

DotConnectAfrica Comments on the Proposed ICANN Bylaws Changes Regarding Consideration of GAC Advice.

ICANN is posting for public comment proposed Bylaws revisions that would incorporate a higher voting threshold for the Board to determine not to follow the advice of the Governmental Advisory Committee. Currently, the Bylaws require a simple majority of the Board (50% + 1) to vote to not follow a piece of advice from the GAC. The proposed amendments to the Bylaws would require 2/3 of the voting members of the Board to vote to act inconsistently with a piece of GAC advice.

Role of the GAC in ICANN

The Governmental Advisory Committee (GAC) is a formal advisory body providing important feedback and input for ICANN regarding its public policy. ICANN has Supporting Organizations (SOs) and Advisory Committees (ACs) that it relies upon to receive guidance and advice related to the interests and needs of stakeholders who are not able to directly participate.

The GAC's most important responsibility is to analyze ICANN's internal and external activities and policies with respect to the interaction between ICANN's policies and processes and other countries' national laws or international agreements.

GAC Advice

The GAC is relied upon by ICANN to provide diverse opinions and perspectives when supplying advice to ICANN. Members have a distinct role to provide informative and accurate comments or advice to ICANN. Such advice ought to be based on well informed research and in line with the multi-stakeholder model.

However, the GAC's advice has sometimes strayed beyond the GAC's mandate to provide advice concerning matters of international public policy. Questions and comments during GAC meetings, as revealed through the publicly available transcripts, show that there are situations where members of the GAC have attempted to give advice on matters that do not involve matters of policy, including matters in which the individuals offering the advice have an individual interest or are tied to persons or entities that have an interest in swaying ICANN's decision-making processes for their own reasons.

This problem is severely exacerbated by the way the GAC makes decisions to render advice. Any GAC member can propose GAC advice. Although in principle such advice is put to a vote, no quorum of GAC members is required for a vote to be held and many GAC members cannot attend every GAC meeting due to other commitments or cost. As a result, GAC advice can be approved and sent to ICANN on the vote of only a handful of people – or simply the absence of any opposing voice present in the room when the vote happens to be called – even if other GAC members, including a majority of GAC members, would oppose the advice if given the opportunity.

And, unfortunately, not all delegates to the GAC are well informed as to ICANN's model and rules, which increases the risk of the GAC offering inappropriate advice or advice that exceeds

the GAC's mandate. It is imperative that its members stay informed about new Internet trends and pending policy issues, this will enable them to comfortably and confidently commit their positions on diverse matters to their governments authoritatively, and within the framework that ICANN has created for the GAC.

ICANN's Proposed Changes Increase the Likelihood of Abusive Use of the GAC to Interfere in ICANN's Activities

ICANN's proposed rule change seeks to make it more difficult for ICANN not to follow the advice given by the GAC. The proposed change, however, goes in precisely the opposite direction of where it should be headed based on the serious infirmities in the way GAC advice is rendered. The proposed changes would give the GAC enormous power over ICANN, without any procedures in place to ensure that GAC advice is the result of a sound process that truly reflects the views of the GAC and pertains to the GAC's mandate of international public policy matters.

And of course, all of this is happening while the IANA functions stewardship transition process is ongoing as the US looks to define a transitioning system where ICANN will no longer be under the oversight of the US government.

For all of the above reasons, we strongly urge the ICANN Board not to adopt the proposed amendment to its Bylaw