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# Public Comment Summary Report

## Pilot Holistic Review Draft Terms of Reference

**Open for Submissions Date:**

Tuesday, 30 August 2022

**Closed for Submissions Date:**

Thursday, 10 November 2022 (extended from 14 October 2022)

**Summary Report Due Date:**

Monday, 12 December 2022

**Category:** Reviews

**Requester:** ICANN Board

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**Open Proceeding Link:**

<https://www.icann.org/en/public-comment/proceeding/pilot-holistic-review-draft-terms-of-reference-30-08-2022>

**Outcome:**

This Public Comment proceeding was scheduled to remain open from 30 August through 14 October 2022. The Public Comment proceeding was extended to 10 November in response to multiple requests for additional time to submit input.

Twelve submissions addressing the Pilot Holistic Review Draft Terms of Reference were received. The Organizational Effectiveness Committee of the Board will review the input received and will in turn inform the ICANN Board on the conclusions of this Public Comment, and will lead the discussions on next steps for the Pilot Holistic Review Draft Terms of Reference.

## Section 1: What We Received Input On.

The ICANN Board sought input from the ICANN community on whether the Draft Terms of Reference (ToR) for the Pilot Holistic Review seem fit for purpose, and whether they are tailored to the community's expectations based upon ATRT3 recommendation 3.5 four objectives:

- the effectiveness of collaboration mechanisms between ICANN structures,
- the structures' accountability to their members and constituencies,
- continuing purpose of structures, and potential changes in structures and operations to improve the overall effectiveness of ICANN as well as ensure optimal representation of community views,
- continuous improvement efforts of structures.

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The ICANN Board also welcomed input on the Pilot Holistic Review scheduling and timing in light of other community and stakeholder work.

Four questions were posed as part of the Public Comment, to aid responders in formulating their views.

1. Do you support the Pilot Holistic Review Terms of Reference as drafted?
2. Does the Holistic Review Program outlined in Section II of the Draft Terms of Reference provide a clear approach to accomplishing the ATRT3's objectives, as set out in the same section, while addressing the information gaps identified by the ICANN Board set out below?
3. Do the steps and the deliverables associated with each ATRT3 recommendation 3.5 objective, as described in Section II of the Terms of Reference, clearly outline the scope of work for the Pilot Holistic Review?
4. Do the steps and the deliverables associated with each ATRT3 Recommendation 3.5 objective, as described in Section II of the Terms of Reference, explain clearly how Supporting Organizations, Advisory Committees, Nominating Committee, as well as their constituent parts will participate in the process of establishing a Holistic Review Program?

Commenters were not required to answer each question, and some commenters provided inputs beyond the questions posed.

In total, 13 comments were received, including 2 comments from individuals.

## Section 2: Submissions

### Organizations and Groups:

Name	Submitted by	Initials
Security and Stability Advisory Committee	Rod Rasmussen	SSAC
At-Large Advisory Committee	Policy staff in support of the At-Large Community	ALAC
Country-Code Name Supporting Organization Council	Alejandra Reynoso	ccNSO Council
NIC United Kingdom of Great Britain and Northern Ireland*	Andrew Hallfamn*	UKGNI*
Business Constituency	Business Constituency	BC
Registries Stakeholder Group	Registries Stakeholder Group	RySG
AFNIC	Pierre Bonis	AFNIC
Registrar Stakeholder Group	Secretariat	RrSG
Governmental Advisory Committee	Robert Hoggarth	GAC
Cross-Community Working Party on ICANN and Human Rights	Ephraim Percy Kenyanito	CCWP-HR
Intellectual Property Constituency	Intellectual Property Constituency	IPC

### Individuals:

Name	Affiliation (if provided)	Initials
Vanda Regina Teixeira Scartezini		VS
Alejandro Pisanty		AP

\*This Public Comment is unrelated to the Pilot Holistic Review Draft Terms of Reference.

## Section 3: Summary of Submissions

The submissions revealed concerns and questions on several elements, including the independent examination, lack of clarity around how the Holistic Review and Continuous Improvement recommendations evolved into their final form from the ATRT3 draft report, and how the public comments on the draft recommendations were addressed by the ATRT3.

### [Submission 1 \(VS\)](#)

VS expressed full support for the Pilot Holistic Review Draft Terms of Reference (ToR) as written as well as for the initiation of the pilot.

### [Submission 2 \(AP\)](#)

AP noted concerns with the ToR as written. The comments noted that the reviewers need to be independent of all of the SOs and ACs and questioned the process through which SOs and ACs have been involved in reviewer selection over recent years. Pisanty also suggested that all of ICANN should be reviewed as a part of the Holistic Review, and that the review should focus on

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simplifying ICANN processes. AP noted that his submission was provided to the LACRALO as a dissenting opinion.

