

## **Workstream II: Governance and Institutional Arrangements**

### **Scoping paper**

#### **I. Introduction**

##### **A. Mandate**

1. The Conference of the Parties (COP) in its decision 1/CP.16 entrusted the Transitional Committee (TC) with the design of the Green Climate Fund (GCF) to develop and recommend operational documents for approval by the COP at its 17th session. The TC, at its initial meeting held in Mexico City, Mexico on 28–29 April 2011, agreed to organize its work through four workstreams, including: (a) Workstream I on Scope, Guiding Principles, and Cross-cutting Issues; (b) Workstream II on Governance and Institutional Arrangements; (c) Workstream III on Operational Modalities; and (d) Workstream IV on Monitoring and Evaluation. It also agreed that work under each workstream will be facilitated by two members of the TC, the Co-Facilitators. The Technical Support Unit (TSU) is providing support, under the guidance of the TC members, Co-Chairs and Workstream Co-Facilitators, by preparing background papers and organizing workshops and other consultations as required.

##### **B. Scope**

2. Decision 1/CP.16 provides the basis and broad contours of GCF governance and institutional arrangements, including legal and institutional arrangements, the Board, the Secretariat, trustee arrangements and complementarity with other operating entities of the financial mechanism and other climate, environment, and development finance.

#### **II. Workstream on governance and institutional arrangements**

3. As provided in decision 1/CP.16, Parties agreed that the GCF shall be designated as an operating entity of the financial mechanism of the Convention, with arrangements to be concluded between the COP and the GCF to ensure that it is accountable to and functions under the guidance of the COP. Parties further decided that the GCF shall be governed by a Board of 24 members with specific distribution among Parties<sup>1</sup>, have an interim trustee with a clearly defined role,<sup>2</sup> and be supported by an independent secretariat.<sup>3</sup>

4. Under the Co-chair's proposed Revised Draft Workplan that the Transitional Committee considered at its first meeting in April 2011, work under this stream will include, inter alia:

(a) Legal and institutional arrangements, including fiduciary management issues, for the establishment and operationalization of the GCF. (decision 1/CP.16, appendix III, para 1(a));

(b) Rules of procedure, functions, and responsibilities of the Board and other governance issues related to the Board. (decision 1/CP.16, appendix III, Para 1(b),, para 103);

(c) Role of the Fund's secretariat and the procedure for selection and/or establishing the independent secretariat. (decision 1/CP.16, appendix III, para 1(f));

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<sup>1</sup> Decision 1/CP.16, paragraph 103.

<sup>2</sup> Decision 1/CP.16, paragraph 104-107.

<sup>3</sup> Decision 1/CP.16, paragraph 108.

(d) Trustee arrangements and issues of fiduciary responsibility for the Fund. (decision 1/CP.16, paras 104–108);

(e) Relationship between institutional arrangements of the GCF and other bodies established under the Convention, including the Standing Committee on finance (decision 1/CP.16, appendix III, Para 1(i)).

5. At the first technical workshop of the TC (TW1), the Workstream II Co-Facilitators, proposed sub-dividing topics into five sub-workstreams: (a) II.1 Legal and institutional arrangements, (b) II.2 the Board, (c) II.3 the Secretariat, (d) II.4 Trustee arrangements, and (e) II.5 Complementarity with the other operating entities of the financial mechanism and other climate, environment and development finance. The Co-Facilitators, with the support of the TSU, also shared background notes at the workshop. During the workshop, the Co-Facilitators invited discussion and comments on the draft workplan (see annex I) and background notes.

6. The relevant discussion among TC members or their advisers, as well as written submissions received (see annex II), along with submission and inputs received from observers are synthesized in this scoping paper. This paper is intended to stimulate additional discussion and input.

#### **A. Sub-workstream II.1: Legal and institutional arrangements**

7. This sub-workstream will address the legal status and formal relationships of the GCF with the COP, and its institutional components (the Board, the Secretariat, the Trustee, and the implementing partners and other relevant elements, including mechanisms for expert, technical and stakeholder input). These topics will be informed by Workstreams III and IV.

8. The legal status (capacity or personality) of the GCF and its components, how such status will be conferred, and the possible liabilities of the components are to be defined. Some members have noted that the legal dimensions of the GCF should be tailored to the legal needs of the GCF. Some members have highlighted that the GCF should have independent legal personality in order to operationalize direct access to resources by developing countries. While some other members noted that not all funds, climate change and development, have been accorded independent legal personality. Many members noted that the experiences gained and lessons learned by other Funds (for example the Global Fund to Fight AIDS, Tuberculosis and Malaria, the Adaptation Fund (AF), the Global Environment Facility (GEF) and the Climate Investment Funds (CIFs)) could inform the needs for a GCF legal personality. It was proposed that factors that may or may not necessitate a GCF legal personality require in-depth analysis. It was also underlined by some members that given the many linkages between the legal status/personality and other issues to be decided within workstreams, the consideration of legal status should be considered later in the GCF development process.

9. The legal relationships between the GCF and its implementing partners, both multilateral and national will reflect the legal status/personality of the GCF. Legal status/personality will influence the nature of contractual relationships and adherence to appropriate fiduciary standards, safeguards, and reporting and auditing requirements. Some members noted that if the GCF does not have a legal personality, it might operate similarly to the GEF which derives its legal status from the Trust Fund administered by the World Bank. With this arrangement, the implementing entities enter into legal arrangements with the Trustee under the supervision of the GEF Council. It was noted that the GCF should secure an independent legal personality, so that it could enter into legal agreements with implementing entities, including national legal entities. The Adaptation Fund was highlighted by some members as an example of this operating model.

10. The accountability relationship between the COP and the GCF components (principally the Board, Secretariat, and Trustee) is broadly defined in the decision 1/CP.16. The GCF, as a distinct operating entity of the financial mechanism of the Convention, shall act under the

guidance of, and is accountable to, the COP with appropriate arrangements agreed between the COP and the GCF. It was noted by some members that the GCF Board would need to be accountable to and under the guidance of the COP, but could retain independence in programme and project funding related decision-making. It was further noted by some members that the Secretariat could support the Board's operation of the GCF and that the Trustee could serve the Board as the fiscal agent for GCF assets. It was highlighted by some members that existing examples (for example the GEF, the CIFs, the AF and the Multilateral Fund) of board, secretariat and trustee relationships can inform the TC decision-making on this topic.

## **B. Sub-workstream II.2: The Board**

11. This sub-workstream addresses issues related to the GCF Board. Decision 1/CP.16 defines a basic structure for the Board: 12 developed country members and 12 developing country members, including representation for small island developing States and the least developed countries within the developing country seats. The decision also allows for alternates.

12. There are divergent views on the role of the COP in selecting Board members. Some members highlighted that the two primary constituencies, developed and developing countries, should be able to determine their own procedures for selection of Board members. An approach was proposed that the COP would not have a role in selecting Board members while another suggested approach proposed that the COP would have a role in the selection process of the Board.

13. Many members suggest there should be an opportunity for active participation by observers in the work of the Board, including observers from thematic bodies of the Convention and the private sector. Members have proposed different ideas of voting and non-voting members of the Board for the involvement of observers in this regard. It was highlighted that there is a precedent for these practices in several multilateral funds (for example the GEF, Global Fund and the CIFs).

14. It was proposed that qualifications of Board members should enable effective and efficient management and administrative decisions. Members recognized that a range of technical, administrative and managerial expertise is required of Board members. An approach was presented that gender balance should be an important element of Board composition. It was also noted that the TC should also consider the process for selecting, the role and the status of the president/Chair of the Board.

15. The mandate and responsibilities of the Board, especially the extent to which the Board will engage in project/programme approval, are yet to be fully defined. Ideas on these issues are emerging, but there is a range of views among the members on these matters. Some members envision a robust role for the Board in developing and implementing GCF operational modalities while others have emphasized the role of the COP in deciding on policies, programme priorities and eligibility criteria relating to the Convention's financial mechanism. The precise nature of the Board's functions and responsibilities will have overlap with issues discussed under Workstreams I, III and IV, as noted by some members. An illustrative list of the Board's responsibilities, as proposed by members, could be: identifying procedures and guidelines; selecting the Chair of the Board; providing oversight for the Secretariat and appointing its leader; identifying or recommending criteria and evaluating country/programme eligibility requirements, access conditionalities and safeguards; promulgating financial decisions, including on operating budget, programme/project budgets and other uses of funds; evaluating effectiveness of programme and activity implementation; accrediting implementing entities; periodically reviewing windows and modalities; acting as focal point for other international bodies; reporting to the COP; address institutional and operating arrangements with the COP; and establishing and guiding mechanisms for scientific and technical advice, evaluation and accountability.

16. The rules of procedures and function of the Board, especially decision-making processes, are yet to be defined. It has been noted that examining the rules and procedures of other fund

boards will be informative. Some members also noted that the rules and procedures of the Board will also be informed by the Board's mandate and responsibilities. It was also proposed that consensus-based decision-making, when a majority of Board members are present, is a common practice in funds. Other suggestions by members for rules of procedure include: Board members should be allowed to serve for two years; voting Board members should select the Chair and Vice-Chair for two-year terms; the Board should provide annual reports to the COP; all Board decisions should be recorded and maintained as permanent records; the Board should meet at least twice annually; each constituency serving on the Board should determine a process for selecting its representative.

