequate safeguards and effective remedies against abuse.

32. The systematic violation of human rights undermines national security and may jeopardize international peace and security. A State responsible for such violation shall not invoke national security as a justification for measures aimed at suppressing opposition to such violation or at perpetrating repressive practices against its population.

It is to be noted that paragraph 32 warned of the systematic violation of human rights, which exposes national security to danger; in that regard it is in agreement with modern definitions of national security.
3. National Security and the right to information in Egypt

This section presents a reading of the Egyptian context and legislation versus the two international documents concerning national security and the right to information “Tshwane principles and Johannesburg principles for national security” through the review of constitutional provisions and legislative texts, in addition to highlighting certain incidents over the last few years in Egypt.

The Johannesburg and Tshwane principles

The Johannesburg principles are considered one of the most important documents to organize the relation between national security and right to information. It was considered a historical step in the development of principles and standards after the Siracusa principles, mentioned above. It focused only on aspects of freedom of expression and rights to information amongst the remainder of human rights mentioned in the Siracusa principles, providing elaboration and clarification therefore. Those principles are based on international and regional law as well as measures for the protection of human rights and the development of state practices (as shown by decisions made by national courts) as well as general law principles that are acknowledged by the UN.

In its beginning the document states that it is based on the Siracusa principles in addition to the “minimal Paris human rights standards in emergency states”. The document has been endorsed by the UN in 1996.9

As for Tshwane principles10 they are more specific than the Siracusa ones and more in-depth than the Johannesburg principles, since they elaborate on the interpretation and explanation of standards for the use of national security as a reason for withholding some information or punishment of those who disclose them.

This document is considered an all-encompassing one for all that has been produced worldwide on the issue, since it is based on international standards, best practices and contributions by experts worldwide. Consultations regarding this

8 Was accredited on October 1st, 1995 by a group of experts in international law, national security, and human rights in a meeting held by the Article 19 organization and the International Centre Against Censorship, in collaboration with the Center for Applied Legal Studies at the University of the Witwatersrand, in Johannesburg. The Johannesburg Principles document can be found via this link http://www.un.org/esa/sustdev/documents/Johannesburg%20Declaration.doc.
document involved more than 500 experts from 70 countries in 14 meetings organized in various places, in addition to the UN special rapporteur for freedom of opinion and expression, UN special rapporteur on counter terrorism and human rights, Special Rapporteur of the African Commission for human and people’s rights on freedom of expression and access to information, Special rapporteur of the organization of American states on freedom of expression, as well as representative of the Organization of Security and collaboration in Europe on media freedom11. It is therefore that this document will be reviewed in detail in this paper.

Those documents do not deny the state’s right to withhold some information in order to protect fundamental rights of individuals or for national security concerns. They seek to develop specific interpretations of what is meant by national security and the principles that should be followed when national security is used to withhold information. In its introduction the Tshwane principles document states that “barriers to public and independent oversight created in the name of national security increase the risk that illegal, corrupt, and fraudulent conduct may occur and may not be uncovered; and that violations of privacy and other individual rights often occur under the cloak of national security secrecy”; and that the only reason where it is permissible to withhold information is when “the interest of the population that calls for secrecy of information greatly outweighs that of their disclosure.”12

It should be noted that the Tshwane principles did not include a specific definition of national security. However, in principle 2 it was noted that what the document addresses “is good practice for national security, where used to limit the right to information, to be defined precisely in a country’s legal framework in a manner consistent with a democratic society13, since the developers of the document are aware of the variability of social, political and economic determinants in every country, which may affect the definition of the concept of national security deepening on the changing contexts. This is not in any way to be understood to grant states the freedom to define what is meant by national security without consideration of human rights and freedoms of individuals, which will be made clear in reviewing the rest of the principles mentioned in the document.

