ICANN's Human Rights Impact Assessment
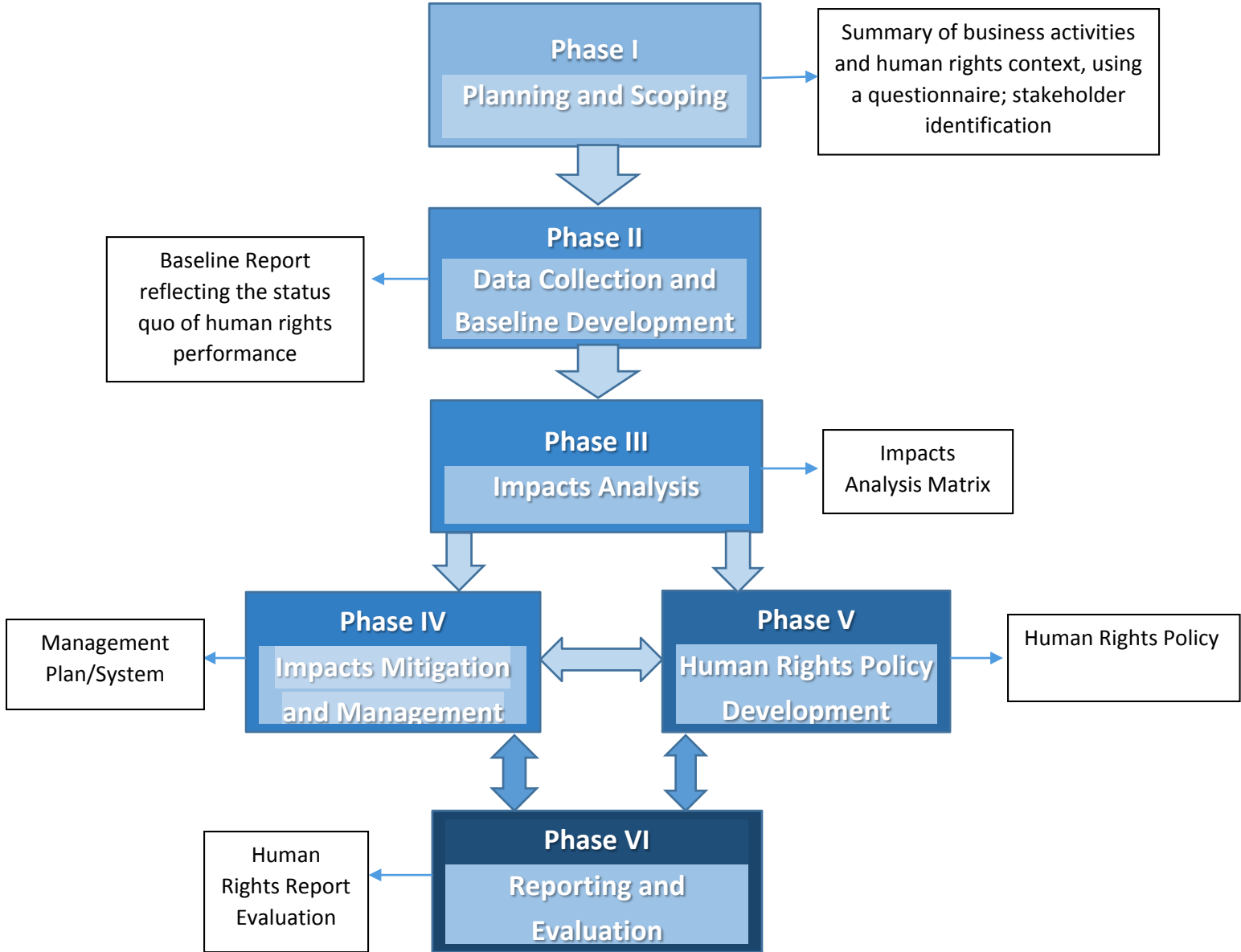## Process Steps for Discussion

<u>Background</u>: At ICANN Dublin in October 2015, the Cross Community Working Party on Human Rights (CCWP-HR) engaged in discussions with various stakeholder groups about the human rights implications of ICANN's operations and the policy development process in particular. To better understand the context of its work, the CCWP-HR proposed a Ten Step human rights review process (found in Annex B of the CCPW-HR paper entitled <u>Recommendations for developing Human Rights Review Process and Reporting</u> – the "Report").

