



**October 13<sup>th</sup> 2015**

**Director of the New gTLD Program**

Internet Corporation for Assigned Names and Numbers (ICANN)

**Geographic Names Panel**

Internet Corporation for Assigned Names and Numbers (ICANN)

**Committee Chair**

ICANN Board New gTLD Program Committee (NGPC)

Internet Corporation for Assigned Names and Numbers (ICANN)

**Dr. Stephen Crocker**

Chairman of the Board

Internet Corporation for Assigned Names and Numbers (ICANN)

**Chairperson of the Governmental Advisory Committee**

Internet Corporation for Assigned Names and Numbers (ICANN)

Los Angeles

USA

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Dear Sir/Madam,

**Subject: *DotConnectAfrica Trust's Reaction & Response to the AUC Commissioner for Infrastructure and Energy Letter to the ICANN Geographic Names Panel***

The attention of DotConnectAfrica Trust (DCA Trust) has been drawn to a [letter that was written by Dr. Elham Ibrahim](#), the African Union Commissioner for Infrastructure and Energy to the ICANN Geographic Names Panel (GNP). As a directly affected party, we hereby write to convey our official reaction to this letter that was sent to the ICANN GNP.

Our presentation is in **two parts**. The first part relates to our general response to the Commissioner's letter; whilst the second part deals with specific issues that have been referred to in her letter.

# Part I

## Introduction and General Comments

Our general comments in response to the AUC letter that was sent to the ICANN GNP are as follows:

1. We think that the letter is inappropriate and we disagree with its contents; tactical objective and its overall intended purpose. We ask ICANN Board and GNP not to countenance the letter.
2. There is no place in the new gTLD procedures or governing policy for this type of letter. It is neither a legitimate challenge to the 'resumed evaluation' by ICANN of DCA Trust's .Africa application; nor is it a solicited input that would aid the process.
3. From Section 2.4.3.1 of the new gTLD Applicant Guidebook, we can infer the important stipulation to:

**“safeguard against the potential for inappropriate influence and ensure applications are evaluated in an objective and independent manner”.**

We therefore strongly believe that the letter by AUC Commissioner amounts to inappropriate interference designed to undermine the objectivity and independence of the GNP.

4. We note that Section 2.2.4. ('Communication Channels') of the ICANN new gTLD Applicant Guidebook clearly stipulates *inter alia*:

***“Contacting individual ICANN staff members, Board members, or individuals engaged by ICANN to perform an evaluation role in order to lobby for a particular outcome or to obtain confidential information about applications under review is not appropriate.”***

Therefore, no party (including the AUC) may contact an Evaluation Panel (or Panels) directly. This ensures that any work being conducted by an Evaluation Panel is independent and free of interference from any party. It is obvious that the AUC letter is intended to advocate (or lobby) for a particular outcome and is very inappropriate according to the Guidebook provisions.

5. The DCA vs ICANN IRP brought to light the same kind of inappropriate intervention by ICANN staff in the initial GNP Evaluation of both .Africa applications. These irregularities were extensively covered during the IRP in which DCA prevailed. Impartiality may have been compromised. InterConnect Communication's (ICC) Mark McFadden wrote: ***“so far, so good, I think. The ball is now in Sophia's court – if she wants to invoke Independent Review, then good luck to her.”***

Finally, DCA urges ICANN to disregard these letters as it is intended to create a negative influence that would prejudice the outcome of the 'resumed evaluation' by ICANN in order to fail DCA Trust's .Africa application. Therefore, if accepted by for the purpose of the present 'resumed evaluation' by ICANN of DCA Trust's .Africa application, it would be a serious violation of the new gTLD Guidebook principles, and due process.

## Part II

Since the AUC Infrastructure and Energy Division letter has mentioned several points pertaining to GAC Early Warnings, GAC Objection Advice, Governmental support, AU RFP etc., we use this opportunity to exercise our right to respond to those points. We find it necessary to restate our views on the subject as follows:

### I) Early Warning & GAC Objection Advice

DCA Trust has always questioned the validity of the GAC Early Warnings – since those were provided mostly by ccTLD operatives who have no mandate over .Africa. The operatives **had not consulted with their home governments** but were made to sign a pre-prepared template.

