

[PREAMBLE]	<p>This document addresses the "considerations" listed in para 24 of Annex 12 of the CCWG Accountability Final Report . [In order of precedence, this document is subsidiary to, first, Bylaw Sections 1.2(b)(viii) and 27.2, and, second, the Framework of Interpretation if and when it becomes approved pursuant to Bylaws Section 27.2(a). To the extent of any inconsistency or conflict between the terms of this document and those provisions then those provisions shall apply in such order.] [Matthew questions the relevance of this part of the Preamble]</p> <p>Tatiana: if we are to go with this preamble, we better to clarify that the previous Fol is a document providing the textual interpretation of the bylaw.</p> <p>Greg: I think this document should be considered part of the Fol.</p>
Consider which specific Human Rights conventions or other instruments, if any, should be used by ICANN in interpreting and implementing the Human Rights Bylaw.	<p>Matthew Shears: add "Addressed in the Fol"</p> <p>David McAuley: Agree with Matthew here although I would say "This has been considered and addressed in the Fol."</p> <p>Tatiana Tropina: I made a comment in the other doc that if this is addressed in the Fol we have to make a cross-reference because the Fol considers "internationally recognised HR" not the instruments, so maybe we can expand it and include one sentence that makes this reference. Or explain here, again one sentence only. But if this complicates the situation, am fine with your solution, Matt and David.</p> <p>Greg Shatan: I still don't think it's clear HOW this has been addressed in the Fol. We should explain it here.</p>
The policies and frameworks, if any, that ICANN needs to develop or enhance in order to fulfill its commitment to	<p>The Subgroup on Human Rights of the CCWG suggests that while operationalizing the human rights bylaw, ICANN should prioritize areas of focus, such as its operations, existing policies and procedures, and/or new policies consistent with its Mission. The subgroup believes that ICANN's commitment to respect human rights and to take human rights into consideration in its operations and policies in the foregoing</p>

Deleted: With the exception of addressing the Framework of Interpretation, which has been separately drafted by the Subgroup,

Deleted: constitutes the Subgroup's work product in addressing the "Work Stream 2 activities" found at paragraph 170 of the CCWG's Final Report, and

Comment [1]: Unclear whether we are talking about "ICANN Inc." or about ICANN the community. "Operations" is an ICANN Inc. concern primarily, while "policies" are an "ICANN community" concern. We probably should separate the two strands in our discussion.

Comment [2]: This seems to imply that ICANN should review existing policies solely because we now have the Human Rights Bylaw. I don't know if that's the intent, but I would suggest that we make it clear this is NOT our suggestion. Rather, the HR bylaw (and the other Core Values, and the Commitments and the Mission) should be taken into account when policies come up for review in the normal course of things.

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Comment [3]: I don't think this sentence is responsive to the "consideration" in the left-hand column.

<p>respect Human Rights</p>	<p>manner should be consistent with the human rights Core Value of the bylaws. This could involve the use of human rights impact assessments¹ of how ICANN's operations could impact human rights.</p> <p>Alternate text to above: Policies and frameworks to be considered by ICANN to fulfill its commitments to respect human rights could comprise HR impact assessment in areas such as operations, policy development processes and other procedures, internal monitoring of the effectiveness of such assessments and related communication and reporting. The development of a Corporate Social Responsibility policy could also contribute to ICANN fulfilling its commitment to respect human rights.</p> <p>David: I don't see any obligation to "operationalize" the HR bylaw, either in Section 1.2(b)(viii) or Section 27.2 – rather once an FOI is finally approved the bylaw language of respect shall then by its own weight have force or effect. It seems to me that at that moment a simple internal framework would suffice that would specify or describe how ICANN goes about fulfilling its duty of respect. That might include HR impact assessments or risk assessments but the specifics would be up to ICANN – and such devices would, if adopted, most likely be defined terms in ICANN's framework.</p> <p>Tatiana: I am fine with this approach as long as we state clearly that it's up to ICANN to consider how to fulfil the duty. My concern has been that this will hang up in the air - I never expected the FOI to solve the issue of "how" to operationalise but I think we have to make clear that it's not going to do so.</p> <p>David: Fair point.</p> <p>[Jorge:] As a first step ICANN could consider developing a HR risk assessment, which would help in identifying what HR are more relevant for ICANN, without excluding other HR. Implementation would also</p>
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Comment [4]: I'm not sure this makes sense to put here. Is this being suggested as a "policy"? Or a "framework"?

