

EXHIBIT C-54

To All Prospective Applicants for New gTLDs –

Since ICANN's founding ten years ago as a not-for-profit, multi-stakeholder organization dedicated to coordinating the Internet's addressing system, one of its foundational principles has been to promote competition in the domain-name marketplace while ensuring Internet security and stability.

We are now engaging the Internet community in agreeing a way forward to introduce new gTLDs in the domain name space. Such expansion is driven by the demand for more innovation, choice and change to the Internet's addressing system, now constrained by only 21 generic top-level domain names. In a world with 1.5 billion Internet users—and growing—diversity, choice and competition are key to the continued success and reach of the global network.

The launch of these coming new gTLD application rounds followed a detailed and lengthy consultation process with all constituencies of the global Internet community. Representatives from a wide variety of stakeholders—governments, individuals, civil society, business and intellectual property constituencies, and the technology community—were engaged in discussions for more than 18 months. In October 2007, the Generic Names Supporting Organization (GNSO)—one of the groups that coordinate global Internet policy at ICANN—completed its policy development work on new gTLDs and approved a set of recommendations. Major contributors to this policy work were ICANN's Governmental Advisory Committee (GAC), At-Large Advisory Committee (ALAC), Country Code Names Supporting Organization (ccNSO) and Security and Stability Advisory Committee (SSAC). All this policy development work culminated with ICANN's Board of Directors deciding to adopt the community-developed policy at the ICANN Paris meeting in June 2008. You can see a thorough brief to the policy process and outcomes at <http://gns0.icann.org/issues/new-gtlds/>.

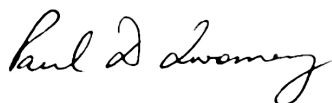
Please note that the Applicant Guidebook that follows this letter is a draft. Applicants should not rely on any of the proposed details of the new gTLD program, as the program remains subject to further consultation and revision. Also, some of the modules in this guidebook highlight areas of the process that remain under development. These areas will be made available for public consultation in the near future.

In addition to the Draft Applicant Guidebook, ICANN is posting a series of papers that serve as explanatory memoranda to assist the Internet community to better understand the implementation work.

ICANN expects to engage in a productive and robust dialogue with the Internet community through a consultative process. Comments will be used to revise and prepare the final Applicant Guidebook, to be released early in 2009.

The New gTLD Program enables the Internet community to open up the name space to new and innovative uses for top-level domains, and can meet some of the needs unmet by the current market. It has the potential to be one of the biggest influences on the future of the Internet.

Sincerely,



Paul Twomey
President and CEO

New gTLD Program: Draft Applicant Guidebook (Draft RFP)

Please note that this is a discussion draft only. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.



24 October 2008

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New gTLD Program: Applicant Guidebook

How to Use

The Draft Applicant Guidebook (Request for Proposals) consists of a series of modules, each focused on specific topics within the application and evaluation process:

Module 1: Introduction to the Application Process

Provides an overview of the application process, documentation requirements, and fees

Module 2: Evaluation Procedures

Describes the various reviews that occur during the evaluation process and criteria for approval of applications

Module 3: Dispute Resolution Procedures

Contains the grounds for formal objection by third parties concerning gTLD applications submitted, and the dispute resolution procedure triggered by an objection

Module 4: String Contention Procedures

Describes mechanisms for resolving contention when there is more than one qualified applicant for identical or similar gTLD strings

Module 5: Transition to Delegation

Describes the final steps required of an applicant, including execution of a registry agreement and completion of pre-delegation tests

Module 6: Terms and Conditions

Contains the terms and conditions applicable to all entities submitting an application

Glossary

Contains definitions for terms used in the Applicant Guidebook

ICANN is posting a series of explanatory memoranda to accompany this draft, to provide further details on the background work completed by ICANN. Links to these memoranda are noted within the relevant modules.

All materials contained in the Draft Applicant Guidebook are being presented for public comment. Please note that this is a discussion draft only. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.



Draft Applicant Guidebook

Module 1

Please note that this is a discussion draft only. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.

24 October 2008

Module 1

Introduction to the gTLD Application Process

This module gives applicants an overview of the process for applying for a new generic top-level domain, and includes instructions on how to complete and submit an application, the supporting documentation an applicant must submit with an application, the fees required and when and how to submit them.

This module also describes the conditions associated with particular types of applications, and the application life cycle.

For more about the origins, history and details of ICANN's policies on new gTLDs, please see <http://gns0.icann.org/issues/new-gtlds/>.

A glossary of relevant terms is included with the Draft Applicant Guidebook (Draft RFP).

Prospective applicants are encouraged to read and become familiar with the content of this entire module as well as the others, before starting the application process to make sure they understand what is required of them and what they can expect at each stage of the application evaluation process.

1.1 Application Life Cycle and Timelines

This section provides a description of the stages that an application passes through once it is submitted. Some stages will occur for all applications submitted; others will only occur in specific circumstances. Applicants should be aware of the stages and steps involved in processing applications received.

1.1.1 Application Submission Dates

The application submission period opens at [time] UTC [date].

The application submission period closes at [time] UTC [date].

Applications may be submitted electronically through ICANN's online application system.

To receive consideration, all applications must be submitted electronically through the online application system by the close of the application submission period.

An application will not be considered, in the absence of exceptional circumstances, if:

- It is received after the due date.
- The application form is incomplete (either the questions have not been fully answered or required supporting documents are missing). Applicants will not ordinarily be permitted to supplement their applications after submission.
- The evaluation fee has not been paid by the deadline. Refer to Section 1.5 for fee information.

1.1.2 Application Processing Stages

This subsection provides an overview of the stages involved in processing an application submitted to ICANN. In Figure 1-1, the shortest and most straightforward path is marked with bold lines, while stages that may or may not apply in any given case are also shown. A brief description of each stage follows.

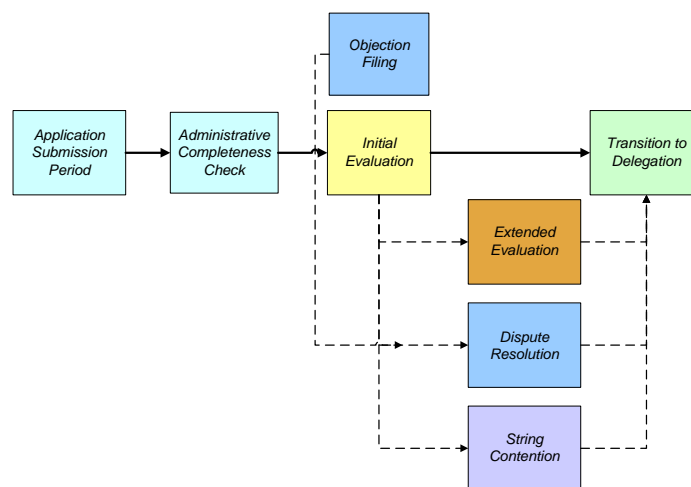


Figure 1-1 – Once submitted to ICANN, applications will pass through multiple stages of processing.

1.1.2.1 Application Submission Period

At the time the application submission period opens, applicants wishing to apply for a new gTLD can become registered users of the online application system.

Through the application system, applicants will answer a series of questions to provide general information, demonstrate financial capability, and demonstrate technical and operational capability. The supporting documents listed in subsection 1.2.3 of this module must also be submitted through the application system.

Applicants must also submit their evaluation fees during this period. Refer to Section 1.5 of this module for additional information about fees and payments.

Following the close of the application period, applicants can continue to use the application system as a resource to track the progress of their applications, although they may receive communications from ICANN through other means.

1.1.2.2 Administrative Completeness Check

Immediately following the close of the application period, ICANN will check all applications for completeness. This check ensures that:

- All questions are answered (except those questions identified as optional);
- Required supporting documents are provided in the proper format(s); and
- The evaluation fees have been received.

ICANN will post a list of applications considered complete and ready for evaluation as soon as practical after the close of the application period. The status information for each application will also be updated in the online application system.

1.1.2.3 Initial Evaluation

Initial Evaluation will begin immediately after the administrative completeness check concludes. All complete applications will be reviewed during Initial Evaluation.

There are two main elements of the Initial Evaluation:

- String reviews (concerning the applied-for gTLD string); and
- Applicant reviews (concerning the entity applying for the gTLD and its proposed registry services).

Applicant reviews include a determination of whether the applicant has the requisite technical and financial capability to operate a registry.

- Panels of independent evaluators will perform these reviews based on the information provided by each applicant in its responses to the application form.
- There may be one round of questions and answers between the applicant and evaluators to clarify information contained in the application. Refer to Module 2 for further details on the evaluation process.

Evaluators will report whether the applicant passes or fails each of the parts of the Initial Evaluation. These reports will be available in the online application system.

At the conclusion of the Initial Evaluation period, ICANN will post a notice of all applications that have passed the Initial Evaluation. Depending on the volume of applications received, ICANN may post such notices in batches over the course of the Initial Evaluation period.

1.1.2.4 Objection Filing

Formal objections to applications can be filed on any of four enumerated grounds by parties with standing to object. The objection filing period will open after ICANN posts the list of complete applications as described in paragraph 1.1.2.2. Objectors will file directly with dispute resolution service providers (DRSPs). Refer to Module 3, Dispute Resolution Procedures, for further details.

The objection filing phase will close following the end of the Initial Evaluation period (refer to paragraph 1.1.2.3). Objections that have been filed during the objection filing phase will be addressed in the dispute resolution phase, which is outlined in paragraph 1.1.2.6 and discussed in detail in Module 3.

All applicants should be aware that third parties have the opportunity to file objections to any application during this period. Applicants whose applications are the subject of a formal objection will have an opportunity to file a response according to the dispute resolution service provider's rules and procedures (refer to Module 3).

An applicant wishing to file a formal objection to another application that has been submitted would do so within

the objection filing period, following the objection filing procedures in Module 3.

1.1.2.5 Extended Evaluation

Extended Evaluation applies only to applicants that do not pass Initial Evaluation.

Applicants failing certain elements of the Initial Evaluation can request an Extended Evaluation. If the applicant does not expressly request an Extended Evaluation, the application will proceed no further. The Extended Evaluation period allows for one additional round of questions and answers between the applicant and evaluators to clarify information contained in the application. The reviews performed in Extended Evaluation do not introduce additional evaluation criteria.

An Extended Evaluation may also be required if the applied-for gTLD string or one or more proposed registry services raise technical issues that might adversely affect the security and stability of the DNS. The Extended Evaluation period provides a time frame for these issues to be investigated. Applicants will be informed if such reviews are required at the end of the Initial Evaluation period. Evaluators and any applicable experts consulted will communicate their conclusions at the end of the Extended Evaluation period. These reports will be available in the online application system.

At the conclusion of the Extended Evaluation period, ICANN will post all evaluator reports from the Initial and Extended Evaluation periods.

If an application passes the Extended Evaluation, it can then proceed to the next stage. If the application does not pass the Extended Evaluation, it will proceed no further.

1.1.2.6 Dispute Resolution

Dispute resolution applies only to applicants that are the subject of a formal objection.

Where formal objections are filed and filing fees paid during the objection filing phase, dispute resolution service providers will initiate and conclude proceedings based on the objections received. The formal objection procedure exists to provide a path for those who wish to object to an application that has been received by ICANN. Dispute resolution service providers provide the fora to adjudicate the proceedings based on the subject matter and the needed expertise.

As a result of the proceeding, either the applicant will prevail (in which case the application can proceed to the next stage), or the objector will prevail (in which case either the application will proceed no further or the application will be bound to a contention resolution procedure). Refer to Module 3, Objection and Dispute Resolution, for detailed information. Applicants will be notified by the Dispute Resolution Service Provider of the results of dispute proceedings. The online application system will also be updated with these results.

1.1.2.7 String Contention

String contention applies only when there is more than one qualified applicant for the same or similar gTLD strings.

String contention refers to the scenario in which there is more than one qualified applicant for the same gTLD or for gTLDs that are so similar that they create a probability of detrimental user confusion if more than one is delegated. ICANN will resolve cases of string contention either through comparative evaluation or through an alternative mechanism for efficient resolution of string contention.

In the event of contention between applied-for strings that represent geographical names, the parties may be asked to follow a different process to resolve the contention.

Groups of applied-for strings that are either identical or confusingly similar are called contention sets. All applicants should be aware that if an application is identified as being part of a contention set, string contention resolution procedures will not begin until all applications in the contention set have completed all aspects of evaluation, including dispute resolution, if applicable.

To illustrate, as shown in Figure 1-2, Applicants A, B, and C all apply for .EXAMPLE and are identified as a contention set. Applicants A and C pass Initial Evaluation, but Applicant B does not. Applicant B elects Extended Evaluation. A third party files an objection to Applicant C's application, and Applicant C enters the dispute resolution proceeding. Applicant A must wait to see whether Applicants B and C successfully complete the Extended Evaluation and dispute resolution phases, respectively, before it can proceed to the string contention resolution stage. In this example, Applicant B passes the Extended Evaluation, but Applicant C does not prevail in the dispute resolution proceeding. String contention resolution then proceeds between Applicants A and B.

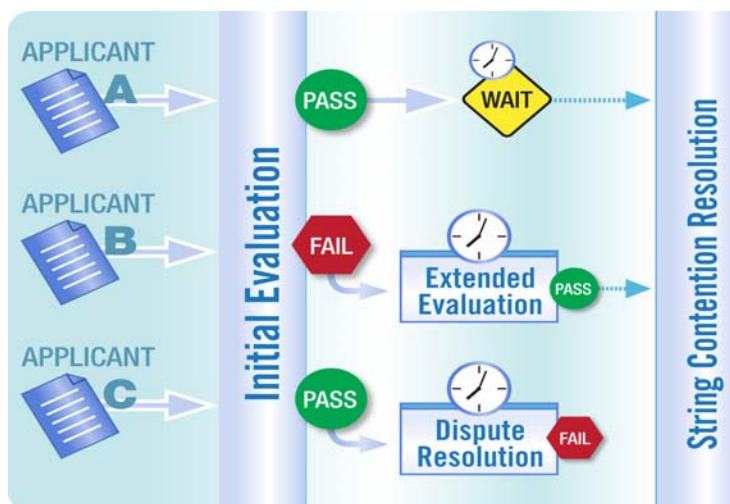


Figure 1-2 – All applications in a contention set must complete all previous evaluation and dispute resolution stages before string contention resolution can begin.

Applicants prevailing in a string contention resolution procedure will proceed toward delegation of applied-for gTLD strings. The online application system will be updated with the resolution of the string contention procedures.

1.1.2.8 Transition to Delegation

Applicants that successfully complete all the relevant stages outlined in this subsection 1.1.2 are required to carry out a series of concluding steps before delegation of the applied-for gTLD string into the root zone. These steps include execution of a registry agreement with ICANN and completion of a pre-delegation technical test to validate information provided in the application.

Following execution of a registry agreement, the prospective registry operator must complete technical set-up and satisfactory performance on technical checks before delegation of the gTLD into the root zone. If the initial start-up requirements are not satisfied so that the gTLD can be delegated into the root zone within the time frame specified in the registry agreement, ICANN may in its sole and absolute discretion elect to terminate the registry agreement.

Once all of these steps have been successfully completed, the applicant is eligible for delegation of its applied-for gTLD string into the DNS root zone.

1.1.3 Accounting for Public Comment in the Evaluation of Applications once the New gTLD Process is Launched

Public comment mechanisms are part of ICANN's policy development and implementation processes. As a private-public partnership, ICANN is dedicated to preserving the operational security and stability of the Internet, to promoting competition, to achieving broad representation of global Internet communities, and to developing policy appropriate to its mission through bottom-up, consensus-based processes. This necessarily involves the participation of many stakeholder groups in a public discussion.

In the new gTLD application process, public comments will be a mechanism for the public to bring relevant information and issues to the attention of those charged with handling new gTLD applications. ICANN will open a public comment forum at the time the applications are publicly posted on ICANN's website (refer to paragraph 1.1.2.2), which will remain open through the application round.

Public comments received will be provided to the evaluators during the Initial and Extended Evaluation periods. Evaluators will have discretion to take the information provided in these comments into consideration as deemed necessary. Consideration of the applicability of the information submitted through public comments will be included in the evaluators' reports.

Public comments may also be relevant to one or more objection grounds. (Refer to Module 3, Dispute Resolution Procedures, for the objection grounds.) ICANN will provide all public comments received to DRSPs, who will have discretion to consider them.

A distinction should be made between public comments, which may be relevant to ICANN's task of determining whether applications meet the established criteria, and formal objections that concern matters outside this evaluation. ICANN created the formal objection process to allow a full and fair consideration of objections based on subject areas outside ICANN's mission and expertise. A party contacting ICANN to pursue an objection will be referred to the formal objection channels designed specifically for resolving these matters in the new gTLD space. More information on the objection and dispute resolution processes is available in Module 3.

1.1.4 Sample Application Scenarios

The following scenarios briefly show a variety of ways in which an application may proceed through the evaluation process. The table that follows summarizes some processes and outcomes. This is not intended to be an exhaustive list of possibilities. There are other possible combinations of paths an application could follow.

Scenario Number	Initial Evaluation	Extended Evaluation	Objection(s) Raised	String Contention	Approved for Subsequent Steps
1	Pass	N/A	None	No	Yes
2	Fail	Pass	None	No	Yes
3	Pass	N/A	None	Yes	Yes
4	Pass	N/A	Applicant prevails	No	Yes
5	Pass	N/A	Objector prevails	N/A	No
6	Fail	Quit	n/a	N/A	No
7	Fail	Fail	n/a	N/A	No
8	Fail	Pass	Applicant prevails	Yes	Yes
9	Fail	Pass	Applicant prevails	Yes	No

Scenario 1 – Pass Initial Evaluation, No Objection, No Contention – In the most straightforward case, the application passes Initial Evaluation and there is no need for an Extended Evaluation. No objections are raised during the objection period, so there is no dispute to resolve. As there is no contention for the applied-for gTLD string, the applicant can enter into a registry agreement and the application can proceed toward delegation.

Scenario 2 – Extended Evaluation, No Objection, No Contention – In this case, the application fails one or more aspects of the Initial Evaluation. The applicant is eligible for and requests an Extended Evaluation for the appropriate elements. Here, the application passes the Extended Evaluation. As with Scenario 1, no objections are raised during the objection period, so there is no dispute to resolve. As there is no contention for the gTLD string, the applicant can enter into a registry agreement and the application can proceed toward delegation.

Scenario 3 – Pass Initial Evaluation, No Objection, Contention – In this case, the application passes the Initial Evaluation so there is no need for Extended Evaluation. No objections are raised during the objection period, so there is no dispute to resolve and no appeal. However, there are

other applications for the same or a similar gTLD string, so there is contention. In this case, one application wins the contention resolution, and the other contenders are denied their applications, so the winning applicant can enter into a registry agreement and the application can proceed toward delegation.

Scenario 4 – Pass Initial Evaluation, Win Objection, No Contention – In this case, the application passes the Initial Evaluation so there is no need for Extended Evaluation. During the objection period, a valid objection is raised by an objector with standing on one of the objection grounds (refer to Module 3, Dispute Resolution Procedures). The objection is heard by a dispute resolution service provider panel that finds in favor of the applicant. The applicant can enter into a registry agreement and the application proceeds toward delegation.

Scenario 5 – Pass Initial Evaluation, Lose Objection – In this case, the application passes the Initial Evaluation so there is no need for Extended Evaluation. During the objection period, multiple valid objections are raised by one or more objectors with standing in one or more of the objection grounds. Each objection category for which there are objections is heard by a dispute resolution service provider panel. In this case, the panels find in favor of the applicant for most of the objections, but one finds in favor of the objector. As one of the objections has been upheld, the application does not proceed.

Scenario 6 – Fail Initial Evaluation, Applicant Withdraws – In this case, the application fails one or more aspects of the Initial Evaluation. The applicant decides to withdraw the application rather than continuing with Extended Evaluation. The application does not proceed.

Scenario 7 – Fail Initial Evaluation, Fail Extended Evaluation
In this case, the application fails one or more steps in the Initial Evaluation. The applicant requests Extended Evaluation for the appropriate elements. However, the application fails Extended Evaluation also. The application does not proceed.

Scenario 8 – Extended Evaluation, Win Objection, Pass Contention – In this case, the application fails one or more aspects of the Initial Evaluation. The applicant is eligible for and requests an Extended Evaluation for the appropriate elements. Here, the application passes the Extended Evaluation. During the objection period, one valid objection is raised by an objector with standing. The objection is heard by a dispute resolution service provider

panel that rules in favor of the applicant. However, there are other applications for the same or a similar gTLD string, so there is contention. In this case, the applicant prevails over other applications in the contention resolution procedure, the applicant can enter into a registry agreement and the application can proceed toward the delegation phase.

Scenario 9 – Extended Evaluation, Objection, Fail

Contention – In this case, the application fails one or more aspects of the Initial Evaluation. The applicant is eligible for and requests an Extended Evaluation for the appropriate elements. Here, the application passes the Extended Evaluation. During the objection period, one valid objection is raised by an objector with standing. The objection is heard by a dispute resolution service provider that rules in favor of the applicant. However, there are other applications for the same or a similar gTLD string, so there is contention. In this case, another applicant prevails in the contention resolution procedure, and the application does not proceed.

Transition to Delegation – After an application has completed Initial or Extended Evaluation, dispute resolution, if applicable, and string contention, if applicable, the applicant is required to complete a set of steps leading to delegation of the gTLD, including execution of a registry agreement with ICANN, and completion of pre-delegation testing. Refer to Module 5 for a description of the relevant steps in this phase.

1.1.5 Subsequent Application Rounds

ICANN's goal is to launch the next gTLD application rounds as quickly as possible. The exact timing will be based on experiences gained and changes required after this round is completed. The goal is for the next application round to begin within one year of the close of the application submission period for this round.

1.2 Information for All Applicants

1.2.1 Eligibility

Any established corporation, organization, or institution in good standing may apply for a new gTLD. Applications from individuals or sole proprietorships will not be considered.

1.2.2 *Two Application Types: Open or Community-Based*

All applicants are required to designate each application for a new gTLD as **open** or **community-based**.

1.2.2.1 *Definitions*

For purposes of this RFP, an **open gTLD** is one that can be used for any purpose consistent with the requirements of the application and evaluation criteria, and with the registry agreement. An open gTLD may or may not have a formal relationship with an exclusive registrant or user population. It may or may not employ eligibility or use restrictions.

For purposes of this RFP, a **community-based gTLD** is a gTLD that is operated for the benefit of a defined community consisting of a restricted population. An applicant designating its application as community-based will be asked to substantiate its status as representative of the community it names in the application, and additional information may be requested in the event of a comparative evaluation (refer to Section 4.2 of Module 4). An applicant for a community-based gTLD is expected to:

1. Demonstrate an ongoing relationship with a defined community that consists of a restricted population.
2. Have applied for a gTLD string strongly and specifically related to the community named in the application.
3. Have proposed dedicated registration and use policies for registrants in its proposed gTLD.
4. Have its application endorsed in writing by an established institution representing the community it has named.

1.2.2.2 *Implications of Application Designation*

Applicants should understand how their designation as open or community-based will affect application processing at particular stages, as described in the following paragraphs.

Objection/Dispute Resolution – All applicants should understand that an objection may be filed against any application on community opposition grounds, even if the applicant has not designated itself as community-based or declared the TLD to be aimed at a particular community. Refer to Module 3, Dispute Resolution Procedures.

String Contention – Any applicant that has been identified as part of a contention set (refer to Module 4.1) may be obliged to participate in either a comparative evaluation or another efficient mechanism for contention resolution if the application reaches the string contention stage and the applicant elects to proceed.

A **comparative evaluation** will take place if a community-based applicant in a contention set has elected comparative evaluation.

Another efficient mechanism for contention resolution will result in other cases. If a comparative evaluation occurs but does not produce a clear winner, the efficient mechanism will then result.

Refer to Module 4, String Contention Procedures, for detailed discussions of contention resolution procedures.

Contract Execution and Post-Delegation – A community-based gTLD applicant will be subject to certain post-delegation contractual obligations to operate the gTLD in a manner consistent with the restrictions associated with its community-based designation, once it begins operating the gTLD. ICANN must approve material changes to the community-based nature of the gTLD and any associated contract changes.

1.2.2.3 Changes to Application Designation

An applicant may not change its designation as open or community-based once it has submitted a gTLD application for processing.

1.2.3 Required Documents

Applicants should be prepared to submit the following documents, which are required to accompany each application:

1. **Proof of legal establishment** – Examples of acceptable documentation include articles or a certificate of incorporation, articles of association or equivalent documents relative to the type of entity and the jurisdiction in which it is formed, such as statutes or membership agreements of the entity.
2. **Proof of good standing** – Examples of acceptable documentation include a certificate of good standing or other equivalent official document issued by a competent government authority, if offered by a governmental authority for the jurisdiction.

Under some laws or jurisdictions, it may be possible to prove both establishment and good standing with a single document. That is, the same document may suffice for items 1 and 2.

If no such certificates or documents are available in the applicant's jurisdiction, an affidavit drafted and signed by a notary public or a legal practitioner duly qualified to represent clients before the courts of the country in which the applicant's organization is established, declaring that the organization is established and in good standing, must be submitted.

3. If the applicant is a government body or organization, it must provide a **certified copy of the act** wherein or governmental decision whereby the government body or organization was established.

ICANN is aware that practices and documentation standards vary from region to region, and has attempted to account for a variety of these practices when specifying the requirements. Applicants with exceptional circumstances should contact ICANN to determine how to provide appropriate documentation.

4. **Financial statements.** Applicants must provide audited financial statements for the most recently completed fiscal year for the applicant, and unaudited financial statements for the most recently ended interim financial period for the applicant.
5. Before delegation: **documentary evidence of ability to fund ongoing basic registry operations** for then-existing registrants for a period of three to five years in the event of registry failure, default or until a successor operator can be designated.

All documents must be valid at the time of submission.

Supporting documentation should be submitted in the original language. English translations are not required.

Some supporting documentation will be required only in certain cases:

1. **Community endorsement** – If an applicant has designated its application as community-based, it will be asked to submit a written endorsement of its application by an established institution representing the community it has named.
2. **Government support or non-objection** – If an applicant has applied for a string that is a geographical term, the

applicant is required to submit a statement of support or non-objection for its application from the relevant government(s) or public authorities. Refer to Section 2.1.1.4 for more information on the requirements for geographical names.

3. **Documentation of outside funding commitments** – If an applicant lists outside sources of funding in its application, it must provide evidence of commitment by the party committing the funds.

1.2.4 Notice Concerning Technical Acceptance Issues with New gTLDs

All applicants should be aware that acceptance of their applications by ICANN and entering into a registry agreement with ICANN does not guarantee that the new gTLD will immediately function throughout the Internet. Past experience indicates that ISPs and webhosters do not automatically allow passage of or access to new gTLD strings even when these strings are authorized by ICANN, since software modifications may be required that may not happen until there is a business case for doing so.

Similarly, web applications often validate namestrings on data entry and may filter out new or unknown strings. ICANN has no authority or ability to require acceptance of new gTLD namestrings although it does prominently publicize ICANN-authorized gTLD strings on its website. ICANN encourages applicants to familiarize themselves with these issues and account for them in startup and launch plans. Successful applicants may find themselves expending considerable efforts post-implementation in working with providers to achieve acceptance of their new gTLD namestring.

Applicants should review (Informational) RFC 3696 (see <http://www.ietf.org/rfc/rfc3696.txt?number=3696>) for background. IDN applicants should review the material concerning experiences with IDN test strings in the root zone (see <http://idn.icann.org/>).

1.2.5 Terms and Conditions

All applicants must agree to a standard set of Terms and Conditions for the application process. The Terms and Conditions are available in Module 6 of this RFP.

1.3 Information for Internationalized Domain Name Applicants

Some applied-for gTLD strings are expected to be Internationalized Domain Names (IDNs) that require the insertion of IDN-encoded A-labels into the DNS root zone. IDNs are labels that contain one or more letters or characters other than LDH (letters a,...z; digits 0,...9; and the hyphen "-").

If an applicant applies for such a string, it must provide accompanying information indicating compliance with the IDNA protocol and other requirements. The IDNA protocol is currently under revision and its documentation can be found at

<http://www.icann.org/en/topics/idn/rfcs.htm>. Applicants must provide applied-for gTLD strings in the form of both a **U-label** and an **A-label**.

An A-label is the ASCII-Compatible Encoding form of an IDNA-valid string. Every A-label begins with the IDNA ACE prefix, "xn--", followed by a string that is a valid output of the Punycode algorithm, and hence is a maximum of 59 ASCII characters in length. The prefix and string together must conform to all requirements for a label that can be stored in the DNS including conformance to the LDH (host name) rule described in RFC 1034, RFC 1123 and elsewhere.

A U-label is an IDNA-valid string of Unicode characters, including at least one non-ASCII character, expressed in a standard Unicode Encoding Form, normally UTF-8 in an Internet transmission context.

For example, using the current IDN test string in Cyrillic script, the U-label is <испытание> and the A-label is <xn--80akhbyknj4f>. An A-label must be capable of being produced by conversion from a U-label and a U-label must be capable of being produced by conversion from an A-label.

Applicants for IDN gTLDs will also be required to provide the following at the time of the application:

1. Short form of string (English). The applicant will provide a short description of what the string would mean in English.
2. Language of label (ISO 639-1). The applicant will specify the language of the applied-for TLD string, both

according to the ISO's codes for the representation of names of languages, and in English.

3. Script of label (ISO 15924). The applicant will specify the script of the applied-for gTLD string, both according to the ISO code for the presentation of names of scripts, and in English.
4. Unicode code points. The applicant will list all the code points contained in the U-label according to its Unicode form.
5. Representation of label in phonetic alphabet. The applicant will provide its applied-for gTLD string notated according to the International Phonetic Alphabet (<http://www.arts.gla.ac.uk/IPA/ipachart.html>).
6. Its IDN table. This table provides the list of characters eligible for registration in domain names according to registry policy. It will contain any multiple characters that can be considered "the same" for the purposes of registrations at the second level. For examples, see <http://iana.org/domains/idn-tables/>.
7. Applicants must further demonstrate that they have made reasonable efforts to ensure that the encoded IDN string does not cause any rendering or operational problems. For example, problems have been identified in strings with characters of mixed right-to-left and left-to-right directionality when numerals are adjacent to the path separator. If an applicant were applying for a string with known issues, it should document steps that will be taken to mitigate these issues in applications.

1.4 Submitting an Application

Applicants may complete the application form and submit supporting documents using ICANN's TLD Application System (TAS). To access the tool, applicants must first register as a TAS user, which involves paying a user registration fee of USD100.

As TAS users, applicants will be able to provide responses in open text boxes and submit required supporting documents as attachments. Restrictions on the size of attachments as well as the file formats are included in the instructions on the TAS site.

ICANN will not accept application forms or supporting materials submitted through other means than TAS (that is, hard copy, fax, email), unless such submission is in accordance with specific instructions from ICANN to applicants.

1.4.1 Accessing the TLD Application System

The TAS site is located at [URL to be inserted in final version of RFP].

TAS features include:

1.4.1.1 Sub-user Management

This feature allows applicants to create sub-users with varying permission levels to assist in completing the application. For example, if an applicant wishes to designate a user to complete the technical section of the application, the applicant can create a sub-user account with access only to that section.

1.4.1.2 Workflow Management

This feature allows applicants to check the status of their applications through TAS.

1.4.1.3 Security

ICANN uses all reasonable efforts to protect applicant information submitted through TAS. TAS uses advanced Internet security technology to protect applicant information against unauthorized access. This technology includes:

Secure Socket Layer (SSL) – To ensure that confidential information remains confidential, it is sent to TAS in a secure session using SSL technology. SSL technology scrambles or encrypts information as it moves between the user's browser and TAS.

Limited TAS Authorized Users and Permission Levels – TAS is a hierarchical system with defined user roles and permissions. ICANN-authorized personnel have access only to the portions of the system they need. For example, an accounting user may only need access to perform updates to the portion of a record indicating whether an applicant's evaluation fee has been received.

Although ICANN intends to follow the security precautions outlined here, it offers no assurances that these procedures will keep an applicant's data confidential and secure from access by unauthorized third parties.

1.4.2 Technical Support

TAS users can refer to the FAQ/knowledge base or contact [email address to be inserted in final version of RFP] for help using the system. Users can expect to receive a tracking

ticket number and a response within 24 to 48 hours through the TAS submission tool.

1.4.3 Backup Application Process

If the online application system is not available, ICANN will provide alternative instructions for submitting applications.

1.5 Fees and Payments

This section describes the fees to be paid by the applicant. Payment instructions are also included here.

1.5.1 Breakdown of Fees and Amounts

The following fees are required from all applicants:

- ***TAS User Registration Fee*** – USD 100. This fee enables a user to enter the online application system. This fee is nonrefundable.
- ***gTLD Evaluation fee*** – USD 185,000. ICANN will not begin its evaluation of an application unless it has received the gTLD evaluation fee by the due date. Refer to subsection 1.5.4. The gTLD evaluation fee is set to recover costs associated with the new gTLD program. The fee is set to ensure that the program is fully funded, and doesn't take resources from other ICANN funding sources, including generic registries and registrars, cc TLD contributions and RIR contributions.

In certain cases, refunds of a portion of this fee may be available for applications that are withdrawn before the evaluation process is complete. The amount of refund will depend on the point in the process at which the withdrawal is made. (Refer to subsection 1.5.5.) Details will be made available when the application process is launched.

Applicants may be required to pay additional fees in certain cases. Those possible additional fees include:

- ***Registry Services Review Fee*** – If applicable, this fee is payable for additional costs incurred in referring an application to the RSTEP for an extended review. Applicants will be notified if such a fee is due. The fee for a three member RSTEP review team is anticipated to be USD 50,000. In some cases, five-member panels might be required, or there might be increased scrutiny at a greater cost. In every case, the applicant will be advised of the review

cost before its initiation. Refer to Section 2.1.3 of Module 2 on Registry Services review.

- **Dispute Resolution Filing Fee** – This amount must accompany any filing of a formal objection and any response that an applicant files to an objection. This fee is payable to the applicable dispute resolution service provider in accordance with the provider's payment instructions. ICANN estimates that non-refundable filing fees could range from approximately USD 1,000 to USD 5,000 (or more) per party per proceeding. Refer to the appropriate provider for the relevant amount. Refer to Module 3 for dispute resolution procedures.
- **Dispute Resolution Adjudication Fee** – This fee is payable to the applicable dispute resolution service provider in accordance with that provider's procedures and schedule of costs. Both parties in the dispute resolution proceeding will be required to submit an advance payment of costs in an estimated amount to cover the entire cost of the proceeding. This may be either an hourly fee based on the estimated number of hours the panelists will spend on the case (including review of submissions, facilitation of a hearing, if allowed, and preparation of a decision), or a fixed amount. The prevailing party in a dispute resolution proceeding will have its advance payment refunded, while the non-prevailing party will not receive a refund and thus will bear the cost of the proceeding.

ICANN estimates that a proceeding involving a fixed amount could range from USD 2,000 to USD 8,000 (or more) per proceeding. ICANN further estimates that an hourly rate based proceeding with a one-member panel could range from USD 32,000 to USD 56,000 (or more) and with a three-member panel it could range from USD 70,000 to USD 122,000 (or more). These estimates may be lower if the panel does not call for written submissions beyond the objection and response, and does not allow a hearing. Please refer to the appropriate provider for the relevant amounts or fee structures. Refer also to Section 3.2 of Module 3 for further details.

- **Comparative Evaluation Fee** – This fee is payable to the provider appointed to handle comparative evaluations, in the event that the applicant participates in a comparative evaluation.

Applicants will be notified if such a fee is due. Refer to Section 4.2 of Module 4.

This list does not include fees (that is, registry fees) that will be payable to ICANN following execution of a registry agreement. See <http://www.icann.org/en/topics/new-gtld-draft-agreement-24oct08-en.pdf>.

1.5.2 Payment Methods

Payments to ICANN may be submitted by wire transfer, ACH, money order, or check.

1.5.2.1 Wire Transfer Payment

Instructions for making a payment by **wire transfer** will be available in TAS.

1.5.2.2 ACH Payment

Instructions for making **ACH payments** will be available in TAS.

1.5.2.3 Credit Card Payment

To make a **credit card payment**, note:

ICANN accepts Visa, MasterCard/Maestro, American Express and Discover credit cards as forms of payment. The maximum amount accepted is USD 20,000 per invoice.

- Fill out and sign the Credit Card Payment Form at <http://www.icann.org/en/financials/credit.pdf>.
- Send the completed form to ICANN at fax:
+1.310.823.8649

Or mail the form to:

Internet Corporation for Assigned Names and Numbers
(ICANN)
Attention: Finance Department
4676 Admiralty Way, Suite 330
Marina del Rey, CA 90292-6601 USA

1.5.2.4 Check or Money Order Payment

To make a **payment by check or money order** (USD only), mail or deliver by private carrier to:

Internet Corporation for Assigned Names and Numbers
(ICANN)
Attention: Finance Department
4676 Admiralty Way, Suite 330
Marina del Rey, CA 90292-6601 USA

1.5.3 Requesting an Invoice

The TAS interface allows applicants to request issuance of an invoice for any of the fees payable to ICANN. This service is for the convenience of applicants that require an invoice to process payments.

1.5.4 Deadlines for Payments

The Evaluation Fee must be received by [time] UTC [date].

ICANN or its providers will notify the applicants of due dates for payment in respect of additional fees (if applicable).

1.5.5 Withdrawals and Refunds

Refunds may be available to applicants who choose to withdraw at certain stages of the process.

An applicant that wishes to withdraw an application must use the TAS interface to request a refund. ICANN will not consider any other form of request for refunds. Refunds will only be issued to the organization that submitted the original payment. All refunds are paid by wire transfer. Any bank transfer or transaction fees incurred by ICANN will be deducted from the amount paid.

Further details on refund amounts will be available in the final version of the RFP.

1.6 Questions about this RFP

Applicants may submit questions about completing the application form to [email address to be inserted in final version of RFP]. To provide all applicants equitable access to information, ICANN will post all questions and answers in a centralized location on its website.

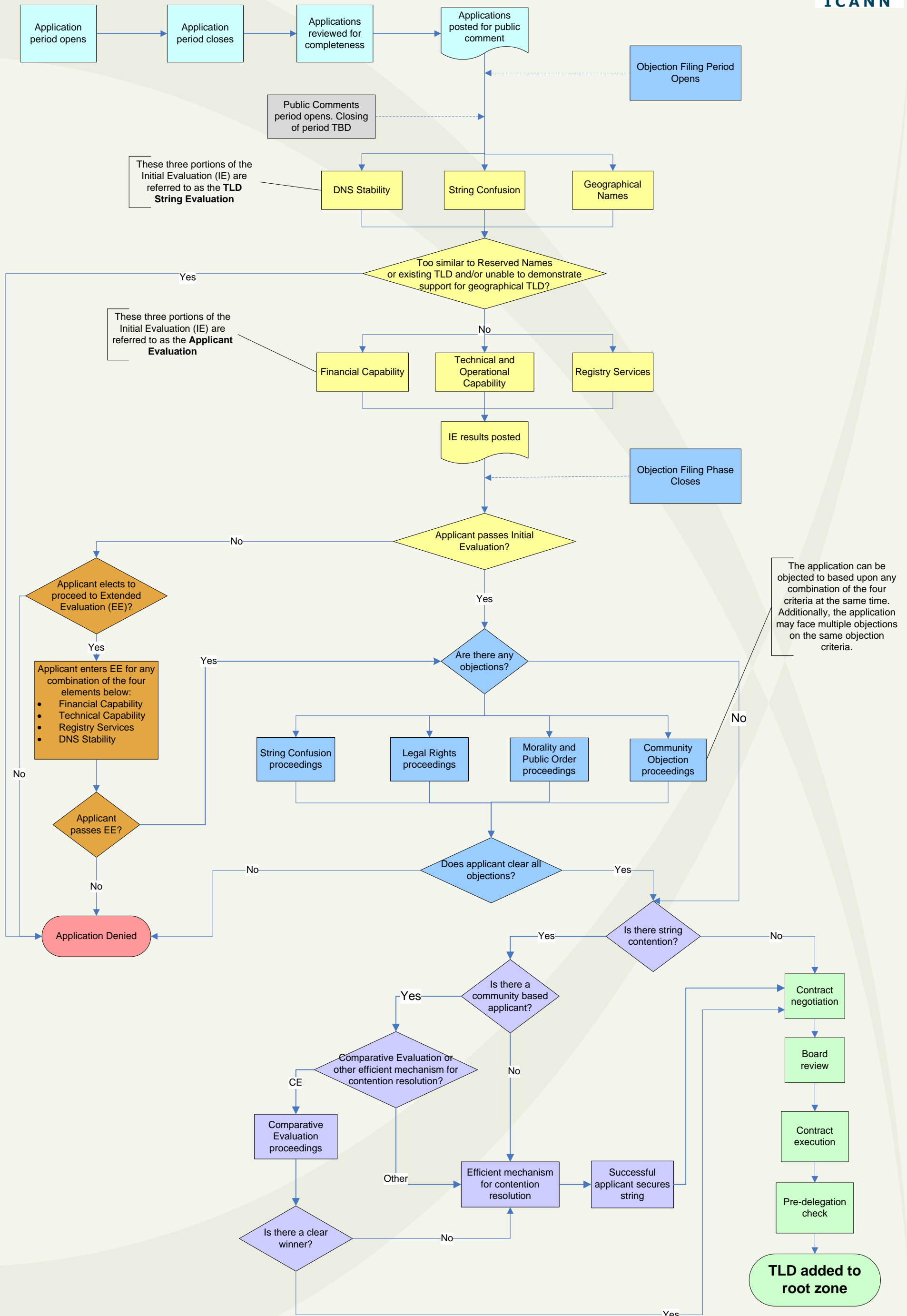
All requests to ICANN for information about the process or issues surrounding preparation of an application must be submitted in writing to the designated email address. ICANN will not grant requests from applicants for personal or telephone consultations regarding the preparation of an application. Applicants that contact ICANN for clarification about aspects of the application will be referred to the dedicated online question and answer area.

Answers to inquiries will only provide clarification about the application forms and procedures. ICANN will not provide consulting, financial, or legal advice.



New gTLD Program - Evaluation Process

DRAFT- For Discussion Purposes



The application can be objected to based upon any combination of the four criteria at the same time. Additionally, the application may face multiple objections on the same objection criteria.



Draft Applicant Guidebook

Module 2

Please note that this is a discussion draft only. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.

24 October 2008

Module 2

Evaluation Procedures

This module describes the evaluation procedures and criteria used to determine whether applications are approved for delegation as a gTLD. All applicants will undergo an Initial Evaluation and those that do not pass all phases may enter into an Extended Evaluation.

The first, required evaluation is the **Initial Evaluation**, during which ICANN first assesses an applied-for gTLD string, an applicant's qualifications, and proposed registry services.

The following elements make up **Initial Evaluation**:

- String Reviews
 - String confusion
 - Reserved Names
 - DNS stability
 - Geographical names
- Applicant Reviews
 - Demonstration of technical and operational capability
 - Demonstration of financial capability
 - Registry services

These elements, which are described in greater detail later in this module, are intended to ensure applied-for gTLD strings do not negatively impact DNS security or stability, and to ensure that applicants are capable of operating the gTLD in a stable and secure manner, and that new services can be introduced without adverse effect on the security or stability of the DNS.

An applicant must pass all these reviews to pass the Initial Evaluation. Failure to pass any one of these reviews will result in a failure to pass the Initial Evaluation.

Extended Evaluation may be applicable in cases in which an applicant does not pass the Initial Evaluation or additional inquiry is required.

2.1 Initial Evaluation

The Initial Evaluation consists of two types of examination. Each type is composed of several elements.

The first examination focuses on the applied for string to test:

- Whether the applied-for gTLD string is similar to others and would cause user confusion;
- Whether the applied-for gTLD string might disrupt DNS security or stability; and
- Whether requisite government approval is given in the case of certain geographical names.

The second examination focuses on the applicant to test:

- Whether the applicant has the requisite technical and financial capability; and
- Whether the registry services offered by the applicant might adversely affect DNS security or stability.

2.1.1 String Reviews

In the Initial Evaluation, ICANN reviews every applied-for gTLD string for string confusion, potential to introduce instability into the DNS, and whether relevant government approval is required. Those reviews are described in greater detail in the following paragraphs.

2.1.1.1 String Confusion Review

The objective of this review is to prevent user confusion and loss of confidence in the DNS. This review involves a comparison of each applied-for gTLD string against existing TLDs and against other applied-for gTLD strings. The examination is to determine whether the applied-for gTLD string is so similar to one of the others that it would create a probability of detrimental user confusion if it were to be delegated to the root zone. ICANN will perform determinations of string similarity in accordance with the steps outlined here.

The similarity review will be conducted by a panel of String Similarity Examiners. This examination will be informed by an algorithmic score for the visual similarity between each applied-for string and each of other existing and applied-for TLDs. The score will provide one objective measure for consideration by the panel.

The examiners' task is to identify string similarities that would create a probability of detrimental user confusion. The examiners will use a common standard to test for whether string confusion exists, as follows:

Standard for String Confusion – String confusion exists where a string so nearly resembles another visually that it is likely to deceive or cause confusion. For the likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion.

The standard will be applied in two sets of circumstances, when comparing:

- Applied-for gTLD strings against existing TLDs and reserved names.
- Applied-for gTLD strings against other applied for gTLD strings or strings requested in ccTLD processes).

Existing String Similarity Examination – This review involves cross-checking between each applied-for string and the list of existing TLD strings to determine whether the two strings are so similar to one another that they create a probability of detrimental user confusion.

All TLDs currently in the root zone can be found at <http://iana.org/domains/root/db/>.

An application that fails the string confusion review and is found too similar to an existing string will not pass the Initial Evaluation, and no further reviews will be available.

In the simple case in which an applied-for TLD string is identical to an existing TLD, the application system will recognize the existing TLD and not allow the application to be submitted.

Such testing for identical strings also takes into consideration the code point variants listed in any relevant language reference table.

For example, protocols treat equivalent labels as alternative forms of the same label, just as "foo" and "Foo" are treated as alternate forms of the same label (RFC 3490).

An applied-for gTLD string that passes the string confusion review is still subject to challenge by an existing TLD operator or by another gTLD applicant in the current

application round. That process requires that a specific objection be filed by an objector having the standing to make such an objection. Refer to Module 3, Dispute Resolution Procedures, for more information about the objection process.

String Contention Sets: Similarity with Other Applied-for gTLD Strings – All applied-for gTLD strings will be reviewed against one another to identify any strings that are so similar that they create a probability of detrimental user confusion would result if more than one is delegated into the root zone. In performing the string confusion review, the panel of String Similarity Examiners will create contention sets that may be used later in the process. A contention set contains at least two applied-for strings identical to one another or so similar that string confusion would result if more than one were delegated into the root zone. Refer to Module 4, String Contention Procedures, for more information on contention sets and contention resolution. ICANN will notify applicants who are part of a contention set by the conclusion of the Initial Evaluation period. These contention sets will also be published on ICANN’s website.

Similarity to TLD strings applied for as ccTLDs -- Applied-for gTLD strings will also be reviewed for similarity to TLD strings applied for in the IDN ccTLD Fast Track process (see <http://www.icann.org/en/topics/idn/fast-track/>). Should conflict with a prospective fast-track IDN ccTLD be identified, ICANN will take steps to resolve the conflict. (See process for Geographical Names in paragraph 2.1.1.4.)

String Similarity Algorithm – The String Similarity Algorithm (Algorithm) is a tool the examiners use to provide one objective measure as part of the process of identifying strings likely to result in confusion. The Algorithm is also available to applicants for testing and informational purposes. The Algorithm and user guidelines are available at <http://80.124.160.66/icann-algorithm>.

The Algorithm calculates scores for visual similarity between any two strings, using factors such as letters in sequence, number of similar letters, number of dissimilar letters, common prefixes, common suffixes, and string length.

2.1.1.2 Review for Reserved Names

The Reserved Names review involves comparison with the list of top-level Reserved Names to ensure that the applied-for gTLD string does not appear on that list.

Top-Level Reserved Names List

<i>AFRINIC</i>	<i>IANA-SERVERS</i>	<i>NRO</i>
<i>ALAC</i>	<i>ICANN</i>	<i>RFC-EDITOR</i>
<i>APNIC</i>	<i>IESG</i>	<i>RIPE</i>
<i>ARIN</i>	<i>IETF</i>	<i>ROOT-SERVERS</i>
<i>ASO</i>	<i>INTERNIC</i>	<i>RSSAC</i>
<i>CCNSO</i>	<i>INVALID</i>	<i>SSAC</i>
<i>EXAMPLE*</i>	<i>IRTF</i>	<i>TEST*</i>
<i>GAC</i>	<i>ISTF</i>	<i>TLD</i>
<i>GNSO</i>	<i>LACNIC</i>	<i>WHOIS</i>
<i>GTLD-SERVERS</i>	<i>LOCAL</i>	<i>WWW</i>
<i>IAB</i>	<i>LOCALHOST</i>	
<i>IANA</i>	<i>NIC</i>	
*Note that in addition to the above strings, ICANN will also reserve translations of the terms "test" and "example" in multiple languages.		

If an applicant enters a Reserved Name as its applied-for gTLD string, the application system will recognize the Reserved Name and not allow the application to be submitted.

In addition, applied-for gTLD strings are reviewed in a process identical to that described in the preceding section to determine whether they exceed a similarity threshold with a Reserved Name. An application for a gTLD string that is identified as too similar to a Reserved Name will not pass the Reserved Names review.

2.1.1.3 Review for Potential DNS Instability

This review determines whether an applied-for gTLD string might cause instability to the DNS. In all cases, this will involve a review for conformance with technical and other requirements for gTLD labels. In some exceptional cases, an extended review may be necessary to investigate possible technical stability problems with the applied-for gTLD string.

2.1.1.3.1 String Stability Review

New gTLD labels must not adversely affect on the security or stability of the DNS. Although no string complying with the requirements in paragraph 2.1.1.3.2 of this module is expected to adversely affect DNS security or stability, an extended review is possible if technical reviewers identify an issue with the applied-for gTLD string that requires further investigation.

String Stability Review Procedure – During the Initial Evaluation period, ICANN will conduct a preliminary review on the set of applied-for gTLD strings to ensure that proposed strings comply with relevant standards provided in the preceding section and determine whether any strings raise significant technical stability issues that may require an Extended Evaluation.

There is low probability that this review will be necessary for a string that fully complies with the string requirements in paragraph 2.1.1.3.2 of this module. However, the technical stability review process provides an additional safeguard if unanticipated security or stability issues arise concerning an applied-for gTLD string.

See Section 2.2 for further information on the Extended Evaluation process.

2.1.1.3.2 String Requirements

ICANN will review each applied-for gTLD string to ensure that it conforms with the requirements outlined in the following paragraphs.

If an applied-for gTLD string is found to violate any of these rules, the application will be denied. No further reviews are available.

Technical Requirements for all Labels (Strings) – The technical requirements for the selection of top-level domain labels follow.

- The ASCII label (that is, the label as transmitted on the wire) must be valid as specified in the technical standards *Domain Names: Implementation and Specification* (RFC 1035), and *Clarifications to the DNS Specification* (RFC 2181). This includes the following:
 - The label must have no more than 63 characters.
 - Upper and lower case characters are treated as identical.
- The ASCII label must be a valid host name, as specified in the technical standards *DOD Internet Host Table Specification* (RFC 952), *Requirements for Internet Hosts — Application and Support* (RFC 1123), and *Application Techniques for Checking and Transformation of Names* (RFC 3696). This includes the following:

- The label must consist entirely of letters, digits and hyphens.
- The label must not start or end with a hyphen.
- There must be no possibility for confusing an ASCII label for an IP address or other numerical identifier by application software. For example, representations such as "255", "o377" or "0xff" representing decimal, octal, and hexadecimal strings, can be confused for IP addresses. As such, labels:
 - Must not be wholly composed of digits between "0" and "9".
 - Must not commence with "0x" or "x", and have the remainder of the label wholly composed of hexadecimal digits, "0" to "9" and "a" through "f".
 - Must not commence with "0o" or "o", and have the remainder of the label wholly composed of digits between "0" and "7".
- The ASCII label may only include hyphens in the third and fourth position if it represents a valid Internationalized Domain Name in its A-label form (ASCII encoding).
- The presentation format of the domain (that is, either the label for ASCII domains, or the U-label for Internationalized Domain Names) must not begin or end with a digit.

Requirements for Internationalized Domain Names – These requirements apply only to prospective top-level domains that use non-ASCII characters. Applicants for these internationalized top-level domain labels are expected to be familiar with the IETF IDNA standards, Unicode standards, and the terminology associated with Internationalized Domain Names.

- The label must be a valid internationalized domain name, as specified in the technical standard *Internationalizing Domain Names in Applications* (RFC 3490). This includes the following nonexhaustive list of limitations:
 - Must only contain Unicode code points that are defined as "Valid" in *The Unicode Codepoints and IDNA* (<http://www.ietf.org/internet->

[drafts/draft-ietf-idnabis-tables-02.txt](#)) and be accompanied by unambiguous contextual rules where necessary.

- Must be fully compliant with Normalization Form C, as described in *Unicode Standard Annex #15: Unicode Normalization Forms*. See also examples in <http://unicode.org/faq/normalization.html>.
- Must consist entirely of characters with the same directional property.
- The label must meet the relevant criteria of the ICANN *Guidelines for the Implementation of Internationalised Domain Names*. See <http://www.icann.org/en/topics/idn/implementation-guidelines.htm>. This includes the following nonexhaustive list of limitations:
 - All code points in a single label must be taken from the same script as determined by the Unicode Standard Annex #24: Unicode Script Property.
 - Exceptions are permissible for languages with established orthographies and conventions that require the commingled use of multiple scripts. However, even with this exception, visually confusable characters from different scripts will not be allowed to co-exist in a single set of permissible code points unless a corresponding policy and character table is clearly defined.

The IDNA protocol used for internationalized labels is currently under revision through the Internet standardization process. As such, additional requirements may be specified that need to be adhered to as this revision is being completed. The current status of the protocol revision is documented at <http://tools.ietf.org/wg/idnabis>.

Policy Requirements for Generic Top-Level Domains –
Applied-for strings must be composed of three or more visually distinct letters or characters in the script, as appropriate.

2.1.1.4 Geographical Names

ICANN will review all applied-for strings to ensure that appropriate consideration is given to the interests of governments or public authorities in country or territory

names, as well as certain other types of sub-national place names. The requirements and procedure ICANN will follow is described in the following paragraphs.

2.1.1.4.1 *Requirements for Strings Intended to Represent Geographical Entities*

The following types of applications must be accompanied by documents of support or non-objection from the relevant government(s) or public authority(ies).

- Applications for any string that is a meaningful representation of a *country or territory name* listed in the ISO 3166-1 standard (see http://www.iso.org/iso/country_codes/iso_3166_data_bases.htm). This includes a representation of the country or territory name in any of the six official United Nations languages (French, Spanish, Chinese, Arabic, Russian and English) and the country or territory's local language.
- Applications for any string that represents a *sub-national place name*, such as a county, province, or state, listed in the ISO 3166-2 standard.
- Applications for a city name, where the applicant clearly intends to use the gTLD to leverage from the city name.
- An application for a string which represents a continent or UN region appearing on the

Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings list at <http://unstats.un.org/unsd/methods/m49/m49regin.htm>.

An applied-for gTLD string that falls into the above categories is considered to represent a geographical name. It is the applicant's responsibility to identify whether its applied-for gTLD string falls into the above categories and to determine the relevant government or governments, or the relevant public authority or authorities. In the case of an application for a string which represents a continent or UN region, evidence of support, or non-objection, will be required from a substantial number of the relevant governments and/or public authorities associated with the continent or the UN region.

The evidence of support or non-objection from the relevant government or public authority should include a signed

letter of support or non-objection from the minister with the portfolio responsible for domain name administration, ICT, foreign affairs or the Office of the Prime Minister or President of the relevant jurisdiction. If there are reasons for doubt about the authenticity of the communication, ICANN will consult with the diplomatic authorities or members of ICANN's Governmental Advisory Committee for the government or public authority concerned on the competent authority and appropriate point of contact with their administration for communications.

The letter must clearly express the government's or public authority's support or non-objection for the applicant's application and demonstrate the government's or public authority's understanding of the string being requested and what it will be used for.

The requirement to include evidence of support for certain applications does not preclude or exempt applications from being the subject of objections on community grounds (refer to section 3.1.1 of Module 3), under which applications may be rejected based on objections showing substantial opposition from the targeted community.

2.1.1.4.2 Review Procedure for Geographical Names

A Geographical Names Panel (GNP) will be established to evaluate applications and confirm whether each string represents a geographic term, and to verify the authenticity of the supporting documentation where necessary. The Geographic Names Panel may consult with additional experts as they consider appropriate.

The steps ICANN and the Geographical Names Panel intend to follow to ensure compliance with these requirements are described here.

1. During the Initial Evaluation period, ICANN evaluates each application for a geographical name to confirm that the applicant has provided a letter of support or nonobjection from the relevant government.
2. ICANN forwards applications considered complete to the GNP for confirmation that:
 - The strings are a meaningful representation of a country or territory name or a subnational place name, and

- The communication from the government or public authority is legitimate and contains the suggested content.
3. The GNP also reviews applications that are not self-identified as a geographical name to ensure that the applied-for string is not a meaningful representation of a country or territory name or a sub-national place name.
 4. All applications determined to be geographical but without necessary supporting documents will be considered incomplete. The applicant will be notified and the application will not pass Initial Evaluation.
 5. The GNP may consult additional expertise if uncertainty arises about the name the applied-for gTLD string is claimed to represent.

The results of the evaluation will be publicly posted on ICANN's website at the conclusion of the Initial Evaluation, and will also be available to applicants.

If there is more than one application for a string representing a certain geographical term as described in this section, and the applications are considered complete (that is, have requisite government approvals), the applications will be suspended pending resolution by the applicants. If there is contention between identical (or similar) applicants where one is identified as a geographical name, the string contention will be settled using the string contention methodology described in Module 4.

2.1.2 Applicant Reviews

Concurrent with the applied-for gTLD string reviews described in subsection 2.1.1, ICANN will review the applicant's technical and operational capability, its financial capability, and its proposed registry services. Those reviews are described in greater detail in the following subsections.

2.1.2.1 Information Sought

The questions provided for applicants in the application form are available at <http://www.icann.org/en/topics/new-gtld-draft-evaluation-criteria-24oct08-en.pdf>. Applicants answer questions which cover the following three areas in relation to themselves: general information, technical and operational capability, and financial capability.

Applicants should be aware that the application materials submitted in the online application system, as well as any evaluation materials and correspondence, will be publicly posted on ICANN's website. The sections in the application that are marked CONFIDENTIAL will not be posted. Any sections of the application that ICANN has not designated CONFIDENTIAL will be posted.

The applicant questions cover the following three areas:

General Information – These questions are intended to gather information about an applicant's legal identity, contact information, and applied-for gTLD string. Failure to provide any of this information will result in an application being considered incomplete. Under specific areas of questions under this category are: the identification of the applied-for string; selection of TLD type; and requests for certain documents.

Demonstration of Technical and Operational Capability – These questions are intended to gather information about an applicant's technical capabilities and plans for operation of the proposed gTLD.

Applicants are not required to have deployed an actual registry to complete the requirements for a successful application. It will be sufficient at application time for an applicant to demonstrate a clear understanding and accomplishment of some groundwork toward the key technical and operational aspects of running a gTLD registry. Each applicant that passes the technical evaluation and all other steps will be required, following execution of a registry agreement, to complete a pre-delegation technical test before delegation of the applied-for gTLD. Refer to Module 5, Transition to Delegation, for additional information.

Demonstration of Financial Capability – These questions are intended to gather information about an applicant's financial capabilities to operate a gTLD registry business and its financial planning in preparation for long-term operation of a new gTLD.

2.1.2.2 Evaluation Methodology

Initial Evaluations are conducted on the basis of the information each applicant makes available to ICANN in its response to the questions in the application form. ICANN and its evaluators are not obliged to take into account any information or evidence that is not made available in the application and submitted by the due date, unless explicitly requested by the evaluators.

Evaluators are entitled, but not obliged, to request further information or evidence from an applicant, and any such request will be made solely through TAS, rather than by direct means such as phone, letter, email, or other similar means. Only one exchange of information between the applicant and the evaluators may take place within the Initial Evaluation period.

Because different registry types and purposes may justify different responses to individual questions, evaluators will pay particular attention to the consistency of an application across all criteria. For example, an applicant's scaling plans noting hardware to ensure its capacity to operate at a particular volume level should be consistent with its financial plans to secure the necessary equipment.

2.1.3 Registry Services Review

Concurrent with the string reviews described in subsection 2.1.1, ICANN will review the applicant's proposed registry services. The applicant will be required to provide a list of proposed registry services in its application.

Registry services are defined as: (1) operations of the registry critical to the following tasks: the receipt of data from registrars concerning registrations of domain names and name servers; provision to registrars of status information relating to the zone servers for the TLD; dissemination of TLD zone files; operation of the registry zone servers; and dissemination of contact and other information concerning domain name server registrations in the TLD as required by the registry agreement; (2) other products or services that the registry operator is required to provide because of the establishment of a consensus policy; and (3) any other products or services that only a registry operator is capable of providing, by reason of its designation as the registry operator.

A full definition of registry service can be found at <http://www.icann.org/en/registries/rsep/rsep.html> and in the draft registry agreement at <http://www.icann.org/en/topics/new-gtld-draft-agreement-24oct08-en.pdf>. Registry services will be examined to determine if the proposed registry service might raise significant stability or security issues. Examples of services submitted to the registry services process by established registries can be found at <http://www.icann.org/en/registries/rsep>.

The registration of domain names, for example, is a registry service. Lists of registry services currently provided by

registries can be found in registry agreement appendices. In general cases, these services successfully pass this inquiry. See

<http://www.icann.org/en/registries/agreements.htm>.

Review of all applicants' proposed registry services will occur during the Initial Evaluation.

Procedure – ICANN's first review will be a preliminary determination of whether a proposed registry service requires further consideration based on whether the registry service may raise significant security or stability issues.

If ICANN's preliminary determination reveals that there may be significant security or stability issues surrounding the proposed service, the application will be flagged for an extended review by the RSTEP (see <http://www.icann.org/en/registries/rsep/rstep.html>). This review will occur during the Extended Evaluation phase (refer to section 2.2).

Definitions for security and stability applied in the registry services review are:

Security – an effect on security by the proposed registry service means (1) the unauthorized disclosure, alteration, insertion or destruction of registry data, or (2) the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with all applicable standards.

Stability – an effect on stability means that the proposed registry service (1) does not comply with applicable relevant standards that are authoritative and published by a well-established, recognized, and authoritative standards body, such as relevant standards-track or best current practice RFCs sponsored by the IETF, or (2) creates a condition that adversely affects the throughput, response time, consistency, or coherence of responses to Internet servers or end systems, operating in accordance with applicable relevant standards that are authoritative and published by a well-established, recognized and authoritative standards body, such as relevant standards-track or best current practice RFCs and relying on registry operator's delegation information or provisioning services.

2.1.4 Applicant's Withdrawal of an Application

An applicant who does not pass the Initial Evaluation may be permitted to withdraw its application at this stage for a partial refund (refer to subsection 1.5.5 of Module 1, Introduction to gTLD Application Process).

2.2 *Extended Evaluation*

An applicant may request an Extended Evaluation if the application has failed to pass the Initial Evaluation elements concerning:

- Demonstration of technical and operational capability (refer to paragraph 2.1.2.1).
- Demonstration of financial capability (refer to paragraph 2.1.2.1).

An Extended Evaluation may also result if ICANN identifies a need for further review on the following elements:

- DNS stability (refer to paragraph 2.1.1.3).
- Registry services (refer to subsection 2.1.3). Note that this investigation incurs an additional fee (the Registry Services Review Fee) if the applicant wishes to proceed. See Section 1.5 of Module 1 for fee and payment information.

From the time an applicant receives notice of failure to pass the Initial Evaluation, it has 15 calendar days to submit to ICANN the Notice of Request for Extended Evaluation through the online application interface. If the applicant does not explicitly request the Extended Evaluation, and pay any additional fees as applicable, the application will not proceed.

2.2.1 *Technical and Operational or Financial Extended Evaluation*

This subsection applies to an Extended Evaluation of an applicant's technical and operational capability or financial capability, as described in paragraph 2.1.2.1.

The Extended Evaluation allows one additional round of inquiry and answer between the evaluators and the applicant to clarify information contained in the application. This supplemental information will become part of the application. Applicants may not change the information submitted in their original applications. Through the online system, the evaluators will provide the applicant a set of questions describing any deficiencies in the application and request clarification. Such communications will include a deadline for the applicant to respond.

The same panel that reviewed an application during Initial Evaluation will conduct the Extended Evaluation, using the

same criteria as outlined at <http://www.icann.org/en/topics/new-gtld-draft-evaluation-criteria-24oct08-en.pdf>, to determine whether the application, now that certain information has been clarified, meets the criteria.

ICANN will notify applicants at the end of the Extended Evaluation period as to whether they have passed. If an applicant passes Extended Evaluation, its application continues to the next stage in the process. If an applicant does not pass Extended Evaluation, the application will proceed no further. No further reviews are available.

2.2.2 String Stability Extended Evaluation

This section applies to an Extended Evaluation of DNS security or stability issues with an applied-for gTLD string, as described in paragraph 2.1.1.3.

If the evaluators determine that a string poses stability issues that require further investigation, the applicant must either confirm that it intends to move forward with the application process or withdraw its application.

If an application is subject to such an Extended Evaluation, an independent 3-member panel will be formed to review the security or stability issues identified during the Initial Evaluation.

The panel will review the string and determine whether the string complies with relevant standards or creates a condition that adversely affects the throughput, response time, consistency, or coherence of responses to Internet servers or end systems, and will communicate its findings to ICANN and to the applicant.

If the panel determines that the string does not comply with relevant standards or creates a condition that adversely affects the throughput, response time, consistency, or coherence of responses to Internet servers or end systems, the application cannot proceed.

2.2.3 Registry Services Extended Evaluation

This section applies to an Extended Evaluation of Registry Services, as described in subsection 2.1.3.

If a proposed registry service has been referred to the Registry Services Technical Evaluation Panel (RSTEP) for an extended review, the RSTEP will form a review team of members with the appropriate qualifications.

The review team will generally consist of 3 members, depending on the complexity of the registry service proposed. In a 3-member panel, the review could be conducted within 30 to 45 days. In cases where a 5-member panel is needed, this will be identified before the extended evaluation starts. In a 5-member panel, the review could be conducted in 45 days or fewer.

The cost of an RSTEP review will be covered by the applicant through payment of the Registry Services Review Fee. Refer to payment procedures in section 1.5 of Module 1. The RSTEP team review will not commence until payment has been received.

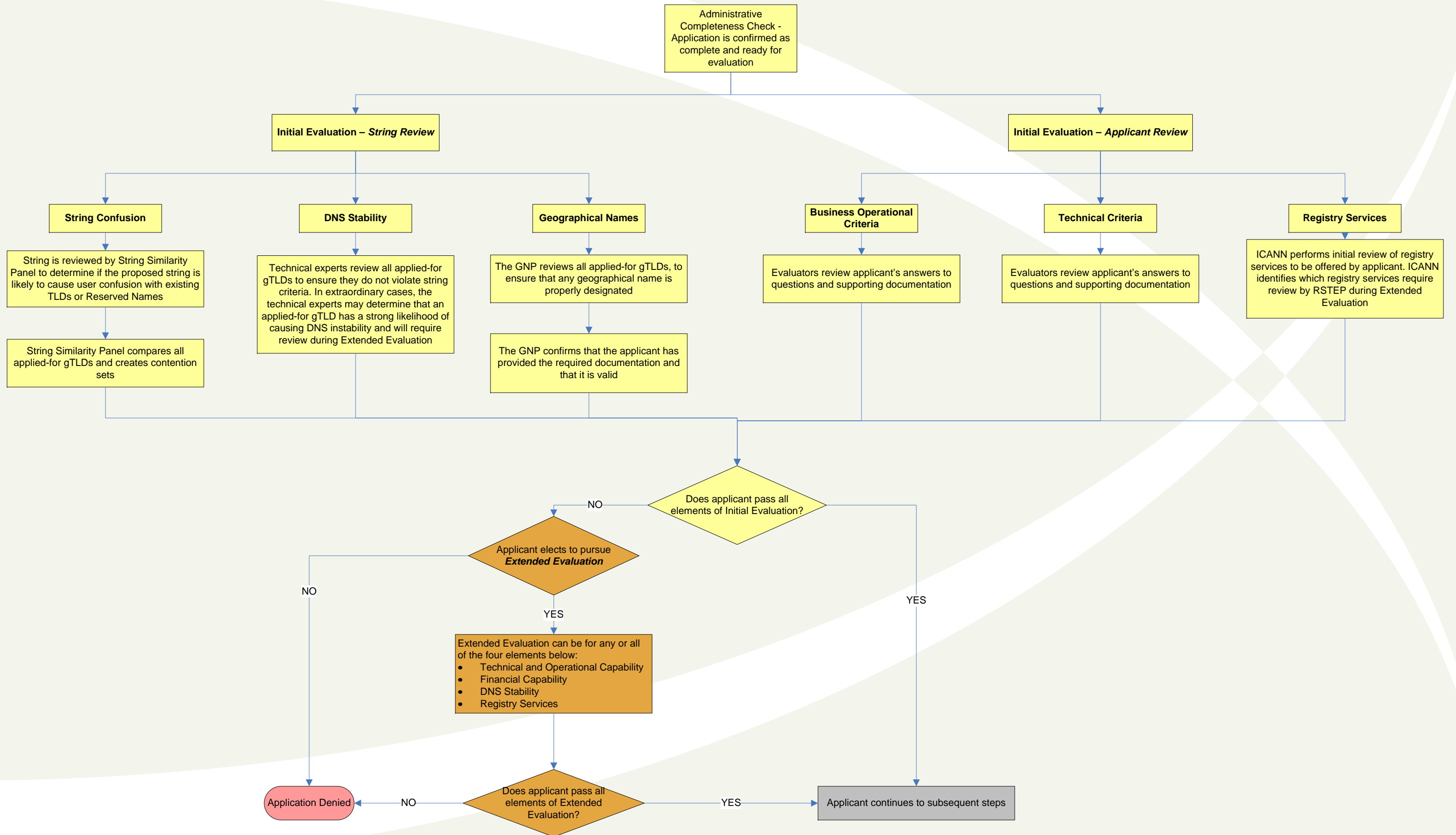
If the RSTEP finds that one or more of the applicant's proposed registry services may be introduced without risk of a meaningful adverse effect on security or stability, these services may be included in the applicant's contract with ICANN.

If the RSTEP finds that the proposed service would create a risk of a meaningful adverse effect on security or stability, the applicant may elect to proceed with its application without the proposed service, or withdraw its application for the gTLD.

2.3 *Probity and Conflicts of Interest*

ICANN staff and by various independent service providers will review all applications during **Initial Evaluation** and **Extended Evaluation**. During this entire evaluation process, applicants must not approach, or have any other person or entity approach on their behalf, any ICANN staff member, any ICANN Board member, or any person associated with the evaluation process, including any evaluators, experts, examiners, or reviewers retained by ICANN.

DRAFT - New gTLD Program – Initial Evaluation and Extended Evaluation





Draft Applicant Guidebook

Module 3

Please note that this is a discussion draft only. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.

24 October 2008

Module 3

Dispute Resolution Procedures

This module describes the purpose of the objection and dispute resolution mechanisms, the grounds for lodging an objection to a gTLD application, the general procedures for filing or responding to an objection, and the manner in which dispute resolution proceedings are conducted.

This module also discusses the guiding principles, or standards, that each DRSP will apply in its decisions.

All applicants should be aware of the possibility that an objection may be filed against their applications, and of the options available in the event of such an objection.

3.1 Purpose and Overview of the Dispute Resolution Process

The independent dispute resolution process is designed to protect certain interests and rights. The process provides a path for formal objections during evaluation of the applications. It allows certain parties with standing to have their objections considered before a panel of qualified experts. A formal objection can be filed only on four enumerated grounds, as described in this module. A formal objection initiates a dispute resolution proceeding. In filing an application for a gTLD, the applicant agrees to accept this gTLD dispute resolution process. Similarly, an objector accepts the gTLD dispute resolution process by filing its objection.

3.1.1 Grounds for Objection

An objection may be filed on any one of the following four grounds:

String Confusion Objection – The applied-for gTLD string is confusingly similar to an existing TLD or to another applied-for gTLD string.

Legal Rights Objection – The applied-for gTLD string infringes existing legal rights of the objector.

Morality and Public Order Objection – The applied-for gTLD string is contrary to generally accepted legal norms of morality and public order that are recognized under international principles of law.

Community Objection – There is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.

The rationales for these grounds are discussed in the final report of the ICANN policy development process for new gTLDs. For more information on this process, see <http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm>.

3.1.2 *Standing to Object*

Objectors must satisfy standing requirements to have their objections considered. As part of the dispute proceedings, all objections will be reviewed by panelists designated by the applicable Dispute Resolution Service Provider (DRSP) to determine whether the objector has standing to object. Standing requirements for the four objection grounds are:

Objection Ground	Who may object
String confusion	Existing TLD operator or gTLD applicant in current round
Legal rights	Rightsholders
Morality and Public Order	To be determined
Community	Established institution

3.1.2.1 *String Confusion Objection*

Two types of entities have standing to object:

- An existing TLD operator may file a string confusion objection to assert string confusion between an applied-for gTLD and the TLD that it currently operates.
- Any gTLD applicant in this application round may also file a string confusion objection to assert string confusion between an applied-for gTLD and the gTLD for which it has applied.

In the case where a gTLD applicant successfully asserts string confusion with another applicant, the only possible outcome is for both applicants to be placed in a contention set and to be referred to a contention resolution procedure (refer to Module 4). If an objection by a gTLD applicant to another gTLD applicant is unsuccessful, the applicants may both move forward in the process without being considered in contention with one another.

3.1.2.2 *Legal Rights Objection*

Only a rightsholder has standing to file a legal rights objection. The source and documentation of the existing legal rights the objector is claiming are infringed by the applied-for gTLD must be included in the filing.

3.1.2.3 *Morality and Public Order Objection*

Standing requirements for morality and public order objections remain under study. In the case of morality and public order objections, it may be appropriate to grant standing only to parties who have recognized authority in the arena of morality or public order, such as governments, or it may be appropriate to make this option available to any interested parties who assert harm due to an applied-for gTLD string.

3.1.2.4 *Community Objection*

Established institutions associated with defined communities are eligible to file a community objection. To qualify for standing for a community objection, the objector must prove both of the following:

It is an established institution – Factors that may be considered in making this determination include:

- Level of global recognition of the institution;
- Length of time the institution has been in existence; and
- Public historical evidence of its existence, such as the presence of formal charter or national or international registration, or validation by a government, inter-governmental organization, or treaty. The institution must not have been established solely in conjunction with the gTLD application process.

It has an ongoing relationship with a defined community that consists of a restricted population – Factors that may be considered in making this determination include:

- The presence of mechanisms for participation in activities, membership, and leadership;
- Institutional purpose related to benefit of the associated community;
- Performance of regular activities that benefit the associated community; and
- The level of formal boundaries around the community.

3.1.3 Options in the Event of Objection

Applicants whose applications are the subject of an objection have the following options:

The applicant can file a response to the objection and enter the dispute resolution process (refer to subsection 3.3); or

The applicant can withdraw, in which case the objector will prevail by default and the application will not proceed further.

If for any reason the applicant does not file a response to an objection, the objector will prevail by default.

3.2 Procedure for Filing an Objection

To trigger a dispute resolution proceeding, an objection must be filed by the posted deadline date. Objections must be filed directly with the appropriate DRSP for each objection ground.

The **International Centre for Dispute Resolution** has agreed in principle to administer disputes brought pursuant to string confusion objections.

The **Arbitration and Mediation Center of the World Intellectual Property Organization** has agreed in principle to administer disputes brought pursuant to legal rights objections.

The **International Chamber of Commerce** has agreed in principle to administer disputes brought pursuant to Morality and Public Order and Community Objections.

3.2.1 Objection Filing Procedures

The procedures outlined in this subsection must be followed by any party wishing to file a formal objection to an application that has been posted by ICANN. These procedures are provided to applicants for reference and are intended to cover dispute resolution procedures generally. Each provider has its own rules and procedures that also must be followed when filing an objection.

Should an applicant wish to file a formal objection to another gTLD application, it would follow these procedures.

- All objections must be filed by the posted deadline date. Objections will not be accepted by the DRSPs after this date.

- All objections must be filed in English.
- Each objection must be filed separately. That is, if any objector wishes to object to several applications at the same time, the objector must file an objection and pay a filing fee for each application that is the subject of an objection. If an objector wishes to object to one application on different grounds, the objector must file an objection and pay a filing fee for each objection ground.
- All objections must be filed with the appropriate DRSP. If an objection is filed with a DRSP other than the DRSP specified for the objection ground, that DRSP will promptly notify the objector of the error. The objector then has 5 calendar days after receiving that notification to file its objection with the appropriate DRSP.
- Objections must be filed electronically and all interactions with the DRSPs during the objection process must be conducted online.

Each objection filed by an objector must include:

- The name and contact information, including address, phone, and email address, of all parties submitting an objection.
- The basis for standing; that is, why the objector believes it has the right to object.
- A statement of the nature of the dispute, which should include:
 - A statement giving the specific ground under which the objection is being filed.
 - A detailed explanation of how the objector's claim meets the requirements for filing a claim pursuant to that particular ground or standard.
 - A detailed explanation of the validity of the objection and why the application should be denied.
- Copies of any documents that the objector considers to be a basis for the objection.

Objections are limited to 2500 words, excluding attachments.

The DRSP will use electronic means to deliver copies of all materials filed to the applicant and to all objectors.

Each applicant and all objectors must provide copies of all submissions to the DRSP associated with the objection proceedings to one another, and to ICANN.

ICANN will publish a document on its website identifying all objections shortly after the deadline for filing objections has passed (refer to Item 1 above). Objections will not be published before that deadline.

3.2.2 Objection Filing Fees

At the time an objection is filed, the objector is required to pay a nonrefundable filing fee in the amount set and published by the relevant DRSP. If the filing fee is not paid, the DRSP will dismiss the objection without prejudice. See Section 1.5 of Module 1 regarding fees.

3.3 Filing a Response to an Objection

3.3.1 Filing Procedures

These procedures are intended to cover dispute resolution procedures generally. Each DRSP will have its own rules that also must be followed.

Upon notification that ICANN has published the list of objections filed (refer to subsection 3.2.1), the DRSPs will notify the parties that responses must be filed within 30 calendar days of receipt of that notice. DRSPs will not accept late responses. Any applicant that fails to respond to an objection within the 30-day response period will be in default, which will result in the objector prevailing.

- All responses must be filed in English.
- Each response must be filed separately. That is, if an applicant wishes to respond to several objections, the applicant must file a response and pay a filing fee to respond to each objection.
- All responses must be filed with the appropriate DRSP. If a response is filed with a DRSP other than the DRSP specified for the objection ground, that DRSP will promptly notify the applicant of the error. The applicant then has 5 calendar days after receiving the notification to file its objection with the appropriate DRSP.

- Responses must be filed electronically and all interactions with the DRSPs during the dispute resolution process must be conducted online.
- Each response filed by an applicant must include the name and contact information, including address, phone, and email address, of all parties submitting the response.
- Each responding applicant's response must contain a point-by-point confirmation or denial of the claims made by each objector. The applicant also should attach any copies of documents that it considers to be a basis for the response.
- Responses are limited to 2500, excluding attachments.
- The DRSP will use electronic means to deliver copies of all materials filed to the applicant and to all objectors.
- Each applicant and all objectors must provide copies of all submissions to the DRSP associated with the objection proceedings to one another and to ICANN.

3.3.2 Response Filing Fees

At the time an applicant files its response, it is required to pay a nonrefundable filing fee in the amount set and published by the relevant DRSP, which will be the same as the filing fee paid by the objector. If the filing fee is not paid, the response will be disregarded.

3.4 Dispute Resolution Procedure

3.4.1 Preliminary Objection Processing

Each DRSP will conduct an administrative review of each objection for compliance with all procedural rules within 14 calendar days of receiving the objection. Depending on the number of objections received, the DRSP may ask ICANN for a short extension of this deadline.

If the DRSP finds that the objection complies with procedural rules, the objection will be deemed filed, and the proceedings will continue. If the DRSP finds that the objection does not comply with procedural rules, the DRSP will dismiss the objection and close the proceedings without prejudice to the objector's submission of a new objection that complies with procedural rules. The DRSP's review or rejection of the objection will not interrupt the time limit for submitting an objection.

3.4.2 Consolidation of Objections

Once the DRSP receives and processes all objections, at its discretion the DRSP may elect to consolidate certain objections.

An example of circumstances in which consolidation might occur is multiple objections to the same application based on the same ground.

In assessing whether to consolidate objections, the DRSP will weigh the efficiencies in time, money, effort, and consistency that may be gained by consolidation against the prejudice or inconvenience consolidation may cause. The DRSPs will endeavor to have all objections resolved on a similar timeline. It is intended that no sequencing of objections will be established.

New gTLD applicants and objectors also will be permitted to propose consolidation of objections, but it will be at the DRSP's discretion whether to agree to the proposal.

3.4.3 Negotiation and Mediation

The parties to a dispute resolution proceeding are encouraged—but not required—to participate in a cooling off period to determine whether the dispute can be resolved by the parties. Each DRSP has panelists who can be retained as mediators to facilitate this process, should the parties elect to do so, and the DRSPs will communicate with the parties concerning this option and any associated fees.

If a mediator is appointed, that person may not serve on the panel to resolve the objection.

There are no automatic extensions of time associated with any cooling off period. The parties may submit joint requests for extensions of time to the DRSP according to its procedures, and the DRSP or the panel, if appointed, will decide whether to grant the requests, although extensions will be discouraged. The parties must limit their requests for extension to 30 calendar days.

3.4.4 Selection and Number of Panelists

Appropriately qualified panelists will be appointed to each proceeding by the designated DRSP.

Panelists must be independent of the parties to an objection resolution proceeding. Each DRSP will follow its adopted procedures for requiring such independence,

including procedures for challenging and replacing a panelist for lack of independence.

There will be one panelist in proceedings involving a **string confusion objection**.

There will be one panelist with relevant experience in intellectual property rights disputes in proceedings involving an existing **legal rights objection**.

There will be three panelists recognized as eminent jurists of international reputation, in proceedings involving a **morality and public order objection**.

There will be one panelist in proceedings involving a **community objection**.

Neither the panelists, the DRSP, ICANN, nor their respective employees, Board members, or consultants will be liable to any party in any action for damages or injunctive relief for any act or omission in connection with any proceeding under the dispute resolution procedures.

3.4.5 Adjudication

At its discretion, the panel appointed by the DRSP may request further statements or documents from the parties, although such requests will be limited and infrequent.

To keep costs down and limit delays, the panel will discourage and, if practicable, not permit any document production or other discovery-style requests from the parties.

Without its being requested by the parties, the panelists may appoint experts to be paid for by the parties, request live or written witness testimony, or request limited exchange of documents.

Any party may request a hearing; however, it is within the panel's discretion whether to allow such a hearing. The presumption is that the panel will render decisions based on written submissions and without a hearing.

If a request for a hearing is granted, videoconferences are to be used if possible. If not possible, then the DRSP panel will select a place for hearing if the parties cannot agree. The panel will determine whether the hearings are to be public or private. Hearings will last no more than one day, except in the most exceptional circumstances.

Typically, dispute resolution proceedings will be conducted in English, but may be conducted in another language in accordance with the rules of the provider.

3.4.6 *Decision*

The DRSPs' final decisions will be in writing and will include:

- A summary of the dispute and findings; and
- The reasoning upon which the decision is based.

Each DRSP will develop a single format for all final decisions that its panelists render. The DRSP will notify the parties of the decision via email.

ICANN will strongly encourage DRSPs to use reasonable efforts to issue all final decisions within 45 days of the panel appointment date unless, after both parties have completed their initial submissions, the parties jointly request a short postponement of their adjudication date to accommodate negotiation or mediation or to accommodate other aspects of the proceedings, and the panel agrees.

When the panel is composed of three panelists, the decision will be made by a majority of the panelists.

Unless the panel decides otherwise, each DRSP will publish all decisions rendered by its panels in full on its website.

A dispute resolution panel decision will be considered an expert determination, and will be considered by ICANN in making a final decision regarding the success of any application.

3.4.7 *Dispute Resolution Fees*

Before acceptance of objections, each DRSP will publish a schedule of costs for the proceedings that it administers under this procedure. These costs cover the fees and expenses of the members of the panel and the DRSP's administrative costs.

ICANN expects that string confusion and legal rights objection proceedings will involve a fixed amount charged by the panelists while morality and public order and community objection proceedings will involve hourly rates charged by the panelists.

Within 7 business days of constituting the panel, the DRSP will estimate the total costs and request advance payment in full of its costs from both the objector and the applicant.

Each party must make its advance payment within 15 calendar days of receiving the DRSP's request for payment. The respective filing fees paid by the parties will be credited against the amounts due for this advance payment of costs.

The DRSP may revise its estimate of the total costs and request additional advance payments from the parties during the resolution proceedings.

Additional fees may be required in specific circumstances; for example, if the DRSP receives supplemental submissions or elects to hold a hearing.

If an objector fails to pay these costs in advance, the DRSP will dismiss its objection and no fees paid by the objector will be refunded.

If an applicant fails to pay these costs in advance, the DRSP will sustain the objection and no fees paid by the applicant will be refunded.

After the hearing has taken place and the panel renders its decision, the DRSP will refund any costs paid in advance to the prevailing party.

