# CCWG-Accountability Work Stream 2
## ICANN Ombuds Office
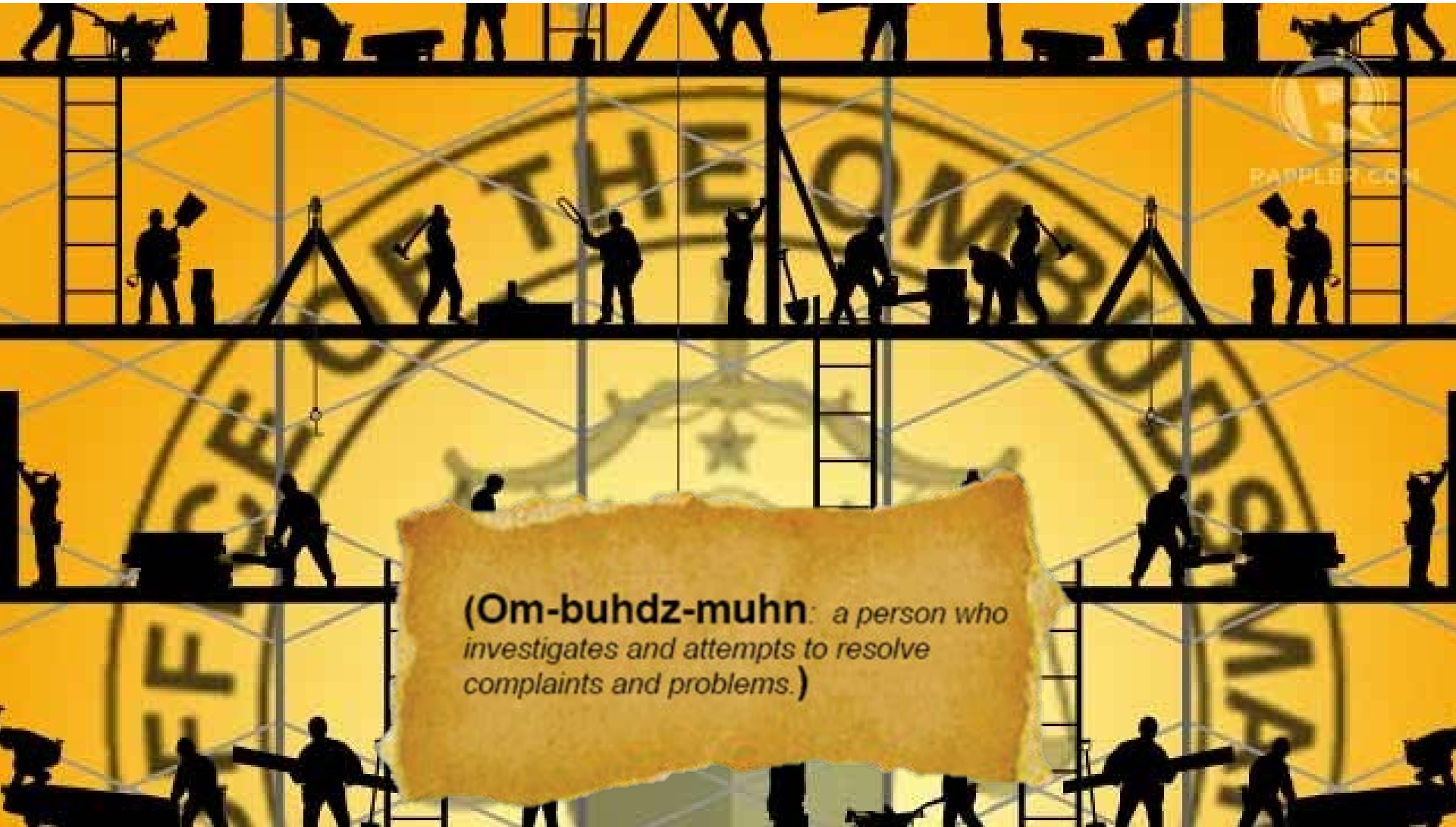
Meeting #26

19 July 2017

**Rapporteur: Sébastien Bachollet**

# CCWG-Accountability Work Stream 2
## ICANN Ombuds Office



(Om-buhdz-muhn: a person who investigates and attempts to resolve complaints and problems.)