**C. Sub-workstream II.3: The Secretariat**

17. Many members highlighted the need for establishment of a new and independent Secretariat, proposed ideas for its legal status, composition, and recruitment procedures. It was also highlighted by some members that the legal status of the Secretariat will depend on the legal status of the Fund. It was noted that the GCF should have a Secretariat that is accountable to the Board and supports the Board's operation of the GCF. It was noted that the Secretariat should be agile and have appropriate expertise. The leader of the Secretariat should be appointed by the Board and authorized to select and hire staff.

18. Members have different views on the role of the TC and the Board in defining the mandate and functions of the Secretariat. It was underlined that the TC will need to define the specific administrative, managerial, and technical roles and responsibilities of the Secretariat while others proposed to leave it to the Board. Suggested functions of the Secretariat include: programme and project technical and administrative review; monitoring, reporting, verification and evaluation of the funding portfolio; administrative duties to support the Board; and others.

19. It was underlined that the relationship between the Secretariat and implementing entities could be defined by the TC and the Board. Defining the mandate and functions of the Secretariat will be informed by reviewing experiences gained and lessons learned from the Adaptation Fund, Multilateral Fund, GEF, and CIFs Secretariats.

**D. Sub-workstream II.4: Trustee Arrangements**

20. Members generally agreed that the decision 1/CP.16 provides relatively detailed guidance on the role of the Trustee. There is an emerging convergence among the members on how the trustee should receive instructions (via the Board or Secretariat). The Trustee will be accountable to the Board for the performance of its fiduciary duties in accordance with relevant Board decisions. It was also highlighted that trustee-implementing entity arrangements could be informed by prior experiences of the interim trustee and other funds.

21. The review process for the interim trustee and process for selection of the permanent Trustee is a keen interest among members. Decision 1/CP.16 defines that the current trustee arrangements for the GCF are to be reviewed three years after operationalization of the Fund. It was suggested an open bidding process, with rigorous review and selection procedures, for future Trustee arrangements. An approach was proposed that the TC should not exclude the possibility that the Trustee might be in-house, rather than a separate organization.

**E. Sub-workstream II.5: Complementarity with the other operating entities of the financial mechanism and other climate, environment, and development finance**

22. This sub-workstream focuses on how the GCF will relate to other elements of the public climate finance landscape, both in terms of governance and mandate/activities. This sub-

workstream will be influenced by Workstream I on Scope, Guiding Principles, and Cross-cutting Issues.

23. There is consensus among the members that complementarity between the GCF and other bilateral, regional, and multilateral funding mechanisms and institutions is highly desirable. Members supported the goal of a coherent and well-coordinated climate finance architecture. Members noted that the various channels for climate finance should have clear roles, avoid duplication of efforts, share best practices, and promote synergies. Many members noted that even with the creation of the GCF, other channels for delivering climate finance will continue to exist.

24. The specific relationship and complementarity of the GCF with the GEF and the Adaptation Fund within the financial mechanism of the Convention is of interest to members of the TC. It was noted by some members that the GCF will join the GEF as an operating entity of the UNFCCC financial mechanism. Many members highlighted that the two funds can play important roles in the multilateral climate finance architecture and that their activities should be complementary. It was also proposed that the international community needs to consider the role of other multilateral climate funds (for example, the CIFs, the Least Developed Countries Fund, the Special Climate Change Fund, the Forest Carbon Partnership Facility and the United Nations collaborative programme on reducing emissions from deforestation and forest degradation in developing countries) as the contours of the GCF are defined. It was also noted that there may be opportunities to improve efficiencies and improve the overall climate finance architecture.

25. Many members also noted that improved coordination among these actors is highly desirable. It was also highlighted that better coordination among major bilateral and multilateral channels can be achieved by encouraging these institutions to work together and interact frequently, inter alia through a Forum of entities. It was noted that coordination models among finance channels that exist in other development sectors will be informative.

26. Decision 1/CP.16 states the role of the Standing Committee is to “assist the COP in exercising its functions with respect to the financial mechanism of the Convention”. It was highlighted that the Standing Committee of the COP may have a supervisory role and be able to recommend solutions for enhancing coherence in and rationalizing the financial mechanism. Some members highlighted that the Standing Committee is to have an advisory role, rather than supervisory or executive role in the GCF. Some members also highlighted that it is not possible to fully define the relationship between the GCF and the Standing Committee at this time.

## **Annex I**

### **Draft Workplan for Workstream II: Governance and institutional arrangements**

#### **Introduction and background**

As provided in decision 1/CP.16, Parties agreed that the GCF shall be designated as an operating entity of the financial mechanism of the Convention<sup>4</sup>, with arrangements to be concluded between the COP and the GCF to ensure that it is accountable to and functions under the guidance of the COP<sup>4</sup>. Parties further decided that the GCF shall be governed by a Board of 24 members with specific distribution among Parties,<sup>4</sup> have an interim trustee with a clearly defined role,<sup>5</sup> and be supported by an independent secretariat.<sup>6</sup>

Under the Co-Chairs' proposed Revised Draft Workplan the Transitional Committee considered at its first meeting in April 2011, work under this stream will include, *inter alia*:

- Legal and institutional arrangements, including fiduciary management issues, for the establishment and operationalization of the GCF. Annex III, Para 1(a);
- Rules of procedure, functions, and responsibilities of the Board and other governance issues related to the Board. Annex III, Para 1(b); Decision 1/CP.16, Para 103;
- Role of the Fund's secretariat and the procedure for selection and/or establishing the independent secretariat. Annex III, Para 1(f);
- Trustee arrangements and issues of fiduciary responsibility for the Fund. Decision 1/CP.16, Paras 104-108;
- Relationship between institutional arrangements of the GCF and other bodies established under the Convention, including the Standing Committee on Finance, as well as national entities. Decision 1/CP.16.

Elements of this Workstream and potential background or working papers are offered in the sections below.

**Proposed workplan** The work under Workstream II, Governance and Institutional Arrangements, can be organized into five categories: legal issues for the GCF and its institutional components; the Board; the Secretariat; the Trustee; and complementarity and coherence with other finance flows.

It is proposed to address the five categories of issues in parallel over the coming weeks in order to facilitate progress in this workstream and allow sufficient time for decisions to be worked through in other, connected workstreams (especially workstream III).

1. Circulate workplan and collect initial responses to issues and questions across five sub-workstreams presented below;
2. Prepare a scoping paper (either one on each sub-workstream or an aggregated workstream II paper) based on responses.

Prepare a set of background papers on existing models and arrangements in use in other funds across five sub-workstreams Identify options based on scoping paper and background paper Consolidate and reduce options.

Table an options paper for entire workstream discussion.

This proposed workplan is drafted in a way that will allow it to evolve based on the views of TC members. Inputs on specific issues will be sought from TC members during the entire process and as well will be solicited from major stakeholder groups, including civil society and the private sector,

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<sup>4</sup> 1/CP.16 Paragraph 103.

<sup>5</sup> 1/CP.16 Paragraph 104-107.

<sup>6</sup> 1/CP.16 Paragraph 108.

**Sub-workstream II.1: Legal and institutional arrangements**

This sub-workstream will address the legal status and formal relationships of the GCF and its institutional components (the Board, the Secretariat, the Trustee, and the Implementing Partners). Inputs will be solicited regarding:

- The legal status (capacity or personality) of the GCF and its components, how such status will be conferred, and the possible liabilities of the components;
- The legal relationships between the GCF and its implementing partners, both multilateral and national;
- The accountability relationship between the UNFCCC COP and the GCF components (principally the Board, Secretariat, and Trustee).

**Sub-workstream II.2: The Board**

This sub-workstream will address issues related to the GCF Board. Inputs will be solicited regarding:

- The composition and election of the Board, including: the election of members and regional distribution among UN regions; the role of non-governmental actors including the private sector; the election of Chair(s) and duration of members' service;
- The mandate and responsibilities of the Board, especially the extent to which the Board will engage in project/programme approval;
- The rules of procedures and functioning of the Board, especially decision-making processes.

**Sub-workstream II.3: The Secretariat**

The sub-workstream will address issues related to the GCF Secretariat. Inputs will be solicited regarding:

- The establishment of the independent Secretariat, as well as its legal status, composition, and recruitment procedures;
- The mandate and functions of the Secretariat, including its role (if any) in project/programme review, MRV, and carbon accounting;
- Relationship with implementing institutions, including project cycles and division of responsibility.

**Sub-workstream II.4: Trustee Arrangements**

This sub-workstream will focus on the trustee and will be closely coordinated with Workstream III.2 dealing with managing large-scale finance. Inputs will be solicited regarding:

- Issues regarding the role of the trustee (in addition to 1/CP.16, Paras 104-108), including the investment strategy of the trust fund;
- From where the trustee receives instructions (Board or Secretariat);
- Relationship between the trustee and implementing institutions, particularly in terms of subsidiarity over fiduciary standards;
- The review process for interim trustee and process for selection of permanent trustee.

**Sub-workstream II.5: Coherence with the other operating entities of the financial mechanism and other climate, environment, and development finance**

This sub-workstream will focus on how the GCF will work alongside other elements of the public climate finance landscape, both in terms of governance and mandate/activities. This will be strongly influenced by Workstream I on scope, functions, and guiding principles. Inputs will be solicited regarding:

- The relationship between the GCF and the Standing Committee once constituted;
- Methods to ensure complementarity at the national and international level between the GCF and other bilateral, regional, and multilateral funding mechanisms and institutions as well as carbon markets;

- The specific relationship and complementarity with the GEF and Adaptation Fund within the UNFCCC financial mechanism.



