

THE POSITION OF NURSES ACROSS THE BORDERS TO THE ALAC ALS MOP WP REVIEW AS IT RELATES TO THE PROPOSED ALS ACCREDITATION PROCESS AS AN ALS TO ALAC AND MEMBER OF THE ALS MOP WP

Introduction

Fellow members of the Empowered Community and the ICANN family.

This document is our position as it concerns the above subject matter. I must remind the members of the ALS MOP WP that I am sharing this document to the MOP WP directly in their emails and the AFRALO mailing list because the issues and the proposals contained in the document for review concerns the largest and most powerful section of the ALAC community; as such, because of the far reaching proposals if not openly debated and discussed, a lot within the WP and the RALOs may be wrongly influenced to sign up to what may even hurt them in the future, when they realized they have been misled by a section of the community with an agenda. (See Section 1.2.(a)iv, ICANN Byelaws: ***Employ open, transparent and bottom-up, multi-stakeholder policy development processes that are led by the private sector (including business stakeholders, civil society, the technical community, academia, and end users), while duly taking into account the public policy advice of governments and public authorities. These processes shall (A) seek input from the public, for whose benefit ICANN in all events shall act, (B) promote well-informed decisions based on expert advice, and (C) ensure that those entities most affected can assist in the policy development process;***). Secondly, not very few of the ICANN family have taken time to familiarise themselves with the ICANN Byelaws which should be the 'bible' of our operation within ICANN. As a result I shall rely copiously on relevant sections of the Byelaws to support our position in this document.

There are TWO documents attached to this email-First, the draft ALS ACCREDITATION PROCESS PROPOSAL that was shared on Google and this very document elaborating on our comments in the former document.

Permit me if you will, to ask the following questions: **(they may have been answered, we do not think we are satisfied)**

1. What informed this very review process in the first place?
2. What was working well with the process in review?
3. What is/was not working well with the process in review?
4. If some areas within the process in review did not work well, does it warrant this elaborate and expansive review that has taken the shape of an **Assizes**?
5. Why would the ALSs not be availed the opportunity to review the draft of this WP before going to ALAC for approval?
6. If ICANN is to **Employ open, transparent and bottom-up, multi-stakeholder policy development processes... and (C) ensure that those entities most affected can assist in the policy development process;**- See Section 1.2.(a)iv, ICANN Byelaws, why then would this review process be made a top-bottom instead of the other way round? Or better still why would the ALSs not have a say in its review before ALAC consideration of our job?

These were and are still our concerns because the fervour and enthusiasm being manifested by the WP leadership on this review, even to proposing a consideration OUTSIDE of the existing policies and practice of ICANN like **allowing an application from an ALS that has no region to be admitted into ICANN** to me is worrisome. Note that, majority of the members of the WP do not belong to any ALS nor have some been members of an ALS in the past. They came into ICANN as individuals and rose to their positions. One can now see why some of the proposals being made do not have bearing on

them, because they stand to lose nothing at the end whichever way the pendulum swings.

Nothing about us without us is apt in this setting. For any meaningful achievement from this review to stand the test of time, it must include the inputs of those to be affected by the review or policy.

POINTS OF OBSERVATION IN THE PROPOSAL AS THEY RELATE TO THE ICANN BYELAWS

1. The drafters of the ICANN Byelaws foresaw a situation like is playing out now in the WB when they laid the foundation of ICANN's structure and activities on Section 1.2 (a) iii, iv, v under **Commitments and Core Values**. These provisions I would implore every member of the WP and other stakeholders reading this document to read and reflect on this as it relates to their decisions in reviewing the ALS activities. For ease of reference, I have copied these sections hereunder:

*1.2 (a) **Commitments:** In performing its Mission, ICANN must operate in a manner consistent with these Bylaws for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and international conventions and applicable local law, through open and transparent processes that enable competition and open entry in Internet-related markets. Specifically, ICANN commits to do the following (each, a "**Commitment**," and collectively, the "**Commitments**"):*

(a) iii, Respect the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to matters that are within ICANN's Mission and require or significantly benefit from global coordination:

iv, Employ, open, transparent and bottom-up, multistakeholder policy development processes that are led by the private sector (including business stakeholders, civil society, the technical community, academia, and end users), while duly taking into account the public policy advice of governments and public authorities. These processes shall (A) seek input from the public, for whose benefit ICANN in all events shall act, (B) promote well-informed decisions based on expert advice, and (C) ensure that those entities most affected can assist in the policy development process:

v, Make decisions by applying documented policies consistently, neutrally, objectively, and fairly, without singling out any particular party for discriminatory treatment (i.e., making an unjustified prejudicial distinction between or among different parties):

