

Date: 29th June 2021

From: Co-chairs, AFRINIC Policy Development Working Group

To: AFRINIC Board of Directors

SUBJECT: REPORT ON THE POLICY PROPOSAL “BOARD PREROGATIVES ON THE PDP” (AFPUB-2020-GEN-004-DRAFT02)

Introduction

It was brought to our attention as incoming PDWG Chairs that the AFRINIC Board had not received the ratification report for the policy proposal “Board Prerogatives on the PDP”.

In line with the Policy Development Process, we have noted that the above mentioned policy proposal attained rough consensus at the last Public Policy Meeting held in online format 16-17 September 2020 during the AFRINIC-32 meeting.

As Co-chairs, we believe that the current version of the proposal (Ver.2) addresses notes and observations made by interested community members that participated in discussions during the life-cycle of the proposal since the first draft. The last call period was concluded on 7 October 2020.

The table below shows the milestones in the policy proposal progress;

Date	Milestone/Activity
13 th August 2020	The proposal was received on pdwg@afnic.net
17 th August 2020	Proposal was given the ID AFPUB-2020-GEN-004-DRAFT01 and posted on website https://afnic.net/policy/proposals/2020-gen-004-d1#proposal .
18 th August 2020	Announcement done on mailing list https://lists.afnic.net/pipermail/rpd/2020/011024.html
9 th September 2020	AFRINIC published the Impact Assessment of the proposal on the website https://afnic.net/policy/proposals/2020-gen-004-d1#impact
16 th September, 2020	Proposal with ID AFPUB-2020-GEN-004-DRAFT01 was presented and discussed at the AFRINIC-32 public policy meeting.

Date	Milestone/Activity
17 th September 2020	Co-Chair decision: Rough Consensus Subject to some amendments
17 th September 2020	Amendment of the proposal was submitted to pdwg@afnic.net . Subsequently Proposal was given the ID AFPUB-2020-GEN-004-DRAFT02 and posted on website https://afnic.net/policy/proposals/2020-gen-004-d2#proposal .
17 th September 2020	Amendments were made and Co-Chair decision: rough consensus is reached and the minutes of the meeting can be found at https://lists.afnic.net/pipermail/rpd/2020/011741.html
21 September 2020	Summary of amendments to be made was posted to RPD mailing list https://lists.afnic.net/pipermail/rpd/2020/011372.html
21 st September 2020	The start of the “last-call” period was announced by Co-chairs. https://lists.afnic.net/pipermail/rpd/2020/011372.html
7 th October 2020	End of Last Call Announcements and the decision of the Co-chairs was that consensus has been maintained https://lists.afnic.net/pipermail/rpd/2020/011630.html
6 th November 2020	The impact assessment for AFPUB-2020-GEN-004-DRAFT02 was published by AFRINIC - https://lists.afnic.net/pipermail/rpd/2020/011984.html
9 th December 2020	The AFRINIC Legal counsel published a statement in regard to this proposal https://lists.afnic.net/pipermail/rpd/2020/012121.html

Additional Notes

At the start of our tenure, we became aware that the AFRINIC Board has not received the ratification report, yet the outgoing PDWG Chairs mentioned that they had sent it. However, they did not resend their report to the Board as requested by AFRINIC, and also did not forward their original ratification email to the RPD mailing list when requested by the PDWG members.

23-28 June 2021 - As the current AFRINIC PDWG Chairs, we have gone through the discussions on the RPD mailing list and notes of the AFRINIC-32 meeting and prepared this report. As supporting documentation, the summary of the assessment conducted is as follows:

