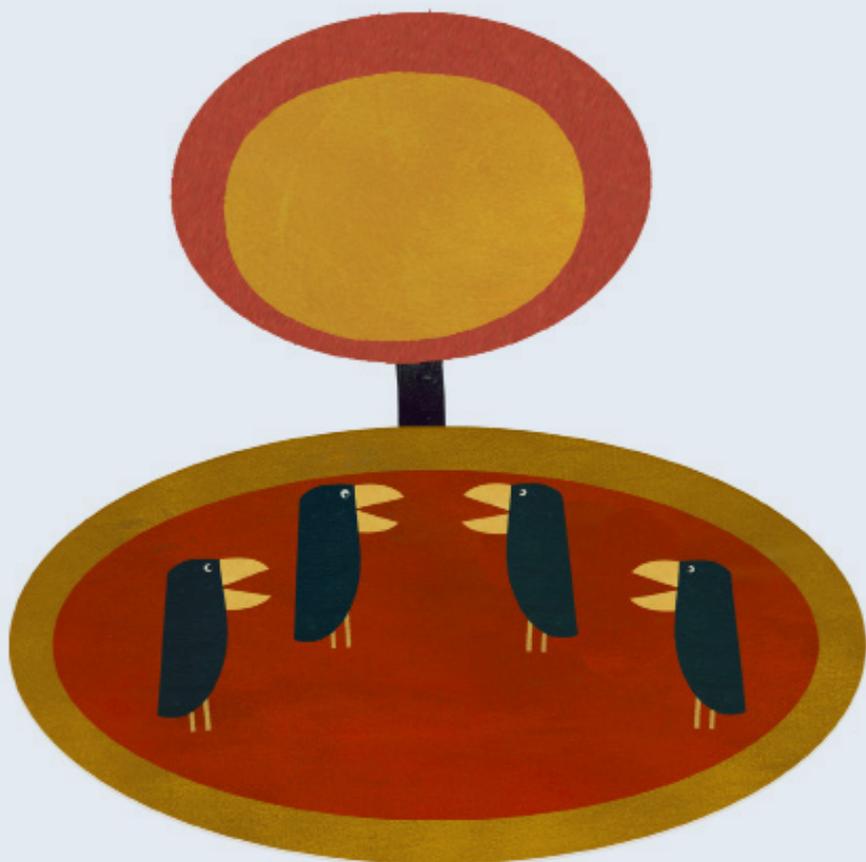


NAVIGATING HUMAN RIGHTS IN
THE DIGITAL ENVIRONMENT
THE INTERNATIONAL
CONFERENCE OF DATA
PROTECTION AND PRIVACY
COMMISSIONERS



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About this tool

The International Conference of Data Protection and Privacy Commissioners (ICDPPC) is a forum which brings together a membership of 100 data protection authorities (DPAs) from more than 70 countries across the globe. The decisions made at the annual conference by its members (the DPAs) are influential – they shape data protection policy globally by providing guidance and tools for DPAs to fulfill their mandates. The ICDPPC also works with influential regional networks (like the European Union and the Asia Pacific Privacy Authorities Forum) that set policy, and even binding legislation.

DPAs are public entities which are legally mandated to supervise the implementation of data protection or privacy-related legislation. They should be independent from government and can carry out their mandate by conducting investigations, imposing fines or other penalties when the law is breached, running public awareness campaigns to inform users of their rights, and inputting into legislative proposals. Some countries, for example federal states, or states with devolved governments, may have multiple DPAs.

In theory, digital human rights defenders and DPAs should get along. We're both tasked with a common objective – to protect and promote the right to privacy in the context of data protection, and to ensure users have adequate information and are able to effectively exercise their rights.

But just because the ICDPPC has a human rights mandate, it's not a given that all its decisions will be human rights-respecting – particularly with the large number of powerful industry lobbyists who attend. A critical civil society voice is sorely needed. Historically, however, all but a few civil society groups have really engaged at the ICDPPC, and those who do have expressed frustration with both the process and the content of its discussions.