# Agenda Meeting #26 Ombuds

- Roll Call / Apologies – Welcome
- External review of the ICANN Ombuds Office
  - Last comments from the subteam, Q&A
- Next Steps
  - Last Final report
  - PoV of the subteam on each of the recommendations
  - Next Meetings
- AOB

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Work Stream 2

# Participation & Dashboard

# WS2 Drafting Team "Ombudsman"

## Active Participants

1. **Sébastien B**achollet - **Rapporteur** (**26**)
2. Adebunmi Akinbo (2)
3. Alberto Soto (**17**)
4. Arshad Mohammed (-)
5. **Avri D**oria (**18**)
6. Carlos Vera Quintana (6)
7. **Cheryl L**angdon-Orr (**19**)
8. Chris LaHatte (previous Ombuds) (8)
9. Denise Michel (-)
10. Edward Morris (2)
11. Farzaneh Badii (8)
12. **Herb** Waye (Ombuds) (**24**)
13. José Francisco Arce (2)
14. Jimson Olufuye (1)
15. Karel Douglas (3)
16. **Klaus** Stoll (**12**)
17. Michael Karanicolas (1)
18. Raoul Plommer (2)
19. Robin **G**ross (2)
20. Samantha **E**isner (1)
21. Sarah Kiden (1)
22. Sivasubramanian Muthusamy (4)
23. Susan Payne (2)

## Observers

1. Aarti Bhavana
2. Adebunni Adeola Akinbo
3. Alan **G**reenberg
4. Akinremi Peter Taiwo
5. Amrita Choudhury
6. Angie Graves
7. Dan Shevet
8. David Maher
9. Elizabeth Bacon (1)
10. Gangesh Varma
11. Iftikhar Shah
12. Johan Helsingius
13. Jon Nevett
14. Mike Rodenbaugh
15. Pam Little (1)
16. Pablo Andrés Mazurier
17. Philip Corwin
18. Renu Sirothiya
19. Rinalia Abdul Rahim
20. Vidushi Marda
21. Vinay Kesari
22. Yoav Ostreicher

## Board Liaisons

- **Asha** Hemrajani (**19**)
- Mike Silber (backup) (4)

## Co-Chair

- ~~Mathieu **W**eill~~
- Jordan **C**arter

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# Ombuds Office

## Updates:
- External reviewer (Cameron Ralph LLC) produced its evaluation report.
- Subgroup reviewed report and provided feedback and inputs.

## Upcoming Activities:
- Evaluation report will be presented to CCWG-Plenary at ICANN 59 face-to-face meeting.
- External Reviewer will finalize its report on basis of inputs received from CCWG.
- Subgroup will start working on draft recommendations once evaluation report is finalized.

## Open Items:
- Coordination with other sub-groups:
  - Transparency
  - Staff Accountability
  - Human Rights
  - Diversity
  - Accountability SO/AC
- A new timeline needs to be setup (extending after ICANN 59).

