

## 5C) General Accountability Requirements

During the first public comment period on the draft document built by the CCWG-Accountability, there were several comments with regards to general accountability requirements such as diversity, staff accountability and SO/AC accountability and how the proposed mechanisms, so far, did not address these topics fully.

The CCWG Accountability acknowledged these valuable comments and, in this section, describes the assessments that it conducted with regards to each of these issues, and the respective proposals to enhance ICANN's accountability. Distinction between Work Stream 1 and Work Stream 2 proposals has been defined according to the same criteria used overall, as mentioned in section X.

### 5C.1 Diversity

#### Problem Statement

The current CCWG-Accountability draft refers to diversity in several places: the Independent Review Panel composition, AoC review teams composition, the Community Mechanism as Sole Member, etc.

Some comments express concern about diversity. Several commenters requested more details about the concrete steps, or asked to more explicit support enhancements of diversity within ICANN.<sup>1</sup>

It is not just a middle and long-term issue (Work Stream 2) but also some immediate actions (Work Stream 1) must be taken.

Overall, the concern expressed by some is related to the ability of the ICANN community (through the Board/NomCom/SO/ACs, the review teams or other groups) to represent the diversity of views, origins and interests of the global Internet community.

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<sup>1</sup> Comments that included reference to diversity came from: AFNIC, Gov: ES - BR - IN - FR, CCG, Linx, JPNIC, IPC, ZR, Jan Scholte, Eco, BC, ISPCP, Board, SBT

On the other hand some commenters, while acknowledging the importance of diversity in the accountability mechanisms, have expressed their view that diversity requirement should not prevail over skills or experience requirements.

As the community becomes empowered, there's a concern that the newly created bodies need to include the dimension of diversity:

- On Independent Review: "Brazil considers that geographic, cultural and gender diversity is a key element and should be a mandatory criterion in the selection of IRP panelists."
- Other (including in the Community Mechanism as Sole Member): "Improve diversity in all its aspects at all levels of the organization" could already be better reflected in Work Stream 1 proposal".

A multidimensional approach will be useful to be taken into account regarding diversity.

A, non-exhaustive, unordered<sup>2</sup> list of elements, that is under discussion and includes but is not limited to:

- Skill set
- Region
- Origin
- Culture
- Language
- Gender
- Age
- Disability
- Stakeholder group
- ...

In the comment to include a continuous improvement path regarding diversity within ICANN, we can underline the following regarding Work Stream 1:

- Make explicit commitments regarding diversity in the proposed new accountability bodies.
- Expand ATRT reviews into **Accountability, Transparency and Diversity Reviews**. The review team would be tasked to assess and make recommendations regarding diversity across all ICANN bodies.
- Establish threshold regarding composition of each body (will depend of the body and of the overall composition) to avoid possible blocking on certain votes.
- Transform the Structural Reviews into **Structural Accountability, Transparency and diversity Reviews of SO/ACs**, under the Board's supervision.

In the comments, we can underline the following proposals regarding Work Stream 2:

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<sup>2</sup> Some in the Work Party argues that the list should be ordered. Initial discussions about ordering the diversity elements in terms of priority indicated that it would be challenging to find consensus on any ordered list.

- Set-up a **Diversity Office** and an **Election Office**: Those two offices can be merged and can be included or not in the Office of the ICANN Ombudsman
- Include regional (if not other) diversity among the main ICANN leadership position and in each groups.
- Rotation of the ICANN meetings in all the ICANN regions.

Some have linked the Diversity issue(s) with the following items:

- Limit the number and the length of office/mandate
- Election
- Conflict of interest
- Translation

### **First study steps (identifying – reviewing – next steps)**

As a result of this work, the CCWG-Accountability divided its work into the following steps:

1. Identify the existing mechanisms in place for Board/Staff/NC/SO/AC/SHG... regarding diversity.
2. Review existing mechanisms in order to assess if they address the concerns expressed by the community during the first public comment period.
3. Build a list of activities that should be taken in both Work Stream 1 and Work Stream 2.

The documents to be reviewed are:

1. [ICANN bylaws](#)
2. [The Affirmation of Commitments](#)
3. [ATRT 1 recommendations](#) and [ATRT 2 recommendations](#)
4. Organizing Documents of each ICANN Supporting Organizations and Advisory Committees

An initial review of existing ICANN documentation shows that there are provisions regarding regional diversity for some ICANN groups.

