
COPENHAGEN – GAC Human Rights and International Law Working Group
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UNKNOWN SPEAKER: As Thomas said, we're going to start the meeting on the human rights and international law in just a few minutes. Thanks.

MARK CARVELL: Okay. I think we're all here except Milagros Castanon, our co-chair I don't know if she's in the room. Let's kick off.

My name is Mark Carvell. I'm the U.K. GAC representative. I'm one of the co-chairs of the Human Rights and International Law Working Group. The other two co-chairs are on my far right, Jorge Cancio, Switzerland GAC representative. And, as I said, Milagros Castanon from Peru is the third co-chair. Perhaps she will join us if she's detained at another meeting.

Just a quick reminder of what this working group is, we were set up about two years ago with a mandate really to consider steps for ensuring that the technical coordination of the domain name system is done in a manner which respects human rights and international law, relevant international law, under then what was the focus was the article four in the constitution. But, of

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course, now we have a bylaw commitment on human rights, which we'll talk about very shortly.

And also it's important for the GAC to have a working group that would promote cooperation with the rest of the ICANN community, including the cross-community working party on ICANN's corporate and social responsibility to respect human rights, chaired by the person on my immediate right, Niels ten Oever,

And also really to ensure that the GAC has a focus and a channel for participating in other ICANN work streams, policy development processes, and so on, including -- here again, I turn to my right -- currently, of course, the Cross-Community Working Group subgroup on human rights under Work Stream 2 chaired by Niels on my right. So that's an example of an intersect for us specifically on the area of human rights.

An agenda was drafted for this discussion, which I hope you've had a chance to look at. I'll just quickly survey the room to see if anyone has any comments on the agenda.

I can't see anybody raising a hand. So I'll proceed really then to get the discussion going.

We'll start off with the first item, which is the framework of interpretation for ICANN's human rights bylaw. As I mentioned,

we're very lucky to have with us here Niels ten Oever who is chairing the subgroup on Work Stream 2, which is working on -- well, Niels will explain in more detail, I guess, basically, how to create a framework for interpreting the core value agreed in the bylaws on respect for human rights. That's the key objective and the outcome that will feed into the Cross-Community Working Groups package of outcomes for work stream two.

So, without further ado, I'll turn to Niels to give us an update of where things stand, how things are progressing, and the way ahead. Thank you.

NIELS TEN OEVER:

Thank you very much, Mr. Co-chair, honorable representatives. It is a great pleasure to be among you here today. ICANN staff, would you be so kind as to load presentation and not documents. That would be great.

So it's a great pleasure to be here with you all and give a short overview of where we are in the Cross-Community Working Group on enhancing ICANN accountability, Work Stream 2, human rights subgroup. As you all know, as part of the IANA transition in Work Stream 1, we have a core value, edits to the ICANN bylaws which outlines respect for human rights. But this core value will only be activated once a framework of interpretation has been developed. The development of this

framework of interpretation is exactly what we are doing currently in Work Stream 2. So, once we are done with that work, we are going -- that core value will be activated. Or at least that is what we thought.

Could you please be so kind as to load the other document, and then I'll unveil the mystery.

Because in the work of Work Stream 1 there was a bit of ambiguity -- next slide, please -- which can be seen as the story of the hare and the tortoise where we were working on the framework of interpretation. And the framework of interpretation was done and submitted to the CCWG plenary. And we already had two readings of it when a careful reading of annex 6 and annex 12 of the Work Stream 1 report showed that we would actually need to also address specific considerations that were asked in annex 6 and annex 12 of Work Stream 1 and that these needed to be addressed as part of the framework of interpretation.

So at that moment we retracted the framework of interpretation and subsequently started working on the considerations document.

Next slide, please.

So, once we are done with the considerations document, the framework of interpretation and the considerations document will be merged. And together they will be submitted to the CCWG plenary. And, after two readings of that, they will be submitted for public comment.

Next slide, please.

So where we are is that the framework of interpretation is done. The considerations document is on its way. And we are expecting to reach a drafting team consensus on the considerations documents during the Copenhagen meeting.

