

ICANN Bylaw Language	Commentary
'within the scope of its Mission'	<p>ICANN's Mission is focused on defining ICANN's technical functions. The bylaws, including the human rights provision, will be interpreted within the scope of its Mission.</p>
'within the scope of other Core Values'	<p>The Commitments and Core Values section of the bylaws (Section 1.2 (a) and (b), respectively) has several notable references that echo important human rights concepts:</p> <ul style="list-style-type: none"> • Section 1.2 (a)(iv)(A) commits ICANN to act for public benefit. This commitment could also be understood implicitly to mean that ICANN should not act to harm the public, such as harming people's rights. • Section 1.2(b)(ii) refers to <i>informed participation</i>, and <i>accountability and transparency</i>, and (v) has a reference to <i>non-discriminatory treatment</i>. All of these concepts are part of human rights principles. This subsection also mentions 'cultural diversity' – while this concept is not directly referred to in the International Covenant on Economic, Social and Cultural Rights, it is consistent with the spirit and intent of the Covenant. <p>These references in the Commitment and Core Values complement the Core Value of respect for human rights and collectively create an enabling environment for the operationalization of the human rights provision in the bylaws.</p>
'respecting'	<p>Section 1.2(b)(vi) mentions ICANN being 'rooted in the private sector.' ICANN's strong orientation toward the private sector means that the UN Guiding Principles on Business and Human Rights (UNGPs), tailored specifically for business enterprises, can provide a meaningful human rights framework for ICANN. The UNGPs, among other things, explain what it means for business enterprises to 'respect human rights.'</p> <p>The General Principles of the UNGPs state: The UNGPs are grounded in recognition of 'the role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights.' In this section, the meaning of 'respecting' human rights is explored. Compliance with applicable law is explained below.</p> <p>Unlike the internationally recognized human rights which legally obligate states (see below), the UNGPs do not create new international law obligations or limit or undermine any legal obligations a State may have (UNGPs, General Principles). This also means that the UNGPs do not require enterprises to enforce human rights, which is the legal duty of states.</p> <p>Pursuant to the UNGPs, ICANN can voluntarily express its commitment to respect human rights, and identify, prevent, mitigate and account for how it addresses adverse human rights impacts through the process of human rights due diligence. In doing so, ICANN can prioritize areas of focus, such as its operations, internal procedures, and/or new policy, consistent with its Mission. In addition, operational level grievance mechanisms should be established to address human rights grievances.</p> <p>ICANN's commitment to apply the UNGPs to its operations and policies in the foregoing manner is consistent with the letter and the spirit of the human rights provision of the bylaws as well as with the UNGPs.</p>

<p>‘internationally recognized human rights’</p>	<p>The internationally recognized human rights that are relevant to ICANN are:</p> <ul style="list-style-type: none"> • 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* • ILO’s Declaration on Fundamental Principles and Rights at Work (applicable to ICANN’s employees and workers) <p>These rights are contained in human rights instruments that bind states, and not private actors. Nonetheless, ICANN can refer to them as international benchmarks in its operations and strive to respect them, without being legally bound by them. ICANN’s human due diligence can be carried against these rights in order to ascertain whether ICANN’s operations or policies create an outcome that is not consistent with these rights.</p> <p>*Note that UNDRIP is technically a declaration adopted by the UN General Assembly and not a legally binding treaty.</p>
<p>‘as required by applicable law’</p>	<p>As already mentioned, the UNGPs are grounded in recognition of enterprise responsibility to comply with all applicable laws. This is a universal principle that applies to all individuals and organs of society.</p> <p>To the extent any applicable law reflects internationally recognized human rights (such as applicable law on freedoms of assembly, association, ideas and expression, labor, nondiscrimination, privacy, protection of minors and vulnerable people, etc.), and they are applicable to ICANN directly (as opposed to ICANN’s business partners), these legally bind ICANN.</p>
<p>‘This Core Value does not create, and shall not be interpreted to create, any obligation on ICANN outside its Mission’</p>	<p>As stated above, application of the human rights Core Value does not create any legal obligation of ICANN outside its Mission. It is assumed that it is implicit in ICANN’s Mission that it will operate within the bounds of applicable laws; furthermore, it is also assumed that ICANN has the discretion to voluntarily make commitments to respect human rights and to carry out human rights due diligence.</p>
<p>‘or beyond obligations found in applicable law’</p>	<p>The application of the UNGPs to ICANN’s operations and policies does not create legal obligation beyond those found in laws applicable to ICANN.</p>
<p>‘This Core Value does not obligate ICANN to enforce its human rights obligations’ [against other parties]</p>	<p>The Core Values do not create any new legally enforceable rights or duties of ICANN and ICANN will not be legally obligated to enforce human rights obligations against other parties. While UNGP Principle 13(b) refers to adverse human rights impacts that are directly linked to ICANN’s operations, products or services by its business relationships, and suggests that termination of the relationship is an option, ICANN must also take into account “credible assessments of potential adverse human rights impacts of terminating such business relationships” (commentary to Principle 19). On</p>

	the assumption that the negative human rights impacts of termination outweigh the benefits, ICANN can consider remaining in the business relationship, consistent with its Mission, and seek to implement one or more actions, such as engagement, capacity building, exercising its leverage outside the business relationships, etc., with respect to its business relationships.
'or the human rights obligations of other parties, against other parties'	See immediately above.