

An Initial Sketch for a  
Human Rights Impact Assessment Model  
for the  
Generic Names Supporting Organisation's  
Policy Development Process

Cross Community Working Party on ICANN's Corporate and Social  
Responsibility to Respect Human Rights (CCWP-HR)

## I. Key Considerations

### A. Why is an HRIA of the GNSO relevant?

As per Section II.I of ICANN's Bylaws, the GNSO is responsible for developing and recommending substantive policies relating to generic top-level domains to the ICANN Board. As evidenced by the [policy development process](#) within the GNSO, this Supporting Organisation is entrusted with not only the creation and implementation of policies, but also with ensuring meaningful participation, input and coordination amongst various stakeholders within ICANN.

ICANN's new bylaws were approved in May 2016, adding a new Human Rights Core Value underscoring ICANN's commitment to "respect internationally recognized human rights as required by applicable law". The operationalization of this commitment is in the form of the Framework of Interpretation for Human Rights (FoI HR) which is now pending for approval before the CCWG. When the FoI HR is accepted by the CCWG and approved by the ICANN Board, Supporting Organisations (SO) and Advisory Committees (AC) will need to devise compliance mechanisms to live up to the Core Value. Given that the UN Guiding Principles are mentioned in the FoI HR as being a possible inspiration for applying the Human Rights Core Value, one potential solution is the incorporation of Human Rights Impact Assessments (HRIAs) into decision-making processes.

HRIAs are valuable as they ensure that policymakers and businesses respect human rights, by making a demonstrated effort to identify, avoid, mitigate and remediate potentially negative human rights impacts of their policies and/or operations. Ideally, these assessments should draw on both internal and independent human rights expertise, and be underpinned by meaningful consultation with potentially affected rights-holders and other relevant parties. There is a wealth of literature on HRIA models and their implementation (examples [here](#), [here](#), and [here](#)).

## B. Where does this fit: possible integration of HRIAs into GNSO PDPs

This report is a first attempt to see how a HRIA could be triggered and then completed within the GNSO.

This report is not intended to replace existing HRIA processes or even indicate what a HRIA process is the GNSO will eventually *be*. It is an attempt at starting a conversation around a model based on HRIA best practices, and providing food for thought on how to integrate HRIAs within existing PDP procedures in the GNSO.

## C. Key Criteria of this Model Human Rights Impact Assessments in GNSO Policy Development Processes

1. Participation: This model will aim at bringing about meaningful participation of affected or potentially affected rights-holders during all stages of the impact assessment process.
2. Non discrimination: This model aims at laying out a engagement and consultation process that is inclusive. This will also contribute to thinking around the HRIA is other fora within ICANN, for example, the CCWG, ICANN the organisation, SOs and ACs, who all have their own roles and responsibilities vis-a-vis the FoI HR.
3. Empowerment: This model integrates capacity building initiatives within ICANN for individuals and groups at risk of vulnerability or marginalisation is undertaken to ensure their meaningful participation.
4. Transparency: An underlying assumption for this model is that the impact assessment process is open and visible to participating members, affected or potentially affected rightsholders, and the community at large, without risking the security and well-being of rightsholders or other participants such as NGOs and human rights defenders
5. Accountability: The impact assessment team is supported by human rights expertise, and the roles and responsibilities for impact assessment, mitigation and management are assigned and adequately resourced.
6. Benchmark: International human rights standards constitute the benchmark for this impact assessment model. This would also be determined by the FoI HR.

7. Scope: The assessment includes potential impacts caused or contributed to by the GNSO policy development processes. Assessing impact severity: Impacts are addressed according to the severity of their human rights consequences.
8. Access to remedy: This impact assessment model focuses on fostering a dialogue with stakeholders, especially to ensure that rights holders have avenues for raising grievances regarding the impact assessment process and outcomes.

## D. Structure

HRIAs can usually either have a stand-alone or integrated approach. A stand-alone approach focuses exclusively on human rights, whereas an integrated approach focuses on integrating human rights into other similar exercises, for example, having a human rights analysis within an Environmental Impact Assessment.

This model considers a **stand-alone** HRIA model for the following reasons:

1. It is in line with the envisioned FoI HR and better serves the purpose of the bylaws.
2. ICANN's ecosystem is heavily process oriented, integrating a HRIA with those will be a long term process, and we can never really be exhaustive.
3. Highlights human rights impact by integrating with existing procedures for PDPs in the GNSO, so as to reduce procedural complexity, and also to make this model more seamless in practical application.
4. Allows for clear distillation and focus on significant and urgent HR impact within the GNSO.

