

ICANN

VIRTUAL COMMUNITY FORUM

70



Nominating Committee Review Update

Nominating Committee Review Implementation Working Group



ICANN70 Prep Week
10 March 2021

Presenters

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Agenda

1

NomComRIWG
Overview

2

Implementation
Progress

3

Bylaw Changes

4

Standing
Committee
Charter

5

Process Maps

6

Next Steps



We will be asking for some feedback today about the NomCom Review.

This exercise is intended to take the temperature of the room. It is not a polling or voting exercise.

Responding to these questions is **anonymous** and **voluntary**.

Which of the following describes who you are?

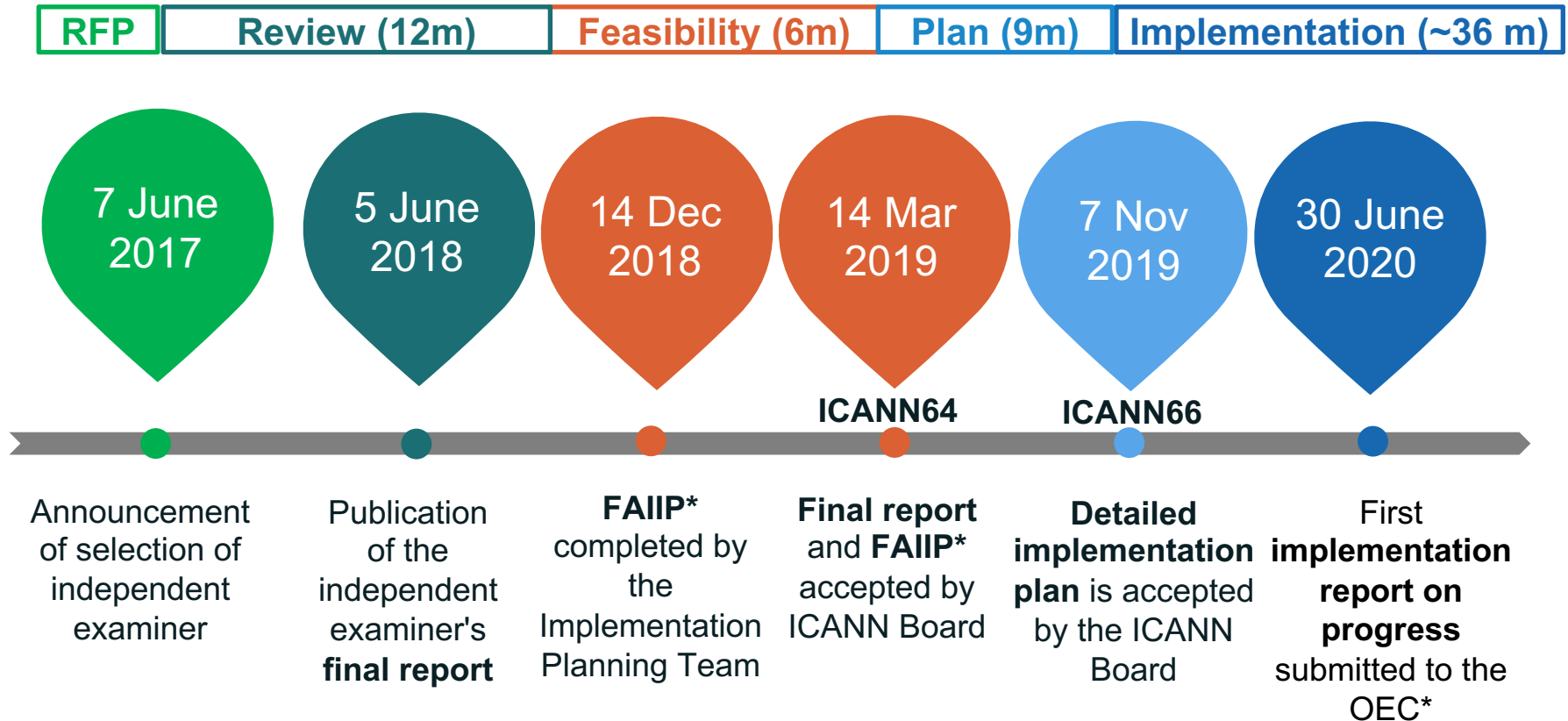
(you may select more than 1 choice)

