

# Human Rights Gap Analysis for ICANN's Pilot Holistic Review Draft Terms of Reference

Final Report

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## **Acknowledgements**

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## **About the CCWP-HR**

The CCWP-HR is a multistakeholder forum currently chartered as a sub-entity of the Non-Commercial Stakeholder Group (NCSG) within the Generic Name Supporting Organisation (GNSO) but remains open to the rest of the Internet Corporation for Assigned Names and Numbers (ICANN) community for research and discussion on the relationship between human rights and global Domain Name System (DNS) coordination. This is related — but not limited — to policies, procedures, and operations, with a particular focus on ICANN's responsibility to respect human rights. The primary goal of the CCWP-HR is to provide information, facilitate dialogue, and make suggestions to ICANN Org, its Board of Directors, and the ICANN community on ways to better harmonize ICANN's policies and procedures with internationally recognized human rights laws and corporate social responsibility standards. Membership is open to any interested individual, regardless of affiliation.

## **About the Authors**

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## **Summary**

In August 2022, ICANN published the ICANN Pilot Holistic Review Draft Terms of Reference, requesting feedback from the community. We note that ICANN Org published the draft terms of reference of the Pilot Holistic Review as an outcome of the ICANN Board approval of the Third Accountability and Transparency Review Team (ATRT3) recommendation to initiate a new Specific Review. As noted in the draft terms of reference, the holistic review is intended to:

1. Review the effectiveness of the various inter-SO/AC/NC collaboration mechanisms
2. Review the accountability of SO/ACs or constituent parts to their members and constituencies (this will include an in-depth analysis of the survey results).
3. Review SO/AC/NC as a whole to determine whether they continue to have a purpose in the ICANN structure, as they are currently constituted, or whether any changes in structures and operations are desirable to improve the overall effectiveness of ICANN and ensure optimal representation of community views (taking into consideration any impacts on the Board or the Empowered Community).
4. Review continuous improvement efforts of SO/AC/NC based on good practices.

In particular, this report assesses whether the Pilot Holistic Review Draft Terms of Reference are fit for purpose and whether they align with the community's expectations of full implementation of Section 27.2 of the ICANN Bylaws (on Human Rights) and other Bylaws that have an impact on human rights based upon the ATRT3 recommendation and Workstream 2 Recommendations.

We welcome the work of ICANN on releasing the document in line with Workstream 2 Recommendations on ICANN Transparency. Our analysis shows that, primarily, the document is a good first step but has fundamental gaps in ensuring the full implementation of Section 27.2 of the ICANN Bylaws (on Human Rights) and other Bylaws that have an impact on human rights.

CCWP-HR therefore implores ICANN to consider the recommendations below, which would ensure that the Pilot Holistic Review is implemented more closely with international law and best practice.

## **Recommendations**

While we welcome the draft Holistic Review Terms of Reference, we are concerned that the draft has not comprehensively accounted for how the

Supporting Organizations and Advisory Committees will reflect the Human Rights Core Value in their policy and operational processes.

We note, through Section 27.2 of the ICANN Bylaws (on Human Rights), ICANN itself has recognized the HRIA as ‘a process to identify and prioritize the impacts an organization has on human rights, to analyze how effectively these impacts are managed by the organization, and to develop actions for improvement, ‘through the Framework Of Interpretation for Human Rights (FOI-HR)<sup>1</sup>.

We further note that the FOI-HR explicitly envisions the ICANN Community conducting HRIAs:

1. Policy Development HRIAs: according to the FOI-HR, ‘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. 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.’

Additionally, according to the FOI-HR, ‘[i]t is up to each SO and AC, and ICANN the organization, to develop their own policies and frameworks to fulfill this Core Value.’ The FOI-HR additionally expressly states that “ICANN, the community as well as the organization, will need to consider how to reflect this Core Value in their policy and operational processes.” We recommend that, based on the United Nations Guiding Principles ( UNGPs) on Business and Human Rights, the best way for an organization to figure out what its human rights concerns are would be to carry out a Human Rights Impact Assessment (HRIA) or a Human Rights Gap Analysis (HRGA) in order to identify areas that need improvement in their operational processes.

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<sup>1</sup> The Framework Of Interpretation for Human Rights (FOI-HR) was developed through a multistakeholder process as a consensus recommendation and approved by the ICANN Board in November 2019 at ICANN 66 in Montreal, Canada  
<<https://www.icann.org/en/system/files/files/ccwg-acct-ws2-final-24jun18-en.pdf>> accessed 7 October 2022

We note that HRIAs would involve ICANN Org or an SO/AC, either itself or through a third party engaging in an assessment of itself and consulting both internal and external stakeholders to identify and measure the impact of its policies on human rights and create a roadmap to minimize any negative effects on human rights while a HRGA would be a light weight version of a HRIA and would not necessarily involve an exercise involving both internal and external stakeholders and would at times be limited to a desk review of policies and providing recommendations without actual interviews with various stakeholders.

We are thus concerned that the failure to include procedures (such as HRIAs or HRGAs) which would outline steps to be taken to respect the Human Rights Core Value in the design and development of principles and criteria for self-assessment for continuous improvement efforts of SO/AC/NC based on good practices carried out by each SO, AC, and NC is a missed opportunity to ensure SO/ACs continually improve in respecting Section 27.2 of the ICANN Bylaws (on Human Rights). . To this end, we recommend that the entire Draft Terms of Reference be revised to include provisions to ensure that each SO/AC is able to identify its human rights impact, and we would recommend that the best way to implement this would include carrying out both organizational and policy development HRIAs/ HRGAs as a guideline requirement under the holistic review process.

## **Conclusion**

CCWP-HR is grateful to have participated in this public comment process in accordance with the November 2019 ICANN Board approval of the FOI-HR.

We welcome feedback on any aspect of this initiative and extend an open invitation to any interested individuals to get involved in the next phase of work. To become a member of the Cross-Community Working Party on ICANN and Human Rights (CCWP-HR), visit the CCWP-HR page on the ICANN Community website

<<https://community.icann.org/display/gnsononcomstake/CCWP+on+ICANN+and+Human+Rights>>.