3.5 *Dispute Resolution Principles (Standards)*

Each panel will use appropriate general principles (standards) to evaluate the merits of each objection. The principles for adjudication on each type of objection are specified in the paragraphs that follow. The panel may also refer to other relevant rules of international law in connection with the standards.

The objector bears the burden of proof in each case.

The principles outlined below are subject to evolution based on ongoing consultation with DRSPs, legal experts, and the public.

3.5.1 *String Confusion Objection*

A DRSP panel hearing a string confusion objection will consider whether the applied-for gTLD string is likely to result in string confusion.

String confusion exists where a string so nearly resembles another that it is likely to deceive or cause confusion. For a likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the

average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion.

3.5.2 *Legal Rights Objection*

In interpreting and giving meaning to GNSO Recommendation 3 (“Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law”), a DRSP panel presiding over a legal rights objection will determine whether the potential use of the applied-for TLD by the applicant takes unfair advantage of the distinctive character or the reputation of the objector’s trademark or service mark (“mark”), or unjustifiably impairs the distinctive character or the reputation of the objector’s mark, or otherwise creates an impermissible likelihood of confusion between the applied-for TLD and the objector’s mark, by considering the following non-exclusive factors:

1. Whether the applied-for TLD is identical or similar, including in appearance, phonetic sound or meaning, to the objector’s existing mark.
2. Whether the objector’s acquisition and use of rights in the mark has been bona fide.
3. Whether and to what extent there is recognition in the relevant sector of the public of the sign corresponding to the TLD, as the mark of the objector, of the applicant or of a third party.
4. Applicant’s intent in applying for the TLD, including whether the applicant, at the time of application for the TLD, had knowledge of the objector’s mark, or could not have reasonably been unaware of that mark, and including whether the applicant has engaged in a pattern of conduct whereby it applied for or operates TLDs or registrations in TLDs which are identical or confusingly similar to the marks of others.
5. Whether and to what extent the applicant has used, or has made demonstrable preparations to use, the sign corresponding to the TLD in connection with a bona fide offering of goods or services or a bona fide provision of information in a way that does not interfere with the legitimate exercise by the objector of its mark rights.
6. Whether the applicant has marks or other intellectual property rights in the sign corresponding to the TLD,

and, if so, whether any acquisition of such a right in the sign, and use of the sign, has been bona fide, and whether the purported or likely use of the TLD by the applicant is consistent with such acquisition or use.

7. Whether and to what extent the applicant has been commonly known by the sign corresponding to the TLD, and if so, whether any purported or likely use of the TLD by the applicant is consistent therewith and bona fide.
8. Whether the applicant's intended-use of the TLD would create a likelihood of confusion with the objector's mark as to the source, sponsorship, affiliation, or endorsement of the TLD.

3.5.3 Morality and Public Order Objection

This section is under construction. ICANN expects to implement a standard for morality and public order objections in accordance with international legal principles. Accordingly, ICANN has reviewed legal systems in all ICANN regions. ICANN has also consulted with judges, attorneys, and legal experts in many jurisdictions. The general principles guiding ICANN in the establishment of dispute resolution standards are: (1) everyone has the right to freedom of expression; and (2) such freedom of expression may be subject to certain narrowly interpreted exceptions that are necessary to protect other important rights. See Articles 19 and 20 of the International Covenant on Civil and Political Rights. ICANN continues to address the challenge of identifying standards appropriate for the global namespace.

3.5.4 Community Objection

The four tests described here will enable a DRSP panel to determine whether there is substantial opposition from a significant portion of the community to which the string may be targeted. For an objection to be successful, the objector must prove that:

- The community invoked by the objector is a defined community; and
- Community opposition to the application is substantial; and
- There is a strong association between the community invoked and the applied-for gTLD string; and

- There is a likelihood of detriment to the community named by the objector if the gTLD application is approved.

Each of these tests is described in further detail below.

Community – The objector must prove that the community expressing opposition can be regarded as a well-defined community. A panel could balance a number of factors to determine this, including:

- Level of public recognition of the group as a community at a local and / or global level;
- Level of formal boundaries around the community and what elements are considered to form the community;
- How long the community has been in existence;
- How globally distributed is the community (breadth, level of importance)(this may not apply if the community is territorial); and
- How many people make up the community.

If opposition by a number of people is found, but the group claiming opposition is not determined to be a distinct community, the objection will fail.

Substantial opposition – The objector must prove substantial opposition within the community it has identified. A panel could balance a number of factors to determine whether there is substantial opposition, including:

- Number of expressions of opposition relative to the composition of the community;
- Distribution or diversity among sources of expressions of opposition, including:
 - Regional
 - Subsectors of community
 - Leadership of community
 - Membership of community
- Nature/intensity of opposition; and
- Costs incurred by objector in expressing opposition, including what other channels they have used to convey their opposition.

If some opposition within the community is determined, but it does not meet the standard of substantial opposition, the objection will fail.

Targeting – The objector must prove an association between the applied-for gTLD string and the community expressing opposition. Factors that could be balanced by a panel to determine this include:

- Statements contained in application;
- Other public statements by the applicant;
- Associations by the public.

If opposition by a community is determined, but there is no clear connection between the community and the applied-for gTLD string, the objection will fail.

Detriment – The objector must prove that there is a likelihood of detriment to the rights or legitimate interests of its associated community. Factors that could be used by a panel in making this determination include:

- Damage to the reputation of the community that would result from the applicant's operation of the applied-for gTLD string;
- Evidence that the applicant is not acting or does not intend to act in accordance with the interests of the community;
- Interference with the core activities of the community that would result from the applicant's operation of the applied-for gTLD string; and
- Dependence of the community on the DNS for its core activities.

Defenses – Satisfaction of the standing requirements for filing a Community Objection (refer to paragraph 3.1.2.4) by the applicant is a complete defense to an objection filed on community grounds.

DRAFT - New gTLD Program – Objection and Dispute Resolution

An applicant may face anywhere from zero objections to multiple objections in any of the four areas

Objection filing phase opens

Party with standing files objection directly with DRSP for these grounds:

- **String Confusion**
- **Legal Rights**
- **Morality and Public Order; and/or**
- **Community**

Objector pays filing fee directly to DRSP

Objection filing phase closes

Applicant responds to objection by paying filing fee and responding to claims made by objector

Once the DRSPs receive all objections, at their discretion, the DRSPs may elect to consolidate certain objections if there are multiple objections to the same application based on the same ground

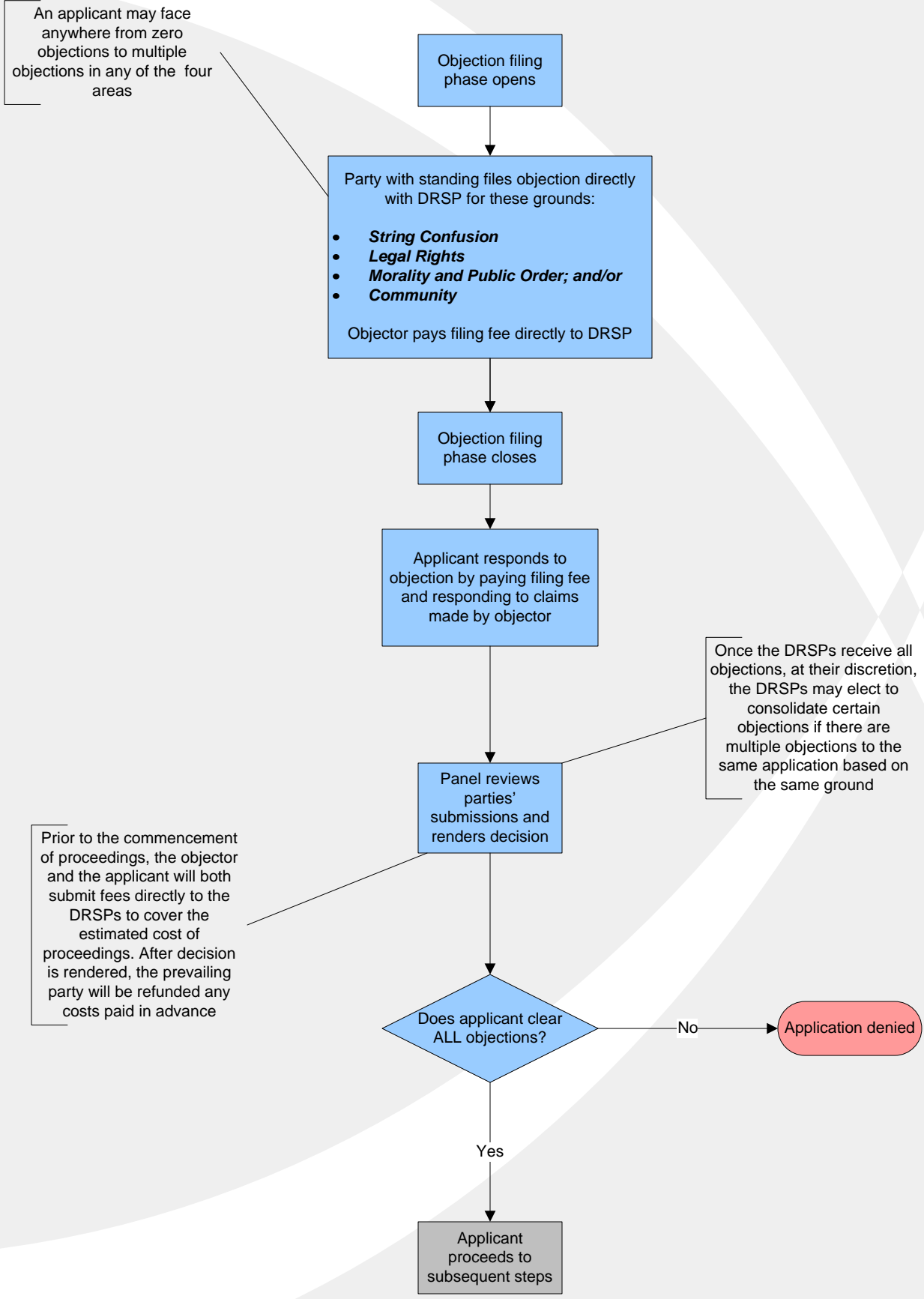
Panel reviews parties' submissions and renders decision

Prior to the commencement of proceedings, the objector and the applicant will both submit fees directly to the DRSPs to cover the estimated cost of proceedings. After decision is rendered, the prevailing party will be refunded any costs paid in advance

Does applicant clear ALL objections?

No → Application denied

Yes → Applicant proceeds to subsequent steps





Draft Applicant Guidebook

Module 4

Please note that this is a discussion draft only. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.

24 October 2008

Module 4

String Contention Procedures

This module describes situations in which contention over applied-for gTLD strings occurs, and the two methods available to applicants for resolving such contention cases.

4.1 String Contention

String contention occurs when either:

1. Two or more applicants for an identical gTLD string successfully complete all previous stages of the evaluation and dispute resolution processes; or
2. Two or more applicants for similar gTLD strings successfully complete all previous stages of the evaluation and dispute resolution processes, and the similarity of the strings is identified as creating a probability of user confusion if more than one of the strings is delegated.

ICANN will not approve applications for proposed gTLD strings that are identical or that would result in string confusion, called contending strings. If either situation 1 or 2 above occurs, such applications will proceed to contention resolution through either comparative evaluation or an efficient mechanism for contention resolution, both of which are described in this module. A group of applications for contending strings is referred to as a contention set.

4.1.1 Identification of Contention Sets

Contention sets are groups of applications containing identical or similar applied-for gTLD strings. (In this RFP, “similar” means strings so similar that it is probable that detrimental user confusion would result if the two similar gTLDs are delegated into the root zone.) Contention sets are identified during Initial Evaluation from review of all applied-for TLD strings by the panel of String Similarity Examiners. ICANN will publish contention sets by the close of the Initial Evaluation period.

Applications for identical gTLD strings will be automatically assigned to a contention set. For example, if Applicant A and Applicant B both apply for .TLDSTRING, they will be

identified as being in a contention set. Such testing for identical strings also takes into consideration the code point variants listed in any relevant language reference table.

The String Similarity Examiners will also review the entire pool of applied-for strings to determine whether the strings proposed in any two or more applications are so similar that they would create a probability of user confusion if allowed to coexist in the DNS. The panel will make such a determination for each pair of applied-for gTLD strings. The outcome of the String Confusion Review described in subsection 2.1.1 is the identification of contention sets among applications that have direct or indirect contention relationships with one another.

Two strings are in **direct contention** if they are identical or so similar that there is a probability of user confusion if both were to be delegated as TLDs in the root zone. More than two applicants might be represented in a direct contention situation: if four different applicants applied for the same gTLD string, they would all be in direct contention with one another.

Two strings are in **indirect contention** if they are both in direct contention with a third string, but not with one another. Direct and indirect contention are explained in greater detail in the example that follows.

In Figure 4-1, Strings A and B are an example of direct contention. Strings C and G are an example of indirect contention. C and G both contend with B, but not with one another. The figure as a whole is one contention set. A contention set consists of all applications that are linked by string contention to one another, directly or indirectly.

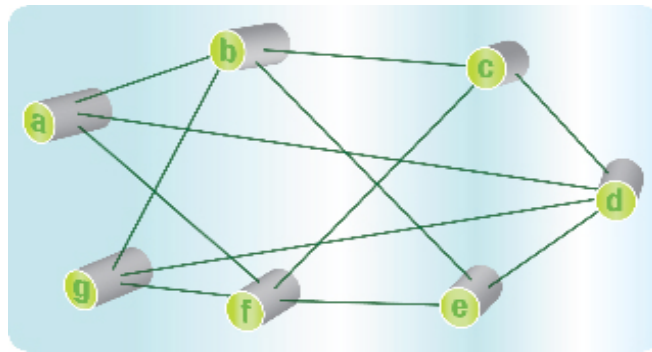


Figure 4-1 – This diagram represents one contention set, featuring both directly and indirectly contending strings.

While contention sets are determined during Initial Evaluation, the final configuration of the contention sets can only be established once the evaluation and dispute resolution process steps have concluded. This is because any application excluded through those steps might modify a contention set identified earlier. A contention set may be split into two sets or it may be eliminated altogether as a result of an Extended Evaluation or dispute resolution proceeding.

Refer to Figure 4-2: In contention set 1, applications D and G are eliminated. Application A is the only remaining application, so there is no contention left to resolve.

In contention set 2, all applications successfully complete Extended Evaluation and Dispute Resolution, so the original contention set remains to be resolved.

In contention set 3, application F is eliminated. Since application F was in direct contention with E and J, but E and J are not in contention with one other, the original contention set splits into two sets: one containing E and K in direct contention, and one containing I and J.

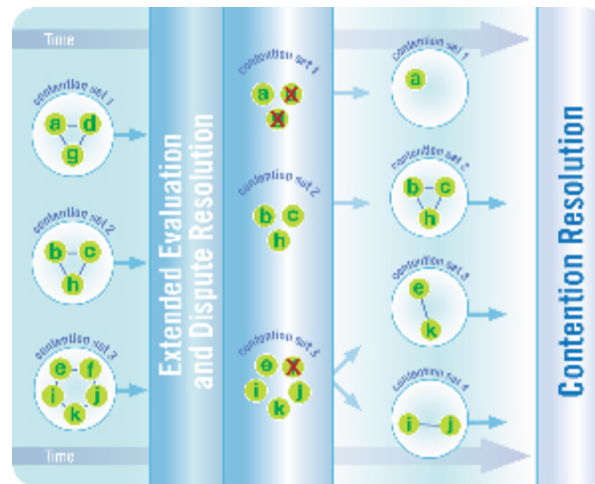


Figure 4-2 – Resolution of string contention cannot begin until all applicants within a contention set have completed all applicable previous stages.

The remaining contention cases must then be resolved through comparative evaluation or an efficient mechanism for contention resolution, depending on the circumstances. In this process, ICANN addresses each contention set to achieve an unambiguous resolution.

In their policy advice, the GNSO called for an efficient process to resolve cases of contention where there was no claim of community representation to be used as a factor for resolving the contention. While not settled, candidate means for this process are discussed below and in more detail in a companion paper to the Draft Applicant Guidebook called “Resolving string contention—a complete lifecycle including string contention resolution.”

4.1.2 *Impact of Dispute Resolution Proceedings on Contention Sets*

If an applicant files a string confusion objection against another applicant (refer to Module 3), and the panel does find that string confusion exists; that is, rules in favor of the objector, the two applicants will be placed in direct contention with each other. Thus, the outcome of a proceeding based on a string confusion objection would result in a new contention set structure for the relevant applications.

4.1.3 Self-Resolution of String Contention

Applicants that are identified as being in contention may elect to reach a settlement or agreement among themselves whereby one or more applicants withdraws its application. This may occur at any stage of the process, once ICANN publicly posts the applications received on its website.

Applicants may not resolve a case of string contention by changing their applications by, for instance, selecting a new TLD string or creating a joint venture as a means to resolve the contention case.

4.1.4 Possible Contention Resolution Outcomes

Any application with no contention situation left to resolve is allowed to proceed to the next step. In some cases, an applicant who is not the outright winner of a string contention resolution process can still proceed. This situation is explained in the following paragraphs.

There may be more than one application that passes contention resolution within a contention set. If the strings within a given contention set are all identical, the applications are in direct contention with each other and there can only be one winner that proceeds to the next step.

However, where there are both direct and indirect contention situations within a set, more than one string may survive the resolution.

For example, if string A is in contention with B, B is in contention with C, but C is not in contention with A. If A wins the contention, B is eliminated but C can go on since C is not in direct contention with the winner and both strings can coexist in the DNS without risk for confusion.

4.2 Comparative Evaluation

Comparative evaluation can begin once all applicants in the contention set have completed all previous stages of the process.

The comparative evaluation is an independent analysis. Scores received in the applicant reviews are not carried forward to the comparative evaluation. Each applicant participating in the comparative evaluation begins with a score of zero.

4.2.1 Eligibility for Comparative Evaluation

As described in subsection 1.2.2 of Module 1, all applicants are required to identify whether their application type is:

- Open; or
- Community-based.

Only community-based applicants may elect a comparative evaluation. ICANN policy states that if there is contention for strings, a claim to support a community by one party will be a reason to award priority to that application. If one community-based applicant within a contention set makes this election, all other community-based applicants in the same contention set will be part of the comparative evaluation.

Applicants designating their applications as community-based will also be asked to respond to a set of questions in the application form that would provide relevant information if a comparative evaluation occurs.

Before the comparative evaluation begins, all community-based applicants in the contention set may be asked to provide additional information relevant to the comparative evaluation. Additionally, the community-based applicants will be required to pay a Comparative Evaluation Fee (refer to Section 1.5 of Module 1) to participate in the comparative evaluation.

4.2.2 Comparative Evaluation Procedure

Comparative evaluations for each contention set will be performed by a comparative evaluation provider appointed by ICANN to review all applications for contending gTLD strings. The panel's charter is to determine whether one of the community-based applications clearly and demonstrably would add more value to the Internet's Domain Name System. Open applicants within the contention set will not participate in the comparative evaluation.

If no single community-based applicant emerges as one that clearly and demonstrably adds more value to the namespace than all the competing contending applications, then all of the parties in the contention set (both open and community-based applicants) will proceed to an alternate mechanism for efficient contention resolution.

4.2.3 Comparative Evaluation Criteria

A panel appointed by the comparative evaluation provider will review and score the one or more community-based applicants who elected comparative evaluation against the criteria in the following table:

Criteria	Score		
	3	2	1
Nexus between Proposed String and Community	String is name or well-known abbreviation of community institution.	String is relevant to applicant's area of interest but also has other well-known associations.	No connection.
Dedicated Registration Policies	Registration eligibility is strictly limited to members of the pre-established community identified in the application. Registration policies also include name selection and use requirements consistent with the articulated scope and community-based nature of the TLD. Proposed policies include specific enforcement measures including investigation practices, penalties, takedown procedures and appeal mechanisms.	Registration eligibility is predominantly available to members of the pre-established community identified in the application, and also permits people or groups informally associated with the community to register. Policies include some elements of the above but one or more elements are missing.	No dedicated registration policies.
Community Establishment	Clearly identified, organized and pre-established community of considerable size and longevity.	The community addressed fulfills some but not all the requirements for a score of 3.	No community addressed.
Community Endorsement	Endorsement by a recognized institution or by member organizations.	Endorsement by some groups with apparent relevance, but also some opposition by groups with apparent relevance.	Assorted endorsements from individuals or groups of unknown relevance – or – no endorsement by any community.

If no applicant scores 11 or more, there is no clear winner. If only one applicant scores 11 or more, that applicant will be declared the winner.

If more than one applicant scores 11 or more, the evaluators will consider what portion of the community is represented by the application. *If one applicant represents*

a much larger share of the relevant community than another, that will be a basis for awarding priority.

Following the comparative evaluation, ICANN will review the results and reconfigure the contention set as needed. The same procedure will occur for remaining contention sets involving any community-based application that has elected comparative evaluation. If no community-based applicant that has elected comparative evaluation is left in the contention set, any applications remaining in contention will proceed to a subsequent contention resolution process. Applications not in contention will proceed toward delegation.

4.3 Efficient Mechanism for Contention Resolution

A tie-breaker mechanism will be developed for resolving string contention among the applicants within a contention set, if the contention has not been resolved by other means. Unless the specific conditions for comparative evaluation outlined in Section 4.2 apply, this mechanism will be used to resolve the contention. This mechanism may also be used if no clear winner is identified during the comparative evaluation process.

The GNSO policy recommendations call for an efficient means of resolution. Continued investigation regarding the availability of alternative methods will guide ICANN's development of this mechanism.

The first efficient means of resolution that will be employed is a settlement arrived at by contending parties. Applicants for identical or similar TLDs can arrive at an accommodation where all in direct contention withdraw except for one. As described earlier, those withdrawing cannot apply for a new string. Nor can contending parties combine to form a new applicant. It is expected that many cases of contention will be resolved in this manner as it will be the most efficient and economical for the contending parties.

Failing to arrive at accommodation of the type described just above, auctions are one means of last resort that is being explored to resolve the contention. The purpose of an auction is to resolve contention in a clear, objective manner.

Auction proceeds – The purpose of an auction is to resolve contention in a clear, objective manner. It is not to raise revenue. While there may be significant proceeds from auctions in the event they occur, it is important to understand that this in no way the purpose of the auction. The annual budget process sets ICANN's funding and spending limits. ICANN has no authorization to spend beyond the budget. ICANN already has precedent of returning revenue to the community when last year and in 2006 ICANN reduced registration fees from 25¢ to 20¢ over two years as a result of an unforeseen growth in revenue. Proceeds from auctions will be reserved until the uses of the proceeds are determined through a community consultation. The proceeds will not go into ICANN's general expense budget but will be separately earmarked for projects or uses identified by the community. This important aspect of the auction process and its result will be an important part of the communications plan for the new gTLD program.

The new gTLD application fee is designed to be cost/revenue neutral. It factors in costs already forgone, future processing costs and legal expenses that are significant and would be a large drain on the Corporation's established budget.

See further details on the exploration of an auction model in the contention lifecycle at <http://www.icann.org/en/topics/string-contention-22oct08.pdf>.

In practice, ICANN expects that most contention cases will be resolved through other means before reaching this stage.

4.4 Contention Resolution and Contract Execution

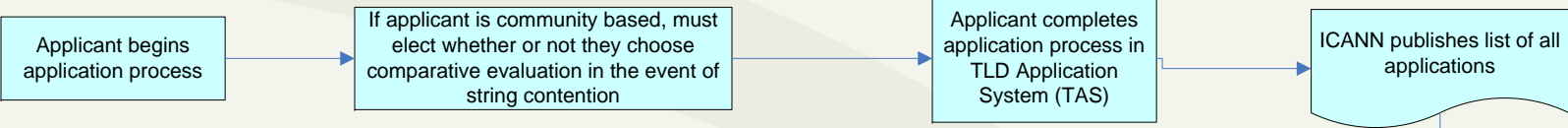
An applicant that has been declared winner of a contention resolution process will proceed by entering into the contract execution phase. (Refer to section 5.1 of Module 5.)

If the winner of the contention resolution has not executed a contract within 90 days of the decision, ICANN has the right to extend an offer to the runner-up applicant to proceed with its application. For example, in a comparative evaluation, the applicant with the second-

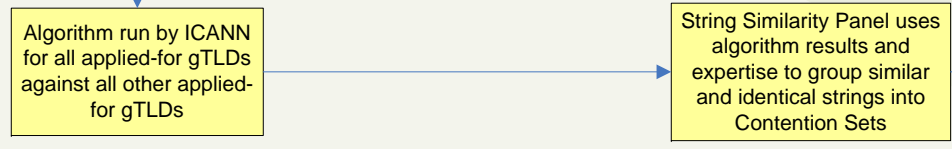
highest score (if equal to or greater than eleven, might be selected to go on to the next step, delegation. (Refer to Module 5.) Similarly, in an efficient mechanism for contention resolution, another applicant who would be considered the runner-up applicant might proceed to the delegation step. This offer is at ICANN's option only. The runner-up applicant in a contention resolution process has no automatic right to an applied-for gTLD string if the first place winner does not execute a contract within a specified time.



Application/
Admin Check



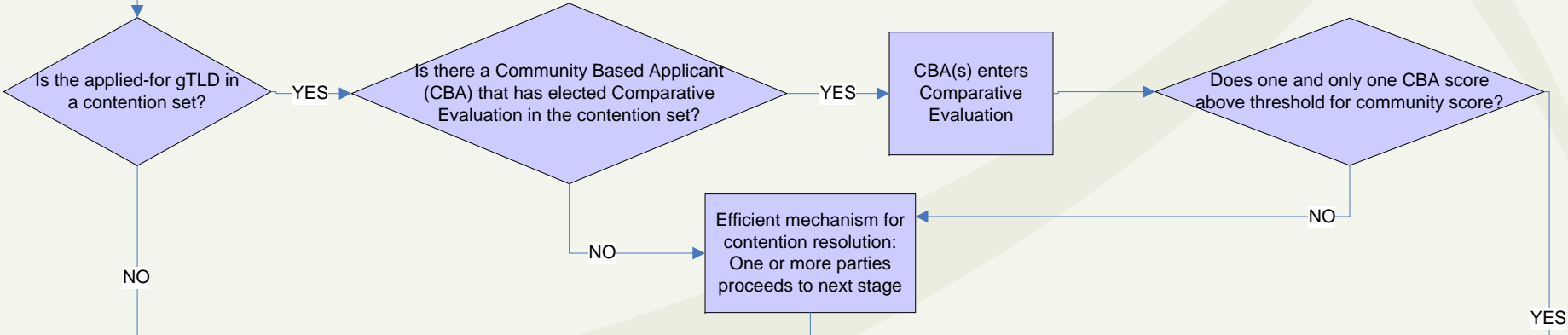
Initial Evaluation (IE)
String Review



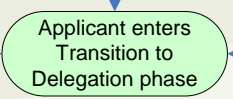
IE + EE
+ Dispute Res

IE, Extended Evaluation (EE), and Dispute Resolution continue. Some applications may not pass certain elements of the review process, **which may alter the contention sets.**

String Contention



Transition to
Delegation





Draft Applicant Guidebook

Module 5

Please note that this is a discussion draft only. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.

24 October 2008

Module 5

Transition to Delegation

This module describes the final steps required of an applicant, including execution of a registry agreement with ICANN and preparing for delegation of the new gTLD string into the root zone.

5.1 Registry Agreement

All applicants that have successfully completed the evaluation process—including, if necessary, the dispute resolution and string contention processes—are required to enter into a registry agreement with ICANN in order to proceed to delegation.

It is important to note that the agreement referred to below does not constitute a formal position by ICANN and has not been approved by the ICANN Board of Directors. The agreement is set out here for review and community discussion purposes and as a means to improve the effectiveness of the agreement in providing for increased competition and choice for consumers in a stable, secure DNS.

The contract terms can be reviewed at <http://www.icann.org/en/topics/new-gtld-draft-agreement-24oct08-en.pdf>. All successful applicants are expected to enter into the agreement substantially as written. The terms of the contract and, in particular, differences with existing registry agreements are explained in a companion paper to the agreement, *Summary of Changes to Base Agreement for New gTLDs*, <http://www.icann.org/en/topics/new-gtld-draft-summary-changes-24oct08-en.pdf>.

After an applicant has successfully completed the application process, ICANN may conduct a pre-contract review. To ensure that an applicant continues to be a going concern in good legal standing, ICANN reserves the right to ask the applicant to submit updated documentation and information before entering into the registry agreement.

If at any time during the evaluation process information previously submitted by an applicant becomes untrue or

inaccurate, the applicant must promptly notify ICANN and submit updated information. This includes applicant-specific information such as changes in financial position and changes in ownership or control of the applicant.

5.2 Pre-Delegation Testing

Following completion of the Board review, each applicant will be required to complete pre-delegation steps as a prerequisite to entering the IANA process for delegation into the root zone. The pre-delegation check must be completed within the time period specified in the registry agreement.

5.2.1 Technical Testing

The purpose of the pre-delegation technical test is to verify the applicant has met its commitment to establish registry operations in accordance with the technical and operational criteria described, along with the applicant questions. (Refer to Module 2.) The checks are also intended to ensure that the applicant can operate the gTLD in a stable and secure manner. All applicants will be tested on a pass/fail basis according to the questions and criteria that follow.

Question	Criteria
1 IDN (variant) tables	
If applicant will be supporting IDNs, was the IDN table attached to the application when originally submitted and does it fulfill IDN and IANA guidelines and requirements?	IDN tables must be developed and provided by the IDN string applicant at the time the application was submitted. The table must fulfill the requirements from the IDN Guidelines as well as the IANA repository requirements in order to be considered valid (see http://iana.org/procedures/idn-repository.html).
2 DNSSEC keys, materials	
If DNSSEC is offered as part of registry services at time of application, can applicant comply with requirements?	Trust anchor for the registry will be published in the IANA Interim Trust Anchor Repository. Validity will be determined by verifying that DNS resolvers that support DNSSEC can successfully retrieve and DNSSEC validate information from that zone when configured with the published trust anchor for the zone.
3 Architecture load requirements	
Has the applicant implemented a network architecture necessary to support load characteristics, as outlined in its application?	Applicant will self-certify adherence to this requirement and provide materials to ICANN that demonstrate adherence. Examples of self-certification documents include but are not limited to a network/system diagram of the as-built network system (demonstrating correspondence to documentation in initial application), results of load testing performed by the applicant, and actual performance of the configuration in use for other registries. At ICANN's discretion, aspects of this self-certification documentation can be audited on-site at the services delivery point of the registry.

Question	Criteria
4 IPv6 for registrants	
Does registry support provisioning of IPv6 services for its registrants?	Registry must support provisioning of IPv6 services on behalf of its registrants. This means that registrar systems will allow entry of IPv6 addresses in all relevant address fields, that the SRS system is set up to support the communication of IPv6 addresses, and that registry name servers can be provisioned with IPv6 addresses. Applicant will demonstrate successful provisioning of a test account with IPv6 name server entries.
5 IPv6 reachability	<i>Note: This requirement is under consideration and the community is urged to provide feedback on this requirement.</i>
Does registry support access to DNS servers over an IPv6 network?	IANA currently has a minimum set of technical requirements for IPv4 name service. These include two nameservers separated by geography and by network topology, which each serve a consistent set of data, and are reachable from multiple locations across the globe. The registry will meet this same criterion for IPv6, requiring IPv6 transport to their network. Applicant will identify IPv6-reachable name servers that meet these requirements, and reachability will be verified by ICANN.
6 Escrow deposit sample	
Has the applicant demonstrated the ability to conform to registry escrow requirements? See http://www.icann.org/en/topics/new-gtld-draft-escrow-spec-24oct-08-en.pdf .	The applicant will provide a conforming sample of a dummy data deposit showing correct type and formatting of content. The applicant will also provide evidence of an agreement with an escrow provider complying with Part B of the Data Escrow Requirements.
7 System monitoring	
Has the applicant implemented the system monitoring described by the applicant in the initial application?	Applicant will self-certify adherence to this requirement and provide materials to ICANN that demonstrate adherence. Examples of self-certification documents include but are not limited to: diagrams of monitoring systems (demonstrating correspondence to documentation provided in the application), output of periodic monitoring runs performed by the applicant demonstrating capability claimed in the application, and actual performance of this monitoring set up in use for other registries. At ICANN's discretion, aspects of this self-certification documentation can be audited on-site at the services delivery point of the registry.
8 Registry continuity planning	
Has applicant demonstrated capability to comply with ICANN's Registry Continuity Plan? See http://www.icann.org/registries/failover/icann-registry-failover-plan-15jul08.pdf	Applicant will self-certify adherence to this requirement and provide materials to ICANN that demonstrate adherence. Examples include identification of appropriate contact points and evidence of the registry's own continuity plan, and identification of a registry services continuity provider.
9 System performance requirements	
Has applicant demonstrated capability to comply with the performance specifications? See http://www.icann.org/en/topics/new-gtld-draft-performance-spec-24oct08-en.pdf	Applicant will self-certify adherence to this requirement and provide materials to ICANN that demonstrate adherence. Examples of self-certification documents include but are not limited to performance and availability results that demonstrate DNS availability at stated levels for at least one month, and Whois service availability for at least one month. At ICANN's discretion, aspects of this self-certification documentation can be audited on-site at the services delivery point of the registry.

5.2.2 Additional Requirements

At the pre-delegation stage, an applicant must also provide documentary evidence of its ability to fund ongoing basic registry operations for then-existing registrants for a period of three to five years in the event of registry failure, default or until a successor operator can be designated. This obligation can be met by securing a financial instrument such as a bond or letter of credit (i.e., evidence of ability to provide financial security guaranteed by a creditworthy financial institution); contracting with and funding a services provider to extend services; segregating funding; or other means.

Once an applicant has met the requirements in 5.2.1 and 5.2.2 above, it is eligible to proceed to delegation of its applied-for gTLD string by IANA.

If an applicant does not complete the pre-delegation steps within the time period specified in the registry agreement, ICANN reserves the right to terminate the registry agreement.

5.3 IANA Delegation Process

Upon notice of successful completion of the ICANN pre-delegation testing, applicants may initiate the process for delegation of the new gTLD into the root zone database. Information about the delegation process is available at <http://iana.org/domains/root/>.

5.4 Ongoing Operations

ICANN will continue to provide support for gTLD registry operators as they launch and maintain registry operations. ICANN's gTLD registry liaison function provides a point of contact for gTLD registry operators for assistance on a continuing basis.

The registry agreement contains a provision for ICANN to perform audits to ensure that the registry operators remain in compliance with agreement obligations.



Draft Applicant Guidebook

Module 6

Please note that this is a discussion draft only. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.

24 October 2008

Module 6

Top-Level Domain Application - Terms and Conditions

By submitting this application through ICANN's online interface for a generic Top Level Domain (gTLD) (this application), applicant (including all parent companies, subsidiaries, affiliates, agents, contractors, employees and any and all others acting on its behalf) agrees to the following terms and conditions (these terms and conditions) without modification. Applicant understands and agrees that these terms and conditions are binding on applicant and are a material part of this application.

1. Applicant warrants that the statements and representations contained in the application (including any documents submitted and oral statements made in connection with the application) are true and accurate and complete in all material respects, and that ICANN may rely on those statements and representations fully in evaluating this application. Applicant acknowledges that any material misstatement or misrepresentation (or omission of material information) will reflect negatively on this application and may cause ICANN and the evaluators to reject the application.
2. Applicant warrants that it has the requisite organizational power and authority to make this application on behalf of applicant, and is able to make all agreements, representations, waivers, and understandings stated in these terms and conditions and to enter into the form of registry agreement as posted with these terms and conditions.
3. Applicant acknowledges and agrees that ICANN has the right to reject any and all applications for new gTLDs, and that there is no assurance that any additional gTLDs will be created. The decision to proceed with review and consideration of an application to establish one or more gTLDs is entirely at ICANN's discretion. ICANN reserves the right to reject any application that ICANN is prohibited from considering for a gTLD under applicable law or policy, in which case any fees submitted in connection with such application will be returned to the applicant.

4. Applicant agrees to pay all fees that are associated with this application. These fees include the evaluation fee (which is to be paid in conjunction with the submission of this application), and any fees associated with the progress of the application to the extended evaluation stages of the review and consideration process with respect to the application, including any and all fees as may be required in conjunction with the dispute resolution process as set forth in the application. Applicant acknowledges that the initial fee due upon submission of the application is only to obtain consideration of an application. ICANN makes no assurances that an application will be approved or will result in the delegation of a gTLD proposed in an application. Applicant acknowledges that if it fails to pay fees within the designated time period at any stage of the application review and consideration process, applicant will forfeit any fees paid up to that point and the application will be cancelled.
5. Applicant shall indemnify, defend, and hold harmless ICANN (including its affiliates, subsidiaries, directors, officers, employees, consultants, evaluators, and agents, collectively the ICANN Affiliated Parties) from and against any and all third-party claims, damages, liabilities, costs, and expenses, including legal fees and expenses, arising out of or relating to: (a) ICANN's consideration of the application, and any approval or rejection of the application; and/or (b) ICANN's reliance on information provided by applicant in the application.
6. Applicant hereby releases ICANN and the ICANN Affiliated Parties from any and all claims by applicant that arise out of, are based upon, or are in any way related to, any action, or failure to act, by ICANN or any ICANN Affiliated Party in connection with ICANN's review of this application, investigation or verification, any characterization or description of applicant or the information in this application, or the decision by ICANN to recommend, or not to recommend, the approval of applicant's gTLD application. APPLICANT AGREES NOT TO CHALLENGE, IN COURT OR IN ANY OTHER JUDICIAL FORA, ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION, AND IRREVOCABLY WAIVES ANY RIGHT TO SUE OR PROCEED ON THE BASIS OF ANY OTHER LEGAL CLAIM AGAINST ICANN AND ICANN AFFILIATED PARTIES WITH RESPECT TO THE APPLICATION. APPLICANT ACKNOWLEDGES AND



ACCEPTS THAT APPLICANT'S NONENTITLEMENT TO PURSUE ANY RIGHTS, REMEDIES, OR LEGAL CLAIMS AGAINST ICANN OR THE ICANN AFFILIATED PARTIES WITH RESPECT TO THE APPLICATION SHALL MEAN THAT APPLICANT WILL FOREGO ANY RECOVERY OF ANY APPLICATION FEES, MONIES INVESTED IN BUSINESS INFRASTRUCTURE OR OTHER START-UP COSTS AND ANY AND ALL PROFITS THAT APPLICANT MAY EXPECT TO REALIZE FROM THE OPERATION OF A REGISTRY FOR THE TLD.

7. Applicant hereby authorizes ICANN to publish on ICANN's website, and to disclose or publicize in any other manner, any materials submitted to, or obtained or generated by, ICANN and the ICANN Affiliated Parties in connection with the application, including evaluations, analyses and any other materials prepared in connection with the evaluation of the application; provided, however, that information will not be published to the extent that the application specifically identifies such information as confidential. A general statement as the confidentiality of the application will not be sufficient for these purposes. Except for information that ICANN determines to treat as confidential, applicant understands and acknowledges that ICANN does not and will not keep the remaining portion of the application or materials submitted with the application confidential.
8. Applicant certifies that it has obtained permission for the posting of any personally identifying information included in this application or materials submitted with this application. Applicant acknowledges that the information that ICANN posts may remain in the public domain in perpetuity, at ICANN's discretion.
9. Applicant gives ICANN permission to use applicant's name and/or logo in ICANN's public announcements (including informational web pages) relating to top-level domain space expansion.
10. Applicant understands and agrees that it will acquire rights in connection with a gTLD only in the event that it enters into a registry agreement with ICANN, and that applicant's rights in connection with such gTLD will be limited to those expressly stated in the registry agreement. In the event ICANN agrees to recommend the approval of the application for applicant's proposed gTLD, applicant agrees to enter into the registry agreement with ICANN in the form published in

connection with the application materials. Applicant may not resell, assign, or transfer any of applicant's rights or obligations in connection with the application.

11. Applicant authorizes ICANN to:
 - a. Contact any person, group, or entity to request, obtain, and discuss any documentation or other information that, in ICANN's sole judgment, may be pertinent to the application;
 - b. Consult with persons of ICANN's choosing regarding the information in the application or otherwise coming into ICANN's possession.
12. For the convenience of applicants around the world, the application materials published by ICANN in the English language have been translated into certain other languages frequently used around the world. applicant recognizes that the English language version of the application materials (of which these terms and conditions is a part) is the version that binds the parties, that such translations are non-official interpretations and may not be relied upon as accurate in all respects, and that in the event of any conflict between the translated versions of the application materials and the English language version, the English language version controls.

Glossary

Terms Applicable to this RFP and to the New gTLD Application Process

A-Label	The ASCII-Compatible Encoding (ACE) form of an IDNA-valid string.
Applicant	An entity that has applied to ICANN for a new gTLD by submitting its application form through the online application system.
Application	An application for a new gTLD lodged in response to this RFP. An application includes the completed Application Form any supporting documents, and any other information that may be submitted by the applicant at ICANN's request.
Application form	The set of questions to which applicants provide responses, as at http://www.icann.org/en/topics/new-gtld-draft-evaluation-criteria-24oct08-en.pdf .
Application interface	The web-based interface operated by ICANN, available at [URL to be inserted in final version of RFP]
Application round	The complete succession of stages for processing the applications received during one application submission period for gTLDs. This RFP is for one application round. Any subsequent application rounds will be the subject of subsequent RFPs.
Application submission period	The period during which applicants may submit applications through the application interface.
Applied for gTLD string	A gTLD string that is subject of an application.
American Standard Code for Information Interchange (ASCII)	A character encoding based on the English alphabet. ASCII codes represent text in computers, communications equipment, and other devices that work with text. Most modern character encodings—which support many more characters than did the original—have a historical basis in ASCII.
AXFR	Asynchronous full transfer, a DNS protocol mechanism through which a DNS zone can be replicated to a remote DNS server.
Business ID	A number such as a federal tax ID number or employer information number.

ccTLD	Two-letter top-level domains corresponding with the ISO 3166-1 country code list. See http://iana.org/domains/root/db/ .
Community-based TLD	A community-based gTLD is a gTLD that is operated for the benefit of a defined community consisting of a restricted population. An applicant designating its application as community-based must be prepared to substantiate its status as representative of the community it names in the application
Community objection	An objection based on the grounds that there is substantial opposition to a gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.
Comparative evaluation	A process to resolve string contention, which may be elected by a community-based applicant.
Consensus policy	A policy created through the GNSO policy development process listed in Annex A of the ICANN Bylaws. See http://www.icann.org/en/general/bylaws.htm#AnnexA . A list of current consensus policies is available at http://www.icann.org/en/general/consensus-policies.htm .
Contention sets	A group of applications containing identical or similar applied-for gTLD strings.
Country-code TLD	See ccTLD.
Delegation	The process through which the root zone is edited to include a new TLD, and the management of domain name registrations under such TLD is turned over to the registry operator.
Digit	Any digit between "0" and "9" (Unicode code points U+0030 to U+0039).
Dispute Resolution Service Provider (DRSP)	An entity engaged by ICANN to adjudicate dispute resolution proceedings in response to formally filed objections.
Domain name	A name consisting of two or more (for example, john.smith.name) levels, maintained in a registry database.
Domain Name System Security Extensions (DNSSEC)	DNSSEC secures domain name look-ups on the Internet by incorporating a chain of digital signatures into the DNS hierarchy.
Existing TLD	A string included on the list at http://iana.org/domains/root/db

Extended Evaluation	The second stage of evaluation applicable for applications that do not pass the Initial Evaluation, but are eligible for further review.
Extended Evaluation period	The period that may follow the Initial Evaluation period, for eligible applications which do not pass the Initial Evaluation.
Evaluator	The individuals or organization(s) appointed by ICANN to perform review tasks within Initial Evaluation and Extended Evaluation under ICANN direction
Evaluation fee	The fee due from each applicant to obtain consideration of its application.
Geographical Names Panel (GNP)	A panel of experts charged by ICANN with reviewing applied-for TLD strings that relate to geographical names.
Generic Names Supporting Organization (GNSO)	ICANN's policy-development body for generic TLDs and the lead in developing the policy recommendations for the introduction of new gTLDs.
Generic top-level domain gTLD	See gTLD A TLD with three or more characters that does not correspond to any country code.
Hyphen	The hyphen "-" (Unicode code point U+0029).
Internet Assigned Numbers Authority (IANA)	IANA is the authority originally responsible for overseeing IP address allocation, coordinating the assignment of protocol parameters provided for in Internet technical standards, and managing the DNS, including delegating top-level domains and overseeing the root name server system. Under ICANN, IANA distributes addresses to the Regional Internet Registries, coordinate with the IETF and other technical bodies to assign protocol parameters, and oversees DNS operation.
ICANN	Internet Corporation for Assigned Names and Numbers
ICANN-accredited registrar	A company that registers domain names for Internet users. There are more than 900 ICANN-accredited registrars who provide domains to Internet users. The list of ICANN-accredited registrars is available at http://www.icann.org/en/registrars/accredited-list.html
Internationalized Domain Name (IDN)	A domain name including at least one character other than those in letters (a,...,z), digits (0,...,9) and the hyphen (-).
Internationalizing Domain Names in Applications (IDNA)	The technical protocol used for processing domain names containing non-ASCII characters in the DNS.

IDN ccTLD Fast Track	The process for introducing a limited number of IDN ccTLDs associated with the ISO-3166 two-letter codes. See http://www.icann.org/en/topics/idn/fast-track/ .
IDN table	A table listing all those characters that a particular TLD registry supports. If one or more of these characters are considered a variant this is indicated next to that/those characters. It is also indicated which character a particular character is a variant to. The IDN tables usually hold characters representing a specific language, or they can be characters from a specific script. Therefore the IDN table is sometimes referred to as "language variant table", "language table", "script table" or something similar.
IGO	Inter-governmental organization.
Internet Engineering Task Force (IETF)	The IETF is a large, open international community of network designers, operators, vendors, and researchers concerned with the evolution of the Internet architecture and the smooth operation of the Internet.
Initial Evaluation period	The period during which ICANN will review an applied-for gTLD string, an applicant's technical and financial capabilities, and an applicant's proposed registry services.
International Phonetic Alphabet	A notational standard for phonetic representation in multiple languages. See http://www.arts.gla.ac.uk/IPA/IPA_chart_(C)2005.pdf .
IXFR	Incremental Zone Transfer, a DNS protocol mechanism through which a partial copy of a DNS zone can be replicated to a remote DNS server.
LDH (Letter Digit Hyphen)	The hostname convention defined in RFC 952, as modified by RFC 1123.
Legal Rights objection	An objection on the grounds that the applied-for gTLD string infringes existing legal rights of the objector.
Letter	Any character between "a" and "z" (in either case) (Unicode code points U+0061 to U+007A or U+0041 to U+005A).
LLC	Limited liability corporation.
Morality and public order objection	An objection made on the grounds that the applied-for gTLD string is contrary to generally accepted legal norms of morality and public order that are recognized under international principles of law.
Objection	A formal objection filed with a Dispute Resolution Service Provider in accordance with that provider's procedures.
Objection filing period	The period during which formal objections may be filed

	concerning a gTLD application submitted to ICANN
Objector	One or more persons or entities that have filed a formal objection against a new gTLD application with the appropriate DRSP.
Open TLD	An open TLD can be used for any purpose consistent with the requirements of the application and evaluation criteria, and with the registry agreement. An open TLD may or may not have a formal relationship with an exclusive registrant or user population. It may or may not employ eligibility or use restrictions.
Pre-delegation test	A technical test and other steps required of applicants before delegation of the applied-for gTLD string into the root zone.
Primary contact	The person named by the applicant as the main contact for the application, and having authority to execute decisions concerning the application.
Principal place of business	The location of the head office of a business or organization.
Registrar	See ICANN-accredited registrar.
Registry	A registry is the authoritative, master database of all domain names registered in each top-level domain. The registry operator keeps the master database and also generates the zone file that allows computers to route Internet traffic to and from top-level domains anywhere in the world.
Registry Agreement	The agreement executed between ICANN and successful gTLD applicants, which appears in draft form at http://www.icann.org/en/topics/new-gtld-draft-agreement-24oct08-en.pdf .
Registry operator	The entity entering into the Registry Agreement with ICANN, responsible for setting up and maintaining the operation of the registry.
Registry services	(1) Operations of the registry critical to the following tasks: (i) the receipt of data from registrars concerning registrations of domain names and name servers; (ii) provision to registrars of status information relating to the zone servers for the TLD; (iii) dissemination of TLD zone files; (iv) operation of the registry zone servers; and (v) dissemination of contact and other information concerning domain name server registrations in the TLD as required by the registry agreement; and (2) other products or services that the registry operator is required to provide because of the establishment of a consensus policy; and (3) any other products or services that only a registry operator is capable of providing, by reason of its

	designation as the registry operator.
Registry Services Technical Evaluation Panel (RSTEP)	The Registry Services Technical Evaluation Panel is a group of experts in the design, management, and implementation of the complex systems and standards-protocols used in the Internet infrastructure and DNS. RSTEP members are selected by its chair. All RSTEP members and the chair have executed an agreement requiring that they consider the issues before the panel neutrally and according to the definitions of security and stability.
Reserved Name	A string included on the Top-Level Reserved Names List (Refer to paragraph 2.1.1.2 of Module 2.)
Request for Comments (RFC)	The RFC document series is the official publication channel for Internet standards documents and other publications of the IESG, IAB, and Internet community.
Rightsholder	The person or entity that maintains a set of rights to a certain piece of property.
Root Zone	The root zone database represents the delegation details of top-level domains, including gTLDs and country-code TLDs. As manager of the DNS root zone, IANA is responsible for coordinating these delegations in accordance with its policies and procedures.
Round	See application round.
Script	<p>A collection of symbols used for writing a language. There are three basic kinds of script. One is the alphabetic (e.g. Arabic, Cyrillic, Latin), with individual elements termed "letters". A second is ideographic (e.g. Chinese), the elements of which are "ideographs". The third is termed a syllabary (e.g. Hangul), with its individual elements represent syllables. The writing systems of most languages use only one script but there are exceptions such as for example, Japanese, which uses four different scripts, representing all three of the categories listed here.</p> <p>It is important to note that scripts which do not appear in the Unicode Code Chart are completely unavailable for inclusion in IDNs.</p>
Security	In relation to a proposed registry service, an effect on security by the proposed Registry Service means (1) unauthorized disclosure, alteration, insertion, or destruction of registry data, or (2) unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with all applicable standards.
Shared Registry System (SRS)	A system that allows multiple registrars to make changes

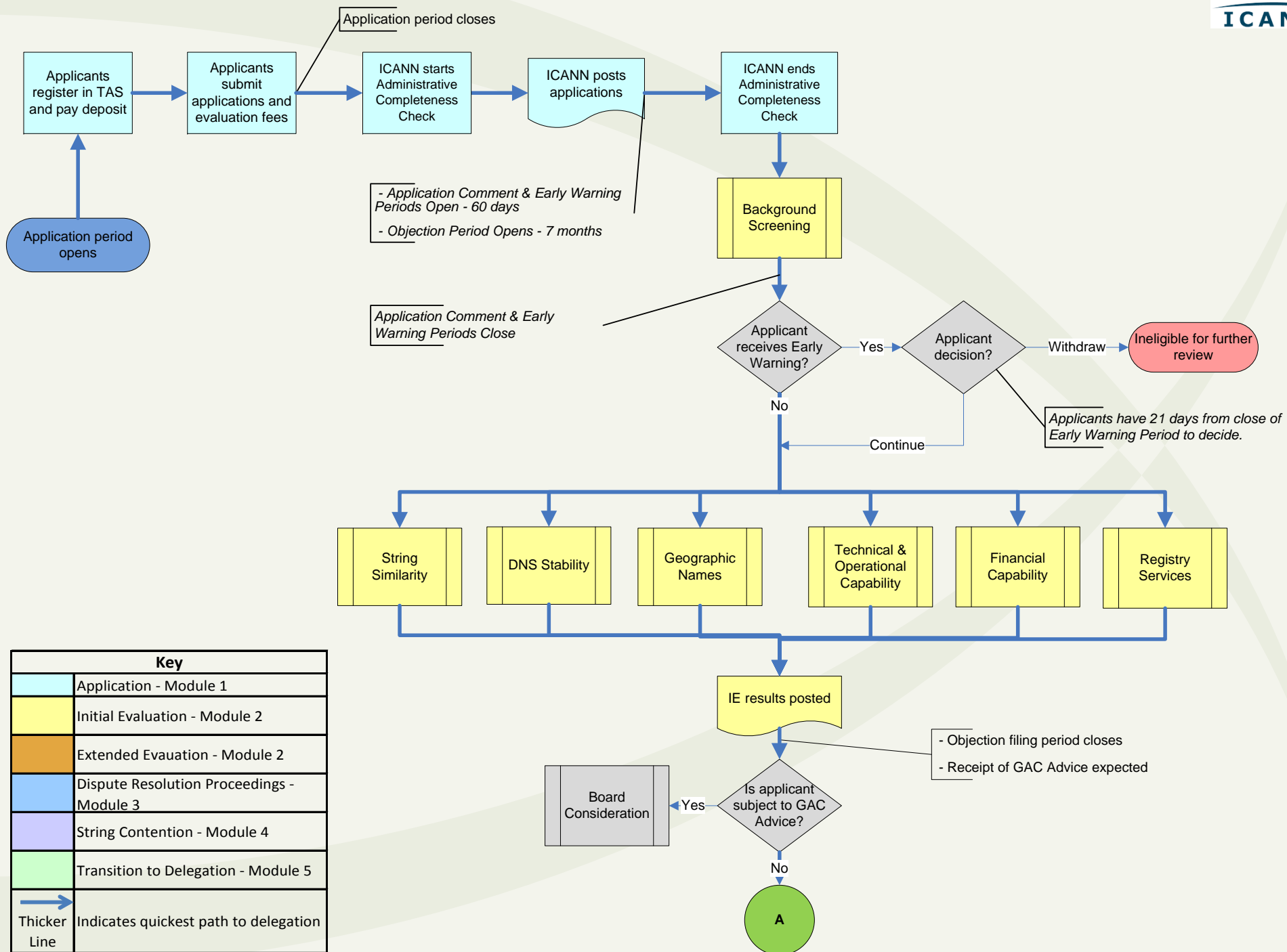
	to a registry simultaneously.
Stability	In relation to a proposed registry service, an effect on stability means that the proposed registry service (1) does not comply with applicable relevant standards that are authoritative and published by a well-established, recognized, and authoritative standards body, such as relevant standards-track or best current practice RFCs sponsored by the IETF; or (2) creates a condition that adversely affects the throughput, response time, consistency, or coherence of responses to Internet servers or end systems, operating in accordance with applicable relevant standards that are authoritative and published by a well-established, recognized and authoritative standards body, such as relevant standards-track or best current practice RFCs and relying on registry operator's delegation information or provisioning services.
String	The string of characters comprising an applied-for gTLD.
String confusion objection	An objection filed on the grounds that the applied-for gTLD string is confusingly similar to an existing TLD or to another applied-for gTLD.
String Similarity Algorithm	An algorithmic tool used to identify applied-for gTLD strings that may result in string confusion.
String Similarity Examiners	A panel charged with identifying applied-for gTLD strings that may result in string confusion.
String contention	The scenario in which there is more than one qualified applicant for the same gTLD or for gTLDs that are so similar that detrimental user confusion would be the probable result if more than one were to be delegated to the root zone.
TLD Application System (TAS)	The online interface for submission of applications to ICANN.
Top-level domain (TLD)	TLDs are the names at the top of the DNS naming hierarchy. They appear in domain names as the string of letters following the last (right-most) dot, such as "net" in www.example.net . The TLD administrator controls what second-level names are recognized in that TLD. The administrators of the root domain or root zone control what TLDs are recognized by the DNS.
U-Label	A "U-label" is an IDNA-valid string of Unicode characters, including at least one non-ASCII character, expressed in a standard Unicode Encoding Form, normally UTF-8 in an Internet transmission context.
Uniform Domain Name Dispute Resolution Policy	A policy for resolving disputes arising from alleged abusive registrations of domain names (for example, cybersquatting), allowing expedited administrative

(UDRP)	proceedings that a trademark rights holder initiates by filing a complaint with an approved dispute resolution service provider.
User registration fee	The fee paid by prospective applicants for new TLDs to obtain access to the TLD Application System (TAS).
Whois	Records containing registration information about registered domain names.

EXHIBIT C-55



DRAFT - New gTLD Program - Evaluation Process





DRAFT - New gTLD Program - Evaluation Process, Page 2

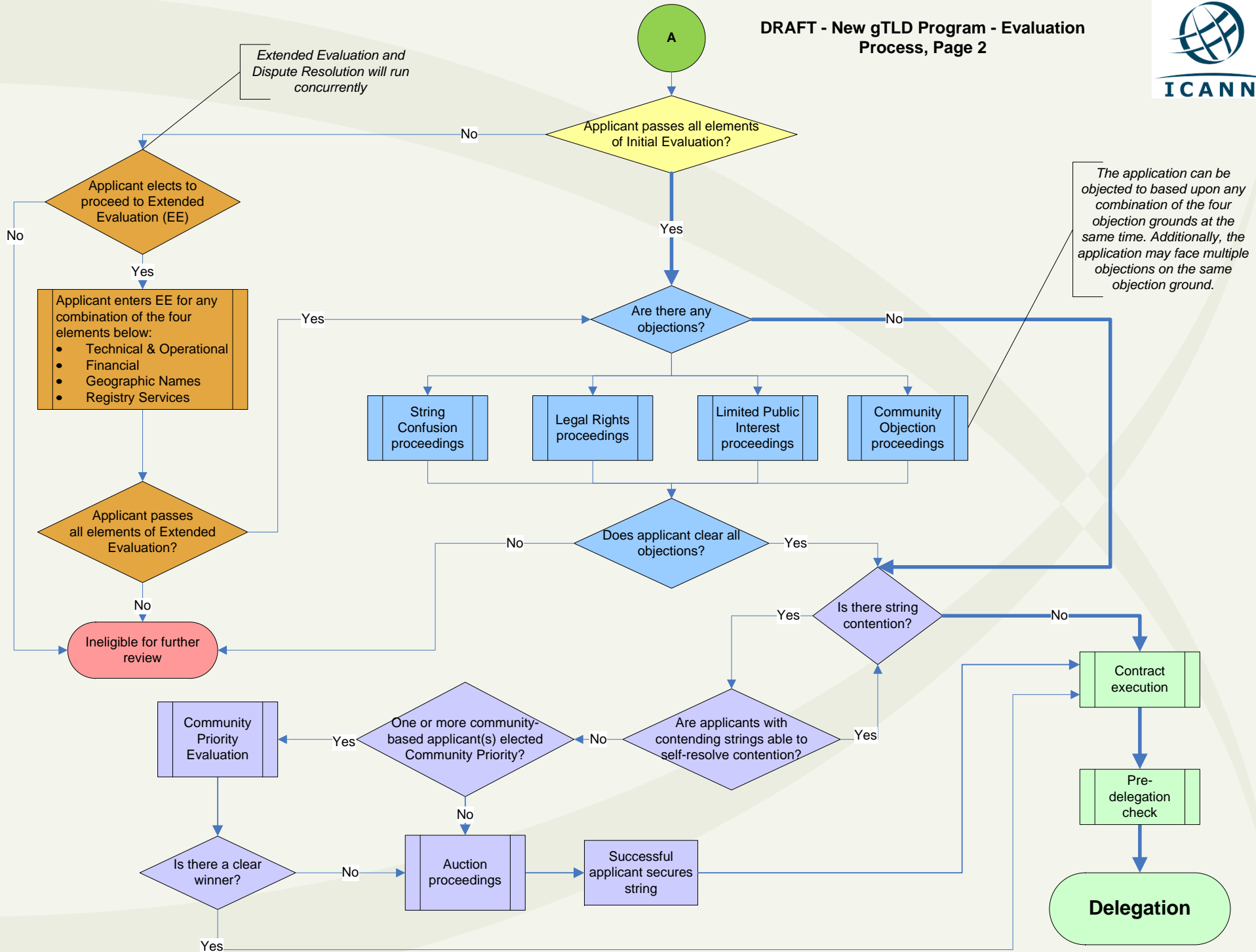


EXHIBIT C-56

Expert Report of Dr. Milton Mueller

Independent Review Process, ICM Registry LLC v. ICANN

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1 Objective of Expert Report

I have been asked to describe the history, policies, and practices of the Internet Corporation for Assigned Names and Numbers (ICANN) as they relate to issues of Internet governance and governmental influence. Specifically, I examine the history, policies, and practices of ICANN as they impacted ICM Registry's application for the sponsored top level domain (sTLD) .xxx. As set forth in detail below, ICANN's administration of the 2004 round for new sponsored TLDs and its rejection of ICM Registry's application was inconsistent with ICANN's Bylaws and Articles of Incorporation.

2 My Qualifications and Experience

I am a tenured Professor at the Syracuse University School of Information Studies. In January 2008, I was appointed the XS4All Professor at the Technische Universiteit Delft, The Netherlands. This is an endowed Chair on the Faculty of Technology, Policy and Management sponsored by XS4All (the Netherlands' first Internet service provider) and the position is devoted to the "security and privacy of Internet users." It is a part-time position and I continue to hold my professorship at Syracuse University.

I have extensive experience with ICANN, and have conducted academic and applied policy research on Internet governance issues since 1997. My book, Ruling the Root: Internet Governance and the Taming of Cyberspace, published by MIT Press in 2002, is a critically acclaimed and widely cited scholarly account of the history of the domain name system, the development of policy conflicts over control of Internet identifiers, and the formation of ICANN. In the course of researching this book, I comprehensively reviewed the key documents reflecting the technical, administrative, legal, and economic evolution of the domain name system, and interviewed scores of the people involved in making that history. Since 1998, I have published fourteen articles on ICANN and Internet governance-related issues in academic journals or as chapters in scholarly books. In addition, I sit on the editorial boards of four scholarly publications

concerned with information and communication policy issues.

I also participate in a number of groups and associations dedicated to researching Internet governance issues. In 2004, I, along with four other scholars, founded the Internet Governance Project, an alliance of academics who collaboratively research and participate in the international institutions shaping the Internet. I also helped found the Global Internet Governance Academic Network (GigaNet) in 2006. GigaNet is a scholarly association of researchers who hold an annual symposium concurrently with the annual Internet Governance Forum. In 2007, I served as GigaNet's program committee chair and in 2008, I was elected vice-chair of GigaNet. My academic CV with a complete list of publications, positions, and accomplishments is attached.¹

My research on Internet governance has been funded by the Markle Foundation, the Ford Foundation, the Association for Computing Machinery, the Next Generation Infrastructures Foundation in the Netherlands, the Eastman Kodak Foundation, and Nokia, Inc. I have been invited to speak or to present the results of this research at numerous forums, including the annual meeting of the International Trademark Association (INTA), the New York State Bar Association, the United Nations Internet Governance Forum, the International Telecommunication Union, the U.S. Federal Communications Commission (Office of Strategic Planning), the U.S. Department of Commerce (National Telecommunications and Information Administration), and the United Nations General Assembly. In 2001, I was invited to join a committee formed by the U.S. National Academy of Science to study "Internet Navigation and the Domain Name System." The Academy's National Research Council forms committees of established experts to study and report on important policy problems. The committee reports are then circulated to Congress, federal agencies, and the general public. The project I served on was funded by the National Science Foundation and the U.S. Department of Commerce. Our report, *Signposts in Cyberspace*, was released on March

¹ See Exhibit A.

31, 2005.²

In addition to my scholarly work, I have extensive practical experience in domain name policy-making and ICANN's processes and procedures. I was an active participant in the U.S. Department of Commerce proceedings that led to the creation of ICANN in 1997-1998, and in the International Forum on the White Paper (IFWP), which followed the U.S. Department of Commerce's release of the White Paper.³ I was a member of a group (one that included the current Chairman of ICANN's Board, Peter Dengate Thrush) that submitted an alternative proposal to the U.S. Department of Commerce for the creation of an entity to manage the domain name system. In 1999, I co-founded the Noncommercial Users Constituency,⁴ a part of ICANN's policy-making apparatus. From 1999 to 2003, I was an arbitrator of domain name trademark disputes under ICANN's Uniform Domain Name Dispute Resolution Policy (UDRP) for the World Intellectual Property Organization, serving as a panelist on approximately 20 cases. In 2000, I actively participated in ICANN's Working Group C, which set the policy for the initial addition of seven top level domains (TLDs) in 2001. From February 2001 to February 2002, and again from March 2003 to March 2004, I was an elected representative on an ICANN policy-making organ, the Names Council of the Generic Names Supporting Organization,⁵ where I represented the Noncommercial Users Constituency. In that capacity I chaired a Task Force on the divestiture of the .org TLD, leading in the production of a policy document that guided ICANN's subsequent redelegation of the

² The NRC report does not reflect my views alone, but a consensus of committee members with widely divergent views and areas of expertise. Participation in the NRC Committee is mentioned only to document an important form of peer recognition.

³ The Department of Commerce's statement on the Management of Internet Names and Addresses, also known as the "White Paper," was a statement by the U.S. government that it intended to transition the responsibilities for Internet management to a private body. U.S. Department of Commerce, National Telecommunications and Information Administration, Management of Internet Names and Addresses, Docket Number: 980212036-8146-02 (The White Paper), June 5, 1998. Available at: http://www.ntia.doc.gov/ntiahome/domainname/6_5_98dns.htm. For a more complete discussion, see *infra*, sections 4.1.2.

⁴ The Noncommercial Users Constituency was called the Noncommercial Domain Name Holders Constituency before 2003. In 2003 it was renamed in accordance with Bylaw changes recommended by ICANN's "Evolution and Reform" initiative. For simplicity's sake, I use only one name, the current one.

⁵ The Generic Names Supporting Organization (GNSO) was called the Domain Name Supporting Organization (DNSO) during my first term as a Names Council representative. Its name was changed in accordance with Bylaw changes recommended by ICANN's "Evolution and Reform" initiative in 2002. For simplicity's sake, I use one name, the current one.

.org domain from VeriSign to the Public Interest Registry. As part of the .org redelegation, in August 2002, I served as a member of a team selected by Stuart Lynn, ICANN's CEO at the time, to evaluate applicants. In March 2003, I was again elected to represent the Noncommercial Constituency on the Names Council. In 2004, 2006, and 2007, I was elected Chair of the Noncommercial Users Constituency. Additionally, I have attended many of ICANN's quarterly meetings and am familiar with its procedures, its corporate structure, and many of the executives and staff who manage the organization.

Because of my research and experience with ICANN, and my knowledge of Internet governance issues generally, I have previously served as an expert witness in matters involving Internet issues. In 1999, I served as an expert witness in Worldsport v. ArtInternet S.A., Cedric Loison and Network Solutions, Inc. 99-CV-616 (BWK) (E.D. Pa.). In November 2002 I served as an expert witness in the case Taubman Company v. Webfeats and Henry Mishkoff, Civil Action No. 01-72987 (E.D. Mich.). Both of the cases mentioned above were done *pro bono* because they involved policy issues concerning freedom of expression. I have also served as a paid expert witness or consultant. In 2002, Professor Lee McKnight of Syracuse University and I produced a report funded by Nokia, Inc. on the policies and methods that could be used for adding new TLDs. From 2002 to 2004 I was an expert witness in a Hong Kong telecommunications industry case, Reach Communications v New World Telephone. In 2005, I served as an expert witness in the case Brian Cartmell v. VeriSign, involving a dispute over the transfer of a country code top level domain (ccTLD).

Although I am participating in the current case on a paid basis, this report is prepared for the Independent Review Panel, and I recognize that my obligation as an expert is to advise and inform the Panel.

3 Overview of the Statement

ICANN is a new and innovative model of global governance that coordinates and

regulates the multi-billion dollar industry of domain name registration.⁶ I was a participant in and observer of ICANN throughout the period of ICM Registry's application. Because this expert report is long and complex, I begin by providing a summary of my analysis to serve as a navigation guide for the Panel.

First, I will explain how ICANN works as an institution, focusing in particular on the respective roles of private sector and governmental actors in ICANN, and the ways in which ICANN's decisions implicate matters of public policy.

Next, I will analyze the roller-coaster treatment of the .xxx application and then critically assess the ICANN Board's stated reasons for its ultimate rejection. This analysis hinges on two crucial factual questions:

- (a) What was the meaning of the Board's vote on June 1, 2005 to enter contract negotiations with ICM? Was it, as ICANN asserts, nothing more than a wary, noncommittal nod to ICANN staff to start negotiating with ICM in order to determine whether a questionable application could somehow, through additional negotiations, be adjusted to meet the requirements of the sTLD process? Or was it, as ICM Registry asserts, a formal recognition by the Board that the .xxx application had met the technical, business, community value, and sponsorship requirements outlined in the RFP and all that remained was to negotiate specific contractual conditions within those parameters?
- (b) How should the interventions of the U.S. government and its allies in the GAC in the two and a half months after the Board's vote on June 1, 2005 be characterized? Were these interventions, as ICANN implies in its Response, a legitimate, expected part of a well-defined process in which governments advise ICANN on public policy concerns? Or were they extraordinary and untimely disruptions that essentially destroyed the defined process for reviewing the applications, as well as ICANN's principles, including transparency, nonarbitrariness, fairness and nondiscrimination?

⁶ In July 2008, there were about 162 million domain name registrations worldwide, with a somewhat arbitrary but plausible estimate that, at US\$ 20 in annual revenue per domain, the registration industry as a whole is worth approximately US\$ 3.25 billion. *VeriSign Domain Report*, Volume 5 Issue 3, June 2008. Domain name registrations are growing at a rate of about 26% per year and the creation of domain names in non-Roman scripts, such as Chinese, Korean, or Cyrillic, may sustain or even accelerate this growth level, though of course no one knows for sure.

In response to the first question, I set out the facts to show that the Board's vote on June 1, 2005, was held to resolve the question of whether ICM Registry met the four sets of evaluation criteria established in the Request for Proposals (RFP), and specifically its fulfillment of the sponsorship criteria. The Board's vote meant that the .xxx application met all four sets of criteria and was ready to enter into contract negotiations. As an expert on ICANN and its processes, I consider the evidence on this point to be overwhelming. The two-step nature of the evaluation process is repeatedly described by Kurt Pritz, the ICANN staff person in charge of introducing the new TLDs. Numerous statements by Board members confirm that the vote meant that the .xxx application met the published criteria. No TLD considered ineligible on any of the three grounds would ever have been passed on to contract negotiations. If the ensuing negotiations were actually intended to clear up specific concerns about the eligibility of the .xxx application, the resolution authorizing negotiations would have specified what those concerns were, just as the Board resolutions authorizing negotiations around other TLDs identified the specific concerns associated with those TLDs which were to be addressed along with the contract negotiations.

In response to the second question, I discuss the facts demonstrating that the U.S. government-led intervention in August 2005 was a surprising and disruptive act. ICANN impermissibly allowed partisan and ideological domestic U.S. political considerations to supersede and overturn its own evaluation process. The intervention not only prompted ICANN's Board to discard its June 2005 decision, but also reflected a sudden change in the U.S. Department of Commerce's own position. This intervention triggered a complete breakdown of the established sTLD process for ICM Registry's application.

In the final section of this report, I explain how accountability and resistance to political interference are major concerns for ICANN and the future of the Internet. I also discuss why independent, impartial review processes such as this IRP are needed to protect ICANN's ability to follow its defined criteria and procedures. The importance of a strong commitment to defined procedures and objective standards goes well beyond the ICM Registry case; it has major implications for the future of the Internet as a whole.

4 ICANN as an Institution

Many of the points of dispute between ICM Registry and ICANN involve

different interpretations of ICANN's function and of its relationship to governments. For that reason it is useful to explain in detail how and why ICANN ended up taking the particular institutional form it did. In this section I explain why ICANN was organized as a private sector nonprofit corporation, even though it engages in global governance over a global resource. I also explain the changing role of governments in ICANN and the way ICANN operates under its Bylaws.

4.1 Why ICANN was set up as a private sector, California nonprofit organization

It is unusual for a private organization to hold policy-making and administrative control over resources critical to the functioning of an international public infrastructure. Why then was ICANN organized as a private corporation? This organizational structure occurred for three reasons:

- (a) The need for global rather than national coordination and policy-making;
- (b) The desire of the U.S. government and Internet businesses to avoid the influence of other governments and existing intergovernmental organizations; and
- (c) The preferences of the technologists who developed the Internet and had previously held informal authority over the Internet's administration.

4.1.1 The need for global coordination and policy

In forming its policy toward the Internet in the mid-to-late 1990s, the Clinton administration was concerned that the Internet's promise of global electronic commerce would be undermined by assertions of territorial jurisdiction.⁷ It was feared that national governments, in particular, would impose upon the naturally global arena of the Internet a patchwork of inconsistent or conflicting national laws and regulations. A private sector governance authority was perceived as a way around this problem, and so the U.S. adopted a strategy of internationalization through privatization. In its 1997 policy document, "*A Framework for Global Electronic Commerce*," the Clinton administration

⁷ "The Internet is emerging as a global marketplace. The legal framework supporting commercial transactions on the Internet should be governed by consistent principles across State, national, and international borders that lead to predictable results regardless of the jurisdiction in which a particular

called for “private sector leadership” and noted that “governments should establish a predictable and simple legal environment based on a decentralized, contractual model of law....”⁸ With respect to domain names, the White House proposed in the *Framework* that it may be possible “to create a contractually based self-regulatory regime that deals with potential conflicts between domain name usage and trademark laws on a global basis.”⁹

4.1.2 Avoidance of existing intergovernmental organizations

The U.S. Government’s Internet governance policy was driven not only by its positive assessment of private sector leadership and global contractual approaches, but also by a negative outlook toward the performance of existing intergovernmental institutions. U.S. telecommunication and information policy-makers shared a longstanding antipathy toward the International Telecommunication Union (ITU), because U.S. technology leadership and its often aggressive liberalism were typically blunted within ITU forums.¹⁰ The U.S. was also leery of European-led efforts to create a new international treaty or charter for regulation of the Internet,¹¹ fearing that it would open the door to an ITU or U.N.-like bureaucracy, which could stifle the Internet. Thus, the 1998 U.S. Department of Commerce White Paper, that in many ways served as the charter and founding document for ICANN, avoided direct government action while inviting international participation in governance. The White Paper concluded that “the U.S. Government is prepared to recognize, by entering into agreement with, and to seek international support for, a new, not-for-profit corporation formed by private sector Internet stakeholders to administer policy for the Internet name and address system.”¹² In

buyer or seller resides.” A Framework for Global Electronic Commerce, The White House, July 1, 1997. Available at: <http://clinton4.nara.gov/WH/New/Commerce/read.html>.

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ Peter Cowhey, “Dialing for Dollars: Institutional Designs for the Globalization of the Market for Basic Telecommunication Services,” in J. Hart and A. Prakash (eds.) *Coping with Globalization*. New York: Routledge (2000), pp. 243-288.

¹¹ On September 8, 1997, European Union Commissioner Martin Bangemann, in a speech prepared for an ITU conference in Geneva, called for an “international charter” to regulate the Internet. The charter, he said, should deal with questions such as technical standards, illegal content, licenses, encryption and data privacy. Bangemann’s proposed charter, according to Peter Cowhey, who was, at the time, the Chief of the U.S. Federal Communications Commission’s International Bureau, strongly motivated the U.S. to seek a private sector solution.

¹² The White Paper.

this manner the U.S. sidestepped traditional intergovernmental arenas and moved the Internet governance problem to an entirely new forum where governments and intergovernmental organizations were not the central players.

4.1.3 Preserving the special role of the Internet technical community

The Internet protocols and the domain name system standards and software were developed by computer science researchers about 25 years prior to the creation of ICANN. This elite, tightly-knit group received government research subsidies but acted with a great deal of autonomy. As the Internet grew, this technical cadre, led by Vinton Cerf and Jon Postel, developed their own organizations and institutions for standardizing and promoting Internet protocols. The most significant products of that effort were the Internet Engineering Task Force (IETF) and its Internet Assigned Numbers Authority (IANA), the Internet Society (ISOC),¹³ and IP address registries RIPE-NCC in Europe and APNIC in Asia. All were organized as private sector nonprofits. Though centered in the United States, from the beginning, the IETF and ISOC involved computer scientists/engineers in Europe and Asia and thus were international in scope.

From the origin of the Internet domain name system in 1980 until about 1996, this technical community had *de facto* control of the management of Internet identifiers. When the commercialization of the Internet and the World Wide Web transformed domain names into valuable commodities and raised legal and commercial issues, new stakeholders and interests emerged whose demands impinged on the Domain Name System's (DNS) management and threatened the technologists' position. This stakeholder group, therefore, resisted traditional forms of international collective action and favored private sector arrangements based on their own organically developed institutions. ICANN was originally conceived as a "new IANA," implying continuity with their past efforts.¹⁴ The respected technologist, Jon Postel, who had contracted with the U.S.

¹³ The Internet Society formally incorporated the Internet Architecture Board (IAB), a small committee that represented the leadership of the technical community. The IAB in turn claimed responsibility for designating an "Internet Assigned Numbers Authority" (IANA) that would manage the top of the name and address space hierarchies. IANA was composed of Jon Postel and his staff at the Information Sciences Institute (ISI) of Marina del Rey, California.

¹⁴ There are still online records of an email sent by Jon Postel to a wide variety of Internet discussion lists on June 28, 1998 pointing the community to a draft of the Postel-Sims proposal for what became

government to perform the IANA functions since the beginning of the Internet, prepared the initial plans for ICANN in consultation with his lawyer. The main reason ICANN was organized as a *California* nonprofit was because Postel, who was slated to become the new organization's chief technologist, wished to remain in California. ICANN's headquarters are located in Marina del Rey, largely because that is where Postel worked.

4.2 The role of the U.S. government in ICANN

The U.S. government has played a special role in the supervision of ICANN throughout the Internet's brief history. This role evolved from the fact that it was U.S. government contractors and researchers, such as Jon Postel and a company known as Network Solutions, Inc. (now, VeriSign) that established the original coordinating mechanisms of the Internet. These oversight mechanisms were supposed to be short-term transitional agreements to help maintain the stability and accountability of the experiment in private sector global governance that ICANN represented. After 2000, however, the U.S. government showed greater interest in retaining some form of oversight to ensure stability and security, and, consequently, these "transitional" arrangements are now in their eleventh year. The U.S. Department of Commerce retains oversight of ICANN using three instruments:

- (a) The Memorandum of Understanding and Joint Project Agreement;
- (b) The IANA contract; and
- (c) A cooperative agreement with VeriSign.

As will be evident from my explanation of each of these, U.S. oversight is supposed to have a very limited function. In the Department of Commerce's own words, "The U.S. government] plays no role in the internal governance or the day-to-day operations of [ICANN] . . . [rather, the U.S. government] monitors and ensures that ICANN performs MOU tasks,¹⁵ and offers expertise and advice on certain discrete issues."¹⁶

ICANN and referring to it as a "new IANA." See, e.g., <http://mailman.anu.edu.au/pipermail/link/1998-June/033763.html>.

¹⁵ Including technical tasks such as the assignment of Internet address blocks, the development of accreditation procedures for registrars to ensure stability and security, the development of technical procedures for the operation, stability, and security of the primary root server, etc.

¹⁶ Testimony of John Kneuer, Acting Assistant Secretary for Communications and Information, United States Department of Commerce before the Subcommittee on Telecommunications and the Internet and the Subcommittee on Commerce, Trade and Consumer Protection and the Committee on Energy and Commerce, United States House of Representatives, September 21, 2006.

4.2.1 The Memorandum of Understanding and the Joint Project Agreement

When ICANN was first created, the U.S. Department of Commerce entered into a Memorandum of Understanding (MOU) with ICANN, first executed on November 25, 1998 (and subsequently amended). The MOU was the primary supervisory document used to describe the tasks and responsibilities of ICANN. It provided a list of policy-making tasks related to the development of policies and procedures to coordinate the domain name system that ICANN was supposed to perform, and set specific priorities and milestones for ICANN.¹⁷ The Department of Commerce revised the MOU six times between October 1998 and September 30, 2006. In September 2006, the MOU was replaced with a Joint Project Agreement (JPA). In keeping with the widely expressed desire to make ICANN more independent of the U.S. government, the JPA's goals were less specific than those of the MOU, including such things as "encourag[ing] greater transparency, accountability, and openness in the consideration and adoption of policies" and promoting the stability and security of the Internet's DNS.¹⁸ Like its predecessor, the JPA styles itself as a transitional kind of oversight. The JPA's Preamble says that its purpose is to facilitate the "joint development of the mechanisms, methods, and procedures necessary to effect the transition of the Internet domain name and addressing system (DNS) to the private sector."¹⁹ The current JPA expires on September 30, 2009, and there is a vigorous public discussion on whether it should be allowed to expire or be renewed.²⁰

¹⁷ Memorandum of Understanding Between the U.S. Department of Commerce and Internet Corporation for Assigned Names and Numbers (MOU), Section V (Responsibilities of the Parties), November 25, 1998. Available at: <http://www.icann.org/en/general/icann-mou-25nov98.htm>.

¹⁸ Joint Project Agreement Between the U.S. Department of Commerce and Internet Corporation for Assigned Names and Numbers (JPA), Section V.B, September 29, 2006. Available at: <http://www.icann.org/en/general/JPA-29sep06.pdf>.

¹⁹ JPA, Preamble. The technical management of the DNS, entrusted to ICANN through the MOU and JPA, constitutes serving as the gatekeeper for the "root zone file," the single authoritative list of TLDs, which tells any computer in the world where it can find the domain names registered within the hierarchy under the existing TLDs. See *infra*, section 5.1.

²⁰ For a sample of this debate, see the public comments filed in the NTIA *Notice of Inquiry*, October 30, 2007, "The Continued Transition of the Technical Coordination and Management of the Internet's Domain Name and Addressing System: Midterm Review of the Joint Project Agreement," U.S. Department of Commerce, National Telecommunications and Information Administration, Docket No. 071023616-7617-01. Available at: http://www.ntia.doc.gov/ntiahome/frnotices/2007/ICANN_JPA_110207.html.

4.2.2 The IANA contract

The IANA contract, originally dated February 2, 2000 and amended or replaced five times, is a zero-price, sole-source contract between ICANN and the U.S. government authorizing ICANN to perform the technical functions of the IANA.²¹ These functions involve administrative activities such as allocating IP address blocks, editing the root zone file, and coordinating the assignment of unique protocol numbers.²² The IANA contract does not authorize the contractor to make or change the policies that guide the performance of the IANA functions; it must rely on ICANN processes to make and change policies (*e.g.*, create a procedure for adding TLDs to the root). Any changes in the root zone file must be audited (that is, reviewed to ensure that the requested changes are technically correct and that the requestor is authorized to make the request) and approved by the U.S. Department of Commerce.²³ Without this contract, ICANN would have little, if any, influence over the coordination of the Internet's identifier systems.

4.2.3 The VeriSign Cooperative Agreement

VeriSign, the registry operator of the *.com* and *.net* domains and the world's largest commercial domain name registry, has a cooperative agreement with the U.S. Department of Commerce, first executed on January 1, 1993 (and subsequently amended). The agreement, which dates back to the early days of the public Internet, authorizes VeriSign to run the hidden master server that publishes the official root zone file to the Internet's root servers. In effect, whereas ICANN is responsible for making the *policies* that govern the root server system, VeriSign has *operational* control of the authoritative root zone information and its dissemination. VeriSign also runs the "A root server," one of 13 computers that distribute the root zone file information worldwide,

²¹ The latest version is available at: <http://www.icann.org/en/general/iana-contract-14aug06.pdf>. For a discussion of the nature of this contract in relation to U.S. administrative law, see Michael Fromkin, "Bring on the IANA competitors," ICANN Watch, February 3, 2003. Available at: <http://www.icannwatch.org/article.pl?sid=03/02/03/2251256&mode=thread>.

²² See ICANN/U.S. Government Contract for Performance of the IANA Function, Section C.2 (Contractor Requirements), August 14, 2006. Available at: <http://www.icann.org/en/general/iana-contract-14aug06.pdf>.

²³ Letter from Meredith Baker, Acting Assistant Secretary for Communications and Information, to Peter Dengate Thrush, Chairman of the Board of Directors of ICANN, July 30, 2008. Available at: http://www.ntia.doc.gov/comments/2008/ICANN_080730.pdf.

under this agreement.²⁴ The Cooperative Agreement is important for two reasons: (1) it was the instrument by which the U.S. government obtained and continues to exercise its authority to control changes to the root;²⁵ and (2) it compelled VeriSign to conform to the ICANN regime's regulations on registries and registrars.

4.2.4 "Authority" over the authoritative root zone file

In addition to the above three formal instruments, the U.S. Department of Commerce has asserted what it calls "authority" over any modifications of the DNS root zone file since October 1998.²⁶ When the U.S. first asserted this authority, it was done mainly for competition policy reasons, because Network Solutions, Inc., the predecessor of VeriSign, essentially enjoyed a monopoly on gTLD registrations. If Network Solutions had the power to decide which new TLDs would be added to the root, or could otherwise manage the root zone file, then the market's dominant, commercial supplier of gTLD registrations would be in a position to decide who its competitors were, how many competitors there would be, and what criteria they had to meet to enter the market. The U.S. established its authority over changes to the root in order to facilitate the creation of ICANN and a more competitive market for domain name registries and registrars. The main rationale for control of the DNS root zone file changes was to make the root administrator a neutral and open facilitator of Internet coordination.

Obviously, then, after one considers the founding documents, history, and roles of the parties involved, it is clear that the U.S. government has limited residual authority over the root zone file to ensure its security and stability and to prevent its use for anti-competitive purposes, but not to interfere in the day to day decision making of ICANN or

²⁴ "NSI agrees to continue to function as the administrator for the primary root server for the root server system and as a root zone administrator until such time as the USG instructs NSI in writing to transfer either or both of these functions to NewCo or a specified alternate entity." Amendment 11 to Cooperative Agreement Between NSI and U.S. Government, October 6, 1998. Available at: <http://www.icann.org/en/nsi/coopagmt-amend11-07oct98.htm>.

