

ON ‘BEING ACCOUNTABLE’

What does it mean for an Operating Entity of the UNFCCC Financial Mechanism to be accountable to the COP, and how does this relate to operationalizing Art. 11.3 (b)?

Submission to the UNFCCC Standing Committee on Finance

14 June 2013

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Definition

accountable, *adj.* Chiefly of persons (in later use also organizations, etc.): liable to be called to account or to answer for responsibilities and conduct; required or expected to justify one’s actions, decisions, etc.; answerable, responsible.

Sample usage: 2002 Big Issue 17 June, 23: Whistle-blowing..should be about making people in charge accountable [...].
Oxford English Dictionary

Setting the Scene

The aim of this Note is to shed some light on ways in which the relationship between the COP and the Operational Entities (OEs) of its Financial Mechanism, as stipulated in Art. 11 of the Convention, could be strengthened, focusing on how the accountability of the OEs to the COP could be improved.

In particular, Article 11.3(b) provides that the GCF and the COP should agree on modalities by which a particular *funding decision* may be reconsidered in light of COP policies, programme priorities, and eligibility criteria.

In December 2011, at COP 17 in Durban, the Green Climate Fund (GCF) joined the Global Environment Facility (GEF) as the second OE. As such, the GCF is ‘under the guidance of and accountable to’ the COP, as reaffirmed in paragraph 3 of Decision 3/CP.17, and paragraph 4 of the GCF Governing Instrument (GI)

A year later, at COP 18 in Doha, the COP requested that the Standing Committee on Finance (SCF):

- (i) develop with the GCF Board *Arrangements* between the COP and the GCF; and
- (ii) further amend the *Guidelines* for the Review of the Financial Mechanism of the UNFCCC.

Pursuant to Art. 11, the SCF –at its third meeting (Bonn, March 2013) – included the Modalities in its list of elements of the Arrangements. In the course of the relevant discussions at that meeting, a representative of Transparency International (TI) made an intervention and raised the following question: ‘How can the COP ensure practical and meaningful accountability from the GCF that necessarily goes beyond the structures which the GCF is putting in place itself, for itself?’

While the specific focus of the TI intervention (see Box 1) was on the propriety of using the GCF’s own Independent Integrity Unit to investigate allegations of corruption and fraud against the GCF itself, the same question can, of course, be asked of using the GCF’s own Independent Redress Mechanism (IRM) to deal with complaints against decisions by the GCF in general, and *ipso facto* Art. 11 complaints against GCF funding decisions.

Box 1. Transparency International intervention

I wanted to share with you a recent experience of ours with the Green Climate Fund, in the hope that it will help inform your continuing discussions about structures and procedures for accountability between the GCF and the COP.

In the lead-up to the vote on a host country for the GCF, we received reports of behaviour that might be interpreted as vote buying. We informed the GCF Co-Chairs. We also contacted the Interim Secretariat who, interestingly, told us that they lacked the authority to intervene on events external to the GCF Board meetings. The next authority on the issue would have been the COP, but the COP is more a meeting than an operative body, and that meeting was not due to take place for another month or two. As such it was unclear who should follow up on these allegations.

This points to a worrisome lack of clarity over who the GCF Board should be accountable to, both now and in the future. The GCF's governing instrument paves the way for the institution of an Independent Integrity Unit to investigate allegations of corruption and fraud. But the instrument states that the unit will work with the Secretariat and report to the Board, which suggests that its functions will not extend to the activities of either body.

I do not wish to cast aspersions over the integrity of either the GCF Board or its Secretariat. However, considering that they will wield significant influence over the allocation and disbursement of funds, their exposure to conflicts of interest or undue influence could be high.

As such, my question to you today is: how can the COP ensure practical and meaningful accountability from the GCF that necessarily goes beyond the structures which the GCF is putting in place itself, for itself?

Source: personal communication by Alice Harrison, Transparency International (who made the intervention)

Should the GCF IRM be used to implement the Art. 11 Modalities?

The Independent Redress Mechanism (IRM) of the GCF

The IRM to be established by the GCF Board is part of the GCF Accountability Mechanism (see Box 2). Although the GI neither explicitly defines its institutional coverage (who is to be covered) nor who it will report to, it stands to reason that it will (i) cover complaints about entities that are accountable to the GCF Board, and (ii) report to the Board.

As it happens, the GI explicitly identifies the GCF Secretariat (para. 19), and the Trustee (para. 27) as being accountable to the Board, and it again stands to reason that through accreditation, the implementing and funding entities will also become accountable to the GCF board (with respect to GCF funding).

