Response to the ICANN GAC Early Warning Advice against the .Africa Application Submitted by DotConnectAfrica Trust

DotConnectAfrica Trust (DCA Trust), an applicant for the .Africa generic Top-Level Domain under the auspices of the ICANN new gTLD program, has been informed of several Governmental Advisory Committee (GAC) Early Warning Advice notifications that have been received by the ICANN GAC against DCA's application for .Africa. It is the understanding of DCA Trust that the GAC Early Warning are based on objections that been **formally lodged against its application by the African Union Commission (AUC) acting in concert with some other African countries namely, Comoros, Kenya, Cameroun, DRC, Benin, Egypt; Gabon, Bourkina Faso, Ghana, Morocco, Mali, Uganda, Senegal, South Africa, Nigeria and Tanzania** have all objected to DCA's application for .Africa.

DCA Trust has endeavored to prepare a detailed official response to the ICANN Board and the ICANN Governmental Advisory Committee as per this document.

However, before responding to the pertinent issues contained in the GAC Early Warning Advice of the African Union Commission, DCA Trust would like to implore the ICANN Board not to follow the GAC Early Warning Advice.

In general, all the notices are similar, meaning that they all emanated from a common source, which further implies that the respective governments had no independence of action in submitting this presumably spurious GAC Early Warning Advice letters against DCA's application to the ICANN GAC. We believe that the governments were teleguided (or manipulated) into submitting these GAC Early Warning Advice, and as such, cannot really be considered as authentic in most cases. ***It is simply the outcome of a coordinated action which African country governments are being coerced to support, and we believe that actual governmental consultations with respective African country governments has not been done in many cases.*** For example, the Government of Comoros has presumably objected to DCA's application for DotAfrica, based on text and wording that is similar to that used by the Government of Kenya to also object to DCA's application for .Africa; meanwhile DCA Trust's application has been officially endorsed by the Government of the Republic of Kenya, and this endorsement was never withdrawn**. It would be interesting to know how a governmental objection was contrived against DCA's application for .Africa by the same government that has already endorsed DCA's application.**

The GAC Early warning Advice has been done to punish DotConnectAfrica for opposing the African Union's proposal to have .Africa included in the List of Top-Level Reserved Names. We may recall that on the sidelines of the ICANN International Meeting at Dakar, Senegal, the African Union Commission-supported African Ministerial Round-Table had submitted a request to ICANN asking to: **"Include (.Africa, .Afrique, .Afrikia, ايقيرفا۰),** **and its representation in any other language on the Reserved Names List in order to enjoy the level of special legislative protection, so to be managed and operated by the structure that is selected and identified by the African Union."**

DotConnectAfrica Trust had **openly campaigned against this request by the AUC** because its approval by ICANN would have made the .Africa string name unavailable against the backdrop that the List of Reserved Top-Level Names was already indicated in the approved version of the Applicant's Guidebook.

In ICANN's official response dated 8th March 2012, and signed by the Chairman of the ICANN Board, Dr. Stephen Crocker that was addressed to Elham M. A. Ibrahim, Commissioner for Infrastructure and Energy at the African Union Commission, we note the following recommendation:

Elham M. A. Ibrahim, AU Commissioner for Infrastructure and Energy, noted *inter alia*: *"ICANN is not able to take actions that would go outside of the community-established and documented guideline of the program to provide the special treatment you have requested. ICANN does wish to explain, however that protections exist that will allow the African Union and its member states to play a prominent role in determining the outcome of any application for these top-level domain name strings."*

On this particular issue, the same communication concluded in a nutshell that: *"While ICANN is not able to offer the specific relief requested in the Communiqué, the robust protections built into the New gTLD Program afford the African Union (and its individual member states), through the Governmental Advisory Committee, the opportunity to raise concerns that an applicant is seen as potentially sensitive or problematic, or provide direct advise to the Board."*

DotConnectAfrica Trust believes that the response by ICANN to the African Union Commission contained specific recommendations to the extent that it clearly outlined a particular course of action that should be utilized by the AU regarding the possible use of the Governmental Advisory Committee to raise concerns about DCA as an applicant and DCA's submitted application.

