

# Board Prerogatives on the PDP

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# Summary of the problem (1)

- AFRINIC PDP provides a conflict resolution via the Appeal Committee which is appointed by the Board. However, there is no indication of the need for any procedure or “Terms of Reference” for that committee.
- The actual Terms of Reference, haven’t been developed by the community, despite they are restricting the community rights according to the PDP and creating a clear discrimination for authors or proposals appealing a co-chairs decision.
- The Terms of Reference have two well defined parts: a) Composition and selection of the members, and b) Working methods.
- While it is correct that the board defines how the members are selected, as this is a clear prerogative of the Board, following the PDP (“... the person may file an appeal with an Appeal Committee appointed by the AFRINIC Board of Directors”), the PDP doesn’t give to the Board prerogatives on how that committee should work, which is something clearly and exclusively sovereignty of the community.

# Summary of the problem (2)

- Also, the “working methods” enter into details such as “conflict of interest”, which clearly belong to the composition and selection of the committee and furthermore, set new conditions which are restrictive interpretations of the PDP. For example, in several parts of the process the word “other” has been included, while the PDP explicitly says “An appeal can only be filed if it is supported by three (3) persons from the Working Group who have participated in the discussions”.
- Is not only that this “other” wording changes the PDP unequivocal interpretation, creating a clear restriction of proposal authors rights, which discriminate them against the rest of the community, but also changes the meaning of Consensus on which the PDP is based. Authors could be the only part of the community that defend a proposal, because, for example, the rest of the community participants ignore the proposal, even if they agree on it, or express a “I don’t like it”, but don’t provide a valid rational justification against the proposal.
- In addition to that, considering the low participation of the community in the discussions, in many situations it may happen that even if people are in favor of a proposal, they don’t express it, and again negative opinions are just opinions, not justified objections.

# Summary of the problem (3)

- Basically, the problem can be summarized as that the board and/or the committees not have the right to behave against the PDP, even if it is only in a matter of interpretation, and consequently, they can only change the PDP thru the PDP itself, with an exceptional provision set by the AFRINIC bylaws:

“11.4 Notwithstanding, the provisions of Article 11.2 the Board may adopt such policies regarding the management of internet number resources where it considers that the same is necessary and urgent, having regard to the proper and responsible usage of these resources.

11.5 Endorsement of policy adopted by the Board:

1. Any policy adopted by the Board under the provisions of Article 11.4 shall be submitted to the community for endorsement at the next public policy meeting.
  2. In the event that such a policy submitted by the Board is not endorsed, the said policy shall not be enforced or implemented following its non-endorsement; however, any action taken in terms of the policy prior to such non endorsement shall remain valid.”
- This text has two clear and very relevant aspects:
    1. It only authorizes the Board (not the Committees), to adopt policies regarding the management of Internet number resources, NOT to modify or re-interpret the PDP itself.
    2. Any policy adopted by the board in case of necessary and urgent need, should be endorsed by the community at the next PPM.

# Summary of the problem (4)

- As it can be easily observed, the Appeal Committee Terms of Reference, have never been introduced as a policy, never linked in any way to the CPM, and consequently, they have never been endorsed by the community.
- It is clear that this is a continued and persistent aggression to the PDP, and can't be accepted by the community, as it also constitutes a clear violation of the ICANN ICP-2.

# Addressing the problem

- It should be clarified that the examples on the previous section, are a concrete situation, but this proposal tries to avoid this problem being repeated in the future, by ensuring that the Board and Committees prerogatives are well delimited.
- This proposal adds a new section, at the end of the current PDP, in order to clarify what are the limits of the Board and resolve existing breaches of the PDP and related procedures, in consonance the with bylaws and the community sovereignty, on top of the Board decisions itself.

# Proposed Changes

## 3.6 Board Prerogatives

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.

(Text to be added after the actual "Conflict Resolution" section)

In exceptional situations, duly justified, the Board may define temporary procedures or policy changes, which will only be valid maximum until the next PPM, as they must be immediately introduced as a draft policy proposal. Attending to the exceptionality, the "Varying the Process" section will be used in order to try to speed up the consensus.

### 3.6.1 Temporary Provisions

When this policy reaches consensus, any existing relevant Board or Committees processes or policies will automatically decay and can only be re-introduced as a draft policy proposal.

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.

# References

- In other RIRs, this situation didn't happen. The board or committees haven't modified the PDP in any similar fashion as it happened here.
- In LACNIC and RIPE, the appeal can be done by a single community member, without the need for any further community support.
- In ARIN, the equivalent to the appeal process (petition process) requires support from 10 individuals (including those that initiated the petition, but they should be from 10 different organizations).
- None of those RIRs has “additional” processes (generated by the board and not the community) which aren't part of the PDP itself. APNIC doesn't have an explicit appeal process.
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# Responses to Impact Analysis (1)

## 2. AFRINIC Staff Comments on the clarity of policy

- “AFRINIC would like to point out that in the absence of the Terms of Reference defined in the CPM, one was drafted and shared with the community for inputs and comments.”
  - There is NO need for any “terms of reference”, they don’t exist in other institutions. The PDP should be self-contained and anything that modify the PDP must be approved following the PDP itself, not just because the PDP, but also because the bylaws state that (section 11.5), otherwise the board defeats the full purpose of the PDP by means of “terms of reference or non-policy procedures”.

# Responses to Impact Analysis (2)

- “While the policy proposal's problem statement mentions that the Terms of Reference of the Appeal Committee are not in the Consolidated Policy Manual, the proposed sections do not aim to fix this problem. There is also no other policy proposal that has reached a consensus regarding the Terms of Reference of Appeal Committee.”
  - There is NO NEED for “terms of reference”, just follow the PDP and if any clarification is needed the \*BOARD\* should follow the PDP and the bylaws (11.5), not circumvent that. The board is not \*on top\* of the community, it is an oversight. It was a mistake, fine, let's correct it.

# Responses to Impact Analysis (3)

- “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. Such an attempt, according to staff is contrary to Article 3.4 of the Bylaws.”
  - Art. 3.4 of bylaws are about “The Company” and this is related to \*members\* NOT the \*community\*. The board has **encroached on the powers and prerogatives of the community**, in a clear violation of both, the PDP and the bylaws and insulting the community.