In the section on “definition” in the Tshwane document refers to the definition of “Legitimate national security interest” stating that “A national security interest is not legitimate if its real purpose or primary impact is to protect an interest unrelated to national security, such as protection of government or officials from

11 Ibid, page 5
12 Ibid
13 Ibid, principle 2
embarrassment or exposure of wrongdoing; concealment of information about human rights violations, any other violation of law, or the functioning of public institutions; strengthening or perpetuating a particular political interest, party, or ideology; or suppression of lawful protests”.14

The 12th principle of the Johannesburg document, concerning the “Narrow Designation of Security Exemption” states that the “A state may not categorically deny access to all information related to national security, but must designate in law only those specific and narrow categories of information that it is necessary to withhold in order to protect a legitimate national security interest.”

**National Security in the Egyptian Constitution**

Regarding Egyptian legislations, the first mention of national security in the Egyptian 2014 constitution, lies in article 31 which states that:

“The security of cyberspace is an integral part of the economic system and national security. The State shall take the necessary measures to preserve it as regulated by Law.”

It should be noted that this article belongs to the section on Basic components of Society and not in the section of public freedoms. Article 68 which addresses the right to information did not mention in detail the reasons that justify withholding information, mentioning that this would be regulated by the law. Until now no law has been issued regarding to information in Egypt, although it was among the priorities of the current parliamentary cycle, since it is one of the laws that complement the constitution. Until then, the present laws dealing with release of information are being enforced; those laws are not comprehensive and include numerous gaps and provisions that lead to secrecy rather than disclosure of information.

As for article 86, it states that “Protecting national security is a duty. The responsibility of all parties to uphold national security is guaranteed by the Law... Defending the nation and the protection of its land are an honor and a sacred duty. Military service is mandatory according to the Law” without any specification regarding the nature of national security, nor how it can be protected according to the article. In fact, if the current artillery of laws will not be subjected to a review to examine its compatibility with the provisions of the relatively recently endorsed constitution, this article would have provided the constitutional pro-

14 Ibid, page 10
tection to a number of laws that undermine existing freedoms, foremost freedom of expression and right to information, where the term “national security” was mentioned.

Article 211 of the constitution concerning the Supreme Council for the Regulation of Media, mentions national security as one of the factors that have to be taken into account by the different media outlets; outlining criteria for abiding by national security requirements fall within the mandate of the Council.

Concept of National Security in the laws organizing communication and the press

In an attempt to find a definition of national security in Egyptian laws, we have law 10/2003 regarding the issuance of the law organizing communication, which is the only law that includes a definition for national security, stating that it is “all that concerns affairs of the republican presidency, the armed forces, military production, ministry of interior, general security, national security agency, administrative control and related bodies.” Article 4 of the same law outlined regulations governing the work of the national body for the organization of communication, including “protection of national security and higher state interests”, thereby contradicting Tshwane and Johannesburg principles since it expands the concept of national security to include whole institutions, without any objective measure for national security to be used as reference. It is not acceptable to consider everything that is related to certain institutions to be a national security concern, thereby opening the door wide for restriction of popular oversight and subjecting to punishment any person who undertakes the study, analysis or criticism the performance of those institutions, which constitutes the fundamentals of democracy.

In the press organizing law issued in 1996 the term “national security” appeared in articles 4 and 9. Article 4 permits censorship of newspaper during exceptional periods of time, such as war or public mobilization or for reasons of public security and general safety. Article 9 clearly and explicitly sets “national security” as a general exception to the right to access and exchange information: “It is prohibited to impose any restrictions that prevent the free flow of information or obstructs equal opportunity between the different newspapers regarding access to information, which might obstruct the right of citizens to information and knowledge, without compromise of requirements of national security and defense of the homeland and its higher interests.”
The above contradicts principles 2, 3, 4 and 5 of Tshwane principles. Principle 3 in particular was quite specific regarding the requirements for justifiable restriction of access to information for reasons of national security. According to principle 3 the government has to prove that those restrictions are:

a- Prescribed by law. The law must be accessible, unambiguous, drawn narrowly and with precision so as to enable individuals to understand what information may be withheld, what should be disclosed, and what actions concerning the information are subject to sanction.

b- Necessary in a democratic society.

(i) Disclosure of the information must pose a real and identifiable risk of significant harm to a legitimate national security interest.

(ii) The risk of harm from disclosure must outweigh the overall public interest in disclosure.

