

RECALL COMMITTEE

FINAL DETERMINATION

By email dated 26 July 2021, the AFRINIC Board of Directors (hereinafter referred to as “the Board”) received a petition to recall both Chairs of the Policy Development Working Group (hereinafter referred to as “PDWG”). A copy of the said petition is herewith enclosed as **Annexure A**.

Appointment of the Recall Committee

1. On 29 September 2021, the Board pursuant to section 3.5(3) of the Consolidated Policy Manual (hereinafter referred to as “CPM”) appointed a Recall Committee (hereinafter referred to as “the Committee”) constituted of three members, namely:
 - (i) Dr Christian D. Bope;
 - (ii) Mr Haitham El-Nakhal; and
 - (iii) Dr Ousmane Ly.

2. At the first meeting of the Committee (i.e. on 26 October 2021), Mr. Haitham El-Nakhal declared his interests in the petition inasmuch as he was one of the co-authors to the proposal titled “*RPKI ROAs for Unallocated and Unassigned AFRINIC Address Space AFPUB-2019.GEN-006-DRAFT03*”, and thus recused himself from the proceedings in order to avoid such perception of bias on his part.

3. In consequence of the above, on 27 October 2021 the Board reconstituted the Committee as follows:
 - (i) Dr Christian D. Bope;
 - (ii) Dr Ousmane Ly; and
 - (iii) Kenneth Yip Tong

And the newly reconstituted committee proceeded accordingly.

4. The assistance of Mr. Craig Ng, General Counsel, APNIC, was also solicited by the Board. The latter acted as an observer to the Committee and his intervention was only solicited on matters of law.

The role of the Recall Committee

5. It is apposite to add that the role of the Committee is to investigate the circumstances of the justification for the recall request and determine the outcome. To put simply, the Committee is required to determine whether, having regards to the facts enunciated in the recall petition, there is sufficient basis to recall the Chairs.
6. In so doing, the Committee was responsible for establishing its own working procedure (**Annexure B** refers) and it was also authorised by the Board to communicate its findings to the PDWG. Consequently, to ensure consistency in its proceedings, the Committee followed the procedure adopted by the previous Recall Committee which delivered its ruling in February 2021.
7. The Committee also bears in mind that the burden of proving any allegation against the PDWG Chairs lies on the petitioner, on the balance of probabilities.
8. Consistent with the above and to enable the Committee to deliver on its function, the latter deemed it appropriate to verify, with the assistance of AFRINIC's staff based on information publicly available, both the allegations made against the PDWG Chairs, and the response submitted by the PDWG's Chairs. In particular, reference was made to the PDWG Chairs' report dated 21 July 2021 with respect to the policy in question as well as the reports of the Appeal Committee communicated to the PDWG on 31 December 2021 which led the Committee to be alive of the 2 appeals pertaining to the policy proposal titled "*RPKI ROAs for Unallocated and Unassigned AFRINIC Address Space AFPUB-2019.GEN-006-DRAFT03*".
9. At this juncture, the Committee finds it relevant to add that in referring to the information obtained from AFRINIC's Staff and/or those already available publicly, the Committee is mindful of its role to act independently, impartially and with integrity; and as such, it has at all times limited itself to the contents of the recall petition and that it has not allowed itself to be influenced by facts not forming part of the recall petition.

PDWG Chairs' opportunity to provide a response

10. The Committee wishes to highlight that, as a matter of fairness, the Committee had by email dated 12 January 2022 invited the PDWG chairs to submit their response to the aforesaid petition.

11. The PDWG Chairs submitted their response by way of 2 emails dated 25 and 26 January 2022 respectively. Both correspondences represent the complete explanation submitted by the PDWG Chairs. A copy of the PDWG's Chairs' explanation together with such corresponding annexures is herewith enclosed as **Annexure C**.

Acceptable grounds for recall

12. For the purposes of the present petition, the Committee proceeded to evaluate whether the alleged conduct of the PDWG Chairs amount to:

- a) Irrational or unreasonable actions, noting that reasonable actions about which there is disagreement will not constitute sufficient grounds for recall;
- b) Procedural impropriety, or serious procedural error;
- c) Bias, or actions that give the perception of bias or failure to act impartially;
- d) Dishonesty;
- e) Deviation from the PDP and/or from general norms in the context of an open, bottom up, consensus based process;
- f) Negligence or incompetence in carrying out their duties.

13. The Committee agreed that whilst a single minor incident of negligence or incompetence or deviation from procedure may not sufficiently constitute a ground for recall, yet a pattern of repeated incidents that fit the above criteria nevertheless will. Likewise, a single incident of a severe nature may be sufficient grounds for recall.

Analysis

14. The Committee has given due consideration to both the version of the petitioners, made up of one main requestor and supported by seven others, as well as the response provided by the PDWG Chairs.

15. At the outset, the Committee notes that the allegations contained in the petition are of 2 folds i.e. the manner in which the PDWG Chairs were selected by the Board during the months of March and April 2021; and secondly whether, in regard to the AFRINIC-33 meeting, the PDWG Chairs failed in their duties when declaring of consensus with respect to the policy titled "RPKI ROAs for Unallocated and Unassigned AFRINIC Address Space AFPUB-2019.GEN-006-DRAFT03".

16. In regard to the issue of the selection of the PDWG Chairs, the Committee notes that the appointment of the PDWG Chairs was effected by the Board and thus falls completely outside its scope and mandate. Accordingly, this ground for recall is automatically set-aside.
17. As regard the second limb of the petition, the Committee holds that the petitioners have not been able to substantiate how the PDWG Chairs have failed in their duties such that they were no longer fit for that position. In fact, the gist of the petitioners' argument is that the PDWG failed to give due considerations to objections raised during the AFRINIC-33 meeting.
18. Be it as it may, the Committee observes that the policy in question was also subject to two appeals before the AFRINIC's Appeal Committee. The first appeal was initiated on 22 July 2021 by one Meriem Dayday or Meriem DayeDaye (as the case may be) and both users of email address meriempdayday@gmail.com, whereas the second appeal was initiated on 23 July 2021 by one Lamiaa Chnayti which appears to be the main petitioner to the present petition. It is also worthy of note that Meriem DayDay is one of the supporters to the present petition. The Committee notes that the petitioner did not disclose the existence of the appeals in their petition. Still, this did not alter the decision of the Committee in its determination that there is no sufficient ground for the recall of the PDWG Chairs.

Findings/Outcome of the Recall Committee

19. Considering the above, the Committee finds that the petitioners have not been able to establish, on the balance of probabilities, that the PDWG Chairs are no longer fit for that position. This recall petition is accordingly set-aside.

Dated: 16 February 2022

| MEMBER (CHAIRPERSON) | MEMBER | MEMBER |
|------------------------------------|----------------------|-----------------------------|
| Dr Christian Domilongo Bope | Dr Ousmane Ly | Mr. Kenneth Yip Tong |

ANNEXURES

Annexure A: Petitioner's Petition

Annexure B: Working Procedure

Annexure C: Co-Chairs' Response