

**REDACTED REPORT ON INVESTIGATION INTO
ALLEGATIONS OF BULLYING, HARASSMENT AND
VIOLATION OF THE AFRINIC NON-DISCLOSURE
AGREEMENT**

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Executive Summary of Findings of the IC

1. The IC is of the view that the statement made by a Head of Department ('H1') to another Head of Department ('H2'), coupled with the rude gesture whereby H1 would have pointed to H1's crotch area, amounts to an instance of harassment.
2. H1 would also have breached section 54(1)(c) of the Employment Rights Act 2008 inasmuch as by making that rude statement, H1 would have verbally abused H2.
3. The investigation has not revealed further instances of harassment, intimidation or any such other behaviour on the part of H1 against H2 or any other staff.
4. H2 is also a difficult person to work with and may have, on certain occasions, made an abuse of authority over subordinate staff.
5. The IC is satisfied that there is no evidence of harassment, bullying or intimidation on the part of certain members of the Board against H2.
6. The IC has reached the conclusion that the disclosure by a member of the Board ('BM1') to a former employee of AFRINIC ('E1') of a WhatsApp group conversation involving BM1 and BM2 was in breach of (i) the Non-disclosure Agreement ('NDA'); and (ii) the requirements of section 153 of the Companies Act 2001.
7. There is no evidence whatsoever of BM2 having breached the terms of the NDA and/or section 153 of the Companies Act 2001.
8. The statement "*on va te prendre pour une pauvre petite africaine*" made by H2 to E1 could be construed as 'harassment' within the meaning of section 2 of the Employment Rights Act 2008 and would have constituted a breach of section 54(1)(a) of the Employment Rights Act 2008.
9. The repeated use of the word "*psychopath*" by H2 to an employee of AFRINIC ('E2') could be construed as bullying under section 51(1)(e) of the Employment Rights Act 2008.

1. AFRINIC

- 1.1 The African Network Information Centre (AfrinIC) Ltd ('AFRINIC') was incorporated in 2004 as a private domestic company limited by guarantee under the laws of the Republic of Mauritius. AFRINIC has about one thousand and five hundred members (the 'Members') who elect the board of directors which is vested with the function of administering the company. The board of directors (the 'Board') comprises eight directors, elected by the Members, and the Chief Executive Officer ('CEO'), who is appointed by the directors. Directors are elected for a term of three years, following which they may stand for re-election. The day-to-day management of AFRINIC is vested in the CEO.
- 1.2 The Board constituted the following committees: (i) the Audit Committee, which oversees AFRINIC's financial reporting process, internal financial control and risk management system; (ii) the Finance Committee, which advises the Board on financial policy, investment policy and its implementation; (iii) the Remuneration Committee, which advises the Board on executive and senior management remuneration and performance-related elements, including short-term bonuses and long term incentives; and (iv) the Fees Review Committee, which advises the Board on the fees structure of AFRINIC.
- 1.3 AFRINIC has a Governance Committee which is independent of the Board. It consists of two persons appointed by the Board, three persons elected by the Members, one member of the Board, appointed by the Board as a liaison, and the legal advisor of AFRINIC. The Governance Committee makes recommendations to the Board, but the Board is not bound to follow the recommendations made.
- 1.4 The main business of AFRINIC consists of maintaining a database of IP addresses to ensure that each Member is allocated a unique IP address. AFRINIC is the exclusive company that services the African continent. Members have signed a service contract with AFRINIC and pay a membership fee. Internet service providers constitute a significant proportion of the Members.
- 1.5 AFRINIC comprises the following departments: (i) Research & Innovation; (ii) Finance & Accounting; (iii) External Relations; (iv) Communications and Public Relations; (v) Member Services; (vi) IT and Engineering; (vii) Capacity Building; and (viii) Human Resources & Administration. Each department is led by a Head of Department who reports to the CEO. Other employees working within the departments are referred to as 'team members'.
- 1.6 The position of Finance & Accounts Director is hierarchically superior to the position of Head of other departments and is at par with the position of a Chief Financial Officer. The Chief Executive Officer and the Finance & Accounts Director form part of what is called the 'Executive Committee'.
- 1.7 AFRINIC currently has approximately forty-nine employees, all of whom have signed a contract of employment with AFRINIC that is governed by the laws of the Republic of Mauritius. All employees, with the exception of the CEO, are employed on a permanent-term basis, following a six months to one year probation period. The ratio of employees who are Mauritian nationals to those who are foreign nationals is approximately one to one.

2. INTRODUCTION

- 2.1. H2 was suspended by AFRINIC on the following grounds:
 - (1) attempt to commit a fraud or attempt to defraud AFRINIC by deliberately submitting a claim for a departmental lunch that did not take place or that H2 did not attend; and
 - (2) attempt to commit a fraud or attempt to defraud AFRINIC by deliberately submitting a claim for a departmental lunch that was not attended by members of H2's department.
- 2.2. H2 attended a disciplinary committee hearing with regards to the above charges. Counsel representing H2 raised preliminary objections for failure to comply with the requirements of the Employment Right Act 2008 and the hearing was adjourned to the following week for the Chairperson to consider the objections raised.
- 2.3. On the same day, H2 sent an e-mail to the CEO of AFRINIC, the Council of Elders, the Board, with the legal advisor of AFRINIC, and the Human Resource & Administration Manager, in copy.
- 2.4. In the e-mail, H2 made certain allegations of harassment in the work environment at AFRINIC.
- 2.5. Upon taking cognisance of the allegations, the Board requested the Governance Committee to formulate the terms of reference (the 'Terms of Reference') for the independent investigation.
- 2.6. On 09 April 2018, the investigation committee ('IC') was formally set up.
- 2.7. The scope of the investigation, as defined in clause 4 of the Terms of Reference, is as follows:
 - 4.1. *In light of the concerns identified, the Investigation Committee will examine the complaint document and determine, in terms of the methodology it will adopt, whether there is evidence which would establish whether in fact*
 - 4.1.1. *[H1] has acted in a harassing, intimidating, and undermining manner in [interacting] with [H2] and/or staff and has further plotted against [H2];*
 - 4.1.2. *[BM1] and [BM2] have acted in a harassing, intimidating, bullying and undermining manner in their interactions with [H2] and have further plotted against [H2];*
 - 4.1.3. *[BM1] and [BM2], both whilst being Board Directors, have acted in such a manner as to violate the AFRINIC Non-Disclosure Agreement (NDA) which both signed at the start of their mandate as Board Directors;*
 - 4.1.4. *Any form of harassment in the work place at AFRINIC as alleged exists.*
 - 4.2. *To make such recommendations, as deemed appropriate, to ensure non-recurrence of the concerns identified.*

- 2.8. The IC has prepared this report following an investigation undertaken between 10 April 2018 and 24 April 2018, using the methodology described in section 3. Sections 4 to 7 consider, in turn, each issue identified in the Terms of Reference, and sets out the evidence in relation to the issue under consideration and the findings of the IC on each issue. Section 8 lays down the findings of the IC that are ancillary to the investigation. Section 9 proposes certain recommendations, in light of the findings of the IC.
- 2.9. Certain members of the staff of AFRINIC who have been interviewed during the investigation have requested that their names and records of interview not be disclosed to the Board, the community of AFRINIC and/or the public. The request made by those staff members were relayed to the Governance Committee of AFRINIC on 23 April 2018 and the IC has urged the Governance Committee to consider that request, which the IC considers to be fair in view of the full and frank disclosure made by the interviewees during the investigation. The Governance Committee has informed the IC on 02 May 2018 that it has acceded to that request.