## Annex II

### Chapter II: Submissions by members of the Transitional Committee on workstream II

#### I. Submission by Mr. Ewen McDonald (Australia)

##### Comments on Transitional Committee Workstream II Issues

##### Sub-workstream II.1: Legal and institutional arrangements

*This sub-workstream will address the legal status and formal relationships of the GCF and its institutional components (the Board, the Secretariat, the Trustee, and the Implementing Partners and other relevant elements, including mechanism for expert, technical and stakeholder input). Inputs will be solicited initially regarding:*

*(i) The legal status (capacity or personality) of the GCF and its components, how such status will be conferred, and the possible liabilities of the components;*

The necessary legal status of the fund, and of its components, is not a foregone conclusion. Not all funds - climate change and development - have a need for legal personality. It would therefore be useful for us to consider an options paper in the first instance.

As a first step, the options paper could examine the experience of other funds, for example, the Adaptation Fund, the Multilateral Fund for the implementation of the Montreal Protocol and the Global Fund to Fight AIDS, Tuberculosis and Malaria. The background document for this workstream included some information on the legal status of other funds, but it would be useful to take this further to examine the processes and thinking that led each fund to its current legal (or otherwise) status.

The paper might then analyse what factors could necessitate legal status within the Green Climate Fund, for example, the issue of direct access, which the TC is considering under Workstream III. The implications of conferring legal status for the legal relationships between the GCF and its implementing partners should also be considered. As a starting point, it would be important to examine the provisions of the Cancun Agreements. This analysis may lead us to the conclusion that the Fund does require legal powers – and we should specify these. Or it may lead us to the conclusion that it does not in fact require legal status.

If the former, the options paper could then examine the alternatives available in conferring legal status. Based on the above analysis of the legal powers required by the Fund, the paper could consider which element(s) of the Fund would most appropriately take on these powers, and what process would be required for conferral.

Given the many linkages between the issue of legal status and other issues to be decided in this and other workstreams, consideration of legal status may need to be concluded down the track, after initial consideration of these other issues. However, work could commence on background analysis, and implications of existing decisions, immediately. Each workstream should be encouraged to identify the legal implications of their issues and the decisions taken by the TC and feed those back to Workstream II.

*(ii) The legal relationships between the GCF and its implementing partners, both multilateral and national;*

Our consideration of this component will depend in part on whether or not the GCF (or one of its elements) is conferred legal capacity.

If the Fund does not have legal capacity, it might operate similarly to the GEF, which itself does not have independent legal personality but has a legal status derived from the Global Environment Trust Fund operated by the World Bank. In this situation, implementing partners, both multilateral and national, enter into legal arrangements with the trustee. However, implementing partners continue to be accountable to the Council to ensure the effectiveness of their GEF-financed activities, including project quality, management and results.

Should the GCF secure independent legal personality, it could enter directly into legal arrangements with its respective implementing partners. Implementing partners would still be accountable to the Fund Board. The Adaptation Fund provides an example of this model.

***(iii) The accountability relationship between the UNFCCC COP and the GCF components (principally the Board, Secretariat, and Trustee)***

As indicated in the Cancun Agreements, the Fund is accountable to and functions under the guidance of the COP. The Board of the Fund would therefore be accountable and under the guidance of the COP, but would also retain independence in decision-making with regard to funding projects and programmes. The Secretariat and the Trustee would both be accountable to the Board.

In elaborating the details of these relationships we should draw upon the existing example of the Global Environment Facility (GEF). Like the GCF, the GEF is an operating entity of the financial mechanism of the Convention, and is also accountable to and functions under the guidance of the COP. This relationship may provide some insights and lessons learnt to consider in the Fund design.

**Sub-workstream II.2: The Board**

***This sub-workstream will address issues related to the GCF Board. Inputs will be solicited initially regarding:***

***(i) The composition and election of the Board, including: the election of members and regional distribution among UN regions; the role of non-governmental actors; the election of Chair(s) and duration of members' service;***

The TC may wish to provide additional advice on composition of the Board or it may leave this to developed and developing country groupings to determine amongst themselves, particularly in light of time constraints on the TC's mandate.

Consideration of Board composition could include regional distributions within the 12 developed and 12 developing country seats that were agreed in the Cancun Agreements, including designating permanent seats for Least Developed Countries (LDCs) and Small Island Developing States (SIDS) within the developing country seats. Developed and/or developing countries may choose to develop constituencies of more than one country per seat in order to broaden country involvement, as is the case in the GEF. Consideration of the governing provisions of the GEF and other funds in relation to Board composition may assist the TC in deciding whether this needs to be addressed any further in the Fund design process.

As the Green Climate Fund is an operating entity of the financial mechanism, with an independent Board, constituencies will select their own Board members, and there is a question as to whether the TC needs to provide input to this process. However, the TC should consider under this workstream the terms of Board members, and whether we stagger these to ensure continuity across terms.

Australia also sees merit in examining how best to engage non-government organisations in the work of the Board, noting the Board composition has already been agreed by the COP, to ensure that their expertise and experience can input into the operations of the GCF. In considering this issue, we should look not only at traditional observers or active observers such as civil society, but also representatives from advisory bodies under the Convention and the private sector.

This sub-component of the workplan must also consider the expertise that Board members require. The qualifications of the Board should facilitate effective and efficient management and disbursement decisions. Members of the Board and any sub-governing boards, if agreed, should have relevant skills and expertise in fund management, finance and development administration. This sub-component should consider how "expert" members should be, and how to consider incorporating a range of skills *across* the Board, moving from technical skills to governance skills to the ability to set and deliver on strategy.

The TC should also consider how to encourage gender balance within the Board.

***(ii) The mandate and responsibilities of the Board, especially the extent to which the Board will engage in project/programme approval;***

Our consideration of this sub-component should start at a strategic level – what should be the nature of the Board? Should it be to set strategic direction? Or should it take on primarily a management and administration role? We can then address the questions of the extent to which the Board will engage in project/programme approval and the expertise we require within Board members. For example, if we wish Board members to spend a large amount of time considering the detail of project and programme proposals, we will need significant technical expertise within our members, not to mention the ability to dedicate a significant amount of time to this task.

***(iii) The rules of procedures and functioning of the Board, especially decision-making processes.***

Examining the rules and procedures of the boards of other relevant funds seems a logical place to start for this sub-component. This will also in part depend on the answer to the above question relating to the role of the Board and its level of engagement in project/programme approval.

**Sub-workstream II.3: The Secretariat**

***The sub-workstream will address issues related to the GCF Secretariat. Inputs will be solicited initially regarding:***

***(i) The establishment of the independent Secretariat, as well as its legal status, composition, and recruitment procedures;***

The legal status of the Secretariat would presumably be considered under component II.1.(i) above (which is to consider the legal status of all components of the Fund).

One question that should be addressed is the extent to which the TC considers the establishment of the independent Secretariat. Having set out the Secretariat's mandate, functions and relationships (as per the below), the TC may wish to devolve the more administrative and time-consuming tasks of recruiting the Secretariat to the Board. However, the TC may also wish to consider the composition of the Secretariat, in order to guide the Board as to size, key functions, etc. – this may depend on timing and priorities.

***(ii) The mandate and functions of the Secretariat, including its role (if any) in project/programme review, and MRV;***

Australia places great importance on ensuring the Secretariat has the requisite technical capacity and expertise to do its job. In deliberating upon the functions of the Secretariat, especially on whether it will have a role in project and programme review, it will be key for us to be able to assume that the Secretariat will have the right skills and expertise to assist the Board in such tasks.

Australia's view is that indeed the Secretariat should have a role in project and programme review. Such review requires a certain set of skills and can be time-consuming, and the Board of the Fund cannot be expected to be able to take sole responsibility for such a task.

It will be important for the Fund to have strong monitoring, reporting and evaluation processes– such as emissions reductions monitoring and reporting at the project and program level – and it is anticipated that the Secretariat could play a role in this regard. However it would be useful to further clarify in which instance(s) the Secretariat would be required to undertake measurement, reporting and verification procedures. Issues related to monitoring and evaluation should be addressed in workstream (IV).

We should draw on the experience of funds such as the Adaptation Fund, the Climate Investment Funds and the GEF in determining the Secretariat's mandate and functions. A paper providing some detail on the mandate and functions of these funds' secretariats would be helpful.

***(iii) Relationship with implementing institutions, including project cycles and division of responsibility***

The relationship between the secretariat and implementing institutions will in part depend on TC decisions on the role and types of implementing institutions and standards and criteria applied to those institutions.

Consistent with other items, the TC should consider the respective roles of secretariats and implementing entities in other funds, the resourcing implications of the secretariats taking on these roles and potential options for alternative entities to perform these roles.

**Sub-workstream II.4: Trustee Arrangements**

*This sub-workstream will focus on the trustee and will be closely coordinated with Workstream III.2 dealing with managing large-scale finance. Inputs will be solicited initially regarding:*

*(i) Issues regarding the role of the trustee (in addition to 1/CP.16, Paras 104-108), including the investment strategy of the trust fund;*

The Cancun Agreements provide clear guidelines as to the role of the trustee. Consideration of the investment strategy for the trust fund should consider the risks and benefits of different investment strategies. The TSU could provide further information (or seek external input) on options and risks and benefits. The TC may wish to agree some boundaries around investment strategies of the trust fund, however we would encourage leaving reasonable flexibility for the Board to manage these decisions.

*(ii) From where the trustee receives instructions (Board or Secretariat);*

This issue interlinks with component II.1.(i) above, legal status.