(iii) The restriction must comply with the principle of proportionality and must be the least restrictive means available to protect against the harm.

(iv) The restriction must not impair the very essence of the right to information.

c- Protection of a legitimate national security interest. The narrow categories of information that may be withheld on national security grounds should be set forth clearly in law.

The second Tshwane principle stressed the importance of the law including sufficient guarantees against its abuse, including immediate, comprehensive and effective evaluation of the validity of the restriction, monitored by an independent oversight body, and subject to complete judicial revision.

The same principle included an illustrative list of factors to be considered in deciding whether the public interest in disclosure outweighs the risk of harm:

- Factors favoring disclosure:

When disclosure could reasonably be expected to

(a) promote open discussion of public affairs,

(b) enhance the government’s accountability,

(c) contribute to positive and informed debate on important issues or matters of serious interest,
(d) promote effective oversight of expenditure of public funds,
(e) reveal the reasons for a government decision,
(f) contribute to protection of the environment,
(g) reveal threats to public health or safety, or
(h) reveal, or help establish accountability for, violations of human rights or international humanitarian law.

- Factors favoring non-disclosure:
When disclosure would likely pose a real and identifiable risk of harm to a legitimate national security interest.

- Factors that are irrelevant:
When disclosure could reasonably be expected to
(a) cause embarrassment to, or a loss of confidence in, the government or an official,
(b) weaken a political party or ideology.

The same principle added that the fact that disclosure could cause harm to a country’s economy would be relevant in determining whether information should be withheld on that ground, but not on national security grounds.

Principle 4 of the Tshwane document states that the burden of demonstrating the legitimacy of any restriction rests with the public authority seeking to withhold information, i.e. it is not the responsibility of the person seeking access to information to prove that they are not related to national security. Such responsibility lies with the authority to prove that the ban is due to national security concerns, in which case it has to provide specific and objective reasons. The mere release of a certificate or statement by a minister or an official to the effect that such information harms national security is not considered a decisive decision in that regard and the matter should be referred to a court of judgement in each single case.

This again, contradicts articles 8 and 10 of the press law. Article 8 states that a journalist is entitled to receive information which is accessible by law; article 10
exempts information, statistics or news that are “secretive by nature or according to the law” from the scope of information a journalist is permitted to access.

**Exemption of whole institutions from requirements of disclosure of information.**

Principle 5 of the Tshwane document stipulates clearly that no public authority may be exempted from disclosure requirements of information, mentioning specifically “the judiciary, the legislature, oversight institutions, intelligence agencies, the armed forces, police, other security agencies, the offices of the head of state and government, and any component offices of the foregoing. It added that information may not be withheld on national security grounds simply on the basis that it was generated by, or shared with, a foreign state or inter-governmental body, or a particular public authority or unit within an authority, which is in total contradiction with the above mentioned Egyptian law regulating communication, and hence affects judicial decisions in related cases in Egypt. The provision also contradicts the content of media messages or comments made by Egyptian officials, including recently elected parliamentarian, who should undertake a role of oversight with all state bodies, including the armed forces.

For example, questioning or discussing the nature of some institutions in Egypt or their budgets, such as the armed forces or the security institutions, is considered treason and not an exercise of a fundamental right to knowledge and access to information necessary for oversight, transparency and combat of corruption.

According to principle 9 of Tshwane document, and bases of court decisions in some countries as will be shown later, states should not only disclose budgetary items of the armed forces and other military bodies, but also information related to military operations at a certain time and place as long as disclosure of ongoing or future military operations could not be used by the enemy of the state.¹⁵

Implementation of this principle is akin to a phantasy in Egypt, where the military budget is mentioned as a round figure in the state budget, and its details are not subject to disclosure. Even parliamentarians are not allowed access to the details of the military budget, according to article 203 of the constitutions, concerning the National Defense Council, which states that:

“National Defense Council shall be chaired by the President of the Republic and comprise the membership of the Prime Minister, the Speaker of the House of Representatives, the Minister of Defense, the Minister of Foreign Affairs, the Minister of Finance and the Minister of Interior, the Chief of the General Intelli-

