The Government Advisory Committee (GAC) has issued advice to the ICANN Board of Directors regarding New gTLD Applications. Please see Section IV, Annex I, and Annex II of the GAC Beijing communique for the full list of advice on individual strings, categories of strings, an strings that may warrant further GAC consideration.

Respondents should use this form to ensure their responses are appropriately tracked and routed to the ICANN Board for their consideration. Complete this form and submit it as an attachment to the ICANN Customer Service Center via your CSC Portal with the subject, "[Application ID] Response to GAC Advice" (for example "1-111-11111 Response to GAC Advice"). All GAC Advice Responses must be received no later than 23:59:59 on 10-May-2013.

Respondent:

Applicant Name	DotConnectAfrica Trust (DCA Trust)
Applicant ID	1-1165-42560
Applied for TLD (string)	.Africa

Response:

Subject: 1-1165-42560 Response to GAC Advice

General Introduction & Summary

This GAC Advice Response has been prepared in response to the GAC Advice Objection notice conveyed in the ICANN GAC Beijing Communique which contains the following statement:

> ***"i. The GAC Advises the ICANN Board that:***
>
> ***i. The GAC has reached consensus on GAC Objection Advice according to Module 3.1 part I of the Applicant Guidebook on the following applications:***
>
> ***1. The application for .africa (Application number 1---1165---42560)"***[1]

Therefore, as the applicant for the .Africa gTLD with Application ID. No. 1-1165-42560, DotConnectAfrica Trust wishes to respond to this specific GAC Objection Advice against its application that has been officially notified to the ICANN Board and widely disseminated to the ICANN Global Community.[2]

[1] See Section IV ('GAC Advice to the ICANN Board') on page 3 of GAC Beijing Communiqué available at https://gacweb.icann.org/display/gacweb/Governmental+Advisory+Committee

We begin by expressing our great **disappointment and outrage** with the decision of the ICANN GAC to issue a GAC Objection Advice against our application for the .Africa new gTLD. **We totally disagree with it, and would like to repudiate and reject it in the strongest possible terms.** From the outset, we would like to urge the esteemed Board of Directors of the Internet Corporation for Assigned Names and Numbers not to accept this iniquitous, tendentious and inequitable GAC Objection Advice, and to completely distance themselves from it. We implore the ICANN Board to employ the existing provisions within the new gTLD Guidebook not to accept the GAC Objection Advice under any circumstances. We believe that our application should be allowed to proceed under the general terms of the structured new gTLD program that is being implemented by ICANN, and would strongly insist that the GAC Objection Advice against our application should not be followed by the ICANN Board.

We hereby seek the immediate **protection of the ICANN Board** against an overwhelming **force,** that is **hellbent on frustrating, and prematurely terminati**ng, our new gTLD aspirations; and hope that the Board of ICANN will be kind and considerate enough to use its discretionary powers to provide the type of unique protection that we are presently requesting.

Part A

Why DCA Trust Disagrees with the GAC Objection Advice

Before going into the specific details of our Reponse, we wish to explain the fundamentals that underpin our profound disagreement with the GAC Objection Advice that has been devised against our .Africa new gTLD application by the ICANN GAC.

We had anticipated that in the absence of any valid objections filed against DCA's application either on the basis of; String Confusion, Legal Rights, Community or Limited Public Interest Objection;[3] that a high-handed GAC Policy Advice will be contrived and used autocratically to influence the ICANN Board to act against DCA's application; and by so doing**, turn the battle for .Africa new gTLD in favour of Uniforum ZA Central Registry,** the other competing applicant in the same exact matching string contention set for .Africa new gTLD. Against the backdrop that UniForum had openly advocated, as evidenced in written comments conveyed to the Independent Objector of the ICANN new gTLD Program[4], urging the Independent Objector to file an Objection against DCA's application, and a GAC advice has now been issued against DCA's application, thereby assisting UniForum to achieve their wanton obectives and desires against DCA. What reassurances do we have that UniForum did not have a hand in this GAC Objection Advice against DCA's application?

[2] See for example http://newgtlds.icann.org/en/program-status/correspondence
[3] All objections that have been filed with the various international dispute resolution providers may be found at http://newgtlds.icann.org/en/program-status/odr
[4] UniForum's comments to the Independent Objector to the ICANN new gTLD Program may be found at http://www.independent-objector-newgtlds.org/app/download/8743939/UniForum+SA+Response+to+the+IO.pdf

If our estimation is indeed correct that a Machiavellian effort has been actually orchestrated against our application, where is the justice in allowing such invidiousness to prevail within an open, transparent and competitive new gTLD program? Thus, we have no need to over-emphasize that such actions that are entirely of a contrived nature should not be allowed by the ICANN Board within the circumscribed civilized space of a globally approved new gTLD program.