Limitations of this approach:

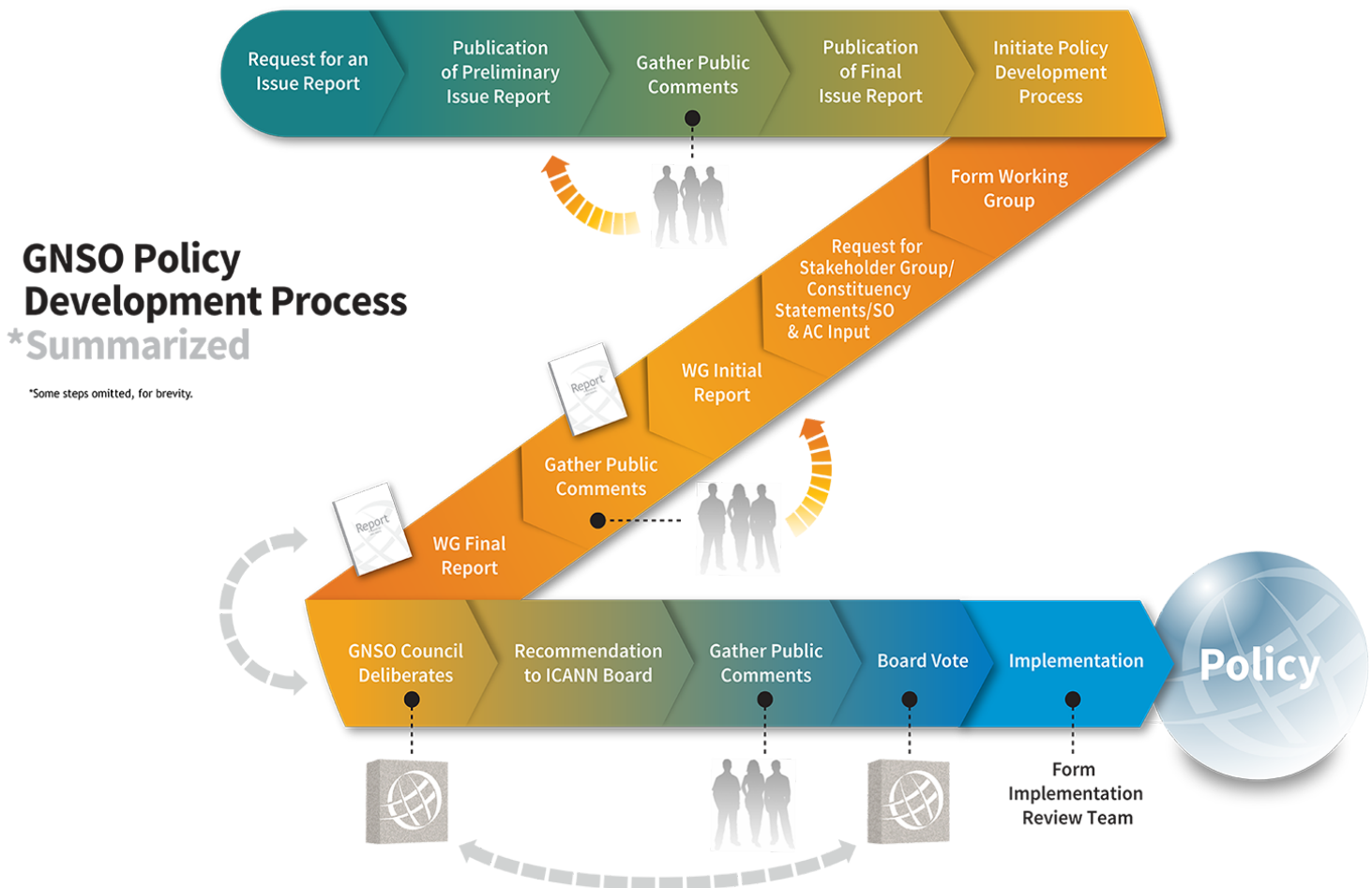
1. Silo-ing human rights which isn't ideal in a complex organisation like ICANN.
2. Mitigation and follow up plans are not as easily implemented as they require support from parts of the organisation that weren't necessarily consulted during the HRIA.

## II. Phase-wise design

This phase-wise design has been adapted specifically to best suit the GNSO's existing policies and procedure. Drawing from HRIA best practices, it lays down a three step process that fits into existing structures currently in place for PDPs. This is done to facilitate a realistic, achievable HRIA model whose blue print can be implemented beyond a single PDP.

Key features of this HRIA are:

1. Integrating with existing GNSO procedures to make the inclusion of human rights considerations organic and workable.
2. Defining the threshold of effort and consideration needed at each stage, clarifying the responsibility and measurement of success.



PHASE I: PLANNING, SCOPING, AND MAPPING RISK — *Contained in Preliminary Issue Report*

This phase requires careful consideration of potential human rights implications and risks. This is the *mapping stage* of the Impact Assessment, with all possible outcomes and effects being considered in a systematic way.

After the request for an issue report is made, Staff is tasked with drafting the preliminary issue report. This preliminary report must integrate the human rights impact assessment into its broader considerations by answering the following question:

What are potential human rights implications within this policy development process?