²⁵ Under Amendment 11 of this agreement (dated October 6, 1998), VeriSign agreed not to modify the root zone file without approval of the U.S. government. The U.S. government did not have any formal authority over the content of the root zone file until this Amendment was agreed to by VeriSign (which was still called Network Solutions, Inc. at that time). VeriSign was pressured to give up this authority in order to shield itself from an antitrust lawsuit by Name.Space, Inc., which was attempting to add new TLDs to the root. See also July 30, 2008 Baker letter, *supra* note 23.

²⁶ The assertion of policy authority came in Amendment 11 of the Cooperative Agreement with Network Solutions, Inc., and takes this form: "While NSI continues to operate the primary root server, it

to impose its opinions regarding content decisions, considerations of morality, etc.²⁷

4.3 The role of other governments in ICANN

The private, contractually-based governance model upon which ICANN was founded implied minimizing the role of governments in its affairs – except, of course, on some level, the United States. During the creation of ICANN, the U.S. repeatedly indicated that it would relinquish its own residual authority over the DNS root and that its oversight function was a temporary aspect of the “transition” or privatization of the Internet.²⁸ To this day, the Bylaws require that “no official of a national government or a multinational entity established by treaty or other agreement between national governments may serve as a Director.”²⁹ According to the ICANN Bylaws, “responsibility for developing and recommending to the ICANN Board substantive policies relating to generic top level domains” lies with the Generic Names Supporting Organization (GNSO).³⁰ Within that Supporting Organization, governments are not recognized as a constituency group. Instead, business and civil society groups, such as trademark holders, noncommercial users, registries and registrars are so recognized. The only formal place for governments in the ICANN governance and policy making process is the Governmental Advisory Committee (GAC).³¹ As the name suggests, it is intended to be only an *advisory* body.

4.3.1 The Governmental Advisory Committee

In its earliest manifestation, the GAC was described as a committee that “should consider and provide advice on the activities of the Corporation as they relate to concerns

shall request written direction from an authorized [U.S. government] official before making or rejecting any modifications, additions or deletions to the root zone file.”

²⁷ See Testimony of John Kneuer, *supra* note 16 and accompanying text, where Mr. Kneuer denies that the U.S. government is involved in ICANN’s policy making.

²⁸ The White Paper: “the U.S. Government would continue to participate in policy oversight until such time as the new corporation was established and stable, phasing out as soon as possible, but in no event later than September 30, 2000. The U.S. Government would prefer that this transition be complete before the year 2000. To the extent that the new corporation is established and operationally stable, September 30, 2000 is intended to be, and remains, an ‘outside’ date.”

²⁹ Bylaws for Internet Corporation for Assigned Names and Numbers, as amended effective May 29, 2008 (ICANN Bylaws), Article VI, Section 4.1. Available at: <http://www.icann.org/en/general/bylaws.htm>.

³⁰ ICANN Bylaws, Article X, Section 1.

³¹ Of course, as has always been the case since ICANN’s inception, individual members of the GAC or individual governments or their representatives may attend meetings and send correspondence, etc.

of governments, particularly matters where there may be an interaction between the Corporation's policies and various laws, and international agreements."³² In other words, the GAC played an informational role in the formulation or approval of policy. The GAC did not participate in making new policies, but passively advised and informed the ICANN Board of any adverse "interactions" between ICANN's activities and existing laws and international agreements. The original Bylaws even imply that the advisory capacity of the GAC had to be requested by the Board: "the Board will notify the chair of the Governmental Advisory Committee of any proposal for which it seeks comments under Article III, Section 3(b) and will consider any response to that notification prior to taking action."³³

4.3.2 Political pressures for a stronger governmental role

The formal exclusion of governments from a direct policy-making role, coupled with the special status of one government, the United States, in ICANN, was highly objectionable to some governments and became especially controversial during the World Summit on the Information Society (WSIS). The WSIS was a United Nations negotiation, held from 2002 – 2005, to promote global initiatives on information and communications policy. Although it was initially set up to focus on global action to bridge the digital divide, the WSIS process was practically overwhelmed by the Internet governance issue. More specifically, WSIS became the vehicle for an attempt by rival governments and international institutions to attack ICANN and the United States' unilateral control of the Internet domain name and addressing systems.³⁴ Governments and the International Telecommunication Union (ITU) challenged both the unilateral power held by the U.S. government over ICANN, and the prevalence of private sector,

³² Original ICANN Bylaws proposal, October 1998. Available at: <http://www.ntia.doc.gov/ntiahome/domainname/proposals/icann/bylaws.htm>.

³³ *Ibid.*

³⁴ This is reflected in both the press coverage at the time and in the Tunis Agenda, the final negotiated, politically binding document produced by the Summit. Paragraph 68 says that all governments, not just the US, should have "an equal role and responsibility" for the DNS root and for Internet public policy oversight. Paragraphs 69 and 70 of the Tunis Agenda call for the development of "globally-applicable principles on public policy issues associated with the coordination and management of critical internet resources." Paragraphs 71 and 72 propose mechanisms for developing these principles. WSIS, Tunis Agenda for the Information Society, November 18, 2005. Available at: <http://www.itu.int/wsis/docs2/tunis/off/6rev1.html>.

non-governmental policy-making mechanisms for the Internet.³⁵ Interestingly, the concerns of other governments about internationalizing ICANN or ameliorating the United States' unilateral control over ICANN and the root played an important role in how the .xxx application was treated.

Some of the pressures came from within ICANN. For example, in 2002, at a period of time when ICANN seemed to be failing and needed more international support, ICANN President Stuart Lynn made the controversial suggestion that government representatives be placed on the Board. This was rejected, but as a result of these and other political pressures, ICANN modified its Bylaws in December 2002 to more formally account for governmental advisory input within its processes. The description of ICANN's "Core Values" introduced at that time (and still in the current Bylaws) included the concept of "public policy matters" as a domain over which governments held special authority.³⁶ In particular, the new Core Value number 11 stated that ICANN, while remaining rooted in the private sector, had a Core Value of "...recognizing that governments and public authorities are responsible for public policy and duly taking into account governments' or public authorities' recommendations."³⁷

This new "Core Value" was given procedural form in ICANN's Bylaws, Article XI, Section 2, which noted that:

The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice. The Governmental Advisory Committee and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.³⁸

In short, the GAC's role of advising ICANN's Board on matters deemed to be relevant to public policy became more institutionalized. Of course, that did not mean that the GAC could intervene at any time and in any matter and veto or change actions that

³⁵ For background information documenting this problem, see the paper "Political Oversight of ICANN: A Briefing for the WSIS Summit," Internet Governance Project, November 1, 2005. Available at: <http://internetgovernance.org/pdf/political-oversight.pdf>.

³⁶ ICANN Bylaws, amended as effective December 15, 2002, Article I, Section 2.

³⁷ *Ibid.*

³⁸ ICANN Bylaws, amended as effective December 15, 2002, Article XI, Section 2.

ICANN had already undertaken; in fact, the Bylaws specifically require that the GAC's advice be "timely presented."³⁹ Nor did these amendments state or imply that the GAC could force ICANN to act in contradiction to ICANN's Bylaws or Articles of Incorporation.

To summarize, ICANN as an institution was not designed to make governments full-fledged participants in the policy-formulation process, nor was it intended to give the GAC a blanket veto power over ICANN Board decisions. On the contrary, it was designed to keep governments at arms length and to delegate DNS policy-making authority to nonstate actors. One can readily appreciate, however, how the December 2002 Bylaw revisions, coupled with outside challenges to the United States' control over the root and the eruption of demands for a stronger governmental role in Internet governance at the World Summit on the Information Society, created political pressures to which certain actors within ICANN may have been tempted to pander, or which could have intimidated the Board into deviating from its Bylaws and the institutionalized advisory role of the GAC.

5 How ICANN Operates Under its Bylaws

The preceding sections explained the general framework under which ICANN was created. Writing both as an academic and as someone with first hand experience of ICANN's activities, I will now discuss ICANN's Bylaws and how the concept of ICANN has been operationalized.

The Bylaws are the basic procedural and substantive rules that are supposed to govern all of ICANN's activities. Although ICANN is a private corporation, its exclusive power over certain Internet functions and its role in formulating globally applicable policy for Internet identifier resources gives its Bylaws the character of the procedural rules that govern what is effectively an international regulatory agency. The Bylaws define who gets how much representation in which decision-making process, how many votes are needed, whether they require notice and comment periods, and articulate, *inter alia*, standards of fairness, objectivity, transparency, and nondiscrimination, that govern how ICANN is to carry out its activities. Because there are many contending interests and

³⁹ ICANN Bylaws, Article III, Section 6 and Article XI, Section 2.

factions within ICANN, and high economic stakes, the Bylaws serve as the common “rules of order” that allow the stakeholders to plan and interact fairly and transparently. For that reason, it is important for ICANN to follow its Bylaws and, of course, its own rules require it to do so.⁴⁰ This requirement takes on even greater significance in light of the fact that ICANN’s actions have important consequences for the operation of a key global resource. Because of the importance of ICANN’s actions for individuals and entities around the world, it is important that all stakeholders, regardless of their culture, language, or industry, understand and can participate in ICANN’s processes. With a community as large and as diverse as ICANN’s, it is difficult enough to ensure that everyone is informed and aware even if documented policies are carefully followed. If ICANN acts arbitrarily or departs from its documented policies and procedures, informed participation from the community will become impossible. ICANN has been given responsibility for a global resource, and its actions should be held to a commensurately high standard to match. From the perspective of someone involved who has studied, written about, and often participated in ICANN’s functions and activities, the most often referenced part of ICANN’s Bylaws are its Mission and Core Values, which serve as reference points in disputes over the proper scope of ICANN’s actions, though, of course, they must be read in the context of the Bylaws as a whole, along with ICANN’s Articles of Incorporation, which include principles such as transparency, nondiscrimination, objectivity and fairness.⁴¹

5.1 The nexus between policy and technical coordination

One of the most important areas of concern in this new regime has been the relationship between ICANN’s mandate to serve as a *technical coordinator* of the Internet’s unique identifiers (domain names and IP addresses) and its role as a maker of *policy*. The relationship between these two roles is especially salient in ICM Registry’s case because of the claim that an .xxx domain somehow conflicted with the “public policy” concerns of governments.

The need for an entity like ICANN starts with the technical requirements of the

⁴⁰ ICANN Bylaws, Article IV, Section 1 says that “ICANN should be accountable to the community for operating in a manner that is consistent with these Bylaws”

DNS. Some of the basic aspects of ICANN's administration of DNS are adequately explained in paragraph 13 of the ICM Registry Request and in paragraphs 11 – 13 of the ICANN Response. Missing from both accounts, however, is a reference to the DNS root, which is the basis of ICANN's influence over policy.

Domain names are organized in a hierarchical fashion. The top of the DNS hierarchy consists of a single authoritative list, known as the "root zone file," that tells any computer in the world which TLDs exist and where it can find the domain names registered under them. All domain names are dependent upon the maintenance of a unique entry in the root of the DNS so that they can remain globally interconnected in a reliable and open manner.

To oversimplify drastically, ICANN serves as the gatekeeper to the DNS root zone file. Its most basic technical function is to ensure that all TLDs entered into the root zone file are uniquely associated with a particular registry. But the performance of that seemingly simple technical function requires policy decisions to be made. Indeed, insofar as a business or user is dependent on the global functioning of domain names or on the right to operate a TLD registry, ICANN's position as gatekeeper to the DNS root could be exploited to exert various degrees of leverage over them. That leverage can be used sparingly or it can be exploited vigorously to implement a public policy.

Figure 1, below, illustrates this concept. It is a simple graph that arranges different approaches to coordinating the root zone on a spectrum ranging from "minimal policy" to "maximum policy leverage." At the "minimal policy" end of the spectrum, a lightweight ICANN could simply receive any and every application for a TLD, check to see if the name is already assigned to another registry, and if not, enter the new name into the root zone file on a first-come, first-served basis, allowing a new registry to go into business. If ICANN fully adhered to a minimalist model it would not regulate the technical standards used, it would not reject TLD applications that involved trademark conflicts, and it would not impose any contractual conditions upon applicants; it would just maintain a list of the TLD names and make sure that each name is unique. Note, however, that the use of first-come, first-served as the assignment mechanism is, itself, a policy decision. As a matter

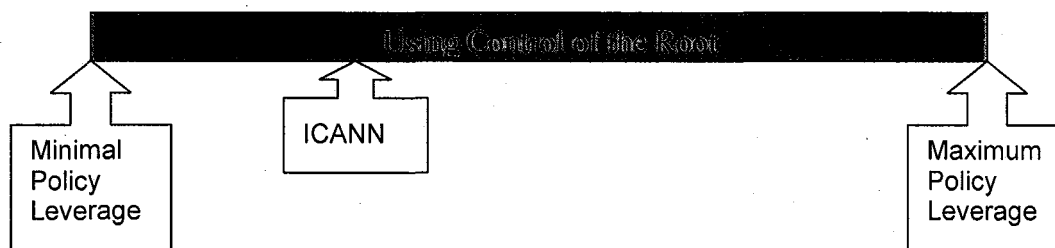
⁴¹ ICANN Bylaws, Article I, Sections 1 and 2. I will largely focus on the Bylaws, as the Bylaws govern the day-to-day actions of ICANN.

of policy, ICANN could decide to use auctions, popular votes, or merit reviews instead of a first-come, first-served strategy to resolve competing applications for the same string or to ration the number of TLDs. This is a good example of how even the most minimal approach to root zone file administration requires *some* policy decisions.

At the other extreme – maximum policy leverage – ICANN could exploit its control over the root of the DNS to influence or dictate a broad range of Internet-related behavior. It could try to make all TLD name registries sign contracts binding them to monitor and censor the content of all web sites registered under their domain. To cite some deliberately absurd examples, ICANN could attempt to promote a particular religion by refusing to maintain country code top level domains (ccTLDs) for any country that does not officially establish Zoroastrianism as the State Church; or it could require all domain name registries to contractually require the use of the Linux operating system by anyone who wants to register a domain. While these examples seem outlandish, it became evident during WSIS that some governments were interested in using ICANN’s leverage of the Internet industry to exert much more regulatory control.

Today, ICANN is located between these two extremes. The stated Mission and Core Values in the Bylaws are much closer to the minimal technical coordination side of the spectrum than to the wholesale exploitation of the root for regulation of Internet activity.

Figure 1: Spectrum of Policy Leverage over Control of the DNS Root



ICANN’s Bylaws define its Mission as threefold:

1. [ICANN] Coordinates the allocation and assignment of the three sets of unique identifiers for the Internet, which are
 - a. Domain names (forming a system referred to as “DNS”);

b. Internet protocol (“IP”) addresses and autonomous system (“AS”) numbers; and

c. Protocol port and parameter numbers.

2. [ICANN] Coordinates the operation and evolution of the DNS root name server system.

3. [ICANN] Coordinates policy development reasonably and appropriately related to these technical functions.”⁴²

Note in particular number 3, which confines ICANN’s policy-development activities to issues “reasonably and appropriately related” to the technical coordination functions mentioned in numbers 1 and 2. There is a strong consensus within ICANN that the regulation of the content of web sites or email communications is far outside of its mandate.⁴³

In addition to the simple coordination of the uniqueness of TLD names, however, ICANN uses its control of the root to impose a number of contractual conditions on the domain name supply industry. The contracts ICANN requires of TLD registries embody a number of rules, regulations, and standards that emerge from ICANN’s policy-development processes. These conditions fulfill *public policy* objectives. For example, ICANN promotes competition in the retail market for domain name registration by separating the market for registry (wholesale) services and registrar (retail) services and forbidding registries from acting as registrars. ICANN imposes price caps (a form of rate regulation) and a variety of other economic and technical regulations on the operators of registries. It also accredits registrars and has some minimal consumer protection regulations associated with the accreditation contracts. It requires registries and registrars to support a Whois service that identifies domain name registrants and their name servers, which has sparked privacy policy debates. It binds both registrants and registrars to a uniform dispute resolution policy to arbitrate trademark and domain name conflicts. There is, as I will explain later, no functional difference between these kind of policy decisions and what governments normally call public policy.

⁴² ICANN Bylaws, Article I, Section 1.

⁴³ The ICANN Response confirms this, as do other presentations and statements by ICANN staff. Andrew McLaughlin, General Counsel, ICANN, March 30, 2000, “ICANN: Goals, Principles and Mechanisms.” Available at: <http://www.icann.org/presentations/icann-studienkreis-leipzig-ajm.pdf>.

5.2 *The creation of new top level domains*

A TLD is an entry of a character string (such as *.com* or *.xxx*) into the root zone file, along with information about which name servers can be used to find the list of second level domain names under that TLD. Creating TLDs involves making an exclusive assignment of a string of characters to a particular registry operator, who can then sell domain name registrations under the TLD.

One should not make too much of the distinction between generic TLDs (gTLDs), country code TLDs (ccTLDs), or sponsored TLDs (sTLDs). From a technical point of view, TLDs are just TLDs. They all function in exactly the same way. The distinction between sTLDs, gTLDs, and ccTLDs are matters of their organizational status; each type has different obligations associated with them through the contracts created by ICANN, or, in the case of ccTLDs, in their nominal connection to national jurisdictions, which brings some presumed sovereignty interest into the making of their policies and the policies of ICANN. Those policy distinctions are important, of course. But since they emerge from the fine-grained detail of contracts, from interpretations and from political interactions, the boundary between them is often blurry. For example, ccTLDs were originally defined by ICANN as sponsored TLDs in which the government and local internet community were the “sponsors.”

The concept of sponsored TLDs (sTLDs) has been contested within ICANN and it is important to keep this in mind when considering the controversies surrounding ICM Registry’s status as a “sponsored” domain. Sponsored TLDs, as defined in the first and second rounds of ICANN’s TLD addition processes, involved the recognition of some kind of a linkage between a TLD name and a bounded community or category of registrants. Registrations within the sponsored domain are restricted to people or organizations who consider themselves to belong within that community or category and are recognized as such by the sponsoring organization. The restrictions can be imposed either by the registry’s own practices and choices, or imposed on the registrant through contractual obligations. Early, paradigmatic instances of so-called “sponsored” TLDs (although they were not called that when they were created) are the *.edu* and *.mil* TLDs. Historically, registrations in *.edu* have been confined to 4-year colleges and universities located in the United States (although there have always been exceptions, such as a few

universities outside the U.S. with *.edu* domains). Likewise, *.mil* is restricted to registrants within the U.S. Department of Defense.

Advocates of a minimalist ICANN have always disliked the notion of sponsored TLDs. That is because sTLDs place ICANN in the position of approving who the appropriate representative of a “community” is. Such a determination bears little direct connection to ICANN’s technical coordination mandate. Critics of the sponsorship concept do not oppose creating TLDs that, on the registry’s own initiative, restrict their services to specific self-defined communities, viewing that as one of many possible variations in registry business models. They just do not want sponsorship criteria to be incorporated into ICANN’s contracts, or for ICANN to bless specific individuals or organizations as the official, legitimate agents of a certain community. On the other hand, supporters of ICANN’s role in dispensing sTLDs have noted that there might be competing applications for a TLD string that is semantically associated with a specific group, such as *.navajo*, for example. They believe that it is incumbent upon ICANN to assign a name such as *.navajo* to legitimate representatives of the Navajo nation and not to simply give it to anyone who comes along. This is another example of how TLD selections of any kind can raise policy issues.

Regardless of one’s position on whether there should or should not be sTLDs, there is no doubt based on the facts of this case that ICANN treated the *.xxx* application for a sponsored top level domain in an unfair, arbitrary and discriminatory manner, as discussed in detail below.

5.3 The ICANN policy-making process

This discussion of ICANN process will be confined to the GNSO, which is an organ of ICANN that initiates the development of policy regarding domain names, and to the GAC, which intersected with the domain name policy process in the *.xxx* affair.

In order to facilitate the development of policies that are in the public interest, ICANN’s policy development process in the GNSO is based on a representational model composed of constituency groups that correspond to different segments of society. There were six constituency groups in the period of interest (*i.e.*, during the 2004 sTLD round). Two of them, registries and registrars, represented suppliers of domain name services, or more precisely, the “contracting parties” whose businesses are directly governed by

ICANN's contracts. Three other constituencies are based on user groups or consumers of domain name services: business users, trademark holders, and noncommercial users.

Another constituency, Internet service providers, stands somewhere between users and suppliers but usually is aligned politically with the commercial users.

Ideally, ICANN policies follow a bottom-up development process. The process, known as the PDP or "policy development process," is described in ICANN's Bylaws.⁴⁴ It is not terribly relevant to describe the process in detail; suffice it to note that the PDP specifies how to initiate a policy process, what stages a proposal must go through, the duties of the ICANN staff in the process, when and how long a proposal is put up for public notice and comment, and what voting thresholds are needed for the proposal to progress through certain stages. Once a GNSO task force or working group is finished developing a policy it must be put before the GNSO Council for a vote. If it receives a supermajority (2/3) vote, it is considered a "consensus policy." It is then sent to the ICANN Board for final approval. The Board can only reject a "consensus policy" by a 66% vote. If the GNSO Council vote is not a consensus policy, the Board can adopt or reject the policy by majority vote.

The PDP, like all ICANN processes initiated after 2002, defines specific periods for commenting on reports and proposals. As is true of almost all policy-making institutions, if one does not comment within the allotted time period, one loses one's opportunity to have input. Occasionally comment periods will be extended for a few weeks if insufficient numbers of comments have been received, perhaps due to clashes with holiday periods, or because there are too many other proceedings underway. But comment periods are never reopened after a Council or Board vote has been held. The idea is for proposals that are still under development to be modified or improved in reaction to the comments received.

ICANN's process recognizes a distinction between "policy" and "implementation." The GNSO is responsible for developing policy, but the ICANN staff is responsible for implementation of the policy. Thus, in the case of the ICANN President's proposal to introduce new sponsored TLDs in 2002, the basic policy

⁴⁴ See ICANN Bylaws, Annex A. Available at <http://www.icann.org/en/general/bylaws.htm#AnnexA>.

decisions behind that call for applications were made through interactions between the ICANN President, the GNSO Council, GNSO constituencies, the At Large Advisory Committee, and other stakeholders who participated in the notice and comment periods. But the staff developed the actual text of the Request for Proposals (RFP). Once developed, the RFP was put up for public comment, modified again, and then approved by the Board.

5.4 Governments under the Bylaws

When describing the basic structure of ICANN in the prior section, I noted the December 2002 Bylaw amendments which mandated that “the advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies.” There are two reasons why this change posed serious problems.

First, there is no definition of what constitutes “public policy matters” or of what differentiates such matters from the other things that ICANN does. Superficially, the Bylaw amendments imply that there is something called “policy” for domain names that is appropriately set by the private sector-led GNSO, and something else called “public policy” that is somehow reserved to national governments acting through the GAC. As an expert scholar who has studied and participated in the making of information and communication policy in national, local, and international contexts for 25 years, in my opinion, such a distinction does not exist. All domain name policies developed and implemented by the non-governmental actors in the GNSO are “public” in the sense that they define the technical and economic structure of the entire global domain name industry and so have important economic, technical, and political consequences for all Internet users, governments, and private sector service suppliers. Take, for example, the ICANN contractual provision that binds all customers of ICANN-accredited registrars to subject themselves to the Uniform Domain Name Dispute Resolution Policy. The UDRP protects trademarked names from misappropriation, which is obviously a public policy matter addressed in public national law and international treaties. No qualitative difference exists between the kind of policies produced by the GNSO and passed on to the ICANN Board, and the kind of policies discussed or recommended by governments in the GAC. A review of GAC communiqués and policy advice documents reveals that the

topics are all the same: how many and what kind of new TLDs should be created, who should have exclusive rights to which names, privacy in Whois, data escrow, various fraud and security protection measures, and so on.

A second problem is that, even if one could draw a bright line between “public policy” and other kinds of policy, governments do not speak with one voice on policy. Public policies vary tremendously around the world and can contradict each other. This rather obvious fact, as I noted earlier, was central to the rationale for making ICANN a nongovernmental entity in the first place. The idea was to detach DNS coordination and governance policies from the territorial jurisdiction of national states in order to avoid these conflicts. That is precisely why the GAC is institutionalized as simply a committee that advises the Board of Directors. If governments want to make applicable public policy about the Internet they do not need the GAC or ICANN to do so: they can commence negotiations on a treaty, or utilize existing intergovernmental organizations or take actions that apply specifically to their own jurisdiction.⁴⁵

During the policy development process for the 2004 round and during the pendency of the .xxx application, the GAC had several opportunities to monitor and influence ICANN’s activities, including at general meetings, through the open comment periods, in response to direct requests from the ICANN Board, and through the issuance of formal GAC communiqués. GAC communiqués address issues of special concern to GAC participants and are typically issued at the end of ICANN quarterly meetings. In this regard it is noteworthy that no GAC communiqué prior to the June 2005 vote ever expressed opposition to the .xxx TLD specifically, or rejected the concept of a specialized domain for adult content generically. Nor did any GAC communiqué issued prior to or during the sponsored TLD round in which ICM Registry participated insist on a GAC right to review or veto the results of an ICANN TLD approval. On the contrary, when

⁴⁵ Intergovernmental organizations include the International Telecommunication Union, the OECD, the World Intellectual Property Organization, or the World Trade Organization. Unilateral government action could take the form of adopting a nation-wide filter, as Australia is currently planning, or empowering censors to identify and remove content that violates the rules established by the national government, as China currently does. See Meraiah Foley, “Proposed Web Filter Criticized in Australia,” *THE NEW YORK TIMES*, December 11, 2008. Available at: <http://www.nytimes.com/2008/12/12/technology/internet/12cyber.html>; Kathrin Hille, “China Bolsters Internet Censors’ Scrutiny,” *FINANCIAL TIMES*, January 5, 2009. Available at: http://www.ft.com/cms/s/0/f858f9aa-dac8-11dd-8c28-000077b07658.html?ncllick_check=1.

asked formally about the sTLD applications in April 2005, the GAC chair issued a written statement declaring that none of its members had any concerns with the pending applicants.⁴⁶

GAC has been most effective at influencing the policies adopted by ICANN when it has issued a communiqué or policy advice that precedes the finalization of a GNSO policy development process by a substantial time period. Examples are the GAC's principles on ccTLDs,⁴⁷ and the March 2007 GAC Principles on new gTLDs.⁴⁸ Both documents articulated policy principles well before any GNSO-developed policy was finalized. The new gTLD principles were subsequently used by ICANN staff to impose constraints on the development of policy by the GNSO. Indeed, one could see the GAC's new gTLD policy principles as an attempt to clean up the mess made during the .xxx affair, when it was evident that some members of the GAC wanted to retroactively influence an ICANN Board decision to approve .xxx but had no procedural or Bylaw basis for doing so.

6 Narrative of the .xxx Application's Treatment

I now turn to a more chronological narrative of the ICM Registry application process. I will strive to place the .xxx application in the context of the sTLD process as a whole, as that clarifies the allegations of arbitrary and discriminatory treatment.

Defining a process for the addition of new TLDs to the root was considered a part of ICANN's mandate from its inception in 1998. ICANN's attempt to meet that need began in 2000, with a process to add seven new gTLDs as an experiment or "proof of concept," followed by an evaluation. The initial round of new gTLD additions in 2000, however, was roundly criticized as arbitrary and amateurish.⁴⁹ A scholarly article by

⁴⁶ Letter from Mohamed Sharil Tarmizi, GAC Chairman, to Paul Twomey, ICANN President and CEO, April 3, 2005. Available at: <http://www.icann.org/correspondence/tarmizi-to-twomey-03apr05.htm>.

⁴⁷ See GAC Principles for the Delegation and Administration of ccTLDs, February 23, 2000. Available at: <http://www.icann.org/en/committees/gac/gac-cctldprinciples-23feb00.htm>.

⁴⁸ See GAC Principles Regarding new gTLDs. March 28, 2007. Available at: http://gac.icann.org/web/home/gTLD_principles.pdf.

⁴⁹ See Prepared Statement of A. Michael Froomkin, Professor of Law, University of Miami School of Law, before the Senate Commerce, Science and Transportation Committee Communications Subcommittee, hearings on *ICANN Governance*, February 14, 2001. In the first round, ICANN attempted to hold a one-day comparative hearing between more than 40 applicants, each of whom had submitted complex applications that referenced many proposed TLDs. During this process, each applicant was given only three minutes to speak in a large public meeting before the Board. ICANN's Board then proceeded to

Jonathan Weinberg, a law professor and former member of an interdepartmental working group in the U.S. government on domain names, called it a “badly dysfunctional” process, and noted that ICANN’s incoming chairman, Internet protocol pioneer Vinton Cerf, complained that ICANN needed to find a way to “extract” itself from making those kinds of decisions.⁵⁰ As a consequence, the first round of TLD additions resulted in nearly a dozen reconsideration requests.⁵¹

6.1 The design of the RFP process

ICANN’s prior performance in adding new gTLDs no doubt loomed large during the design of the RFP for the 2004 sponsored TLD round. Following the report of a GNSO task force evaluating the first round of new TLDs, the Board asked the GNSO for policy advice about “whether to structure the evolution of the generic top level domain name space and, if so, how to do so.”⁵² In doing this, then ICANN President, Stuart Lynn, was laying the groundwork for the development of a permanent, stable process for the addition of new gTLDs over the long term. He knew, as did all involved, that developing such a process would take years. So alongside these more general plans, President Lynn set in motion a short term plan to add a “limited new round of TLDs.”⁵³ This plan eventually received the support of the GNSO and then the Board, in line with ICANN process.⁵⁴ Throughout the policy development process, the GAC was informed of the plans and given the opportunity to comment on the processes and policies for the new sTLDs. More than once, ICANN staff appeared before the GAC to discuss the plans,

make a superficial and often arbitrary assessment of the applications; *e.g.*, rejecting a proposal for a .iii TLD because someone on the Board objected that the name was difficult to pronounce, even though the ability to pronounce a proposed gTLD had never before been mentioned as a decision criterion.

⁵⁰ Jonathan Weinberg, “ICANN, “Internet Stability,” and New Top Level Domains,” 2002. Available at: <http://www.law.wayne.edu/weinberg/icannetc.pdf>.

⁵¹ See web site of ICANN Reconsideration Committee. Available at: <http://www.icann.org/en/committees/reconsideration/index.html>.

⁵² ICANN Board Minutes, December 15, 2002. Available at: <http://www.icann.org/en/minutes/minutes-annual-meeting-15dec02.htm>. Specifically, Stuart Lynn was asking the GNSO whether the name space should be structured as a fixed taxonomy imposed on users and suppliers from the top down, or whether the top level name space should be defined more flexibly through the proposals of prospective registries and the choices of users in the market. The latter option was favored by the GNSO.

⁵³ Stuart Lynn, ICANN President, A Plan for Action Regarding New TLDs, October 18, 2002. Available at: <http://www.icann.org/en/committees/ntepptf/new-gtld-action-plan-18oct02.htm>.

⁵⁴ GNSO meeting minutes of October 29, 2003. Available at: <http://gnso.icann.org/meetings/minutes-gnso-29oct03.shtml>. The author of this Report was a member of the GNSO Council at that time. See also ICANN Board Minutes, December 15, 2002, *supra* note 52.

answer questions, or listen to suggestions.⁵⁵

ICANN was more careful this time to define its criteria and to specify a more detailed and robust process. At the ICANN meeting in Brazil, in March 2003, President Lynn outlined his plan to post a draft paper outlining the methodology and evaluation criteria to be used, which would be followed by a public comment period.⁵⁶ The final RFP described four selection criteria to be used in evaluating applications: (1) technical; (2) business plan; (3) community value; and (4) sponsorship. In practice, there were three evaluation teams, and the “Sponsorship/Other” evaluation team assessed “community value” as well as sponsorship. The process was designed to protect the Board from the lobbying and unfettered discretion it had dealt with during the proof of concept round. Thus, it removed the Board from the initial evaluations of these criteria and instead delegated it to teams of disinterested expert consultants. The Board’s meeting minutes stress the “importance of the establishment of and adherence to *objective criteria* for review” by the third party consultants.⁵⁷ The Board’s role, according to the RFP, “will be either to accept or reject the findings of the consultant(s). The Board itself will not perform the evaluation.”⁵⁸

As this statement implies, and as the ICM Registry Request correctly asserts, the implementation of the RFP involved a two-step process. First, the independent Evaluation Team (ET) assessed the applicants’ conformity to the sponsorship, community value, business, and technical requirements. The ETs then conveyed a report to the applicant and the Board. Based on the content of the ET report and its recommendations, the Board would make the final determination as to whether the criteria had been met. If all the criteria were met, the applicant would move on to the second stage of the process, which was contract negotiations with the ICANN staff.

⁵⁵ See Minutes of the GAC Meeting 15 held in Rio de Janeiro from March 23-25, 2003, dated 16 June 2003, available at: http://gac.icann.org/web/meetings/mtg15/Rio_Executive_minutes.doc; Minutes of GAC Meeting 15 held in Montreal from June 22-25, 2003. Available at: http://gac.icann.org/web/meetings/mtg16/Montreal_Executive_minutes.doc.

⁵⁶ A first draft RFP was posted in June 2003, and the comment period closed in August 2003. The final RFP was posted December 15, 2003. The development of the process thus took place over a period of one year.

⁵⁷ ICANN Board minutes, September 9, 2003. Available at: <http://www.icann.org/en/minutes/minutes-09sep03.htm>.

⁵⁸ New sTLD Application, December 15, 2003. Available at: <http://www.icann.org/en/tlds/new-stld-rfp/new-stld-application-part-15dec03.htm>.

This was evident at the time in numerous statements by ICANN staff. Kurt Pritz, for example, in his March 4, 2004 description of the process at the ICANN Rome meeting, which I attended, said that evaluations would occur May through July, and that “with the 1st of August [2004], we’ll identify those sTLDs that completed the first round and met the criteria, and we’ll go on to the round of technical and commercial negotiations.”⁵⁹ Likewise, the March 19, 2004 public announcement of the receipt of 10 applications states very clearly that “[a]ll applicants that are found to satisfy the posted criteria will be eligible to enter into technical and commercial negotiations with ICANN...”⁶⁰ An even more complete and direct statement comes from Kurt Pritz’s presentation at the Capetown ICANN meeting on December 3, 2004. Pritz states that

there was, essentially, a two-step process. . . . First, the application was reviewed by a panel of independent evaluators. . . . So if all the contingencies weren’t resolved at the end of the independent evaluation, the application was passed to the board for a final determination as to whether the application met the stated criteria in the RFP. Those that were determined to meet that application then go on to negotiation. And then at the end of this negotiation, I will ask the board to confirm and authorize the formation of a new sTLD.⁶¹

The whole point of the Evaluation Teams was to weed out any applications that clearly did not meet the threshold criteria, obviating the need for any contract negotiations with applications that would never pass the criteria. It was obvious to me, as an observer of the RFP process and participant in ICANN meetings at which they were discussed, that a vote by the Board to conduct negotiations was a statement that the sponsorship, community value, business, and technical criteria had been met. It meant that the most important threshold had been crossed and all that remained was to work out the contractual details. That two-step process was repeatedly set forth by ICANN in a clear and unambiguous manner.

6.2 Public comment on the sTLD applications

As part of the elaborate application process, ICANN posted basic information

⁵⁹ ICANN meeting public forum, real-time captioning, Rome, March 4, 2004. Available at: <http://www.icann.org/en/meetings/rome/captioning-forum1-04mar04.htm>.

⁶⁰ March 19, 2004 Announcement, posting applications for public comment. Available at: <http://www.icann.org/en/announcements/announcement-19mar04.htm>.

about the sTLD applications it received for public comment. This allowed the Board to assess community sentiment about each of the proposals, and permitted knowledgeable observers in the community to identify issues or problems that should be taken into account. Public comments were open for approximately two months, during April and May of 2004.

ICANN's Response states that the *.xxx* application was unusually controversial. It was somewhat controversial, as anything associated with adult content is; but it was not, at this stage in the process, qualitatively different from other applications. There were 63 different comments filed about *.xxx* during the comment period, some supportive, some critical. The *.mail* application actually received the most critical commentary, with 74 comments posted, many of them attacking the proposal's financial arrangements or its eligibility as a sponsored domain. The *.travel* application attracted vehement opposition in the early stages, due to objections from a whistle-blowing, online travel journalist who alleged to have uncovered evidence of a "secret deal" between ICANN staff and the International Air Transport Association. These charges produced nearly three years of public controversy, including an unresolved Request for Independent Review.⁶² About 50 comments were made on the *.travel* proposal. The *.asia* and *.cat* applications each raised immediate questions about whether governments had some kind of a claim to be taken into consideration. The *.asia* proposal was explicitly opposed by the ccTLD registry for Hong Kong, reflecting a bitter division within the Asian region. In the case of *.cat*, there were concerns regarding global recognition of subnational units. The *.mobi* application was similarly controversial, and its claim to be a limited, sponsored domain was actively challenged. About 57 comments were filed about the *.mobi* application. The *.mobi* proposal prompted public criticism from World Wide Web founder Tim Berners-Lee, who claimed it would "break the Web architecture of links, and attack the universality of the Web."⁶³ Many observers scoffed at the construction of *.tel* as a sponsored TLD, asking what kind of a "restricted community" the world's 2 billion plus telephone users

⁶¹ ICANN meeting public forum, real-time captioning, Cape Town, December 3, 2004. Available at: <http://www.icann.org/en/meetings/capetown/captioning-public-forum-1-03dec04.htm>.

⁶² See the writings of Ed Hasbrouck available at: http://hasbrouck.org/blog/archives/cat_internet_domain_names.html.

⁶³ Tim Berners-Lee, "New Top Level Domains Considered Harmful." April 2004. Available at: <http://www.w3.org/DesignIssues/TLD>.

constituted. Thus while the .xxx application raised some objections and issues, as an sTLD application it was not significantly more controversial than the others during the 2004 comment period.

Moreover, that the content of a proposed sTLD might be considered by some to be “controversial” was never a criterion specified in connection with the RFP (nor would it have been a proper or appropriate criterion in any event). Indeed, it is fair to say that the .xxx proposal became significantly more controversial only *after* the Board’s vote on June 1, 2005.

It is important to keep in mind that the GAC as a whole, and individual governments within it, had ample opportunity to comment on the RFP, the process, and the proposals during this period. The record shows that there is no negative comment on the .xxx proposal from governments reflected in the posted public comments. Nor did any GAC communiqué address specific proposals. When the GAC’s opinion was solicited by ICANN management, the chair of the GAC at the time, Mohamed Sharil Tarmizi, wrote to ICANN’s President and CEO, Paul Twomey, on April 3, 2005, stating “[n]o GAC members have expressed specific reservations or comments, in the GAC, about the applications for sTLDs in the current round.”⁶⁴

6.3 Rejection of .xxx by the Sponsorship Evaluation Team

An evaluation by the three independent Evaluation Teams (ETs) was also conducted during this time period. The August 31, 2004 independent evaluation report held that while .xxx passed the technical and business-financial criteria set forth in the RFP with flying colors, it did not meet the sponsorship criteria. The Sponsorship ET’s findings are adequately summarized in the ICANN Response, paragraphs 49-51. The conclusion to reject .xxx based on the sponsorship criteria was strong: the “deficiencies cannot be remedied within the applicant’s proposed framework.”

The independent evaluation report sounds pretty damning until one considers it in conjunction with the following facts:

- (a) The team charged with evaluating compliance with sponsorship criteria only approved two of the ten applications.

⁶⁴ Letter from the Mohamed Sharil Tarmizi, to Paul Twomey, April 3, 2005, *supra* note 46.

- (b) Of the six applications that essentially failed the sponsorship test and did not withdraw, *all* eventually received a positive vote from the Board to proceed to contract negotiations, including .xxx.
- (c) Of the six applications that the Board passed on to contract negotiations, .xxx is the *only* one that did not make it eventually into the root.

This factual record shows that the negative findings of the Sponsorship ET had very little to do with the outcome of this sTLD process. It also indicates that there was indeed something quite exceptional about the treatment of the .xxx application.

ICANN's Response attempts to use the evaluation team's rejection recommendation as a basis for justifying and explaining its later decision. But, in fact, the initial rejection by the Sponsorship ET in 2004 powerfully undercuts ICANN's argument. ICANN's RFP procedure gave it two distinct opportunities to reject applications that did not meet the sponsorship requirements. First, it could have simply accepted the Sponsorship ET's findings. If the Sponsorship ET's arguments were valid why did the Board not eliminate ICM Registry from further consideration in the Fall of 2004? Second, regardless of the recommendation of the evaluation committee, the Board could have decided on its own, in mid-2005, that the application's status as a sponsored domain was inadequate or questionable, and it could have voted down the opportunity to continue with contract negotiations. As we know, it did not do either. ICANN allowed the .xxx application to pass both hurdles.

Had ICANN eliminated .xxx from consideration in 2004, there would be no basis for challenging its decision, as it would have followed its stated procedure. What happened instead is that ICANN's President, Paul Twomey, essentially overruled the sponsorship panel. He gave ICM Registry and all the other negatively affected applicants a chance to "clarify" their applications, and then – not only in the case of .xxx but also all other applications that had their sponsorship criteria questioned or rejected – the Board disregarded the Sponsorship ET's recommendations, conducted its own analysis and made its own determination, and moved forward to contractual negotiations.

To understand these outcomes and assess their relevance to ICM Registry's charge of unfair, arbitrary and discriminatory treatment, we have to step back and put it in the wider context of the ongoing debate about adding new TLDs. Ever since it was

created, ICANN had been gripped by a debate between advocates of a very liberal policy toward adding new TLD names and those who opposed any new additions. There was a widespread perception in the industry and among advocates of a more liberal policy that ICANN had been unduly restricting the market for new TLDs. There were equally adamant demands from trademark holders and some technical people to block all new TLDs.⁶⁵ For obvious political reasons, ICANN's policies always fell somewhere between these two poles. The plan for the addition of a few new sponsored TLDs in 2004 was an attempt to explore a new middle ground, the adding of new sponsored TLDs if they met specified criteria. Sponsored TLDs were more acceptable than open gTLDs to those who opposed any new TLDs at all. With narrowly defined communities and restricted eligibility, sTLDs minimized the risk of trademark infringement and the need for defensive registrations. But the first round of new sponsored TLDs added in 2000, such as *.museum* and *.coop*, were widely derided as complete failures.⁶⁶

Everyone recognized that new unsponsored TLDs, which are open to all users, can appeal to a larger target group of registrants and thus have more commercial value than the highly restrictive sTLDs. Thus, ICANN's sponsored TLD round carried within it a built-in tension between market entrants seeking a sustainable and profitable business model (which implied a TLD name space open to a larger number of registrants) and ICANN's demand for a restricted community (which implied fewer registrations and more extensive and costly reviews of prospective registrants). Because there is no precise definition of a "community," and, as noted earlier, the definition of a "sponsored TLD" rests entirely on humanly-constructed contractual conditions which can be stretched in various ways, the definition of sponsorship was contested and proved unclear throughout the process.

Early in the process, it became obvious that many constituencies within ICANN wanted the sponsorship criteria to be construed more liberally to allow more applications to be eligible. For example, in its first iteration, the draft RFP restricted sTLD applications to organizations that had applied in the first round. That requirement would

⁶⁵ A good summary of this debate is contained in the National Research Council report, *Signposts in Cyberspace: the domain name system and internet navigation*, Washington, DC: National Academies Press, 2005. Available at: http://www.nap.edu/catalog.php?record_id=11258.

have severely limited eligibility. But public comments from ICANN users⁶⁷ and objections from prospective applicants prompted ICANN to modify the RFP to allow applications from anyone, including those who had applied for open gTLDs in the 2000 round. The simple fact that ICANN allowed an application that only a few years earlier was presented to them as an open gTLD to be re-packaged as a sponsored TLD application, tells us a lot about how hard and fast a distinction “sponsorship” really is. Specifically, when applications arrived from *.mobi* and *.tel* – which were aimed at so-called “communities” that consisted of millions of web content providers for mobile devices, or billions of holders of telephone numbers – it was evident to all but the most obtuse observers that the concept of “sponsorship” was being stretched quite far in order to accommodate major commercial interests, such as the consortium of mobile equipment manufacturers and mobile service providers backing *.mobi*.

Thus, when assessing the sponsorship ET’s rejection of *.xxx*, one must bear in mind the fact that the sponsorship ET appears to have adopted a fairly literalist interpretation of the sponsorship criteria. It applied stricter criteria to all applications uniformly, regardless of how few applicants could meet the criteria. ICANN’s management, on the other hand, was under intense pressure from applicants and industry groups to open up the name space. Given ICANN’s fledgling status and need for support and financing, ICANN naturally wanted to accommodate business interests at that stage. And so, the Sponsorship ET was asked to reconsider the rejected applications. In the end, *every* application previously rejected by the Sponsorship ET that went on to a vote of the Board was approved.

Contrary to the theme in ICANN’s Response, *.xxx* was not the only application that generated concerns about its sponsored nature. Indeed, from a sponsorship standpoint *.xxx* made a lot more sense than *.mobi* or *.tel*, and was quite similar in character to the *.jobs* application, which targeted a self-defined community based on the kind of service content offered. The complaints that *.xxx* was not globally recognized to be associated with adult content, aside from being facially implausible to anyone with the slightest

⁶⁶ This point is evident if one considers the last time they encountered either of those sTLD domains from the 2000 round in their daily Internet use.

exposure to adult online content, seems especially discriminatory in the light of the quick and easy approval obtained by *.jobs*, which consists of an English word that is most assuredly incomprehensible to billions of Chinese, Arabic, Cyrillic, Japanese, and Korean-reading internet users, to name a few.

To put this point even more bluntly, I am suggesting that ICANN's management and Board, in its pursuit of the laudable goal of expanding the name space and responding favorably to the proposals of major business interests to enter the market, essentially construed the sponsorship criteria broadly for some, and narrowly for others, evidencing a lack of conformity to rigid sponsorship criteria. Until the U.S. government changed its mind and pressured ICANN to reconsider its decision with respect to *.xxx*, ICANN's management was more interested in opening the name space to powerful players than it was in enforcing strict sponsorship criteria. It would have been arbitrary and discriminatory for ICANN to reject *.xxx* in June 2005 based on a rigid application of sponsorship criteria, while accepting and implementing applications with similar or weaker credentials. And, for ICANN to accept *.xxx* at one stage using one set of sponsorship criteria, and later, when faced with external political pressure, to apply stricter criteria exclusively to that applicant, can only be viewed as egregiously arbitrary and discriminatory.

6.4 The June 1, 2005 vote of the Board

The Board, responding to the concerns and questions about the *.xxx* application, and especially its association with adult content, delayed a vote on the ICM Registry application for some time. The Board's meeting minutes from April and May 2005, and ICANN's Response in this proceeding, talk about the extensive discussions that the Board had about *.asia* and *.xxx*. During early 2005, the Board and staff repeatedly express their feeling of unreadiness with respect to voting on the *.xxx* and *.asia* applications. These delays, in my view, support an interpretation of the June 1, 2005 Board vote as one that was held to resolve the question of whether *.xxx* met the sponsorship criteria. If the Board vote was not intended to resolve the open question about sponsorship, but instead

⁶⁷ See, e.g., At Large Advisory Committee (ALAC) Response to the Proposed sTLD RFP and Suggested Principles for New TLD Processes. Available at: <http://www.atlarge.icann.org/en/correspondence/response-stld-process-09oct03.htm>.

was nothing more than a noncommittal attempt to see where contractual negotiations might lead, there would have been no need to delay the vote; the “test” could have begun weeks or months earlier.

On June 1, 2005 the Board finally voted on .xxx and by a vote of 6 to 3, the Board decided that .xxx met the technical, business-financial, community value, and sponsorship criteria and authorized ICM Registry to begin contract negotiations with ICANN staff. ICANN now claims that the June 1, 2005 vote “was intended only to permit ICM to proceed with contract negotiations, *not* that ICM had satisfied the sponsorship criteria.”⁶⁸ This claim flies in the face of the surrounding factual evidence.

The factual record and ICANN’s Response stress again and again that the sponsorship issue was the *only* consideration holding up the ICM application. It notes that the Board engaged in lengthy and repeated discussions about “whether ICM’s application met the requisite sponsorship criteria.” If the June 1, 2005 vote was not about the sponsorship issues and did not resolve the issue of whether the application met those criteria then what, exactly, was the vote about? After several months of delay and uncertainty, why would ICANN have held a vote authorizing contract negotiations if that vote did not resolve the only outstanding issue regarding the application? Bear in mind that being deemed a sponsored domain was a *requirement* of the process; it would make no sense for ICM and ICANN to enter into contract negotiations if .xxx hadn’t satisfied the Board of its status as a sponsored domain under the criteria of the RFP.

ICANN’s claim that the contract negotiations were intended to “test” the question of whether the registry agreement could answer the concerns regarding sponsorship is an after-the-fact rationalization of its later reversal. Contradicting this claim is the absence of any instructions or statements in the resolution associated with the vote about what the Board was looking for. If authorization of negotiations was really contingent on the outcome of specific issues, it would have been directly communicated to ICM Registry in the Board resolution. Footnotes 93 and 94 of the ICANN Response show that specific instructions were transmitted to .jobs and .mobi after they allowed contract negotiations to proceed. The .cat authorization also demanded that the applicant gain the approval of governmental authorities. Where was the corresponding statement accompanying the .xxx

⁶⁸ ICANN Response, para. 57.

application? There were no instructions. ICANN's inability to produce any supporting explanations or instructions to ICM Registry regarding the negotiations fatally undermines its contention.

6.5 The political reaction to the June 1, 2005 vote

The analysis in this section is built around the second factual question posed earlier: how can we characterize the interventions of the U.S. government and its allies in the GAC in the two and a half months after the June 2005 Board vote? This question leads to a number of subordinate factual questions: Were these interventions, as ICANN implies in its Response, a legitimate and to-be-expected part of a well-defined process in which governments advise ICANN on public policy concerns? Or were they extraordinary disruptions that essentially broke the defined process?

By referencing a break in the process I mean five things: (1) Were the governmental interventions untimely? (2) Did they have the effect of reversing a decision that had already been made? (3) Did they impose on ICANN and ICM a timetable and set of requirements that disregarded the process set out in the Request for Proposals? (4) Was there a sudden and precipitous change in the U.S. Department of Commerce's position, which improperly caused a sudden and precipitous change in ICANN's position? (5) Was there anything improper or inappropriate about the United States government's actions? The answer to all five of these questions is yes.

As a result of a Freedom of Information Act (FOIA) request by ICM Registry to the U.S. Department of Commerce and U.S. Department of State, publicly available internal U.S. government memos and documents reveal quite a bit about how ICANN's June 1, 2005 decision about .xxx impacted the U.S. government.⁶⁹ The internal documents make it clear that the staff of the National Telecommunications and Information Administration (NTIA), a bureau within the U.S. Department of Commerce which directly supervises ICANN, were favorable to the .xxx application at the time of ICANN's decision.⁷⁰ The Department of Commerce seems to have supported .xxx

⁶⁹ The documents are posted on the Web at <http://www.internetgovernance.org/pdf/xxx-foiapage.pdf>.

⁷⁰ The NTIA's Meredith Attwell sent an email to the NTIA's Robin Layton and Suzanne Sene ardently asking for "talking points on why this (xxx) is a good thing and why we support it." Email from Meredith Attwell to Jeffrey Joyner, Robin Layton, and Suzanne Sene, June 15, 2005. Available at: <http://www.internetgovernance.org/pdf/xxx-foiapage.pdf>.

because of its ability to identify adult content so that it could be more easily filtered or avoided by those who did not want exposure to it. They also make it clear that the NTIA at this time saw nothing wrong with ICANN's process for vetting the TLD proposals, and that the NTIA still believed that it should not interfere with ICANN decisions.⁷¹ The NTIA at that time claimed that "the department has a strictly technical role in the implementation of new top level domains, but we do not make policy decisions with respect to domain names or internet content."⁷²

Higher-level political appointees in the Department of Commerce, on the other hand, were immediately concerned about the political appearance of the decision. News of the decision hit the media on June 2, 2005. Immediately, these officials started asking themselves whether the decision would "cause us any problems."⁷³ Those fears proved to be justified as conservative anti-pornography groups began to mobilize. Many of these groups simply reacted in a knee-jerk fashion to the association between an ICANN decision and adult content on the Internet. They did not seem to understand the way in which a .xxx domain had the potential to contain and accurately identify adult content. But regardless of whether their position was right or wrong, the pressure they exerted was enormous and outside of the oversight contemplated by the White Paper, the MOU/JPA, or the IANA contract.

The political pressures began on June 14, 2005 as the Department of Commerce heard from the Family Research Council (FRC) asking about the Department's authority over the root zone file. Obviously the FRC was interested in whether the Department of Commerce could be pressured to overrule the ICANN decision. Then the Department of Commerce heard from the office of Representative Charles W. Pickering, Republican from Mississippi, whose staffer noted that "I had read that you guys will have to

⁷¹ On June 16, 2005, the Commerce Department met with a group of representatives of four conservative anti-pornography groups and U.S. Representative Charles W. Pickering's staff person and told them that "they [NTIA] do not have authority to approve the substance of domain names - only the technical aspects of it." Email from Mike Hurst, Counsel and aide to Representative Pickering, to conservative groups, June 16, 2005. Available at: <http://www.internetgovernance.org/pdf/xxx-foiaprogram.pdf>.

⁷² Email from Clyde Ensslin, NTIA Public Affairs, to Robert MacMillan, *Washington Post*, June 17, 2005. Available at: <http://www.internetgovernance.org/pdf/xxx-foiaprogram.pdf>.

⁷³ Email from Fred Schwien, Executive Secretary of the Department of Commerce, to Assistant Secretary of Commerce Michael Gallagher and Acting Assistant Secretary for Communication and Information John Kneuer, June 2, 2005. Available at: <http://www.internetgovernance.org/pdf/xxx-foiaprogram.pdf>.

approve” and that the Hill is “reviewing its options” (including legislation to make .xxx compulsory for adult material).⁷⁴ On June 16, 2005 U.S. government officials met with four anti-pornography groups and Representative Pickering’s staff person. On June 21, 2005, John Kneuer, the Acting Assistant Secretary for Communication and Information, and the NTIA’s public relations person met with FRC and Concerned Women for America. Still, during this period, the NTIA staff persons who directly supervise ICANN and attend its meetings, Suzanne Sene and Meredith Attwell, (correctly) told the groups they had no authority over the decision and strove to redirect conservative rage over .xxx to ICANN.

On June 16, 2005, however, Fred Schwien, Executive Secretary at the U.S. Department of Commerce sent an email to Michael Gallagher, the head of NTIA, Meredith Attwell, and others, that started to change the tone of the debate. He said “who really matters in this mess is Jim Dobson [head of Focus on the Family and founder of the Family Research Council].” Schwien continued:

What [Dobson] says on his radio program in the morning will determine how ugly this really gets--if he jumps on the bandwagon, our mail server may crash. My suggestion is that someone from the White House ought to call him ASAP and explain the situation, including that the White House doesn't support the porn industry in any way, shape or form.⁷⁵

From this point on, the prophylactic relationship between the Department of Commerce and ICANN began to erode, although it did not break down completely until some time in late July or early August 2005. It is clear that the approach to the issue was becoming increasingly political and less one of neutral supervision of ICANN. NTIA official Attwell said on June 21, “I think there will be a call for [U.S. Department of Commerce] Secretary Gutierrez to weigh in to urge ICANN not to approve it. I don't know where we will go if that happens.”⁷⁶

⁷⁴ Email from Mike Hurst, Legislative Director/Counsel to Congressman Charles W. Pickering, to Jim Wasilewski, June 14, 2005. Available at: <http://www.internetgovernance.org/pdf/xxx-foiapage.pdf>.

⁷⁵ Email from Fred Schwien to Michael Gallagher, June 16, 2005. Available at: <http://www.internetgovernance.org/pdf/xxx-foiapage.pdf>.

⁷⁶ Email from Meredith Attwell, NTIA, June 21, 2005. Available at: <http://www.internetgovernance.org/pdf/xxx-foiapage.pdf>.

6.6 *The change in the U.S. government's position*

In the second week of July 2005, ICANN held its quarterly meeting in Luxembourg. Evidence of the U.S. government's activities and expressions of opinion in that meeting are critical facts for the Panel to consider. At that time, the NTIA had already received about 4,000 emails expressing opinions against the .xxx TLD. These emails were generated by a campaign from the Family Research Council. And yet, NTIA's Suzanne Sene, who represented the Department of Commerce in the GAC at the Luxembourg meeting, refrained from exerting any formal pressure to delay or stop .xxx. On the contrary, GAC minutes show that Ms. Sene tried to prevent GAC from expressing negative views of .xxx "at this late stage." She stated that "the process had been public since the beginning, and the matter could have been raised before at Plenary or Working group level."⁷⁷

Those comments were made openly in the GAC meeting; a few days later Ms. Sene's internal report on the meeting to her supervisors criticizes as untimely the GAC complaints regarding the process, revealing that the U.S. did not share the opinion that GAC should have been asked again for its views before ICANN voted to approve .xxx.⁷⁸ Ms. Sene's email does reveal that some GAC members, especially in Europe, were dissatisfied about not being asked about the Board's approval of .xxx, but also indicates that they were resigned to the Board's decision. Some European GAC members (Denmark, the European Union, and the Netherlands) seem to have been motivated, not by intrinsic opposition to .xxx, but to the process that ICANN followed in approving it. In particular, some GAC members were unable to understand why the Sponsorship ET's recommendation had been overruled. There was also a feeling that ICANN and the U.S. marginalized other governments in the Internet governance process. Recall that, at this time, the WSIS Summit meeting was approaching and many governments were on the offensive against ICANN and the way it shifted policy-making authority away from governments to private actors. Despite all this, GAC refrained from addressing .xxx in its Luxembourg communiqué. As Ms. Sene wrote in her internal memo, "happily. . . there is

⁷⁷ Minutes of GAC Meeting 22, held in Luxembourg from July 11-12 2005, dated November 23, 2005. Available at: http://gac.icann.org/web/meetings/mtg22/LUX_MINUTES.doc.

⁷⁸ Email from Suzanne Sene to Department of Commerce colleagues "re gac communiqué", July 13, 2005. Available at: <http://www.internetgovernance.org/pdf/xxx-foihomepage.pdf>.

no mention ofxxx in the final gac communiqué.”⁷⁹ The GAC instead chose to concentrate its attention on the development of policy principles to guide ICANN’s plans for progressive addition of new TLDs in the future.⁸⁰

This proves that the official U.S. position, as late as July 25, 2005, still favored moving forward with .xxx, and therefore the U.S. government hadn’t yet decided to exert pressure on ICANN to reverse its decision. Also, the minutes of the open meeting between GAC and the ICANN Board representatives show that ICANN’s management was still willing to stand up for its vote to approve .xxx.⁸¹ Thus, as long as the U.S. government and ICANN’s President weren’t opposed to .xxx, complaints from within the GAC were contained. This set of facts shows that ICANN could have maintained the integrity of its process and moved forward into negotiations with ICM Registry and its eventual entry into the root. Objections from a few governments that did not congeal into a formal statement in the communiqué could have been addressed and managed.

So what changed?

The decisive variable in the turnaround of ICANN’s decision was a politically-driven change in the U.S. government’s position. ICANN’s Response rather cleverly obscures this fact, making it appear as though .xxx had always been a focal point of large-scale opposition, and that there was a long, gradual, slide toward rejection. This is incorrect. The record shows a very sharp and time-specific reversal in the fate of .xxx. The date is August 11, 2005.

The change in the U.S. government’s position took place some time in the short period following Ms. Sene’s Luxembourg report and the U.S. Department of Commerce’s production of a letter to Paul Twomey and Vinton Cerf on August 11, 2005. One can infer that at some point between the week after the Luxembourg meeting and

⁷⁹ *Ibid.*

⁸⁰ I note here that ICANN’s Response in this proceeding, at paragraph 60, misrepresents the Luxembourg GAC communiqué as referencing the .xxx application. In fact, the GAC communiqué statement that “introduction of new TLDs can give rise to significant public policy issues” goes on to conclude, “[a]ccordingly, the GAC welcomes the initiative of ICANN to hold consultations with respect to the implementation of the new Top Level Domains strategy. The GAC looks forward to providing advice to the process.” Available at: <http://gac.icann.org/web/communiqués/gac22com.rtf>. Obviously this was not advice pertinent to .xxx, but referred to the GAC’s attempt to develop principles that could guide ICANN’s policy and process for adding new TLDs in the future.

⁸¹ Minutes of GAC meeting 22, held in Luxembourg, *supra* note 77. Vinton Cerf, Paul Twomey, and other ICANN Board members participated in the plenary portion of this GAC meeting.

August 9 or 10, 2005, a decision by higher-level officials in the Department of Commerce, or perhaps the Bush administration, was made to halt the progress of the .xxx application. A letter was drafted and transmitted from Michael Gallagher of NTIA to Vinton Cerf and Paul Twomey on August 11, 2005. The letter asked ICANN to delay a decision on .xxx and expressed the U.S. government's concerns about the opposition to the application. Ms. Sene, of the NTIA, transmitted this letter by email to a dozen countries on August 12, 2005. The list of recipients included Mohamed Sharil Tarmizi, Chairman of the GAC,⁸² and Australian GAC delegate, Ashley Cross. Both the documentary record and my own conversations with the people involved indicate that the Department of Commerce letter preceded the subsequent letter from Mohamed Sharil Tarmizi. This is quite significant, because in its public relations campaign, ICANN used Chairman Tarmizi's letter as the excuse for delaying a decision on .xxx. It is now clear that this was done to deflect responsibility for the delay away from the U.S. government. On its web site, ICANN dated the Department of Commerce letter *August 15, 2005*, even though the record proves that they had received it via email on August 12, 2005, and ICANN's own Response admits that the letter's date was August 11, 2005.⁸³ ICANN posted the GAC Chair's letter on its home page, while burying the Department of Commerce letter in the "Correspondence" section of its web site. The trick worked, as many news media reported that the GAC had requested the delay (instead of the U.S. government). Note also that ICANN's Response misrepresents the nature of Chairman Tarmizi's letter.⁸⁴ ICANN refers to it as an action by the GAC, when in fact it was not anything close to being official GAC policy advice or an official communiqué. It was simply a letter requested by Paul Twomey to serve as cover for the Department of Commerce's reversal. As noted previously, the GAC had numerous clear opportunities to call for a delay in processing .xxx and declined to do so in its official communiqués. Even if one grants that governments have some right to intervene in the process, the treatment of the .xxx application is the epitome of a nontransparent, arbitrary, and untimely action.

⁸² This is the same Mohamed Sharil Tarmizi who wrote to ICANN's Paul Twomey, on April 3, 2005, stating that "[n]o GAC members have expressed specific reservations or comments, in the GAC, about the applications for sTLDs in the current round." Available at: <http://www.icann.org/correspondence/tarmizi-to-twomey-03apr05.pdf>.

⁸³ ICANN Response, paragraph 61, footnote 101.

⁸⁴ See ICANN Response, paragraph 63.

In assessing the motivation for the U.S. government intervention, the specific form it took, and the attempt to utilize the GAC as the proxy, two factors must be kept in mind. First, any attempt by the U.S. Department of Commerce to directly block .xxx on the grounds of the TLD's meaning or the web site content that might be associated with it could be considered "state action" and thus would open the Department of Commerce to charges that it was perpetrating an illegal act of censorship under the First Amendment to the U.S. Constitution. Second, and probably more importantly at the time, the action came in the thick of the WSIS controversies about the U.S. government's dominant role in ICANN. A decision by the U.S. government to directly overrule an ICANN decision (i.e. to put .xxx on the root), coming in the midst of a global uproar over the United States' unilateral control of the DNS root, would have inflamed these tensions and undermined the United States' negotiating position at the upcoming WSIS Summit meeting in Tunisia in November, 2005.

Prior to August 11, 2005, ICM Registry's application had fared relatively well. Although it was controversial among some, it had successfully weathered the ET process and Board vote. Entry into the root zone was imminent. GAC objections up to then – disorganized, untimely and rather muted – had been discounted by both ICANN's management as well as by the U.S. Department of Commerce. After August 11, 2005 everything changed. Even with the major redactions, the FOIA documents show that U.S. government policy toward ICANN and the .xxx application was improperly influenced by domestic political pressure from a limited but vocal and influential constituency. These documents indicate that the U.S. government altered its policy toward ICANN because of this pressure, and that the alteration was precipitous, occurring only two weeks after the U.S. representative had defended ICANN's approval of .xxx at a public ICANN meeting. The U.S. government suddenly abandoned its position that it had no interest in the "substance of domain names" and, instead, actively lobbied against the .xxx domain.

6.7 The broken process

After the U.S. government intervention, ICANN's original RFP process became mangled beyond recognition. In effect, an entirely new evaluation and approval process, centered on the GAC, was improvised as ICANN responded to the political crosswinds emanating from domestic U.S. politics, GAC, WSIS, and some adult content providers

who were opposed to .xxx. Here is a partial list of specific ways in which the process was broken:

- (a) ICANN abandoned its June 2005 decision that ICM Registry had met the sponsorship criteria. The issue of whether .xxx met the sponsorship criteria was reopened in 2006.
- (b) The GAC demanded the public posting of the Evaluation Team reports, which the prior process had specified should be kept private until the process was complete.⁸⁵
- (c) The whole process was returned to the public comment stage that, according to the original RFP, was supposed to have ended in May 2004 (more than a year before). The U.S. government, which had argued in July 2005 that the “GAC had several opportunities to raise questions...as the process had been open for several years,”⁸⁶ pushed to get more comment while actively soliciting other governments to send in negative comments about the .xxx application.⁸⁷ The delay also afforded an opportunity for some representatives of the adult content industry, many of whom saw the clear labeling of adult content as facilitating censorship or regulation, to mobilize a major letter-writing campaign against the domain.
- (d) The GAC was retroactively afforded a veto over ICANN’s approval of the contract, even though this kind of review was not included in the original process. The U.S. government in particular took a special interest in the .xxx proposal, actually reviewing and critiquing contract language. It did not engage in similar action with any of the other TLD proposals.
- (e) In what was probably the most unfair and irrational aspect of the off-the-

⁸⁵ See, among other documents, the letter from Peter Zangl, Deputy Director of the European Commission’s Information Society Directorate, to Vinton Cerf, September 16, 2005, asking to delay the Board’s consideration of .xxx in order to allow the GAC to review the Evaluation Team reports. Available at: <http://www.icann.org/correspondence/zangl-to-cerf-16sep05.pdf>. The GAC Communiqué of Vancouver, dated November 28 – December 1, 2005, welcomes the Board’s decision to postpone consideration of .xxx until the GAC was able to review the evaluation report and “the additional information requested from ICANN.” Available at: <http://gac.icann.org/web/communiques/gac23com.pdf>.

⁸⁶ Minutes of GAC Meeting 22, held in Luxembourg, *supra* note 77.

⁸⁷ I personally spoke with representatives of two governments who confirmed that the Department of Commerce sent emails to the entire GAC and followed up with phone calls pushing governments to weigh in with negative opinions on .xxx.

rails process, the negotiations over the terms and conditions of the ICM Registry contract were transformed by the U.S. and some members of the GAC into a proxy for regulating all adult content on the Internet. Worse, even while ICANN management catered to some GAC members' demand to leverage ICM's contract to "address concerns about offensive content,"⁸⁸ it later asserted that the application should be rejected because it involved ICANN in monitoring and regulation of Internet content. Thus, ICANN used self-contradictory criteria in its approval process.

7 Assessing the Board Resolution Rejecting .xxx

In this section I describe the rationale ICANN used to reject the application as spelled out in the March 30, 2007 Board resolution. This section specifically rebuts ICANN's Response, which purports to show that ICANN's actions conformed to its Mission, Core Values, and Bylaws.⁸⁹ In my assessment I will pay special attention to Article I, Section 2, paragraph 8 of the ICANN Bylaws, which articulates ICANN's Core Value of "*making decisions by applying documented policies neutrally and objectively, with integrity and fairness.*" I will also focus on Article II, Section 3 of the Bylaws, which requires nondiscriminatory treatment. Those two areas are where ICANN deviated most severely from its Bylaws.

7.1 The .xxx application failed to meet sponsorship criteria

ICANN's March 2007 resolution rejecting .xxx asserted that ICM Registry's application did not meet sponsorship criteria. This came twenty-one months after a vote by the Board in June 2005 that the application *did* meet the sponsorship criteria. The record of this case leaves little room for doubt that the first Board vote was supposed to have resolved the question of whether ICM Registry met the sponsorship criteria. At the Luxembourg ICANN meeting in July 2005, Vinton Cerf, Chairman of the ICANN Board, informed the GAC that the .xxx proposal "met the three main criteria, financial, technical,

⁸⁸ See ICANN Board Minutes, Lisbon, Portugal, March 30, 2007, where the Board resolution rejected one proposed contract because it did "not address GAC's concern for offensive content and similarly avoids the GAC's concern for the protection of vulnerable members of the community." Available at: <http://www.icann.org/en/meetings/lisbon/transcript-board-30mar07.htm>.

⁸⁹ See ICANN Response, para. 105.

sponsorship.” He noted that “there were doubts expressed about the last [sponsorship] criteria which were discussed extensively and the Board reached a positive decision considering that ICANN should not be involved in content matters.”⁹⁰ Similar statements exist from other Board members.⁹¹ Contrary to ICANN’s assertions in paragraph 57-59 of its Response, there is no conditionality in Chairman Cerf’s or other Board members’ statements. Thus, .xxx’s “failure to meet sponsorship criteria” alleged in the final Board resolution constituted a *reversal* of an earlier determination. That reversal, in and of itself, is a signal that there was something more going on than the objective and neutral application of documented policies. As I demonstrated above, the reversal is explained entirely by a change in the position of the United States government, not by ICM Registry’s failure to conform to documented policies. Not until ICANN received the August 11, 2005 email from the U.S. Department of Commerce was the sponsorship issue reopened.

Based on these facts, one can only conclude that ICANN’s actions with respect to the sponsorship criteria were arbitrary. The RFP process established independent Evaluation Teams to assess conformity to sponsorship and other criteria. This resulted in an initial, negative evaluation, but this assessment was reconsidered and overruled – not just in the case of ICM Registry, but for *most* of the other sTLD applications. This by itself did not violate the process, however, for under the RFP the Board clearly retained the authority to accept or reject the ET’s recommendations. Where ICANN obviously deviated from its process, however, was by reopening the question of sponsorship after its June 1, 2005 vote. ICANN had repeatedly stated that each proposal that was approved would proceed to contract negotiations. Each proposal that was approved did proceed to negotiations. And each proposal that proceeded to negotiations resulted in a contract – except for .xxx – on the purported grounds that it had not, after all, received approval. Nothing in the documented procedure permitted it to do this.

Further bolstering the conclusion of discriminatory treatment, if one compares ICM Registry’s concept of a sponsored community to that of other successful applicants, one

⁹⁰ Minutes of GAC meeting 22 in Luxembourg, *supra* note 77.

⁹¹ Board member Joichi Ito wrote on his blog, two days after the vote, “the .xxx proposal, in my opinion, has met the criteria set out in the RFP. Our approval of .xxx is based on whether .xxx met the criteria.” Available at: <http://joi.ito.com/weblog/2005/06/03/some-notes-on-t.html>.

finds no important difference. This is especially evident in the cases of *.mobi* and *.jobs*. ICM Registry proposed a *.xxx* top level domain that would be restricted to adult content providers who agreed to conform to certain guidelines regarding the publication of their materials. In other words, the sponsored community was self-selecting. Clearly, nothing in this sponsored model requires all or even most adult content providers to participate. Indeed, it is obvious that many adult content suppliers, *e.g.* those who trade on luring in traffic from people who are not looking for explicit material, those concerned about the extra costs of maintaining additional domains, or those concerned about being blocked by filters, would have an incentive not to support the *.xxx* initiative. For ICANN to suggest that *.xxx* needs the support of those people to qualify as a sponsored domain seems disingenuous at best.

In much the same way, the *.mobi* and *.jobs* domains involve self-selected communities. In the case of *.mobi*, the self-selected group consisted of providers of content on the Internet who agreed to follow certain style sheets and configurations that would facilitate access by mobile devices. There are many web site providers for mobile content who do not participate in the *.mobi* initiative for various reasons. In the case of *.jobs*, the sponsored community meant anyone who agreed to supply a specific kind of service on the Internet. There are many job-oriented web sites that do not make *.jobs* their primary home, *monster.com* being one of the largest and most obvious examples. Incredibly, ICANN also allowed *.tel* to pass sponsorship criteria, although I cannot understand how a domain that describes itself as a domain to “store, update and publish all your contact information, web links and keywords directly on the internet” can be classified as a sponsored domain.⁹² In short, there seems to be no clear or consistent concept of what qualifies as sponsorship emerging from ICANN’s sTLD decisions – yet all of them succeeded except *.xxx*. And, as I discussed before, each of these proposed sTLDs had considerable opposition when the applications were first made public; the level of objections to *.xxx* was very similar until the point when the U.S. government (prodded by a religious conservative campaign) publicly reversed its position on *.xxx*. I must conclude therefore that the only relevant difference explaining the treatment afforded these domains was that

⁹² Advertisement for *.tel* at a registrar site. Available at: http://we.register.it/domains/tel_ext.html?chglng=eng.

.xxx became politically controversial to the U.S. government while the other applications were not. Importantly, U.S. domestic political controversy is not contemplated in the founding documents, which set the parameters of the ICANN/US relationship. Thus political controversy inside the United States cannot serve as a justification for disregarding the rules established in the Bylaws, the Articles of Incorporation, or the specific rules developed to govern the sTLD application process.

7.2 The .xxx application raised public policy concerns

The March 30, 2007 Board resolution also claimed that ICM Registry's application raised "public policy" concerns and that these policy concerns could not be "credibly resolved with the mechanisms proposed by the applicant." I believe that this statement reflects an inherently arbitrary and discriminatory standard of judgment for two reasons.

My first objection relates to the inherent arbitrariness of any attempt to make ICANN's globally applicable decisions reflect the policy concerns of 200+ national governments. ICANN was created to make public policy for the global domain name system precisely because territorial governments and their different legal regimes and jurisdictional boundaries are not suited to the global coordination that the DNS requires. Had .xxx been approved, individual national governments would retain the full authority to pass national laws regarding online adult content, and in several ways the existence of the .xxx domain might help them to do so (see discussion in 7.3 below). The .xxx case is a perfect example of the kind of paralysis that ensues when territorial governments attempt to extend their differing "public policies" into those aspects of Internet administration that must be globally coordinated. When it comes to content regulation and standards of sexual conduct there is a large amount of heterogeneity across governments and societies. Unless all governments in the world agree – and it is manifest that they did *not* have a common position on adult content or .xxx – the concept that an ICANN decision must satisfy any and all governments "public policy" concerns is a fiction. So, in asking ICM Registry to respond to these heterogeneous policy concerns, ICANN (and, I believe, the U.S. government) knew perfectly well that it was asking for the impossible.

The other objection relates to process. On December 15, 2003, ICANN published an RFP which described the process, timetable, and criteria for evaluating sTLD

applications. In that RFP, the words “public policy” do not appear at all and there were no requirements that applicants be prepared to resolve whatever public policy concerns might be asserted by governments. ICANN’s Bylaws did allow the GAC to provide advice on public policy to the Board, but the Bylaws are clear that GAC’s role is *advisory*, and that the ICANN Board has the full capability to reject the GAC’s advice so long as it provides an explanation. Furthermore, implicit in any system of good governance is the idea that advice must be presented in a timely manner, according to a defined procedure. Not only is this a general rule of good governance, ICANN’s Bylaws specifically require that the GAC’s advice be timely if it is to be considered.⁹³ It is evident from the factual record that governments were expected to provide their advice during the public comment period and in the run up to the Board’s vote on June 1, 2005. Prior to the U.S. government’s change in position, ICANN’s Board and the U.S. government both argued that any objections by individual GAC members to .xxx were too late. If governments fail to participate in a process or, worse, signal to ICANN that they have no concerns and then, after crucial decisions have been made, belatedly decide that they do not like the results and demand a reversal, this not only deviates from basic standards of fair and nonarbitrary treatment, but is a fundamental subversion of their obligation to govern in a lawful and accountable way. Further, when one uniquely important government argued for the .xxx application in mid-July 2005 and then changed its mind two weeks later for purely political reasons that have nothing to do with ICANN’s documented policies, the 2004 round clearly became a very arbitrary process.

ICANN’s March 2007 decision and its IRP Response in this dispute imply that the Board must defer indiscriminately to any claim of public policy concerns raised by any member of the GAC at any time. But this is not true. Even though ICANN was under political pressure, it still had the authority to explain to the U.S. government and the GAC that it had already made a determination that ICM Registry’s application met the RFP criteria. Nothing required it to reopen that decision. ICANN could also have explained to the GAC that it was not supposed to take content into account in assigning TLDs, as it was not contemplated in the RFP. It even could have explained that the creation of the .xxx domain had the potential to facilitate national governments’ regulation of adult

⁹³ ICANN Bylaws, Article III, Section 6 and Article XI, Section 2.

content, by making it easier for them to identify or filter certain kinds of content within such a domain. ICANN had many options. What ICANN lacked, in this case, was a commitment to its documented policies and processes. Its Board and management did not have to accede to demands to derail its process. They could have maintained the integrity of their own process by sticking to documented policies applied objectively and with fairness. They chose not to.

7.3 The agreement did not address the GAC's concern for offensive content and the protection of vulnerable members of the community

The Board resolution asserted that governments' concerns regarding offensive content and vulnerable community members could not be "credibly resolved with the mechanisms proposed by the applicant." While I recognize that many people are concerned about offensive content, such content could appear on other TLDs approved by ICANN, and yet none of the other applicants were required to provide assurances that they would resolve government concerns about such content. A very large amount of offensive content on the Internet today, including images of child abuse, is registered under the *.com* domain, and could be registered under other sTLDs, for that matter. And nobody asks ICANN to work concerns about "offensive content" into the registry agreement of *.com*.

ICANN's RFP did not make any mention of "offensive content" or content regulation issues. And regardless of how legitimate concerns about offensive content are, ICANN is not supposed to take a position on a domain name application based on the content to appear under the domain. Content regulation is not within ICANN's limited policy authority. ICANN's lack of authority over content does not mean that governments have no control over Internet content. Individual governments can take their own measures to respond to any ICANN decision in a way that gives effect to their own public policies. For example, as everyone at the time knew, individual governments could, if they wished, require their national Internet service providers to completely block (or fail to resolve) a new *.xxx* domain.⁹⁴ Or they could require local web site operators to

⁹⁴ For instance, the United Arab Emirates "has a wide-ranging filtering system that prevents its citizens from accessing an unusually high percentage of Internet content," including a block against the

register within that domain. Indeed, the voluntary segregation of adult content into a specific domain could actually enhance the ability of national governments to enforce their own policies in this area. Thus, there was no need for the .xxx application to propose mechanisms to resolve government concerns about content. In fact, proposing such mechanisms would run afoul of ICANN's concern that the .xxx sTLD would involve ICANN in content management, as discussed below.

Placed in context, the so-called "public policy" objections meant little more than that .xxx was singled out for special treatment because of its association with adult content. The .xxx application suffered because some governments clung to the illusion that they could somehow affect all adult content on the Internet by preventing one new TLD. It suffered because governments who were already predisposed against the United States' unilateral control of ICANN saw the potentially embarrassing link to adult content as a handy stick with which to beat ICANN and the U.S. government. It suffered because some governments and advocacy groups saw opposition to the .xxx application as a way to posture in public as being against online adult content – conveniently ignoring the fact that large amounts of online pornographic materials already exist under many other TLDs.

7.4 The application raised law enforcement compliance issues and there are "credible scenarios" in which ICANN would be forced to become involved in content regulation

The fourth and fifth reasons set out in the Board resolution rejecting ICM Registry's application were both stating the same thing, so they are grouped together in the discussion here. They both assert that the revised ICM contract – which GAC members insisted on and ICANN negotiated – would, because of variation in what is considered offensive content across countries, require ICANN to monitor ICM's applications of the terms, thus engaging it in content and conduct regulation. As a rationale for rejecting the .xxx application, this argument recalls the child who murdered her parents, and then asked for clemency on the grounds that she was an orphan. In this

entire Israeli ccTLD (.il). OpenNet Initiative, Internet Filtering in the United Arab Emirates in 2004-2005: A Country Study. Available at: <http://opennet.net/studies/uae>. See also the discussion in *supra* footnote 45.

case, ICANN itself (responding to pressure from GAC and especially the U.S. government) was responsible for inserting into the .xxx contract terms and conditions that required monitoring of compliance by the registry. It then used those very same features as the basis for rejecting the application. This problem emerged precisely because ICANN discarded its documented process and allowed the GAC to become deeply involved in the negotiation and approval of specific contractual conditions. In doing so, ICANN created a situation in which governments attempted to use the contract to control “offensive content” and to assert a much stronger role in ensuring certain kinds of compliance based on the nature of the content posted on .xxx web sites.

But this concern is clearly a discriminatory and arbitrary one, because the issue of monitoring compliance with the rules governing the sponsored community is inherent in any and every sponsored domain. For example, .cat is supposed to be a vehicle for the Catalan community. But what happens if there is a severe division within the Catalan community regarding who does or does not qualify as Catalan? If the group running the domain decides that one faction that wants to be considered Catalan does not qualify and discriminates against its members, ICANN could be confronted with a challenge to the legitimacy of the registry’s policies. If the Spanish government and/or subregional governments became involved in such a dispute (perhaps because one faction or another was alleged to be associated with terrorists) such a problem could indeed raise “public policy matters” of a serious nature. In deciding whether or not to renew the domain, ICANN would necessarily be drawn into making judgments about how the registry determined who is a legitimate representative of the Catalan community or about content of web sites and the domain’s policies regarding who or what is “Catalan.” I noted earlier that many people within ICANN opposed the concept of sponsored domains precisely for this reason.

The larger point, however, is that all issues of compliance with the registry’s policies are matters of contract, be it regarding the .xxx domain or any other sponsored domain. With sponsored TLDs, ICANN essentially delegates to a registry the authority to apply some criterion to include or exclude prospective domain name registrants, based on the registry and sponsoring organization’s rules, not based on any individual country’s laws or regulations. All ICANN has to do is determine whether the registry is following

its stated terms of inclusion or exclusion. ICANN does not directly monitor or regulate web site content or end users, it monitors compliance with the contract. The same issues related to compliance and content are raised by any sponsored domain. Here, .xxx was singled out for special treatment simply because of the politicization of online adult content.

My opinion, based on a review of the foregoing facts, is that ICM Registry's application was rejected not because it failed to meet the RFP criteria but simply because the concept of a domain for adult content became too politically controversial and embarrassing to ICANN and the U.S. government. The factual record clearly demonstrates that the most important factor affecting the fate of the .xxx application was not its relationship to documented criteria but the favor or disfavor of the U.S. government. Throughout the review process, ICANN applied its stated criteria for evaluation loosely, relying primarily on another, unstated criterion that was inherently discriminatory and subjective: namely, an apparent desire to placate powerful stakeholders in order to build favor and support for ICANN as an organization, or to forestall attacks on its legitimacy. Accordingly, ICANN first stretched its criteria to accommodate applicants and then, in response to untimely political pressure, changed its standard to single out an applicant that some felt had become too controversial.

8 Conclusion: ICANN and Accountability

In this section I address the importance of the Panel's decision in this case. The Independent Review Process is, at the current time, the only viable protection that the Internet community has against arbitrary and discriminatory behavior by ICANN (which can apparently occur at the behest of, or with the support of, one or more governments, or any other powerful player).

The question of whether ICANN is subject to meaningful external checks has become increasingly salient in the last three years. ICANN and its community of participants are still working out the ramifications of the U.S. government's 1998 decision to privatize the administration of the DNS. It is still not entirely clear how this *de facto* international organization should be held accountable, to whom it should be held accountable, and how it should relate to traditional national governments and national law. More specifically, it is widely recognized that ICANN's establishment as a

California not-for-profit corporation and its oversight by one national government are problematic for an organization that administers critical *global* resources such as Internet domain names and addresses. Just how problematic this is became evident during the WSIS, the politics of which, as I showed above, played an important role in ICANN's handling of ICM Registry's application.

In the wake of the November 2005 WSIS summit, ICANN's management has been exploring the continued internationalization of ICANN's legal status to overcome some of the political and legal problems associated with its foundation in one country's corporation law and its oversight by the U.S. Department of Commerce. Thus in December 2005, only a few weeks after the final WSIS meeting, ICANN President Paul Twomey asked his President's Strategy Committee to commence a series of consultations on how to "strengthen and complete the ICANN multi-stakeholder model." The Strategy Committee was preoccupied in particular with the "question of whether the international operations and perception of ICANN would benefit from establishing a secondary or parallel legal presence" outside of the United States.⁹⁵

In the process of seeking independence from the U.S. government that this goal implied, ICANN learned that its community of participants is deeply concerned about the need for *accountability* and *independent review*.⁹⁶ In February 2008, the new Board Chair, Peter Dengate Thrush, initiated consultations on "Improving Institutional Confidence."⁹⁷ These consultations started in conjunction with a Department of Commerce hearing on the future of ICANN's JPA with the U.S. Department of Commerce, the expiration of which in September 2009 could remove one form of oversight.⁹⁸ One conclusion of the consultations was that ICANN should "[e]stablish additional accountability mechanisms that allow the community to request the re-

⁹⁵ Report of the President's Strategy Commission, October 2007. Available at: <http://www.icann.org/en/psc/report-2007.pdf>.

⁹⁶ Final President's Strategy Commission Report, March 23, 2007. Available at: <http://www.icann.org/en/psc/psc-report-final-25mar07.pdf>. ("[If ICANN is internationalized] the Board should ensure, however, that appropriate full accountability and review mechanisms are established, including utilizing international arbitration panels.")