Therefore, we expressly disagree with the work of the ICANN GAC in this matter.

Even though a GAC Early Waring was issued, and DCA Trust had submitted a detailed response, we believe that the ICANN GCA did not do its work properly. For example, we had asked for full accountability and disclosures regarding the AUC RFP Process[5], but this was ignored as if our remonstrations are of no consequence. What is the point in asking us to defend a GAC Early Warning issued by the ICANN GAC, if there is no parallel due process set-up for an Accountability Hearing that would, at a minimum, judiciously investigate the issues that we have raised, and present the results for the interest of the global Internet-using public and global ICANN Community; so as to profoundly demonstrate that there will be no miscarriage of justice under any circumstances over the matter of .Africa?

Within a multi-stakeholder ethos as practiced within the ICANN Community, we strongly believe that it is only fair to demand that our voice should be heard. The ICANN GAC should have tried to address our concerns regarding the specific points of accountability that we demanded in our Response to the GAC Early Warning. **Lip-service cannot be paid to multi-stakeholder Global Internet Governance if the voice of an eligible and victimized new gTLD applicant can be so easily muzzled into insignifance by the collective power of the governments represented at ICANN**, now living up to their mythical billing as 'Leviathan'. Indeed, we feel very disappointed that 'Governments at ICANN' have not listened to us, and have thus wielded their 'mighty powers' rather injudiciously against DCA's application. We are frustrated with the

[5] Please also see Page 4 of ***DotConnectAfrica Trust (DCA Trust) Response to the ICANN GAC Early Warning Advice.*** In our official response to the GAC Early Warning Notice we had demanded accountability and full disclosure on:

i. *Which firms and organizations participated in the RFP process*
ii. *What they had each proposed*
iii. *How they were evaluated*
iv. *What merit-based system was employed in the evaluation of the respective proposals*
v. *The relative scores obtained by each evaluated participant*
vi. *The final rankings and how the decision was arrived at to select UniForum South Africa as 'an African-based registry';*
vii. *The final Evaluation Committee minutes that were taken during the meeting to decide on the selection of UniForum*
viii. *The names of those who assented to those minutes;*
ix. *The decision of the AU Tenders Board to approve the selection of UniForum SA, and the official signatories to that decision*
x. *A full public disclosure to the ICANN Board and ICANN GAC in order to further substantiate the GAC Early Warning Advice against DCA Trust's application for the .Africa gTLD name string.*

outcome of GAC's deliberations at Beijing; and we have every right to be, since faith must be retained in governments, and government must listen to, and address, the most important concerns of global citizens. Philosophically speaking, **ICANN thrives on consensus, and autocracy as manifested by the present GAC Objection Advice against DCA Trust's application, is a major dialetical contradiction, and should not be countenanced by the ICANN Board.**

We therefore wish to vigorously reinforce our plea to the ICANN Board of Directors to dissociate themselves completely from this GAC Objection Advice and not to accept it.

1. DCA Trust Obtained Early Support from the African Union Commission

We again would like to reassure the entire ICANN Global Community and Governments that are represented at ICANN that DCA Trust has no problems with the African Union Commission. We know about government support which explains why DCA Trust went to the AUC and UNECA as early as 2008 and 2009 to respectfully request for it; and we are proud to say that the endorsements to support our initiative, which were sought on the **basis of direct formal requests presented to the organizations, were freely granted by the respective inter-governmental -cum-diplomatic authorities.**

We therefore reject the insinuation that the .Africa new gTLD application submitted by UniForum ZA Central Registry is somehow more valid than the .Africa application that was submitted by DCA Trust because they managed to contrive questionable AU support; but even so, reneging on the terms of their AU endorsement by submitting a fraudulent[6] application which did not acknowledge an African Community in it. "Anyone coming to equity must come with clean hands", so says the legal/philosophical maxim on the core principles of Equity; and in this case, we stand by our position that UniForum has not engaged with 'clean hands' over the issue of .Africa.[7] Accepting a GAC Objection Advice against DCA's application will be against the canons of equity and justice. Why should UniForum's fraudulent application[8] for .Africa now

[6] Please see Note 8 below for further explanations

[7] See for example, the argument formulated by Harvard Law School Professor, Henry E. Smith published in 'Yale Law' that ***"equity relies directly on basic morality"*** and that equity receives ***"much of its substance from everyday moral disapproval of deceptive behavior"*** and moreover, a ***"wrong doer is not supposed to profit from his own wrong"***. See 'An Economic analysis of Law versus Equity', October 22, 2010, available at: http://www.law.yale.edu/documents/pdf/LEO/HSmith_LawVersusEquity7.pdf

