Introduction:

On 14 March 2014 the National Telecommunications and Information Administration (NTIA) announced its intent to transition its stewardship of the Internet Assigned Numbers Authority (IANA) functions and related root zone management to the global multistakeholder community.

This transition means many issues that currently affecting ICANN's operations must be clearly refined and defined both in the bylaws and all treaties that will mandate the long term running of a functional and operational overseer and custodian of the internet names and numbers.

ICANN's past has faced many question relating especially to the accountability of the organization, some users of ICANN's services and especially the new gTLD applicant have faced many issues as regards a fair and just handling of the issues that cover accountability and transparency. As such ICANN's need for accountability and transparency in all its activities cannot be over stated.

The need for independence must also be accompanied by proper structures and mechanisms to address accountability of Board and staff in equal measure.

ICANN must therefore allow an independent and separate accountability and transparency body to be created to manage the issues that arise from actions or inactions of the Board and/or staff and any other contractor assigned specific duties in the day to day running.

Such accountability mechanisms need to touch on all spheres of ICANN including the ICANN budgets

DotConnectAfrica Comments

ICANN Supporting Organizations (SOs) and Advisory Committees (ACs) unincorporated associations.

The recommendation that ICANN Supporting Organizations (SOs) and Advisory Committees (ACs) would each form unincorporated associations, and through these associations would exercise the rights they would gain as a "Member" of ICANN.

It is important to formulate the membership criterions of the SO's and AC's so that there is accountability within them and this can translate into a better ICANN.

3.1 Revised Mission, Commitments & Core Values

With regards to current ICANN's bylaws as currently constituted, it needs a structural and language change since the current bylaws are skewed and weak and permits ICANN decision makers to exercise excessive discretion;

The Authority of ICANN's board especially ought to be redefined and roles properly addressed to enable the multistakeholder model to have a grip at all actions and justifications of the board actions.

The roles of the ICANN board as regard veto powers should be minimized to allow only a limited ability to change these key accountability provisions of ICANN's Bylaws.

Comments on section: Add the green highlighted text

> Employing open, transparent and bottom-up, [private sector led multistakeholder] policy development mechanisms processes that (i) seeks input from the public, for whose benefit ICANN shall in all events act, (ii) promote well-informed decisions based on expert advice to whom due diligence on conflicts of interest has been performed upon and (iii) ensure that those entities most affected can assist in the policy development process;

3.2 Fundamental Bylaws

Indeed the ICANN's Bylaws should be harder to change than others. These would be deemed Fundamental Bylaws; these identified sections of the bylaws should be well designated and marked.

The proposed increase of the voting threshold to 3/4 of votes in favour of the change (higher than the usual threshold of 2/3) Is acceptable, however the members of the board in question must also demonstrate their understanding of the proposals through proper study so that it is not just passed by vote without due considerations. The board members should be careful not to be just approvers of proposals; they must do so under justifiable and necessary means.

ICANN community input proposals cycles:

There I a need y the CCWG-Accountability to define the number of change proposals that can occur at a time in order to avoid the participant and the volunteer exhaustion and apathy that may have been witnessed in the current state.

The proposal should be set to reduce the number of PDP's and proposals to a certain minimum, this will enable the community to properly comment or respond diligently to the proposals.

The number of days allocated for comments must also be increased to ensure thorough input research.

4) Appeals Mechanisms

IRP Panel: The Independent review process is a very important redress mechanism for the users of ICANN's services; the ICANN's existing Independent Review Process (IRP) could be having some limitations as have been identified by the panels that are currently handling different IRP's of the new gTLD process.

The Independent Review Process (IRP) panels need to be more empowered to be able to do its duties as an independent yet judicial mechanism that can propose or produce declarations without the fear of a veto by a disagreeing ICANN Board.

The IRP Panels ought to feel well empowered to perform it duties transparently and with the confidence that a resulting ruling will carry the day. Therefore it is important that the rulings from the IRP are binding rather than merely advisory.

On accessibility, applicants have shied away from accessing these services due to the expensive nature of the IRP. Thus the IRP should be made more be accessible, both financially and from a standing perspective, transparent, efficient. Therefore the burden of the legal fees would be on ICANN

Results from the IRP should not make ICANN to immunize or insulate itself more to 'WIN' in future rather it should take into account the recommendations of the IRP panels and be used to enrich the operation of ICANN in the foreseeable future.

The time limits set for filing IRPs should be extended to at least 9 months from the date of the decision that is being challenged, having taken into account the additional (elapsed) time expended on Reconsideration and Cooperative Engagement Processes (CEP). The point is that delays in preliminary/exploratory processes might affect a final decision to institute an IRP, if the preliminary processes prove unsatisfactory, and time limitation should not stop an aggrieved party from seeking accountability through the IRP procedure.