Despite this, our engagement is crucial. As civil society, we need to be in the room to ensure that public interest and human rights issues receive their due attention, and aren't drowned out by louder voices. So this tool has two aims. First, to help human rights defenders understand how the forum works, who's who, and where, when, and how to effectively engage within it. And second, to outline some broad advocacy aims and pathways that human rights defenders might take.

Scope and timeline

The ICDPPC, like the Group of Twenty (G20), refers to both an event and a process. Each year, between September and November, an event – called the ICDPPC – occurs, and this is where all the key decisions and outcomes happen. But the ICDPPC also refers to the broader organisation of the ICDPPC, and the activities which occur between each event.

In this tool, our main focus is on engagement in the ICDPPC's annual event, although we do outline some other avenues human rights defenders could take – for example, engaging with DPAs between events, or getting involved in the intersessional activities of ICDPPC Working Groups.

This year's edition of the ICDPPC, the 39th, is hosted by Hong Kong's DPA, the Office of the Privacy Commissioner for Personal Data; and this tool works on a timescale extending from the present (August 2017) to the 40th ICDPPC in Brussels, Belgium (October 2018), which will be jointly hosted by the European Data Protection Service (EDPS) and the Bulgarian Commission for Personal Data Protection:

September 25 to 29, 2017: 39th ICDPPC in Hong Kong

May 16 to 18, 2018: Meeting between the EDPS and civil society to foster dialogue and engagement at RightsCon, Toronto (TBC)

September 2018: Deadline for submission of proposed resolutions by DPAs to the Executive Committee for the 40th ICDPPC in Brussels, Belgium

October 22 to 26, 2018: 40th ICDPPC in Brussels, Belgium

Why should I care about the ICDPPC?

Engaging in the ICDPPC as a human rights defender is, as we'll see, not without its challenges. But it's definitely worth it. Without a strong public interest voice, there's no guarantee the ICDPPC will make rights-respecting decisions, in spite of its privacy and data protection mandate. Here are a few reasons why that matters:

It has a big influence on data protection standards

The ICDPPC is the only annual event which brings together the authorities whose role and responsibility is to enforce data protection legislation (DPAs).

Around 70 countries have established DPAs, and, while their specific functions, roles and responsibilities vary, they generally have a mandate to provide guidance on national data protection legislation and take enforcement action when the law is breached.

The ICDPPC provides guidance to DPAs on data protection and privacy-related issues, including the right to privacy – from publishing guidelines and handbooks, to developing positions on pressing policy issues like artificial intelligence (AI) and biometric data.

At the ICDPPC, DPAs also make commitments to coordinate on global issues like data transfers or data flows. Measures to tackle these challenges – which often involve reforms to legal frameworks, or attempts to make agreements compatible – carry both opportunities and risks for human rights. The ICDPPC has a lot of influence here because of its close relationship with data protection networks and institutions like the Asia Pacific Privacy Authorities and the EU's Article 29 Working Party, which makes it an obvious target for engagement for human rights defenders interested in data protection.

Data is increasingly central to human rights discussions

Below are just three of the crucial emerging policy areas which relate to data protection and fall within the remit of the ICDPPC.

Cybersecurity

One of the key functions of DPAs, both at the national level, and globally at the ICDPPC, is coordinating responses to threats to cybersecurity. These threats may have significant human rights implications – notably for the right to privacy – because they compromise sensitive personal information. The ICDPPC offers an opportunity for human rights defenders to make sure DPAs are handling cybersecurity in a way which ensures both the security and rights of users.

Emerging technologies

The ICDPPC also presents an opportunity to set the agenda and tone on new and emerging issues such as artificial intelligence (AI), machine learning, profiling, robotics and the internet of things. DPAs will play a role in the regulation of these new technologies and therefore it's important for all stakeholders to ensure that DPAs understand the implications of these technologies for data protection and human rights, and their own role in supporting public discussion on these technologies.

Biometric data

The increasing collection and storage of data from biometric technologies (which use physical and behavioural characteristics to automatically identify people) is creating new privacy risks, and a concomitant need for strong legal and policy safeguards. Questions around the legal status of biometric data and appropriate safeguards for the protection of biometric data are likely to remain important items on the ICDPPC agenda for years to come.

The ICDPPC needs oversight

Aside from the advocacy value of engaging at the ICDPPC, there's another reason civil society need to be there: to keep DPAs accountable.

