

# ICANN CCWG-Accountability Work Stream 2

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## Design/Drafting Team Ombuds Office

### 1. Background for Ombuds Office in Work Stream 2

ICANN's new bylaws reflect the CCWG Supplemental Final Proposal, regarding Work Stream 2 (WS2)

#### ARTICLE 27 TRANSITION ARTICLE

##### Section 27.1. WORK STREAM 2

(b) The CCWG-Accountability recommended in its Supplemental Final Proposal on Work Stream 1 Recommendations to the Board, dated 23 February 2016 ("CCWG-Accountability Final Report") that the below matters be reviewed and developed following the adoption date of these Bylaws ("Work Stream 2 Matters"), in each case, to the extent set forth in the CCWG-Accountability Final Report:

- (vii) Considering enhancements to the Ombudsman's role and function;

This WS2 item was described in the CCWG-Accountability Work Stream 1 Final Proposal (Annex 12):

*Through the enhanced Request for Reconsideration process (see Recommendation #8: Improving ICANN's Request for Reconsideration Process), the CCWG-Accountability has given increased responsibility to the Ombudsman.*

*The Ombudsman can perform a critical role in ensuring that ICANN is transparent and accountable, preventing and resolving disputes, supporting consensus-development, and protecting bottom-up, multistakeholder decision-making at ICANN. ICANN's Office of Ombudsman must have a clear charter that reflects, supports, and respects ICANN's Mission, Commitments and Core Values, and must have sufficient authority and independence to ensure that it can perform these important roles effectively. As part of Work Stream 2, the CCWG-Accountability will evaluate the current Ombudsman charter and operations against industry best practices and recommend any changes necessary to ensure that the ICANN Ombudsman has the tools, independence, and authority needed to be an effective voice for ICANN stakeholders.*

## 2. Dependencies between the sub-groups

- Diversity (Sébastien Bachollet)
- Human Rights (Raoul Plommer)
- Jurisdiction (Farzaneh Badii)
- SO/AC Accountability (Cheryl Langdon-Orr)
- Staff Accountability (Avri Doria)
- Transparency (Michael Karanicolas)
- Reviewing CEP (Edward Morris)
- Guidelines stand. conduct (Karel Douglas)
- IRP “Phase 2” (Robin Gross)

## 3. Stress Tests

Any stress tests elaborate during Work Stream 1 dealing with Ombuds function?

## 4. Current role of the ICANN Ombuds Office

The Ombudsman Role has been expanded through WS1, to include a responsibility to perform a first substantive review over Reconsideration Requests.

In addition, the CWG-Stewardship identified a new role for the Ombudsman, as a place of escalation for complaints about (Public Technical Identifiers) PTI’s naming function service delivery. [*Can someone point to an official document?*]

This expansion is in addition to the Ombudsman’s existing role (as set forth in the ICANN Bylaws) and further described in the Ombudsman Framework.

The Ombuds office is a mediator and not a decision maker.

The Ombuds office can only suggest it can never tell anyone to do anything - which is why informality is so important.

## 5. Evaluation

Evaluate the current ICANN Ombuds charter and operations against industry best practices

- a. ICANN [Ombudsman Framework](#) (April 2009)

b. International Ombuds Association

- i. <http://www.ombudsassociation.org/About-Us/IOA-Standards-of-Practice-IOA-Best-Practices.aspx>
- ii. [http://www.ombudsassociation.org/IOA\\_Main/media/SiteFiles/IOA\\_Best\\_Practices\\_Version3\\_101309\\_0.pdf](http://www.ombudsassociation.org/IOA_Main/media/SiteFiles/IOA_Best_Practices_Version3_101309_0.pdf)

	<p><b>ICANN Ombuds Framework<sup>1</sup></b></p> <p>April 2009</p>	<p><b>International Ombuds Association</b></p> <p>Rev. 10/09</p>	<p><b>Comments</b></p> <p>Herb Wave</p>
<p><b>Jurisdiction</b></p>	<p>The ICANN Ombudsman will receive and have jurisdiction over complaints of unfairness concerning:</p> <ul style="list-style-type: none"> <li>• Decisions, actions, or inactions by one or more members of ICANN staff;</li> <li>• Decisions, actions, or inactions by the Board of Directors that may be inconsistent with the Articles of Incorporation or the Bylaws.</li> <li>• Decisions, actions, or inactions by constituent bodies.</li> </ul> <p>The Ombudsman does not have jurisdiction over complaints concerning:</p> <ul style="list-style-type: none"> <li>• Internal administrative matters;</li> <li>• Personnel issues;</li> <li>• Issues relating to membership on the Board; or</li> <li>• Issues relating to vendor/supplier relationships.</li> </ul> <p>The Ombudsman may decline jurisdiction over a complaint in the following circumstances:</p> <ul style="list-style-type: none"> <li>• The person making the complaint knew, or</li> </ul>		

