

FINDING A GOVERNANCE EQUILIBRIUM

SUBMISSION TO THE TRANSITIONAL COMMITTEE:

GREEN CLIMATE FUND

Richard Calland, Associate Professor: University of Cape Town

Dr Nancy Dubosse, Senior Researcher: Economic Governance, Idasa

6 OCTOBER 2011



Introduction & Purpose

1. The Green Climate Fund (GCF) represents an extraordinary, perhaps unprecedented, opportunity to re-organise the way the world is currently doing business with respect to development cooperation and environmental sustainability. Therefore, its governance and institutional arrangements are crucial to its success: the architectural design must secure its credibility with potential donors, its legitimacy with recipient countries and their domestic social stakeholders, and its accountability to its 'parent' body, the UNFCCC Conference of the Parties (COP).
2. This submission is made on behalf of the University of Cape Town (UCT) and has been compiled by Richard Calland, Associate Professor: UCT, and Dr. Nancy Dubosse, Senior Researcher: Economic Governance, Idasa (the Institute for Democracy in Africa).
3. The purpose of the submission is to add to the body of information and analysis available to the Transitional Committee (TC), as it seeks to resolve the outstanding questions ahead of its final report to the Conference of Parties (COP) in Durban.

What should the Governance Architecture deliver?

4. The broad-ranging 'Guiding Principles' set out in the Draft Outline Report of the TC to COP17 (TC-3/2) provide a useful general framework, and are likely to be broadly acceptable. Yet, the devil is in the detail. What precise institutional design is required? Questions such as 'which structure reports to whom, and on what basis?' are crucial to striking the right balance between securing the confidence of donors in the probity and efficacy of the GCF and the nimbleness and dexterity, as well as transparency, that are crucial ingredients in ensuring the legitimacy of its operations and its funding choices (including who gets what, when and how).
5. Moreover, to apply the old maxim that 'form should follow function', it is important to be clear about what the core business of the GCF should be. In this regard, we work from presumption that it will seek to provide the following services to the international community. Borrowing from the observations made by the French delegate to the TC, with which we respectfully concur, the core business of the GCF should be:
 - 5.1 To bring coherence to the climate finance universe
 - 5.2 To channel climate finance funding in support of national strategies and to actively promote such strategies by improving the capacity of countries,

- especially Least Developed Countries and Small Island States, and Africa, to produce such strategies and viable projects for accessing GCF funds
- 5.3 To mobilise and leverage the full range of existing financial institutions
 - 5.4 To provide and/or design the appropriate instruments to stimulate investments
 - 5.5 To develop the capacity to absorb large flows of funds and function independently (free of replenishments) in order to promote and support substantial transformation
6. In order to accomplish this ambition, the GCF's governance and institutional arrangements will have to provide it with the following attributes:
 - 6.1 Global scope, credibility and expertise
 - 6.2 Appropriate political balance and representation
 - 6.3 Full transparency, with a state-of-the-art information disclosure regime
 - 6.4 Strong fiduciary checks and balances
 - 6.5 Nimbleness and efficiency (in administration and decision-making)¹
 7. As with any entity comprised of human beings, it is important to recognize that the different parts of an institution have different objectives and targets, and so the political calculus varies from one to the other. Further, these functioning parts must also remain dynamic. Overall, the GCF needs to capture the attention of the private sector; it needs to enlist the confidence of donor countries; it needs to maintain the perception of equality and fairness of access; it needs to be responsive to national priorities. Thus, the architecture that is designed must ensure that each of its parts feeds into the overall objective of the GCF.

Checks and Balances

8. From the TC3 it would appear that there are two main models under consideration, in terms of the primary institutional design and arrangements – that is to say, those that concern the governing body (board), the executive capacity (secretariat) and accountability and administrative oversight (Trustee and M & E) and encompassing the relationship of these institutions to the 'parent' body, the COP.
9. The core elements of a governance system are, we submit: ownership; participation; structures; mandate; membership; and participation. Even if these core elements

¹ For an example of a principles and functional attribute-based approach to governance architecture for an international initiative, see: "The Construction Sector Transparency Initiative Global Program: Institutional Options for the Future International Governance of the Initiative". Working Paper by Richard Calland for the World Bank, July 2011.

can be provided for, there may still scope for abuse of power, inefficiency, or a failure to adapt to changing externalities, etc.