### **Submission 3 (SSAC)**

The SSAC comments questioned if the Review Team would be able to perform the work outlined in the Draft ToR, noting that “Since future reviews are stipulated to be completed within 18 months, it therefore seems unlikely that this Pilot Holistic Review could be completed within that same timeframe when the additional task of developing and documenting procedures must be undertaken.” It additionally noted that past “cross-community efforts relying on volunteer commitments have great difficulty in achieving ambitious time targets.” The SSAC noted the section of the Draft ToR which highlighted that there is “not a universal understanding or agreement on the intended scope of the Holistic Review” and suggested that this be removed because the SSAC believes the ToR “should make very clear what the scope of the Holistic Review is and any disagreement on the documented scope should be highlighted and resolved through the Public Comment Process.” The SSAC additionally suggested that the mission of the Holistic Review “would be improved by a minor expansion of the scope to consider if there are any interests not currently represented within the current ICANN structures (e.g., DNS operators and Security Practitioners) and if these interests can be accommodated within existing SO/ACs, or if new structures need to be introduced.” It additionally recommended clarifying the term structures, the addition of language to amend the Bylaws to remove any reviews replaced by the Holistic Review, greater clarity on guiding principles within the ToR document, information on Review Team composition, and clarity on the Review Team’s ability to use qualified consultants similar to Organizational Reviews.

### **Submission 4 (ALAC)**

The ALAC stated its support for the Pilot Holistic Review Draft ToR as written, suggesting the pilot start “as soon as possible”, but also suggested edits and identified areas of the ToR which it believes required further clarification. It stated that it agrees with the approach of the Holistic Review Program, the clarity of the outlined scope of work for the Pilot Holistic Review, and the outlined process for how the SOs, ACs, and NomCom would participate in establishing the Holistic Review Program and noted its support for integrating the Holistic Review into the ICANN org Bylaws mandated Reviews process. It also stated that it believes that the Holistic Review is an important component of the Evolution of the ICANN Multistakeholder Model work and that the Holistic Review needs to “clarify roles and responsibilities within ICANN and identify improvements necessary to the overall multistakeholder model.” It went on to identify areas where it believes further clarification is required as well as areas which it feels still need to be addressed in the Draft ToR including: “a. Degree, if any, to which internal SOAC structures are subject to the Holistic Review, b. Consideration of the roles and responsibilities of the various SOACs, stakeholder groups, constituencies, and structures with respect to each other, c. Consideration of any activities already ongoing for continuous improvement in the various structures, d. Relationship to work already underway regarding the Enhancing the Effectiveness of ICANN’s Multistakeholder Model project, e. Development of a specific remit for the Holistic Review Team, while in the pilot phase, f. Prompt implementation of recommendations made by the Review Team that address the most critical gaps or issues identified as of the highest priority.” The ALAC additionally suggested the appointment of a non-voting impartial chair to the Pilot Holistic Review team in an effort to “minimize the risks of perceived or actual bias from the chair”, the inclusion of timeline graphics to aid in the understanding of timelines, edits to the Definitions and Acronyms section of the ToR, the securing of a technical writer to support the Review Team’s work, and revisions to the introduction of the ToR to clearly articulate

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“expectations for what work is to be completed by the end of the pilot phase and what work is expected to commence.”

#### Submission 5 (ccNSO Council)

The ccNSO Council stated it believes that the scope and structure outlined in the Draft ToR lack clarity, are too broad, and that the work is too dependent on other initiatives. It additionally noted that there continues to be varying interpretations of the intended scope and purpose of the Holistic Review, citing section II of the Draft ToR as well as the 11 October 2022 webinar from which it noted “This divergence in interpretation was confirmed by the questions, responses and discussions of community members, members of ATRT3 and staff.” The ccNSO Council believes that “without a careful review of the scope and structure and without broad community support from the various community groups, the starting conditions for the Pilot are sub-optimal” and that the lack of clarity and other deficiencies create “a high risk that a majority of the work of the PHR will be taken up arguing about scope and intentions.” It stated that it believes that the “implications and impact of inclusion of purpose and structure in Holistic Reviews” first need to be understood and agreed upon and that “**It is inappropriate for this work to be done within the PHR** [emphasis in original].” It additionally noted that it believes the identification of dependencies are also inappropriate to be completed within the pilot. It also stated that the work as outlined in the Draft ToR is “unrealistic” for community groups and Review Team volunteers, would “draw large amounts of community energy and attention and require large amounts of work”, and would create a “natural bias of the review team towards volunteers from larger organisations.” It recommended addressing these concerns before the pilot is initiated through the formation of a Cross Community Working Group to “Define Scope of the Review, Identify Dependencies, and (conduct) fact-finding” and “Define the approach to and methods for the Pilot Review.” The ccNSO Council additionally noted confusion over the deliverable to provide input on skill sets for the future Holistic Review team members, citing conflicting notions if the pilot would be conducting an “actual review” or not, and in its annex noted a concern that there were many questions left unanswered or left for the Pilot Review Team to decide, including why there is a lack of independence in the Holistic Review, “why self-assessment only?”

#### Submission 6 (BC)

The BC expressed its appreciation for the broad scope of the Holistic Review and noted that it believes it is “critical” for the scope to be broad enough to “include the restructuring of Board seats and of the GNSO Council.” Although it stated that it does not have “major concerns” with the specific steps to address the four ATRT3 objectives, it noted concerns with the “assumption that SO/ACs and NomCom, indeed, would want to cooperate in developing a set of principles for self-assessment.” It additionally questioned if the provision under the second ATRT3 objective, which calls for identification, aggregation and analysis of accountability, and development of criteria for a self-assessment, “could be implemented”, and stated it “anticipates lack of consensus” on the third ATRT3 objective because it believes “certain constituencies would be averse to adjusting their present advantage.” It additionally stated that it found the level of detail in Section II of the Draft ToR “excessive and the process overly elaborate”, questioned if the approach could yield the deliverables needed to address the Boards information gaps, and expressed concern that “the Pilot – as currently outlined -- will become bogged down in the profusion of “process issues,” and inhibit sufficient attention to the difficult, sensitive, but core issues of SO/AC accountability and structural improvements.” In response to these concerns, it recommended the streamlining of the process identified in Section II.