1. I have served, or am currently serving on the NomCom
2. I have applied, or have been appointed by the NomCom
3. I am interested in applying for a NomCom position
4. I am from a body that appoints a delegate to the NomCom
5. None of the above

Agenda 1. NomComRIWG Overview

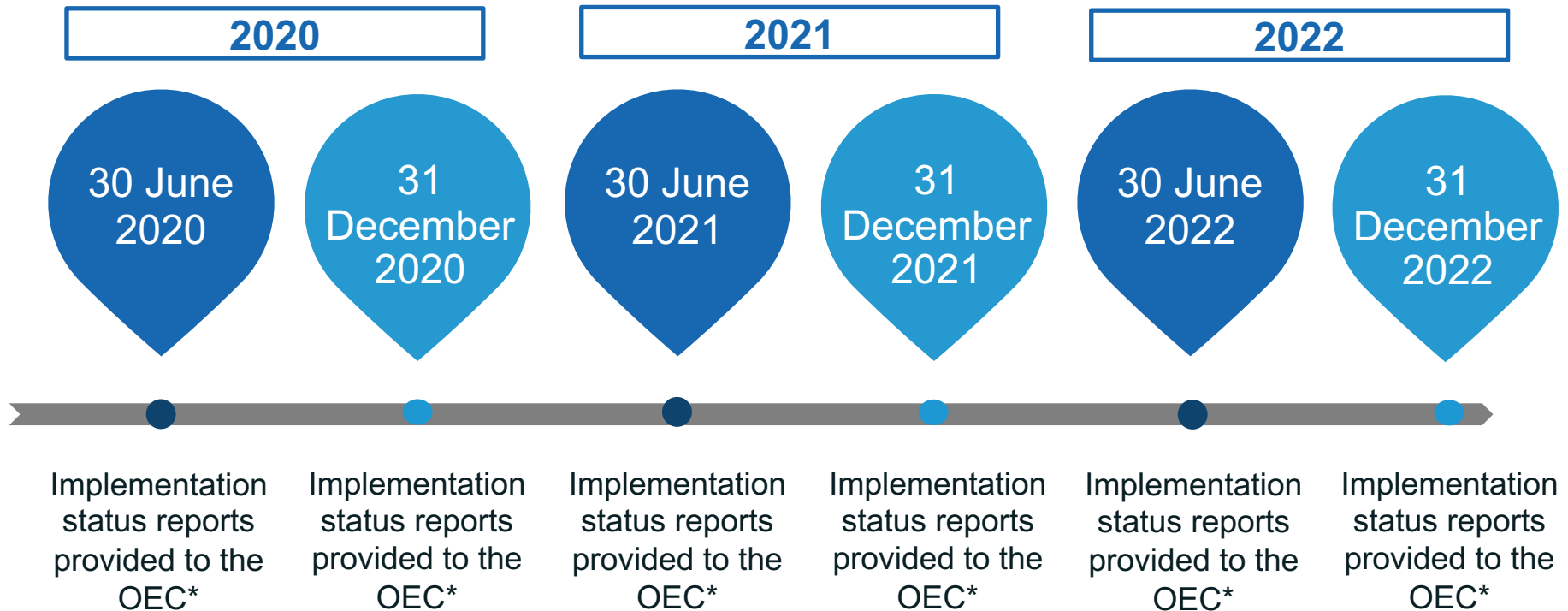
Overall NomCom Review Timeline

- **32 Members**, representatives from all SOs/ACs other than ASO, GAC, and SSAC
- **Held 97 teleconferences to-date**, 53 since implementation work started
- Currently in phase 2 of the implementation phase



Implementation Timeline (~36 months)

- **32 Members**, representatives from all SOs/ACs other than ASO, GAC, and SSAC
- **Held 40 teleconferences in 2020, 53 since implementation start**



Agenda 2. Implementation Progress

Implementation Progress Summary

Finalized and submitted to the ICANN Board's Organizational Effectiveness Committee