3. METHODOLOGY

The investigation consisted of face-to-face interviews with persons deemed to possess information material to the investigation and a review of the documents considered to be material by the IC.

3.1. Interviews

3.1.1. The IC carried out extensive, one-on-one, face-to-face interviews. All interviews were carried out at the offices of AFRINIC at 11th Floor Standard Chartered Tower, Ebène, Mauritius. Certain interviewees who are overseas were individually interviewed via teleconference at the offices of AFRINIC.

3.1.2. All interviewees proficient in Mauritian creole, French and English were offered the option of the interview being conducted in either of these languages.

3.1.3. All interviewees were informed of the purpose of the interview and the manner in which the information they provided would be used by the IC.

3.1.4. The consent of all interviewees was requested for their interview to be recorded. All interviewees were further informed of the opportunity to make off-the-record comments to the IC.

3.1.5. Following each interview, the IC drew up a record of the interview that was subsequently submitted to the interviewees to confirm the accuracy of the record. All interviewees, with the exception of two staff members, signed their record of interview.

3.1.6. The recordings of the interviews were used by the IC for the sole purpose of preparing this report and has not been shared with any person.

3.2. Document Review

Based on the information contained in the Terms of Reference, the IC drew up an initial list of documents to review. This list was expanded during the investigation as and when interviewees disclosed the existence of further documents of material importance to the investigation.

3.3. Non-disclosure Agreement

BM1 and BM2 requested and received the approval of the Board to share certain information that is covered by NDA they signed at the start of their mandate as directors. A template of the NDA signed by all directors at the start of their mandate was provided to the IC.

4. WHETHER A HEAD OF DEPARTMENT HAS ACTED IN A HARASSING, INTIMIDATING AND UNDERMINING MANNER IN INTERACTING WITH ANOTHER HEAD OF DEPARTMENT AND/OR STAFF AND HAS FURTHER PLOTTED AGAINST THAT HEAD OF DEPARTMENT

1. *The evidence of H2*

- 1.1. In a letter which was circulated to the members of the Board, the Council of Elders, the CEO and the Human Resource & Administration Manager, H2 made a complaint that as a Head, H2 felt profoundly insulted, attacked and disrespected because of what H2 called a personal vendetta from several people including H1. H2 also stated that there was a will on the part of certain people including H1 to get rid of H2 as a staff.
- 1.2. H2 also alleged that there was a plot by certain members of the Board, namely BM1 and BM2 as well as H1 to get rid of H2 from AFRINIC. H2 claimed to be a victim of discrimination based on both sex and race.
- 1.3. H2 further claimed to have been penalised and harassed for never accepting to be involved in dirty politics and never responding positively to indecent propositions.
- 1.4. H2 also accused H1 of moral and sexual harassment. H2 alleged that H1 had over the past six years made personal attacks against H2, sometimes using sexual connotations.
- 1.5. H2 also claimed to be a victim of H1's constant badmouthing and plotting. H2 added that H1 had the power to make the life of staff miserable.
- 1.6. In H2's letter, H2 made mention of a conversation had with H1 in the presence of another employee of AFRINIC ('E3') in the course of which H1 would have told H2 "*where do you want to find the budget, in my pubic hair?*". H2 added that these words were uttered with a rude gesture on the part of H1, where H1 would have pointed to H1's crotch area.
- 1.7. H2 complained of bullying and moral harassment on the part of H1 on several occasions. H2 stated that because of H1's position in AFRINIC, H2 had to keep quiet knowing that this could lead to further trouble.
- 1.8. H2 claimed to have reported the matter verbally. The matter was also reported during a performance appraisal.
- 1.9. H2 stated that there were other members of the staff who were harassed, bullied and diminished every day. H2 added that everyone was afraid of H1 because of the latter's position in AFRINIC.
- 1.10. H2 also stated that H1 had the ears of BM1 and BM2 to further harass and fire H2.

2. *Interview of H2*

- 2.1. In the course of interviews with the IC at the offices of AFRINIC, H2 gave evidence of having experienced a toxic work environment in general at AFRINIC with the staff divided in clans. H2 stated that in the past there was a clear demarcation of powers between the Board and management. The staff was well shielded from interaction with the Board, which only occurred via the CEO.
- 2.2. H2 also gave evidence to the effect that the situation has changed for the worse. According to H2, the demarcating line between the Board and management has become blurred to the extent

that BM1 and BM2, because of their proximity with H1, became involved in the day-to-day management of AFRINIC.

- 2.3. H2 also stated that another member of the Board of AFRINIC would interfere in the business of AFRINIC.
- 2.4. H2 stated that H1 had objected to H2's presence in a management meeting on the ground of H2 not being a Head of Department initially.
- 2.5. H2 complained of certain abuse of positions on the part of H1:
 - (i) veto as regards travel requests of staff despite the travel having already been scheduled and budgeted; and
 - (ii) veto as regards the promotion of certain staff members.
- 2.6. According to H2, H1 acted arbitrarily towards the staff by influencing management to step outside the remit of H1's powers to have the travel requests of certain staff members rejected despite such travel requests having been planned, budgeted and previously approved.
- 2.7. H1 had thus vetoed the travel requests of H2 and another Head of Department ('H3'), and had also badmouthed H3 by saying that the latter did not know how to work, and just wanted to travel. However, the travel requests of the friends of H1 were approved, and this arbitrariness occurred on a recurrent basis.
- 2.8. H2 claims to have experienced the following forms of harassment from H1:
 - (i) H1 has abused his exclusive authority to sign purchase request forms ('PRF') or travel forms.
 - (ii) Upon being given a PRF or travel form to sign, H1 would make adverse comments with respect to the amount and would throw away the form. H1 would thereafter continue with private telephone conversations.
 - (iii) In management meetings, H1 would make comments to undermine H2, implying that H2 did not know how to handle projects. One specific instance of this occurred at a meeting where H2 had been discussing gender inclusiveness and had raised the point that gender inclusiveness must start within AFRINIC. When H2 pointed out that there was only one woman who held the position of Head of Department, and that there were no women sitting on the Board, H1 made a sexist comment to H2. H2 discussed this instance of harassment with H3.
 - (iv) When H2, accompanied by E3, went to see H1, regarding a cross-departmental budget, H1 stood up, commented "*where do you want me to find the budget? In my pubic hair?*" and pointed to H1's crotch area. E3 left the room at that point. H2 discussed the incident with E3 immediately after leaving H1's office. H2 thereafter made a verbal complaint and was advised to make a formal written complaint. H2 refused to do so out of fear of retaliation.
- 2.9. When questioned by the IC on the circumstances which led to H2's suspension by AFRINIC, H2 gave the explanations summarised below.

