

9 August 2018

Ms. Heather Forrest
GNSO Council Chair

Dear Ms. Forrest,

I write to you regarding the Final Report of the Policy Development Process on IGO-INGO access to curative rights protection mechanisms (the “IGO Curative PDP”).

As the GNSO Council prepares to review the IGO Curative PDP Final Report, and particularly insofar as the Council has signaled an intention to facilitate a resolution on the Final Report’s inconsistencies with GAC Advice, I hope the Council finds the following useful.

As you may know, the GAC has been closely following the IGO Curative PDP since its outset.

Indeed, even prior to the commencement of the IGO Curative PDP, the GAC had issued Consensus Advice concerning IGO identifiers. For the GNSO Council’s consideration, in a spirit of compromise (notably respecting co-existence principles), GAC Advice over the period 2012 to 2014 evolved from seeking preventative protection for IGO identifiers to supporting a curative dispute resolution mechanism that still reflects IGOs’ status under international law.

I recall here the GAC’s Hyderabad Communiqué in which the GAC affirmed that IGOs, unique treaty-based institutions created by governments under international law, undertake global public service missions, and that protecting their identifiers in the DNS is in the global public interest. The Hyderabad Communiqué went on to state that ICANN’s Bylaws and Core Values mandate that the concerns and interests of entities most affected, here IGOs, should be taken into account in policy development processes.¹

Stemming from this foundation, as you may also be aware, the GAC, alongside numerous GAC Observers, provided comments on the IGO Curative PDP Initial Report –

¹ We are aware that IGOs’ decision not to participate in the IGO Curative PDP has been raised. As you may know, this was a conscious decision based on IGOs’ experiences in a prior Working Group related to consensus level designations (and Minority Statements), and on assessing IGO Curative PDP participants’ likely policy intentions. The foresight behind the decision not to be formally associated with the IGO Curative PDP is (unfortunately) reflected both in the insular Working Group discussions, and in the text and “recommendations” in the full Final Report.

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none of which appear to have been adequately reflected in the Final Report. To the contrary, the “recommendations” of the IGO Curative PDP Final Report conflict with longstanding GAC Advice.

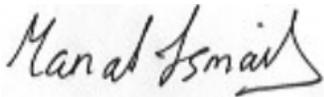
It is concerning moreover that the core “recommendation” of the IGO Curative PDP not only failed to reach consensus (amongst only a handful of active participants), but that minority statements of the former co-chair and of the remaining co-chair seriously call into question both the methodology and the results of the IGO Curative PDP.

These minority statements echo concerns as to representativeness and process integrity expressed by the GAC in its Consensus Advice to the Board in the Abu Dhabi Communiqué.

I also wish to raise for your attention the attached letter sent by the United Nations’ Assistant Secretary-General in charge of the Office of Legal Affairs, to the ICANN Board of Directors.

I remain at your disposal to help find an acceptable resolution to this longstanding issue.

Sincerely,

A handwritten signature in black ink that reads "Manal Ismail". The signature is written in a cursive style with a distinct flourish at the end.

Manal Ismail
Chair, Governmental Advisory Committee (GAC)