A. Proposed ICANN Bylaw changes (six Recs)

B. Finalized and submitted proposed Charter for the NomCom Standing Committee (Rec.24)

C. Initial discussions on all other recommendations

Agenda 3. Bylaw Changes

Proposed Bylaw Change Summary

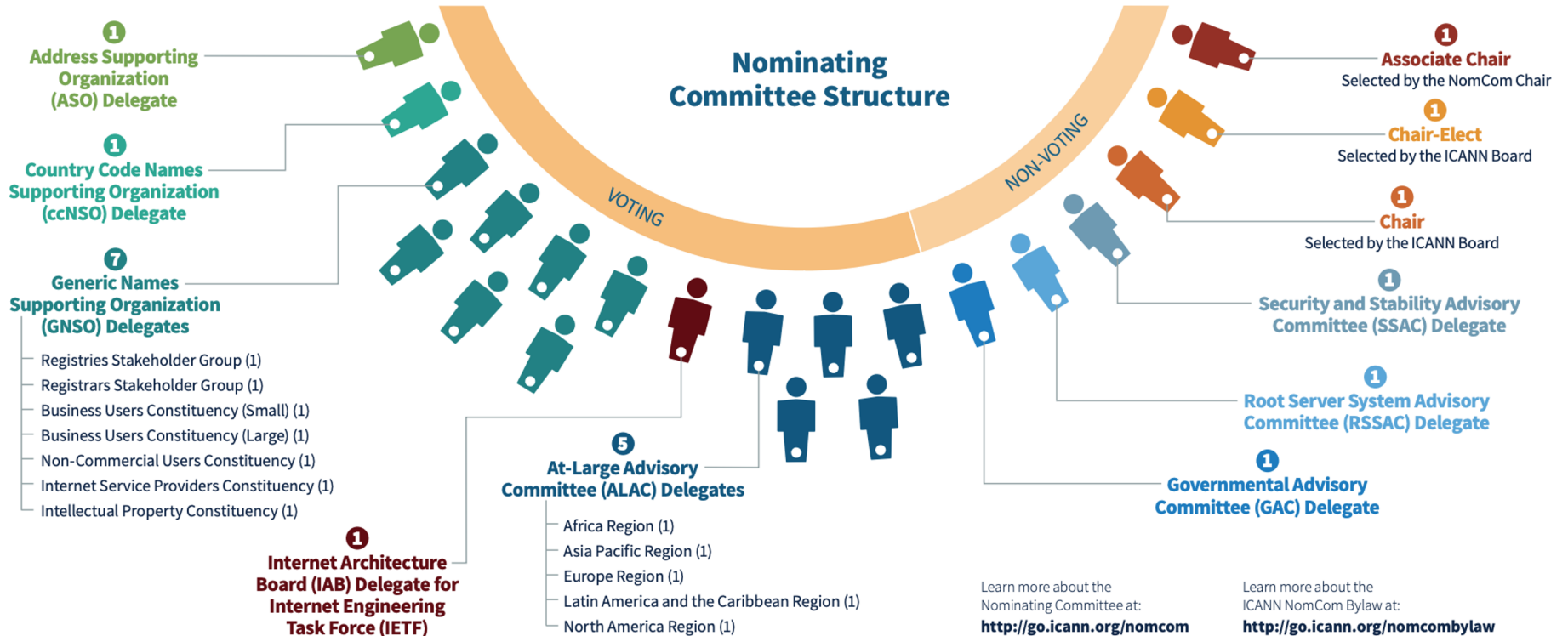
5 recommendations require amendments to the ICANN Bylaws. For efficiency, they are grouped together so that the ICANN Board can follow a single process for the entire group.

- **Rec. 7:** *“NomCom members, except for leadership positions, should serve two-year terms, and be limited to a maximum of two terms.”*
- **Rec. 9:** *“All NomCom members should be fully participating and voting members, except for NomCom leadership.”*
- **Rec. 10:** *“Representation on the NomCom should be re-balanced immediately and then be reviewed every 5 years.”*
- **Rec. 24:** *“An empowered body of current and former NomCom members should be formed to ensure greater continuity across NomCom’s, and in particular, to recommend and assist in implementing improvements to NomCom operations.”*
- **Rec. 27:** *“Provide clarity on desire for and definition of “unaffiliated directors”. Upon clarification of desire and definition, determine the number of specific seats for unaffiliated directors”.*

All of the proposed amendments are **limited to Article 8: Nominating Committee of the ICANN Bylaws**, along with a **transition article**. (see rec. 7)

Rationale for Bylaws Change (Rec. 10)

Rec. 10: “Representation on the NomCom should be re-balanced immediately and then be reviewed every 5 years.”