1.2 (b) under **Core Values**

i, To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of, other responsible entities that reflect the interests of affected parties and the roles of bodies internal to ICANN and relevant external expert bodies:

vi, Introducing and promoting competition in the registration of domain names where practicable and beneficial to the public interest as identified through the bottom-up, multistakeholder policy development process:

vii, Striving to achieve a reasonable balance between the interests of different stakeholders, while also avoiding capture; and **at the rate the WP is going and if the lines of proposed changes are allowed, it will negate the principle of achieving reasonable balance between interests of different stakeholders. What is staring us now is a CAPTURE MENTALITY.**

Furthermore, section 1.2.(c) summarises the importance of both the commitments and core values, take specific notice of the underlined portion of this core value: *The Commitments and Core Values are intended to apply in the broadest possible*

range of circumstances. The Commitments reflect ICANN's fundamental compact with the global Internet community and are intended to apply consistently and comprehensively to ICANN's activities. The specific way in which Core Values are applied, individually and collectively, to any given situation may depend on many factors that cannot be fully anticipated or enumerated. Situations may arise in which perfect fidelity to all Core Values simultaneously is not possible. Accordingly, in any situation where one Core Value must be balanced with another, potentially competing Core Value, the result of the balancing must serve a policy developed through the bottom-up multistakeholder process or otherwise best serve ICANN's Mission. **To what extent would the current review serve ICANN's best interest different from what is currently operational? Where is the application of the 'bottom-up' process if ALSs would await ALAC decision before it can make inputs (if at all) into our current review?**

Suffice to mention also, that Section 3.1 vehemently reinforced the need for transparency when it stated as follows: *ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness, including implementing procedures to (a) provide advance notice to facilitate stakeholder engagement in policy development decision-making and cross-community deliberations, (b) maintain responsive consultation procedures that provide detailed explanations of the basis for decisions (including how comments have influenced the development of policy considerations), and (c) encourage fact-based policy development work. ICANN shall also implement procedures for the documentation and public disclosure of the rationale for decisions made by the Board and ICANN's constituent bodies (including the detailed explanations discussed above).*

The above to us should form the fulcrum of any policy review. The WP as far as we are concerned by the body language of its current leaders are diametrically opposed to the above standards. For example, at the meeting of Monday May 18,

2020, the Chairman of the WP was very clear, when he stated that the **ALSs would not have the opportunity for inputs or sighting the draft of the WP before it is submitted to ALAC**. That is not bottom-up policy formulation, nor is it transparent. Let us be very clear that, most of the leaders in this WP were never members of any ALS, as stated earlier, and they have at various times benefitted from ICANN in ITS BEST OF TIMES, have remained in every leadership positions by gyrating from one committee to the other in the name of EXPERIENCE as was the response to me in Montreal during the General Assembly. **This to me is pure recycling and not experience**. This same behaviour is permeating every strata of the ICANN community in all the regions as anyone in a position of leadership after 4 years is not satisfied but would use that position to influence his/her choice for further roles. **If there must be review, it has to be on how to prevent the recycling of ICANN leaderships in its community as currently practiced. There must be tenure limits! There is no Empowered Community if we keep repeating the same thing to expect a different result**. Very soon, majority of these leaders would retire from active roles in ICANN because of the current reality as members are becoming restive. And when they leave, what legacy would they leave behind without **empowered successors instead of adopting successors based on blind loyalty?**

SPECIFICS IN THE PROPOSED DRAFT REVIEW

Flowing from the WP meeting on 18/5/2020, I raised concerns on the following proposed drafts, **Item 2: For Review**: the set of actions that is to be done under Due Diligence is too probing especially the item that stated: ***...verifying sources of funding***... ICANN or any of its constituents cannot exercise such powers when viewed against its Byelaws in **S12.2(d)vii** as the ALSs are SELF-SUPPORTING entities.

