

GAC Human Rights & International Law Working Group (HRIL WG)

Options Paper for Human Rights Core Values

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1. Introduction: Background of this Work

Formed in February 2015, the GAC Working Group on Human Rights and International Law (HRIL WG) focuses on aspects of ICANN's policies and procedures which relate to human rights and relevant international law.

The GAC's HRIL WG [objectives](#) include, but are not limited to, the following:

1. Considering any appropriate steps that ICANN could take to help ensure that its technical coordination of the domain name system (DNS) is managed in a manner which respects human rights and relevant international law pursuant to and consistent with, among other legal instruments, ICANN's Articles of Incorporation, in particular Article 4;
2. Cooperating with ICANN's advisory committees, supporting organisations, and communities, in particular the Cross-Community Working Party on ICANN's Corporate and Social Responsibility to Respect Human Rights, to encourage and facilitate multi-stakeholder support and cooperation in advancing human rights related policies, recommendations, and advice;
3. Participating in applicable ICANN work streams, policies, and studies to promote a shared understanding of human rights and relevant international law.

The Working Group Co-Chairs are Switzerland (Jorge Cancio) and Suada Hadzovic (Bosnia Herzegovina).

The Human Rights and International Law Working Group Co-Chairs have identified focus on ways the GAC may implement Human Rights Core Values established in the ICANN Bylaws, while considering the [Framework of Interpretation and Considerations document](#) which was part of the [CCWG Accountability Work Stream 2 Recommendations](#). A questionnaire was sent out to GAC Human Rights and International Law Working Group members and the full GAC membership for input on these non exclusive broad implementation options. The results of the questionnaire were presented by the Co-Chairs as part of the Working Group Session at ICANN64 (please see the section below labeled "Survey Results).

The [Work Stream 2 Final Report \[icann.org\]](#) was approved by the Chartering Organizations in November 2018 and submitted to the ICANN Board on 9 November 2018. The ICANN Board held an open session on the Work Stream 2 report on January 27th as part of their Los Angeles Workshop agenda. Currently, the ICANN Board has reformed its Transition Caucus Working Group to propose a timeline for the Board to consider the report and to balance this timeline with all the other mandated implementation work that is anticipated, such as the set of recommendations from the Consumer Competition & Trust (CCT) Review.

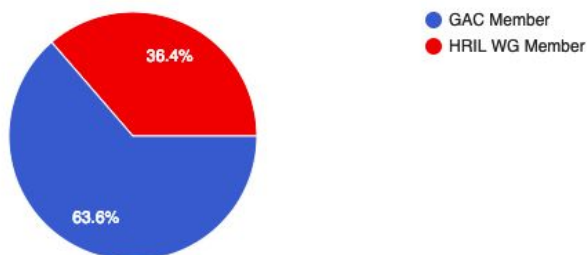
2. GAC HRIL WG Human Rights Core Values Implementation Options - Survey Questions and Results:

The HRIL WG addressed four potential options for implementation via an online [questionnaire](#) circulated to GAC Members and Observers in February 2019, which preceded a face-to-face discussion at ICANN64 in Kobe.

Presentation of HRIL WG Questionnaire Results:

Membership:

11 responses



Implementation Options & Results:

- **Option 1:** Establish a standing item/question to be considered during the Communique drafting? (e.g. "does the subject-matter Communique have Human Rights impact and/or relevance?" **Results: 4/11 (36.4%)**
- **Option 2:** Establish a standing item/question to be considered for other GAC communications where a position is conveyed (e.g. "does the issue/topic have Human Rights impact and/or relevance?" **Results: 6/11 (54.5%)**
- **Option 3:** Create the position of a GAC HR rapporteur – responsible for flagging issues and to lead in Options 1 and 2 **Results: 5/11 (45.5%)**
- **Option 4:** Provide for the participation of the GAC in Human Rights Implementation Assessments or similar procedural steps established for Policy Development Processes ([see work from CCWP CRS-HR](#)) **Results: 5/11 (45.5%)**

There were also a number of additional comments submitted as part of the online questionnaire:

I think Option 1 is too formal and heavy, bearing in mind how we are lagging behind the agenda while writing GAC communiques and it might be too time consuming for one person to cover the issue. Establishing separate position of HR rapporteur within the GAC (but outside HRIL WG) could create two parallel different in scope opinions from rapporteur and HRIL WG. In order to avoid such dual situation we could have someone (or group of people) within HRIL WG dealing with the question „does the issue/topic have Human Rights impact and/or relevance?“, sometimes the given issue/topic could be also related to GAC communique, but not necessarily every time.

In considering options, it is pertinent for GAC to adopt a way forward that is most consistent with both its role, and modus operandi. Having said that, Option 4 constitutes the most effective way forward for GAC on this matter. Participation of GAC in Human Rights Implementation Assessments and similar procedural steps established for PDPs, as in Option 4, is key and is properly consistent with how GAC organizes its work and draws on its resources.

