

Submission by the Arab Republic of Egypt on behalf of the African Group of Negotiators on Draft Guidance to the Green Climate Fund

18 September 2019

Procedural Issue with responding to the Addendum Report to the COP

The African Group of Negotiators (AGN) reserves its right as a Group of Parties to submit additional guidance to be considered by the COP and CMA following the publication of the Addendum report of the GCF Board which is expected to be released following the twenty-fourth meeting of the Board in November 2019.

Confirmation of Procedures of Issuing COP Guidance from the CMA

Paragraph 6 of the Governing Instrument of the Green Climate Fund provides that 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. It further states that 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.

In adopting the Paris Agreement, Article 9.8 states that the financial mechanism of the Convention, including its operating entities, shall serve the PA. Paragraph 58 of 1/CP.21, states that the two operating entities of the financial mechanism shall serve the Paris Agreement. Paragraph 61 recommends that the CMA shall provide guidance to the entities entrusted with the operation of the Financial Mechanism of the Convention on the policies, programme priorities and eligibility criteria related to the Agreement for transmission to the COP.

Specifically, in relation to the Green Climate Fund (GCF), the following decisions and practice needs to be adhered to:

1. In accordance with the Governing Instrument of the Fund (Para 6) and the arrangements between the Fund and COP, the COP provides annual guidance to the Board of the GCF, and the GCF Board reports annually on its progress related to the guidance received.
2. In accordance with the Paris Agreement, the guidance to the GCF applies mutatis mutandis to the Paris Agreement.
3. The established COP practice is for Parties to provide guidance to the Board on the basis of the annual report and the addendum report from the Board. This process is facilitated by the Standing Committee on Finance, based on submissions by members, as well as submissions by Parties.
4. The SCF presents a draft decision to the COP for discussion.
5. In the case of the CMA the following is critical:
 - a. There is no provision for the CMA to provide guidance to the GCF Board.
 - b. The CMA will provide guidance on matters related to the GCF via the COP.
 - c. The SCF will be requested to also prepare guidance related to the Paris Agreement.
 - d. In this sense, the CMA will submit a draft decision to the COP for inclusion in the COP decision on guidance to the GCF.
 - e. The Board of the GCF will only report to the COP, but will specify in its report how it has responded to the guidance provided by the CMA.
 - f. Given that the GCF is accountable to the COP, the COP may reject guidance provided by the CMA only on the basis that such guidance is inconsistent with the Governing Instrument of the Fund.
 - g. For the Global Environmental Facility, the same process as for the GCF shall be followed.

It is the AGN's view that one decision will be transmitted from the COP to the GCF Board. The decision from the CMA related to guidance to the GCF on Paris Agreement matters will be annexed to the COP decision.

Privileges and Immunities for the GCF

Paragraph 8 of the Governing Instrument of the Fund states: "The Fund will enjoy such privileges and immunities (Ps&Is) as are

necessary for the fulfillment of its purposes. The officials of the Fund will similarly enjoy such privileges and immunities as are necessary for the independent exercise of their official functions in connection with the Fund.” Paragraph 8 underscores the need for Ps&Is in relation to (a) Fund-wide functions and (b) Fund officials.

Subsequent to its report to the COP and as agreed in Board Decision B.08/24, the Board specifically requested the COP to consider “*recommending to the General Assembly of the United Nations that the General Assembly consider an institutional linkage between the United Nations and the Green Climate Fund that is consistent with the status of the Fund and the powers vested in the Board and a Secretariat that is fully independent and accountable to the Board, as stated in the Fund’s Governing Instrument, as approved by the COP in decision 3/CP.17.*”

At COP18, Parties agreed to continue their deliberations on the Board’s request and put in place a process to re-consider the requests every two years in conjunction with the a report from the Board on the status of Ps&Is. The 2019 report on Ps&Is makes the following assessment on the state of PS&Is and the impacts of the Fund’s activities:

1. The Board has reported that the absence of such privileges and immunities creates an increased risk that legal action may be taken against the GCF, its Board members and other officials, especially in the context of projects/programmes implemented by entities who themselves are protected by their own privileges and immunities. Such litigation would be costly and disruptive to the activities of the GCF and may dissuade contributors from making further contributions to the GCF;
2. The lack of privileges and immunities as a political risk mitigation mechanism means the GCF seeks to protect its rights, and funds entrusted to it by contributors, using legal risk mitigants, such as its legal agreements. To address the relevant risks as well as comply with the requirements of the Board, these agreements tend to be complex and in some cases prescriptive. This in turn limits the ability of the GCF to utilize effective adaptive project management approaches, which can delay implementation; and
3. The lack of privileges and immunities also gives rise to challenges with obtaining visas for travel to countries to help develop and implement projects/programmes and creates material risks to GCF personnel, especially those engaged in

in-country investigations where privileges and immunities are essential to ensure the safety and independence of the investigators, and the integrity of the investigative processes. Furthermore. Moreover, the lack of immunity from jurisdiction for GCF personnel in, and the ability to freely enter into, countries in which the GCF has projects/programmes may adversely affect the ability of the GCF to discharge its functions and ensure transparency and oversight over GCF resources, for example in the context of: (i) project review/supervision missions in relevant countries; (ii) in-country investigations to be conducted by the Independent Integrity Unit (IIU) and the Independent Redress Mechanism (IRM); and (iii) in-country evaluations of projects/programmes conducted by the Independent Evaluation Unit.

