ICANN 68
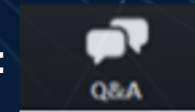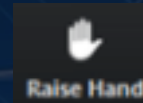## VIRTUAL POLICY FORUM

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- When its your turn to speak, we will announce your name and unmute your mic.
- You will then be prompted to unmute

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ICANN

GAC Discussion on Implementation of Work Stream 2 Recommendations

Session Leads:
Suada Hadzovic, HRILWG Co-Chair
Lina Rainiene, HRILWG Co-Chair

Invited Speakers:
Austin Ruckstuhl, CCWP-HR Co-Chair
Ephraim Kenyanito, CCWP-HR Co-Chair

ICANN68 Virtual Policy Forum

24 June 2020

ICANN | GAC
Governmental Advisory Committee

ICANN 68
VIRTUAL POLICY FORUM
22–25 June 2020

Session Agenda

◉ **Topic 1: WS-2 Timeline and ICANN Org implementation of the New Human Rights Core Value for ICANN**
(Topic Lead: Suada Hadzovic, Speakers: Ephraim Kenyanito and Austin Ruckstuhl, CCWP-HR Co-Chairs)

◉ **Topic 2: GAC implementation of the new Human Rights Core Value for ICANN**
(Topic Lead: Lina Rainiene, Speakers: Ephraim Kenyanito and Austin Ruckstuhl, CCWP-HR Co-Chairs)

◉ **Topic 3: ICANN Follow-up on Jurisdictional Interest**
(GAC Member comments as time permits)

WS-2 Accountability Timeline (2016 - 2020)

❏ Work Stream 2 of the effort (WS2) focused on addressing accountability topics for developing solutions and full implementation was expected to extend beyond the IANA Stewardship Transition.

❏ **October 2016:** Human Rights Core Value was added to the ICANN Bylaws change.

❏ **November 2018:** Chartering Organizations (all ICANN SO's, ALAC and GAC) approved the WS2 Final Report.

❏ WS2 Final Report included nearly 100 individual recommendations arranged into 8 topical areas (5 of the 8 topic areas appear to have implications for direct GAC operational implementation):

  1. Diversity of the community work on policy
  2. Guidelines for Good Faith removal of Board Members
  3. **Human Rights**
  4. Jurisdiction
  5. Improving the ICANN Office of the Ombuds
  6. Increase SO/AC Accountability
  7. Staff Accountability
  8. Transparency

❏ In total, 42 individual recommendations merit GAC attention and consideration

❏ Staff identification inventory of GAC-applicable recommendations: Specific WS-2 Accountability Recommendations For SO-ACs from CCWG – Accountability WS 2 Final Report

WS-2 Accountability Timeline (2019 - 2020)

❏ **November 2019:** Board Approval of the WS2 Final Report Recommendations

❏ ICANN Org was directed to:
- ❏ **Proceed with WS2 implementation with work to begin upon adoption of the recommendations** - using the considerations noted in the WS2 Implementation Assessment Report;
- ❏ **Start implementation on those recommendations** that are possible to move forward **without waiting for a budgeting cycle**;
- ❏ **Provide support** for those parts of the **WS2 recommendations that are community driven in implementation**; and
- ❏ **Provide regular implementation status reports to the Board**

❏ 8 May 2020, <u>ICANN Blog post</u> published reporting that:

- ❏ (1) "ICANN org has started implementing several recommendations"
- ❏ (2) "**a significant part of the remaining recommendations apply to the community, such as those relating to Supporting Organization and Advisory Committee accountability**"
- ❏ (3) "ICANN org will provide regular implementation status reports detailing achievements, ongoing work, and plans for the future" with the anticipation that the first of these reports will be published in the third quarter of calendar year 2020."

❏ GAC to consider starting implementation (Human Rights, etc.)

Topic 1: ICANN Org Implementation of the new Human Rights Core Value for ICANN

❏ Annex 3 of the WS2 Final Report under the "Considerations" by the Human Rights Sub-Group regarding language from Annex 12 of the CCWG –WS1 Report paragraph 24 (starting on page 8 of Annex 3 to the Final Report) states:

❏ *"When developing corporate or operational policies, and executing its operations, ICANN the organization should take the Human Rights Core Value into account. In order to do so, **ICANN the organization should propose a framework to the community, which should include multistakeholder involvement in its development, and regular review.**"*

❏ *"**When examining its operations, ICANN the organization could consider instruments such as HRIAs to assess its impact on human rights**. However, **this is up to ICANN the organization to develop and implement**. The results of such HRIAs should be reflected in ICANN's annual reporting."*

Topic 1: ICANN Org Implementation of the new Human Rights Core Value for ICANN

❑ At the ICANN Board's request, ICANN organization (org) prepared an implementation assessment report that includes resource estimates in preparation for the Board's consideration of the WS2 Final Report and its recommendations.