**Rapporteurs:** Sebastien Bachollet

**# of signed-up Active Participants:** 23

**# of signed-up Observers:** 22

**Useful links:**
- Wiki
- Mailing List archive
- Meetings schedule

## Description / Scope:

Evaluate the current Ombudsman charter and operations against industry best practices and recommend any changes necessary to ensure that the ICANN Ombuds Office (IOO) has the tools, independence, and authority needed to be an effective voice for ICANN stakeholders.
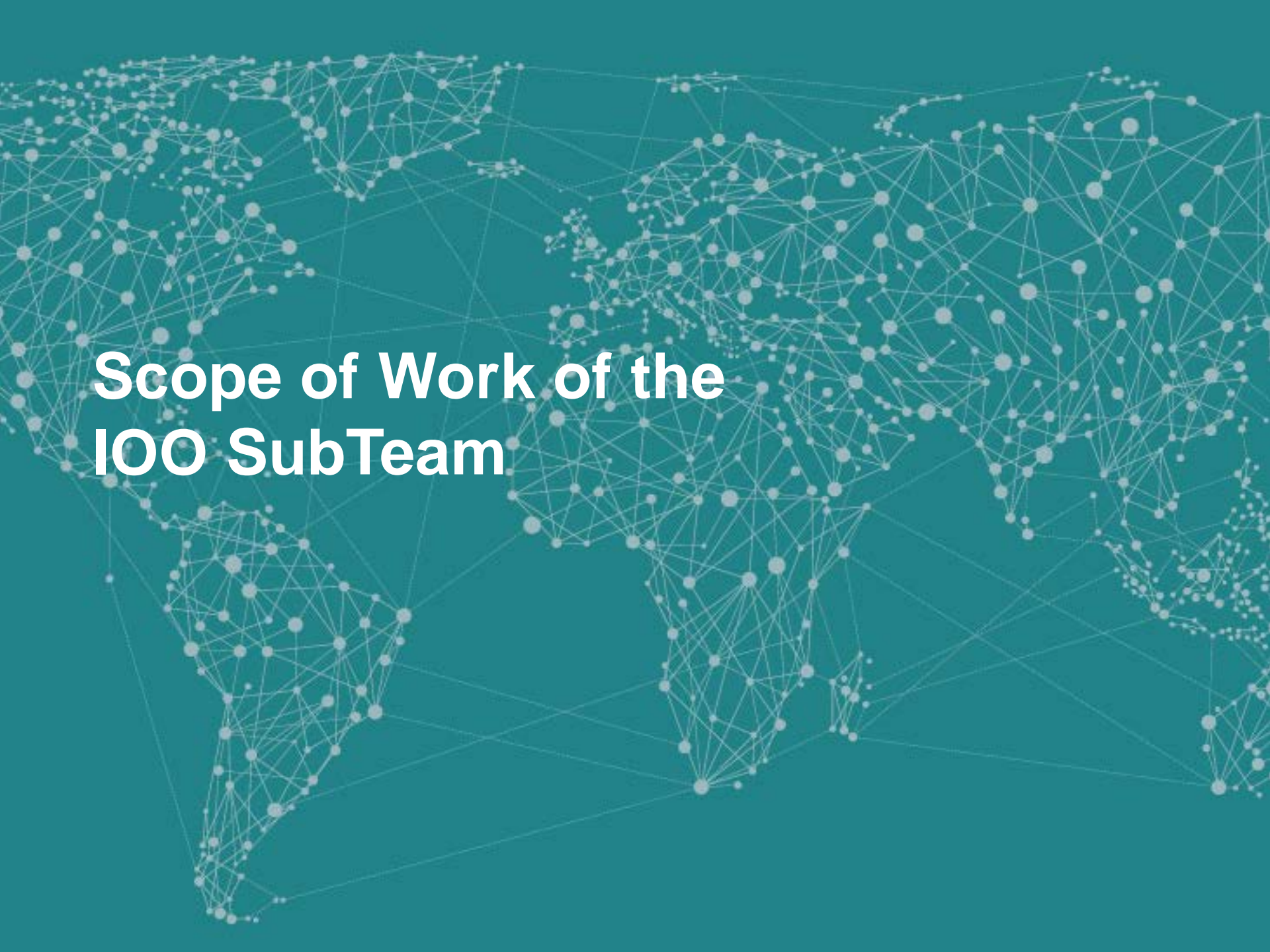
## Activity:

| | |
|---|---|
| Total # of meetings: | 25 |
| Total # of emails: | 157 |
| Collective hours on calls: | 344 |


Chart: # of meetings (bars) and # of emails (line) for Jul–Jun
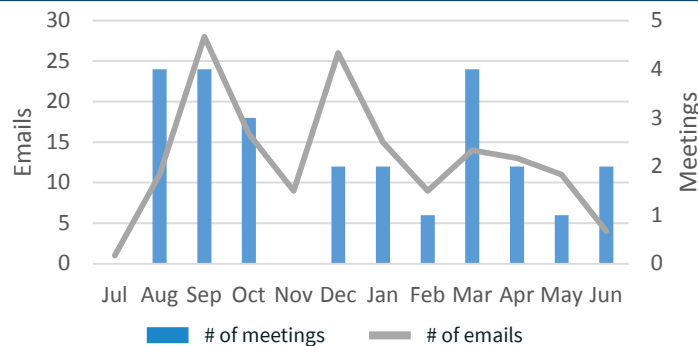
## Work Plan:

| | | |
|---|---|---|
| Start work | Aug | ✓ |
| Document questions to answer | Sep | ✓ |
| Document work to do | Oct | ✓ |
| Produce draft for subgroup | tbd | |
| Produce draft for CCWG | tbd | |
| Produce draft for PC | tbd | |
| Public Comment | tbd | |
| Revise draft | tbd | |
| CCWG approval | tbd | |

Based on data available from the WS2 wiki – this is a high level summary of the work underway .

