NIELS TEN OEVER: Oh, I'm very sorry, ICANN staff. I should have indeed mentioned the starting of the recording. Just to be clear, this is the Cross-Community Working Group on Enhancing ICANN Accountability Work Stream 2 Human Rights Subgroup Meeting 15 on December 6, 19:00 UTC.

We have apologies from Jorge Cancio and Tatiana Tropina. Kavouss mentioned that he would only be on the phone bridge. I'd like ICANN staff to take a roll call from the Adobe room and ask everyone who is only on the audio bridge to let us know that they are on the audio bridge so we can catch that for the archive.

CHERYL LANGDON-ORR: Cheryl here, Niels. I'll be in the AC shortly, but I'm only on the phone bridge at the moment.

NIELS TEN OEVER: Welcome. Great you're here. With that, we should have a log of everyone who is there. Does anyone have an update to their Statement of Interest that they would like to share? No?

So we can continue with the content part of the agenda, and that is the analysis and discussion on the progress of the drafting team working on the human rights policy and process questions. This is just an initial first draft to see where the ideas work. We have four questions to answer, and the drafting team has been active and responsive to already provide us with something to discuss.

I will ask ICANN staff to pull up the doc or PDF that has been shared, or for people who prefer Google Docs and like to follow my annotations, they can go to the link that I'm posting now in the Adobe chatroom.

I would like to continue with, at least start off with the tradition that we've been doing such, is asking the people from the drafting team who are on the call to give us an initial overview of what they've been working on and what they've been doing and taking us through the different questions. I see that the only member of the drafting team on the call right now is Greg Shatan. Greg, would you be so kind to come in and give us an overview?

GREG SHATAN: If we are now pivoting to the new document here, I think this in the left-hand column has the additional points which we were asked to work on in Annex 12 in the Work Stream 1 report. The right-hand column has what I would call a fairly early draft of responses to each of these points. I think that between IGF and too much celebrating of the finishing of the Framework of Interpretation, there was a bit of a hangover and not a lot of additional work done on this other than the initial state.

However, and there is a framework here so to speak, and definitely looking for comments overall on whether this is on the right track, whether things are missing that should be here, whether there are things here that are beyond scope that somehow have wriggled their way in, whether the second and third points, which are now occupying

one row, should be split into two separate rows given their slightly different focus.

And generally speaking, I will admit that I have not gone over this with a fine-toothed comb though I have read it. So it is still, as I say, in a relatively early stage though framed up quite nicely for something at that stage. Thanks.

NIELS TEN OEVER: Thank you very much for that introduction, Greg. Yes, this is indeed a very early draft, but it's good for us to discuss where we are and how this could work.

Let's start off with the first point and the first question that has been asked in [a lot in Annex 6 and] Annex 12 of the CCWG report. Let me note or reiterate that this work is structurally different from the FoI work because these are things that we cannot already completely implement. These are more recommendations we would make on follow up work. This is us as a design team and at a later point the CCWG at large looking forward on seeing how we can give arms and legs so to say to the Framework of Interpretation.

Let's dive into the first question. The question is: "The policies and frameworks, if any, that ICANN needs to develop or enhance in order to fulfill its commitment to respect human rights."

We've been answering that with the initial answer: "While operationalizing the human rights Bylaw, ICANN can prioritize areas of focus, such as its operations, internal procedures, and/or new policies

consistent with its Mission. ICANN's commitment to respect human rights and to take human rights into consideration in its operations and policies in the foregoing manner is consistent with the human rights provision of the Bylaws. This could involve the use of a human rights impact assessment of how ICANN's operations could impact human rights."

This is a look forward to what could be needed. I would be very interested to hear from you all. Do you think this is concrete enough? Do you think this is high-level? Do you think it's too broad or too narrow? I see David McAuley has a reply, so I'm greatly looking forward to hearing from you, David. David, please come in.

DAVID MCAULEY: Thank you, Niels. I'll speak in my personal opinion. First of all, I just took a look at this in the last half hour, and I want to thank the folks that put this together. In my opinion, the first point, the second column may be a little bit broad. One of the things that appears to be possible here by use of the words "if any" is that the answer could be none, especially when the verb is "needs to" do this, "needs to" do that. I think it's possible to observe that ICANN has been respectful of human rights, now has a Framework of Interpretation and a Bylaw that requires that it respects human rights.

