

Decision on Green Climate Fund adopted

Geneva, 15 Dec (Meena Raman) – One significant outcome of the Durban climate talks was the adoption on 11 December of a decision by the UNFCCC Conference of Parties (COP) on the Green Climate Fund, thus clearing the way for further development of the fund that had been established at the Cancun conference a year ago.

The COP decision agreed to approve the governing instrument for the Green Climate Fund (GCF) as transmitted to it (although without consensus) by the Transitional Committee to design the Fund, without any changes to the instrument. However, the accompanying decision that agreed to the instrument contained several important points that clarified or elaborated further on the instrument as well as on transitional arrangements for the initial work and operation of the Fund.

Through a decision adopted by the COP early morning on Sunday, December 11, the COP welcomed the report of the Transitional Committee (tasked to develop the instrument by the Cancun decision) and approved the governing instrument for the GCF, which was annexed to the decision.

In Durban, while some countries did not want a re-negotiation of the governing instrument of the Fund, others wanted their concerns to be addressed. These concerns were addressed via the decision of the COP. Among the key points negotiated at Durban were the legal personality of the Fund, the role of national authorities in agreeing to activities financed by the Fund (including via the private sector), and the location of the transitional secretariat.

The decision concerning the GCF was one of the outcomes of the so-called 'Durban Package' and was the subject of intense negotiations, given that the report of the Transitional Committee (TC), which included the governing instrument, was transmitted to the COP without consensus by the Chairs of the TC.

The United States and Saudi Arabia, as members of the TC, had withheld consensus to the adoption of the report in the final meeting of the TC in October, while several developing country TC members had also expressed concerns over many parts of the GCF instrument.

At the plenary session of the COP on November 30, the G77 and China called for an open, transparent and inclusive process through a contact group to draft the decision necessary for the COP in relation to the GCF.

South African COP President, Ms. Maite Nkoana-Mashabane proposed to conduct informal consultations based on the report of the TC, which led to negotiations over the draft decision.

Parties through intense negotiations arrived at near consensus over the draft decision on 8 December, except over a key issue as to who is to host the interim secretariat of the GCF.

The options on the table were (i) the UNFCCC Secretariat, (ii) the Global Environment Facility Secretariat (GEF), or (iii) the UN Office in Geneva.

The G77 and China rejected the GEF Secretariat as an option, while developed countries were insisting otherwise.

Following intense wrangling, a compromise was reached at Ministerial level informal consultations on Saturday for the UNFCCC secretariat jointly with the GEF secretariat to take the necessary administrative steps to set up the interim secretariat of the GCF as an autonomous unit within the UNFCCC secretariat premises in Bonn.

Another issue that took much squabbling was the issue of how the GCF is to have legal personality and legal capacity. Parties managed to arrive at a decision over this, which is reflected below in paragraphs 11 and 12 of the decision.

A further issue of concern for many developing countries was the provision in the governing

instrument in paragraph 46 that allowed the private sector to directly access the GCF funds without the need for their funding proposals to be approved by the national designated authorities.

Paragraph 46 of the governing instrument reads: “Recipient countries may designate a national authority. This national designated authority will recommend to the Board funding proposals in the context of national climate strategies and plans, including through consultation processes. The national designated authorities will be consulted on other funding proposals for consideration prior to submission to the Fund to ensure consistency with national climate strategies and plans.”

Following negotiations in Durban, this concern was addressed with the following compromise in paragraph 7 of the decision which reads: “...requests the Board to develop a transparent no-objection procedure to be conducted through national designated authorities referred to in paragraph 46 of the governing instrument, in order to ensure consistency with national climate strategies and plans and a country driven approach and to provide for effective direct and indirect public and private sector financing by the Green Climate Fund. Further requests the Board to determine this procedure prior to approval of funding proposals by the Fund.”

The decision adopted by the COP as regards the GCF is as follows:

“The Conference of Parties

1. Welcomes the report of the Transitional Committee (FCCC/CP/2011/6 and Add.1), taking note with appreciation of the work of the Transitional Committee in responding to its mandate given in decision 1/CP.16, paragraph 109;
2. Approves the governing instrument for the Green Climate Fund annexed to this decision;
3. Decides to designate the Green Climate Fund as an operating entity of the Financial Mechanism of the Convention, in accordance with Article 11 of the Convention, with arrangements to be concluded between the Conference of the Parties and the Fund at the eighteenth session of the Conference of the Parties to ensure that it is accountable to and functions under the guidance of the Conference of the Parties to support projects, programmes, policies and other activities in developing country Parties;
4. Notes that the Green Climate Fund will be guided by the principles and provisions of the

Convention;

5. Decides to provide guidance to the Board of the Green Climate Fund, including on matters related to policies, programme priorities and eligibility criteria and matters related thereto, taking into account the Boards annual reports to the Conference of the Parties on its activities;

6. Requests the Board to operationalize the Fund in an expedited manner;

7. Also requests the Board to develop a transparent no-objection procedure to be conducted through national designated authorities referred to in paragraph 46 of the governing instrument, in order to ensure consistency with national climate strategies and plans and a country driven approach and to provide for effective direct and indirect public and private sector financing by the Green Climate Fund. Further requests the Board to determine this procedure prior to approval of funding proposals by the Fund;

8. Further requests the Board to balance the allocation of the Green Climate Fund resources between adaptation and mitigation activities;

9. Stresses the need to secure funding for the Green Climate Fund, taking into account paragraphs 29 and 30 of the governing instrument, to facilitate its expeditious operationalization, and requests the Board to establish necessary policies and procedures, which will enable an early and adequate replenishment process;

(Paragraphs 29 and 30 of the governing instrument relate to ‘financial inputs’ and provide as follows:

“29. The Fund will receive financial inputs from developed country Parties to the Convention.