Outreach: Rebalancing

- NomComRIWG drafted a **call for action** (<https://mm.icann.org/pipermail/nomcomriwg/2020-June/000472.html>) addressed to the GNSO Supporting Groups and Constituencies Chairs, to hear from the GNSO's constituencies and stakeholder groups whether they support such a Bylaws change.
- Four responses were received following this call to action: IPC, BC, ISPCP, RySG.
- NomComRIWG discussed the proposed Bylaws amendment on a call (22 July 2020) with GNSO constituencies and stakeholder group leaders.
- NomComRIWG submitted the proposed amendment to OEC in December 2020.
- NomComRIWG work with regard to this recommendation is complete.

Rationale for Proposed Bylaw changes (Rec. 27)

Rec. 27: *“Provide clarity on desire for and definition of “unaffiliated directors”. Upon clarification of desire and definition, determine the number of specific seats for “unaffiliated directors”. ”*

Section 8.8. INELIGIBILITY FOR SELECTION BY NOMINATING COMMITTEE

....

(b) Individuals who do not meet the definition of “unaffiliated” as set forth in the Nominating Committee Standard Operating Procedures shall be ineligible for selection by the Nominating Committee to fill Seats 1 through 8 of the ICANN Board. Service on the ICANN Board shall not render any candidate ineligible pursuant to this Section 8.8(b).

- This intent of this statement is to:
 - encourage the NomCom, to **prioritize unaffiliated directors** in their appointments.
 - **address the reappointment of non-affiliated directors** - the rule being that if a potential candidate was originally an unaffiliated director, they would remain with that designation, even if they’re reapplying.

Criteria for Unaffiliated Directors (Rec. 27)

Proposed eligibility criteria for unaffiliated candidates applying to a NomCom Board position to be added to NomCom Operating Procedures:

A current contract or employment or any sort of compensation received from any body in the ICANN community that appoints to the ICANN Board disqualifies a candidate from being eligible for a NomCom-appointed ICANN Board position.

In addition, any actual or perceived conflict of interest that is likely to occur due to serving in any leadership role, decision-making capacity or receiving reimbursement from a part of the ICANN Community or ICANN org also disqualifies a candidate for a NomCom-appointed Board position.

If an applicant was previously disqualified from serving on the ICANN Board based on the above definition, there must be a minimum of a two-year gap before they would be considered eligible to serve on the ICANN Board.

If the candidate is not disqualified based on the above definition, they may be identified as an unaffiliated applicant for the ICANN Board.

Re-applying Board candidates are not considered ineligible due to their Board membership



For the proposed eligibility criteria for Unaffiliated Directors,

A current contract or employment or any sort of compensation received from any body in the ICANN community that appoints to the ICANN Board disqualifies a candidate from being eligible for a NomCom-appointed ICANN Board position.

Which of the following should be included in the definition of “Compensation”?

1. Any reimbursement of expenses or stipend from ICANN
2. Any reimbursement or a stipend from an SO/AC of ICANN
3. Any reimbursement of expenses above a nominal amount, such as \$500/year
4. None of the above



Who would you include in the definition to “*any body in the ICANN community*”?

Check all that apply:

1. Any employee or consultant of ICANN
2. Any employee or consultant of contracted parties, including but not limited to: Registries, Registrars, ICANN Law Firms, and ICANN IT Vendors (TMCH, etc.)
3. Any employee or consultant of an organization actively participating in an SO/AC
4. None of the above



For the proposed eligible criteria for Unaffiliated Directors,

Do you feel that the two-year gap for previously ineligible candidates is:

- A. Too long, it should be shorter
- B. About right
- C. Not enough, it should be longer

Agenda 4. Standing Committee Charter

NomCom Standing Committee Charter

Rec. 24: *“An empowered body of current and former NomCom members should be formed to ensure greater continuity across NomCom’s, and in particular, to recommend and assist in implementing improvements to NomCom operations.”*

- NomComRIWG proposed a draft Charter to define the roles and responsibilities and scope of the NomCom Standing Committee specified in recommendation 24.
- The Draft Charter and the proposed process - to gain community recognition and endorsement of the NomCom Standing Committee purpose and mission – is currently being reviewed. More information will be available at the next update.