The points of discussion in that document as to what are the relevant instruments and what is the level of detail where we need to look at in the considerations document. Because for the framework of interpretation it was very clear we only needed to look at how people could be guided while interpreting the bylaw. And in the considerations we're also looking a bit in how the bylaw would be operationalized. And that is to be seen what is within our mandate and also to ensure that we do not go outside of our mandate that we tell others what to do. So that is what we're working on. But I'm very confident that we will make next steps during this meeting. And for that we have a very committed subgroup and also a very committed drafting team of which some of the members are present among us here. I can

only say a great appreciation for all the participation there. And I would like to invite all representatives to join our work or at least review it and definitely also advise us on how to go forward during the public comment period.

MARK CARVELL: Thank you very much, Niels.

Jorge, did you want to say anything as co-chair following progress on this at this time?

JORGE CANCIO: Yes. Thank you. And good morning to everyone.

On the framework of interpretation, I would like to ask Niels to flesh out a little bit the content of the considerations we are looking into just on a very high level so that the audience, the members of the human rights and international law working group are aware of what is the substance we're discussing in the subgroup. So I don't know, at the very general level, to convey an idea of what is really what we are trying to get on that paper which is preventing us from sending it to the public comment.

Because, when we were preparing for this meeting, we were mostly confident we would be already in the public comment.

And, as you said before, we had to backtrack a little bit. But it could be good to know what are the specifics a little bit of that.

NIELS TEN OEVER:

Thank you very much, co-chair.

One could see it as backtracking. One could also describe it as regulator -- (indiscernible) ^ so I think we will make quite some progress. And I would be very happy to outline the work of the framework of interpretation. For that it might be handy if the other document is put on the projector. Because what the framework of interpretation is actually doing is that it's giving a very concrete exegesis of what the bylaw actually says. So it takes every part of the bylaw. And the bylaw reads within the scope of its mission and within the scope of other core values, ICANN will respect internationally recognized human rights as required by applicable law. This core value does not create and shall not be interpreted to create any obligation to ICANN outside its mission or obligations found in applicable law. And this core value does not obligate ICANN to enforce its human rights obligations or human rights obligations of other parties against other parties.

So what is done in this relatively short core value, it's being cut into little parts. And in every little parts we're trying to explain what it means.

Next page, please.

As you can see in the left hand column, you see the ICANN bylaw language. And then, in the right-hand column, you see our framework of interpretation. So how we propose that people should read and understand the bylaw.

And we've done this for -- in the smallest possible unit, so that it's really clear what is actually meant by the bylaw. I hope that this is a sufficient explanation, co-chair.

UNKNOWN SPEAKER: Yes, thank you very much. I would urge the members of this working group to start looking into this document. And it's also important to understand the value or the role of the considerations document which is the one under discussion and now in the subgroup of the CCWG accountability.

This is more or less a compliment, if I understand it rightly, to the more interpretational text we had agreed upon in December.

And could you perhaps also outline the main elements of the consideration document?

NIELS TEN OEVER: Thank you, Mr. Co-chair. I'd be more than happy to. What we've been asked to consider in annex 6 and annex 12 of the Work

Stream 1 CCWG reports are the following considerations that we're seeking to address: That is consider which specific human rights conventions or other instruments, if any, should be used by ICANN in interpret thing and implementing the human rights bylaw. Next one the policy and frameworks, if any, that ICANN needs to develop or enhance in order to fulfill its commitment to respect human rights.

And next one. Consistent with ICANN's existing processes and protocols, consider how these new frameworks should be discussed and drafted to ensure broad multistakeholder involvement in the process and consider how the interpretation and implementation of this bylaw will interact with existing and future ICANN policies and procedures. And, finally, consider what effect, if any, this bylaw will have on ICANN's consideration of advice given by the Governmental Advisory Committee.

So, in a very similar fashion to the framework of interpretation, we'll put the considerations in the left-hand column and come up with a detailed consideration in the right-hand column. That's concretely what we are working on now.

JORGE CANCIO:

Okay. Thank you very much. I don't know if Mark wants to add something.

MARK CARVELL:

Yes. Thank you.

But, before we open it up to everybody in the room, I just want to say that this is a major step forward for the ICANN community. We've reached a stage now where we have something in the bylaws and we have a good multistakeholder discussion on how we actually will implement it and what the potential impacts would be.

So I just have one perhaps not easy question for Niels. And that is if we have some kind of vision where we will be in two to three years' time possibly with a new gTLD round launching. How do you see the work that you're leading on now pave the way for a more consistent and ubiquitous recognition that everybody who's developing the policy within this ICANN community has to be alert to potential human rights issues. Not only on policy but also how ICANN conducts its work or how it performs as an employer and so on as well as other related issues.

