

International Centre for Dispute Resolution

CASE No. Case 50-20-1300-1083

Between

DOTCONNECTAFRICA TRUST (DCA TRUST),
Claimant

v.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS (ICANN),
Respondent

WITNESS STATEMENT OF SOPHIA BEKELE ESHETE

I, SOPHIA BEKELE ESHETE, of Walnut Creek, California, hereby make the following statement:

1. I make this statement based on my own personal knowledge of issues related to the application made by DotConnectAfrica Trust (“DCA”) for rights to .AFRICA, a new generic top-level domain name (“gTLD”), to the Internet Corporation for Assigned Names and Numbers (“ICANN”).
2. I am the founder and executive director of DCA and a champion for DCA’s application for the .AFRICA gTLD. I have devoted the past eight years to an initiative, DotConnectAfrica, to ensure the creation of an Internet domain name space by and for Africa and Africans. I believe that DCA submitted a well-qualified and compelling application for .AFRICA, which was undermined at each stage of the application process by ICANN’s breaches of its Bylaws,

Articles of Incorporation, and the New gTLD Guidebook due to its improper cooperation with the African Union Commission (“AUC”), the backer of the competing application for the .AFRICA gTLD submitted by UniForum S.A., now known as ZA Central Registry (“ZACR”).¹ ICANN basically drew a road map for the AUC to prevent any other applicant from obtaining rights to .AFRICA by advising the AUC that it could reserve .AFRICA for its own use as a member of ICANN’s Governmental Advisory Committee (“GAC”). ICANN then accepted the GAC’s advice—engineered by the AUC following ICANN’s road map—to block DCA’s application for .AFRICA. In my view, this entire process was highly improper and most irregular.

I. PERSONAL AND PROFESSIONAL BACKGROUND

3. I was born in Addis Ababa, Ethiopia, the third of six children, to Ato Bekele Eshete and Sister Muluaem Beyene. My father was a prominent and successful businessman who was involved in diverse businesses in Ethiopia and was the founder and board member of United Bank and United Insurance, one of the largest financial institutions in Ethiopia. My mother was a career nurse. Growing up, I idolized my mother, who was kind, compassionate and deeply religious. At the same time, I listened to my father talk about his businesses to friends and family at home, where I learned a lot from him about the business world and learned the value of independence, networking, and risk-taking. I came to the U.S. after completing my secondary school education. I earned my bachelor’s degree in business analysis and information systems from San Francisco State University and a master’s of business administration in management of information systems from Golden Gate University.

¹ For the sake of consistency, I refer to the applicant competing with DCA for .AFRICA as ZACR in my statement.

4. When I finished my bachelor's degree, I was recruited by Bank of America ("BoA") to serve as an information auditing and security professional. As a senior information technology audit consultant, I led, planned and executed medium to complex control reviews of production application systems for various technical platforms and I served as lead auditor for BoA's Capital Markets activities in San Francisco, New York, Chicago and Latin America. My responsibilities included auditing computer systems to ensure that data inputs and outputs were consistent (similar to how an auditor would examine a company's cash flows), performing and overseeing corporate governance and risk management functions, providing training and support to BoA employees on system security and technology related issues and coordinating and implementing pilot projects, including developing working standards, models and programs within various audit divisions.

5. Approximately five years later, I moved to UnionBanCal, to reengineer and manage UnionBanCal's audit division. In the role of senior information technology audit specialist, I reported directly to the audit director in UnionBanCal's Corporate Audit Risk Management Division. My main role was to set up a new information technology auditing unit and team. I provided strategies and action plans for streamlining existing auditing processes and procedures, improving existing audit programs, developing new audit programs and recommending technical and business specifications for implementing a local area network within the division. I also mentored and supervised auditors and executed technology and integrated audits locally and within the holding bank located in New York, as well as supported external auditors (*e.g.*, Deloitte & Touche) on audit projects. About one year later, I moved to PricewaterhouseCoopers ("PwC") to manage the information technology audit portfolio of one of the firm's largest

banking accounts, Barclay's Bank. After spending one year at PwC in the role of senior technology advisory consultant, I started my own companies.

6. In 1998, I founded and became the chief executive officer of tech start-ups CBS International ("CBS"), based in California, and affiliate SbCommunications Network plc ("SbCnet"), based in Addis Ababa. CBS primarily offers services in the areas of technology and business consulting and internet solutions. Using Africa as a base, I launched affiliate SbCnet, which specializes in systems and technology integration and support services. Both companies are part of an initiative to support the transfer of technology and knowledge to enterprises in emerging markets. Clients include global, multinational, continental and national organizations in both the private and public sectors.

7. In 2004, I shifted my focus back to the U.S. to help meet the challenges arising from the major corporate governance scandals taking place, such as Enron and WorldCom. I advised U.S.-based clients, including Intel Corp., NASDAQ, Genetech, BDO Sieldman LLP and the Federal Reserve Bank, on corporate governance and risk management within the context of information technology, including on complying with the requirements of Sarbanes-Oxley. I also advised clients on corporate relations and communications programs.

8. In the course of my career, I have obtained and I continue to maintain various professional certifications, including Certified Information Systems Auditor or "CISA," Certified Control Specialist or "CCS," and Certified in the Governance of Enterprise Information Technology or "CGEIT." These certifications are issued to professionals who demonstrate knowledge and proficiency in the field of information systems auditing and security, and enterprise information technology governance principles and practices.

9. I am also a founding member and executive director of the San Francisco Bay Area chapter of the Internet Society (“ISOC”), which serves the ISOC’s purpose of promoting open access to the Internet for all persons by focusing on local issues and representing the interests of those who live or work in the San Francisco Bay Area. In addition, I am a co-founder of the Internet Business Council for Africa (“IBCA”), the aim of which is to promote the involvement and participation of the African private/non-governmental sector (and the global private sector involved in Africa) in the global information and communication technology and Internet community, and also to provide an avenue for them to participate in global Internet governance.²

10. In 2008, I formed DCA to pursue applying for and obtaining a .AFRICA gTLD. Through my involvement in the Internet domain name systems (“DNS”) industry, I got the idea to apply for .AFRICA and recognized the potential benefits to the people of Africa of operating a .AFRICA gTLD for charitable purposes. In 2012, DCA applied for .AFRICA through the New gTLD Program.

II. EARLY INVOLVEMENT WITH ICANN AND INTERNET GOVERNANCE MATTERS

11. Since 2005, I have been very active in the DNS industry, which encompasses website design and hosting, building servers and hosting domain names, managing and registering domain names and setting up email addresses. In 2005, I was elected as the first African to serve on ICANN’s Generic Names Supporting Organization Council (“GNSO”), a policy advisory body that advises the ICANN Board of Directors (the “Board”) on global public policies that guide the development of the Internet, including the gTLD policy and processes affecting such TLDs as .asia, .com, .net, .org, and others.

² Internet Business Council for Africa, <http://theibca.org/>.

12. In my initial statement of interest to ICANN, I declared my interest in issues facing emerging economies relating to information and communications technology and the Internet as well as my interest in pursuing an initiative to obtain a .AFRICA continental domain name.³ Later, my statement of interest evolved to encompass the many projects I worked on at the GNSO, including my efforts to obtain the .AFRICA gTLD.

13. During the two years that I served on the GNSO, ICANN was actively engaged in a global Internet expansion project to introduce new gTLDs. As a member of the GNSO, I helped develop the rules and requirements for the New gTLD Program and participated in discussions about how to “standardize” the rules to ensure that the process for awarding new gTLDs would be fair, transparent and equitable. When we were formulating the rules and requirements, we tried to craft the requirements in such a way as to ensure that the application process would be open and competitive, and that applications would be evaluated on the basis of objective criteria.

14. During my service on the GNSO, I was also instrumental in initiating policy dialogue over internationalized domain names (“IDNs”). I led an active campaign to introduce IDNs under which new IDNs in Arabic, Cyrillic, Chinese and other non-Latin alphabets would become available, thereby providing non-English/non-Latin language native speakers an opportunity to access and communicate on the Internet in their native languages. In furtherance of this goal, I helped form an IDN working group within ICANN to bring the global voices of the IDN stakeholders to ICANN. I was then nominated to chair ICANN’s IDN Working Group at the GNSO and was highly influential in drafting the IDN policy guidelines.⁴ Our group, which later organized itself as the International Domain Resolution Union (“IDRU”), is credited with

³ Sophia Bekele Statement of Interest, ICANN, <https://mex.icann.org/node/4985>.

⁴ Sophia Bekele, ICANNWiki, http://icannwiki.com/index.php/Sophia_Bekele.

pioneering the IDN TLD globally.⁵ These new IDNs have been introduced by ICANN through the current New gTLD Program.⁶

III. NEW gTLD PROGRAM

15. One of ICANN's key responsibilities is to introduce and promote competition in the registration of Internet domain names, while ensuring that the domain name system is secure and stable. For the first several years of ICANN's existence, TLDs were very few in number and were limited by ICANN. The New gTLD Program is a response to demands by Internet stakeholders that ICANN permit the expansion of new top-level domain names into the root zone (*i.e.*, the top-level Domain Name System zone maintained by ICANN). The New gTLD Program is meant to allow an unlimited number of new TLDs in order to enhance competition for and to promote consumer choice in domain names. It evolved, in large part, out of the work ICANN's GNSO performed between 2005 and 2007 to explore introducing new gTLDs, work in which I was directly involved as a member of the GNSO Council at that time.

16. In 2005, the year I was elected to the GNSO, I and other members of the GNSO began the process of developing the parameters for introducing new gTLDs. The process involved detailed discussions and debate about what the rules and requirements should be for new gTLDs, including what technical, operational and financial standards should apply. During this process, we were mindful of the balance between ICANN's objective of expanding the universe of Internet domain names and protecting the security and stability of the system. In 2008, relying on the work of the GNSO, ICANN's Board adopted the GNSO's recommendations for introducing new gTLDs. Ultimately, these recommendations and input from various Internet

⁵ Letter from David Allen, Exec. Director IDRU, to Sophia Bekele, Exec. Director, DCA (5 Dec. 2010), *available at* <http://origin.library.constantcontact.com/download/get/file/1102516344150-330/TAS-IDRU+endorsement++DCA.pdf>.

⁶ *ICANN in Beijing, China: IDNs to win big in the new gTLD process*, Tандаа Биашара (17 Apr. 2013), <http://tandaabiashara.com/icann-in-beijing-idn-to-win-big-in-the-new-gtld-process/>.

stakeholders was brought together in 2011 in ICANN’s gTLD Applicant Guidebook (the “AGB”) and the launch of the New gTLD Program.

IV. THE DOTCONNECTAFRICA INITIATIVE AND THE DOTCONNECTAFRICA TRUST

17. While serving on the GNSO Council, I came across discussions being held on new geographic TLDs like .asia and .lat, as well as .EU under the country-code TLD (“ccTLD”) program. Being from Africa and in light of my activities in Africa at the time, I asked my colleagues at the GNSO why a “.AFRICA” did not exist. Part of the diligence I performed to ensure that my efforts to obtain a .AFRICA gTLD would not overlap with the work of others, included making inquiries into registered TLDs potentially relating to .AFRICA. After confirming that no one was championing it among the African participants in ICANN, that there was no African participation in GNSO sessions nor any sign that anyone appeared to be interested in .AFRICA as a new gTLD, I turned my focus to securing the .AFRICA TLD.

a. Creation of the DotConnectAfrica Initiative and Formation of DCA

18. I first proposed developing .AFRICA as a new gTLD in 2006, in a presentation given to the African members of the ICANN Board. The following year, I gave a presentation on the topic to different African organizations of the ICANN community during the ICANN 28 meeting in Lisbon, Portugal.⁷ Soon thereafter, I led the .AFRICA initiative under a new start-up, envisioning connecting the dots in Africa under one umbrella and calling the initiative “DotConnectAfrica.” In February 2008, I wrote to the Board to notify ICANN of the “DotConnectAfrica Initiative”⁸ and in June of 2008, at the ICANN 32 meeting in Paris, I made

⁷ Presentation to the ICANN Africa Group ICANN 28 meeting in Lisbon, Portugal (2007), *available at* <http://www.slideshare.net/Nyosef/dotafrika>.

⁸ Letter from Sophia Bekele, Executive Coordinator (.Africa), to P. Dengate Thrush, Chairman, ICANN (13 Feb. 2008), *available at* <http://www.scribd.com/doc/99725682/Letter-of-Notification-for-ICANN-for-Applying-for-Delegation-of-Dotafrika-TLD-Chairman-ICANN>.

my first public announcement of the DotConnectAfrica Initiative, including my plan to apply for a .AFRICA gTLD.

19. In 2008, as the idea of a .AFRICA gTLD was gaining traction, I decided to form DCA as a not-for-profit organization to formally pursue this initiative. The mission of DCA is to advance education in information technology in the African society and, in connection with that objective, to benefit the general public by providing the African society with a continental Internet domain name to provide access to Internet services for the people of Africa.

b. DCA’s Mission and Charitable Purposes

20. My personal dream for the DotAfrica Initiative that I am leading is to deploy the new domain name as a positive branding opportunity for Africa that will benefit all Africans in the use of technology to power their businesses, and to also realize certain charitable projects aimed at giving back to the community, such as the “miss.africa” and the “generation.africa” programs that my organization already has initiated to empower girls and young people in Africa in the field of technology.

21. “Miss.africa” is a gender-focused initiative targeted mainly at female youth audiences in Africa to increase their personal involvement in early technology use and adoption with a view to improving their digital self-awareness and empowerment and overall self-esteem. It was inspired mainly by the DNS Women Group of ICANN, a group established to advance women’s global Internet leadership through networking, information and resources sharing.⁹ The miss.africa program is envisioned as one of the central pillars of DCA’s corporate social responsibility program and was first launched and publicized during the ICANN gala event in

⁹ See DNS Women Group, <http://www.dnswomen.org>.