Standing Committee Objective 1

1. Provide continuity across annual NomCom cycles

Several of the NomCom processes span the typical timeframe of an annual NomCom cycle. With the transition to new leadership and members, this can lead to inefficiencies.

The Standing Committee will publish and maintain the process maps and timelines related to ensuring an efficient NomCom process

Standing Committee Objective 2

2. Build the institutional memory of the NomCom

Historically, the NomCom's efficiency and productivity has been hampered by the lack of work products created by previous NomCom cycles, causing an annual re-invention of evaluation and interviewing techniques.

The Standing Committee will establish and maintain a published archive of NomCom work products. This will include updating any changes or additions generated by each NomCom, after redacting any sensitive information contained in the documents

Standing Committee Objective 3

3. Help coordinate processes and communications with other bodies

An efficient NomCom is dependent on the timely actions and contributions of external bodies that need to occur before a new NomCom cycle begins and after it ends.

The scope of responsibilities for the Nominating Committee Standing Committee will encompass NomCom associated processes with the following groups:

- NomCom Leadership
- ICANN and PTI Boards
- ICANN org
- Bodies that appoint members to the NomCom
- Bodies that receive NomCom appointees
- Candidates applying for NomCom appointments
- External consultants to the NomCom
- Overall ICANN community

Agenda 5. Process Maps

Process Maps and Timelines

Rec. 13: *“Publish a Process Diagram and codify key elements of the NomCom process. Each year, the NomCom should be required to highlight and explain process changes to the ICANN community in an open session.”*

Independent examiner finding: *The NomCom has made progress in increasing the extent to which it preserves policies and procedures from year to year, however, it still “reinvents the wheel” on many process issues and exhibits a lack of continuity.*

- NomComRIWG reviewed the current timeline of the NomCom Annual Cycle published on icann.org and is providing suggested additional steps that should appear on the timeline.
- Once published and publicized among the community, the diagram would be periodically reviewed and updated.
- The Standing Committee (once established as intended by **rec. 24**) would ensure that any deviation from the standard process by the NomCom is clearly communicated to the ICANN community.

NomCom Operating Procedures Change Control

ICANN BYLAWS

Section 8.7. PROCEDURES

The Nominating Committee shall adopt such operating procedures as it deems necessary, which shall be published on the Website. **The Nominating Committee and the NomCom Standing Committee, while ensuring confidentiality, will ensure that they maintain transparency and accountability to the ICANN Community for all their processes.**

Corresponding modifications to NomCom Operating Procedures

If, in the event that the NomCom decides to modify any of these Procedures, then the Standing Committee is empowered to review these proposed changes and determine if a public comment period is warranted before the proposed changes take effect.

Agenda 6. Next Steps

Next Steps

NomComRIWG will be focusing in the upcoming months on:

- Work with the ICANN Board on Bylaw and Charter processes
- Process Maps for NomCom
- Refining the proposed Charter for the Standing Committee
- Rewriting Operating Procedures
- Creating NomCom Repository
- Finishing implementation of other recommendations

Q&A

Thank you!



Contact our working group: mssi-secretariat@icann.org



Follow our wiki at <https://community.icann.org/x/aBpIBg>

Locate the Progress Reports under “Documents”

Redlines of Proposed Bylaw Changes

Redlined Proposed Bylaw changes (Rec. 7)

Section 8.2. COMPOSITION

The Nominating Committee shall be composed of the following persons:

- (a) A non-voting Chair, appointed by the Board;
- (b) A non-voting Chair-Elect, appointed by the Board as a non-voting advisor;
- (c) One voting delegate each selected by the following entities:
 - i. The Council of the Address Supporting Organization established by Section 9.2;
 - ii. The Council of the Country Code Names Supporting Organization established by Section 10.3;
 - iii. The Governmental Advisory Committee established by Section 12.2(a)
 - iv. The Security and Stability Advisory Committee established by Section 12.2(b);
 - v. The Root Server System Advisory Committee established by Section 12.2(c); and
 - vi. The Internet Engineering Task Force.