In principle we expect that the trustee should receive any significant instructions from the Board; however, in relation to day to day issues the Secretariat may need to be the point of contact and engagement for the trustee, with capacity to make day to day decisions. In light of this, it would be helpful to consider the options for the trustee's roles and the types of interactions it may likely to require with the Board and Secretariat.

*(iii) Relationship between the trustee and implementing institutions, particularly in relation to internationally accepted fiduciary standards;*

It will be important to engage the interim trustee for the Fund in consideration of the first three sub-components of sub-workstream II.4. This is not only because the trustee will fill the role for the initial period of the Fund's existence, but also because the World Bank has a wealth of experience acting as trustee for other funds, including for the Adaptation Fund. However, it is important to note that the Transitional Committee will ultimately make the decisions on all design elements, including trustee arrangements.

*(iv) The review process for interim trustee and process for selection of permanent trustee.*

Australia supports the development of independent and rigorous review and selection processes in relation to the trustee of the Fund. However, given these processes will not be required for three years, we encourage the TC to focus its attention on other, more pressing priorities required for the design of the Fund, and leave the development and implementation of these processes to the Board of the Fund.

In considering these processes, the TC should encourage the Board to examine the reasons the UNFCCC negotiations were unable to select a permanent trustee in Cancun – the reservations that were raised should be considered in the Board's processes for reviewing the performance of the interim trustee and assessing offers to act as permanent trustee. Developing a robust process that considers these issues would help to avoid a further occurrence of interim institutional arrangements. The experiences of other funds that have undertaken review processes and procedures to appoint trustees would be useful input into the Board's consideration.

**Sub-workstream II.5: Coherence with the other operating entities of the financial mechanism and other climate, environment, and development finance**

*This sub-workstream will focus on how the GCF will work alongside other elements of the public climate finance landscape, both in terms of governance and mandate/activities. This will be strongly influenced by Workstream I on scope, functions, and guiding principles. Inputs will be solicited initially regarding:*

*(i) The relationship between the GCF and the Standing Committee once constituted;*

To preserve the integrity of the GCF and its effective and efficient operation, it is important to respect and maintain a clear line of accountability between the Fund and the COP. Australia considers that the COP should be the sole body for the delivery of any guidance to the Fund, including on funding priorities and allocations. Consistent with

this, the Standing Committee, as an advisory body to the COP, would not provide direct advice or guidance to the GCF.

Information either requested by the GCF or provided by the Standing Committee that would directly impact on the Fund's operational or decision-making functions should flow through the COP. Information or recommendations from the Standing Committee could inform the guidance provided by the COP to the Fund.

This sub-component should also include consideration of other expert and advisory bodies within the UNFCCC, such as the Adaptation Committee, the Least Developed Countries Expert Group and the Technology Executive Committee, all of which have relevance to the Fund. As with the Standing Committee, it will be important to ensure processes exist to maintain a clear line of accountability between the Fund and the COP.

***(ii) Methods to ensure complementarity at the national and international level between the GCF and other bilateral, regional, and multilateral funding mechanisms and institutions as well as carbon markets;***

It would be useful to consider all of these funding mechanisms and institutions, as well as carbon markets, against the GCF in terms of comparative advantages and niches, as well as where, inevitably, there may be some duplication in mandates. We should consider how best we might reduce and manage that duplication.

We should also consider how and in what terms the various mechanisms and institutions might "talk" to each other. For example, a formal avenue for this to occur could have merit, but does not necessarily need to be convened by the Fund.

***(iii) The specific relationship and complementarity with the GEF and Adaptation Fund within the UNFCCC financial mechanism.***

Sub-component iii) should consider the full range of funding mechanisms under the Convention. As well as exploring the relationship and complementarity with the GEF and the Adaptation Fund, consideration should also be given to these issues in relation to the Least Developed Countries Fund and the Special Climate Change Fund.

It will be important to ensure that operational entities of the financial mechanism (GCF and GEF) and the other UNFCCC funds are coherent in their approach to climate change financing. The GEF has built a significant body of expertise in its current target and priority functions and the GCF should consider ways to complement this work.

**II. Submission by Ms. Audrey Joy Grant (Belize)**

**First submission of views from Belize, supported by Guyana**

**Governance and institutional arrangements**

**The Fund Board**

- Election is by the COP.
- There must be equitable and balanced representation on the Board.

**Fund Trustee**

- The role of trustee is fiduciary management.  
The permanent Trustee should be decided by open bidding

### **III. Submission by Mr. Rob Stewart (Canada)**

#### **Comments the draft work plan for Workstream II: Governance and Institutional Arrangements**

In general, the work plan proposes a logical flow of work. There are, however, a few points that would merit close examination. Specifically, on questions raised in the workplan:

- *Legal and institutional arrangements*

(i). The legal status of the GCF should be a function of what is necessary to deploy the financial instruments selected, whether the GCF should be able to raise capital from the markets, whether the GCF will have the capacity to enter into contractual relationships, and whether a shareholder model is to be applied.

(ii). The form and content of the instruments that will be used to define the relationships between the GCF and implementing partners will depend on the legal status of the GCF

(iii) The accountability relationship can be defined in an MoU between the COP and the GCF. The MoU between the GEF and the COP is a useful model.

- *The Board*

(ii). The choices about the mandate and responsibilities of the Board are linked to the choices around the funding windows to be established and whether any more specific governance arrangements will be created for those windows.

- *The Secretariat*

(i). The status of the secretariat should depend on the overall legal status of the GCF and, possibly, the relationship between the GCF and the trustee. In principle, the more independent the GCF is, the stronger the case for the secretariat having international legal status, along with appropriate privileges and immunities.

- *Trustee Arrangements*

(iii). Given that the interim trustee will be the World Bank, it may be desirable to apply to the GCF the internationally accepted fiduciary standards that are used at the World Bank.

- *Coherence with other operating entities*

(i) . Prima facie, it is not possible right now to anticipate a specific relationship between the GCF and the Standing Committee. The Standing Committee's main role is to assist the COP, not to have specific relationships with the financial mechanism. In addition, the precise roles and functions of the Standing Committee have yet to be defined.

**IV. Submission by Mr. Per Callesen (Denmark) and  
Twinning Expert (The Netherlands)**

**Proposed workplan**

The background notes and background papers mentioned under (ii) and (iii) should cover not only the relevant national, bilateral and regional funds but also the larger private funds (Gates, Clinton etc.). There are likely valuable lessons to be learned from the experiences of the Multilateral Fund under the Montreal Protocol and the GEF Council as well.

**Sub-workstream II.2: The Board**

**(i) The composition and election of the Board, including: the election of members and regional distribution among UN regions; the role of non-governmental actors; the election of Chair(s) and duration of members' service**

The composition of the board needs careful consideration. The Cancun agreement stipulates that the 24 seats on the Board should be reserved for Parties with equal representation of the group of developed countries and the group of developing countries. However, with the view to strengthen the catalytic function of the Green Climate Fund (GCF) it might be relevant to consider if a broader group of constituencies including representatives from both the public and private sector, as well as individuals with particular expertise should be invited to join the Board - either as voting members, and thereby reducing the seats available to Parties - or as non-voting representatives of strategic alliances, to ensure technical support and capacity strengthening. Furthermore, it may also be considered to allow a non-voting Board seat be made available for the representative of the trust fund and to the Executive Director of the Secretariat.

**(ii) The mandate and responsibilities of the Board, especially the extent to which the Board will engage in project/programme approval;**

As the supreme governing body of the fund, the GCF Board should be authorized to exercise the following powers:

- appoint full and alternate Board members selected in accordance with agreed procedures;
- set policies and strategies;
- set operational guidelines, work plans and budgets for the Secretariat;
- make funding decisions;
- select and, if necessary, replace the Executive Director (other Secretariat appointments should be made by the Executive Director under procedures approved by the Foundation Board);
- set criteria for membership of, and appoint members of the Technical Review Panel and other advisory groups as appropriate;
- validate eligibility criteria for projects;
- establish a framework for monitoring and periodic independent evaluation of performance and financial accountability of activities supported by the fund;
- establish conflict of interest policies for the Board, the Technical Review Panel, the Secretariat staff and others as appropriate;
- consider, approve, and monitor cooperative arrangements or agreements with other organizations and institutions;
- coordinate with outside agencies;
- advocate for the Fund and mobilize resources;
- establish Fund Board committees as appropriate;
- approve the annual report; and
- all other powers required to carry out the purposes of the Fund.



In the decision making process the GCF Board should be advised by an independent technical review committee, which should consist of an impartial team of experts appointed by the board to guarantee the integrity and consistency of an open and transparent review process. Based upon a pre-defined set of assessment indicators, the review committee should assess the proposal(s) and advise the Board. The chair of the independent technical review committee should not be a Member of the Board. Any Board Member should be allowed to ask the chair of the independent technical review committee to explain the committee's advice to the Board.

The GCF Board should be allowed to delegate its powers, except where governing law or by-laws may otherwise prohibit delegation. Powers delegated by the Board should, notwithstanding such delegation, be exercised under the authority and direction of the Board.

**(iii) The rules of procedures and functioning of the Board, especially decision-making processes.**

Each constituency serving on the Board should determine a process for selecting its Board representation. Board Members should serve as representatives of their constituencies.

Board Members should be allowed to serve for two years. The Executive Director of the GCF should act in his or her capacity as chief executive officer of the GCF and should serve the Board for the duration of his or her term.

Board Members should be deemed to act in their capacity as representatives of their respective governments, organizations or constituencies.