¹⁵ Ibid, page 19
gence Service, the Chief of Staff of the Armed Forces as well as the Commanders of the Navy, the Air Forces and Air Defense, the Chief of Operations of the Armed Forces, and the Head of Military Intelligence. The Council shall be competent to examine the matters pertaining to preserving the security and integrity of the country, and to discuss the budget of the Armed Forces, which shall be included in the State budget under one budget line. The opinion of the Council shall be obtained on the bills concerning the Armed Forces. Other competences of the Council shall be specified by Law. Upon discussing the budget, the Head of the Financial Affairs Department of the Armed Forces and the heads of the Planning and Budgeting Committee and the National Security Committee at the House of Representatives shall join the Council. The President of the Republic may invite any person having relevant expertise to attend the Council’s meetings without having the right to vote.”

The first article of law 313/1956k amended by law 14/1967 concerning the ban on publishing any news related to the armed forces states that:

“It is prohibited to publish or broadcast any information or news regarding the armed forces, its formations, movements, artillery, or members and generally anything that is related to military or strategic affairs in any way through publishing or broadcasting except after obtaining a written permission by the director of military intelligence, or his deputy in case of the latter’s absence, whether by the publisher of the published or broadcasted material or the person responsible for its publishing or broadcast.”

If we apply this to the nature of information being disclosed regarding ongoing military operations in Sinai, which amounted to forced displacement of some citizens, in addition to allegation of widespread human rights violations against the inhabitants of this area under the pretext of combat of terrorism, we realize that this in itself is a violation of principle 10 of Tshwane document, which prioritized disclosure of information related to human rights violations or which could affect fairness of future trials for such violations.

Principle 10 gave examples of the kind of information that should be disclosed in the case of human rights violations, or the mere suspicion of their occurrence, as follows:

(a) A full description of, and any records showing, the acts or omissions that constitute the violations, as well as the dates and circumstances in which they occurred, and, where applicable, the location of any missing persons or mortal remains.

(b) The identities of all victims, so long as consistent with the privacy and other rights of the victims, their relatives, and witnesses; and aggregate and other-
wise anonymous data concerning their number and characteristics that could be relevant in safeguarding human rights.

(c) The names of the agencies and individuals who perpetrated or were otherwise responsible for the violations, and more generally of any security sector units present at the time of, or otherwise implicated in, the violations, as well as their superiors and commanders, and information concerning the extent of their command and control.

(d) Information on the causes of the violations and the failure to prevent them.

Principle 9 of the Johannesburg principles concerning banned places states that:

Any restriction on the free flow of information may not be of such a nature as to thwart the purposes of human rights and humanitarian law. In particular, governments may not prevent journalists or representatives of intergovernmental or nongovernmental organizations with a mandate to monitor adherence to human rights or humanitarian standards from entering areas where there are reasonable grounds to believe that violations of human rights or humanitarian law are being, or have been, committed. Governments may not exclude journalists or representatives of such organizations from areas that are experiencing violence or armed conflict except where their presence would pose a clear risk to the safety of others.”

In Egypt it is not permitted to disclose information related to army operations in Sinai, or elsewhere, except by the armed forces themselves. Usually those are short information, merely mentioned the number of “takfireyin” killed as they are called or the number of “terrorist hot spots” which have been attacked and exposed, without any mention of the names of the killed or the location of the operation or the legal procedures undertaken upon opening fire to identify whether the killing was extrajudicial or otherwise, as well as guarantees of fair trials. Nor is it allowed to accompany the army during its operations, nor to depend on other sources of information such as testimonies or complaints by local population or civilian workers in those locations such as doctors, ambulance drivers etc. The arrest of researcher and journalist Ismail El Eskandarani16, concerned with Sinai affairs, is clear evidence of the media gag and the withholding of any information that might differ from the official ones.17 Similarly, photojournalist Mahmoud Abu Zeid (Shawan) has been arrested and put to trial for covering the dispersion of the Rabaa Adaweya protest in August 201318, provides another ex-
ample of how far governments can go to oppress those who seek to disclose and document facts in the absence of legislations that protect the right to information, using vague terms such as “national security” and in the absence of criteria therefore.