⁹⁷ See the web page for the "Improving Institutional Confidence" consultation. Available at: <http://www.icann.org/en/jpa/iic/>.

⁹⁸ Midterm Review of the Joint Project Agreement between NTIA and ICANN, February 28, 2008. Available at: http://www.ntia.doc.gov/ntiahome/frnotices/2008/ICANN_transcripts_080228.pdf.

examination of a decision from the Board...⁹⁹ ICANN has begun to develop Accountability and Transparency Framework and Principles in response to these concerns.

In this background information one sees several important points. One sees a longstanding concern about ICANN's accountability to a global community that does not have a single government to act on its behalf. One sees that independent review of ICANN decisions is widely demanded and expected by its constituencies, and is regularly invoked by its current President and Board as a signal of its commitment to responsibility and fairness.¹⁰⁰ One also sees a very intense ongoing debate and discussion about the role of national governments in ICANN, an issue that loomed large in the fate of ICM Registry's .xxx application.

All of these factors combine to make this first use of ICANN's Independent Review Process extremely important to the institution itself. ICANN is subject to strong political tensions and pressures from many different sources. ICANN's existing IRP has never been used; no stakeholder with the resources to lodge a dispute has come along until now. That makes this proceeding a critical step in the evolution of ICANN's accountability. The accountability standards that emerge from the IRP's decision in ICM Registry v. ICANN will have a long-term influence on the future of ICANN as an international institution, and through that, on the global governance of the Internet.

Insofar as it has any reason to exist, the IRP exists to hold ICANN accountable. ICANN should not, therefore, be asking for any deference to its prior decision. It should welcome the opportunity to have an Independent Review Panel fully assess the extent to which it applied the evaluation criteria of the sponsored TLD process in a fair, nonarbitrary and nondiscriminatory manner. In the highly politicized environment of Internet governance, it is essential that ICANN be required to apply its rules and procedures impartially and objectively, in order to establish the credibility and legitimacy of this young international regulatory regime.

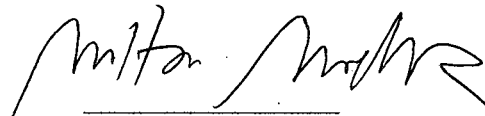
⁹⁹ Improving Institutional Confidence in ICANN, September 2008, p. 4 (Proposal for Discussion). Available at: <http://www.icann.org/en/psc/iic/improving-confidence-revised-en.pdf>.

¹⁰⁰ The House Subcommittee on Commerce, Trade, and Consumer Protection, hearing on *ICANN Internet Governance: Is it Working?*, September 21, 2006, p. 19, Serial No. 109-142. During his testimony in this hearing, Paul Twomey comments that "ICANN does have well established principles and processes

I have relied upon the documents, publicly available, cited herein to prepare this Expert Report and hereby declare that I have prepared this Expert Report to the best of my knowledge and belief.

Date:

12 Jan 2009



Dr. Milton Mueller

for accountability in its decision making and bylaws. . . . [T]here is the ability for appeal to a review committee, and then . . . to an independent review panel and independent arbitration.”

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- Review of **Intellectual Property in the Information Age**, by Susan Halpern, for *Administrative Science Quarterly* (2001).
- Review of **Code and Other Laws of Cyberspace**, by Lawrence Lessig for *Info 2* (5) (October 2000), 454-455.
- Milton Mueller, "Competition in the Domain Name Market," *Business Communications Review* 29, 8 (August 1999).
- Milton Mueller, "ICANN and Internet Regulation," (Commentary) *Communications of the ACM* 42, 6, June 1999.
- Review of **Media Technology and Society: A History from the Telegraph to the Internet**, by Brian Winston. For *Isis* 90, 4 (December 1999), 793-794.
- Review of **Information Policy: A framework for evaluation and policy research**, by R. H. Burger (Ablex, 1993) for *Information Processing and Management* (Spring 1995).
- Milton Mueller, "Telecommunications as Infrastructure: A Skeptical View." Review Essay, *Journal of Communication* 43, 2 (Spring 1993), 147-59.
- Review of **The Bell System and Regional Business: the Telephone in the South, 1877-1920**, by Kenneth Lipartito, for *Technology and Culture* (July 1991).
- Review of **The Process of Technological Change**, by Jon Clark, et al, for *Business History Review* 63, 4 (Winter 1989).
- Milton Mueller, "The Revolution in Property Relations in U.S. Telecommunications," *Media Studies Journal* 3, 1 (Winter, 1989) 58-73.
- "Technology out of Control," review essay of Langdon Winner's **The Whale and the Reactor**, Goldberg and Strain's **Technological Change and the Transformation of America** and Colton and Bruchey's **Technology, the Economy, and Society**. *Critical Review* 1, 4 (Fall 1987).

PREVIOUS POSITIONS

- 1/98 - 9/03: Associate Professor. Syracuse University School of Information Studies.
- 8/92-7/97: Assistant Professor. Department of Communication, School of Communication, Information, and Library Studies, Rutgers University, New Brunswick, New Jersey. Promoted to Associate Professor, July 1997.
- 1/97 - 7/97 Visiting Professor. Hong Kong University of Science and Technology, Department of Information and Systems Management. Also 7/95 - 12/95.
- 8/91 - 8/92: Assistant Director. International Center for Telecommunications Management. College of Business Administration, University of Nebraska at Omaha. Research Associate, 8/89 - 8/91.

PRESENTATIONS, LECTURES, CONFERENCES

<too many to keep up with since 2005>

Invited speaker, "ICANN Studienkreis" conference on Internet governance, Brussels, Belgium, October 21, 2005.

Invited speaker, "Re:Activism conference," Central European University, Budapest Hungary, October 15, 2005.

Invited speaker, "Age of Networks" Seminar, University of Illinois, Institute for Advanced Studies, October 3, 2005.

"Info-communism? A Critique of the Emerging Discourse on Property Rights in Information," TPRC Annual Conference, Alexandria, Virginia, September 24, 2005.

Speaker and organizer, "Regime Change on the Internet? Internet Governance After WGIG." Internet Governance Project, Washington DC, July 28, 2005.

Invited speaker, "IPv6 Resource Management," International Telecommunication Union, Geneva, Switzerland, June 22, 2005.

"Territorial States and the Global Internet: ICANN, Internet Governance, and the UN Secretary-General's Working Group on Internet Governance," International Communication Association, May 29, 2005.

"Info-communism? A Critique of the Emerging Discourse on Property Rights in Information," Governance, Regulations and Powers on the Internet Workshop, Paris, France, May 27-28, 2005.

"Movement in the Making? Communication-Information Policy and Transnational Collective Action by Civil Society," International Studies Association Annual Convention, Honolulu Hawaii, March 5, 2005.

Organizer and host, Symposium on "Internet Governance: Global Rules for Advancing the Information Society," Internet Governance Project, Syracuse University, 12 November 2004.

Invited Expert speaker, Consultation of the United Nations Working Group on Internet Governance, Geneva, Palais des Nations, September 20, 2004.

Invited speaker on Public Policy, "Informatics: Defining the Research Agenda," Indiana University School of Informatics, Bloomington, IN, September 10-12, 2004.

"Civil Society Activism and Communication Information Policy," Invited Presentation, Oxford Internet Institute, Oxford, UK. July 26, 2004.

Invited participant, Conference on "Code as Code," Institute on Information Policy (IvIR), University of Amsterdam, Amsterdam, NL. July 1-2, 2004.

"Internet governance policy in Japan, China and the US." Presented at "Partners Managing Risk: Danger and Opportunity in Pacific Rim Finance and Business Linking China, Japan and the USA. May 14-16, Qingdao, China. (Invited Presentation)

"Governing the Internet: ICANN, WSIS, and the Future of Global Networking." Seoul National University, April 24, 2004. (Invited presentation.)

"Identity Economics and Policy for Distributed Systems," First International Conference on Grid Economics and Business Models, Seoul, Korea, April 23, 2004. (Invited presentation.)

"Making Sense of Internet Governance: Defining Principles and Norms," International Studies Association Annual Convention, Montreal Canada, March 18, 2004. (Competitive submission.)

"Making Sense of Internet Governance: Identifying Public Policy Issues," International Telecommunication Union, Workshop on Internet Governance, Geneva, Switzerland, February 26, 2004.

"The post-.COM internet: toward regular and objective procedures for internet governance." Telecommunication Policy Research Conference (TPRC), Washington, DC, September 20, 2004. (competitive submission).

"Reinventing Media Activism," Special convening at the Ford Foundation to review draft research report on public interest advocacy and activism in communication and information policy. New York, NY July 29, 2003.

"ICANN and new top-level domains." International Studies Association Annual Conference, Portland, OR, March 28, 2003. (Competitive paper submission).

ENUM and Broadband Cable Networks. PTC 2003, Pacific Telecommunication Council, Honolulu, HI, Jan. 2003. (competitive paper submission).

Spectators or Players: Participation in ICANN by the "Rest of the World." Conference on Governing Global Electronic Networks. Social Sciences Research Council and Center for International Development and Conflict Resolution. Held at the Central European University, Budapest, Hungary, November 14 - 18, 2002. (invited)

Interest Groups and the Public Interest: Transnational Civil Society and the Globalization of Communications Policy. TPRC 30th Research Conference on Information, Communication and Internet Policy, Alexandria, VA, September 28-30, 2002. (competitive paper submission).

Research on ICANN's Uniform Dispute Resolution Policy. Trademarks in Cyberspace, International Trademark Association, New York, NY September 25-26, 2002. (invited)

Global rights to names: Control of the DNS root and the expansion of intellectual property rights. Annual convention of the International Communication Association, Seoul, Korea, July 15, 2002. (competitive paper submission)

ICANN and Domain Names: From Common Pool Resource to Property Rights in the International Arena. 43rd annual International Studies Association Convention, New Orleans, March 24, 2002. (invited panel participant)

Dancing the Quango: ICANN and the Privatization of International Governance. Conference on New technologies and International Governance, School of Advanced International Studies, Johns Hopkins University, Washington DC, February 11-12, 2002. (invited)

Governments and Country Names: ICANN's Transformation into an Intergovernmental Regime. PTC 2002, Pacific Telecommunication Council, Honolulu, HI, Jan. 2002. (competitive paper submission)

Convergence: a reality check. Conference on audiovisual services, telecommunications and the WTO, World Trade Organization, Geneva, CH, November 2001. (invited)

Competing DNS roots: creative destruction or just plain destruction? TPRC 29th Research Conference on Information, Communication and Internet Policy, Alexandria, VA, Alexandria, VA, October 2001. (competitive paper submission)

Wealth redistribution and the diffusion of new technologies. Seminar on the digital divide, Columbia Institute for Tele-Information, Columbia University, New York, June 2001. (invited)

Organization and the Internet: Who is Making the Rules Online? New Economy Breakfast for Congressional staff, Washington, DC. Sponsored by Mercatus Center, George Mason University, February 16, 2001. (invited)

International Governance conference. Max Planck Institut Project Group on Law, Politics and Governance, Bonn Germany, February 2001. (invited)

Intellectual Property and Privacy in ICANN Policy, Pressing Issues II: Understanding and Critiquing ICANN's Policy Agenda, Marina Del Rey, California, November 12, 2000. (invited-b)

A Statistical Assessment of ICANN's Uniform Dispute Resolution Policy, New York State Bar Association, Intellectual Property Law Section, Fall Meeting, October 12, 2000, Bolton Landing, New York. (invited)

Rough Justice: A statistical assessment of ICANN's Uniform Dispute Resolution Policy, 28th annual Telecommunications Policy Research conference, Alexandria, Virginia, September 28, 2000. (competitive paper submission)

ICANN and the Representation of Civil Society in Internet Governance, Transatlantic Information Exchange Service (TIES), "Is the Internet Civil society's Best Friend?" Paris, April 4-5, 2000. (invited)

ICANN and Internet Governance, MIT Technology and Culture Forum, Cambridge, Massachusetts, August 4, 2000. (invited)

ICANN and Intelsat: Global Communication Technologies and their Incorporation into International Regimes," 41st Annual Convention of the International Studies Association Los Angeles, California, March 15, 2000. (competitive paper submission)

Technology and Institutional Innovation: Internet Domain Names. 27th Annual Telecommunications Policy Research Conference, Alexandria, Virginia, September 27, 1999. (competitive paper submission).

Why ICANN Failed. Conference on "Governing the Commons," Computer Professionals for Social Responsibility, Washington DC, September 24, 1999. (invited-b)

Investigating Technology's Ability to Foment Institutional Change: Internet domain names. Second Berlin Internet Economics Workshop, Berlin, Germany, May 28-29, 1999 (competitive paper submission).

Creating Collaboration between Domain Name Registrars and Trademark Owners. ICM Conference on Corporate Domain Names, New York, NY October 13, 1998 (invited).

The 'Governance' Debacle: How the Ideal of Internetworking Got Buried by Politics. INET'98, (Annual Conference of the Internet Society) Geneva, Switzerland, 22 July 1998 (competitive paper submission).

Privatization in New Zealand Telecommunications. Center for Tele-Information, Columbia University, New York, 12 June 1998 (invited).

Spectrum Property Rights. Wireless Information Network Laboratory, Focus 98 on Unlicensed Spectrum, Long Branch, NJ, 22 June 1998 (invited).

Domain Names and Trademarks. Internet Executive Summit, Washington, DC, 4 February 1998. (invited)

The Political Economy of Internet Domain Naming. INET '97 (Annual Conference of the Internet Society) June 24-27, Kuala Lumpur, Malaysia. (competitive paper submission)

China's Telecommunication Sector and the WTO: Can China Conform to the Telecom Regulatory Principles? Conference on China as a Global Economic Power: Market Reforms in the New Millennium Cato Institute and Fudan University, Shanghai, China, June 16, 1997. (invited)

Universal Service: Who Needs it? Conference on Managing and Addressing Universal Service Obligations in a Competitive Telecoms Environment, 26-27 February, Hong Kong. (invited)

Implementing Universal Service: what have the FCC and Joint Board done with Section 254? Conference on Universal Service: Deregulation and Competition in Telecommunications, International Business Communications, Bethesda Maryland, USA, 9 December 1996. (invited)

Telecommunications Access in the Age of Electronic Commerce: Toward a Third-Generation Universal Service Policy. 24th Annual Telecommunications Policy Research Conference, Solomons, Maryland, USA, October 6, 1996. (competitive paper submission)

The Hong Kong Internet Exchange: A case study in the economics and institutional development of Asian internet infrastructure." Conference on Coordination and Administration of the Internet, Harvard University Information Infrastructure Project, Kennedy School of Government, Cambridge, Mass., USA, Sept 10, 1996.

Internet and Government Policy in Hong Kong--Pounding a square peg into a round hole? Center for Internet Exchange Technologies Forum, Chinese University of Hong Kong, August 28, 1996. (invited)

Towards a Political Economy of Communication and Information. International Communication Association, Chicago, Illinois, May 25, 1996. (competitive paper submission)

Interconnecting Cybernetworks. Conference on Telecommunications and Cybernetworks, Columbia Institute for Tele-Information, Columbia University Graduate School of Business, May 17, 1996. (invited)

Telecommunications and the NII. Panel organizer and presenter, INFORMS Spring 1996 meeting, Washington DC, May 7, 1996.

Controlling the Computer: China confronts the global Internet. Conference on Computers, Freedom and Privacy (CFP'96), Massachusetts Institute of Technology, Cambridge, March 30, 1996. (invited-b)

"Telecommunications Futures Forum" Co-organizer of conference sponsored by the Hong Kong University of Science and Technology, Department of Information and Systems Management, November 25, 1995.

"Telecommunications Reforms in a Socialist Market Economy: the Case of China." Seminar, Department of Journalism and Communication, the Chinese University of Hong Kong, October 26, 1995.

"A Structural Approach to Interconnection." Interconnection and InterOperation: A Blueprint for Public Policy, Workshop sponsored by the International Telecommunications Society, Wellington, New Zealand, October 18-20, 1995. (invited)

"Developing a Social Science Research Agenda for the National Information Infrastructure," special conference convened by the Computer and Information Science Division of the (USA) National Science Foundation, Washington, DC, June 1-2, 1995. (invited)

"Telephone Penetration and the Inner City: A Geographic and Demographic Analysis." paper presented at the annual convention of the International Communications Association, Albuquerque, New Mexico (USA), May 25-28, 1995. (competitive paper submission)

Invited Panel Chair and paper presenter, "Universal Service," 22nd Annual Telecommunications Policy Research Conference, October 2, 1994, Solomons Maryland. (Invited) (competitive paper submission)

Keynote speaker, "Establishing Market Share in a Competitive Telecommunications Market," Conference on Hong Kong Telecommunications and Network Competition, September 28-30, 1994 Furama Hotel, Hong Kong.

"Bargaining with a monopoly: deregulated interconnection in New Zealand," Conference on Competition in Network Industries, Columbia Institute for Tele-Information, Columbia University, New York, November 5, 1993. (invited)

"The historical development of Universal Service," Benton Foundation, CITI Universal Service Symposium, Washington DC, October 15, 1993. (invited)

Discussant, panel on "International experiences in telecommunications reform," 21st Annual Telecommunications Policy Research Conference, Solomons, Maryland, October 3, 1993. (competitive paper submission)

"International Trade and International Information Flows: Exploring an Unexamined Relationship." Panel organizer and presenter, International Communications Association Annual convention, May 31, 1993.

"Trade and Telecommunications in Greater China." Pacific Telecommunications Conference, Honolulu, Hawaii, January 18, 1993. (competitive paper submission)

"The User-Defined Network: the Present Extent of Private Networking in the U.S." Presented at the Conference on Private Networks and Public Objectives, Columbia Institute for Tele-Information, Columbia University, New York, December 11, 1992. (competitive paper submission)

"Contested Terrain: International Telecommunications in Hong Kong on the Eve of 1997." 9th International Conference of the International Telecommunications Society, Cannes, France, June 17, 1992. (competitive paper submission)

"Telecommunications Deregulation at the State Level: an Empirical Evaluation." 19th Annual Telecommunications Policy Research Conference, Solomons, Maryland, September 28, 1991. (competitive paper submission)

"Telecommunications Liberalization in the Asia-Pacific Region." Panel co-organizer and presenter, 1991 International Communications Association Convention, Chicago, May 24, 1991. (competitive paper submission)

"Universal Service as a Product of Competitive Struggle." Panel co-organizer and presenter, 1991 International Communications Association Convention, Chicago, May 24, 1991. (competitive paper submission)

"New Zealand's Revolution in Spectrum Management." Rethinking the Invisible Resource, a conference sponsored by the Federal Communications Commission, the National Telecommunications and Information Administration, and the Northwestern University Washington Program in Communications Policy, April 30, 1991. (invited)

Discussant, "Cable Industry's Future in the U.S. Telecommunications Infrastructure." Center for Telecommunications and Information Studies, Columbia University, New York, January 25, 1991.

"Cable and Wireless PLC: A study in global system building." Pacific Telecommunications Council, Honolulu, Hawaii, January 16, 1991. (competitive paper submission)

"The Indigenization of Foreign Culture in Three Chinese Cultural Settings: a Critique of Media Imperialism Theory." 1990 International Communications Association (ICA) convention, Dublin Ireland, June 24. (competitive paper submission)

"Separate System Competition: the Case of Hong Kong." 8th International Conference of the International Telecommunications Society (ITS), Venice, Italy, March 18-21, 1990. (competitive paper submission)

"The Great Information Migration: Historical Perspectives on Shifts in Dominant Media." International Communications Association (ICA) Conference, San Francisco, May 1989. Co-organizer of panel on broadband telecommunications. (competitive paper submission)

"Natural Monopoly and Competition: Myth and Reality in American History." Paper on telephone history presented at session of joint conference of the Organization of American Historians and the National Council on Public History, St. Louis, April 6-9, 1989. (competitive paper submission)

"Open Interconnection and the Economics of Networks: An Analysis and Critique of Current Policy." 16th Annual Telecommunications Policy Research Conference, Airlie House, Virginia, Oct. 30 - Nov. 1, 1988. (competitive paper submission)

"From Competition to Universal Service: The Emergence of Telephone Monopoly in the U.S., 1907-1921." Annual Meeting of the Society for the History of Technology, Wilmington, Delaware, October 21, 1988. (competitive paper submission)

"Capitalism Reborn: the revolution in property relations in U.S. telecommunications." Conference on Technology, Communication and the Humanities, sponsored by the Institute for Advanced Studies in the Humanities, University of Edinburgh, August 19, 1988.

"Letting the BOCs out of the Box." Commenter on presentations by Henry Geller and Herbert Marks on local exchange telephone deregulation, Cato Institute Policy Forum, Washington D.C., July 23, 1987.

EXHIBIT C-57

From: H. E. Mrs. Elham Mahmoud Ahmed IBRAHIM Contact Information Redacted
To: Sophia Bekele Contact Information Redacted
Sent: Monday, August 3, 2009 8:50 AM
Subject: RE: OECD source reference on internet name administration as an infrastructure resource

Thank you Sophia, the letter will be ready soon

From: Sophia Bekele Contact Information Redacted
Sent: Friday, July 31, 2009 12:42 AM
To: H. E. Mrs. Elham Mahmoud Ahmed IBRAHIM
Cc: Diaby Moustapha Mamy
Subject: Fw: OECD source reference on internet name administration as an infrastructure resource

Dear Commissioner Elham and Mr. Diaby

Please note below attached is a document from UN Working Group on Internet Governance that classifies "Internet name administration" which I highlighted in red, such as "dotAfrica" Internet name to be under "infrastructure resource management."

I have provided you with the link below to establish the source.

http://www.oecd.org/document/56/0,3343,en_21571361_34590630_34638200_1_1_1_1,00.html

Best regards,

The UN Working Group on Internet Governance (WGIG) has identified what it considers to be key public policy areas for further investigation and discussion.

1/ INTERNET INFRASTRUCTURE AND RESOURCE MANAGEMENT		
Physical infrastructure	Telecommunications infrastructure, broadband access, convergence with NGN	
	VoIP	Peering & interconnection
	Spectrum policy	<i>Technical standards*</i>
Resource management	Administration of Internet names	<i>Administration of IP addresses*</i>
	<i>Administration of root server system*</i>	<i>Administration of root zone files*</i>
	<i>Multilingualization of Internet naming systems*</i>	
2/ ISSUES RELATING TO THE USE OF THE INTERNET		
<i>"While these issues are directly related to Internet Governance, the nature of global cooperation required is not well defined" (WGIG Preliminary report)</i>		
Spam	Critical infrastructure protection	Security of network and information systems
Cybersecurity, cybercrime	National policies & regulations	<i>Exemptions for ISPs of third party liability*</i>
3/ ISSUES WITH WIDER IMPACT THAN THE INTERNET		
Electronic authentication	Competition policy, liberalization, privatization, regulations	
Access protection	Consumer, user protection, privacy	Unlawful content and practices
Dispute resolution	Intellectual property rights	E-commerce and taxation of e-commerce
E-government and privacy	<i>Freedom of information and media*</i>	
4/ ISSUES WITH DEVELOPMENTAL ASPECTS		
<i>"Issues relating to developmental aspects of Internet governance, in particular capacity building in developing countries"</i>		
Internet leased line costs	Affordable & universal access	Education, human capacity building
Other	National infrastructure development	Social dimensions and inclusion
<i>Content accessibility*</i>	Open-source and free software	<i>Cultural and linguistic diversity*</i>

*: *The OECD has not conducted significant work in these areas.*

Sophia

When they call the roll in the Senate, the Senators do not know whether to answer 'Present' or 'Not guilty.' - Theodore Roosevelt

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EXHIBIT C-58

African Union Compendium

2nd Edition



OXFAM
International

Oxfam International

Liaison Office with the African Union

About Oxfam International Liaison Office with the African Union

Around the globe, Oxfam works to find practical, innovative ways for people to lift themselves out of poverty and thrive. We save lives and help rebuild livelihoods when crisis strikes and we campaign so that the voices of the poor influence the local, national, regional and global decisions that affect them. We believe that change happens when citizens are informed, empowered and enabled to influence policies, practices and to use mechanisms to hold their leaders accountable.

We work directly with citizens, communities and we seek to influence the powerful to ensure that poor people can improve their lives and livelihoods and have a say in decisions that affect them. We are an international confederation of 17 organizations working together with partners in more than 90 countries including 35 in Africa.

Following the signing of a Memorandum of Understanding with the African Union and a Bilateral Host Agreement with the Government of Ethiopia, Oxfam set up a Liaison Office with the African Union (OI-AU) in Addis Ababa to strengthen its collaboration with the African Union. OI-AU together with other Oxfam affiliates and partners operating in Africa, work closely with the African Union and its member States on various issues of common interest including humanitarian policy, peace and security, social affairs, gender justice, economic affairs, governance, agriculture, citizens' participation and communication.

In line with the African Union's mission to build an integrated, prosperous and peaceful Africa, driven and managed by its own citizens and representing a dynamic force in the international arena, our Liaison Office with the African Union, part of Oxfam Pan Africa Team works essentially on the following:

1. Active Citizenship in the Affairs of the African Union: To support citizens and civil society organizations of Africa to work with and engage the African Union, and be part of the policy processes debates and decisions that affect their life.
2. Saving Life Now and in the Future: Peace, Security and Humanitarian Affairs including direct engagement with the African Union's peace and security organs in terms of policy advocacy and campaign, building on Oxfam's operational presence in 35 countries in Africa including a number of conflict affected countries namely Sudan, South Sudan, DRC, Mali, Somalia etc.
3. Making African Extractive Resources Work for Africa: Support the AU's African Mining Vision and African Mineral Development Centre objectives to ensure that African rich mineral resources are fully and best used for the socio-economic development of the continent
4. Representation of Oxfam to the African Union and management of the confederation's relationship with the African Union, its organs and member states in the framework of the existing Memorandum of Understanding between Oxfam International and the African Union Commission.

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African Union Compendium



Oxfam International Liaison Office with the African Union



Acronyms

AACC	All Africa Conference of Churches
ACB	African Central Bank
ACBF	African Capacity Building Foundation
ACHPR	African Commission on Human and People's Rights
AEC	African Economic Community
AIB	African Investment Bank
AMF	African Monetary Fund
APRM	African Peer Review Mechanism
APSA	African Peace and Security Architecture
ASF	African Standby Force
AU	African Union
AUC	African Union Commission
CCP-AU	Centre for Citizens' Participation in the African Union
CEN-SAD	Community of Sahel-Saharan States CID Citizens and Diaspora Directorate
CMD	Conflict Management Division
COMESA	Common Market for Eastern and Southern Africa
CSOs	Civil Society Organisations
EAC	East African Community
EASFCOM	Eastern Africa Standby Force Mechanism
ECCAS	Economic Community of Central African States
ECOSOCC	Economic, Social and Cultural Council of the African Union
ECOWAS	Economic Community of West African States
EU	European Union
FAS	Femmes Africa Solidarité

FEMNET	African Women's Development and Communication Network
FES	Friedrich Ebert Stiftung
FIDH	International Federation for Human Rights
GIMAC	Gender is My Agenda Campaign
ICRC	International Committee of the Red Cross
IFAD	International Fund for Agricultural Development
IGAD	Intergovernmental Authority on Development
International IDEA	International Institute for Democracy and Electoral Assistance
IPSS	Institute for Peace and Security Studies IRRI International Refugee Rights Initiative
ISS	Institute of Security Studies
MoU	Memorandum of Understanding
NARC	North African Regional Capability
NEPAD	New Partnership for Africa's Development
NGO	Non-Governmental Organisation
OAU	Organisation of Africa Unity
OI-AU	Oxfam International Liaison Office with the African Union
PAP	Pan Africa Parliament
PRC	Permanent Representatives Committee
PSC	Peace and Security Council
PSD	Peace and Security Department
RECs	Regional Economic Communities
SADC	Southern African Development Community
SOAWR	Solidarity for African Women's Rights
SOTU	State of the Union Coalition
UNOAU	United Nations Liaison Office to the African Union

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Acknowledgment and Introduction

I am delighted to introduce to you this second edition of the African Union Compendium.

I would like to thank sincerely my dynamic and dedicated colleagues of OI-AU who worked hard to complete this 2nd edition, a totally revised and augmented version of the 1st edition.

I am particularly grateful to Rinret Dabeng the Project Lead, Idriss Ali Nassah and Brenda Mofya the reviewers and all the other colleagues contributors in this exciting work.

I would also like to thank the African Union Commission staff and the representation offices of the RECs, for their contributions and assistance in the realization of this project.

The original project and the 1st Edition of this Compendium was thought by Oxfam Liaison Office with the African Union and Fahamu with the objective of supporting the African Union's mission to build an integrated, prosperous and peaceful Africa, an Africa driven and managed by its own citizens and representing a dynamic force in the international arena.

Our aim was to have a comprehensive manual to support our "understanding the African Union" training programme now jointly executed by Oxfam and the African Union Commission.

It is to be noted that, in preparing the African Union Compendium, we have made use of publicly available official AU documents, policy instruments, key presentations by AU departmental experts, internet research and research work that has taken into account available information

Oxfam and its partners are committed to the vision and objectives of the African Union, and continue their engagement with the continental body through different efforts of popularizing the African Union, and supporting it to promote the implementation of

the various policy instruments that will in essence render better conditions of life for the citizens of the continent.

I sincerely hope that this Compendium will be of great use to citizens, CSOs, the media, policy makers and other interested stakeholders.



Désiré Assogbavi,

Resident Representative and Head of Oxfam Liaison Office of the African Union

Addis Ababa, 6 January 2014

Why an AU Compendium?

Since its creation in 2002 as a successor to the Organisation of African Unity (OAU), the African Union (AU) has been seeking to achieve greater unity and solidarity of African countries and to be a people-centred institution by allowing and encouraging citizens' engagement with its organs. The AU has promised to keenly involve African citizens at large and members of the diaspora in the process of the continental integration. Over the last few years, the AU has been trying to build a partnership between governments and all segments of civil society, in order to strengthen solidarity and cohesion among the African people and to make Africans 'both the actors and beneficiaries of the structural changes engendered by development' (OSISA et al., 2007). In addition, the creation of organs such as the Pan African Parliament (PAP) and the Economic, Social and Cultural Council (ECOSOCC) was another manifestation of the AU's desire and determination to engage different stakeholders in the affairs of the Union.

Over the past 10 years, the increased relevance and targeting of the African Union as the premier continental institution has been a learning process worth the effort for many involved in the advocacy space in Africa. As a result, there has been a growing interest by African civil society in popularising and engaging the continental body, thus introducing a clear need to alleviate the knowledge and information gap on the structures and the functioning of the AU, its various organs, institutions as well as its decision-making processes. To address this need, the AU Commission and Oxfam have undertaken a capacity building project since 2010 in the form of a training on 'Understanding the African Union'. This training is meant to popularise the continental institution among members of the civil society and help them to strategize on how to engage it at various levels.

A comprehensive resource guide on the AU to assist in the delivery of such trainings was identified as a key missing tool. With this in mind, OI-AU decided to produce a resource book titled 'African Union Compendium'. The Compendium covers the AU structures, decision making processes, civil society space at the AU and it adds value by highlighting the role these various civil society actors have played in the space provided and, in some instances, how they initiated the creation of that space. The African Union Compendium is intended for multiple stakeholders including—but not limited to—CSOs and policymakers at various levels, AU and diplomatic staff, academics, staff of Regional Economic Communities (RECs) and the media.

In the past, there have been a number of guides and manuals on the AU, with useful information for civil society and other actors seeking to engage the continental body. These include; Civil Society Organisations and the African Union: Towards a Continental Advocacy Strategy published by World Vision (2007), Towards a People Driven African Union: Current Obstacles and New Opportunities published by AfriMAP, AFRODAD and Oxfam, Strengthening Popular Participation in the African Union: A Guide to African Union Structures and Processes published by Oxfam and AfriMAP. However, with the African Union Compendium, a holistic approach was adopted in the gathering and organising of information about the African Union, its organs, structures and mechanisms that offer both an overview for understanding the AU as well as a comprehensive reference for in-depth insight.

CHAPTER 1: THE PAN-AFRICAN MOVEMENT



- ❖ Introduction
- ❖ Origins
- ❖ Ideological and Philosophical Concepts

Chapter 1: The pan-African Movement

1. Introduction

A number of historians and political analysts believe that the creation of the African Union (AU) and its predecessor, the Organisation of African Unity (OAU), was a manifestation of the rise of the pan-African movement. In addition, the establishment of the AU was a desire by African leaders to unite all people of Africa in order to face new realities of globalisation, including the role of emerging powers that are shifting the power relations between the North and the South (Adi and Sherwood, 2003).

Even though the establishment of the OAU was 'a demonstration of the ascent of the pan-African ideologies,' Adi and Sherwood (2003) continue arguing that there has never been a universally accepted definition of what constitutes pan-Africanism. Most recent writers on the subject are reluctant to provide definitions, or they provide several, acknowledging that the vagueness of the term reflects the fact that pan-Africanism has taken different forms at different historical moments and geographical locations. They view pan-Africanism as a movement of people, men and women whose lives and work have been concerned, in one way or the other, with the social and political emancipation of African people and those of the African diaspora.

For instance, the Oxford Dictionary defines the term 'pan-Africanism' as the '*principle or advocacy of the political union of all the indigenous inhabitants of Africa*'. The Cambridge Dictionary writes that '*pan-Africanism is a belief that people from Africa and their descendants should be united, or a movement to achieve such unity*'. The Merriam Webster's Collegiate Dictionary says that '*pan-Africanism is a movement for the political union of all the African nations*'. Badejo (2008) gives a similar meaning by saying that pan-Africanism is 'a socio-political worldview, philosophy, and movement, which seeks to unify native Africans and those of African heritage into a 'global African community.

On the other hand, authors such as Cheikh Anta Diop and Théophile Obenga have sometimes used the term pan-Africanism to mean advocacy for a political African unification. In the United States of America, the term is closely associated with Afrocentrism, an ideology of African American identity politics that emerged during the civil rights movement of the 1960s to 1970s (Amate, 1986). Pan-African unity is especially important in African American identity politics because the African ancestry of the Afro-American community cannot be derived from any identifiable African people. Therefore, it has become necessary to minimise the differences between the various people of Africa in favour of a generalised African heritage (Shivji, 2008). Despite those differences in the meaning of pan-Africanism, there is a uniting factor, that is, all the authors 'believe in some form of unity or of common purpose among the people of Africa and the diaspora' (Adi and Sherwood, 2003).

In the short introduction above, we did not seek to write about pan-Africanism as different scholars, including the ones quoted above, have extensively covered the subject. Rather, we have sought to establish a linkage between the pan-African movement in the 19th century and the creation of the OAU and ultimately the AU. The driving force behind the work of George Padmore, Isaac Wallace-Johnson, William Edward Burghardt Du Bois, Aimé Césaire and Walter Rodney, among others, was the same that led Kwame Nkrumah, Julius Kambarage Nyerere and Sékou Touré, just to name a few, to dedicate their lives to the unity of African people.

2. Origins

As a philosophy, pan-Africanism represents the aggregation of the historical, cultural, spiritual, artistic, scientific and philosophical legacies of Africans from past times to the present. Pan-Africanism as an ethical system traces its origins from ancient times, and promotes values that are the product of the African civilisation and the struggles against slavery, racism, colonialism and neo-colonialism. It thus includes a variety of ideas, activities and movements that celebrated 'Africanness', resisted the exploitation and oppression of those of African descent and opposed ideologies of racism (Adi and Sherwood, 2003).

Pan-Africanism is usually seen as a by-product of the European slave trade. Enslaved Africans of diverse origins and their descendants found themselves entrenched in a system of exploitation where their African origin became a sign of their servile status. Pan-Africanism set aside cultural differences, asserting the principality of these shared experiences to further solidarity and resistance to exploitation.

Alongside a large number of slave insurrections, by the end of the 18th century, a political movement developed across the Americas, Europe and Africa that sought to connect these disparate movements into a network of solidarity putting an end to this oppression. In London, the United Kingdom, the 'Sons of Africa' was a political group addressed by Quobna Ottobah Cugoano — an African abolitionist — in the 1791 edition of his book 'Thoughts and Sentiments on the Evil of Slavery'. The group addressed meetings and organised letter-writing campaigns, published campaigning material and visited parliament. They wrote to figures such as Granville Sharp, William Pitt and other members of the White Abolition Movement, as well as King George III and the Prince of Wales, the future George IV (Harris, 2003).

What we could call 'the modern organised pan-African movement' began around the beginning of the 20th century with the founding of the African Association in London, later renamed the Pan-African Association by the Trinidadian Henry Sylvester-Williams around 1887. The Pan-African Association was concerned, at that time, with solving what they saw as the 'problem of the twentieth century...the problem of the colour line', and to 'secure civil and political rights for Africans and their descendants throughout the world'. (Harris, 2003)

3. Ideological and Philosophical Concepts

As initially conceived by Henry Sylvester-Williams (some historians credit this idea to Edward Wilmot Blyden, an Americo-Liberian educator, writer, diplomat and politician) pan-Africanism referred to the unity of all continental Africa. The concept soon expanded, however, to include the African diaspora. During apartheid in South Africa there was a Pan-Africanist Congress that dealt with the oppression of South Africans under white apartheid rule. Other pan-Africanist organisations include Garvey's

Universal Negro Improvement Association-African Communities League, Trans-Africa and the International People's Democratic Uhuru Movement (Badejo, 2008)

Pan-Africanism seeks to re-examine the African history from an 'African perspective' and a return to traditional African concepts about culture, society and values. An important aspect is the suggestion that Ancient Egypt has essential 'African' characteristics, sometimes expressed by the term Nile Valley Civilisations or African civilisations that group Egypt with other civilisations of other parts of the continent. According to Badejo (2008), the pan-African movement of the 1950s and early 1960s focused on four pillars:

- 1. The recognition that African nationalism had to be pan-Africanism; that 'territorial nationalism' built within countries whose boundaries had been artificially drawn by colonial masters was both unreal and unviable;*
- 2. Pan-Africanism was consistently anti-imperialist;*
- 3. Pan-Africanism was conceived and perceived as a political project or movement;*
- 4. Pan Africanists were persistent in their stand that African unity would be voluntary act and that it could not be imposed.*

In the 21st century, the new pan-Africanism movement is still committed to the 'long aspired-to African unity and solidarity', but with an unprecedented new level manifested in the recognition that development, peace and security and democracy in Africa are intertwined and interdependent. This new understanding of pan-Africanism explains the termination of the OAU and the birth of its successor, the AU (Da Costa, 2007).

Celebrating the Year of Pan-Africanism and African Renaissance

May 25th, 2013 was a historical day for the African Union as it celebrated fifty (50) years of the existence of the Organization of African Unity that eventually became the African Union. Remembering the words of Kwame Nkrumah that declared that "Africa must unite or perish!" the AU chose the 21st Ordinary Summit in May 2013 to reflect on the dreams and visions that led to the existence of the organization.

The OAU Charter of 1963 was envisaged to "harness the natural and human resources of our continent to the total advancement of our peoples in all spheres of human endeavour". As the whole African continent celebrated and reflected the golden jubilee, the AU acknowledged that the mission that OAU set out to achieve had been accomplished. According to the AU, Africa today "enjoys its total liberation and its unity, enjoys an unprecedented economic rise, enjoys more and more democracy and good governance, peace and stability".

The Golden Jubilee Celebration paid tribute to the Founders of the OAU and the leaders who led the liberation movement in Africa. The AU also sought to "take stock of 50 years of achievements while paving the way for the next 50 years". The celebration afforded the AU the opportunity to assess the values that underlie pan-Africanism and the chance to outline its vision and mission for the year 2063. The AU, in partnership with Femmes Africa Solidarité and the Gender is My Agenda Campaign (GIMAC) celebrated the past and present accomplishments of women and paid tribute to various women across history who led in the liberation struggle for independence in Africa.

The Pan-African Movement in Africa



H.E. Dr. Francis Kwame Nkrumah (Sept. 21, 1909- April 27, 1972); Nkrumah was the founder and leader of the African independence movement and the foremost advocate of Pan-Africanism during his time. In February of 1951, Kwame Nkrumah left James Fort Prison. After 207 years under colonial rule and a landslide election, Nkrumah guided the Gold Coast to independence in 1957 and rapidly renamed it Ghana. Nkrumah was a proponent of Pan-Africanism, as he sought the liberation of the entire African continent from colonial rule and offered assistance to other African nationalists. So deep was his commitment that he declared that “the independence of Ghana was meaningless unless

it was linked up with the total liberation of the African continent”. To Nkrumah, Ghana’s sovereignty was secondary to the pan-African dream of a Union of African States. According to Nkrumah, “the unity of Africa and the strength it would gather from continental integration of its economic and industrial development...could have a most powerful effect for world peace”. He found allies in his contemporaries such as Nnamdi Azikiwe, Sékou Touré and Modibo Keita and in them he found powerful support. His efforts helped to bring about the Organization of African Unity in the promotion of peace and cooperation between African states.



H.E. Jomo Kenyatta (October 20th 1893-August 22nd 1978); Kenyatta was the founding President and Head of State of the Republic of Kenya. After being released from prison; in December 1963, Kenyatta was jubilantly declared the Prime Minister and in 1964; became the President of an independent Kenya. In his time, Kenyatta was a pioneer, a nationalist, an intellectual and fervent pan-Africanist. Along with other founding presidents; Kenyatta popularized the message

and values of pan-Africanism, emphasizing on an intellectual, political and economic cooperation that would lead to the political unity of Africa.



H.E. Benjamin Nnamdi Azikiwe (Nov. 16, 1904- May 11, 1996); Azikiwe was the Head of State of Nigeria from 1960-1966 and was the first president of an independent Nigeria. Azikiwe firmly believed that in order for Africa's to come into its own, dignity must be restored to African peoples. He supported the idea that African States declare a doctrine of non-intervention where the continued existence of any colonial territory in Africa, by any non-African state would be regarded as an unfriendly act against the African continent as a whole. In an address in 1962, Azikiwe stated that in the quest for the unity of African states, "so long as the form of

government is clearly understood and an efficient machinery for organization and administration is devised, backed by multi-lateral conventions which would enhance the standard of living of Africans, safeguard their existence by collective security and guarantee to them freedom under the law in addition to the fundamental human rights, the dream of Pan-Africanism is destined to come true".



H.E. Ahmed Sékou Touré (Jan. 9, 1922- March 26, 1984); Sékou Touré was a trade union leader, a pan-Africanist and the first President of Guinea. He was the founder and leader of the Democratic Party of Guinea which won independence in 1958 from France. As a leader of the pan-African movement, he spoke out against colonial powers and was instrumental in the struggle for world African liberation. After independence, Touré signed an agreement to form a union between Guinea and Ghana. He envisioned that this union would be transformed "into a common cooperation

and action in all fields to realize rapidly a United States of Africa". In 1959, Touré and Nkrumah signed the Conakry Declaration where this agreement was

open to all countries on the continent with the aim of assisting other African countries under colonial rule to become sovereign and to form the 'Union of Independent African States'. Along with Nkrumah, he assisted in the formation of the All-African Peoples Revolutionary Party and together they; with Mali's Modibo Keita; attempted to form a United States of Africa in the 1960s. Under Touré's leadership, Guinea was one of the first countries in Africa that opened its borders to Africans in the diaspora. In partnership with his pan-African contemporaries, their efforts led to the politically historic meeting in Ethiopia in 1963 that culminated into the foundation of the Organization of African Unity (OAU).



H.E. Julius Nyerere (April 13, 1922- Oct 14, 1999); Julius Nyerere was the first president of independent Tanganyika, the creator of Tanzania and one of the founding fathers of the OAU and a life-long ally in the pan-African movement. Nyerere was actively involved in pan-African politics and was opposed to all forms of exploitation. Nyerere granted citizenship to all peoples born in Tanganyika, irregardless of their race. With Tom Mboya of Kenya, he established the Pan-African Movement for East and Central Africa (PAFMECA) which eventually transformed into the Pam-African Freedom Movement of East, Central and South Africa in 1962; giving

strong and active support to the liberation struggles within those regions. With Nkrumah, Nyerere convened the precursor to the OAU; the All African People's Conference (AAPC). One of the resolutions from that meeting was that "the ultimate objective of African nations is a Commonwealth of Free African States...linguistic and other divisions should be subordinated to the overriding demands of African Unity". Shortly before the AAPC was held, Nyerere emphasized that, "African Unity must come, and it must be a real unity. Our goal must be a United States of Africa.



H.E. Patrice Émery Lumumba (July 2, 1925- Feb. 11, 1961); *Mr. Patrice Lumumba was an independence leader and the first democratically elected Prime Minister of the Democratic Republic of the Congo (DRC). An avid pan-Africanist, Lumumba constantly pursued national unity. He genuinely pursued the independence and the empowerment of Congo so that DRC could have full monopoly over their resources to improve the lives of the Congolese citizens. After meeting with Nkrumah at the AAPC, Lumumba declared that independence from colonial rule in the Congo was a fundamental right and not a gift. In the spirit of national unity, Lumumba's objective was to organize masses of the*

Congolese people for the "liquidation of the colonial regime and the exploitation of man by man". Under the leadership of Lumumba and the Mouvement National Congolais (MNC), the Congolese people were united as one anti-colonialist movement. In 1959 several other independence movements joined the MNC and they "demanded an installation of a Congolese government by 1960 as a step towards independence". Faced with a united front, Congo was granted its independence on June 30, 1960. Although he was assassinated 6 months after he was elected, Lumumba left behind a legacy as an international champion in the independence struggle and pan-African movement in Africa.

CHAPTER 2: THE CONTINENTAL BODY

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- ❖ Introduction: Road to Creation of the African Union
 - ❖ Advent of the African Union
 - ❖ Vision of the African Union
 - ❖ African Union Symbols and Anthem
 - Emblem
 - African Union Flag
 - African Union Anthem
 - ❖ Objectives of the African Union
 - ❖ Principles of the African Union
 - ❖ African Continental Map

Chapter: 2 The Continental Body

1. Introduction

As mentioned earlier, the origins of the AU and OAU can be traced back to the activities of pan-Africanists such as Henry Sylvester Williams, William Edward Burghardt Du Bois, William Marcus Garvey, among others. Henry Sylvester Williams was the first to use the term pan-Africanism and the first to organise a pan-African congress in 1900. Whereas that congress had participants of African origins but living in the diaspora, the one that followed, organised by his follower, Du Bois, had a number of participants from Africa, mainly West Africa (Shivji, 2008).

After a series of these pan-African congresses, African leaders from the West (French-dominated) territories who participated in them started organising on their own to demand equality with French nationals in their countries and later on independence. The sentiment for West African unity was soon to give way to the desire for a wider, all embracing continental African unity. In the early 1960s, for the first time in modern history, leaders of free Africa were able to speak with one voice. They called on colonial powers to take immediate steps to grant independence to the African territories being dominated by them and to ensure that they did not violate the territorial integrity of the independent African states.

That aspiration of determining their destiny led African leaders to meet in May 1963 in Addis Ababa, Ethiopia, to form the Organisation of African Unity (OAU). On May 24th, 1963 H.E. Kwame Nkrumah; the first president of Ghana delivered a riveting speech in which he said,

"I am happy to be here in Addis Ababa on this most historic occasion. I bring with me the hopes and fraternal greetings of the government and people of Ghana. Our objective is African union now. There is no time to waste. We must unite now or perish. I am confident that by our concerned effort and determination, we shall lay here the foundations for a continental Union of

African States.

A whole continent has imposed a mandate upon us to lay the foundation of our union at this conference. It is our responsibility to execute this mandate by creating here and now, the formula upon which the requisite superstructure may be erected."

Leaders of 30 of the 32 independent African states participated in the conference at which the OAU was founded. Those countries were Algeria, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Congo, Côte d'Ivoire, Benin, Egypt, Ethiopia, Gabon, Ghana, Guinea, Liberia, Libya, Madagascar, Mali, Mauritania, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, Somalia, Sudan, Tanzania, Tunisia, Uganda and Zaire. Morocco and Togo, which were not present, were allowed to sign later as founding members.

On that day, His Excellency Haile Salassie I, Emperor of Ethiopia, was selected as the first President of the OAU. In his acceptance speech on May 25, 1963, he shared his vision for Africa saying, "Today, we look to the future calmly, confidently, and courageously. We look to the vision of an Africa not merely free but united. In facing this new challenge, we can take comfort and encouragement from the lessons of the past. We know that there are differences among us. Africans enjoy different cultures, distinctive values, and special attributes. But we also know that unity can be and has been attained among men of the most disparate origins, that differences of race, of religion, of culture, of tradition, are no insuperable obstacle to the coming together of peoples. History teaches us that unity is strength, and cautions us to submerge and overcome our differences in the quest for common goals, to strive, with all our combined strength, for the path to true African brotherhood and unity."

2. Road to the Creation of the African Union

With the end of the Cold War, the final liberation of South Africa and the reshaping of the international political scene, African Heads of State and Government recognised that the OAU's framework was no longer adequate to meet the needs for greater continental

policy coordination and stronger economic growth, and that a greater commitment to democratic government at national level was necessary to strengthen Africa's own voice on the international stage.

Whereas the purposes set out in the OAU Charter focused on the defence of the sovereignty, territorial integrity and independence of African states and the eradication of all forms of colonialism from Africa, the first objective of the AU was to 'Achieve greater unity and solidarity among African countries and among the people of Africa'. In addition, there was a need for the continent to respond to its development needs by linking political and economic aspects, distribution of resources and the need to distinguish and recognise the role of all stakeholders including the civil society.

As such, African countries, in their quest for unity, economic and social development have taken various initiatives and made substantial progress in many areas which paved the way for the establishment of the AU. Worth mentioning among these are:

- *The African Charter on Human and People's Rights, (Nairobi 1981) and the Grand Bay Declaration and Plan of Action on Human Rights, (Mauritius 1999). These two instruments were adopted by the OAU to promote Human and People's Rights in the continent. The Human Rights Charter led to the establishment of the African Human Rights Commission located in Banjul, The Gambia;*
- *Africa's Priority Programme for Economic Recovery (APPER) established in 1985 as an emergency programme designed to address the development crisis of the 1980s in the wake of protracted drought and famine that had engulfed the continent and the crippling effect of Africa's external indebtedness;*
- *The OAU Declaration on the Political and Socio-Economic Situation in Africa and the Fundamental Changes taking place in the World (1990), which underscored Africa's resolve to seize the initiative, to determine its destiny and to address the challenges to peace, democracy and security;*
- *The Charter on Popular Participation adopted in 1990 as a testimony to the renewed determination of the OAU to endeavour to place the African citizen at the centre of development and decision-making;*
- *The Treaty establishing the African Economic Community (AEC) in 1991:*

commonly known as the *Abuja Treaty*, it seeks to create the AEC through six stages culminating in an African Common Market using the *Regional Economic Communities (RECs)* as building blocks. The Treaty has been in operation since 1994;

- *The Mechanism for Conflict Prevention, Management and Resolution (1993): a practical expression of the determination of the African leadership to find solutions to conflicts, promote peace, security and stability in Africa;*
- *The Cairo Agenda for Action (1995): a programme for re-launching Africa's political, economic and social development;*
- *African Common Position on Africa's External Debt Crisis (1997): a strategy for addressing the continent's external debt crisis;*
- *The Algiers Decision on Unconstitutional Changes of Government (1999) and the Lomé Declaration on the Framework for an OAU Response to Unconstitutional Changes (2000);*
- *The 2000 Solemn Declaration on the Conference on Security, Stability, Development and Cooperation: establishes the fundamental principles for the promotion of Democracy and Good Governance on the Continent;*
- *Responses to other challenges: Africa initiated collective action through the OAU in the protection of the environment, in fighting international terrorism, in combating HIV/AIDS, malaria and tuberculosis or dealing with humanitarian issues such as refugees and displaced persons, landmines, small and light weapons, among others.*
- *The Constitutive Act of the African Union adopted in 2000 at the Lomé Summit (Togo) and that entered into force in 2001;*
- *The New Partnership for Africa's Development (NEPAD): adopted as a Programme of the AU at the Lusaka (Zambia) Summit (2001).*

3. Advent of the African Union

The OAU's initiatives paved the way for the birth of the AU. In July 1999, the Assembly decided to convene an extraordinary session to expedite the process of economic and political integration of the continent. Since then, four Summits were held leading to the official launch of the African Union:

- *The Sirte (Libya) Extraordinary Session (1999) that decided to establish the African Union;*
- *The Lomé Summit (2000), which adopted the Constitutive Act of the Union;*
- *The Lusaka Summit (2001) that drew the roadmap for implementation of the AU;*
- *The Durban (South Africa) Summit (2002) that launched the AU and convened the 1st Assembly of the Heads of State and Government of the African Union.*

4. Vision of the African Union

The vision of the African Union is that of an integrated, prosperous and peaceful Africa, driven by its own citizens and representing a dynamic force in the global arena.

This vision of a new, forward-looking, dynamic and integrated Africa will be fully realised through a relentless struggle on several fronts and as a long-term endeavour. The AU has shifted focus from supporting liberation movements in the former African territories under colonialism and apartheid, as envisaged by the OAU since 1963, to an organisation spearheading Africa's development and integration.

According to its Constitutive Act, the African Union is set to 'accelerate the political and socio-economic integration of the continent; promote peace, security, and stability on the continent; as well as promote sustainable development at the economic, social and cultural levels as well as the integration of African economies'.

The shift in principles from the OAU comes in the form of the adoption of key principles the AU will conform to, such as: non-interference by any Member State in the internal

affairs of another, but at the same time also recognising the 'right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity'.

The decision to abide to the principle of non-indifference is a clear and bold departure from the principles of the OAU, which had its roots in non-interference and the respect of sovereignty. As mentioned earlier, the AU is based on the common vision of a united and strong Africa and on the need to build a partnership between Governments and all segments of society, in particular women, youth and the private sector, in order to strengthen solidarity and cohesion amongst the people of Africa. As a continental organisation, it focuses on the promotion of peace, security and stability on the continent as a prerequisite for the implementation of the development and integration agenda of the Union.

5. African Union Symbols and Anthem

5.1. Emblem



Description

- a. *The palm leaves shooting up on either side of the outer circle stand for peace;*
- b. *The gold circle symbolises Africa's wealth and bright future;*
- c. *The green circle stands for African hopes and aspirations;*
- d. *The plain map of African without boundaries in the inner circle signifies African unity;*
- e. *The small interlocking red rings at the base of the Emblem stand for African solidarity and the blood shed for the liberation of Africa.*

5.2. African Union Flag



Description

The current flag of the African Union was adopted at the 14th Ordinary Session of the Assembly of Heads of State and Government, which took place in Addis Ababa on 31 January 2010. The green background symbolises hope of Africa and the 54

gold stars represent Member States.

5.3. African Union Anthem

Let us all unite and celebrate together

The victories won for our liberation

Let us dedicate ourselves to rise together

To defend our liberty and unity

O Sons and Daughters of Africa

Flesh of the Sun and Flesh of the Sky

Let us make Africa the Tree of Life

Let us all unite and sing together

To uphold the bonds that frame our destiny

Let us dedicate ourselves to fight together

For lasting peace and justice on earth

*O Sons and Daughters of Africa
Flesh of the Sun and Flesh of the Sky
Let us make Africa the Tree of Life*

*Let us all unite and toil together
To give the best we have to Africa
The cradle of mankind and fount of culture
Our pride and hope at break of dawn
O Sons and Daughters of Africa
Flesh of the Sun and Flesh of the Sky
Let us make Africa the Tree of Life*

Source: African Union Website

6. Objectives of the African Union

- a. *To achieve greater unity and solidarity between the African countries and the people of Africa;*
- b. *To defend the sovereignty, territorial integrity and independence of its Member States;*
- c. *To accelerate the political and socio-economic integration of the continent;*
- d. *To promote and defend African common positions on issues of interest to the continent and its people;*
- e. *To encourage international cooperation, taking due account of the Charter of the United Nations and the Universal Declaration of Human Rights;*
- f. *To promote peace, security and stability on the continent;*
- g. *To promote democratic principles and institutions, popular participation and good governance;*
- h. *To promote and protect human and people's rights in accordance with the African Charter on Human and People's Rights and other relevant human rights instruments;*
- i. *To establish the necessary conditions which enable the continent to play its rightful role in the global economy and in international negotiations;*
- j. *To promote sustainable development at the economic, social and cultural levels as well as the integration of African economies;*
- k. *To promote co-operation in all fields of human activity to raise the living standards of African people;*
- l. *To coordinate and harmonise the policies between the existing and future Regional Economic Communities for the gradual attainment of the objectives of the Union;*
- m. *To advance the development of the continent by promoting research in all*

fields, in particular in science and technology;

- n. To work with relevant international partners in the eradication of preventable diseases and the promotion of good health on the continent.*

7. Principles of the African Union

- a. Sovereign equality and inter-dependence among Member States of the Union;*
- b. Respect of borders existing on achievement of independence;*
- c. Participation of the African people in the activities of the Union;*
- d. Establishment of a common defence policy for the African continent;*
- e. Peaceful resolution of conflicts among Member States of the Union through such appropriate means as may be decided upon by the Assembly;*
- f. Prohibition of the use of force or threat to use force among Member States of the Union;*
- g. Non-interference by any Member State in the internal affairs of another;*
- h. The right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity;*
- i. Peaceful co-existence of Member States and their right to live in peace and security;*
- j. The right of Member States to request intervention from the Union in order to restore peace and security;*
- k. Promotion of self-reliance within the framework of the Union;*
- l. Promotion of gender equality;*

- m. Respect for democratic principles, human rights, the rule of law and good governance;
- n. Promotion of social justice to ensure balanced economic development;
- o. Respect for the sanctity of human life, condemnation and rejection of impunity and political assassination, acts of terrorism and subversive activities;
- p. Condemnation and rejection of unconstitutional changes of governments.

8. African Continental Map



Africa Hall



Africa Hall is located within the United Nations Economic Commission for Africa headquarters in Addis Ababa, Ethiopia. Although not located within the African Union headquarters, Africa Hall is of special political significance to the African Union as it was the place where the first summit of the OAU took place.

In May 1963, the leaders of thirty-two newly independent African states assembled to establish the OAU. They discussed the efforts to oppose colonialism and promote independence and unity among African people. The meeting was finalized with the signing of the charter forming the Organization of African Unity (OAU).



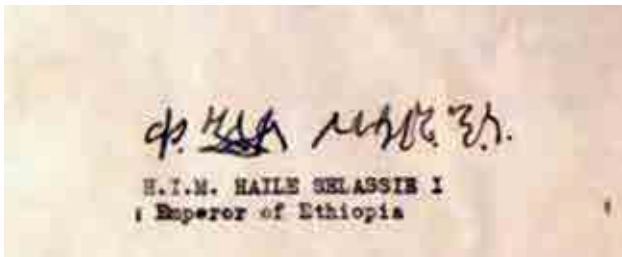
An artist's impression of the founders of the OAU painted in Africa Hall at UNECA



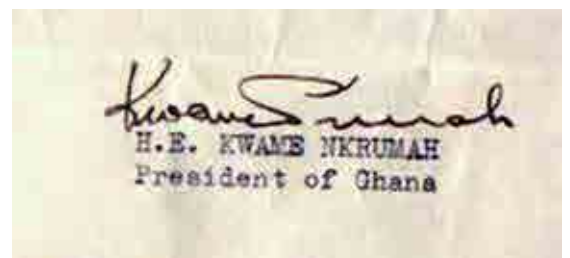


*OAU Charter Conference
in May 1963*

*His Excellency, Emperor Haile
Selassie I (Emperor of Ethiopia)
signing the OAU Charter and
his signature as shown on the
OAU Charter.*

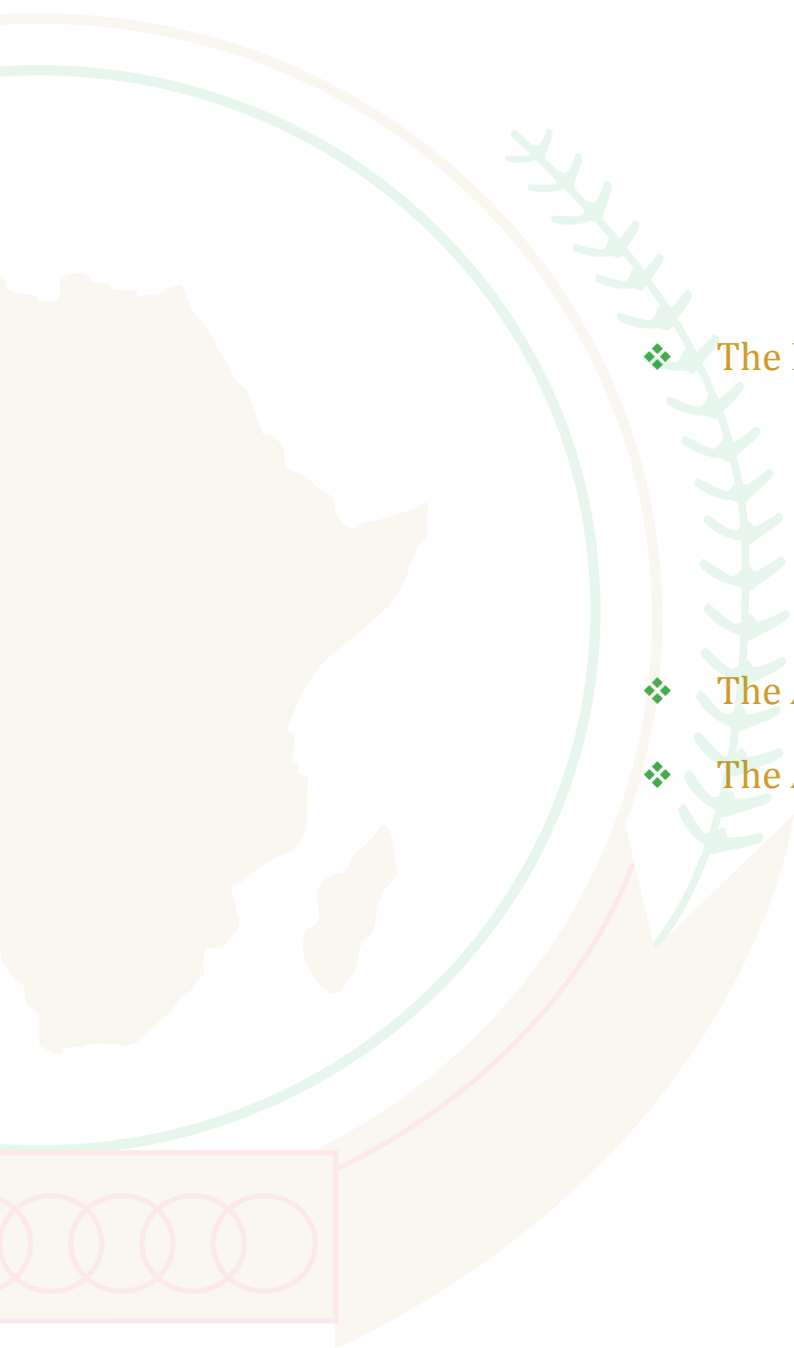


*Signature of H.E. Kwame Nkrumah
on OAU Charter*



CHAPTER 3: AFRICAN UNION ORGANS AND STRUCTURES

- ❖ Organogram of the African Union
- ❖ Functions of the African Union Organs and Structures
- ❖ The Assembly
- ❖ The Executive Council
- ❖ The Permanent Representatives' Committee
- ❖ New Partnership for Africa's Development
- ❖ African Peer Review Mechanism
- ❖ The Pan-African Parliament
- ❖ The African Court of Justice and Human Rights
- ❖ The Specialised Technical Committees
- ❖ The Peace and Security Council
- ❖ The Economic, Social and Cultural Council (ECOSOCC)
 - ❖ ECOSOCC Standing Committee
 - ❖ Criteria for Membership
 - ❖ ECOSOCC and the African Court of Justice and Human Rights



❖ The Financial Institutions

- ❖ African Investment Bank
- ❖ African Monetary Fund
- ❖ African Central Bank

❖ The African Union Commission

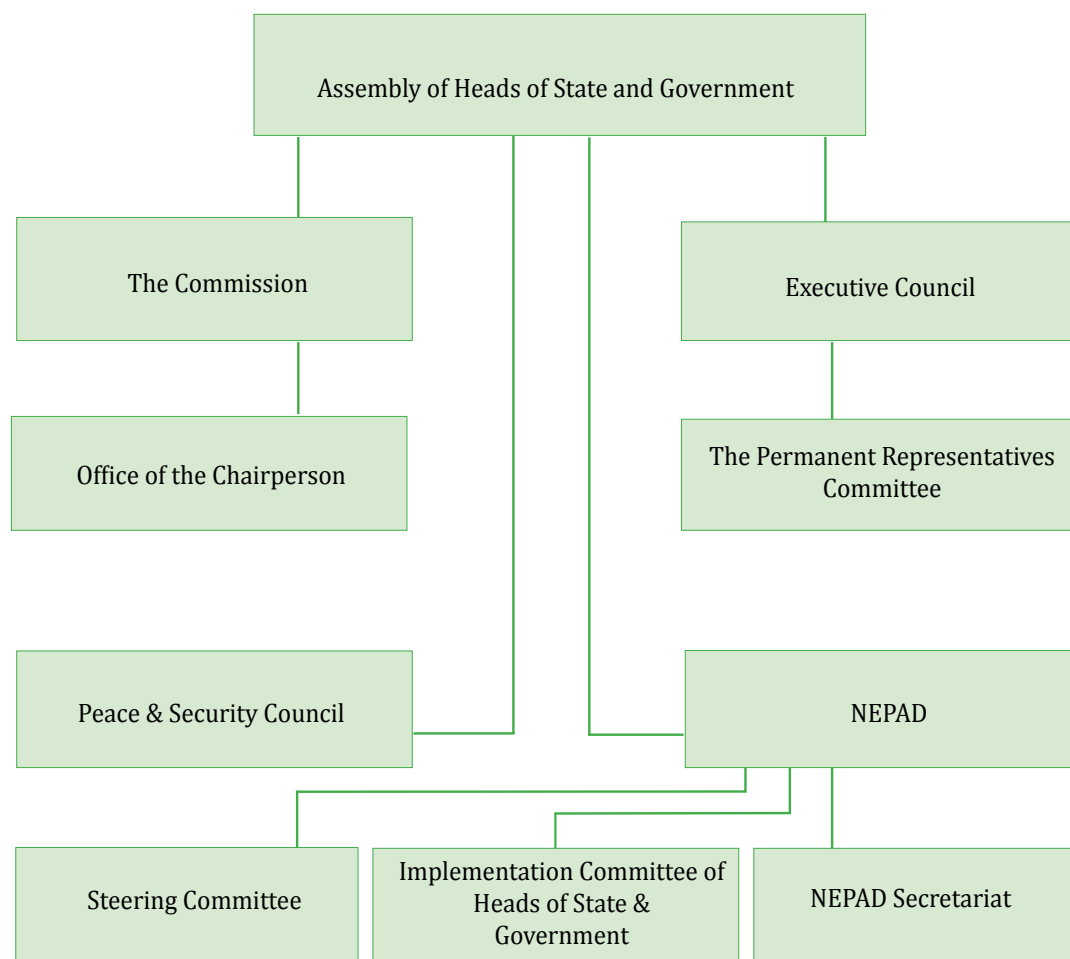
❖ The African Union Structures

- ❖ The African Union Commission on Human and Peoples' Rights
- ❖ The African Union Commission on International Law
- ❖ The African Union Advisory Board on Corruption

Chapter 3: African Union Organs and Structures

As stipulated in the Constitutive Act, the African Union has nine organs, plus the Peace and Security Council that was created in 2003. These are the Assembly of the Union; the Executive Council; the Pan-African Parliament; the Court of Justice; the AU Commission; the Permanent Representatives Committee; the Specialized Technical Committees; the Economic, Social and Cultural Council; and the Financial Institutions. The Assembly may decide to establish any organ or institution as it considers necessary.

1. Organogram of the African Union (Un-Official)



Source: Adapted from *Civil Society Organisations and the African Union towards a continental advocacy strategy for World Vision, 2007*

2. The Functions of the African Union Organs and Structures

2.1. The Assembly

The Assembly is the highest decision making body of the Union. It is composed of all Heads of State and Government and meets twice in ordinary sessions in January and July each year. It can also convene in an extraordinary session at the request of a Member State and on approval by a two-thirds majority of the Member States. A Head of State or Government is elected after consultations among the Member States to hold the Office of the Chairman of the Assembly for a period of one year. Whereas the Chairman of the Union is the representative of the Assembly according to article 6 of the Constitutive Act of the African Union, the Chairperson of the African Union Commission is the 'chief executive officer of the Commission and the legal representative of the Union'.

The Assembly takes its decisions by consensus or, failing which, by a two-thirds majority of the Member States of the Union. However, procedural matters; including the question of whether a particular matter is one of procedure or not, are decided by a simple majority. Two-thirds of the total membership of the Union forms a quorum at any meeting of the Assembly, which also adopts its own Rules of Procedure.

1. The Assembly has the following powers and functions (some of which it may delegate to any organ of the union:

- a. *To determine the common policies of the Union, establish its priorities and adopt its annual programme;*
- b. *To monitor the implementation of policy decisions of the Union as well ensure compliance by all Member States through appropriate mechanisms;*
- c. *To accelerate the political and socio-economic integration of the continent;*
- d. *To give directives to the Executive Council, the Peace and Security Council of*

- the Commission on the management of conflicts, war, acts of terrorism, emergency situations and the restoration of peace;*
- e. To decide on intervention in a Member State in respect of grave circumstance such as war crimes, genocide and crimes against humanity;*
 - f. To decide on intervention in a Member State at the request of that Member State in order to restore peace and security;*
 - g. To determine the sanctions to be imposed on any Member State for non-payment of contributions, violation of the principles enshrined in the Constitutive Act and the rules, non-compliance with the decisions of the Union and unconditional changes of government;*
 - h. To consider and decide on requests for membership of the Union;*
 - i. To adopt the budget of the Union, oversee and direct the financial matters of the Union in accordance with the Financial Rules and Regulations of the Union;*
 - j. To establish any other organ of the Union;*
 - k. To establish new Committees as it may deem necessary;*
 - l. To establish such Specialised Agencies, Ad-hoc Committees and Commissions and temporary working groups, as it may deem necessary;*
 - m. To appoint and terminate the appointment of the Chairperson of the Commission, his/her Deputy and the Commissioners;*
 - n. To appoint and terminate appointment of Judges of the Court;*
 - o. To receive, consider and take decisions on reports and recommendations from the other organs of the Union;*
 - p. To elect the Chairperson and other office bearers of the Assembly;*
 - q. To decide on the venue of its meetings;*
 - r. To amend the Constitutive Act in conformity with the laid down procedures;*

- s. *To interpret the Constitutive Act pending the establishment of the Court;*
- t. *To determine the structure, functions and regulations of the Commission; and*
- u. *To determine the structure, functions, powers, composition and organisation of the Council*

2. The Assembly may delegate any of its powers and functions to any other organ of the Union

2.2. The Executive Council

The Executive Council is composed of the Ministers of Foreign Affairs or such other ministers or authorities as are designated by the governments of Member States. It meets at least twice a year in ordinary session as well as in an extra-ordinary session at the request of any Member State and upon approval by two-thirds of all Member States.

The Executive Council takes its decisions by consensus or, failing which, by a two-thirds majority of the Member States. However, procedural matters, including the question of whether a matter is one of procedure or not; are decided by a simple majority. In addition, two-thirds of the total membership of the Union forms a quorum at any of its meetings. The Executive Council adopts its own Rules of Procedure.

The Executive Council is tasked with coordinating and taking decisions on policies in areas of common interest to the Member States, including the following: foreign trade; energy, industry and mineral resources; food, agricultural and animal resources, livestock production and forestry; water resources and irrigation; environmental protection, humanitarian action and disaster response and relief; transport and communications; insurance; education, culture, health and human resources development; science and technology; nationality, residency and immigration matters; social security, including the formulation of mother and child care policies, as well as policies relating to the disabled and the handicapped; establishment of a system of African awards, medals and prizes.

As an organ responsible to the Assembly, the Executive Council considers issues referred to it and monitors the implementation of policies formulated by the Assembly. It may delegate any of its powers and functions mentioned below to the Specialised Technical Committees.

1. The main functions of the Executive Council are to:

- a. Prepare the sessions of the Assembly;*
- b. Determine the issues to be submitted to the Assembly for decision;*
- c. Coordinate and harmonise the policies, activities and initiatives of the Union in the areas of common interest to Member States;*
- d. Monitor implementation of the policies, decisions and agreements adopted by the Assembly;*
- e. Elect the Commissioners to be appointed by the Assembly;*
- f. Elect members of the African Commission on Human and People's Rights, and the African Committee of Experts on the Rights and Welfare of the Child and submit to the Assembly for appointment;*
- g. Take appropriate action on issues referred to it by the Assembly;*
- h. Examine the Programme and Budget of the Union and submit them to the Assembly for consideration;*
- i. Promote cooperation and coordination with the Regional Economic Communities(RECs), the African Development Bank (ADB), other African Institutions and the United Nations Economic Commission for Africa(UNECA);*
- j. Determine policies for cooperation between the Union and Africa's partners and ensure that all activities and initiatives regarding Africa are in line with the objectives of the Union;*
- k. Decide on the dates and venues of its sessions on the basis of criteria adopted by the Assembly*

- l. Appoint its Chairperson and the other office bearers in conformity with the Bureau of the Assembly;*
- m. Receive, consider and make recommendations on reports and recommendation from other organs of the Union that do not report directly to the Assembly;*
- n. Set up such ad-hoc committees and working groups as it may deem necessary*
- o. Consider the reports, decisions, projects and programmes of the Committees;*
- p. Approve the Rules of the Committees, oversee, monitor and direct their activities;*
- q. Consider the Staff Rules and Regulations, and the Financial Rules and Regulations of the Union and submit them to the Assembly for adoption;*
- r. Approve the agreements for hosting the Headquarters, other organs and offices of the Union;*
- s. Consider the structures, functions and Statutes of the Commission and make recommendations thereon to the Assembly;*
- t. Determine the conditions of service including salaries, allowances and pensions of the Staff of the Union;*
- u. Ensure the promotion of gender equality in all programmes of the union.*

2. **The Executive Council may give instructions to the PRC;**
3. **The Executive Council may assign tasks to the commission.**

2.2.A. Sub-Committees of the Executive Council

- *Ministerial Committee on Candidatures*
- *Ministerial Committee on the Challenges of Ratification/Accession and Implementation of the OAU/AU Treaties*
- *Ministerial Committee on the Review of Scale of Assessment*

2.3. The Permanent Representatives' Committee (PRC)

The Permanent Representatives Committee (PRC) is composed of Permanent Representatives to the Union and other plenipotentiaries of Member States and is charged with the responsibility of preparing the work of the Executive Council and acting on the Executive Council's instructions. It may set up such sub-committees or working groups, as it may deem necessary.

The functions of the PRC are to:

- a. Act as an advisory body to the Executive Council;*
- b. Prepare its Rules of Procedure and submit them to the Executive Council;*
- c. Prepare the meetings of the Executive Council, including the agenda and draft decisions;*
- d. Make recommendations on the areas of common interest of Member States particularly on issues on the agenda of the Executive Council;*
- e. Facilitate communication between the Commission and the capitals of Member States;*
- f. Consider the programme and budget of the Union as well as administrative, budgetary and financial matters of the Commission, and make recommendations to the Executive Council;*
- g. Consider the Financial Report of the Commission and make recommendations to the Executive Council;*
- h. Consider the Report of the Board of External Auditors and submit written comments to the Executive Council;*

- i. Consider reports on the implementation of the budget of the Union;*
- j. Consider reports on the implementation of the policies, decisions and agreements adopted by the Executive Council;*
- k. Participate in the preparation of the programme of activities of the Union;*
- l. Participate in the preparation of the calendar of meetings of the Union;*
- m. Consider any matter assigned to it by the Executive Council;*
- n. Carry out any other functions that may be assigned to it by the Executive Council.*

2. The PRC may set up such ad-hoc committees and temporary working groups, as it deems necessary, including a sub-committee on Headquarters and Host Agreements, NEPAD and the Cairo Plan of Action of the Africa/Europe Summit.
3. The functioning, mandate, composition and term of office of such ad-hoc committees and temporary working groups shall be determined by the PRC. The quorum for meetings of such sub-committees or temporary working groups shall be a simple majority.

2.3. A. Sub-Committees of the PRC

The sub- committees discuss technical and administrative questions, as delegated by the full PRC

- *Advisory Sub-committee on Administrative, Budgetary and Financial Matters*
- *Sub-committee on Audit Matters*
- *Sub-committee on Contributions*
- *Sub-committee on Economic and Trade Matters*
- *Sub-committee on Headquarters and Host Agreements*
- *Sub-committee on Multilateral Cooperation*

- *Sub-committee on NEPAD*
- *Sub-committee on Programmes and Conferences*
- *Sub-committee on Refugees*
- *Policy Sub-committee of the Special Emergency Assistance Fund for Famine in Africa*
- *Sub-committee on Structural Reforms*

2.4. New Partnership for Africa's Development (NEPAD)

NEPAD was adopted by African Heads of State and Government of the OAU in 2001 and was ratified by the African Union (AU) in 2002 to address Africa's development problems within a new paradigm; as the integrated and comprehensive socio-economic development programme to accelerate Africa's renewal. NEPAD's main objectives are to reduce poverty, put Africa on a sustainable development path, halt the marginalization of Africa and empower women. The NEPAD founding document champions good governance as a basic requirement for peace, security and sustainable political and socio-economic development. The Lusaka Summit (2001) also agreed on the creation of the Heads of State and Government Implementation Committee (HSGIC), which in turn established the NEPAD Steering Committee and the NEPAD Secretariat to coordinate and administer its activities. NEPAD had as its overarching objectives the eradication of poverty, the promotion of sustainable development and the arrest of the marginalisation of Africa under globalisation. In particular, the goal to eradicate poverty in Africa was focused on meeting the Millennium Development Goals (MDGs).

In line with the integration of NEPAD into the structures and processes of the AU, the 14th AU Summit held in Addis Ababa, Ethiopia in February 2010, strengthened the NEPAD programme by transforming the NEPAD secretariat into an implementation

Agency - the NEPAD Planning and Coordinating Agency (NEPAD Agency).

It is also in this regard that the NEPAD Heads of State and Government Implementation Committee (HSGIC) was transformed into the NEPAD Heads of State and Government Orientation Committee (HSGOC). In addition, the Summit authorised the Chairperson of the African Union Commission to exercise supervisory authority over the NEPAD Agency.

2.4. A. NEPAD Governance Structures

The NEPAD governance structures are:

- *The Assembly of the African Union (AU)*
- *The NEPAD Heads of State & Government Orientation Committee (HSGOC)*
- *The NEPAD Steering Committee*

The Chairperson of the HSGOC reports to the AU Assembly on the activities of HSGOC and makes recommendations for consideration and adoption. In this regard, the NEPAD Agency provides the chairperson with technical support on drafting the Chair's summary report to the Assembly and prepares the draft decision(s) to be tabled in the Assembly for resolution. The other NEPAD related reports are provided to the Heads of State and Government in order to widen understanding, engagement and ownership of NEPAD by all the Heads of State and Government in the Assembly.

2.4. B. NEPAD Thematic Areas

NEPAD manages a number of programmes and projects in six thematic areas namely:

- a. *Agriculture and Food Security*
- b. *Climate Change and National Resource Management*
- c. *Regional Integration and Infrastructure*

- d. *Human Development*
- e. *Economic and Corporate Governance*
- f. *Cross-cutting issues, including gender, capacity development and ICT*

2.5. African Peer Review Mechanism (APRM)

Launched in 2003 by the African Union (AU), the African Peer Review Mechanism (APRM) is a mutually agreed instrument voluntarily acceded to by the Member States of the AU as an African self-monitoring mechanism. The APRM is a bold, unique and innovative approach designed and implemented by Africans for Africa.

Mandate

The mandate of the APRM is to encourage conformity in regard to political, economic and corporate governance values, codes and standards among African countries and the objectives in socio-economic development within the New Partnership for Africa's Development (NEPAD).

Objectives

The objectives of the APRM are primarily to foster the adoption of policies, standards and practices that lead to political stability, high economic growth, sustainable development and accelerated sub-regional and continental economic integration through experience sharing and reinforcement of successful and best practices, including identifying deficiencies and assessment of requirements for capacity building.

2.5. A. APRM Structures:

a. APR Forum

The Committee of Participating Heads of State and Government is the highest decision-making authority in the APRM. These participating Heads of State and Government of Member States of the African Union have voluntarily acceded to the APRM. The APR forum has ultimate

responsibility for the oversight of the APRM organisation and processes, for mutual learning, capacity building and for exercising the constructive peer dialogue and persuasion required to make the APRM effective, credible and acceptable.

b. APR Panel

The Panel of Eminent Persons is appointed to oversee the process to ensure the integrity of the process, to consider review reports and to make recommendations to the APR Forum. The APR Panel meets when required to review and make objective assessments of and recommendations on the country review reports submitted to it by the APR Secretariat.

c. APR Secretariat

The APRM Secretariat provides the secretarial, technical, coordinating and administrative support services for the APRM. The secretariat has both technical and administrative capacity to undertake and manage the analytical work that underpins the peer review process and also conforms to the principles of APRM.

d. APR Team

The Country Review Team is appointed to visit the country to review progress with the country's Programme of Action, and produce the APRM report on the country. The APR teams are carefully designed to enable an integrated, balanced, technically competent and professional assessment of the reviewed country and will be approved by the APR Panel.

2.5. B. Thematic Areas of APRM

a. Democracy and good political governance

This thematic area ensures that the respective national constitutions reflect the democratic ethos and provide for demonstrably accountable governance, and that political representation is promoted, thus providing for all citizens to participate in the political process in a free and fair political environment. The aim is to enforce strict adherence to the position of the African Union (AU) on unconstitutional changes of government and other decisions of our continental organization aimed at promoting democracy, good governance, peace and security. It also aims

at establishing and strengthening appropriate electoral administrations and oversight bodies in our respective countries, and providing the necessary resources and capacity to conduct elections that are free, fair and credible.

b. Economic governance and management

This seeks to promote macroeconomic policies that support sustainable development, to implement transparent, predictable and credible government economic policies, promote sound public finance management and to fight corruption and money laundering. This thematic area also seeks to accelerate regional integration by participating in the harmonization of monetary, trade and investment policies amongst the participating states.

c. Corporate governance

The APRM definition of Corporate Governance involves all aspects that govern a company's relations with shareholders and other stakeholders. The APRM's Objectives, Standards, Criteria and Indicators document defines Corporate Governance as concerned with the ethical principles, values and practices that facilitate holding the balance between economic and social goals, and between individual and communal goals. The aim is to align as much as possible the interests of individuals, corporations and society within a framework of sound governance and common good.

The approved codes and standards have the potential to: promote market efficiency, control wasteful spending, consolidate democracy and encourage private financial flows—all of which are critical in the quest to alleviate poverty and promote sustainable development. AU members are encouraged to strive within their capabilities to implement these codes, which have been developed through consultative processes that involved active participation and endorsement by African countries.

d. Socio-economic development

The area promotes key socio-economic thrusts such as gender equality, allocation of appropriate funds to the social sector, as well as promoting new partnerships between governments, the private sector and civil society.

2.6. The Pan-African Parliament (PAP)

The Pan-African Parliament (PAP) was inaugurated on 18 March 2004 and its permanent seat is in Midrand, Johannesburg; Republic of South Africa. The establishment of the PAP was inspired by a vision of African Heads of State and Government to provide a common platform for African people and their grassroots organisations to be more involved in discussions and decision-making on the problems and challenges facing the continent. The ultimate aim of PAP is to evolve into an institution with full legislative powers, whose members are elected by universal suffrage. At present it has 230 members and exercises advisory and consultative powers.

The core functions of the Pan-African Parliament are to:

- a. Facilitate the effective implementation of the policies and objectives of the African Union;*
- b. Work towards the harmonisation or co-ordination of the laws of Member States;*
- c. Make recommendations aimed at contributing to the attainment of the objectives of the AU and draw attention to the challenges facing the integration process in Africa as well as the strategies for dealing with them;*
- d. Request officials of the AU to attend its sessions, produce documents or assist in the discharge of its duties;*
- e. Promote the programmes and objectives of the AU in the constituencies of the Member States;*
- f. Encourage good governance, transparency and accountability in Member States;*
- g. Familiarise the people of Africa with the objectives and policies aimed at integrating the African continent within the framework of the establishment of the African Union;*
- h. Promote the coordination and harmonisation of policies, measures, programmes*

and activities of the parliamentary fora of Africa.

2.7. The African Court of Justice and Human Rights (ACJHR)

This organ is in charge of civil matters particularly with regards to the protection of human rights and consolidation of good governance in Africa. It serves as a veritable criminal court for the continent. The African Court of Justice was merged with the African Court of Human and People's Rights to become what is now known as 'The African Court of Justice and Human Rights'. The merging was done during the African Union Summit of Heads of State and Government on 1 July 2008 in Sharm El Sheikh, Arab Republic of Egypt. It acts as a jurisdiction in charge of legal matters of the African Union.

The functions of the African Court of Justice and Human Rights are to:

- a. Collect documents and undertake studies and researches on human and people's rights matters in Africa;*
- b. Lay down rules aimed at solving the legal problems relating to human and people' rights;*
- c. Ensure protection of human and people' rights; and*
- d. Interpret all the provisions of the African Charter on Human and People's Rights.*

2.8. The Specialised Technical Committees (STCs)

There are seven Specialised Technical Committees (not yet functional) that are responsible to the Executive Council:

- a. *The Committee on Rural Economy and Agricultural Matters;*
- b. *The Committee on Monetary and Financial Affairs;*
- c. *The Committee on Trade, Customs and Immigration Matters;*
- d. *The Committee on Industry, Science and Technology, Energy, Natural Resources and Environment;*
- e. *The Committee on Transport, Communications and Tourism;*
- f. *The Committee on Health, Labour and Social Affairs; and*
- g. *The Committee on Education, Culture and Human Resources.*

The Specialised Technical Committees are composed of ministers or senior officials responsible for sectors falling within their respective areas of competence and the Assembly can, whenever it deems appropriate, restructure the existing ones or establish others.

