AFRALO Statement on the CCWG report
4 September 2015

We, the AFRALO community members, have reviewed the second report of Cross Community Working Group on enhancing the ICANN accountability (CCWG) put for public comment and would like to congratulate the CCWG for the huge amount of work undertaken in a so short time, and the great improvement in comparison with the first report. Nevertheless, we still have remarks to make about this proposal:

Section 5: Independent review Process

- The "IRP sub-group" is mentioned repeatedly in this section, while no definition (composition, mission, term, etc.) of this subgroup is provided.

- Timeline for IRP: The period of time for complainants to file their complaint and the total period of time for the IRP to issue its final report should be clearly fixed, and not left for further decision. This is to avoid any possible gaming, unpredictability, corruption or other unfair result of the IRP.
  - The time for the complainants to file their complaint should be not be less than 15 days and not longer than 30 days from becoming aware of the alleged violation and how it allegedly affects them. We propose 30 days to give the affected parties enough time to file their complaints properly.
  - The total period of time for the IRP to publish its final report should be fixed. We propose an initial deadline of 3 months (as it is now), and an extension for a period not longer than 3 other months in case of unexpected events. In any case, the total period of time for the IRP to issue its final report should not exceed 6 months from the filling of a complaint.

- Paragraph 5: We do support that, to the extent permitted by law, IRP decisions should be binding on ICANN, but we would like to emphasize that those decisions should only be about whether the ICANN action (or no action) does comply with ICANN's Articles of Incorporation and/or Bylaws. In any case, it shouldn't issue corrective decisions, but decisions to override the ICANN action (or no action) that the board is obliged to accept and revise its decision accordingly. The corrective decisions are the sole right of the ICANN Board.

- Paragraph 12: We believe that the last part of the following sentence is not clear enough: "Reasonable efforts will be taken to achieve cultural, linguistic, gender, and legal tradition diversity, with an aspirational cap on number of panelists from any single region". We propose to modify it in the following way: "…with aspirational cap on not more than 2 panelists from the same region".

- Paragraph 14-c: it is not specified how the community would nominate a slate of proposed panel members.

- Paragraph 17: Our understanding is that the Community, assisted by legal experts and the members of the first standing IRP members would draft, issue for public comment and revise the rules of procedure for the IRP (as clearly mentioned in 14-b) that would be approved by the ICANN Board. These rules would be subject to periodic review by the same process.

Section 6: Community Mechanism as Sole Member Model

- Paragraph 345-346: We appreciate that absolute threshold is used for vote counting as mentioned in paragraph 345, as well as considering the no votes as abstentions. Nevertheless, we believe that non participation shouldn't be counted as an abstention, and should be removed from the total number of electorate. They would be automatically added as soon as they recover their right of participation.

- Paragraphs 348 to 358: Even if the community forum would make no decisions, it couldn't be considered as informal or optional. It is a fundamental element of the process and must be an official and mandatory part of the exercise of the community powers. This will not add more complexity, but will better channel the community discussion prior to any final decision.

Section 7: Community powers

- Paragraph 374: When a petition is issued triggering the discussion and the decision making process about the exercise of the community power, a discussion period among the community is started; it might have one of the 2 following results:
  - The party(ies) that issued the petition withdraw it: there is no further action to do and the power will not be exercised
  - They don't withdraw the petition and the decision making period starts

- Paragraph 378: We recommend that in no circumstance should overall budget veto be allowed but certain parts of the budget can be vetoed when necessary without delaying execution of the other parts.

We have big concerns about the rejection of budget items concerning a particular SO or AC by the community. We believe that the board who has the responsibility to balance the needs and priorities among the various ICANN constituencies should continue to do so.

- Paragraph 406-407: Removal of individual ICANN Board Directors: We reiterate our concern about the appointing SO/AC being the sole remover of the director, which will make the Board directors more focused on the narrow interest of the SO or AC that appointed them than on the global public interest and the interest of the organization as a whole.

The discussion in the community forum prior to the decision of removal, with the obligation for the considered SO or AC to explain why they want to remove the director and the ability for the considered Director to defend him/herself is a great improvement that made us accept to live with the proposal. Absent this discussion with all its details in the final proposal, or considering it as an informal or optional process, AFRALO will strongly object to this power exercise.

- Paragraph 410-411: Replacing a removed Board Director: When an SO or AC decides to remove its director, they are responsible for replacing him/her using the same appointing procedure. The process of appointing a director by an SO or AC takes several months (for example ALAC needs 5 months).

We propose that a director removed 8 months prior to the end of his/her term is not replaced because if we add a minimum of 3 months adaptation for the replacement director to the selection period (several months), we will reach the end of his/her term.

- Paragraph 415: We think that to recall the Entire ICANN Board, at-least one SO and one AC should be required to sign a petition to trigger the process.

- The whole section 7: In the whole process of exercising the community powers (petition, discussion and decision making), the person or party who will coordinate those phases is not identified. We propose that a person be identified to be the official coordinator of the processes; for the implementation of the community powers' exercise, he/she liaises with the Board and staff, receives the petition, checks its validity, invites the community forum to meet,

communicates the result of each phase, fixes the timelines according to the bylaws stipulation, etc. This person might be the community forum chair (selected by the different SOs and ACs), or any other community selected person.