So while I look at the language in the second column, it appears broad, I just think there are things that we will probably flesh out in the next meeting or two and options to consider. One of which might be that

there's nothing that's necessary, but there are things maybe we would suggest along those lines.

Then also when it gets into the notion of human rights impact assessment, I've seen that term frequently and wonder when we use it in a document, at least among ourselves, we should have a definition for it. What does that mean? Where does it apply? Does it apply in both PDP processes of ccNSO and GNSO? Does it apply in internal operations, etc.? Those kind of questions.

So I think this is a good start, but I think there's more that we'll flesh out in the next meeting or so. Thank you, Niels.

NIELS TEN OEVER: Perfect. Thank you very much, David. That's very clear. I'm trying to make live notes in the document. Greg, please come in.

GREG SHATAN: Thanks. I think that the answer, if you will, has kind of driven by the question and I think it needs to back up a bit. What I mean by that is that the question is directly asking about what policies and frameworks ICANN needs to develop or enhance. So there's not actually any reference to any policy or any framework in the answer. There's reference broadly to policies, but I think what's being looked for here is something different, which is either to identify existing policies that need to be enhanced or potential new policies that could be developed.

And I think we need to stick to the ICANN definition of policy, which is also something that gets implemented; it's not implementation.

Framework is a little bit more of a new word in the ICANN vocabulary, but I think we can look somewhat to our own Framework of Interpretation for some idea of what a framework is, at least that it's a guide to the perplexed or for the perplexed and perhaps by the perplexed that helps people through something.

I think that before we get to discussion of operationalization, I think we need to parse the question more carefully as we did with the Bylaw itself and make sure that we are being faithful to the words and to the request. It may be that the answer here is still part of this answer but not the first paragraph, or it may be that it actually fits better in the next box or two if that's split into two. Thanks.

NIELS TEN OEVER: That's a good comment, Greg, and I understand and I feel what you're saying. Do others have comments or questions on this first part? If not, then let's go on to the second part in which two questions have been taken together. Let me first start off with reading out the questions. Something relatively concrete is suggested here. So we jump from the relatively abstract on top to the more concrete here, but let me first read the question.

"Consistent with ICANN's existing processes and protocols, consider how these new frameworks should be discussed and drafted to ensure broad multi-stakeholder involvement in the process." And the question which [inaudible] is: "Consider how the interpretation and implementation of this Bylaw will interact with existing and future ICANN policies and procedures."

There are clearly at least two parts in this. One is ICANN the organization, and one part is the policy development process. I think this part we'll try to answer and approach both. Let me first read it out for you.

"ICANN should consider incorporating Human Rights Impact Assessments (HRIA) in its Policy Development Processes (PDPs). The determination of the impact of a proposed policy on human rights will take place through a Policy Impact Assessment (PIA) that occurs during the drafting of the Preliminary Issue Report (PIR) in the PDP. If the PIA identifies potential impact(s) on specific human rights, a Human Rights Impact Assessment (HRIA) would be triggered for those specific rights and would be undertaken during the drafting of the Working Group's Initial Report. The HRIA would be an integral part of the Working Group's Final Report.

"In order to operationalize these policy changes an appropriate mechanism should be established, for example a Cross Community Working Group on Human Rights which would make proposals for the supporting organizations to implement in their respective Policy Development Processes.

"ICANN should also consider ensuring that it does not violate human rights in its operations. ICANN might consider instruments such as a Human Rights Impact Assessment to carry out a preliminary assessment of the effect of its operations, however, this is up to the ICANN the corporation to decide and implement. The results of such Impact Assessments should be incorporated in ICANN's annual reporting."

This is a rough overview of how we could see the implementation of the Bylaw going. This is a quite a concrete proposal, so I'm very curious what people think about this. Except for being a concrete proposal, it's also giving us a quite concrete way or an option of how we could follow up the work once we are done with the questions that are answered here as part of our Work Stream 2 work. I'm very curious what you all have to say. I see Greg's hand is up. Greg, please come in.

GREG SHATAN: Thanks. I think here again the question and the answer don't really fit together. I think that the first question is really fairly focused, which is on how these new frameworks, which is the thing referred to up above although I'm not quite sure what these new frameworks are, but how they should be discussed and drafted to ensure broad multi-stakeholder involvement in the process.