Singapore¹⁰ and continued in Dakar. It is aimed at attracting more young girls and women to the Internet platform to enable them to form a sizable demographic of Internet users in Africa, thereby involving them in complementary gender development initiatives that improve the lives of young girls and women. The program carries out this objective by awarding scholarships to young women in Africa who perform exceptionally in high school and by providing funding to support technology initiatives launched by young women in Africa.

22. “Generation.africa” is a youth-focused program launched by DCA to empower a new generation of Internet users in Africa using its generation.africa theme. It is intended to target youth audiences and to encourage them to be involved in discussions that define and increase their common stake-holding in the development and evolution of the Internet.¹¹

c. DCA’s Leadership on .AFRICA

23. DCA has been very active in promoting .Africa and the DotConnectAfrica Initiative since its formation. For example, in June 2010, DCA sponsored the ICANN 38 International meeting in Brussels, Belgium, recording the first time a prospective or current TLD registry operator from Africa sponsored an ICANN event.¹² Between ICANN 38 and the ICANN 39 meeting in Cartagena, Colombia, I focused my efforts on making a clear case for a .AFRICA gTLD for Africa within ICANN, the National Telecommunications & Information Administration of the United States Department of Commerce and also within the global Internet community on behalf of the global African and Pan-African constituency.¹³

¹⁰ Miss.africa made history at ICANN Singapore (30 June 2011), <http://www.prlog.org/11563212-dotafrika-africa-made-history-with-icann-in-singapore.html>.

¹¹ See Generation.Africa, <http://www.dotconnectafrica.org/yes-campaign/dca-initiatives/generation-africa/>.

¹² Progress towards a “.africa” at ICANN 38, in Brussels the Capital of Europe (3 Aug. 2010), <http://www.prlog.org/10803421-progress-towards-africa-at-icann-38-in-brussels-the-capital-of-europe.html>.

¹³ DotConnectAfrica statement to ICANN public forum, Cartagena, Colombia (5 Dec. 2010), *available at* <http://www.prlog.org/11150099-dotconnectafrica-statement-to-icann-public-forum-cartagena-colombia.html>.

24. At the same time, I assembled a pan-African Advisory Board to assist in building support for .AFRICA in individual African nations, as well as collecting endorsements from such governments, as I understood that governmental support for a geographic name like .AFRICA would be required. I then expanded the advisory board to a global one comprised of technology pioneers, analysts, visionaries, Internet domain industry experts, entrepreneurs, business executives and leaders in various sectors and walks of life, to ensure that the technology transfer component of our initiative is achieved, and renamed it the Global Strategic Advisory Leadership Group. This Global Strategic Advisory Leadership Group provides guidance and input into the work of DCA on a regular basis.

25. Presently, the group totals 30 and is chaired by Dr. Yassin Mshana, a member of the Information and Communications Technology Policy Development team for Tanzania and the Tanzanian coordinator of the World Bank-coordinated Global Development Learning Network. Other members of the group include the “Father of the Internet” in Nigeria, the co-inventors of the IDN (one of whom is also the chairman and cofounder of IDNS.net and chairman of the IDRU), a strategic advisor to the government of Guinea and a vice president in the Guinea office of the President, the vice chairman of the Rwanda Information and Communications Technology Association, a former member of the Parliament of Canada who acts as the senior legal reform advisor to Rwanda, legal counsel for the Internet Commerce Association, and founders, chief executive officers and other high-level executives of technology and media companies. Many of these advisors hail from different countries in Africa, where they help to champion the work of DCA.¹⁴

¹⁴ See DCA, Global Strategic Advisory Leadership Group, <http://www.dotconnectafrica.org/about/global-strategic-advisory-leadership-group/>.

26. For more than seven years, DCA’s Yes2DotAfrica campaign has served as a platform for advocating the benefits of a “.AFRICA” gTLD and technology transfer. DCA has been invited to share its knowledge and experiences at major universities in the United States, Heads of State forums in Africa, the United Nations and other large economic forums in the U.S., Europe and globally, including Web 2.0, television and radio programs, the Internet Governance Forum and ICANN forums. As a result of the campaign, DCA is a highly visible and well-known applicant and advocate for the African gTLD. To this day, DCA continues to use the Yes2DotAfrica campaign to promote the “.AFRICA” gTLD.¹⁵

V. DCA’S EFFORTS TO COLLECT THE SUPPORT OF AFRICAN GOVERNMENTS

27. After forming DCA, I began the process of collecting the support of African governments for the DotConnectAfrica Initiative’s plan to apply to ICANN for a .AFRICA gTLD. Although the rulebook was still undergoing changes at the time DCA was preparing its application, I understood that the gTLD requirements for a geographic name like .AFRICA would require government endorsements.

28. I thought it would be best to first approach representatives of the two pan-African organizations in Addis Ababa, the United Nations Economic Commission for Africa (“UNECA”), an intergovernmental organization of the United Nations that deals with economic issues in Africa and assists African governments with policymaking, in which African governments are represented by key government ministers (such as ministers of trade and ministers of information and communications technology), and the African Union Commission (“AUC”), a donor-funded political body comprised of appointed officials that represent heads of

¹⁵ DCA Accomplishments, <http://www.dotconnectafrica.org/yes-campaign/accomplishments/>; “Top 50 African Trailblazers,” Africa Leadership Network. *NewAfrican*, p. 58, available at http://issuu.com/icpubs/docs/na0513_combinedissue_lowres?e=6326645/2549184,A.

state of Africa. As one who was born and raised in Addis Ababa, and also later having worked with both organizations in my professional capacity, I was knowledgeable of their organizational mandates and policy development process. Therefore, I approached both UNECA and the AUC staff and leadership to obtain support and endorsement.

a. UNECA’s Endorsement of DCA

29. I was well known to UNECA through my past work serving on their various advisory boards. In 2000, I was appointed for a two-year term by H.E. K.Y. Amoako, then Executive Secretary and United Nations Under Secretary General of UNECA, to serve on the African Technical Advisory Committee (“ATAC”), and as an expert on the U.N. Information and Communications Technology (“UNICT”) Task Force sponsored by UNECA. The ATAC formulated policy recommendations and provided technical guidance and direction on implementing an African Information Society Initiative (“AISI”) to bridge the digital divide between developed countries and Africa, monitored the initiative, evaluated the results and recommended regional projects in support of the initiative. During my tenure at ATAC, I co-authored the “Common Position for Africa’s Digital Inclusion,”¹⁶ which was developed in response to the UNECA Conference of Minister’s Resolution 812 (XXXI) on the Implementation of the AISI.¹⁷ I was also elected as Interim Steering Committee Advisor and East African Representative to the first African Stakeholder Network, a UNECA initiative charged with coordinating information and communications technologies activities among UNECA, the United Nations Development Programme, International Telecommunications

¹⁶ UNECA, Common Position for Africa’s Digital Inclusion: Recommendations of the Meeting on Africa’s Contribution to the G8 DOT Force and the UN ECOSOC on Digital Divide (May 2001), *available at* <http://repository.uneca.org/handle/10855/3069>.

¹⁷ UNECA, Resolution No. 812 (XXXI), Implementation of the African Information Society Initiative (8 May 1996), *available at* <http://www.uneca.org/pages/812-xxxi-implementation-african-information-society-initiative-aisi>.

Union, the United Nations Educational, Scientific and Cultural Organization and the African members of the UNICT Task Force. My local companies also have supplied information technology equipment to as well as partnered with UNECA on CISCO's initiatives to promote the participation of women in information technology.

30. Therefore, in pursuance of the endorsement for the DotConnectAfrica Initiative, I wrote to the UNECA Executive Secretary at the time, Abdoulie Janneh, presenting my credentials and stating my past professional affiliation with UNECA, to inform him and his staff of DCA's proposal on .AFRICA. After I met with Executive Secretary Janneh and his official staff a few times to explain the project and its benefits to Africa, he issued an official letter of endorsement, dated August 8, 2008, to express both his personal and UNECA's support for my initiative to apply to ICANN for the .AFRICA TLD.¹⁸ The endorsement also recognized that the initiative would "contribute substantially to helping Africa bridge the digital divide" and would "certainly be a valuable attribute for individuals, corporations, professionals and entities active in the continent."¹⁹

b. The AUC's Endorsement of DCA

31. With the support of UNECA, I approached the departments within the AUC responsible for overseeing this type of project and made our initial proposals concerning .AFRICA. As I did with UNECA, I presented the .AFRICA proposal to the AUC along with my credentials and descriptions of the projects my companies had undertaken and successfully commissioned for the AU (formerly known as the Organisation of African Unity or "OAU"), such as implementing the first and largest integrated campus networking infrastructure to provide internet and intranet connectivity to the AU General Secretariat based in Addis Ababa, so as to allow them to connect

¹⁸ UNECA Endorsement [C-15].

¹⁹ *Id.*

and network within the campus plus regional offices in Africa.²⁰ I believe I was the first person to raise the prospect of obtaining a .AFRICA gTLD with the AU. At the time, none of the AUC officials with whom I spoke were aware of the possibility of a .AFRICA TLD, nor were they familiar with ICANN or the New gTLD Program.

32. After a number of meetings and discussions with the AUC to introduce the project and expound on the scope of the project, I wrote to the office of the AUC chairman at the time, Jean Ping, to request an appointment to discuss the .AFRICA project and its importance to Africa. Chairman Ping's office granted me an appointment and I flew from the United States in order to meet with him in person. Chairman Ping received me at his office with his diplomatic advisor, Ambassador Antonio Tete, and we discussed which department within his commission would have the authority to support the DotConnectAfrica Initiative.

33. After the meeting, Chairman Ping's assistant presented the paperwork about the DotConnectAfrica Initiative to the AUC Commissioner of Infrastructure, Dr. Elham Ibrahim. I also emailed her a copy of an Organisation for Economic Co-operation and Development document on Internet name administration, which I had shared with Chairman Ping and Ambassador Antonio Tete during our meeting.²¹ Dr. Ibrahim promptly wrote a letter of support for DCA.²² During this period, DCA also met with AUC Deputy Chairperson, Mr. Erastus Mwencha and his deputy assistant and presented the value of .AFRICA, as well as

²⁰ *Africa: DotConnectAfrica's Sophia Bekele Named One of 50 African Trailblazers by NewAfrican Magazine*, allAfrica (24 May 2013), <http://allafrica.com/stories/201306032372.html?viewall=1>; *CBS Wins OAU's Largest IT Project*, Capital (7 Feb. 1999), available at <http://cbsegroup.com/wp-content/uploads/2013/08/cbs-wins-oaus-largest-it-project-p11.jpg>.

²¹ Email from Sophia Bekele, Exec. Director, DCA to Elham Mahmoud Ahmed Ibrahim, Commissioner of Infrastructure and Energy, AUC (3 Aug. 2009), available at http://www.dotconnectafrica.org/wp-content/uploads/2014/06/Sophia-Bekele_Elham-IBRAHIM-OECD-source-reference-on-internet-name-administration-as-an-infrastructure-resource.pdf.

²² Letter from Elham Mahmoud Ahmed Ibrahim for Jean Ping, Commissioner of Infrastructure and Energy, AUC, to Sophia Bekele, Exec. Director, DCA (7 Aug. 2009), available at <http://www.dotconnectafrica.org/wp-content/uploads/2014/11/Dr-Elham-Ibrahim-Letter-of-Support-to-AUC-Chair-Jean-Ping.pdf>.

letters of support from other institutions, such as UNECA and the Washington, D.C., office of the AU.²³

34. Shortly thereafter, the AUC—through Chairman Ping’s Office—issued an official letter of support for DCA, dated August 27, 2009.²⁴ In the letter, Chairman Ping stated that the AUC supported my initiative to apply to ICANN for .AFRICA and that the AU was willing to assist DCA with coordinating the DotAfrica Initiative with African ministers and governments.²⁵

c. My Global Campaign for Support

35. In 2009, having secured support from these pan-African organizations, I decided to organize a campaign to sensitize African peoples and governments to the benefits of a .AFRICA gTLD, and also to gather support for the .AFRICA initiative globally and within Africa.²⁶ I began by recruiting staff to assist DCA’s mission from Kenya, where I was inclined to have the East African base for .AFRICA to facilitate the initiative. I found the government policy over bandwidth and Internet open in Kenya and the support structure in terms of technical partnership solid, so it seemed to be a good place to locate DCA’s main activities. As part of this campaign, I traveled to various African countries including Nigeria, Ethiopia, Kenya, South Africa, Uganda, and Mauritius and attended various regional forums that brought ministers and African people together. Outside of Africa and internationally, I was also invited by major universities and institutions with communities of the African diaspora to participate in forums and international conferences, including, among others, Golden Gate University, the University of California, Berkeley, Stanford University, Sacramento State University, the World Summit on

²³ Letter from Amina Salum Ali, Permanent Representative, AU Mission of the United States of America, to Elham Mahmood Ahmed Ibrahim, Commissioner of Infrastructure and Energy, AUC (20 May 2008), *available at* <http://www.dotconnectafrica.org/wp-content/uploads/2014/01/AU-Mission-dotAfrica-endorsement.pdf>.

²⁴ AUC Endorsement [C-16].