The Board should provide the COP with regular (yearly), transparent and detailed reports on how it implements guidance from the COP, and on the results achieved by the Green Climate Fund. Experience with the GEF suggests that effective COP guidance will require high quality information.

The GCF Board should meet as often as necessary but not less than twice per year. A meeting of the GCF Board should be convened by written notification from the Chair or the Vice Chair of the GCF Board, or by the Executive Director at the direction of the Chair or the Vice Chair.

All decisions of the GCF Board should be recorded in minutes of the GCF Board meetings, approved by the Board and provided to all voting and non-voting Board Members, and retained in the permanent records. The Board should only conduct business when a majority of Board Members of each of the three voting groups described above is present.

Board Members should select the Chair and the Vice Chair of the GCF Board from among voting Board Members, and the two positions should alternate every two years between the voting groups described above. The Chair and the Vice Chair should each be elected for two-year terms.

In addition to chairing Board meetings, the Chair should also have an important advocacy and fund raising role.

**Sub-workstream II.3: The Secretariat**

The GCF should have its own exclusive Secretariat, which works only for the GCF and is accountable only to the Board of the GCF. It should remain identifiable as a separate and integral unit of the GCF with its own head.

The Secretariat should be kept small and should have a high degree of expertise. The head of the secretariat should be appointed by the Board and should be authorized to select and hire the individuals making up the secretariat.

## V. Submission by Mr. Remy Rioux (France)

### Workstream II: governance and legal arrangements. Views and comments

#### Preliminary comments

The legal and institutional arrangements as well as the role and functions of GCF's components are strongly linked to and will depend on the outcomes of workstreams I and III, insofar as the "form" of the GCF cannot be designed until the guiding principles, the main functions and the financing tools of the GCF are defined.

Therefore, there is a need to make sure that the governance and institutional arrangements decided in workstream II will be coherent and will make the GCF able to fulfill the role and functions it will be entrusted with. It is thus important to allow sufficient time for decisions to be worked through in other connected workstreams. Secondly, it will be crucial to draw on the different existing governance models and arrangements in use in other funds. Therefore, it would be very useful for the TC members to further analyze in a more critical manner these existing models. As they may not bring all the answers to the questions raised by the design of the GCF, the TC should also be able to propose some innovative solutions regarding the governance and institutional arrangements for the future Fund.

#### ***a) sub-workstream II.1. Legal and institutional arrangements***

**(i) The legal status of the GCF** will depend on the type of institutions that will be created (cf. work stream III). If the GCF is a financial institution, it will likely need to be endowed with the legal capacity in order to raise funds from the capital markets. If the GCF is a trust fund, the legal capacity will not be necessary: for 20 years, the GEF has been functioning without legal capacity (leaning against the World Bank, working as its trustee). Nevertheless, depending on the role and functions we want the GCF to fulfill, the legal capacity may appear to be necessary. Therefore, the legal status or capacity will be decided in accordance with the functions and the role the GCF will be entrusted with.

**(ii) The legal relationships between the GCF (or one of its components) and its implementing agencies** will need to ensure that the funding flowing through these agencies are spent wisely and in accordance with the decisions taken by the Board. On this aspect again, the functions and the role of the GCF and the different modalities of access to GCF's funding will be key to define the legal relationships between the GCF and its implementing agencies. Lessons could be learnt from the GEF and the CIFs partnerships.

**(iii)** According to the paragraph 102 of the Cancun Decision, the GCF has been established "as an operating entity of the financial mechanism of the Convention under Article 11, with arrangements to be concluded between the Conference of Parties and the Green Climate Fund to ensure that **it is accountable and functions under the guidance of the Conference of the Parties**".

The accountability of the GCF to the COP is an important issue of legitimacy. Nevertheless, it will be important to implement this accountability by making sure that the GCF remains under the guidance of the COP and not under its authority. Drawing on the experience of the GEF, which until now is the only operating entity of the financial mechanism of the Convention, this guidance means that the COP will provide on a regular basis political guidance to the GCF regarding its main functioning rules, strategic priorities and eligibility criteria. In return, the GCF will have to report in a regular basis to the COP on the way this political guidance is fulfilled. But any micromanagement from the COP should be prevented and the relationship should therefore remain limited. As it is the case for the GEF, we consider that the signature of a MoU between the Board of the GCF and the COP will be the best way to ensure that the GCF is accountable and functions under the guidance of the COP.

#### ***b) Sub-workstream II.2. The Board***

Paragraph 103 of decision 1/CP.16 provides that "the Fund should be governed by **a Board of 24 members, comprising an equal number of members from developing and developed country Parties**; representation from developing country Parties should include representatives of relevant United Nations regional groupings

and representatives of small island developing States and the least developed countries”. Therefore, the Cancun agreement already provides a detailed composition of the Board. The Board should be composed of members having the necessary experience and skills, notably in the area of finance and climate change. Regarding the way the seats will be effectively distributed, it will depend on each of the groupings to manage this issue among themselves within the framework decided by the COP in Cancun.

Regarding the other stakeholders (civil society, private sector, indigenous communities...<sup>7</sup>) it will be important for the legitimacy of the Fund to ensure that these actors are properly involved. But it shouldn't necessarily imply for them to get a permanent seat in the Board. They would rather participate to the Board's council as “active observers” with the possibility to intervene on main issues and submit their views to the council members. Nevertheless, if a specific sub window for the private sector, specific institutional arrangements, including voting rights for the representatives of the private sector limited to this specific window could be elaborated.

***c) Sub-workstream II.3. The secretariat***

According to paragraph 108 of decision 1/CP.16 “the operation of the Fund shall be supported by an **independent secretariat**”. The selection procedure of the secretariat should therefore ensure the independency of the secretariat.

The secretariat should be composed of professionals with high experience and specific skills in the area of projects/programs financing and climate change. The exact composition of the secretariat will highly depend on the type of Fund that will be created. Various options could be envisaged:

-if the Fund manages itself important amounts of funding and finances a large number of diversified projects, the Board will need to be supported by a strong staff. In this case it could be decided:

- to create a new and *ad hoc* secretariat with strong technical and financial capacities
- to create a light secretariat which strongly relies on specific technical committees based on the staffs of the existing climate funds and climate specialists from international institutions.

-If the model of a “Fund of funds” prevails, the management of projects and related funding will be largely delegated to the implementing agencies and in this case the secretariat will remain very light. However, strong financial expertise would be needed to ensure the complementarity of the fund.

***d) Sub-workstream II.4. Trustee arrangements***

The Cancun decision already provides for many details regarding the trustee's role and functions (cf. § 104 to 107).

(i)The investment strategy of the trust fund is difficult to define regardless of the type of fund that will be created (a trust fund or a financial institution) and of the type of sources that will flow through the Fund (grants, loans, capital, CER-type sources that have to be monetized...). Therefore, this strategy should be later determined after these issues have been clarified.

(ii)As the trustee is accountable to the GCF Board (§106), the trustee should receive its instructions mainly from the Board. The Board could nevertheless decide to delegate some competencies regarding the Trustee to the Secretariat.

(iii) Once the implementing institutions got the accreditation which requires among others that the agency meet all the fiduciary standards, a financial procedures agreement (FPAs) could be with the Trustee in order to allow both the Trustee to allocate the funds and the Agency to receive them.

***e) Sub-workstream II.5. Coherence with the other operating entities of the financial mechanism and other climate, environment, and development finance.***

<sup>7</sup> The scope of the stakeholders should be further defined.

(i) The TC cannot in any way prejudge the future design of the Standing Committee (SC) that will be decided by the COP itself. Therefore, the question of the relationship between the GCF and the SC should not be discussed until the SC is completely constituted.

(ii) It is important to draw a difference between the overall coordination functions that should be addressed independently and by an independent body and the complementarity that has to be ensured on the ground regarding allocation of funds.

The GCF could be tasked with significantly reinforcing the coordination between financial actors on the ground in order to avoid any overlapping or duplication. It will be important for the GCF to pay attention to what is really being done in recipient countries by other donors. A partnership could be formalized to clarify the division of labor, in order to endeavor effective cooperation on the ground and mechanism to incentivize traditional donors to work on behalf of the GCF should be developed.

Regarding the potentially high risk to overlap with existing climate funds such as the Adaptation Fund and the GEF within the UNFCCC mechanism, there could be envisaged to tackle this specific issue by negotiating and signing a MoU with these two funds, as it is already the case between the GEF and the CIF. This MoU would clarify the general division of labor between the Funds and will seek to favor the synergies between them by providing a longstanding cooperation between the experts of these funds and a complementarity between the different funds' activities.

**VI. Submission by Mr. Michael Adande (Gabon)**

In term of Board composition, this requires:

- A balanced and equitable representation of all Parties
- The focus on the functions of the Board is key, they should be inspired by Article 11

In terms of legal personality of the Fund, an international personality appears as best option.

The Fund should remain under the authority of the COP

The Secretariat should be independent and should be scalable to the level of its activities. The Trustee activities should be clearly segregated with any other functions.

## **VII. Submission by Mr. Y V Reddy (India)**

### **On Workstream II**

**India** welcomes the opportunity to present views to the Transitional Committee for the design of the Green Climate Fund on various issues relating to the work of the Committee. Pursuant to the deliberations held in the first meeting of the Committee held on 28-29 April, 2011 in Mexico and the subsequent technical workshop held on 30 May – 1 June, 2011 at Bonn, Germany, India submits its views on the issues relating to the second work-stream i.e. ‘Governance and Institutional Arrangements’ as follows.