### **Affirmation of Commitments**

The Affirmation of Commitments didn't include any reference regarding diversity.

### **Accountability and Transparency Reviews**

The Accountability and Transparency Reviews have made no specific recommendation with regards to Board/SO/AC diversity.

### **Bylaws**

ICANN bylaws state:

## Board

*“One intent of these diversity provisions is to ensure that at all times each Geographic Region shall have at least one Director, and at all times no region shall have more than five Directors on the Board (not including the President). As used in these Bylaws, each of the following is considered to be a "Geographic Region": Europe; Asia/Australia/Pacific; Latin America/Caribbean islands; Africa; and North America.”*

## NomCom

### **“Section 5. DIVERSITY**

*In carrying out its responsibilities to select members of the ICANN Board (and selections to any other ICANN bodies as the Nominating Committee is responsible for under these Bylaws), the Nominating Committee shall take into account the continuing membership of the ICANN Board (and such other bodies), and seek to ensure that the persons selected to fill vacancies on the ICANN Board (and each such other body) shall, to the extent feasible and consistent with the other criteria required to be applied by [Section 4 of this Article](#), make selections guided by Core Value 4 in [Article I, Section 2](#).”*

## ccNSO Council

*“The ccNSO Council shall consist of (a) three ccNSO Council members selected by the ccNSO members within each of [ICANN's Geographic Regions](#) in the manner described in [Section 4\(7\) through \(9\) of this Article](#);”*

## ASO

*“Under the terms of the MoU signed between ICANN and the RIRs in October 2004, the NRO Number Council now performs the role of the Address Supporting Organization Address Council (ASO AC).*

*The regional policy forum of each RIR selects two members. The Executive Board of each RIR also appoints one person from its respective region<sup>3</sup>.”*

*“The ASO Address Council shall consist of the members of the NRO Number Council<sup>4</sup>.”*

## GNSO Council

Regarding the GNSO the “only” diversity dimension is at the level of the Stakeholder Group that selects the council members.

## GAC

No reference

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<sup>3</sup> <https://www.nro.net/about-the-nro/the-nro-number-council>

<sup>4</sup> <http://archive.icann.org/en/aso/aso-mou-29oct04.htm>

## SSAC

No reference

## RSSAC

No reference

## ALAC

*“The ALAC shall consist of (i) two members selected by each of the Regional At-Large Organizations (“RALOs”) established according to paragraph [4\(g\) of this Section](#), and (ii) five members selected by the Nominating Committee. The five members selected by the Nominating Committee shall include one citizen of a country within each of the five Geographic Regions established according to [Section 5 of Article VI](#).”*

## ICANN Staff

No reference

Having reviewed and inventoried the existing mechanisms related to Board/NomCom/SO/AC diversity, while some diversity arrangements exist within ICANN documents, diversity does not appear as one of the areas where ICANN continuously strives to improve.

## Recommendations

Therefore, the CCWG recommends the following actions with the view to enhancing (further) ICANN’s effectiveness in promoting diversity:

1. Include diversity as an important element for the creation of any new structure, such as the IRP (see Section [4](#) for diversity requirements for the panel) and the ICANN Community Forum (see Section [5](#) for diversity requirements for the Forum)
2. Evaluate a proposed evolution of the ATRT into **Accountability, Transparency and Diversity Reviews** and of the Structural Reviews into **Structural Accountability, Transparency and Diversity Reviews of SO/ACs** as part of Work Stream 2.
3. Perform, as part of Work Stream 2, a more detailed review to establish a full inventory of the existing mechanisms related to diversity for each and every ICANN group (including Stakeholder Groups, Constituencies, Regional At-Large Organizations, the Fellowship program and other ICANN outreach programs), as after an initial review of the current documents, it is clear that they do not address the full concerns raised by the larger community on the diversity issue.
4. Identify the possible structures that could follow, promote and support the strengthening of diversity within ICANN.
5. Carry out a detailed working plan on enhancing ICANN diversity as part of Work Stream 2.

6. Strengthen commitments to outreach and engagement in order to create a more diverse pool of ICANN participants, so that diversity is better reflected in the overall community and thus more naturally reflected in ICANN structures and leadership positions.

## 5C.2 Staff Accountability

During the first public comment period several comments were received with regards to ICANN staff accountability and how the proposed mechanisms, so far, centered their impact only in ICANN's Board of Directors.