❑ ICANN [WS2 Implementation Assessment Report](#) | November 2019

❑ **Recommendation for a Framework of Interpretation for Human Rights**
      3.3 Implementation Considerations, ICANN Org:

▪ *" Within ICANN org, these recommendations are incorporated into ICANN's work as an organization. Independent of the FOI, ICANN org has conducted a human rights impact assessment on its daily operations and published the report 15 May 2019.*

▪ *Regarding the specific recommendations and the FOI, ICANN org manages its work in the public interest, with core values in all aspects of its work, and human rights are now included as an additional element. In this regard, there may need to be slight adjustments to practices with the addition of human rights to the core values.*

▪ *To the extent adjustments need to be made, there may be a need for practices to be developed to document how ICANN balances the core value of respecting human rights amongst and against the other core values when developing corporate or operational policies and executing its operations.*

▪ *The incorporation of the FOI into community processes and procedures, and assessment that there is adherence to core values now including human rights, applies not only to policies developed by the community but also to advice, CCWG recommendations and review recommendations. Depending on the approach by the SO/AC or other groups to considering and applying the human rights core value into their work and the determination of a need for a SO/AC or other group human rights impact assessment tool, ICANN org support and additional resources may be required to support the community's work. "*

Topic 2: GAC implementation of the new Human Rights Core Value for ICANN

❏ Annex 3 of the WS2 Final Report seems quite definitive on the expectations for ICANN community groups regarding the new Human Rights Core Value. The framework of interpretation enumerated in Annex 3 offers specific and practical direction for ICANN supporting organizations and advisory committees.

❏ *"Each SO and AC should take the Core Value into consideration in its policy development or advisory role. **It is up to each SO and AC, and ICANN the organization, to develop their own policies and frameworks to fulfill this Core Value.** In doing so, the SOs and ACs, as well as ICANN the organization, should also take into account the requirement to balance the Core Values."*

❏ *Supporting Organizations could consider defining and incorporating Human Rights Impact Assessments (HRIAs) in their respective policy development processes. HRIAs should not consider particular human rights in isolation since they are universal, indivisible, interdependent, and interrelated. Given the interrelated nature of Core Values, the Supporting Organizations could also consider other Core Values, as part of the balancing required by the Bylaws.*

❏ ***Advisory Committees could also consider similar measures defining and incorporating HRIAs in their respective processes.****"*

Topic 2: GAC implementation of the new Human Rights Core Value for ICANN

The HRIL WG discussed the role of the GAC in the implementation of ICANN's Human Rights Core Value and as a result of GAC Members' input indicated following priorities:

- Option 1 (to not be pursued): 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?"

- Option 2 (not discarded): 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?

- Option 3 (not discarded): Create the position of a GAC HR rapporteur – responsible for flagging issues and to lead in Options 1 and 2

- **Option 4 (for implementation): Provide for the participation of the GAC in Human Rights Implementation Assessments or similar procedural steps established for Policy Development Processes.**

Identification Inventory of GAC - Applicable Recs

Staff research conducted to set baseline for potential GAC inventory of implementation recommendations and considerations:

Options for initial implementation steps include:

- Case-by-case rec consideration by GAC leadership

- Assessment and advice of relevant recommendations by HRIL WG

- Assessment and advice of relevant recommendations by GOPE WG

Specific WS-2 Accountability Recommendations For SO-ACs
from CCWG – Accountability WS 2 Final Report

GAC Support staff has closely reviewed the CCWG – Accountability WS2 Final Report (24 June 2018)(hereinafter WS Final Report) (see https://www.icann.org/en/system/files/files/ccwg-acct-ws2-final-24jun18-en.pdf) and identified a total of forty-two (42) WS2 Final Report recommendations that impact the GAC in some way or form.

Those individual recommendations have all been identified in this document (see **bold blue font text**) to help further GAC information sharing, discussion and deliberations at the ICANN67 Cancun public meeting.

The purpose of this documentation is to simply identify the scope of the recommendations calling for GAC implementation. Implementation plans and priorities for addressing these recommendations will be developed by GAC members and memorialized in separate documentation.

Staff Identification Inventory document: https://tinyurl.com/y8fnkz48

Topic 2: GAC implementation of the new Human Rights Core Value for ICANN

- ❑ The Cross-Community Working Party for Human Rights (CCWP-HR) published a report named Designing a Human Rights Impact Assessment for ICANN's Policy Development Process. This report outlines an iterative research-and-design process carried out between November 2017 and July 2019 aiming to shape a multistakeholder HR impact assessment for ICANN's policy development processes.

- ❑ Since ICANN66, GAC members and CCWP-HR held a number of joint sessions and conference calls focusing on the Implementation of the Human Rights Core Value in ICANN's Bylaws, following the release of the Human Rights Impacts Assessment by ICANN Org.