- 2.10. H2 had made a request to the Head of Human Resource & Administration Manager for Rs. 4,000 for a departmental lunch. H2 signed a memo to that effect (the 'Memo'), which memo required that a receipt be brought after the lunch.
- 2.11. H2 claimed not to have read the Memo prior to signing same. Upon being presented with a copy of the Memo, H2 confirmed having signed the Memo.
- 2.12. Upon being handed with a cash cheque of Rs 4,000 by the Finance & Accounting Department, H2 did not go to the bank to cash the cheque for lunch.
- 2.13. H2 had lunch with a consultant at Hennessy Park Hotel. H2 paid for the lunch and thereafter tried to pay the cheque in H2's bank account.
- 2.14. However, the cheque was dishonoured by the bank as one signature was missing.
- 2.15. Upon informing the Human Resource & Administration Manager of the matter, H2 was asked to produce a receipt for the departmental lunch to get a refund.
- 2.16. H2 contacted Hennessy Park Hotel for a receipt and upon being favoured with same, submitted the receipt to the Finance & Accounting Department.
- 2.17. Following certain investigation by the travel section of the Finance & Accounting Department, it would appear that H2 had been travelling back to Mauritius on the day of the lunch and could not have attended the restaurant at the time mentioned in the receipt.
- 2.18. The Finance & Accounting Department then inquired with the relevant staff members of AFRINIC forming part of H2's department whether they had been taken to the departmental lunch. The relevant staff members denied attending a departmental lunch with H2.
- 2.19. Subsequently, H2 received a letter of charges and summons to a disciplinary hearing (i) charging H2 with attempt to commit a fraud or attempt to defraud AFRINIC by deliberately submitting a claim for a departmental lunch (a) that did not take place or that H2 did not attend, and (b) that was not attended by members of H2's department; and (ii) inviting H2 to attend a disciplinary hearing to answer to the charges. H2 was suspended with pay as from the date of the letter.
- 2.20. H2 offered explanations of having made a mistake as to the date of the invoice and was advised to consult a lawyer. H2 claimed to have spoken with a member of H2's department ('E4') and E4 mentioned having been questioned about attending a departmental lunch with H2. According to H2, E4 admitted not attending a departmental lunch with H2, and stated to H1 that E4 would be taken to lunch by H2 when the Finance & Accounting Department had reimbursed H2.
- 2.21. In H2's defence, H2 stated having taken a consultant and probably had made a mistake as to the date on which the lunch took place. H2 also stated that certain staff members were aware that H2 had no staff members within H2's department who could have been taken out to lunch at the material time.
- 2.22. H2 was of the view that the charges were not warranted to the extent that the amount involved was insignificant. H2 was not afforded with the opportunity to offer explanations regarding the possibility of making a mistake on the date of the lunch. H2 also believes that H1 was looking for an excuse to get rid of H2 by making meticulous enquiries regarding the circumstances in which the lunch took place and even went to question the taxi that fetched H2 from the airport on the day H2 landed in Mauritius.

3. *Interview of H1*

- 3.1. H1 had an interview with the IC at the offices of AFRINIC.
- 3.2. H1 stated that H2 joined AFRINIC around the same time when H1 joined the organisation. According to H1, H2 was found not to be up to the standard expected and H2's probation period was extended as questions were raised as to H2's competency.
- 3.3. According to H1, H2 interacted with H1 on matters relating to budget and finance. They shared e-mail exchanges like every other staff members and H1 never experienced any difficulty with H2. H1, however, believes that H2 had trouble settling down and had great difficulty interacting with colleagues within H2's team.
- 3.4. H1 referred to an incident whereby an official complaint had been made by H2's team and produced an e-mail to that effect. H1 admitted not being involved in this complaint but stated that no disciplinary action had been taken against H2.
- 3.5. According to H1, team members had experienced difficulty working with H2, but H1 stated that had not been H1's experience with H2. H1 said that they never had any personal problems but conceded that this might be due to the fact that H1 has never worked with H2 extensively. H1 maintained that they shared an amicable relationship to the extent that H2 would even confide in H1 at times. H1 never had the impression that H2 harboured any malice against H1. If H2 did, H2 could have limited interactions with H1 to professional matters.
- 3.6. H1 stated that there was never any intention to get rid of H2.
- 3.7. H1 denied the following allegations made by H2, namely that:
 - (i) H1 had uttered the following words to H2 "*where do you want to find the budget? In my pubic hair?*" and had pointed to H1's crotch area;
 - (ii) H1 had made H2 wait outside of H1's office when H2 needed to discuss work-related matters; and
 - (iii) H1 wanted to get H2 dismissed from AFRINIC.
- 3.8. With respect to the allegations of fraud, H1 maintained that due process was followed in the context of the charges brought against H2.
- 3.9. H1 explained that there is a departmental lunch allowance in the form of a budget per staff member that is monitored by the HR & Administration Department. The budget per individual, which amounts to approximately Rs 4,000 per person, may be used at one go or it may be used over a period of time. Any Head of Department who wishes to take his team members to lunch must contact the HR & Administration Department to make a request to use the departmental lunch budget. The HR & Administration Department would inform the Heads of Department accordingly and ask when they plan to go for the departmental lunch. The HR & Administration Department would then prepare a memo addressed to the Finance & Accounting Department, to arrange for disbursement of the amount requested for the departmental lunch. It is clearly stipulated in the memo that the Head of Department must submit the invoice of the departmental lunch to the Finance & Accounting Department. The Finance & Accounting Department then prepares a cash cheque which is handed over to the Head of Department who had made the request and the Head of Department signs the memo.
- 3.10. H1 stated that H2 had complained that the cheque provided for the departmental lunch had been dishonoured by the bank. H2 was asked to bring the receipt for a refund.