²⁵ *See id.*

²⁶ DCA Accomplishments, <http://www.dotconnectafrica.org/yes-campaign/accomplishments/>.

the Information Society or “WSIS,” the United Nations Department of Economics & Social Affairs and the United Nations Public Administration Network, Geneva.

d. The Federal Democratic Republic of Ethiopia’s Endorsement of DCA

36. In February 2009, Deriba Kuma, the minister of the Ministry of Transport and Communication of the Federal Democratic Republic of Ethiopia issued an official letter of endorsement of the DCA’s initiative to obtain .AFRICA.²⁷

e. IDRU and CCA’s Endorsements of CCA

37. In 2010, DCA also obtained endorsements for the initiative from IDRU,²⁸ a group that has pioneered the use of non-Latin-based languages on the Internet, which I thought would be useful for Africa, and the Corporate Council on Africa (“CCA”),²⁹ a non-profit organization developed to promote business and investment between the United States and African nations. I also started to collect endorsements from individual African governments.³⁰

f. Kenya’s Endorsement of DCA

38. In January 2012, DCA formally introduced the DotAfrica Initiative to the government of Kenya through the office of the Honorable Minister of Information & Communications of the Republic of Kenya Samuel L. Poghisio, E.G.H, M.P.³¹ DCA enumerated the benefits that would accrue to the host country of the DotAfrica Initiative, such as contributing to the foreign direct

²⁷ Letter from Deriba Kuma, Minister of the Ministry of Transport and Communication of the Federal Democratic Republic of Ethiopia, to Sophia Bekele, Exec. Director, DCA (Feb. 5, 2009), *available at* <http://www.dotconnectafrica.org/wp-content/uploads/2014/01/MoTAC-Ethiopia-endorsement.pdf>.

²⁸ Letter from David Allen, Exec. Director, IDRU, to Sophia Bekele, Exec. Director, DCA (Dec. 5, 2010), *available at* <http://www.dotconnectafrica.org/wp-content/uploads/2013/09/IRDU-Endorsement.jpg>.

²⁹ Letter from President and CEO, CCA, to Sophia Bekele, Exec. Director, DCA (Nov. 17, 2010), *available at* <http://www.dotconnectafrica.org/wp-content/uploads/2014/10/Endorsement-letter-for-DotConnectAfrica-from-Corporate-Council-on-Africa-CCA-Washington-DC-USA-Nov172010.jpg>.

³⁰ Endorsers of DotConnectAfrica Initiative, <http://www.dotconnectafrica.org/yes-campaign/dca-endorsements/>.

³¹ Letter from Sophia Bekele, Executive Director, DCA, to Hon. Samuel Lesuron Poghisio, M.P., Minister of Information and Communications, Republic of Kenya (16 Jan. 2012), *available at* <http://www.dotconnectafrica.org/wp-content/uploads/2014/06/Introduction-of-the-.Africa-Initiative-led-by-DotConnectAfrica-Organization-and-Official-Request-for-Kenyan-Government-Support-and-Endorsement.pdf>.

investment profile of Kenya and the country's overall prestige as the potential host of the first Pan-African gTLD registry, and requested the official support and endorsement of the Kenyan government. On August 7, 2012, Kenya's Minister for Information and Communications sent DCA a letter of endorsement, expressing the Ministry's support for the DotAfrica Initiative.³² I was excited to receive this endorsement and it was important for the DotAfrica Initiative given our plans for basing .AFRICA gTLD registry operations in Kenya.

VI. DCA'S PREPARATIONS TO APPLY FOR AND OPERATE .AFRICA

39. Applicants for a new gTLD must submit a detailed application to ICANN that demonstrates the applicant's technical, operational and financial capability to operate a TLD. The requirements and evaluation procedures are set forth in the 338-page AGB. Applying for and preparing to operate a gTLD is a time-intensive and expensive process that requires specific expertise and careful planning, as well as significant financial resources.

40. In 2011, DCA began the process of selecting a registry services operator that would be equipped to handle the backend technical registry operation of the TLD and operation of the names registered to the TLD. After conducting a selection process that included technical and financial evaluation, as well as support from a host country, DCA reached a landmark agreement with United Kingdom-based CentralNic, a world-class registry services provider, to assist DCA to setup a registry services system in Africa, and also signed important agreements with Safaricom (Kenya) Ltd.³³ and FINCOM Technologies (Kenya) Ltd.³⁴ for the co-location of

³² Letter from Hon. Samuel Lesuron Poghiso, M.P., Minister of Information and Communications, Republic of Kenya, to Sophia Bekele, Executive Director, DCA (7 Aug. 2012), *available at* <http://www.dotconnectafrica.org/wp-content/uploads/2013/05/Kenya-Government-Endorsement-of-the-Dotconnectafrica-Initiative.pdf>.

³³ Safaricom (Kenya) Ltd. is a Kenya-based integrated communications company. *See* <http://www.safaricom.co.ke>.

³⁴ Fincom is a Kenya-based information and communications technology company. *See* <http://www.myfincom.com/>.

mission critical computer hardware and network technical infrastructure that would support the registry functions of DotAfrica gTLD.

41. In 2012, I also setup DCA Registry Services in Nairobi, Kenya, to support the activities of DCA in securing and later operating the .AFRICA gTLD.³⁵ CentralNic has worked closely with DCA Registry Services to provide registry software, consulting and training services, and to ensure that the Kenya-based registry to be established for the .AFRICA TLD will satisfy all of the stringent technical and operational requirements of the ICANN New gTLD Program, of which I am familiar from my time on the GNSO. DCA has undertaken all of these preparations to ensure that it will be ready to operate the registry fully, should DCA be awarded the .AFRICA gTLD.

42. CentralNic also worked intensively with DCA at the time we were preparing and submitting our application to ICANN for .AFRICA to ensure that DCA's application satisfied the main technical and operational requirements for gTLDs set forth in ICANN's AGB.

VII. DCA'S APPLICATION FOR .AFRICA

43. Feeling confident that the DotAfrica Initiative had gained the support of important organizations and the governments of Ethiopia and Kenya and secure in the substantial preparations DCA had made for actually operating a TLD, DCA submitted its application for the .AFRICA gTLD. I personally put up 50 percent of the \$185,000 application fee and, to date, I have used my personal assets to fund 50 percent of the operating costs of DCA. Supporters of DCA's mission have and continue to fund DCA's operations.

44. As one who helped develop the new gTLD guidelines and who understands the New gTLD Program requirements, I believe that DCA has submitted a competitive application that

³⁵ See DCA Registry Services, DCA <http://dotconnectafrica.org/DCAreistry/>.

satisfies the applicable requirements and the New gTLD Program objectives of ICANN—to provide increased consumer choice in the domain name market while ensuring Internet security and stability. I and the supporters of the DotConnectAfrica Initiative believe that the expansion of the global Internet under the auspices of the New gTLD Program of ICANN will lead to the expansion of Internet use in Africa. This is fundamental to DCA’s mission and purpose for a .AFRICA gTLD: to harness the prospects and opportunities presented by the New gTLD Program to introduce profound changes to the way the Internet is utilized in Africa, especially the new domain names that will be created and become available under a .AFRICA gTLD.

45. Specifically, DCA has made an explicit commitment in its .AFRICA application to ICANN that DCA will establish a full-service Internet registry that will be operated by DCA Registry Services Ltd. in accordance with the technical and operational criteria and other specifications stipulated by ICANN in the AGB. DCA applied for .AFRICA as a standard gTLD (not a “community-based TLD”³⁶) and plans to implement an open gTLD registry in line with the mission and purpose of DCA.

46. Moreover, to ensure that .AFRICA is widely accessible to Africans, DCA presented a pricing model in its application that would ensure substantially lower costs for users relative to the current price of ccTLD domain names available from African ccTLD operators. With user affordability in mind, DCA proposed the sum of \$10.00 as the registration cost per standard domain name in the new .AFRICA gTLD extension. In addition, DCA also provided a \$300,000.00 letter of credit—valid for five years from the date of issue—as a financial guarantee to satisfy the application requirement to provide a Registry Continuing Operations Instrument

³⁶ Applicants must indicate whether they are applying for a “community-based TLD,” in response to question 19 of the new gTLD application. If an applicant designates its application as “community-based,” the applicant is required to submit a written endorsement of its application by one or more established institutions representing the community it has named.

(“COI”) of appropriate value. ICANN requires all applicants to post a COI to ensure user and registrant protection in the event of registry business failure. The Registry COI amount serves to enable ICANN to safely transition the operation of a gTLD registry to an approved Emergency Back-End Registry Operator (“EBERO”), thus ensuring uninterrupted registry services for users and registrants.

VIII. THE AUC’S DECISION TO OBTAIN .AFRICA FOR ITSELF

47. Initially, DCA had the support of the AUC, as described above. As soon as it became more widely known within the African Internet community that the AUC was interested in supporting DCA’s initiative to apply for a .AFRICA TLD, however, other parties recognized the potential for .AFRICA and began to vie for the AUC’s support. Although there is nothing wrong with that in and of itself, I was troubled by the lengths some of our competitors went to discredit DCA in order to persuade the AUC to abandon its support of DCA’s initiative. I also found it very inappropriate that ICANN seemingly allowed these competitors to use their positions at ICANN to unfairly influence the gTLD application process.

a. Anne-Rachel Inné’s Inappropriate Use of Her Role at ICANN to Promote Her Favored Applicant to the AUC

48. In 2008, it came to my attention that an ICANN staff member from Niger, Anne-Rachel Inné had been communicating with the AU about .AFRICA and, in particular, had been campaigning against DCA as a candidate for .AFRICA. In October 2008, I wrote to the chairman of ICANN on behalf of DCA to formally voice our concerns that Ms. Inné was inappropriately and unethically using her position as the Manager for Regional Relations in Africa for ICANN to promote a group called the African Network Information Center (“AFRINIC”), the regional Internet registry for Africa, which was following in the footprint of

DCA and which she introduced to the AU to advise it on a .AFRICA domain.³⁷ AFRINIC does not have a mandate to provide advice on domain names, as the mandate of the organization is limited to Internet Protocol addresses only.

49. DCA Project Coordinator Nebiyu Yosef sent a letter of complaint regarding the actions of Anne-Rachel Inné to ICANN's ombudsman at the time, ICANN's chairman at the time and ICANN's Board.³⁸ As an ICANN staff member, Ms. Inné's presentations to pan-African organizations of her favored applicant group gave the impression that the group had the backing of ICANN for a .AFRICA domain and created—deliberately, in my opinion—confusion on the part of such organizations, including many of DCA's supporters and other members of the African community. Although ICANN never responded formally to our request that Ms. Inné immediately cease and desist from taking any further action on .AFRICA, the ICANN chairman at the time, Peter Dengate Thrush, told me that Ms. Inné was given a verbal warning to stop. ICANN's Ombudsman also reviewed our complaint, but ICANN deemed the results of his investigation confidential and they were not posted publicly. I do not believe ICANN's efforts to investigate and address these issues with Ms. Inné were sufficient. I also believe my concerns about Ms. Inné were amply justified, as she was recruited, when her contract was not renewed by ICANN,³⁹ to be chief operations officer of AFRINIC in July 2012.⁴⁰

³⁷ Letter from Sophia Bekele, Executive Director, DCA, to Peter Dengate Thrush, Chairman, ICANN (29 Oct. 2008), available at <http://www.dotconnectafrica.org/wp-content/uploads/2014/07/Complaint-letter-%E2%80%93Interference-of-ICANN-staff-in-the-DotAfrica-initiative.pdf>.

³⁸ Email from Nebiyu Yosef, Project Coordinator, DCA, to Peter Dengate Thrush, Chairman, ICANN (2 Nov. 2008), available at <http://www.dotconnectafrica.org/wp-content/uploads/2014/07/Complaint-letter-Interference-of-ICANN-staff-in-the-DotAfrica-initiative-via-ICANN-Ombudsman.pdf>.

³⁹ *Anne-Rachel Inné's Term Expires at ICANN*, DomainNewsAfrica (3 Sept. 2012), <http://domainnewsafrica.com/anne-rachel-innes-term-expires-at-icann/>.

⁴⁰ Press Release, AFRINIC, Ms[.] Anne-Rachel Inné Appointed AFRINIC Chief Operations Officer (31 July 2012), <https://lists.afrinic.net/pipermail/announce/2012/000897.html>; Semaj Itosno, *Afrinic Gets New COO*, BiztechAfrica (31 July 2012), <http://www.biztechafrica.com/article/afrinic-gets-new-coo/3721/#.VD4bZ1dxgQY>; Remmy Nweke,

50. DCA wrote to ICANN to express its views that Ms. Inné’s replacement should be someone from outside the “Af*” groups (*i.e.*, not part of AFRINIC, the African Network Operators’ Group or “AfNOG,” the Africa Research and Education Networking or “AfREN” group, the Africa Top Level Domain Organization or “AfTLD,” ISOC Africa or AfrICANN). DCA encouraged ICANN to do this to ensure matters affecting Africa would be handled in a fair, equitable and participatory manner; in a way that such processes would not be influenced by a few close associates with vested interests who owned and operated the various Afri* organizations and appointed only their friends to the exclusion of others. ICANN not only hired Pierre Dandjinou, who has connections to AFRINIC and AfTLD, and who was a member of the dotAfrica Taskforce formed by the AUC to obtain the rights to operate .AFRICA (the “AUC Task Force”), but hired back Ms. Inné in June 2014 as Vice President of Government Engagement – Geneva. I was very concerned that Mr. Dandjinou’s appointment gave these Afri* groups—and the AUC Task Force, in particular—special access to ICANN.

b. The AUC’s Purported Withdrawal of its Support for DCA

51. We continued our work toward putting together DCA’s application for .AFRICA. Whilst in the middle of collecting individual endorsements and making announcements through our public relations campaign, we learned that the AUC had emailed me a letter dated, April 16, 2010, stating that the AUC no longer endorsed any “individual initiatives” for .AFRICA.⁴¹ The letter also stated that “In coordination with the member states and with relevant

Anne-Rachel Inné Joins AFRINIC as COO, ITRealms (2 Aug. 2012), <http://www.itrealms.com.ng/2012/08/anne-rachel-inne-joins-afrinic-as-coo.html>.