- ❑ CCWP-HR prepared [sample tool](#) aimed at helping SO/ACs implement recommendation 3 of the Workstream 2 Recommendations

CCWP-HR Sample Tool

Sample HRIA tool for ICANN SO/ACs

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Does the SO/ AC/ Group Provide for a process of appeal when application for membership is rejected.

* This is a living document for and by the multistakeholder ICANN community. Please feel free to make edits or additions. (This tool is aimed at SO/ ACs implementing recommendation 3 of the Workstream2 Recommendations)

Issue Area	Short Description	Description	Salient Human Rights	Negative Impact Scenario(s)	Impacted Groups	Severity of impact	Positive Impact Scenario(s)	Applicable Human Rights Law
Diversity	Definitions and interpretations	Does the SO/AC/ Group the incorporate the seven key elements of diversity- 1) Geographic or Regional Representation, 2) Language, 3) Gender, 4) Age, 5) Physical Disability, 6) Diverse Skills, 7) Stakeholder Group or Constituency	Right to equal treatment/ non discrimination	Unclear Benchmarks within SO/AC/ Group on what diversity entails.	- Minority / local communities members of the SO/AC - Global South members	Medium		Universal Declaration of Human Rights International Covenant on Civil and Political Rights International Covenant on Economic, Social and Cultural Rights International Convention on Elimination of All Forms of Racial Discrimination Convention on the Elimination of all Forms of Discrimination Against Women Convention on the Rights of Persons with Disabilities UN Declaration on the Rights of Indigenous Peoples UN Guiding Principles for Business and Human Rights Universal Declaration on Cultural Diversity
Diversity	Transparency on diversity	Does the SO/AC/Group clearly identify which elements of diversity are mandated in their charters or ICANN Bylaws and any other elements that are relevant and applicable to each of its levels (and entire structure) including leadership (Diversity Criteria) and is this information published on their official websites.	Right to equal treatment/ non discrimination	Lack of SO/ AC/ Group Transparency on diversity.	- Minority / local communities members of the SO/AC - Global South members	Medium		Universal Declaration of Human Rights International Covenant on Civil and Political Rights International Covenant on Economic, Social and Cultural Rights International Convention on Elimination of All Forms of Racial Discrimination Convention on the Elimination of all Forms of Discrimination Against Women Convention on the Rights of Persons with Disabilities UN Declaration on the Rights of Indigenous Peoples UN Guiding Principles for Business and Human Rights Universal Declaration on Cultural Diversity
Diversity	Accessibility for all members from the seven key elements of diversity	Are the documents produced by the SO/ AC/ Group accessible by all members regardless of 1) Geographic or Regional Representation, 2) Language, 3) Gender, 4) Age, 5) Physical Disability, 6) Diverse Skills, 7) Stakeholder Group or Constituency	Right to equal treatment/ non discrimination	Applicants who are persons with disabilities have restricted access to SO/ AC Charter, Advice documents and or PDP involvement as a result of lack of adequate translation, interpretation or transcription services.	Persons with disabilities	Medium		Accessibility is identified in Article 3(f) of the UN Convention as one of its eight general principles, accessibility, including access to ICTs, is established therein as a condition that will enable person disabilities to exercise their fundamental freedoms and human rights.
Participation	Criteria for membership	Does the SO/ AC/ Group clearly outline in the bylaws or in operational procedures its rules of	Right to take part in the conduct of public affairs; Freedom of Association	New members may be prevented from joining if critera are not clear				• Universal Declaration of Human Rights (art. 21); • the International Covenant on Economic, Social and Cultural Rights (art. 8); • the International Convention on the Elimination of All Forms of Racial Discrimination (art. 5 (c)

Topic 3: ICANN Follow-up on Jurisdictional Interest

❏ This was a matter of interest identified by some GAC Members during preparation of ICANN67 Meeting

❏ Language in the Final Report suggests potential future work (Recommendation 4.3 - Further Discussions of Jurisdiction-Related Concerns)

"There were a number of concerns raised in the sub-group where the sub-group had substantive discussions but did not get to a point of conclusion."

"These concerns were put on the table by different stakeholders, and for these stakeholders, these are legitimate concerns. As these concerns were not discussed to the end, there should be a path forward for these concerns beyond the CCWG Accountability, which was tasked to look into a limited number of issues within a limited period of time and with a limited budget."

"Therefore, the sub-group suggests that another multistakeholder process of some kind should be considered to allow for further consideration, and potentially resolution, of these concerns. *We believe that this report, with its annexes, can be a very useful tool for further debates which will surely take place – whether in another cross-constituency effort or in a future ATRT Review, or in some other ICANN context.* ***The appropriate forum for such discussions is beyond the mandate of the CCWG-Accountability; however, we encourage the community to build on the work of the sub-group and prior work in this area."***

❏ Opportunity for GAC Member comments/suggestions regarding appropriate GAC role, if any, in this area

Questions & Answers