#### Submission 7 (RvSG)

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The RySG stated that it “cannot support the Pilot Holistic Review Terms of Reference until fundamental concerns are first addressed by the ICANN Board and staff.” It believes that the Draft ToR is unclear, and that the process of “moving directly to a pilot from a recommendation, with obvious significant open questions, is not transparent, efficient, nor ultimately effective.” It is concerned that the current proposal “if pursued without clarification and due process, would be at risk of undermining the transparency and accountability values that should be at the core of ICANN’s bottom-up, multi-stakeholder process.” The RySG restated the ccNSO Council’s position that it is “inappropriate” for the Holistic Review’s purpose, structure, and dependencies to be determined within the pilot, and that the work as outlined in the Draft ToR would be “unrealistic” for community groups and Review Team members to “stay actively involved in for 18-months.” It additionally restated confusion over the deliverable to provide input on skill sets for the future Holistic Review team members, citing conflicting notions if the pilot would be conducting an “actual review” or not. The RySG also raised concerns regarding the “omission of external review of structures moving forward”, noting that it had previously identified this concern in its public comments on the ATRT3. Although the RySG “understands and agrees” with the importance of a continuous improvement program and “appreciates that structures have the option of including external review in their continuous improvement efforts”, it is “concerned that **not mandating instances of external review risks mitigating the effectiveness of continuous improvement programs and encouraging capture of those groups** [emphasis in original].” In line with the ccNSO Council, the RySG recommended the formation of a Cross Community Working Group to “Define Scope of the Review, Identify Dependencies, and (conduct) fact-finding” and “Define the approach to and methods for the Pilot Review” before the pilot is initiated. The RySG noted that its comments were based on and in agreement with those of the ccNSO Council.

#### **Submission 8 (AFNIC)**

AFNIC expressed its support for the Pilot Holistic Review Draft ToR as written and stated that it recognizes the importance of the review. Although it noted that the Draft ToR “could be fine tuned”, it believes that the Draft ToR provided “a clear approach allowing for a timely start of the pilot holistic review.”

#### **Submission 9 (RrSG)**

The RrSG expressed concerns that the Draft ToR “leaves too many open questions and varied interpretations to allow for proceeding with the Pilot as proposed”, suggesting “more work should be done to resolve the currently-identified open issues before launching the Pilot Holistic Review.” It stated that it believes “The goal of a pilot program should be to test a proposed work plan to confirm it is sufficient to meet the goals of the program - not to resolve already identified information gaps and resolve ambiguities about scope”. In line with the ccNSO Council and the RySG, the RrSG also recommended the formation of a Cross Community Working Group, “or similar mechanism, to first address the structure of the Pilot and future Holistic Reviews to address the Board identified “information gaps.” It noted that it reviewed the public comments from the ccNSO Council and RySG and that it “shares their concerns and supports their proposals, without needing to repeat them.”

#### **Submission 10 (GAC)**

The GAC stated it “recognizes that this proceeding is focused on the Draft ToR document as presented and is not intended to address larger strategic issues regarding ICANN community prioritization and review efforts. Consequently, the GAC has made an effort to focus its comments on those procedural aspects of this current inquiry.” The GAC went on to state that it supports the progress of the Pilot Holistic Review and “has several suggestions for specific edits



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or modifications to the Draft ToR document.” It noted that it believes the mission of the Pilot Holistic Review would be improved by “an expansion of the scope to consider if there are any interests not currently represented within the current ICANN structures (e.g., DNS operators, security practitioners or other identified groups of interested stakeholders) and if these interests can be accommodated within existing SO/ACs, or if new structures need to be introduced.” It highlighted the section in the Draft ToR which noted “there were many questions and different views about whether the Holistic Review was only evaluating how the SO/ACs interact, communicate and coordinate their work, or whether the Holistic Review was meant to examine the ICANN structures themselves”, and noted that it believes that this would “appear to raise concerns regarding the scope of the pilot effort and future holistic reviews.” The GAC stated that it would support “the interpretation that a “holistic” review should prioritize review of community interaction capabilities and implementations”, but noted that since ATRT3’s Final Report “specifically noted that the “holistic” review would need to serve the Section 4.4 ICANN Bylaws requirements for “periodic” and “independent” reviews of community structures”, this should be clarified in the mission to avoid “unnecessary community debates about the purpose and scope of the pilot review specifically or future holistic reviews generally.” The GAC, “acknowledging the view of other commenters”, additionally noted that it “seems unlikely” that the Pilot Holistic Review could be completed within the 18-month timeframe considering the identified work, and suggested the ToR should provide a mechanism for the Pilot Review Team to petition the Board to extend the period if needed. Although the GAC stated that the deliverables identified in the ToR are relevant to the ATRT3 recommendation and “reflect sweeping and ambitious expectations that will require dedicated, diligent and focused efforts by the Pilot Review Team”, it noted that the Draft ToR fails to “provide a detailed roadmap for how to achieve the program goals and expectations.” To address this point, it suggested that “select Board members and members of the ToR Drafting Team will need to make themselves available on a regular basis at the beginning of and throughout the service of the Pilot Review Team to offer guidance and interpretation of various expectations.” The GAC additionally raised a concern that the Draft ToR lacks a clear methodology for how SOs, ACs, and NomCom would cooperate with one another to achieve the pilot’s objectives, noting that “Such clarity is important for the communities as they conduct their annual FY23 work planning and will be a vital factor in managing timetable expectations for the overall pilot effort.” It went on to suggest that the ToR should clarify the term structures, the expected composition of the Review Team, ICANN org’s expected staff resource commitments to support the pilot effort, and the how qualified consultants could be used to perform work “similar to the way in which consultants were engaged to undertake Organizational Reviews”.