The AGN notes that since COP20 (2014), only 21 bilateral arrangements for Ps&Is have been signed. This average is about 4 arrangements per year and following the same trajectory, all developing countries able to sign bilateral agreement, the GCF may only reach the full quota of developing countries agreements in 2047. As confirmed in the third biannual report on Ps&Is, paragraph 8 of the Governing Instrument has yet to be implemented and is is now appropriate for the COP to remedy this problem. The process agreed upon at the Lima COP and subsequent guidance from the COP is insufficient to remedy the problem.

Therefore the AGN proposed the following language in the SCF guidance to the COP on the GCF:

The COP recommends to the General Assembly of the United Nations that the General Assembly consider providing an institutional linkage between the United Nations and the Green Climate Fund that is consistent with the status of the Fund and the powers vested in the Board and a Secretariat that is fully independent and accountable to the Board, as stated in the Fund's Governing Instrument, as approved by the COP in decision 3/CP.17.

Welcoming GCF Progress

The AGN welcomes the following progress, based on the provisions of the Governing Instrument and prior COP guidance:

1. GCF operations have continued at a steady place during the

reporting period. The Board has approved USD 5.2 billion to support the implementation of 111 climate change adaptation and mitigation projects and programmes in 99 developing countries.

2. A total of 88 entities are Board-approved for accreditation, subject to completing legal arrangements with GCF by signing and making effective their accreditation master agreement (AMAs). To date, 47 entities have completed this process and have been able to fully operationalize their engagement with GCF. Of these 88 entities, 57 per cent are DAEs and 43 per cent are international access entities. Among the above 88 entities, 16 are private sector entities, including both DAEs and international access entities; and
3. At B.22, the Board adopted the revised strategy for the Readiness and Preparatory Support Programme (Readiness Programme).

Gaps in GCF implementation – Additional/unfulfilled guidance UNFCCC/CMA

The AGN has identified the following mandates that are yet to be implemented by the Board, namely:

1. Concern regarding the slow pace of NAP approval noting that while 30 NAP proposals have been approved more than 48 remain in the pipeline waiting approval;
2. The lack of progress on agreeing eligibility criteria for the Fund, including elements of full and incremental costs;
3. The lack of progress in clarifying GCF support to adaptation despite a clear Board mandate and a COP decision regarding the need to achieve a balance between adaptation and mitigation support and in the context of Article 7.1 of the Paris Agreement in which Parties established a global goal on adaptation for enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change;
4. The first replenishment process reflects the level of ambition envisaged by the Parties to the Convention and Paris Agreement, reflecting “*new, additional, adequate and predictable financial resources to developing countries and will catalyse climate finance, both public and private, and at the international and national levels.*”
5. Notes with concern despite COP decision 10.CP/22 and subsequent Board decisions to increase the number of direct access entity proposals in the pipeline, that funding proposals for 2019 indicated a total of 19 of which only 3 were from

- direct access entities, and only 1 was for a national direct access entity;
6. Concerns that COP decision 7/CP.21 remains unimplemented, despite a clear mandate in paragraph 38 of the Governing Instrument to “*to consider ways to provide support, pursuant to the modalities of the Green Climate Fund, for facilitating access to environmentally sound technologies in developing country Parties, and for undertaking collaborative research and development for enabling developing country Parties to enhance their mitigation and adaptation action;*”
 7. The AGN remains concerned that adoption of climate-resilient and low-emission practices and technologies in agriculture are still not at desirable levels. [It is estimated that current technologies and practices only deliver 21-40% of the emissions reductions needed in agriculture to meet the Paris Agreement goal of limiting global warming to 2°C.](#) If agriculture is to deliver its share in realizing the Paris Agreement goals and the SDGs, climate-resilient and low-emission practices and technologies will need to be scaled up. In addition, new technologies and practices will need to be developed, and effective research and innovation systems are needed;
 8. Concerns that despite pledges made during the Initial Resource Mobilization period, a number of pledges remain a) unfulfilled and b) no commitment agreements have been signed for the outstanding pledged amount;
 9. Confirms that in accordance with the Governing Instrument, the Fund will “*finance agreed full and agreed incremental costs for activities to enable and support enhanced action on adaptation, mitigation (including REDD-plus), technology development and transfer (including carbon capture and storage), capacity-building and the preparation of national reports by developing countries;*” and
 10. Stresses the importance of grant-based resources for African countries and other developing countries, particularly for adaptation, and further stressing that climate action should not lead to increase in debt for African countries and other developing countries.