Comment [5]: I'm not sure this makes sense to put here. Is this being suggested as a "policy"? Or a "framework"?

Comment [6]: This seems like a back-door effort to cherry pick certain Human Rights, or to prioritize certain Human Rights over others. I would not support this.

Comment [7]: That is not the intention at all - let's find some acceptable language

Comment [8]: Help in identifying how best to balance the HRs and other Core Values

Comment [9]: This sentence is not about implementation.

Comment [10]: The second half of this text should be moved to implementation

Comment [11]: There is no section on implementation.

¹ https://en.wikipedia.org/wiki/Human_Rights_Impact_Assessment

	<p>need to consider internal tracking activities on the HR commitment effectiveness, as well as external communication and reporting.</p> <p>Anonymous: Jorge - can you explain what this is and how it would work? The purpose of a HRIA is to assess whether a process/operation or other impacts any HRs specifically. It sounds as though you are asking for a meta organizational level review. Thanks</p> <p>Jorge: Hi. A HR risk assessment is a more general and preliminary analysis of the HR profile of an organization. It serves as a sort of baseline assessment and helps to identify possible priority issues/areas.</p>
<p>Consistent with ICANN's existing processes and protocols, consider how these new frameworks* should be discussed and drafted to ensure broad multistakeholder involvement in the process.</p> <p>*Niels:Resolve There no history of frameworks, should we understand this a policies. Greg:This is a reference to the "frameworks, if any, that ICANN needs to</p>	<p>The methods for developing any new policies or frameworks that may be needed to fulfill ICANN's commitment to respect Human Rights will be dictated by the type of policy and how ICANN develops those policies.</p> <p>For example, Policies relating to generic top-level domains are the responsibility of the GNSO and should be developed by the GNSO using that organization's policy and processes for policy development. This includes any changes to the GNSO's Policy Development Processes (PDPs). The GNSO's processes allow for broad multistakeholder involvement in Working Groups developing these policies.</p> <p>Similarly, Policies related to country code top-level domains are the responsibility of the country code Names Supporting Organization (ccNSO). The ccNSO has a PDP process that is similar to the GNSO, therefore it is proposed that the same process is considered.</p> <p>The review and development of recommendations on Internet Protocol (IP) address policy is the responsibility of the Address Supporting Organization. The ASO does not have a similar formal PDP to the ccNSO and the GNSO, this does not mean that there are no moments in the development of the policies and procedures in which reviews and recommendations could be reviewed.</p>

<p>develop" that's in the preceding sentence.</p>	<p>Any operations, employee-related or vendor-related policies should be developed by ICANN <u>operations and management</u> <u>taking human rights into account as dictated in the Bylaw</u>, but should also consider multistakeholder involvement in the development process. At a minimum, proposed policies should be set out for public comment seeking input on <u>among other things</u>, whether the policies fulfill ICANN's commitment under the Human Rights Bylaw.</p>
<p>Consider how the interpretation and implementation of this Bylaw will interact with existing and future ICANN policies and procedures.</p>	<p>The interpretation of the Bylaw should be driven by the Framework of Interpretation. It is expected that the Bylaw will be duly taken into account when future ICANN policies and procedures are developed, and <u>implemented</u> in accordance with the Framework of Interpretation. The different Supporting Organizations should consider incorporating Human Rights Impact Assessments (HRIA) in their Policy Development Processes (PDPs). The determination of the impact of a proposed policy on human rights would 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 WG's Initial Report. The HRIA would be an integral part of the WG's Final Report.</p> <p>David: I suggest this paragraph be written as: "The different Supporting Organizations should consider defining and incorporating HRIAs in their PDPs, including doing in the preliminary issue report a policy impact assessment of the impact of a proposed policy on those human rights that ICANN is obliged to respect. If the assessment identifies potential impact(s) on any such specific human rights, an HRIA would be triggered for those specific rights and would be undertaken during the drafting of the WG's Initial Report. The HRIA</p>