[8] Ibid. Harvard Law School Professor Henry Smith believes fraud ***"is a knowing misrepresentation that is intended to induce another to part with an entitlement and that succeeds in doing so"***, and that ***"legally, fraud is narrowly defined but there is a larger set of misrepresentations that have an effect similar to fraud***." The key word here is 'misrepresentation' by which, as we have always maintained, UniForum ZA Central Registry misrepresented their application by claiming to have the support of an 'African Community' that it was endorsed to apply on its behalf, but deliberately failing to acknowledge the same community in its application as per its official answers to ICANN Evaluation Criteria questions regarding a Community relationship. The key argument here being that if this deliberate misrepresentation is allowed, then ICANN could be defrauded along with the African Union Commission who had parted with the endorsement, and that only an equitable decision-making by the ICANN Board of Directors would prevent this fraud from being perpetrated. We believe that DCA Trust as an applicant that has not done anything wrong should not be the victim of this fraud that has been committed by the apparent misrepresentation contained in UniForum's application for .Africa.

be the principal beneficiary of an autocratic GAC Objection Advice against DCA's application for .Africa? It is therefore incumbent upon the ICANN Board of Directors not to accept **a dictatorial *fiat* from the ICANN GAC that is portentously inequitable and iniquitous in all its ramifications.**[9] In a democratic world order that seeks the balanced input of equity in the settlement of any contentious dispute, such self-serving recourse to autocratic Leviathanism should be seriously discouraged and firmly deplored by all global citizens.

2. The Need for Accountability

We have already escalated our matter to the United States Congress, the highest institution of the US Federal Government, and we shall continue to count on the outcome of a prospective Congressional Accountability Hearing to be adjudicated by a Special Independent Counsel acting as new gTLD Program Ombudsman, which we hope will vindicate us and indict UniForum and its principals for fraudulent misrepresentation and deceit. **We need not remind anyone that even ICANN had to seek prior approval and supportive encouragement from Congress in public hearings before proceeding with the actual implementation of the new gTLD Program, so no one should scoff at our intentions of escalating our grievances to Congress as an important arbiter with cross-cutting and over-riding legislative and oversight responsibilities.** The United States Congress as a duly constituted parliamentary body, can always exercise the principle of 'Sovereignty of Parliaments' to inquire about anything; therefore, the power of Congress to act on anything cannot be questioned or circumscribed. Apart from the United States Congress, other parliamentary bodies in governmental jurisdictions elsewhere also have similar wide-ranging powers.[10]

As a direct consequence, we do not accept that the prospects for a due process Congressional Investigation should be forestalled by a 'misadvised' GAC Objection Advice. As already pointed out, ICANN, even as it undertakes its Internet Expansion project, is also accountable to the United States Congress as a U.S. Federal Contractor. Again, we would like to emphasize that the transparency and accountability that we have been insisting upon cannot be so easily buried by a contrived autocratic process that is typified by this high-handed GAC Objection Advice.

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[9] Ibid. Again, we cite Professor Henry Smith's arguments which are anchored on the fact that equity is a legal solution to opportunism, and ***"equity is a coherent mode of decision making in which features work together to combat opportunistic behavior."***

[10] For example, section 88(lb) and (2b) of the Constitution of the Federal Republic of Nigeria, 1999, as amended, requires the House of Representatives of the Nigerian National Assembly to conduct an investigation into the public affairs of any person, authority, Ministry or government department for the purpose of exposing corruption, inefficiency or waste in the execution or administration of laws. As such, we believe that any parliamentary body, including the U.S. Congress has to be completely mindful of the weighty accusations that DCA Trust has reported officially and why it has called on Congress to appoint an Independent Counsel as a Special new gTLD Ombudsman to investigate and adjudicate on any matters of illegality that have been reported by applicants regarding the new gTLD Program.

3. A Way Forward

DCA Trust has peviously outlined a Way Forward on .Africa to ICANN, and we need to once again, reinforce the same position as part of our response to the GAC Objection Advice. The processing of applications should continue. The evaluation of our new gTLD application should not be prejudiced in any way. If we pass the Initial Evaluation, we shall present this as ample proof of the viability of our application to enable us go back to the African Union Commission to discuss and negotiate under mutual and cooperative terms. We have always preferred conciliatory gestures and we are amenable to a mutual settlement as encouraged by ICANN in situations of string contention as we now find ourselves. A mutual and equitable settlement of the string contention cannot be achieved if one party wields its governmental power as a sledge hammer that can be used to deal a 'sudden death' knockout punch to kill one application as a way of resolving the string contention over .Africa new gTLD.