- 3.11. When H2 brought the receipt for the lunch, it was a computer-generated printout rather than the usual till invoice in the form of a long rectangular piece of paper. It appeared to be a receipt that had been requested after the lunch had taken place. It was noticed that the date mentioned in the receipt coincided with the date when H2 had been travelling back to Mauritius. To verify the legitimacy of the receipt and the claim for payment made by H2, the Finance & Accounting Department inquired about H2's travel dates. H1 was of the view that the checks would probably not have been made had H2 presented a proper receipt.
- 3.12. Following further inquiries, it came to light that there were only two staff members that H2 could have taken to lunch. According to H1, both denied attending a departmental lunch with H2 at the material time.
- 3.13. Upon being questioned by the IC, H1 maintained that the same kind of check is done in respect of all receipts submitted to the Finance & Accounting Department and that the check was not the result of any grudge harboured against H2.
4. **Findings of the IC on whether H1 acted in a harassing, intimidating and undermining manner in his interaction with H2 and/or staff and has further plotted against H2**

Harassment of H2

- 4.1. Regarding the allegations made by H2 to the effect that H1 had acted in a harassing, intimidating, and undermining manner in interacting with H2 and/or staff and has further plotted against H2, the investigation has revealed that the main allegations of H2 was that H1 would have stated the following to H2: "*Where do you want to find the budget? In my pubic hair?*", and pointed to H1's crotch area. H1 has denied this allegation.
- 4.2. According to H2, the above incident occurred in the presence of E3. This was denied by E3 in an interview with the IC.
- 4.3. The IC is of the view that this incident could not have been a figment of H2's imagination. It is important to note that relevant members of management of AFRINIC had been made aware of this incident well before an internal inquiry was initiated in respect of the allegation of fraud committed by H2.
- 4.4. Further, when E3 was confronted with respect to the incident, the latter did not there and then deny that the incident had occurred. E3 had stated: (i) not knowing why H2 had mentioned E3's name in the complaint; and (ii) not recalling what had happened. E3 further stated that E3 would need to consult a lawyer before giving any statement.
- 4.5. The IC takes note of the definition of the term 'harassment' as set out in section 2 of the Employment Rights Act 2008, which reads as follows: "*harassment means any unwanted conduct, verbal, non-verbal, visual, psychological or physical, based on age, disability, HIV status, domestic circumstances, sex, sexual orientation, race, colour, language, religion, political, trade union or other opinion or belief, national or social origin, association with a minority, birth or other status, that a reasonable person would have foreseen that a worker would be affected negatively in his dignity*".
- 4.6. On the basis of the above definition, the IC is of the view that the statement made by H1 to H2, coupled with the rude gesture whereby H1 would have pointed to H1's crotch area, amounts to an instance of harassment.

- 4.7. Moreover, H1 would also have breached section 54(1)(c) of the Employment Rights Act 2008 inasmuch as by uttering the words referred to in paragraph 4.1. H1 would have verbally abused H2.
- 4.8. H2 has tried to establish that there was widespread harassment on the part of H1. Save as stated above, the IC is not convinced of a systematic harassment of H2 by H1.

Interacting with other staff

- 4.9. The IC is of the further view that there is evidence tending to suggest that H1 has experienced certain difficulties interacting with several staff members. This had also been the subject of discussion at senior management level.
- 4.10. The investigation has not revealed further instances of harassment, intimidation or any such other behaviour on the part of H1 against H2 or any other staff.

The fraud investigation

- 4.11. The IC considers that the checks undertaken by the Finance & Accounting Department to prove that H2 had committed a fraud to the detriment of AFRINIC were warranted in the circumstances to prevent any form of abuse of the departmental lunch budget.
- 4.12. The IC has not pronounced itself on the allegation of fraud committed by H2 as this falls outside the scope of the Terms of Reference.

5. WHETHER CERTAIN MEMBERS OF THE BOARD HAVE ACTED IN A HARASSING, INTIMIDATING, BULLYING AND UNDERMINING MANNER IN THEIR INTERACTIONS WITH A HEAD OF DEPARTMENT AND HAVE FURTHER PLOTTED AGAINST THAT HEAD OF DEPARTMENT

5. *The evidence of H2*

- 5.1. In a letter, H2 claimed to be a victim of moral harassment and defamation by certain members of the Board including BM1 and BM2.
- 5.2. H2 alleged that BM1 and BM2 had made misogynistic and indecent comments that are disrespectful to women. H2 claimed to have reported the matter and had also raised it with the HR & Administration Department.
- 5.3. H2 added that E1 gave permission to share certain documents showing that BM1, H1 and other people were plotting to fire H2. E1 would have further told H2 of now being safe, having left AFRINIC, and that H2 needs to take action to remedy the situation.
- 5.4. According to H2, E1 has screenshots of conversations with BM1 amounting to sexual harassment and H2 has annexed those screenshots to the letter.
- 5.5. H2 added that BM1 was bullying and threatening E1.
- 5.6. H2 stated that BM1, to prove the latter's power, had sent E1 screenshots of conversations with other members of the Board on the plot to fire H2. According to H2, the name of H1 was also raised in their conversation as H1 would have been instrumental to this vendetta.
- 5.7. H2 then stated that BM1 also shared a conversation that BM1 had had with the CEO on another Head of Department ('H4'), and had claimed to be untouchable.
- 5.8. In the letter, H2 would have it that BM1 and BM2 made a reference to a former member of the Board, and that the latter also wanted to get rid of H2 since 2016. According to H2, some of the members of the Board kept interfering in AFRINIC operations.
- 5.9. H2 claimed to experience deteriorating health issues as a result of continuous harassment in the workplace.
- 5.10. H2 also gave evidence of interaction with members of the Board at bi-annual public policy meetings, usually held in mid-May and November, at which Heads of departments make a presentation regarding their department. During the course of the week, there are further exchanges. Interactions with the Board also occur at retreats, and when the Board visits Mauritius.
- 5.11. Certain members of the Board also send private e-mails with information or action requests.
- 5.12. H2 stated that in the past, there had been a clear demarcation between the Board and management, and the staff was well shielded from interactions with the Board, which occurred via the CEO.
- 5.13. However, the demarcating line between the Board and the management of AFRINIC became blurred to the extent that BM1 and BM2 began to get involved in the day-to-day management of AFRINIC. As a result of their friendship with H1, BM1 and BM2 were able to direct the day-to-day management of AFRINIC. Another member of the Board would also interfere in the business of AFRINIC.