This watchdog role is more typically performed by civil society at the national level, where it can support the role of DPAs by bringing data protection complaints to authorities, undertaking litigation, raising awareness about data protection and user rights with users, and developing technical and policy solutions. Performing this role in a global forum like the ICDPPC might seem more daunting – but it's crucial. After all, the ICDPPC is one of the only places where you'll be able to meet DPAs from a range of different countries and regions. Given the cross-border nature of many data protection issues – and the fact that many important commitments and decisions are made at the ICDPPC – constructive, rigorous scrutiny and engagement from civil society is essential.

How it works

History

The ICDPPC was first convened in 1979 in Germany and has been the main annual global forum for DPAs ever since. The ICDPPC's membership comprises representatives from over 100 accredited DPAs.

Vision and mission

The ICDPPC's stated **vision** is:

“an environment in which privacy and data protection authorities around the world are able effectively to act to fulfil their mandates, both individually and in concert, through diffusion of knowledge and supportive connections.”

In addition to this focus on enabling the realisation of national mandates, the ICDPPC also aims to:

- Disseminate knowledge, and provide practical assistance to help authorities more

effectively to perform their mandates;

- Connect and support efforts at the national and regional levels, and in other international forums, to enable authorities to protect and promote privacy in the context of data protection.

Structure

The main programme of the annual ICDPPC is a mixture of closed sessions (for accredited members, observers and invitees only) and open sessions (which can be attended by anyone who registers). Side events are also organised to complement the main ICDPPC discussions.

Only members are allowed to vote in the ICDPPC's decision-making processes, and membership is strictly limited to DPAs. Observer status can be obtained by organisations which deal with protection of personal data, but aren't DPAs (eg. multilateral institutions, like the Council of Europe), which allows them to enter closed sessions.

Closed sessions

The closed sessions are where decisions are made, where discussions relating to resolutions (see section on key outcomes below) are had and where resolutions are voted on and passed. In these sessions, the ICDPPC agenda is adopted, Working Groups (see section on Working Groups below) are created, and existing Working Group reports are adopted. The topics to be discussed at the closed sessions are generally made public before the annual conference and the minutes can be accessed [afterwards](#).

The closed sessions can only be attended by accredited members and observers, although external experts can be invited to speak on agenda items and to engage in discussions with members. This depends on the Executive and Programme Committee, and these invitees are most often from industry and academia. The full list of functions of the closed session can be found [here](#).

Open sessions

The open sessions, like the closed sessions, respond to the ICDPPC agenda. However, unlike the closed sessions, they do not have a direct input into the outcomes of the

ICDPPC. As such, their main function is to open agenda discussions to a wider range of stakeholders, and they are unlikely to have a direct impact on decisions made at the ICDPPC.

Side events

Side events are hosted by both members and non-members to discuss specific issues on the ICDPPC agenda. The host normally opens an application process for side events a few months before the ICDPPC (which are then included on the agenda as 'official side events'). These can be organised by any participant (including civil society) but, because of the associated cost, most tend to be organised by the private sector.

ICDPPC Working Groups (see below) also host side events, often to present or update ICDPPC participants on the progress of their work. There is usually a list of side events included with the final agenda before the meeting, with details on whether they are open or invite-only.

There are also more ad-hoc meetings or workshops that are organised by participants on the sidelines of the ICDPPC. Generally, limited information will be publicly available about these meetings and workshops.

Who's who

The Executive Committee

The Executive Committee is made up of five members. The Chair and two Committee members are elected annually by the ICDPPC membership. The remaining two Committee members are the hosts of the current and upcoming ICDPPC. The Committee has a variety of different functions - from following up with the application of resolutions, to appointing delegates representing the ICDPPC to the forums or gatherings of international organisations (like the Organisation for Economic Cooperation and Development, International Committee for the Red

Cross, or Council of Europe) at which the ICDPPC has observer status. The current members of the Executive Committee are listed [here](#).

The Programme Committee

The Programme Committee is made up of representatives of different stakeholders such as the DPAs, the private sector and academia. It has never included a civil society member. The members are in charge of putting together the agenda for the event and identifying key speakers and stakeholders. It always includes representatives of the host data protection authority. The Programme Committee members can be found [here](#).