⁴¹ Letter from Erastus Mwencha, Deputy Chairperson, AUC, to Sophia Bekele, Executive Director, DCA (16 Apr. 2010), *available at* <http://www.dotconnectafrica.org/wp-content/uploads/2014/01/AU-Deputy-Letter-to-Dotconnectafrica.jpg>.

international organization such as ICANN, the Commission will go through open process that certainly will involve the private sector.”⁴²

52. This was shocking to me, as the AUC previously had not shown any interest in applying for the .AFRICA gTLD. I also did not understand why the letter came via email from Moctar Yedaly,⁴³ a lower, technical operative of the AUC, and not the chairman’s office, from which the official endorsement had been issued initially. I was also surprised to see that the AUC’s letter stated that “it would coordinate with ICANN,” as ICANN’s role is to oversee the New gTLD Program as an impartial authority, not to assist particular prospective new gTLD applicants.⁴⁴

53. Subsequently, the position of the AU on .AFRICA was confirmed in an AU “Briefing Note on .AFRICA” (the “AU Briefing Note”), which stated in reference to DCA that “it does not support any individual on this matter,” and asserted that .AFRICA should be preserved “as a community domain which should be operated on behalf of the community.”⁴⁵ DCA issued a public commentary on the AU Briefing Note to address the points we believe were misrepresented by the AU and to explain that ICANN, and not the AUC, controls the process for awarding .AFRICA.⁴⁶

⁴² *Id.*

⁴³ Emails from Miriam Araya, AUC, and Moctar Yedaly, Head of Communications and Posts Division, AUC, to Sophia Bekele, Exec. Director, DCA (4 May 2010), *available at* <http://www.dotconnectafrica.org/wp-content/uploads/2014/07/Emails-From-Mr-Moctar-Yedaly-to-DCA-on-Second-Letter.pdf>.

⁴⁴ Letter from Erastus Mwencha, Deputy Chairperson, AUC, to Sophia Bekele, Executive Director, DCA (16 Apr. 2010), *available at* <http://www.dotconnectafrica.org/wp-content/uploads/2014/01/AU-Deputy-Letter-to-Dotconnectafrica.jpg>.

⁴⁵ Briefing Note on .AFRICA, Dep’t of Infrastructure and Energy, Information Society Division, AU (May 2011), *available at* <http://library.constantcontact.com/download/get/file/1102516344150-110/Briefing+Note+on+.africa+by+Infrastructure.pdf>.

⁴⁶ DCA Commentary on the Position of the AU Task Force on DotAfrica and AU Infrastructure and Energy Dep’t, Yes2dotAfrica Campaign (26 May 2011), *available at* <http://library.constantcontact.com/download/get/file/1102516344150-112/DCA+response+to+the+AU+Infrastructure+position+on+.africa.pdf>.

c. Private Communications between ICANN and the AUC

54. I made several telephone calls to ICANN General Counsel John Jeffrey to try to ascertain what communications had been taking place between ICANN and the AUC. Failing to receive a satisfactory response from Mr. Jeffrey, I wrote a letter to the chief executive officer of ICANN at the time, Rod Beckstrom, regarding the private communications that representatives of the AUC told me that they were having with ICANN about defining a regulatory framework for .AFRICA.⁴⁷ In the letter, I asked ICANN whether it had, or it planned to, consult with other continental organizations and governments to ensure that other stakeholders had an opportunity to be heard on such issues. I also asked ICANN to clarify whether and how its private discussions with the AUC impacted the gTLD process set forth in the version of the AGB in effect at that time. Mr. Beckstrom never responded to me, though Mr. Jeffrey later instructed me verbally not to write any more letters to ICANN's chief executive officer.

55. Going forward, I directed my telephone calls and email communications regarding ICANN's communications with the AUC to ICANN's in-house lawyers, but they also refused to respond to my questions directly. On April 28, 2011, I emailed Mr. Jeffrey, copying Mr. Beckstrom, to alert him that based on public media reports, representatives of the AU were presenting themselves as the ultimate authority presiding over the award and delegation of a .AFRICA gTLD.⁴⁸ I was very troubled by this because the AU appeared to be deliberately creating the impression that it had a mandate under the auspices of ICANN to select the registry operator for a .AFRICA gTLD. I repeatedly voiced my concerns to ICANN about this because

⁴⁷ Letter from Sophia Bekele, Exec. Director, DCA, to Rod Beckstrom, Chief Executive Officer, ICANN (20 Aug. 2010), *available at* <http://www.dotconnectafrica.org/wp-content/uploads/2014/07/Letter-of-Clarification-With-ICANN-African-Union-Discussions-to-Rod-Beckstrom-ICANN-CEO-from-DotConnectAfrica-Sophia-Bekele.pdf>

⁴⁸ Email from Sophia Bekele, Exec. Director, DCA, to John Jeffrey, General Counsel & Secretary, ICANN (28 Apr. 2011), *available at* <http://www.dotconnectafrica.org/wp-content/uploads/2014/07/Letter-to-John-Jeffrey-Urgent-.africa-registry-mandate-issue-April-29-2011.pdf>

ICANN's ongoing silence on the matter suggested it indeed was supporting the AUC. This caused a lot of confusion for the public, including supporters of DCA.

56. During this period of time, DCA issued public commentary to try to correct the widespread misperceptions about the AU's authority over .AFRICA.⁴⁹ DCA also continued to call on individual governments through our interlocutors and request support. As much as it takes a long time to convince governments of endorsements on a one-to-one basis, we started getting back responses from the governments stating that they would be supporting the "AU position," which we later learned was an AUC plan to apply for a .AFRICA gTLD.

IX. ICANN'S ADVICE TO THE AUC AND ITS FACILITATION OF THE AUC'S EFFORTS TO QUASH DCA'S APPLICATION FOR .AFRICA

57. Specifically, we heard that the AUC planned to submit a request to ICANN during the ICANN Dakar International meeting between 23 and 28 October 2011 ("ICANN 42") that ICANN reserve .AFRICA for the AU. I was extremely upset by this news, as I had shared my proposal with the AUC (including making detailed presentations about it and my strategy), earned the endorsement of the AUC based on the strength of my proposal, used our proposal to get support from the African Ministries and African heads of state as per the statement of endorsement we obtained from the Chairman of the AUC, and then the AUC decided to try to obtain .AFRICA for itself and cut DCA and its charitable mission out of the process. Our supporter and partner had now turned into our competitor for the .AFRICA gTLD. I and DCA's supporters viewed this unexpected development as a betrayal of the good faith and confidence that we had placed in the AUC regarding the DotConnectAfrica Initiative.

⁴⁹ *Exclusive Commentary from DCA: AfTLD seeks mandate to manage .africa* (28 March 2011), <http://archive.constantcontact.com/fs053/1102516344150/archive/1104932132671.html>.

58. Even more troubling, it became apparent to me that the AUC was carrying out a strategy in collusion with ICANN to quash DCA’s application rather than compete with it. We learned during the ICANN 42 meeting in Dakar that the AUC had requested that ICANN include all similar name strings, “.africa,” “.afrique” and “.afriqia,” in ICANN’s list of “reserved names”—a list of strings that ICANN withholds from general availability, such as the two-letter country codes, territory names and ICANN- and IANA-related names. The AUC basically was asking ICANN to just give .AFRICA and the other strings to the AUC outside of any process so that the AUC would not have to apply for and compete for the right to operate the strings. Another reason I believe the AUC submitted this request was to enable the AU to receive special legislative protections for the .AFRICA TLD and similarly named strings, so that the AUC could independently delegate the .AFRICA TLD to a structure to be identified later outside of the aegis of the ICANN mandated New gTLD Program.

59. I participated in the African Ministerial meeting that was organized to get support for this proposal, and I strongly opposed the AUC’s request to reserve the names. I explained that the request did not comply with the AGB because a prospective applicant may not reserve a gTLD. Moreover, ICANN had already published its list of “Top-Level Reserved Names” in the AGB, so any decision to approve the AUC’s request would require amending the AGB. Furthermore, reserving .AFRICA would disqualify all competition and would enable the AUC to award these strings under a separate process outside of the oversight of the official ICANN New gTLD Program.⁵⁰

60. I also made a presentation and argued in front of the ICANN Board during a public forum at the ICANN meeting in Dakar that reserving the .AFRICA name for the AUC, through a

⁵⁰ DCA’s Executive Briefing Note following its Engagement with ICANN Leaders at the ICANN-42 Public Forum Meeting at Dakar, Senegal (27 Oct. 2011), <http://archive.constantcontact.com/fs053/1102516344150/archive/1108422124191.html>.

method bypassing the formal application process under the New gTLD Program, would be anti-competitive. DCA issued a number of communications in French and English to ICANN and the African public gathered at that event to detail and reinforce its opposition.⁵¹ What happened in Dakar led DCA's supporters to believe that the AUC was intent on trying to use its diplomatic influence to win special treatment from ICANN in order to obtain .AFRICA without any competition. DCA's supporters were very troubled by this plan, hence DCA's spirited opposition at both the African Ministerial Roundtable and subsequent ICANN public forum meeting in Dakar.

61. ICANN did not take any action on the AUC's request to reserve .AFRICA. With the application period for new gTLDs scheduled to open in only a few months' time, DCA wrote to ICANN to request that it respond in writing to the AUC and post its response publicly.⁵² Without a public declaration by ICANN that it would not reserve .AFRICA for the AUC, other potential applicants faced the risk that at any time ICANN would announce that it was giving the strings to the AUC. If that happened, every applicant other than the AUC would have wasted a considerable amount of time and resources preparing to apply for an unavailable string. Although ICANN neither responded to DCA's letter nor the AUC's request, DCA was confident that the AUC's request to reserve a gTLD was improper, and most irregular, so DCA proceeded with preparing and submitting its application for .AFRICA.

⁵¹ See *id*; *The Illegitimate "African Agenda" for Dakar: Say No to the ARC and the Illegal Cabal Supporting It!*, DCA (12 Oct. 2011), <http://www.dotconnectafrica.org/2011/10/the-illegitimate-african-agenda-dakar-arc-illegal-cabal-supporting-it/#sthash.iGvHYIio.dpuf>; DCA Official Commentary on the African Ministerial Table Outcome (21 Oct. 2011), <http://archive.constantcontact.com/fs053/1102516344150/archive/1108241322041.html> (English) and <http://archive.constantcontact.com/fs053/1102516344150/archive/1108245258976.html> (French); DCA Statement At The AFRICANN meeting On .Africa At Dakar (27 Oct. 2011), <http://archive.constantcontact.com/fs053/1102516344150/archive/1108347659795.html> (English) and <http://archive.constantcontact.com/fs053/1102516344150/archive/1108351920018.html> (French).

⁵² Letter from Sophia Bekele, Exec. Director, DCA, to Chief Executive Officer, ICANN (19 Dec. 2011), *available at* <http://www.dotconnectafrica.org/wp-content/uploads/2014/07/Letter-to-ICANN-Board-requesting-an-Official-Public-Answer-to-the-Reserve-names-request-by-African-Union-Commission-19Dec2011.pdf>.

62. I believe that ICANN’s failure to timely respond, whether deliberate or not, disadvantaged DCA in its efforts to garner support from the African governments for its application. The feedback I and other representatives of DCA kept hearing from these governments was that they could not be sure ICANN would reject the AUC’s request to reserve the names, as there had been no official communication from ICANN. It would have been fruitless and potentially politically damaging for the governments to support DCA if ICANN planned to just give the strings to the AUC, as a special favor, as the AUC had requested. This made collecting new endorsements from African governments rather complicated and very difficult for DCA.

63. It was not until 8 March 2012—after the application round for new gTLDs had opened—that ICANN finally issued a formal response, rejecting the AUC’s request.⁵³ ICANN’s letter informing the AUC that ICANN could not reserve the names for the AUC, advised the AUC that it could use the “Governmental Advisory Committee . . . to raise concerns that an applicant is seen as potentially sensitive or problematic, or to provide direct advice to the Board,” so as to change the outcome of the gTLD.⁵⁴ I find it very troubling that ICANN told the AUC—our competitor for the .AFRICA gTLD—how to use the GAC to circumvent the objection procedures established in the AGB.

64. The purpose of the GAC is to provide advice to ICANN on issues of public policy, especially regarding issues where ICANN’s activities or policies intersect with national laws or

⁵³ Letter from Steve Crocker, Chairman of Board of Directors, ICANN, to Elham M.A. Ibrahim, Commissioner of Infrastructure and Energy Commission, AUC (8 Mar. 2012), *available at* <https://www.icann.org/en/news/correspondence/crocker-to-ibrahim-08mar12-en> [Ex. C-24].

⁵⁴ Letter from Stephen Crocker, Chief Executive Officer, ICANN, to Elham M.A. Ibrahim, Commissioner of Infrastructure and Energy Commission of the African Union Commission (8 Mar. 2012), *available at* <https://www.icann.org/en/news/correspondence/crocker-to-ibrahim-08mar12-en> [Ex. C-24].

international agreements.⁵⁵ Membership on the GAC is unregulated and open to “national governments and distinct economies as recognized in international fora,”⁵⁶ which makes it an exceedingly political body. By explaining to the AUC how to use the GAC to quash DCA’s competing application for .AFRICA, ICANN essentially told the AUC to use political channels to accomplish its purpose rather than the very procedures ICANN developed to ensure that gTLDs are awarded in a fair, open and transparent process.

65. Not surprisingly, three months after ICANN suggested to the AUC that it use the GAC to object to DCA’s application for .AFRICA, the AUC became a voting member of the GAC.⁵⁷ I believe the timing of the AUC becoming a member of the GAC is directly related to its efforts to obtain .AFRICA. I also believe ICANN violated its Articles of Incorporation and Bylaws when it directed, publicly advised and allowed the AUC, as the backer of the competing application for .AFRICA submitted by ZACR, to use the GAC for anti-competitive purposes.

