

[PREAMBLE]

The following part of the document addresses the “considerations” listed in paragraph 24 of Annex 12 of the CCWG Accountability Final Report.

<p>Consider which specific Human Rights conventions or other instruments, if any, should be used by ICANN in interpreting and implementing the Human Rights Bylaw.</p>	<p>ICANN, as a non-state private entity, is not a party to any Human Rights declaration, convention or instrument. However, ICANN the community and the organization could refer to any of the widely adopted Human Rights declarations, conventions and other instruments¹ while taking human rights into account in its policies and operations. It should be noted that the bylaw was not written with one specific Human Rights declaration, convention or other instrument in mind.</p> <p>With regards to the UN Guiding Principles for Business and Human Rights, no consensus was reached as to their suitability for interpreting the Core Value. However with regards to the implementation of the Core Value, the UN Guiding Principles for Business and Human Rights, or <u>at least certain aspects of the Guiding Principles</u>, could be considered as a useful guide in the process of applying the Human Rights Core Value. There are certain Guiding Principles that may not be suitable for ICANN and others that might be applicable, depending on the circumstances. However, it is beyond the scope of this document to provide a detailed analysis of the Guiding Principles and their application, or not, in particular situations.</p> <p>In any case, a conflict between any Guiding Principle and an ICANN Bylaw provision or Article of Incorporation must be resolved in favor of the Bylaw or Article. The use of the Guiding Principles as potential guidance has to be carefully considered by each SO and AC as well as ICANN the organization. These bodies must also consider Human Rights grievance procedures to be implemented such as Request for Reconsideration and Independent Review Process as well as any less formal steps to be taken prior to the invoking of either of these more</p>
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- [Universal Declaration of Human Rights](#)
- [International Covenant on Civil and Political Rights](#)
- [International Covenant on Economic, Social and Cultural Rights](#)
- [International Convention on Elimination of All Forms of Racial Discrimination](#)
- [Convention on the Elimination of all Forms of Discrimination Against Women](#)
- [Convention on the Rights of Persons with Disabilities](#)
- [UN Declaration on the Rights of Indigenous Peoples](#)
- ILO's [Declaration on Fundamental Principles and Rights at Work](#) could be applicable to ICANN's employees and workers

	formal procedures.
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<p>The policies and frameworks, if any, that ICANN needs to develop or enhance in order to fulfill its commitment [sic] to respect Human Rights</p>	<p>In order to put the Human Rights Core Value into practice, ICANN the community as well as the organization will need to consider how to reflect this Core Value in their policy and operational processes. Each SO and AC should take the Core Value into consideration in its policy development or advisory role. It is up to each SO and AC, and ICANN the organisation, to develop their own policies and frameworks to fulfill this Core Value. In doing so, the SOs and ACs, as well as ICANN the organization, should also take into account the requirement to balance the Core Values.</p> <p>The subgroup notes that the word “commitment” used in this sentence is not quite appropriate, since there is a different section of the Bylaws that sets forth ICANN’s “Commitments” (Section 1.2(a)). The Core Values (such as the Human Rights Core Value) are distinguished from the Commitments. The Bylaws state that “In performing its Mission, ICANN will act in a manner that ... respects ICANN’s Core Values” (Section 1.2; emphasis added) that ““Core Values” should also guide the decisions and actions of ICANN” (Section 1.2(b), emphasis added), and notes that “The specific way in which Core Values are applied, individually and collectively, to any given situation may depend on many factors that cannot be fully anticipated or enumerated.” (Section 1.2(c), emphasis added). Section 1.2(c) goes on to note “perfect fidelity to all Core Values simultaneously” may not always be possible, and that “where one Core Value must be balanced with another ... the result ... must serve a policy developed through the bottom-up multistakeholder process or otherwise best serve ICANN’s Mission.”</p> <p>As such, it would be more accurate to say that ICANN the organization and the community have an “obligation to respect and be guided by the Human Rights Core Value, as balanced with other Core Values where appropriate.”</p>
<p>Consistent with ICANN’s existing processes and</p>	<p>The methods for developing any new policies or frameworks that may be needed to apply the Human Rights Core Value will be dictated by the type of policy and how ICANN the organization and the community develop those policies.</p>

<p>protocols, consider how these new frameworks* should be discussed and drafted to ensure broad multistakeholder involvement in the process.</p>	<p>For example, “developing and recommending to the Board substantive policies relating to generic top-level domains” (Bylaws, 11.1) is the responsibility of the GNSO and any new or revised policies or frameworks, including any changes to the GNSO Policy Development Process, should be developed by the GNSO using that organization’s policy and processes. The GNSO’s processes allow for multistakeholder involvement in Working Groups developing these policies, and for public comment on any recommendations. Similarly, “developing and recommending to the Board global policies related to country code top-level domains” (Bylaws, Section 10.1(a)) is the responsibility of the country code Names Supporting Organization (ccNSO). Any new or revised policies or frameworks, including any changes to the ccNSO Policy Development Process, should be developed by the ccNSO using that organization’s policy and processes.</p> <p>The review and development of recommendations on Internet Protocol (IP) address policy is the responsibility of the Address Supporting Organization. The ASO does not have a similar formal PDP to the ccNSO and the GNSO. Nonetheless, ASO should also consider how to apply the Human Rights Core Value.</p> <p>When developing corporate or operational policies, and executing its operations, ICANN the organization should take the Human Rights Core Value into account. In order to do so ICANN the organization should propose a framework, which should include multistakeholder involvement in its development, and regular review.</p>
<p>Consider how the interpretation and implementation of this Bylaw will interact with existing and future ICANN policies and procedures.</p>	<p>The interpretation of the Human Rights Core Value should be driven by the Framework of Interpretation. It is expected that the Core Value will be taken into account when future ICANN policies and procedures are developed, and interpreted in accordance with the Framework of Interpretation.</p> <p>Supporting Organizations could consider defining and incorporating Human Rights Impact Assessments (HRIAs) in their respective policy development processes. HRIAs should avoid “cherry-picking” and</p>

	<p>should give due regard to principles of proportionality. Given interrelated nature of Core Values, the Supporting Organizations could also consider other Core Values, as part of the balancing required by the Bylaws².</p> <p>Advisory Committees could also consider similar measures defining and incorporating HRIAs in their respective processes.</p> <p>When examining its operations, ICANN the organization could also consider instruments such as HRIAs to assess their impact on Human Rights. However, this is up to ICANN the organization to develop and implement. The results of such HRIAs should be reflected in ICANN's annual reporting.</p>
<p>Consider what effect, if any, this Bylaw will have on ICANN's consideration of advice given by the Governmental Advisory Committee (GAC)</p>	<p>ICANN's Mission, Commitments and Core Values, including the Human Rights Core Value, should be taken into account by the SOs and ACs, and ICANN the organization when considering policy matters.</p> <p>The Board will need to take into account ICANN's Mission, Commitments and Core Values, including the Human Rights Core Value, in considering all matters before the Board which also includes advice given by the GAC.</p>

² ICANN Bylaws, Section 1.2(c).