

# Time to Decide!

## THE ADAPTATION FUND AFTER MARRAKECH

### Discussion Note<sup>1</sup>

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### Contents

<b>Executive Summary .....</b>	<b>2</b>
<b>What is the Adaptation Fund? .....</b>	<b>3</b>
<b>Why do we need the Adaptation Fund?.....</b>	<b>4</b>
<b>What has been done so far? .....</b>	<b>5</b>
At the Adaptation Fund Board (regarding GCF Linkage).....	6
<i>The 'Secretariat Paper'</i> .....	6
<i>The 'Secretariat/Trustee Paper'</i> .....	7
At the Conference of the Parties of the UNFCCC (COP) .....	9
<i>COP21 (Paris)</i> .....	9
<i>COP 22 (Marrakech)</i> .....	10
At the Conference of the Parties serving as the Meeting of the Parties of the KP (CMP).....	10
<i>CMP 11 (Paris)</i> .....	10
<i>CMP 12 (Marrakech)</i> .....	10
Adaptation Fund Resource Mobilization and Fundraising.....	11
<i>Chronology</i> .....	11
<i>The Strategy</i> .....	11
<b>What now? .....</b>	<b>12</b>
<b>Annex. Independent Legal Assessment.....</b>	<b>13</b>
Summary: .....	13
Advice: .....	13

<sup>1</sup> The views expressed in this Note do not necessarily reflect the views of the affiliated institutions of the authors.

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## Executive Summary

This Note deals with the linkages between two multilateral climate funds – the [Adaptation Fund](#) and the [Green Climate Fund](#) (GCF) – and, specifically, with the accreditation of the former as the international implementing entity of the latter.

The Adaptation Fund (along with other small specialized multilateral ‘retail’ funds) is necessary to enable the GCF to function at scale as a ‘wholesale’ fund which manages only medium and large projects and programmes. Indeed, if it did not exist it would have to be created to cover multilaterally funded micro adaptation projects, in the context of a GCF that is able to work at an annual multi-billion-euro/dollar scale.

Servicing small funds directly may not be efficient for donors/contributors, but this can be remedied by ‘rationalizing’ *the funding streams* through a wholesale approach without abolishing the small retail funds needed for such an approach to work at scale. In practice, this means that national contributions to the Adaptation Fund should be channelled via the GCF and accessed by the Adaptation Fund under the programmatic approach, as envisaged in the [GCF Governing Instrument](#). For this, the Adaptation Fund would need to be accredited to the GCF as an international implementing entity (without prejudice as to receiving contributions from other sources).

There has been a protracted debate at the Adaptation Fund Board and elsewhere on whether this should happen, and indeed whether the Adaptation Fund Board has the mandate to take a decision in this respect. The Note looks in detail at this debate and draws two main conclusions:

- First, it sees the recent decision by the Adaptation Fund Board to have a “further legal, operational and financial analysis on the implications of various linkages with the GCF” as a real opportunity to provide helpful input to substantive deliberations on whether to seek GCF accreditation or not, in particular by proposing concrete steps available to the Board if any obstacles remain. However, for this to be truly useful, there must be a stake-holder consultation and an independent review of the analysis, to ensure that all concerns are adequately considered and all aspects correctly covered.
- Second, having reviewed the existing decision-making practice at the Adaptation Fund Board, as well as relevant decisions – in particular those taken by the Adaptation Fund governing body (the ‘[CMP](#)’) during the recent Marrakech climate conference, *inter alia*, encouraging the Adaptation Fund Board “to further consider all potential sources of funding” – this Note concludes that the Adaptation Fund Board does indeed have the mandate to take a decision with respect to seeking GCF accreditation.

This conclusion is supported by an independent legal assessment (appended in full) which, having carried out a detailed interpretation of the constitutive rules and the practice of the Adaptation Fund Board with the CMP, infers that the Board “enjoys an implicit delegation to apply for accreditation and later conclude a Master Accreditation Agreement with the GCF. This function, necessary to implement a key option for the resource mobilization strategy, should be seen as additional to the ones enlisted in Decision 1/CMP.3 and is confirmed by the hortatory language of the latest CMP decisions, as well as the relevant permissive practice of the CMP in analogous circumstances.”