- 5.14. In the course of the investigation, H2 was asked about the identity of any other member of the Board who had perpetrated acts of harassment and intimidation. H2 limited the allegations to BM1 and BM2 and added that they were the only two persons who had been guilty of harassment and intimidation.
- 5.15. H2 gave evidence of having attended a charity event that had been organised by E1, on which occasion H2 informed E1 of having been suspended by AFRINIC and showed the letter of suspension setting out the charges levelled by AFRINIC and summoning H2 to a disciplinary committee to E2. After the event, E1 told H2 that there had been an intention to remove H2 from AFRINIC since 2016. E1 mentioned that H1 badmouths, gossips and plots against H2.
- 5.16. E1 then showed H2 chat messages that purported to establish that (i) there had been an intention to remove H2 from AFRINIC since 2016; and (ii) BM1 had been sexually harassing E1. E1 had also been morally and sexually harassed by another Head of Department ('H5') and no action had been taken against H5 despite E1's complaints.
- 5.17. E1 had obtained the chat messages in an attempt by BM1 to persuade E1 to share information on the management of AFRINIC. BM1 allegedly forwarded to E1 screenshots of conversations with certain members of the Board to impress upon E1 his power within AFRINIC.
- 5.18. BM1 allegedly also pressured E1 to sleep with him and messaged E1 regularly. E1 allegedly also confided that in November 2017, when the staff of AFRINIC went to Lagos, Nigeria, BM1 had grabbed E1 in an elevator and asked for a kiss. E1 left the elevator thereafter and BM1 proceeded to message E1, requesting for them to meet in E1's room.
- 5.19. According to H2, H5 also started to treat E1 as a secretary and sent rude messages to E1 and e-mails when E1 was sick. H5 also wanted E1 to participate in all travel plans, would get angry when E1 would talk to other staff members and isolated E1. E1 felt sick constantly and had a nervous breakdown in the office.
- 5.20. H2 also remarked that despite the complaints of harassment made by H2 and E1 to the relevant persons within AFRINIC, no action was taken.
- 5.21. H2 claims to have been harassed by members of the Board during presentations to the Board. H2 has left those presentations crying, as a result of the sarcastic remarks made and questions asked by certain members of the Board.
- 5.22. H2 interpreted chat messages exchanged between members of the Board in the following manner:
- (i) H1 had improperly challenged H2's professional competency with members of the Board, particularly in light of the fact that H2 does not report to H1;
 - (ii) BM1 was unreasonably targeting H2 despite no wrongdoing on H2's part having been brought to the attention of the senior management of AFRINIC;
 - (iii) BM1's action served to maintain a blurred line between management and the Board of AFRINIC to the extent that BM1 was interfering in the day-to-day management of AFRINIC and the course of action to be followed to treat complaints received from staff members;
 - (iv) there is a specific person that BM1 wants to promote as Head of Department, as evidenced by the suggestion that H2 be asked to step down and the latter's position being advertised;

- (v) there has been insubordination on the part of those staff members who complained about H2's behaviour to BM2;
 - (vi) there is a discrepancy between the views expressed by BM2 in the chat messages, and the e-mail exchanges H2 has had with BM2 in the past, wherein BM2 had praised H2's performance as Head of Department;
 - (vii) employees who are close to BM1 would enjoy certain privileges;
 - (viii) BM1 and BM2 did not have the right to interfere in the day-to-day management of AFRINIC; and
 - (ix) BM1 and BM2 have taken at face value what AFRINIC staff has been saying about H2 rather than carrying out an independent investigation into the complaints.
- 5.23. H2 also pointed out that H4 would bully all staff members within H4's department.
- 5.24. H2 maintains that the community of AFRINIC has been divided between Francophones and Anglophones. Francophones are considered by BM1 and BM2 as troublemakers.
- 5.25. In the course of H2's evidence, H2 conceded that the annexures to the letter did not convey a full picture of the exchanges which E1 had with BM1. H2 stated that E1 had only favoured H2 with those parts of the chat conversation which E1 had considered to be relevant for the purposes of the complaint. H2 had then compiled those screenshots of the chat conversation in connection with the allegations made by H2 and annexed them in the letter.

6. *The evidence of BM1*

- 6.1. The IC interviewed BM1.
- 6.2. BM1 has been associated with AFRINIC since its inception.
- 6.3. BM1 explained that there are two types of interaction that exist within AFRINIC:
- (i) interactions within the community which are not strictly defined; and
 - (ii) interactions with staff members of AFRINIC which are purely professional interactions.
- 6.4. There are both formal and informal forms of interaction between BM1 and staff members of AFRINIC. The formal interactions take place when Heads of Department make presentations to the Board at bi-annual meetings of AFRINIC. Members of the Board thereafter put questions to the Heads of Department and make suggestions based on the content of the presentation. BM1 maintained that the mandate of Board members only allows them to make suggestions which are not binding on the Heads of Department. The Board is concerned with strategic matters as opposed to operational matters.
- 6.5. The presentations of Heads of Departments are the only instances where the Board may form a view on the competency of the Heads of Departments. BM1 maintains that the Board does not usually exert influence over the operational matters. However, there are times when the advice of the Board have been sought over certain operational matters.
- 6.6. The informal interaction occurs at the community level. There are various training sessions, workshops and presentations that may be attended and hosted by members of the Board and staff members of AFRINIC. Members of the Board attending would not do so in their capacity

as member of the Board but rather in an individual capacity as a representative of a member within the community.

- 6.7. BM1 has very little interaction with H1 outside the professional context.
- 6.8. The IC has taken cognisance of an excel sheet attributing points to various candidates eligible to assume a senior-level position within AFRINIC. It is apposite to note that BM1 attributed the third lowest grade to H1.
- 6.9. BM1 does not recall how long he has known H2. He has had a few interactions with H2, for instance, H2 had requested BM1 to represent AFRINIC at a function in Abuja and had also asked him to attend an ICANN meeting in South Africa. Their last interaction occurred in Lagos, Nigeria. At that meeting, H2 had requested BM1 to use his influence to move H2 to the Legal Department. BM1 specifically told H2 that his mandate did not allow him to interfere in operational matters of AFRINIC. BM1 subsequently reported that conversation to the management and Legal Advisor of AFRINIC.
- 6.10. BM1 stated that when H2 was promoted to the position of Head of Department, BM1 recalls enquiring with the management of AFRINIC about the basis of this promotion, as promotions within AFRINIC should be methodological rather than reactive and based on friendship.
- 6.11. BM1 denied having attacked or intimidated H2. BM1 has noted that H2 may, on certain occasions, be unprepared for presentations at bi-annual meetings. H2 might have wrongly construed the questions put by members of the Board as harassment as H2 did not respond very well to questions put by members of the Board.
- 6.12. BM1 recalls that at some point H2 had organised an Africa Government Working Group meeting. BM1 had been involved in the planification of that event and attended same. He noted that attendance had been very poor. Upon being questioned by BM1 on the poor attendance, H2 admitted to having only contacted five potential attendees from Nigeria. According to BM1, H2 had used an outdated contacts list and had failed to follow up with contact persons upon not receiving a feedback from them. This is an instance of the interaction BM1 and H2 had and there is no hint of bullying or intimidation on BM1's part despite H2's lack of organisation for that meeting.
- 6.13. BM1 took cognisance of the e-mail sent by H2 and the letter of complaint, together with the annexes attached thereto.
- 6.14. Regarding Annex I to the letter, BM1 admits that he has exchanged chat messages with E1. However, BM1 has been unable to verify the authenticity of the chat messages contained therein as a lot of those chat messages have, according to him, been rearranged to create an entirely new conversation. BM1 believes that the chat messages have been tampered with by arguing that there is a difference in fonts between the different chat bubbles.
- 6.15. BM1 denies the allegation that he has made use of his influence for the benefit of certain staff members. Rather, it was certain staff members who had asked him to use his influence for their benefit and he had refused to do so. Both E1 and H2 had personally requested him to use his influence in the furtherance of their career aspirations and he had refused to do so.
- 6.16. BM1 stated that he has never made use of his position with a view to dismiss any staff member of AFRINIC.
- 6.17. BM1 believes that the chat messages annexed to H2's letter amount to an attempt to intimidate or blackmail him.