Summary of the Assessment

Concerns	Addressed/ Pending	Comments
<p>The Board provides the ToR for its appointed bodies.</p> <p>Rather than wanting to use a proposal to get rid of the ToR etc, why not suggest the changes you want to see in the ToR through the very bottom up process. I don't think there are any restrictions to that effect but I know the board has twice come to the working group seeking suggestions.</p> <p>I do not agree with this proposal in its current form. I suggest removing it and submitting your suggestions on how to address the "working methods" that you mentioned in your problem statement.</p>	Addressed	<p>Author mentioned that ToR is not needed.</p> <p>Board appoints AC but NOT to alter the PDP as the ToR is doing in order to have the Appeal Committee to interpret the CPM in a stricter or different way as the PDP section 3.5 itself.</p> <p>The Appeal Committee can simply look at the CPM.</p>
<p>The policy proposal is not challenging the contents of section 3.5 of the CPM. Instead, additional provisions, are being proposed i.e. new sections 3.6 and 3.6.1 which conjunctively have the effect of encroaching on the powers and prerogatives of the Board of Directors.</p> <p>It may reasonably be viewed that the proposed policy is akin to an encroachment on the powers of the Board of Directors.</p>	Addressed	<p>Author says 'This is FALSE. The proposal is only re-stating what is already part of the ICANN ICP-2 and the PDP and the bylaws.'</p> <p>The policy re-enforces what is obvious: "The AFRINIC Board or Committees can't amend or re-interpret the CPM, including the PDP, and even less, restrict the rights of any community member, following the Consensus and Bottom-Up approach, as set by the PDP. "</p>

Concerns	Addressed/ Pending	Comments
<p>You can not therefore succumb the directors/board to the CPM because that would be pure encroachment into the powers of the oard by the community by also restricting the directors to the CPM contrary to the same CPM section 3.1.</p>		<p>We can't allow that the Board jumps over the PDP even if in good faith, by means of "additional" documents. If the Board believe that something is needed to clarify *anything* in the PDP, it *must* be done following the PDP and in exceptional circumstances we allow the Board to use the section 11.4 of the PDP, but at the same time, ensuring that it comes back to the PDP process for endorsement, as stated in 11.5.</p> <p>On the other way around, this policy just makes sure that the Board has now this attribution provided by the community! It was a severe fault of the bylaws to have such a text without being backed up by the PDP.</p> <p>However, the ratification of this policy *allows* the Board to use this policy for this first time, by ensuring with a Board urgent policy, that the existing committees processes or policies are still *valid* until the next meeting, so no problem is created.</p>
<p>"However, should the PDWG maintain its stand in respect of the above, then the appropriate motion has to be made during an AGMM, pursuant to Article 7.7 of the bylaws to amend articles 3.4, 15(1), 15(2) and 15(3) of the bylaws thus allowing the powers of the Board of Directors to be subjected to the directives and guidance of the PDWG."</p>	<p>Addressed</p>	<p>This is not needed because 3.4, 15.1, 15.2 and 15.3 are about the company, NOT the community, not the PDP. I re-read many times the complete bylaws, and those specific articles, and there is nothing contradicting the policy. As said on the other way around, this policy allows the Board to get granted by the community responsibilities that the bylaws, despite the text in 11.4/11.5, don't</p>

Concerns	Addressed/ Pending	Comments
		<p>have any meaning, because the bylaws have NO POWER on top of the community.</p> <p>And actually, what this policy is proposing is correcting a problem in the bylaws. Bylaws state that the Board can adopt “urgent policies” (and only for resource management, NOT for the PDP itself) and then ask for the community endorsement. Note that the only way for the community to endorse a policy is following the PDP itself, so that means that the Board should submit any policy that they adopt, to be endorsed, as a policy proposal itself, following the consensus bottom-up process.</p> <p>What this policy is about, is to *allow* the bylaws to be correct and not need to modify them, otherwise, the bylaws are enforcing a breach of the PDP, which should be brought to ICANN, as it constitutes an ICP-2 breach.</p>
<p>Objections to "As an exception of the preceding paragraph, in the absence of elections processes for aspects related to the PDP (co-chairs, appeal committee), those aspects will be still handled by the Board in consultation with the community. However, this is also a temporary measure and also specific draft policy proposals should be introduced for that.</p>	<p>Addressed</p>	<p>Addressed with PDWG chair requests to remove the clause. No impact assessment of the change was requested. PDWG’s assent for the change was not requested</p> <p>Author also mentioned ‘I only removed that because the chairs (wrongly in my opinion, as your questions are clearly showing now) asked for it.</p>



Conclusion and Recommendation

Based on the above information, we advise the AFRINIC Board to ratify the draft policy proposal at its earliest convenience.

Vincent Ngundi & Darwin Da Costa

AFRINIC PDWG CO-CHAIRS