Appendix H: Minority Statements

In producing the Second Draft Report, the CCWG-Accountability agreed to include minority statements for those who objected to the overall set of recommendations in the document.[1] In order for minority statements to be published at the same time as part of the Second Draft Report, they needed to be received by 12:00 UTC on 1 August 2015. Three minority statements were received by the deadline and included below in order received.

Any minority statements received after the deadline are published on the CCWG-Accountability Wiki space at: https://community.icann.org/x/6oxCAw.

Eberhard Lisse -
CCWG-Accountability Member (ccNSO-Appointed)

Dear Co-Chairs

I am the Managing Director of Namibian Network Information Center (Pty) Ltd, the country code Top Level Domain ("ccTLD") Manager of .NA with 24 years uninterrupted service and corresponding experience. I have been appointed by ICANN's county code Names Supporting Organization ("ccNSO") as a member to the Cross Community Working Group on Enhancing ICANN Accountability ("CCWG Accountability").

I had previously (2015-06-03) had to comment on the so called "Draft Recommendations" of the CCWG Accountability[2] after its publication, I was prevented by the Co-Chairs from submitting my minority viewpoints to be added to the "report" which I view to be in violation of its Charter.[3]

The CCWG Accountability submits a proposal which in terms of its Charter must focus

> [...] on mechanisms enhancing ICANN accountability that must be in place or committed to within the time frame of the IANA Stewardship Transition.

It does not do so.

I do not agree with, and formally object to the proposal for the following reasons:

[resume]

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[1] As an alternative to minority statements, the option to provide a dissenting opinion to individual questions was proposed. Dissenting opinions are included in the body of the Report and are available for those who do not wish their objection to an individual aspect of the report to be perceived as opposition to the overall approach proposed in the Second Draft Report.

[2] http://forum.icann.org/lists/comments-ccwg-accountability-draft-proposal-04may15/msg00020.html

[3] https://community.icann.org/display/acctcrosscomm/Charter

1. The proposal is rushed (due to an arbitrary, self-imposed and unrealistic deadline), overly complex, hard to understand even by members and participants of the CCWG Accountability themselves, and in my view only adds additional layers without achieving much, if anything:

    a. One of the members of the CCWG Accountability stated in a revealing email to the main list on 2015-07-30:[4]

        I think it's also important to note the proposal currently under discussion changes nothing about ICANN's day-to-day, month-to-month, or even year-to-year operations and community engagement structures. Only in very rare cases would the proposed Sole Member community empowerment model come into play. [...][5]

        While the anticipated model establishes important checks and balances and shared authority through a community empowerment mechanism, with an escalation path to enforce them, it otherwise doesn't structurally change ICANN at all.

    b. In the Statement of Policy on the Management of Internet Names and Addresses[6] due process requirements were already made in 1998:

        The Green Paper envisioned the new corporation as operating on principles similar to those of a standard-setting body. Under this model, due process requirements and other appropriate processes that ensure transparency, equity and fair play in the development of policies or practices would need to be included in the new corporation's originating documents.

        In my view ICANN's failure to ensure due process has been the norm rather than the exception.

    c. Assuming an Independent Review Panel staffed by eminent jurists to be correct in stating:[7]

        93. [...] the Panel is of the unanimous view that certain actions and inactions of the ICANN Board (as described below) with respect to the application of DCA Trust relating to the .AFRICA gTLD were inconsistent with the Articles of Incorporation and Bylaws of ICANN.

        It is painfully obvious that this proposal would not have prevented these certain actions and inactions.

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[4] http://mm.icann.org/pipermail/accountability-cross-community/2015-July/004650.html

[5] The sentence removed [...] draws the conclusion: *"In my opinion, its existence would be a powerful deterrent to bad behavior and would therefore become an available but largely unneeded tool."* with which I do not agree, at all. Just the opposite is true.

[6] http://www.ntia.doc.gov/federal-register-notice/1998/statement-policy-management-internet-names-and-addresses

[7] https://www.icann.org/en/system/files/files/final-declaration-09jul15-en.pdf

2. I have very strong concerns about the way the CCWG Accountably has dealt with ICANN's Accountability to Human Rights.

   Anything more restrictive than

   > *Within its mission and in its operations, ICANN will respect fundamental human rights, in particular the exercise of free expression, free flow of information and due process.*

   is unacceptable.

3. The proposal obviously does not contain accountability measures for ccTLD Managers.

   I have in my previous comments stated why this is necessary and remain convinced that it is

4. The questions under what statutory powers this transfer will occur, what in fact it is that is transferred and what is not transferred, remain unanswered.

   And they **must** be answered in order for any transfer of the functions and/or the root zone to occur.

5. I have previously commented on the process of the CCWG Accountability which I view as in violation of its Charter and non-inclusive.

   Therefor I renew my objections against the process, for the record.

   I must, unfortunately, point out that despite several members/participants requesting sufficient time to duly consider the final version of this proposal prior to drafting minority viewpoints, if any, and even the Ombudsman expressing concerns about fairness in this regard Co-Chairs allowed less than 24 hours for consideration of the complete, final frozen document. Depending on the time zone one found oneself in this allowed mere minutes, in practical terms, for addition of Minority Viewpoints such as these into the proposal.