Within its field of competence, each Specialised Technical Committees has the following functions:

- a. *To prepare projects and programmes of the Union and submit them to the Executive Council;*
- b. *To ensure the supervision, follow-up and evaluation of the implementation of decisions taken by the organs of the Union;*
- c. *To ensure coordination and harmonisation of projects and programmes of the Union;*

- d. *To submit to the Executive Council, either on its own initiative or at the request of the Executive Council, reports and recommendations on the implementation of the provisions of the Constitutive Act; and*
- e. *To carry out any other functions assigned to it for the purpose of ensuring the implementation of the provisions of the Constitutive Act.*

Subject to any directives given by the Executive Council, each Specialised Technical Committee meets as often as necessary and shall prepare its Rules of Procedure and submit them to the Executive Council for approval.

2.9. The Peace and Security Council (PSC)

The Protocol relating to the establishment of the Peace and Security Council (PSC) of the African Union entered into force on 26 December 2003, after being ratified by the required majority of Member States of the AU. It is made up of 15 Member States who are chosen for a term of two to three years and is tasked with intervening in conflicts to protect the security of the continent. The Peace and Security Council is established as a standing decision-making organ for the prevention, management and resolution of conflicts and has a collective security and early-warning arrangement (African Peace and Security Architecture) to facilitate timely and efficient response to conflict and crisis situations in Africa.

The Peace and Security Council performs functions in the following areas:

- a. *Promotion of peace, security and stability in Africa;*
- b. *Early warning and preventive diplomacy;*
- c. *Peace-making, including the use of mediation, conciliation and enquiry;*
- d. *Peace support operations and intervention;*
- e. *Peace-building and post-conflict reconstruction;*

- f. *Humanitarian action and disaster management;*
- g. *Any other function as may be decided by the Assembly*

2.10. The Economic, Social and Cultural Council (ECOSOCC)

The Economic, Social and Cultural Council (ECOSOCC) is an advisory organ composed of different social and professional groups of the Member States of the Union and was established in 2005 in order to build partnerships between African governments and civil society. The 150-member General Assembly was launched in September 2008, replacing ECOSOCC's initial interim structure and includes African social groups, professional groups, non-governmental organisations, and cultural organisations.

The Citizens' and Diaspora Directorate (CIDO) office in the AU Commission acts as the secretariat for ECOSOCC and its officers have the potential to be a critical link for civil society to the AU. As full delegates to the Summits, they can attend meetings, including closed sessions, and are in a position to brief civil society organisations on key issues tabled. The Assembly of the Heads of State and Government determines ECOSOCC's functions, powers, composition and organisation.

2.10. A. ECOSOCC Standing Committee

The standing committee of ECOSOCC is the technical arm of its General Assembly and it ensures that ECOSOCC operationalizes its statutory duties. Currently, the General Assembly of ECOSOCC is fully operational. According to the ECOSOCC statutes, members in the diaspora also sit on the committee. There are ten clusters that are established as the operational mechanisms of ECOSOCC and these are:

- *Peace and Security;*

- *Political affairs;*
- *Infrastructure and Energy;*
- *Social Affairs and Health;*
- *Human Resources, Science and Technology;*
- *Trade and Industry;*
- *Rural Economy and Agriculture;*
- *Economic affairs;*
- *Women and Gender;*
- *Cross-cutting Programmes.*

All civil society organisations (CSOs) working in the various sectors are expected to align themselves with the clusters related to their area of work.

2.10. B. Criteria for Membership

- a. *Be a national, regional, continental or African diaspora CSO without restriction to undertake regional or international activities;*
- b. *Have objectives and principles that are consistent with the principles and objectives of the Union;*
- c. *Be registered in a Member State of the African Union and/or meet the general conditions of eligibility for the granting of observer status to non-governmental organisations;*
- d. *Show proof that the ownership and management of the CSO is made up of not less than 50 per cent of Africans or the African diaspora;*
- e. *Show that the organisation derives at least 50 per cent of its resources from the contributions of the members of the organisation.*

2.10. C. ECOSOCC and the African Court of Justice and Human Rights

ECOSOCC as an organ of the AU has access to the proposed African Court of Justice and Human Rights. This is a huge opportunity for CSOs because even though the Court's protocol does not allow CSOs access to the court, CSOs can take matters before the court through ECOSOCC. From the provisions of Article 29(b) of the Statute of the African Court of Justice and Human Rights, access to the court is granted to The Assembly, the Pan-African Parliament and other organs of the Union authorised by the Assembly. As such, ECOSOCC is an entry point to the court for CSOs as it is a full organ of the African Union.

2.11. The Financial Institutions

The African Union has created three financial institutions in a bid to facilitate trade within the continent. They are the African Investment Bank (AIB), the African Monetary Fund (AMF) and the African Central Bank (ACB).

2.11. A. African Investment Bank

The African Investment Bank (AIB) is one of the three financial institutions planned for in the Constitutive Act of the African Union. The mandate of the AIB was envisioned to aid in fostering economic growth and accelerating economic integration in Africa in line with the broad objective of the African Union. To achieve these objectives, the Bank will carry out the following tasks:

- a. *To promote investment activities of the public and private sector intended to advance regional integration of the Member States of the African Union;*
- b. *To utilise available resources for the implementation of investment projects contributing to the strengthening of the private sector and the modernisation of rural sector activities and infrastructures;*

- c. To mobilise resources from capital markets inside and outside Africa for the financing of investment projects in African countries; and*
- d. To provide technical assistance as may be needed in African countries for the study, preparation, financing and execution of investment projects.*

The headquarters of the African Investment Bank is in Tripoli, Libya. A formal agreement with the host country to establish a Steering Committee in order to commence technical studies on the institutional and organisation aspects of the Bank was signed. The mission of the technical steering committee is to spearhead studies leading to the setting up of the bank, including working out the fine-print of its sources of funding, management and institutional framework.

2.11. B. African Monetary Fund

The African Monetary Fund (AMF) is stipulated in the Abuja Treaty in the Constitutive Act of the African Union, Article 19, in a bid to facilitate the integration of African economies through the elimination of trade restrictions and enhance greater monetary integration.

The main objectives of the AMF are to:

- a. Provide financial assistance to AU Member States;*
- b. Act as a clearing house as well as undertake macro-economic surveillance within the continent;*
- c. Coordinate the monetary policies of Member States and promote cooperation between the monetary authorities in these states; and*
- d. Encourage capital movements among Member States; amongst others.*

The Headquarters of the African Monetary Fund is Yaoundé, Republic of Cameroon. A Memorandum of Understanding to set up a Technical Steering Committee to undertake the implementation for the hosting of the African Monetary Fund was signed on 30 June 2008 between the African Union Commission and the Cameroon Government, at the margins of the

11th ordinary session of the African Union Summit of Heads of State and Government that took place in Sharm El Sheikh, Arab Republic of Egypt.

2.11. C. African Central Bank

The African Central Bank (ACB) was created following the 1991 Abuja Treaty and reiterated by the 1999 Sirte Declaration that called for the speeding up of the implementation process. The ACB, just like the other African financial institutions, is aimed at building a common monetary policy and create the African common currency as a way for accelerating economic integration in Africa.

The objectives of the African Central Bank are to:

- a. *Promote international monetary cooperation through a permanent institution;*
- b. *Promote exchange stability and avoid competitive exchange rates depreciation;*
- c. *Assist in the establishment of a multilateral system of payments in respect of current transactions between members and eliminate foreign exchange restrictions, which hamper the growth of world trade.*

The Headquarters of the African Central Bank is Abuja, Republic of Nigeria.

2.11. The African Union Commission

The Commission is the Secretariat of the Union and is composed of the Chairperson, his or her deputy and the Commissioners who are assisted by the necessary staff for its smooth functioning. The Assembly determines the structure, functions and regulations of the Commission. (Detailed Information on the AU Commission can be found in Chapter Four).

3. African Union Structures

3.1. The African Commission on Human and Peoples' Rights (ACHPR)

The African Commission on Human and Peoples' Rights was officially inaugurated on the 2nd of November, 1987 and its current headquarters is in Banjul, Gambia.

The Commission is composed of 11 members elected by the AU Assembly from experts nominated by the State Parties to the Charter. The members of the Commission serve a six-year term and are eligible for re-election indefinitely.

Mandate:

The Commission's main mandate is "to promote human and peoples' rights and ensure their protection in Africa" by developing and maintaining constructive and productive relations between the AU and Member States.

The core functions of the ACHPR are:

- a. *To execute the mandate of the Commission by ensuring the promotion, protection and supervision of the observation of human rights in Member States;*
- b. *To develop instruments and rules aimed at promoting human rights in keeping with the provisions of the African Charter on Human and People's Rights;*
- c. *To cooperate with other African and other International Institutions, including non-governmental organisations and civil society organisations, engaged in the promotion of human rights in Africa;*
- d. *To conduct research to appraise and inform decisions;*
- e. *To collect and gather documentation for dissemination to inform discussions;*

- f. To popularise human and people's rights instruments and in particular, the African Charter on Human and People's Rights in Member States;*
- g. To interpret any provisions of the Charter at the request of a Member State;*
- h. To provide logistical support for meetings;*
- i. To undertake investigations on complaints on human rights violations;*
- j. To provide research framework for data collection in order to monitor and track progress on human rights;*
- k. To provide a monitoring and reporting framework;*
- l. To provide a regulatory framework for monitoring compliance to instruments entered into with Members States;*
- m. To ensure availability of information for increased awareness on human rights.*

3.2. The African Union Commission on International Law

The African Union Commission on International Law is an independent advisory organ of the African Union that was formed in accordance with Article 5(2) of the Constitutive Act. The statutes of AUCIL were adopted by the AU Assembly of Heads of State and Government in February, 2009. The AUCIL meets twice a year in ordinary sessions. However, the AUCIL may meet in extraordinary sessions at the request of the Chairperson or two thirds of the membership. Its sessions are held at the AU Headquarters.

The AUCIL consists of 11 members of recognized competence in international law and who are nationals of AU Member States, considering geographical and gender representation. Members are elected for a period of five (5) years and they are eligible for re-election only once. However, the term of office of five (5) of the members elected at the first election expires at the end of three (3) years. They are eligible for re-election only once. The members of the AUCIL elect among themselves the Chairperson and Vice Chairperson for a period of two years. The elected

Chairperson and Vice Chairperson are eligible for re-election only once.

Mandate:

The mandate of the AUCIL is to promote the universal values and progressive principles of international law, and the peaceful settlement of conflicts. The Commission also serves to promote in the African continent a culture of respect for emerging international norms and rules which have a potential for eventual crystallization into firm rules of international law;

The core functions of the AUCIL are:

- a. To undertake activities relating to codification and progressive development of international law in the African continent with particular attention to the laws of the Union as embodied in the treaties of the Union, the decisions of the policy organs of the Union and in African customary international law arising from the practice of Member States;*
- b. To propose draft framework agreements, model regulations, formulations and analyses of emerging trends in States' practice to facilitate the codification and progressive development of international law;*
- c. To assist in the revision of existing treaties and, in the identification of areas in which new treaties are required as well as prepare drafts thereof;*
- d. To conduct studies on legal matters of interest to the Union and its Member States;*
- e. To encourage the teaching, study, publication and dissemination of literature on international law in particular the laws of the Union with a view to promoting acceptance of and respect for the principles of international law, the peaceful resolution of conflicts, respect for the Union and recourse to its Organs, when necessary.*

3.3. The African Union Advisory Board on Corruption

The African Union Advisory Board on Corruption is an autonomous organ established within the African Union, in terms of Article 22 of the African Union Convention on Preventing and Combating Corruption. The board comprises of 11 members elected by the Executive Council from a list of experts proposed by the State Parties. These members are appointed for a term of two years; renewable once.

Mandate:

The main mandate of the Board is to promote and encourage the adoption of measures and actions by State Parties to prevent, detect, punish and eradicate corruption and related offences in Africa.

The main functions of the advisory board on corruption are to:

- a. Promote and encourage adoption and application of anti-corruption measures in Africa;*
- b. Collect and document information on the nature and scope of corruption and related offences in Africa;*
- c. Develop methodologies for analysing the nature and extent of corruption in Africa, and disseminate information and sensitize the public on the negative effects of corruption and related offences;*
- d. Advise governments on how to deal with the scourge of corruption and related offences in their domestic jurisdictions;*
- e. Develop and promote the adoption of harmonized codes of conduct of public officials;*
- f. Build partnerships with the African Commission on Human and Peoples' rights, African civil society, governmental, intergovernmental and non-governmental*

organizations to facilitate dialogue in the fight against corruption and related offences;

- g. Submit regular reports to the Executive Council on the progress made by each State Party in complying with the provisions of this convention;*
- h. Perform tasks related to corruption and related offences that may be assigned to it by the policy organs of the African Union.*

The African Peace and Security Architecture (APSA)



The African Peace and Security Architecture (APSA) was established by the African Union in collaboration with the Regional Economic Communities. Its role is to deal with prevention, management and resolution of conflicts in Africa. Its core organ is the African Union Peace and Security Council.

APSA is built around structures, objectives, principles and values, as well as decision-making processes relating to the prevention, management and resolution of crises and conflicts, post-conflict reconstruction and development on

the continent.

The Peace and Security Council (PSC) Protocol, which was adopted in July, 2002, in Durban, and entered into force in December 2003 outlines various components of the APSA and their respective responsibilities. Other documents were subsequently adopted to facilitate and expedite the operationalization of the APSA.

The main pillar of the APSA is the PSC, which is supported, in discharge of its mandate, by various structures, namely: the Commission, the Panel of the Wise, the Continental Early Warning System (CEWS), the African Standby Force (ASF) and the Peace Fund. The relationship between the African Union (AU), which has the primary responsibility for promoting peace, security and stability in Africa, and the Regional Economic Communities/Regional Mechanisms for Conflict Prevention, Management and Resolution (RECs/RMs) is a key APSA component. Interaction between the PSC and other AU organs, such as the Pan-African Parliament and the African Commission on Human and Peoples' Rights, as well as with civil society organizations, is equally vital for the promotion of peace, security and stability in Africa. Furthermore, the PSC Protocol provides for partnerships between the AU, on the one hand, the United Nations (UN) and other relevant international stakeholders, on the other hand.

The APSA embraces a comprehensive agenda for peace and security in Africa that includes:

- *Early warning and conflict prevention;*
- *Peace-making, peace support operations, peace-building and post-conflict reconstruction and development;*
- *Promotion of democratic practices, good governance and respect for human rights; and*
- *Humanitarian action and disaster management.*

The African Standby Force (ASF)

The African Standby Force is intended for rapid deployment in peace support operations for the AU that may include preventive deployment, peacekeeping, peace-building, post-conflict de-militarization, and humanitarian assistance. It is composed of standby multidisciplinary contingents, with civilian and military components located in their countries of origin and ready for rapid deployment at appropriate notice.

The establishment of the ASF started in earnest in 2003, but with the military in the lead. It was not until 2008 that the first police officers were recruited into the African Union (AU) Support Operations Division (PSOD), as part of the strategic level management structure of the Planning Element (PLANELM). Since then, the AU PSOD has undertaken initiatives to develop the policy framework of the police dimension, including guidelines for the AU Formed Police Units (FPU) and the AU Police Rapid Deployment Capability Concept .

Functions of the ASF:

- a. *Observation and monitoring missions;*
- b. *Other types of peace support missions;*
- c. *Intervention in a Member State in respect of grave circumstances or at the request of*

a Member State in order to restore peace and security, in accordance with Article 4(h) and (j) of the Constitutive Act of the African Union (CAAU).

d. Preventive deployment;

e. Peace-building, including post-conflict disarmament and demobilisation;

f. Humanitarian assistance to alleviate the suffering of civilian population in conflict areas and support efforts to address major natural disasters; and

g. Any other functions as may be mandated by the PSC or the Assembly.

The Continental Early Warning System (CEWS)

The Continental Early Warning System (CEWS) is one of the five pillars of the African Peace and Security architecture (APSA). The CEWS is responsible for data collection and analysis and is mandated to collaborate with “the UN, its agencies, other relevant international organizations, research centres, academic institutions and NGOs” with its information to be used by the Chairperson of the Commission” to advise the Peace and Security Council (PSC), on potential conflicts and threats to peace and security in Africa and recommend the best course of action.”

Background

Article 12 of the PSC Protocol provides for the establishment of a Continental Early Warning System (CEWS), in order to facilitate the anticipation and prevention of conflicts in Africa. As stipulated in article 12 (2) of the Protocol, the CEWS consists of;

- an observation and monitoring centre, to be known as “the Situation Room”, which is located at the Conflict Management Division of the African Union and is responsible for data collection and analysis; and*
- the observation and monitoring units of the Regional Mechanisms for Conflict Prevention, Management and Resolution, which shall be linked directly through appropriate means of communication to the Situation Room and Objectives*
- To anticipate and prevent conflicts on the continent*

- *To provide timely information on evolving violent conflicts based on specifically developed indicators.*

Mandate

- *data collection and analysis;*
- *engagement with decision makers; and*
- *Co-ordination and collaboration with the Regional Economic Communities/Regional Mechanisms (RECs/RMs).*

CEWS Information Gathering Tools:

- *Africa Media Monitor: an automated data-gathering software that facilitates the collection of information from a large variety of sources in real time in various languages;*
- *CEWS Portal: a software used for information sharing with the RECs' early warning mechanisms;*
- *Indicators and Profiles Module: a database for the collection and appropriate management of structural information baselines, to enable the development of risk assessments;*
- *Africa Reporter: an analytical tool tailored to the CEWS indicators and templates to facilitate the submission of incident and situation reports from the AU field missions and Liaison Offices;*
- *Africa Prospectus: a tool designed to forecast risk propensity or vulnerability with respect to structural influences and constraints; and*
- *Live-Mon: a new software that performs an automatic geo-localization of news items so that events can be displayed on a map.*

The Panel of the Wise (PoW)

The Panel of the Wise (PoW) is one of the critical pillars of the APSA. Article 11 of the Protocol establishing the PSC, sets up a five-person panel of “highly respected African personalities from various segments of society who have made outstanding contributions to the cause of peace, security and development on the continent” with a task to support the efforts of the PSC and those of the Chairperson of the Commission, particularly in the area of conflict prevention.

Background

The first Panel was appointed in December 2007 and composed of Ahmed Ben Bella of Algeria, who served as chair, Salim Ahmed Salim of Tanzania, Elisabeth K. Pognon of Benin, Miguel Trovoada of Sao Tome and Principe, and Brigalia Bam of South Africa. At the July 2010 Summit in Kampala, Ben Bella and Ahmed Salim were reappointed for another term ending in December 2013 and three new members were appointed: Mary Chinery Hesse of Ghana; Kenneth Kaunda of Zambia; and Marie Madeleine Kalala-Ngoy of the Democratic Republic of the Congo.

The Panel has produced some thematic reports on issues relevant to peace and security such as non-impunity, women and children in armed conflicts and electoral disputes.

Methods of Work

The PoW reports to the PSC and through it, to the Assembly. Members are selected by the Chairperson of the AU Commission and appointed through a decision of the Assembly for three year renewable once terms. The Protocol states that the Panel, at the request of the PSC or its own initiative “shall undertake such action deemed appropriate to support the efforts of the PSC and those of the Chairperson of the Commission for the prevention of conflicts”.

The Panel meets at least three times annually to deliberate on its work program and to identify regions or countries to visit; it furthermore organizes annual workshops on issues related to conflict prevention and management to assist in producing a thematic report to be submitted to the Assembly of African Heads of State and Governments for endorsement.

Mandate

- *Mandated to support and to advise the effort of the chairperson of the commission and the AU PSC, in the area of conflict prevention;*
- *Advice both the Commission and the Council on issues that are necessarily considered by the policy organs of the AU such as the issues of impunity, justice and reconciliation as well as, women and children in arms conflicts and its impact on the most vulnerable ones;*
- *Use its good officers to do conflict mediation and broker peace agreements between warring parties; and,*
- *Help the AU Commission in mapping out threats to peace and security by providing regular advice and analysis and requesting the Commission to deploy fact-finding or mediation teams to specific countries.*

CHAPTER 4: AFRICAN UNION COMMISSION

- ❖ Mission & Values of the Commission
- ❖ Functions of the African Union Commission
- ❖ Organogram of the African Union Commission
Directorates and their Functions

The AUC Chairperson

- ❖ Bureau of the Chairperson Office of the Secretary General to the Commission
- ❖ Directorate of Information and Communication
- ❖ Protocol Services Unit
- ❖ Directorate of Strategic Policy Planning, Monitoring and Evaluation
- ❖ Directorate of Women, Gender and Development
- ❖ Office of the Internal Auditor
- ❖ Citizens' & Diaspora Directorate (CIDO)
- ❖ Office of the Legal Counsel

The AUC Deputy Chairperson

- ❖ Bureau of the Deputy Chairperson
- ❖ Directorate for Administration and Human Resources Development
- ❖ Directorate for Programming, Budgeting, Finance and Accounting
- ❖ Directorate for Conference Services
- ❖ Medical Services Directorate

Department and their Functions

- ❖ Department of Peace and Security
- ❖ Department of Political Affairs
- ❖ Department of Infrastructure and Energy
- ❖ Department of Social Affairs
- ❖ Department of Trade and Industry
- ❖ Department of Rural Economy and Agriculture
- ❖ Department of Economic Affairs
- ❖ Department of Human Resources, Science and Technology



African Union Representational and Specialized Offices

- ❖ Permanent Observer Mission to the United Nations: New York
- ❖ African Union Permanent Mission to the United Nations: Geneva
- ❖ The African Union Mission to the United States of America: Washington, DC
- ❖ Permanent Mission of the African Union to the European Union and the African, Caribbean and Pacific Group of States (ACP Brussels)
- ❖ African Union Permanent Delegation to the League of Arab States, Cairo
- ❖ African Union Mission to the Southern Africa Region

Chapter 4 :African Union Commission

The Commission is the Secretariat of the African Union and is entrusted with executive functions. Its structure represents the Union and protects its interests under the auspices of the Assembly of Heads of State and Government as well as the Executive Council. The Commission executes its functions through eight main portfolios, namely Peace and Security; Political Affairs; Trade and Industry; Infrastructure and Energy; Social Affairs; Rural Economy and Agriculture; Human Resources, Science and Technology; and Economic Affairs.

A. Mission and Values of the Commission

The mission of the Commission is to become ‘an efficient and value-adding institution driving the African integration and development process in close collaboration with African Union Member States, the Regional Economic Communities and African citizens’.

The values to guide and govern the functioning and operations of the Commission are:

- *Respect for diversity and team work;*
- *Think Africa above all;*
- *Transparency and accountability;*
- *Integrity and impartiality;*
- *Efficiency and professionalism; and*
- *Information and knowledge sharing.*

The Commission is guided by the following principles:

- a. *Subsidiarity and complementarity with other organs, Member States and Regional Economic Communities;*
- b. *Results orientation, feasibility and impact focus;*
- c. *Close coordination and cooperation with the Regional Economic Communities;*
- d. *Coherence of policies and programmes; and*
- e. *A networking approach that takes advantage of available resources through other players.*

The Commission is the key organ playing a central role in the day-to-day management of the African Union. Among other functions, it represents the Union and defends its interests, elaborates draft common positions of the Union, prepares strategic plans and studies for the consideration of the Executive Council, elaborates, promotes, coordinates and harmonises the programmes and policies of the Union with those of the RECs, ensures the mainstreaming of gender in all programmes and activities of the Union.

B. Composition

1. The Commission shall be composed of the following members:

- a) *a Chairperson;*
- b) *one (1) Deputy Chairperson; and*
- c) *eight (8) Commissioners.*

2. The Assembly may, when it deems necessary, review the number of Commissioners.

3. The Members of the Commission shall be assisted by the necessary staff for the

smooth functioning of the Commission.

1. Functions of the African Union Commission

1. The Commission shall carry out the functions assigned to it under the Constitutive Act, those specified in Protocols thereto, decisions of the Union as well as those established in these Statutes.
2. The Commission shall:
 - a) *represent the Union and defend its interests under the guidance of and as mandated by the Assembly and the Executive Council;*
 - b) *initiate proposals for consideration by other organs;*
 - c) *implement the decisions taken by other organs;*
 - d) *organise and manage the meetings of the Union;*
 - e) *act as the custodian of the Constitutive Act, its protocols, the treaties, legal instruments, decisions adopted by the Union and those inherited from the OAU;*
 - f) *establish, on the basis of approved programmes, such operational units as it may deem necessary;*
 - g) *coordinate and monitor the implementation of the decisions of the other organs of the Union in close collaboration with the PRC and report regularly to the Executive Council;*
 - h) *assist Member States in implementing the Union programmes and policies, including, CSSDCA and NEPAD;*
 - i) *work out draft common positions of the Union and coordinate the actions of Member States in international negotiations;*
 - j) *prepare the Union's Programme and Budget for approval by the policy organs;*
 - k) *manage the budgetary and financial resources including collecting the approved*

- revenue from various sources, establishing fiduciary, reserve and special Funds with the appropriate approvals, and accepting donations and grants that are compatible with the objectives and principles of the Union;*
- l) manage the assets and liabilities of the Union according to laid down regulations and procedures;*
 - m) prepare strategic plans and studies for the consideration of the Executive Council;*
 - n) take action in the domains of responsibility as may be delegated by the Assembly and the Executive Council. The domains shall include the following:*
 - i) control of pandemics;*
 - ii) disaster management;*
 - iii) international crime and terrorism;*
 - iv) environmental management;*
 - v) negotiations relating to external trade;*
 - vi) negotiations relating to external debt;*
 - vii) population, migration, refugees and displaced persons;*
 - viii) food security;*
 - ix) socio-economic integration; and*
 - x) all other areas in which a common position has been established.*
 - o) mobilize resources and devise appropriate strategies for self-financing, income generating activities and investment for the Union;*
 - p) promote integration and socio-economic development;*
 - q) strengthen cooperation and co-ordination of activities between Member States in fields of common interest;*
 - r) ensure the promotion of peace, democracy, security and stability;*

- s) *provide operational support to the PSC;*
- t) *elaborate, promote, coordinate and harmonise the programmes and policies of the Union with those of the RECs;*
- u) *prepare and submit an annual report on the activities of the Union to the Assembly, the Executive Council and the Parliament;*
- v) *prepare the Staff Rules and Regulations for approval by the Assembly;*
- w) *implement the decisions of the Assembly regarding the opening and closing down of sections, administrative or technical offices;*
- x) *follow up and ensure the application of the Rules of Procedure and Statutes of the organs of the Union;*
- y) *negotiate, in consultation with the PRC, with the host countries, the Host Agreements of the Union and those of its administrative or technical offices;*
- z) *build capacity for scientific research and development for enhancing socio-economic development in the Member States;*
- aa) *strive for the promotion and popularization of the objectives of the Union;*
- bb) *collect and disseminate information on the Union and set up and maintain a reliable database;*
- cc) *ensure the mainstreaming of gender in all programmes and activities of the Union;*
- dd) *undertake research on building the Union and on the integration process;*
- ee) *develop capacity, infrastructure and maintenance of intra-continental information and communication technology; and*
- ff) *prepare and submit to the Executive Council for approval, administrative regulations, standing orders and Rules and Regulations for the management of the affairs of the Union and keeping proper books of accounts.*

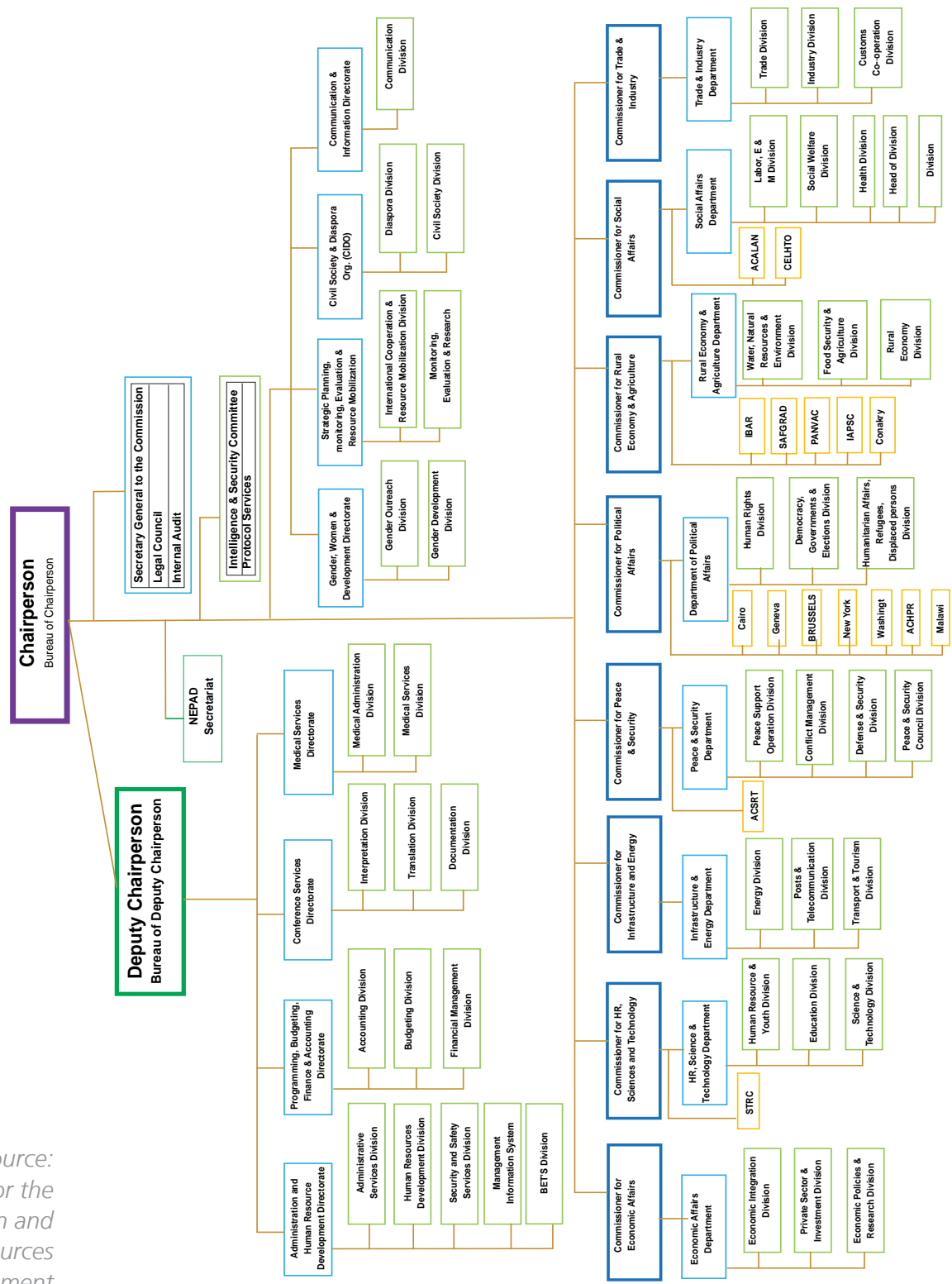
2. Portfolios of The Commission

1. The portfolios of the Commission shall be as follows:

- a) *PEACE AND SECURITY (Conflict Prevention, Management and Resolution, and Combating Terrorism...);*
- b) *POLITICAL AFFAIRS (Human Rights, Democracy, Good Governance, Electoral Institutions, Civil Society Organizations, Humanitarian Affairs, Refugees, Returnees and Internally Displaced Persons...);*
- c) *INFRASTRUCTURE AND ENERGY (Energy, Transport, Communications, Infrastructure and Tourism...);*
- d) *SOCIAL AFFAIRS (Health, Children, Drug Control, Population, Migration, Labour and Employment, Sports and Culture...);*
- e) *HUMAN RESOURCES, SCIENCE AND TECHNOLOGY (Education, Information Technology Communication, Youth, Human Resources, Science and Technology...);*
- f) *TRADE AND INDUSTRY (Trade, Industry, Customs and Immigration Matters...);*
- g) *RURAL ECONOMY AND AGRICULTURE (Rural Economy, Agriculture and Food Security, Livestock, Environment, Water and Natural Resources and Desertification...);*
- h) *ECONOMIC AFFAIRS (Economic Integration, Monetary Affairs, Private Sector Development, Investment and Resource Mobilization...).*

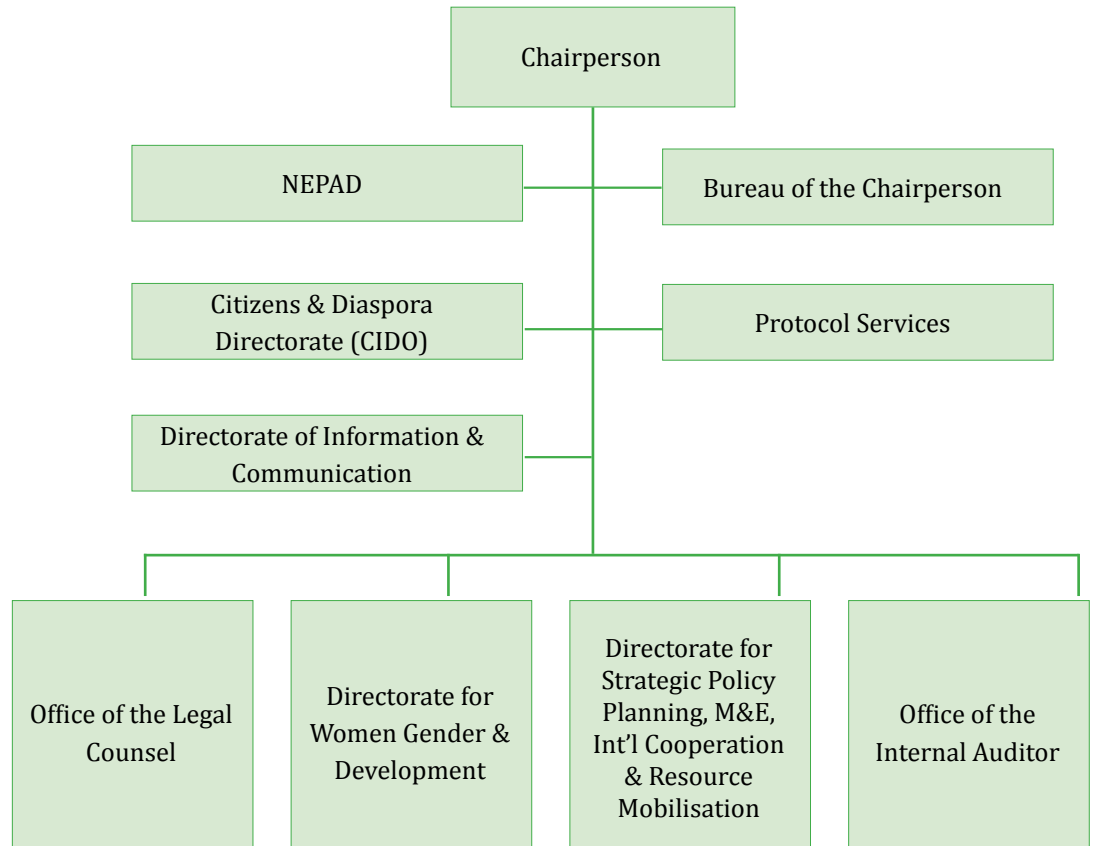
- ### 2. Considering that gender issues are cross-cutting through all the portfolios of the Commission, a special unit shall be established in the Office of the Chairperson to coordinate all activities and programmes of the Commission related to gender issues.

3. Organogram of the African Union



Source: Directorate for the Administration and Human Resources Development

4. Directorates and their Functions



Source:
Directorate for the
Administration
and Human
Resources
Development

4.1. The AUC Chairperson

1. The functions and responsibilities of the AUC Chairperson shall be:

- a) Chief Executive Officer;
- b) Legal representative of the Union;
- c) Accounting Officer of the Commission;

2. The Chairperson shall be directly responsible to the Executive Council for the effective discharge of his/her duties

4.1. A. Functions of the AUC Chairperson

1. The functions of the Chairperson shall be to, inter-alia:

- a. Chair all meetings and deliberations of the Commission;
- b. Undertake measures aimed at promoting and popularising the objectives of the Union and enhancing its performance;
- c. Promote cooperation with other organisations for the furtherance of the objectives of the Union;
- d. Participate in and keep records of the deliberations of the Assembly, the Executive Council, the PRC, the Committees and any other organs of the Union as may be required;
- e. Submit reports requested by the Assembly, the Executive Council, the PRC, the Committees and any other organs of the Union as may be required;
- f. Prepare, in conjunction with the PRC, and submit the Staff Rules and Regulations to the Executive Council for approval;
- g. Prepare, together with the PRC, and transmit to Member States the Budget, Audited Accounts and Programme of Work at least one (1) month before the commencement of the sessions of the Assembly and the Executive Council;
- h. Act as depository of all Union and OAU Treaties and other legal instruments of the Union and perform depository functions thereof;
- i. Act as a depository for instruments of ratification, accession or adherence of all international agreements concluded under the auspices of the Union and communicate information in this respect to Member States;
- j. Receive copies of international agreements entered into between or amongst Member States;
- k. Receive the notification of Member States which may desire to renounce their membership in the Union as provided for in Article 31 of the Constitutive Act;

- l. Communicate to Member States, and include in the Agenda of the Assembly, as provided in Article 32 of the Constitutive Act, written requests of Member States for amendments or revisions to the Constitutive Act;*
- m. Circulate the provisional agenda of the sessions of the Assembly, the Executive Council and the PRC to Member States;*
- n. Receive proposals, together with explanatory notes, for the inclusion of items on the agenda of the Assembly and the Executive Council at least sixty (60) days prior to the session;*
- o. Receive and circulate requests which conform to the correct Rules of Procedure of the Assembly or the Executive Council, from any Member State, for the convening of an extraordinary session of the Assembly or the Executive Council;*
- p. Assess, in conjunction with the PRC, the need for branches, administrative and technical offices as may be considered necessary for the adequate functioning of the Commission, and create or abolish them as necessary, with the approval of the Assembly;*
- q. Consult and coordinate With the Governments and other institutions of Member States and the RECs, on the activities of the Union;*
- r. Appoint the staff of the Commission in accordance with the provisions of Article 18 of these Statutes;*
- s. Assume overall responsibility for the administration and finances of the Commission;*
- t. Prepare an Annual Report on the activities of the Union and its organs;*
- u. Carry out diplomatic representations of the Union;*
- v. Liaise closely with the organs of the Union to guide, support and monitor the performance of the Union in the various areas to ensure conformity and harmony with agreed policies, strategies, programmes and projects;*
- w. Carry out such other functions as may be determined by the Assembly or the Executive Council;*

- x. *Supervise the functioning of the Headquarters and other offices of the Union;*
- y. *Coordinate all activities and programmes of the Commission related to gender issues.*

2. The Chairperson may delegate any of his/her functions to the Deputy Chairperson and in the absence of the latter, to one of the Commissioners.

4.1.1. Bureau of the Chairperson

Mandate

The Bureau of the Chairperson exists to assist the Chairperson in discharging his or her responsibilities as chief executive and legal representative of the Union and in organising and managing schedules of internal meetings, ceremonies, audiences and travels.

Core Functions:

- a. *To manage the office of the Chairperson and to maintain coordination and liaison among the directorates and units (Directorate for Women, Gender and Development; Directorate for Strategic Policy Planning, Monitoring and Evaluation, International Cooperation and Resource Mobilisation; Office of the Legal Counsel; Office of the Internal Auditor; NEPAD Coordination Unit; CSSDCA Coordination Unit; Communication and Information Unit and Protocol Services Unit) under the chair person, as well as between all other directorates and units with the office of the Chairperson;*
- b. *To provide advisory services to the Chairperson;*
- c. *To ensure that the Chairperson is informed on developments within and outside the Commission requiring his/her attention;*
- d. *To prepare or review and finalise letters, speeches, statements and addresses to*

- be delivered by the Chairperson;*
- e. To initiate, follow up and coordinate any tasks requested by or intended for the Chairperson;*
 - f. To prepare and manage the budget of the office of the Chairperson;*
 - g. To prepare and maintain the schedule of the Chairperson;*
 - h. To prepare and follow up instructions of the Chairperson;*
 - i. To plan, programme and implement the activities of the office of the Chairperson;*

4.1.2. Office of the Secretary General to the Commission

Core Functions:

- a. To manage the work of coordinating the preparation and holding of the meetings of the Commission and meetings of other organs of the Union such as the PRC and its sub-Committees, the Executive Council, the Assembly, PAP and STCs;*
- b. To ensure that all documentation for the meetings and the work of the above organs are properly prepared, in line with the vision and mission of the Union, are duly processed and dispatched on time to Member States;*
- c. To ensure that the outcome of meetings, such as decisions and reports are properly finalised, and disseminated on time to Member States;*
- d. To ensure that those documents are properly stored and accessible at any time and to manage a Databank of documentation of the Union;*
- e. To ensure that follow-up to meetings of the Commission and other organs are carried out efficiently and rapidly for timely implementation;*
- f. To establish horizontal linkages between various departments, directorates*

and units for smooth coordination of programmes and activities and timely implementation of decisions;

g. Perform any other relevant duties, as may be assigned by the Chairperson.

4.1.3. Directorate of Communication and Information

Mandate

The Communication and Information Directorate has the mandate of developing, planning and conducting activities designed to provide information about the AU and to promote increased awareness about its aims and activities through various information tools and mechanisms.

Core Functions:

- a. To serve as the focal point for disseminating information and to act as the spokesperson for the Commission;*
- b. To draft news releases, correspondence or other informational publications and to assist with distribution of information materials;*
- c. To manage, formulate and coordinate development and implementation of outreach as well as advocacy programmes for the Commission;*
- d. To establish and maintain lines of communication with constituencies, non-governmental organisations, policy institutions, academia, foundations and associations, as well as identify and coordinate action on opportunities to foster support for the objectives and activities of the AU;*
- e. To formulate and advise on promotional strategies for press conferences, meetings and other activities planned for the outreach and advocacy programmes;*
- f. To organise research and drafting of materials related to issue-oriented campaigns and events;*

- g. To ensure development and maintenance of the website as well as relevant automated databases;*
- h. To provide editorial advice, statements, speeches and replies to frequently asked and anticipated questions for use by senior management;*
- i. To serve as the focal point for relations with, and support for, departments and programmes on communication and public information strategies and information dissemination;*
- j. To coordinate implementation of the decisions of the meetings of the African Ministers of Information;*
- k. To explore the possibility of establishing and managing a television and radio station for the African Union and a newspaper.*

4.1.4. Protocol Services Unit

Mandate

The Protocol Services Unit of the African Union Commission is mandated to provide protocol services to the Commission and other organs of the AU such as privileges, immunities, ceremonial and consular services.

Core Functions:

- a. To develop and maintain rules and procedures relating to protocol services, including implementation of Host Agreement;*
- b. To continuously keep staff of the Commission informed of the rules and protocol procedures;*
- c. To initiate congratulatory messages to Member States as appropriate;*
- d. To provide protocol services as appropriate to the members of the Commission*

- and the entire staff of the Commission;*
- e. To ensure appropriate conduct of ceremonies and public functions;*
 - f. To process documents for diplomatic privileges;*
 - g. To process applications for exit and entry visas on behalf of the staff of the AU;*
 - h. To process laissez-passer applications;*
 - i. To keep flags and national anthems of AU Member States;*
 - j. To compile information on AU Member States and their leaders;*
 - k. To assist representatives/delegations of Member States during AU meetings and other functions, in close collaboration with the host countries.*

4.1.5. Directorate of Strategic Policy Planning, Monitoring and Evaluation

Mandate

The mandate of the directorate is to develop and maintain constructive and productive institutional relationships between Africa and the rest of the world as well as to coordinate the mobilisation of extra budgetary resources. The Directorate of Strategic Policy Planning, Monitoring and Evaluation also ensures inter-departmental coordination in strategic planning for continuous monitoring and evaluation of programme outputs against action plans, as well as to assess the efficiency and effectiveness of programmes in realising organisational goals and objectives. In addition, it shall provide and maintain research and statistical services that will cater for the needs of the entire Commission, other organs of the Union, RECs as well as Member States.

Core Functions:

- a. To prepare rules and procedures for policy formulation, coordination and evaluation;
- b. To promote internal best practices concerning strategic planning, monitoring and evaluation;
- c. To survey and propose overall operational priorities of the Commission;
- d. To assist directorates and offices to develop strategic planning skills;
- e. To organise coordination meetings on policy formulation and strategic planning;
- f. To lead and provide support for sectoral research projects and ensure their effective implementation;
- g. To develop and manage a research and statistics services for the Union;
- h. To prepare the annual report of the Commission;
- i. To produce an approved annual statement on general orientations and priorities relating to operational and administrative programmes and activities;
- j. To propose training programmes relating to programme designing and programme coordination;
- k. To ensure that the statistics unit is easily accessible to all organs and the Member States are able to provide updated statistical information;
- l. To design and implement monitoring and evaluation procedures for assessing programme achievements and programme effectiveness;
- m. To strengthen existing relations and develop relations with other world regions;
- n. To seek new areas of cooperation with international partners;
- o. To promote a positive image of Africa within the international arena;
- p. To popularise the African Union and market its programmes and activities;

- q. To initiate, develop and manage policy for international cooperation and resource mobilisation;*
- r. To coordinate and develop strategies for resource mobilisation;*
- s. To coordinate the process of proposal and project formulation;*
- t. To coordinate the process of project and programmes monitoring and evaluation;*
- u. To develop outlines for progress reports;*
- v. To initiate, develop and manage strategies for sustainability, self-financing, income generation and investment;*
- w. To facilitate logistical support to coordinate interaction with partners.*

4.1.6. Directorate of Women, Gender and Development

Mandate

The mandate of this directorate is to promote gender equality within and throughout the Union as well as within Member States by translating policy agreements and instruments into measurable programmes and projects. It shall provide oversight by facilitating development and harmonisation of policy, facilitating co-ordination and initiating gender mainstreaming strategies.

Core Functions:

- a. To harmonise gender policies in the AU organs and Member States;*
- b. To initiate and manage the gender analysis of policies emanating from the Commission and the AU organs;*
- c. To design gender sensitive indicators for AU Commission and the AU organs;*
- d. To develop and manage a gender mainstreaming strategy and promote its implementation;*

- e. *To develop, implement and monitor a gender policy;*
- f. *To design and maintain an efficient coordination framework;*
- g. *To provide training for the uniform application of gender policy and gender mainstreaming strategy within the Commission and AU organs;*

4.1.7. Office of the Internal Auditor

Mandate

To ensure that financial rules and procedures of the African Union are sound, efficient and implemented accordingly.

Core Functions:

- a. *To ascertain the completeness, authenticity and proper maintenance of the Commission's financial records in accordance with its regulations, rules, policies and procedures;*
- b. *To review by examination, inquiry and observation the Commission's financial control systems, including those for safeguarding assets and preventing and detecting fraud and theft in order to determine whether additional procedures might be required;*
- c. *To obtain sufficient reliable evidence to constitute a reasonable basis for audit conclusions on the effectiveness of controls and the degree of compliance with them, using discussion, observation, inspection and analytical review techniques;*
- d. *To record the planning, supervision and conduct of audits and control systems review, the evidence relied upon and the reasons for any significant audit decisions taken;*
- e. *To report conclusions regarding operational efficiency, effectiveness and recommend improvements in control systems or other action considered*

desirable;

- f. To propose and implement internal auditing policies, rules and procedures for the Commission of the African Union;*
- g. To prepare and implement an annual auditing programme;*
- h. To liaise and cooperate with external auditors*
- i. To prepare and submit an annual report of audited activities, comprising recommendations made and reactions thereon;*
- j. To draw the attention of programme managers to required improvements;*
- k. To prepare a report on each audit mission or activity and to submit it to the Chairperson and the Vice Chairperson and, as and when appropriate, to other Commissioners;*
- l. To undertake any special mission and conduct any investigation as and when requested by the Executive Council and/or the Chairperson.*

4.1.8. Citizens and Diaspora Directorate (CIDO)

Mandate & Function:

The Constitutive Act of the African Union is explicit in its intention to create a ‘people-oriented African community’ in the African Union based on partnership between governments and all segments civil society. The Citizens and Diaspora Directorate will serve as the operational arm for the implementation of this programme. Its mandate is to focus on the implementation of directives related to partnership with African Citizens in general including the African Civil Society and the African Diaspora including faith based groups.

Taking into account the bilateral engagements, relationship with networks and other processes occurring outside ECOSOC, CIDO has a mandate to follow up on such processes as well.

CIDO also has responsibility for mainstreaming the participation of the African Diaspora in the work of the Union and currently serves as the Secretariat of ECOSOCC. The facilitation and support work given to ECOSOCC is in addition to its own set of priorities and actions within the framework of the Commission.

CIDO comprises of three divisions namely:

- a. *Civil Society Division*
- b. *Diaspora Division*
- c. *ECOSOCC Secretariat*

4.1.9. Office of the Legal Counsel

Mandate

To provide legal advisory and representational services, serve as a depository, as well as to ensure legality in decision-making and compliance with the AU Constitutive Act and all existing legal instruments of the AU.

Core Functions:

- a. *To assist and advise the Commission and AU organs on legal matters;*
- b. *To provide legal opinions relating to interpretation of all protocols, rules and regulations of the AU as well as other legal instruments;*
- c. *To assess the legal implications of the activities and decisions of all deliberative, advisory and administrative bodies and to participate in the meetings of these bodies;*
- d. *To draft contracts, host agreements, cooperation agreements and rules of procedure of the various organs, treaties and other legal instruments as well as*

- prepare election documents, including materials for elections at the level of the Executive Council and the Assembly;*
- e. To represent the Commission and all organs of the AU in judicial proceedings, negotiations or other procedures for the conclusion of agreements or the settlement of disputes;*
 - f. To follow-up on issues concerning implementation of headquarters and host agreements;*
 - g. To ensure that the privileges and immunities of the Commission and its staff and representatives accredited to it are assured, respected and protected as provided for in the headquarters agreements and the General Convention on Privileges and Immunities of the AU;*
 - h. To follow up issues relating to international legal matters;*
 - i. To ensure that the legal interaction between the organs of the Union and Member States, other organisations, individuals and other legal entities are regulated in such a manner that the interests of the AU are safeguarded;*
 - j. To undertake investigations and prepare reports on special legal problems.*

4.1.10. The Deputy Chairperson

The Deputy Chairperson shall, in the discharge of his/her responsibilities, be accountable to the Chair person. He/she shall have, inter alia, the following functions:

- (a) To assist the Chairperson in the exercise of his/her functions;*
- (b) To exercise the functions delegated to him/her by the Chairperson;*
- (c) To shall be in charge of the administration and finance of the Commission;*
- (d) To act as Chairperson in case of death or permanent incapacity of the latter, pending the appointment of a new Chairperson;*
- (e) To act as Chairperson in the absence or in case of temporary incapacity of the latter.*

2. In case of absence, death, temporary or permanent incapacity of the Deputy Chairperson, the Chairperson shall, in consultation with the Chairperson of the Assembly, appoint one (1) of the Commissioners to act as the Deputy Chairperson, pending the return of the incumbent or the appointment of a new Deputy Chairperson, as the case may be.
3. The office of the Deputy Chairperson is composed of: the Bureau of the Deputy Chairperson; Directorate for Administration and Human Resources Development; Directorate for Programming, Budgeting, Finance and Accounting and; Directorate for Conference Services.

4.1.11. Directorate for Administration and Human Resources Development

Mandate

The mandate of the directorate is to plan, develop and manage human resources for optimal organisational performance and to implement action on staff policies and regulations; provide efficient and timely core services, procure and manage human resources for all directorates and offices of the Commission in order to facilitate their smooth functioning.

Core Functions:

- a. To initiate and develop administrative rules and procedures;*
- b. To promote awareness of best practices in administrative procedures;*
- c. To initiate, propose and manage human resource policies, taking into account gender and other considerations;*
- d. To ensure a fair and efficient performance appraisal system, including enforcement of staff discipline;*

- e. *To develop and manage policy on medical services as well as provide effective outpatient clinical services drawing on adequate diagnostic services;*
- f. *To initiate, develop and manage a reliable management information system policy;*
- g. *To design and manage a reliable transport system;*
- h. *To design and manage a current and reliable inventory system;*
- i. *To refurbish, build and maintain buildings;*
- j. *To initiate, manage and maintain an effective security system for property and staff;*
- k. *To initiate, design and manage modern library services;*
- l. *To design and maintain an archival system for the AU Commission and other AU organs;*
- m. *To provide an efficient registry service;*
- n. *To ensure a smooth coordination framework for the administrative staff.*

4.1.12. Directorate for Programming, Budgeting, Finance and Accounting

Mandate

The mandate of the Directorate is to mainly deal with planning, developing and implementing financial accounting policies and policy to execute budgetary programmes, rules, regulations and procedures. The directorate also collects and manages statutory and other funds owed to the African Union to ensure inter-departmental coordination in programming and the budgetary process, as well as to assess the efficiency and effectiveness of programmes in realising organisational goals and objectives.

Core Functions:

- a. To prepare integrated programmes of overall operational activities and projects;
- b. To prepare and issue instructions relating to budget preparation;
- c. To conduct and monitor the process of budget preparation;
- d. To prepare the programme budget of the Commission and follow up its implementation;
- e. To organise coordination meetings on programming and budgeting;
- f. To propose training programmes relating to programme designing, programme coordination and budget preparation;
- g. To manage the programme budget of the Commission;
- h. To initiate, propose, manage and implement financial policies;
- i. To develop and maintain financial and accounting rules and procedures;
- j. To promote awareness of best practices in financial management and internal financial control systems;
- k. To initiate and take necessary actions to collect funds of and for the African Union;
- l. To control budget execution and process payments;
- m. To invest excess liquidity as authorised;
- n. To facilitate the conduct of external audit;
- o. To ensure effective implementation of Financial Rules and Regulations;
- p. To ensure safe custody of all liquid assets of the Union;
- q. To ensure prompt recovery of all receivables owed to the Union;
- r. To produce periodic financial and budget execution reports and annual financial

statements, in accordance with Financial Rules and Regulations.

4.1.13. Directorate for Conference Services

Mandate

The mandate of the Directorate is to provide, plan and manage conference services for the AU Commission and, when necessary, for other organs of the Union as well as to print and reproduce all documents of the AU Commission.

Core Functions:

- a. To plan, organise and service conferences and meetings of the AU and its organs;
- b. To determine and provide such conference needs as interpretation, translation, editing and proof-reading of policy and technical documents, as well as reports;
- c. To print and reproduce all documents of the Commission;
- d. To develop a system for the efficient storage, control and distribution of documents before, during and after conferences and meetings of the AU;
- e. To identify the technical and material resources needed to service conferences;
- f. To ensure that there are venues and documents for meetings;
- g. To circulate documents for meetings and conferences;
- h. To ensure safe keeping of documents.

4.1.13. Medical Services Directorate

Mandate

The Directorate of Medical Services is under the Bureau of the Deputy Chairperson and is an outpatient polyclinic that provides curative, preventive, and acute care/observation services to the AU staff and registered dependents, AU consultants, African diplomats accredited to Ethiopia and the AU, AU delegates and consultants. It also administers the Medical Assistance Plan and/or medical insurance within the AU Commission and regional offices.

Core Functions:

- a. *To provide continuing, comprehensive full-person curative, health promoting and preventative services for employees and dependents of the AU, African diplomats in Addis Ababa and delegates to AU meetings;*
- b. *To provide medical coverage to participants during AU conferences, meetings and Summits;*
- c. *Medical examinations for pre-employment and assessment for AU Commission, biennial medical assessment of AU personnel prior to renewal;*
- d. *Technical assistance in planning, running and maintaining health services for AU peacekeeping missions.*

5. Departments And Their Functions

5.1. Department of Peace and Security

Mandate

The Peace and Security Department (PSD) of the Commission of the African Union

provides support to the efforts aimed at promoting peace, security and stability on the continent. Currently, the PSD's activities focus on the following areas:

- a. Implementation of the Common African Defence and Security Policy;*
- b. Operationalization of the Continental Peace and Security Architecture as articulated by the Protocol Relating to the Establishment of the Peace and Security Council of the AU, including the Continental Early Warning System and the African Standby Force;*
- c. Support to the efforts to prevent, manage and resolve conflicts;*
- d. Promotion of programmes for the structural prevention of conflicts, including through implementation of the African Union Border Programme;*
- e. Implementation of the AU's Policy Framework on Post-Conflict Reconstruction and Development;*
- f. Coordination, harmonisation and promotion of peace and security programmes in Africa, including with the Regional Economic Communities/Regional Mechanisms for Conflict Prevention, Management and Resolution, the United Nations and other relevant international organisations and partners.*

The Department comprises of four divisions namely:

a. The Conflict Management Division

The Conflict Management Division (CMD) focuses on the operationalization of some of the aspects of the African Peace and Security Architecture (Continental Early Warning Systems, the Panel of the Wise, the Memorandum of Understanding between the AU and the Regional Economic Communities/Regional Mechanisms for Conflict Prevention, Management and Resolution). The CMD supports and coordinates activities relating to conflict prevention and management, as well as to post-conflict reconstruction and development. The CMD supervises and coordinates the work of the AU Liaison Offices on the ground.

b. The Peace Support Operations Division

The Peace Support Operations Division (PSOD) works towards operationalization of the African Standby Force and the Military Staff Committee, including elaboration of relevant policy documents and coordination with relevant African structures and AU partners. The (PSOD) also plans, mounts, manages and supports AU peace support operations.

c. The Peace and Security Council Secretariat

The Peace and Security Council Secretariat provides the operational and administrative support required by the Peace and Security Council (PSC) to enable it and its subsidiary bodies to perform their functions effectively. The Secretariat also acts as the builder and custodian of the institutional memory on the work of the (PSC) and facilitates its interaction with other organisations/institutions on issues of peace and security.

d. The Defence and Security Division

The Defence and Security Division is in charge of issues relating to arms control and disarmament, counter-terrorism and other strategic security issues, including security sector reform. This division also addresses long-term crosscutting security issues.

5.2. Department of Political Affairs

Mandate

The Department of Political Affairs has remained the core department in the Organisation of Africa Unity (and the African Union) since its inception in 1963. The mandate of the department is to contribute to the emergence of a political environment within and among African countries as well as at the international level that is conducive to bringing about sustainable development and accelerating economic integration of the continent.

The main objectives of the Department of Political Affairs include to:

- a. Advocate for and assist in ensuring that all African countries respect human rights;*
- b. Work towards emergence of democratic institutions and sustained popular participation throughout the continent;*
- c. Encourage transparency and accountability in public affairs, political, economic and cultural areas with a greater involvement of the civil society and the private sector;*
- d. Devise ways and means of finding durable solutions for problems of refugees and addressing the causes and symptoms of humanitarian crises;*
- e. Monitor election processes on the continent.*

Core Functions:

- To develop common positions in the political field for use in international negotiations;*
- To monitor implementation of common policies by Member States;*
- To prepare reports for monitoring and tracking progress on democratisation, good governance and electoral processes;*
- To disseminate reports and share best practices;*
- To develop an effective early warning system for predicting population displacements;*
- To gauge the socio-political impact of international developments on Africa;*
- To develop and monitor policy on popular participation in the activities of the Union;*
- To monitor implementation of international humanitarian law by Member States;*
- To monitor the situation and flow of refugees and displaced persons in Africa;*

- To collaborate with other AU institutions to ensure harmonisation of activities.

The department comprises of two divisions and one unit namely:

a. Democracy, Governance, Human Rights and Elections Division

The Division of Democracy, Governance, Human Rights and Elections strengthens the African Commission on Human and People's Rights and to strengthen capacity for supporting democratic processes in AU Member States

b. Humanitarian Affairs, Refugees and Displaced Persons Division

The Humanitarian Affairs, Refugees and Displaced persons has a core mandate of providing assistance in collaboration with other departments and relevant agencies/organisationstorefugees, displaced persons and victims of humanitarian crises;

c. African Union Democracy and Electoral Assistance Unit (DEAU)

The mandate of the DEAU is to promote Democracy and democratic Elections within the Continent by coordinating and organizing African Union election observer missions to Member States of the Union; and by enhancing the national electoral processes of Member States through the provision of direct technical and electoral assistance to Election Management Bodies in Africa.

The department also has four other offices namely the:

1. Permanent Observer Mission of the African Union to the United Nations in New York whose mandate is to develop and maintain constructive and productive institutional relationships between the African Union and United Nations institutions as well as to promote a common view within the 'African Group' in

international negotiations;

- 2. The African Union Representational Mission to the United States of America in Washington whose mandate will be to develop, maintain and undertake resource mobilisation and consolidate constructive and productive institutional relationships between the African Union and Africans in the diaspora, the Bretton Woods institutions as well as with the Government of the United States of America through marketing of the AU;*
- 3. The African Union Mission to the Southern Africa Region in Lilongwe, Malawi with a mandate of representing the AU in the Southern Africa Region as well as developing and maintaining constructive and productive relationships between the AU and Member States in the region as well as SADC and COMESA;*
- 4. The African Commission on Human and People's Rights in Banjul, The Gambia, whose mandate is to monitor, promote and protect human and people's rights in Member States by developing and maintaining constructive and productive relations between the AU and Member States.*

5.3. Department of Infrastructure and Energy

Mandate

The mandate of this department is to enhance regional and continental efforts for accelerated integrated infrastructural development and effective and sustainable deployment of energy resources.

Core Functions:

- a. To coordinate and harmonise policies on road, air and maritime transport;*
- b. To monitor and track implementation through the RECs;*
- c. To harmonise communication policies on telecommunication, Integrated*

Compliance Information Systems, post and meteorology;

- d. To promote common policies for development of private sector initiative in the tourism industry;*
- e. To coordinate and harmonise policies and programmes on energy development;*
- f. To ensure availability of research findings on the improvement of infrastructure and services;*
- g. To ensure logistical support for workshops, seminars and meetings of Member States on sector matters;*
- h. To ensure availability of reports on developments in the infrastructure and energy sectors;*
- i. To collaborate with AFREC and other specialised agencies;*
- j. To collaborate with NEPAD and CSSDCA in order to ensure harmonisation of activities.*

The Department of Infrastructure and Energy has one division namely:

a. The Division of Information Society (INFOSOC)

The Division of Information Society mandate covers all aspects of coordinating Communications and Information Technology areas notably Telecommunication/ICT, Postal and Broadcasting. The **ISD** is in charge of all continental activities related to the development, the harmonization, the coordination and the implementation of Policies, Regulations, Strategic frameworks and infrastructure development for the Communications and Information Technologies sector.

5.4. Department of Social Affairs

Mandate

To serve as a focal point for planning, developing and harmonising continental and regional policies, programmes and projects concerning labour, social development and culture with the view to building up capacities and promoting African integration and solidarity.

Core Functions:

- a. *To initiate and harmonise the social policies of Member States;*
- b. *To monitor and track implementation of programmes and projects emanating from common policies in health, labour and social issues in Africa;*
- c. *To formulate and harmonise policies on matters of population and development as well as to assist Member States in developing and implementing appropriate population policies and strategies;*
- d. *To develop and harmonise policies on health, nutrition and environmental hygiene;*
- e. *To identify emerging social issues that may have an impact on the overall development of Africa;*
- f. *To establish modalities that will assist Member States address challenges posed by migration;*
- g. *To prepare common strategies and compile best practices for combating major health challenges;*
- h. *To develop and harmonise common labour policies in order to enhance productivity in Africa;*
- i. *To develop strategies for establishing an African Labour Market and Labour*

Exchange;

- j. To initiate action for formulating common drug control and related crime prevention policies and strategies as well as to implement the AU plan of action on drug control;*
- k. To promote the African and international drug conventions and related legal instruments on drug control and crime prevention;*
- l. To integrate drug control measures and other social programmes into the NEPAD strategy;*
- m. To promote alternative programme development to stem the cultivation of Cannabis;*
- n. To develop, harmonise and monitor activities relating to HIV/AIDS, tuberculosis and other related infectious diseases.*

The department of social affairs comprises of six divisions namely:

- 1) Division of Health, Nutrition and Population*
- 2) Division of HIV/AIDS, Malaria, Tuberculosis*
- 3) Division of Labour, Employment and Migration*
- 4) Division of Social Welfare, Vulnerable Groups and Drug control*
- 5) Division of Culture and Sport*

5.5. Department of Trade and Industry

Mandate

The mandate of this department is to contribute towards making Africa a significant

and competitive trading partner in the global economy as well as an integrated trading bloc within the continent. Furthermore, by initiating policy measures and strategies, the portfolio will also contribute to the structural transformation of the continent by diversifying and modernising production structures through self-sustained industrial development.

Core Functions:

- a. To coordinate formulation and implementation of trade policies with the RECs and to promote inter and intra African trade including reform and follow up of all African trade;*
- b. To harmonise policies on industry, trade, tariffs and non-tariff barriers and immigration across the RECs;*
- c. To network with non-governmental entities such as the chambers of commerce at regional level, industrial associations, exporters, importers and NGOs in order to ensure fair trade;*
- d. To provide backstopping support for AU Member States in global trade negotiations;*
- e. To monitor global trends in trade and analyse their impact on Africa;*
- f. To organise, develop and maintain a trade policy data-base and documents on common positions taken by RECs with the aim of harmonising these positions at the continental level;*
- g. To develop and harmonise policies and instruments for the free movement of persons within the Union and work towards a common African Union citizenship and residency status among Member States;*
- h. To encourage and support the participation of civil society organisations in trade and industrial activities;*
- i. To promote inter and intra African trade.*

The Department of Trade and Industry is made up of three divisions namely:

a. The Division of Trade

The objective of the Division is to build Africa's trade capacities and enhance the competitiveness and diversification of its economy for the attainment of sustainable economic growth and development, eradication of poverty, continental unity and integration, as well as effective integration of Africa into the global economic and trading systems as strong and respected partners.

b. The Division of Industry

The objective of the Division is to build Africa's industrial capacities and enhance the competitiveness and diversification of its economy for the attainment of sustainable economic growth and development, eradication of poverty, continental unity and integration, as well as effective integration of Africa into the global economic and trading systems as strong and respected partners.

c. The Division of Customs Cooperation

The Division of Customs Cooperation exists to support and coordinate the efforts of Customs administrations of Member States in the process of regional and continental integration and to advise, make recommendations to, elaborate and implement strategies for and on behalf of the Commission on Customs issues as well as follow-up on the implementation of regional and continental programmes at Member States and RECs level.

5.6. Department of Rural Economy and Agriculture

Mandate

The mandate of the department is to initiate and promote policies and strategies that can contribute to the development of rural economy, particularly through improvement of agricultural productivity and growth of the sector as a whole. It is also charged with promoting measures that will contribute towards enhancing environmental sustainability.

Core Functions:

- a. *To promote and coordinate strategies as well as initiatives for development of the African rural economy among the RECs and specialised institutions and centres working in this field;*
- b. *To initiate, propose and coordinate policies and programmes for the development of production capacities (agriculture, livestock, and fisheries) with the aim of ensuring food security in the African continent;*
- c. *To promote and facilitate development initiatives of rural communities, as well as coordinate efforts towards transfer of technologies;*
- d. *To organise and provide technical assistance to specialised institutions in the fight against desertification, drought and management of natural resources and environment;*
- e. *To coordinate RECs in their efforts towards harmonisation of initiatives to eradicate poverty and alleviate conditions faced by rural women and rural communities such as those pertaining to infrastructure and energy and processing of agricultural products by small-scale producers;*
- f. *To ensure effective and constructive participation of the Commission in regional and continental efforts towards sustainable development of the*

rural economy, as well as uplifting the standards of living and production capacities of rural communities;

- g. To follow up agricultural policies and strategies at RECs level and to promote their harmonisation;
- h. To organise and ensure participation of the Commission in agricultural research and the propagation of extension services in African countries;
- i. To initiate studies on climate change as well as promote collaboration among Member States in these activities;
- j. To initiate and coordinate cross-border water management projects.

The department comprises of three divisions namely:

a. The Agriculture and Food Security Division

The Division of Agriculture and Food Security; in collaboration with NPCA facilitates the implementation of the CAADP agenda, strengthens the resilience of African food production system through the value chain approach in the context of climate change and facilitates the harmonization of agricultural policy and knowledge support in synchrony within the Framework of CAADP.

b. Environment and Natural Resources Division

The Division of Environment and Natural Resources is geared towards the facilitation of actions and programmes in Africa designed to achieve sustainable development of Member States across the continent.

c. Rural Economy Division

The Division of Rural Economy focuses on actions to promote an enabling policy

environment and mobilize political support and financial resources for achieving improved performance of the rural economy. The division focuses its activities on advocacy and support to the formulation and adoption of continental level frameworks and guidelines for policy development and implementation in key sectors of land, pastoralism, rural infrastructure and market access. Capacity building activities are also supported in order to empower rural producers, which will lead to improved rural incomes, livelihoods, and creation and expansion of rural wealth. This will be achieved through promotion of value addition, income diversification and improved market access.

5.7. Department of Economic Affairs

Mandate

The mandate of the department is to initiate and promote policies and strategies that can enhance the coordination, harmonisation and facilitation of continental collective initiatives in economic integration. It also undertakes measures to support investment promotion, mobilisation of development financing, building of common financial institutions. The department is also mandated to undertake econometric research and analysis as well as provide econometric statistics.

Core Functions:

- a. To develop policies and strategies for the acceleration of economic integration;*
- b. To coordinate activities that relate to the promotion and development of the process of regional economic integration;*
- c. To assist in promotion and development of the private sector and investments within and among Member States and RECs;*
- d. To promote domestic savings in Africa as well international financial inflows to develop and establish continental financial institutions, including a common*

African monetary Union;

- e. To develop monetary and fiscal policies, including strategies that address the debt problem;*
- f. To ensure coordination of development planning for African economies at both national and regional levels;*
- g. To promote and facilitate economic policies affecting various stages of development among African RECs with a view to achieving the African common market;*
- h. To interact with ECOSOCC and civil society;*
- i. To mobilise resources for economic development and integration projects.*

The Department of Economic Affairs comprises of four divisions namely:

a. Economic Integration and Regional Cooperation Division

The Division of Economic Integration and Regional Cooperation ensures the implementation of the Abuja Treaty, establishing the African Economic Community (AEC) through coordination and harmonization of activities of RECs; which are the pillars of the AEC. The division also monitors the implementation of the relevant Africa Union Assembly Declarations and Decisions on integration, especially the Sirte Declaration on the acceleration of the integration process.

b. Economic Policies and Research Division

c. Private Sector Development/ Investment & Resource Mobilization

The Private Sector Development/ Investment and Resource Mobilization Division aims at mobilizing development financing and improving the conditions for private sector activity and increasing Africa's share of global investment flows as a means of attaining growth, employment creation and poverty alleviation. This is achieved by devising strategies and promoting policies that enhance the development of Africa's private sector, supporting Member States in embarking on reforms that could help improve the business climate and attract both domestic and foreign investments, as well as assist in mobilizing development funding, including through alternative sources of financing and other innovative means of financing.

d. Statistics Division

The statistics division generates timely, reliable and harmonized statistical information, covering all aspects of political, economic, social and cultural integration for Africa. It also identifies specific statistical data related to all AU and its organs' activities, formal policies for statistical development and capacity building for the AU and its member states. The statistics division coordinates the implementation of the African Charter on Statistics as regulatory continental framework for statistics development and capacities building of members of the African Statistics System as well as building networks and promote cooperative programs with partners and foster effective institutional linkages between the AU and other institutions.

5.8. Department of Human Resources, Science and Technology

Mandate

The mandate of the Department of Human Resources, Science and Technology is promotion and coordination of human resources development and science and technology policies, particularly the use of ICTs by youth and all groups for the social

and economic development of Africa. These policies will enhance the integration process through programmes and activities that are perceived by Member States as reflective of their priority developmental objectives and political stability.

Core Functions:

- a. To coordinate policies relating to human resources development, science and technology in Member States;*
- b. To promote research in science and technology;*
- c. To promote integration of ICTs into research and development;*
- d. To strengthen cooperation in the field of education and training;*
- e. To coordinate advancement of the development of the continent by promoting research in science and technology;*
- f. To ensure promotion and strengthening in the use of information and communication technologies in socio-economic and socio-cultural development in Africa;*
- g. To provide logistical support for science and technology;*
- h. To participate in scientific research and make available reports emanating from this research;*
- i. To promote the use of principles gleaned from best practices;*
- j. To promote integration of youth in the development process of the continent;*
- k. To encourage the interest of youth in science and technology;*
- l. To provide secretarial services for the Scientific Council for Africa.*

The department of human resources, science and technology comprises of three divisions:

a. Education Division

The Education Division of Human Resources Science and Technology seeks to promote research and original knowledge production, to promote quality in African higher education and development of Continental Frameworks and to increase the involvement of universities in the continent's development efforts. The main goal of the education division is to revitalize higher education in Africa.

One of the initiatives of the AU to revitalize higher education and research is the establishment of the Pan African University.

Pan African University:

Its intention is to enhance global competitiveness of African higher education and research as well as to establish an African University at the core of Africa's development. The Pan African University was established to boost the population and retention of high level human resources and quality knowledge outputs and be able to attract the best intellectual capacity from all over the world. Based on thematic areas, the first four institutes of the Pan African University will be hosted as follows:

- *Western Africa PAU Institute of Life and Earth Sciences at University of Ibadan, Nigeria*
- *Eastern Africa PAU Institute of Basic Sciences, Technology and Innovation at the Jomo Kenyatta University of Agriculture and Technology*
- *Central Africa – PAU Institute of Governance, Humanities and Social Sciences at University of Yaoundé*
- *Northern Africa - PAU Institute of Water and Energy Sciences (including Climate Change)*

b. Human Resources and Youth Division

The Youth Division under the Department of Human Resource Science and Technology (HRST) is responsible for Africa's Youth Agenda in the African Union Commission (AUC). The Division is in charge of addressing issues concerning:

- *Youth policy development, participation and capacity building;*
- *Legal framework development: African Youth Charter;*
- *Institutional framework: African Youth Decade Plan of Action (2009–2018);*
- *Implementing Youth Programs: African Union Youth Volunteers Corps (AU-YVC);*
- *Partnerships and Resource Mobilization;*
- *Organizing Youth Forums and Celebrating the African Youth Day;*

c. Science, Technology and ICT

6. African Union Representational and Specialized Offices

These offices are reflected as part of the commission because they are an extension of the Commission and they represent the African Union outside of Addis Ababa, Ethiopia.

6.1. Permanent Observer Mission to the United Nations; New York, USA

Mandate:

The mandate of the Permanent Observer Mission of the AU in New York is to develop and maintain constructive and productive institutional relationships between the AU and the UN institutions as well as promote a common view within the African group in international relations.

Core Functions:

- i. To assist in coordinating the activities of the African Group;*
- ii. To advise headquarters' on strategies for addressing emerging issues at the UN;*
- iii. To assist member states to adopt common positions in the UN;*
- iv. To circulate information on the AU and the UN;*
- v. To assist the Commission to prepare for UN activities especially for the UN General Assembly;*
- vi. To maintain contacts with UN agencies based in New York; including the UNDP and UNICEF;*
- vii. To follow-up on issues related to NEPAD at the UN level;*
- viii. To assist with procurement for the commission and other organs;*
- ix. To facilitate the exchange of information between the AU and the UN;*
- x. To provide logistical and technical support to the African Group.*

6.2. African Union Permanent Mission to the United Nations; Geneva, Switzerland

Mandate:

To develop and maintain constructive and productive institutional relationships between the African Union and the United Nations institutions as well as to promote a common view within the African Group in international negotiations.

Core Functions:

- i. To assist in coordinating activities of the African Group;
- ii. To advise Headquarters on strategies for addressing emerging issues at the UN;
- iii. To assist Member States adopt common positions in the UN;
- iv. To circulate information on the AU and UN;
- v. To assist the Commission in preparing for the UN activities in Geneva;
- vi. To follow-up on AU/UN Programmes of Cooperation;
- vii. To maintain contact with UN agencies based in Geneva;
- viii. To follow-up on issues relating to NEPAD;
- ix. To assist with procurement for the Commission and other Organs;
- x. To inform on AU activities;
- xi. To facilitate the exchange of information between the AU and the UN;
- xii. To facilitate follow-up and work in all related agencies;
- xiii. To assist in liaising with the African Diaspora in Europe.

6.3. The African Union Mission to the United States of America; Washington, DC, USA

Mandate:

To develop, maintain, undertake resource mobilisation and consolidate constructive and productive institutional relationships between the African Union and Africans in the Diaspora, the Bretton Woods Institutions, as well as with the Government of the United States of America through marketing of the AU.

Core Functions:

- i. To assist in coordinating activities of the African Group in the Americas;*
- ii. To advise headquarters on strategies of addressing emerging issues in the Americas;*
- iii. To assist Member States adopt common positions in their relationship with the Americas;*
- iv. To circulate information on the AU in the Americas;*
- v. To assist the Commission prepare for meetings with Congress, Bretton Woods Institute and the Organisation of American States;*
- vi. To build a political constituency and support for Africa in the Americas;*
- vii. To establish working relationships with the Organisation of American States;*
- viii. To maintain contact with the various political pressure groups and pro-Africa Groups;*
- ix. To coordinate activities of the African Group in Washington, DC; regarding contacts with the Congress of the United States, the World Bank and IMF; and to mobilise support for Africa's development efforts;*

- x. *To constantly liaise with the Congressional Black Caucus and other groups that are sympathetic to Africa in their activities to advocate for policies that will help shape and influence progressive policies towards African countries;*
- xi. *To submit briefs on the activities of the AU, and of their African Group in Washington, DC;*
- xii. *To inform on a constant basis, American popular opinion about Africa, and about its issues of concern;*
- xiii. *To provide regular information which influence Congressional decisions and other decision-makers on Africa;*
- xiv. *To counter when necessary, media distortions of developments and events in Africa;*
- xv. *To disseminate information on activities of the AU, and of its Member States;*
- xvi. *To follow-up on the activities and programmes of the World Bank and IMF that are of interest and concern to Africa;*
- xvii. *To assist with procurement for the Commission and other organs;*
- xviii. *To follow-up on issues relating to NEPAD, CSSDCA, Gender and other cross-cutting programmes;*
- xix. *To support the African course;*
- xx. *To sensitise the communities in the diaspora;*
- xxi. *To promote a positive image of the AU in the Americas.*

6.4. Permanent Mission of the African Union to the European Union and the African, Caribbean and Pacific Group of States (ACP); Brussels

Mandate

To develop and maintain constructive and productive institutional relationships between the African Union and the European Union institutions, and the ACP Secretariat as well as to promote a common view within the African Group in international negotiations.

Core Functions:

- i. To assist in coordinating activities of the African Group to build a political constituency and support for Africa in Europe;*
- ii. To advise AU Headquarters on strategies for addressing emerging issues at the EU;*
- iii. To monitor matters of concern to Africa in Europe;*
- iv. To assist member states adopt a common position with the EU;*
- v. To follow-up on AU/EU programmes of cooperation;*
- vi. To assist the Commission prepare for meetings with the EU;*
- vii. To follow-up activities of other international organisations based in Brussels;*
- viii. To follow-up on issues relating to NEPAD;*
- ix. To assist with procurement for the Commission and other organs;*
- x. To ensure regular consultations with stakeholders;*
- xi. To circulate information on the AU and EU;*
- xii. To facilitate the exchange of information between the AU and the EU;*

- xiii. *To provide logistical and technical support for the African Group;*
- xiv. *To assist in liaising with Africans diaspora in Europe.*

6.5. African Union Permanent Delegation to the League of Arab States; Cairo, Egypt

Mandate

To represent the AU to the League of Arab States, foster closer cooperation between the AU and the League in the political, economic, cultural and social fields, as well as update the AU on developments at the League and vice versa.

Core Functions:

- j. *To work towards the development and strengthening of cooperation between the AU and the League of Arab States in the political, economic, cultural and social fields;*
- k. *To forge closer links between the AU and the African diplomatic missions as well as other international organisations in Cairo;*
- l. *To produce periodic reports on major issues bearing interests to African countries;*
- m. *To increase the awareness about the AU and its activities to the League of Arab States and the African missions in Cairo;*
- n. *To build a political constituency and support for Africa;*
- o. *To follow-up and monitor political developments of concern to Africa in Arab countries;*
- p. *To follow-up on issues relating to NEPAD;*
- q. *To assist with procurement for the Commission and other organs;*

- r. *To ensure regular consultations with stakeholders;*
- s. *To facilitate the exchange of information between the AU and the League of Arab States;*
- t. *To participate in Africa-related consultations;*
- u. *To coordinate the activities of the African Group;*
- v. *To advise Headquarters on strategies for addressing emerging in the Arab League;*
- w. *To assist Members States for adopting common positions with the League of Arab States;*
- x. *To assist the Commission to prepare for meetings and consultations with the Arab League;*
- y. *To assist in liaising with Africans Diaspora in the Arab world.*

6.6. African Union Mission to the Southern Africa Region; Lilongwe, Malawi

Mandate:

The AU Southern Africa Regional Office in Lilongwe, Malawi was established in 2001 as a representational office of the AU to develop and maintain constructive and productive relationships between the AU and Members States in the region as well as SADC and COMESA.

Core Functions:

- i. *To represent the AU in the Southern Africa region;*
- ii. *To increase awareness about the AU, its mission and its work in the region;*
- iii. *To establish working relationships with the Southern Africa region;*

- iv. *To monitor political development of concern to African countries in the Southern Africa region;*
- v. *To ensure that Southern Africa activities on refugees, health, immigration and natural disasters receive quick attention from the AU;*
- vi. *To support the exchange of info between Southern Africa countries and the AU and ensure regular consultations with the RECs in the region;*
- vii. *To counter, when necessary, media distortions about development and events in Southern Africa;*
- viii. *To follow up on issues relating to early warning systems in Southern Africa;*
- ix. *To deal with issues that foster and promote cohesion, solidarity and unity;*
- x. *To liaise on and harmonise specific policies in geopolitical and socio-economic activities of the AU in the Southern Africa region;*
- xi. *To spearhead, initiate and review the AU activities and policies taking into account the constant changing world trends;*
- xii. *To promote unity, solidarity and enhance pan-African spirit in the Southern Africa region;*

POPULARIZING THE AFRICAN UNION: The AU Branding Campaign



The past 10 years has shown the importance of the African Union as a continental organization. The Constitutive Act of the African Union (AU) declares its desire to be a 'people-driven' organization that includes all youth, women and various forms of organizations. In this spirit, in 2012; the AU began a branding campaign to make the AU more relatable to African peoples of all backgrounds.



CHAPTER 5: THE AFRICAN UNION DECISION-MAKING PROCESS

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- ❖ Initiation of decision making process-overview
 - ❖ The Permanent Representatives Committee
 - ❖ The Executive Council
 - ❖ The Assembly
 - ❖ Authentication of Decisions
 - ❖ Types of AU Decisions
 - ❖ The AU Policy Cycle

Chapter 5: African Union Decision-making Process

Decisions of the African Union are normally the result of a long process initiated as a policy proposal by the Commission of the AU, a Member State or a group of Member States or other organs of the Union. Proposals are normally debated in an expert meeting followed by meetings of the Ministers in charge of the particular issue before it gets to the Executive Council through the PRC then to the Assembly of the Union.

Not all decisions follow exactly the same process or pattern. Some simple or urgent items can be put on the AU Summit agenda without going through the usual process. There are two principal decision-making organs within the African Union i.e. the Executive Council and the Assembly of the Union. The Assembly, which is composed of the Heads of State and Government, is the supreme decision-making organ of the Union. Some decisions are made at the level of Executive Council, while others are made at the level of the Assembly. Decisions made at the level of the Executive Council include decisions on the budget and all other proposals with financial implications and decisions on legal instruments and appointment of elected officials, which are endorsed thereafter by the Assembly.

1. Initiation of decision-making process: Overview

Before the policy organs take any decision, the process starts either within the African Union Commission (the secretariat of the Union), other AU organs or from the Member States as policy proposals. The Commission can initiate proposals for consideration by other organs in accordance with Article 3 (2) (b) of the Statutes of the Commission. The Commission prepares all the necessary documents that elaborates on that policy or proposal including the agenda and programme of work and convenes a meeting

of experts from the African Union Member States from the relevant sectors in their respective countries.

The experts meeting, which takes four to five days, will debate extensively on the proposals and make recommendations that are submitted to the Ministers responsible for that particular sector. For instance, if the policy that is debated upon deals with health issues, the recommendations will be forwarded to Ministers of Health. The Ministers will then deliberate on the recommendations of the experts and may or may not agree with the recommendations, after which day they will be tabled before the Executive Council for approval. Most of the reports from ministerial meetings are submitted to the Executive Council for adoption however some proposals have to go through the Permanent Representatives Committee, which submits its recommendations to the Executive Council. Thereafter, the Executive Council tables the recommendations before the Assembly.

2. The Permanent Representatives Committee (PRC)

The PRC, which is composed of permanent representatives from all AU Member States acts as an advisory body to the Executive Council and prepares the work of the Executive Council. Its subcommittees prepare the work of the PRC. The PRC meets at least once every month at the headquarters of the African Union in Addis Ababa, Ethiopia. The Chairperson of the PRC, in consultation with its Bureau and the Chairperson of the African Union Commission, prepares the provisional agenda of the PRC. However, Member States and other organs of the Union may also propose items for discussion. All PRC meetings are conducted in closed sessions, but from time to time, the PRC may decide to hold open sessions. The Permanent Representative whose country is the Chair of the Assembly chairs the sessions. The Chairperson is assisted by other members of the Bureau i.e. the four Vice Chairs whose countries are members of the Bureau of the Assembly and a Rapporteur. The same Member States who constitute the Bureau of the Assembly will also constitute the PRC and

Executive Council Bureaus. The PRC takes decisions by consensus, or where there is no consensus by a two-thirds majority of Member States eligible to vote. Decisions on procedural issues are taken by simple majority of the Member States eligible to vote. The PRC makes recommendations, which only become decisions when they are adopted by the Executive Council.