<sup>1</sup> <http://www.icann.org/general/bylaws.htm#V>

	<p>ought to have known of the decision, recommendation, act, or omission to which the complaint refers more than 60 days before the complaint was received by the Ombudsman;</p> <ul style="list-style-type: none"> <li>• The subject matter of the complaint primarily affects a person other than the complainant and the complainant does not have sufficient personal interest in it;</li> <li>• The complaint is repetitive, trivial, vexatious, frivolous, non-substantive, otherwise abusive, or not made in good faith;</li> <li>• Having due regard for all the circumstances, further action by the Ombudsman is not necessary to resolve the complaint;</li> <li>• The complaint is abandoned; or is withdrawn in writing by the complainant;</li> <li>• The complainant revokes the ADR process by engaging in either a formal review process under Article IV of the Bylaws; or engages in an outside legal process.</li> </ul> <p><a href="http://www.icann.org/general/bylaws.htm#IV">http://www.icann.org/general/bylaws.htm#IV</a></p>		
<p><b>Power</b></p>	<p>The Ombudsman shall use various ADR techniques to facilitate the fair, independent, impartial, and timely resolution of complaints.</p> <p>The Ombudsman does not have the power to make, change or set aside a policy, administrative or Board decision, act, or omission. To the extent a complaint is made relating to a policy, administrative or Board decision, act, or omission, the Ombudsman does have the power to investigate these events, and to use ADR techniques to attempt to resolve the complaint.</p>		

	<p>Where, in the conduct of an investigation of a complaint, the Ombudsman forms an opinion that there has been a serious breach of administrative fairness or mal administration, the Ombudsman may notify the Board of Directors of the circumstances.</p> <p>Where there exists no further opportunity for ADR techniques to be applied, or there is no likelihood of a successful Ombudsman resolution, the Ombudsman shall advise the complainant of the formal review procedures.</p> <p>If the Ombudsman declines jurisdiction, he shall inform the complainant in writing of the decision.</p> <p>The Ombudsman may make recommendations to the Board of Directors with respect to matters arising from complaints reviewed and investigated by the Ombudsman. Where the Ombudsman makes a recommendation to the Board of Directors and to the extent the Board deems it appropriate and feasible, the Board should endeavor to respond to the Ombudsman's recommendation within 60 days after the Board meeting following receipt of such a recommendation.</p>		
<p><b>Independence</b></p>	<p>The Ombudsman is independent... The Ombudsman reports only to ICANN's Board of Directors. The Ombudsman cannot be removed from office, except by a 75% vote of the Board.</p> <p>Should the Ombudsman believe starting an investigation on his/her "own motion" would be</p>	<p>1.1 The Ombudsman Office and the Ombudsman are independent from other organizational entities.        1.2 The Ombudsman holds no other position within the organization which might compromise independence.        1.3 The Ombudsman exercises sole discretion over whether or how to act</p>	<p>1. Is perception of independence an issue?        2. Better understanding of relationships?        3. Term of office. Two year renewable by Board.</p>