### **Submission 11 (CCWP-HR)**

The CCWP-HR suggested that the Draft ToR is a “good first step” but noted that the Draft ToR “has fundamental gaps in ensuring the full implementation of Section 27.2 of the ICANN Bylaws (on Human Rights) and other Bylaws that have an impact on human rights.” It noted that it believes the Draft ToR has not “comprehensively accounted” for how the SOs and ACs would “reflect the Human Rights Core Value in their policy and operational processes”, specifically noting its expectation of “full implementation of Section 27.2 of the ICANN Bylaws (on Human Rights).” It recommended that the Draft ToR be revised to include provisions to “ensure that each SO/AC is able to identify its human rights impact”, and suggested that “the best way to implement this would include carrying out both organizational and policy development HRIA (Human Rights Impact Assessments)/ HRGAs (Human Rights Gap Assessments) as a guideline requirement under the Holistic Review process.” The CCWP-HR stated it is concerned that failure of including HRIAs in the self-assessments for continuous improvement is “a missed

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opportunity to ensure SO/ACs continually improve in respecting Section 27.2 of the ICANN Bylaws (on Human Rights).”

### **Submission 12 (IPC)**

The IPC considered the Draft ToR to be “Dense and Inaccessible to most readers”, and “Unclear as to the primary purpose of the review.” It noted it supported a Holistic Review of ICANN but believes that it should be modeled after the 2002 Holistic Review, “It was only because the review examined all of the issues at that time that the community was able to set ICANN on a path to better fulfill its mission for the next two decades. A partial review examining just the few types of issues as contained in these Terms of Reference would not achieve the same type of results needed to put ICANN on an effective path for the next twenty years.”. The IPC stated concern that starting the Holistic Review with “terms which are open to differing interpretations risks setting review team members against each other from the outset and will lead to inevitable community disappointment when the output does not deliver on their differing expectations.” The IPC also noted concerns related to the lack of independent review of the structures as outlined in the Draft ToR, specifically the sole use of self-assessments. It suggested that the self-assessments would be performed by “insiders that have little interest in seeing a change to the status quo other than to potentially improve their own positions within the community”, and recommended the ToR be “modified to provide for INDEPENDENT assessment of the factors listed.” It went on to state that the ATRT3 recommendations are meant to reflect Section 4.4 of the ICANN Bylaws which call for such reviews to be conducted **“by an entity or entities independent of the organization under review** [emphasis added][emphasis in original].” The IPC additionally raised concerns that the Draft ToR’s “lack of clarity and unnecessary complexity create barriers to success for the review”, and that “the review as outlined will require an inordinate amount of time from community members that are already suffering from severe volunteer fatigue due to the complex work required to manage the substantive issues that we believe should already have had more progress such as DNS Abuse, Access to Domain Name Registration Data, etc.” It additionally recommended that ICANN not delay “the implementation of recommendations from other reviews and/or other review processes while the Pilot Holistic Review is being undertaken”, that the “self-assessment portion of the Terms of Reference should be modified to create concrete measurable components for SOs and ACs”, and that “Independent Assessment should include assessment of Board interaction with the Community in resolving policy disputes where no Consensus has been achieved via the PDP process.”

*\*Note: One respondent (NIC United Kingdom of Great Britain and Northern Ireland) submitted an unrelated comment to the Pilot Holistic Review Draft Terms of Reference, and therefore was not reported in the above summary and below analysis.*

## **Section 4: Analysis of Submissions**

**The submissions were wide ranging from support to concerns over the Draft ToR, with many containing the following themes:**

- *Concern over the clarity of the Holistic Review’s scope*
- *Concern over the lack of identified dependencies*
- *Concern over the lack of independent examination within the Holistic Review*
- *Concern over the community’s ability to support the Pilot Holistic Review work*



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### 3 Submissions stated support for the Pilot Holistic Review Draft ToR as written with some still noting the need for clarifications

- Submission 1 (VS)
- Submission 4 (ALAC)
- Submission 8 (AFNIC)

### 9 Submissions stated opposition with the Pilot Holistic Review Draft ToR as written and/or raised concerns with the ToR as written

- Submission 2 (AP)
- Submission 3 (SSAC)
- Submission 5 (ccNSO Council)
- Submission 6 (BC)
- Submission 7 (RySG)
- Submission 9 (RrSG)
- Submission 10 (GAC)
- Submission 11 (CCWP-HR)
- Submission 12 (IPC)

### Supportive submissions

Three commenters expressed broad support for the Holistic Review concept and the Draft ToR and urged that the Pilot Holistic Review should commence as soon as possible - ALAC, AFNIC and VS. To note, ALAC offered suggestions of areas of clarification.