3. The Executive Council

The Executive Council is composed of Ministers of Foreign Affairs of all AU Member States and meets twice a year in ordinary session. The Executive Council reports to the Assembly, prepares the sessions of the Assembly and determines the issues to be submitted to the Assembly for decision. Reports for ministerial meetings are adopted by the Executive Council without discussion unless there are contentious issues that require debate.

All draft decisions are submitted to the Executive Council for consideration. Initially they are submitted to its drafting Committee composed of 15 Member States which examines and amends them where appropriate before submitting them to the whole Executive Council for consideration. Decisions are taken by consensus or where there is no consensus by a two-thirds majority of the Member States eligible to vote.

The agenda of the Executive Council consists of two parts: items that are adopted without discussion in which the PRC or relevant Ministers has reached agreement on and the items that require discussion before approval. After deliberation, the draft decisions and recommendations of the Executive Council are submitted to the Assembly of Heads of State and Government for consideration and adoption.

The Commission is expected to provide the financial implications before a draft decision is adopted. Ministerial meetings come up with reports and draft decisions, declarations or resolutions, which the Executive Council examines and adopts or submits to the Assembly for consideration and adoption

Decisions adopted by the Executive Council are authenticated by its Chairperson and

Chairperson of the Commission and published in 'Official Journal of the African Union' in all AU official languages within fifteen days after signature and transmitted to all Member States, AU organs and the Regional Economic Communities (RECs).

4. The Assembly

The Assembly is composed of all Heads of State and Government and meets twice in ordinary sessions in January and July each year. It can also convene in an extra ordinary session at the request of a Member State. Sessions of the Assembly are preceded by the Ordinary Sessions of the Executive Council and the Permanent Representatives Committee. The agenda of the Assembly consists of items decided upon by the Assembly at its previous session, items proposed by the Executive Council, Member States and other organs of the Union. The Provisional agenda of the Assembly consists of two parts, Part A and Part B (Rules of Procedure of the Assembly):

Part A- items which are adopted without discussion in which the Executive Council has reached agreement on, such as ministerial meeting reports;

Part B- Items that require discussion before approval by the Assembly.

The Assembly also takes all its decisions by consensus or where there is no consensus, by a two-thirds majority of the Member States who are eligible to vote. The African Union Commission implements and follows up on the implementation of all the decisions. Before every session of the PRC, Executive Council and Assembly, the Commission prepares progress reports and an implementation table indicating the status of implementation of decisions, constraints and challenges encountered in implementing the decisions. The progress reports are submitted to the Executive Council and Assembly through the PRC. However, there is no consistent mechanism to track the implementation of the AU decisions by Members States at national levels.

The signatures of the Chairperson of the Assembly and the Chairperson of the African Union Commission authenticate decisions adopted by the Assembly. Those decisions are then published in all working languages of the Union i.e. Arabic, English, French

and Portuguese in the 'Official Journal of the African Union' within 15 days after the signatures and are transmitted to all Member States, other organs of the Union and Regional Economic Communities (RECs). Decisions taken by the policy organs are binding on all the AU Member States, organs of the Union and the RECs.

4.1. Authentication of Decisions

The signatures of the Chairperson of the Assembly and the Chairperson of the African Union Commission authenticate decisions adopted by the Assembly. Those decisions are then published in all working languages of the Union i.e. Arabic, English, French and Portuguese in the 'Official Journal of the African Union' within 15 days after the signatures and are transmitted to all Member States, other organs of the Union and Regional Economic Communities (RECs). Decisions taken by the policy organs are binding on all the AU Member States, organs of the Union and the RECs.

4.2. Types of AU Decisions

- *Charters, Treaties, Conventions and Protocols are legally binding if ratified by a Member State. They enter into force only after they have been ratified by a sufficient number (15) of Member States;*
- *Decisions are binding on all Member States or relevant organs or individuals;*
- *Regulations are procedures and rules that govern the implementation of a decision. They are applicable to all Member States that implement the decisions;*
- *Declarations and resolutions are not binding but intend to guide and harmonise viewpoints of Member States.*

Failure of any Member State to comply with any obligation under any instrument of the AU attracts sanctions that can be economic or political. They include, but not limited to:

- *Sanctions for failure to pay contributions;*

- Sanctions for engaging in unconstitutional change of government;
- Sanctions for failure to comply with policies.

5. The African Union Policy Cycle

Stage	Forum	Description	Possible NGO Actions
1.	Member State or AU Commission proposal	Proposals are introduced by Member States or a department or directorate of the AU Commission, or other organs are referred to the Commission by the Executive Council	<ul style="list-style-type: none"> •Familiarise yourself with annual plans and Summit decisions; •Suggest proposals to Member States; •Offer technical assistance and relevant information to draft documents; •Organise brainstorming sessions.
2.	Experts meeting group	Most AU policy documents, treaties and programmes of action are scrutinised by a panel of experts appointed by the governments and the AU Commission	<ul style="list-style-type: none"> •Seek for invitations or nominate experts; •Interact with individual experts; •Offer to write short briefing papers; •Facilitate meetings; •Volunteer to draft reports; •Brief ACHPR special rapporteurs.
3.	Ministers meeting	After the panel of experts, a proposal is submitted to ministers	<ul style="list-style-type: none"> •Seek invitation to be part of delegation or lobby in the meeting's margins; •Brief ministers and officials while in home country; •Share position papers; •Talk to the press at national level what the proposal means.

Stage	Forum	Description	Possible NGO Actions
4.	PRC full meeting or subcommittee	After the ministerial meeting, policy documents with budgetary implications go to the PRC and its subcommittees	<ul style="list-style-type: none"> •Brief chair, members and regional caucuses; •Offer suggestions on ways to fund the proposal; •Give regular briefings on your issues to PRC members to establish credibility
5.	Executive Council	After the ministerial meeting, policy documents with budgetary implications go to the PRC and its subcommittees.	<ul style="list-style-type: none"> •Highlights negative consequences of not adopting proposals; •Brief the press on importance of issues; •Brief regional caucus meetings; •Brief delegations and regional caucuses
6.	Assembly	If approved by the Executive Council, and where necessary, a decision will be sent to the Assembly for final adoption	<ul style="list-style-type: none"> •If issue not decided, continue to gather support; •If agreed, congratulate governments for taking bold and positive steps; •Set up a monitoring mechanism

Source: Adapted from Strengthening Popular Participation in the African Union: A Guide to AU Structures and Processes; Afrimap & Oxfam 2010



20th Ordinary Session of the Assembly of Heads of States and Government

15th Extraordinary Session of the Executive Council



Meeting of the Permanent Representatives Council

CHAPTER 6: THE UNION GOVERNMENT DEBATE



Chapter 6: The Union Government Debate

Since the OAU was founded there has been debate among Member States over the framework for continental institutions and the balance between political and economic integration and national sovereignty. The early drive for a 'Union Government' for Africa led by President Kwame Nkrumah of Ghana was defeated at the 1965 Accra Summit of the OAU, and a quarter-century later the 1991 Abuja Treaty establishing the AEC endorsed a 'gradualist' approach, creating a distant time-table for the achievement of full integration. However, some Member States – and some African citizens – continued to lobby for integration to progress more rapidly.

These debates contributed to the establishment of the African Union to replace the OAU – and have if anything become more demanding since the AU Constitutive Act was adopted. Pressure for a more integrationist legal framework for the AU led to the appointment of a committee of seven Heads of State, who presented a report to the July 2006 Banjul Summit. The AU Commission was then mandated to produce a more detailed report on the issues, and produced a 'Study on Union Government: Towards a United States of Africa', presented to the January 2007 Addis Ababa Summit. The Assembly then decided that there would be one central theme and agenda item at the Accra Summit in July 2007, a 'Grand Debate on the Union Government'. Ahead of the Accra Summit, members of the PRC and Executive Council met in May for a retreat, culminating in an extraordinary session of Ministers of Foreign Affairs, in Durban, South Africa, where the Union Government proposals were discussed. The delegations did not reach consensus.

The Assembly discussed the Union Government at the Accra Summit on 1–3 July 2007. The 'Accra Declaration' noted the need for common responses to the challenges of globalisation, for a consensus on shared values, and for the involvement of Africa's people and the African diaspora in the debate. In a compromise between those states

that wanted to move quickly to the creation of a 'United States of Africa' and those that were more cautious, the Assembly agreed to accelerate the economic and political integration of the African continent, and accelerate the rationalisation of the RECs, and also to conduct an audit of the institutions and organs of the AU to review the challenges they already faced and make proposals on how best to move forward. A ministerial committee was appointed to work on these issues.

A panel of eminent persons was set up to conduct the 'Audit Review' and presented a long and detailed report to the January 2008 Summit on the functioning of the existing AU organs. Among the many recommendations made were that:

- *The Assembly should return to one annual meeting of Heads of State and Government and the term of the Chairperson should be two years.*
- *The Executive Council should be renamed the Council of Ministers and be composed sectorally, with different ministers attending according to what is on the agenda.*
- *The Commission should be reorganised to strengthen the authority of the chairperson. The chair and deputy chair should be elected six months ahead of the rest of the commissioners, and the chair should assign portfolios to the individual commissioners.*
- *Implementation of AU decisions should be improved by ensuring that the first item on the agenda of each Assembly session is a review of previous decisions, by the establishment of National Commissions on AU Affairs and by the imposition of sanctions for noncompliance.*

At the January and July 2008 Summits, the Assembly decided to postpone decisions once again. In January 2008, the election of a new Chairperson and Commissioners of the AU Commission went ahead according to the previous system, and the Assembly appointed a Committee of Twelve Heads of State and Government (Botswana, Cameroon, Egypt, Ethiopia, Gabon, Ghana, Libya, Nigeria, Senegal, South Africa, Tanzania and Uganda) to review the proposals made by the audit review. At the July 2008 Summit, the Assembly requested the AU Commission to present a report on the

modalities for implementing the recommendations of the Committee of Twelve to the February 2009 Assembly, 'with a view to bringing the debate to a final conclusion' at that meeting. At a special session of the Assembly held on 1 February 2009, however, the Assembly decided only to transform the AU Commission into an AU Authority, with strengthened resources and powers, and to refer further decisions (such as a proposed reorganisation of departments) once again to the next Summit after further study of the necessary amendments to the Constitutive Act by an Extraordinary Session of the Executive Council.

The Executive Council met in Libya in April 2009, to consider the functions of the new AU Authority, the size of the Authority, the functions of the secretaries who would head the new departments, and the financial implications of establishing the Authority.

The Conclusions of the Executive Council's Extraordinary Session were modest. Ministers endorsed an expansion of the areas of competence of the AU Authority, which would replace the AU Commission, but left the structure of the Authority mostly unchanged from that of the Commission and did not follow the recommendations of the AU Audit Review to strengthen the powers of the chairperson. The Extraordinary Session also emphasised that the AU is 'a Union of independent and sovereign States; as such, it is an inter-governmental organisation and all its organs are of an inter-governmental nature. In all cases, the Assembly shall retain its right to delegate any function and/or power to any organ of the Union including the Authority'. The Authority has, however, been given the role of coordinating the AU position on key issues. These conclusions were endorsed by the Assembly during the June–July 2009 Summit, also held in Libya.

The long delays in finalising the proposals for the restructuring of the AU reflect not only technical differences about the best way of configuring the secretariat of the African Union and the powers that should be given to its different organs, but also philosophical differences among African leaders about the future direction of the continent, including concerns about the role of state sovereignty in a more integrated Africa. Almost all Africans welcome the drive for greater African integration, but some also fear that the creation of new institutions without broad consultation among Africa's

people could result into less rather than more space for democratic participation in the work of the premier continental body.

African civil society organisations and parliaments need to engage in this debate. Fundamental questions remain unresolved about the structure and reach of Africa's continental institutions and the degree of protection for national sovereignty. The revision of the Constitutive Act that is underway provides opportunities for advocacy on issues such as when and how the AU structures may intervene in a Member State; on the priorities among the various challenges the continental structures should address; on the relationships between different AU executive organs and between those organs and the Pan-African Parliament; on the participation of civil society in the activities of the executive organs, including especially the PRC; on the legislative authority of the Pan-African Parliament, the system by which its members are chosen, and the participation of civil society in its work; and on the structure of ECOSOCC and its relations both with the AU executive organs and with other civil society organisations. These issues are too important to be left to technocrats and governments.

New Names of Departments within the reform of AUC

Peace and Security

New Name: Peace and Common Defence

Conflict prevention and management, peacekeeping, terrorism, transitional crime

Political Affairs

New Name: Political Affairs and coordination of common position on External Relations

Political cooperation, governance, elections, human rights, humanitarian affairs, free movement of persons, financial crimes

Infrastructure and Energy

New Name: Transport and energy infrastructure

Social Affairs

New Name: Health and Social Affairs

Children, crime prevention, human trafficking, population, migration, labour and employment, sports and culture, epidemics including HIV and AIDS

Trade and Industry

New Name: Trade, Industry and International Cooperation

International trade negotiations, trade, industry, customs and immigration, free movement of goods and services, tourism

Rural Economy and Agriculture

New Name: Rural Economy, Agriculture and Environment

Agriculture and food security, livestock, water, desertification, natural resources, climate change

Economic Affairs

Economic integration, international economic cooperation, monetary affairs, private sector development, investment and resource mobilisation, poverty reduction, statistics

CHAPTER 7: THE PROCESS OF ORGANISING MEETINGS AND THE AU SUMMIT

- ❖ Introduction
- ❖ Mandate to Convene a Meeting
- ❖ Agenda of the Meeting
- ❖ Development of the Work Programme Preparatory
- ❖ Arrangements for the Meeting Hosting Agreement
- ❖ Preparatory Committee
- ❖ Protocol Arrangements
- ❖ Press Coverage
- ❖ Visa Processing
- ❖ Security Arrangements
- ❖ Evaluation Mission to Hosting Country
- ❖ Secretarial Services
- ❖ Criteria for Participation in Meeting
- ❖ Invitation of Participants and Delegates to the Meeting

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- ❖ Notice of Meeting
 - ❖ Registration and Accreditation of Participants
Selection of Hosting Partner
 - ❖ Responsibility of Hosting Partner
 - ❖ Responsibilities of Departments of the AUC
 - ❖ Medical Services
 - ❖ Financial Arrangements for Participants
 - ❖ The Conduct of Meetings
 - ❖ Role of Member States and their representatives to the African Union, in the preparation of the Ordinary AU Summits

Chapter 7: The Process of Organising Meetings and the AU Summit

1. Introduction

Different departments of the AUC in the execution of their technical and facilitation role continuously conduct meetings with Member States, development partners, various stakeholders and experts. This chapter outlines set procedures that guide these meetings. Some of these meetings are statutory, having been approved by the organs of the African Union, others, such as Experts meetings are non-statutory and are held as directed by the needs of the Departments' Annual Work Plans. This chapter deals mostly with the statutory meetings, which may be ordinary, extra-ordinary or special meetings. Where it is relevant and appropriate, procedures for preparing Ordinary AU Summits will also be discussed in details.

2. Mandate to Convene a Meeting

Statutory meetings are meetings that are sanctioned by the organs of the African Union and are approved by the Chairperson of the Commission. They are usually pre-set with dates and venues agreed upon at similar previous meetings. They are usually pre-set with dates and venues agreed upon at similar previous meetings. Extra-ordinary meetings, in contrast to pre-set ordinary meetings, may be held at the request of a Member State which nonetheless requires the agreement of two-thirds of the Member States of the African Union to the holding of such a meeting. The convening of these too will be processed through the organs of the African Union as usual.

Approval for holding an Extraordinary Session shall be obtained at least fifteen (15) days before the date of the meeting. A Special Meeting may also be held at the request of a Member State, without the requirement of the quorum as in extra-ordinary meeting mentioned above.

African Union Ordinary Summits are held twice a year and each Summit consists of three two-day meetings that always take place in the same sequence. Usually, there is a one-day break between these meetings. The Permanent Representatives Committee meets first, followed by the Executive Council of Ministers and then the Assembly of Heads of State and Government.

The decision to hold two Summits, which was taken at the June 2004 Summit, was meant to attend to issues that were not discussed in the previous Summit. As a rule, the January Summit takes place at the AU headquarters in Addis Ababa, Ethiopia. The June – July Summit is held in a different Member State each year. The AU can also convene extraordinary Summits at the request of the Chairperson or a Member State with approval by a two-thirds majority of the Member States.

3. Agenda of the Meeting

The provisional agenda of an Ordinary Session shall be proposed by the concerned/ implicated Department (of the particular theme) in consultation with the Chairperson of the African Union Commission, based on the intended outcome of the meeting, however, relevant Development Partners and Member States shall be consulted and offered the opportunity to include items on the agenda which are relevant to the objectives of the meeting or conference. Items proposed by Member States shall be accompanied by relevant background documents as a requirement. As a policy, the agenda shall be made to consist of just enough items to permit adequate time to discuss them in the time available, thereby lead to a few decisions and recommendations that can be implemented, to a large extent, before the next meeting. There are however standard items including the following: Opening Ceremony, Election of the Bureau and Adoption of the Agenda, Adoption of the Work Programme, Any Other Business, Date and Venue of the Next Meeting and Closing Ceremony.

The agenda of an ordinary session shall be communicated to Member States no later than thirty (30) days before the opening session of the meeting. The agenda of an extraordinary session shall be communicated to Member States no later than fifteen

(15) days before the opening session of the meeting, and shall comprise of only those items submitted for consideration in the request to convening the session.

The key organs that are involved in the preparation of Summits include the AU Commission and the PRC through their extensive collaboration to ensure the smooth running of the Summit. There are two aspects to the preparation of these meetings, i.e. the logistics at the proposed location and the substantive issues to be discussed.

The agenda for an ordinary session of the Assembly is in principle drawn up by the Executive Council. In practice, the PRC led by the 15-member bureau, which comprises the president of the AU and representatives of Member States elected by PRC, will direct logistical preparations and draw up a provisional agenda for the Summit meetings.

It is the responsibility of the AU Commission to distribute the draft agenda to Member States through their representatives in Addis Ababa at least 30 days before the Summit.

A typical agenda has the following items:

- a. Official Opening Ceremony*
- b. Adoption of the Agenda and Organisation of Work*
- c. Presentation and Discussion on the Theme of the Summit*
- d. Reports (of the Executive Council, PSC, NEPAD, President of the Union, and any other representative of the Union that reports back)*
- e. Item proposed by Member States*
- f. Adoption of Decisions and Recommendations of the Executive Council*
- g. Adoption of Decisions and Declarations of the Assembly*
- h. Any other Business*
- i. Date and Venue of the next Summit*
- j. Closing Ceremony*

4. Development of the Work Programme

The relevant department shall group items on the agenda in logical sequence into sessions that will form the Work Programme. The work programme shall then be discussed with the Chairperson of the meeting

before finalisation and dissemination. The Department shall select, and inform in good time, all facilitators on the work programme, including panel discussants. Facilitators will be provided with relevant back- ground documents to guide their facilitation.

5. Preparatory Arrangements for the Meeting

At the beginning of each year all departments shall produce a calendar of meetings to ensure adequate preparation for their conduct. As a matter of principle the number of meetings shall be kept to a minimum. The Ministers' conference is commonly a two-day session. It is preceded by a 2-day Experts' meeting. The Experts' meeting will deliberate the technical issues and set the agenda for the Ministers' conference, which in turn deliberates on the issues and comes up with decisions. Decisions from the Ministers' meeting are taken to the Summit of Heads of State and Government for endorsement as official decisions of Member States.

Arrangements of the meeting or conference shall be made well in advance of the date of the meeting to ensure that adequate notice is given to participants and that all logistics and resources for the meeting are mobilised. A Note Verbale, confirming the holding of the meeting, its objectives and the expected out- come shall be produced for ministerial meetings six months before the meeting to confirm the holding of the meeting. It shall be finalised three months before the meeting. This shall be translated into the official languages of the African Union and posted on the African Union Commission website.

For meetings held outside the African Union Commission secretariat, a Hosting Agreement shall be pre- pared three months before the meeting. Once the agenda has been agreed upon, the technical team of the particular department shall produce

the Work Programme and a list of background documents, including Reports, to guide the meeting. A roadmap indicating deadlines for the production of the documents shall be produced five months before the meeting. These documents shall be finalised three months before the meeting and referred for translation into the four official languages of the African Union two months before the meeting. Each document shall be placed on the African Union Commission website as soon as it is completed.

The responsible Department shall collaborate with the Host Government to produce an Information Bulletin for participants which shall be translated into the official languages of the Commission and shall be posted on the AUC website at least three months before the holding of the meeting. In addition to placing them on the website the meeting documents, agenda and work programme shall be sent out to the invited participants at least 30 days before the meeting to ensure that they have enough time to read them and thereby facilitate their informed participation in the meeting.

An Aide Memoire shall be produced by the technical team of the department outlining the theme of the meeting, the objectives and expected outcome of the meeting. This shall be sent out to Member States at least three months before the meeting is held. Speeches and statements for the meeting shall be drafted and submitted at least ten days before the meeting.

6. Hosting Agreement

Meetings held outside the Commission's premises are held with the collaboration of the Commission and the Member State in whose country the meeting takes place. Normally the Member State will have offered to host the meeting. In this case a Hosting Agreement is signed between the African Union Commission and the hosting country. A standard agreement document exists in the Commission, which is processed by the relevant Department responsible for the particular meeting, in collaboration with the AUC legal counsel, through the hosting country's diplomatic representative to the Commission. The Department, through its Director will ensure that the hosting country is aware of its obligations as outlined in the agreement, and is in agreement thereof.

Where there are any queries, these will be discussed with the department and an agreement reached and signed. This process shall be completed at least three months before the meeting to allow for a second country to host the meeting if the original country was in any way constrained to execute the agreement.

For Ordinary AU Summits, additional logistical arrangements provided for by the host country include:

- a. Reception of all official delegates, starting from the Heads of State and Government and their delegations;*
- b. To provide enough accommodation for all official delegates and other independent individuals attending the Summit;*
- c. Ensure security, primarily of all Heads of State and Government and their delegations;*
- d. Clearance of state/official aircrafts carrying Heads of State and Government and their delegations;*
- e. Provide media facilities for journalists covering the Summit; The AU Commission and the host country usually set up media facilities to be used by the members of the press who are covering the Summits. In addition, different delegates and officials can use the media facilities to hold press conferences or to update and or give their views to the members of the press regarding the issues of the Summits.*
- f. Make sure that there are enough health facilities for the delegates among other measures.*

7. Preparatory committee

A multi-disciplinary, inter-departmental committee shall be set up two months before the meeting to coordinate the arrangements of holding the meeting under the leadership of the Director of the Department in charge. This committee shall regularly

brief the Commissioner of the organising department on progress made.

8. Protocol Arrangements

The Department in charge of organising the meeting, through its Director, shall inform the Protocol Department of the AUC, in good time, about the nature, venue and dates of the meeting, including the kind of participants expected, to ensure that necessary arrangements are made by Protocol Department.

9. Press Coverage

The Department in charge of organising the meeting will liaise with the Press Department of the AUC and also with the Hosting Country to ensure that necessary press coverage for the meeting is provided.

10. Visa Processing

The department or the hosting country, where the meeting is held outside the AUC, will inform participants and facilitate the processing of visas for all official participants of the meeting, including external support staff. Normally participants will be informed where to obtain their visas before departure from their countries of origin. Arrangements for obtaining visas on arrival in the country of the meeting will be communicated where such facilities exist.

11. Security Arrangements

General security shall be provided for all participants and special security arrangements made for VIPs by AUC when the meeting is held at the AUC secretariat. For meeting held outside the African Union Commission secretariat, the security arrangements shall be the exclusive responsibility of the Government. The Government shall provide such protection, as it may deem necessary, for the security of the participants and the

smooth running of the Conference. Regarding the internal security of the Conference Centre, the local security officers shall work in accordance with the established AU security procedures. Staff members of the Commission, in particular, shall be given freedom of movement within the Conference Centre in order to facilitate their work.

12. Evaluation Mission to Hosting Country

The AUC shall undertake an Evaluation Mission to the hosting country a month before the meeting to assess the availability of the facilities and other arrangement described in the Hosting Agreement to ensure that the meeting runs smoothly. Such evaluation mission will, among other things look at the adequacy of the meeting place, allocation of space for the secretariat and the press, protocol and reception facilities, hotel accommodation, transport system, and security arrangements. Visa requirements for participants will be discussed, and an agreement made to ensure the smooth movement of delegates and participants. A second visit may be made after the first if the findings of the first meeting so dictate.

13. Secretarial Services

The AUC will make arrangements for necessary secretarial services as required by the agreed languages of the meeting in accordance with the rules and regulations of the AUC. Where the meeting is held outside the AUC the cost of this service will be to the hosting country.

14. Criteria for Participation in Meeting

Depending on the nature of the meeting a profile of participants will be produced by the department to guide the invitation of delegates to the meeting. Member states will be encouraged to stick to the guidelines to ensure relevant persons participate in the meeting. The Commission may admit to its meetings observers representing organisations that enjoy observer status at the African Union Commission or have a cooperation agreement with the African Union.

15. Invitation of Participants and Delegates to the Meeting

Invitation to the meeting shall be done by the hosting country. When the meeting is held at the AUC Headquarters, the Department will, in consultation with the Chairperson of the meeting, send out invitations.

16. Notice of Meeting

Meetings will normally be done in the work plan of the Departments and are normally placed on the AUC website. In addition, the relevant organising department in this case, will place the notice of the meeting on the AUC website in the official languages of the AUC, at least 60 days before the meeting is held. Such notice shall include the profile of the expected participants, the venue of the meeting, the dates of the meeting, and a list of hotel accommodation available, including current rates and details. Confirmation on whether the meeting will still hold consists of a Note Verbale posted on the AUC website and also sent to relevant member state authorities, at least 30 days before the meeting for an ordinary session and at least 15 days before the meeting for an extraordinary session.

17. Registration and Accreditation of Participants

All delegates, participants, support and security staff for all meetings will be registered and provided with colour-coded identity passes. They will all be required to wear lapel-pins and identity passes for the entire duration of the meeting for security reasons. Apart from the official participants, only those members or organisations accredited to the African Union shall attend the meeting. The Legal Department of the AUC will guide the Department on which organisations are qualified to have observers at the meeting.

For ordinary AU Summits, the host country issues all accreditations to the Summit after security checks done by its national security and intelligence departments. As such, it prepares a final list of the heads and members of delegations from each member state and other participants in order to make necessary preparations for all logistics.

17.1. Accreditation to Summits

Accreditation is the official process of getting authorization to attend AU Summits. There are six types of accreditation.

17.1.a. Delegate Accreditation

This is the authorization given to AU Member States. Each Member State is entitled to one head of delegation, usually the Head of State or Government including four other people. However, it is common practice for Member States to bring larger delegations of officials from different ministries, especially the Ministry of Foreign Affairs and the Office of the President. These delegates can attend other meetings and be present during different parts of the Summit.

17.1.b. Observer Accreditation

Non-governmental organizations, non-African governments, UN agencies and other international partner organizations and institutions may be given accreditation to the AU summits as observers. With observer status at the AU Summits, delegates do not have the right to speak nor the right to attend more than the opening and closing ceremonies of the Executive and Assembly sessions.

Civil society organizations wishing to obtain accreditation as observers to a summit must send their requests to CIDO many weeks in advance of the meeting so that the names of the individuals seeking access can be put on the list of those invited by the AUC held by the protocol department at the Summit venue. However, this practice is not typically advertised anywhere and the numbers who may be granted such assistance are likely to

be limited. Luckily, other AU directorates and departments may also forward names of selected organisations to be given accreditation.

17.1.c. Staff Accreditation

Delegates of the host country as well as the staff of the AUC are given this type of accreditation.

17.1.d. Media Accreditation

This type of accreditation to attend the summit is given to national and international press and other media institutions that wish to cover the proceedings of the summits.

17.1.e. Security Accreditation

Security accreditation is given to the members of security that are charged with ensuring the safety of all summit delegates, especially the Heads of State and Government and their delegation.

17.1.f. Selection of a Hosting Partner

Protocol accreditation is issued to officers in charge of all protocol services during the summit.

17.2. Badges

To ensure Security and ease of identification of the participants, all delegates are given unique badges. Apart from high-level delegates, there are two types of badges that are required during the summits. One is a security badge bearing the delegate's photograph; the other indicates the meeting that it is being attended.

In general, the following types of badges are used:

- *Heads of State and Government as well as Heads of delegations are issued with special golden pins that give them access to all venues and events;*
- *Foreign ministers are issued with silver pins in order to give them access to relevant venues and events;*
- *Other ministers are issued with special ministerial badges to give them access to relevant venues and events;*
- *Members of the PRC are issued with special PRC badges to identify them and allow them access to relevant venues and events;*
- *Other delegates are issued with delegate badges to give them access to relevant venues and events;*
- *Security officers are given specified security badges to give them access to areas allowed for the press;*
- *Members of observer delegations are issued with observer badges to give them access to venues and events allowed for observers;*
- *Support staff from diplomatic missions are issued with support staff badges to give them access to areas allowed for support staff.*
- *Host country support staff are issued with designated badges.*

18. Selection of Hosting Partner

Any member state may offer to host a meeting of the department. Development partners recognized by the AUC may also host meeting of the department at an agreed place. The Legal Department of the AUC will advise the department on the eligibility of the country or partner to host the meeting based on the rules and regulations of the AUC. Where there is more than one country offering to host the meeting, the regional rotation formula will apply. Where neither country qualifies on the rotation basis, the department in charge of organising the meeting will arrange for the offering countries to agree among themselves as to who should host the meeting.

19. Responsibility of Hosting Partner

These are indicated in the Hosting Agreement and made known to hosting partner before the signing of the Agreement. They include conference premises and necessary equipment, flags and badges, communication facilities, hospitality and transportation, both International and local. The AUC will provide all other requirements of the meeting that are not within the Hosting Agreement unless the hosting partner offers to provide them. The hosting Government shall bear the additional expenses incurred by the Commission arising from the holding of the conference outside the secretariat of the AUC. For meetings co-hosted with a development partner, a Memorandum of Understanding shall be produced with the assistance of the legal counsel and signed by the AUC and the partner.

20. Responsibilities of Departments of the AUC

The Commission shall be charged with the overall responsibility of organizing, conducting and managing in accordance with the rules and regulations of the AUC, provide background documents of the meeting, direct and participate in the production of the report of the meeting. The Commission shall provide all other resources, which are not provided by the hosting partner as agreed in the Hosting Agreement, unless the hosting partner offers to provide the same.

21. Medical Services

The hosting government shall ensure that the venue has taken up, at its expense, a special accident insurance policy for all the staff members of the Commission covering the entire duration of the Conference as well as during transportation from Addis Ababa to the hosting country and back. The hosting government shall provide medical facilities, adequate for first aid.

For emergencies, the Government shall ensure immediate transportation and

admission of the participant to a hospital. The participant shall however be responsible for the payment of any medical expenses incurred. Where the meeting is held at the AUC secretariat, the AUC medical facilities will be available to participants in the circumstance indicated above.

22. Financial Arrangements for Participants

The hosting partner will arrange accommodation and prerequisite financial resources as indicated in the Hosting Agreement. The financial obligations for participants will be made known to participants by the department, indicating as to whether the participant, the AUC, or the hosting partner will bear the cost of the meeting.

23. The Conduct of Meetings

a. Election of Bureau: *this item shall normally be on the agenda of the meeting.*

The Legal Department of the AUC will guide the chair in the conduct of this election according to the set rules of the AUC. The Legal Department of the AUC will provide information on who is eligible for election or re-election, as set out in the rules and regulations of the AUC. The Bureau shall be composed of a Chairperson, three vice-Chairpersons, and a Rapporteur. Official participants of the meeting will conduct the election in a closed session. For Ministerial meetings, members shall be elected on a regional basis, having earlier agreed on which region will take which office on a rotational basis. Normally the country selected to host the meeting shall take the chair.

b. Chairpersons: *The persons elected to that position during the election of the Bureau shall chair meetings. These persons will chair the meetings until the election of the next Bureau. In the absence of the elected Chairperson, the person holding the position of first vice-chair will chair the meeting.*

In the absence of both the Chairperson and the three vice-Chairpersons, the bureau will elect a Chairperson from among themselves for that meeting. For meetings of the department that do not have an elected bureau, the Commissioner of the department or his/her assistant, normally the Director of the department will

chair the meeting or make arrangement for the same with the delegates of the meeting.

- c. Rapporteur(s):** For a meeting that has an elected bureau, the person elected as rapporteur will be the official recorder of that meeting. In his or her absence the bureau will elect a rapporteur from among itself or among the official delegates of that meeting, for the recording of that meeting. For meetings of the department, the Director of the department shall provide a rapporteur for the meeting from among the secretariat or from among the official delegates of the meeting.
- d. Official Language(s) of the Meeting:** For Ministerial meetings of a continental coverage, the four official languages of the African Union, notably; English, French, Arabic and Portuguese will be used. For regional meetings, only those languages common to the region concerned will be used. In either case, the African Union or the hosting country or both will provide translation resources. For meetings other than Ministerial meetings, official languages used will depend on the needs of the participants. Where more than one language is used the department in charge of organizing the meeting will arrange for translation resources as necessary.
- e. Quorum of the Meeting:** Decisions and recommendations of the meeting shall only be binding if the meeting attained a quorum of two-thirds of the member states officially registered at the meeting. The Rapporteur, in consultation with the legal counsel of the AUC shall record and report to the meeting the quorum status of the meeting.
- f. Opening ceremony:** A separate official opening ceremony programme will be produced. This programme will be at the beginning of the meeting unless circumstances require it to be rescheduled.
- g. Official Announcements and Procedural Matters:** The secretariat of the department in charge of organizing the meeting will communicate with the Chairperson any announcement and procedural matters designed to guide the smooth running of the meeting. It will be the responsibility of the Director of the department or his/her designated assistant to guide the chair on procedural matters relevant to the meeting. A Note Verbale shall be prepared by the

department and sent to all member states and shall be posted on the official website of the AUC in the official languages of the African Union. The Note Verbale shall indicate the theme of the meeting, the expected delegates to the meeting, the place where the meeting was scheduled to be held and the dates of the meeting.

- h. Adoption of the Agenda:** The adoption of the agenda shall normally be the second item on the provisional agenda of the meeting, after the election of the bureau. The Chairperson will present the proposed agenda to the delegates at the beginning of the meeting for a brief discussion and then adoption. Items on the agenda may be deleted or modified. Normally no new items will be added to the agenda. Where modifications are proposed on the agenda, the Department will guide the chair as to whether or not there was enough background documentation to permit informed discussion of the modified topic(s). Member States shall be encouraged to comment on the provisional agenda communicated to them to ensure the department prepared background documents for any revisions proposed.
- i. Presentation of the Work Programme:** The Chairperson will present the proposed Work Programme, including procedural matters to the delegates at the beginning of the meeting for a brief discussion and then adoption. Normally no new items will be added to the Work Programme. Where modifications are proposed, the Department will guide the chair as to whether or not the modifications were feasible within the agreed period of the meeting.
- j. Presentation of the Work Programme in the Meeting:** Items on the agenda shall be presented in the meeting as oral presentations, with effective use of visual aids, panel discussions, which may be preceded by an introductory presentation, which may be oral or film/video. These will be followed by plenary session discussion from which decisions and recommendations will emerge.
- k. Points of Order:** During discussion of any matter, an official delegate may, at any time, raise a point of order. The Chairperson shall immediately rule upon the point of order. Any appeal against the ruling of the point of order shall immediately be put to the vote; otherwise the ruling of the Chairperson shall stand. A member raising a point of order may not speak on the substance of the subject matter under discussion.

- l. Adjournment of Debate:** During discussion of any matter, an official delegate may move for the adjournment of the debate on the item under discussion. In addition to the person who proposes the motion, one other delegate may speak in favour and one against the motion, after which the motion shall immediately be put to the vote.
- m. Closure of debate:** An official delegate may, at any time, move for the closure of debate on an item under discussion, whether or not any other delegate had signified the wish to speak. Permission to speak on the closure of the debate shall be accorded to only two delegates opposing the closure, after which the motion shall immediately be put to the vote.
- n. Suspension or Adjournment of a Meeting:** During the discussion of any matter, an official delegate may move for the suspension or adjournment of the meeting. No discussion on such a motion shall be permitted. The motion shall immediately be put to the vote.
- o. Order of Motions:** The following motions shall have precedence in the following order over all other proposals or motions before the meeting:
- (i) To suspend the meeting;
 - (ii) To adjourn the meeting;
 - (iii) To adjourn the debate on the item under discussion;
 - (iv) To close the debate on the item under discussion.
- p. Consideration of Reports:** The department in charge of organising the meeting shall prepare relevant reports of the meeting for presentation and discussion at the meeting. These will normally be an update on actions on the subject matter since the previous report if any. The reports will have been prepared by officers of the department directly related to the subject matter and, will be presented by the Commissioner or his/her representative.
- q. Voting Procedures:** Should any vote be required for the adoption of report or opinion, the legal counsel of the African Union shall guide the meeting on the procedure to be followed and which people were eligible to vote as per rules and regulation of the AUC. Each Member State shall have one vote. Unless

otherwise decided, voting shall be by show of hands. After the voting process has commenced, there shall be no interruption of the voting, except on a point of order by a delegate in connection with the actual conduct of the voting.

- r. **Any other Business:** Any official delegate to the meeting may raise items for discussion under Any Other Business. The department will guide the chair on the relevance of the raised item to the current meeting. Where the item may need to be referred to another forum for discussion the secretariat will advise the chair accordingly.
- s. **Selection of Venue and Date of the next Meeting:** The legal counsel of the African Union will guide the meeting on the selection of the venue of the next meeting. The secretariat will guide the chair on the most appropriate dates based on the rules and regulations of the African Union, and also based of commitments already on the calendar for the concerned persons and the secretariat.
- t. **Adoption of the Report of the Meeting:** The official rapporteur of the meeting will present a summary of the report of the meeting to the delegates towards the end of the meeting for adoption. Any corrections made and verified by the delegates will be made and presented to the secretariat for finalization and dissemination.
- u. **Closing Ceremony:** A programme for the official closing ceremony will be produced by the secretariat of the department and circulated to the delegates a day before the closure of the meeting.
- v. **Immediate Follow-up Action**
 - i. **Finalisation of the Report:** The Secretariat shall finalize the report of the meeting within two days of closing the meeting at the site of the meeting. To minimise expenses, the head of the secretariat will identify the relevant persons to finalise the report and release the rest to travel back home. The report shall then be translated into the official languages of the African Union within three days of concluding the meeting.
 - ii. **Distribution of Harmonized Report or Outcome of the Meeting:** This shall be done within one week of concluding the meeting

- iii. Evaluation of Meetings:* These meetings shall be conducted and attended by all departments involved in the meeting within two weeks of concluding the meeting. The meetings shall analyse and document the strengths, weaknesses; opportunities encountered and prepare comprehensive recommendations to be implemented to improve on the next meeting.
- iv. Follow-up on Meeting Recommendations and Decisions:* Relevant officers of the department shall commence follow-up actions on the decisions and recommendations of the meeting and regularly brief the Commissioner on progress made.

How Member States Prepare for the Ordinary AU Summits¹

The sequence of events in the preparation for AU Summits in civil law countries is usually as follows, with small variations.

The ministry of foreign affairs receives the agenda from its mission in Addis Ababa, and immediately organises, through its African Union branch, an internal consultation that is generally attended by the legal affairs branch, the international organisations branch and, according to the importance of the Summit, the general secretariat of the ministry and the office of the minister. The aim of this initial consultation is to provide the ministry with a more complete vision of the issues to be discussed during the Summit.

At the outcome of the consultation, a document is produced and presented to the minister. It contains the comments and suggestions made by the ambassador in Addis Ababa at the time of sending of the agenda. Following that, the ministry of foreign affairs dispatches the various technical documents to the technical ministries covering the proposed topics for their written comments.

An inter-ministerial consultation is then organised by the ministry of foreign affairs, in close collaboration with the office of the president of the republic and the concerned departments of the office of the prime minister, with a view to preparing a fact sheet for

¹ Towards A People-Driven African Union: Current Obstacles and New Opportunities, 2007. Chapter 3, page 19-20.

each item on the agenda and ensuring that the other ministries cover all the technical aspects of the items on the Summit agenda.

At the outcome of these two consultations, the fact sheets are gathered into a single file containing the draft position papers on each agenda item or, at least, on the items of particular interest to the country in question. The file is presented to the minister for approval.

After such approval is obtained, it is submitted to the president of the republic who provides a clear political orientation on each of the proposals contained in the file. (It may happen that the president gives instructions that are in total contradiction with the proposals put forward by the consultations organised under the aegis of the ministry of foreign affairs.) While the file is being prepared, the ministry remains in regular contact with the ambassador accredited to Addis Ababa for updates on the items on the agenda and opinions on the proposed positions. After it is prepared, the document is presented to the president for approval. The president submits it to his staff for an in-depth review, following which it is formally approved.

In common law countries, the process is not dissimilar: Officials at the diplomatic mission in Addis Ababa transmit documents to the department of foreign affairs. The documents will be accompanied by a briefing document from the ambassador in Addis Ababa who also sits on the PRC. This briefing document contains observations on positions of other Member States on particular issues on the agenda.

At the department of foreign affairs, the document is referred to the relevant official who heads the AU/Africa affairs desk. The Africa affairs desk may comprise a team of six officers. They will be responsible for drafting the briefs. A director within the foreign affairs department holds a meeting within the department to chart a strategy. This includes identification of relevant departments to make inputs under the agenda items.

Depending on the issues, lead government agencies such as the department of justice/ attorney general's office will be requested to submit the government's position on the relevant agenda item. The AD Department will give the governments agencies requested to make submissions a period by which inputs should be receive.

An inter-departmental meeting is held to discuss the submissions. The permanent secretary (or deputy) of the ministry of foreign affairs or director general/director within the department of foreign affairs will lead these meetings.

On an ad-hoc basis, the officials at the AD/Africa desk may meet with civil society to discuss specific issues that may be discussed at the Summit.

The Africa desk coordinates responses from other government agencies into a consolidated document.

This document is then transmitted to a senior official, either a director general or permanent secretary for approval; the minister of foreign affairs (but not usually the president) will sign off on the final document.

The foreign affairs ministry/department coordinates the delegation to represent the state at the Summit.

Once approved identical sets of documents are then transmitted to those who will be representing government at the Summit. Ideally, this is done approximately two weeks before departure to the Summit. Where documents are outstanding, this will be indicated in the prepared briefing documents.

In the case of the president attending the Summit, an advance team will visit the location to view premises.



AU Headquarters

The former base of the OAU at the African Union headquarters



The new African Union Headquarters in Addis Ababa, Ethiopia



The main conference room in the African Union Conference Centre

CHAPTER 8: CIVIL SOCIETY ENGAGEMENT

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- ❖ The African Union and Civil Society Organizations
 - ❖ Engagement with the African Union
 - ❖ The Institutional Spaces
 - ❖ The Joint Spaces
 - ❖ The Self-Created (Autonomous) Spaces
 - ❖ The Invited Spaces
 - ❖ Other Opportunities

Chapter 8: Civil Society Engagement

1. The African Union and Civil Society Organizations

The nature of CSOs in development work is changing from the traditional direct and efficient service delivery. There currently is growing need for civil society to participate in policy processes, in order to bring about sustained long-term development and change alongside governments and other stakeholders. The increased attention on issues of governance, human rights, social inequality and poverty amongst others in Africa, has been the motivation for civil society to work on enlarging space for advocacy. Continued policy influence CSOs are beginning to yield especially at the National and Regional level in Africa, is a strong reason to build on the African CSOs' capacity to play a stronger role in the policy making forum at the Continental level.

The emergence of reformed and reform-minded institutions such as the African Union and bodies such as the Pan-African Parliament, processes such as the Africa Peer Review Mechanism and bold steps at consolidating democracy have all opened new opportunities and challenges for Africa's civil society.

Over the last few years, there has been the emergence of pan-Africa civil society organisations (NGOs, net- works, alliances, coalitions and movements as well as think tanks and research centres) that have tried to en- gage directly with the AU on a diverse set of policy issues (HIV/AIDS, women's rights, trade, food security, agriculture, climate and environment and peace and security). As the role and influence of these groups increase and become more important, maintaining and expanding future space for autonomous and direct civil society interaction with the AU will become critical. Due attention and space needs to be given in the debate to identify opportunities and challenges for CSOs when using evidence to inform policy, share best practice, and build capacity in order to achieve better collaboration amongst CSO actors and the policy-makers.

In its preamble, the Constitutive Act of the African Union stresses a “common vision of a united and strong Africa” and the “the need to build a partnership between governments and all segments of civil society”². In addition, the AUC (the secretariat of the Union), seeks to achieve an efficient and value adding institution that drives the African integration and development process. This is done in close collaboration with different stakeholders, including Member States, Regional Economic Communities (RECs) and African Citizens.

Furthermore, the decision by African leaders to establish the Economic, Social and Cultural Council (ECOSOCC)³ was a demonstration of the African Union’s “response to the calls for democracy and development from Africa’s vibrant civil society institutions”. Aware of rich and diverse human and institutional resources of the grassroots level, the continent’s leaders were determined to build a “Union that is people-oriented” and based on strong partnerships between the governments and all segments of the society.

However, AU policy makers have recognized that the AU CSO relations cannot be limited to ECOSOCC; as such various bilateral forms of engagement are also utilized. These include the signing of Memoranda of Understanding between civil society organizations and the AUC or specific departments within it; granting of observer status to observe AU processes and meetings; pre-Summit consultative forums, and consultative meetings on specific agendas (Ikome 2008). Furthermore, the AU’s “Livingstone Formula” has made it possible for civil society organizations to contribute to the efforts of the Peace and Security Council (PSC) to foster peace and stable societies and to protect civilians. Article 20 of the Protocol Relating to the Establishment of the PSC of the African Union

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- 2 *The African Union understands civil society organizations as those entities, including but not limited to:*
- Social groups such as those representing women, children, the youth, the elderly and people with disabilities and special needs;*
 - Professional groups such as those associations of artists, engineers, health professionals, social workers, media, teachers, sports associations, legal professionals, social scientists, academia, business organizations, national chambers of commerce, workers, employers, industry and agriculture as well as other private sector interest groups;*
 - Non-governmental organizations, community-based organizations and voluntary organizations;*
 - Social and professional groups in the African diaspora in accordance within the definition approved by the Executive Council. (Source: ECOSOCC statutes)*
- 3 *The African civil society’s legitimacy of engaging the African Union is found in the mandate of the ECOSOCC detailed in Chapter 2 or 3 for additional information.*

stipulates that “the PSC shall encourage non-governmental organizations to participate actively in the efforts aimed at promoting peace, security and stability in Africa. When required such organizations may be invited to address the Peace and Security Council”. In addition, the protocol states that “Civil Society Organizations may provide technical support to the African Union by undertaking early warning reporting, and situation analysis which feeds information into the decision-making process of the PSC”.⁴

The African Citizens’ and Diaspora Directorate (CIDO), located within the Office of the Chairperson of the AUC; is responsible for following up on such participatory activities. It also serves as the official liaison office for civil society wishing to interact with the AUC. As well, CIDO serves as the secretariat for ECOSOCC.

2. Engagement with the African Union

As the AU tries to understand the unique nature of African civil society organizations, the civil society also needs to understand the structures, as well as the challenges of engaging the AU while maintaining its uniqueness as an independent stakeholder.

There are various levels of engagement with the African Union, and one aspect of it was described in detail in Chapter 5 in the attempt to influence the ultimate decision making forum, known as the AU Heads of State and Government Summit held bi-annually. The level of engagement and participation of African as well as international NGOs go beyond the above mentioned type of engagement. The process of collaborating with the Commission’s different departments, the individual Member States whether through their Addis based representatives or at the national level; the different forums (experts, ministerial and/or other capacity building initiatives)- in all, these constitute engagement in the broader and multi-pronged sense, and various avenues exist with the continental institution to conduct these engagements.

There are four spaces/categories that members of civil society can use to influence, impact and contribute to the African Union’s decision-making process. They are:

⁴ Source: PSC/ PR/(CLX), 5 December 2008, *Conclusions of a Retreat of the PSC on a mechanism of interaction between the Council and CSOs.*

a. *The Institutional Space*

This is a space created by the AU itself. Any civil society organization may be invited to attend AU activities. Invitations can come from organs and institutions such as ECOSOCC, CIDO, the Pan-African Parliament and other African Union Commission departments.

CIDO: CIDO is tasked with facilitating CSO affairs and ensuring their participation in the activities of AU organs through the various departments and forums among other tasks.

ECOSOCC: ECOSOCC was established as a vehicle for building a strong partnership between governments and all segments of the African civil society, ECOSOCC is an advisory organ of the African Union composed of different social and professional groups of the Member States and its members have official status in the structures of the Union. By sending a delegation of five members to the AU Summits, ECOSOCC becomes an important channel to influence policies at the AU.

The Pan-African Parliament (PAP): PAP is an advisory and consultative organ to the Union and has its secretariat in Midrand, South Africa, where it holds its regular sessions in November and March each year. Sessions are open to non-state actors and they organise direct interaction between parliamentarians and CSOs every year, which is an open discussion on any chosen topic.

The Peace and Security Council (PSC): Article 20 of the Protocol establishing the Peace and Security Council states that the PSC “shall encourage non-governmental organisations, community-based and other civil society organisations, particularly women’s organisations, to participate actively in the efforts aimed at promoting peace, security and stability in Africa. When required, such organisations may be invited to address the Peace and Security Council”. As such, this is the main instrument calling for the participation of civil society actors in the AU’s peace and security architecture. The said article 20 was operationalized by the development of the Livingstone Formula in 2008, which set out the modalities for interaction between the PSC and civil society.

Article 10 of the *Protocol on the Rights of Women* also establishes that the right to peace encompasses the right to participate in the creation and maintenance of this peace. Moreover, of note are policy documents such as the Post Conflict Reconstruction and Development policy which explicitly highlight the role of civil society.

b. Joint Spaces

Some civil society organizations jointly or in close cooperation organize activities with the relevant AUC department and organs based on different thematic areas. For example, any organization together with the AU can agree to come together and hold an event targeted at other CSOs and maximize the collaboration by working closely with the department in the AUC, with additional support from the particular division and/or cluster of ECOSOCC, and representatives of the Member States who are chairing a particular division and a period of time, or have championed the issue at hand. This is a great way to give exposure for civil society organizations working nationally to continental platforms for engagement; understanding of value addition of engaging at the AU level and bring together civil society members and interlocutors to discuss and come to a consensus on various models, mechanisms and strategies for input and engagement with policy components.

CASE STUDY

International Peace Day Celebration

Oxfam International Liaison office with the AU (OI-AU) participated in the International Peace Day celebrations organized in collaboration with the AU Commission on September 19th, 2013. This was within the context of the 50th Anniversary of the founding of the OAU/AU. In partnership with the AU Peace and Security Department (PSD) and the "Make Peace Happen Campaign", OI-AU organized a public seminar themed "Education for Peace". The seminar was organized in commemoration of Peace Day; in recognition of the importance

of addressing the challenges of peace and security. It emphasized the need for education and public awareness on issues related to peace. It provided a forum for Addis Ababa-based stakeholders to celebrate Peace Day by engaging in discussions on peace and solidarity, the culture of peace within the context of African renaissance, the role of youth in promoting peace as well as a vibrant discussion on the work of the Peace and Security Council. The event enjoyed active online participation from African citizens from all over the world. This also demonstrated how the AU is embracing new platforms of social media.

c. Self-Created Spaces

These are spaces created by CSOs themselves in organizing autonomous activities related to AU issues and processes. For instance, activities can be organized around themes such as peace and security, democracy and good governance, women's rights, freedom of movement among others. They can also prepare detailed analytical reports for the various policy organs of the AU.

CASE STUDY

African Common Position on the Arms Trade Treaty

Oxfam International Liaison office with the AU (OI-AU) organised a series of bi-lateral meetings with a number of African Ambassadors on the need for a globally binding Arms Trade Treaty (ATT) as well as a strong African Common Position ahead of the 2012 United Nations diplomatic conference to negotiate the ATT. These meetings were conducted together with the African Forum on Small Arms (AFONSA). In addition to policy recommendations, requests were made to Ambassadors to ensure civil society space at the subsequent Lomé meeting on Small Arms and Light Weapons and the African Common Position in September 2011. In addition to these bi-lateral meetings, a roundtable bringing together a wider group of AU Member States' representatives was organised to collectively discuss some of the challenges in arriving at an African Common Position as well as the key issues and considerations that should be included in the common position such as risk assessment criteria for arms transfers.

d. *Invited Spaces*

Special committees (i.e. African Committee of Experts on the Rights and Welfare of the Child) invite expert CSO actors to input in the technical debate as necessary and by invitation only. This level of involvement, however limited and dependent on the invitation and goodwill of the members of the particular entity, allows for a positive step in the right direction regarding contribution of invaluable information to the betterment of the final policy document. A similar process once instituted would be the associate ad-hoc participation of non-qualifying members of the African and wider civil society in the ECOSOCC Clusters' work, as per invitation and need.

e. *Other Opportunities*

In addition to the previously mentioned avenues, members of civil society organizations can also influence the AU decision-making process in the following ways by:

(i) Staying updated on activities of the AU by looking at the AU calendar of events and seeking information pertinent to the particular lobbying opportunity; Analysing each AU decision which will help them to know what is going on; Focusing on specific issues and have accurate information to be strategic and relevant; Knowing the countries that are influential and the countries that will be interested in the issues they propose to talk about (Power Analysis); Identifying countries in the relevant committees so as to do targeted advocacy and last but not least, checking the level of compliance by the various countries of the AU documents and use these documents for advocacy.

The African Union is made up of member states; and engagement with the Union should go beyond the African Union Commission or other organs of the Union, such as with national governments in the various member states:

(i) CSOs can monitor the decisions taken at the various Summits and determine whether these decisions are being complied with. They can then hold their governments accountable for commitments made, instruments signed and ratified but not complied with. The role of civil society has for long been

proven to be very important in pushing for compliance with policies through identification of weaknesses and encouragement to governments to improve on their performances;

(ii) Civil society organisations can also carry out independent monitoring of the activities of AU organs as well as those of AU Member States through a series of surveys and comparative analyses (see below).

CASE STUDY

State of the Union Coalition (SOTU)

The Purpose

The lack of effective implementation of international or continental standards and policies has a direct impact on human development and economic indicators. Thus impact is also the consequence of poor governance in Africa as well as weak capabilities of African citizens and civil society organisations to hold their Governments accountable for the decisions they take in multi-lateral spaces, particularly the AU.

The State of the union Coalition was formed in 2009 by ten organizations⁵ in ten countries. It is a unique multi-sectoral monitoring group that is holding African Governments accountable for the ratification and implementation of African Union decisions. A key factor in their interest in the coalition is their frustration with the slow speed of integration of AU decisions and declarations into national policies, laws and budgets.

Currently, important policy debates concerning the livelihoods of African citizens do not involve broader public participation. Concerted public pressure and united political will are needed at both continental and national levels to make the AU a reality in the lives of ordinary citizens.

⁵ For more information on the organizations please visit www.sotu-africa.org

It urges compliance with fourteen specific policies⁶ and standards adopted by the African Union. These policies and standards offer the greatest promise for fighting poverty, discrimination and injustice. The ten AU legal instruments and four policy frameworks have been selected in recognition of the tremendous opportunities they offer for eradicating poverty, promoting justice and realising political, economic and social rights in Africa. Unless the gap between policy and practice is addressed, the policies developed at the level of the African Union will have no impact on the development, fundamental freedoms and human rights enjoyed by African citizens.



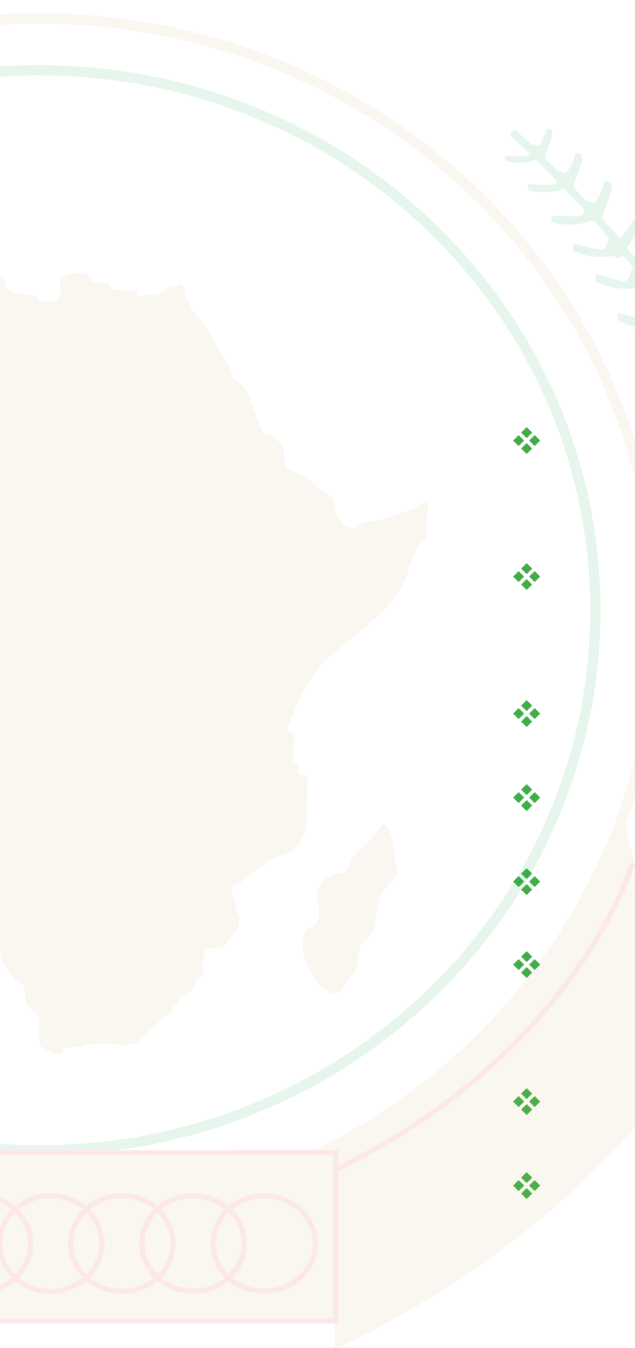
The AU and Mary Robinson partner with the “Gender Is My Agenda Campaign” (GIMAC) on the 21st GIMAC Pre-Summit meeting

⁶ *The ten legal instruments are: The African Youth Charter; African Charter on Human and People’s Rights in Africa; African Charter on Democracy, Elections and Governance; African Charter on the Rights and Welfare of the Child; African Convention on the Conservation of Nature and Natural Resources; African Union Convention on Preventing and Combating Corruption; Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa; Revised African Convention on the Conservation of Nature and Natural Resources; Treaty Establishing the African Economic Community; Protocol to the Treaty Establishing the African Economic Community relating to the Pan-African Parliament*

The four policy frameworks are: The African Health Strategy 2007-2015; NEPAD Comprehensive Africa Agricultural Development Plan (CAADP); Abuja Call for Acceleration Action towards Universal Access to HIV/AIDS, Tuberculosis and Malaria Services by 2010; Maputo Plan of Action for the Operationalization of the Continental Policy Framework for Sexual and Reproductive Health and Rights 2007-2010

CHAPTER 9: NON-STATE ACTORS ENGAGING THE AFRICAN UNION

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- ❖ Fahamu
 - ❖ Friedrich Ebert Stiftung (FES)
 - ❖ Institute for Peace and Security Studies
 - ❖ Institute for Security Studies
 - ❖ International Committee of the Red Cross (ICRC)
 - ❖ International Federation for Human Rights (FIDH)
 - ❖ International Institute for Democracy and Electoral Assistance (IDEA)
 - ❖ The Open Society Foundations of African Union Advocacy Program
 - ❖ Oxfam International
 - ❖ Plan International
 - ❖ Save the Children

- 
- ❖ The Solidarity for African Women's Rights (SOAWR)
 - ❖ Centre for Citizens' Participation on the African Union (CCP-AU)
 - ❖ State of the Union Coalition (SOTU)
 - ❖ Femmes Africa Solidarité (FAS)
 - ❖ Africa Capacity Building Foundation (ACBF)
 - ❖ Africa Network Campaign on Education for All (ANCEFA)
 - ❖ All Africa Conference of Churches
 - ❖ Disclaimer

Chapter 9: Non-State Actors Engaging the African Union

Since the African Union was created in 2002, there have been a growing number of non-state actors trying to establish relationships with different organs and institutions of the African Union in order to influence, in one way or the other, the decision-making processes of the continental organisation.

The increasing number of non-state actors engaging with the African Union has had an impact not only on development of policies and their implementation but also in popularising the AU among African citizens. This chapter looks at selected examples of organisations with AU-related programmes.



OXFAM
International

Oxfam International Liaison Office with the African Union

Oxfam International Liaison Office with the African Union (OI-AU) works primarily to raise citizens' awareness of the African Union and engagement with its Commission. As an advocacy office, OI-AU is mandated to undertake the following:

- 1. Active citizenship in the Affairs of the African Union: To support, facilitate and enable access to the African Union for partners, African civil society organizations as well as Oxfam affiliates and their partners in their engagement with the AU. This role includes running a secondment programme and other capacity building functions as well as information sharing programmes to strengthen African civil society partners*
- 2. Peace & Security: Direct Policy and Campaign engagement with the African Union on Oxfam's Rights in Crisis work (peace, security and humanitarian issues) in Africa.*
- 3. Representation of Oxfam Confederation: Representation to the African Union and management of relationship with the AU and its organs and member states.*

OI-AU, formally established in 2007 in Addis Ababa after the signing of a MoU with the African Union and through a host agreement with the Ethiopian Government, has many programmes aimed at AU engagement. Since its establishment, OI-AU, in partnership with the AUC has spearheaded the “Understanding of the African Union” training workshops as its flagship capacity building activity to foster knowledge of African civil society on the African Union’s key structures, organs and policy space. In the same vein, OI-AU has facilitated and conducted media and advocacy sessions to train African CSOs in the use of media together with advocacy techniques for an effective policy advocacy campaign with the African Union and its organs as well as the Regional Economic Communities (RECs). This is on the understanding that many civil society actors across the continent do not have the physical access to the AUC and the know-how to influence policy at the AU. Oxfam International has also been offering the Pan-African-in-Residence (Secondment) Program, which allows selected candidates to come to Addis Ababa and gain first-hand experience in engaging the African Union for a period of three months. At the policy level, OI-AU has facilitated access for CSOs and other partners to AU Summits, Ministerial and Experts meetings at the AU by providing accreditation support, policy analysis insight, documentation and financial and material support. The office also engages in post-AU summit analysis with key stakeholders for knowledge-sharing and mapping of future influencing moments. Apart from its many other policy-influencing activities, OI-AU has supported various organizations to hold face-to-face lobby and advocacy meetings with Addis Ababa-based ambassadors on various issues including peace and security, economic justice, gender justice and governance. In all these efforts, OI-AU works mainly with the Peace and Security Department (PSD), CIDO, the Directorate of Information and Communication (DIC), the Department of Political Affairs (DPA) and the Department of Rural Economy and Agriculture (DREA) among others.

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FAHAMU

Fahamu is a non-governmental organisation that seeks to strengthen and nurture the movement for social justice in Africa by generating knowledge to serve activism, bridging the gap between theory and practice – Tuliwaza; creating learning for, by and across movements – Adilisha; amplifying Africa-centred voices, perspectives and solutions in policy and decision making at all levels – Utetezi and creating platforms for analysis and debate – Pambazuka. Fahamu’s work is consistently inter-connected, for instance, as the organisation works on creating platforms for Africa-centred advocacy through Utetezi, it continues to generate analysis through Pambazuka that spurs in-depth thinking and knowledge generation through Tuliwaza, in turn contributing to learning by and from the movements through Adilisha. It is this cycle and synergy that makes Fahamu uniquely placed to continue to grow networks for social justice and position itself to support change.

Established in 1997, Fahamu is distinctively placed as a pan-African organisation supporting and working collaboratively with social movements over the long term. Rather than imposing generic solutions to address the needs of and to strengthen movements, Fahamu is committed to ensuring that its interventions are relevant, timely and significant to the movements it serves. In addition, Fahamu’s approach respects the collective leadership, self-determination and self-sustainability of its partners. Furthermore, Fahamu seeks to provide diverse and innovative approaches, tactics and resources to the social movements that it works with. With its expertise, access to information and networks, it seeks to enhance the access of transformative social movements to each other as well as to the processes, knowledge, skills, experience and

platforms to strengthen their work.

Fahamu has made a significant contribution to media and freedom of expression in Africa, using information and communications technologies. Its award-winning online publication, Pambazuka News, carries an in-depth analysis of African current affairs and provides a platform for social justice issues across the continent. In terms of its engagement with the African Union, Fahamu established in 2007 the AU Monitor Initiative to enable African civil society organisations to engage constructively with the African Union and its organs in the interests of promoting justice, equity and accountability through the provision of high-quality and timely information.

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Friedrich Ebert Stiftung (FES) - AU Liaison Program

The Friedrich-Ebert-Stiftung (FES) was founded in 1925 as a political legacy of Germany's first democratically elected president with the following aims: furthering political and social education of individuals from all walks of life in the spirit of democracy and pluralism, facilitating access to university education and research for gifted young people by providing scholarships and contributing to international understanding and cooperation.

FES's Addis Ababa office is the focal point for continental issues and the contact office to the African Union with which it has signed a Memorandum of Understanding (MoU). Since 2007 FES Addis Ababa has been conducting series of training workshops for African Journalists and Editors on the African Peace and Security Architecture

(APSA) and AU transformation. The aim of these workshops is to improve the awareness of African media and to provide first-hand information on the AU and its security architecture. FES hopes that this will lead to a better perception of key issues by the public through better and critical reporting and, in the long run, to a more dynamic interaction between African journalists and key actors, based on contacts at AU headquarters. It is expected these capacity building activities will incite citizen discussion on the African Union developments. FES has also been conducting Inter-parliamentary dialogues bringing together national, regional and pan African parliamentarians to discuss issues related to the AU. The engagement with Members of Parliament is aimed at strengthening the democratic participation of Parliamentarians in the AU transformation processes and amplifying their role in the implementation/ domestication of AU instruments. Furthermore, FES – AU has commissioned research resulting in various publications on key African Union topics. Following the signing of the MoU in 2011, FES is now working to broaden the scope of its AU work to include issues relating to achieving social & economic rights, fair trade, fighting poverty, promoting good governance and gender equality. To this effect, FES collaborates with the Department of Peace and Security, Communication and Information, the Pan African Parliament and the Office of Legal Counsel of the African Union Commission.

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Institute for Peace and Security Studies (IPSS)- AU Liaison Program

The IPSS vision is to be a premier institute of higher education for peace and security studies in Africa. Its mission is to promote peace and security in Ethiopia and Africa at large through education, research and professional development. The Institute enables skills development in conflict prevention, management and resolution as well as in peace building, and promotes the values of a democratic and peaceful society, by offering Masters and PhD programmes.

In addition to these programmes, the IPSS through its outreach programme, hosts conferences and panel discussions to disseminate research findings in the areas of conflict prevention, management and resolution, peace culture, peace building, security and related issues. It is engaged in promoting the spirit of cooperation and sharing of information between policy/decision makers, academia, civil societies and other stakeholders. The work of the IPSS emphasizes linking scholarly research with policy development through networking, educating for peace, developing and enriching students' inquisitive abilities, and fostering their creativity and personal interest in peace and security.

The IPSS also runs a joint programme with the African Union. The Africa Peace and Security Programme (APSP), is a joint initiative of the IPSS and the African Union Commission, Peace and Security Department, as endorsed by the AU Executive Council in February, 2010 (EX.CL/567 XVI). With the aim of building the capacity of the African Union, the Regional Economic Communities and member states, the APSP conducts research and provides training, to take up the intellectual challenge of peace and security in Africa. The programme also brings together research centres and institutions to support the African Union in its endeavour of African-led solutions to peace and security challenges on the continent.

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Institute for Security Studies (ISS) - Addis Ababa Office

The ISS is a pan-African applied policy research institute headquartered in South Africa with offices in Kenya, Ethiopia and Senegal. The ISS is an established think tank working in the area of African human security. It seeks to mainstream human security perspectives into public policy processes and to influence decision makers within Africa and beyond.

The objective of the Institute is to add critical balance and objectivity by providing timely, empirical research and contextual analysis of relevant human security issues to policy makers, area specialists, advocacy groups, and the media.

In line with its objective, the ISS conducts research and compiles reports for the African Union and the African community in general. ISS is also known for facilitating public discussions and seminars on pre and post African Union Summit agenda items and other major African issues. ISS also provides technical support in the areas of peace and security to the African Union, mainly to the Peace and Security Department as the need arises by resourcing different meetings and providing reports. Although ISS has other offices in Africa, its Addis office coordinates all the other offices in order to ensure that the ISS is constantly working to address AU requests. In order to attain this, ISS works with the Peace and Security Council, Peace Support Operation Division and Political Affairs Department of the African Union Commission.

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International Committee of the Red Cross (ICRC) Liaison Office with the AU

The International Committee of the Red Cross (ICRC) is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of war and internal violence and to provide them with assistance. Established in 1863, the ICRC is at the origin of the International Red Cross and Red Crescent Movement. It directs and coordinates the international relief activities conducted by the Movement in situations of conflict. It also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles.

The ICRC Delegation to the African Union (AU), based in Addis Ababa, works closely with the different organs of the AU and all its member states to draw attention to the needs of those affected by armed conflicts and other situations of violence, to promote greater recognition and much wider implementation of International Humanitarian Law (IHL) throughout Africa and raise awareness of ICRC's role and activities on the continent. The ICRC has also further strengthened its partnership with the AU through the secondment, since end 2009, of an IHL expert to support the activities the Peace and Security Department and related Divisions. Since the signature of the cooperation agreement in 1992, the ICRC has an official observer status to the AU, which has been granted by the organization of the African Unity (OAU).

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International Federation for Human Rights (FIDH) - Representation to the AU

FIDH is an international NGO established in 1922. It aims at defending all civil, political, economic, social and cultural rights, set out in the Universal Declaration of Human Rights. It acts in the legal and political fields for the creation and reinforcement of international and regional instruments for the protection of human rights and for their implementation. FIDH is a federalist movement that acts through and for its 164 member organisations in more than 100 countries. FIDH has some areas of prime concern including Freedom and capacity to act of human rights defenders; Universality of rights, in particular those of women and migrants; The effectiveness of human rights, in particular ensuring that all violators are called to account or Respect for human rights in times of conflict. The work in these areas occurs at national, regional and international levels through coordinated efforts between FIDH's national members and partner organisations.

FIDH deploys a large range of actions that have proved to be effective: urgent reactions, both public and confidential; international fact-finding, trial observation and defence missions; political dialogue; advocacy; litigation and public awareness campaigns.

In terms of advocacy, FIDH focuses on international and regional intergovernmental bodies such as the UN, EU, ASEAN, or AU. Along with offices in Geneva, New York, Brussels, The Hague, Bangkok and Cairo, FIDH has opened an office in Nairobi with a view to strengthen its interaction with AU institutions and NGOs' access to them. For

many years now, FIDH advocates for the strengthening of the African Commission on Human and Peoples' Rights (ACHPR), the main body in charge of promoting and protecting human rights on the continent. To this end, FIDH constantly supports the participation of human rights defenders in the ACHPR's ordinary sessions, produces well-documented shadow reports, organises briefings on the human rights situation in Africa, provides Commissioners with its expertise on specific topics or uses the quasi-judicial mandate of the Commission. At the AU level, FIDH concentrates its efforts on increasing the interaction between human rights defenders and AU representatives and advocates for the development of a strong AU human rights strategy/approach reflected in its main decisions. FIDH, which is at the origin of one of the pending cases before the African Court on Human and Peoples' Rights, also focuses on the strengthening of this Court, in particular by lobbying States for the ratification of its Protocol and for the guarantee of an effective access to the Court by individuals and NGOs. FIDH also intends to increase its advocacy towards Regional Economic Communities (REC) including ECOWAS and SADC.

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International Institute for Democracy and Electoral Assistance (International IDEA) Liaison Office with the AU

International IDEA has a long standing relationship with the African Union. Such relationship has culminated with the signing of a memorandum of Understanding (MoU) between the two organizations in Accra, Ghana, 30 June 2007. The MoU contains a detailed five-year Joint Action Plan which outlines the key programs of collaboration including: support

to the implementation of the African Charter on Democracy, Elections, and Governance and its provisions, as well as the provisions of previous Charters and Declarations, promotion of democratic elections, strengthening of political parties, support to constitution building, and mainstreaming gender issues to promote the involvement of women. The focal points for IDEA-AU relationship is the Liaison office in Addis Ababa and for the AU-IDEA is the Department of Political Affairs. However, the adopted flexible framework of JAP calls for wide range of partnerships, involving all relevant AU departments and partners in the implementation of the plan.

The Liaison Office to the African Union: The mandate of International IDEA Liaison Office to the African Union is to ensure the smooth running of JAP. The office also shapes the relationship between IDEA at large and the African Union Commission and engages in dialogue with IDEA Member States and civil society organizations located in Addis Ababa, on how best to support the African Union.

IDEA Input: DPA/AU and IDEA Liaison Office jointly define needs, skills and resources which will contribute to the implementation of specified tasks. Together they develop coordination mechanisms, detail targets, work plans and timetables. IDEA inputs consist of human, financial, information, knowledge and technical resources, among others. Support to AU is based on IDEAs areas of specialization and the comparative experience and knowledge base.

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The Open Society Foundations- African Union Advocacy Program

The Open Society Foundations (OSF) works to build vibrant and tolerant democracies whose governments are accountable to their citizens. To achieve its mission, OSF seeks to shape public policies that assure greater fairness in political, legal, and economic systems and safeguard fundamental rights. OSF implements a range of initiatives to advance justice, education, public health, and independent media.

The AU Advocacy Programme of the Open Society Foundations plays the role of policy advisor to and an interface for the foundations and their partners on issues related to the AU. It promotes concerted African Civil society participation at the AU and works to promote domestic knowledge and understanding of AU policies and standards. The programme has been supporting a number of initiatives aimed at ensuring unified continental policies and guidance documents addressing widespread human rights and democracy concerns in line with OSF strategies and priorities, including:

Crisis response and early warning: OSF works with Civil Societies Organisations across Africa to bring to the attention of AU organs and institutions, potential and actual crises situations occurring in Africa.

Democracy, Governance, Human Rights and Accountability: We work on holding African governments accountable to the commitments they have made with regard to human rights, rule of law and democratic governance. In this regard we have been working towards the ratification and implementation of the African Charter on Democracy, Elections and Governance (ACDEG), on the African Governance Architecture (AGA) and Platform and Human Rights Strategy for Africa (HRSA), as well as the 2012 Year of Shared Values.

Citizenship, Statelessness, Migration, Freedom of Movement, IDPs and Refugees: OSF raises awareness and provides expertise on these issues, towards ensuring continental standard setting to protect vulnerable Africans. OSF has also published studies in these areas and we are working with our partner the Centre for Citizen's Participation in the African Union (CCP-AU) on a study of migration in Africa.

Civil Society and the AU: We work to capacitate civil society organisations to better

engage with African Union organs and institutions.

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Plan International - Liaison office with the African Union

Plan International is an International NGO which is working with children, families, communities, government and civil society directly in 24 African countries. It can confidently claim to be the largest international NGO facilitating Child Centred Community Development in Africa. Plan International has a robust and long working relationship with the African Union and other African Regional Inter-governmental institutions. This relationship was rewarded in 2009 with the signing of a Memorandum of Understanding (MoU) between Plan International and the AU. It also has an enriching working relationship with the AU African Committee of Experts on the Rights and Welfare of the Child (ACERWC), with an observer status with the ACERWC and the African Commission on Human and People's Rights (ACHPR). Plan International is strategically engaging the African Union and institutions on Child Rights, Child Protection, Education and Youth Empowerment. Plan International has just signed a hosting agreement with the Ethiopian government to set up its Pan Africa Program & AU Office which focuses on policy, advocacy and campaign on its strategic themes and drawing from its presence on the ground across Africa.

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Save the Children- Africa Advocacy Office

Save the Children is the world's leading independent organization working for children to create a world in which every child attains the right to survival, protection, development and participation. Save the Children has one of the largest presence of any NGO in Africa. Its engagement with the African Union is premised on its Pan-African Advocacy Initiative supported by 13 Save the Children members. Its Pan Africa Advocacy office headquartered in Addis Ababa through a host agreement with the Ethiopian government is led by the Africa Advocacy Director and a skilled team of Save the Children advocates and experts from Africa. Save the Children's Pan-Africa Advocacy Initiative helps organisations look beyond their national border and collectively work together to promote and protect children's rights across Africa. Save the Children helps to influence African policies, mechanisms and standards and encourage governments to implement and fund policies related to Save the Children's six global priority areas: Child Rights Governance, New Born and Child Survival (Every One), Humanitarian (ACE), Child Protection, Education and HIV and AIDS.

For the past three years, the Pan-Africa Advocacy Initiative has been working with the African Union, child focused organizations and activists. In doing so, Save the Children rallies civil society throughout Africa on key issues at key moments such as at AU Summits and the Day of the African Child; participate in AU and Pan-African task forces, network and committees to lobby for children's rights; Train activists on how to use the AU instruments to hold governments accountable; Share learning and good practice and inform organizations on how they can advocate; Lobby and support the AU and the Commission by working together with the Department of Social Affairs and the African Committee of Experts on the Rights and Welfare of the Child. Save the Children has over time supported local civil societies in writing of alternative reports

on child rights and linking the AU and national governments. Save the Children has positioned itself to enhance its work with the departments of; Peace and Security, Human Resource, Science and technology and Political Affairs on integrating child rights into their policy documents and initiatives.

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The Solidarity for African Women's Rights (SOAWR)



The Solidarity for African Women's Rights (SOAWR) is a continental network of more than 39 national, regional and international organisations and development partners committed and working to ensure the promotion and protection of women's human rights in Africa.

Established in 2004, the coalition has focused on enhancing the organisational capacity to advocate for the universal signing, ratification and implementation of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa.

Adopted in July 2003 and entered into force in November 2005, it is a critical African Policy document outlining the human right of women and girls in Africa. It became the fastest African Union instrument to enter into force due to efforts of various stakeholders including the SOAWR coalition. The Protocol is a powerful complement to other international and regional women's rights conventions, treaties and resolutions such as the Convention on the Elimination of All Forms of Discrimination against Women.

Considering the reality of the negative position and condition of women in Africa, SOAWR believes the Protocol provides a strategic tool for reversing the power relations, gender inequality and impoverishment of women in Africa for the betterment of all. The coalition's strength lies in the diversity of its membership and their expertise, which they lend to the coalition through active individual and collective actions such as advocacy and lobbying at different levels all over the continent.

Those actions at the African Union level include the following:

- *To work closely with the AU's Women, Gender and Development Directorate to organise high profile lobby visits and meetings with Heads of State and Government, the AU Commission, Permanent Representatives Committee, the Pan African Parliament and Ministers to amplify voices of rural and urban women directly affected by poverty, exclusion and discrimination;*
- *To organise lobbying and consultations with relevant government officials, especially at the side-lines of AU Summits, for actions to be taken that mainstream the provisions of the Protocol in all national policy decisions, legislation, development plans, resource allocation, programs and activities*



The Centre for Citizens' Participation on the African Union (CCP-AU)

The Centre for Citizens' Participation on the African Union was established in 2007 as an independent network of citizens and civil society organizations that aspires to broaden and strengthen opportunities for substantive engagement between the African Union (AU) and citizens. CCP-AU was established with the mandate to coordinate and facilitate citizens' engagement with the AU so that it can be a Union that delivers to African people and addresses their issues.

CCP-AU was established with a vision of a people driven African Union; that is accountable and accessible to its citizens. While it initially was set up to increase

Ethiopian CSOs' engagement with the AU its mandate was expanded to also facilitate African civil society's access and engagement with the African Union. Most civil society actors had limited understanding of the operations, structures and processes of the AU; civil society faced challenges in accessing officials, processes and getting accreditation to Summits and also there were challenges with practical aspects such as getting visas into Ethiopia and any other countries hosting a Summit including practical information on accommodation and other logistical support. As more CSOs across the continent got more involved, the membership, mandate and scope of the organization broadened.

CCP-AU focuses on the organs and institutions of the AU including but not limited to the Assembly of Heads of States and Governments, the Executive Council, the PRC, the Peace and Security Council, the Pan African Parliament, ECOSOCC, NEPAD and many others. Thematically, CCP-AU works with civil society organizations that focus on regional integration, gender equality and women's rights, peace and security, economic justice as well as democracy, governance and human rights.

From 2007, the CCP-AU organized Citizens' Conferences which brought together civil society actors from across the five regions of the continent. The organization also holds training workshops on understanding the AU in countries hosting AU Summits and coordinates pre-Summit dialogues with ambassadors/ members of the PRC and mobilized hundreds of national, regional and continental networks, coalitions and organizations into its membership.

A Task Force was put in place in 2009 with the mandate to drive the agenda of institutionalizing the CCP-AU. The Task Force succeeded in drafting a Constitution for the organization, registering the CCP-AU in Kenya, recruiting an Executive Director and organizing the first CCP-AU General Assembly. The Task Force thus carried the work of the CCP-AU until the February 2011 General Assembly.

As of March 2011, the CCP-AU elected a new Board comprising of African civil society leaders and a newly founded secretariat. The CCP-AU secretariat is in Nairobi, Kenya and has a presence in Addis Ababa, Ethiopia and Midrand, South Africa.

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The State of the Union Coalition (SOTU)

The State of the Union is a coalition of 10 civil society organizations working together to hold African Governments accountable for the ratification, domestication and implementation of key African Union decisions and standards. SOTU is committed to establishing a democratic culture, effective public institutions and meaningful citizens' participation in public affairs to demand the delivery of key political, social, and economic rights and standards that directly impact on the lives of African Citizens.

Since the establishment of OAU/AU, African Governments have developed and acceded to several instruments in the form of protocols, conventions, treaties and declarations. These instruments were developed to accelerate the integration of African Government policies and programmes at the national level. Collectively, these new protocols, rights based policy standards and legal instruments hold African states to higher standards of performance.

However lack of effective implementation of these key instruments continues to deny African Citizens the opportunity to enjoy the rights promised to them in these instruments. SOTU was therefore set up as a unique multi-sectoral monitoring group to respond to the frustration with the slow speed of integration of AU decisions and declarations into national policies, laws and budgets. Currently, important policy debates concerning the livelihoods of African citizens do not involve broader public participation. Concerted public pressure and united political will are needed at both continental and national levels to make the AU a reality in the lives of ordinary citizens.

SOTU tracks the performance of the African governments and promotes compliance of fourteen key policies and laws adopted by the African Union. The ten AU legal instruments and four policy frameworks have been selected in recognition of the

tremendous opportunities they offer for eradicating poverty, promoting justice and realising political, economic and social rights in Africa. Unless the gap between policy and practice is addressed, the policies developed at the level of the African Union will have no impact on the development, fundamental freedoms and human rights enjoyed by African citizens.

Combined, the ten AU legal instruments and four policy standards significantly raise the bar for most African Governments in the areas of political, social and economic rights.

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Femmes Africa Solidarité (FAS)

Femmes Africa Solidarité (FAS), created in 1996, seeks to foster, strengthen and promote the leadership role of women in conflict prevention, management and resolution on the African continent. Its conceptual framework is the UN Resolution 1325. FAS's work in this regard is set in the context of a wider campaign to protect and promote women's human rights in Africa. For FAS, engendering the peace process is vital to achieving the lasting absence of conflict on the African continent. Efforts to resolve conflict and address its root causes will not succeed unless we empower all those who have suffered from it—including and especially women who suffer its impact disproportionately. Only if women play a full and equal part can we build the foundations for enduring peace: development, good governance, human rights and justice.

FAS has initiated and has been organizing Women's AU Pre-Summit Consultative

Meetings since 2002 to give a stronger voice to women interested in advancing African women's agenda. They represent a core strategic component of FAS overall regional programme on mainstreaming gender in the African Union (AU), organized so far in partnership with: AU Gender Directorate (AUGD), AWDF, UNECA and UNWOMEN, OSIWA, Government of Finland, GTZ, ACTIONAID, DFID, Government of the Netherlands, and UN Agencies and most recently, OI-AU.

Along the years, FAS has gained in credibility and has been fulfilling an increasing number of functions and member positions. FAS is the Vice-President of the African Union Women's Committee (AUWC) located in the Addis Ababa and CONGO (500 NGOs) located in Geneva. FAS is a member of the African Union ECOSOCC, NEPAD Gender Task Force, the AU Gender Directorate/UNDP Steering Committee of the Network on Gender, Peacebuilding and Governance, the African Women's Foresight Group, the 6th ICRC International Group of Advisers, and the CAUX Foundation, CONGO NGO-CSW, the NY Working Group on Women, Peace, and Security. In addition, FAS has the observer status with the African Commission for Human and Peoples' Rights (ACHPR) since many years, as well as with IOM and OIF, and more recently the UN/AU Conference on the Great Lakes Region. Furthermore, FAS is the coordinator of the "Gender Is My Agenda Campaign". The GIMAC was launched in 2002 in Durban, South Africa, in the year that the OAU became the AU. GIMAC is a women's platform that was formed to create space for civil society organizations to formulate and promote a gender agenda for Africa. The GIMAC has contributed to the adoption and implementation of the Gender Parity Principle in the AU, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003), known as the Maputo Protocol, including the "Solemn Declaration on Gender Equality in Africa" (SDGEA) in 2004

To consolidate its presence at the international level, FAS has a permanent representative stationed in New York; USA, Addis Ababa; Ethiopia and Dakar; Senegal.