Item 3(a): We do not see the need for current RALO leadership to still constitute a 'Body' within a 'Body' known as "LARGER REGIONAL

LEADERSHIP” made up of ex RALO leaders. **This like breeding a collection of ‘Mafia-like -group’ that pulls the strings behind the curtain like a puppet show in the RALO.** Since these ex leaders would remain as members of their various ALSs or individual members of the RALOs, they could still made their contributions like any other ordinary members. Their roles ended with their tenures. **It is practices like this that breeds the recycling of leaders and constrict offices for the other members in the community stifle the leadership growth of the ‘next-generation-Generation Gap.**

Item 7: The role of ALAC in this regard is unnecessary. Once the At large staff has completed their DD and referred to the RALOs, and it is approved or accepted by the RALO, their recommendation should not be subjected to ALAC review for another 5 days!

The following observations were made directly inside the document and herein was/is our observations highlighted accordingly:

Decisions are made in accordance with the standard ALAC majority decision process as per ALAC RoP 12.2.1. **It is very interesting that the only section of the ALAC RoP referenced by the proponents of these changes was 12.2.1. What about section 12.2 (d) (vii), (viii), ix (E)?**

Decisions to accredit, or refuse to accredit, an ALS shall be subject to review as provided by the ICANN Bylaws, Section 4.2 Reconsideration. **Why would the proponents ONLY prefer that it is ONLY the decision of ALAC to accredit or refuse accreditation of an ALS that should be subjected to Section 4.2? That is a smokescreen, why not subject this entire review with its stringent conditions be subjected to Section 4.2? This, in fact, will be the consideration of most existing ALSs individually or collectively should ALAC go-ahead to adopt these measures being proposed as they are very draconian.**

The ALAC will notify the applicant of its accreditation decision, and, if applicable, provide information on requesting a review of the decision. In the case of a decision to not accredit, the ALAC, at the sole decision of the ALAC Chair, may include a rationale for the rejection. **Communication of official decisions to entities within ICANN should be the duty of the ICANN Staff not ALAC.**

Except as provided below under ‘Suspension of an Application’, the ALAC and the At-Large staff shall work concertedly to ensure that the process of reaching a decision to accredit, or not to accredit, an At-Large Structure shall normally take no longer than

ninety (90) calendar days from the date at which an application is received to the date at which the applicant is notified of the decision. Should it become apparent that this norm may not be achieved, the applicant shall be notified of the situation. ALAC should not overbear on the ICANN staff in performing their paid administrative duties. It will defeat the purpose of objectivity by the ICANN staff in performing DD because of undue influence by ANY MEMBER of ALAC with a vested interest. What is wrong with the present practice by the way

Note that under decisions to accredit or refuse to accredit...S4.2 of the ICANN Byelaw was the only section referenced. That is selective ‘redress,’ capitalizing on the ignorance of ICANN Byelaws by most the ALSs and other members of both the WP and the community. We would address this later on.

Suspension of an Application

An application for ALS accreditation may be suspended where:

1. The suspension is requested by the Applicant; or
2. Additional information is requested by ICANN Staff during the Due Diligence process; or
3. The RALO Secretariat of the region the applicant is based in determines that further information is required from the applicant which is essential to the evaluation of the application; or
4. Members of the ALAC believe that additional information is essential to the evaluation of the application Once, due DD has been performed and the RALO are satisfied with the applicant's meeting its standards as contained in its MOU and recommendation for approval made, ALAC should respect that recommendation. ALAC members are elected by the RALOs and such it is high-handed for ALAC to engage in scrutiny of a decision of the RALO especially when it was adopted by the consensus of the membership of the RAOL not just its leaders but members.
- 5.

Wherever an application is suspended under part 1 of this section, that suspension shall be lifted upon the request of the applicant.

When notifying the applicant of the additional information, it shall be obligatory to also notify the applicant that the application is suspended until the information is received.

An application that is suspended at the request of the applicant, or waiting for information from the applicant for more than 90 days shall be considered to be withdrawn.

QUESTION TO STAFF & WP: Are there cases where we may need to suspend an application other than to request new information? e.g. to get information other than from the applicant or due to the need for further evaluation? If so, how do we constrain the time required? I would suggest the time frame should be unify across any suspension reason

De-accreditation

An ALS may be de-accredited at the request of the ALS or by a decision of the ALAC.

1. If an ALS voluntarily decides to give up its ALS Status, the situation should be duly documented and the ALAC informed. ALAC Members may request additional investigation to ensure that the request is voluntary on behalf of the ALAC and may request that a formal vote of the ALAC be required. A simple majority in accordance with the ALAC RoP 12.2.1 is required.
2. A RALO may request de-accreditation of one of its ALSes. The rationale would normally include non-adherence to ALS minimum criteria, but other issues may be considered. The ALS must be given adequate opportunity to correct the problem(s), generally being given no less than 6 months to do so.
3. Any RALO action(s) in relation to ALS de-accreditation should be thoroughly documented.