X. THE AUC’S APPOINTMENT OF ZACR TO APPLY FOR .AFRICA

66. Despite ICANN rejecting the AUC’s request to add .AFRICA to its list of reserved names, the AUC continued its efforts to obtain .AFRICA for itself. Subsequently, the AUC shifted its position and issued a request for proposals (“RFP”) for a registry operator,⁵⁸ which I believe it did in order to legitimize its plan to award .AFRICA to a preferred registry operator outside of the auspices of the ICANN New gTLD Program. The AUC later announced that it

⁵⁵ See ICANN Governmental Advisory Committee, <https://gacweb.icann.org/display/gacweb/Governmental+Advisory+Committee>.

⁵⁶ See ICANN Governmental Advisory Committee, <https://gacweb.icann.org/display/gacweb/About+The+GAC>.

⁵⁷ GAC Communiqué – Prague, Czech Republic, ICANN (28 June 2012), <https://gacweb.icann.org/display/gacweb/Meeting+44%3A+Prague,+Czech+Republic,+24-29+June+2012>.

⁵⁸ Request for Proposals by the African Union Commission for the Operation of Dot Africa, <http://www.au.int/en/content/request-proposals-african-union-commission-operation-dot-africa>.

had selected ZACR to apply for and administer the .AFRICA gTLD.⁵⁹ DCA found the AUC's direct appointment of ZACR on behalf of Africa misleading since a firm cannot be selected to administer a domain that has not yet been delegated by ICANN. Therefore, DCA ran a "No" campaign against the appointment.⁶⁰

67. I believe that the outcome of the AUC RFP process was predetermined. The AUC formed the dotAfrica Task Force to advise it and help it launch the RFP process. The AUC Task Force was comprised of members of the African Internet community, including people who had floated proposals of their own for .AFRICA, such as dotafrica.org and the AfTLD, though no members of DCA were invited to join.

68. The people who were invited to join the AUC Task Force had numerous conflicts of interest that should have precluded them from being involved in the AUC's process of choosing the potential registry operator.⁶¹ I found it most disturbing that Nii Quaynor, a former member of the ICANN Board was appointed chair of the AUC Task Force. Not only was Mr. Quaynor the owner of dotafrica.org, which he had previously tried to use as a vehicle to garner support for a .AFRICA gTLD and failed, but he also held various roles in other organizations that made him deeply conflicted. Mr. Quaynor served as executive chairman of the AfTLD—an association of top level ccTLD managers in Africa financed by AFRINIC (of which he was founding

⁵⁹ Letter from Elham M.A. Ibrahim, Commissioner of Infrastructure and Energy, AUC, to Neil Dundas, Director, UniForum SA/ZACR (4 April 2012), *available at* <http://origin.library.constantcontact.com/download/get/file/1102516344150-297/Letter+of+Appointment+from+AU+to+UniForum.pdf>.

⁶⁰ Say "NO" to African Union RFP, Yes2dotAfrica Campaign, <http://archive.constantcontact.com/fs053/1102516344150/archive/1108683982073.html>.

⁶¹ DotConnectAfrica's .africa gTLD Endorsement Treatment at the Africa Union Commission <http://domainnewsafrika.com/dotconnectafricas-dotafrica-gtld-endorsement-treatment-at-the-africa-union-commission/>

chairman)—which also floated its own unsuccessful proposal for .AFRICA.⁶² Moreover, on November 17, 2010, in an email message sent by Mr. Quaynor to the AfrICANN discussion forum, he wrote, “I think its [sic] more responsible for the regional organization (AUC) to hold the string in public trust and have policy oversight, especially so with these likes of practices of DCA. This has been what the Africann community has helped to achieve.”⁶³ In other words, Mr. Quaynor informed his readers what “they”—the African community, as represented on the AUC Task Force—had achieved to undermine DCA’s endorsement by the AUC in order to clear the way for giving the rights to .AFRICA to the AUC. Interestingly, Mr. Quaynor’s dotafrica.org now represents the front domain of ZACR’s registry for .AFRICA (under the “Africa in One Space” umbrella).⁶⁴ DCA has run a “No” campaign on Mr. Quaynor to expose all of his associations.⁶⁵

69. This very same Task Force also supported the African Registry Consortium (“ARC”), a registry operator created by the people who are now directors and officers of ZACR in advance of the late October ICANN meeting held in Dakar, Senegal. Immediately prior to the Dakar meeting, members of these organizations held an African Ministerial Round Table where the program advertised that Moctar Yedaly (who attempted to recant the AUC’s endorsement of DCA for .AFRICA) would speak about African Internet governance and a .AFRICA gTLD,

⁶² Say “No” to the CABAL (special-interest coalitions) that is trying to hijack DotAfrica, Yes2dotAfrica Campaign (6 Sept. 2011), <http://archive.constantcontact.com/fs053/1102516344150/archive/1107431408048.html>; Say “NO” to the Masquerade “African Agenda” for Dakar and the Illegal Cabal Supporting It, Yes2dotAfrica Campaign (11 Oct. 2011), <http://archive.constantcontact.com/fs053/1102516344150/archive/1108039247315.html>; Say “No” to African Registry Consortium (ARC), Yes2dotAfrica Campaign, <http://archive.constantcontact.com/fs053/1102516344150/archive/1106696043739.html>.

⁶³ Email from Nii Quaynor to AfrICANN Discussion, <https://lists.afrinic.net/pipermail/africann/2010-November/002948.html>.

⁶⁴ See dotAfrica, <http://dotafrica.org/en/home/>; Africa In One Space, <http://www.africainonespace.org>.

⁶⁵ Say “No” to Nii Quaynor, Vice Chair of African Union “.africa” Taskforce, Yes2dotAfrica Campaign (14 May 2011), <http://archive.constantcontact.com/fs053/1102516344150/archive/1104994724388.html>.

Pierre Dandjinou (who has connections to Mr. Quaynor's dotafrica.org, AFRINIC, AfTLD and ARC) would make a presentation about ICANN's New gTLD Program and an unnamed individual would present ARC's approach for .AFRICA, after which resolutions for an "African Agenda ICANN" would be presented and considered for adoption. I believe this agenda was contrived for the purpose of giving legitimacy to ARC, an organization made up of and supported by individuals who had made their own unsuccessful attempts to obtain support for a .AFRICA gTLD.

70. Mr. Dandjinou's role at the meeting especially bothered me because he had previously used his position as vice chair of the AUC's Task Force to try to gain support for AfTLD's efforts to obtain a .AFRICA gTLD and now he appeared to be trying to push a self-serving agenda by setting up a round table on the topic to promote ARC. Mr. Dandjinou also had been an outspoken critic of DCA in order to advance his favored groups. Interestingly, Mr. Dandjinou's position within the AUC and his role in dotafrica.org is well known to ICANN and the larger ICANN community, as DCA reported his activities to ICANN and ran a "No" campaign to inform the public about his conflicts of interest during his run for an ICANN At-Large Board position, which he did not win.⁶⁶

71. When Ms. Inné stepped down as Manager for Regional Relations in Africa for ICANN to become chief operating officer of AFRINIC, AFRINIC founder and former member of the board of directors Tarek Kamel gave me a courtesy notice that ICANN was planning to appoint Mr. Dandjinou to fill Ms. Inné's role, which had been retitled Vice President for Stakeholder Engagement for Africa. DCA protested his appointment in an email to Tarek Kamel, who claimed responsibility for his hire, and through official comments I made during a scheduled

⁶⁶ Letter from DCA to ICANN (13 Nov. 2010), available at <http://www.dotconnectafrica.org/wp-content/uploads/2012/09/DCA-letter-to-BCEC-Nov-13-2010.pdf>.

hearing held by ICANN. During the hearing, I requested that if he was appointed, he would not be involved in any discussions on .AFRICA and that he would file a conflicts of interest disclosure with ICANN. Representatives of ICANN, made up of its internal counsel, assured me on both counts, but did not follow through with their promises.

72. I was astounded that ICANN would appoint someone so conflicted on .AFRICA to be the voice of Africa at ICANN and then, despite the concerns I raised with ICANN about Mr. Dandjinou's numerous conflicts of interest, neither bar him from discussions on .AFRICA nor require him to make the appropriate conflicts of interest disclosures. As a result of these lapses, I believe Mr. Dandjinou used his position to the advantage of the groups he supported and to the disadvantage of DCA. After his appointment, Mr. Dandjinou introduced a newly formed group, the Africa ICT Alliance ("AfICTA"), modeled on the IBCA, which I co-founded and with DCA introduced to ICANN in connection with the ICANN's "Africa Strategy," after Mr. Dandjinou had been privy to DCA's proposal through his position at ICANN.

73. Mr. Dandjinou also is a member of the official ICANN Africa Strategy Working Group, a group launched by ICANN in 2012 to lead its initiative to increase African participation and influence within ICANN. ICANN invited members from the African Internet community to participate, but to date has excluded DCA. This is particularly troubling given that the Africa Strategy Working Group holds out publicly that it leads ICANN's Africa strategy "with the support of AFRINIC."⁶⁷ Not only are Ms. Inné, Mr. Quaynor and Mr. Dandjinou associated with AFRINIC, but Mr. Kamel, AFRINIC founder and former board member, is the senior advisor to ICANN's chief executive officer, Fadi Chehadé. This also means that both the AUC Task Force chair (Mr. Quaynor) and vice chair (Mr. Dandjinou) help direct the ICANN African Strategy,

⁶⁷ Press Release, ICANN, A New Approach to Africa (10 Aug. 2012), *available at* <https://www.icann.org/news/announcement-2012-08-10-en>.

which is a very advantageous position to be in when these men have an interest in the outcome on .AFRICA and have taken, and continue to take, antagonistic positions to DCA.

74. All of these individuals and entities are connected to and form part of the group to which the AUC had planned to delegate the .AFRICA gTLD once the AUC had obtained the rights to it via its request to reserve the strings. I believe that this is why the AUC, led by its Task Force comprised of the members of these entities, designed the RFP to make it nearly impossible for any applicant other than ZACR—the registry operator they favored and the AUC initially appointed—to compete in the process.

75. This is evidenced by the community support requirements in the AUC RFP, which I believe violate the ICANN AGB twofold. One, the AUC RFP mandates that the applicants apply for a geographic name and apply on behalf of a community, which is inconsistent with the ICANN AGB.⁶⁸ The .AFRICA gTLD is not a community TLD, it is a generic TLD, which means there is no requirement that the applicant have the support of a specific community. Two, to reinforce this extraneous requirement, the AU RFP required applicants to be partnered with African ccTLD operators, which is also not in line with ICANN’s rules for gTLD applicants, as there is no requirement in the AGB that an applicant to be partnered with one. Furthermore, the requirements and experience needed for operating a ccTLD registry is different from that for a gTLD.

76. I and other supporters of DCA believe that the AUC was using the ccTLDs allied with certain African governments to garner political support for its independent plans for .AFRICA.

⁶⁸ “NO” to the African Union RFP for the Operation of DotAfrica, Yes2dotAfrica Campaign, <http://archive.constantcontact.com/fs053/1102516344150/archive/1108683982073.html>; Rejoinder to TechCentral SouthAfrica 'Bizarre twist in .africa tale,' DCA (7 Sept. 2012), <http://archive.constantcontact.com/fs053/1102516344150/archive/1110949549089.html>; DCA's Commentary on ITWebAfrica Story The 185,000 Misunderstanding on .africa, DCA (25 Aug. 2012), <http://archive.constantcontact.com/fs053/1102516344150/archive/1110817256334.html>.

77. The requirement to partner with ccTLD operators was so specific that it basically amounted to a requirement that an applicant have a relationship with the AfTLD. DCA had run a “No” campaign against the AfTLD’s request to the AU for a mandate to run the .AFRICA registry since DCA already had been endorsed by the AU. I and other supporters of DCA did not believe that the AfTLD, as an association of ccTLD operators, should run a gTLD, as it would stifle competition.⁶⁹

78. I believe that the AUC deliberately made this an eligibility requirement for the purpose of favoring ZACR given the preexisting relationship between ZACR and the AfTLD. The chairman of the AfTLD, Vika Mpisane, is also the general manager of the South African Domain Names Authority (“ZADNA”), which established ZACR and is located at the same address as ZACR.⁷⁰

79. The RFP also asked bidders to provide extensive technical and financial information in their submissions. DCA wrote to the AU in December 2011, explaining that it could not participate in a bidding process that would provide its potential competitor with the specific details of its bid strategy and other confidential information. I and DCA believed that this information could only be submitted to ICANN, as ICANN is the only entity with the mandate to receive bid submissions and evaluate applicants for new gTLDs.⁷¹

80. Additionally, I believe that the extremely short window for evaluating the bids and selecting the winning registry operator provided for in the RFP demonstrates that the outcome

⁶⁹ Vote “No” to AfTLD (17 Mar. 2011), <http://archive.constantcontact.com/fs053/1102516344150/archive/1104815470848.html>.

⁷⁰ Unpublished report on the “History of .Africa” authored by Rebecca Wanjiku (Sept. 2012), http://www.dotconnectafrica.org/wp-content/uploads/2013/09/Dot-Africa-History-Paper-September-2012_Rebecca-Wanjiku.pdf.

⁷¹ Letter from Sophia Bekele, Exec. Director, DCA, to John Shinkaiye, Ambassador, Bureau of the Chairperson, AUC (30 Dec. 2011), *available at* <http://www.dotconnectafrica.org/wp-content/uploads/2014/01/Letter-to-AU-leaders-to-inform-unwillingness-to-participate-in-RFP-8th-December-2011.pdf>.

was predetermined. The RFP gave the evaluators only seven days (five business days) to review the proposals and notify the winner, which is simply not enough time for any meaningful evaluation, particularly considering that the RFP asked for much of the same information as required in the ICANN gTLD application, which is evaluated over a period of six months or more.