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THE AFRICAN CAPACITY BUILDING FOUNDATION | FONDATION POUR LE RENFORCEMENT DES CAPACITES EN AFRIQUE

The African Capacity Building Foundation (ACBF)

Established in February 1991, ACBF is the outcome of collaboration between African governments and the international donor community. Its mission is to build sustainable human and institutional capacity for sustainable growth and poverty reduction in Africa. ACBF's vision is for Africa to be recognized for its socio-political and economic capabilities and endowments – a continent with effective institutions and policies acquired through sustained investment in people and institutions. The Foundation aims to become a leader, major partner, and centre of excellence for capacity building in Africa.

The creation of ACBF was in response to the severity of Africa's capacity needs, and the challenge of investing in indigenous human capital and institutions in sub-Saharan Africa. ACBF was also designed to serve as a coordinating mechanism for donor support to capacity building on the Continent, through the pooling of resources and common governance and reporting system. Until January 2000, ACBF interventions focused on building and strengthening capacity for macroeconomic policy analysis and development management, its initial niche in capacity building. In 2000, this focus was expanded as a result of the integration of the Partnership for Capacity Building in Africa (PACT) initiative into the Foundation's fold. PACT aims at mobilizing greater support for capacity building in Africa. The expansion broadened the Foundation's scope to cover the following areas:

- *Support to projects and programs designed to strengthen the core public sector and its interface with the private sector and civil society in order to enhance their contributions to good governance, poverty reduction and sustainable development.*

- *Support to regional initiatives in the areas of training, policy analysis, applied policy research, trade policy development and negotiations as well as policy advocacy.*
- *Support for the emergence of institutional frameworks for country ownership and coordination of capacity-building activities as well as for participatory development.*
- *Knowledge generation and sharing for the transformation of the Foundation into a knowledge-based institution and to support the emergence of knowledge-based economies in Africa.*

ACBF and the AU signed an MOU to cement their strategic partnership in 2010. The partnership was enforced to enhance and expand the existing collaborative arrangements between the two organizations, with a view to building the capacity of African countries in the areas of economic policy analysis, policy formulation, policy implementation and the overall management of economic policy for poverty reduction on the continent. Furthermore, the AU serves as an Observer on the ACBF Board of Governors.

ACBF continues to complement the AU in capacity building, by investing in the human and institutional development required to address and develop effective policies for the continent.

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The African Network Campaign on Education for All (ANCEFA)

ANCEFA is a Pan African civil society campaign education network , with a mission to promote, enable and build the capacity of African civil society to advocate and campaign for access to free, quality and relevant education for all. ANCEFA works with national education coalitions from at least 35 countries across Africa and cooperates with like-minded regional, continental and international organizations in advancing the right to education on the continent. ANCEFA's program priorities include advocating for increased education financing for quality inclusive education, promoting national accountability, advocating for quality teaching and learning, and building the institutional capacity of its various structures including staff and board to enhance policy engagement. The network is based in Dakar, but with Program Offices in Nairobi, Lusaka, and Lome.

ANCEFA is recognised as a partner and stakeholder engaged in policy dialogue at continental and global levels through organisations such as ECOWAS, SADEC, the African Union, UNESCO, Global Campaign for Education and the Executive Committee of the Fast Track Initiative. ANCEFA's work is supported by a number of partners, notably Global Campaign for Education, Government of the Netherlands, Oxfam, Open Society Institute, Open Society Initiative for Southern Africa, Action Aid International, IBIS (Danish international education NGO), Plan International, Aide et Action and Save the Children.

In July 2013, an MoU was signed between the AUC and the Africa Network Campaign on Education for All (ANCEFA). Recognizing the mutual interests of the Commission and ANCEFA especially those related to the right to education at national, regional and continental levels, and promoting the implementation of the plan of action for the African Union Second Education Decade for Africa (2006-2015), particularly in the thematic areas of Gender and Culture, Education Management Information System, Teacher development, Technical Vocational and Training (TEVET), Curriculum and Teaching and learning Material, Quality Management, and Early Childhood development

(ECD) as being critical for achieving the collective African Union vision ANCEFA and AU formed a partnership.

It is hoped that this partnership will enable both the AU and ANCEFA to pursue collaborative activities and projects that will assist in promoting the right to education in general and in particular, in supporting the implementation of the African Union Second Decade on Education for Africa plan of action 2006- 2015), and other continental frameworks developed by the AUC.

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*The All Africa Conference of Churches (AACC)
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The AACC is a continental Faith-Based Ecumenical Organization with its headquarters in Nairobi, Kenya. It spans 50 years of active service on the continent and brings together Christian Churches from 40 African Countries that have over 120 million members. Since its inception in 1963, the AACC and the AU have had an active collaboration. Having officially been established in April 1963, a month prior to the creation of the Organization of African Unity, AACC has been involved in peace mediation and peace building work in different countries on the continent, in cooperation with the different Civil Society Organizations advocating for African peoples dignity.

The AACC has continued to partner/cooperate with the Africa Union on issues relating to peace on the continent. AACC has institutionalized its relationship with the African Union Commission by establishing a Liaison Office in Addis Ababa and by signing a Memorandum of Understanding (MoU) with the Commission.

The purpose of the Liaison Office is to facilitate the AACC/AU partnership linking African Churches to the Africa Union - focused on supporting the cause of socio-economic development, good governance, conflict prevention and resolution across the African continent. The main objectives of the Liaison Office is to enable African churches and councils to contribute to the development and sustained unity, peace and human dignity in the African Continent, and to advocate for the rights of people who are suffering to help ensure their safety and protection.

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Disclaimer

It is also important to note that this does not represent an exhaustive list of non-state actors engaging the AU. There are many more non-state actors including coalitions who engage the AU in their respective line of work but are not listed here.

Appendix

Appendix 1: AU Regions

The Member states of the five regions of the AU are as follows:

EAST Comoros, Djibouti, Ethiopia, Eritrea, Madagascar, Mauritius, Rwanda, Somalia, Seychelles, South Sudan, Sudan, Tanzania, Uganda
CENTRAL Burundi, Cameroon, Central African Republic, Chad, Democratic Republic of Congo, Republic of Congo, Equatorial Guinea, Gabon, Sao Tome and Principe
NORTH Algeria, Egypt, Libya, Mauritania, Morocco, Sahrawi Arab Democratic Republic, Tunisia
SOUTH Angola, Botswana, Lesotho, Malawi, Mozambique, Namibia, South Africa, Swaziland, Zambia, Zimbabwe
WEST Benin, Burkina Faso, Cabo Verde, Cote d' Ivoire, Gambia, Ghana, Guinea-Bissau, Guinea, Liberia, Mali, Nigeria, Senegal, Sierra Leone, Togo

Appendix 2: Regional Economic Communities (RECs) Recognized by the AU

Both the 1980 Lagos Plan of Action for the Development of Africa and the 1991 Abuja Treaty to establish the African Economic Community proposed the creation of Regional Economic Communities (RECs) as the basis for African integration, with a timetable for regional and then continental integration to follow.

There are eight RECs recognized by the African Union, each established under a separate treaty. The membership of many of the communities overlaps, and their rationalisation has been under discussion for several years, and formed the theme of the 2006 Banjul summit. At the July 2007 Accra summit the Assembly adopted a Protocol on the Relations between the African Union and the Regional Economic Communities. This protocol was intended to facilitate the harmonisation of the policies and ensure compliance with the Abuja Treaty and Lagos Plan of Action time frames.

The eight RECs recognised by the AU are:

<i>Regional Economic Communities</i>	<i>Member States</i>	<i>Objectives</i>	<i>Activities/ Programmes</i>
<i>Arab Maghreb Union (UMA)* www.maghrebarabe.org</i>	<i>Algeria, Libya, Mauritania, Morocco**, Tunisia</i>	<i>Promote trade and economic cooperation</i>	<i>Infrastructure, security and food safety</i>

<i>Regional Economic Communities</i>	<i>Member States</i>	<i>Objectives</i>	<i>Activities/ Programmes</i>
<p><i>Common Market for Eastern and Southern Africa (COMESA)</i></p> <p>www.comesa.int</p>	<p><i>Burundi, Comoros, Democratic Republic of the Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia and Zimbabwe</i></p>	<p><i>Attain trade and economic cooperation</i></p> <p><i>promote peace and security in the region</i></p>	<p><i>Trade and investment; Trade liberalisation and facilitation; Agriculture and food; Private sector support and infrastructure; Women in business; Peace and security; Multilateral negotiations and monetary harmonisation</i></p>
<p><i>Community of Sahel-Saharan States (CEN-SAD)</i></p> <p>www.cen-sad.org</p>	<p><i>Benin, Burkina Faso, Central African Republic, Chad, Cote d'Ivoire, Djibouti, Egypt, Eritrea, Gambia, Ghana, Guinea Bissau, Kenya, Liberia, Libya, Mali, Morocco, Niger, Nigeria, Senegal, Sierra Leone, Somalia, Sudan, Togo, and Tunisia</i></p>	<p><i>Strengthen peace, security and stability; achieve global economic and social development</i></p>	<p><i>Agriculture, industry, energy, trade liberalisation, transport and communication, education and security</i></p>
<p><i>East African Community (EAC)</i></p> <p>www.eac.int</p>	<p><i>Burundi, Kenya, Rwanda, Tanzania and Uganda</i></p>	<p><i>Attain socio-economic cooperation, development and integration; maintain peace and Security; attain political federation</i></p>	<p><i>Trade liberalisation, natural resources management; peace and security; energy, infrastructure, environmental management, science and technology</i></p>
<p><i>Economic Community of Central African States (ECCAS)</i></p> <p>www.ceeac-eccas.org</p>	<p><i>Angola, Burundi, Cameroon, Chad, Central African Republic, Democratic Republic of Congo, Equatorial Guinea, Gabon, Republic of Congo, Rwanda, São Tomé and Príncipe</i></p>	<p><i>Achieve collective autonomy and maintain economic stability; develop capacities to maintain peace and security; attain economic and monetary integration</i></p>	<p><i>Peace and security; agriculture, energy cooperation, natural resources cooperation, tourism, trade liberalisation, industrial development, transport and communications, science and technology</i></p>

<i>Regional Economic Communities</i>	<i>Member States</i>	<i>Objectives</i>	<i>Activities/ Programmes</i>
<p><i>Economic Community of West African States (ECOWAS)</i></p> <p>www.ecowas.int</p>	<p><i>Benin, Burkina Faso, Cape Verde, Cote d'Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo</i></p>	<p><i>Attain trade and economic cooperation; promote peace and security in the region</i></p>	<p><i>Trade and investment; trade liberalisation and facilitation; agriculture and food, private sector support, infrastructure, women in business, peace and security, multilateral negotiations and monetary harmonisation</i></p>
<p><i>Intergovernmental Authority on Development (IGAD)</i></p> <p>www.igad.org</p>	<p><i>Djibouti, Eritrea, Ethiopia, Kenya, Somalia, Sudan and Uganda</i></p>	<p><i>Attain regional economic cooperation and integration; promote regional security and political dialogue; promote trade and social economic development and cooperation</i></p>	<p><i>Conflict prevention; management and resolution and humanitarian affairs; infrastructure development (transport and communications); food security and environment protection</i></p>
<p><i>Southern African Development Community (SADC)</i></p> <p>www.sadc.int</p>	<p><i>Angola, Botswana, DRC, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe</i></p>	<p><i>Cooperation and integration in the socio-economic arena, as well as political development</i></p>	<p><i>Food, agriculture and natural resources; trade, industry, finance and investment; infrastructure and services, social and human development</i></p>

*Morocco withdrew from the OAU in 1984 when the Sahrawi Arab Democratic Republic was admitted as a member.

** UMA currently remains inactive due to deep political and economic disagreements between countries

The RECS are important to civil society organisations because of their regional significance and because they are the 'building blocks' of the African Union. The Economic Community of West African States (ECOWAS) has the most formalised parallel civil society body; known as the West Africa Civil Society Forum (WACSOF).

ECOWAS, SADC and the EAC are some of the RECs with their own courts. Ordinary citizens and civil society organisations can bring cases directly to these courts, and there have been important decisions from both the ECOWAS and SADC courts in favour of human rights principles. The East African Court of Justice has also ruled on issues relating to the composition of the East African Legislative Assembly.

Relationships between the African Union and the RECs

As mentioned before, the July 2007 Accra summit had the AU Assembly adopting a Protocol on the Relations between the African Union and the Regional Economic Communities. The objective of the protocol was to formalize, consolidate and promote closer co-operation among the RECs and between them and the Union through the coordination and harmonization of their policies, measures, programmes and activities in all fields and sectors. The protocol also aimed at implementing the Sirte Declaration with regard to the acceleration of integration process.

In 2008, the AU signed a Memorandum of Understanding (MoU) with the RECs and Regional Mechanisms (RMs) on the Cooperation in the Area of Peace and Security between the African Union, the Regional Economic Communities and the Coordination Mechanisms of the Regional Standby Brigades of Eastern Africa and Northern Africa. The MoU sought to contribute to the full operationalization and effective functioning of the African Peace and Security architecture. It also aimed at fostering a closer partnership between the AU, the RECs and RMs in the promotion and maintenance of peace, security and stability on the continent, as well as to enhance coordination between their activities.

To achieve its objectives, the AU, RECs and RMs agreed to cooperate in all areas relevant for the promotion and maintenance of peace, security and stability in Africa including: the operationalization and functioning of the African Peace and Security Architecture (APSA); the prevention, management and resolution of conflicts; humanitarian action and disaster response; post-conflict reconstruction and development; arms control and disarmament; counter-terrorism and the prevention and combating of trans-national organized crime and any other areas of shared priorities and common interest.

In order to achieve these goals the AU established liaison offices to AU for each of the RECs and RMs.

Regional Economic Community Liaison Offices to the African Union

COMESA Liaison Office to the African Union

The Common Market for Eastern and Southern Africa (COMESA) is one the building blocks of the African Economic Community, established by the Abuja Treaty signed in 1991, and the African Union created by the AU Constitutive Act of 2000.

COMESA was established in 1994 to succeed the Preferential Trade Area (PTA) that had been in existence since 1981. The Member States of COMESA are the following: Burundi, Comoros, DRC, Djibouti, Egypt, Ethiopia, Eritrea, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Uganda, Seychelles, Sudan, Swaziland, Zambia and Zimbabwe.

COMESA is implementing a medium-term strategic plan (2011-2015) focusing on six strategic priorities: (1) removing barriers to factor mobility; (2) building capacity for global competitiveness; (3) addressing supply side constraints related to infrastructures; (4) peace and security; (5) cross-cutting issues including gender, social affairs, climate change, human capital, knowledge based society; and (6) institutional development.

The establishment of the COMESA Liaison Office to the African Union is governed by three legal frameworks:

1. *The Protocol on relations between AU and Regional Economic Blocks (RECs) signed on 27th January 2008 to facilitate the implementation of the measures aiming to formalize, consolidate and promote cooperation among the RECs and between them and AU.*
2. *The Protocol relating to the establishment of the AU Peace and Security Council related to the need to ensure close harmonization and coordination with regional mechanisms for conflict prevention, management and resolution adopted by the AU Assembly in July 2002;*
3. *The Memorandum of Understanding (MOU) on cooperation in the area of peace and security between the AU, the RECs and coordinating mechanisms of the regional standby brigades of Eastern Africa and Northern Africa signed in 2008.*

One of the principles articulated in Article IV of the MOU is the adherence to the principle of subsidiarity, complementarity and comparative advantage in order to optimize the partnership between the African Union, the RECs and the coordinating mechanisms in the promotion of peace and security. The establishment of Liaison Offices to the African Union is one of the key components of the African Union Peace and Security Architecture.

The role of the COMESA Liaison Office to African Union is primarily to enhance communication and coordination between AU and COMESA, improve confidence building, promote joint initiatives, increase participation in each other's meetings, promote horizontal synergy among RECs and other regional mechanisms through exchange of best practices and joint activities, facilitate the application of subsidiarity for vertical coherence.

The Liaison Office promotes also the integration of regional initiatives into continental frameworks, the transposition and domestication of continental decisions at regional level as well as the operationalization of continental architecture such as African Peace and Security Architecture, the African Governance Architecture, the continental

agenda in the areas of infrastructure, agriculture, climate change, social development, industrial development, human capital development, trade, monetary and economic integration.

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EAC Liaison Office to the African Union

The East African Community is the regional intergovernmental organisation of the Republics of Kenya, Uganda, Burundi, Rwanda and the United Republic of Tanzania with its headquarters in Arusha, Tanzania. The treaty for the establishment of the East African Community was signed on 30 November, 1999 and entered into force on 7 July, 2000.

The EAC aims at widening and deepening cooperation among partner states in political, economic, social and other fields for their mutual benefit. It promotes the strengthening of peace, security and stability. It aims at achieving global economic and social development.

The EAC Liaison Office to the African Union was established to promote and improve relations between the AU and EAC, particularly in the area of peace and security. In the Memorandum of Understanding signed between the AU and Regional Economic Communities (RECs) and RMs in January 2008, the parties committed themselves to facilitate the establishment of the Liaison Offices.

The establishment of the EAC Liaison Office to the African Union is governed by three legal frameworks:

1. *The Protocol on relations between AU and Regional Economic Blocks (RECs)*

signed on 27th January 2008 to facilitate the implementation of the measures aiming to formalize, consolidate and promote cooperation among the RECs and between them and AU.

- 2. The Protocol relating to the establishment of the AU Peace and Security Council related to the need to ensure close harmonization and coordination with regional mechanisms for conflict prevention, management and resolution adopted by the AU Assembly in July 2002;*
- 3. The Memorandum of Understanding (MOU) on cooperation in the area of peace and security between the AU, the RECs and coordinating mechanisms of the regional standby brigades of Eastern Africa and Northern Africa signed in 2008.*

The EAC Liaison Office to the African Union contributes to the operationalization of the African Peace and Security Architecture (APSA), as well as strengthens cooperation and closely coordinates AU's and EAC's activities towards shared goals of ridding the region of the scourge of conflicts and laying the foundation for sustainable peace, security and stability. The other programmes EAC focuses on include trade liberalisation, natural resources management within the SADC region, energy, infrastructure development and technological advancement.

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ECCAS Liaison Office to the African Union

The Economic Community of Central African States (ECCAS) was formed in October 1983 in Libreville. At its creation, ECCAS' objective was to promote and reinforce a harmonious cooperation and an autonomous and equilibrated development in the

framework of its economic and social activities.

Unfortunately, ECCAS experienced a cessation of activities from 1992-1998 due to internal crises experienced by its member states. In 1998 the Heads of State and Government decided to re-launch ECCAS and include the promotion peace, security and stability within the region to the agenda.

ECCAS' aim is to realize collective autonomy improve the standards of living of its population, upgrade and maintain economic stability, reinforce pacific relationships among member states and to contribute to overall progress of the entire African continent. ECCAS is comprised of 10 member States: The Republic of Angola, the Republic of Burundi, The Republic of Cameroon, The Central African Republic, The Republic of Congo, The Democratic Republic of Congo, The Republic of Gabon, the Republic of Gabon, the Republic of Equatorial Guinea, The Democratic Republic of Sao Tome and Principe and the Republic of Chad.

The ECCAS liaison office to the African Union was established in 2008. The ECCAS liaison office with the African Union was established in conformity to the underlined protocols:

- 1. The Protocol on relations between AU and Regional Economic Blocks (RECs) signed on 27th January 2008 to facilitate the implementation of the measures aiming to formalize, consolidate and promote cooperation among the RECs and between them and AU. This would be through coordination and harmonization of their policies, measures, programmes and activities in all fields and sectors that can contribute to the realization of the objectives of AU Constitutive Act (2000) and the treaty establishing the African Economic Community (1991);*
- 2. The Protocol relating to the establishment of the AU Peace and Security Council related to the need to ensure close harmonization and coordination with regional mechanisms for conflict prevention, management and resolution adopted by the AU Assembly in July 2002;*
- 3. The Memorandum of Understanding (MOU) on cooperation in the area of peace and security between the AU, the RECs and coordinating mechanisms of the regional standby brigades of Eastern Africa and Northern Africa*

signed in 2008 in which Article 20(1) stipulates, "Without prejudice to the primary role of the Union in the promotion and maintenance of peace, security and stability in Africa, the RECs and, where appropriate, the Coordinating Mechanisms shall be encouraged to anticipate and prevent conflicts within and among their Member States and, where conflicts do occur, to undertake peace-making and peace-building efforts to resolve them, including the deployment of peace support missions" and Article 20(3) stipulates that, "The RECs managing regional brigades within the framework of the African Standby Force and the Coordinating Mechanisms, shall, upon decision by Council, make available their assets and capabilities, including planning, to the other RECs and Coordinating Mechanisms or the Union, in order to facilitate the deployment of peace support operations outside their areas of jurisdiction."

The principle objective of the ECCAS Liaison Office to the AU is to improve the information flow between ECCAS and the AU and vice versa as well as to ensure the representation and the visibility of ECCAS within the AU. ECCAS analyzes and evaluates information and confers the relevant information to ECCAS. The liaison office has extended its mandate from focusing most of its work with the Departments of Peace and Security, Economic Affairs and Political Affairs to working with all departments at the AU.

Contact Information:

Head of ECCAS Liaison Office to the AU

Tel: (+251) 11 551 7700 ext. 4088 (Addis office)

ECOWAS Liaison Office to the African Union

The Economic Community of West African States (ECOWAS) was created on 28 May, 1975 through the Treaty of Lagos. The headquarters of ECOWAS is located in Abuja, Lagos. ECOWAS is comprised of 15 West African member states, namely: Benin, Burkina Faso, Cape Verde, Cote d'Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali,

Niger, Nigeria, Senegal, Sierra Leone and Togo.

Its objective is to attain trade and economic cooperation and to promote peace and security in the region. ECOWAS promotes trade and investment, trade liberalisation and facilitation, agriculture and food

The establishment of the ECOWAS Liaison Office to the African Union is governed by three legal frameworks:

1. *The Protocol on relations between AU and Regional Economic Blocks (RECs) signed on 27th January 2008 to facilitate the implementation of the measures aiming to formalize, consolidate and promote cooperation among the RECs and between them and AU. This would be through coordination and harmonization of their policies, measures, programmes and activities in all fields and sectors that can contribute to the realization of the objectives of AU Constitutive Act (2000) and the treaty establishing the African Economic Community (1991);*
2. *The Protocol relating to the establishment of the AU Peace and Security Council related to the need to ensure close harmonization and coordination with regional mechanisms for conflict prevention, management and resolution adopted by the AU Assembly in July 2002;*
3. *The Memorandum of Understanding (MOU) on cooperation in the area of peace and security between the AU, the RECs and coordinating mechanisms of the regional standby brigades of Eastern Africa and Northern Africa signed in 2008 in which Article 20(1) stipulates, "Without prejudice to the primary role of the Union in the promotion and maintenance of peace, security and stability in Africa, the RECs and, where appropriate, the Coordinating Mechanisms shall be encouraged to anticipate and prevent conflicts within and among their Member States and, where conflicts do occur, to undertake peace-making and peace-building efforts to resolve them, including the deployment of peace support missions" and Article 20(3) which stipulates that, "The RECs managing regional brigades within the framework of the African Standby Force and the Coordinating Mechanisms, shall, upon decision by Council, make available their assets and capabilities, including planning, to the other RECs and Coordinating Mechanisms or the Union, in order to facilitate the deployment of peace support operations outside their areas of jurisdiction."*

The ECOWAS Liaison Office to the African Union contributes to the operationalization of the African Peace and Security Architecture (APSA), as well as strengthens cooperation and closely coordinates AU's and ECOWAS's activities towards shared goals of ridding the region of the scourge of conflicts and laying the foundation for sustainable peace, security and stability. Its key priorities include areas relevant for the promotion and maintenance of peace, security and stability in Africa including: the operationalization and functioning of the African Peace and Security Architecture (APSA); the prevention, management and resolution of conflicts; humanitarian action and disaster response; post-conflict reconstruction and development; arms control and disarmament; counter-terrorism and the prevention and combating of trans-national organized crime.

Contact Information:

Head of ECOWAS Liaison Office to the AU

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SADC Liaison Office to African Union

The Southern African Development Community (SADC) is an inter-governmental organization made up of 15 member states, headquartered in Gaborone, Botswana. SADC was transformed into a development community on 17 August, 1992 in Windhoek, Namibia when the Declaration and Treaty was signed at the Summit of Heads of State and Government thereby giving the organization a legal character. In 2001, the 1992 SADC treaty was amended to redesign the structures, policies and procedures of SADC.

Its objective is to promote socio-economic cooperation and integration as well as political and security cooperation amongst all its member states.

SADC has 15 member states, namely: Angola, Botswana, DRC, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.

The establishment of the SADC Liaison Office to the African Union is governed by three legal frameworks:

1. *The Protocol on relations between AU and Regional Economic Blocks (RECs) signed on 27th January 2008 to facilitate the implementation of the measures aiming to formalize, consolidate and promote cooperation among the RECs and between them and AU.*
2. *The Protocol relating to the establishment of the AU Peace and Security Council related to the need to ensure close harmonization and coordination with regional mechanisms for conflict prevention, management and resolution adopted by the AU Assembly in July 2002;*
3. *The Memorandum of Understanding (MOU) on cooperation in the area of peace and security between the AU, the RECs and coordinating mechanisms of the regional standby brigades of Eastern Africa and Northern Africa signed in 2008.*

The role of the SADC Liaison Office to African Union is mainly to reinforce communication and coordination between AU and SADC, improve confidence building, promote joint initiatives, increase participation in each other's meetings, promote harmonization among RECs and other regional mechanisms through exchange of best practices and joint activities, facilitate the application of subsidiarity for vertical coherence. The liaison office to the AU coordinates and monitors all areas of cooperation between SADC and the AU. These areas include but are not limited to arms control, conflict management and resolution, integration and the harmonization of economic development within the SADC region.

The Liaison Office promotes also the integration of regional initiatives into continental frameworks, the transposition and domestication of continental decisions at regional level as well as the operationalization of continental architecture such as African Union Peace and Security Architecture (APSA), the African Governance Architecture (AGA), the continental agenda in the areas of infrastructure development, harmonization of trade policies, non-tariff barriers to facilitate intra-african trade, regional integration, social development, industrial development, human capital development, trade,

monetary and economic integration.

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Head of SADC Liaison Office to the AU

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Regional Mechanisms

North Africa Regional Capability (NARC)

The idea for the North Africa Regional Capability (NARC) was formed in 2007 and by 2008 all of its member states had signed an MoU. On 28 May 2010, NARC signed the Memorandum of Understanding on cooperation in the area of peace and security between the African Union, the Regional Economic Communities and the Regional Standby Brigades of Eastern Africa and Northern Africa at the headquarters of the African Union in Addis Ababa.

The Arab Maghreb Union (UMA) cooperating with Egypt were initially designated to act as one of the regional organization which would create and support the African Peace and Security Architecture (APSA) and its components. Nevertheless, intra-regional differences prevented progress on the project. NARC was created to take on the role of the regional mechanism for Northern Africa.

With its Headquarters based in Tripoli, Libya; NARC consists of 5 member states, namely: Algeria, Libya, Tunisia, Egypt and the Republic of Sahara. Mauritania remains an observer.

The establishment of NARC is governed by:

1. *The Protocol relating to the establishment of the AU Peace and Security Council*

related to the need to ensure close harmonization and coordination with regional mechanisms for conflict prevention, management and resolution adopted by the AU Assembly in July 2002 in which Article 16(8) stipulates that, "In order to strengthen coordination and cooperation, the Commission shall establish liaison offices to the Regional Mechanisms. The Regional Mechanisms shall be encouraged to establish liaison offices to the Commission."

2. *The Memorandum of Understanding (MOU) on cooperation in the area of peace and security between the AU, the RECs and coordinating mechanisms of the regional standby brigades of Eastern Africa and Northern Africa signed in 2008 in which Article 20(1) stipulates, "Without prejudice to the primary role of the Union in the promotion and maintenance of peace, security and stability in Africa, the RECs and, where appropriate, the Coordinating Mechanisms shall be encouraged to anticipate and prevent conflicts within and among their Member States and, where conflicts do occur, to undertake peace-making and peace-building efforts to resolve them, including the deployment of peace support missions" and Article 20(3) stipulates that, "The RECs managing regional brigades within the framework of the African Standby Force and the Coordinating Mechanisms, shall, upon decision by Council, make available their assets and capabilities, including planning, to the other RECs and Coordinating Mechanisms or the Union, in order to facilitate the deployment of peace support operations outside their areas of jurisdiction."*

Based on these two frameworks; the activities and programs of the NARC focus mainly on all areas relevant for the promotion and maintenance of peace, security and stability in Africa including: the operationalization and functioning of the African Peace and Security Architecture (APSA); the prevention, management and resolution of conflicts; humanitarian action and disaster response; post-conflict reconstruction and development; arms control and disarmament; counter-terrorism and the prevention and combating of trans-national organized crime; border management; capacity building, training and knowledge sharing; resource mobilization and in many other areas of shared priorities and common interest as may be agreed. In the area of operationalization of APSA, NARC collaborates with the African Union and the other REC offices to ensure the full and effective functioning of the African Standby Force (ASF), Continental Early Warning System (CEWS) and the Military Staff Committee.

Based on the 2011-2015 roadmap that was implemented by all the RECs and RMs, the ASF remains a current priority of NARC as they intend to have their brigade and other pledged capabilities prepared and trained by 2015.

Contact Information:

Head of NARC Liaison Office to the AU

Tel: (+251) 11 551 7700 ext. 4111 (Addis office)

Eastern Africa Standby Force Mechanism (EASFCOM) Liaison Office to the AU

The Eastern Africa Standby Force (EASF) is one of the five regional components of the African Standby Force established by the African Union for the purpose of containing the scourge of conflicts and enhancing peace and security in the continent.

Contact Information:

Head of EASFCOM Liaison Office to the AU

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ECOWAS Standby force in Mali

Appendix 3: Foreign Offices to the African Union

1. United Nations Liaison Office to the African Union (UNOAU)⁷

The strong relationship between the United Nations and the African Union dates back to the Organization of African Unity period. In 2006, the General Assembly endorsed the recommendation of the Secretary-General to establish a United Nations Liaison Office with the OAU. UNOAU in Addis Ababa serves as the official link between the UN and the African Union and other African sub-regional organizations. The United Nations Department of Political Affairs (DPA) and the African Union began operating under the Ten Year Capacity Building Programme for the African Union in 2006. The UN support at the African Union is organized around various themes, with advances made in peace, security and capacity-building.

Within the framework of engaging the African Union, the UNOAU boosts the African Union's capacity to provide electoral assistance to AU member states. Support is directed at strengthening the Democracy and Electoral Assistance Unit of the African Union. This includes assistance for the establishment of a database of African electoral management bodies, experienced election observers and experts, and non-governmental organizations who work on elections. UNOAU also has regular "desk to desk" meetings with the African Union on the prevention and management of conflicts since 2008. These meetings bring together UN and AU officials for information sharing, coordination and the strengthening of partners.

In addition, the liaison office provides assistance at strategic, institutional and operational levels. For instance, the UN assisted the AU in the development of an African Union mediation strategy, in making operation the Panel of the Wise and in developing a tailored training on AU mediation support. UNOAU also provides assistance to the Secretariat of the AU Peace and Security Council by advising the AU

on the establishment of a sanctions committee, for building institutional memory and for the work of the AU Gender Directorate in the areas of peace and security. UN and AU cooperation has intensified over the past few years in their collaborative efforts in conflict mediation and peacekeeping. UN and AU peacemakers patrol side by side in Darfur. UN and AU offices cooperate together towards resolving the crisis in the eastern Democratic Republic of the Congo and in tandem, provide support in the response to political crises in countries like Kenya, the Comoros, Mauritania, Guinea, Niger and Madagascar.

2. European Union Delegation to the African Union⁸

Both African and Europe are bound together by history, culture, geography and mutual values: respect for human rights, equality, solidarity, democracy. The Delegation of the European Union to the African Union started two years before the entry into force of the Lisbon treaty. The EU delegation to the AU was established as an integrated function of EU Delegation comprising European Commission and the European Council components. The EU delegation the AU started to operate mid-January 2008 with the arrival of its Head of Delegation Koen Vervaeke in Addis Ababa.

Within the framework of the engaging the AU, the EU delegation to the AU was established to help coordinate EU policy and action relating to the AU as well as to maintain close contact with the AU Commission- its other institutions and the representative offices of the African sub-regional organisations and AU countries. In addition, the EU delegation helps, advises and supports the AU on request in all the areas outlined in the Africa-EU strategy

The close EU-AU cooperation on peace and security has become a driving force for the development of a fully-fledged Africa- EU strategic partnership, leading into a strong Joint Africa-EU Strategy (JAES) in 2007, a First Action Plan and furthermore, a strong Partnership on Peace and Security. With this new strategic framework, the EU went beyond development aid and recognized the African Union, and Africa as a

⁸ http://eeas.europa.eu/delegations/african_union/index_en.htm

whole, as a strategic political partner. The new joint Africa-EU partnership enables comprehensive dialogue between both continents on issues of democratic governance and human rights, peace and security, gender equality, Millennium Development Goals (MDGs), energy, climate change, migration, employment etc. The AU Commission is the main executive arm of the Africa-EU Strategic Partnership, under the political guidance of the AU member states and the AU Chairperson, Dr. Nkosazana Dlamini Zuma.

Since its foundation in 2002, the African Union has made huge leaps towards preventing, managing and resolving conflicts in Africa. This is evidenced through the establishment of the African Peace and Security Architecture (APSA) and the AU lead Peace Support Operations (PSOs). The key APSA elements are the Peace and Security Council (PSC), the Panel of the Wise (PoW), the African Standby forces (ASF), the African Peace Fund and the Continental Early Warning System (CEWS). The construction of APSA has progressed steadily since 2004. The AU missions in Sudan (AMIS), AMISOM in Somalia and the ECCAS mission in the Central African Republic (MICOPAX) highlight the crucial role that the AU and the Regional Economic Communities (RECs) play in securing peace on the continent.

High-level political dialogue continues between the AU and EU with great steps in gathering the EU political and Security Committee and the AU Peace and Security Committee for regular dialogue on issues of common interest. Through this partnership, the EU delegation to the African Union envisions an increased political dialogue on peace and security matters, full operationalization of the APSA and predictable funding enabling APSA's building blocks; the AU and Regional Economic Mechanisms (RECs and RMs), to plan and execute PSOs in Africa. In 2004, the African Peace Facility (APF) was established in response to a request by African leaders. The APF contributes to African peace and security through targeted support at the continental and regional levels in all areas of conflict management. Through the APF, the EU has given significant support to the African Peace and Security agenda.

3. United States Mission to the African Union (USAU)⁹

The United States of America mission was formally opened in 2006. The goal of the establishment of the United States Mission to the was to create a partnership with the African Union in ways that strengthen democratic institutions, promote peace and stability, support sustainable economic development through increased trade and investment, and improve the lives and health of all Africans.

To fulfil these goals, USAU uses a program focused approach on various issues. USAU envisions a powerful AU Political Affairs Department (PAD) that promotes democratic development, rule of law, respect for human rights, strong civil societies with durable solutions for humanitarian crises. The USAU supports the African Union's Democracy and Electoral Assistance Unit (DEAU) through financial and technical assistance for elections missions.

In addition, USAU works with the AU peace and Security Commission and the African Permanent Representatives to support the AU in various ways. These include supporting conflict mitigation through mediation and peacekeeping, a Continental Early Warning system that detects threats to peace and security on the continent before they erupt called the African Standby Force (ASF). UNLO has also supported the AU in establishing a strong coordination and communications plan for maritime safety and security.

The USAU mission seeks to increase cultural understanding and facilitate diplomatic channels between the U.S. government and member states of the AU.

On January 30, 2013 the AUC Chairperson Dr. Nkozasana Dlamini-Zuma, signed a Memorandum of Understanding (MOU) to further cement the US-AU partnership. Assistant Secretary for African Affairs Johnnie Carson, present at the AU signing ceremony, presented Chairperson's Dlamini-Zuma's signed copy of the MOU to the U.S. Secretary of State Hilary Clinton, who signed the MOU as one of her last acts in the office on February 1, 2013, ushering a new phase of the relationship between the United States government and the African Union. The USAU mission seeks to achieve common policy objectives in the years ahead.

⁹ <http://www.usau.usmission.gov/>

Appendix 4: African Union Scientific and Technical Offices

1. The Scientific, Technical and Research Commission (STRC), Lagos, Nigeria

Vision

The vision of the STRC is to coordinate and promote scientific and technological research and findings, and to serve as a clearing house for all scientific and technical activities of the continent through a sharpening of the overall national and regional development plans, strategies and policies in order to ensure full exploitation of national and natural resources for a durable long-term growth and development.

Mandate

The specific mandate of the STRC include:

- *Supervision of the sub-regional offices and projects;*
- *Implementation of ascribed priority programmes of the AU in science and technology for development;*
- *Organisation of training courses, seminars, symposia, workshops and technical meetings as approaches to implementing its coordination mandate;*
- *Publication and distribution of specialized scientific books and documents of original value to Africa; and*
- *Servicing the various inter-African Committees of Experts including the Scientific Council for Africa*

Core Functions:

- *To coordinate programmes in applied research especially through the inter-*

African committees of experts;

- *To identify funding for research projects of interest and training;*
- *To promote best practices emanating from scientific and technological development applications;*
- *To exchange and disseminate information and research documentation in the field of scientific and technological development;*
- *To organize training programmes and exchanges of researchers and specialists;*
- *To promote research partnerships and networks;*
- *To promote research in all relevant fields;*
- *To promote support to member states in the organisation of pilot projects;*
- *To develop research data for dissemination;*
- *To coordinate the initiation, preparation and the implementation of the programmes and activities of the scientific and technical offices.*

2. The Inter-African Bureau for Animal Resources (IBAR); Nairobi, Kenya

Vision

The vision of the emerging IBAR is to be the vehicle for the AU to develop an appropriate and independent expertise in the area of animal health and production for the alleviation of poverty of those involved in livestock farming and food security in member states.

Mandate

The mandate of the IBAR is to provide integrated advisory service and capacity building that will enable member states of the AU to sustainably improve their animal resources, enhance the nutrition and income of their people and alleviate rural poverty.

Core Functions

- To coordinate the activities of the AU member states in the area of animal health and production;
- To collect, collate and disseminate information in all aspects of animal health and production among member states;
- To initiate and implement projects in the field of animal health and production;
- To collaborate and cooperate with appropriate member states, intergovernmental, regional and international organizations in matters of animal health and production;
- To harmonize all international legislative aspects of livestock development;
- To develop links with reputable universities and regional research institutions;
- To promote policies on poverty alleviation, emergency and relief interventions, and
- To promote trade and establish markets in livestock and livestock products.

3. Semi-Arid Food Grain Research and Development (SAFGRAD) Programme; Ouagadougou, Burkina Faso

Mission

The vision of SAFGRAD is to accelerate growth of agriculture by promoting the application of more productive technologies friendly to semi-arid environment.

Mandate

The mandate of SAFGRAD is “To lead, coordinate and facilitate the formulation of appropriate policies and programmes that would build resilience of rural livelihoods in semi-arid Africa through strengthening of institutional capacities aimed at advancing agricultural research, technology transfer and adoption; enhancement of value chains;

management of natural resources; and mitigation and adaptation to climate change and combating desertification as well as other related areas”.

Core Functions:

- *Promotion of food security programme through the development projects;*
- *Eradication of poverty by developing programmes that enhance technical transfer and commercialisation to generate employment and income;*
- *Post-harvest processing to transfer farm produce into value-added products;*
- *Planning and implementing programmes that enhance production and development support services to increase production;*
- *The on-farm resource management to facilitate the diffusion of successful production and farm management technology packages that contribute to the sustainable use of resources (nutrient cycling), integration of cereals/legumes in livestock production systems;*
- *Technology transfer and commercialisation to facilitate the diffusion of technologies favouring generation of income, creation of employment and food security at the household level among participating countries. The program puts emphasis on the strengthening of women economic capacity and technology commercialisation;*
- *Dissemination to farmers and other end-users of technologies to facilitate the development of micro- enterprises and the generation of employment and income;*
- *Development of linkages and partnership between sources of technologies (NARS, IARCs, Universities) and users of technologies (farmers' association, NGOs);*
- *Documentation of success stories, lessons learned and experiences.*

4. Inter- African Phytosanitary Council (IAPSC); Yaoundé, Cameroon

Vision

The vision of a restructured IAPSC in the new African Union is for the office to be the resource and market information centre for Phytosanitary and plant protection activities in Africa. In the quest for food sustainability, it is important for member states to be informed about quarantine pests, which are usually very devastating when introduced into other countries. A revitalised IAPSC will be better able to protect the continent from pest incursions and contribute towards the goal of providing the African people with sufficient food and feed of high quality.

Mandate

The IAPSC is charged with the responsibility of:

- *Preventing the introduction of crop pests and diseases into any part of Africa;*
- *Controlling and/or eradicating those pests and diseases already in existence in the region;*
- *Discouraging and stopping the uncontrolled commercialisation and dissemination of agro pharmaceuticals and chemicals into and within Africa, and*
- *Preserving human health that could be exposed to toxic chemical residues used in treating plants.*

In addition, the IAPSC should also guide member states on the implications of applying biotechnology for plant protection purposes as well as their implication for food safety. The IAPSC should also actively participate in the capacity of African countries to comply with the requirements of the WTO-SPS Agreement.

Core Functions:

The core functions include:

- *Development and management of information to serve African and International Plant Protection Organisations (IPPOs);*
- *Harmonisation of Phytosanitary regulations in Africa;*
- *Development of regional strategies against the introduction and spread of plant pests (insects, plant pathogens, weeds, etc);*
- *Promotion of safe and sustainable plant protection techniques, and*
- *Training of various cadres of NPPO personnel in Pest Risk Analysis (PRA), Phytosanitary inspection and treatment, field inspection and certification, laboratory diagnoses, pest surveillance and monitoring, etc.*

5. The Centre for Linguistic and Historical Studies by Oral Tradition (CELHTO); Niamey, Niger

Mandate

The mission assigned to the Niamey Office's mandate is to go well beyond the collection of oral traditions and the promotion of African languages to include all aspects of African cultures in their richness, diversity and convergences.

Core Functions:

- *To undertake sociological studies of African communities;*
- *To ensure the development of practical texts in African languages;*
- *To produce, protect and conserve recorded, written, photographed or audio-visual reference documents on oral tradition;*
- *To ensure the systematic distribution of existing documents;*

6. The African Academy of Languages (ACALAN)

The Heads of State and Government of the African Union adopted the Statutes of the African Academy of Languages (ACALAN) during their Khartoum, Sudan Summit of 2006. ACALAN is affiliated to the Department of Social Affairs of the African Union Commission and is headquartered in Bamako, Mali.

Mission

The mission of ACALAN is to foster Africa's integration and development through the development and promotion of the use of African languages in all domains of life in Africa.

Core Values

- *Respect for the cultural values of Africa, especially African languages on behalf of the African;*
- *Integration of the African continent for an endogenous development; linguistic and cultural diversity as a factor of Africa's integration and the promotion of African values including an encouragement of mutuality and solidarity amongst Africans.*

Objectives

- *To empower African languages in general and vehicular cross-border languages in particular, in partnership with the languages inherited from colonization;*
- *To promote the convivial and functional multilingualism at every level, especially in the education sector;*
- *To ensure the development and promotion of African languages as factors of African integration and development, of respect for values and mutual understanding and peace.*

Appendix 5: Leaders of the OAU/AU

Secretaries-general of the Organisation of the African Unity			
Name	Beginning of Term	End of Term	Country
Kifle Wodajo (acting)	25 May 1963	21 July 1964	Ethiopia
Diallo Telli	21 July 1964	15 June 1972	Guinea
Nzo Eakangaki	15 June 1972	16 June 1974	Cameroon
William Eteki	16 June 1974	21 July 1978	Cameroon
Edem Kodjo	21 July 1978	12 June 1983	Togo
Peter Onu (acting)	12 June 1983	20 July 1985	Nigeria
Ide Oumarou	20 July 1985	19 September 1989	Niger
Salim Ahmed Salim	19 September 1989	17 September 2001	Tanzania
Amara Essy	17 September 2001	9 July 2002	Cote d'Ivoire
Chairpersons of the African Union			
Amara Essy (interim)	9 July 2002	16 September 2003	Cote d'Ivoire
Alpha Oumar Konaré	16 September 2003	28 April 2008	Mali
Jean Ping	28 April 2008	15 October 2012	Gabon
Dr. Nkosazana Dlamini-Zuma**	15 October 2012	Incumbent	South Africa



** In 2012 Dr. Nkosazana Dlamini-Zuma succeeded to Mr. Jean Ping as Chairperson of the African Union; making her the first woman to serve as Chairperson of the African Union Commission in the history of the OAU/AU

Appendix 6: Legal Instruments

1. *The Constitutive Act of the African Union Commission (2000): Constitutive Act of the AU:* http://www.africa-union.org/root/au/AboutAu/Constitutive_Act_en.htm
2. *The Protocol relating to the Establishment of the Peace and Security Council (2003) of the African Union:* http://www.africa-union.org/root/au/organs/psc/Protocol_peace%20and%20security.pdf
3. *Protocol on the Relations Between the African Union and the Regional Economic Communities:* <http://www.afrimap.org/english/images/treaty/AU-RECs-Protocol.pdf>
4. *Memorandum of Understanding on Cooperation in the Area of Peace and Security Between the African Union, the Regional Economic Communities and the Coordinating Mechanisms of the Regional Standby Brigades of Eastern Africa and Northern Africa:* <http://www.peaceau.org/uploads/mou-au-rec-eng.pdf>
5. *The African Charter on Human and People's Rights (1981):* <http://www.humanrights.se/wp-content/uploads/2012/01/African-Charter-on-Human-and-Peoples-Rights.pdf>
6. *OAU/AU Declaration on the Principles Governing Democratic Elections in Africa:* <http://www.eisa.org.za/PDF/oaudec.pdf>
7. *The Treaty Establishing the African Economic Community (1991):* http://www.africa-union.org/root/au/Documents/Treaties/Text/AEC_Treaty_1991.pdf
8. *Protocol Relating to the Mechanism for Conflict Prevention, Management and Resolution (1993):* <http://www.comm.ecowas.int/sec/?id=ap101299&lang=en>
9. *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa:* http://www.achpr.org/files/instruments/women-protocol/achpr_instr_proto_women_eng.pdf
10. *Solemn Declaration on Gender Equality (2004):* <http://www.afrimap.org/>

- english/images/treaty/AU_GenderSolemnDec04.pdf*
11. *Solemn Declaration on a Common African Defence and Security Policy:* <http://www.peaceau.org/uploads/declaration-cadsp-en.pdf>
 12. *Memorandum of Understanding (MoU) on Security, Stability, Development and Cooperation (2002):* http://www.africa-union.org/Special_Programs/CSSDCA/cssdca-memorandumofunderstanding.pdf
 13. *Declaration on Democracy, Political, Economic and Corporate Governance/ The New Partnership for Africa's Development:* http://www.eisa.org.za/aprm/pdf/APRM_Declaration_Governance.pdf
 14. *The African Common Position on Africa's External Debt Crisis (1987):* <http://archive.lib.msu.edu/DMC/African%20Journals/pdfs/Journal%20of%20Political%20Economy/ajpev2n5/ajpe002005007.pdf>
 15. *Statutes of the Economic, Social and Cultural Council of the African Union:* <http://www.africa-union.org/ECOSOC/STATUTES-En.pdf>
 16. *Revised Draft Rules of Procedure of the Economic, Social and Cultural Council of the African Union (2005):* <http://www.africa-union.org/ECOSOC/RULES%20OF%20PROCEDURE.pdf>
 17. *The African Charter on Democracy, Elections and Governance (2007):* <http://www.africa-union.org/root/au/Documents/Treaties/text/Charter%20on%20Democracy.pdf>
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EXHIBIT C-59



Governmental Advisory Committee

Prague, 28 June 2012

GAC Communiqué – Prague, Czech Republic

I. Introduction

The Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN) met in Prague, Czech Republic during the week of 23 – 28 June 2012. 50 GAC Members attended the meetings and 6 Observers. The GAC expresses warm thanks to the local host CZ .NIC for their support.

II. Internal Matters

1. The GAC welcomes Viet Nam as a member of the GAC.
2. The GAC welcomes the African Union Commission as a member of the GAC.
3. The GAC welcomes European Organisation for Nuclear Research (CERN), the International Labour Office, the International Criminal Court, the European Space Agency, and the European Broadcasting Union to the GAC as observers.

III. Issues discussed and inter-constituencies Activities

1. GAC/Generic Names Supporting Organisation (GNSO)

The GAC met with the GNSO and discussed the expected impacts on GNSO constituencies with the launch of the new gTLD program and the possibility of an influx of new participants into the multistakeholder processes or change in constituency. The GAC also received an update on the Consumer Trust, Choice and Competition Working Group's review of the new gTLD program, and the methodology behind identifying the forty-five (45) different categories of metrics relating to consumer trust, choice and competition.

The GAC and the GNSO also had a discussion regarding the recent ICANN Board rejection of the recommendations from the GNSO Council for protections for International Olympic Committee and Red Cross/Red Crescent names and agreed that further clarity regarding the status of work on this issue was required.

2. Board/GAC Recommendation Implementation Working Group (BGRI-WG)

The Board GAC Recommendation Implementation Working Group met to discuss further developments on the Accountability and Transparency Review Team's recommendations relating to the GAC (recommendations 9-14). The BGRI-WG has agreed to launch the [online register of GAC advice](#) and is ready to take the next steps in utilizing this important tool as a tracking mechanism for GAC advice delivered to the Board; as well as requests from the Board for advice from the GAC.

The BGRI-WG also discussed the differences between the GNSO and ccNSO PDPs in terms of whether or not they are requested to pro-actively seek GAC input on public policy issues and how such input is currently being handled or considered. The BGRI-WG agreed that further work, including outreach to other SOs, should be initiated to identify better ways to consider GAC input early within the PDP, noting the Board's responsibility to inform the GAC of matters that may affect public policy issues. During the Prague meeting the Board and the GAC made progress on recommendation 13, having increased the face to face interactions with the Board, allowing for more focused and additional exchanges during the two sessions with the ICANN Board.

3. GAC/Security Stability and Resiliency Review Team (SSR-RT)

The GAC received an update from the SSR-RT regarding the Review Team's final report on the review of ICANN's performance in preserving and enhancing the stability, security, and resiliency of the Domain Name System. The GAC fully supports all recommendations of the review team.

The GAC noted that in line with other ongoing discussions within the community the report mentioned contractual compliance as an important area of focus, as well as community outreach.

4. Domain Name Marketplace Briefing

The GAC received a briefing from ICANN, registrars, and registries regarding the ccTLD and gTLD registry environments; the life cycle for a gTLD domain name including how it's registered, how it operates, as well as the actions taken once a domain name expires.

The GAC also received a brief explanation of the gTLD marketplace from the registrars including various business models for the domain name industry. Staff also gave a presentation of what the market may look like in the future with the introduction of new gTLDs. The unequal geographic distribution of the ICANN accredited registrars, especially in Latin America and Africa, was also expressed as a concern.

The GAC expressed a particular interest in ICANN's role in the market.

5. Presentation from Intergovernmental Organisations (IGOs)

The OECD gave a presentation on behalf of 38 IGOs regarding protections in the new gTLD program. The GAC welcomed the presentation made by the Director of Legal Affairs of the OECD on behalf of 38 intergovernmental organisations (IGOs). The GAC was advised that IGOs are treaty-based organisations recognized under international law, the names and acronyms of which are protected as scheduled under Article 6ter of the Paris Convention as well as in multiple national jurisdictions.

Mindful of its previous GAC advice to the Board on protection of names and acronyms of international organisations enjoying protection at both the international level through international treaties and through national laws in multiple jurisdictions, such as Red Cross/Red Crescent and IOC, and recognizing the importance of assuring equal treatment of qualifying international organisations under the same criteria, the GAC is carefully considering the issue, with a view to providing further advice to the Board at a time suitable to the GNSO consideration of this issues expected in July.

6. GAC/At-Large Advisory Committee (ALAC)

The GAC met with the ALAC to discuss ALAC's plan for new gTLD objections and received a presentation on their processes; as well as a discussion on how the GAC and ALAC can work together to study the demand from and impact on Internet users from the gTLD program launch; as well as a briefing from ALAC on their proposal for an ALAC academy for capacity building within, and outside, of ICANN.

7. IDN Variant Briefing

The GAC received a briefing from the IDN Variant team regarding their work, the GAC thanks the IDN Variant team for the information provided.

8. GAC/Security Stability Advisory Committee (SSAC)

The GAC met with the SSAC to discuss their work with law enforcement as well as the security and stability implications of batching in the new gTLD program.

9. GAC/country code Names Supporting Organisation (ccNSO)

The GAC met with the ccNSO and received an update on the Framework of Interpretation Working Group, the Country Names Study Group, and the ccNSO Strategic and Operational Planning Working group. The GAC shares the concerns expressed by the ccNSO that there will not be Expense Area Group reporting on the budget, which has serious implications for full and proper budgetary accountability and transparency.

10. GAC/Address Supporting Organisation (ASO)/Number Resource Organisation (NRO)

The GAC received a presentation on Resource Public Key Infrastructure (RPKI).

The GAC warmly thanks the ASO/NRO, GNSO, SSR-RT, the ICANN Board, Registries and Registrars, the ALAC, the IDN Variant Team, SSAC, the ccNSO, the OECD, as well as all those among the ICANN community who have contributed to the dialogue with the GAC in Prague.

IV. GAC Advice to the Board¹

1. IDN ccTLDs

In principle the GAC considers that the introduction of IDN ccTLDs on an expeditious basis is in the global public interest. The GAC notes that a conservative approach has been taken in respect of two character IDN applications. The GAC is of the view that decisions may have erred on the too-conservative side, in effect applying a more stringent test of confusability between Latin and non-Latin scripts than when undertaking a side by side comparison of Latin strings. A practical approach should be followed allowing confusability to be pragmatically considered on a case by case basis, following publicly documented criteria.

The GAC advises the Board:

- that when decisions are taken in this regard, that there be transparency of process, and that decisions against the release of a string should be accompanied by a detailed rationale.
- the GAC will write to the Board with further reflections on the methodology that should be followed when evaluating two character IDNs.

¹ To track the history and progress of GAC Advice to the Board, please visit the GAC Advice Online Register available at: <https://gacweb.icann.org/display/GACADV/GAC+Register+of+Advice>

- recently refused IDNs, particularly those nominated by public or national authorities should be urgently re-considered in light of the above considerations.
- Without prejudice to the previous bullet and for transparency and accountability purposes, the GAC further advises the Board to create a mechanism of appeal that will allow challenging the decisions on confusability related to proposed IDN ccTLDs.

2. ICANN's role as an industry self-regulatory organisation

- a. The GAC understands that ICANN's role includes:
 - i. Overseeing the global DNS industry, and accrediting organisations to participate in that industry
 - ii. Use of contracts to establish relationships with specific industry participants.
 - iii. Overseeing and enforcing compliance with those contracts
- b. The GAC welcomes the briefing on ICANN's role in overseeing the global DNS industry, and looks forward to further targeted discussions on this issue

The GAC requests a written briefing from the Board that explains:

- The broad principles and particular mechanisms used by ICANN when overseeing the global DNS industry, including details of each of the self-regulatory mechanisms it has developed for this role (including contracts, code of conduct, and so on)
- Why ICANN has chosen to accredit and contract with some industry participants directly (for example, registries and registrars), and not others (for example, resellers)?
- How ICANN would resolve a situation where a reseller was identified as breaching an ICANN policy or contractual obligation? How would a breach involving a privacy/proxy provider be handled? It would be useful for these hypothetical circumstances to reflect any documented procedures, contractual obligations, and escalation measures.

3. ICANN's role in the development of contracts

- a. The GAC welcomes the publication by ICANN of the draft new Registrar Accreditation Agreement (RAA). It appears that this draft contains many changes from the current RAA, and has clearly been informed by a number of LEA/GAC recommendations.

- b. Several questions relating to privacy and data protection issues and the accountability of resellers remain outstanding. As discussed in the public meeting with the Board, the GAC stands ready to assist in these discussions. The GAC encourages the Board to provide written questions on any privacy and data retention matters to the GAC to facilitate an early response.
- c. The GAC emphasises the need for all ICANN contracts to be clear, unambiguous and enforceable, and welcomes ICANN's efforts to enhance its compliance and termination tools as a part of the RAA negotiation process. The timeliness of this work is increasingly important.

The GAC advises the Board

- that this work should be finalised as a matter of priority, and
- that all the necessary amendments and procedures should be in place in advance of the delegation of any new gTLDs.

The GAC reiterates its interest and availability to assist with the resolution of these issues.

4. ICANN's contract oversight and compliance role

- a. At the San Jose meeting, the GAC had asked the Board for an update on the status of the LEA/GAC recommendations that relate to due diligence by ICANN, and would appreciate a response.
- b. The importance of an effective industry oversight and compliance function will become more important with the upcoming introduction of new gTLDs, and an increase in the number of contracts that ICANN will need to oversee. With the accompanying likelihood of new entrants to the industry, it will be important for ICANN to ensure that its compliance policies and processes are clear, publicly known and consistently enforced.
- c. The GAC has provided the Board with examples of organisations that have separated their regulatory and operational responsibilities (see Annex 1). As previously advised at the San Jose meeting, the GAC considers that a principles-based approach to structuring ICANN's compliance activities would support a robust and consistent oversight and compliance function.

The GAC advises the Board

- to finalise improvements to its compliance and industry oversight functions before any new gTLDs are launched.

5. WHOIS Review Team

- a. The GAC welcomes the final report of the WHOIS Review Team, and notes that there are a number of common themes identified by the WHOIS Review Team's recommendations, the LEA/GAC recommendations, and the GAC's advice relating to ICANN's industry oversight and compliance function.
- b. The GAC endorses the recommendations of the WHOIS Review Team, and will closely monitor the Board's response and subsequent implementation activities.

The GAC advises the Board

- to take account of the WHOIS Review Team's recommendations as part of the current RAA amendment process.

6. Root Zone Scaling

- a. The GAC welcomes the draft report on "Impact on Root Server Operations and Provisioning Due to New gTLDs" and exchanged initial views on it with the board. The GAC expressed its concern that the processes and decision taking procedures to slow down, stop and adjust the pace of insertions of TLD strings in the root in case of detected anomalies in the root system, including its harmonized metrics, mechanisms and chain of command, are not yet defined.
- b. The GAC also looks forward to the publication of more comprehensive data for external review as planned.

The GAC advises the Board

- to take this up in advance of the delegation of any new gTLDs.

7. Financial and Budgetary Reporting

- a. The GAC believes that transparency and accountability with regard to financial budgeting and allocation of resources between and within the different constituencies of ICANN is a matter of fundamental importance.

The GAC advises the Board

- to provide tools urgently for reporting on the distribution of allocation of financial resources between and within ICANN in order to assure transparency and accountability in financial matters.

8. Ethics and Conflict of Interest

- a. The GAC welcomes the ongoing work concerning ethics and conflicts of interest.

The GAC advises the Board

- to proceed urgently with all the necessary steps to implement an effective and enforceable ethics and conflicts of interest policy, to strengthen ICANN governance framework both in the context of the new gTLD process and in all other areas of its activity.

9. New gTLDs

In addition to the advice previously communicated to the Board on June 17, 2012:

The GAC advises the Board

- to review and plan action for the next round to ensure there is no repetition of the low uptake in applications from developing countries.
- that there is still important work to be undertaken to finalise the operation of the Trademark Clearinghouse. The GAC therefore requests a status report for its consideration no later than two weeks before the Toronto meeting.
- that it requires further clarification as to the status of its pending request for enhanced protections for the IOC and Red Cross/Red Crescent names at the top and second levels, in light of the Board's rejection of the GNSO's recommendations intended to refine the means of enhanced protection at the top level in April, 2012.

V. Next Meeting

The GAC will meet during the period of the 45th ICANN meeting in Toronto, Canada.

During the 45th ICANN meeting in Toronto, there will be a high-level GAC meeting.

ANNEX I

ASX

One example of an Australian organisation that has separated its compliance from its operational functions is the ASX Group (which was created by the merger of the Australian Stock Exchange and the Sydney Futures Exchange).

Like ICANN, the ASX Group is responsible for regulating an industry that funds it. The ASX Group does this through its subsidiary, ASX Compliance PTY LTD, which is responsible for monitoring and enforcing the ASX operating rules. ASX Compliance is wholly owned by the ASX Group, but has a separate Board of Directors to other ASX Group entities. More information about ASX Compliance is available at www.asxgroup.com.au/asx-compliance.htm

Ofcom

Ofcom is the regulator and competition authority for the United Kingdom's communications industries. It is independent of Government and policy development. Ofcom has a number of roles and duties relating to identifying and responding to conduct which is unlawful, anti-competitive, or otherwise harms consumer interests.

Since it was set up in 2003, Ofcom's enforcement and compliance work has developed significantly and is now undertaken by two teams, the Competition Group Investigations Team and the Consumer Protection Team, which to breaches of regulatory rules or relevant law.

The powers available to Ofcom and the processes for conducting investigations into adherence with regulatory rules, consumer protection issues, competition issues and resolving regulatory disputes, are described on the Ofcom website at:

<http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/complaints-disputes/>

EXHIBIT C-60



Governmental Advisory Committee

17 June 2012

Dr. Stephen Crocker
Chairman of the Board of Directors
ICANN

Re: Processing of applications for new generic Top-Level Domains (gTLDs)

Dear Dr. Crocker,

I am writing to relay the GAC's concerns about ICANN's approach to processing new gTLD applications.

The GAC shares many of the concerns that have already been expressed by members of the ICANN community with regard to ICANN's digital archery and batching processes. These processes appear to significantly impact the timeframes for assessing and delegating new gTLDs.

The substantive competition and fairness concerns being raised within the community suggest that ICANN may not have fully considered the implications of these processes, and highlights the need to fully consult with the community before taking decisions of this magnitude. In short, the GAC is concerned that the potential risks associated with the digital archery and batching mechanisms may outweigh the benefits.

In light of ICANN's decision to initiate digital archery on 8 June 2012, **the GAC advises the Board** to consult with the community as a matter of urgency to consider ways to improve its assessment and delegation processes in order to minimise the downside risks and uncertainty for applicants. In line with the concerns raised by the community, this should include a focus on competition and fairness with delegation timing. The GAC intends to address the issue of the digital archery and batching system at the Prague meeting with the Board.

The GAC understands that the delegation of new TLDs to the root needs to be well managed for stability reasons. This is one of the reasons why the GAC has been seeking

information about root zone scaling from the ICANN Board. The GAC also seeks information about how ICANN intends to evaluate the effect of delegating the first batch in relation to root zone stability issues and, moreover, how this evaluation will influence the timetable for the following batches.

In terms of the GAC's role in assessing applications, I can inform the Board that the GAC has identified several benefits from having a single Early Warning period in relation to all applications (these relate to efficiency, consistency, and timeliness). On this basis, **the GAC advises the Board** that it is planning to issue any Early Warnings shortly after the Toronto ICANN meeting, in October 2012.

In relation to GAC advice on any contentious new gTLD applications, the GAC is still considering its options, and is awaiting further discussion with the Board before making a decision. Given the delays to the gTLD application process, the timing of upcoming ICANN meetings, and the amount of work involved, **the GAC advises the Board** that it will not be in a position to offer any advice on new gTLD applications in 2012. For this reason, the GAC is considering the implications of providing any GAC advice on gTLD applications. These considerations are not expected to be finalised before the Asia-Pacific meeting in April 2013.

I look forward to the Board's response to these issues, and to further discussion as the gTLD process continues.

Regards,

A handwritten signature in black ink, appearing to read 'Heather Dryden', with a stylized flourish at the end.

Heather Dryden
Chair, Governmental Advisory Committee
Senior Advisor to the Government of Canada

EXHIBIT C-61

Chronology of ICANN's Actions During the New gTLD Process

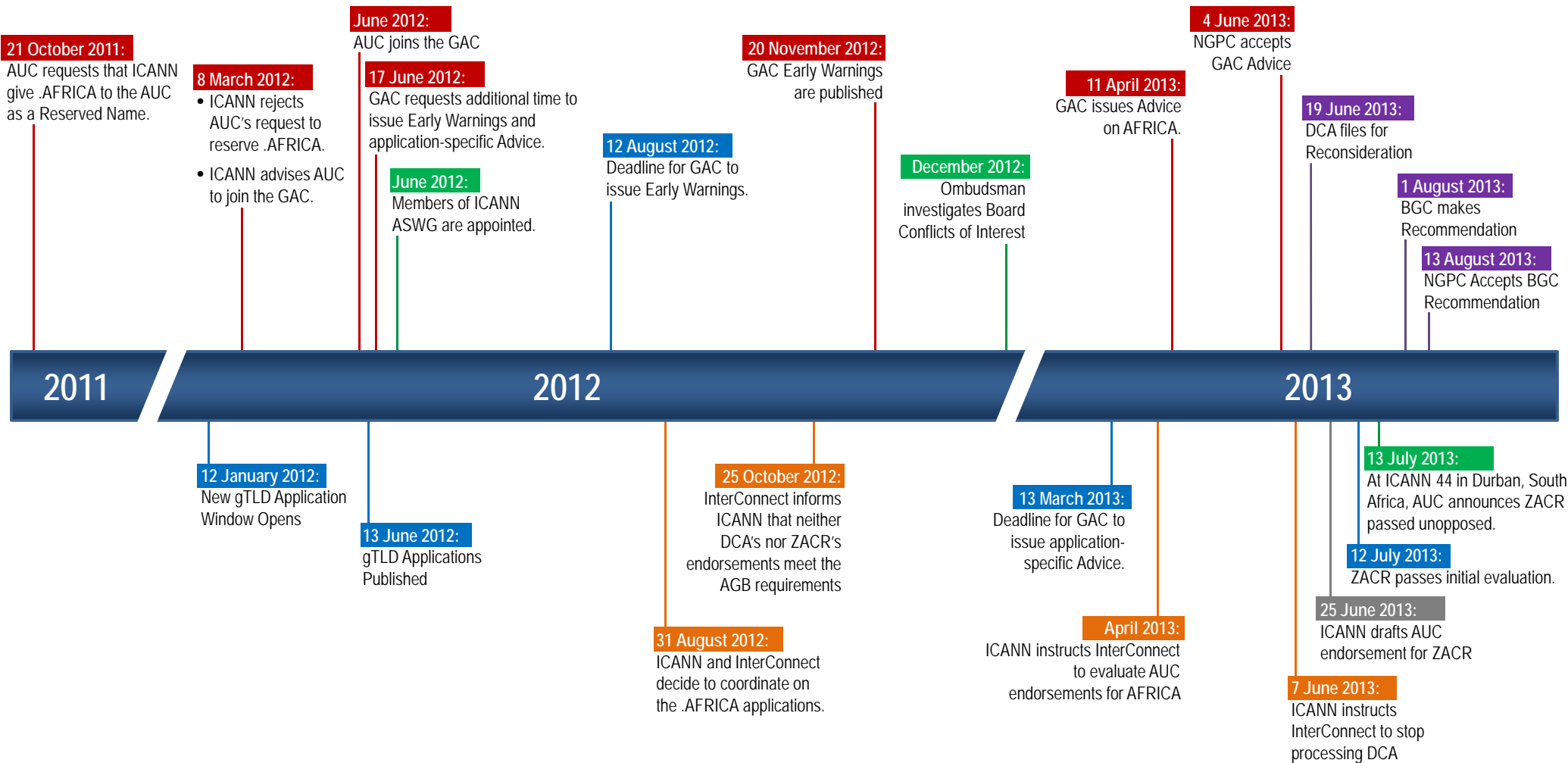


EXHIBIT C-62

Members		AfTLD	AfriNIC	AUC Task Force	ZACR Team	C-62 ICANN ASWG
	Adiel A. Akplogan		✓		✓	
	Mohamed el Bashir	✓			✓	
	Moses Bayingana			✓	✓	
	Victor Ciza	✓			✓	
	Pierre S. Dandjinou		✓	✓		✓
	Maimouna Ndeye Diop Diagne		✓			✓
	Mohamet Diop		✓			✓
	Mohamed Tijani Ben Jemaa				✓	✓
	Yann Kwok	✓	✓	✓		
	Brian Longwe	✓	✓			
	Vika Mpisane	✓			✓	
	Alice Wanjira Munyua				✓	✓
	Barrack Ong'ondo Otieno	✓			✓	✓
	Nii N. Quaynor	✓	✓	✓	✓	✓
	Oumtanaga Souleymane	✓		✓		
	Aliounie Traore	✓	✓		✓	
	Mary Uduma	✓			✓	

EXHIBIT C-63

Redacted - Confidential Application Information

Contact Information Redacted

Contact Information
Redacted

EXHIBIT C-64

AFRICAN UNION

الاتحاد الأفريقي



UNION AFRICAINE

UNIÃO AFRICANA

**EXTRA-ORDINARY CONFERENCE OF AFRICAN
UNION MINISTERS IN CHARGE OF COMMUNICATION
AND INFORMATION TECHNOLOGIES**

Johannesburg, SOUTH AFRICA

2-5 November, 2009

**OLIVER TAMBO DECLARATION
JOHANNESBURG 2009**

DECLARATION

PREAMBLE

WE, the African Union Ministers in charge of Communication and Information Technologies, have met in the Extraordinary Session on the 5th of November 2009 in Johannesburg, Republic of South Africa;

GUIDED BY the Constitutive Act and Vision of the African Union (AU);

RECALLING the Executive Council Decision (EX.CL/238. (VII)) on establishment of the Communication and Information Ministerial Conference (CITMC);

RE-AFFIRMING that Information and Communication Technologies are key to Africa's development and economic competitiveness in the attainment of the African Union vision and the Millennium Development Goals (MDGs);

TAKING INTO ACCOUNT the African Regional Action Plan on the Knowledge Economy (ARAPKE) that was adopted by the Executive Council of the African Union DEC. EX.CL/261 (IX), Khartoum 2006 and the decision DEC. EX.CL/434 (XIII) on the endorsement of its flagship projects, Sharm El Sheikh 2008;

ALSO TAKING INTO ACCOUNT the African Heads of State and Government Declaration on supporting the programme of Infrastructure development in Africa (PIDA) Assembly/AU/9(XII), Addis Ababa 2009;

RECALLING the decision DEC. EX.CL/434 (XIII) of the 13th Ordinary Session of the Executive Council in Sharm El-Sheikh, 2008 calling on the AU Commission, in collaboration with the Regional Economic Communities (RECs), Specialised Institutions, Member States and other stakeholders to take the necessary measures to speed up the implementation of the Reference Framework for Harmonization for Telecommunication ICT Policy and Regulation, the Strategies and Action Plans for the development of a Postal Sector in Africa, and the ARAPKE with a view to develop a strong, integrated and the viable communications sector in the continent;

ALSO RECALLING the decision DEC. EX.CL/434 (XIII) of the 13th Ordinary Session of the AU Executive Council on the establishment of a Communication and Information Technologies Fund to foster the implementation of ARAPKE before 2010;

CONSIDERING the vital role of ICTs in socio-economic development including infrastructure and government services delivering, and its contribution to regional and Continental integration;

APPLAUDING the decision of the Heads of State and Government to dedicate the 14th Ordinary Session of the January 2010 Assembly to the theme; “Information and Communication Technologies in Africa: Challenges and Prospects for Development”;

TAKING NOTE of the Report of the Experts Meeting held from the 2nd to the 4th of November 2009, in Johannesburg, Republic of South Africa.

COMMITMENTS

WE HEREBY COMMIT OURSELVES TO:

1. **ESTABLISH** mechanisms to accelerate and monitor the implementation of ARAPKE, the Reference Framework for Harmonization for Telecommunication ICT and Policy Regulatory, the Strategies and Action Plans for the development of the Postal Sector in Africa;
2. **PROMOTE** Regional integration through the development and implementation of harmonized regional, continental policies and conducive regulatory frameworks for affordable and reliable broadband infrastructure development and private sector investment;
3. **WORK TOGETHER** to protect African geographic and heritage names, traditional knowledge, and traditional cultural expressions which are recognized as economic assets in the information society;
4. **ENSURE** that ICT policies are mainstreamed in other sectors at national, regional and continental levels;
5. **INTEGRATE** ICTs into National Imperative Programmes including Education Training Systems and the public administration with a view to produce a critical mass and increase skilled human capital and promote access and use of ICTs at 10% growth rate per annum;
6. **PROMOTE** ICT R&D initiatives in national imperative to ensure innovation and development within the framework of Africa’s Science and Technology Research

Programs (Consolidated Plan of Action of endorsed by the Executive Council in Khartoum 2006, EXL/254 (VII));

7. **WORK TOGETHER** to promote the use of Country Code Top Level Domains (ccTLDs) as they are a critical national resource whilst ensuring that the technical and administrative operations are at international standards to foster trust and use of African Domain Names in order to bring financial, economic and social-cultural benefits to Africa.
8. **PROMOTE** the transition of Broadcasting from Analog to digital.
9. **PROMOTE** South-South cooperation.

DIRECTIVES

WE HEREBY DIRECT THE AU COMMISSION TO

1. Develop a biennial ICT outlook in order to facilitate the evidence based policy formulation, peer review evaluation and ensure better utilization of the resources for the development of the sector;
2. Develop standards and guidelines for African Postal Services and Strategies to promote the utilization of ICT for the sector development;
3. Promote a massive penetration and use of ICTs into local communities using African languages including codification programs to fit into IT standards, and encourage the development of African Content-based applications to give them rightful place in the information society;
4. Develop common definition, understanding, concept and guidelines on open access, in coordination with relevant stakeholders;
5. Jointly develop with the United Nations Economic Commission for Africa, under the framework of the African Information Society Initiative (AISI) a convention on cyber legislation based on the Continent's needs and which adheres to the legal and regulatory requirements on electronic transactions, cyber security, and personal data protection. It is recommended that AU Member States adopt this convention by 2012;

6. AU Commission to work closely with African Telecommunication Union (ATU) and other relevant stakeholders to encourage regional ICT regulators to establish an African regulatory body;
7. To conduct a continental study on telephone numbering based on the work already done.

RECOMMENDATIONS

Based on these commitments and directives, we recommend to the Assembly of Heads of State and Government to:

1. Urge the AU Commission, UNECA, RECs, Member States and specialized institutions in coordination with all other African ICT stakeholders to establish appropriate institutional arrangements and mechanisms to interconnect ICT backbones including national and regional Internet Exchange Points within Africa and the rest of the world with objective of lowering the tariffs and providing better quality of service;
2. Direct the Ministers of Finance to work in close cooperation with the Ministers in charge of CITs in order to identify innovative funding mechanisms to enable Member States to contribute to the African Union Communication and Information Technologies Fund.

APPRECIATION

We **EXPRESS** our gratitude to H.E. PRESIDENT Jacob Gedleyihlekisa Zuma and the People of the Republic of South Africa for their warm hospitality and excellent organization of this conference.

EXHIBIT C-65

AFRICAN UNION

الاتحاد الأفريقي



UNION AFRICAINE

UNIÃO AFRICANA

Addis Ababa, Ethiopia

P. O. Box 3243

Telephone: 5517 700

Fax: 5517844

Website: www.africa-union.org

**THIRD CONFERENCE OF AFRICAN MINISTERS
IN CHARGE OF COMMUNICATION AND
INFORMATION TECHNOLOGIES**

03 - 07 August 2010

Abuja, Nigeria

AU/CITMC-3/MIN/Decl.(III)

2010 ABUJA DECLARATION

2010 ABUJA DECLARATION

PREAMBLE

WE, African Ministers in charge of Communication and Information Technologies meeting at the Third Ordinary Session of the African Union Conference of Ministers in charge of Communication and Information Technologies in Abuja, Federal Republic of Nigeria, from 6 – 7 August 2010;

Guided by the Constitutive Act of the African Union and the Vision of the African Union (AU);

Recalling the Executive Council Decision (EX.CL/Dec./238. (VII)) on establishment of the Communication and Information Technologies Ministerial Conference (CITMC);

Bearing in mind the 14th Assembly of Heads of State and Government Declaration on Information and Communication Technologies in Africa: Challenges and Prospects for Development, Doc. Assembly/AU/11(XIV), held in Addis Ababa, Ethiopia, from 1 to 2 February 2010;

Re-affirming that Information and Communication Technologies are key to Africa's development and economic competitiveness in the attainment of the African Union Vision and the Millennium Development Goals (MDGs);

Taking into account the African Regional Action Plan on the Knowledge Economy (ARAPKE) adopted by the Executive Council of the African Union Decision EX.CL/Dec./261 (IX) in Khartoum, The Sudan in 2006;

Considering the African Heads of State and Government Declaration Assembly/AU/9(XII), on supporting the Programme for Infrastructure Development in Africa (PIDA), adopted in Addis Ababa, Ethiopia, in 2009;

Considering also the Oliver Tambo Declaration adopted in Johannesburg in November 2009;

Recalling the Decision EX.CL/Dec./434(XIII) of the 13th Ordinary Session of the Executive Council held in Sharm El-Sheikh, Egypt, in July 2008;

Welcoming the various initiatives on the development of the Information and Communication Technologies sector in Africa, including:

- The Reference Framework for Harmonization of Telecom/ICT Policy and Regulations In Africa;
- African Regional Action Plan for the Knowledge Economy;
- Action Plan for the Development of Postal Sector in Africa;
- EU-Africa Partnership on Infrastructure (ICT component);
- EU-Africa Partnership on Science, Information Society and Space;
- NEPAD Planning and Coordination Agency (NPCA) ICT programmes.
- Connect Africa Summit, and
- The Pan-African e-Network for Tele-Medicine and Tele-Education.

Taking note of the Report of the Experts Meeting held in Abuja, Federal Republic of Nigeria, from 3 to 5 of August 2010.

HEREBY COMMIT OURSELVES TO:

1. **INTEGRATE** Information and Communication Technologies into our respective National Indicative Programmes;
2. **PROMOTE** the mainstreaming of ICT policies in other sectors at national, regional and continental levels;
3. **WORK TOGETHER** to contribute to the implementation of the Programme for Infrastructure Development in Africa (PIDA), notably its ICT component;
4. **PROMOTE** the transition from Analog to Digital terrestrial Broadcasting and to set up National Multi-Disciplinary Committee (Telecoms/ICT experts and regulators, broadcasting experts and regulators and policy makers) on the Analog Switch-Off with the mission, among others, to oversee the national strategy and to coordinate with similar committees at regional and continental levels;
5. **ENCOURAGE** the African private sector to invest in ICT networks projects;
6. **SET UP** national structure to promote the use of ICT in education to enable the rollout and scaling up of the NEPAD e-School initiative;
7. **PROMOTE** the implementation of the e-Post programme as part of the National e-strategies taking into account coordination at the regional level;

8. **SECURE** the orbital/spectrum resources required to accommodate continental satellites including applying as a block to secure allocation of unused ITSO orbital resources to Africa as priority;
9. **SUPPORT** the implementation of the 'Connect Africa' commitment to promote human and institutional capacity building through interconnected network of ICT Centres of Excellence;
10. **SUPPORT** the creation of an African Centre of Excellence with continental coverage, in the field of ICT;
11. **SUPPORT** the decision to integrate the Ministerial Conference and the Executive Committee of the NEPAD e-Africa Commission into the African Union CIT Ministerial Conference (CITMC);
12. **ENCOURAGE** the RECs to strengthen their capacity through the provision of Postal Experts for an optimum implementation of the Action Plan for the Development of the Postal Sector in Africa;
13. **INCLUDE** postal entities in our strategies and programmes for the development of the ICT universal access in accordance with the Declaration of the 14th Assembly of the African Union held in Addis Ababa, Ethiopia, in February 2010.

HEREBY REQUEST THE AU COMMISSION TO:

- 1) **Work with** the ITU and with all the development partners to continue activities on harmonisation of policy and regulations in Africa based on the platform created by HIPSSA project in order to implement the remaining components of the Reference Framework adopted by the CITMC-2;
- 2) **Jointly finalize with** the United Nations Economic Commission for Africa, within the framework of the African Information Society Initiative (AISII), the Draft Convention on Cyber Legislation and support its implementation in Member States by 2012;
- 3) **Set up** the structure and modalities for the Implementation of the DotAfrica project;
- 4) **Conduct** a feasibility study for the establishment of the African Space Agency taking into account existing initiatives, and develop an African Space Policy in cooperation with the RECs, UNECA and ITU;

- 5) **Implement** the integration of the NEPAD e-Africa Commission governance into the governance of the CITMC;
 - 6) **Provide** support to Member States in implementing the e-Post programme in cooperation with the stakeholders;
 - 7) **Enhance** organizational and institutional capacity building for better programmes and initiatives coordination, and for an appropriate and consolidated mechanism for reporting to the CITMC.
 - 8) **Develop** an action plan and a monitoring mechanism for implementation of CITMC decisions
 - 9) **Strengthen** the capacity of the Departments in charge of Communications and Information Technologies within the African Union Commission as to allow an optimum implementation of this Declaration
14. **APPRECIATE** the role of African institutions, UN Agencies, African and international development partners and the private sector in supporting the AU efforts to develop the ICT sector in the continent;
15. **EXPRESS** our gratitude to His Excellency President **Dr. Goodluck Ebele Jonathan**, the Government and People of the Federal Republic of Nigeria for their warm hospitality and excellent organization of this conference.

Abuja, Nigeria, 7 August 2010

EXHIBIT C-66

Redacted - Confidential Application Information

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EXHIBIT C-67

Geographic Names Panel

ICANN New gTLD Program

Sensitive and Confidential Data

Date: 10-Jul-12

#	Issue to be resolved	ICANN Preliminary Response
1	Is it ICANN's intent that every author of a letter of support is contacted to attempt to verify that they, indeed, authored the letter of support?	Yes
2	What happens when a letter writer indicates support for strings that are not applied-for (for instance, .afrique)?	Send a clarifying question to the applicant to have them inform and confirm that the author of the letter is supporting the correct string (e.g., dotafrica versus .afrique)
3	What should happen when it is difficult or impossible to verify who was in the actual position of authority to write the letter at the time the application was submitted?	AGB states that the applicant should explain the validity of the actual position of authority within the letter. If the timing is unclear, then send a clarifying question to the applicant to confirm with the government that the actual position of authority within the letter is valid.
4	What is the authoritative source of information about the number of countries in a particular region? This will have significant impact on the .africa example.	See AGB Section 2.2.1.4.2.
5	Many country's cultures require official document to not be signed, but sealed instead. Does the seal of an authoritative supporter match the requirement for letters of support being signed?	Yes, and apply the same authentication process as described in question #1.
6	Is a letter, signed by a supporter not currently holding that office or a position of authority an acceptable letter of support (for instance, .vegas)?	Yes, only if they were the appropriate authority at the time the letter was signed.

7	<p>The AGB has the words (page 2-20), "the letter writer should demonstrate the government's or public authority's understanding that the string is being sought through the gTLD application process and that the applicant is willing to accept the conditions under which the string will be available." How should a letter actually demonstrate this? Is just saying it enough?</p>	<p>Saying it is enough as the AGB states "the letter writer should demonstrate the government's or public authority's understanding that the string is being sought...".</p>
8	<p>A very high number of validations to do will likely mean a high number of queries to people who author letters of support? Is this what ICANN actually wanted? Intended? See issue P1, #1.</p>	<p>Yes and yes.</p>
9	<p>The AGB has the words (page 2-21), "the GNP will confirm that the applicant has provided the required documentation from the relevant governments or public authorities, and that the communications from the government of public authority is legitimate and contains the correct content." What does "legitimate" mean in this context. Simply asking them to confirm that they wrote the letter? How is "legitimacy" defined in this context?</p>	<p>Please conduct the same authentication process as described in question #1. This includes the validation that the letter itself is from the author and that it comes from the right branch of government or the right level of authority.</p>
10	<p>In the .africa case, do letters from The African Union count toward the 60% rule? What about a letter from the UN?</p>	<p>No, per the AGB the letters must come from each of the individual countries. Please send a clarification question to state that the African Union letter is meaningful, however it does not count towards the 60% rule.</p>
11	<p>If a letter does not meet ICANN's criteria for support, should the GNP go to the signing entity and request that a new letter be issued? Does the applicant do that?</p>	<p>A clarifying question should be issued to the applicant, where the applicant must obtain a new letter from the government to meet ICANN's criteria for support.</p>
12	<p>ICANN is responsible for identifying the appropriate point of contact within the support letter author's administration (AGB page 2-21). Will this be supplied along with each letter of support when assigned to each GNP firm?</p>	<p>The point of contact should be part of the letter of support. If not, please issue a clarifying question.</p>

13	The AGB is very unclear about who corrects statements of support that do not meet ICANN's criteria in AGB 2.2.1.4.3. At times it looks as if the GNP is contacting the signing entity. At other times it appears that ICANN is working with the applicant to repair the problem. Which is it?	If the application is incomplete, then please issue a clarifying question to the applicant. If the application and the content of the letter is complete, then go to the signing entity for validation.
14	What should be done about letters of support that are either illegible or whose translations appear not to match the original text in the source language?	Please issue a clarifying question for either scenarios.
15	What happens when a regime falls (in our case the Egyptian, Libyan and Tunisian parts of .africa) and we have the documents from the previous regime?	As part of the verification process, the panel will contact the government to validate the authenticity of the documents. The government can always withdraw the letter of support.
16	Many support letters did not include email or other contact details. This would significantly challenge any deadlines for verification and authentication surrounding Geographic names.	Please try to conduct your own investigation to authenticate the letter. If this activity is deemed unsuccessful, then issue a clarifying question. We will look into the IANA authentication approach to see if we can leverage any existing procedures.
17	In the case of a regional (a geographic name like .africa or .oceania, for instance) it is not always clear what needs to be answered by the applicant and what needs to be answered in each support letter.	Please see response to question 13.
18	In the case of a regional application, should the applicant be warned that the amended/new letters of support that meet ICANN's criteria are not coming in and that the deadline is approaching?	No. If the letters are not provided, then a clarifying question should be issued.