The 10(b) Tshwane principle addresses safeguards for the Right to Liberty and Security of Person, the Prevention of Torture and Other Ill-treatment, and the Right to Life

(1) Laws and regulations that authorize the deprivation of life of a person by the state, and laws and regulations concerning deprivation of liberty, including those that address the grounds, procedures, transfers, treatment, or conditions of detention of affected persons, including interrogation methods.

(2) The location of all places where persons are deprived of their liberty operated by or on behalf of the state as well as the identity of, and charges against, or reasons for the detention of, all persons deprived of their liberty, including during armed conflict.

(3) Information regarding the death in custody of any person, and information regarding any other deprivation of life for which a state is responsible, including the identity of the person or persons killed, the circumstances of their death, and the location of their remains.

The above mentioned principle is not applied at all in the case of Egypt. According to reports of international and local human rights organizations, including the National Council for Human rights, Human Rights Watch, Egyptian commission for rights and freedoms, Egypt suffers the phenomenon of forced disappearance. A report titled “Forced Disappearance awaits Justice” issued by the Egyptian Commission for Rights and Freedoms\(^1\) concludes with the “involvement of some security authorities such as the national security sector affiliated to the ministry of interior and the military intelligence department affiliated to the armed forces in the kidnap of individuals and keeping them isolated from the outside world in secret or illegal places of detention such as national security headquarters such as Lazoughli in Cairo, central security and national security camps in Tanta, military prisons such as Azouli prison and New Azouli prison inside the Galaa camp in Ismailia at the headquarters of the high command of the second field army... where the detainees are subject during the period of their disappearance to vari-
ous methods of torture and maltreatment, foremost electrocution, suspension from the hand, forcing them into the grill position, threat of sexual assault with the objective of receiving confessions or collecting information of individuals or entities that organize demonstrations or suspected of links to terrorist attacks. Throughout their detention the victims remained blindfolded, handcuffed under dire detention conditions. The report also indicated a number of cases who have been subject to forced disappearance since the events that followed the 30th of June 2013 and whose fate remains unknown until now.”

Those human rights organizations have depended on the testimonies of survivors of forced disappearance and torture as well as on complaints by families of the disappeared, while the role of the ministry of interior, and upon major lobbying efforts, to respond to questions by the National Council for Human Rights and examine the names of cases that have been documented to confirm or disconfirm their presence in prisons. However, it has failed to comment on some cases, which indicates that they might have been killed under torture and maltreatment, for lack of a fair trial or disclosure of the aforementioned information, which should include disclosing method of interrogation, places of detention, etc., especially that there is no way to confirm the whereabouts of the victims.

Section (c) of the 10th Tshwane principle addresses the kind of information that should be disclosed in relation to the Structures and Powers of Government, which include without limitation, the following:

(1) The existence of all military, police, security, and intelligence authorities, and subunits.

(2) The laws and regulations applicable to those authorities and their oversight bodies and internal accountability mechanisms, and the names of the officials who head such authorities. (3) Information needed for evaluating and controlling the expenditure of public funds, including the gross overall budgets, major line items, and basic expenditure information for such authorities.

(4) The existence and terms of concluded bilateral and multilateral agreements, and other major international commitments by the state on national security matters.

This principle stresses the importance of disclosure by security institutions of the extent of security forces presence, their internal bylaws and regulations concerning oversight and accountability, names of officials, etc. to enable a reference and follow up of internal investigations that address a specific human rights violation

http://www.gc-rf.org/?p=1194
possibly committed by one of its members. To give one example, a military court acquitted the only defendant in the famous “virginity testing” case that took place in March 2011, which resulted in local and international uproar amidst contradictions in statements by army officials before and after the verdict ranging from statements that the practice of virginity testing was a routine practice in military prison to complete denial of the incident. In view of the lack of transparency regarding regulations in such cases, the defendant was acquitted. Another famous incident involved the assault of a woman during the Tahrir protests in December 2011, where the whole incident was captured on video showing army soldiers beating and kicking her resulting in her fall, exposure of the upper part of her body. This was followed by statements by officials of the Egyptian army that investigations are ongoing to hold perpetrators accountable, although nothing happened in that regard until the writing of this report.  