Our position is that in the absence of any official Accountability Hearing on the issues that we have raised and reported as our grievances against UniForum ZA Central Registry, the implementation of **any policy action against DCA's application by the ICANN Board would be absolutely unlawful.** At this time, we believe that statesmanship and conscientiousness are required from all public authorities who have a stake in this matter; **in which case, any autocratic, high-handed efforts could cause illegality to be covered up.** Accountability and transparency cannot be simply shoved aside by the hubristic intimidation of DCA Trust with the help of those who oppose it on the ICANN GAC. If there is no accountability, then this issue of government support (or lack of support) for applicants should no longer be considered as relevant to the .Africa new gTLD process, and the **policy decision by the ICANN Board should now be based only on the other evaluated technical, operational and financial criteria.**

4. GAC Objection Advice against DCA's .Africa Application is Anti-competitive

Another strong point of disagreement we have with the GAC Objection Advice is with respect to the issue of competition. The GAC Core Principles consider that ICANN's decision making should take into account public policy objectives that promote effective and fair competition.[11]

However, we see the GAC Policy Advice as a wrong step, and against the explicit commitment to fair competition as enshrined in the Core Principles, against the backdrop that the AU is a sort of 'co-applicant' that has already mainstreamed itself as part of the UniForum ZACR application and applying structure. To simply drive home our analogy: the GAC Objection Advice portends to tie our hands behind our back whilst asking us to participate in a boxing match. Such a pugilistic contest would be very unfair and unbalanced, since it would be rather obvious to all the spectators that the hamstrung boxer has been pre-designed to lose the match. It is even more significant and absurd to observe that the boxer whose hands have been tied, have actually been tied by his opponent in the boxing match!

[11] For example, the Core Principles of GAC includes the following important consideration: ***"Effective competition at all appropriate levels of activity and conditions for fair competition, which will bring benefits to all categories of users including, greater choice, lower prices, and better services."*** Please see https://gacweb.icann.org/display/gacweb/Core+Principles

We believe that the AU's involvement as endorser and co-applicant has further complicated the entire process and has made the UniForum ZACR application more opaque than ever. **In a situation where the African country governments have not endorsed UniForum but have only supported the position of the African Union on .Africa; it is highly questionable on philosophical grounds, whether the political support that has been indeed granted by African countries to the AU as an inter-governmental body representing African country governments can directly translate into an endorsement for a .Africa new gTLD that has been applied for to ICANN under the auspices of the globally approved new gTLD program.** Moreover, the African country governments have only expressed support for the African Union's Position regarding the official request that was made to ICANN for the reservation of the .Africa gTLD name string and related name strings in other languages. For example, the letters written by the Namibian and Kenyan governments to the African Union tend to confirm this assertion.[12] When these letters are compared with the straight-forward Letter of Endorsement granted by the Kenyan government in support DCA's application[13], it soon becomes clear on closer examination that a letter that has been written by an African country government in support of the AU's position on .Africa is quite different from a Letter of Endorsement that has been written by an African country government in support of an application for .Africa new gTLD.

We believe that these questions and contradictions must be resolved first of all, before any high-handed GAC Advice Objection against our .Africa application is countenanced by the ICANN Board. It remains quite significant to our argument and response (defense) that so far, no African country government has directly endorsed the application of UniForum ZA Central Registry. **As a matter of fact, we contend that if UniForum has not been endorsed by 'name' by any African country government (and the evidence at our disposal profoundly suggests that this is actually the case), we do not accept that their application should be allowed to continue by the ICANN Board**, whilst ours should be stopped on the basis of a GAC Policy Advice Objection. It is not our fault that the ICANN GAC has not thoroughly considered the issues at stake before issuing their GAC Objection Advice. Even GAC should be accountable for its actions.

Before reaching the conclusion that our application warrants a GAC Objection Advice, the GAC should have actually determined that the competing application submitted by UniForum has the requisite support from African country governments. The ICANN GAC should have not been so quick to reach the premature and inchoate conclusion that African country government support for an AU position on .Africa is equivalent to African country government endorsement for the application that has been submitted by UniForum ZA CR.

[12] For example, see http://tandaabiashara.com/wp-content/uploads/2013/04/Kenyas-position-on-Dot-Africa-copy.pdf for Kenya's letter and http://www.dotconnectafrica.org/icann-related-2/third-party-documents/ for Namibia's letter.
[13] See for example, http://www.dotconnectafrica.org/yes-campaign/dca-endorsements/ for a copy of DCA's endorsement letter received from the Government of Kenya.