81. In the end, ZACR was the only bidder and the AUC endorsed ZACR—the same company that it had originally appointed—as a preferred applicant for .AFRICA. This time when the AUC appointed ZACR, it issued a statement making it appear that it went through an international competitive bid in an open and transparent process,⁷² which I believe was a sham.

XI. ICANN'S EVALUATION OF THE APPLICATIONS

82. ZACR, despite being the publicly endorsed applicant on behalf of the AUC, submitted a standard (not community-based) application for the .AFRICA gTLD. After the ICANN new gTLD application window had closed and portions of the applications were made public, DCA reviewed ZACR's application and noted problems and weaknesses with several aspects of it. DCA submitted official public comments on the problematic areas of ZACR's application to ICANN to be provided to the evaluation panels performing the Initial Evaluation of ZACR's application, as per the public comment procedures in the AGB.

a. Irregularities and Weaknesses in ZACR's Application

83. I was very surprised to see that the application for .AFRICA was submitted by ZACR rather than the AU and that ZACR did not submit its application as a “community-based” TLD

⁷² AU, Communiqué, dotAfrica gTLD, *available at* <http://www.au.int/en/sites/default/files/dotAFRICA%20Communique.pdf>.

application, despite the fact that the AU had selected and given its written endorsement of ZACR's bid to apply *on behalf of* the AU.⁷³

84. I was also surprised to see in ZACR's application that it intended to transfer all of the registry rights, registry databases and intellectual property to the AUC, when the AU was not actually the applicant (while nonetheless giving African governments the impression that the ZACR application was an AUC application). This did not conform to the rules established by ICANN for domain name registrants. There was no way that the AUC would own the intellectual property rights to an Internet resource that was to be delegated via the new gTLD process nor was the agreement between the AUC and ZACR consistent with the provisions of the sample registry agreement set forth in the AGB. If ZACR was allowed to simply transfer all of these intellectual property rights and registry data to the AU, in apparent violation of the ICANN rules requiring all technical registry data to be properly escrowed with ICANN serving as the principal legal and technical beneficiary of any registry data escrow, it would mean that the AU could do whatever it wanted with those rights and information, just like a ccTLD (ccTLDs do not enter into the same type of registry agreements that gTLDs do with ICANN). If this transfer actually took place, the AUC would not be bound by a contract with ICANN like ZACR is through its registry agreement with ICANN. It was very troubling to me that ICANN apparently accepted this arrangement, particularly since the AUC would be able to appoint another registry operator that had not been screened nor evaluated by ICANN.

85. DCA requested that ICANN disqualify ZACR immediately based on the merits of its application and its failure to follow the new gTLD AGB procedures.⁷⁴ Not only did the

⁷³ See ZACR's Application, <https://gtdresult.icann.org/applicationstatus/applicationdetails/1184>.

⁷⁴ Letter from Sophia Bekele, Exec. Director, DCA, to CEO, ICANN (9 July 2012), *available at* <http://www.dotconnectafrica.org/wp-content/uploads/2014/06/Letter-to-ICANN-to-request-disqualification-of-UniForum-from-the-new-gTLD-programme-9th-July-2012.pdf>.

application reveal this improper agreement with the AU to grant it these rights, but it also contemplated vesting legal or executive responsibility in an organization that did not have any formal role or executive responsibility at ZACR and delegating responsibility for overseeing .AFRICA to an entity not yet legally established. These comments, however, were ignored by ICANN.

86. Finally, I was surprised that ZACR's application passed the financial evaluation given that ZACR posted a COI of \$140,000, which ICANN's guidelines indicate is appropriate when the applicant anticipates registering between 50,000 to 100,000 domain names under the TLD. Considering ZACR claims to have registered over 750,000 domain names under the South African ccTLD co.za alone, we considered it unrealistic that the .AFRICA gTLD—which would be appealing and available to individuals on the entire continent of Africa and worldwide—would garner only 100,000 or fewer domain name registrants. DCA submitted a comment about this to ICANN during the comment period on ZACR's application, as we believed that UniForum had significantly understated their unit projections for domain name registrations, whilst increasing the unit sale cost of each domain name, in order to achieve their financial targets and to post a lower COI amount than would realistically be needed to protect potential users and registrants of .AFRICA. In fact, we thought \$140,000 would be grossly insufficient for ICANN to cover the actual operating costs of transitioning the registry to another EBERO in event of registry business failure.⁷⁵

87. At this point, DCA's attempts to get endorsements from African governments were being significantly undermined by the belief of the African governments that they were supporting the application of the AUC that represented the larger African governments and the African Internet

⁷⁵ Official Public Commentary to UNIFORM's Application to ICANN
<http://archive.constantcontact.com/fs053/1102516344150/archive/1111021912009.html>.

community and not of a private company, such as DCA, that appeared to them to be “intruding” into the structure selected by the AUC, as can be read in the statements of the GAC Early Warning Objections submitted by individual governments.⁷⁶ Moreover, ZACR’s application was being presented publicly as an application that had been made on behalf of the “African Community,” even though ZACR did not submit a community-based application to ICANN. DCA continued to get feedback that the governments were supporting the “AU position,” meaning that they supported ICANN giving .AFRICA to the AUC through the ZACR vehicle. In other words, I believe the AUC was being presented as the applicant for .AFRICA simply to garner political support for the standard, non-community application that had been submitted by ZACR.

88. These purported endorsements actually were letters written in support of the AUC’s request to reserve .AFRICA (something that is not contemplated by the New gTLD Program) and not in any way related to the endorsements required under the AGB for an applicant for a geographic gTLD. At the time, I was not aware of any African government that had actually endorsed the ZACR application. Not only were the supporters of the “AU position” confused, but the AU itself and supporting entities involved in the project do not seem to have understood that the only entity actually applying for the right to operate .AFRICA was ZACR and not the AUC.

b. ICANN’s Order of Review of the Applications for .AFRICA was Inconsistent with the Applicants’ Priority Numbers

89. I am also troubled by the order in which ICANN reviewed and released the Initial Evaluation results of DCA and ZACR’s respective applications for .AFRICA. ICANN conducted a “prioritization draw” on December 17, 2012, in Los Angeles, CA, to assign priority

⁷⁶ See GAC Early Warnings, ICANN, <https://gacweb.icann.org/display/gacweb/GAC+Early+Warnings>.

numbers to all gTLD applications.⁷⁷ Each applicant was required to purchase a \$100 ticket in order to participate in the draw. According to ICANN, the numbers would be used to determine the order in which the Initial Evaluation results would be released. Despite DCA drawing number 1,005 and ZACR drawing number 307, ICANN released the results of the Initial Evaluation of DCA’s application on July 3, 2013, and the results of the Initial Evaluation of ZACR’s application on July 12, 2013—9 days *after* releasing DCA’s results and nearly three months *after* the results for application number 307 should have been released based on the purported sequence of evaluations.

90. The fact that ICANN did not evaluate the ZACR application until the results of DCA’s Initial Evaluation were issued and a GAC objection to DCA’s application had been orchestrated seem like a deliberate attempt to allow ZACR to pass Initial Evaluation without competition so that it could simply take advantage of the extended evaluation procedures set forth in the AGB to correct the failings of its application.⁷⁸ On a timeline I saw in the AU’s presentation materials from the July 2013 Durban ICANN meeting, ZACR did not appear to have received clarifying questions on its application until after the GAC advice was issued on DCA’s application.⁷⁹ This seems to me another instance where ICANN failed to follow its own procedures simply to advance, or deliberately assist, the AUC-supported application to prevail. I believe that ICANN was taking into consideration the fact that the AUC is a political body and had taken to heart the communication from ZACR to the ICANN Independent Objector (“IO”) that he object to DCA’s

⁷⁷ See New gTLD Prioritization Draw 2012, ICANN, <http://newgtlds.icann.org/en/applicants/prioritization-draw>.

⁷⁸ *A delayed evaluation “pass” score for .Africa competition*, The Reporter (24 Aug. 2013), <http://www.thereporterethiopia.com/index.php/living-and-the-arts/art/item/880-a-delayed-evaluation-pass-score-for-africa-competition>.

⁷⁹ Update on AU dotAfrica (.Africa) Project, Presentation to AfriSIG13 by Dr. Edmund Katiti, Head of NEPAD e-Africa Programme (July 2013), <http://african-ig-school.events.apc.org/wp-content/uploads/sites/2/2013/06/NEPAD-DotAfrica-Presentation.pdf>.

application. If DCA prevailed despite ZACR having been endorsed by the AUC, then the AU would lose faith in ICANN. For these reasons, I and other supporters of DCA believe that ICANN improperly yielded to pressure from the AUC to pass ZACR's application for .AFRICA for political reasons.

XII. ICANN ALLOWED THE AUC TO USE THE GAC TO FURTHER ITS GOAL OF RESERVING .AFRICA FOR ITS OWN USE

91. As I explained above, ICANN suggested to the AUC that although it could not reserve .AFRICA for its own use, it could nevertheless, as a GAC member, use the GAC to object to any application that it deemed to be problematic for any reason. In other words, ICANN gave the AUC a strategy for quashing DCA's application that did not actually require the AUC to meet the stringent standards for filing and prevailing on a "community objection" through the formal objection process set forth in the AGB. I believe that this is another instance where ICANN assisted the AUC in its efforts to promote its favored applicant.⁸⁰

92. The AUC followed ICANN's advice and, after submitting its application for .AFRICA, became a voting member of the GAC. In November 2012, approximately five months after the AUC joined the GAC, the GAC filed an "early warning," objecting to DCA's application for .AFRICA on the basis that it did not meet the minimum requirements of the AGB concerning geographic names. DCA's application received 17 such early warnings, which seem to be based on some kind of form letter, from Comoros, Kenya, Cameroun, DRC, Benin, Egypt; Gabon, Bourkina Faso, Ghana, Morocco, Mali, Uganda, Senegal, South Africa, Nigeria and Tanzania and the African Union itself.⁸¹ DCA objected to the GAC early warning advice, particularly

⁸⁰ ICANN Activities in Africa | Response to African Union Communiqué of October 2011
<https://www.icann.org/en/news/correspondence/crocker-to-ibrahim-08mar12-en>.

⁸¹ See <https://gacweb.icann.org/display/gacweb/GAC+Early+Warnings>; Response to the ICANN GAC Early Warning Advice against the .Africa Application Submitted by DotConnectAfrica Trust,

since the form letters—most of which were not even signed—were not clear indications of any objection from the actual governments involved.⁸² DCA also pointed out the apparent contradiction in the method applied in obtaining the purported “early warnings” since, for example, Kenya had previously endorsed DCA’s application for .AFRICA.

93. Despite this seemingly inappropriate use of GAC early warning advice, in April 2013, at the ICANN meeting in Beijing, China, decisions were made with respect to what aspects of the new gTLD procedures should continue, including the use of GAC advice. The AGB gives the GAC the authority to advise the ICANN Board regarding an application identified as being problematic, in that it potentially violates national law or raises other sensitivities.⁸³

a. Improprieties at the GAC Meeting in Beijing

94. Of particular relevance to DCA, we learned that Alice Munyua—Vice Chair of the GAC at the time, an AUC GAC representative, and a supporter and steering committee member of the “Africa in One Space Initiative,” the sponsor of ZACR’s application—was passing herself off as the Kenyan GAC representative during the Beijing meeting.⁸⁴ Ms. Munyua had served as the Kenya GAC advisor in previous years, but was replaced by Sammy Buruchara in February 2013. Approximately six weeks prior to the opening of the ICANN Beijing meeting, the government of Kenya circulated Mr. Buruchara’s letter of appointment to the GAC, with a copy to ICANN Chief Executive Officer Fadi Chehadé, to notify them that Mr. Buruchara had replaced

<http://www.dotconnectafrica.org/wp-content/uploads/2012/12/Response-to-the-ICANN-GAC-Early-Warning-Advice-against-the-.Africa-Application-Submitted-by-DotConnectAfrica-Trust.pdf>.

⁸² DotConnectAfrica Trust Applicant Responses to GAC Advice, <http://newgtlds.icann.org/sites/default/files/applicants/23may13/gac-advice-response-1-1165-42560-en.pdf>.

⁸³ DotConnectAfrica Trust Applicant Responses to GAC Advice <http://newgtlds.icann.org/sites/default/files/applicants/23may13/gac-advice-response-1-1165-42560-en.pdf>

⁸⁴ See Transcript, Beijing – Joint Meeting of the GAC and the ICANN Board, pp. 19-22 (9 Apr. 2013), available at <http://beijing46.icann.org/meetings/beijing2013/transcript-gac-board-09apr13-en.pdf>.

Ms. Munyua as the country's advisor.⁸⁵ Each country is given two seats on the GAC: one for the representative and one for the advisor. Mr. Buruchara was and is the duly appointed representative of Kenya on the GAC reporting to the Minister of Kenya.

95. Nonetheless, Ms. Munyua apparently continued to introduce herself as Kenya's GAC representative during the GAC meetings in Beijing. Mr. Buruchara, who was unexpectedly unable to attend the GAC Meeting in Beijing, wrote to ICANN Chief Executive Officer Fadi Chehadé and GAC Chair and ICANN Board Member Heather Dryden to request that they stop Ms. Munyua from masquerading as the Kenyan GAC representative.⁸⁶ Furthermore, Mr. Buruchara explicitly stated that Kenya did not wish to object to DCA's Application.⁸⁷ Because Mr. Buruchara received an error message in response to his email, Mr. Katundu also resent the message to Ms. Dryden's email address, copying the entire GAC email listing.