The members

Over 100 DPAs form the official membership of the ICDPPC. In most cases, each DPA is represented at the ICDPPC by more than one person. There are also some countries where there is more than one DPA, such as in devolved or federal states, like Canada and Germany. All accredited members can be found [here](#).

Working Groups

At the ICDPPC, a range of Working Groups comprising ICDPPC members perform intersessional work between the annual conferences. This includes implementing projects which are included in conference outcomes – for example, developing guidelines or metrics. These Working Groups are set up and renewed in the closed sessions of the conference, coordinate with each other throughout the year, and present their work in closed sessions and side events at the annual conference. Later in this tool, we suggest some ways human rights defenders can engage with these groups between conferences.

Key outcomes

RESOLUTIONS

Since 2003, the formal outcome of the ICDPPC has been the adoption of resolutions and declarations in the closed sessions “on subjects that warrant the common interest or concern of the accredited members, and promote their implementation”. The ICDPPC began routinely adopting and publishing resolutions in 2003 once it had settled on procedures for submitting and adopting them.

One recent example comes from the ICDPPC in Marrakech, Morocco, in 2016. Members adopted **several resolutions**, including a **strongly worded statement** on the need to protect human rights defenders. It stated that governments need to “provide and promote safe and effective channels for individuals to report poor privacy practices, to seek redress for breach of data protection rules, or disproportionate action against the rights to privacy and data protection.”

The general requirements for a proposed resolution or declaration are that it:

- Is clearly and concisely expressed;
- Addresses matters that are sufficiently related to the purposes of the ICDPPC;
- Offers guidance or contributes to public debate on matters related to data protection or privacy rights.

Submission rules:

- Members may submit proposals to the Chair or the Executive Committee (copying in the ICDPPC host/s).
- Proposed resolutions or declarations must be submitted at least one month (or more if the issue is complex) before the next closed session, to enable the text to be circulated to all members of the ICDPPC.
- Proposed resolutions or declarations must have at least three other co-sponsors, representing, insofar as possible, different cultural, geographic and legal backgrounds.

Decision making:

- There is a closed session where members consider and vote on the proposed texts.

FINAL COMMUNIQUE AND DECLARATIONS

In addition to the resolutions and declarations, members also agree on and release **a joint communique or declaration** at the end of the conference. This does not take the same form every year, but generally presents a summary of discussions from the closed sessions and a list of the adopted resolutions.

Declarations and communiqués differ from resolutions in that they often will not have been debated by ICDPPC members, or voted on; instead, they offer a snapshot or summary of discussions and may indicate points of agreement on topics discussed.

What we can do and how

With this tool, we didn't want to narrow ourselves to one set of advocacy objectives for the ICDPPC, recognising that groups engaging may have different priorities.

Instead, we suggest in this section a range of actions that could be taken in pursuit of two broad advocacy objectives which many human rights defenders are likely to support: first, **greater openness, inclusivity and transparency at the ICDPPC**; second, **the inclusion of stronger rights-respecting language in ICDPPC outcomes**.



Turn up, and talk to people

If possible, attending the annual ICDPPC event can be hugely valuable as a human rights defender. DPAs from around the world will be there, so it's a great opportunity to build relationships, forge conversations between different stakeholder and national groups, and present the human rights case to people with real influence over data protection. The ICDPPC's strategic plan – which includes strategic priorities and defined goals – can be a useful resource for advocating with DPAs. For example, one of the stated goals in the plan is “advancing global privacy in the digital age” which could be referenced when arguing in favour of measures to strengthen respect of the right to privacy.

Making these personal connections can also make other activities, outlined below, easier. If you already know some DPAs, getting a panel spot in a closed session – or influencing resolution text at a future edition of the ICDPPC – is likely to be more possible.

If you can't make it to the conference, it might be worth reaching out to other civil society groups who are attending, and requesting opportunities for remote input – for example, a daily email providing remote groups with updates on conference developments, or livestreaming or recording civil society side events.