- 6.18. Regarding Annex II of H2's letter, BM1 confirmed that he had participated in a group conversation. He maintains that the conversation was only advisory in nature.
- 6.19. BM1 had become aware of certain staff discontentment within AFRINIC from E1. When BM1 referred to staff discontentment, he had in mind certain specific e-mails from certain staff members of AFRINIC making certain complaints against H2.
- 6.20. BM1 expressed the feeling that the Board had been "*too eager to hang him*" over allegations that had not yet been proved. He had expected a certain level of protection from the Board, but he had been ignored when he had shared the e-mail from E1 in his defence and was asked to present it to the IC as it did not concern the Board.

7. ***The evidence of BM2***

- 7.1. The IC interviewed BM2.
- 7.2. BM2 regularly attends the bi-annual meetings of AFRINIC which usually take place at the beginning of June and end of November/beginning of December, with the exception of a few which he missed. Those meetings are attended by no less than one hundred and eighty members. At the said meetings, members of the Board of AFRINIC would have the opportunity to have face to face meetings with Heads of Departments and other staff members of AFRINIC.
- 7.3. BM2 also has the opportunity to meet staff members of AFRINIC at various workshops and training sessions.
- 7.4. BM2 maintains that all contact that he has with staff members of AFRINIC have always been strictly professional.
- 7.5. BM2 has known H1 since 2008 and they have had face-to-face meetings but he does not recall the frequency of those meetings. He has also exchanged some e-mails with H1.
- 7.6. BM2 confirmed that a group conversation took place on WhatsApp. He confirmed that Annex II of H2's letter reproduces accurately the conversation with the exception of the last message sent which is not related to the issue in question. He does not recall that particular message forming part of the group conversation.
- 7.7. BM2 admitted that he had created the WhatsApp group to discuss certain HR-related matters. According to him, the Board of AFRINIC was aware of certain HR-related issues within AFRINIC and BM1 and BM2 had volunteered to assist on those issues. According to BM2, this was not specifically documented in the minutes of the Board meeting, but it would certainly have been recorded and could also be verified from other Board members.
- 7.8. BM2 received an e-mail containing certain complaints against H2 regarding (i) the manner in which H2 was appointed as Head of Department; (ii) the preferential treatment H2 allegedly benefitted from, as evidenced by the fact that no action was taken when certain staff members complained of H2's unprofessional and racist behaviour; and (iii) the unfair and unprofessional manner in which H2 was shortlisting candidates for the position of Head of Department by excluding candidates whom H2 did not like.
- 7.9. BM2 became aware through an e-mail from an employee of AFRINIC ('E5') of discontentment building up among certain staff members.
- 7.10. BM2 has not shared the e-mail received from E5 with the Board and has not mentioned E5's name to protect the latter's privacy. BM2 has only referred to the conversation he had with H1

at AFRINIC 25, wherein H1 had raised some concerns regarding harassment of staff members by H2 in the chat messages.

- 7.11. BM2 shared E5's e-mail with BM1. The latter mentioned that he had also received certain staff grievances. BM1 and BM2 thereafter proceeded with the WhatsApp group conversation, referred to in paragraph 7.6., based on the prior general approval given to them by the Board of AFRINIC to assist on HR related matters, referred to in paragraph 7.7.
- 7.12. BM2 stated that he has known H2 for a long time and they were friends. BM2 denied having any personal bias against H2. BM2 further denied the allegation made by H2 that he had harassed and bullied H2, plotted against H2 or undermined H2's work.
- 7.13. BM2 views H2 as an asset to AFRINIC. H2 has a lot of work experience.
- 7.14. BM2 maintains that he has never personally shared his personal opinion of H2's work performance in the group conversation. He has merely relayed what he had heard from staff members.
- 7.15. BM2 has never personally witnessed any member of the Board being rude to Heads of Department during their presentations at the bi-annual Board meetings. BM2 stated that Board members may appear to be harsh in their questioning, but this is a normal process of interaction.
- 7.16. BM2 recalls one of H2's presentations wherein H2 was asked the source of one of the graphs included in the presentation. H2 was unable to answer the question and this could have caused some embarrassment to H2, but BM2 does not believe that this amounts to bullying or harassment on the part of the Board members.
- 7.17. After the presentations, the members of the Board discuss the presentations and express their opinions of the performance of the Heads of Department. Both positive and negative comments are expressed, but BM2 has never witnessed a member of the Board making a comment that was unreasonable or unfair towards any Head of Department.
- 7.18. BM2 had the following comments to make when asked about the specific allegations made by H2 in the letter:
 - (i) BM2 does not subscribe to the view expressed in Annex II that H1 would have his support. BM2 presented an excel sheet that showed the score that each candidate received from members of a committee that had been constituted to fill in a senior-level position within AFRINIC. BM2 had not attributed any points in favour of H1 and H1 had not been the committee's first choice.
 - (ii) BM2 had no comments to make on the allegations listed in the first two paragraphs of the third page of H2's letter, which he considers to be defamatory.
 - (iii) Regarding the fifth paragraph on the third page of the letter, reference is made to Annex V, which is not included in the letter.
 - (iv) Regarding the sixth paragraph on the third page of H2's letter which makes reference to Annex I to the Letter, BM2 pointed out that his name is not actually mentioned in Annex I.
 - (v) Regarding the eighth paragraph on the third page of H2's letter, BM2 pointed out that there is no indication of an intention on his or on BM1's part to get rid of H2 in Annex II. They simply relayed complaints made to them by staff members.