	<p>appropriate, the Ombudsman will request authority to do so from a Board committee to be determined by the Board of Directors. That committee shall then determine, based on the information provided by the Ombudsman and any information it obtains on its own, whether such an “own motion” investigation is sanctioned by the committee and thus whether or not the Ombudsman is authorized to proceed with that investigation.</p>	<p>regarding an individual’s concern, a trend or concerns of multiple individuals over time. The Ombudsman may also initiate action on a concern identified through the Ombudsman’ direct observation.        1.4 The Ombudsman has access to all information and all individuals in the organization, as permitted by law.        1.5 The Ombudsman has authority to select Ombudsman Office staff and manage Ombudsman Office budget and operations.</p>	<p>4. NomCom or Board appointment?</p>
<p><b>Neutrality        Impartiality        Fairness</b></p>	<p>The Ombudsman is ... impartial, and neutral. Upon the completion, but before transmittal, of a draft report to the Board of Directors, the Ombudsman will first provide the relevant ICANN department, committee, organization or individual(s) an opportunity to review, respond and provide feedback to the draft report. The Ombudsman will consider feedback generated by this Internal Fairness Procedure in the preparation of a final report for the Board. The relevant department, committee, organization or individual(s) should endeavor to respond to the Ombudsman, or request an extension to respond, within 30 calendar days from receipt of the draft report.</p> <p>Complaints to the Office of Ombudsman shall be dealt with in an informal, timely, and confidential manner.</p>	<p>2.1 The Ombudsman is neutral, impartial, and unaligned.        2.2 The Ombudsman strives for impartiality, fairness and objectivity in the treatment of people and the consideration of issues. The Ombudsman advocates for fair and equitably administered processes and does not advocate on behalf of any individual within the organization.        2.3 The Ombudsman is a designated neutral reporting to the highest possible level of the organization and operating independent of ordinary line and staff structures. The Ombudsman should not report to nor be structurally affiliated with any compliance function of the organization.        2.4 The Ombudsman serves in no additional role within the organization which would compromise the Ombudsman’ neutrality. The Ombudsman should not be aligned with any formal or informal associations within the organization in a way that might create actual or perceived conflicts of interest for the Ombudsman. The Ombudsman should have no personal interest or stake in, and incur no gain or loss from, the outcome of an issue.</p>	<p>1. Fairness        2. Unbiased        3. Advocate for equality among groups?        4. Give voice to smaller groups when larger groups control?        Balancing of power.</p>

		<p>2.5 The Ombudsman has a responsibility to consider the legitimate concerns and interests of all individuals affected by the matter under consideration.</p> <p>2.6 The Ombudsman helps develop a range of responsible options to resolve problems and facilitate discussion to identify the best options.</p>	
<p><b>Confidentiality</b></p>	<p>All matters brought before the Ombudsman shall be treated as confidential. The Ombudsman shall also take all reasonable steps necessary to preserve the privacy of, and to avoid harm to, those parties not involved in the complaint being investigated by the Ombudsman.</p> <p>The Ombudsman shall only make inquiries about, or advise staff or Board members of the existence and identity of, a complainant in order to further the resolution of the complaint. The Ombudsman shall take all reasonable steps necessary to ensure that if staff and Board members are made aware of the existence and identity of a complainant, they agree to maintain the confidential nature of such information, except as necessary to further the resolution of complaint.</p> <p>The Ombudsman has the right to have access to (but not to publish if otherwise confidential) all necessary information and records from ICANN staff and constituent bodies to enable an informed evaluation of the complaint and to assist in dispute resolution where feasible. Private and internal communications not distributed via public websites may be designated as confidential by the party providing such information and records.</p>	<p>3.1 The Ombudsman holds all communications with those seeking assistance in strict confidence and takes all reasonable steps to safeguard confidentiality, including the following:        The Ombudsman does not reveal, and must not be required to reveal, the identity of any individual contacting the Ombudsman Office, nor does the Ombudsman reveal information provided in confidence that could lead to the identification of any individual contacting the Ombudsman Office, without that individual's express permission, given in the course of informal discussions with the Ombudsman; the Ombudsman takes specific action related to an individual's issue only with the individual's express permission and only to the extent permitted, and even then at the sole discretion of the Ombudsman, unless such action can be taken in a way that safeguards the identity of the individual contacting the Ombudsman Office. The only exception to this privilege of confidentiality is where there appears to be imminent risk of serious harm, and where there is no other reasonable option. Whether this risk exists is a determination to be made by the Ombudsman.</p> <p>3.2 Communications between the Ombudsman and others (made while the</p>	<ol style="list-style-type: none"> <li>1. Danger of emails &amp; social media.</li> <li>2. Limited control over disclosure if one party does not adhere to confidentiality.</li> <li>3. Maintains open lines with organization regarding complaints and issues.</li> </ol>