96. I also wrote to Mr. Chehadé and Ms. Dryden on behalf of DCA, protesting Ms. Munyua's actions.⁸⁸ In light of the GAC Early Warnings against DCA and Ms. Munyua's involvement as an adviser to the "Africa in One Space Initiative," I believe it was very inappropriate for her to be involved in drafting, let alone gathering support for issuing, GAC objection advice against a competing application for .AFRICA. I believe it was very inappropriate for Ms. Munyua to use

⁸⁵ See Letter from Francis Wangusi, Director General, Communications Commission Kenya, to Heather Dryden, Chairperson, GAC, ICANN (21 Feb. 2013), *available at* <http://www.dotconnectafrica.org/wp-content/uploads/2014/08/Change-of-the-Kenyas-GAC-Advisor.pdf>; email from Michael Katundu, GAC Representative, Kenya, to Heather Dryden et al. (25 Feb. 2013), [Ex.113]; email from Sammy Buruchara, GAC Advisor, Kenya, to Fadi Chehadé (7 Mar. 2013)

⁸⁶ Email from Sammy Buruchara to Heather Dryden (9 April 2013), [Ex. C-79]; Email from Michael Katundu to Heather Dryden (10 April 2013), [Ex. C-80]; Email from Sammy Buruchara to Heather Dryden (10 April 2013), [Ex. C-81] ; *see also* Email from Sophia Bekele, Exec. Director, DCA, to Fadi Chehadé et al. (10 Apr. 2013), <http://www.dotconnectafrica.org/wp-content/uploads/2013/04/DOTCONNECTAFRICA-EMAIL-COMMUNIQUE-TO-ICANN-ON-GAC-AND-.AFRICA.pdf>.

⁸⁷ See Email from Sammy Buruchara to Heather Dryden (9 April 2013), [Ex. C-79].

⁸⁸ Letter from Sophia Bekele, Executive Director, DCA, to ICANN (11 July 2012), *available at* <http://www.dotconnectafrica.org/wp-content/uploads/2014/07/Reporting-COI-on-.Africa-gTLD-regarding-Ms.-Alice-Munyua-Vice-Chair-of-GAC-from-Kenya.pdf>.

her previous affiliation as Kenya's GAC advisor to pose as a GAC member at the Beijing meeting in order to gather support for issuing GAC objection advice against DCA, to the benefit of the applicant she supported.

97. I am aware that ICANN has submitted a witness statement from Ms. Dryden, in which Ms. Dryden implies that Mr. Buruchara was not entitled to represent the government of Kenya in the GAC. She also claims that DCA has failed to submit additional emails that reveal that Mr. Buruchara actually consented to the GAC; however, I believe she is misinterpreting what he said in those emails.

98. Ms. Dryden was well aware that Mr. Buruchara was a GAC representative for Kenya, since Kenya had sent an appointment letter to ICANN when he was appointed—a letter on which Ms. Dryden herself was copied.⁸⁹ At the time, the Communications Commission of Kenya also sent a letter directly to Ms. Dryden to inform her that Mr. Buruchara had replaced Alice Munyua as Kenya's GAC Advisor.⁹⁰ Ms. Dryden received these communications more than one month in advance of the GAC meeting at which Ms. Munyua claimed to represent Kenya.

99. Mr. Buruchara also has told me that there were additional emails in the chain he had previously sent to me and that they showed that he had, in fact, objected to any GAC advice against DCA's application. At my request, he sent me the attached two email chains showing his discussions with other African government representatives to the GAC.⁹¹ As these emails show, he believed that the AUC's use of the GAC to advise ICANN to deny DCA's request was

⁸⁹ Email from Sophia Bekele, Exec. Director, DCA, to Alan Greenberg, McGill (21 July 2013), <http://www.dotconnectafrica.org/wp-content/uploads/2014/07/Email-ICANN-Question-on-GAC-Advise-on-.africa-July-2013.pdf>.

⁹⁰ Letter from Francis Wangusi, Director General, Communications Commission Kenya, to Heather Dryden, Chairperson, GAC, ICANN (21 Feb. 2013), *available at* <http://www.dotconnectafrica.org/wp-content/uploads/2014/08/Change-of-the-Kenyas-GAC-Advisor.pdf>.

⁹¹ [Cite to Memorial Exhibit No. for email chain]; email from Sophia Bekele, Exec. Director, DCA, to ITRT2 Chair and Team (21 July 2013), <http://www.dotconnectafrica.org/wp-content/uploads/2014/07/Email-to-ICANN-URGENT-Attention-GAC-and-.africa-issue-discussed-at-ICANN-Beijing-April-2013.pdf>.

fundamentally unfair and irregular because the AUC, in concert with ZACR, was actually an applicant for .AFRICA, and, in fact, was DCA's only competitor.

100. On April 11, 2013, the GAC issued "consensus objection advice" to the Board, a type of advice that creates a strong presumption for the Board that the application should not be approved. DCA submitted a formal response to ICANN on May 8, 2013, using ICANN's GAC Advice Response Form for Applicants. Our response raised serious concerns about ICANN directing the AUC how to use the GAC on behalf of ZACR to stop DCA's application, when ZACR, as a private applicant, would not otherwise have been able to object to DCA's application through the GAC process. This is troubling on many levels. To begin with, it is anti-competitive. ICANN has not given DCA any assurance that the ICANN Board members who are connected to the competing application recused themselves from voting on the advice.

b. ICANN Directed and Permitted the AUC to Use the GAC to Usurp the Role of the Geographic Names Panel

101. Even worse, the GAC essentially usurped the role of the Geographic Names Panel, which serves to verify the relevance and authenticity of the supporting documentation for a geographic TLD, like .AFRICA. While the GAC deliberations are political by nature, the Geographic Name Panel's role is not. The Geographic Names Panel must review the documentation submitted by an applicant and declare whether that applicant has satisfied the requirements in the AGB. DCA never got to this point. Instead, the AUC used its position on the GAC to persuade GAC members to advise the Board that DCA's application should not proceed. We did not receive any requests for clarification (what ICANN calls "clarifying questions") from the evaluators on the Geographic Names Panel that would justify this result.

102. By doing this, ICANN also allowed the AUC to circumvent the formal objection process and independent dispute resolution procedures that ICANN has created for gTLD applications.

Even though DCA successfully deflected the threat of a community objection by arguing and presenting its case to the ICANN IO, DCA did not get the benefit of having an independent, third-party expert evaluate what amounts to the AUC's "community objection," one of four specific and allowable grounds for objecting to a new gTLD application under the AGB.⁹² On the contrary, the GAC merely deliberated and sent its advice to the Board. Despite my and DCA's objections to the AUC's misuse of the GAC, ICANN's New gTLD Program Committee ("NGPC") accepted the GAC advice. Subsequently, DCA filed a request for a Reconsideration, which ICANN denied.

103. It is incomprehensible to me how a committee acting on the delegated authority of the Board could accept the GAC's advice without further inquiry given all of the concerns I had raised on behalf of DCA about the application process and the GAC advice itself. I believe that the NGPC, in acting for the Board, should have consulted with an independent expert about the issues raised in the GAC advice, as the AGB expressly allows. In fact, the AGB uses as an example of when it would be appropriate to consult an independent expert, the situation where an issue raised in the GAC advice is an area covered by the objection procedures. Because the AUC used the GAC to bring what is essentially a community objection against DCA's application, I think the Board should have viewed the GAC's advice skeptically and recognized that consulting an independent expert, such as would have been required through the actual community objection dispute resolution process, was the only way to obtain a fair result. Instead, with Mr. Buruchara's emails showing Kenya's objections to the GAC advice in hand and with knowledge of DCA's serious concerns about the process, the NGPC just accepted the GAC's advice. This is further evidence to me of ICANN favoring the AUC-backed application

⁹² See AGB, pp. 3-4, -7, -8.

and the Board violating the principles and requirements set forth in its Articles of Incorporation and Bylaws by allowing such anti-competitive behavior to continue unchecked.

XIII. DCA'S CONCERNS ABOUT CONFLICTS OF INTEREST AMONG ICANN BOARD MEMBERS EVALUATING APPLICATIONS FOR NEW GTLDS

104. I believe the ICANN Board also failed to take the necessary steps to ensure that only impartial decision-makers could participate in Board decisions concerning DCA and the .AFRICA gTLD. On behalf of DCA, I raised concerns about potential conflicts of interest of ICANN Board members and NGPC members Chris Disspain and Mike Silber that I believe should have disqualified them from participating in any decisions with respect to DCA's application for the .AFRICA gTLD.⁹³

105. Mr. Disspain is the chief executive officer and a director of .au Domain Administration, which, together with ARI Registry Services Ltd., is part of AusRegistry Group. ARI Registry Services Ltd. is an organization that hosts and supports the “.com.au” registry and also provides registry management and consulting services to different clients. Furthermore, it has assisted many organizations with preparing and submitting applications for new gTLDs to ICANN. According to publicly available information, ARI Registry Services Ltd. advised the ZADNA when it established ZACR, which is part of ZACR, the administrator of the “.co.za” domain registry. ZACR has submitted the only other application for the .AFRICA gTLD. I believe that because of the business relationship between ARI Registry Services, as a provider of technical consulting services to ZADNA and to ZACR, Mr. Disspain might be deeply conflicted over the

⁹³ See letter from Sophia Bekele, Exec. Director, DCA, to Chief Executive Officer, ICANN (18 July 2012), available at <http://www.dotconnectafrica.org/wp-content/uploads/2012/09/Reporting-COI-on-.Africa-gTLD-regarding-Mr.-Mike-Silber-a-Member-of-the-ICANN-Board-from-South-Africa.pdf>; letter from Sophia Bekele, Exec. Director, DCA, to Chief Executive Officer, ICANN (18 July 2012), <http://www.dotconnectafrica.org/wp-content/uploads/2012/09/Reporting-COI-on-.Africa-gTLD-regarding-Mr.-Chris-Disspain-a-Member-of-the-ICANN-Board-from-Australia.pdf>; letter from Sophia Bekele, Exec. Director, DCA, to Fadi Chehadé, Chief Executive Officer, ICANN (1 Oct. 2012), <http://www.dotconnectafrica.org/wp-content/uploads/2012/10/Letter-to-ICANN-on-Mike-Silber-and-Chris-Disspain-October-1-2012-updated.pdf>.

award of the .AFRICA gTLD. I am concerned that these business relationships could influence Mr. Disspain's views on .AFRICA in favor of ZACR given that it is a client of ARI Registry Services Ltd.

106. Mr. Silber, a current ICANN Board member, is the treasurer and a director of ZADNA. ZACR operates the .za registry pursuant to an agreement with ZADNA and ZADNA has openly endorsed ZACR's application for .AFRICA. I also understand that ZADNA's General Manager, Vika Mpisane, recommended ZACR to the AUC initially.⁹⁴ Since DCA has applied for the same geographical string name as ZACR, I believe it is inappropriate and unethical for Mr. Silber to participate in any decisions regarding the .AFRICA TLD, as there is the potential for him to use his presence on the Board to advantage ZACR's application.

107. Accordingly, on July 18, 2012, immediately after DCA discovered that Messrs. Disspain and Silber had potential conflicts of interest, DCA sent letters to the Board, requesting that both men recuse themselves from any decision-making processes concerning DCA and the .AFRICA gTLD. ICANN did not respond to DCA's letters.⁹⁵ On October 1, 2012, DCA wrote to the Board again, requesting that ICANN provide DCA assurances that Messrs. Disspain and Silber would not be permitted to participate in any Board-level discussions and decisions regarding

⁹⁴ New generic Top-Level Domain Program (gTLD) for Global Internet Expansion-Need for Direct Congressional Oversight & Recommendation for the Appointment of an Independent Counsel as Congressional new gTLD Ombudsman to Investigate & Report to Congress on Matters of Illegality and Irregularities in new gTLD Program of ICANN, <http://www.dotconnectafrica.org/wp-content/uploads/2013/03/Letter-to-US-Senate-on-UniForum-escalation-21st-February-2013-from-DotConnectAfrica.pdf>; Unpublished report on the "History of .Africa" authored by Rebecca Wanjiku, http://www.dotconnectafrica.org/wp-content/uploads/2013/09/Dot-Africa-History-Paper-September-2012_Rebecca-Wanjiku.pdf.

⁹⁵ See Letter from DCA to ICANN Board regarding Chris Disspain (18 July 2012), *available at* <http://www.dotconnectafrica.org/wp-content/uploads/2012/09/Reporting-COI-on-.Africa-gTLD-regarding-Mr.-Chris-Disspain-a-Member-of-the-ICANN-Board-from-Australia.pdf>; letter from DCA to ICANN Board regarding Mike Silber (18 July 2012), *available at* <http://www.dotconnectafrica.org/wp-content/uploads/2012/09/Reporting-COI-on-.Africa-gTLD-regarding-Mr.-Mike-Silber-a-Member-of-the-ICANN-Board-from-South-Africa.pdf>.

.AFRICA.⁹⁶ To my knowledge, both men continued to participate in NGPC meetings on .AFRICA. Again, ICANN did not respond.

108. Later that month, DCA filed a complaint with the ICANN Ombudsman. He took up the matter, but I do not believe he conducted a thorough investigation of the concerns DCA raised with him. The Ombudsman also indicated that he consulted with ICANN General Counsel, John Jeffrey, about the scope of his review and the types of recommendations that he could make to ICANN about DCA's concerns, which I believe was inappropriate.

