<u>**India's Comments on**</u>

CCWG-Accountability 2nd Draft Proposal on Work Stream 1

****

India appreciates the work of Cross Community Working Group on Enhancing ICANN Accountability ("CCWG") for its efforts in coming up with this second Draft Report ("CCWG Draft"). The objective of the proposal to empower the multistakeholder community through Sole Member of ICANN is a right step in the overall proposal of multistakeholder community based Internet Governance.

2.   The draft proposal of CCWG broadly identifies four principles: (a) Bylaws, (b) an empowered community, (c) accountability of the ICANN Board of Directors, and (d) independent appeals and review mechanisms.

3.   With respect to community empowerment, it is recognized that the earlier proposal in this regard, in particular both forms of the 'Empowered SO/AC' Model ('Membership' and 'Designator') were practically not in order. The 'Community Mechanism as Sole Member' model that is reflected in the current CCWG Draft is an improvement over the earlier proposal. However, this is a new legal model to establish Community Mechanism as the Sole Member of ICANN and has not been judicially tested. There is thus a need for legal clarity for sustainability and robustness of the Model. It would be important to evaluate and attempt to quantify some of the legal risks posed by way of adoption of this model, including but not limited to legal challenges mounted by Communities against such a structure. The

framework must therefore provide for a review of the provisions and flexibility to fine tune and remove difficulty in the light of experience gained over a period.

4.   The establishment/designation of 'fundamental bylaws' may be the right step, since it would help protect the operating ethos of ICANN from repetitive amendments.   However, the specific bylaws which would be designated 'fundamental bylaws' requires careful consideration, particularly in respect of provisions such as existing ICANN Bylaws Article XVIII Section 1 dealing with 'headquarters', to ensure that only the most essential characteristics of ICANN are included. CCWG-Accountability proposal must provide for jurisdictional rights of the respective countries in respect of ccTLDs and other domains. The ICANN byelaws should be amended to include necessary provisions in this regard.

5.   One of the most important aspects as to who will authorize changes in Root Zone File post NTIA stewardship transition, remains unaddressed in the proposal. Despite jurisdictional issue getting highlighted by many individuals during the discourse in the communities, these are excluded in the current draft proposal. The community efforts are leading to a proposal that can be deemed satisfactory to ICANN Board and NTIA, not necessarily to a proposal for the benefit of majority of global multistakeholder community, whose interests should be paramount. While the current proposal makes provision for five new community powers, there is no provision for empowering community to have any control over Root Zone Management Process.

6.   There is a risk that if ICANN will be funding the review panel directly, then the IRP might be biased in its findings. Independence may be impacted even after limiting the term to the maximum of five years. As reflected in previous comments to the Government Advisory Committee (GAC), such financial dependence might affect the true independence of the panel.

7.   It is imperative that Work Stream 2 proposals are pursued and implemented, since they are concerned with fundamental issues of concern to the global multistakeholder community. Appropriate steps must be taken to ensure that ICANN implements the Work Stream 2 proposals within the agreed time. The recommendation that a transitional bylaws be included, which commits ICANN to the implementation of the CCWG-Accountability recommendations on Work Stream 2, is strongly supported.

8.   The additional stress test relating to 'barriers to entry' (Stress Test #34) is important and required additional focus. In order for ICANN to accurately reflect the views of the multistakeholder community, there must be a sustained focus on barriers to entry which mean that formal inclusion does not always translate to substantive inclusion. Active steps must be taken to ensure substantive inclusion of stakeholders (whether through existing SO/ACs or new ones), while keeping in view diversity of languages and regions.

*****