The comment made by CENTR recommends that an “accountability literacy, culture and attitude” is fostered: not only establishing, but also disclosing existing programs on training and audit for ICANN staff in order to have staff be accountable on their day-to-day actions.

In general, management and staff should be working for the benefit of the community and in line with ICANN's purpose and mission. While it is obvious that they report to and are held accountable by the Board (the President & CEO) or the President & CEO (management & staff), the purpose of their accountability is the same as that of the organization:

- Complying with ICANN's rules and processes;
- Comply with applicable legislation;
- Achieve certain levels of performance as well as security;
- Make their decisions for the benefit of the community and not in the interest of a particular stakeholder or set of stakeholders or ICANN the organization alone.

After considering the comments received by the community, the CCWG-Accountability assessed how to address the concerns raised during the first public comment period.

Work was divided into the following steps:

1. Identify the existing accountability mechanisms in place applicable to ICANN staff.
2. Review existing mechanisms in order to assess if they address the concerns expressed by the community during the first public comment period.
3. Build a list of activities that should be taken in both Work Stream 1 and Work Stream 2.

The reviewed documents were:

1. [ICANN bylaws](#)
2. [The Affirmation of Commitments](#)
3. [ATRTR 1 recommendations](#) and [ATRTR 2 recommendations](#)

A first review of existing ICANN documentation shows that there is almost no provisions that oblige Staff to be held accountable to the SO/ACs or the larger internet community with regards to their actions.

Also, the reviewed documentation shows that most, if not all, mechanisms currently in place are aimed at holding ICANN Board of Directors accountable but they do not refer to Staff as part of that accountability effort in a way that properly addresses the concerns raised by the community during the public comment period.

An inventory of existing accountability mechanisms shows that documents reviewed include the following mechanisms:

### **Affirmation of Commitments (AoC)**

The Affirmation of Commitments includes some key commitments that while oriented to ICANN as an organization, are centered in commitments undertaken by the Board of Directors and not necessarily by Staff. Therefore, while recognizing that Staff is part of ICANN the Organization, there should be specific expectations and commitments established for Staff to be held accountable not only to the internal hierarchy of the organization but also to those SO/ACs and the larger internet community to which their day-to-day actions should benefit.

The identified mechanisms or criteria in the Affirmation of Commitments by which SO/ACs should conduct their work in relation to the DNS are: paragraph 7 and paragraph 9.1 e).

### **Accountability and Transparency Reviews**

Although Staff is constantly referred to in the Accountability and Transparency Review Teams recommendations, there is no particular recommendation that relates directly to Staff accountability. However, one area in which the 2<sup>nd</sup> Accountability and Transparency Review Team (ATRT2) did make recommendation concerning the staff deals with the operation of 'whistleblowing' activities by staff, and the need to insure that there is a safe means by which staff can inform the community of problems and issue that only they can see.

### **Bylaws**

ICANN bylaws establish different mechanisms that subject Staff to be held accountable not only to the ICANN community but also to the larger community outside ICANN. The identified existing mechanisms are:

- Article IV, Section 2.2 a.
- Article IV, Section 2.3 f.
- Article V, Section 2.

- Article XIII, Section 4.

## Recommendations

Having reviewed and inventoried the existing mechanisms related to Staff Accountability, areas of improvement include clarifying expectations from staff as well as establishing appropriate redress mechanisms. The CCWG-Accountability recommends taking the following actions as part of its Work Stream 2:

1. Develop a document that clearly describes the role of ICANN staff vis-a-vis the ICANN Board and the ICANN community. This document should include a general description of the powers vested in ICANN staff by the ICANN Board of Directors that need, and do not need, approval of the ICANN Board of Directors.
2. Consider the creation of a Code of Conduct, transparency criteria, training, and key performance indicators to be followed by Staff in relation to their interactions with all stakeholders, establishment of regular independent (internal + community) surveys/audits to track progress and identify areas that need improvement, establish appropriate processes to escalate issues that enable both community and staff members to raise issues. This work should be linked closely with the Ombudsman enhancement item of Work Stream 2.

## 5C.3 SO/AC Accountability

As new institutional arrangements increase community powers in ICANN, legitimate concerns arise regarding the accountability of the community (organized as SOs and ACs) in enacting those powers. In other words, “Who watches the watchers?”.