The ALAC noted “The At-Large Advisory Committee (ALAC) and the At-Large community are clear on the purpose and potential of recommendation 3.5 from the Third Accountability and Transparency Review Team (ATRT3).” The comment noted that the ALAC and the At-Large community “have been very involved in both the ATRT3 Specific Review that recommended a Holistic Review and the drafting team that developed the ToR for the initial pilot (Terms of Reference Team). The ALAC appointed representatives to the ATRT3 (Sebastien Bachollet, Cheryl Langdon-Orr, Daniel Nanghaka, and Vanda Scartezini), who then continued as four of the five shepherds for the implementation of the ATRT3 recommendations.”

Further, the ALAC stated the following (emphasis included in the comment):

1. **“Support the Pilot Holistic Review Terms of Reference** as drafted.
2. **Agree that the Holistic Review Program** outlined in Section II of the Draft Terms of Reference **provides a clear approach** to accomplishing ATRT3’s objectives while addressing the information gaps identified by the ICANN Board.
3. **Agree that the steps and the deliverables** associated with each ATRT3 recommendation 3.5 objectives, as described in Section II of the Terms of Reference, are **clearly defined and outline the scope of work for the Pilot Holistic Review**.
4. **Appreciate the clarity** that the steps and the deliverables associated with each ATRT3 Recommendation 3.5 objective, as described in Section II of the Terms of Reference, **explain how Supporting Organizations, Advisory Committees,**

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**Nominating Committee, as well as their constituent parts, participate in the process of establishing a Holistic Review Program.”**

Reflecting on the ATRT3 recommendation 3.5 to create a Holistic Review, the ALAC offered strong support, stating “At-Large and ALAC understand that while the first Holistic Review is to be considered a pilot, we advocate for the Holistic Review to eventually be incorporated as an integral part of the ICANN org Bylaw mandated Review process.” The comment added that “The Holistic Review Pilot Project is an unprecedented effort that will significantly contribute to improving ICANN Reviews and the multistakeholder model. ALAC/At-Large support the establishment of the Holistic Review as part of the overall ICANN org Review process, rather than remaining a pilot.”

AFNIC expressed general support for the Holistic Review and the Draft ToR and echoed ALAC’s support for starting the Pilot Holistic Review promptly, stating “AFNIC support the proposed Holistic Review. While the Term of reference could be fine-tuned, we consider that the key steps outlined in the ToR to address the objectives set forth in recommendation 3.5 provide a clear approach allowing for a timely start of the pilot holistic review.”

VS noted that “as member of ATRT3 and involved with the concept and justification of Pilot Holistic review I am totally in favor of the approach and the general idea of this “pilot project.”

The GAC “is encouraged to see this effort progressing – including the May 2022 decision by the community prioritization team to assign the Pilot Holistic Review the highest priority level. The GAC supports this progress...” The GAC further noted that “The GAC would support the interpretation that a “holistic” review should prioritize review of community interaction capabilities and implementations but also acknowledges that the ATRT3 Final Report specifically noted that the “holistic” review would need to serve the Section 4.4 ICANN Bylaws requirements for “periodic” and “independent” reviews of community structures (see <https://www.icann.org/en/system/files/files/atrt3-report-29may20-en.pdf> at page 68). This matter should be clarified in the Draft ToR document “Mission” section to avoid unnecessary community debates about the purpose and scope of the pilot review specifically or future holistic reviews generally.”

Furthermore, the GAC expressed support for several aspects of the Draft ToR, stating “Section II of the Draft ToR document does a good job outlining the objectives and deliverables of the pilot effort and addressing specific information gaps identified by the Board.” “The objectives and deliverables identified in the Draft ToR document (see pages 5-9 of the document) effectively track the relevant and applicable ATRT3 recommendations regarding a new holistic review.”

On decision making methodology, the GAC expressed support “The GAC supports the general use and application of the existing ICANN Operating Standards for Specific Reviews in the context of this pilot effort. Those standards will provide a useful foundational guide for the Pilot Review Team and will ensure a measure of institutional consistency between this effort and previous ICANN review endeavors.” In connection with outreach, “The GAC supports the framework of the Outreach Plan identified in the draft document. Regular updates to the community will ensure that the pilot effort maintains a constant momentum.”

The BC expressed support for the importance of the ATRT3 recommendation, stating “We appreciate the work that went into developing a way to implement what we regard as an

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important recommendation of the ATRT3 to ensure accountability of the SO/ACs and consider structural changes to improve representation of community views.” Furthermore, the BC “appreciates the broad scope of the review mandate from ATRT3.” The BC reflected on the structural issues that the group had raised during previous opportunities to comment, noting that “...structural problems in the GNSO continue to undermine its effectiveness and fairness as a policymaking body, with related accountability shortcomings of certain GNSO constituencies.” The BC stated that “we strongly agree with the intent of the 3rd ATRT3 objective – “Review SO/AC/NC as a whole to determine if they continue to have a purpose in the ICANN structure or if changes in structures and operations are desirable. However, we anticipate lack of consensus on this point within the NCPH because certain constituencies would be averse to adjusting their present advantage.”