The same principle calls for the disclosure of bilateral or multi-lateral security agreements with other states, which could be related, for example, to exchange of prisoners. In that regard it is noteworthy to mention the scandal of “torture by proxy” between the CIA and a number of countries, including Egypt, in the aftermath of the September 2001 attacks, or what has been called “enhanced interrogation techniques” exposed in the report by the CIA to the US Congress, which was unclassified towards the end of 2014, by the title “Committee Study of the Central Agency’s Detention and Interrogation Program.” Media reports have described Egypt as “as a main destination for “outsourcing” detention for the CIA, where the US had transferred prisoners to other countries to be interrogated.” Such information had leaked to the Egyptian Press via reports and media leaks abroad, to be confirmed by the US Senate, and not through direct disclosure by the Egyptian government, which refrained from commenting to the contents of the report.

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Concept of national security in a court ruling in Egypt

With the early hours of Friday, the 28th of January 2011 (Friday of Wrath) three companies providing telecommunication and mobile services in Egypt, cut their services to all their clients, for five days. The companies later rationalized this step, that it was upon orders by sovereign bodies in Egypt as well as the national agency for organization of communication.

The administrative court (7th circle – economic and investment disputes) looked into a lawsuit by the number 21855/65 by lawyers and activists, among them Manal El Tibi, director of the Egyptian Center for Housing rights, against state officials related to the decision to cut communication as well as against the three mobile companies, demanding a cancellation of the administrative body’s right to issue a decree to stop or cut communication services to mobile phone. They also demanded that the accused pay compensation for the material and moral harm that befell service users as a result of cutting it for the above mentioned duration.

The court ruled in favor of the plaintiffs in this case on the 28th of May 2011, addressing in detail the concept of national security, which the administrative body used as a pretext to cut communication, which necessitates a definition of the concept to be able to judge the legitimacy of its use to rationalize the decision, or the absence of such legitimacy and hence accept the appeal. The court defined national security in a number of paragraphs, among which are the following:

“The ability of the country to protect its territory, its fundamental values against external threats, foremost military ones, based on the fact that this mandate of safeguarding state territory against foreign aggression, protection of citizens from harm, as well as their property, beliefs and values, is the mandate granted by the people to the state on ground of the social contract between them.”

The court also described the various aspects of national security, defining its political aspect as “including two elements, an internal and an external one; where the internal aspect relates to the coherence of the internal front, social peace, citizenship with decline of sentiments of tribalism and sectarianism; as for the external aspect it is related to an estimate of the greed of major states in state territory; and the economic aspect is related to the national strategy concerned with the development and use of all state resources to achieve its political objectives and build necessary defense force and promote trade exchange”; the military aspect concerns meeting requirements of defense through the building of a strong military force, capable of achieving strategic military balance and necessary defense; the social aspect being the realization of social justice and reducing class gaps as well as development of services.
The court concluded that it does not recognize a threat to national security which necessitated cutting communication and hence “the claim behind the appealed decree is not justified and has been used to cover another covert cause for its issuance, namely the protection of the regime.”
4. National security and right to information – the case of Mexico

In this section, we will discuss the evolution of the right to information in the State of Mexico, beginning with the constitutional amendment to societal pressure for the release of information law, with three examples of cases that were presented to the Independent Information Commission regarding access to information that may relate to national security; it is to be noted that three decisions were made to disclose information regarding matters, which in Egypt are considered even taboo thoughts, locked up by permanent laws and even the current constitution in a black box, to prevent their discussion entirely.

Background

The Mexican constitution has been amended in 1977 to include the right to free information, where article 6 states that the right to information is granted by the state. Also, the Supreme court in Mexico passed several verdicts supporting and promoting this right. Mexican parliament has unanimously agreed to pass the bill granting the right to information. The law was titled “Federal law for transparency and access to public governmental information” (Information law) in April 2002. It was signed by the president in June 2002 and was enforced in June 2003. It is to be noted that the law was the result of ongoing efforts by a civil society coalition known as the Oaxaca group.