#### **Governance and Institutional Arrangements**

Governance of the Fund should be guided by the provisions of Article 11 of the Convention that deals with the issues relating to institutional arrangements of the Financial Mechanism of the Convention, and its governance, and accountability.

Apart from the institutional and governance issues of the Fund, the Fund design should articulate the relationship of the Fund with the Conference of Parties and clarify the nature of guidance in terms of advice and/or supervision that it should receive from the Conference of Parties.

##### **(i) Institutional arrangements**

The GCF should have at least four institutional components e.g. the Fund Board, the Trustee, the Secretariat and the National Implementing Entities. Besides, it may have specific thematic windows and technical/expert advisory panels that should assist it in performing its functions in the related themes or areas.

An independent legal entity of the GCF is of utmost importance. A legal status should be imparted to the Fund forthwith and should not await the completion of arrangements relating to modalities of contributions. A legally independent Fund will be able to channel both committed and private resources in an integrated model and will be able to develop the capacity to be a tool for transformation and policy intervention. Establishment of the Fund’s legal character subject to the principles of the Financial Mechanism of the Fund will be an important expression of the willingness of the parties to let the GCF become such a tool. Creation of a legal entity of the Fund is therefore a critical component of the institutional arrangements.

The Board of the Fund should be a body accountable to the CoP and should function according to the guidelines laid down by the CoP. It should have a President and vice President elected from amongst the Annex I and Non Annex I members on an alternate basis, each with a term of two years, renewable for another two years term. The President will preside over the meetings of the Board which should meet at least 4 times a year. The Board should function according to ‘one member one vote’ principle and should take decisions according to consensus of at least 2/3<sup>rd</sup> of the members present and voting and 2/3<sup>rd</sup> of the members from each category of Annex I and Non-Annex I parties.

Functions of the Board should be laid down by the CoP. Amongst the primary and essential functions of the Board is the provision of channeling and providing resources to the NIEs according to the laid down principles of thematic and functional and geographic allocation. It should also lay down the procedure of sanction of funds to the projects and programs to meet their incremental or full costs according to the agreed principles.

The Fund should have an independent Secretariat staffed with officials of proven expertise and should be headed by a Chief Executive Officer. The executive and administrative functions of the Board should be performed by the Secretariat in accordance with the directions and advice of the Board and the guidelines laid down by the CoP.

The initial trustee of the Fund should function for three years from the date of incorporation of the Fund, following which the trustee should be selected on the basis of proven expertise in management of financial assets and resources in a secure, risk-proof and cost effective manner.

The Fund should have National Implementing Entities (NIEs) appointed by the Board. NIEs should be an integral part of the Fund design. NIEs should have a role in implementation of activities and Plans, disbursement of resources and the involvement or otherwise of the private sector at the national level. The GCF should have an active role in designing the NIEs. Permitting a loose structure where funds are allocated and disbursed to implementing entities without having co-relation with the national implementing entities will lead to avoidable confusion and complication not only in the management of resources but also in the monitoring of the actual flow of the funds for climate needs on a verifiable and monitorable basis. If the Fund has to channel resources in accordance with the principles and objectives of the Convention, it must act in support of the national strategies. Accordingly, the mobilization of resources and their application must take place at the national level and the GCF must have an appropriate fund allocation model for this purpose.

(ii) Governance

Governance arrangements should clearly spell out the relationships amongst institutions and their accountability to each other.

The Fund design should ensure that the Fund is accountable to the CoP in terms of the operation of the Fund and its functions. The accountability is two-fold i.e. accountability of the Fund Board to the CoP on the one hand, and, on the other, of the Trustee towards the Board. There should be a clear separation between the trusteeship functions and the operational functions and it is important to avoid a conflict of interest in these functions. At the same time, the CoP must lay down the guidelines for the functioning of the Board.

The functioning of the Board should be overseen by Standing Finance Committee of the CoP whose function should be to cohere the working of various entities and financial institutions towards achieving the objectives of the Convention.

Private sector model of International Finance Corporation (IFC), the Fund of Funds model, or even a partnership model is not an effective governance model for channeling of funds. Under such a model, the channeling of funds will not be guided by the national priority of adaptation and mitigation and the GCF will not provide grant based investments as warranted by the Convention. This model will not meet the goals of national development strategies. GCF should therefore provide resources to a national entity that synchronizes and mobilizes resources from other sources including the private sector at the national level.

Further, the GCF must avoid imposing conditionalities on funds in the name of guidelines for monitoring of performance and implementation. Performance review of a supported project is an internal and endogenous exercise at the national level, guided by the national priorities. There cannot be *a-priori* judgment of the outcomes and performance reviews as a part of governance.

**VIII. Submission by Ms. Naoko Ishii (Japan)**

*The Board.* We appreciate the preparation of Factsheets on selected existing funds, which is useful information to overview the existing modalities. It will be appreciated if TSU could provide more detailed information of the decision making rules of each fund (e.g. African Water Fund shows just “provided in the Instrument”) and conduct analysis on to what extent each Board works effectively and efficiently.



## IX. Submission by Ms. Bernaditas Mueller (Philippines)

### On Governance and institutional issues

**General Comment:** When referring to specific sub-paragraphs of the TOR contained in Annex III of Decision 1/CP.16, the exact term must be used to avoid interpretations.

1. Legal and institutional arrangements for the establishment and operationalization of the GCF: including the legal status of the Fund; legal relations with partners; accountability of the Board to the COP, ensuring that guidance from the COP is followed, the Board of the Fund, the independent secretariat, and the Trustee. The flow of responsibilities of the different institutions should likewise be specified: The COP provides guidance and the Board of the Fund is accountable to the COP; the Fund Board is served by an independent secretariat, and the Trustee is the Trustee of the Fund. The terms and conditions for following the guidance of, as well as for ensuring accountability to the COP must be clearly defined and laid out.
2. The Board of the Fund: – composition and election of the Board; election of the Chair; terms of office of members; Mandate and responsibilities of Board; Rules of procedure and functioning, especially in decision-making.
3. Secretariat – Establishment of an independent secretariat, selection of the independent secretariat, legal status, composition, recruitment procedures; Mandate and functions; Relation with national/multilateral implementing institutions, and functions in carrying out the operational instructions of the Board.
4. Trustee: role of trustee in strict adherence to paragraphs 104, 105 and 106 of Decision 1/CP.16; clear lines of responsibilities (instructions from the Board, as may be carried out by the secretariat); Relation of trustee and national/multilateral implementing institutions if any; Strict limit of interim status to three years (paragraph 107), with a review to be conducted within these three years to allow for setting of criteria and process for open bidding for the selection of a permanent Trustee.
5. Relationship of the GCF and thematic bodies established under the Convention: “Mechanisms to ensure the provision of appropriate expert and technical advice” (TOR, para 1 (i)).

### II. Proposed Work Plan

1. On para. 4 under “Proposed Work Plan”, delete reference to “coherence” with other finance flows, as this is not contained in the TOR and replace with “methods to enhance complementarity of activities (not and “finance flows”)), and delete “while recognizing linkages with work under other workstreams”, which would not be applicable. **Comment: Consistency of the work to be undertaken by the TC should be in complete consistency with the TOR.**
2. Mechanisms to ensure the provision of appropriate expert and technical advice, including from relevant thematic bodies established under the Convention. (please see “Comment” above).
3. Mechanism to ensure stakeholder input and participation.
4. There should be a clear delineation of the respective roles of the different funds under the Convention: the Special Climate Change Fund and the Least-developed Countries Fund, as well as the Adaptation Fund of the Kyoto Protocol, within the context of the financial mechanism of the Convention, as well as the relationship and possible realignment of responsibilities between the GCF and another operating entity of the financial mechanism, the Global Environment Facility. This could fall under the responsibility of the Standing Committee once constituted as a subsidiary body of the Convention, for the guidance of the COP.

**X. Submission by Mr. A. F. Elisaia (Samoa)**

AOSIS comments on Transitional Committee Workstream II issues

1. AOSIS appreciates the opportunity to provide initial feedback on issues to be considered in Workstream II, Governance and Institutional Arrangements. We look forward to working with Transitional Committee colleagues, the Transitional Support Unit, observers and other stakeholders to further analyze and consider these issues and provide more substantive input as the work progresses.

**a. Sub-workstream II.1: Legal and institutional arrangements**

2. As an operating entity of the financial mechanism of the Convention, the GCF functions under the guidance and is accountable to the COP (Para 102, 1/CP.16). The Board should faithfully carry out the decisions of the COP relevant to its work.

3. The Board is the governing body of the fund and the decision-making entity.

4. The Secretariat should be a new, independent and dedicated entity within the fund rather than an outside existing entity. The Secretariat should take its directions from the Board and provide the Board with administrative, technical and other forms of support.

5. The Trustee should have the limited role of disbursing funds, as defined in an agreement with GCF, and carry out the instructions of the Board.

**b. Sub-workstream II.2: The Board**

6. The Board of the Green Climate Fund shall be comprised of 24 members, taking into account fair and balanced representation among these groups as follows:

- (a) Twelve representatives from the Parties included in Annex I to the Convention (Annex I Parties);
- (b) Three representatives from Asia;
- (c) Three representatives from Africa;
- (d) Three representatives from GRULAC;
- (e) One representative of the Small Island Developing States;
- (f) One representative of the Least Developed Country Parties; and
- (g) One representative rotating on an biennial basis from the Small Island Developing States and the Least Developed Country Parties;

7. Members of the Board should be nominated by their regional groups and be endorsed by the COP. The members shall each serve for a term of two years.