The IPC stated support for the concept of a Holistic Review, while expressing concerns about the Draft ToR: “...the IPC takes the viewpoint that in general, a holistic review such as the one ICANN is embarking on, should be an opportunity for ICANN to showcase to others that it is meeting its internal objectives, or provide a clear and easy path to better understand and meet its objectives. The Draft Terms do not seem to accomplish that objective.”

## Concerns across submissions

*Concern: Clarity of the Holistic Review’s scope*

### Background and context

Clear and focused scope of work is an important aspect of all ICANN work.

### Six submissions expressed concern about clarity of Holistic Review’s scope

Comments from the SSAC, ccNSO Council, the RrSG, and the RySG directly referenced the lack of a clear “universal” understanding of the scope of the Holistic Review and the need for clarity before work on the Pilot Holistic Review begins. The ccNSO Council, RrSG, and RySG suggested establishing clarity through a Cross Community Working Group to “Define Scope of the Review, Identify Dependencies and (conduct) fact-finding” and “Define the approach to and methods for the Pilot Review”, while the SSAC suggested using the Public Comment process. The IPC noted that it does not believe that the scope is clear as outlined in the Draft ToR. Comments by the GAC regarding “timing challenges” indicated it believes clarifying scope within the pilot would be difficult to manage within 18-months and would require the availability of Board members and members of the ToR Drafting Team to offer guidance and interpretation via consultation throughout the pilot.

Several illustrative quotes include:

**ccNSO Council supported by the RrSG and RySG:** “It is the ccNSO Council’s understanding that - as noted in Section II Background – a number of community groups have varying “interpretations of the intended scope and purpose of the Holistic Review.” This divergence in interpretation was confirmed by the questions, responses and discussions of community members, members of ATRT3 and staff during the 11 October 2022 webinar.”

**ccNSO Council supported by the RrSG and RySG:** “Regarding reviewing the purpose and structure of the ccNSO, we note that this is one of the core questions of “Organizational Reviews” (ICANN Bylaws section 4.4). The ccNSO Council believes that the implications and

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impact of inclusion of purpose and structure in Holistic Reviews must first be understood and agreed upon by potentially affected parties. **It is inappropriate for this work to be done within the PHR** [emphasis in original]. Without proper phasing and gating, there is a high risk that this topic will adversely impact the Pilot itself and that it will be very difficult to mitigate any outcomes from the PHR that sections of the community disagree with.”

**SSAC:** “The last paragraph of the Background (Section II, p3) mentions that there is not a universal understanding or agreement on the intended scope of the Holistic Review and makes reference to a discussion during an ALAC meeting. The SSAC considers that such a reference should not feature in a Terms of Reference document. Rather, these Terms of Reference should make very clear what the scope of the Holistic Review is and any disagreement on the documented scope should be highlighted and resolved through the Public Comment Process.”

**IPC:** “The lack of clarity and unnecessary complexity create barriers to success for the review. In addition, the review as outlined in the Draft Terms will require an inordinate amount of time from community members that are already suffering from severe volunteer fatigue due to the complex work required to manage the substantive issues that we believe should already have had more progress such as DNS Abuse, Access to Domain Name Registration Data, etc. The Draft Terms contain a lot of “make work”, documentation, and again will not lead to actions that can actually improve ICANN’s ability to achieve its mission.”

**GAC:** “The draft ToR document accounts for this challenge by assigning the Pilot Review Team to initially produce a work plan that will achieve that 18-month timetable (see page 10), but the Draft ToR document should provide some flexibility for the Pilot Review Team to petition the Board to extend the period if it appears necessary. Given the foundational aspect of this pilot effort, an endeavor that could ultimately result in the creation of new ICANN Bylaws, it is important that the work be done correctly and that the Pilot Review Team be given sufficient time and sufficient ICANN staff support to assure thoroughness and thoughtfulness.”

**GAC:** “To ensure the success of the overall effort, select Board members and members of the ToR Drafting Team will need to make themselves available on a regular basis at the beginning of and throughout the service of the Pilot Review Team to offer guidance and interpretation of various expectations that perhaps could not be reasonably specified prior to the beginning of the work. This consultation availability will be an important resource for the Pilot Review Team.”

*Concern: Lack of identified dependencies*

#### Background and context

ATRT3 recommendation 3.5 to establish a Holistic Review has dependencies with ATRT3 recommendation 3.6 to evolve Organizational Reviews into a Continuous Improvement Program. [ATRT3 Final Report](#) Section 8 focused on the Assessment of Periodic (now Specific) and Organizational Reviews. ATRT3’s assessment concluded that the Board and ICANN org should:

- Suspend any further RDS and SSR Reviews until the next ATRT.
- Allow one additional CCT Review following the next round of new gTLDs.
- Continue with ATRT Reviews with a modified schedule and scope.
- Evolve the content of the Organizational Reviews into continuous improvement programs in each SO/AC and Nominating Committee (NC).