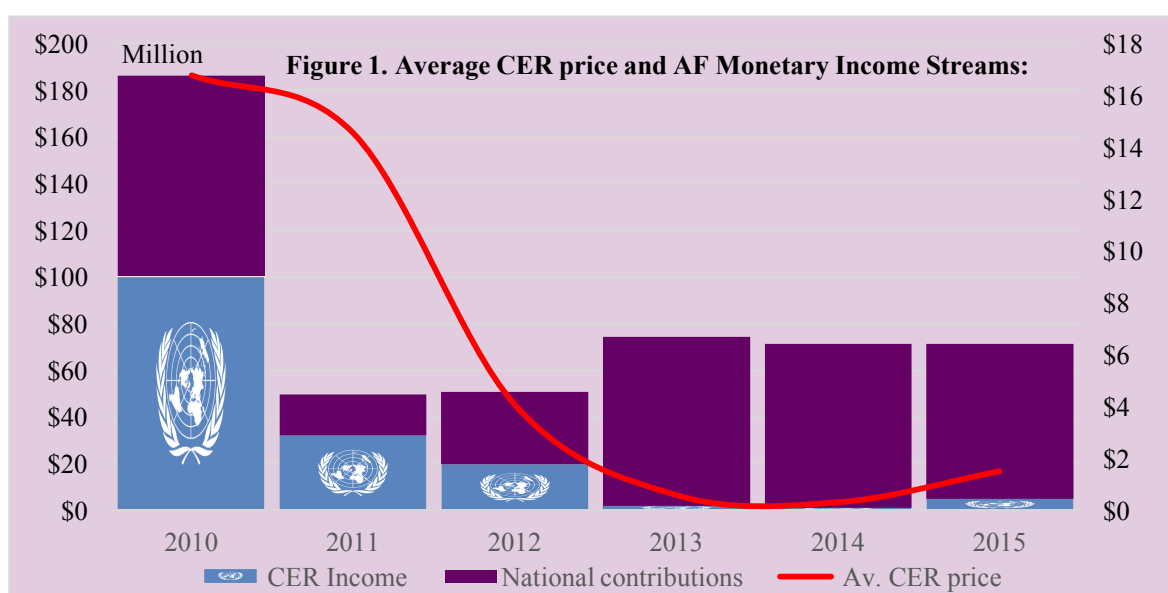
In short, the time has come for the Adaptation Fund Board to buckle down and take a decision on whether to seek GCF accreditation or not. The time for protracted debates has passed. It is now time to decide!

## What is the Adaptation Fund?

Almost exactly 15 years ago, Marrakech hosted the seventh session of the Conference of the Parties (COP 7) to the [United Nations Framework Convention on Climate Change](#) ('Convention'), which established not only the Adaptation Fund (AF) under the Kyoto Protocol, but also the Least Developed Countries Fund (LDCF) and the Special Climate Change Fund (SCCF) under the Convention, as part of the [Marrakech Accords](#). The AF was created to finance concrete adaptation projects and programmes in developing country Parties to the Kyoto Protocol that are particularly vulnerable to the adverse effects of climate change, and it became operational with the election of its first Board by the CMP<sup>3</sup> (the governing body of the Kyoto Protocol) in 2007 in Bali, Indonesia.

Since then, the AF has been at the cutting edge of innovation in a number of ways. Created to receive its income as a 'share of proceeds' from the Kyoto Protocol [Clean Development Mechanism](#) (CDM) as the prime source of income, it is the first and only multilateral climate fund to be replenished through what has become known as 'international innovative finance'. Given that the 'income' was in the form of [certified emission reductions \(CERs\)](#) issued for a CDM project activity, the AF also had to pioneer how to manage the monetization of such assets.

Another pioneering feature of the AF is its 'direct access' modality. It works with National



Implementing Entities (NIEs) – instead of international implementers such as multilateral banks or UN agencies – and demand has been considerable, with the total number of new proposals in the 2016 submission period totalling a record US\$208.6 million.

In 2013, an [independent review](#) of the effectiveness of the AF concluded that: “*The operationalization of the Adaptation Fund has played an important role in scaling up available finance for adaptation in developing countries, albeit from a very low baseline. It has developed a functional system for delivering adaptation finance that meets high levels of transparency, and has important provisions for accountability and learning.*” Another comprehensive independent evaluation, carried out in March 2014, gave the AF high marks for its effectiveness, efficiency, and relevance.

<sup>3</sup> Conference of the Parties serving as Meeting of the Parties to the Kyoto Protocol.