Accordingly, we believe that ICANN's recommendations to the AU regarding how to directly influence the outcome of the .Africa top-level domain name string, was **actually prejudicial to DCA's application** since, this has clearly assisted the AU in the process of coordinating a GAC Early Warning Advice against DCA's application for .Africa. Our understanding is that the GAC *is supposed to independently submit GAC Early Warning Advice to the ICANN Board, but in the case of .Africa, we find the ICANN Board actually recommending to the AUC to perform the GAC Early Warning Advice*. Procedurally, this is incorrect and problematic, since it gives the impression that ICANN has actually instigated the GAC Early Warning by engaging in an advisory action or activity that seems to subvert the position of an applicant or that puts a particular application in jeopardy. **Be that as it may, DCA Trust considers this as a very serious aberration that is inimical to the new gTLD application for .Africa that it has submitted.**

It is therefore on this basis that we strongly urge the ICANN Board not to follow the GAC Early Warning Advice so that ICANN will not **be seen as having acted prejudicially, perhaps inadvertently**, against the interest of DotConnectAfrica as applicant simply by conveying specific recommendations to the African Union Commission in these matters.

We shall now address the specific issues mentioned in the GAC Early Warning Advice.

1. *The AUC claims in its formal objection to DCA's application that it has the mandate of African governments to 'establish dotAfrica as a continental (geographic) To-Level Domain for use by*

organisations, businesses and individuals with guidance from African Internet Agencies' and 'to set up the structures and modalities for the implementation of dotAfrica project' as provided for in the Abuja Declaration. In keeping with this mandate and following an open and transparent Request for Proposal process, UniForum SA, trading as the ZA Central Registry, was appointed as the registry operator to manage and administer the dotAfrica gTLD on behalf of the African Community for the benefit of the African region.

DCA insists that the process that led to the selection and appointment of UniForum SA, trading as ZA Central Registry was not based on an open and transparent RFP Process. The process hardly met the standards of an open, competitive and transparent process since UniForum was simply appointed based on the recommendation of Mr. Vika Mpisane, Head of the South African Domain Names Authority, who at the time the selection was made, was Chairperson of the African Top-Level Domains Organization (AfTLD). According to an unpublished document purportedly written on the 'History of DotAfrica' by Ms. Rebecca Wanjiku, a member of the DotAfrica Registry Project Committee under the auspices of the AfricaInOneSpace, we read the following:

"*The AUC RFP made it clear that AUC wanted African ccTLDs to play a crucial role in implementing .Africa. The AUC wanted .Africa run by an African operator using an African technology. This forced AfTLD to do an immediate review of its bid. Mpisane says that It was out of this reality that he personally (in his capacity as AfTLD Chairman at the time) lobbied the AfTLD Directors, key AfTLD members African community to find a suitable registry partner and investor from Africa. There was only one African registry operator that had a registry technology that met ICANN's registry requirements. That is how, with the support of the African Internet Community, the ZA Central Registry (UniForum SA), which runs an EPP registry system, was put forward to work with the community, especially AfTLD, to send a proposal to the AUC. The ZACR bid, which had the express backing of individual African ccTLDs, AfTLD and key African community members, got the approval of the AUC.*"

Mr. Vika Mpisane was reportedly interviewed by Ms. Rebecca Wanjiku on August 14, 2012. It was during this interview that the above revelation was made. Even though the document that we have referred to is not yet unpublished, **a draft version of it has been made available to a cross section of people in the AfrICANN Community for review.**

Our understanding therefore is that there is no truth in the assertion that the AUC had put in place an open and transparent process that led to the selection of UniForum ZA Central Registry. **UniForum was selected based on the outcome of a strong lobbying effort by Mr. Vika Mpisane of the South African Domain Names Authority, who used his leadership of the AfTLD at that time to simply put forward the name of UniForum South African ZA CR, the administrator of the .co.za second-level domain and registry operator from South Africa**. Our conclusion is that <u>nepotism, cronyism, abuse of office, and influence-peddling</u> played a huge role in the appointment of UniForum. DCA's position is that the lack of an open and transparent approach to the selection of a registry operator by the African Union Commission made it very difficult for DCA to obtain the needed governmental supports in a straight-forward manner since Vika Mpisane had simply recommended UniForum and this recommendation was accepted by the AU without fostering the implementation of a globally competitive process in line with ICANN's general principles regarding openness, transparency and free competition.