10. Our assessment of these potential models is made through the primary lens of ‘checks and balances’. While it is essential that the GCF avoids bureaucratic *longueur*, and is nimble and dextrous, it is no less important that it diffuses power amongst its various core stakeholder communities – the donors who will liquidate the fund; the legal entity that will govern the fund on behalf of the international community; the secretariat that will execute the Fund’s mandate and policies; and the recipient, beneficiary countries, to whose benefit the Fund is directed.
11. By ‘checks and balances’ we do not, therefore, advocate for a governance design that is unable to act boldly and swiftly, held back by a set of competing limitations on power, but rather a system that is lean but also accountable and which is able to find and sustain an equilibrium between the various inevitable interests that are at stake.
12. In this regard, we submit that alongside the ‘top’ architecture of the GCF, the TC should recommend that the GCF adopt a commitment to constitute as a part of its overall governance modus operandi – in terms of both decision-making and stakeholder consultation – a series of multi-stakeholder forums, either nationally and/or regionally. Multi-stakeholder initiatives have emerged in recent times as an effective means to find consensus between different stakeholders and as a way of setting and enforcing standards of conduct, especially with regard to information disclosure and transparency².

Possible Models

13. In the two models, there are aspects, specified by prior decisions of the COP (1/CP.16), which must be preserved:
 - 13.1 There is a Board that governs the GCF, which is “accountable to and functions under the COP”, comprised of 24 members evenly split between developed and developing countries.
 - 13.2 There is a trustee (World Bank as interim), which is accountable to the Board for the performance of its fiduciary responsibilities.

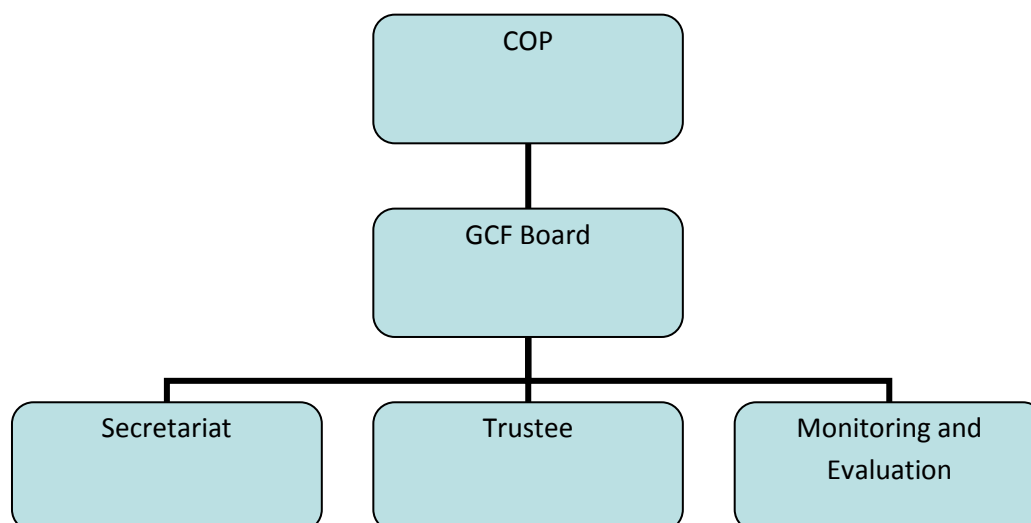
² See: Calland R. and Koechlin L. 2009. *Standard-Setting at the Cutting Edge: An Evidence-Based Typology for Multi-Stakeholder Initiatives*, in *Non-State Actors as Standard Setters*. Cambridge University Press; and, ScanTeam. May 2011. *Achievements and Strategic Options - Evaluation of the Extractive Industries Transparency Initiative*.

13.3 The operation of the GCF is to be supported by an Independent Secretariat to “assist in improving the coherence and coordination in the delivery of climate change financing”.

13.4 Elements of the models below were also borrowed from the *Report on survey of relevant funds and institutions and lessons learned: A note on the results*, TC-3/INF.2 (31 August 2011).

