Comments of the ccNSO Council on the Bylaws Amendments and Documents to Implement the NomCom2 Review

Introduction

The Country-Code Name Supporting Organization (ccNSO) Council welcomes the opportunity to provide a response and input to the proposed Bylaws Amendments and Documents to Implement the NomCom2 Review. This response and input reflects the views of the ccNSO (Council) and was adopted as such in accordance with the Guideline: ccNSO Statements (2016)[1].

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[1] https://ccnso.icann.org/sites/default/files/filefield_47783/guidelines-statements-30mar16-en.pdf

On the introduction of "Unaffiliated" Directors (Section 7.2 & 7.4)

It is the understanding of the ccNSO Council that "unaffiliated" Directors are suggested to effectuate recommendation 27 from the Independent Reviewer and the related suggestions from the Nominating Committee Review Implementation Working Group.

The ccNSO Council fully supports the recommendation of the reviewer that NomCom appointees are expected to be independent and prioritize the interests of the global Internet community in their decision making.

It is the view of the Council that this reflects the intent behind the creation of the NomCom in 2002 (see ICANN: A Blueprint for Reform https://archive.icann.org/en/committees/evol-reform/blueprint-20jun02.htm**).**

The purpose of the Nominating Committee is to select Directors and other individuals as otherwise described in the applicable sections of this document, and who conform to the criteria in those sections. The purpose of NomCom selections is to balance the representative selection of other Directors and positions to ensure that ICANN can continue to benefit from participants in the ICANN process (Directors or otherwise) of the highest integrity and capability who place the public interest ahead of any particular special interests, but who are nevertheless knowledgeable about the environment in which ICANN operates.

This implies a NomCom composed both of persons deeply involved with the various constituencies of ICANN and also of persons knowledgeable but less directly involved. One of the underlying principles of the NomCom is that its very functional and geographic diversity would tend towards selection of Directors and persons filling other positions who are broad in outlook, individually and as a group, and not beholden to particular interests.

To ensure that independent views are taken into account by the ccNSO Council, the Council has developed a set of specific requirements for NomCom appointees to the ccNSO Council in 2008, and which have evolved over time (latest version https://ccnso.icann.org/sites/default/files/field-attached/nomcom-appointee-specific-requirements-18dec20-en.pdf). Over time this set of requirements have proven to be very helpful in maintaining a balanced, knowledgeable Council with a broad outlook.

The ccNSO Council appreciates that the role of the ICANN Board of Directors should not be compared with the role and responsibilities of the ccNSO Council. However the ccNSO Council believes that the proposed changes to introduce "unaffiliated" Directors as proposed, might be too onerous on the Nomcom and related parties.

We suggest that to give direction to NomCom on the nomination of independent directors (as originally envisioned when the NomCom was created) a section will be introduced in the Nominating Committee Operating Procedures to provide guidance to the Nomcom on appointment of directors. This would in our view not require a specific condition in the Bylaws to appoint at least a limited number of the category of "unaffiliated" Directors. Ultimately, if this proves not to result in the intended goal of appointing more "independent" directors, a Bylaw change could again be considered.

On transforming all NomCom delegates into voting delegates (section 8.2)

The ccNSO Council believes that the proposed amendment should be introduced only if there is a clear support for the change of role by the relevant Advisory Committee (GAC, SSAC, RSSAC). If the amendment is not supported, the change for the specific Advisory Committee should not be considered.

On change of Terms on NomCom appointee (section 8.3)

The ccNSO is generally supportive of the proposed extension of the term of the appointee to the NomCom. A two-year period seems to be appropriate. Further, the Council is supportive of the possibility to serve two terms maximum on the NomCom. However the Council believes that it should be up to the appointing organizations, whether they allow the appointee to serve two consecutive terms or with a minimum of two years between the end of their first term and the beginning of the second term. The Council believes that the appointing organizations and their respective communities are best positioned to assess the optimal duration to serve on the Nomcom, factoring considerations as continuity, institutional power..

Secondly, the ccNSO Council is aware that ICANN has launched a discussion on the composition of the NomCom. Although as said we are in general supportive of the proposed change, we also believe that this proposed amendment preempts the outcome of this "re-balancing" discussion. If this amendment was adopted and re-balancing was subsequently agreed upon, implementation of the highly needed re-balancing would be made more complex and take additional time as some members would be in their first year of appointment.

On the inclusion of the NomCom Standing Committee (section 8.7)

The ccNSO Council appreciates the suggestion to create a body that will ensure greater continuity and alleviate the burden on NomCom and the already tight timelines. This being said the Council also believes that this would be better achieved by starting with a light-weight structure with a more focused mandate. If the formation of the Standing Committee would prove to be a success, by achieving the goals that were set out when it was established, the mandate of the committee could be expanded. In our view

Recommendation 24 of the Independent reviewers does provide such a lightweight mandate. The independent reviewer recommended to form an empowered body *"to ensure greater continuity across NomComs, and in particular, to suggest and assist in implementing changes to NomCom processes."*

On the change to Section 12.2

It is the understanding of the ccNSO Council that the RSSAC requested a change to section 12.2 of the Bylaws. Accordingly, members of RSSAC would no longer be appointed by the ICANN Board.