30. The Fund may also receive financial inputs from a variety of other sources, public and private, including alternative sources.”)

10. Invites Parties, through their regional groupings and constituencies, to submit their nominations for the members of the Board to the interim secretariat by 31 March 2012, in accordance with paragraph 11 of the governing instrument;

(Paragraph 11 reads:

“The members of the Board and their alternates will be selected by their respective constituency or regional group within a

constituency. Members of the Board will have the necessary experience and skills, notably in the areas of climate change and development finance, with due consideration given to gender balance.”)

11. Decides that the Green Climate Fund be conferred juridical personality and legal capacity and shall enjoy such privileges and immunities related to the discharge and fulfillment of its functions, in accordance with paragraphs 7 and 8 of the governing instrument;

(Paragraphs 7 and 8 on the ‘Legal status’ of the Fund read as follows:

“7. In order to operate effectively internationally, the Fund will possess juridical personality and will have such legal capacity as is necessary for the exercise of its functions and the protection of its interests.

8. The Fund will enjoy such privileges and immunities 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.”

This was one of the most controversial issues in the Durban negotiations. The issue was how the GCF is to have juridical personality and legal capacity and whether such legal status was sufficient to be conferred by a decision of the COP or whether there was need for other legal arrangements.)

12. Invites Parties, in line with the objectives set forth in paragraph 11 above, to submit to the Board expressions of interest for hosting the Green Climate Fund by 15 April 2012, based on the following criteria:

(a) The ability to confer and/or recognize juridical personality and legal capacity to the Fund for the protection of its interests and the exercise of its functions, to give effect to paragraphs 7 and 8 of the governing instrument, including but not limited to the ability to contract, acquire and dispose of immovable and movable property, and institute legal proceedings;

(b) The ability to provide privileges and immunities to the Fund as are necessary for the fulfillment of its purposes, and to the officials of the Fund as are necessary for the independent exercise of their official functions in connection with the Fund;

(c) Financial arrangements, administrative and

logistical support to the Fund;

(d) Any other information that the host country wishes to provide;

13. Requests the Board, following the receipt of expressions of interest, to conduct an open and transparent process for the selection of the host country, and decide on a host country for endorsement by the Conference of the Parties at its eighteenth session, in accordance with paragraph 22 of the governing instrument;

(Paragraph 22 reads:

“The selection of the host country of the Fund will be an open and transparent process. The selection of the host country will be endorsed by the COP.”)

14. Requests the Board and the host country of the Green Climate Fund to develop, in accordance with paragraphs 7 and 8 of the governing instrument, the legal and administrative arrangements for hosting the Fund and to ensure that juridical personality and legal capacity are conferred to the Fund, and privileges and immunities as are necessary are granted to the Fund and its officials in an expedited manner;

15. Also requests the Board to establish the independent secretariat of the Green Climate Fund in the host country in an expedited manner as soon as possible, in accordance with paragraph 19 of the governing instrument;

(Paragraph 19 provides as follows:

“The Fund will establish a secretariat, which will be fully independent. The secretariat will service and be accountable to the Board. It will have effective management capabilities to execute the day-to-day operations of the Fund.”).

16. Invites the Board to select the trustee of the Green Climate Fund through an open, transparent and competitive bidding process in a timely manner to ensure there is no discontinuity in trustee services;

17. Requests the Board to initiate a process to collaborate with the Adaptation Committee and the Technology Executive Committee, as well as other relevant thematic bodies under the Convention, to define linkages between the Fund and these bodies, as appropriate;

18. Recognizing the need to facilitate the immediate functioning of the Green Climate Fund and ensure

its independence, requests the UNFCCC secretariat jointly with the Global Environment Facility secretariat to take the necessary administrative steps to set up the interim secretariat of the Green Climate Fund as an autonomous unit within the UNFCCC secretariat premises without undue delay after the seventeenth session of the Conference of the Parties so that the interim secretariat can provide technical, administrative and logistical support to the Board until the independent secretariat of the Green Climate Fund is established;

19. Decides that the interim arrangements should terminate no later than the nineteenth session of the Conference of the Parties;

20. Decides that the interim secretariat shall be fully accountable to the Board and shall function under its guidance and authority, and that its head shall report to the Board;

21. Urges the Board to move promptly to appoint the head of the interim secretariat;

22. Decides that the criteria for the selection of the head of the interim secretariat shall include, inter alia, expertise in the design or management of funds, relevant administrative and management experience, experience in or working with developing countries, and policy expertise;

23. Requests the interim secretariat to make arrangements for convening the first Board meeting by 30 April 2012;

24. Welcomes the offers of Switzerland and the Republic of Korea to host the first and second meetings of the Board respectively, and invites Parties to host subsequent meetings;

25. Invites Parties to make financial contributions for the start-up of the Green Climate Fund, including administrative costs of the Board and its interim secretariat;

26. Welcomes the generous offer of the Republic of Korea to contribute to the start-up cost of the Green Climate Fund.”