Get a place on the Programme Committee

The Programme Committee plays a crucial role within the ICDPPC: it decides the agenda, and handles the logistics and organisation of the event. As we noted earlier in the tool, the private sector is currently dominant within this Committee. And while independent experts and think tanks are sometimes represented, civil society organisations representing the public interest have never been included. It's too late to work on this for the 2017 Conference in Hong Kong, but civil society can start reaching out to the co-hosts for 2018, the European Data Protection Supervisor (EDPS) and the Commission for Personal Data Protection of the Republic of Bulgaria, to push them to support civil society inclusion in the Committee.

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Coordinate with other civil society groups

Historically, the civil society voice at the ICDPPC has been led by a few groups including Electronic Privacy Information Centre (EPIC), European Digital Rights (EDRi), Privacy International and Access Now. These groups have played – and continue to play – a critical role at the ICDPPC; organising side events, supporting other groups in attending the conference, coordinating joint statements, and generally serving as a critical, public interest voice within the ICDPPC. More recently, other groups including Digital Asia Hub and Global Partners Digital have joined these groups and are engaging in the ICDPPC this year in Hong Kong. EDRi and Access Now have already started engaging with the joint organisers of the 2018 conference, and are currently trying to ensure a more accessible conference – for example, by lobbying for a fee waiver for civil society groups.

As a human rights defender new to the ICDPPC, your first step should be reading the conference agenda to see what topics are most relevant to your work and advocacy aims. Then you can seek out other civil society partners, private sector groups and DPAs who might have similar aims, or shared points of agreement, and go on from there.

Inform and influence resolution text

Resolutions and declarations are important at the ICDPPC: they're the official outcomes of the conference, and shape the joint projects undertaken by DPAs. The adoption process is driven by the DPAs themselves, who submit resolutions to the Executive Committee at least one month in advance of the Conference.

There's no formal channel for civil society to shape these resolutions, so you have to be direct and proactive. Your best bet is to reach out to DPAs at the national level several months in advance of the conference. Find out what's in the resolutions they've submitted, or are planning to submit – is there any additional expertise you can offer? Even if there's no input they want from you, just finding out what they're planning to do can be valuable intelligence, and can help inform your advocacy efforts and those of other civil society groups.

You can also ask DPAs to submit a resolution on your behalf, which you have already drafted. They aren't, of course, obliged to do this for you – but it can't hurt to try. Your chances of success in this will likely be higher if you approach multiple

DPA as part of a coalition of groups, rather than alone, with a resolution that has been jointly developed. If you decide to take this approach – which will require extensive planning and coordination and a clear, commonly agreed goal – it would be sensible to get the ball rolling at least six months in advance of the conference.

Make your voice heard in the closed sessions

Being in the room with the DPAs and holding a civil society event are both important. But to really influence the outcomes of the conference, like the final communique, getting into the closed sessions as an expert panellist is crucial.

There is no formal mechanism for doing this, and no guaranteed allocation of civil society spaces on the panels. To get in, you'll need to leverage existing relationships with conference organisers and DPAs who are influential within the ICDPPC. One way of doing this would be to reach out to contacts in the Programme and Executive Committee six months or a year before the annual conference to suggest topics for the agenda. Then, when the agenda is published, you can get in touch again to enquire about speaking slots at the closed sessions. Your proactive approach in shaping the agenda topics might encourage the Programme Committee to give you a chance.

Participate in existing ICDPPC intersessional work

In 2017, the ICDPPC embarked on a particularly relevant project for civil society. Following the 'Resolution on developing new metrics of data protection regulation', adopted in Marrakesh, Morocco, in 2016, the ICDPPC undertook a census to collect information and create a snapshot of privacy and data protection authorities and regulations around the world. The desired outcomes are to develop internationally comparable metrics in relation to data protection and privacy, and support the efforts of other international partners to make progress in this area. The survey includes questions ranging from details of DPA establishment and personnel, to the scope of its enforcement powers and budget. In addition, there's a special section on cross-border data flows, enforcement and cooperation, and breach notification. Although there are no formal avenues for civil society to input, one thing you could do is reach out to DPAs at the national level who are represented in the Working Group, request updates on their work and offer your expertise and input.

Acknowledgements

This text has been co-authored by Fanny Hidvegi (Access Now) and Sheetal Kumar (Global Partners Digital).

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