The ccNSO Council reluctantly expresses some concern about the proposed change. By removing the appointment by the Board, with no other mechanism in place, it is unclear to us (and we assume to the wider community as well) who is eligible to become part of RSSAC and how? We appreciate that RSSAC is changing and these changes will be reflected in the Bylaws in time.

It is our understanding that such an amendment would avoid potential cooptation: a person appointed by RSSAC becomes a voting member of NomCom, this person would vote on the nomination of a Board member, who in turn would appoint members to RSSAC.

In addition, we note that although section 12.2 (c)(ii) and section 12.2 (b)(ii) are currently the same: The SSAC's/RSSAC's chair and members shall be appointed by the Board. Before making the change as requested the ccNSO Council would appreciate the need for the change to section 12.2 (c)(ii) and not to change 12.2 (b)(ii).

We hesitantly suggest that, before becoming a voting member of the NomCom, both the mechanism of section 12.2 (b) and (c)(ii) should be amended to include an alternative mechanism to appoint members to SSAC and RSSAC.

On the NomCom Standing Committee Charter

According to the proposed charter the purpose of the NomCom Standing Committee is to:

- Support continuous improvement to the NomCom Operating Procedures and associated processes to increase the effectiveness and efficiency of the NomCom while enhancing the NomCom's transparency and accountability to the overall ICANN community.

- Provide continuity across annual NomCom cycles and to build the institutional memory of the NomCom.

The Council notes that the purpose statement provides elements that are not directly related to the recommendation of the independent reviewer, and at a minimum will need further explanation and discussion in this context, as they are not detailed in the proposed charter and lend themselves to different interpretations. These elements are:

- Continuous improvement – It is unclear whether this would refer to the continuous improvement framework to be developed by the community as suggested by ATRT 3 or to some other method. In section VIII of the proposed charter Review and Continuous Improvement this element is not detailed either.

- "effectiveness and efficiency of the NomCom" – The Council appreciates the goal to be effective and efficient, but notes the objective may be in conflict with the goal of the NomCom, which is responsible for nominating Board members and others in leadership positions.

- "enhancing the NomCom's transparency and accountability to the overall ICANN community." – This part of the purpose statement is again not aligned with the recommendations of the independent reviewer. We understand that section VII is intended to detail Accountability and Transparency. However we believe that the proposed mechanisms do not measure up to the method the reviewers recommended. Any suggestion should be provided to the ICANN Community for public comment, which in our view is a fundamental feature to build trust in the NomCom Standing Committee and in the view of the Council this suggestion is not included in the Charter of the NomCom Standing Committee.

Further, the purpose of the Committee is further refined by the scope of responsibilities. Accordingly, the Standing Committee is expected to:

Provide continuity across annual NomCom cycles - In cooperation with the relevant ICANN staff the Committee is expected to standardize the work across NomCom cycles, such as planning, documenting and review of the NomCom's processes.

Further, the Standing Committee is also charged with participating in ICANN's annual budget and planning processes on behalf of the NomCom.

With respect to this activity by the use of the wording "in cooperation" it is unclear to the Council whether the staff has a supporting role or a more independent role, with respect to this activity, including, but not limited to the participation of the committee in ICANN's annual planning processes.

The ccNSO Council appreciates the need to provide adequate staff support and other resources to the NomCom. As such the Council notes that according to section 8.6 of the

ICANN Bylaws ICANN "shall provide administrative and operational support necessary for the Nominating Committee to carry out its responsibilities." The Council also understands the need for participation of the NomCom annually in the planning processes to ensure adequate resourcing for the NomCom. However, the Council believes that the Standing Committee and/or the NomCom has no role in other areas of the budget and this should be clarified.

Build the institutional memory of the NomCom - In collaboration with ICANN org NomCom support staff, the NomCom Standing Committee will be responsible for reviewing, assessing, and providing input on the website and systems used for maintaining a historical archive for processes and procedures used by the NomCom.

The ccNSO Council supports such a role for the Standing Committee.

The NomCom Standing Committee engagement with ICANNorg - In fulfilling its purpose and responsibilities with ICANN org NomCom support staff, especially with regard to the review of each NomCom cycle, the NomCom Standing Committee will work in consultation with ICANN org NomCom support staff to help assess the previous NomCom cycle.

To the extent this activity enhances processes, and alleviates the work of the NomCom and reduces the time pressure, the ccNSO Council is supportive. However, again it is noted that some elements under this activity are open for interpretation, particularly the work items under d) and e).

The NomCom Standing Committee Role with Respect to Bodies That Appoint Delegates to the NomCom - In fulfilling its purpose and responsibilities, the NomCom Standing Committee will be available to provide information/guidance to bodies appointing delegates to the NomCom regarding the diversity needs, in line with the ICANN community agreed upon definitions and goals for diversity considerations.

It is the understanding of the Council that to date the ICANN community definitions and goals for diversity considerations, have not been defined, nor been agreed upon. In addition, it is our understanding that – although important - diversity criteria are not included as a requirement for bodies appointing delegates to the NomCom. Therefore the ccNSO Council does not understand the need to include this already in the charter.

Finally this Standing Committee should have a more explicit name to avoid confusion with the Nominating Committee itself, for example: NomCom's Improvement & Continuity Standing Committee.