Can you say a few words about the vision, if you like, of where we will be in a couple years' time? Thanks.

NIELS TEN OEVER:

Thank you very much, Mr. Co-chair.

I think we are currently working through what it could look like. So we are trying to shape a common vision. And we're also trying to see where it makes sense to have a unified approach and where to have a specific approach.

We now have the core value. We soon hope to have the framework of interpretation with some guidelines of considerations. But then it will really be up to the supporting organizations and advisory committee as well as ICANN the organization and the ICANN board to operationalize this.

And I think it's very important that we as a CCWG subgroup do not go outside of our mandate and tell you what to do. I think what we did is we're trying to materialize what we jointly agreed in a multistakeholder collaboration in the transition. Now we need to tailor that to the different parts of the community. And I think it's up to the different parts of the community to shape that together. And I think for that participation and thinking -- because this is also pioneering work. So I think it's not so much grand visions that we need as well as careful collaboration and considerations. Thank you.

MARK CARVELL:

Thank you, Niels. Let's hear from people in the room. Okay. I saw Iran. Kavouss had his hand up. Anybody else signaling at

this moment? Thomas de Haan from the Netherlands, thank you. Kavouss, please go ahead. Thank you.

KAVOUSS ARASTEH: Yes, thank you very much, Mark. And Jorge and thank you to Niels for the effective work that they have done.

Something that we encounter these days in the ICANN is overlapping activities. The group that you are chairing, Mark, was established two years ago before the transition starts. Transitions put a particular emphasis on the human right. And at the first meeting it was started in the transition and finally it was not agreed to put more than one very, very high-level paragraph in the bylaws saying that the implementation of that is subject to framework of interpretation of human rights. And that is why in the Work Stream 2 this issue followed.

Unfortunately, because transition was done in a very hasty manner, we have two annexes which are contradicting each other -- annex 6 and annex 12. This is not the fault of the group but it is what has happened because of the last moment.

And let me say that no one paid sufficient attention to annex 12 because they've been concentrating to those required by the transition. Annex 12 was after the transition. So that is the

reason why some contradiction has happened. But we don't want to blame anybody.

Now, we have studied -- I was one of the participants of your group, Niels. I did not miss any meeting. We have done our job for annex 6. It was going to the two reading of the plenary and somebody rightly or wrongly found that there was a need to look at annex 12 and we did. But this should not be an excuse that we redo the entire job of annex 6, which is the case in your group. It was. But you very skillfully tried to manage that. Some people use that excuse to redo everything, which was not effective nor productive.

What we should have done, look at what we did in the first round and look at Annex 12 and see if there is anything that has been missed, but not redoing the whole job.

I give you an example. The Ruggie principle was discussed at, deliberated extensively, and it was something agreed in a very mild arrangement, but now people, they come under this excuse of (indiscernible) totally reject that. This is not productive. And we have to be very, very careful of that.

And then you mentioned that policies of the constituencies and GAC advice should or expected to respect human right. No problem. In fact, one of the GAC member in a very rare intervention that made in that group, he emphasized that GAC

advice must or should respect human right, but he did not mention that the PDP should also respect human right. And I wonder why that distinguished GAC member would just put all pressure to the GAC but did not mention that the PDP must be also observing the human right. That is what I'm fighting during the last several sessions, and you witnessed, distinguished chair, that I pushed and pushed and pushed that we should have equal treatment. Because you have two type of document to ICANN Board: recommendation arising from the PDP development by GNSO and ccNSO, and we have GAC advice. All three must or should or expected to respect human right. Mentioning something just for GAC because Annex 12 referred to GAC, rightly or wrongly, but not refer to the others is not right. At this stage we have to correct this and we have to mention in your output document all policy development must respect human right. Similarly, all GAC advice must respect human right. If you mention GAC but not others, it's not correct. So we have to take this one. And second --

MARK CARVELL: Okay. Thank you.

KAVOUSS ARASTEH: -- any output of your group should go to his group. We should not duplicate the issues because that goes to the bylaw in an

indirect manner. So we should not continue to have parallel working.

So anything we prepare should feed that group.

Thank you.

MARK CARVELL:

Thank you. Thank you, Kavouss.

Niels, did you want to comment on -- not so much on the history but perhaps --

NIELS TEN OEVER:

The future.