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Comment [12]: I wonder about this suggestion, Matthew, because I see the two groups at opposite ends of the spectrum. As I understand, the CCWP is discussing HR/ICANN and floating ideas/suggestions that would have to feed through the policy process, public comment, etc. We in the WS2 HR subgroup, on the other hand, are working on an already adopted bylaw, post-board action, post-public comment. Not sure how that group would feed into ours.

Comment [13]: Anne - agree and also note that "commitment" is misleading in the phrase "commitment to respect human rights". Commitment is a term of art in the By-Laws - so we need to stick with "core value"

Comment [14]: I'm uncomfortable with this suggestion, since it seems at odds with the idea that each SO (and for that matter, each AC) should make its own determinations. I'm not sure what the remit of a cross-community group would be. If there is a role for a cross-community group, I think we would be much better off starting anew with group duly chartered by the SO/ACs. By contrast, the CCWP is a committee of the NCSG, as far as I can tell.

Comment [15]: agree - am removing - Matthew

Deleted: It is worthwhile mentioning that the CCWP-HR might also be a useful vehicle for ongoing discussions as to how, when and where ICANN might further elaborate on its commitment (choose a word other than "commitment" since that is a particular term in the ByLaws) to respect human rights.

Comment [16]: This was meant to emphasize that the interpretation of the Bylaw should be in accordance with the FoI. Implementation of policies is a whole different thing.

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	<p>would be an integral part of the WG's Final Report."</p> <p>Anne: Do SOs and ACs other than GNSO have PDPs? Shouldn't we just say "policy development processes"? I don't think PDP applies to the GAC process of developing public policy advice.</p> <p>In order to <u>implement</u> these policy changes an appropriate mechanism should be established, for example a Cross Community Working Group on Human Rights, or a similar group, could be established which would make proposals for the supporting organizations to implement in their respective Policy Development Processes.</p> <p>ICANN should also consider ensuring that it does not violate human rights in its operations. ICANN might consider instruments such as a HRIA to carry out a preliminary assessment of the effect of its <u>specific</u> operations. However, this is up to the ICANN the corporation to decide and implement. The results of such IAs should be incorporated in ICANN's annual reporting.</p>
<p>Consider what effect, if any, this Bylaw will have on ICANN's consideration of advice given by the Governmental Advisory Committee (GAC)</p>	<p>There is no change to the status of GAC advice or how GAC advice will be considered solely due to this Bylaw. The Board will need to take into account ICANN's Mission and Core Values, including the Human Rights Core Value, in considering advice given by the GAC. Anne: <u>How is "no change" accurate? Won't this ByLaw affect GAC public policy advice?</u> Greg: <u>The question is focused on how ICANN will "consider" GAC advice, and avoids asking about how GAC advice will be developed. I believe this was intentional.</u></p> <p>Jorge: <u>GAC Advice is an input into the ICANN policy-development and/or decision-making. The GAC primarily discusses public policy implications, each Member with its own background, and then it strives for consensus. But it is ICANN who makes a legal decision that is measurable against its Bylaws, including the HR Core Value.</u></p>

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Comment [17]: The question is focused on how ICANN will "consider" GAC advice, and avoids asking about how GAC advice will be developed. I believe this was intentional.

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