



NORTH AMERICAN REGIONAL AT LARGE ORGANIZATION

July 3, 2023

Tripti Sinha
Chair, Board of Directors
ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536

Re: Nominating Committee (NomCom) Rebalancing

Dear Tripti,

Thank you very much for your letter of April 26, 2023, regarding the topic of NomCom Rebalancing. NARALO appreciates the opportunity to provide our views on this subject to you and to the ICANN Board. Our responses to the questions presented to us appear below, directly following each question.

- 1. What does it mean to have a balanced NomCom at a point in time? For example, what criteria would you apply to measure or assess whether the NomCom is balanced? And further, how can one test whether or not the NomCom is balanced?**

The goal of a “balanced NomCom” is somewhat of a red herring. Depending on how one defines “balance,” one could yield wildly different results. The real goal is an *effective* NomCom, and “balance” (by whatever definition) must satisfy this greater goal. An effective NomCom is one that identifies, attracts and selects highly qualified and committed individuals while actively seeking out diverse individuals, with regard to both mandatory (e.g., geographic diversity requirements for certain positions) and non-mandatory (gender, cultural, ethnic, socio-economic, etc.) diversity goals.

Assessing the composition of the NomCom should never be viewed as merely a mechanical exercise, nor should it attempt to treat every SO/AC identically. SOs and ACs vary widely in their mission, their make-up, the size and diversity of the stakeholders they represent, and even whether they are intended to be representative structures (vs., e.g., expert structures).

A “balanced NomCom” should include participation from each SO and AC and, where relevant, their constituent structures (e.g., RALOs, SGs and Constituencies). The level of representation¹ should take into account the size, organization and diversity of each SO/AC and the people

¹ NARALO acknowledges that delegates “do not act in furtherance of the group that appointed them to the NomCom” (as per NomCom documentation). Delegates are nonetheless “representative” in the larger senses of the word.



and/or entities each represents, but this is only one of many relevant criteria. ICANN's mission and purpose, as reflected in its By-Laws and other fundamental documents, needs to be considered as well. The relative roles of various SOs and ACs is another relevant consideration. The goals and purpose of the NomCom must also be taken into account.

By and large, the NomCom is well-balanced today by the above criteria and will be better balanced after the non-voting members are given voting status. The justifications for the current make-up still make sense and any "rebalancing" would need to explain why these justifications no longer make sense.

Rebalancing is not necessarily limited to moving seats around. Rebalancing may mean creating new seats (or even potentially reducing the number of seats).

A balanced NomCom also needs to take into account diversity factors such as geography and gender, and the inclusion of Indigenous peoples and persons with disabilities. Geographic diversity is mandated by the ICANN Bylaws in certain instances. Even where it is not, participating groups should be sensitive to these factors and look to achieve diversity over the course of their appointments. Each NomCom participating entity should have as its goal to attempt to meet these criteria as best as they can. Different entities can and should have different approaches and how they proceed should be determined by each entity. A top-down and highly directed approach to the delegate selection process would not be the ICANN way.

In terms of measuring, testing and assessing, ICANN could look at whether all groups of ICANN stakeholders have the ability to participate meaningfully (vs. being excluded) and various metrics of representation and distribution across each of the factors discussed above, year by year and over time. Metrics should not be overemphasized, since "balance" is as much qualitative as it is quantitative.

It is also important to look at NomCom outcomes and examine the process, the quality of outcomes, the diversity and "balance" of the resulting candidates and nominees, and the overall functioning of the NomCom. In addition, a balanced NomCom should not function as a "house committee" that only nominates people who are pleasing to Board and Org. A diversity of viewpoints is critical, even if some of those viewpoints are critical of ICANN.

2. Do you support the view that the current composition of the NomCom needs to be rebalanced? Please explain why or why not.

The NomCom could be better balanced, and a rebalancing should be considered now and periodically thereafter. However, the NomCom does not "*need*" to be rebalanced, i.e., it is not so imbalanced that a rebalancing *must* occur now. Nonetheless, there are certain shortcomings in the current balance and composition of the NomCom that should be considered and addressed, such as the current use of non-voting delegates and the lack of representation of at least one



existing ICANN structure. A greater emphasis could also be placed on achieving balance along geographic, gender, Indigenous participation, and the participation of persons with disabilities.

However, NARALO believes that, to the greatest extent possible, it should be left up to each participating entity to manage and rebalance their slots to maximize balance, diversity, effectiveness and quality of participation. Each entity is best able to consider the nuances that go into choosing delegates from and/or by their own sector.

3. How frequently does the balance need to be measured or assessed?

NARALO believes that it is reasonable to measure and assess balance every five years. However, it should be noted that, both under WorkStream 2 and also under the ATRT3 recommendations that the Board has adopted, there is a requirement that a “continuous improvement” framework be created. While “continuous” measuring and assessing would be overkill, this does suggest that some monitoring and measuring should take place every year, with more in-depth assessments taking place less often (e.g., every five years).