The Report recommended a measured and incremental approach to initially understand the scope of human rights impacts from ICANN's policy development process, eventually leading to a fuller process of a corporate-level human rights impact assessment (HRIA). While the discussions around this proposal produced some useful interactions, it quickly turned out that many other potential human rights implications can be identified in other ICANN activities beyond policy development. The discussion also pointed to the need to reach consensus within CCWP-HR, across other working groups, and ICANN management and board on what is meant by human rights in the first place, illustrated by concrete examples of human rights impacts. Various stakeholders also asked about the boundaries of ICANN's responsibilities.

Given the specific identified needs, CCWP-HR is coming to the view that an HRIA is in fact the most appropriate method of inquiry to come to a common understanding among all the stakeholders about ICANN's human rights impacts. A collective understanding on the relevance of human rights in ICANN's operation can also inform the process of drafting ICANN's human rights policy, enabling ICANN to operationalize and report on its responsibility to respect human rights, consistent with the UN Guiding Principles on Business and Human Rights. Throughout the entire process, iterative engagement with ICANN management and the board will be necessary to reach a clear and reasonable expectation about ICANN's responsibility in relation to all of ICANN's functional areas, as well as the boundaries of its responsibility.

This document proposes six phases of work towards ICANN's human rights impacts assessment, consisting of: (i) planning and scoping phase; (ii) data collection and baseline development phase; (iii) impacts analysis phase; (iv) impacts mitigation and management phase; (v) human rights policy development phase; and (iv) reporting and evaluation phase. The process overview is presented below in a diagram:

Process Overview*

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┌─────────────────────────────┐        ┌──────────────────────────────┐
│         Phase I             │───────▶│  Summary of business         │
│                             │        │  activities and human rights │
│   Planning and Scoping      │        │  context, using a            │
│                             │        │  questionnaire; stakeholder  │
│                             │        │  identification              │
└─────────────────────────────┘        └──────────────────────────────┘
              │
              ▼
┌─────────────────────────────┐
│         Phase II            │
   ┌──────────────────────┐◀──│                             │
   │  Baseline Report     │   │   Data Collection and       │
   │  reflecting the status│  │   Baseline Development       │
   │  quo of human rights │   │                             │
   │  performance         │   └─────────────────────────────┘
   └──────────────────────┘              │
                                         ▼
                           ┌─────────────────────────────┐    ┌──────────────┐
                           │        Phase III            │───▶│   Impacts    │
                           │                             │    │   Analysis   │
                           │     Impacts Analysis        │    │   Matrix     │
                           │                             │    └──────────────┘
                           └─────────────────────────────┘
                                 │                    │
                                 ▼                    ▼
┌──────────────┐    ┌──────────────────────┐  ┌──────────────────────┐    ┌──────────────────────┐
│  Management  │◀───│      Phase IV        │◀▶│       Phase V        │───▶│  Human Rights Policy │
│  Plan/System │    │                      │  │                      │    └──────────────────────┘
└──────────────┘    │  Impacts Mitigation  │  │  Human Rights Policy │
                    │   and Management     │  │    Development       │
                    └──────────────────────┘  └──────────────────────┘
                                 ▲                    ▲
                                 ▼                    ▼
┌──────────────┐    ┌─────────────────────────────────────┐
│  Human       │◀───│            Phase VI                 │
│  Rights Report│   │                                     │
│  Evaluation  │    │      Reporting and                  │
└──────────────┘    │      Evaluation                     │
                    └─────────────────────────────────────┘
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*Adapted from the Human Rights Impact Assessment Guidance and Toolbox, Road Testing Version, of
the Danish Institute for Human Rights

Phase I: Planning and Scoping

Summary of Phase I: This phase includes scoping of (i) ICANN's business activities to understand the scale and type of ICANN's operations, and (ii) the human rights context of ICANN's operation to understand the human rights topics in the particular ICANN operational context. For scoping ICANN's business activities, a questionnaire of potentially relevant documents will be used to engage ICANN's board and management. For the human rights context scoping, existing human rights resources can be used, such as the list of international and regional human rights instruments, and a generic list of human rights topics (for example, Tables C and D of the Danish Institute's Human Rights Impact Assessment Guidance and Toolbox, Phase I). The above exercise will also enable a preliminarily identification of the relevant stakeholders, who will be verified in a later process. Phase I involves desk study, documents review, and research.

See additional guidance.