- (vi) Regarding the last paragraph on the third page of H2's letter, BM2 (i) stated that members of the Board do not interfere in operational matters and worked in accordance with Bylaw Article 15 of AFRINIC; and (ii) finds the allegation about treating "*francophones*" in a "*degrading way*" absurd.
- 7.22. BM2 has known the CEO since the latter became a member of the Board. They met in 2008.
- 7.23. BM2 believes that the CEO is good in handling and resolving technical matters. However, AFRINIC has encountered difficulties in handling certain sensitive HR-related matters.
- 7.24. BM2 does not believe that H1 is interfering with decisions taken by the CEO or taking decisions that fall outside of H1's remit.
8. **Findings of the IC on whether BM1 and BM2 have acted in a harassing, intimidating, bullying and undermining manner in their interactions with H2 and have further plotted against H2**
- 8.1. The IC is satisfied that there is no evidence of harassment, bullying or intimidation on the part of BM1 and BM2 against H2.
- 8.2. The IC has given ample opportunity to H2 to substantiate the latter's allegations of intimidation and the like, but H2 has failed to come up with any evidence to that effect.
- 8.3. The only evidence on which H2 seems to rely in support of the allegation is the chat messages in the WhatsApp group conversation.
- 8.4. The IC has carefully considered the wording used in the chat messages in the WhatsApp group conversation and is not persuaded that there is anything in them which give rise to an allegation of harassment, bullying or intimidation on the part of BM1 and BM2.
- 8.5. The tenor of the chat messages in the WhatsApp group have not been denied by the parties thereto. BM1 and BM2 contended that they had been mandated by the Board of AFRINIC to provide assistance on HR-related matters to AFRINIC, albeit that they say that members of the Board of AFRINIC refrain from interfering in operational matters and that their assistance was purely on an advisory basis.
- 8.6. The IC takes note that some adverse comments are made in the chat messages with respect to the performance of H2 as Head of Department.
- 8.7. The IC does not believe that the participants in the WhatsApp group conversation involving BM1 and BM2 had an ulterior motive or acted in bad faith in seeking to get rid of H2. Both BM1 and BM2 were in presence of documents which tended to give an impression of staff discontentment towards H2 which, in turn, prompted them to have the WhatsApp group conversation.
- 8.8. The IC is satisfied that the WhatsApp group conversation was held in good faith with the aim of assisting AFRINIC on HR-related matters.
- 8.9. It is important to note that although those observations were made as far back as December 2016, there is no evidence of any attempt by the participants in the WhatsApp group following that WhatsApp group conversation to get rid of H2.
- 8.10. One of the allegations of H2 was that H1 would have been close to BM1 and BM2 and that there would have been a plot between them to get rid of H2. There is no evidence to support the allegation of proximity. On the contrary, there is evidence to show that H1 had not been the

first choice of BM1 and had not even had the support of BM2 for his appointment to a senior-level position.

6. WHETHER CERTAIN MEMBERS OF THE BOARD HAVE ACTED IN SUCH A MANNER AS TO VIOLATE THE AFRINIC NON-DISCLOSURE AGREEMENT

- 9.1. It is not disputed that both BM1 and BM2 have, in their capacity as member of the Board, signed the Board Non-Disclosure Agreement (the 'NDA').
- 9.2. The NDA precludes them from disclosing certain confidential information about AFRINIC which is not previously published or otherwise disclosed to the public and which relates to, but is not limited to the following:
 - (a) the operations of AFRINIC;
 - (b) the customers of AFRINIC; and
 - (c) the financial, legal, technical and strategic matters relating to AFRINIC.
- 9.3. In the course of its investigation, the IC has also been provided with an extract of a Board resolution bearing reference number 201411.211, which reads as follows: "*information discussed within the Board should not be disclosed without Board approval. Violation may lead to expulsion from the Board as provided by the Bylaws. However, information disclosed by the Board to third parties not under NDA to the Board is no longer confidential and is deemed to be in the public domain*".
- 9.4. The IC is in the presence of a printout of a WhatsApp conversation which was purportedly forwarded by BM1 to E1, concerning a WhatsApp group conversation involving BM1 and BM2.
- 9.5. None of the participants in the WhatsApp group conversation disputed the fact that the private group conversation did take place, nor denied the gist of the matters discussed.
- 9.6. The IC believes that the WhatsApp group conversation involving BM1 and BM2 covered instances with respect to the operations of AFRINIC.
- 9.7. The IC is of the view that there is evidence of information of a confidential nature, i.e. the WhatsApp group conversation involving BM1 and BM2, as envisaged under paragraph 1 of the NDA, being forwarded by BM1 to E1 in the course of a WhatsApp group conversation between them.
- 9.8. The IC has reached the conclusion that the disclosure by BM1 to E1 of the said WhatsApp group conversation was in breach of (i) the NDA; and (ii) the requirements of section 153 of the Companies Act 2001.
- 9.9. The IC has also considered the other exchanges between BM1 and E1 as reproduced in the various annexes to H2's letter. BM1 did not dispute the exchanges save and except that he has stated that the exchanges may have been re-arranged and gives a distorted view as to the nature of those exchanges.
- 9.10. The IC has perused certain other exchanges and there does not appear to be any evidence of a breach on the part of BM1 of the NDA and/or section 153 of the Companies Act 2001.
- 9.11. Finally, the IC believes that there is no evidence whatsoever against BM2 of having breached the terms of the NDA and/or section 153 of the Companies Act 2001.

7. WHETHER THERE WAS ANY FORM OF HARASSMENT IN THE WORKPLACE AT AFRINIC AS ALLEGED.
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10. Evidence of harassment against H2

- 10.1. H2 claimed to have been the victim of harassment for many years by certain current and former AFRINIC Board members.
- 10.2. In the letter, H2 would have it that BM1 was bullying E1 and threatening E1 if the latter did not co-operate, he would fire E1.
- 10.3. H2 also made mention of the fact that some of the members of the Board kept interfering in AFRINIC operations and that they would refer to the "*francophones*" as the troublemakers.
- 10.4. At Annex IV to H2's letter H2 would have it that during AFRINIC 27 in November 2017 in Lagos, Nigeria, BM1 had harassed E1.
- 10.5. As indicated above, during the interview with the IC, H2 was specifically asked about the identity of the "*former AFRINIC Board members*" who had harassed H2. H2 stated that the only Board members would be BM1 and BM2. H2 considered that there was no other Board member who would have been guilty of harassment or bullying.
- 10.6. During the interview, H2 had suggested that a former member of the Board would have acted improperly. Upon being pressed, H2 retracted that statement and restricted the complaints to BM1 and BM2.

11. Evidence of harassment by H2

- 11.1. There is evidence of an official complaint made by certain staff members who had worked with H2, complaining of:

- "1) unprofessional and unproductive behaviour;*
- 2) causing constant mental harassment;*
- 3) badmouthing and bullying other colleagues;*
- 4) encouraging conflicting and sectarian situations;*
- 5) lack of professionalism, communication and leadership skills;*
- 6) standing as a non-inspiring leader for someone in [H2's] position to the extent that we don't feel motivated nor want to work with [H2]".*

Last but not least, there was the allegation of a racist statement made by H2 to E1.

- 11.2. There is also evidence to the effect that H2 had called E2 a "*psychopath*" on three occasions and had stated to E2 that the latter would be forced to submit a letter of resignation.
- 11.3. Staff members interviewed by the IC concerning the above allegations against H2 confirmed the veracity of their allegations, and further intimated to the IC that things had not changed despite (i) the matter having been reported; (ii) meetings having taken place to discuss and try to resolve those matters with all staff concerned; and (iii) H2 having been advised to be more careful when interacting with staff members.