A super-majority ALAC vote of the ALAC is required for such de-accreditation.

4. **ALAC Members may request de-accreditation of an ALS.** The RALO leadership must be consulted and given an opportunity to explain why it believes that the ALS accreditation should remain. In all other respects, the process followed for case 2 shall be followed. **Why would any member of ALAC be given the power to request de-accreditation of an ALS? Which section of the ICANN Bye laws is this proposal fulfilling? Remember what absolute power does? Someone who may not belong to the region of the ALS, not even a member of that RALO leadership, may because he does not like the way Pastor Peters is outspoken would wake up one day to put before the 15 wise men in ALAC the request to de-accredit his ALS. That is exactly what we are breeding. What criteria would the ALAC member fulfill before even contemplating such request?**

CONCLUSION:

Our conclusion shall be made by drawing attention to SOME very salient sections of the ICANN Byelaws that **should guide this WP and every other member when contributing to this draft below from Section 12(d) ix F-G:**

*(F) Decisions to certify or decertify an At-Large Structure shall be made as decided by the ALAC in its rules of procedure, **save always that any changes made to the rules of procedure in respect of an At-Large Structure applications shall be subject to review by the RALOs and by the Board.***

(G) Decisions as to whether to accredit, not to accredit, or disaccredit an At-Large Structure shall be subject to review according to procedures established by the Board.

(H) On an ongoing basis, the ALAC may also give advice as to whether a prospective At-Large Structure meets the applicable criteria and standards.

The underlined sections in F above further supports our position that the ALSs have greater roles in any review that attempts to promote their activities. The powers of ALAC in section H is not absolute but a POSSIBILITY. These are subject to G above. Perhaps at this juncture, it is pertinent to ask if this review was/is in line with section 4.4 (a) or rather was this review the recommendation of this section?

*(a) The Board shall cause a periodic review of the performance and operation of each Supporting Organization, each Supporting Organization Council, each Advisory Committee (other than the Governmental Advisory Committee), and the Nominating Committee (as defined in Section 8.1) by an entity or entities independent of the organization under review. 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, council or committee has a continuing purpose in the ICANN structure, (ii) if so, whether any change in structure or operations is desirable to improve its effectiveness and (iii) whether that organization, council or committee is **accountable** to its **constituencies, stakeholder groups, organizations and other stakeholders.***

Item 1 in the draft proposal identifies 3 **possibilities** and a 4TH for accrediting an **ALS that will not be affiliated to any region** below;

When reviewing the form, determine which questions are mandatory. Also, if we will be accepting global (non-regional) ALSes, the application may need to be adjusted.

NOTE: We spent a lot of time during the last meeting discussing ALSes which do not fit into our regional structure. The three possible options going forward were:

- a. Change the Bylaws to allow assigning such an ALS to a region;
 - b. Interpret the Bylaws to allow assigning such an ALS to a region;
 - c. Reject the application.
- A 4th option might also be possible:
- a. **Have an ALS not associated with any region.**

Why would anyone contemplate the option in red above? ALSs according the Byelaws operate in RALOs either as a group or as individuals. It is ludicrous to begin to formulate an academic exercise in futility. That option should be deleted without ANY DEBATE.

Take notice also of S4.6 b (i): *The Board shall cause a periodic review of ICANN's execution of its commitment to maintain and improve robust mechanisms for public input, accountability, and transparency so as to ensure that the outcomes of its decision-making reflect the public interest and are accountable to the Internet community ("Accountability and Transparency Review").*

Caution: It is hoped that the WP and other well-meaning members of the community would take time to peruse this document and reflect using the Lion's club Four-Way Test of the things we think, say or do:

- Is it the TRUTH
- Is it FAIR to all concerned
- Will it build GOOD WILL and BETTER FRIENDSHIPS
- Will it be BENEFICIAL to all concerned?

If in the event our appeal above is not convincing enough to pause and review the basis again, then we may have no choice than exercise our rights under the ICANN Byelaws in Section 4.2(G)ii, 4.3 of annexe, d, and (H), (I) and (J). 4.3 (ii), (iv)

You have the assurance of our esteemed regards, always.

For Nurses Across the Borders.

Pastor Peters OMORAGBON
President/CEO