EXHIBIT C-68

From: Mark McFadden Contact Information Redacted
Sent: Friday, March 15, 2013 5:56 PM
To: Larisa B. Gurnick
Cc: Emily Taylor
Subject: .AFRICA
Attachments: Expression of Interest for the Dot Africa -ENG-3.pdf; Notes on the African Union.docx; 2013 03 14 - GEONAM - Evaluation Worksheet - AFRICA.2.xls

Importance: High

Larissa:

Our panel has reconsidered the additional letters of support for .africa as ICANN has requested. The files attached to this message should help ICANN's management team make progress on the Geographic Names issues related to both applications for the .africa gTLD.

Our panel attaches a spreadsheet which contains the additional analysis according to the Guidebook which was requested by ICANN. It sets out the documents provided by the applicants in date order. From this, our panel observes that there are letters from the African Union supporting both .AFRICA applications. Two dating back to 2008-9 appear to support the DotAfrica Project application; the two more recent letters refer to the African Union's own application.

We have prepared a short note on the African Union itself, and this contains an analysis of the two declarations of ICT Ministers that were provided. These instruct the executive (Commission) to pursue the DotAfrica project, and in our independent opinion, provide suitable evidence of support from relevant governments or public authorities.

In brief, the African Union is closely modeled on the European Union. It has the power to bind member states, and has an executive arm, the Commission. It has 53 member states. In the independent opinion of the Geographic Names panel, we believe that it is a relevant public authority in the guidebook's terms.

The attached "expression of Internet" document refers to additional statements (explored in the note on the African Union) which would be helpful - but not necessary - to see.

In summary, we make the following recommendations to ICANN: the Geographic Names panel should be directed to take into account declarations made by ICT Ministers of the African Union, contrary to explicit previous guidance by ICANN; also, ICANN should work with the Geographic Names panel to re-fashion separate CQs for each of the applicants with the intent to discover whether the African Union Declarations support both .africa applications, or clarify which of the two applications the African Union now intends to support.

We stand ready to take immediate action in regards to further work on .africa.

mark

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EXPRESSION OF INTEREST FOR THE OPERATION OF THE DOTAFRICA

In their Olivier Tambo Declaration adopted at their extraordinary Conference held in Johannesburg, South Africa, 2-5 November 2009, the African Union Ministers in charge of Communication and Information Technologies (CITMC) acknowledge the necessity to "Establish DotAfrica as a continental Top-Level Domain for use by organizations, businesses and individuals with guidance from African Internet agencies".

And in their Abuja 2010 Declaration adopted at their Third Ordinary Conference (CITMC-3) held in Abuja, Nigeria, from 6 – 7 August 2010, the Ministers requested the African Union Commission (AUC) to "Set up the structure and modalities for the Implementation of the DotAfrica project."

This decision followed the acknowledgement of the benefit of the DotAfrica domain name to Africa, by the African Union Heads of State and Governments (HoSG) Summit held in February 2010 in Addis Ababa.

DotAfrica (.Africa) is that specific Internet namespace for Africa and which is likely to be endorsed for operation during the next round of new GTlds which ICANN will be launching soon.

DotAfrica will be adding value to the namespace as a recognizable phrase which focuses on the African identity. DotAfrica will serve a community which spans over a large portion of region, therefore providing registrants with accrued possibilities for establishing their Internet presence. It is expected that the Africa small and medium size enterprises will greatly benefit from DotAfrica, as they thrive beyond their local markets to invade the regional and continental marketplace. The Internet will therefore become a platform for growth of the Africa business.

The introduction of the DotAfrica will create an attractive regional home for the Pan-African Internet community; this will be the first sponsored registry to be operating from Africa and therefore serving the specific needs of its communities.

Within this background, the African Union Commission is seeking the services of interested entities to operate the DotAfrica gtld.

Interested firms or consortium should submit the following documents along with signed and sealed Letter of Expression of Interest:

- i. Detailed company profile indicating verifiable previous experiences within the last three years,
- ii. Copies of registration certificates and business licenses,
- iii. Audited Financial Statement for the past three years

Communication and Enquiry

Additional information could be obtained from

M. Moctar YEDALY,
Head of Information Society Division
African Union Commission, Addis Ababa, Ethiopia
Tel: +251-11-4665058; Fax: 11-552 5855/+251-11-4665081
E-mail: yedalym@africa-union.org

Or

Hussain Usman, Procurement Unit,
Email: hussainu@africa-union.org

Submission of Expression of Interest

One original and three copies of EOIs (in either English or French Language) must be received in one sealed envelope not later than **Friday, 3rd of June 2011 at 1530hours local time**. Late bid would be rejected and return unopened.

The address for submission is: **The Chairperson of Tender Board; African Union Commission; Roosevelt Street, Building C, 2nd Floor, Room 327, P. O. Box 3243, Addis Ababa, Ethiopia Tel: +251 11-551-7700; Fax: +251 11-551-0430**

Information on the outer envelope should include: on the top left side, boldly written; **Expression of Interest for the Operation of the Dotafrica.**

In the middle of the envelope should be the address.

At the bottom right corner; write "**Do not open, except in the presence of Evaluation Committee**"

All EOIs received would be evaluated based on the company's experience in similar assignment; valid registration certificates and annual turnover

Bidding Document would be sent to short listed companies that met our technical requirements for the final stage of the selection process.

Notes on the African Union

It has 53 members. The only country in the continent of Africa which is not a member is Morocco. It left because of disagreement over Western Sahara issues.

The Constitution of the African Union (dated 11 July 2000) can be found at http://www.africa-union.org/root/au/aboutau/constitutive_act_en.htm#Article7

Its objectives include greater unity and solidarity between African countries, promotion of peace, security and stability, providing sustainable development at the economic, social and cultural levels as well as *integration of African economies*, coordination and harmonisation of policies between Regional Economic Communities.

African countries have the right to request intervention from the Union to restore peace and security.

The organs of the Union include:

The **Assembly** of the Union – takes decisions by consensus or two-thirds majority on a vote.

Its powers include “determine the common policies of the Union”; “receive, consider and *take decisions* on reports and recommendations from the other organs of the Union”; “monitor implementation of policies and decisions of the Union as well as *ensure compliance by all Member States.*”

The Assembly may impose sanctions on Member States.

The African Union’s constitution also provides for the establishment of a Pan-African Parliament, Court of Justice, and central banks.

The Commission is the executive wing of the African Union, whose structure, functions and regulations are determined by the Assembly.

Observations –

The AU is closely modelled on the EU. Its constitution provides for binding determinations and decisions to be made by the Assembly. The withdrawal of Morocco is significant, because it indicates that Member States do not feel that continued participation in the AU is compatible with ignoring or opposing its decisions.

There are two Declarations relevant to the .AFRICA gTLD application(s).

2009 – Oliver Tambo

2010 – Abuja Declaration

Both are declarations of African Union Ministers in Charge of Communication and Information Technologies – the relevant portfolio for domain name policy.

The 2009 Declaration commits to working together to promote the use of ccTLDs as critical national resources, and ensure that the technical and administrative operations are at international standards to foster trust and use of African Domain Names. It also recommends to the AU Assembly to direct Ministers of Finance to work in close cooperation with ICT Ministers to *identify innovative*

funding mechanisms to enable Member States to contribute to the African Union Communication and Information Technologies Fund.

NB The Expression of Interest for the Operation of Dot Africa states that the Oliver Tambo Declaration refers to DotAfrica. I have been unable to find the quoted phrase in the copy I have, and (while this is not necessary given the 2010 declaration) it would be helpful if the applicants could provide further documentation containing the quoted phrase if possible.

The 2010 Declaration requests the AU Commission to “set up the structure and modalities for the implementation of the DotAfrica project.” This is a clear instruction by ICT Ministers from the African Region to its executive wing.

NB The Expression of Interest also mentions that the African Union Heads of State and Governments in their Summit (Addis Ababa 2010) acknowledged the benefit of DotAfrica. I was unable to locate this in the Addis Ababa decisions document. Again, while this is not necessary given the 2010 Declaration, it would be helpful to see the documentation supporting this statement.

EXHIBIT C-69

To: Ann H. Yamashita Contact Information Redacted
From: Mark McFadden
Sent: Tue 9/18/2012 12:18:46 AM
Subject: Re: Re: Trial balloon

Perfect. We've been spending acres of time on it. Way out of proportion to any other geographic name analysis.

mark

Mark McFadden
Madison WI
Contact Information Redacted

On Sep 17, 2012, **Ann H. Yamashita** Contact Information Redacted wrote:

Yup. I plan to start the conversation internally, but we can discuss this at a later date.

Thanks,

Ann Yamashita

Program Manager, New gTLD Program

Internet Corporation for Assigned Names and Numbers (ICANN)

Contact Information Redacted

From: Mark McFadden Contact Information Redacted
Reply-To: Contact Information Redacted
Date: Monday, September 17, 2012 10:03 AM
To: Ann Yamashita Contact Information Redacted
Subject: Re: Re: Trial balloon

But .africa is a big deal and we really think a briefing would be a good idea.
Maybe we can talk about it later.

mark

Mark McFadden
Madison WI
Contact Information Redacted

Contact Information Redacted

On Sep 17, 2012, **Ann H. Yamashita**

Contact Information Redacted

Got it.

Thanks,

Ann Yamashita

Program Manager, New gTLD Program

Internet Corporation for Assigned Names and Numbers (ICANN)

Contact Information Redacted

From: Mark McFadden Contact Information Redacted

Date: Friday, September 14, 2012 9:29 AM

To: Ann Yamashita Contact Information Redacted

Subject: Re: Trial balloon

As I mentioned in the mail below. We would not be ready to have this conversation until sometime around the Toronto meeting.

Mark

Mark McFadden
Madison Wisconsin

On Sep 14, 2012, at 16:37, "Ann H. Yamashita"

Contact Information Redacted

Hi Mark,

My apologies for the delay in response. We would probably have to target to schedule the meeting sometime next week. As you know that Kurt will be in DC, I will need to work with Wendy to see when we can grab him in the morning. Let me see what I can do and if my Monday of next week you do not see a meeting notice. Please let me know.

Actually, is there a preference that you would prefer to have the meeting or are you completely flexible? Once I hear back on your availability, then I will work with Wendy.

Thanks,

Ann Yamashita

Program Manager, New gTLD Program

Internet Corporation for Assigned Names and Numbers (ICANN)

Contact Information Redacted

From: Mark McFadden Contact Information Redacted

Date: Friday, August 31, 2012 8:22 AM

To: Ann Yamashita Contact Information Redacted

Subject: Trial balloon

In the interests of making your life less stressful, I wonder if you would be open to a proposal.

We are aware that the applications for .africa and .dotafrika are very sensitive politically. In terms of .dotafrika we have already received good guidance from ICANN thanks to the simulations that we ran. However, .africa was always going to be more problematic.

We think we will be done with .africa some time around the Toronto meeting. Would you be open to setting up a briefing with you, Larissa, Karen Lentfer and Kurt so that we can brief you on our reasoning and rationale for these two important applications? It is clearly a controversial and politically difficult pair of applications and, while we don't think ICANN should second-guess its panels, we think it would be very helpful for ICANN to have "background" on these two applications.

It runs the risk of treating them differently, of course. But, then again you could always ask us to provide the same "background" on other applications if you decided that was appropriate.

It's just an idea – we are spending an extensive amount of time on these

applications.

No need to set anything up now, but I wanted to see how you felt about the idea.

mark

Mark McFadden
IP Addressing, Naming and Governance Specialist
InterConnect Communications

Contact Information Redacted

InterConnect Communications Ltd, Merlin House, Station Road, Chepstow, NP16 5PB,
United Kingdom.

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EXHIBIT C-70

From: Mark McFadden Contact Information Redacted
Sent: Thursday, May 30, 2013 10:18 AM
To: Cheri Bolen; Trang Nguyen
Cc: Emily Taylor; Alan Turner
Subject: Revised CQs for UniForum Country Related Letters of Support

Importance: High

Cheri:

Thanks for your note.

Your questions and comments on the October spreadsheet are helpful. As a bit of background, we presented that spreadsheet as an early look when we brought the problems with .africa and .dotafrica to ICANN's attention last Fall. Since then, there have been many conversations between ICANN and the Geographic Names panels and our evaluations have changed in certain places. So, to compare the October 2012 spreadsheet against the May 2013 CQs is bound to highlight differences in the evaluations of the support letters.

Another thing to be aware of is that one of the applicant has successfully changed the string they are applying for in that timeframe. In many cases, where you see a request for meeting criteria 3 and 4 in the new CQs and where you see only criteria 4 in the old draft spreadsheet, this difference represents our most recent and final evaluation of the letters of support based on the cumulative advice we have received from ICANN and our judgment as an expert panel giving advice to ICANN.

Redacted - Confidential Application Information

Further, the AU declarations are not letters of support and so will not get a CQ. The African Commission itself does get a CQ (for each of the two .AFRICA applications) and those have been separately drafted and sent to you, along with CQs for UNECA. UNECA, in our opinion, should get a CQ (and we have provided drafts for you) because it is specifically named in the African Union resolutions and instructed to assist the African Union in applying for .AFRICA. UNECA is an intergovernmental organization for the region, and therefore in our opinion qualifies as a relevant public authority.

In addition, we are happy to reformat the letters based on the template you provided. We had used Example 4 from the template you provided but we eliminated the duplicate paragraph that is included there. We have re-inserted that duplication as you asked.

The new CQ document will be uploaded into the directory we created on Tuesday.

Warm Regards,

mark

Mark McFadden
Internet Names, Addresses and Numbers
InterConnect Communications

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EXHIBIT C-71

From: Mark McFadden Contact Information Redacted
Sent: Thursday, October 25, 2012 9:31 AM
To: Larisa Gurnick
Cc: Ann H. Yamashita; Russ Weinstein
Subject: RE: .africa
Attachments: IN CONFIDENCE - GEONAM - Preliminary Evaluation Worksheet .africa.xls

Importance: High

Larisa,

Here is a preliminary matrix that documents the problem with .africa. Note that we were advised by Kurt to cease working on .dotafrica until the executive team had made a decision about how to proceed.

There are 44 letters of support for .africa. Of these, 4 are from either the UN or the AUC and ICANN has already advised us that these will not count toward the 60% regional rule in the AGB. As you can see in the matrix, under the previous reading of the criteria in the AGB many of these letters will result in CQ's. The problem is that the governments supporting .africa were given a template letter that fails many of the tests of the AGB – and they used that template in writing their letter of support.

There are only six letters of support for the former .dotAfrica. However, one of the letters is from the AU and there is clear intent that this “represents” the member states of the AU. In a note on the endorsement the applicant writes the following:

“The applied-for DotAfrica gTLD string is not for a country our territory. However, the guidebook expressly stipulates that the geographical regions are defined by UNESCO, and Africa is clearly stated as one of the UNESCO regions (see <http://www.unesco.org/new/en/unesco/worldwide/>); that is, a name listed as a UNESCO region or appearing on the “Composition of macro geographic(continental) or regions, geographic subregions, and selected economic and other groupings” list, and as such is a geographic name that requires government support. On the basis of this, we understand that DotAfrica is a geographic TLD and is not a Community-based TLD.

In recognition of the centrality of this requirement, we had undertaken early efforts to obtain an unequivocal endorsement for our DotAfrica proposal from the relevant United Nations body for Africa which is the **regional economic grouping**, namely the United Nations Economic Commission for Africa (UNECA). (Please see attached document signed by the Executive-Secretary of UNECA and United-Nations Under-Secretary-General, H.E. Abdoulie Janneh)

DCA had worked closely with UNECA leaders and presented the DotAfrica initiative for their endorsement and support.

The UNECA is a public diplomatic authority that was founded in 1958 and preceded the establishment of the Organization of African Unity (OAU) that was formed in 1963; and is similar to other UN regional economic groupings covering different regions of the globe such as the UN Economic Commission for Europe (ECE), the UN Economic Commission for Asia (UN-ASIA), and the UN Economic Commission for Latin America (UNECLA).”

Quite obviously, if the 60% rule is taken seriously, then the former .dotafrica applications has no chance as a geographic name application unless ICANN directs us to view the letter from the AU as a letter from a treaty organization which represents the wishes of all of its members.

mark

From: Larisa Gurnick Contact Information Redacted
Sent: Thursday, October 25, 2012 5:07 PM
To: Mark McFadden
Cc: Ann H. Yamashita; Russ Weinstein
Subject: .africa
Importance: High

Mark,

I just learned from Ann that there is a meeting taking place today at the executive level to discuss .africa. We need your matrix for this meeting. Can you also please let us know how many letters of support there are for .africa and .dot africa – I believe that this was the original intention of the matrix that you were putting together. Please copy all when you send your response.

Thank you,

Larisa B. Gurnick

Consultant

Internet Corporation for Assigned Names and Numbers (ICANN)

Contact Information

Redacted

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EXHIBIT C-72

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EXHIBIT C-73

	Algeria	Benin	Burkina Faso	Burundi	Cameroon	Cape Verde	Central African Republic	Chad	Comoros	[Republic of the] Congo	Democratic Republic of Congo	Djibouti	Egypt	Gabon	Ghana	Guinea	Ivory Coast	Kenya	Liberia	Mali	Mauritania	Maritius	Morocco	Mozambique	Niger	Nigeria	Senegal	Sierra Leon	South Africa	Sudan	Swaziland	Tanzania	Togo	Tunisia	Uganda	Zambia	Zimbabwe	
Country / Territory?	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Support	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Government body exists?	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y
Signatory held role on app. date?	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Q	N	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y
Government body relevant?	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Documentation authentic?	Q	Q	Q	Q	Q	Q	Q	Q	Q	Q	Q	N	Q	Q	Q	Q	Q	Q	Q	Q	Q	Q	Q	Q	Q	Q	Q	Q	Q	Q	Q	Q	Q	Q	N	Q	Q	Q

From: Emily Taylor Contact Information Redacted
Sent: Friday, May 10, 2013 9:17 AM
To: Trang Nguyen; Cheri Bolen
Cc: Tony Holmes; Mark McFadden
Subject: Re: FW: .africa Clarifying Questions Call

Dear Trang

I promised to send you our advice about ICANN's proposed approach to the .AFRICA applications on Geo Names.

Attached to our email of 26 April, we made a request to reach out direct to the African Union, and also attached draft CQs for each of the .AFRICA applications.

You replied the same day to say that following an internal discussion your recommendation is not to reach out to the African Union, but to send CQs for all letters of support submitted by the applicants.

We would like to highlight the following issues which are likely to arise through the proposed course of action:

1. One of the applicants has letters of support from the AU which are many years old, and date prior to the time when the AU held a competitive tender for the registry for .AFRICA. It is foreseeable, indeed we believe it likely, that the applicant will continue to rely on those letters of support.
- 2.
3. One of the applications submitted letters of support from 35 countries or public authorities which do not meet the Guidebook requirements and will require CQs. We anticipate that many months will elapse before the applicant is able to secure further letters from those countries, and that given conditions on the ground it may not be possible to obtain letters that conform to Guidebook requirements at all. All of this will considerably delay the evaluation of both .AFRICA applications.
- 4.
5. Ultimately, there are questions which only the AU, and not the applicants, can answer. These are set out in the draft which we sent through on 26 April. Given our recommendation that the AU be treated as a relevant public authority, that its membership covers all sovereign states in the continent of Africa apart from one, an answer from the AU will clarify matters in a way that the applicants themselves may be unable to.

We understand and respect the reasoning behind your internal recommendation.

However, we believe that the proposed way forward will add considerable delay, potentially confuse matters further, and will not resolve the key question which is the AU's position with regard to the two applications.

The Geo Names panel is entitled under the Guidebook to reach out direct to relevant governments or public authorities in order to determine their intentions (paragraph 2.2.1.4.4, which states "The GNP may communicate with the signing entity of the letter to confirm their understanding of the terms on which the support for an application is given").

Given that both applicants rely on AU support, and the Guidebook foresees that it is possible for a single country or public authority may support more than one application for the same string, we strongly recommend in the interests of both applicants and of the gTLD process that the next step should be to approach the AU, and signal to the applicants that depending on the outcome, we may also seek CQs from the remaining countries and authorities attached to their respective applications.

I hope that you will give advice your careful consideration. It is in conformance with the guidebook, deals fairly and reasonably between the applicants without the risk of prejudice to one or the other, and is likely to avoid many months of delay and potential confusion.

Tony Holmes and I would be happy to have a call with you and any of your colleagues to discuss this further. In fact, we have a call arranged with Cheri for Monday morning your time, and I hope we can pick up this discussion then.

Kind regards

Emily

On 29 April 2013 11:09, Mark McFadden Contact Information Redacted wrote:

>
> Mark McFadden
> Internet Names, Addresses and Numbers
> InterConnect Communications
> Consulting in Communications Regulation and Strategy
 Contact Information Redacted

>
>
> From: Trang Nguyen Contact Information Redacted
> Sent: Friday, April 26, 2013 3:10 PM
> To: Mark McFadden; Vanessa Graff; Mark McFadden - home; Emily Taylor
> Cc: Tony Holmes
> Subject: Re: .africa Clarifying Questions Call
>
> Hi Mark,
>
> We had an internal discussion on the information that you sent and
> have the following recommendations:
> * No outreach to the EU.
> * Yes to sending CQs to the applicants of the 2 .Africa applications.
> However, the CQs should contain questions for all letters of support
> submitted by the applicants. The reason being that if the applicant(s)
> is/are unable to obtain a revised support letter from the AU or UNECA,
> they may be able to fulfill the requirements by approaching the individual governments.
> Please let me know if you'd like to discuss further.
>
> Thank you,
>
> Trang
>
> From: Mark McFadden Contact Information Redacted
> Date: Friday, April 26, 2013 5:33 AM
> To: Trang Nguyen Contact Information Redacted Vanessa Graff
> Contact Information Redacted Mark McFadden - home
 Contact Information Redacted Emily Taylor Contact Information Redacted
> Cc: Tony Holmes Contact Information Redacted
> Subject: .africa Clarifying Questions Call
>
> Vanessa, Trang:

>
> Two things: draft attached to this message and meeting arrangements.
>
> First, find three documents attached to this message. Two are the
> first drafts of CQ's for the .africa applicants. One is a contact
> request for the African Union. We'd like to talk about these on our
> call. Emily and I have lots of other questions to go with the drafts,
> but at least we have the work started.
>
> Second, Emily and I don't yet have meeting details for the call -- 8am
> (PST), 4pm (UK time), 5pm (Geneva time). It would be very helpful to
> have a UK tollfree dial-in number.
>
> mark
>
> Mark McFadden
> Internet Names, Addresses and Numbers
> InterConnect Communications
> Consulting in Communications Regulation and Strategy
Contact Information Redacted

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--

Emily Taylor
Director

Contact Information Redacted

Contact Information Redacted

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EXHIBIT C-75

From: Mark McFadden Contact Information Redacted
Sent: Friday, April 26, 2013 5:33 AM
To: Trang Nguyen; Vanessa Graff; Mark McFadden - home; Emily Taylor
Cc: Tony Holmes
Subject: .africa Clarifying Questions Call
Attachments: Contact request - AFRICAN UNION.docx; Draft CQ #1.docx; Draft CQ #1.docx

Vanessa, Trang:

Two things: draft attached to this message and meeting arrangements.

First, find three documents attached to this message. Two are the first drafts of CQ's for the .africa applicants. One is a contact request for the African Union. We'd like to talk about these on our call. Emily and I have lots of other questions to go with the drafts, but at least we have the work started.

Second, Emily and I don't yet have meeting details for the call -- 8am (PST), 4pm (UK time), 5pm (Geneva time). It would be very helpful to have a UK tollfree dial-in number.

mark

Mark McFadden
Internet Names, Addresses and Numbers
InterConnect Communications
Consulting in Communications Regulation and Strategy
Contact Information Redacted

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Contact request – African Union

Two applications under the current round of ICANN gTLDs have attached the following letters from African Union bodies:

Application #	Letter date	Organisation	Signatory
1-1165-42560	27 August 2009	African Union Commission	Chairperson, Jean Ping
1-1243-89583	4 April 2012	African Union	Commissioner, Infrastructure and Energy, Dr Elham M A Ibrahim

Copies of the letters are attached for your reference.

Support from relevant government or public authority

Paragraph 2.2.1.4.3 of the Applicant Guidebook states

"It is important to note that a government or public authority is under no obligation to provide documentation of support or non-objection in response to a request by an applicant.

"It is also possible that a government may withdraw its support for an application at a later time...."

Paragraph 2.2.1.4.4 foresees that the same government or public authority may support more than one application, eg "...in the event that a contention set is composed of multiple applications with document of support from the same government or public authority..."

Right of ICANN and Geographic Names Panel to contact signing entity of support letters

According to paragraph 2.2.1.4.4 ("Review Procedure for Geographic Names"),

"For any application where the [Geographic Names Panel] GNP determines that the applied-for gTLD string is a geographic name requiring government support, the GNP will confirm that the applicant has provided the required documentation from the relevant governments or public authorities, and that the communication from the government or public authority is legitimate and contains the required content. ICANN may confirm the authenticity of the communication by consulting with the relevant diplomatic authorities or members of ICANN's Governmental Advisory Committee for the government or public authority concerned on the competent authority and appropriate point of contact within their administration for communications."

"The GNP may communicate with the signing entity of the letter to confirm their intent and their understanding of the terms on which the support for an application is given."

The purpose of this communication is to confirm the intent of the African Union with regard to the above-named applications.

Please answer the following questions

- 1. Please indicate for which of the applications the African Union intends to provide support or non-objection**

		Please indicate the ONE option that applies
Option A	The African Union intends to provide support or non-objection to BOTH APPLICATIONS 1-165-42560 (Applicant DotConnectAfrica Trust) AND 1-1243-89583 (Applicant Uniform SA (NPC) trading as Registry.Africa)	<input type="checkbox"/>
Option B	The African Union intends to provide support or non-objection to application 1-165-42560 (Applicant DotConnectAfrica Trust) ONLY	<input type="checkbox"/>
Option C	The African Union intends to provide support or non-objection to application 1-1243-89583 (Applicant Uniform SA (NPC) trading as Registry.Africa) ONLY	<input type="checkbox"/>
Option D	The African Union intends to provide support or non-objection to NEITHER APPLICATION	<input type="checkbox"/>

- 2. In the event that the African Union intends to provide support or non-objection for one or more of the above-named applications, please indicate the person and role to whom ICANN should address future enquiries.**

A copy of this communication has been provided to the applicants of 1-165-42560 and 1-1243-89583.

Application ID: 1-1165-42560
String: AFRICA
Applicant: DotConnectAfrica Trust

Clarifying Question 1:

Question 21b of the AGB states, "If [the application is for] a geographic name, attach documentation of support or non-objection from all relevant governments or public authorities." Section 2.2.1.4.3 (*Documentation Requirements*) of the AGB states that each letter of support or non-objection for a Geographic Name applicant must meet the following criteria:

1. Must clearly express the government's or public authority's support for or non-objection to the applicant's application
2. Demonstrate the government's or public authority's understanding of the string being requested
3. Demonstrate the government's or public authority's understanding of the string's intended use
4. Should demonstrate the government's or public authority's understanding that the string is being sought through the gTLD application process and that the applicant is willing to accept the conditions under which the string will be available.

Your application for .AFRICA includes a letter dated 27 August 2009, from the Chairperson of the African Union Commission, subject "Endorsement of the DotAfrica (.africa) Initiative". The letter is signed by Jean Ping, Chairperson of the African Union Commission and bears the seal of the Deputy Chairperson of the African Union Commission. However, the letter does not meet criteria 1 – 4 above.

Please provide an updated letter of support from the Chairperson of the African Union Commission, or another signatory duly authorised on behalf of the African Union Commission, that meets the following criteria:

1. Must clearly express the government's or public authority's support for or non-objection to the applicant's application
2. Demonstrate the government's or public authority's understanding of the string being requested
3. Demonstrate the government's or public authority's understanding of the string's intended use
4. Should demonstrate the government's or public authority's understanding that the string is being sought through the gTLD application process and that the applicant is willing to accept the conditions under which the string will be available.

For criterion number 4, "the applicant...[willingness] to accept the conditions under which the string will be available" can be satisfied by meeting the requirement of the first part of the criteria: "demonstrate the government's or public authority's understanding that the string is being sought through the gTLD application process."

Clarifying Question 2:

Question 21b of the AGB states, "If [the application is for] a geographic name, attach documentation of support or non-objection from all relevant governments or public authorities." Section 2.2.1.4.3 (*Documentation Requirements*) of the AGB states that each letter of support or non-objection for a Geographic Name applicant must meet the following criteria:

1. Must clearly express the government's or public authority's support for or non-objection to the applicant's application
2. Demonstrate the government's or public authority's understanding of the string being requested
3. Demonstrate the government's or public authority's understanding of the string's intended use
4. Should demonstrate the government's or public authority's understanding that the string is being sought through the gTLD application process and that the applicant is willing to accept the conditions under which the string will be available.

Your application for .AFRICA includes a letter dated 8 August 2008, from the Executive Secretary, United Nations Economic Commission for Africa, which begins "I write to express my support and that of the Economic Commission for Africa (ECA) for the 'dotafrika' initiative ...". The letter is signed by Abdoulie Janneh, Executive Secretary and bears the seal of the United Nations Economic Commission for Africa. However, the letter does not meet criteria 1 – 4 above.

Please provide an updated letter of support from the Executive Secretary of the United Nations Economic Commission for Africa, or another signatory duly authorised on behalf of the United Nations Economic Commission for Africa, that meets the following criteria:

1. Must clearly express the government's or public authority's support for or non-objection to the applicant's application
2. Demonstrate the government's or public authority's understanding of the string being requested
3. Demonstrate the government's or public authority's understanding of the string's intended use
4. Should demonstrate the government's or public authority's understanding that the string is being sought through the gTLD application process and that the applicant is willing to accept the conditions under which the string will be available.

For criterion number 4, "the applicant...[willingness] to accept the conditions under which the string will be available" can be satisfied by meeting the requirement of the first part of the criteria: "demonstrate the government's or public authority's understanding that the string is being sought through the gTLD application process."

Your letter(s) of support is (are) due to ICANN by end of the initial evaluation period. ICANN will inform you of the exact end date of the initial evaluation period in a separate communication when that information is available.

Redacted - Confidential Application Information

EXHIBIT C-76

From: trang.nguyen>Contact Information Redacted
Sent: Tuesday, May 14, 2013 7:21 AM
To: Emily Taylor
Subject: Re: .africa Clarifying Questions Call

Hi Emily,

What time would work for you? I can be available as early as 7am PST. I'd like to discuss this sooner rather than later so let me know of a time that works for you.

Thank you,

Trang

Sent from my iPhone

On May 14, 2013, at 12:08 AM, "Emily Taylor" Contact Information Redacted wrote:

> Hi Trang
>
> I can't do tomorrow or Thursday at the time you suggested, but I can
> do Friday
> - will that work for you?
>
> Kind regards
>
> Emily
>
>
> On 14 May 2013 02:22, Trang Nguyen Contact Information Redacted wrote:
>> Hi Emily,
>>
>> Thank you for your email. ICANN has considered and discussed the
>> points that you brought up below and decided on the route outlined in
>> my email dated 26 April. Would you be available for a call at 8am PST
>> tomorrow to discuss next steps? We'd like to have the CQs for each
>> support letter go out as soon as possible.
>>
>> Thank you,
>>
>> Trang
>>
>> From: Emily Taylor Contact Information Redacted
>> Date: Friday, May 10, 2013 9:16 AM
>> To: Trang Nguyen Contact Information Redacted Cheri Bolen
>> Contact Information Redacted
>> Cc: Tony Holmes Contact Information Redacted Mark McFadden
>> Contact Information Redacted

>> Subject: Re: FW: .africa Clarifying Questions Call

>>

>> Dear Trang

>> I promised to send you our advice about ICANN's proposed approach to
>> the .AFRICA applications on Geo Names.

>>

>> Attached to our email of 26 April, we made a request to reach out
>> direct to the African Union, and also attached draft CQs for each of
>> the .AFRICA applications.

>>

>> You replied the same day to say that following an internal discussion
>> your recommendation is not to reach out to the African Union, but to
>> send CQs for all letters of support submitted by the applicants.

>>

>> We would like to highlight the following issues which are likely to
>> arise through the proposed course of action:

>>

>> 1. One of the applicants has letters of support from the AU which are
>> many years old, and date prior to the time when the AU held a
>> competitive tender for the registry for .AFRICA. It is foreseeable,
>> indeed we believe it likely, that the applicant will continue to rely on those letters of support.

>> 2.

>> 3. One of the applications submitted letters of support from 35
>> countries or public authorities which do not meet the Guidebook
>> requirements and will require CQs. We anticipate that many months
>> will elapse before the applicant is able to secure further letters
>> from those countries, and that given conditions on the ground it may
>> not be possible to obtain letters that conform to Guidebook
>> requirements at all. All of this will considerably delay the evaluation of both .AFRICA applications.

>> 4.

>> 5. Ultimately, there are questions which only the AU, and not the
>> applicants, can answer. These are set out in the draft which we sent through on 26 April.
>> Given our recommendation that the AU be treated as a relevant public
>> authority, that its membership covers all sovereign states in the
>> continent of Africa apart from one, an answer from the AU will
>> clarify matters in a way that the applicants themselves may be unable to.

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>> We understand and respect the reasoning behind your internal recommendation.
>> However, we believe that the proposed way forward will add
>> considerable delay, potentially confuse matters further, and will not
>> resolve the key question which is the AU's position with regard to the two applications.

>>

>> The Geo Names panel is entitled under the Guidebook to reach out
>> direct to relevant governments or public authorities in order to
>> determine their intentions (paragraph 2.2.1.4.4, which states "The
>> GNP may communicate with the signing entity of the letter to confirm
>> their understanding of the terms on which the support for an application is given").

>>

>> Given that both applicants rely on AU support, and the Guidebook
>> foresees that it is possible for a single country or public authority
>> may support more than one application for the same string, we
>> strongly recommend in the interests of both applicants and of the

>> gTLD process that the next step should be to approach the AU, and
>> signal to the applicants that depending on the outcome, we may also
>> seek CQs from the remaining countries and authorities attached to their respective applications.
>>
>> I hope that you will give advice your careful consideration. It is
>> in conformance with the guidebook, deals fairly and reasonably
>> between the applicants without the risk of prejudice to one or the
>> other, and is likely to avoid many months of delay and potential confusion.
>> Tony Holmes and I would be happy to have a call with you and any of
>> your colleagues to discuss this further. In fact, we have a call
>> arranged with Cheri for Monday morning your time, and I hope we can
>> pick up this discussion then.

>>
>> Kind regards

>>
>> Emily

>>
>> On 29 April 2013 11:09, Mark McFadden [Contact Information Redacted](#) wrote:

>>>
>>> Mark McFadden
>>> Internet Names, Addresses and Numbers InterConnect Communications
>>> Consulting in Communications Regulation and Strategy
>>> [Contact Information Redacted](#)

>>>
>>>
>>>
>>>

>>> From: Trang Nguyen [Contact Information Redacted](#)
>>> Sent: Friday, April 26, 2013 3:10 PM
>>> To: Mark McFadden; Vanessa Graff; Mark McFadden - home; Emily Taylor
>>> Cc: Tony Holmes
>>> Subject: Re: .africa Clarifying Questions Call

>>>
>>> Hi Mark,

>>>
>>> We had an internal discussion on the information that you sent and
>>> have the following recommendations:
>>> * No outreach to the EU.
>>> * Yes to sending CQs to the applicants of the 2 .Africa applications.
>>> However, the CQs should contain questions for all letters of support
>>> submitted by the applicants. The reason being that if the
>>> applicant(s) is/are unable to obtain a revised support letter from
>>> the AU or UNECA, they may be able to fulfill the requirements by
>>> approaching the individual governments.
>>> Please let me know if you'd like to discuss further.

>>>
>>> Thank you,

>>>
>>> Trang

>>>
>>> From: Mark McFadden [Contact Information Redacted](#)
>>> Date: Friday, April 26, 2013 5:33 AM

>>> To: Trang Nguyen Contact Information Redacted Vanessa Graff
>>> Contact Information Redacted Mark McFadden - home
>>> Contact Information Redacted Emily Taylor Contact Information Redacted
>>> Cc: Tony Holmes Contact Information Redacted
>>> Subject: .africa Clarifying Questions Call

>>> Vanessa, Trang:

>>> Two things: draft attached to this message and meeting arrangements.

>>> First, find three documents attached to this message. Two are the
>>> first drafts of CQ's for the .africa applicants. One is a contact
>>> request for the African Union. We'd like to talk about these on our
>>> call. Emily and I have lots of other questions to go with the
>>> drafts, but at least we have the work started.

>>> Second, Emily and I don't yet have meeting details for the call --
>>> 8am (PST), 4pm (UK time), 5pm (Geneva time). It would be very
>>> helpful to have a UK tollfree dial-in number.

>>> mark

>>> Mark McFadden

>>> Internet Names, Addresses and Numbers InterConnect Communications
>>> Consulting in Communications Regulation and Strategy
>>> Contact Information Redacted

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>> Emily Taylor

>> Director

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>>Contact Information Redacted
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> Emily Taylor
> Director
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>Contact Information Redacted
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> Emily Taylor Consultancy Limited is a company registered in England
> and Wales No. 7630471. VAT No. 114487713.

EXHIBIT C-77

From: Trang Nguyen Contact Information Redacted
Sent: Wednesday, May 15, 2013 8:21 PM
To: Emily Taylor
Cc: Cheri Bolen; Tony Holmes; Mark McFadden; AlanTurnerContact Information Redacted
Subject: Re: .africa Clarifying Questions Call
Signed By: Contact Information Redacted

Hi Emily,

I haven't heard back from you so just wanted to follow up. Please confirm that ICC will provide the CQs for all letters of support that are deficient for both .Africa applications on 24 May 2013, and that no direct outreach to the AU will occur.

Thank you. If you would like to discuss further, please let me know.

Trang

From: Trang Nguyen Contact Information Redacted
Date: Tuesday, May 14, 2013 6:59 PM
To: Emily Taylor Contact Information Redacted
Cc: Cheri Bolen Contact Information Redacted Tony Holmes Contact Information Redacted ; Mark McFadden Contact Information Redacted
Subject: Re: .africa Clarifying Questions Call

Hi Emily,

I sent you an email this morning about rescheduling this call. Please let me know what date/time works for you. I can do a call as early as 7am PST. I'd like to get things moving forward on this.

As mentioned in my previous emails, we have considered the points that ICC has brought up, but we would like to follow the process that we have followed for all other applicants. This means issuing CQs for all support letters that did not meet the requirements of the AGB. As per your previous email, we are expecting to receive these CQs on 24 May to send to the applicants. Additionally, we believe that an outreach directly to the AU is unnecessary because through the CQs that are issued, the applicants will have to approach the AU. If the AU no longer supports the application, the applicant would not be able to get a revised letter. We believe that this approach follows the existing process and will essentially inform us whether the AU still supports either or both of the applications.

Regarding your concern about the amount of time that the applicant has to respond, I agree this is a concern, but one that ICANN will manage.

I look forward to discussing this with you and to receiving the CQs next Friday.

Warm regards,

Trang

From: Emily Taylor Contact Information Redacted
Date: Monday, May 13, 2013 11:37 PM
To: Trang Nguyen Contact Information Redacted
Cc: Cheri Bolen Contact Information Redacted Tony Holmes Contact Information Redacted ; Mark McFadden

Contact Information Redacted

Subject: Re: .africa Clarifying Questions Call

Hi Trang

I can't do tomorrow or Thursday at the time you suggested, but I can do Friday - will that work for you?

Kind regards

Emily

On 14 May 2013 02:22, Trang Nguyen Contact Information Redacted wrote:
Hi Emily,

Thank you for your email. ICANN has considered and discussed the points that you brought up below and decided on the route outlined in my email dated 26 April. Would you be available for a call at 8am PST tomorrow to discuss next steps? We'd like to have the CQs for each support letter go out as soon as possible.

Thank you,

Trang

From: Emily Taylor Contact Information Redacted

Date: Friday, May 10, 2013 9:16 AM

To: Trang Nguyen Contact Information Redacted Cheri Bolen Contact Information Redacted

Cc: Tony Holmes Contact Information Redacted Mark McFadden Contact Information Redacted

Subject: Re: FW: .africa Clarifying Questions Call

Dear Trang

I promised to send you our advice about ICANN's proposed approach to the .AFRICA applications on Geo Names.

Attached to our email of 26 April, we made a request to reach out direct to the African Union, and also attached draft CQs for each of the .AFRICA applications.

You replied the same day to say that following an internal discussion your recommendation is not to reach out to the African Union, but to send CQs for all letters of support submitted by the applicants.

We would like to highlight the following issues which are likely to arise through the proposed course of action:

1. One of the applicants has letters of support from the AU which are many years old, and date prior to the time when the AU held a competitive tender for the registry for .AFRICA. It is foreseeable, indeed we believe it likely, that the applicant will continue to rely on those letters of support.
2. One of the applications submitted letters of support from 35 countries or public authorities which do not meet the Guidebook requirements and will require CQs. We anticipate that many months will elapse before the applicant is able to secure further letters from those countries, and that given conditions on the ground it may not be possible to obtain letters that conform to Guidebook requirements at all. All of this will considerably delay the evaluation of both .AFRICA applications.
3. Ultimately, there are questions which only the AU, and not the applicants, can answer. These are set out in the draft which we sent through on 26 April. Given our recommendation that the AU be treated as a relevant public authority, that its membership covers all sovereign states in the continent of Africa apart from one, an answer from the AU will clarify matters in a way that the applicants themselves may be unable to.

We understand and respect the reasoning behind your internal recommendation. However, we believe that the proposed way forward will add considerable delay, potentially confuse matters further, and will not resolve the key question which is the AU's position with regard to the two applications.

The Geo Names panel is entitled under the Guidebook to reach out direct to relevant governments or public authorities in order to determine their intentions (paragraph 2.2.1.4.4, which states "The GNP may communicate with the signing entity of the letter to confirm their understanding of the terms on which the support for an application is given").

Given that both applicants rely on AU support, and the Guidebook foresees that it is possible for a single country or public authority may support more than one application for the same string, we strongly recommend in the interests of both applicants and of the gTLD process that the next step should be to approach the AU, and signal to the applicants that depending on the outcome, we may also seek CQs from the remaining countries and authorities attached to their respective applications.

I hope that you will give advice your careful consideration. It is in conformance with the guidebook, deals fairly and reasonably between the applicants without the risk of prejudice to one or the other, and is likely to avoid many months of delay and potential confusion.

Tony Holmes and I would be happy to have a call with you and any of your colleagues to discuss this further. In fact, we have a call arranged with Cheri for Monday morning your time, and I hope we can pick up this discussion then.

Kind regards

Emily

On 29 April 2013 11:09, Mark McFadden [Contact Information Redacted](#) wrote:

Mark McFadden
Internet Names, Addresses and Numbers
InterConnect Communications
Consulting in Communications Regulation and Strategy
[Contact Information Redacted](#)

From: Trang Nguyen [Contact Information Redacted](#)
Sent: Friday, April 26, 2013 3:10 PM
To: Mark McFadden; Vanessa Graff; Mark McFadden - home; Emily Taylor
Cc: Tony Holmes
Subject: Re: .africa Clarifying Questions Call

Hi Mark,

We had an internal discussion on the information that you sent and have the following recommendations:

- No outreach to the EU.
- Yes to sending CQs to the applicants of the 2 .Africa applications. However, the CQs should contain questions for all letters of support submitted by the applicants. The reason being that if the applicant(s) is/are unable to obtain a revised support letter from the AU or UNECA, they may be able to fulfill the requirements by approaching the individual governments.

Please let me know if you'd like to discuss further.

Thank you,

Trang

From: Mark McFadden Contact Information Redacted

Date: Friday, April 26, 2013 5:33 AM

To: Trang Nguyen Contact Information Redacted Vanessa Graff Contact Information Redacted Mark McFadden - home
Contact Information Redacted Emily Taylor Contact Information Redacted

Cc: Tony Holmes Contact Information Redacted

Subject: .africa Clarifying Questions Call

Vanessa, Trang:

Two things: draft attached to this message and meeting arrangements.

First, find three documents attached to this message. Two are the first drafts of CQ's for the .africa applicants. One is a contact request for the African Union. We'd like to talk about these on our call. Emily and I have lots of other questions to go with the drafts, but at least we have the work started.

Second, Emily and I don't yet have meeting details for the call -- 8am (PST), 4pm (UK time), 5pm (Geneva time). It would be very helpful to have a UK tollfree dial-in number.

mark

Mark McFadden
Internet Names, Addresses and Numbers
InterConnect Communications
Consulting in Communications Regulation and Strategy
Contact Information Redacted

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Emily Taylor
Director



Contact Information Redacted

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Emily Taylor
Director



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EXHIBIT C-78

BEIJING – Joint Meeting of the GAC and the ICANN Board

BEIJING – Joint Meeting of the GAC and the ICANN Board

Tuesday, April 09, 2013 – 16:45 to 18:00

ICANN – Beijing, People's Republic of China

HEATHER DRYDEN:

Good afternoon, everyone.

We need to make a bit more room at the front table, please, for our Board colleagues. Not everybody is seated. So I am -- Ah, there's one over there, pleasantly located between Mexico and Lithuania. So that's a great neighborhood over there. And to the right....

Okay. All right. Proximity to Bulgaria over here and Switzerland. Very good.

Okay.

Thank you. And we have one, perhaps, here. Perhaps we have everybody seated at this point.

Great!

Excellent. All right. I think we have everybody ready to go.

All right. So thank you to the Board for coming to meet with us. We have a number of topics that we want to raise with you and some questions, and one that I know was identified as well by the Board for discussion in this session.

So I'll just run through what they are, and then we can get started.

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

I know that we typically run out of time in these sessions, but let's get through what we can.

So the first thing that we would like to raise are some questions or concerns that we have around how exactly the public interest commitment specifications would work, and some of the dispute resolution aspects of that in particular.

And then we have a question about the application for dot IDN in relation to those PIC specs.

Then we would like to discuss IGO protections, and more on gTLDs. We would like to raise this issue of string confusion or string contention with singular and plural top-level domains of essentially the same name, as I say, in the singular and plural form.

As well, we have a question about the process to be followed regarding establishing level of governmental support for a geo name and how that is addressed in the process and how that gets reported on, whether that's meant to be the geographic panel or something else. So we have a specific question in relation to that aspect of the process as well.

We will ask about the April 23rd date and how that relates to the IDNs that have been prioritized and are meant to proceed through the process, so it's really a timeline question, I believe, in relation to that.

Then we would just like to raise the registrar accreditation agreement, and some of the things that we heard earlier from law enforcement this week, and we would like to reinforce some of the advice we have given to the Board previously on that topic. And there may be things that you are able to update us about as far as those negotiations are concerned.

Then we would like to raise ethics and conflict of interest and what is progress on that particular issue.

Then we have identified the IOC and Red Cross.

And as well, we understand that new hubs have been set up, so we'd like to ask about the creation of those and how those decisions were made.

And then, time permitting, to talk about the ATRT 2, but we do recognize that we have quite a full agenda.

So we're going to be busy.

But before we go ahead with public interest commitments, someone had suggested to me that I just make a few comments about what the GAC is doing regarding gTLD advice, particularly for sensitive or controversial names.

I'm hearing as well that there's been a bit of confusion about what we are doing and how we're approaching it.

So in essence, we have two parts to this agenda, and the first one is based on categories. So we would provide advice, specifically safeguard -- what we're calling safeguard advice for those categories. And along with that, we would aim to provide an indicative list of strings that we think would be relevant to that safeguard advice.

And then the second part of our agenda is listing potential objections. So applications for objection where the GAC would consider and discuss advising on a consensus basis to not act upon a particular application or if it is equal to being a string, then that string.

So just a few points there since we have the opportunity, and I hope that is at least of some use to those that have questions about our process, which we're in mid process on. It's ongoing.

Okay.

So, Steve, did you want to comment before we proceed?

STEVE CROCKER:

That's a very long list. I despair of getting through half of it, much less all of it.

My reaction in listening to this is I would like to shuffle the order, and so my response is we'll take hubs for a hundred and see -- which would be a lot easier than some of these.

So joking aside, you're going to have to pick somewhere between a quarter and a half of these in the hour that we have, I think.

HEATHER DRYDEN:

Thank you, Steve. So I have tried to organize them in some sense of priority. So let's just start at the beginning and see how far we get. Yeah? All right.

So public interest commitment specifications. I will look to my GAC creation to ask some questions or raise some concerns with the Board at this time.

Norway, please.

NORWAY:

Yes, thank you, Chair. I have one specific question to one specific application which then leads to one general question, then specifically regarding the PIC specs. That's regarding the application for dot IDN.

According to the guidebook, Section 2.2.1.4.1, this is alpha three-letter code in the ISO3166 list for Indonesia.

So my question is according to the guidebook, this application should have been rejected. That's not allowed with the three-letter codes.

That is the first sort of factual information.

In the PIC spec for the application, it says that it has been put in a change request for changing the string to dot Internet instead of dot IDN.

So my question is is it possible in the application process to change string?

And in that case, because in the status information on the Web page, the dot IDN application still stands as in evaluation. And so if it's allowed with change requests and changing the strings, the next follow-on question is that that will change the process of evaluation of applicants, because to my knowledge, it has not been posted that there is an application for dot Internet, as such.

So will there be a new early warning period, time period for that? And what basis should sort of, for example, the GAC base the advice on, for example, that string?

So that's my sort of first specific question and the two sort of follow-up general questions.

Thank you.

STEVE CROCKER: You have the mic?

CHRISTINE WILLETT: Yes. Is this on?

Hello.

STEVE CROCKER: So Christine Willett will answer.

CHRISTINE WILLETT: Thank you, Steve. This is Christine Willett.

So the dot IDN application was an applicant support application, went through our applicant support process. And that application was not successful in the applicant support review. So that made that application ineligible for further review in the initial evaluation or other aspects of the program.

So that would end the evaluation of that application at that point.

HEATHER DRYDEN: Thank you.

Okay.

STEVE CROCKER: And let me ask what I think is the obvious follow-up. What's the appearance of the dot Internet and is there confusion there?

CHRISTINE WILLETT: I don't know that we have a string applied for dot Internet. I'm looking to my team.

Do we have a string applied for dot Internet? No.

HEATHER DRYDEN: Norway.

NORWAY: Yes. Just a comment on the answer, then.

So, then, because then I would just expect in the status list for the dot IDN that it says "rejected" or something, because that would then be more explainable for -- because as it stands now, it looks like it's still a valid application still in process. So that's -- Thank you.

CHRISTINE WILLETT: So the applicant has been notified. There was an announcement and we published the results for that application.

We are expecting that that applicant will withdraw and funds paid will be returned.

But you're right, the status could be updated to reflect the current status.

Thank you.

HEATHER DRYDEN:

Thank you, Christine and Norway.

So next I have Denmark and then Australia.

DENMARK:

Thank you, Chair, and thank you to ICANN for clarifying that particular case. And I think that case also exemplifies another concern that we have, which is these applications continue to be more and more complicated. And the PIC specs actually adds to that because now we have several documents in which the applicant is stating their intents or the conditions and commitments they want to apply to. But it's a little bit confusing for governments to actually identify what text is the most important. Is their priority between the different documents? And we will have the application of January 2012, and then we have PIC specs of March 5th, if I remember the date correctly, and in the end we will also have a contract between ICANN and the registry.

So it will be difficult not only for governments but also for other stakeholders to know where they should find the commitments of the applicant.

So that's a concern I have.

Thank you.

HEATHER DRYDEN:

Thank you, Denmark.

Christine, would you like to respond to that?

CHRISTINE WILLETT:

Hello. Thank you, Heather.

The PIC specifications were developed and designed in response to the GAC early warnings to offer the applicants an opportunity to clarify the specific commitments they were making to the community in the public interest.

So understanding that the applications are quite long, very lengthy with many attachments, many documents, the intention was that the PIC specification would offer the applicant a very concise way to specify exactly what they were committing to and would enable the GAC members to review those commitments in light of the early warnings that had been received.

HEATHER DRYDEN:

Thank you, Christine.

Next I have Australia.

AUSTRALIA:

Thank you very much, and hello, everyone. We have a packed room yet again.

So I have a couple of more general questions about the PIC specifications and the surrounding processes. In particular, I'm interested in the standings for raising a dispute about a PIC issue.

On my reading, it appears that there is a threshold for someone to have standing to raise a dispute. I think the term is "material harm" or "material damage."

What I'm interested in is the ability of governments or others to be able to raise concerns if a PIC isn't lived up to, potentially on behalf of someone else.

So, for example, a government may wish to raise a concern on behalf of its constituents if a public interest commitment is not being lived up to. And I'm interested to hear if that is possible and has been considered.

The second one relates to cost. As far as I'm aware, I haven't seen any estimates of costs associated with going through a PIC dispute resolution process, but I understand it's modeled on other processes, and the costs, whilst less than taking a legal remedy, may be significant for a consumer to pursue. So I'm wondering if any thought has gone into that.

And the third one I think goes to the points which have been raised by my colleagues, and it goes to the issue of certainty.

One of the reasons that the GAC raised the question of holding applicants to their commitments was that it seemed to us to be uncertain, the status of what now appear to be assurances or -- I'm not sure what the correct word is -- of what was in the mission and purpose and related statements in the applications was not cleared.

We now have the PIC process. I'm interested to understand the ability to modify PICs down the track. I understand they are only fixed for time and then it's possible to change them.

I'm interested in if much thought has gone into how that would go about. And for applications where governments express concerns or others are likely to have concerns, because we're talking about public interest commitments, how those might be taken into account in any subsequent changes to those commitments.

So three broad areas. I appreciate if we don't get an immediate answer, but I am genuinely interested in understanding how the thinking has gone into this.

HEATHER DRYDEN:

Thank you, Australia.

I think Cherine as chair of the gTLD committee is going to respond.

CHERINE CHALABY:

There it is. It's working. Okay.

Thank you for your comment. I think I will answer one part, and Chris will answer the second part, particularly the potential modification to the PICs.

The question about the GAC ability to raise complaints, particularly in cases where there's no evidence of material harm and regarding the cost and regarding certainties, I think we are really very understanding and sympathetic to that.

We haven't got an answer now, but we must find a way of supporting the GAC in achieving this objective.

So that's all I could say at this moment, and we will ask staff to think about that.

So we will find a way.

Chris, do you want to talk about the PICs?

CHRIS DISSPAIN:

My apologies.

Peter, I missed the second question. I'm just going to go to the third which is the ongoing commitments to the PICs.

So the situation is that the public interest commitment becomes a contractual obligation under the terms of the process. And ICANN has specific processes in place to deal with changes to registry contracts. So any change to the contract would need to go through that process.

Now, there is no specific part of that process that refers -- a request that says they refer -- a request for change must be referred to the GAC, but it's a public process. And I think really trying to lay a process on top of process on top of process makes it quite hard.

So this is an existing process. There are certainly public comment. Everything is published, so that should be fine.

And our apologies, but what -- the second question, could you maybe repeat?

AUSTRALIA: It was to do. It was related to the first. And it related to the issue of cost. If -- had any thought gone into the issue of cost and whether there may be an disincentive for the average consumer in pursuing the dispute resolution process.

CHRIS DISSPAIN: Cost is a double-edged sword. You have to have it to recover costs. And it does act, to some extent, as a disincentive and often is intended to act, to some extent, as a disincentive in order to prevent vexatious clients. But the answer is yes. We have thought about the cost, and there has to be a cost. So, otherwise, it would just be a free for all. But I don't know whether Christine wants to comment on that specific issue. You don't have to.

HEATHER DRYDEN: So I have Denmark with a follow-up and then EU Commission.

DENMARK: Thank you, Chair. And apologies for taking the floor again. But I think the GAC needs to understand the status of the different documents.

If I understood Christine correctly then, when governments and other stakeholders should maybe look at the PICs and disregard the applications of January 2012. Maybe you could clarify then. Thank you.

HEATHER DRYDEN: Thank you, Denmark. Christine.

CHRISTINE WILLETT: Sure. So the application overall represents the intention of the applicant in how they intend to operate the TLD. So I think all of the application is for review and consideration. The public interest commitments are calling out specifically what portions of that application the applicant is committing to as well as any additional commitments the applicant is choosing to make, which may not be in the application explicitly.

So, to your point, I think both documents are worthy of review. But, in regards to any early warnings received, the PIC specification was intended to -- as the mechanism to address those early warnings.

HEATHER DRYDEN: Thank you, Christine. EU Commission.

EUROPEAN COMMISSION: Thank you, Chair. I'm not entirely sure this is necessary. But, since we're on record and just to ensure that model expectations are clear, Mr. Chalaby referred to the fact that the GAC might have complaints and in so doing use the public interest commitment dispute resolution process. I just want to be clear that, if we had complaints, it would be a government or public authority to use the public interest commitment dispute resolution system. So this is on record. Thank you.

CHERINE CHALABY: Correct.

EUROPEAN COMMISSION: Thank you.

HEATHER DRYDEN: Thank you. Are there any other comments or questions from the GAC side? No. Okay. All right.

So let's move on to the next issue, which is protection of IGO names and acronyms, specifically, protections at the second level in the current round. And you might be aware that the GAC provided a list and some criteria quite recently. And then we received a correspondence back from the board asking for further clarification on three points.

And so this is just as much an agenda item being proposed by the board as it is the GAC's.

I will ask Chris, who has been leading this on the board side, to lead us off on this topic. Thank you.

CHRIS DISSPAIN: Thank you. I hope you'll bear with me everybody as I go through a series of steps in order to reach a conclusion.

First of all, I'd like to deal initially with a couple of supposed facts are floating around that are not correct. First is that the board has protected an acronym, that being IOC. That is not correct. The protection afforded to the Red Cross and the Olympics are their names, not any acronyms.

Secondly, there are some suggestions that our resolution, the board's resolution of the 26th of November on IGOs already makes a decision that we will protect names and acronyms. That is also not correct.

The resolution actually says the board requests the GNSO to advise the board by no later than 28th of February if it's aware of any concern such as with global public interest, that the board should take into account in making its decision about whether to include second level protections for certain IGO names and acronyms.

So, turning now to your advice, in respect to the advice to protect the actual names of IGOs, that's problematic because it contains square brackets in respect to languages and also lacks any suggested process or advised process in respect to our review. It mentions a 3-year review but doesn't go any further than that. So that's problematic, from our point in view.

And, respect to the advice on acronyms, that is also problematic. A number of reasons are set out in our letter to you. I know that there is - - that your advice refers to -- and I'm paraphrasing here -- but reserving the acronyms, but allowing the relevant IGO to give consent to a registration. From a principle point of view, this would mean, as a couple of examples, that the Church of England would require the approval of the Council of Europe to register COE.church. It means that the government of Canada to require the approval the Andean community to register CAN dot anything. And it means that the International Standards Organization would require the approval of the International Sugar Organization to register ISO dot anything.

Now, even if this is what you intended in principle, the implementation of this advice is extremely problematic.

Some examples: Who would each IGO who make a decision about providing consent? How long would each IGO have to provide the consent? Would no reply be equivalent to consent? What criteria would be used to decide whether to consent or not? Who would draft those criteria? What -- would the criteria be consistent across all IGOs, or would consent simply be granted at the whim of an IGO?

The board believes that all of these issues make it extremely difficult, if not impossible, to accept the advice as-is. Rather than rejecting the advice, we seek an acknowledgment from the GAC in its communique that there are issues that need to be worked through. And we seek an agreement with the GAC that they will work with the board and staff on those issues from now until Durban when the board will make a final decision. Thank you.

HEATHER DRYDEN:

Thank you for that, Chris. Okay. So this is a clear request of the GAC. Would anyone in the GAC like to comment now? And we can discuss this as a GAC after this meeting as well, of course.

Okay. All right.

So let's move further along in the agenda. So more on gTLDs. We have a question relating to singular and plural forms of, essentially, the same word as a top-level domain. So, Australia, could you perhaps get us started, please.

AUSTRALIA:

Thank you, Chair.

So we've heard some preliminary discussions about the results of the string contention sets where it appears that plural forms of words are not considered to be in contention with the singular. So car and cars and so on.

And, whilst I don't have any great detailed knowledge about the exact tests or criteria which we use for string confusion or string contention reason, it appears to us that there is potential for there to be consumer confusion between strings of this type. We have heard some discussions in the community that others seem to share this interest. And, simply to start the discussion with a question to the board about whether the board shares this interest, potential concern, and whether any thought has gone into it at this stage.

HEATHER DRYDEN:

Thank you for that Australia. Cherine will respond. Thank you.

CHERINE CHALABY:

Thank you for bringing this point. As you know, the independent panel looked at these strings and decided that there was no contention, per se.

Now the question is where does this go from here? I think, as far as the board is concerned, with the new gTLD committee, this is it. I mean, we're not going to second-guess the independent panel. But, really, the ball is now in your court whether the GAC wish to give advice on this

issue. But we -- as far as I know, we have no intention of going against the independent panel's advice, decisions. sorry.

CHRIS DISSPAIN:

Just wanted to add one thing, which is to make sure that you're very clear that the panel was looking at visual similarity. So the very thing that I think you think could be a problem -- you're, of course, entitled to draw your own conclusions -- but the very thing that I think you think might be a problem is the very thing that the panel looked at and decided that they did not believe that those names were -- that there was visual confusion. That's the advice that -- that's why they're not in the contention set, because they looked at them. Okay?

HEATHER DRYDEN:

Thank you. Okay.

So next we have a question coming from Kenya regarding the process for establishing whether an applicant has met the requirements for support from governments for a geo name application. So, Kenya, if you could please.

KENYA:

Thank you, Heather.

As you're all aware, the African Union Commission has a mandate from all the 54 African heads of states, ministers, and the governments to establish a dot Africa TLD as evidenced in the application documentation that has been submitted to date.

As you may be aware, there's another application. Originally, it was for dot dot Africa. While the application remained dot dot Africa, the applicant's guidebook section 2218 at that time did not define that other application as a geographic name. But, after ICANN provided a window for amendment, it made it identical and in direct competition with the African Union Commission endorsed application. And, therefore, it is applicable to geo names criteria, including government support.

Now, again, as you'll all aware, over 41 African governments are compliant with the criteria required. And we followed all the required procedures, including endorsement letters. We've participated in the recent role coming number 307 on the list. In addition 16 governments, including the African Union Commission, created GAC early warnings.

Now, Africa is a clearly designated geographic region as defined in the UNESCO, to quote, composition and geographical continental regions and selected economic and other groups. So the designation of an African TLD as a geographic name is, therefore, technically and procedurally correct. So this process must be subjected to sufficient checks and balances for the protection of the interest of the African continent and African governments and the Pan-African community.

So we would like to, myself and my colleagues -- and I think my African Union member is going to -- African Union Commission is also going to say something about this would like to express concern of what we consider to be a very rather slow pace in resolving this issue.

Our expectation was that the geo panel would have by now clarified some of these concerns, but this has not been the case to date. And we

consider this delay as a form of interference on the African Union Commission's mandate from our heads of states, from our ministers and governments, for the African Regional Project.

We also consider this as persistent interference with the time delays making it very difficult. And the issue is likely to have very substantive political, economic, and social implications for Africa.

So we'd like to understand what the delay is, what the process is, where it's stuck, and how soon we can expect this issue to be resolved. Thank you.

HEATHER DRYDEN:

Thank you, Kenya, African Union Commission, please.

AFRICAN UNION COMMISSION:

Thank you, Madam Chair. And welcome to the board, and thank you for this opportunity to interact with you.

I have a list of a lot of things to congratulate you for and to commend your work with regard to the making ICANN a better place for participation for all members.

But time will not allow me to go through all of that, so I will just summarize again and tell you thank you for everything you have done so far, specifically, within the African continent.

I would just like to summarize what Alice has just said as not only the representative of Kenya as a member state but also one of the AUC representatives.

The issue in front of us is very simple. The African Union has been requested by the users, the community -- it's not actually a political decision that has been initially taken -- to take care and to implement and to set up the dot Africa. So we went through a process, actually, from the community to the ministers from the ministers to the ministers of foreign affairs and from the ministers of foreign affairs to the heads of states. And the decision has been adopted unilaterally within the continent to take care and to implement that project.

Now, the question in front of us is very simple. We -- according to the guidebook, the condition -- the condition is to have 60% support from the member states. We get that. I don't think that anybody can again get another 60% from that. We don't have 120%.

Having said that, this year being the year of the 50th anniversary of the African Union in the OAU and people are looking for symbols of integrations and achievements and symbols that are very important, Africa is actually questioning itself why this dot Africa process, as she said, is not really moving as it should be? We were expecting that, since the old applicant did not have that 60%, it should have dismissed. And then we continue the process. Because we are wasting time, resources, and support from all the communities, from the business, and we are wasting a lot of resources and time. And, therefore, we would like really to know where this is going and how soon, as she said, will it be implemented.

Again, thank you very much and thank you for everything you have done so far since Dakar until now. You have achieved a lot of things

within Africa. But, again, time won't permit that. I will take it up later on with you. Thank you very much.

HEATHER DRYDEN:

Thank you very much for that elaboration, AUC.

So Cherine, please.

CHERINE CHALABY:

Let me start by thanking our African colleagues for bringing this issue to the table. And we do understand the strong support that you just expressed.

However, from the board perspective, I think it would be inappropriate for us to comment on a particular application at this point. But let me say -- and I'll ask staff if they want to add any comments. But we don't believe there is delay, any fundamental delays. And the reason for that is that the geo testing is done at the initial evaluation stage as part of the initial evaluation. It's not another step that's going to be taken afterwards. It's done at the same time or before. So, therefore, we don't believe that there is a built-in delay in the system because of that.

I'll now ask Christine or staff if they want to add anything to my comment.

AKRAM ATALLAH:

Well, this is Akram. We do not comment on particular applications. And the applications are going through the process. And, since their priority has not hit where we are in the process, they are not being

delayed or being accelerated either way. So, when the priority of the application comes in the initial evaluation, the results will be announced for the appropriate application at the right time. Thank you.

HEATHER DRYDEN: Thank you, Akram.

Switzerland, please.

SWITZERLAND: Thank you, Madam Chair. And sorry for coming in late. But I have just a question regarding to your comments on the IGO -- on the reaction of the IGO proposal, if I'm allowed to ask a question. It might be a little naive, my question.

Given -- and being happy that ICANN seems to have been able to find a solution with the trademark clearinghouse on dealing with thousands or even millions of trademarks on a second level, it is difficult for me to understand why it should not be possible to develop something similar for about 200 names or ICANN names of IGOs. So maybe the trademark clearinghouse could be an inspiration to develop something similar in that regard. Thank you.

HEATHER DRYDEN: Okay. Thank you. I think your question has been noted. All right. So I think we can move on.

I'm looking at Brazil to ask a question about the -- ah. Okay. Which topic, New Zealand?

NEW ZEALAND: Thank you, Heather. In the light of the concern expressed by our representatives of Africa, I think we're entitled to a better indication of just where dot Africa is, both applications are in the process, so that we have some indication of timing associated with the decisions. Thank you.

>> 307. We're doing 20 --

CHRISTINE WILLETT: I can address the one dot Africa application has priority number 307. The other previously original D-O-T Africa application has priority number 1,005. And, as of last Friday, we just published initial evaluation results through priority number 108. 1-0-8. And we're publishing -- we've been publishing 30 a week ramping to 50 a week. These evaluations are still in the initial evaluation process.

CHRIS DISSPAIN: Sorry, Christine. If you can just address the question of contention sets being lifted to the highest priority number.

CHRISTINE WILLETT: So certainly. The contention sets are not being -- results for strings in contention are not being pulled together. When we announced the prioritization draw and that proposal was put forth, the idea of consolidating contention sets was set aside. And initial evaluation results are being -- evaluations are being done in priority order, and results are being published based on priority number solely.

HEATHER DRYDEN: Okay. Thank you for that answer. I see the AUC asking for the floor. But it might be worth stating first -- and I think you are perceiving this. But there is a great deal of sympathy in the GAC for our African colleagues and their concerns around this application. So do not mistake the degree of concern shared among colleagues here in the GAC.

Okay. AUC, please.

AFRICAN UNION COMMISSION: Thank you very much for that statement, and we take it as something we can bank on something. Just a question to Christine simply to me. I am number 308. Should I wait for the number 1008 in order to get something on my evaluation, on the evaluation of my application? This simple question.

CHRISTINE WILLETT: So each application is evaluated independently. They're not compared in any way. So, if your application was number 38, your results would be published in sequence. There are a few applications out of the first 108 -- 15, in fact -- for which initial evaluation results have not yet been published. They are the subject of either change requests, additional pending clarifying questions, or other issues and missing information. So we're following a process. And we expect that those held-back application results will be published in subsequent weeks. But all of our evaluation work is being affected in priority order.

HEATHER DRYDEN: Thank you, Christine. So Chris is going to respond a bit further.

CHRIS DISSPAIN: I'm trying to get to a clear understanding that the gentleman from the African Union wants to hear. So, Christine, am I understanding -- if I'm wrong, please correct me.

My understanding is that the evaluation of number 307 will occur, and those results will be published. And then, because there is another application that is in a contention set at this stage, then you have to then wait for that application -- is that not correct? You have to then wait for that application to be evaluated. If that application is found -- is rejected, then you proceed with your application.

If both applications are approved, then they go through the contention set process. And, to be very clear, the issue that I think you have is a misunderstanding that the geographic -- that the test to see whether the application passes the geographic test of acceptance by countries were separate from the initial evaluation or happened before the initial evaluation. That is not the case. It is part of the initial evaluation. So, as the application is looked at, the geographic panel looks at and sees if it passes the evaluation.

So I appreciate that you might not like the fact that the second application is some considerable time after yours; but, nonetheless, the process is as I have explained.

AKRAM ATALLAH: The considerable time is two months, just to be clear, right? All evaluations will be done in August. And the second one is number 1,000. So it should be done half way between there and August. So we're talking about a few weeks, really, at the moment.

HEATHER DRYDEN: Okay. On this point, Norway? No. Okay.

All right. So I think we can move on again. So thank you, Brazil, for your patience. If you could please ask your question. Thank you.

BRAZIL: Thank you, Heather. Before asking my question, allow me to express that Kenya and the African Union have full support from Brazil on their positions in dot Africa. I think it's important to remark this.

Allow me also to thank Mr. Fadi Chehade for the kind words with which he referred to the Brazilian steering committee yesterday at the opening ceremony. Thank you very much.

Now my question. My question is more related to the timelines of the implementation of the gTLD program. We had a very interesting discussion with Mr. Akram Atallah on Thursday. And then a very important information was brought to the GAC that the 31st IDNs, gTLDs that have passed the initial evaluation process would be ready to have their agreements and contracts signed on the 23rd of April. And, as you know, GAC is shortly issuing advices. And there's a possibility that one or more of those advices can refer to one or more of these agreements that would be ready to sign the contracts on the 23rd. Then

my question is how is -- there is a sense that these two timelines are overlapping and that they're not compatible. And I would like to hear the board views on this. Thank you.

HEATHER DRYDEN: Fadi, please.

FADI CHEHADE: Let me clarify that the goal is for us to be prepared around April 23rd to start signing some contracts with new registries. But, frankly, it is a goal. It is not a set date. We are working with the registries to find -- to finalize the agreement with them. We have posted the agreement for public comment. We're analyzing the comments, as we speak.

So we are moving, as I'm sure you've noticed lately, on a faster clip trying to get things where they need to be.

But there's no commitment to a particular date. We will do this in the right order. We will -- we are waiting for your advice. It will be part of our thinking and planning and evaluation. And then, based on that and the community input that we're getting, we'll move forward. But no date is going to drive us towards doing something that is not in the right order or considering all the advice from you and the rest of the community. You have my assurance of that.

HEATHER DRYDEN: Thank you, Fadi. Brazil.

BRAZIL: Thank you very much. It was very clear the explanation. Thank you, Mr. Fadi.

HEATHER DRYDEN: Okay. So you mentioned the contracts for the registries. And I think this lets us move into the registrar accreditation agreement. And this is something that, of course, that the GAC has been paying attention to for some time. And we've heard from law enforcement. And we're aware that the negotiations are still ongoing. So we might have some questions for you. But, if it's possible to update us as well on what's happening, that would also be quite useful. So I'm looking around to see how we might kick off. Fadi. Please, that would be great.

FADI CHEHADE: This is one subject I'm very, very happy to be here to brief you about.

The registrars have been negotiating their new registrar agreement with ICANN for a little more than 20 months. I inserted myself into this process quite intensely in the last 2 1/2 months. And I did because I had listened to you, to the community, to many people. And it became very clear that we need to bring the new RAA to a closure and to embed in it some critical pieces that many of you had, frankly, signaled are important here and in other parts of the community.

So I'm very, very happy to inform you today that we and the registrars, based on the registrar agreement we posted a few weeks ago, have now reached agreement in principle to move forward with the 2013 RAA.

The 2013 RAA includes some remarkable additions. I'm going to walk you through them quickly.

All 12 law enforcement recommendations -- I emphasize all 12 law enforcement recommendations have been addressed in the new version of the RAA. For example, the registrant WHOIS and the account holder e-mail or phone verification and field verification are now part of this agreement. This is even beyond where the law enforcement representatives left the table last year. This is further than they even know. So we were able to work with the registrars on even an improvement of their last position.

Secondly, we now have abuse points of contact for law enforcement guaranteed with the registrars.

Thirdly, something that was not expected because there is a PDP process that is ongoing for the proxy/privacy specification, we have worked with the registrars to include an interim proxy/privacy specification for the protections to be in place now until a PDP is completed. This is a fantastic new addition to this agreement.

Next we have created new data retention obligations, many of which law enforcement asked for, so that they know the data they need is there when they need it.

We have a new WHOIS SLA that actually addresses many of the concerns that came from law enforcement and one that is particularly important for me, next, is that we enhance the compliance remedies in that agreement so that our compliance team has the necessary process and the necessary remedies to achieve what they need to do.

We have also now added a prohibition against cybersquatting as part of that agreement.

We have added additional technical specs, DNSSEC and IPv6, to ensure proper promulgation of these important specifications.

And then I come to the last three, which I want to emphasize, because they're the most important three. First, we have extended the obligations that these registrars are signing up to in that agreement to their resellers. And we now ask them for the very first time to submit the names of their resellers. This is important. I imagine you can see why.

The second of the last three, we have now agreed with them on a new registrants rights and responsibilities document, which is not only embedded in the contract and is enforceable in the contract but we've even agreed on a form of it in plain language that a registrant can read and understand. And we will be promoting this with them. It is not just a document to promote. It is an enforceable document as part of the contract.

And, finally, we have also created for the first time in this agreement a clear path for negotiation and amendment. So we don't end up spending another 20 months next time we need to amend this agreement. Many of you may have read in the press and in other places in our Web sites and blogs about the intensity of that particular part of the agreement. But we now have two new amendments in this agreement. The first one is called an extraordinary amendment, and it is designed to allow the board in narrow, well-defined cases in the

public interest for compelling and significant reasons to actually amend the contract.

We have also added another amendment process that allows us at any time to make a request to sit down with them and amend the contract. And we will proceed in that path with them moving forward.

I'm just giving you the very high-level components of this intensely negotiated agreement. These are significant steps forward in many ways. We have completed all of this in good faith with the registrars.

And I want to tell you that we did this in a new spirit. And you can ask the registrars and ask the people who have been familiar with this contract, which is still out for public comment. We have done this in the spirit of responsibility. We have talked to the registrars that together we should raise our collective responsibility to the public and do things because it's the right thing to do.

The industry needs and has responded to my request to rise above the negotiation and understand that we have a responsibility to the public and to the public interest and, therefore, we want them to work with us.

And, frankly, when you look at this list, it is very, very impressive. I'm very pleased with it. And I ask you to consider and to appreciate that we negotiated this in good faith, and that's the deal on the table.

We are still in a public comment phase. We will release the full revised agreement, which actually the revisions are very limited to the areas that we have noted in the last posting of this agreement. So there are no new areas we discussed with them since we posted the agreement

for public comment a few weeks ago. But we will issue a slightly amended version that includes everything we've agreed to and that should be out this weekend. And we look forward to working with you and with them to really raise the public interest and raise the status of our industry and how the registrars work in it moving forward.

HEATHER DRYDEN: Thank you for that update, Fadi.

E.U. Commission, please.

EUROPEAN COMMISSION: Thank you, Madam Chair. And thank you, Mr. Chehade, for this update. Your personal involvement into these complex negotiations has been noted; and we're thankful for your help in bringing this, it seems, towards a conclusion.

Now we -- the European Commission does not take a position on anything until we see the thing, and we understand that the contract is not yet finalized. So we will reserve any judgment we might possibly wish to make until we see the final results.

I also should note -- and this is -- since we are for the record -- We are in an open session. For the record, our position is that we as part of the GAC gave you the political indication of what we thought was important to put in the Registrar Accreditation Agreement. But the nitty-gritty details of the content of that agreement is a matter of negotiation between two private parties, whether it is ICANN and the registrar, specifically ICANN and the registrars.

I just would like to have a confirmation from you, from the board, that you have an understanding how important it is for Europe to work together in the fight against cyber-crime.

You might know the European Union has recently launched a European Cyber Crime Centre. Representatives of which are us at this meeting. But also to ensure that others' interests and rights are also protected. I'm referring here not only to privacy and personal data protection but also to other rights in general and to ensure that the rule of law is preserved into whatever procedure will be finalized in the Registrar Accreditation Agreement.

We understand -- and I conclude here. I understand that in the draft new Registrar Accreditation Agreement, there are exception procedures envisioned to make sure that registrars which are subject to European Union or its member states' jurisdictions do not have to violate European Union law, which, of course, would not be acceptable, in order to comply with the Registrar Accreditation Agreement.

I would just like to impress to the board that this particular MOU, Mr. Chehade, that this particular process, this particular exemption procedure and in general the fact that applicable law has to be accepted, must be preserved throughout the process towards its conclusion. Thank you.

FADI CHEHADE:

I can confirm that's the case.

HEATHER DRYDEN: Thank you. So next I have United States.

UNITED STATES: Thank you, madam chair. And thank you, Fadi, for providing such a welcomed update. Obviously, you know, we have been quite committed to being a partner with ICANN and the registrars on this important initiative. We are very gratified for all the effort that has been applied, and we, too, look forward to seeing the final document.

I think you can probably expect to see some words in the GAC communique on the initiative. Thank you.

HEATHER DRYDEN: Thank you, United States.

And Australia and then Fadi would like to comment further.

AUSTRALIA: Thank you, Chair. Really just to add -- to echo the sentiments of my U.S. colleague. This certainly seems like a very welcomed development. Again, look forward to seeing the data house. But obviously the GAC -- this is something the GAC has been looking to for some time. I really did want to make a sort of positive comment and welcome this development and to also welcome another development.

I know just recently, I think yesterday, we received a response to a request for GAC advice earlier about ICANN's contractual oversight of parties involved in the global DNS industry.

Again, part of a broader package related to ICANN's compliance activities, the RAA, WHOIS and so on. So two very welcomed developments. So thank you very much.

FADI CHEHADE:

Thank you. Thank you for the comments.

I just want on the record to say something on behalf of the registrars who are -- some of whom are here, many are not.

I want to put on the record that to my not -- maybe a bit of surprise but to my delight, the registrars did not need to be dragged into doing the right thing for the public.

Once we had a discussion at the right level with the right level of people involved, they rose to the occasion. And I want to thank them and note it to all of you that we have a new spirit in the community, a spirit of responsibility, a spirit of understanding that this is a two-way street. And so I want to thank them and note their great cooperation on this.

HEATHER DRYDEN:

Thank you, Fadi.

Are there any other comments on this topic? Okay. I don't see any further requests.

We are getting quite short on time. We have about five minutes remaining, and then I understand the board has to go on to yet another meeting. Okay. All right.

So I believe we have a question a request for an update on ethics and conflicts of interest. So E.U. Commission, did you want to raise this?

EUROPEAN COMMISSION: Thank you, Madam Chair, for prioritizing this point. Since we know that we have not a lot of time available and we took note of the ability of the board to answer 1/4 to 1/2 of our questions. But my request was -- is to have an update on what is the status of your work on updating and strengthening your ethics and conflict of interest policy across the organization. Because the last time we were updated on this, you were in the process of concluding three internal reviews. We were given the results. We had the presentation. It was back in Prague, if I remember correctly, on one of those reviews.

And then I must admit that I got a bit lost. And I did not see any further decision by the board. But this might mean that I missed those decisions.

We would like not necessarily now, at least from the European Commission we will be fine in receiving a written answer from the board as soon as possible after this meeting. But we would appreciate to have a comprehensive assessment from the board and senior staff of where we stand on the commitments taken by the board and the organization quite some months ago -- I would say quite some years ago by now -- on how do you strengthen ethics and conflicts of interest policy, not only for the board, not only for the gTLD program, but for the organization as a whole across all the board, across all of its policy areas. Thank you very much.

HEATHER DRYDEN: Thank you for the question. I think Bruce Tonkin as the lead on this will respond.

BRUCE TONKIN: Is this live? Yeah. Yes, all three of those reviews are complete. And we've made changes in the relevant procedures of the board and the organization. So we will get back to you with a written reply.

HEATHER DRYDEN: Thank you for that, Bruce.

So we have two minutes. So IOC and Red Cross, do we have a brief comment there? United States?

UNITED STATES: Yes, Madam Chair. I shall be very, very previous.

Just to convey to the board, again, sort of the longstanding GAC commitment to protecting the IOC/Red Cross names at the second level. A question for you if we could follow-up in some subsequent communication, if you could, we would urge clarity in the registry agreement that currently says "initially" in terms of protection. And that has caused us some considerable concern as to whether you at some point intend to subsequently remove those protections. So we are very, very concerned that they need to be put in place permanently before new gTLDs begin to be delegated.

So if we may continue to have a dialogue and to express some questions and concerns we have about the implications of a policy process that

would actually be reviewing and assessing and taking a position on, the treaties that we as governments have signed and the laws that we have enacted. So IOC and Red Cross protections, the argument we have made based on two levels of protection, legal protection, international treaty, and national law, yet, we understand there is a policy development process underway that we are monitoring. And there have been questions.

So that raises questions with us as to how the policy might come out, possibly taking positions on the substance of the treaties, the substance of our laws, and whether and how they apply.

And so that -- I just wanted to signal that would be a cause of great concern. Thank you.

HEATHER DRYDEN: Thank you, United States.

Cherine, were you going to take this one?

CHERINE CHALABY: I will take Suzanne's suggestion and have the dialogue because it can go on for a while, and I think we need to be clear and straightforward so that there is no ambiguity in the process as we've done with all the other applications. I think it is always better to do so. So we will do it outside the call.

HEATHER DRYDEN: Okay, thank you.

So what I would suggest is that we put a request to you for further information about the hubs.

And, E.U. Commission, you have something further?

EUROPEAN COMMISSION: Very, very briefly, Madam Chair. Thank you very much. Just to say there are issues around other international organizations as well, so I think we would need to discuss all of this together. Thank you.

HEATHER DRYDEN: Thank you. All right. So regarding the issue of hubs, then further information would be appreciated, if you could provide that to the GAC. And perhaps that's a way of -- can you give a brief -- a minute? Okay. So we can do this quickly apparently.

South Africa, would you like to ask your question about hubs and we'll try to give you a quick answer?

SOUTH AFRICA: Thank you, Chair. During the opening ceremonies, the CEO mentioned that ICANN is establishing hubs in two regions. What I would like to know is what informed the location of the hubs. And depending on the answer, I might have a follow-up question.

FADI CHEHADE: There was a very thorough review of multiple things: Legal matters, logistical matters, infrastructure matters, human resources.

Remember, the hubs are not engagement offices. They are truly taking our core operations and breaking them up around time zone coverage so that if someone called ICANN at some point 24 hours a day, someone will answer the phone. That person could be in one of the hubs. These were designed around time zone services. If Istanbul is on holiday and someone calls from somewhere in Asia or Africa, that could be diverted to the U.S.

From the user standpoint, we are building a model that allows those interacting with ICANN to deal with anyone in these three hubs and they wouldn't know that these are actually three separate locations. So it is very much a time zone distribution model.

And, yes, we went through a very thorough review process that led us to these three hubs. And we can share some of this, if you'd like.

HEATHER DRYDEN:

Thank you for that, Fadi.

Did you have a follow-up, South Africa? Or I see Kenya. Kenya, please.

KENYA:

Thank you very much. I would like to thank the CEO, Fadi, and the board for all the great work in implementing quite a lot of activities and initiatives in the African region and we welcome all the work that you're doing, currently doing. So thank you.

HEATHER DRYDEN:

Thank you. Okay. So we had mentioned ATRT2. So just to say that this is a priority for the GAC as well. It continues to be the focus of a lot of our work. And we had a good exchange earlier this week on that point.

And to conclude, thank you all very much. And thank you as well for the timely provision of a response to our Toronto communique. That was very much appreciated as well.

So thank you there. And we will look forward to meeting with you next time. But I hope we can continue the discussion outside the meeting as well on some of these issues.

For the GAC, we now have a 45-minute break, and then we will reconvene. And the Asia-Pacific IGF would like to have a few minutes with Asia-Pacific governments for five minutes in this room or near this room.

So if you could stay behind and join that meeting, that would be appreciated.

And, again, for the GAC, 45 minutes. Thank you.

STEVE CROCKER:

Thank you, Heather. Thank you, everybody.

[End of Session]

EXHIBIT C-79

Redacted - GAC Designated Confidential Information

EXHIBIT C-80

Redacted - GAC Designated Confidential Information

EXHIBIT C-81

Redacted - GAC Designated Confidential Information