The fact (see Box 3) that the Art. 11 Modalities are recognized by the GI as part of the COP accountability regime – or, to be more precise, the ‘accountability-to-the-COP-regime’ – leaves room for an interesting analogy regarding the GCF’s own Accountability Mechanism, namely: should it apply to all entities that are accountable to the GCF Board, or should it apply only to those accountable entities that do not have their own (independent) complaints procedures? (with complaints regarding the others being dealt with by their own processes and procedures). In more concrete terms, the issue would be whether complaints against, say, the GCF Trustee should be

Box 2. GCF Accountability Mechanisms

67. The Fund's operations will be subject to an information disclosure policy that will be developed by the Board.

68. The Board will establish an independent integrity unit, to work with the secretariat and report to the Board, to investigate allegations of fraud and corruption in coordination with relevant counterpart authorities.

69. The Board will establish an independent redress mechanism that will report to the Board. The mechanism will receive complaints related to the operation of the Fund and will evaluate and make recommendations.

Source: Section XI of the GCF Governing Instrument

dealt with through the GCF Accountability Mechanism, or be delegated to the Trustee's own complaints procedure.

Turning to the headline question of whether it would be proper, and in accordance with good governance best practice, to use the GCF IRM to carry out the Art. 11.3.b Modalities, it turns out that an answer may require some further information/assumptions regarding the GCF access modalities. Specifically, would the GCF engage exclusively in enhanced access through external funding entities (national or international) that take the operational project/programme funding decisions on behalf of the GCF, or would it also use ordinary access, in which case funding decisions would also be taken in house?

Enhanced Access Models

If the operational management functions are devolved to accredited funding entities – as is envisaged under the so-called 'enhanced access' modalities – then complaints as envisaged under Art. 11 would not relate to the GCF Board, but to accredited entities which are accountable to the GCF Board. Thus such complaints could – and arguably should – be in the remit of the GCF IRM, in which case an implementation of Art. 11.3.b through the IRM could be in keeping with good governance best practice.¹

Ordinary Access Models

However, should the GCF operate through (international or national) implementing entities, and retain operational funding decisions, then the first question has to be: are these GCF Board decisions actually (or, indeed, should they be) in the remit of the GCF IRM? In light of the fact that the GI regards the GCF mechanism as part of the GCF accountability system, this question essentially boils down to whether the GCF (Board) is, or should be seen as, accountable to itself.

Clearly, there are stakeholders (see Box 1) who do not think so. At the same time, there is at least one example of a multilateral fund, namely the Global Fund, with such executive self-accountability. However, the difference between the Global Fund and the GCF in this respect is that the Global Fund is accountable to no one (making self-accountability inevitable). This is obviously not the case for the GCF which, as acknowledged in its GI, is accountable to the COP.

¹ Although, given the fact that according to para. 5 of the GI, the GCF Board has 'full responsibility for funding decisions', it could be argued that the Board would ultimately remain accountable to the COP even under these enhanced access modalities.

Box 3. GI on Arrangements

6. Arrangements will be concluded between the COP and the Fund, consistent with Article 11 of the Convention, to ensure that the Fund is accountable to and functions under the guidance of the COP. *In order to ensure accountability to the COP, pursuant to Article 11, paragraph 3*, the Board will:

- (a) Receive guidance from the COP, including on matters related to policies, programme priorities and eligibility criteria, and matters related thereto;
- (b) Take appropriate action in response to the guidance received;
- (c) Submit annual reports to the COP for its consideration and receive further guidance.

Source: GI, Section A. Relationship to the Conference of the Parties

The Way Forward

COP–GCF Arrangements on Art. 11 Modalities

Given that the legitimacy of operationalizing the Art. 11 Modalities through the GCF IRM may depend on which ‘business model’ the GCF is going to adopt, it seems premature to try and force a particular arrangement at this moment in time. This is why it would be best to simply include a placeholder in the text of the Arrangements to be presented for approval at COP 19, with a view to postponing an agreement on the Modalities until COP 20, which would coincide with the conclusion of the Fifth Review.

A complaints/dispute resolution procedure for the UNFCCC Financial Mechanism

Regardless of how Art.11 Modalities are operationalized in the context of the GCF, best governance practice, I believe, requires an accountability regime that includes a complaints procedure concerning the accountable entities, and this should be set up by the body to which these entities are accountable.

Consensus is emerging that the procedure created under Paragraph 5 of the COP/GEF MOU is impractical. However, the fact that it has never been used does not imply that the problem is COP involvement but, at best, that the design of the procedure discourages Parties with grievances to lodge a complaint. Moreover, it does not imply that the COP accountability regime cannot be improved.

What should be considered is a review of these accountability issues in the course of the Fifth Review. One possible solution: introduce an Ombuds Panel/Subcommittee of the SCF as an intermediary between complainants and the COP. Such a body could receive complaints regarding the operating entities from Parties (and stakeholders), and it could try to resolve any conflicts before they have to be taken to the COP.