5. The ICANN Board should accept the Principle that only ICANN should determine the delegation of .Africa new gTLD

DCA Trust hereby insists that as far as the new gTLD Program is concerned, it is only ICANN that determines how the new gTLDs should be decided and delegated as per approved new gTLD Program criteria, but the African country governments have simply expressed the position that the AU should actually determine how .Africa should be decided and delegated. **This is *ultra vires*, and it would behoove GAC as part of ICANN not to support an unsustainable position that is actually at variance with the centrality of ICANN's role as the only accepted and approved delegation authority within the new gTLD program.** Moreover, we wish to emphasize that we are not aware that the rules have been changed to allow African country governments to exercise a supernumerary role in determining the delegation outcome of .Africa. We have always placed our faith in the prescriptions of the new gTLD Program guidelines as codified in the Applicant's Guidebook that ICANN determines all new gTLDs, and .Africa is no exception.

Again the dialectical contradiction is rather obvious: we have applied to ICANN, but somehow, African countries believe that ICANN does not have the power within its own new gTLD program to determine the fate of a particular new gTLD, because the power to determine and delegate has been granted to the African Union by the African country governments. Perhaps, we all need to return to the fundamentals of jurisprudence to help us resolve these points of disputation. Until then, we urge the ICANN Board to set aside the GAC Advice Objection. The position of the African country governments, who have granted political authority to the African Union Commission as an Africa-based inter-governmental organization, is as it were, an entirely political matter. **The legitimate use of this power as far as governmental support for new geographical TLDs is concerned is to properly endorse one or more eligible applicants, but not for the named diplomatic authority, in this case, the African Union Commission, to actually make the determination as if ICANN's role is of no consequence regarding the fate of .Africa.** The fact that the African Union Commission used its political influence and diplomatic authority to push through the GAC Objection Advice is limpid proof that the AU remains convinced that it should determine the delegation outcome of .Africa, and not ICANN. An acceptance of the GAC Objection Advice against DCA's application for .Africa by the **ICANN Board would also imply that the ICANN Board also accepts this patent usurpation and reversal of roles.**

6. The ICANN Board should not implement a GAC Policy Advice that it had somehow initiated

All of the above would remain extremely pivotal to our case and explains why we shall continue to urge the ICANN Board to allow our application to proceed. **The other leg of our response is anchored on the fact that the ICANN Board should not implement a GAC Policy Advice decision that it has initiated on its own:** that is, to the extent that the origins of AU's coordinated GAC Objection Advice against DCA's .Africa application are directly traceable to the ICANN Board. In a nutshell, the GAC Objection Advice that we are now responding to seems to have emanated from the ICANN Board.

We may recall that about the time of the ICANN-42 International Meeting that took place in Dakar Senegal in October 2011, as part of the African Agenda that was devised and arrived at by the African Ministerial Roundtable and Meeting of Experts, the African Union had submitted a 12-point request to the ICANN Board, of which the most audacious request was asking for the reservation of the .Africa name and its equivalent in other languages and Arabic IDN as a special legislative protection that would enable the delegation of the names to be done by the AU to a 'structure' that the AU will identify and select outside the aegis of the new gTLD Program. It is our understanding that the ICANN Board had faithfully considered these requests made by the AU, and whilst not expressly approving the request for .Africa to be placed on the List of Top-Level Reserved Names, had indeed recommended in its 8th March 2012 letter to the African Union to influence the delegation outcome of .Africa through the employment of both Community Objection and GAC Policy Advice as workable strategies.

We hereby cite the position conveyed in the letter written and signed by Dr. Stephen Crocker, in his capacity as Chairman of the ICANN Board of Directors, acting on behalf of ICANN, to Dr. Elham M. A. Ibrahim, AU Commissioner for Infrastructure & Energy, as the official recommendation of ICANN to the AU Commission.

ICANN's letter to the AU notes inter alia:

> ***"While ICANN is not able to offer the specific relief requested in the Communiqué, the robust protections built into the New gTLD Program afford the African Union (and its individual member states), through the Government Advisory Committee, the opportunity to raise concerns that an applicant is seen as potentially sensitive or problematic, or provide direct advice to the Board. In addition, the African Union (and its individual member states) can avail itself of any of the appropriate objection processes mentioned above in the event an application is received for any string – even those beyond representations of .Africa – that may raise concern".***[14]