Similarly, DCA has already questioned the validity of the GAC Objection that was procured against DCA Trust's .Africa application, and the ICANN Board decision in that regard. DCA disagreed with the objection advice and ICANN Board decision and these issues have already been addressed during the IRP - the unanimous decision of the IRP Panel was ***“that both the actions and inactions of the Board with respect to the application of DCA Trust relating to the .AFRICA gTLD were inconsistent with the Articles of Incorporation and Bylaws of ICANN”<sup>1</sup>***.

### II) Issue of Governmental Support

#### On Matters of AUC

#### a. Purported Withdrawal of DCA' s Endorsement for .africa

First, in 2009 DCA Trust received a letter of support from the AUC Chairperson the highest office of the institution. We have always maintained that this endorsement for the .Africa string remains valid. Efforts that were made to repudiate or withdraw the letter of support that had been legitimately granted to DCA Trust are not reasonable within the context of the application process. This is the same position that we have clearly stated in our application's Answer to Evaluation Question No. 21. In this regard therefore, our position remains unchanged. We think that a validly issued letter of support cannot be withdrawn by an endorsing party unless there is non-performance of a contract. This is provided for in the guidebook 2.2.1.4.3 Documentation Requirements page 71 of 338.

#### b. Purported Heads of State Declarations & Ministerial Resolutions on .africa

It is our view that as far as the new gTLD Program is concerned, these Ministerial Declarations and Resolutions mentioned in the AUC letter written by Infrastructure and Energy Division do **not count as valid endorsements, letters of support or objections**. This view has also been reinforced by ICC during their review of endorsement as evidenced in the IRP discovery process.

For instance, various examples have been noted in the AUC's letter on such matters. These include the Heads of State Oliver Tambo declaration dated 2-5 November 2009, ICT Ministers Abuja Declaration dated 3-7 August 2010 and recently in the attached document to the GNP citing a resolution Number 11, dated 4<sup>th</sup> September 2015 Addis Ababa Declaration of the First Ordinary Session of the African Union Specialized Technical Committee on Communication and Information Technologies (STC-CICT). The latter states amongst other numerous project lists by the division:

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<sup>1</sup> Cf. No. 148 on page 61 of IRP Final Declaration

***“PROVIDE all required support to the African Union Commission (AUC) as the only vehicle for the implementation of Dot Africa and withdraw all supports provided to competing applications to the one championed by AUC;”***

These are the sorts of statements that are deliberately inserted in official Communiqués and Resolutions. Heads of State and or Ministers may or may not actually be present or not –as for example in the Dakar 2011 Ministerial meeting that we are often forced to challenge. Such carefully crafted resolutions of questionable validity are often being used to justify a legitimate support or voice of Africa in the .africa matter. It is not correct.

**c. Lack of 60% Requirement by ZACR/AUC Infrastructure and Energy Division application for .africa**

It would have been more convincing if the AUC Infrastructure and Energy Division had obtained the individual endorsements from 60 per cent of the individual countries in Africa to demonstrate that in truth the AUC has been given the **required support or Mandate from African Heads of States and Governments** as the only vehicle for the implementation of DotAfrica, instead of the use of yet another resolution or declaration.

How could informed African ICT ministers issue yet another Declaration that approves the AUC infrastructure and Energy Division as ***‘the only vehicle for the implementation of DotAfrica’***, against the backdrop that, in truth, the AUC Infrastructure and Energy Division cannot implement DotAfrica – for the simple reason that the AUC is a political organization, which is not in the Internet DNS/registry services business?