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- Add a Holistic Review, as a special Specific Review, which will look at all SO/AC/NC and their relations.
  - Implement a new system for the timing and cadence of the reviews.”

The Board noted various dependencies as part of its decision on the ATRT3 Final Report and recommendations - see [Scorecard](#) and the related [Board resolution](#). These included:

- the “need for additional information in order to make an informed decision based on full understanding of what a Holistic Review would entail, including the resources needed to support it”;
- broad community support for the Bylaws amendment to change existing Bylaws provisions for Specific and Organizational Reviews.
- “Dependencies between a Holistic Review and other aspects of Specific and Organizational Reviews, including other components of the ATRT3 recommendations. There are also other ongoing workstreams that could be dependencies (e.g., implementation of recommendations from completed Organizational Reviews, Work Stream 2 of the Cross Community Working Group on Enhancing ICANN Accountability, and some of the efforts tracked through the work on the Evolution of ICANN’s Multistakeholder Model)”.
- “Objective evaluation criteria should be developed in order for future ATRTs to evaluate the effectiveness of any review and to determine if such a review should continue.”

Additionally, the Board noted several considerations, including:

- unaddressed problems with reviews.
- “Bandwidth and workplan alignment - The ATRT3 review recommendation entails simultaneous implementation of both the first Holistic Review and the Continuous Improvement Program”;
- “Standardized measures for continuous improvement - Measuring continuous improvement (e.g., positive change over time) first requires a standardized way of conducting those measurements to enable year over year comparison. Without a standardized methodology and set of criteria for assessing continuous improvement within and across ICANN structures, ICANN runs the risk of using a different measuring stick every time. In addition, a collectively agreed standardized methodology and criteria offer an objective perspective on assessing ‘improvement’ or ‘success’.”

The above noted dependencies and considerations offer examples of dependencies implicit in the ATRT3 recommendations, and the commenters noted that these dependencies and considerations are not addressed in the Draft ToR.

*Three submissions expressed concern about the lack of identified dependencies.*

While the commenters did not specify in all cases which dependencies they were concerned about, they expressed a broad concern about dependencies not being addressed in the Draft ToR. Commenters referenced for example, dependencies on ongoing continuous improvement work within the community, and dependencies on ATRT3 recommendation 3.6 which calls for evolving Organizational Reviews into a Continuous Improvement Program. Comments from the ccNSO Council, the RrSG, and the RySG suggested the work of identifying dependencies is more appropriate for a Cross Community Working Group to perform prior to the start of pilot work.

Several illustrative quotes include:

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**ccNSO Council supported by the RrSG and RySG:** “Further, it is clear from the Scorecard document that “A Holistic Review should also be looked at in light of other dependencies, including those relating to other Specific and Organizational Reviews and **related workstreams** (emphasis added).” **Again, it is inappropriate for this work to be done within the PHR** [emphasis in original]. To understand these and other dependencies and hence the scope of the Holistic Review and a PHR, there should first be a fact-finding process. This could map all activities related to an item to be reviewed within the Holistic Review and a PHR. Such fact-finding would lead to understanding if and/or how various workstreams and/or processes focus on the same element(s) included in the scope of the Holistic Review and a PHR.”

*Concern: Lack of independent examination within the Holistic Review*

*Background and context*

Organizational Reviews are anchored in Article 4.4. of the ICANN Bylaws to assess the effectiveness of ICANN’s supporting organizations and advisory committees. Organizational Reviews are conducted by “an entity or entities independent of the organization under review” to assess:

- (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.
- (iii) whether that organization, council or committee is accountable to its constituencies, stakeholder groups, organizations, and other stakeholders.

ATRT3 recommendations 3.6 changes the independence requirement, stating that “If the SO/AC/NC desires and the budget permits, the assessment can be conducted by an independent contractor or by having an intensive one-to-five-day workshop.” The combination of ATRT3 recommendations 3.5 and 3.6 introduced significant changes to how SO/ACs would be assessed in the future.

The community has expressed concerns about the changes to the independence requirement recommended by the ATRT3 at the time that the ATRT3 Final Report was issued.

*Seven submissions expressed concern about the lack of independent examination within the Holistic Review.*

Comments from AP, the SSAC, the ccNSO Council, the RrSG, the RySG, the GAC, and the IPC cited the absence of independent examination of community structures as a concern. 2 comments specifically noted concern that although the ATRT3 Final Report stated that the Holistic Review would need to serve the “Section 4.4 ICANN Bylaws requirements for “periodic” and “independent” reviews of community structures”, there is no mention of independent examination in the Draft ToR.

Several illustrative quotes include:

**AP:** “the review must be performed including as reviewers’ parties designated by processes independent of all SO’s and AC’s. The vetting process through the SO’s and AC’s in the recent



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years (since it was instituted) has given rise to more insidership than ever and this in turn has weakened the reviews to the point of making some of them unworkable. The Board must be at freedom to designate external members”.