I think that the new frameworks refer to any policy and framework that might need to be developed or enhanced, so this question first has to play off of the answer to the first question and identify, unless we don't identify, new frameworks and then discuss how those would be drafted. I don't think this really goes to that point. To some extent, the discussion of the Cross-Community Working Group does, but that again talks about operationalizing policy changes not about drafting initial frameworks.

So at least it kind of needs to be refocused a bit, the second paragraph. The first paragraph I think doesn't fit with at least the first assignment at all. The second assignment asks how the interpretation and

implementation will interact with policies and procedures. I think first there needs to be some discussion really of the interaction point because really the nub of this question goes to interaction which, again, is not the same thing as implementation itself although we'll have to consider how the implementation might proceed in order to not be too abstract in terms of what we're discussing.

But I think the answer kind of rushes straight past all of that to a suggested implementation mechanism, which I'm not sure [inaudible] asked for at all but if to the extent they are there downstream of a series of other points that need to be considered. Thanks.

NIELS TEN OEVER: Thank you very much, Greg, for that insight. I see David McAuley's hand is up. David, please come in.

DAVID MCAULEY: Thank you, Niels. Again in my personal opinion, I tend to agree with what Greg has said about the first two blocks. I would just add in this one specifically it recalls what I said before about the first block and that is some definitional work I think needs to be done here, which is to be expected since this is just the first draft.

Where I'm coming from is this idea of human rights impact assessment and simply making it clear that if there is that kind of assessment to be done in PDPs by the supporting organizations, that they're not under a broader obligation than ICANN is. That is specifically that what we're

talking about here are internationally recognized human rights under Applicable Law.

The way this reads right now is just that they would consider human rights, and it just sounds vague to me that it could be human rights writ large, everything that anybody claims as a human right. I think that if this were to come to fruition, these groups would operate in the same vein that ICANN does and that would be my suggestion.

I am glad to see that if that happens, it would happen in a preliminary issue report early in the process, which makes great sense. But otherwise, I agree with the general tenor of the comments Greg was making. Thank you.

NIELS TEN OEVER: Excellent. That's a great comment, David, and I also think that's a great way forward. I've been capturing your notes in the Google Doc. I see there are no more hands up, and I think the comments that have been made are really concrete and really helpful as to define how to take steps further. So let's see what the preliminary ideas are about the final question that's asked to us.

That question is, "Consider what effect, if any, this Bylaw will have on ICANN's consideration of advice given by the Governmental Advisory Committee (GAC)." That is a very concrete question about the role of the GAC and the GAC Advice.

The preliminary draft answer to this is: "There are different human rights obligations for states and for non-state actors. The Bylaw outlines

ICANN's core value to respect human rights, this does not change the obligation of governments to protect human rights. Consequently, there is no change to the status of GAC Advice." I'm actually also not completely sure where this question came from during Work Stream 1, so my question might be [inaudible] but what we are suggesting here is that there is no change.

I see that Greg and David are in line. Greg, please come in.

GREG SHATAN: Thanks. Sorry to be so prolix and verbose, but in any case, I have a similar question about where this question came from. I found that, wearing my own rapporteur hat in the jurisdiction subgroup, I have to go back and essentially do some forensic analysis of drafts of the documents and also the underlying meeting transcripts to get a more well-rounded idea of how we ended up with what we ended up with both in terms of what was accepted, what was rejected, what it morphed from and into.

I think this is one where particularly we need to have a good sense of what the concern this was. This is clearly a question that came at the tail end or a the tip of a concern. Without knowing it better and maybe when we have – we have at least one GAC rep on the call, well, at least one GAC member. I understand that no GAC member represents the GAC or any other member. Might comment on that or we might go back to the drawing board on the question but try to flesh out why this is being asked. What was the concern?

EN

I think the answer is good as far as it goes, although I think it may presume too much to say that this does not change the obligation of governments to protect human rights. That obligation is not a piece of natural law. It's an aspirational aspect of a framework of human rights. It's documented, but it's presumptuous, I think, to say that that obligation and that the obligation to protect is something that we can take for granted and state as a fact. Maybe it's unfortunate that that's the case, but I think we need to be careful in making presumptions.