Whether such Resolutions and Declarations are actually the appropriate means or not of conveying endorsements or withdrawing the support that has already been granted to competitors, we also believe that technically speaking, since the **AUC Infrastructure and Energy Division** is a **“co-applicant”** on the .Africa application that was submitted by ZACR<sup>2</sup>, where ZACR stated it **“has given the rights of the registry database and the intellectual property to AUC in a separate contract”**, the AUC Infrastructure and Energy Division cannot **self-endorse** itself for the .Africa string name, since it does not have the individual country endorsements - as required under the Guidebook ***“documentation of support will be required from at least 60% of the respective national governments in the region.”***)

**d. Misrepresentation of endorsement by AUC Infrastructure and Energy Division for .africa**

It must be noted that the letters that the AUC Infrastructure and Energy Division had provided in support of its position on .Africa was for the .Africa new gTLD domain name and its equivalents in other languages (French, Arabic, etc.) to be included in the List of Top-Level Reserved Names so as to enable the AUC benefit from a special legislative protection such as the International Red Cross Society and the International Olympic Movement. This request was not approved by ICANN; all the same, ZACR/AU Infrastructure and Energy Division had appropriated such letters as its own letters of endorsement – which were not accepted as valid.

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<sup>2</sup> ZACR/AUC **Application ID:** 1-1243-89583 <https://gtldresult.icann.org/applicationstatus/applicationdetails/1184>

### III) The AUC RFP Process was not open and transparent

The AUC Infrastructure and Energy Division letter claims unequivocally that **an open and transparent process was followed** in appointing ZACR as the winner of the Request for Proposals (RFP) process on .Africa. We beg to differ – and the correct answers to the following pointed questions would clarify matters for everyone’s benefit:

- How was the AUC .Africa RFP conducted?
- Where is the **complete list of firms/companies that responded to the AUC RFP** on .Africa?
- Where are the **official minutes of the AUC Tender Board meeting** that had been held to deliberate upon, and give consideration to the RFP outcome; and subsequent approval of the evaluated RFP results?
- **Was the .Africa RFP handled by the AUC Procurement Division?** And if not; why was the RFP not overseen by the AUC Procurement Unit as per AUC working procedures and official policy regarding RFPs, RFQs, and such like processes that are used to administrate procurement actions?

**We hereby challenge the AUC to support its claim of an open and transparent process by proving to the entire world that the RFP was conducted based on a transparent and accountable process.**

The position of DCA Trust has always been that the Country-Code Top Level Domains (ccTLDs) such as ZADNA (South African Domain Names Authority) and .CO.ZA also got involved in the process even though they have no mandate over .Africa and recommended that the ZACR should be appointed as the registry operator of .Africa – the same ZACR that manages the .CO.ZA second-level domain under .ZA ccTLD. Even the AUC RFP document mentioned that prospective bidders should partner with African ccTLDs which had caused DCA Trust to raise an exception remark during the last quarter of 2011. Furthermore, we also believe that Mr. Vika Mpisane then head of the ZADNA, and the AfTLD, had made the recommendation to the AUC that resulted in the appointment of ZACR as the registry operator of .Africa new gTLD by the AUC. Therefore, it is evident that there was no competitive, open and transparent RFP process despite claims to the contrary.

Consequently, we wish to request the AUC as a Pan-African institution that also aims to operate according to global best practices to demonstrate to ICANN, the ICANN GNP, and even to the ICANN GAC, that it had followed a regular, procurement process that was **overseen by the AUC Procurement Division and approved by the AUC Tender Board** in reaching a final decision to appoint ZACR as the registry operator of .Africa.

We believe that the entire .Africa saga has been bedeviled by these irregularities, and until a proper Administrative Panel of Inquiry is instituted to look into these issues, these problems shall remain unresolved.

#### **Lack of Community Application on .Africa by AU RFP**

Similarly, the AUC Infrastructure and Energy Division letter claimed in 2012 to have appointed ZACR to apply for .Africa gTLD on behalf of the African Community, yet the same ZACR failed to submit a Community TLD application – as per its appointment letter an observation that had caused DCA to challenge the validity of ZACR’s application; which also clearly failed to acknowledge any community affiliation (by leaving the answers to the relevant evaluation questions blank).

## On Matters of UNECA

### a. Purported withdrawal of DCA's UNECA Endorsement by UNECA's Secretary of the Commission

First off, we are surprised at UNECA's statement coming more than seven years after the endorsement was first written and given to DCA Trust in 2008, by the highest offices of the UNECA; and more than three years after the closing of the new gTLD application window in 2012.