	<p>Nothing shall stop the Ombudsman from treating information confidential if the Ombudsman deems it appropriate to do so. In general terms, due to the very nature of the work of the Office of the Ombudsman, the Ombudsman will resist testifying in any process which would reveal informal, confidential information given to the Ombudsman during the course of an investigation.</p> <p>Communication with complainants will normally be by email or telephone to expedite the exchange of information. When the Office of Ombudsman closes a complaint, it will be in one of the following categories, and the complainant, where possible, will be notified by email.</p>	<p>Ombudsman is serving in that capacity) are considered privileged. The privilege belongs to the Ombudsman and the Ombudsman Office, rather than to any party to an issue. Others cannot waive this privilege.</p> <p>3.3 The Ombudsman does not testify in any formal process inside the organization and resists testifying in any formal process outside of the organization regarding a visitor's contact with the Ombudsman or confidential information communicated to the Ombudsman, even if given permission or requested to do so. The Ombudsman may, however, provide general, non-confidential information about the Ombudsman Office or the Ombudsman profession.</p> <p>3.4 If the Ombudsman pursues an issue systemically (e.g., provides feedback on trends, issues, policies and practices) the Ombudsman does so in a way that safeguards the identity of individuals.</p> <p>3.5 The Ombudsman keeps no records containing identifying information on behalf of the organization.</p> <p>3.6 The Ombudsman maintains information (e.g., notes, phone messages, appointment calendars) in a secure location and manner, protected from inspection by others (including management), and has a consistent and standard practice for the destruction of such information.</p> <p>3.7 The Ombudsman prepares any data and/or reports in a manner that protects confidentiality.</p> <p>3.8 Communications made to the ombudsman are not notice to the organization. The ombudsman neither acts as agent for, nor accepts notice on behalf of,</p>	
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<p><b>Informality and other standards</b></p>	<p>The Ombudsman’s function is to act as an Alternative Dispute Resolution (ADR) office for members of the ICANN community who may wish to lodge a complaint that the staff, board or a constituent body has treated them unfairly. The purpose of the Ombudsman is to ensure that the members of the ICANN community have been treated fairly.</p> <p>The Ombudsman will act as an impartial officer and will attempt to resolve complaints about unfair treatment by ICANN using ADR techniques.</p> <p>The Ombudsman will adhere to the standards of practice adopted by The Ombudsman Association, as they may be applicable. The Ombudsman will act as a leader by modeling and promoting fairness, equality, clarity, innovation, and by providing assistance to ICANN and the community in developing an awareness of the Ombudsman role. The Office of the Ombudsman will strive for certification and peer recognition with relevant Ombudsman bodies.</p> <p>All complaints to the Office of Ombudsman must be made in writing.</p> <p>The Office of Ombudsman shall provide an interactive form on the ICANN website to facilitate the filing of complaints.</p> <p>Written complaints to the Office of</p>	<p>4.1 The Ombudsman functions on an informal basis by such means as: listening, providing and receiving information, identifying and reframing issues, developing a range of responsible options, and – with permission and at Ombudsman discretion – engaging in informal third-party intervention. When possible, the Ombudsman helps people develop new ways to solve problems themselves.</p> <p>4.2 The Ombudsman as an informal and off-the-record resource pursues resolution of concerns and looks into procedural irregularities and/or broader systemic problems when appropriate.</p> <p>4.3 The Ombudsman does not make binding decisions, mandate policies, or formally adjudicate issues for the organization.</p> <p>4.4 The Ombudsman supplements, but does not replace, any formal channels. Use of the Ombudsman Office is voluntary, and is not a required step in any grievance process or organizational policy.</p> <p>4.5 The Ombudsman does not participate in any formal investigative or adjudicative procedures. Formal investigations should be conducted by others. When a formal investigation is requested, the Ombudsman refers individuals to the appropriate offices or individual.</p> <p>4.6 The Ombudsman identifies trends,</p>	<p>“One of the underlying goals of any Ombuds Office in any organization or government is, bottom line, saving the organization time, money, grief, lawsuits, and so forth if conflict can be resolved at the very lowest level possible.”</p> <p>“The fairness aspect is critical. But the informality is something that should be kept in the forefront.”</p> <ol style="list-style-type: none"> <li>1. Coca Cola Ombuds does not even carry a pen vs. our CMS with online complaint form &amp; use of emails.</li> <li>2. Privacy issue: storage of complaints (archives).</li> <li>3. Requires organizational trust in Office.</li> <li>4. Requires community trust in Office.</li> <li>5. Must not be seen as IRP or Reconsideration appeal but can be used at any stage around either.</li> <li>6. Process review not</li> </ol>