However, because this matter is of global import, since governmental representatives and diplomatic observers representing international organization from **5 continents are involved in this matter**, and GAC Early Warning Advice notices having been issued in the name of ICANN GAC and about 16 African country governments; **we**

hereby request the African Union Commission to further justify the integrity of the RFP process that it had put in place that led to the selection of UniForum, by publishing for the sake of satisfying openness and transparency in a globally competitive process, the following:

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

2.   ***The application fails to meet the minimum requirements prescribed by ICANN in the gTLD Applicant Guidebook concerning geographic names.***

• ***It is a geographic string application that does not have the requisite minimum support from African governments.***

Whilst the new gTLD Applicant's Guidebook requirements regarding governmental support concerning geographic names are quite clear, we believe that the process of winning the necessary support from the African country governments **has been fraught and overtly 'politicized' on account of the fact that the African Union Commission has attempted to mainstream its own interest in the UniForum application for .Africa**, thus making it both an 'endorser' and 'co-applicant' for the name string.

The African Union's role has therefore made it impossible for DCA Trust to obtain the necessary "minimum support from African governments" even though DCA had already received early endorsements from some African governments and diplomatic missions including the AUC, UNECA.

The African Union Commission did not separate itself from the .Africa new gTLD process by limiting its role to that of simply endorsing prospective eligible applicants to prepare and submit independent applications to ICANN for .Africa gTLD, but elected to **mainstream** itself as part and parcel of a particular 'structure', applying for the .Africa name string. **Whilst this act of self-endorsement raises questions of legitimacy**, DCA believes that the **African Union Commission used its political and diplomatic influence amongst African Countries to unfairly assist UniForum in garnering endorsements from African governments,** thereby blocking the chances of DotConnectAfrica Trust to independently obtain the required support from many African country

governments who would have also been favorably disposed to support DCA's application for .Africa as a separate initiative that was engaging in fair completion.

We believe that the endorsement issue should no longer be considered as relevant in the evaluation of the .Africa gTLD as a geographic string. We therefore urge the ICANN Board to **waive this requirement** because of the confusing role that was played by African Union. **The organization has created huge problems of legitimacy regarding the endorsement issue by acting both as 'endorser' and 'co-applicant' for .Africa.** It is our view that the final decision by ICANN regarding the delegation of the .Africa string should now only be based on the evaluated technical, operational and financial criteria and not on the issue of endorsement, which has been entirely 'politicized'.

3. *DCA's application constitutes an unwarranted intrusion and interference on the African Union Commission's (AUC) mandate from African governments to establish the structures and modalities for the Implementation of the dotAfrica (.Africa) project;*

Whilst the new gTLD Applicant's Guidebook witnesses that a GAC Early Warning Advice could be issued for any reason, DCA Trust believes that labeling a particular application as an **"unwarranted intrusion and interference"** could hardly qualify as legitimate grounds to issue a GAC Early Warning Advice.

We believe that DCA Trust satisfied ICANN's eligibility requirements in a straight-forward manner based on the Applicant's Guidebook provisions, and as such was free to submit an application under a competitive, globally-sanctioned program. DCA's application for .Africa was submitted to the ICANN according to the instructions received through the formal channels of the new gTLD program. DCA Trust did not intrude, nor has it interfered, in the competing application submitted by UniForum.

DCA Trust has exercised its right to post public comments on the UniForum application; the same way DCA's application for .Africa also attracted several public comments that were posted by UniForum, the African Union Commission and other parties. **These are legitimate actions and procedures that are approved under the new gTLD program and cannot be considered as "unwarranted intrusion and interference."**

Furthermore, the African Union Commission included itself as part of the 'structure' that it formed to apply for .Africa (See http://www.africainonespace.org/), and this structure 'selected' UniForum as registry operator to submit a competing application for the .Africa name string. **DCA Trust has not intruded into this 'structure', neither has it interfered with the operating modalities of this 'structure' that the African Union Commission has formed with other organizations for the purpose of applying for .Africa.**

DCA Trust **has not broken any African country national laws** and believes that its .Africa gTLD application that has been submitted to ICANN is legitimate and should not be labeled or seen by the AUC as an "unwarranted intrusion and interference" on the African Union's mandate. DCA Trust is simply participating in an open, competitive program, and its application is *bona fide*, and submitted to ICANN in utmost good faith. **We see "unwarranted intrusion and interference" as frivolous.** We therefore urge the ICANN Board not to follow this GAC Early Warning Advice.