We wish to note that the UNECA letter to the AUC would not have been written if ICANN had not **"resumed the evaluation"** of DCA Trust's .Africa application after the Final IRP decision was issued in July 2015. For instance, the attached document provided by the AUC Commissioner, Number 36 of the Addis Ababa Resolution of the First Ordinary Session of the African Union Specialized Technical Committee on Communication and Information Technologies (STC-CICT) on 4<sup>th</sup> September 2015 reads:

***"The United Nations Economic Commission for Africa (UNECA) to provide AUC with all required support for the implementation of Dot Africa, including the withdrawal of all support provided earlier to any other entity on matters related to dot Africa;"***<sup>3</sup>.

It is patent from this excerpt that the **UNECA has not acted independently**, but has been unduly pressured by the AUC Commissioner to write this letter. This can be substantiated by the UNECA correspondence of 22<sup>nd</sup> September 2015 by the Executive Secretary Carlos Lopez, careful response (based on the urging of the AUC Commissioner for Infrastructure and Energy), attempting to renounce the earlier letter of support that had been issued to DCA Trust in 2008. This letter was also copied directly to DCA, correctly noted that the **'issue is of a legal nature'** and we expect ICANN and the ICANN GNP to take note of this specific fact.<sup>4</sup>

DCA strongly believes that this type of 'politics' have no place in the ICANN new gTLD Program. **The gTLD rulebook is procedure based program to fulfill certain contractual requirement and not led by governmental politics**, particularly when the governmental entity is partisan in this matter, due to being a competitor to DCA. To restate what we have already said, a validly issued letter of support cannot be withdrawn by an endorsing party unless there is non-performance of a contract. This is reinforced by guidebook 2.2.1.4.3 *Documentation Requirements page 71 of 338*.

We also wish to bring to your attention that **there is an apparent incongruity in the date(s) of the UNECA letter that was written and signed by Ms. Sandra Baffoe-Bonnie**, as Secretary of the Commission and Legal advisor. We believe that these inconsistencies in dates are attributable to deliberate coordination.<sup>5</sup>

For example, a copy of the same letter that was sent by email to DCA Trust on Saturday, 26<sup>th</sup> September 2015 bears a 21<sup>st</sup> September, 2015 date; whereas a copy of the same letter signed by Ms. Sandra Baffoe-Bonnie of UNECA discussing the same subject, having exactly the same contents and the same reference number (OES/15/09/0157), that was submitted to the ICANN GNP by the AUC Commissioner for Infrastructure and Energy Dr. Elham Ibrahim bears a July 20, 2015 date. Interestingly, Dr. Elham Ibrahim's letter to the UNECA to solicit support (**'Re: Request for Support for DotAfrica Project'**) was dated 4<sup>th</sup> August 2015 with Reference No. CIE/L//20/292.15. **The UNECA could not have replied (on July 20, 2015)** to a request made by the AUC Commissioner for Infrastructure and Energy, even two weeks before receiving the AUC's letter that bears a date of 4<sup>th</sup> August 2015.

<sup>3</sup> See page 7 of document available at <https://www.icann.org/en/system/files/correspondence/ibrahim-to-gnp-29sep15-en.pdf>

<sup>4</sup> UNECA Response for Dot Africa Project 2015 <http://dotconnectafrica.org/wp-content/uploads/2015/10/UNECA-Response-for-Dot-Africa-Project-2015.pdf>

<sup>5</sup> Letter from UNECA .africa Page 3 of 12 <https://www.icann.org/en/system/files/correspondence/ibrahim-to-gnp-29sep15-en.pdf>

On our part, we have reasoned that the only explanation for these apparent incongruities in dates is attributable to the simple fact that the date on the copy of the UNECA letter that was sent to the ICANN GNP **was amended after the fact to give the impression that the UNECA letter was written several weeks before the resumption of the GNP Evaluation of DCA Trust’s .Africa application; even though this is not the case** Therefore it should be dismissed as not credible.

**b. On Whether the UNECA is a public authority or not**

We are quite surprised that the **Secretary of the Commission of UNECA, Ms. Sandra Baffoe-Bonnie** has claimed that UNECA is not a public authority, and that its letter written to DCA should not be considered as an endorsement for the purpose of the ICANN new gTLD process, even though the letter of support from UNECA clearly indicated that it was supporting DCA for an application that would be submitted to ICANN for the .Africa top level domain name at the time it was issued.