In answering this question, if some implications *are* identified, this triggers the HRIA. In this initial step, the preliminary issue report must address each of the implications by answering the following questions:

1. Who are the rights holders affected by this?
  - a. End users
  - b. Registrants
2. Who are the duty bearers?
  - a. GNSO Council
  - b. Working Group Chairs
  - c. ICANN Staff
2. Who are other relevant stakeholders who can influence this policy or process?
  - a. NCSG
  - b. CSG
  - c. Registrar Stakeholder Group
  - d. Registries Stakeholder Group
3. How can human rights standards and principles be tested against these risks?
  - a. International human rights frameworks
  - b. International human rights principles
    - i. Non discrimination
    - ii. Accountability
    - iii. Participation
    - iv. Transparency
4. In what ways have these impacts been demonstrated?
5. What foreseeable effects can one contemplate?

Responsibility:

1. Ensure that a thorough initial scoping of human rights implications of PDP.
2. Clearly justify potential risks against:
  - a. Human rights frameworks and principles
  - b. Corresponding rights holders and duty bearers
3. Identify underlying causes of these risks, for eg: competing interests, absence of relevant policy, not enough data etc.
4. Lay the ground for remedial procedures should human rights violations occur

## PHASE 2: ANALYSING IMPACT – *Contained in WG Final Report*

This represents the phase after the Preliminary Report up until the Final Report of the Working Group. At this stage, preliminary risks have been identified, which lays the groundwork for more critical assessment of potential impact. Impact analysis should also involve assessing impact ‘severity’, including by considering the scope, scale and irremediability of the impacts.

This can be done in the following manner:

1. Studying the impact of procedures and policies against human rights standards identified in Phase 1. This can include a right-wise analysis. (if deemed necessary).
2. Ensuring that a HRIA is accounted for in terms of process and scope within the PDP Charter as contemplated in Step 8 of the PDP Manual (Annex 2).
3. Actively inviting and engaging input and critique from stakeholders across the ICANN community.
4. Brainstorming measures to mitigate potential risks, seeking input from across the community and distilling ideas within the Working Group.
5. Demonstrating that critical actors’ roles were outlined, invited and accounted for.
6. In assessing severity of impact, this must be done through a dialogue with critical actors.

Responsibility:

1. Ensuring consideration for HRIA in PDP Manual.
2. Demonstrating stakeholder engagement and justifying stakeholder input vis-a-vis decisions of the working group.
3. Impact severity is contemplated through dialogue.

## PHASE 3: IMPACT MITIGATION, REPORTING, EVALUATION

This stage is meant to ensure that the lessons and findings from the previous two stages in the PDP process are put to meaningful practical use. This involves outlining the following:

1. What steps need to be taken to minimize the adverse human rights implications within this PDP?
2. Which stakeholders must engage with this effort? How?
3. Which rights holders are benefited by this?
4. What access to remedy currently exists? How can this access be safeguarded by the community, for the community? How can grievance mechanisms be strengthened and made more relevant for rights holders?
5. What impact management plan can be put in place should such human rights implications arise?

Responsibilities:

1. Strong grievance mechanisms and impact management plan.
2. Publication of HRIA findings in parallel with Final Report for deliberation by GNSO Council, ICANN Board, Public Comment etc.
3. Integrating mitigation plans with relevant management and policy procedures.
4. Ensuring adequate resources are supplied for implementation of measures and plans arrived at in this phase.

### Phase-wise checklist

Phase	Starts	Ends	Main Objectives	Responsibilities
Planning, Scoping and Mapping Risk	Request for Issue Report	Publication of Preliminary Report	<ol style="list-style-type: none"> <li>1. Demonstrate the existence (or non-existence) of human rights implications in a PDP.</li> <li>2. Map out potential risk</li> <li>3. Map out stakeholder ecosystem</li> <li>4. Determine the human rights frameworks and standards for consideration</li> </ol>	<ol style="list-style-type: none"> <li>1. Justification of potential risks against standards and stakeholders as identified.</li> <li>2. Identification of underlying causes of risks.</li> </ol>
Analysing Impact	Public comments on preliminary	Working Group's Final Report	<ol style="list-style-type: none"> <li>1. Better articulating potential risks against human rights standards.</li> <li>2. Strengthening preliminary</li> </ol>	<ol style="list-style-type: none"> <li>1. Ensuring HRIA is accounted for in PDP Manual.</li> <li>2. Demonstrating</li> </ol>



	report		<p>report through stakeholder engagement.</p> <ol style="list-style-type: none"> <li>Mitigation measures to be better understood through community dialogue.</li> </ol>	<p>stakeholder engagement and input.</p> <ol style="list-style-type: none"> <li>Engaging in dialogue for impact severity.</li> </ol>
Impact Mitigation, Reporting & Evaluation	Post publication of WG's final report	Ongoing	<ol style="list-style-type: none"> <li>Publish findings and learnings.</li> <li>Strengthen grievance redressal mechanisms.</li> <li>Implementation of findings</li> </ol>	<ol style="list-style-type: none"> <li>Ensure adequate resources are supplied for implementation of mechanisms and</li> </ol>