Since the purpose of an IRP is to contest ICANN board or staff actions against policy, an IRP should focus really on accountability and should not be dismissed on a flimsy technicality. An adjudicating IRP Panel should allow a plaintiff to re-file or amend an IRP filing if it is deemed to have been filed incorrectly.

An IRP Panel should be able to determine financial claims and damages and make such awards accordingly.

A party that institutes an IRP against ICANN should also be allowed to exercise the option of seeking redress and relief in a regular court of Law within the judicial system if the IRP is seen as restricted. The overall aim is to seek justice for any wrongful action.

Composition of Panel; Expertise:
Most of ICANN's activities are rendered by volunteers, however there is need for significant training for anybody deemed fit to offer a consultancy or legal expertise, particularly international arbitration expertise and expertise, developed over time, about the DNS and ICANN's policies, practices, and procedures.

Anyone who renders advisory services to ICANN that shall be admitted as evidence or expert must be able to understand the operations of the DNS to be able to provide relevant and actionable advice.

A Standing IRP Panel should not be normative. Each IRP Panel should be constituted afresh for any IRP to ensure that the neutrals are not influenced to take the details and procedures of a particular IRP proceeding and use that in trying to decide a different IRP Process.

Reconsideration Process Enhancement

Composition of the Board Governance Committee and the NGPC must be different to provide fairness and rationale in the decision making.

Any outcome for reconsideration request should be reviewed by an independent group to ensure that the same group that made a decision that is being challenged, for which a reconsideration request is sought, are not the same group that will look into the reconsideration and adopt/ratify the earlier decision that they made. A group cannot keep or ratify/approve its own counsel.

Improvement of the transparency mechanisms will play a big role in determining the fairness of decisions made. Thus recordings / transcripts should be posted of the substantive Board discussions on the option of the requester.
It will be acceptable to also provide a rebuttal avenues and opportunity to the BGC's final recommendation (although requesters can't raise new issues in a rebuttal) before the full Board finally decides.

Section 5.2 Power: reconsider/reject budget or strategy/operating plans

The community should be allowed to be fully included in any discussions especially regarding the regions they come from, in the past, ICANN leadership has been seen to side with some stakeholders while alienating others yet they come from the same region and share interests.

ICANN must maintain impartiality and promote inclusivity in all budget or strategy/operating plans proposals

There should be provisions in the By-laws that should stop ICANN from committing funds to any new initiative that was not envisaged in the budget. For example, a US$200,000.00 was donated to the NETMundial initiative. Chances are that this sum of money that was given pas a subvention to NMI was not budgeted.

QUESTIONS AND OPEN ISSUES:

207 11a) Do you agree that the power for the community to reject a budget or strategic plan would enhance ICANN's accountability?

YES

Moreover, the community should also have the power to veto or approve any plans to scrap an on-going strategic planning process.

5.5 Power: Removing individual ICANN Directors

Recommendation: Add a clause to allow individuals to be able to lodge valid complaints about a particular board member (s), then this can be viewed by the petition of at least two of the SOs or ACs (or an SG from the GNSO).

The creation of a separate special committee of the NomCom to deal with removal petitions when they arise will be a viable proposition since it allows each special committee to be appointed on case by case then disbanded when a closure of a removal petition is finalized

There should also be a provision that enables a Standing Community Group to investigate any Conflict of Interest allegations against Board members, and the Standing Community Group to determine whether or not such alleged Conflicted Board members should be made to recuse themselves on a pertinent (or particular) Board issue. Conflicted Board members who fail to recuse themselves should be voted out from the ICANN Board.

7.2 Require consultation and mutually acceptable solution for GAC advice that is backed by consensus

GAC should change its Operating Principles to add a requirement to formulate a workable format for managing its own transparency and accountability, the issues such identification of conflict of interest are very important in determining the resultant GAC advice to the board

The board should also be able to review the merits of GAC advice and respond appropriately and not just find a mutually agreeable solution only on advice that had GAC consensus.

There should be a provision in the GAC Principle to ensure that at least seventy per cent of the voting members of the GAC should be physically present at a GAC meeting to achieve a Consensus advice.

There should be a provision that a Consensus GAC Advice should not be accepted as a 'sudden death scenario' but a Board-level Committee should actually demonstrate that it has diligently looked into a GAC Advice Response on a point-by-point basis before deciding whether to accept a GAC Advice. This would prevent the Board from summarily rejecting any GAC Advice Response without proper examination of the issue under consideration.