	<p>Ombudsman shall contain the following information:</p> <ul style="list-style-type: none"> <li>• Information about the complainant:           <ul style="list-style-type: none"> <li>○ Name, address, postal address, phone number, email contact, domain name;</li> </ul> </li> <li>• The date of ICANN act, omission, or decision, and a description of that act, omission, or decision;</li> <li>• A description as to how the complainant has sufficient personal interest in the matter;</li> <li>• The nature and basis of the complaint about the act, omission, or decision;</li> <li>• A synopsis of contact between the complainant and the ICANN staff or Board on the issue, if applicable;</li> <li>• Any other information the complainant wishes to provide.</li> </ul>	<p>issues and concerns about policies and procedures, including potential future issues and concerns, without breaching confidentiality or anonymity, and provides recommendations for responsibly addressing them.</p> <p>4.7 The Ombudsman acts in accordance with the IOA Code of Ethics and Standards of Practice, keeps professionally current by pursuing continuing education, and provides opportunities for staff to pursue professional training.</p> <p>4.8 The Ombudsman endeavors to be worthy of the trust placed in the Ombudsman Office.</p>	<p>decision appeal.</p> <p>7. First stop not last stop.        8. Should represent opinion of « reasonable person »?</p>
<p><b>Communication</b></p>	<p>The Ombudsman may post complaints and resolutions to a dedicated portion of the ICANN website:</p> <ul style="list-style-type: none"> <li>(i) in order to promote an understanding of the issues in the ICANN community;</li> <li>(ii) to raise awareness of administrative fairness; and</li> <li>(iii) to allow the community to see the results of similar previous cases.</li> </ul> <p>These postings will be done in a generic manner to protect the confidentiality and privilege of communicating with the Office of Ombudsman.</p> <p>The Ombudsman will provide an Annual Report to the Board of Directors, and this will be posted on the website.</p> <p>The Ombudsman will conduct appropriate outreach and consumer awareness with the ICANN community to raise the level of</p>		

	<p>understanding of the Ombudsman process, and to encourage the use of ADR processes.</p>		
<p><b>Output</b></p>	<p><b>Resolved:</b> When the matter that the complainant brought to the Ombudsman has been resolved between the parties to the satisfaction of the Ombudsman.</p> <p><b>System Improvement:</b> When during the course of conducting an investigation the Ombudsman makes a recommendation to ICANN (either informally or via report to the Board), which the Ombudsman believes may lead to the increased fairness of a process.</p> <p><b>Referral:</b> When a complaint does not lie within the jurisdiction of the Ombudsman, and the complainant is either</p> <ul style="list-style-type: none"> <li>a) passed directly to the responsible staff person within ICANN, or</li> <li>b) given a point of reference outside of ICANN such as the Office of Fair Trading.</li> </ul> <p><b>Self Help:</b> When the contact requires only the transmittal of information enabling the complainant to be self empowered to deal with the matter of the contact on their own (i.e. information found on various ICANN webpages).</p> <p><b>No further Action Required:</b> The Ombudsman may begin initial steps in handling a matter and then find that there is no further action required due to the circumstances (i.e. the complaint may be related to a time sensitive issue, or on evaluation the complaint may not warrant investigation (trivial)).</p> <p><b>Decline Jurisdiction:</b> The Ombudsman may decline jurisdiction, as described in the Ombudsman Framework, for matters such as the timeliness of a complaint, lack of personal</p>		

	<p>interest, trivial, vexatious, etc., or in a circumstance where the complainant escalates the complaint to a formal process pursuant to Article IV of ICANN's Bylaws.</p> <p><b>Unfounded:</b> When the Ombudsman investigates a complaint and determines that the matter presented to the Ombudsman was unfounded.</p> <p><b>Withdrawn:</b> When a complainant notifies the Ombudsman that the complaint need not be pursued further.</p> <p><b>Abandoned:</b> When a complainant ceases to be involved in the Ombudsman process without notice to the Ombudsman.</p> <p><b>Unresolved and escalated by complainant per Article IV of Bylaws.</b></p> <p><b>Resolved with Notification to the Board.</b></p> <p><b>Resolved with Recommendation to the Board.</b></p>		
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## 6. Various types of Ombudsman roles

There is a lot of variance in the type of Ombuds Offices. They work differently, depending on their legislation and their powers. Some research could possibly be done in that area.