The key problem facing the AF is *a chronic lack of income*. Its intended principal source – the 2 per cent share of proceeds from CDM projects – failed to deliver, because CER prices crashed from an average of US\$15.7 per tCO<sub>2</sub> in 2010/11, to US\$0.31 in 2014 (*see Figure 1*) due to a lack of demand for CERs in developed countries. Over the last five years, a handful of countries has been keeping the AF afloat with voluntary contributions (including at [Marrakech](#)). This, I’m afraid, does not amount to the “*ongoing, sustainable and predictable funding streams*” to which the AF Board was aspiring in the AF’s Resource Mobilization Strategy (see below).

## Why do we need the Adaptation Fund?

Everything that needs to be said on this issue has been said, and in this case, also by me! But for the sake of convenience let me sketch the argument again in broad brush strokes – for more detailed expositions, please refer to the publications listed below.<sup>4</sup>

We need the AF – and other small specialized multilateral ‘retail’ funds – in order for the GCF to be able to function at scale as a ‘wholesale’ fund. The alternative (all GCF-funded activities, no matter how small, being processed and managed centrally at the GCF HQ) would create an architectural bottleneck that would make operations at scale impossible. To be able to operate at scale (throughput of multiple billion dollars per annum) the GCF has to outsource the processing and management of micro projects.

Civil servants often see ‘outsourcing’ as nothing more than ‘introducing an additional layer of bureaucracy’ that claims additional overheads from funding that should be going to projects. But their vision could be clouded – possibly by a desire to keep as many employees as possible under their direct control, which is not uncommon in public sector institutions. This is not what proper outsourcing is about! Otherwise it would hardly be practised extensively, and very successfully, in the private sector.<sup>5</sup>

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### <sup>4</sup> Publications List (reverse chronological order)

*Two Unconventional Options to Enhance Multilateral Climate Finance: Shares of Proceeds and Crowdfunding*, ecbi Policy Brief October 2016, with Alexandra Kornilova, Ritika Tewari, and Carsten Warnecke.

*Devolved Programmatic Access*, Joint Submission to the Green Climate Fund Board, April 2016, with Diann Black-Lane, Tosi Mpanu-Mpanu, Cheikh Sylla, and Anders Wallberg.

*Strategic Divisions of Labour, Submission to the Green Climate Fund Board*, OCP/ecbi Submission to the Green Climate Fund Board, November 2015.

*On the Virtues of Strategic Divisions of Labour: Some thoughts on strategies for the Green Climate Fund and the Financial Mechanism of the Paris Agreement*, OCP Blog, November 2015.

*A lifeline for the Adaptation Fund?*, OCP Blog, April 2015.

*Institutional linkages and relations between the Adaptation Fund and other institutions under the Convention*, OCP/ecbi Submission to the Standing Committee on Finance, April 2015.

*The Adaptation Fund at a Crossroads*, Report of a brainstorming dialogue organized by Heinrich Böll Stiftung North America and ecbi, with Liane Schalatek, March 2015.

<sup>5</sup> *A potential concern [...] could be whether introducing the Fund as a ‘middle man’ would not simply increase the overall administrative costs, thus leave less funding for the intended recipients. This legitimate concern can be addressed through an agreement between the principal (GCF) and the agent (the Fund). After all, it should be possible not to duplicate the processes, which means that the sum total of administrative costs should remain the same as if the projects were handled without an intermediary. The costs of this option, however, should not exceed those that processing an agreement with donor countries imply. The secretariat will not charge any additional ‘fees’ for matters related inter alia to its project review and monitoring operations, which are already part of its core tasks. The implementing entities will charge the usual fees. Rather than increasing costs, having the Fund take over certain duties could lower the overall share of GCF resources needed for administration during the initial period, given that the Fund’s procedures have been tried and trimmed over its five years of operations and it has established low administrative costs. Such an arrangement would also enable the Fund to*



In terms of efficiency and effectiveness, there is no doubt that a devolution of micro project processing and management to recipient countries can deliver the greatest benefits. However, not all recipient countries will be able to use this enhanced direct access modality, which is why we must ensure that the option of multilaterally funded micro projects remains. And this is precisely where the small specialized multilateral retail funds – such as the AF – come into their own. Indeed, if it did not exist it would have to be created, so that multilaterally funded micro adaptation projects are possible in the context of a GCF that is fit for purpose (that is, one that works at scale).

Servicing small funds directly may not be efficient for donors/contributors, but this can be remedied by ‘rationalizing’ *the funding streams* through a wholesale approach, without abolishing the small retail funds needed for such an approach to work at scale.