As to the effect of the change in status, I don't see a change from this, but clearly somebody was worried that their either might be a change that shouldn't happen or that there should be a change that would happen. Other than that, I think we're kind of shooting in the dark here. This is one I think that requires some fleshing out on the left-hand column before we can do it justice in the right-hand column. Thanks.

NIELS TEN OEVER: Thank you very much, Greg. I see that David McAuley also agrees with that assessment, and that seems to make a lot of sense. My Internet connection is failing a bit on me now, but I don't think we have any other hands up.

UNIDENTIFIED MALE: Greg, is that an old hand?

GREG SHATAN: I'll just clarify the last part of my remark which is that I didn't mean that we should actually add text to the left-hand column when I said we

should flesh it out. But I do think that we may need to write some additional text to clarify our understanding of the point. And maybe that appears in the right-hand column or it's in a footnote, but what's important is we should be transparent in our documentation if we're relying on legislative history, so to speak, and allow people to understand why we're reading this point in a particular way.

We could do this with the other ones; however, I think they are fairly self-explanatory unless we develop a concern that we don't understand what we're responding too. Thanks.

NIELS TEN OEVER: Excellent. I think that finishes the first reading of this document. I would like to summarize and see if I captured the sense of the group well. This document is a good start. We need to work more on the definitions so it's really clear what we're saying. We also need to be perhaps a bit closer in our answers to the question and not make the first jump too quickly and make really clear what our assumptions and understandings of the questions are. Which would give us a very concrete way of going ahead and would give the draft team also a really clear mission for the coming week to work on.

Greg, I see your hand is up. That was an old hand. I see there are no comments, so I think that means that – oh, I see the hand of Javier. Javier, please come in.

JAVIER RUA-JOVET: Hello. Can you hear me?

NIELS TEN OEVER: We hear you very well. Please go ahead.

JAVIER RUA-JOVET: I'm new to the process. [I'm in] ALAC. I just have a question for anybody. Is there an authoritative list of the human rights we're concentrating on? Or are we still at the stage of just discussing human rights as a general concept? I mean, are we talking about freedom of expression or privacy? I mean, there's a whole host of human rights, so are we concentrating on particular human rights or are we not there yet? Thank you.

NIELS TEN OEVER: Thanks, Javier. That's an excellent question, and I think your question is partially answered in the CCWG report where it says that human rights are interrelated, inalienable, and interconnected. So [inaudible] focus on one human right did not seem the right way to go in Work Stream 1.

Subsequently, in the Framework of Interpretation, we've also outlined a set of documents to which we're referring when we're talking about human rights. I think with the CCWG report and the draft Framework of Interpretation that we just sent to the plenary, I think we should be able to have an answer to your question that will work for you.

For the record, Javier said "thank you" in the chat but if there are any further questions, I'm always happy to follow up here in person or on the list.

I think David's hand is up. David, please come in.

DAVID MCAULEY: Nils, thank you. I just have a comment about our process, and it's just a suggestion. What it would be is that when get to a second reading of anything from now on that the notice of the meeting include that at the top. Because we have such small turnouts from time to time – not always – it might be good to include in the e-mail announcement of the meeting that there will be a second reading of whatever it is in this, that, or the other meeting to encourage folks to come on in and comment on these things. Thank you.

NIELS TEN OEVER: Thanks, David. I thought that that is already a regular practice that we do because this by no means for me constitutes a first reading. It's just a first exploration of a rough first draft. I always try to note in the agenda when it's a first reading or a second reading on the point. But I take your point that it might attract more people if I also put it in the subject bar, so I will do that. More people is always good because it increases the amount of brain power we have at our disposal.

DAVID MCAULEY: Thank you. I think I may have misunderstood what you said earlier then. Thank you. That sounds good.

NIELS TEN OEVER: Okay. Perfect. Then I think we can finalize. I think we've given a mandate and a clear job to the drafting team? I see that Greg already cannot wait to get into the document. I'm really looking forward to be discussing this on the list and in our next call next week, same [inaudible], same place, same time. [inaudible] half hour of your day.

Thank you all very much. I don't think there is any other business unless someone would like to bring up something. Javier, is that an old hand or is that a new hand? That's an old hand. So on that note, I'd like to end the meeting, and I'm greatly looking forward to see you all on the list and in the call next week. Thank you all. Bye. ICANN staff, you can stop the recording.

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