The Board should have the responsibility to ensure that funds are distributed in a balanced manner among countries and regions, as well as access, mainly direct access, for Small Island Developing States and Least Developed Countries.

**c. Sub-workstream II.3: The Secretariat**

8. The Secretariat should be a new, independent and dedicated entity, unaffiliated with any existing entity. The Secretariat will report and function under the instruction of the Board.

9. The Secretariat should be responsible for day-to-day operations, providing financial, legal, and administrative support, and reporting information on the Green Climate Fund's activities to the Board and the public. The Secretariat must ensure transparency on the operation of the fund by reporting and publishing financial information, approved project methodologies, and other information relevant to stakeholders.

10. The Secretariat needs the capacity to hire staff (with the approval of the Board) and such staff should be geographically diverse, including preference to those from underrepresented regions and countries such as SIDS or LDCs.
11. The Secretariat should be of adequate size to manage a large amount of money and projects, understanding that the roles, responsibilities and composition of the Secretariat will evolve over time as the fund scales up.
12. The Secretariat should establish a special unit for SIDS and LDCs to assist these Parties facing specific capacity constraints, throughout the project cycle.

**d. Sub-workstream II.4: Trustee Arrangements**

13. As decided in 1.CP/16, paragraph 105, the Trustee has a limited role and function under the instruction of the Board of the Green Climate Fund. The Trustee should only be responsible for channeling the disbursements to recipients.
14. The Trustee should have the administrative competence to manage the financial assets of the Green Climate Fund, maintain appropriate financial records and prepare financial statements and other reports required by the Board, in accordance with internationally accepted fiduciary standards.
15. The Trustee should not make funding decisions, or be involved in the projects' oversight or evaluation.
16. The Trustee may commingle the assets of the Green Climate Fund for administrative and investment purposes with other assets maintained by the Trustee so long as the investments align with the purpose and principles of the Green Climate Fund.
17. A performance review of the Interim Trustee should be part of the overall independent performance evaluation of the Green Climate Fund, taking place two years after operationalization of the GCF and prior to the appointment of the next Trustee.
18. There should be a two-year open bidding process for the selection of the permanent Trustee. The Terms of reference of the bidding will be defined by the Board, which will also manage this process. It will begin one year after the operationalization of the Green Climate Fund. However, the Board should retain the authority to appoint a new trustee based on the performance evaluation of the interim trustee and the result of the open-bidding process.

**e. Sub-workstream II.5: Coherence with the other operating entities of the financial mechanism and other climate, environment, and development finance**

19. The Green Climate Fund should provide relevant and requested information to the Standing Committee so that it can perform its work.
20. The COP, assisted by the Standing Committee, will provide guidance to the Green Climate Fund in order to improve coherence and coordination among operational entities of the financial mechanism of the Convention and ensure complementarity with other funds outside the Convention.
21. There should be harmonized application procedures and reporting requirements among the Green Climate Fund and other sources of climate change finance to the greatest extent possible.

## XI. Submission by Mr. Nick Dyer (United Kingdom of Great Britain and Northern Ireland)

This is a good workplan. It is very helpful to breakdown the workstream into these five components, and to have such a clear timetable. I have one general comment and a few detailed comments.

My general comment is that for the GCF, form must follow function - we will want to have a view of the instruments, windows and structure of the fund before we decide about the secretariat or the role of the board. The links and sequencing with workstream III will be particularly important.

Specific comments:

- Under b) workstream II.2, we might consider the process for selecting, the role and the status of the resident/chair of the board.

- Under d) workstream II.4, we should not exclude the possibility that the trustee might be in-house, rather than a separate organisation.

- Under e) workstream II.5 - the chapeau should also mention 'development finance', as in the sub-workstream title.

### The Green Climate Fund: Framing the Challenge – A UK Perspective

Large scale investment is needed to shift developing countries onto lower carbon, climate resilient development paths. The role of the Transitional Committee is to design a Green Climate Fund that focuses on helping developing countries achieve the results that will make that shift. A number of options around instruments, structure and how the fund will operate and be governed will emerge during the design process.

#### Defining the challenge

Existing multilateral institutions and funds are making a valuable and substantial contribution to tackling climate change and, subject to their continuing to deliver results, should continue to enjoy international support.

However, the existing climate finance architecture is not configured to deliver the necessary volumes of finance at the right **scale** or **responsiveness**, with the right geographical **coverage**, on the right **terms** or with sufficient **leverage** to meet the challenge:

- **Scale** – Climate change flows need to be scaled up towards the Copenhagen Accord 2020 goal of \$100bn per year and made more coherent and effective to move beyond piloting and be transformational.
- **Responsiveness** – Climate change financing modalities need to be more responsive to their clients. The access arrangements and speed current funds can act at, including the low availability of direct access, are limitations to responsiveness.
- **Coverage** – There is no integrated, global approach to climate change finance that makes the right support available to all countries; and ensures balance across themes (adaptation, mitigation, forestry) and sectors.
- **Terms** – There is no one place that makes available a full set of instruments, products and terms. A range of terms is available from existing funds, but the range is far from complete, and there is no mechanism to match the right terms to an investment across the architecture, or to ensure that it incentivises action, delivers results, excellent value for money, and makes efficient use of scarce subsidy.
- **Leverage** – Both leveraging finance from capital markets into climate change investments, and expanding the private sector's direct investment in climate change operations in developing countries. Existing institutions are scaling up and new innovative funds are beginning to emerge, but the existing architecture does not deliver comprehensively.

Some existing climate funds and institutions meet some of these criteria in some countries and in some sectors. But there is scope to increase coherence, impact and results. The task of the Transitional Committee is to design a Green Climate Fund that addresses these five problems to the highest standards.

Meeting the highest standards will be necessary to attract resources and maintain the confidence of all contributors. Our test of the highest standards is set out in the in the UK's recently published *Multilateral Aid Review*: ten criteria that we apply to assessing the results, effectiveness, efficiency and value for money of all the multilateral institutions we support.

#### Ambition for the Transitional Committee

The Transitional Committee needs to develop a framework for the Green Climate Fund at an appropriate breadth (the range of issues covered) and depth (the level of detail).

In terms of breadth, we suggest aiming for a framework which covers its purpose, principles, governance, structure, monitoring process, fiduciary responsibilities, coherence with other bodies and its legal status. Without these we will not have defined what the fund is aiming to achieve, nor covered the issues in the terms of reference. In order to cover this breadth of issues, the Transitional Committee will need to break the work into separate workstreams. We suggest five workstreams, to ensure all areas are covered:

- **Objectives** – what is the purpose of the fund, what principles it will seek to uphold, what types of activity it will support.
- **Structure** – what funding windows it will have, what types of instrument, how it links to the existing architecture.
- **Governance** – the roles and membership of the boards of governors and directors and the secretariat, the role of any partnership forum and relationship to other bodies.
- **Operations** – defining where responsibilities for financial accountability, monitoring, evaluation and accountability for program implementation will lie, how results will be monitored, and the role of the trustee.
- **Legal** – whether the GCF will be a legal entity, and the privileges and immunities of board members.

It will be important to learn the lessons from the operations of existing funds and draw on the experiences of development cooperation.

In terms of depth, we recognise that we have just six months and while the Transitional Committee can set the broad framework, we envisage more detailed design can subsequently be handed on to the Board to develop further.

## **XII. Submission by Ms. Marisa Lago (United States of America)**

### **a) Sub-workstream II.1: Legal and institutional arrangements**

*This sub-workstream will address the legal status and formal relationships of the GCF and its institutional components (the Board, the Secretariat, the Trustee, and the Implementing Partners and other relevant elements, including mechanism for expert, technical and stakeholder input). Inputs will be solicited initially regarding:*

*(i) The legal status (capacity or personality) of the GCF and its components, how such status will be conferred, and the possible liabilities of the components;*

**U.S. comment:** The U.S. looks forward to discussing whether any legal status is required for the GCF and notes that the legal contours of the GCF should be tailored narrowly to the legal needs of the GCF, with appropriate flexibility for evolution of the GCF. This discussion in large part depends on the key attributes of the GCF, and the resulting legal needs, to be discussed in Workstreams III and IV. We would note that the World Bank has already been designated in the Cancun outcome as the interim trustee, and the GCF could derive legal attributes, such as privileges and immunities, from this relationship.

*(ii) The legal relationships between the GCF and its implementing partners, both multilateral and national;*

**U.S. comment:** As noted above, the precise contours of any legal relationship between the GCF and entities that will carry out GCF funded activities will depend on the outcome of the Workstream III discussion on operational modalities. That workstream will need to define how GCF-funded activities will be carried out, and the appropriate legal relationship will need to be tailored to address that approach. As a general matter, if needed, any contractual relationship with persons carrying out GCF-funded activities should require those persons to comply with appropriate fiduciary standards and safeguards, as well as other specified requirements to include reporting and auditing requirements.

*(iii) The accountability relationship between the UNFCCC COP and the GCF components (principally the Board, Secretariat, and Trustee).*

**U.S. comment:** The Cancun decision spells out explicitly the nature of the relationship between the GCF and the COP, using language that mirrors the language in Article 11 of the Convention. Under that Article, an operating entity functions under the guidance of, and is accountable to, the COP with respect to policies, program priorities, and eligibility criteria related to the Convention. The Convention says that “the Conference of the Parties and the entity or entities entrusted with the operation of the financial mechanism *shall agree upon arrangements* to give effect to the above paragraphs.” This language, which is specifically repeated in the Cancun decision, defines the relationship between the COP and the operating entity. This is precisely what happened in the case of the existing operating entity: the GEF Council and the COP agreed to a Memorandum of Understanding describing the nature of guidance and accountability. A similar document will have to be negotiated between the GCF and the COP (whether it is called an “MOU” or has a different name). By entering into an MOU with the GCF, the COP can assure itself that GCF will remain accountable to its guidance.