I find myself in agreement with the conclusions of the visionary article by Phil Corbin in which he stated as early as November 2014:

> *The result of this flawed approach will be that, if the CWG-Stewardship group has completed its work by July 2015, the CCWG will be under intense internal and external institutional and political pressure to agree that it has "done enough" to meet the woefully low bar set by this Charter for Work Stream 1 mechanisms, with decisions on all remaining work deferred for later.*

and am concerned that he may be correct in saying:

> *But once the transition has transpired the urgency will be gone, community cohesion may erode, and IANA-related leverage will be forfeited. And even if worthwhile recommendations emerge post-Transition the Board will retain ultimate authority to reject any and all through intransigence. Therefore, a vitally important and historic opportunity for lasting and meaningful ICANN accountability may be squandered unless this Charter is further considered and strengthened prior to final adoption and commencement of the CCWG's work.*

In the presence of this objection it follows that the proposal does not have Full Consensus and I submit these minority viewpoints to be added to the proposal as required by the Charter.

I urge ccTLD Managers to reject this proposal and the NTIA not to accept it as is.

Sebastien Bachollet
CCWG-Accountability Member (ALAC-Appointed)

For an accountable, diverse, open, transparent, multistakeholder ICANN that gives rise to confidence

As time is short, it is an individual (hoping that it will reflect the view of some At-Large participants and end-users) minority statement.

Let me start first that I recognize a lot of improvements in this new version of the report of the CCWG-Accountability to be subject to the second comments period.

But I still need to be convinced that some of the proposals are not putting the organization at risk.

- At risk of rigidity: more difficult if not impossible to evolve the organization in a fast evolving world.
- At risk of stagnation: too many processes and deciding bodies, to be taken into account with not enough people.
- At risk of un-governability: let's take 3 groups – The Community – The Board – The Staff – one wanting to change gears, one wanting to brake and one wanting to speed-up.

The Community powers

1. **Reconsider/reject budget or strategy/operating plans**
   It is not compatible with the budget (or strategic and operational plans) development planning. The solution must be to build consensus during the development of the budget, before the discussions and the decisions of the Board of Directors.
   A solution for a better community participation in budget preparation (and accounts) would be, for example, to publish all financial data of the organization in **open data**.
2. **Reconsider / Reject changes to ICANN « standard » Bylaws**
3. **Approve changes to « Fundamental » Bylaws**
   The articles of association of ICANN (Bylaws) should be divided into 3 parts
   1. The Fundamental articles (validation a priori by The Community).
   2. The Basic articles (validation a posteriori by The Community).
   3. The articles that should go into an Operational Document (direct agreement between the Board, the staff and the AC or SO concerned).

4. **Removing individual ICANN Directors**

Removing a member of the Board, by its electoral group, due to disagreement, contradicts his/her independence.

5. **Recalling the entire ICANN Board**
a) The process is very complex and will put the organization in jeopardy by
    a. **Distracting** part of the time of the participants and staff instead of advancing work related to the functions of ICANN.
    b. Possible **capture** by one group (A single Nomcom will select half of the Board in one go – Staff with long standing knowledge)
b) **Alternative proposal**
    a. During a given year the community will be able to recall up to **7 members of the Board of Directors**.
    b. The proposed 7 allows to retain 9 members who then can stay in charge of the day-to-day business until the election of seven new members.
    c. With the annual election of 5 members, that makes up to 12 members who can be changed each year.

Edward Morris
CCWG-Accountability Participant

Section: 6.2

SO's and AC's were established for different and complementary purposes: the SO's, combined, were created to establish policy throughout the domain name space. The AC's were established, in part, to consider and provide advice on policy created by the SO's. As these structures were created to be complementary rather than competitive, entities were allowed to join both SO's and AC's and exercise power therein.

Some proposals provide voting rights in the community mechanism to both SO's and AC's. If accepted, this would empower entities with memberships in multiple SO's / AC's with magnified voting strength in the community mechanism in violation of the generally accepted democratic legal principle of "one person, one vote". To correct this impropriety the following language should be incorporated into any proposal offering voting rights to both AC's and SO's:

Entities with membership in multiple supporting organizations and/or advisory committees may only exercise voting privileges on issues connected to or directly related to the community mechanism in one such supporting organization or advisory committee.

Section: 6.2

This statement is in opposition to the proposed threshold standard that would count no votes, abstentions and non-participation all as no votes. This standard actually eliminates the positive statement that is abstention: that is, that after considering the matter at hand the adherent does not wish to support the proposal yet does not wish to obstruct those who do. This positive voting option should be available to all groups participating in the community mechanism. It certainly should not be equated with opposition to a proposal, as it is no such thing. The abstention option might prove of

particular value on issues that, although important, only impact a small portion of the community. The following standard is proposed:

Thresholds should be based upon the number of yes votes compared with the combined number of no votes and potential votes of non-participants. Abstentions should be treated as neither yes nor no votes, and should not be considered when determining whether a threshold has been met.