MARK CARVELL:

-- the future. But I mean there was reference to the Ruggie principles, and we've got a call set up for later today with a member of the U.N. working group. Perhaps on that point, a few comments would be helpful as we plan that call.

And, you know, Kavouss's final point. Perhaps you might want to comment on that as well.

Thank you.

NIELS TEN OEVER:

Thank you very much, government of Iran, Mr. Arasteh.

I try to be quite short. Your -- your efforts have not been in vain because in the current version of the document, it is outlined that every SO, AC, ICANN organization and ICANN Board all will need to respect human rights, but we will need to find the right modality to do so. And that might differ, of course, per SO and AC, because they have different policy -- policies and procedures and working methods. So we need to find the right method for that. but your point is made and in the document there.

And, indeed, on the Ruggie principles, on the Framework of Interpretation, we have a consensus on considerations. We're still working. And on that, we're now being supported by -- by your group to have a conversation today at 7:30 in room MR5 to - - to benefit from the expertise from the U.N. working group on business and human rights. So it would be great to -- to also share with your experiences there.

And then Wednesday at 5:00, there is the cross-community working party on ICANN's corporate and social responsibility to respect human rights where, among other things, we will also have a presentation of the Danish Institute for Human Rights, which is a very experienced institute in doing human rights impact assessments on issues and with governments, but also

with businesses. And they will give us an introduction on what different models of human rights impact assessments there are.

So those could all be knowledge shares that could help us make the next step.

MARK CARVELL:

Okay. Thank you very much, Niels.

Jorge, did you want to comment at all or should I go straight to Thomas? Thomas de Haan. Yes. Thomas de Haan, please.

THOMAS DE HAAN:

Okay. Thank you all for the good presentation. also a milestone also, I think, for this group and having this in the bylaw and in consensus.

I think, Niels, you answered my -- there is a kind of echo, I think, but okay. You answered my question, one of my questions about giving the constituencies a tool, an instrument to work with assessing whether the activities are in line with human rights. That's a good thing.

I had two other questions, which is basically will there be a mechanism to monitor, let's say, the progress within ICANN, whether policies are in line with human rights? Not necessarily

kind of compliance but more kind of assessments, how are we standing in one or two years? What did change within ICANN?

And second question would be is there going to be a kind of review also? Let's say we can have a kind of monitoring system, but also will there be a kind of review after some time?

Thank you.

MARK CARVELL:

Thank you, Thomas.

Niels, would you like to respond on those points?

NIELS TEN OEVER:

Thank you very much for those -- for those -- for those questions.

As you might notice, I'm a bit hesitant to respond as a -- as a rapporteur of the subgroup, because this -- answering these questions might go beyond the mandate of our subgroup, because it is really the implementation phase. But what I think I can say is that since it is a core value and it's part of the enhanced ICANN accountability, it is part of the existing review and modeling processes.

So I think we should really try to ensure that this is integrated within all the existing work. So one, ATRT review comes to mind, but also IRP processes. The core value could be subject to that.

There are, of course, the annual reports, one could think of transparency reports, which could all reflect parts of the human rights core values.

So I think there are definitely different mechanisms and assessments and reviews in which this could take place. Where and how that should be done remains to be seen when we get to actually operationalizing the bylaw once it's activated.

And for me the next step is let's try to -- let's make sure we activate it and then take the next step together.

MARK CARVELL:

Okay. Thank you very much, Niels.

Yes, we -- we have these opportunities to ensure that the ATRT accountability and transparency review processes provide the vehicle for taking stock of how the bylaws core value and the implementation of that has actually performed. That's a very important point. And the other processes. Sort of environment of awareness I think will be much sharpened up as well to keep everything on track.

So I think I'll just invite one more question, if anybody wishes to put a question at this stage. I can't -- can't see any -- ah, there's one over there. Thank you. I can't -- with these lights here, I can't see you.

UNESCO: That's okay. You may not know me. My name is Rachel Pollack and I'm from UNESCO.

I wondered if you could just very briefly clarify. There have been some allusions to the Ruggie principles, the U.N. Guiding Principles on Business and Human Rights. What the current thinking is at this stage and what you hope might be clarified in this evening's Skype session with the representative from the U.N. working group on business and human rights.

Thank you.