In response to these concerns, the CCWG-Accountability divided its work into the following steps:

- Identify the existing accountability mechanisms in place for SO/ACs.
- Review existing mechanisms in order to assess whether and how they address the concerns expressed by the community during the first public comment period.
- Build a list of steps to enhance SO/AC accountability that should be taken respectively in Work Stream 1 and Work Stream 2.

The reviewed documents were:

1. [ICANN bylaws](#)
2. [The Affirmation of Commitments](#)
3. [ATRT 1 recommendations](#) and [ATRT 2 recommendations](#)



4. Operational rules and procedures of the various SOs/ACs <https://community.icann.org/download/attachments/53782997/final-recommendations-31dec13-en.pdf?version=1&modificationDate=1435911871000&api=v2>

A first review of existing ICANN documentation shows that the provisions that oblige SO/ACs to be held accountable to their constituents or the larger internet community with regards to their actions, decisions or advice, are limited in number and scope.

An inventory of existing accountability mechanisms shows that documents reviewed include the following mechanisms:

### **Affirmation of Commitments (AoC)**

The Affirmation of Commitments includes some key commitments that while oriented to ICANN as an organization, they should also be seen as applicable to the SO/ACs that form the wider ICANN organizational structure as defined in its bylaws.

The identified mechanisms or criteria in the Affirmation of Commitments by which SO/ACs should conduct their work in relation to the DNS are: paragraph 3 and paragraph 9.

### **Accountability and Transparency Reviews**

The Accountability and Transparency Reviews have made no direct recommendations with regards to SO/AC transparency or accountability.

### **Bylaws**

ICANN bylaws state that each SO/AC shall establish its own charter and procedural documents. Further research needs to be done at SO/AC level to verify existing accountability mechanisms put in place for each SO/AC.

It is also important to review whether SO/ACs should be added to specific sections in the Bylaws as subject to provisions applicable to ICANN as a corporation. For example, it should be reviewed and discussed if Core Values should be applicable not only to the corporation's actions but also to the SO/ACs activities.

### **Recommendations**

Having reviewed and inventoried the existing mechanisms related to SO/AC accountability, it is clear that current need to be enhanced in light of the new responsibilities associated with the Work Stream 1 proposals. The CCWG-Accountability recommends the following steps:

1. **As part of Work Stream 1 proposals:**

- Include the review of SO and AC accountability mechanisms into the independent periodical structural reviews performed on a regular basis. These reviews should include consideration on the mechanisms that each SO/AC, as the case may be, has in place to be accountable to their respective Constituencies, Stakeholder Groups, Regional At-Large Organizations, etc.
  - This recommendation can be implemented through an amendment of Section 4 of Article IV of the ICANN Bylaws, which currently describes the goal of these reviews as:
    - *The goal of the review, to be undertaken pursuant to such criteria and standards as the Board shall direct, shall be to determine (i) whether that organization has a continuing purpose in the ICANN structure, and (ii) if so, whether any change in structure or operations is desirable to improve its effectiveness.*
- 2. As part of the Work Stream 2 proposals:**
- The subject of SO/AC accountability should be included in the purview of the Accountability and Transparency Review process as part of Work Stream 2 working plan.
  - Evaluate the proposed “Mutual Accountability Roundtable” to assess its viability and if viable, and undertake the necessary actions to implement it<sup>5</sup>.
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- Carry a detailed working plan on enhancing SO/AC accountability as part of Work Stream 2.
  - Assess whether the Independent Review process would also be applicable to SO/ACs activities as well.

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<sup>5</sup> CCWG-Accountability Advisor Willie Currie introduced a short description of the concept as such:

*The idea of mutual accountability is that multiple actors are accountable to each other<sup>5</sup>. How might this work in ICANN? It would be necessary to carve out a space within the various forms of accountability undertaken within ICANN that are of the principal-agent variety. So where the new community powers construct the community as a principal who calls the Board as agent to account, a line of mutual accountability would enable all ICANN structures to call one another to account. So one could imagine a Mutual Accountability Roundtable that meets at each ICANN meeting, perhaps replacing the current Public Forum. The form would be a roundtable of the Board, CEO and all supporting organizations and advisory committees, represented by their chairpersons. The roundtable would designate a chairperson for the roundtable from year to year who would be responsible for facilitating each Mutual Accountability Roundtable. Each Roundtable may pick one or two key topics to examine. Each participant could give an account of how their constituency addressed the issue, indicating what worked and didn't work. This could be followed by a discussion on how to improve matters of performance. The purpose would be to create a space for mutual accountability as well as a learning space for improvement.*