~~A non-voting liaison appointed by the Root Server System Advisory Committee established by Section 12.2(c);~~

Redlined Proposed Bylaw changes (Rec. 7)

Section 8.3. TERMS

- (a) ~~The term for E~~each voting delegate shall ~~be~~ serve a two one-year term. ~~No individual A delegate may serve as a delegate for more than two terms. In addition, no individual may serve in consecutive terms, regardless of the entity selecting them to the Nominating Committee. An individual will only be eligible to serve a second term as a delegate on the Nominating committee if a minimum of two years has elapsed between the end of their first term and the beginning of the term for which they are being selected. at most two successive one-year terms, after which at least two years must elapse before the individual is eligible to serve another term.~~
- (a) The regular term of each voting delegate shall begin at the conclusion of an ICANN annual meeting and shall end at the conclusion of the immediately following ICANN annual meeting **in two years, subject to the Transition Section 27.xx**
- ~~(a) Non-voting liaisons shall serve during the term designated by the entity that appoints them. The Chair, the Chair-Elect, and any Associate Chair shall serve as such until the conclusion of the next ICANN annual meeting.~~

Redlined Proposed Bylaw changes (Rec. 7)

To support the terms principles defined for the Standing Committee, the NomComRIWG is proposing adding the following language to:

Section 8.3: TERMS

(e) Vacancies in the positions of delegate, ~~non-voting liaison, Chair or Chair-Elect~~ shall be filled by the entity entitled to select the delegate, **subject to the details in the approved Nominating Committee Standard Operating Procedures** ~~non-voting liaison, Chair or Chair-Elect involved~~. **If a delegate is selected to fill a vacancy and less than eight months have elapsed in that term, the delegate will be considered to have served a full term for the purposes of Section 8.3(a). If more than eight months have elapsed in the term at the time the delegate is selected to fill a vacancy, such service will not be considered a full term pursuant to Section 8.3(a).**

(f) For any vacancy in the position of Chair, the Board shall appoint a replacement. For any term that the Chair-Elect position is vacant pursuant to Section 8.3(d), or until any other vacancy in the position of Chair-Elect can be filled, a non-voting advisor to the Chair may be appointed by the Board from among persons with prior service on the Board or a Nominating Committee, including the immediately previous Chair of the Nominating Committee. A vacancy in the position of Associate Chair may be filled by the Chair in accordance with the criteria established by Section 8.2(i).

Redlined Proposed Bylaw changes (Rec. 7)

(d) It is anticipated that upon the conclusion of the term of the Chair-Elect, the Chair-Elect will be appointed by the Board to the position of Chair. However, the Board retains the discretion to appoint any other person to the position of Chair. At the time of appointing a Chair-Elect, if the Board determines that the person identified to serve as Chair shall be appointed as Chair for a successive term, the Chair-Elect position shall remain vacant for the term designated by the Board.

(e) Vacancies in the positions of delegate, ~~non-voting liaison, Chair or Chair-Elect~~ shall be filled by the entity entitled to select the delegate, **subject to the details in the approved Nominating Committee Standard Operating Procedures** ~~non-voting liaison, Chair or Chair-Elect involved~~. **If a delegate is selected to fill a vacancy and less than eight months have elapsed in that term, the delegate will be considered to have served a full term for the purposes of Section 8.3(a). If more than eight months have elapsed in the term at the time the delegate is selected to fill a vacancy, such service will not be considered a full term pursuant to Section 8.3(a).**

(f) For any vacancy in the position of Chair, the Board shall appoint a replacement. For any term that the Chair-Elect position is vacant pursuant to Section 8.3(d), or until any other vacancy in the position of Chair-Elect can be filled, a non-voting advisor to the Chair may be appointed by the Board from among persons with prior service on the Board or a Nominating Committee, including the immediately previous Chair of the Nominating Committee. A vacancy in the position of Associate Chair may be filled by the Chair in accordance with the criteria established by Section 8.2(i).