MARK CARVELL: Thank you. Thank you very much, Rachel, for that question. If I just explain that the purpose of the hookup with the U.N. working group was really to gain some insight from somebody on the working group who's familiar with ICANN on the potential applicability of the -- the Ruggie principles, which, to give the formal title, is Guiding Principles on Business and Human Rights. But of course this is signed up to by states, and hence the multilateral framework of this. But its relevance, I think, was identified by many in the community, certainly many amongst GAC colleagues, as potentially informing and -- and a reference

point, if you'd like, a guidance resource for the ICANN community.

So the purpose of the call was really to facilitate some sort of reflection on that potential by somebody who is on the working group and is familiar with ICANN and understands the sort of unique nature of the ICANN multistakeholder process, and so on.

So that's just to explain why we've set this call up. Originally we were going to do it within this meeting, but the timings didn't work out for Anita Ramasastry, but I hope you will be able to join the room. Which one was it? MR --

NIELS TEN OEVER: MR5.

MARK CARVELL: MR5, when we'll do this call. It's a Skype call, I think, or a possibly we'll phone her. She won't actually be here in person but it's a valuable opportunity.

But Niels might want to comment on the general question of how the discussions have gone in terms of the Ruggie principles, applicability, and so on. Niels. Thank you. Niels, I turn to you on that. Thanks.

NIELS TEN OEVER:

Thank you very much, co-chair.

As you well know, it states that are party to the human rights treaties and conventions. And with the U.N. global compact and its more or less successor the U.N. Guiding Principles on Business and Human Rights, there has been a ways to accommodate nonstate actors and their way to respect human rights, because in the U.N. Guiding Principles, there's the outline of the three pillars, the responsibility of states to protect human rights, the responsibilities for nonstate actors to respect human rights, and the third pillar is access to remedy.

So ICANN somewhat falls in between the first and the second pillar, and that is exactly what we're trying to address.

We know that ICANN is not a state. We also know that ICANN is not a run-of-the-mill business. So that is roughly what the -- what the issue boils down to. So how -- how do we see, with the -- we do not want to reinvent the wheel so we want to understand what the best practices are, but also see in what -- to what extent does it need to be customized to -- to inform our work.

MARK CARVELL:

Okay, Niels. Thanks for that final question.

I think we now need to get on to the next substantive discussion point of our meeting today, which is the -- the Council of Europe report on applications for community-based new gTLDs, which I hope you are all well aware of.

We will have a discussion of the report's recommendations later today in the GAC plenary new gTLD session, but this is an opportunity to preface that discussion in plenary with our look at the human rights perspectives of the Council of Europe's report. And I've got two people here with me to help us do that. One of the authors, Eve Salomon is here with me on my immediate left, and she will make a short presentation on the human rights perspectives underpinning this work. But first of all I want to turn to Elvana Thaci, who is on my far left, who is with the Council of Europe's Media and Information Society Directorate, if I've got the title approximately right, and is representing the Council of Europe here as observer on the GAC. And I just wanted to invite Elvana to say a few words about the context of why the Council of Europe stepped in to the GAC's consideration of community-based applications in view of the Council's primary mandate on human rights, freedom of expression, and so on, in Strasbourg.

So Elvana, can I invite you to say a you few words?

ELVANA THACI:

Thank you, Mark, and thank you to the GAC for having the Council of Europe to present this report. The report, by the way, is available in printed copies. It's at the end of the room on coffee tables, so you can collect a copy of the report there.

I have three short points to make. First I'd like to give you a little bit of background information, context, and the political significance of -- of the Council of Europe's participation in the -- in the GAC and in the ICANN.

Second, the role that we are mandated to play in the GAC. And third, very few words before Eve introduces the report on the -- on the gist of the report.

So the Council of Europe, for those of you who may not know it, is an intergovernmental organization. It brings together 47 European states. And the mandate of the organization is to defend and to promote human rights, democracy, and rule of law. Those are the three key values of the organization which we promote every day, in our everyday activities.

The Council of Europe's participation as an observer in the GAC is based on a decision by the highest decision-making body of the Council of Europe; that is, the Committee of Ministers of the Council of Europe. That decision was issued in 2010, and since then we have been an observer in the -- in the GAC.

Really, that decision highlighted the importance that the member states of the Council of Europe attach to this committee and to the ICANN as well as an organization.