We believe that the AU had accepted the recommendation of ***'providing direct advice to the Board'*** with full certainty, having been reassured that if it indeed adopted the GAC Policy Advice route as its 'objection method', **that ICANN would accept the outcome.** And so we now have an ethical quagmire even for ICANN: the AU requests for Special Legislative Protection on .Africa as a special treatment for the name string(s) that it is interested in, and ICANN refuses officially**, but instead recommends to the AU to utilize the route of a GAC Policy Advice to achieve its aims of protecting the .Africa name(s) for itself; which the ICANN Board decided to accept/approve, thereby enabling the AU to accomplish the objectives which it had sought in its original request to the ICANN Board.** Why should an eligible applicant such as DCA Trust that has so far, not contravened any new gTLD provisions or broken any national laws be subjected to the uncertainties and risks of participating in a new gTLD Program which could have been obviated **if ICANN had agreed *a priori* to the AU's original request?** DCA Trust therefore believes that *a fortiori*, the ICANN

[14] See http://www.icann.org/en/news/correspondence/crocker-to-ibrahim-08mar12-en for further details.

Board should also reject the GAC Objection Advice for the same reason that it rejected the AU's original request for .Africa to be included in the List of Top-Level Reserved Names.

The ICANN Board's recommendation makes it a **colluding party to any intentions expressed by the AU**; to wit, that the .Africa names should be reserved for it, and **accepting the AU's initiated GAC Objection Advice implies that ICANN has assisted the AU – directly or indirectly - to achieve its objectives**. Therefore, it is our contention that the ICANN Board should avoid this ethical quagmire and ***'quicksand of conflict'*** by side-stepping the GAC Objection Advice that has been obtained by the African Union Commission against DCA's new gTLD application for .Africa. The ICANN Board should **maintain its impartiality at all times, and not convey advice to the African Union that would enable the AU get rid of its opponents in obvious violation of the rules of fair completion** that is encouraged under the new gTLD program.

In summing up, at the risk of over-emphasizing simply to drive home an important point, we wish to stress once again that it would be ethically problematic for the ICANN Board to accept to implement and enforce a GAC Objection Advice that it had somehow initiated by recommending same earlier to the African Union Commission.

Part B

Supplementary Arguments to Further Buttress Our Response

We have already presented the finer and more solid points that are crucial to our overall response as articulated above in Part A. Nevertheless, we wish to also present some other supplementary arguments that are no less substantial, so as to further consolidate our response.

We have already shown that DCA Trust's application for the .Africa new gTLD did not attract any other formal objection procedures that were filed on the grounds of String Objection, Legal Rights, Community, or Limited Public Interest grounds. We believe that if no grounds were actually found to object to DCA's application on the basis of the four allowable objection criteria, **why should a GAC Objection Advice be considered as any more valid?**

7. There was no Consensus on GAC advice over DCA's Application

On our part, instrumental to our response to the GAC Objection Advice is our strong belief and understanding that there was actually no consensus on this issue. First, the entire ICANN GAC body is comprised of over 120 governments. The GAC Communiqué that resulted from the Beijing Meeting clearly indicates that only sixty-one (61) GAC members attended the Beijing meeting. We believe that overall consensus could not have been achieved in a situation **where about 50 per cent of GAC members did not participate in the meetings.**[15]

[15] Please refer to the introductory part of the GAC Beijing Communiqué for general information on attendance.

Second, the GAC advice was forcefully pushed through with the assistance of the strident polemics and tactics of intimidation employed by Ms. Alice Munyua, an active supporter and Steering Committee member of the UniForum ZACR application[16]; who claimed to represent Kenya on the GAC to enable her push the agenda of obtaining a GAC Objection Advice against DCA's application, whereas in truth, her GAC tenure has already expired since the ICANN Toronto meeting, after which she was replaced by another officially accredited Kenyan government representative**. Against the backdrop that Ms. Alice Munyau was not a member of GAC but is a member of the Steering Committee of the Africa In One Space initiative, and had actually attended the GAC meeting to assist the UniForum ZA Central Registry application, we question the validity of her attendance and maintain that her vigorous participation in the GAC proceedings with the sort of open bias demonstrated against DCA Trust led to the GAC Objection Advice that was accomplished.** On these grounds therefore, we would like to urge the ICANN Board to note this as fraudulent misrepresentation by an individual who was no longer accredited to GAC, but had somehow ingratiated herself with other GAC members even though her tenure has already expired in order to achieve a sinister objective against DCA Trust. We wish to strongly emphasize that Ms. Alice Munyua was acting as an impostor, and was no longer the Kenyan GAC Advisor (or GAC representative of Kenya) by the time of the ICANN Beijing Meeting which took place in April 2013. Her input and participation were mainly designed to ensure that the GAC Objection Advice that was contrived against DCA's application was obtained anyhow, by hook or crook. **We insist that her participation in the GAC deliberations was highly inappropriate, deceitful and irregular, and this somehow affects the legality and validity of the GAC Objection Advice.**

