

JOHANNESBURG CONFERENCE STATEMENT

ICIC CONFERENCE MARCH 2019

Johannesburg, South Africa

The 11th International Conference of Information Commissioners (ICIC)

Introduction

Over 200 conference participants, with delegates from more than 50 countries from across the globe, made up of Information Commissioners, ombudsmen, government agencies, academics, international institutions and civil society organisations, convened in Johannesburg, South Africa, on 11 and 12 March 2019, under the auspices of the Information Regulator (South Africa) and the Centre for Human Rights, University of Pretoria. The meeting of Information Commissioners and Ombudsmen takes place annually in different locations around the world. The overall theme of the Johannesburg Conference was: 'Building international co-operation to strengthen public access to information globally'.

This statement is a summarised overview of the conference proceedings and key themes that emerged. A comprehensive and detailed report will be issued subsequently.

The conference took place against the backdrop of a number of international human rights instruments: Article 19 of the Universal Declaration of Human Rights, which provides for a right of all persons to 'seek, receive and impart information'; and related instruments which provide for the right: Article 19 of the International Covenant on Civil and Political Rights, Article 13 of the American Convention on Human Rights, Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and Article 9 of the African Charter on Human and Peoples' Rights.

Over two days, the Conference met through a series of plenary and concurrent panel discussions. Diverse insights were shared as part of in-depth discussions about access to information rights. During these sessions delegates:

Affirmed that the right of access to information is fundamental to democracies and the assertion of basic human rights; that transparency supports good governance, accountability, citizen participation, a robust business environment, efforts to combat corruption, and that the support for free media and journalism is part of wider efforts to build social inclusion.

Noted the critical issue that not all citizens are able to exercise the right of access to information equally. Women, refugees, internally displaced persons, people living with disabilities and other vulnerable and marginalised groups face particular challenges. Whether socio-economic, political or historical in

nature, these challenges impede both their right to access to information and access to information about them.

Recalled the monitoring by UNESCO of Sustainable Development Goal 16.10 to support the implementation of access to information and right to information laws, regulations and policies. If citizens have access to information they are empowered to advocate, participate and monitor for meaningful progress towards the wider SDG Agenda 2030.

Recognised the rich and diverse range of perspectives, voices and platforms able to contribute to strengthening public access to information and the opportunities to further build international collaboration.

Key themes and issues

In the **opening session** emphasis was placed on the fundamental importance of the right to information as the centrepiece of democracy in the promotion of transparency, good governance and the realisation of the right to participatory democracy, freedom of expression and digital rights and freedom. The importance of access to information as an enabler of other rights, thus ensuring the realisation of all other rights, be they civil, political, socio-economic, or cultural rights, was also emphasised.

Proactive disclosure was described not as a privilege but as an obligation of all institutions to which the right of access to information applies, including elected representatives and other officials and an imperative for transparency and the development and implementation of a wide range of effective laws and policies including the attainment of the Sustainable Development Goals. The meeting was appraised through UNESCO of the need to ensure focussed reporting on the right to access information recorded in Sustainable Development Goal 16.10.2. Information Commissioners were identified as key authorities who could play an important role in strengthening reporting on Sustainable Development Goal 16.10.2. Attention was drawn to the potential of the 'right to be forgotten' provisions in the European General Data Protection Regulation on the right of access to information, and the need for Information Commissioners to be proactive in debates around the balance between privacy and access to information.

In a review of **international, regional, sub-regional and national trends in public access to information, key challenges were identified including the following:**

- concerns about non-compliance with statutory requirements of transparency legislation;

- constraints on resources to adequately promote the right of the public to access to information including support to public institutions or authorities with capacity training;
- poor quality record management practices that undermine effective realisation of the right of access to information;
- the failure of public institutions in all arms and tiers of government in many countries, to embrace the culture of proactive disclosure of information, both as a key obligation and an essential requirement of access to information rights;
- challenges with enforcing compliance and to go beyond resolving individual wrongs and the ability to identify larger systemic issues;
- the emergence of what was described as a ‘war of narratives’, where false information is used to promote certain narratives that are not in the public interest (such as racism);
- the significant role of ‘infomediaries’, providing local services to make information more easily accessible, and the important bridging civic space they occupy;
- advocacy for greater compliance by public institutions with their access to information obligation should also extend to the legislative and

judicial organs of the State and as well as to security sector institutions, amongst others; and

- the relevance to develop the right to information along with data protection and privacy.

Weighty consideration was given to the **needs of marginalised and vulnerable groups**, recognising a range of initiatives from the work of Information Commissioners and civil society organisations to address the challenges, including projects in Bangladesh, Brazil, Guatemala, Liberia and Nigeria. Innovative models demonstrating the power of technology to improve access to information, transparency and accountability were provided by developing countries that participated.

In consideration of the **use of access to information and freedom of information legislation as a tool to enhance accountability, transparency and deliver other social benefits**, attention was drawn to evidence that suggests that the ease with which information is accessible from public institutions is directly related to the level of trust and confidence in those institutions. It was recommended that institutions should strive to emulate best practices to enhance their performance. Lastly, it was also highlighted that Information

Commissioners should take full advantage of current developments in ICTs to foster more effective access to information systems.

The focus of the **second day** of the conference was series of concurrent panels covering a wide range of topics, including sessions on the following:

- establishing independent and effective oversight bodies for access to information regimes;
- consideration of the challenges in managing privacy and access to information regimes during elections;
- the impact of new technologies on democratic accountability;
- approaches to access to information in the absence of a legislative framework;
- approaches to co-operation in the enforcement, monitoring and supervision of access to information legislation;
- how information commissioners can derive value for their work to improve the operation of the access to information laws in their countries by collating information on the implementation of their law for reporting to UNESCO on progress against Sustainable Development Goal indicator 16.10.2; and
- managing the interface between privacy and access to information.

Some pertinent insights and perspectives emerged, including the following:

- A wide range of approaches exist to ensure the independence of access to information authorities, including through governance arrangements and appointment processes, financial independence, transparency of decision-making and access to justice for dis-satisfied information requesters, including marginalised and vulnerable groups, in the context of affirming their right of access to information.
- It was recommended that the ICIC develop a set of principles and guidance on elections, addressing access to information and data protection with a view to attaining appropriate balance between both rights within the context of elections. In developing these principles, consultation with relevant stakeholders such as election management bodies, data protection authorities and civil society organisations was recommended.
- Given the fundamental nature of the right, the absence of dedicated statute or laws should not limit the exercise of the right. A range of non-legislative measures, such as awards, capacity building and the work of civil society groups, provide opportunities to promote a culture that guarantees the realisation of the public's right to access to information.

- The role of Information Commissioners is crucial in building capacity within their organisations to enable them to confront new and emerging issues and challenges, such as issues related to access to information in the digital age.
- Information commissioners should also be willing to effectively play their role of effectively resolving access to information disputes in a manner that is timely, cost effective and also strengthens public recognition and affirmation of this right.
- Information Commissioners should endeavour to build relationships with civil society in their work, including the monitoring of and reporting on SDG 16.10.2.

In conclusion, the 2019 ICIC Conference, the second held on African soil, presented another opportunity for the greater inclusion of African Information Commissioners. The rich and varied debates and sharing of a diversity of experience and practice provide a platform to maintain the momentum of the ICIC, and to strengthen and shape its future work.

Johannesburg, South Africa, 13 March 2019