- 11.4. The IC takes note that H2 did not deny having made certain statements to E1 and E2 which led to the above two complaints. In relation to both complaints, H2 came up with explanations.
12. **Findings of the IC on whether there was any form of harassment in the workplace at AFRINIC as alleged**
- 12.1. With respect to the allegations made by H2 to the effect that E1 had been the subject of harassment, we must point out that we have not been favoured with the evidence of E1. Although we have been put in presence of the WhatsApp exchanges between E1 and H2, we are of the view that it would be unsafe for the IC to place any reliance on those exchanges to the extent that these have not been confirmed by E1, the alleged victim in question. In view of the fact that the IC has been unable to seek confirmation from E1 regarding the allegations of harassment, the IC would refrain from making any adverse findings of harassment by BM1 against E1.
- 12.2. The IC bears in mind that BM1 has, in the course of his interviews, mentioned the fact that it was E1 who had approached him with the goal of persuading him to use his influence for E1's benefit. In view of the fact that the IC has been unable to confront E1 with this allegation, the IC would also refrain from making any adverse findings on the alleged actions of E1.
- 12.3. The IC is of the view that the above complaints made against H2 have not been properly addressed by AFRINIC. No proper investigation was made and no formal warning was issued to H2.

8. FINDINGS ANCILLARY TO THE INVESTIGATION

Management of AFRINIC

- 13.1. The evidence reveals that there is a general feeling that there is a lack of leadership skills within AFRINIC, especially in HR-related matters.
- 13.2. There is evidence of interference with respect to HR-related matters by certain members of the Board and H1.
- 13.3. There is evidence of certain Heads of Departments and other staff liaising directly with certain Board members to influence them in furthering their personal career aspirations within AFRINIC.
- 13.4. There is also evidence of staff demotivation principally due to a lack of consideration as regard feedback on their performance within AFRINIC.

The attitude of H1

- 13.5. There is evidence tending to suggest that in certain instances, recommendations made by Heads of Department regarding training of staff and/or attendance to certain meetings, workshops and other functions were approved but subsequently not implemented to the detriment of the Heads of Departments and staff concerned. This has led to an unhealthy situation within AFRINIC.
- 13.6. H1 confessed to being at the wrong end of the approval process and would have preferred not to be the ultimate decision taker.
- 13.7. Although H1 would have it on record that all his decisions and recommendations were motivated by financial and budgetary considerations, we understand that H1 would also advise on operational matters.
- 13.8. In that respect, H1 was perceived by staff as exerting too much influence regarding operational matters which, according to staff, fell outside the remit of his functions within AFRINIC.

The attitude of H2

- 13.13. The IC cannot overlook the general feeling expressed by members of the staff to the effect that H2 is also a difficult person to work with and may have, on certain occasions, made an abuse of authority over subordinate staff.
- 13.14. The IC particularly notes the instance when a complaint was received against H2 from no less than seven members of the staff complaining of:

- "1) unprofessional and unproductive behaviour;*
- 2) causing constant mental harassment;*
- 3) badmouthing and bullying other colleagues;*
- 4) encouraging conflicting and sectarian situations;*
- 5) lack of professionalism, communication and leadership skills;*

6) *standing as a non-inspiring leader for someone in [H2's] position to the extent that we don't feel motivated nor want to work with [H2]"*.

Last but not least, there was the allegation of a racist statement being made against a staff.

- 13.15. The evidence suggests that there was a meeting where the allegations were discussed. Subsequently, there was another meeting where H2 denied having made the racist statement and it was decided that H2 should be more careful in the future when interacting with staff.
- 13.16. It is a matter of regret that the above allegations were not independently investigated. Moreover, it would have been appropriate to take a statement from each complainant separately and in confidentiality before deciding on the proper way to resolve the matter.
- 13.17. Four of the complainants that have been interviewed by the IC confirmed that the matter had not been satisfactorily dealt with and the state of affairs had remained unchanged as far as H2's behaviour was concerned.
- 13.18. Confronted with the above feeling expressed by the complainants, the relevant members of senior management of AFRINIC considered that the matter had been handled in good faith in the best interest of AFRINIC by discussing the matter openly with all in an attempt to resolve the matter. It was nevertheless conceded, with hindsight, that the incident could have been better handled.
- 13.19. The IC also notes another instance where H2 would have treated E2 as a "*psychopath*".
- 13.20. The IC has interviewed E2 and is not convinced by the explanation tendered by H2.
- 13.21. On the basis of the evidence set out above against H2, the IC is of the view that:
 - (i) the statement "*on va te prendre pour une pauvre petite africaine*" made by H2 to E1 could be construed as 'harassment' within the meaning of section 2 of the Employment Rights Act 2008 and would have constituted a breach of section 54(1)(a) of the Employment Rights Act 2008; and
 - (ii) the repeated use of the word "*psychopath*" by H2 to E2 could be construed as bullying under section 51(1)(e) of the Employment Rights Act 2008.

WhatsApp group conversation involving BM1 and BM2

- 13.22 The IC feels compelled to make observations with respect to the propriety of the WhatsApp group conversation. It would appear that this type of exchange is of recent occurrence. In fact, the evidence reveals that in the past: (i) the CEO was the only point of contact with the members of the Board; and (ii) members of the Board were not allowed to by-pass the CEO to deal directly with staff members.

9. RECOMMENDATIONS

1. The IC recommends that the matter of H1's behaviour in the office and towards his colleagues be taken anew with H1 so that corrective measures are taken but also communicated to the staff.
2. The IC does not believe it is healthy for AFRINIC that HR and purely operational matters be discussed with some members of the Board. There should be a clear demarcation on one hand between day-to-day management including HR (which should be the sole province of the CEO and the HR & Administration Department) and strategic matters which should be the sole province of the Board.
3. If the Board wishes to advise AFRINIC management on specific operational matters, the Board should either take the decision collectively or appoint a sub-committee to that effect. This should be clearly documented in the minutes of Board meetings dealing with such specific matter.
4. The IC recommends that the AFRINIC employee handbook should contain a section that specifically sets out the forms of harassment that are expressly prohibited under the Employment Rights Act 2008 and the attention of staff should be drawn thereto. Moreover, the handbook should make provision for a proper complaints and investigative procedure to be conducted in a fair, transparent, independent and confidential manner.
5. The IC cannot surmise on the outcome of the disciplinary proceedings. However, the IC recommends that the HR & Administration Department would need to take more affirmative action to avoid Heads of Department abusing their position of authority towards staff members. Complaints or grievances from staff, whether formal or informal, should be treated with all due process and in confidentiality.

[Signature page follows]

This 21st day of June 2018



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