The basic understanding, the premise of our participation, is that the GAC can play an essential role in ensuring that the technical decisions and the coordination function of the DNS in the critical Internet resources take into account international human rights law. So that is also written in the statement, in the declaration that was adopted in 2010 which I just mentioned.

Now, what is our role in the -- in the GAC? What is the role of the Council of Europe here? Our main objective is to promote an active engagement, an active involvement of our member states in the GAC with regard to human rights issues. Most of our member states are members of the GAC as well, and most of them I think are sitting in the room.

MARK CARVELL: Just to explain, for those who are not familiar with the Council, that's 47 member states, if I remember right the figure.

ELVANA THACI: That is 47 European member states, yes.

And our premise is that our member states, which are also GAC - members of the GAC, are bound by international human rights law. They are bound by the European Convention on Human Rights, whether or not the mandate of this committee of the GAC is technical in nature.

So the member states have to exercise the human rights responsibilities and cannot divest themselves from those responsibilities simply because they participate in a technical body.

Our second role is to engage with ICANN to ensure that ICANN also assumes responsibilities for respecting international human rights law by taking due diligence steps to identify, to prevent, to mitigate, and to remedy any harm or any interference with human rights that might happen in the context of its activities.

We also promote a more transparent and more accountable policy development process in ICANN, broadly speaking, one which has measurable standards and is in full respect of the public interest.

Since we became observers in 2010, we have submitted three reports to -- to the GAC. In 2012, on -- a report which focused on new gTLDs and freedom of expression and freedom of assembly and association. There was a second report in 2014 which

looked at the fuller scope of human rights. And there is now a report on the table which will be introduced to you shortly.

We are more -- we are more and more active in discussions in ICANN with regard to privacy. There will be a couple of sessions, I think, this week in the GAC but also cross communities to discuss issues of privacy and data protection.

We have also been involved in the Public Safety Working Group in capacity-building workshop in -- with -- with the African law enforcement authorities. We supported there the participation of countries such as Ghana, Mauritius, Monaco and Senegal. So that is, I think, the scope of activities of the Council of Europe in the GAC.

Now, just two last words about the report, the findings of which and the recommendations of which will be introduced by Eve. Our premise for that -- for that report was that top-level domains should be seen as tools to enable people to access information and to express ideas across borders. They can contribute to -- to the enjoyment and to the exercise of freedom of expression, freedom of assembly and association, and that there are issues related to the principle of nondiscrimination in the way that top-level domain names are allocated.

So with that in mind, we commissioned this report to -- to experts, to independent experts to examine community

applications; in particular, ICANN processes dealing with community objections and Community Priority Evaluation from a human rights angle.

Our second objective with this report was to contribute to the GNSO policy development process on community-based applications and human rights.

I think I will leave it at that on the report. And pass the floor to Eve, if you wish. And I'm happy to answer any questions that you may have. Thank you.

EVE SALOMON:

Thank you. If you could put up my slides, please.

At the back there should be a little short presentation from me.

Anyway, good afternoon, ladies and gentlemen. It is afternoon now. It's a pleasure to be here. As I've already been introduced, I'm one of the co-authors of the Council of Europe report.

In this afternoon's plenary session I'll be back taking you through all the specific recommendations of the report.

But right now, I'm here to really give you a bit of background on the human rights implications of the community-based application process for new gTLDs.

I don't know what's happened to the slides, but if somebody at the back can find them, that would be helpful.

Thank you.

So let's just start. As you are aware, in its role as the global governance body that develops Internet policy and organizes the technical coordination of the Internet's domain name and addressing system in the global public interest, ICANN has the capacity to impact on human rights; in particular, the rights to freedom of expression, freedom of association and nondiscrimination.

And moreover, as Elvana has just said, when states participate in specialist bodies with primarily technical mandates, such as the GAC does in ICANN, states do not divest themselves of their human rights obligations.

We also, I believe, need to consider the Ruggie principles, which have already been mentioned several times this morning, which provide an authoritative global standard on the respective role of businesses and governments on helping ensure that companies respect human rights in their own operations and through their business relationships.

These guiding principles proscribe the duties on governments to provide for greater access to effective remedies, both judicial

and nonjudicial, as well as a responsibility on corporate actors to provide for an effective remedy if they have caused or contributed to adverse impacts.

The guiding principles state that nonjudicial grievance mechanisms should be legitimate, accessible, predictable, equitable, transparent, rights compatible, a source of continuous learning, and based on engagement and dialogue. So those are some other considerations to bring into the how-to apply and implement, how to operationalize human rights objectives.