I therefore fully concur with Jan Kowalzig when he says that “Whatever the outcome [of the negotiations in Marrakech] is, there will always be a need for a funding stream that does the work that the AF does,”<sup>6</sup> and it would be extremely short-sighted to let it go under, only to be forced to re-invent it later on.

To be absolutely clear: being accredited to the GCF allows the AF to apply for (programmatic) GCF funding. It does not mean that the AF Board is required to seek funding from the GCF, nor does it preclude the AF from getting funding from other sources!

## What has been done so far?

So, given the difficult financial situation of the AF, and the need to keep it going, what has been done so far to make this happen? At the [ecbi](#), we have been supporting the AF from the very beginning, indeed for even longer than this.<sup>7</sup> Over the years, the ecbi has hosted a number of discussion evenings with AF Board members; these began at the very first AF Board meeting in March 2008 with a presentation by the World Bank on their idea of an ‘Adaptation Pilot Fund’,<sup>8</sup> which later became the [Pilot Program for Climate Resilience](#) (PCCR) of the Climate Investment Funds. After the collapse of the CER price in 2011-13 (see Figure 1), the ecbi and the Heinrich Böll Stiftung North America organized a brainstorming dialogue during COP 20 in Lima (December 2014) on the future of the AF in a global post-2020 climate framework (see [Report](#)). Following on from the discussion, the ecbi organized an informal meeting for AF Board members, co-hosted by Hans-Olav Ibrekk (Chair of the AF Board), during the 25th AF Board meeting. At that meeting the AF Board requested its Chair and Vice-Chair “to initiate consultations with the Standing Committee on Finance (SCF) and start a dialogue with the GCF Board, on potential linkages between the two funds and request the issue of complementarity between the two funds to be considered by the GCF Board at the earliest.” To facilitate this dialogue, the ecbi organized a Seminar – co-hosted by Seyni Nafo, Outi Honkatukia (Co-

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*share with the GCF its practical experiences on lean administration.* [“Potential linkages between the Adaptation Fund and the Green Climate Fund”, ([AFB/B.24-25/1](#)).]

<sup>6</sup> Michael Igoe, [Who’s fighting for the Adaptation Fund?](#), Inside Development: COP22, Devex, 18 November 2016.

<sup>7</sup> [Operationalising the Kyoto Protocol’s adaptation fund: A new proposal](#), Amjad Abdullah (Maldives), Bubu Pateh Jallow (The Gambia), and Mohammad Reazuddin (Bangladesh).

[On the road to Bali: operationalising the Kyoto Protocol Adaptation Fund](#), Enele Sopoaga (Tuvalu), Lydia Greyling (South Africa), David Lesolle (Botswana), Emily Massawa (Kenya), José Miguez (Brazil).

<sup>8</sup> For more on this idea, see, for example: Benito Müller and Harald Winkler, [One Step Forward, Two Steps Back? The Governance of the World Bank Climate Investment Funds](#), Oxford Energy and Environment Comment, February 2008.

chairs, SCF), and Hans Olav Ibrekk (Chair, AF Board) – on the eve of the 10th SCF meeting (June 2015) to discuss these linkages and relations ([OCP/ecbi Submission](#)).

## **At the Adaptation Fund Board (regarding GCF Linkage)**

### *The ‘Secretariat Paper’*

In October 2014, the AF Board (or ‘the Board’ unless there is danger of misunderstandings) requested the AF Secretariat to “prepare a document containing elements on potential linkages with the Green Climate Fund for consideration by the Board.” ([Decision B.24/29](#)). This document (the Secretariat Paper), published in February 2015 under the title of “Potential linkages between the Fund and the Green Climate Fund” ([AFB/B.24-25/1](#)), looked at a number of scenarios, chiefly at “Scenario 2: Operational linkage between Fund and the GCF”, which it defined as:

*Given the legal capacity of the Board, the GCF could conclude agreements with it, limited to certain operational aspects. This modality would allow the GCF to channel some of its operations (and resources) through the Fund (e.g. direct access, concrete adaptation projects). These agreements do not imply any change in the institutional arrangements for the Fund, and could be concluded by the Board regardless of them.<sup>9</sup>*

The Paper concludes that *Scenario 2, i.e. the Fund receiving core funding from the GCF – either as an intermediary of the GCF by accreditation or entering into some other type of arrangement based on paragraphs 33-34 of the GCF GI – seems the most viable and desirable way of linking both funds at this stage.* The Paper delivers an excellent analysis of this ‘operational linkage’ scenario which is worth reproducing in detail.