Phase I Outputs: Summary of business activities and human rights context; a preliminary list of stakeholders

Phase II: Data Collection and Baseline Development

Summary of Phase II: This Phase involves additional data gathering to better understand the key human rights areas identified in Phase I, through further research, as well as interviews and stakeholder engagement. While Phase I involved desk study, this Phase will involve interactions with experts and stakeholders for further data gathering and verification. Relevant international human rights instruments, human rights principles, as well as some performance indicators for key human rights (such as the Ranking Digital Rights initiative for privacy and freedom of expression) aid the process of analysis. Human rights experts in ICANN's community will be interviewed for their views of key human rights areas; they will also be asked to identify relevant external stakeholders, rights holders, and human rights experts to be interviewed. Through these activities, a baseline that illustrates the current state of human rights in ICANN operations will emerge. Setting the baseline is necessary for measuring the effectiveness of ICANN's mitigation and management programs in the future.

See additional guidance.

Phase II Output: Baseline report

Phase III: Impacts Analysis

Summary of Phase III: Now that the baseline data has been collected, this Phase can begin to systematically identify any human rights impacts of ICANN operations and to assess their severity. It is important to include not only those impacts that seem the most 'immediate' but to consider impacts that the business has caused, contributed to, as well as impacts that are directly linked to business operations, products and services through business relationships.

Distinguishing among causation, contribution and direct linkages is one of the more challenging aspects of applying the UNGPs. Generally, contribution is understood to mean acts or omissions, causing/facilitating/incentivizing another to cause a substantial impact, and there may be some element of knowledge/foreseeability involved as well.

Impact analysis should also involve assessing impact 'severity' by considering the scope and scale of the impacts, and whether the adverse impacts can be reversed or remedied in any way. The prevalence of the adverse impacts should also be considered. These analyses require

> **Possible interpretation of ICANN "causing/contributing/being directly linked to human rights impacts":**
>
> - Causing human rights impacts: Violation of health and safety requirements within ICANN's premises; or disclosure of sensitive information under WHOIS
> - Contributing: Creation of an ICANN policy, such as gTDLs, that would enable another to infringe human rights
> - Directly linked: Acts of registries/registrars that may infringe the rights of others

consideration of adverse impacts from the perspectives of those who are affected, not from the perspective of ICANN. The extent of severity and prevalence of adverse impacts will help ICANN prioritize and sequence its response in Phase IV, and will inform the development of ICANN's human rights policy in Phase V.

To contribute to business respect for human rights, HRIAs focus first and foremost on identifying and addressing adverse human rights impacts. Any identified positive effects may be noted, and if possible should be enhanced, but the 'positive' human rights impacts do not 'offset' the negative impacts.

The draft analysis of adverse human rights impacts should be shared with ICANN board and management, the human rights experts in ICANN community, and the identified external experts and representatives of stakeholder and rights holder groups, and reflect their views.

See additional guidance.

Phase III Output: Impacts analysis matrix

Phase IV: Impact Mitigation and Management

Summary of Phase IV: The identified adverse human rights impacts should be addressed in accordance a mitigation hierarchy that first focuses on prevention where possible; if not, ICANN must find ways to mitigate them appropriately. Impacts management also involves finding ways to exercise leverage to address impacts in collaboration with third parties, including business partners, stakeholders, government agencies, and others.

Operational-level grievance mechanisms help identify impacts and to prevent or mitigate future adverse impacts. An effective design of such a mechanism should be considered.

The identified prevention and mitigation measures should be turned into a Management Plan or a Management System, which identifies roles and responsibilities, allocates resources, and establishes performance indicators, milestones, and deadlines. ICANN board and management should actively participate in this Phase to ensure that the management plan or system can be implemented.

See additional guidance.

Phase IV Output: Human Rights Impacts Management Plan/System

Phase V: Human Rights Policy Development

Summary of Phase V: The outcome of the ICANN HRIA will enable ICANN board, management and the community to take a close look at the human rights provisions in the ICANN bylaws, review work of relevant Working Groups, and to consider an appropriate human rights statement or policy for ICANN. The process will be informed by the common knowledge of the affected rights and rights holders as well as the planned response to address them through the Human Rights Impacts Management Plan/System. The draft policy should be subject to a process of global consultation.

See the UN Global Compact guide on how to develop a human rights policy.

Phase V Output: Human Rights Policy

Phase VI: Reporting and Evaluation

Summary of Phase VI: Collecting and analyzing data generated from the application of the Human Rights Policy and Human Rights Impacts Management Plan/System will help ICANN report on its human rights performance. In a previous paper, the CCWP-HR provided some practice pointers on the steps ICANN can take to produce a Human Rights Report.

The collected data can also inform the adequacy of the Policy and the Management Plan/System. This data can be fed back to improve the Management Plan/System over time. ICANN board and management should carry out a comprehensive (and preferably an external) process of review and evaluation of its Policy and Management Plan/System after three to five years of implementation.

See additional guidance.

<u>Phase VI Outputs</u>: Human Rights Report; Evaluation Report