- a. Legislative
  - i. South African "Public Protector"
  - ii. France "Défenseur des droits"
- b. University
- c. Organizational
- d. Executive (like ICANN)
- e. etc.

## 7. Challenges

- f. Technical vs. common sense.
- g. Formal vs. Informal.
- h. Big issues and small issues. All problems come in regardless of importance/size.
- i. Reaching the community.
- j. Orientation to newcomers/staff/nextGen should be built in.
- k. Being used to game system.
- l. Ombuds shouldn't require a team of lawyers.

## 8. Recommendation

Recommend any changes necessary to ensure that the ICANN Ombudsman has the tools, independence, and authority needed to be an effective voice for ICANN stakeholders

Term of the ombudsman

True independence in a role that is subject to Board renewal

## 9. Additional role for the Ombuds Office?

Can and do we need to go beyond the traditional remit of an Ombudsman (i.e. fairness)?

Inspector General vs Ombuds.

Informality is critical. An Inspector General takes this in a completely different direction and is not an Ombuds role.

Some of the things that have or may be proposed are beyond the Ombuds competence and how we should handle that.

A way to answer this question is:

- To look at the powers and framework for the position we are looking for;
  - [For this document we will call it Ombuds Office].
- To hire the candidate(s) who embody those needs;
- To define the final name for the position.

“And an Inspector General or an Auditor General, or whatever you want to call it, watchdog of an organization, is a very different role. And for an Ombuds to go in that direction, it would be a complete change in the focus of having that accountability mechanism.”

## 10. Interaction

How the new role of the Ombudsman would interact with other mechanisms, to avoid duplication and optimize effectiveness?

## 11. Communication & Relationship

- a. In-reach to community vs Out-reach
- b. Relationships with Board & Community leadership.
- c. All new Board and community leaders have Ombuds orientation?
- d. Give voice to everyone (regardless of size or perceived unimportance of group)
- e. Advocate for ethical behavior

## 12. Trust

## 13. Advice

Advice to the future ICANN Ombudsman?

- New bylaw changes: Reconsideration
- Formal vs. informal?
- Involvement with community?
- Involvement in policy development to ensure fair input from all parties?
- Should policy issues be run past the ombuds office?
- Advocate for ethics/code of conduct?
- Harassment – bullying – behavior?

## 14. Conclusion



# Annexes

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## Resources

ICANN Ombudsman blog: <https://omblog.icann.org/>.

Ombudsman Framework: <https://www.icann.org/resources/pages/framework-2012-02-25-en>

What the Ombudsman can do for you: <https://www.icann.org/resources/pages/contact-2012-02-25-en>.

Online Dispute Resolution Standards of Practice:  
<https://www.icann.org/resources/pages/odr-standards-of-practice-2012-02-25-en>

Ombudsman Annual Reports & Publications: <https://www.icann.org/resources/pages/reports-96-2012-02-25-en>

International Ombudsman Association FAQs:  
<https://www.ombudsassociation.org/Resources/Frequently-Asked-Questions.aspx>

Ombudsman's Program Management:

- [ATRT Part 24 Ombudsman Report](#)
- [Ombudsman Evaluation Seminar](#)
- [Value Statement](#)
- Results Based Management and Accountability Framework (RMAF)
  - [Results Based Management and Accountability Framework \(RMAF\)](#)
- Evaluation Papers
  - [Statistical Comparison](#)
    - [Independent Review of Statistical Comparison](#)
  - [Client Survey Results \(August 2006\)](#)
    - [Third Party Review of Client Survey Results](#)
  - [Literature Base Review July 2006](#)
    - [Independent Review of Literature Based Evaluation](#)
- [Analytical Tools](#)
- [50 Questions for Self-Evaluation](#)
- [A Practitioner's Guide to Evaluating Ombudsman Offices](#)
- [A Blueprint for the Evaluation of an Ombudsman's Office: A Case Study of the ICANN Office of the Ombudsman](#)