According to the law, the “Federal Institute for Public Information” (IFAI), which is the name given to the independent commission for information in Mexico, a step that set a new international standard for the independence of oversight authority over the implementation of the right to information. Citizens sent more than 400 thousand requests to access information to governmental bodies online, a system which has been developed over several years to facilitate use and respond to needs of citizens. The system is not only used to send information requests or appeals to withholding information to the IFAI, but also provides the possibility to review all previous requests submitted to the government and the governmental responses accordingly. This form of input enables citizens to review the development of transparency in Mexico over periods of time, and constitutes one of the most advanced information gateways on the internet.  

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Also, IFAI decisions regarding submitted appeals are considered one of the most advanced regarding the right to information in general as well as in determining relation of right to information to claims put forward by the government, such as national security concerns in particular as will be shown in the following three selected cases.

**Case examples**

1- *Applicant versus general secretariat of national defense – November 2006*  

**Case Background**

In November 2006 a citizen submitted a request of information to the general secretariat of national defense regarding (a) names of officials who have participated and signed documents to purchase material and supplies related to physical protection shields, (b) the number of shields that have been purchased, their cost and their security, (c) documents endorsing the purchase of the shields.

The general secretariat of national defense evaded the three requests. The first request was rejected on ground that the permission of the officers themselves must be obtained to disclose their names. It also denied purchasing the body shields mentioned by the applicant (i.e. it manufactured them and not bought them). In addition to that it was said that disclosing information concerning armament with shields cannot be disclosed because if such information fell in wrong hands it could constitute danger to the life and safety of those who wear them. The secretariat based its response on the provisions of article 13 (a) of the federal law of transparency and access to public governmental information (information law), which classifies as confidential information that might threaten national security, public safety and national defense. Despite that, the general secretariat of national defense did disclose the requested information concerning the cost of body shields.

The applicant was not convinced by the arguments of non-disclosure and submitted an appeal to the IFAI, claiming that some of the information withheld by the general secretariat are governmental information that should be disclosed, especially that they are available on the internet from other sources.

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26 PETITIONER V. SECRETARIA DE LA DEFENSA NACIONAL (SECRETARY OF NATIONAL DEFENSE) [http://www.right2info.org/cases/plomino_documents/r2i-petitioner-v-secretaria-de-la-defensa-nacional-secretary-of-national-defense](http://www.right2info.org/cases/plomino_documents/r2i-petitioner-v-secretaria-de-la-defensa-nacional-secretary-of-national-defense)
IFAI decision

Regarding the first request concerning the disclosure of officials involved in the purchase of shields, the federation referred to article 7 (13) (a) of the information law, which calls for the disclosure of information related to contracts between administrative units, whether in general business transactions, purchase of goods or services. The federation interpreted this article to include names of public employees who participated in signing those contracts, thereby allowing a higher degree of transparency and accountability. Accordingly, the federation ordered the general secretariat to disclose the names of those officials without their prior permission.

Regarding the second request concerning the cost and number of protective shields that have been purchased, the federation noted that if the general secretariat had manufactured the shields instead of purchasing them as evident in its reply, it must have at least logically purchased the raw material needed for the manufacture. Accordingly, the federation ordered the general secretariat to publish information regarding the amount of material purchased for their manufacture (since it has already disclosed information regarding their cost.)

Regarding the final request and article 13 (a) of the information law, which the secretariat quoted to justify non-disclosure of information regarding level of armament, the federation found that that the level of armament is linked to national security, public safety and national defense requirements in a complex way, and that their disclosure might negatively impact military or police activities or operations that aim to secure those domains. It therefore seconded the right of the general secretariat of national defense to classify that information according to the above mentioned provision, with the exception of information already available on the internet.