Furthermore, the **GAC Advice Objection was obtained amidst the protestations of the duly accredited Kenyan GAC Representative and GAC Advisor who did not support it;** which again confirms our belief that there was no consensus by the GAC. Those who attended the GAC meeting were hardly given an opportunity to say anything to the contrary. To reinforce for clarity, we wish to re-state the text of the electronic mail messages sent by the officially accredited Kenyan government representative and advisor to ICANN GAC. This is clear evidence that it was not the consensus of the entire GAC that DCA's application for .Africa should not be allowed to proceed.

[16] For example, see http://www.africainonespace.org/team.php?type=SteerComm where her photograph is prominently displayed as a member of the .Africa Steering Committee and Registry Project Team working with Africainonespace/UniForum ZA Central Registry who have submitted the other application for .Africa

From: Sammy Buruchara
To: GAC Secretariat
Cc: fadi chehade "Katundu , Michael"
Sent: Tuesday, April 9, 2013 10:31 PM
Subject: Re: Change of Kenya's GAC Advisor

Dear Heather,

As the newly appointed Kenyan Government advisor to the GAC, I wish to inform you that I was not able to attend the Beijing meeting due to an unforeseen personal circumstance.

It has come to my attention that Alice Munyua has introduced herself as the Kenya's gov representative to the GAC.

This is inform you that Kenya does not stand by what Alice states in the GAC since she ceased to be the Kenyan Government advisor for GAC on the day of my appointment.

Further, should the situation arise, Kenya does not wish to have a GAC advise on DotConnect Africa Application for .africa delegation.

Regards
Sammy Buruchara
GAC Advisor

-------- Original message -------- Subject:Re: [GAC] dotafrica text proposed for communique From:Sammy Buruchara To:gac@gac.icann.org Cc:

Kenya objects to the above text on the following reasons:

- that AU has representation in the GAC.
- AU has endorsed a candidate for the .africa delegation. It is therefore an interested party.
- AU can therefore not object to another candidate. It must instead leave the process to the ICANN committee to evaluate based on the guide book.

There is an apparent conflict of interest in this issue and GAC members representing AU governments while they have a right to support a certain candidate, must not under the same AU auspice, be the ones to object to other competing candidates.

Kenya therefore does not accept this dotafrica communique.

Regards
Sammy Buruchara

Kenya GAC Representative

The email messages reproduced above clearly witness that:

i. The change notified by the accredited Kenyan GAC Advisor indeed confirmed that Ms. Alice Munyua was no longer the Kenyan Representative to GAC.
ii. Whatever position that Ms. Alice Munyua had communicated to GAC was not confirmed by Mr. Sammy Buruchara as the official position supported by the Kenyan Government.

iii. Mr. Sammy Buruchara indicated clearly in his email communication that it was not the wish of the Kenyan Government that a GAC Advice should be issued against DCA's application for .Africa
iv. Mr. Sammy Buruchara had also clearly stated that Kenya did not accept the text of the .Africa Communiqué that was proposed.
v. The communications were sent to the official electronic mail address of the GAC Secretariat and copied to ICANN officials as well as the Kenyan GAC representative present at the meeting.

It is therefore germane to our response that Kenya as an African country government that has **already endorsed DCA's application for .Africa, did not accept that a GAC Objection Advice should be issued against DCA's application.** The move by Ms. Alice Munyua to wave another letter from Kenya that purportedly supports the AU's position – that is, the usual 'standard issue' from African country governments - was meant to obfuscate the process, and confuse the other GAC members. At best, the outcome of the GAC proceedings at Beijing regarding the GAC Objection Advice that was contrived against DCA's application is fundamentally the result of a meddlesome effort orchestrated by an **unaccredited impostor who had dabbled in the official work of GAC in a most peculiar manner;** and at worst, it was a shameful travesty which lacked any credibility in terms of its irregularity. The remonstrations of duly accredited GAC representatives from Kenya were ignored, so how does that count for GAC Consensus?

Again, we wish to substantiate our response by referring to the official stipulations contained in the GAC Core Principles regarding Consensus.

With respect to how the GAC is expected to conduct its official business, Principle 41, specifies that

> ***"Representatives wishing to develop their position on a particular matter in fuller detail may circulate a written statement for distribution to Members."***[17]

We therefore contend that the email messages sent by Mr. Sammy Buruchara to the GAC Secretariat should be seen and interpreted in line with this principle; in which case, Kenya's dissenting view not to support the GAC Advice against DCA's application would have received wide circulation amongst the GAC members, thus pointing to the possibility of an apparent lack of consensus.