14. What distinguishes these two models are both the directions of accountability of the other units/features of the GCF mentioned in the *Terms of Reference of the Transitional Committee* (as listed in TC-1/5, 14 April 2011) and their roles and responsibilities. The other features, which require more detail from the TC, include the precise role of the Secretariat; a mechanism for periodic independent evaluation; a mechanism to ensure appropriate expert and technical advice; and, a mechanism to ensure stakeholder input and participation.

Model One:



14.1 Description of model

In this model:

The Board

- takes an advisory role, providing strategic guidance;
- meets once/twice a year, reporting to the COP annually;
- sets the eligibility criteria for financing;
- hires the Head of the Secretariat; and
- approves the budget for the Secretariat.

The Secretariat:

- has a managerial role, in which it internalises the function of receiving and processing applications;
- approves projects;
- coordinates with the Trustee for disbursement and with the monitoring and evaluation unit; and
- provides information as requested by the independent evaluation unit.

The Trustee:

- transfers finance to projects, once approved by Secretariat;
- manages the relationship with donors;
- undertakes financial analysis; and
- monitors liquidity.

The Monitoring and Evaluation Unit:

- is internalised as the board does not have a management function;
- requests the necessary information to fulfil its mandate from the Secretariat and reports annually to the Board on the performance of the GCF; and
- designs an information disclosure system and undertake that activity regularly.

14.2 What/where is the balance of power?

14.2.1 The balance of power is top-heavy, with implementation, access and monitoring at global level. There may develop a tension between global governance and national sovereignty.

14.2.2 If the approval of projects is internalised in the Secretariat, complementarity and policy alignment is difficult to achieve.

14.2.3 There is the risk that the Secretariat becomes quite a bloated (and thus ineffective and non-responsive) unit, as it would need to be staffed to receive and vet proposals, undertake capacity building, instrument design and partnership development.

14.2.4 It is difficult to design a mechanism for stakeholder input and participation at global level.

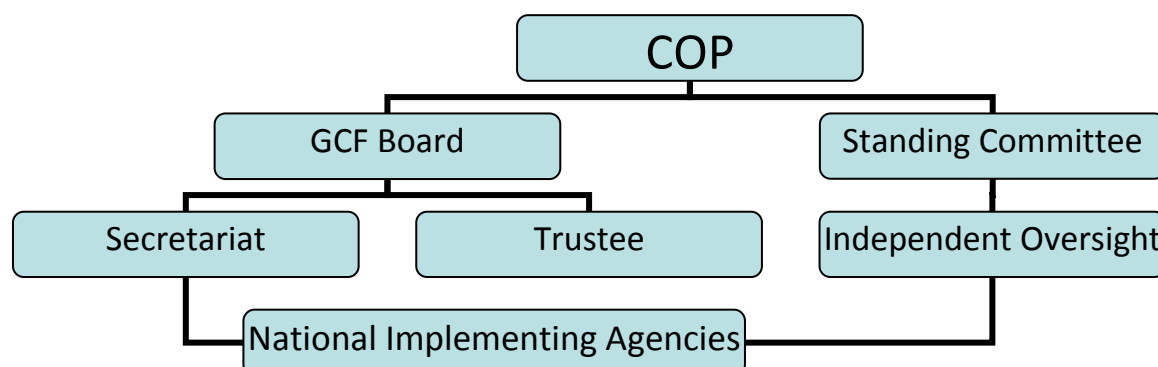
14.3 What are the mitigating 'checks' on these powers?

14.3.1 An officer assigned to each country could assure policy alignment and complementarity with other funding sources.

14.3.2 One of the eligibility requirements of a funding proposal could be the demonstration that local consultations regarding the project (as in environmental impact assessment) had taken place.

14.3.3 There is no direct decision-making by donors or Trustee with regards to project approval.

Model Two:



14.4 Description of model

In this model,

The Board:

- approves of projects;
- accredits National Implementing Agencies (NIAs);
- decides on the eligibility criteria for project financing;
- establishes a technical panel to support it;
- staffs the Secretariat;
- establishes/creates any number of financing instruments they see as fit for purpose; and
- meets monthly.

The Secretariat:

- handles the administration of the GCF;
- coordinates with Trustee;
- processes funding proposals from NIAs; and
- establishes and operates 'desks' for each funding window and an additional desk for capacity building and technology transfer.

