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New principles address the balance between national security and the right to information

The question of how to ensure public access to government information without jeopardizing legitimate efforts to protect people from national security threats is the focus of a new set of global principles being unveiled today.

The new Tshwane Principles on National Security and the Right to Information are the result of over two years of consultation around the world, facilitated by the Open Society Justice Initiative and involving governments, former security officials, civil society groups, and academics.

The Principles address in unprecedented detail the balance between secrecy and the public's right to know, in a world that has been transformed by global efforts to combat terrorism and the parallel rise of new digital technologies, as well as the rapid growth of right to information laws.

In addition to addressing what government-held information may legitimately be kept secret and what information should be disclosed, they outline standards for the treatment of whistleblowers who act in the public interest, as well as issues related to classification and declassification, and other questions.

Frank La Rue, the United Nations Special Rapporteur on the Right to Freedom of Opinion and Expression, welcomed the launch of the Tshwane Principles, saying:

“The Principles are a major contribution to the right of access to information and the right to truth concerning human rights violations, and I believe they should be adopted by the Human Rights Council. All states should reflect these Principles in their interpretations of national security law.”

The Principles are based on a survey of international and national law, standards, good practices, and the writings of experts. They were developed by 22 academic and civil society groups (listed below), who consulted over 500 experts from more than 70 countries, culminating in a meeting in Tshwane, South Africa, which gave the Principles their name.

The process also involved working closely with the four special rapporteurs on freedom of expression and the media from the UN, the African Commission on Human and Peoples' Rights, the Organization of American States (OAS), and the Organization for Security and Cooperation in Europe (OSCE), as well as with the UN Special Rapporteur on Counter-Terrorism and Human Rights.

Lord Alex Carlile, Q.C., the United Kingdom's first Independent Reviewer of Terrorism Legislation (2001-11), and one of the experts involved in the consultations, said:

“In my opinion the Principles provide an excellent international template. I hope that governments around the world will examine the Principles and adopt them, as a standard that is both aspirational and achievable.”

The Principles, in draft form, have already played a role in supporting civil society arguments to modify some of the most troubling sections of South Africa’s Protection of State Information Law, recently adopted by South Africa’s parliament but not yet signed by the president.

Highlights of the Tshwane Principles include:

- Information should be kept secret only if its disclosure poses “a real and identifiable risk of significant harm to a legitimate national security interest” (Principle 3)
- Information concerning serious violations of international human rights or humanitarian law must always be disclosed (Principle 10A)
- The public should have access to information on surveillance programs (Principle 10E)
- No government entity should be categorically exempt from disclosure requirements (Principle 5)
- Public officials who act in the public interest to expose government abuses should be protected from retaliation (Principle 40)

Further Statements of Support

Ben Emmerson, UN Special Rapporteur on Counter-Terrorism and Human Rights:

“The Tshwane Principles reflect global best practice in setting safeguards for balancing the protection of public interest disclosures and the disclosure of gross or systematic human rights violations against need to maintain the secrecy of classified information. I have no doubt that they will come to be regarded as a significant step in promoting international consistency on these sensitive and difficult questions.”

Catalina Botero, OAS Special Rapporteur on Freedom of Expression and Access to Information:

“My office welcomes the Tshwane Principles as the appropriate balance to ensure state capacity to protect security and the protection of individual freedoms.

We must not lose sight of the fact that security, in a democratic society, is not an end in itself. Its only purpose is to protect the capacity of institutions to guarantee all people the free exercise of their rights, without discrimination. History has shown time and again that efforts to increase security through the suppression of liberty have threatened both liberty and security.”

Pansy Tlakula, Special Rapporteur on Freedom of Expression and Access to Information in Africa:

“These Global Principles could not have come at a more opportune time, given the recent adoption of a model Law on access to information for Africa by the African Commission on Human and Peoples’ Rights. These principles complement the provisions of the model law and also seek to strike the requisite balance between the

public's right to know and the protection of legitimate national security interests, given the current global context of rising insecurity. For my home country, South Africa, it would certainly come in quite handy, as we struggle to resolve all the thorny issues implicated in the recently adopted Protection of State Information Bill."

Dunja Mijatovic, the OSCE Representative on Freedom of the Media:

"There is no security without free media and free expression and no free expression and free media without security. These two terms should come hand in hand and not fight each other like we see in so many parts of the world."

Morton Halperin, senior advisor to the Open Society Foundations, who served in the U.S. government under the Johnson, Nixon, and Clinton administrations:

"As societies deal with the continuing conflict between the right to know and claims of national security as well as how to evaluate acts of whistleblowers, these principles will provide a compelling guide grounded in experience and a deep commitment to the values of open society."

The following groups were involved in drafting the principles:

- Africa Freedom of Information Centre, Kampala
- African Policing Civilian Oversight Forum (APCOF), Cape Town
- Alianza Regional por la Libre Expresión e Información (Americas)
- Amnesty International, London
- Article 19, the Global Campaign for Free Expression, London
- Asian Forum for Human Rights and Development (Forum Asia), Bangkok
- Center for National Security Studies, Washington DC
- Central European University, Budapest
- Centre for Applied Legal Studies (CALS), Wits University, Johannesburg
- Centre for European Constitutionalization and Security (CECS), University of Copenhagen
- Centre for Human Rights, University of Pretoria
- Centre for Law and Democracy, Halifax
- Centre for Peace and Development Initiatives (CDPI), Islamabad
- Centre for Studies on Freedom of Expression and Access to Information (CELE), Palermo University School of Law, Buenos Aires
- Commonwealth Human Rights Initiative, New Delhi
- Egyptian Initiative for Personal Rights, Cairo
- Institute for Defence, Security and Peace Studies, Jakarta
- Institute for Security Studies, Pretoria
- International Commission of Jurists, Geneva
- National Security Archive, Washington DC
- Open Democracy Advice Centre, Cape Town
- Open Society Justice Initiative, New York

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