2- Applicant versus general secretariat of national defense – June 2006

Case Background

In June 2006 the applicant submitted to the general secretariat of national defense a request of disclosure of the “details of military defense plans known to the public by DN1, DN2, DN3 in addition to the guard plan” which includes the Mexican defense strategy. The general secretariat of national defense refused to

27 PETITIONER V. SECRETARIA DE LA DEFENSA NACIONAL (SECRETARY OF NATIONAL DEFENSE)
http://www.right2info.org/cases/plomino_documents/r2i-petitioner-v-secretaria-de-la-defensa-nacional-secretary-of-national-defense-3
disclose the information on the grounds of the above mentioned article 13 (a) in addition to other laws that classify information related to national security, public security and national defense as confidential. It also said that disclosure of military defense strategies can obliterate ongoing military efforts and efforts combatting drug trafficking. It only submitted limited information regarding two strategies already available on the internet.

The applicant was not convinced by those arguments and submitted an appeal to the IFAI.

**IFAI decision**

The IFAI differentiated in its decision between (a) strategic and logistic information related to internal and external defense, and (b) information of a public nature, which gives a general glimpse of state approach to defense both internally and externally. While in the first case it may be protected by secrecy, in the second it is definitely not protected against disclosure. Accordingly, the information related to public defense strategy is not protected by provisions of military secrecy.

The IFAI reviewed different judicial systems and concluded that in fact several countries disclose the general tendency of the government in matters of defense through reports that are made available to the public, without this constituting a threat to national security. And that the disclosable information, not subject to secrecy, are usually general information such as main policy guidelines for the legal framework of defense, specification and general description of external and internal threats, an evaluation of the national, regional and international geopolitical context, and a short description of the national defense police. Exempt from disclosure are logistic services, tactics and technology used, information regarding ongoing operations, all of which can be included under the category of “Logistic and strategic information” which are naturally protected and exempted from disclosure since their disclosure might affect the army performance.

The IFAI added that the general information that the applicant seeks to access has not been adequately developed in the documents published on the website of the general secretariat of defense on the internet. Those documents specified the role of the army in case of natural disasters, as well as provided a summary version of the press conference that addressed the “guard plan”, one of the plans that should be disclosed since it did not embody in any way a comprehensive defense strategy by the government whether on the local or international level.
Therefore, the IFAI ordered the general secretariat of national defense to disclose general documents that sufficiently reflect the overall defense strategy of the country on its website, similar to those published by other states, while maintaining non-disclosure of strategic and logistic information protected from disclosure, which might have a direct impact on national security.

3- Applicant versus center for investigations and national security – August 2003

Case background

In August 2003 the applicant requested from the center of investigations and national security – an intelligence office – the disclosure of information on the “name and position of heads of all departments, up to the general director of the center.”

The intelligence office replied that the names of all employees allowed to deal directly with the public were available on the center’s website, while the names of the rest of employees remain confidential for 12 years, whether to protect their personal safety (since they are meant to be intelligence agents) or to avoid harm to the work of the center itself. The center’s arguments were based on articles 7 and 13 of the information law, as well as articles 27 and 28 of its executive regulations, in addition to the guiding principles regarding classification and declassification and other internal bylaws.

The applicant appealed to the IFAI

IFAI decision

The IFAI agreed that the provisions of article 13 (a) of the information law related to national security and (d) related to information, which id disclosed would constitute danger to the life, safety, physical integrity or health of any individual, in addition to laws and other regulations that intelligence center is referring to, applies to the information under question. However, it decided that the correct reference to those provisions requires an objective elaboration of the ways through which the disclosure of personal information (in this case the names and posi-

28 PETITIONER V. CENTRO DE INVESTIGACION Y SEGURIDAD NACIONAL (CENTRE OF INVESTIGATION AND NATIONAL SECURITY) http://www.right2info.org/cases/piomino_documents/db9fe64c6433cdec12284d071e5a1
tions of officers) may lead to real possible and specific threat to their lives, physical integrity, safety or health or their ability to do their job in the protection of national security.

The IFAI also noted that the website of the center for investigations and national intelligence only shows the names of its general director and the communication officer in charge of collecting information, without a structured outline of the center as requested by article 7 of the information law. It is therefore that the IFAI ordered the center to publish its structure without any confidential information that is considered necessary for the protection of members of intelligence and anti-spy authorities as stipulated by the above mentioned article 13 (d).