- On-track
- Behind schedule, but recovery still possible
- Not started
- Target will be missed
- Completed

Updated on 19 Jun 17 | 6

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# Scope of Work of the IOO SubTeam

# Considering enhancements to the Ombudsman's role and function

- *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*

# New Responsibilities & Environment Evolution

- **New Responsibilities**
  - 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**.

- **Environment Evolution**
  - **ICANN Complaints Office** (ICANN CEO decision)

# Interviews

# Interviews

- **People from**
  - ccwg-accountability (co-chairs)
  - Subteams WS2
    - Diversity
    - Guidelines for Good Faith Conduct
    - SO/AC accountability
    - Transparency Subteam
    - ATRT Expert
    - Ombuds
  - Board
  - RIR
  - ALAC & Lacralo
  - gtld applicant
  - GAC
  - Ombuds (current and Previous)
  - Staff
  - Other

Face to face interviews with community members and ICANN staff attending ICANN58 including: members of the Board, members of the Subgroup, members of constituent bodies, members of the community, senior members of staff

# Survey

An on-line survey was undertaken (5 languages offered) seeking additional input from members of the community.

In a limited period, an excellent **84 community responses** were received, including 3 that we arranged to be translated.

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# Recommendations

The statement in Article 5 of ICANN's Bylaws of the Ombuds Office's Charter should be changed to give the Office a more strategic focus

Comments IOO Subteam

# Recommendation 2

The Ombudsman Framework should be replaced by procedures that

- Distinguish between different categories of complaints and explains how each will be handled
- Set out the kinds of matters where the Ombuds will usually not intervene – and where these matters are likely to be referred to another channel (with the complainant's permission)
- provides illustrative examples to deepen understanding of the Ombuds approach

Comments IOO Subteam

# Recommendation 3

Once ICANN has agreed to a revised configuration for the Office of the Ombuds, a plan should be developed for a soft re-launch of the function, which should incorporate action to emphasis the importance of the Ombuds function by all relevant parts of ICANN, including

- Board
- CEO
- Community groups
- Complaints Officer
- ...

Comments IOO Subteam

# Recommendation 4

The ICANN By-laws and any relevant rules of ICANN groups should be amended to oblige all relevant parts of ICANN (should include the Corporation, the Board and Committees and any body or group with democratic or delegated authority) to respond within 90 days (or 120 days with reason) to a formal request or report from the Office of the Ombuds. The response should indicate the substantive response along with reasons

Comments IOO Subteam

# Recommendation 5

The ICANN Office of the Ombuds should establish timeliness KPIs for its own handling of complaints and report against these on a quarterly and annual basis

Comments IOO Subteam

# Recommendation 6

The Office of the Ombuds should be configured so that it has formal mediation training and experience within its capabilities

Comments IOO Subteam

The Office of the Ombuds should be ideally configured (subject to practicality) so that it has **gender**, and if possible other forms of **diversity** within its staff resources

Comments IOO Subteam

ICANN should establish an **Ombuds Advisory Panel**

- made up of 5 or 6 members to act as advisers, supporters, wise counsel and an accountability mechanism for the Ombuds
- The Panel should be made up of a minimum of 2 members with ombudsman experience and 3-4 members with extensive ICANN experience
- The Panel should be responsible for commissioning an independent review of the Ombuds function every 3-5 years

Comments IOO Subteam

The By-laws and the Ombuds employment contracts should be revised to strengthen independence by allowing for a

- **5 year fixed term** (including a 12 month probationary period) and permitting

- only **one extension** of up to 3 years

The Ombuds should only be able to be terminated with cause

Comments IOO Subteam

# Recommendation 10

The Ombuds should have as part of their annual business plan, a **communications plan**, including the formal annual report, publishing reports on activity, collecting and publishing statistics and complaint trend information, collecting user satisfaction information and publicising systemic improvements arising from the Ombuds' work

Comments IOO Subteam

# Recommendation 11

With input from across the community, ICANN should develop a policy for any Ombuds involvement in non-complaints work that addresses

a)   Whether there is unique value that the Ombuds can add through the proposed role or function?

b)   Whether the proposed reporting/accountability arrangements may compromise perceived independence?

c)   Whether the proposed role/function would limit the Ombuds ability to subsequently review a matter?

d)   Whether the workload of the proposed role/function would limit the Ombuds ability to prioritise their complaints-related work?

e)   Whether any Ombuds involvement with the design of new or revised policy or process, creates the impression of a 'seal of approval'?

f)   Whether the proposed Ombuds input may be seen as a 'short-cut' or substituting for full stakeholder consultation?