The Trustee:

- transfers finance to projects, once approved by Board, in coordination with Secretariat;
- manages the relationship with donors;
- undertakes financial analysis; and
- monitors liquidity.

The National Implementing Agency:

- receives applications from public and private sector;
- assesses whether proposals are in alignment with national strategies;
- submits applications to Secretariat and may request assistance from any desk in Secretariat;
- manages and monitors implementation of projects;
- reports to IEO, Trustee, and Secretariat as requested; and
- integrates stakeholder input and participation into its operations.

The Standing Committee to the COP:

- monitors whether the GCF is meeting global adaptation and mitigation targets;
- advises the COP on changing circumstances; and
- manages the Independent Evaluation Unit.

The Independent Evaluation Unit reports to the Standing Committee, as the Board is a managing board, and, as such, is directly implicated in operations. It collects the necessary information to fulfil its mandate from NIAs and also houses information disclosure and redress mechanisms.

Information Disclosure

There is, we submit, an essential need to institutionalise information disclosure. Transparency is too often the subject of rhetorical flourish, but little concrete action. There is a growing understanding of the standards that should be set and the institutional mechanisms that need to be put in place to deliver on them. In particular:

- The principle of disclosure should be set as the default position: i.e. a presumption in favour of openness
- Non-disclosure should be based on a specific, stated ground for non-disclosure, that fully amplifies the harm that would be done to the public interest, subject to a public interest over-ride clause
- All disclosable records should be automatically and pro-actively disclosed
- A system for dealing with requests for information should be put in place

- And, an appeal mechanism (probably to the proposed IEU), should be constituted to provide swift redress for complaints.

Furthermore, therefore, we submit that the TC should recommend that a piece of work devising the detail, and offering different modalities for such an open disclosure system, should be commissioned in time for COP17. Legitimacy and stakeholder confidence may depend on the quality of the transparency that can be both promised and delivered³.

14.5 What/where is the balance of power?

14.5.1 Power is more evenly distributed vertically. Implementation power is at national level. Evaluation power is at global level.

14.5.2 There is the danger that there is not enough distance between a managing board and the Trustee and that the latter may influence the former.

14.5.3 There is the possibility that commercial interests may not be aligned to national strategies.

14.5.4 There may be too much distance between shareholders (COP) and operations of GCF.

14.6 What are the mitigating 'checks' on those powers?

14.6.1 Though accountable to Board, the Trustee is appointed by the COP. The Trustee makes no project-related decisions

14.6.2 Information disclosure system can be established

14.6.3 The NIAs ensure a link between private/commercial interests and national priorities.

14.6.4 Complementarity is achieved at national level, as the NIA will emerge as the main coordination mechanisms for other types of assistance (e.g. bilateral).

14.6.5 With respect to the space between the COP (shareholders) and the GCF, there are two bodies reporting to the COP: the Board in its annual report of operations and the Standing Committee on its performance.

14.6.6 There is no direct decision-making by donors or trustee regarding projects.

³ For a fuller assessment of the transparency and access to information considerations for the GCF see: Calland R. & Jonason P. New horizons, urgent imperatives: transparency & climate finance. Paper prepared for: Rutgers University 1st global conference on transparency research, May 2011.

Concluding Comments

15. To our mind, the appropriate comparator is the corporation: the shareholders are the global citizenry, represented at an annual general meeting – the COP – by their elected governments, which appoints a Board of Directors to govern the GCF in their interests through the year. The Board, in turn, appoints and oversees an executive – the secretariat – to execute its decisions and to implement policy.

16. In this regard, we tend to agree with the approach of the Russian delegate to the TC, who argued at TC3 that the Board must be a Board of Managing Directors, able, therefore, to play a hands-on leadership and management role. In turn, the secretariat could be lean – thus avoiding a large and costly bureaucracy – with the purpose of passing on the funds as quickly as possible to recipient countries and national implementing agencies.

17. Even though there are more ‘moving parts’, applying the principles set out earlier in this submission to the two models and our analysis of them, against the yardstick of the desired functional attributes of the GCF and its overall purpose and ambition, Model 2 appears to offer a substantively more satisfactory and appropriate governance architecture for the GCF.

Richard Calland & Nancy Dubosse
University of Cape Town & Idasa

6 October 2011, Cape Town