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*This scenario is in line with the objective of coherence and complementarity expressed in the mandate of the Standing Committee on Finance (SCF), in several decisions by the Parties, and in the GCF GI, in the context of an emerging institutional architecture of the financial mechanism of the UNFCCC.*

*Regarding the rationale for the GCF to establish an operational linkage with the Fund, the first argument is that, as the WWF study concluded, the GCF should build on and improve existing systems for adaptation finance rather than establish entirely new mechanisms and processes.<sup>[10]</sup>*

*In that context, one could indeed envisage the Fund becoming functionally the (or one of the) channels for direct access funding for micro and small GCF adaptation projects/programmes. This is in line with the argument – on the basis of paragraph 36 of the GCF GI – that in order to function at scale, the GCF will need to focus on programmes, and ‘outsource’ all project activities to multilateral and national intermediaries/funding entities.<sup>11</sup> In that sense, scenario 2 has another significant advantage for the GCF, giving it the ability to spend funds quickly on the outstanding Fund’s project pipeline without jeopardizing the viability of the Fund. Indeed, this may be a way in which the GCF can really hit the adaptation funding ground running.*

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<sup>9</sup> All passages in italics in this sub-section are quotations from the Secretariat Paper.

<sup>10</sup> WWF, [Early Experiences in Adaptation Finance: Lessons from the four multilateral climate change funds](#), p.50 (November 2014).

<sup>11</sup> See, for example, Benito Müller, [A Delhi Vision: for the Green Climate Fund Business Model Framework – Some Thoughts on Access and Disbursement](#), Oxford Energy and Environment Brief, February 2013.

*The Fund, having a governing body with legal capacity, could be accredited as [an] intermediary of the GCF. This option seems possible because the Fund may meet the relevant specialized fiduciary standards.*

*If funding comes from the GCF, then the Fund may have to follow the strategic guidance (at least for this funding) of the GCF, which will increase the coherence between the GCF and [the] Fund.*

*This scenario would also provide adequate and predictable funding for the Fund, in line with previous decisions made by the Parties.*

### *The ‘Secretariat/Trustee Paper’*

Having consulted the Secretariat Paper, the Board decided intersessionally to request the Secretariat to further assess operational linkages with the GCF. At the subsequent meeting, in April 2015, “several members considered that there was a consensus in the climate change community that future funds available would inevitably be channelled to the GCF rather than to any other bodies. The resource mobilization task force would have to decide whether the GCF would be a source of a revenue stream for the Fund. If so, then the Fund should probably seek accreditation, but that entailed risks as well as rewards.”<sup>12</sup>

However, “one Board member said that in any form of cooperation, there would be a number of complex legal issues to be resolved. For example, both Funds had the World Bank as trustee. Likewise, there were some people, including himself, who were members of both Boards, which might be seen as those having a conflict of interest.”<sup>13</sup> Even though this view was not shared by all Board members,<sup>14</sup> the Board became sufficiently worried by this to request “the secretariat, in consultation with the trustee, as appropriate, to prepare a document [...] containing further legal, operational, and financial analysis on the implications of various linkages with the GCF.” ([Decision B.25/26](#))

The requested document, entitled “[Strategic Discussion on Objectives and further steps of the Fund: Potential Linkages between The Fund and The Green Climate Fund](#)” (AFB/B.26/5), was published in September 2015, and was discussed at the next Board meeting in October 2015:

“77. The trustee then took the floor to explain the implications of linkages with the GCF from the trustee’s perspective. He noted that because the World Bank provided trustee service to both funds on an interim basis, it should be fairly straightforward to address the implications of linkages between the Fund and the GCF. Indeed, many simply required a Board decision or a slight amendment to the existing legal agreements; nevertheless, there were others that required more action, as outlined in the document.”<sup>15</sup>

This ‘Secretariat/Trustee Paper’ focuses on accreditation as an operational linkage and considers – as mandated – legal, operational, and financial issues. Overall, the Paper is exceedingly hesitant, not to say vague; its 16 substantive paragraphs contain no less than 21 instances of ‘may’<sup>16</sup> and seven of ‘could’. Some of these concerns are clearly unwarranted: there was never any doubt that a fee must be paid by all entities applying for accreditation (*12.d. The Board may need to pay accreditation fees to the GCF.*<sup>17</sup>)

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<sup>12</sup> Report of the 25th meeting of the Adaptation Fund Board, [AFB/B.25/8](#): para. 77.