UNECA is a Pan-African organization, established in 1958, that is also a member of the global United Nations Organization (UNO), and whose member states are the independent African countries. UNECA cannot suddenly **cease to be a public authority because of the issue of endorsing a geographic name string under the ICANN new gTLD Program** even though the same organization is largely recognized as a public authority by many who are informed and knowledgeable about the UNECA, including UNECA being a member of ICANN GAC since 2004.

The Secretary of the Commission is also not in any position to interpret the New gTLD guidebook for the GNP. The GNP is to do their work independently.

The undersigned is also well aware that UNECA is a public authority, and is quite familiar with the work of UNECA having been appointed by then UNECA Executive-Secretary, Mr. K.Y. Amoako in 2002/2003 and served on the African Technical Advisory Committee (ATAC) – a high-level expert advisory board - that was convened to provide informed policy advice to African Ministers of Information and Communications Technologies. See also personal testimony on IRP.<sup>6</sup>

**c. Our UNECA letter of support should be accepted as a valid endorsement for the .Africa geographic name string**

The excerpt from the Final IRP Declaration which confirms an ICANN official position in a legal proceeding states *inter alia*:

***“Pursuant to the ICC’s advice, the UNECA’s endorsement was taken into account. Like the AUC, the UNECA had signed letters of support for both DCA and ZACR.<sup>82</sup> The ICC advised that because the UNECA was specifically named in the Abuja Declaration, it too should be treated as a relevant public authority.<sup>83</sup> ICANN accepted the ICC’s advice”. (This excerpt has been taken from No. 45 page 37 (Under Section No. 90) of the Final IRP Declaration [PDF, 1.04 MB] which may be found [here](#).)<sup>7</sup>***

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<sup>6</sup> Sophia Bekele Personal testimony to IRP Panel <https://www.icann.org/en/system/files/files/eshete-witness-statement-redacted-03nov14-en.pdf>

<sup>7</sup> Excerpt Final ruling DCA Trust vs ICANN IRP <https://www.icann.org/en/system/files/files/final-declaration-2-redacted-09jul15-en.pdf>

We wish to note that since the UNECA endorsement has already been considered positively for ZACR/AUC Infrastructure and Energy Division – our competitor for the .Africa new gTLD string it would be an act of discrimination and unfair evaluation, if the same UNECA endorsement which DCA Trust has submitted was rejected based on the AUC’s Infrastructure and Energy Division’s unwarranted intervention in the process.

### **On matters of Individual Governments**

If the AUC’s support as a public authority equates to the 60 per cent requirement, then the UNECA letter of support that DCA Trust has submitted should also be considered as equivalent to satisfying the 60 per cent requirement for the sake of equitable and fair treatment to both .Africa new gTLD applicants.

## **Conclusion**

In conclusion, as already conveyed in an official letter dated July 17, 2015 to the ICANN Board Chairman<sup>8</sup>, DCA believes that certain new obstacles such as the UNECA Letter to the AUC are now being re-introduced as after-the-fact measures that would deliberately create the same problems that we have already overcome in the past. Therefore, this substantiates that DCA has no faith in this **“resumed evaluation by ICANN”**. We would not normally participate in an evaluation process which we already think is prejudiced, but have participated in order to satisfy due process requirements, and complete all necessary formalities, even though it is crystal clear that DCA Trust has already satisfied all necessary criteria at the time of application.

Finally, we wish to reiterate that the AUC Infrastructure and Energy Division interference in this evaluation of DCA Trust’s .Africa application is regrettable, and should be dismissed and not given any credence nor consideration. The letter is a complete violation of the new gTLD guidebook on due process and independence.

Thanking you in anticipation even as we express the hope that the ICANN GNP will remain unprejudiced and act in compliance with approved policy giving consideration given to equity, fairness and natural justice.

Yours sincerely,



Sophia Bekele  
Executive Director/CEO  
DotConnectAfrica Trust  
Application ID: 1-1165-42560

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<sup>8</sup> DCA Trust Official letter to the ICANN Board Chairman <https://www.icann.org/en/system/files/correspondence/bekele-to-crocker-chehade-21jul15-en.pdf>