# Recommendation 11

Comments IOO Subteam

# Other functions

- ## If the Ombuds is not to be made responsible
- ## A staff function
  - ### If the function will require a great deal of interaction and collaboration with the Corporation, we would recommend a staff function – with obligations to consult with the community
- ## A community function
  - ### If the task is quite independent and not reliant on heavy staff input, then it could easily be the responsibility of a community body or person – with an obligation to consult with staff

**DIDP (Documentary Information Disclosure Policy)**

We think it would be appropriate for the Ombuds to have input to the design of the proposed new DIDP and to provide information or refer people to it, but not to be expected to replace management's responsibility to implement, promote and routinely report on it. The Office could conduct an 'own-motion' review of the operation of the function after a time, but this should be at its own discretion taking into account its other priorities.

**Diversity**

We would have concerns about the Ombuds function taking on the role of Office of Diversity (as floated with us). As above, the Ombuds could assist, but we think this is better as a staff or community responsibility.

First, it will be quite a workload in the first few years. Second, this is a likely issue for complaints and the Ombuds would be unable to credibly review such a complaint, particularly if it was against guidelines or the implementation of guidelines the Ombuds had been responsible for.

Third, the process of corporation functions and various ICANN groups adopting new policy will inevitably involve those groups seeking the Ombuds 'seal of approval' – eg. "will this implementation be OK?". Again, that would compromise the Ombuds independence.

# Next steeps for the ICANN Ombuds Office SubTeam

# Next steeps IOO SubTeam

- Prepare a draft report answering (at least) the following topics
  - ICANN's Bylaws of the Ombuds Office's
  - Replacement Ombudsman Framework  by Procedures
  - Plan to be developed for a soft re-launch
  - Framework to respond to a formal request or report from the Office of the Ombuds.  The response should indicate the substantive response along with reasons
  - Framework to establish an Ombuds Advisory Panel
  - Framework to develop a policy for any Ombuds involvement in non-complaints work
- Coordination with the other subgroups
- Prepare a new schedule

# Dependencies between WS2 Design Teams

## ICANN Ombuds

1. **Diversity** (Sébastien Bachollet)
2. **Human Rights** (Raoul Plommer)
3. **Jurisdiction** (Farzaneh Badii)
4. **SO/AC Accountability** (Cheryl Langdon-Orr)
5. **Staff Accountability** (Avri Doria)
6. **Transparency** (Michael Karanicolas)
7. **Reviewing CEP** (Edward Morris)
8. **Guidelines for Good Faith Conduct** (Karel Douglas)
9. **IRP "Phase 2"** (Robin Gross)
10. **ATRT2** (Avri Doria)

# **Calendar**

# Subgroup Time Slots

| Day | # | WS2-Ombudsman | |
|---|---|---|---|
| Wednes 19 July 17 | #26 | **Omb-WS2 19:00UTC** | 0x participants + Staff |
| Monday 31 July 17 | #27 | **Omb-WS2 13:00UTC** | 0x participants + Staff |
| Monday 21 August 17 | #28 | **Omb-WS2 19:00UTC** | 0x participants + Staff |
| Monday 11 Sept 17 | #29 | **Omb-WS2 13:00UTC** | 0x participants + Staff |
| Monday 18 Sept 17 | #30 | **Omb-WS2 05:00UTC** | 0x participants + Staff |
| Monday 25 Sept 17 | #31 | **Omb-WS2 13:00UTC** | 0x participants + Staff |
| Monday ? Oct 17 | #32 | **Omb-WS2 00:00UTC** | 0x participants + Staff |
| Monday ? Oct 17 | #33 | **Omb-WS2 00:00UTC** | 0x participants + Staff |

0x participants + Staff

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Work Stream 2

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Thank You