(g)f The existence of any vacancies shall not affect the obligation of the Nominating Committee to carry out the responsibilities assigned to it in these Bylaws.

Proposed Transition Plan for Rec. 7

ASO	1-year term
ccNSO	2-year term
GNSO - RrSG	1-year term
GNSO - RySG	2-year term
GNSO – BUC – Seat 1 (see g)	1-year term
GNSO – BUC – Seat 2 (see g)	2-year term
GNSO - NCUC	2-year term
GNSO - ISPCP	1-year term
GNSO - IPC	2-year term
IETF	2-year term
ALAC – Seat 1 (see g)	1-year term
ALAC – Seat 2 (see g)	2-year term
ALAC – Seat 3 (see g)	1-year term
ALAC – Seat 4 (see g)	2-year term
ALAC – Seat 5 (see g)	2-year term
GAC (inactive, see h)	1-year term
RSSAC (see h)	1-year term
SSAC (see h)	2-year term

Redlined Proposed Bylaw changes (Rec. 9)

Section 8.2. COMPOSITION

The Nominating Committee shall be composed of the following persons:

- (a) A non-voting Chair, appointed by the Board;
- (b) A non-voting Chair-Elect, appointed by the Board as a non-voting advisor;
- (c) One voting delegate each selected by the following entities:
 - i. The Council of the Address Supporting Organization established by Section 9.2;
 - ii. The Council of the Country Code Names Supporting Organization established by Section 10.3;
 - iii. The Governmental Advisory Committee established by Section 12.2(a)
 - iv. The Security and Stability Advisory Committee established by Section 12.2(b);
 - v. The Root Server System Advisory Committee established by Section 12.2(c); and
 - vi. The Internet Engineering Task Force.

~~A non-voting liaison appointed by the Root Server System Advisory Committee established by Section 12.2(c);~~

~~(d) A non-voting liaison appointed by the Security and Stability Advisory Committee established by Section 12.2(b);~~

~~(e) A non-voting liaison appointed by the Governmental Advisory Committee;~~

Redlined Proposed Bylaw changes (Rec. 9)

~~(h) One voting delegate each selected by the following entities:~~

~~(i) The Council of the Country Code Names Supporting Organization established by Section 10.3;~~

~~(ii) The Council of the Address Supporting Organization established by Section 9.2; and~~

~~(iii) The Internet Engineering Task Force.~~

(f) A non-voting Associate Chair, who may be appointed by the Chair, at his or her sole discretion, to serve during all or part of the term of the Chair. The Associate Chair may not be a person who is otherwise a member of the same Nominating Committee. The Associate Chair shall assist the Chair in carrying out the duties of the Chair, but shall not serve, temporarily or otherwise, in the place of the Chair.

Redlined Proposed Bylaw changes (Rec. 10)

(df) Five voting delegates selected by the At-Large Advisory Committee established by Section 12.2(d);

(eg) Seven ~~V~~voting delegates to the Nominating Committee shall be selected by from the Generic Names Supporting Organization established by Article 11, as follows:

- ~~(i) One delegate from the Registries Stakeholder Group;~~
- ~~(ii) One delegate from the Registrars Stakeholder Group;~~
- ~~(iii) Two delegates from the Business Constituency, one representing small business users and one representing large business users;~~
- ~~(iv) One delegate from the Internet Service Providers and Connectivity Providers Constituency (as defined in Section 11.5(a)(iii));~~
- ~~(v) One delegate from the Intellectual Property Constituency; and~~
- ~~(vi) One delegate from consumer and civil society groups, selected by the Non-Commercial Users Constituency.~~

Rationale for Proposed Bylaw changes (Rec. 10)

Rec. 10: *“Representation on the NomCom should be re-balanced immediately and then be reviewed every 5 years.”*

NomComRIWG elected to follow the independent examiner **recommendation 8** (maintain current size of the NomCom) and are of the view that the current allocation of nineteen (19) NomCom seats across the various SO/ACs should remain unchanged, also keeping in mind that it will help maintain the diversity of the NomCom.