So turning back to the human rights which are particularly impacted -- here, if you go on to the next slide. Thank you.

No, it's not that. It's not this -- If you could remove this presentation, please. It's another one which is called human rights. But never mind. I'll just carry on without it.

So looking at specifically at the human rights, which are particularly impacted by the new gTLD process, we'll start with freedom of expression as set out in the Universal Declaration of Human Rights, Article 19.

There we are.

This is just setting out what I'm talking about just so that you know what the key -- the key rights are that we're referring to.

So community TLDs create spaces for communication, interaction, assembly and association for various societal groups or communities. As such, community TLDs facilitate freedom of opinion and expression, including the right to seek, receive, and impart information and ideas. But, at the same time, a community TLD could impact on the freedom of expression of those third parties who were excluded from using the TLD. And, therefore, it has the capacity to be a barrier to freedom of opinion and expression.

As a result, the rights of the community need to be balanced with the rights of third parties that are affected by their potential exclusion from the community TLD.

In balancing those rights, ICANN has what is called a margin of appreciation. In order for it to be able to set policy, which potentially favors one set of applicants over another, if there are sound public interest reasons for it to do so.

So ICANN cannot disregard excluded third parties and should have regard to other means of expression that are available to those who may be excluded from the community TLD.

And, in addition, if there are potential clashes of rights which could be foreseen, ICANN could require gTLD applicants to specify in their rules and policies how they intend to balance these rights.

So I just wanted to make clear there that freedom of expression is a right which you can think of as very obviously affecting communities which apply for a TLD. But they also affect people who are excluded from those applications.

It doesn't mean that ICANN can't go ahead with pursuing its policies in favor of community gTLDs, community applicants. But it does mean that it does need to be considered and looked at expressly.

So, if we move on to freedom of association and assembly as set out in Article 20 of the UDHR, the right to freedom of association and assembly can be exercised for new technologies, including for the Internet, which can provide spaces for communication, interaction, assembly and association for various societal groups or communities. Community TLDs create space to collectively act, express, promote, pursue, or defend a field of common interest. As a volunteer grouping for a common goal, community TLDs facilitate freedom of expression and association and have the potential to strengthen pluralism, cultural and linguistic diversity and respect the needs of vulnerable groups and communities. But, as with the right for freedom of expression, community TLDs also have an effect on the rights of third parties.

Those that are left out of the community may perceive their human rights to be negatively impacted. For that reason, the rights of the community need to be balanced against the rights of those third parties.

As part of this balancing act, it is relevant whether alternative means of association through another gTLD or simply other than a gTLD are available to the concerned party.

So, moving on to freedom from discrimination, which is in Article 2 of the UDHR, there are two relevant aspects to the right to non-discrimination, one in relation to freedom of expression and association and one in relation to process.

Communities are entitled to exercise their rights to expression and assembly free from any discrimination. Perhaps the clearest example in terms of the current CBAs is the application by a community applicant for the .GAY string.

The international center for --- expertise .GAY gTLD may be regarded as detrimental to the interest of the gay community. In other words, it could amount to discrimination.

In terms of process, in a sense, ICANN positively discriminates in favor of community-based applicants by giving them priority for a gTLD if they fulfill certain criteria.

However, as you know, ICANN has received numerous allegations that has perceived --- that a standard has been set so high that practically almost no community is capable of being awarded priority.

Out of 27 string applications in CPE, only five have passed and none with a maximum score of 16.

The criteria and scoring thresholds to determine priority as set out in the Applicant Guidebook as well as the restrictive interpretation by the EIU of the concept of community have allegedly obstructed a fair, equal, and non-discriminatory process.

In addition, the use of auctions to determine contentions may in itself be discriminatory as the auction process favors wealthy applicants with deep pockets which are not --- plurality and diversity as well as breaching the right to non-discrimination.

So let's move on to due process, which is covered in both Articles 8 and 10 of the UDHR. This right ensures the right to a fair and public hearing by a competent, independent, and impartial tribunal established by law as well as the right to an effective remedy. ICANN's gTLD program, including community-based applications, must follow procedural due process as the outcome of the process is itself a determination of rights,

namely, whether or not an applicant will be delegated a top-level domain.