4. How do you suggest that the NomCom’s composition be rebalanced?

This is, to some extent, the “third rail”² of the NomCom Rebalancing discussion. As noted earlier, the conversion of the existing non-voting delegates to voting positions will rebalance the NomCom, at least when it comes to voting. (We understand that the non-voting delegates who participate already participate fully up to the point of voting.) NARALO supports giving these non-voting positions the vote.

Another notable issue is the lack of representation of the NPOC (Not-for-Profit Operational Concerns Constituency), the only structure within the GNSO not to have its own “seat.” NPOC is the home of NGOs and Not-for-Profit corporations within ICANN, so one would expect its membership to be particularly fertile ground for potential NomCom delegates. NPOC was founded roughly a decade ago, so it would seem high time (or even overtime) for a NomCom delegate. Some have raised a “slippery slope” argument about this possibility (i.e., how will ICANN deal with a proliferation of new Constituencies?). In the past decade there have been no serious proposals for new Constituencies in NCSG or CSG (or for Constituencies at all in the RySG or RrSG), so this argument doesn’t hold much water. In the event that a new Constituency seems to be coming into being, the ICANN community will have ample time to consider that question. In the meantime, it seems sensible to give representation to the one Constituency that has managed to come into being since the “rebalancing” of the GNSO.

²The “third rail” is a metaphor for any issue so controversial that it is “charged” and “untouchable” to the extent that anyone who dares broach the subject will invariably be damaged or “burnt.” The metaphor comes from the high-voltage third rail in some electric railway systems (such as the New York City subway); touching the (actual) third rail will result in electrocution, severe injury or death.



Finally, there is the long-simmering question of what to do with the GAC “seat.” The GAC seat has long been vacant, for various reasons. It is possible that the GAC may change its position and fill the seat. However, it is also possible that the GAC may never fill the seat. The existence of a vacant seat creates an imbalance by definition (since the “design” of the NomCom presumably contemplated all seats being full). Should GAC be told that it must fill the seat, possibly with the “threat” of losing it? Should the seat be “reassigned” to a different group? Should the GAC consider filling it with an IGO-based delegate to avoid any complexities that stem from having a sovereign nation represented on the NomCom? Should this all be left up to the GAC (as it presumably has been up to now)? The last would be consistent with NARALO’s general view that self-determination should be a primary tenet in the NomCom rebalancing “debate.” However, it at least bears continuing consideration within GAC as well as the rest of the community.

5. Who should conduct this work, and how should it be conducted?

This process should not solely be the province of Board and Org; it should include the NomCom, the participating entities and the community writ large. This could be done by a cross-community group or team.

At the same time, much of this work needs to be done within each SO/AC or other participating entity. These entities are best placed to consider balance-related issues within their own organizations and how best to rectify and implement them. As previously noted, this work should take into account geographic diversity (within the mandatory geographic areas), gender diversity, Indigenous participation, and participation by persons with disabilities. Skillset and viewpoint diversity are also important factors. Outreach, engagement and capacity-building activities need to take place and should be monitored and assessed for effectiveness – after all, NomCom delegates aren’t born, they’re made. Each entity needs to find ways to encourage and support fresh and diverse participants in the work of the NomCom.

Toward this end, each SO/AC or other participating entity should be encouraged to have an internal working group or other committee to do this work. For example, within At Large, we require at least two people from each RALO to be on such committees, so that we can be assured that their priorities are covered and also so that they can advocate for their own constituency or group. This works well and has served us well over the years.

The work of each internal committee needs to be coordinated with the cross-community working group or team examining NomCom matters. Ideally, representatives for each SO/AC or other participant should be drawn from the internal committee, at least in part. This can be used to find the right “global/local” mix between broader initiatives and internal work.



6. How would your community group prioritize consideration of this issue within your planning efforts?

NARALO has generally concluded that there is no need at this stage for any major rebalancing project. As such, pushing for rebalancing would not be the highest priority for NARALO. Nonetheless, we would certainly participate and “pull our weight” in any activities. On the other hand, maximizing the quality of participation in NomCom is one of our highest priorities. As such, we take the development and support of potential NomCom delegates into account in our broader outreach, engagement and capacity-building efforts.



Thank you again for the opportunity to share our views with you and the ICANN Board. If you have any questions or comments regarding this submission, please contact NARALO. We look forward to discussing and working on this and many more important matters in the upcoming months and years.

Best regards,

A handwritten signature in black ink, appearing to read "Gregory S. Shatan".

Gregory S. Shatan
Chair, NARALO

Reference Link:

Letter from Tripti Sinha: <https://www.icann.org/en/system/files/correspondence/sinha-to-shatan-26apr23-en.pdf>