4. **Its application does not adequately and substantively differentiate itself from the AUC's officially endorsed application for the dotAfrica (.Africa) geographic string and as such will likely result in public confusion with ensuing adverse affects on the goodwill and effectiveness of the African TLD space.**

We believe that DotConnectAfrica Trust has simply made a straight-forward application for the .Africa name string, the same way that UniForum has also submitted an application for the .Africa name string. The fact that DCA's application is in direct completion with the application submitted by UniForum does not constitute any legitimate grounds to issue a GAC Early Warning Advice against DCA. On the other hand, we believe that the UniForum application has not properly differentiated itself from the .Africa application submitted by DCA Trust.

According to an AUC Communiqué issued in May 2011 ('**The Africa Union Commission Clarification on Dot Africa')** *"the Commission said that it was pursuing an open and transparent procedure to guarantee the selection of a registry to act on behalf of the African community."* In March 2012, the African Union Commission released another Communiqué to announce that it had *"selected UniForum SA (the ZA Central Registry Operator or ZACR), to administer and operate dotAfrica gTLD on behalf of the African community".* On the basis of these two separate Communiqués, we believe that a Community TLD application for .Africa should have been submitted by UniForum since the African Union had specifically selected it as the registry operator to act on behalf of the African Community, to wit, *"to administer and operate dotAfrica gTLD on behalf of the African community"*. We therefore believe that UniForum should have specifically designated its .Africa application as a Community TLD submitted on behalf of the African Community in order to sufficiently differentiate it from the standard .Africa gTLD application submitted by DotConnectAfrica Trust. We therefore contend that it was the principal responsibility of the African Union Commission to ensure that UniForum, as its selected registry operator, actually submitted an application on behalf of the African Community so as to properly differentiate the UniForum application from any other application for .Africa, such as the independent standard application submitted by DCA Trust.

5. **Post-amendment, DCA's applied for string Is identical to the dotAfrica (.Africa) application officially endorsed by the African Union Commission (AUC) and the 39 individual African governments that have submitted letters of support per the Applicants' Guide Book (Ref # 1-1234-89583).**

Again, we do not accept that this constitutes any sufficient or reasonable grounds for the African Union Commission to issue a GAC Early Warning Advice against DCA's application for .Africa. The ICANN new gTLD Applicant's Guidebook does not prohibit two different, independent and eligible organizations from applying for the same new gTLD name string. If the applied-for strings are identical, any pertinent issues in this regard should be left to the relevant ICANN Evaluation Panel to be handled according to the published procedures. Accordingly, we would like to implore the ICANN Board also not to follow this GAC Early Warning Advice.

Remediation Plan

ICANN strongly encourages any applicant that has received a GAC Early Warning Advice against its application to work with the relevant parties as soon as possible to address the concerns voiced in the GAC Early Warning. DCA Trust is therefore treating this matter with the utmost seriousness. Accordingly, it is the avowed intention of

DCA Trust to remedy the issue of governmental support for the .Africa geographic gTLD name string that it has applied for.

However, it will not be possible at this stage to reach any form of understanding with the AUC and the supporters of the UniForum application regarding the GAC concerns that have now been raised. The GAC Early Warning Advice has been organized to create problems for DCA's application for .Africa and prevent DCA Trust from publicly participating in the new gTLD program.

DCA's remediation plan is anchored on the outcome of the Initial Evaluation. If the results of the Initial Evaluation are favourable, DCA Trust will approach the African Union Commission with the hope of discussing and reaching a common understanding to obtain the required governmental supports.

Accordingly, DCA wishes to continue with its application and is of the view that ICANN should continue to process its .Africa application until the results of the Initial Evaluation are announced.

A favorable Initial Evaluation outcome will demonstrate that DCA's application is viable and this will make it possible for DCA Trust to engage in direct negotiations under a cooperative framework that would enable it work with the African Union Commission and its member states regarding how .Africa should be managed as a new gTLD string that will be administered for the benefit of Africa and Africans.

DotConnectAfrica Trust hopes that this remediation process can be accomplished between January and March 2013.

For & On Behalf of DotConnectAfrica Trust

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