In any event, ICANN's mission and mandate to manage the DNS in the public interest presumes it will take into account due process standards. This is particularly relevant --- any failure to follow a decision-making process which is fair, reasonable, transparent, and proportionate endangers freedom of expression, freedom of association, and risks being discriminatory.

In our report for the Council of Europe we have, therefore, paid particular attention to ICANN's community objection and community priority evaluation processes to assess whether they are fair and reasonable.

And we have concluded that weaknesses in those processes may affect the human --- questions. And, as I said this afternoon, bearing our conclusions in mind, we'll go through all of the recommendations in the report. Thank you.

MARK CARVELL:

Thank you, Eve. We're starting to eat into the lunch break. We started a bit late, so apologies for that. I think we're going to allow five minutes for questions to Eve in particular on her very

comprehensive --- fundamentals of rights stemming from the universal declaration and so on.

So any questions we can make at this point? Yeah. Indonesia. Thank you.

INDONESIA:

Yes. Thank you for the comprehensive --- just as written there.

I just wonder about two things. One, if ICANN is doing that, as you mentioned --- it's not considered right to the ICANN human rights core values. What will ICANN should do if it is headquartered in California where perhaps many agreed with ICANN the California court didn't agree with that.

Secondly, what --- case and a few months ago last year, I think. Shall ICANN also have that comment on them, bearing in mind that is transfer through the ICANN network. Thank you.

MARK CARVELL:

Okay. Anybody on the top table want to take that? Yes, Eve, thank you.

EVE SALOMON:

I think I would like to defer to ICANN's own legal counsel. I certainly wouldn't want to second guess what ICANN's legal counsel would say. But I want to bring to your attention you

mention the possibility of a California court. That has, in fact, happened, as you may well be aware, when one of the applicants, community applicants for the .AFRICA string has gone to Californian courts on the very issue and actually on freedom of expression grounds. And the court raised questions about the ICANN's attempt to ask applicants to wave their rights to go to court.

So, as far as I understand it, this is still going through legal ---

MARK CARVELL: Wrap this session up. If anybody -- one more, yes. Pakistan.

PAKISTAN: Thank you for detailed presentation. I have a question regarding the community-based new gTLDs.

It is explained that there are issues with the government-based gTLDs and leave some recommendation to the ICANN to resolve these issues.

My question is what is your suggestion for the communities to resolve such issues of their own instead of the broad ICANN? And is there is a mechanism that deals with such matters?

MARK CARVELL: Eve, do you want to have a go? Thank you.

EVE SALOMON:

Our report is looking at ICANN's own processes. And that's what we've looked at. As you probably are aware, where there are contentions, where there are disputes, ICANN does encourage disputants to seek to resolve matters amongst themselves, if possible.

And that has been evoked from time to time. So communities, you know, are involved in trying to come to resolutions. But our report looks specifically ---

MARK CARVELL:

To get away for some sustenance, what we'll do is have a very short report in the GAC communique that we've had this working group session and the issues that we've discussed. And it will be for information purposes in the communique.

And then look forward to comments and reactions from colleagues here during the period leading up to our next meeting.

So I just want to thank Eve very much for presenting that very rich and comprehensive account of the human rights perspective and direct intersect with ICANN's activity under those various key elements of human rights and the declaration.

And thank you also Elvana for explaining the Council of Europe's role in ICANN, the work it's been doing to inform ICANN processes with regard to human rights and the work of the council and the 47 member states and the agreements that they've made.

And I thank you, Niels, for coming here to update us on the framework of interpretation and the considerations document and the process and your next steps.

And just to remind you that we have this call later today at 7:30 until 8:00, so half an hour kind of extension --- where MR5 is, but I know where MI5 is. But that's another aspect of the rights debate. But I'm not going to go down that road. Hope that doesn't get back to my colleagues back in London.

So anyway, MR5 is the place for joining us to --- and I think that's immediately following your subgroup meeting. Is that right, Niels? If colleagues here want to sit in on that.

NIELS TEN OEVER: It's an informal meeting of the drafting team. I'm not sure how relevant it is for participants.

MARK CARVELL: It's not the subgroup meeting.

NIELS TEN OEVER: No.

MARK CARVELL: All right. Thank you very much for your attendance here and for the questions you presented and look forward to further discussions and exchanges in the future. We'll close there and let you go have something to eat. Thank you very much.

[END OF TRANSCRIPTION]