NomComRIWG also consulted with the GAC whether they planned to continue to not make appointments to the NomCom, and agreed that the GAC seat should not be reallocated based on their input.

As part of the discussion, it was noted that ALAC is allocated five seats and internally decides to allocate these seats on a geographic basis to achieve diversity objectives.

Among all ICANN supporting organizations, the GNSO has evolved the most since the ICANN Bylaws were first written and is likely to continue to evolve - its Charter includes sections that anticipate further evolution and expansion.

NomComRIWG considered **two potential rebalancing scenarios:**

- 1. entire NomCom**
- 2. limited to just the GNSO NomCom appointees**

Both options are still possible and pursuing one does not preclude the other.

Rationale for Proposed Bylaw changes (Rec. 10)

Rec. 10: *“Representation on the NomCom should be re-balanced immediately and then be reviewed every 5 years.”*

NomComRIWG considered that the GNSO would continue to evolve and require on-going rebalancing exercises in the future, and decided to split this recommendation into two steps to simplify an immediate, but also future rebalancing exercises without requiring additional Bylaw changes

Step 1. A Bylaw change that maintains the current allocation to the GNSO without specifying how those seats are allocated.

- GNSO could rebalance itself periodically without requiring Bylaw changes.
- Matches the Bylaw language for the ALAC NomCom delegates.

Step 2. Develop a process on how these seats should be allocated. The work of this second phase could be performed by the GNSO (Recommended), NomComRIWG, a cross-constituency working group or others (including GNSO’s constituencies and stakeholder groups)

Redlined Proposed Bylaw changes (Rec. 24)

Standing Committee will ensure NomCom is fully transparent and accountable to the ICANN community, by using a formal change control process for the NomCom Operating Procedures.

NomComRIWG developed a draft Charter for the Standing Committee (see Agenda #4).

To support the purpose of the Standing Committee, the NomComRIWG is proposing adding the following language:

Section 8.7: PROCEDURES

The Nominating Committee shall adopt such operating procedures as it deems necessary, which shall be published on the Website. **The Nominating Committee and the NomCom Standing Committee, while ensuring confidentiality, will ensure that they maintain transparency and accountability to the ICANN Community for all their processes.**

Rationale for Proposed Bylaw Changes (Rec. 24)

- **Rec. 24:** *“An empowered body of current and former NomCom members should be formed to ensure greater continuity across NomCom’s, and in particular, to recommend and assist in implementing improvements to NomCom operations.”*
- Independent examiner conducting the review found that there was a lack of continuity in process across different years' Nominating Committees such that the operational performance of any individual NomCom was routinely impacted.
 - It recommended that a standing committee be formed to suggest and assist in implementing changes to NomCom processes since the NomCom itself operates on a tight timeline and needs to focus on its recruiting and evaluation activities

Purpose:

Oversee continuous improvement to the NomCom Operating Procedures and associated processes to **increase the effectiveness and efficiency of the NomCom while ensuring its transparency and accountability to the overall ICANN community**, including:

- a) Provide continuity across annual NomCom cycles
- b) Build the institutional memory of the NomCom
- c) Help coordinate processes and communications with other bodies

Does not participate in the decision-making processes of the NomCom’s annual candidate evaluation and selection activities.

Rationale for Proposed Bylaw changes (Rec. 27)

Rec. 27: *“Provide clarity on desire for and definition of “unaffiliated directors”. Upon clarification of desire and definition, determine the number of specific seats for “unaffiliated directors”. ”*

Section 8.8. INELIGIBILITY FOR SELECTION BY NOMINATING COMMITTEE

....

(b) Individuals who do not meet the definition of “unaffiliated” as set forth in the Nominating Committee Standard Operating Procedures shall be ineligible for selection by the Nominating Committee to fill Seats 1 through 8 of the ICANN Board. Service on the ICANN Board shall not render any candidate ineligible pursuant to this Section 8.8(b).

- This intent of this statement is to:
 - encourage the NomCom, to **prioritize unaffiliated directors** in their appointments.
 - **address the reappointment of non-affiliated directors** - the rule being that if a potential candidate was originally an unaffiliated director, they would remain with that designation, even if they’re reapplying.