The U.S. is open to the GAC continuing to follow and engage in cross-community discussions on human rights. However, the U.S. does not consider ICANN or the GAC in particular as an appropriate forum to negotiate any new human rights instruments or interpretations of states' obligations or commitments under existing instruments. In particular, the GAC does not have the expertise, nor the capacity, to review its consensus advice for how it comports with binding international human rights law. While private actors can evaluate their actions through the lens of human rights, as contemplated by the Bylaw, such an exercise among governments in a formal negotiation on GAC advice would be a fraught exercise bearing on legal determinations negotiated in other fora.

3. Discussion at ICANN64 Kobe on Implementation Options:

A first discussion was held at ICANN64 in Kobe regarding ICANN Human Rights Core Values implementation and the GAC's potential role in the implementation of this core value. The HRIL WG addressed four potential options for implementation via a questionnaire circulated to GAC Members and Observers.

Jorge Cancio, HRIL WG Co-Chair, presented the questionnaire results to GAC Members, highlighting that the most important condition for the implementation of Human Rights Core Values under the ICANN Bylaws, is the fact it is conditional upon the adoption of a framework of interpretation to become effective. The framework of interpretation was developed by the community via the CCWG accountability Work Stream 2 discussions and is now before the ICANN Board for approval, following endorsement from Supporting Organizations and Advisory Committees (including the GAC). In the case of the Human Rights aspect, these recommendations were endorsed unanimously by SO/ACs.

In preparation for the implementation plan following a potential upcoming endorsement from the ICANN Board, the HRIL WG discussed the importance of

preparation and discussion on what the GAC's role could be within an implementation model for this core value, especially due to the GAC's unique role within the ICANN Community as an advisory body within the ICANN Multistakeholder Model, which is mainly tasked with providing advice on the intersection of ICANN activities with international law and public policy, which encompasses international human rights law.

After the introductory remarks from the co-Chair, the ICANN64 HRIL WG discussion focused mainly on implementation option 4: *Provide for the participation of the GAC in Human Rights Implementation Assessments or similar procedural steps established for Policy Development Processes* ([see work from Cross Community Working Party on Human Rights](#)). Collin Kurre, CCWP HR Co-Chair, further elaborated to GAC members on the mechanisms coming out of the community and the potential role for the GAC within this. [The CCWP-HR has been developing a new impact assessment model for policy development processes](#), to make informed and robust public comments that can then influence the course of the Policy Development Process. Collin Kurre identified a potential role for the HRIL WG to consider in terms of GAC engagement within this mechanism, within the remit of ICANN respecting international human rights required by law, and the GAC's expertise regarding national frameworks would potentially be able to identify binding agreements applicable to the individual scenarios identified in the Working Party's assessment. Jorge Cancio confirmed that the HRIL WG and the CCWP HR would collaborate intersessionally with more information about these efforts.

The HRIL WG noted that no decision was being taken during ICANN64 regarding any of the implementation options but that an options paper would be presented to the GAC at ICANN65, following continuation of the HRIL WG work and collaboration.

[The HRIL WG is in touch with the CCWP Human Rights with a view to submit a request for the organization of a Cross Community Session or High Interest Session on Human Rights. ICANN66 Montreal is currently envisaged as optimal time frame for this proposal to ensure the ICANN Board response regarding implementation options for WS2 recommendations has been published.]

4. Possible Preferred Options by HRIL WG:

Based on the questionnaire results (11 respondents) presented above, options 2, 3 and 4 appear to be the most supported by respondents. Option 1 received negative feedback by one GAC member flagging the difficulty of compiling the GAC Communique adding a portion on Human Rights. Throughout the discussion at ICANN64 it became clear that option 1 would therefore not be brought forward by the HRIL WG without any objections, since the survey results showcase 11 responses with close results

for options 2, 3 and 4, whilst the HRIL WG session was attended by GAC members and GAC HRIL WG members, representing a higher number of attendees and participants compared to respondents to the questionnaire.

The HRIL WG Co-Chair flagged that the implementation options are currently in exploratory and broad stages, but that consultation with GAC Membership was helpful to identify interest or any objections towards any of the four options presented by the Working Group. Based on the discussions, option 1 will therefore potentially not be pursued due to objections presented on the questionnaire results, and no other options will be discarded initially by the Working Group.

Feedback received also included a comment about a preference to not establishing new forums, structures or positions in the area due to lack of sufficient resources or the necessary expertise, privileging HRIL WG engagement in cross-community discussions on Human Rights and on a case-by-case basis decision to participate in CC-WG or PDPs that affect Human Rights issues.

Based on the questionnaire results outlined above, and the face-to-face discussion which took place at ICANN64 in Kobe on March 10th, 2019, option 4 is currently the approach to implement Human Rights Core Values where consensus in the GAC may be most probable, while not discarding options 2 and 3.

Possible elements to be considered under Option 4:

- To be elaborated by interested HRILWG and GAC members

Possible elements to be considered under Options 2 and 3:

- To be elaborated by interested HRILWG and GAC members

5. Further Information

[HRIL WG Page](#)

[Terms of References](#)

[Work plan](#)

[Work Stream 2 Final Report](#)

[HRIL WG - Consolidated Information Document](#)

[HRIL WG Questionnaire - February 2019](#)