**SSAC:** “It would be helpful for the following additional information to be included in the Terms of Reference:

- Review Team composition (by number and representation)
- Accessibility to suitably qualified consultants to undertake work for the Review Team (Similar to the way in which consultants were engaged to undertake Organizational Reviews)”

**RySG:** “The RySG is also concerned by the omission of external review of structures moving forward. This is a concern the RySG raised in previous comments on the ATRT3, and we are conscious that this omission stems from the ATRT3 recommendation. However, given the complexity of the process and challenges we have identified with the Holistic Review, the RySG feels it is appropriate to reiterate this concern. The RySG understands and agrees that a program of continuous improvement is important and appreciates that structures have the option of including external review in their continuous improvement efforts. However, the RySG is concerned that not mandating instances of external review risks mitigating the effectiveness of continuous improvement programs and encouraging capture of those groups.”

**ccNSO Council supported by the RrSG and RySG:** “Questions unanswered or left for the pilot review itself to decide - Why is there a lack of independence – why self-assessment only?”

**GAC:** “The GAC would support the interpretation that a “holistic” review should prioritize review of community interaction capabilities and implementations but also acknowledges that the ATRT3 Final Report specifically noted that the “holistic” review would need to serve the Section 4.4 ICANN Bylaws requirements for “periodic” and “independent” reviews of community structures (see <https://www.icann.org/en/system/files/files/atrt3-report-29may20-en.pdf> at page 68). This matter should be clarified in the Draft ToR document “Mission” section to avoid unnecessary community debates about the purpose and scope of the pilot review specifically or future holistic reviews generally.”

**IPC:** “Rather than providing for an independent review of the structures themselves, it appears that the Holistic Review focuses on self-assessments by insiders that have little interest in seeing a change to the status quo other than to potentially improve their own positions within the community.”

**IPC:** “In addition, by definition, a holistic review needs to be done by persons able to look at the whole of ICANN first from an outside perspective as opposed to reviewing from within. ICANN Bylaws 4.4, which the ATRT3 recommendations are meant to reflect, state that: (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 [emphasis added]. 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

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accountable to its constituencies, stakeholder groups, organizations and other stakeholders.” This requirement of independence appears to be entirely missing from the Draft Terms.”

*Concern: Community’s ability to support the Pilot Holistic Review work*

Background and context

Community’s ability to support reviews has been a topic of discussion for a long time. While this concern had been expressed in various ways, the Board considered this issue when it identified a gap to be addressed, stating that the pilot should provide “Guidance as to how Holistic Review teams should determine and prioritize its work areas in order to ensure effective review outcomes within the recommended 18-month timeframe.”

Six submissions expressed concern about the community’s ability to support the Pilot Holistic Review work.

Comments from the ccNSO Council, the RrSG, the RySG, and the IPC suggested that the current lack of clarity around the intent of its work and the expected outcomes would lead to an “unrealistic” workload for Review Team members and community groups given current work and competing priorities. The BC raised concerns that pursuing the Draft ToR as currently written would lead to the pilot becoming “bogged down in the profusion of “process issues”, and inhibit sufficient attention to the difficult, sensitive, but core issues of SO/AC accountability and structural improvements.” The GAC noted concern with the lack of specificity around the cooperation of SOs and ACs articulated in the Draft ToR as it will be important for fiscal year planning and “vital” to managing the pilot’s work schedule.

Several illustrative quotes include:

**ccNSO Council supported by the RrSG and RySG:** “based on the Terms of Reference of the PHR, 21 volunteers are expected to be actively involved for 18 months. This not only impacts them and their community group, but, maybe more importantly, the organization for which they work. In addition, the community groups are expected to provide feed-back and updates during these 18 months and will therefore need to monitor progress actively. With the uncertainties already discussed in this process, it will be the subject of extensive lobbying, negotiations and possibly conflict and disagreement within and between various stakeholder groups. All of this will draw large amounts of community energy and attention and require large amounts of work from all volunteers selected for the duration of the PHR as proposed to meet the specified timeframe. The Council believes that both aforementioned aspects with respect to members of the PHR volunteers and expectations of the ccNSO and other groups, will create a natural bias of the review team towards volunteers from larger organisations. The Council also believes that expecting the ccNSO and others to stay actively involved over 18 months on top of their priority work items, is unrealistic.”

**IPC:** “The lack of clarity and unnecessary complexity create barriers to success for the review. In addition, the review as outlined in the Draft Terms will require an inordinate amount of time from community members that are already suffering from severe volunteer fatigue due to the complex work required to manage the substantive issues that we believe should already have had more progress such as DNS Abuse, Access to Domain Name Registration Data, etc.”

**BC:** “The BC is worried that the Pilot – as currently outlined -- will become bogged down in the profusion of “process issues,” and inhibit sufficient attention to the difficult, sensitive, but core

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issues of SO/AC accountability and structural improvements. We would urge a streamlining of the process set forth in Section II so it is not so overwhelming and discourages thoughtful participation from across the ICANN community.”

**GAC:** “In several areas of the Draft ToR document, the phrase “in cooperation with SOs and ACs” is used but the specific nature of that “cooperation” is not articulated. It is important to alert the ICANN community structures to how their cooperation will be sought and incorporated into the pilot effort. Such clarity is important for the communities as they conduct their annual FY23 work planning and will be a vital factor in managing timetable expectations for the overall pilot effort.”

## Section 5: Next Steps

ICANN org will provide this summary report of the public comments to the OEC, with briefing, which will in turn inform the ICANN Board on the conclusions of this Public Comment and lead the discussion on next steps.