Furthermore, with respect to how the GAC arrives at a consensus-based Policy Advice to the ICANN Board, Principle 47 specifies that:

> ***"The GAC works on the basis of seeking consensus among its membership. Consistent with United Nations practice, consensus is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection."***[18]

Based on this enshrinement and the evidence that we have already presented regarding what actually took place, we again submit that Kenya's dissenting view was a 'formal objection', which when interpreted on

[17] See https://gacweb.icann.org/display/gacweb/Core+Principles
[18] Ibid.

the basis of Principle 47, clearly indicates that there was no general agreement, thus putting into doubt, the validity of the GAC Objection Advice against DCA's application which was somehow obtained in the absence of consensus.

8. UniForum ZA CR does not have the support of African Country Governments

The unwritten and unspoken strictures imposed by statesmanship dictate that the African Union Commission should no longer mainstream itself in the .Africa process. We think that the AUC should have tried to maintain impartiality, and isolate itself from the process and restrict its role to that of an endorser. Instead, the AUC has made .Africa a political issue and sided with UniForum ZA Central Registry, the other competing applicant for the .Africa string. The overt politicization of the issue of governmental support has caused huge problems of transparency and accountability.

A juridical examination will show that UniForum has no government endorsements of its own, so there is a compelling need for existing assumptions to be further re-examined. Revisionism starts by accepting to question what we already know, or what we thought we always knew in order to arrive at new answers. It is only through iconoclastic re-examination of facts or generally held assumptions that we can show that UniForum has no governmental supports, and the general thinking that UniForum has government supports for its .Africa application must be revised.

For the avoidance of doubt, we wish to maintain that an African country government writing a letter in support of the AU's position on .Africa does not directly translate into the same African country government providing an endorsement for UniForum's application for .Africa. **We have not seen where it is stated in the new gTLD Program Guidebook that governmental endorsements are transferrable from a non-applicant, in this case, the AUC that has active political support for a geographic string from African country governments, to an official applicant for the geographic string,** in this case, UniForum ZA Central Registry, who lacks such governmental support in its name. Everything that has been done so far must be subjected to a very critical examination of what actually constitutes legality. In our estimation, it is not legal for the political support received by the AU as an inter-governmental entity from African country governments to be taken on face value by the ICANN Board of Directors as somehow equivalent to a blanket endorsement for UniForum's application under the terms of the new gTLD Program.

9. GAC Objection Advice contravenes Guidebook provisions regarding new gTLD Program Activity Time-Table

Again, we maintain that the GAC Objection Advice against DCA Trust's application was most irregular in terms of its timing that flagrantly contravenes published new gTLD Program guidelines as presently codified in the Applicant's Guidebook.

The new gTLD program guideline clearly indicates in Module 3: Objection Procedures, Section 3.1 that:

"For the Board to be able to consider the GAC advice during the evaluation process, the GAC advice would have to be submitted by the close of the Objection Filing Period."

We believe that a GAC Objection Advice that was achieved and publicly notified via a GAC Communiqué dated 11th April 2013, nearly 1 month after the Objection Filing period closed officially on 13th March 2013, is most irregular and should therefore not be considered by the ICANN Board of Directors. The Guidebook stipulations are quite unambiguous and need no further elaboration in this regard. We therefore implore the ICANN Board of Directors to note that the GAC Advice against DCA's application has not been submitted by the close of the Objection Filing Period which was encountered on 13th March 2013.

Conclusion

In closing, we wish to reiterate our enduring position that the AU's involvement has created unnecessary complications in the decision path of .Africa, and the only way to resolve this problem amicably is for the issue of government support to be made irrelevant in the process so that both contending applications for .Africa would be allowed to move forward by the ICANN Board based on the outcome of the Initial Evaluation, and for any contentions regarding the .Africa name string to be resolved based on the enshrinements of the new gTLD Program Guidebook.

Finally, on the basis of our response and the arguments that have been marshaled above in support of our position, we respectfully urge the ICANN Board of Directors not to accept the GAC Objection Advice that was issued against DotConnectAfrica Trust's application (ID: 1-1165-42560) for the new .Africa gTLD.

Thanking you in anticipation of your kind consideration and diligent action.

Yours sincerely,

For & On Behalf of DotConnectAfrica Trust

Sbekele

Ms. Sophia Bekele, BS, MBA, CISA, CCS, CGEIT
Applicant for the .Africa new gTLD String Application ID: 1-1165-42560

May 8, 2013