It is important to note that the Transitional Committee is not empowered to determine the terms of guidance and accountability – per Article 11 and the Cancun decision, it is the operating entity itself (once formally constituted) that must “agree upon arrangements” with the COP.

Within the overall relationship between the GCF and the COP, the Cancun decision additionally defines the relationship between the Board, Trustee, and Secretariat. The Trustee is accountable to the Board for the performance of its fiduciary responsibilities and is required to administer GCF assets only for the purpose of, and in accordance with, the relevant decisions of the Board. Accordingly, the Trustee has a reporting relationship with the Board, not the COP. Moreover, the Cancun decision further decided that an independent Secretariat is to support the operations of the GCF. Again, the Cancun decision clarifies that the Secretariat's role is to support the Board in operating the GCF and to take its direction, and further, establishes the Secretariat's independence from the UNFCCC Secretariat and COP.

In sum, the Cancun decision reflects an appropriate set of relationships for the GCF's operations: the Board operates the GCF; the Trustee serves the Board in administering GCF assets; the Secretariat supports the Board's operation of the GCF. The GCF, as a distinct operating entity, acts under the guidance of, and is accountable to, the COP through an appropriate set of arrangements agreed between the Board and the COP.

**b) Sub-workstream II.2: The Board**

*This sub-workstream will address issues related to the GCF Board. Inputs will be solicited initially regarding:*

*(i) The composition and election of the Board, including: the election of members and regional distribution among UN regions; the role of non-governmental actors; the election of Chair(s) and duration of members' service;*

**U.S. comment:** The Cancun decision prescribes a basic structure for the Board: 12 developed, 12 developing, including representation for SIDS and LDCs and allowing for alternates, and does not require "elections." The two main constituencies – developed and developing countries – should determine within their respective constituencies the procedures for self-selection of their representatives on the Board. This is the standard practice in many multilateral funds, including the GEF and the CIFs, as well as in the multilateral development banks. There should be an opportunity for active participation by observers in the work of the Board.

The COP would not have a role in selecting Board members. We note that the Cancun decision specifically decided that the Fund would operate "under the guidance" of the COP – rather than "under the authority" of the COP – after significant negotiation. Subjecting the selection of the Board – the executive decision-making body of the GCF—to COP approval would be firmly at odds with the COP's decision that the Fund is "under the guidance" of the COP. Moreover, this would be inconsistent with Article 11. In describing the relationship between the COP and the operating entities, COP approval of Board members is neither explicitly nor implicitly envisioned.

*(ii) The mandate and responsibilities of the Board, especially the extent to which the Board will engage in project/programme approval;*

**U.S. comment:** We envision the Board playing a robust role in developing and implementing the operational modalities for the GCF, including the approval of projects and programs. The precise contours of the Board's functions and responsibilities may depend on discussions under Workstreams III and IV. Among the responsibilities of the Board, the Board could have responsibilities such as the following:

- II.** Setting strategic priorities, procedures, and guidelines;
- III.** Selecting Chair of the Board;
- IV.** Exercising oversight over Secretariat and appointing its head;
- V.** Approving country/program eligibility requirements, access conditionalities, and safeguards;
- VI.** Make all financial decisions, including review of and approval of operating budget, and approving projects/programs and uses of funds;
- VII.** Evaluating progress in implementation;
- VIII.** Overseeing the accreditation of implementing agencies;
- IX.** Approving and periodically review windows and modalities;
- X.** Acting as focal point with other international bodies;
- XI.** Negotiating arrangements with the COP to give effect to guidance and accountability (MOU or equivalent); and
- XII.** Overseeing accountability and independent evaluation mechanisms.

*(iii) The rules of procedures and functioning of the Board, especially decision-making processes.*

**U.S. comment:** We note that consensus-based decision-making is a common practice within trust funds.

**c) Sub-workstream II.3: The Secretariat**

*The sub-workstream will address issues related to the GCF Secretariat. Inputs will be solicited initially regarding:*

*(i) The establishment of the independent Secretariat, as well as its legal status, composition, and recruitment procedures;*

**U.S. comment:** See answers above.

*(ii) The mandate and functions of the Secretariat, including its role (if any) in project / programme review, and MRV;*

**U.S. comment:** The roles and responsibilities of the Secretariat will depend on other governance and structural features of the fund as decided by the TC or the Board.

*(iii) Relationship with implementing institutions, including project cycles and division of responsibility.*

**d) Sub-workstream II.4: Trustee Arrangements**

*This sub-workstream will focus on the trustee and will be closely coordinated with Workstream III.2 dealing with managing large-scale finance. Inputs will be solicited initially regarding:*

*(i) Issues regarding the role of the trustee (in addition to 1/CP.16, Paras 104-108), including the investment strategy of the trust fund;*

**U.S. comment:** The Cancun decision devotes several paragraphs to defining the role of the Trustee. In its capacity as the trustee, it will hold in trust, the funds, assets and receipts that constitute the fund and manage and administer them consistent with the governing instrument of the fund and in accordance with decisions of the Board. The Trustee will not manage the day-to-day operations of the Fund, or make decisions about what to finance. Those functions are the responsibility of the Secretariat and the Board.

*(ii) From where the trustee receives instructions (Board or Secretariat);*

**U.S. comment:** The Cancun decision provides that the Trustee will be accountable to the Board for the performance of its fiduciary duties and will administer the funds in accordance with relevant decisions of the Board. The Board may decide that the Secretariat will convey certain instructions to the Trustee, but the Board will be the ultimate decision-maker with respect to instructing the Trustee.

*(iii) Relationship between the trustee and implementing institutions, particularly in relation to internationally accepted fiduciary standards;*

**U.S. comment:** We envision the Trustee having a fiduciary role in ensuring that resources are used in accordance with the terms of the governing instrument of the GCF and decisions of the Board.

*(iv) The review process for interim trustee and process for selection of permanent trustee.*

**U.S. comment:** Per the Cancun decision, trustee arrangements for the GCF are to be reviewed three years after operationalization of the fund. These processes should be determined by the Board.

**e) Sub-workstream II.5: Coherence with the other operating entities of the financial mechanism and other climate, environment, and development finance**

*This sub-workstream will focus on how the GCF will work alongside other elements of the public climate finance landscape, both in terms of governance and mandate/activities. This will be strongly influenced by Workstream I on scope, functions, and guiding principles. Inputs will be solicited initially regarding:*



*(i) The relationship between the GCF and the Standing Committee once constituted;*

**U.S. comment:** The GCF, which is to be designated as an operating entity under Article 11 of the Convention, will be under the guidance of and accountable to the COP – not to any subsidiary bodies or committees established by the COP. It follows that there will be no direct relationship between the GCF and the Standing Committee. The Cancun decision clearly states that the role of the Standing Committee is to “*assist the COP in exercising its functions with respect to the financial mechanism of the Convention.*” Therefore, the Standing Committee is to be advisory in nature, rather than supervisory or executive. The COP would presumably have the opportunity to incorporate any recommendations made by the Standing Committee into its guidance to operating entities. However, this is speculative because the Standing Committee does not yet exist and may not exist by the time the TC completes its work.

*(ii) Methods to ensure complementarity at the national and international level between the GCF and other bilateral, regional, and multilateral funding mechanisms and institutions as well as carbon markets;*

**U.S. comment:** The United States supports the goal of a coherent and well-coordinated climate finance architecture. The various channels for climate finance should have clear roles, avoid duplication of efforts, share best practices, and promote synergies. While the Standing Committee might be able to recommend solutions for rationalizing the financial mechanism, the reality is that a large proportion of climate finance will not flow through funds under the guidance of the UNFCCC. Even with the creation of the GCF, other channels for delivering climate finance will continue to be important. The GEF, the multilateral development banks, bilateral agencies, UN agencies, and private sector investment vehicles will all play a role. If we want to improve coordination among these actors, we should focus on doing so from the bottom up. We could explore ways to promote better coordination among major bilateral and multilateral channels, to get these institutions working better together and interacting more frequently. Various models for coordination among finance channels already exist in other development sectors at the operational, national, and programmatic levels.

*(iii) The specific relationship and complementarity with the GEF and Adaptation Fund within the UNFCCC financial mechanism.*

**U.S. comment:** The GCF will join the GEF as an operating entity of the UNFCCC financial mechanism. These two funds will play key roles in the multilateral climate finance architecture and their activities should complement rather than overlap one another. The GCF should focus on financing infrastructure using well-established approaches, as well as programmatic and sectoral approaches in mitigation and adaptation-relevant sectors. The GEF has particular strengths in capacity building, improving enabling environments, and supporting early stage technology. Because of its obligations to other treaties, the GEF also offers potential synergies between its climate program and its biodiversity, desertification and other focal area programs.

The international community needs to consider the role of other multilateral climate funds, including the Adaptation Fund under the Kyoto Protocol, the LDCF, the SCCF, the Forest Carbon Partnership Facility (FCPF), the Climate Investment Funds and UN-REDD. We will have to consider what specific role these additional elements will have in the post-2012 context, and whether there is room to consolidate them to create a more efficient institutional architecture.