109. In the end, the Ombudsman reported that he did not find any disqualifying conflict of interest and opined that the Board likely would be careful to consider such issues when they arise. In reaching his decision, the Ombudsman reported consulting only the minutes of certain NGPC and Board meetings in which he did not find any discussion of ".AFRICA." While it may be coincidental, eight days after the Ombudsman issued his report, ICANN's Board published an updated "Summary of ICANN Officers and Board Member Statements of Interest," which publicly disclosed the relationships DCA identified as potential conflicts of interest.⁹⁷

XIV. THE INDEPENDENT OBJECTOR'S INVESTIGATION AND CONCLUSIONS

110. My experience with ICANN's IO also leads me to believe that representatives of ICANN permitted the AUC to exert improper influence over the application and dispute resolution processes with respect to the .AFRICA gTLD. As part of the new gTLD dispute resolution procedure, ICANN created the position of the IO, an unaffiliated individual whose role is to object to applications that would be contrary to the public and community interests. The IO is authorized to object on "community" or "limited public interest grounds," as defined in the

⁹⁶ See Letter from DCA to the ICANN Board regarding Mike Silber and Chris Disspain, <http://www.dotconnectafrica.org/wp-content/uploads/2012/10/Letter-to-ICANN-on-Mike-Silber-and-Chris-Disspain-October-1-2012-updated.pdf>.

⁹⁷ Summary of ICANN Officers and Board Member Statements of Interest (18 Dec. 2012), <https://www.icann.org/resources/pages/summary-soi-2012-12-18-en>.

AGB, to applications that are deemed harmful where there is no other person with standing to object on community or limited public interest grounds. According to the IO's website, the IO may consider filing an objection against an application if public comments on the application demonstrate that it is a controversial application.

111. Prior to making an objection, the IO issues an "Initial Notice" to the applicant, informing the applicant that he is considering making an objection and on what grounds. The applicant has an opportunity to respond and potentially engage in mediation or negotiation with the IO before the IO files his objection. If mediation is unsuccessful, the IO files his objection with the ICC and prosecutes the objection before the ICC Expert.

112. On 14 May 2012, ICANN announced that Professor Alain Pellet would serve as the IO. So far, the IO has filed Objections against the following gTLD strings: Amazon, Charity, Med, Health, Healthcare, Hospital and Medical. Along with .AFRICA, the IO has considered filing Objections against the following gTLD strings: Adult, Army, Catholic, Church, Gay, GCC, Hot, Islam, LGBT, PersianGulf, Porn, Sex, Sexy, Vodka and WTF.

a. The Independent Objector's Initial Notice

113. On December 31, 2012, DCA received an email notifying us that ICANN's IO was considering objecting to DCA's application for the .AFRICA gTLD on "community grounds." Specifically, the Initial Notice stated that an objection against our application could be warranted on the "community ground." He based his decision to inquire into our application on the existence of 17 GAC Early Warnings and public comments against our application.

114. I found the IO's email surprising since an objection may be filed by the IO or otherwise on community grounds if (i) the person objecting refers to the rights of a clearly delineated community; (ii) there is substantial opposition to the application within that community; (iii) there is a strong association between that community and the gTLD string; and (iv) the

application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of that community. The IO indicated in his Initial Notice that “the notion of ‘community’ is wide and broad” and is not precisely defined in the AGB.⁹⁸ Moreover, the IO compared the AU to the EU and asserted that the AU is even more representative of Africa than the EU is of Europe, a statement with which I certainly do not agree. Finally, the IO asserted that he would only consider the possibility of objecting to our application if it failed to pass the Geographic Names Panel Review and DCA could not reach an agreement on the matter with ZACR, essentially threatening to handicap DCA’s application in the event that the independent evaluators tasked to determine whether DCA had the requisite government support to run .AFRICA found DCA’s application adequate and competitive. I found this apparent threat by the IO very inappropriate since the AGB does not contemplate the IO using his authority to punish one party for failing to settle with another party and it led me to question the independence of the IO.

115. Although typically the IO engages in mediation or negotiation with the applicant, in our case, the IO invited ZACR to submit its thoughts on our application and to opine on whether it, as our competitor, thought the IO should object to DCA’s application on community grounds. I also found it terribly inappropriate that the supposedly *independent* objector consulted with ZACR about DCA’s application.

116. Not surprisingly, on January 18, 2013, Neil Dundas, who was chief executive offer of ZACR at the time, responded to the IO, indicating that his organization would support the IO filing an objection against DCA’s application. ZACR requested that the IO lodge an objection against DCA on behalf of the “African community” because, while clearly delineated, the

⁹⁸ Initial Notice of the Independent Objector on .AFRICA (31 Dec. 2013).

“African community” was too large and disparate to be able to coordinate an objection on its own behalf.

b. DCA’s Response to the Independent Objector

117. Meanwhile, DCA responded on 20 January 2013, expressing our disagreement with the IO’s proposal to object to our application.⁹⁹ First, we asserted that his objection would be superfluous under the AGB, since as the IO indicated in his Initial Notice, we had already received seventeen GAC Early Warnings, including from the AUC. The IO’s role is to file objections where no other objection on the same ground has been filed.

118. Second, we disagreed with his assertion that “community” is not adequately defined under the AGB. Module 4 of the AGB provides criteria for a “community,” and explains that geographic space is neither sufficient nor dispositive to show the existence of a community. Under the Module 4 criteria, we argued that the “African community” really could not be delineated. Furthermore, we argued that the .AFRICA gTLD was not intended to be restricted to Internet users residing in Africa, but according to DCA’s business plan, would benefit all Internet users with connections to Africa, regardless of whether they reside on the continent. We pointed out that the ZACR application was not a community application and did not name any community, so objecting to DCA’s application on the basis of the community “represented” by ZACR would not result in .AFRICA being run by a community representative. Lastly, with regard to the standard for a community objection, we pointed out that the AU is not in fact representative of Africa nor does it have any of the mandates that the EU has to represent Europe. Furthermore, .eu is a ccTLD, and ICANN already had determined that .AFRICA would not be delegated to the AU (or any registry operator) as a ccTLD, but would be subject to the

⁹⁹ DCA’s Response to the IO’s Initial Notice – “.AFRICA,” <http://www.independent-objector-newgtlds.org/home/the-independent-objector-s-comments-on-controversial-applications/africa-general-comment/>.

competitive process as a gTLD. We argued that if the AU thought that an “African community” really existed and felt that it was important to protect that community, the AUC and ZACR should have filed a community-based TLD application.

119. We took issue most vehemently, however, with the IO’s final statement that he would only object to DCA’s application if we passed the Geographic Names Panel Review and demonstrated to the satisfaction of the independent evaluators that our application was complete, proper and competitive. We informed the IO that it was completely inappropriate for him to use a community objection to intervene in order to resolve a valid contention set in favor of one applicant over another on the basis of complaints raised by the competing applicant (ZACR) and its partner (the AUC), particularly if the Geographic Names Panel explicitly determined that our application was adequately supported by the relevant governments.

c. Final Comment of the Independent Objector

120. In the end, the IO determined that he lacked standing to file a Community Objection because the AUC was better placed to file such an Objection and could do so if it deemed it appropriate.¹⁰⁰ In determining that the AUC was adequately positioned to represent the “African community,” the IO did not examine our assertion that the AU is not akin to the European Union nor is the AUC similar in representative authority or mandate to the European Commission.

121. Instead, the IO opined to DCA that he did not think DCA’s application would pass the Geographic Names Panel Review, since he did not think that DCA had adequately demonstrated in its response to the IO that it had the support of the AUC and African governments. I thought this was completely inappropriate and outside the scope of his decision-making authority since DCA is required to demonstrate geographic support to the Geographic Names Panel, not to the

¹⁰⁰ Independent Objector’s Comments on “.Africa,” <http://www.independent-objector-newgtlds.org/home/the-independent-objector-s-comments-on-controversial-applications/africa-general-comment/>

IO, and because the AUC/ZACR, on whose opinion the IO relied, was DCA's competitor for the .AFRICA gTLD. The IO's findings led me to wonder whether he was cooperating with the AUC's apparent strategy to stop DCA's application for .AFRICA.

122. Additionally, it is apparent that ZACR relied on purported endorsements—not of its application for .AFRICA—but of the position of the AU on .AFRICA. This does not meet the requirements of the AGB, as evidenced by the clarifying questions about the endorsements ZACR received from ICANN. Moreover, the endorsements demonstrate that the governments of the African countries expressed support for the AU's position on *reserving* the strings for the AU—not for the AU to apply for or designate an applicant for the strings.¹⁰¹ The difference is apparent, for example, when one compares Kenya's letter of endorsement for *reserving* the strings to Kenya's letter of endorsement in support of DCA's *application* for the strings.¹⁰² So not only did the IO clearly overstep his authority in opining that ZACR should pass the Geographic Names Panel Review and that DCA should fail, but he based his opinion on deficient endorsements. It seemed to me that the IO, an official appointed by ICANN, deliberately tried to conflate the issue of community objection with the work of the Geographic Names Evaluation Panel in order to unduly influence the process to benefit DCA's competitor.

¹⁰¹ Letter from Dr. Ben Fuller, Director, Namibian Network Information Centre (Pty) Ltd., Fadi Chehadé, Chief Executive Officer, ICANN et al. (26 Mar. 2013), *available at* <https://www.icann.org/en/system/files/correspondence/fuller-to-chehade-26mar13-en.pdf>.

¹⁰² *Compare* letter from Samuel Poghio, Minister for Information and Communications, Republic of Kenya, to Rod Beckstrom, Chief Executive Officer, ICANN (7 Aug. 2012), *available at* <http://www.dotconnectafrica.org/wp-content/uploads/2013/08/The-Kenya-support-letter-for-AU-Reserve-names.pdf> (support for the AU's request to reserve .AFRICA), *and* letter from Samuel Poghio, Minister for Information and Communications, Republic of Kenya, to Sophie Bekele, Exec. Director, DCA (17 Aug. 2012), *available at* <http://www.dotconnectafrica.org/wp-content/uploads/2013/07/Kenya-Government-position-on-dotAfrica.pdf> (endorsement of DCA); *see also* Joel N. Kaapanda, Minister of Information and Communications Technology, Republic of Namibia, to Elham Ibrahim, Commissioner of Infrastructure and Energy, AUC (16 Nov. 2012), *available at* <http://www.dotconnectafrica.org/wp-content/uploads/2013/05/Namibia-government-position-of-dotAfrica.pdf> (support for the AU's request to reserve .AFRICA).

123. DCA raised these concerns publicly as well as in DCA's formal written response to the GAC objection advice DCA's application received in the Beijing Communiqué.¹⁰³ In light of these deficiencies, DCA requested in its response to the GAC objection advice that ICANN take a closer look at ZACR's endorsements to determine whether it actually had the requisite support of the African country governments.¹⁰⁴

124. ICANN, however, accepted the GAC objection advice in the Beijing Communiqué. At this point, I and other representatives of DCA decided to seek independent third-party review of ICANN's actions given the unfair and anti-competitive pattern of behavior against us exhibited at all levels within ICANN.

XV. WHAT DCA SEEKS FROM THIS IRP

125. In light of the Board's approval of the GAC objection advice and inaction with respect to the issues raised by DCA throughout the application process for the .AFRICA gTLD, I believe that the process of delegating .AFRICA to ZACR must be stopped by the IRP Panel and the evaluation results for ZACR nullified. It is my understanding that DCA's application passed each of the technical and operational, financial and registry services panel reviews before ICANN stopped processing it. It is evident that the evaluation process was improperly interfered with and unduly influenced by factors other than those contemplated in the AGB.

126. For these reasons, I believe all delegation preparations between ICANN and ZACR must halt since ZACR should not be the beneficiary of ICANN's failure to follow its own rules and procedures, particularly given the many irregularities in the processing of each application and

¹⁰³ See letter from Sophia Bekele, Exec. Director, DCA, to Fadi Chehadé, Chief Executive Officer, ICANN (02 Apr. 2013), available at <https://www.icann.org/en/system/files/correspondence/bekele-to-chehade-crocker-02apr13-en.pdf>; DCA's Response to GAC Objection Advice regarding Application No. 1-1165-42560, available at <http://newgtlds.icann.org/sites/default/files/applicants/23may13/gac-advice-response-1-1165-42560-en.pdf>.

¹⁰⁴ See DCA's Response to GAC Objection Advice regarding Application No. 1-1165-42560, available at <http://newgtlds.icann.org/sites/default/files/applicants/23may13/gac-advice-response-1-1165-42560-en.pdf>.

the seemingly inappropriate level of influence ICANN permitted DCA's competitor over the process.

127. The NGPC's acceptance of the GAC objection advice on DCA's application for .AFRICA stopped the processing of DCA's application and permitted ZACR's application to proceed as "not in contention with any other applied-for strings."¹⁰⁵ Given the serious issues DCA has raised with respect to the rendering and acceptance of the GAC's advice and the evaluations performed, I believe the only solution is to stop the entire process. I also would request that ICANN write a letter to the AUC and African heads of state declaring that the application process has been nullified as a result of these irregularities and ICANN's failure to follow its governing documents and the AGB.

128. I strongly believe that nullifying the current process that resulted in ICANN awarding the .AFRICA gTLD to ZACR is the minimum of what should be done towards rectifying the harm suffered by DCA as a result of the Board's failure to abide by ICANN's Articles of Incorporation and Bylaws. Given the degree of misconduct by ICANN Board members and staff, which proved injurious to DCA's application for .AFRICA, I also believe that DCA should be compensated by ICANN for damages suffered. Finally, to ensure that DCA is given the opportunity to compete for the .AFRICA gTLD without prejudice, DCA should be allowed by ICANN to work independently with African governments to commence a new strategy for implementing the .AFRICA new gTLD.

I affirm that the foregoing is true and correct to the best of my knowledge.



Sophia Eshete Bekele

November 3, 2014
Walnut Creek, CA

¹⁰⁵ UniForum New gTLD Program Initial Evaluation Report (12 July 2013), *available at* <http://newgtlds.icann.org/sites/default/files/ier/bqe3so7p3lu2ia8ouwp7eph9/ie-1-1243-89583-en.pdf>.