<sup>13</sup> Report of the 25th meeting of the Adaptation Fund Board, [AFB/B.25/8](#): para. 76.

<sup>14</sup> “Another member expressed the view that the issue was straightforward. The Fund had extensive experience, which would undoubtedly be beneficial to the GCF.”[*ibid.*]

<sup>15</sup> Report of the meeting of the Adaptation Fund Board, [AFB/B.26/7](#): para. 77.

<sup>16</sup> Not counting the use of the term expressing non-prescriptive options for the Board.

<sup>17</sup> All passages in italics in this sub-section are quotations from the ‘Secretariat/Trustee Paper’.

Almost everything was deemed to be ‘unclear’ (emphasis added):

- *The nature and scope of the legal obligations that the Board will be undertaking by signing an agreement with the GCF are expected to be outlined in a model legal agreement. This document is not available in the public domain. Therefore, the legal implications of an agreement with GCF are unclear at this point.*[para. 6]
- *An important issue to analyze operational implications is which policies and procedures will apply to projects/programmes funded with GCF-contributed funds (i.e. review criteria, reporting responsibilities, fees, RBM). This is unclear at this point. Another issue is whether the Board would be able to submit a broad programme for funding to the GCF and approve the individual projects/programmes in the broad programme following AF policies and procedures. This is also unclear at this point.*[para. 10]
- *It is unclear whether intermediaries may submit a programme and in such case be allowed, once this is approved, to use their own project cycles for approving the individual projects in the programme.*[para. 13]

What the ‘Secretariat/Trustee Paper’ failed to point out is that despite all these ‘uncertainties’, the World Bank itself felt sufficiently comfortable to apply for accreditation and [was duly accredited](#) in July 2015, well before the publication of the paper. In other words, if the World Bank – not known for excessive risk taking – found that there was sufficient clarity in the GCF accreditation rules (at the time) to apply for GCF accreditation, why should the Board need additional clarity?

The issue was further muddled by one Board member claiming that, if accredited, the AF “would then be required to work with countries in order to develop projects which you submit to the GCF Board for approval. So it’s not that they’re going to give you money, and you’re going to finance a portfolio or pipeline in adaptation. You’re going to work with the country, develop a project, and then submit it to the GCF Board, for us at the Board level to approve. So it doesn’t address the issue of servicing whatever pipeline you have, through the accreditation.”<sup>18</sup>

This was curious, for the GCF Governing Instrument, from the outset, stipulated that “the Fund will support developing countries in pursuing project-based and programmatic approaches.”<sup>19</sup> Moreover, in November 2016, the GCF Board approved the [KawiSafi Ventures Fund in East Africa](#), which clearly was using such a programmatic approach (for more on this, see, for example the OCP blog [On the Virtues of Strategic Divisions of Labour](#)); this should put to rest such ‘programmatic’ worries. After all, why should a private sector investment fund be given programmatic access, and not a multilateral one?

It is thus not surprising that “in the ensuing discussion, it was generally felt that it was premature to seek accreditation under the GCF”<sup>20</sup> and the Board requested further consultations. This has continued ever since (“request the chair, vice-chair and secretariat, in consultation with the trustee, as appropriate, to continue discussions/consultations ... and update document [AFB/B.26/5](#)” – the ‘Secretariat/Trustee Paper’). The problem has been that these updates were chiefly about process. They did not refer to clarifications in the GCF accreditation rules and procedures that may have occurred over time, and consequently they did not address the supposed lack of clarity referred to in the initial paper:

- [Decision B.26/38](#), for one, requested an update on the outcome of the COP21/CMP11, which meant that the update ([AFB/B.27/6](#)) was a three paragraph description of the Paris outcome;

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<sup>18</sup> Author’s verbatim transcript of an audio recording of the meeting webcast.

<sup>19</sup> [GCF GI](#), para. 36, emphasis added.

<sup>20</sup> Report of the 26th meeting of the Adaptation Fund Board, [AFB/B.26/7](#): para. 78.

- [Decision B.27/37](#) requested an update of the consultations between the AFB Chair and Vice-Chair to continue consultations with the Co-Chairs of the Green Climate Fund (GCF) on potential linkages between the AF and the GCF, resulting in a three-paragraph list ([AFB/B.28/6](#)) of meetings with no mention of GCF accreditation issues.

As it happens, the most recent request by the Board ([Decision B.28/45](#)) to the Secretariat (“in consultation with the Trustee, as appropriate”) is for an update of the original Secretariat/Trustee Paper “AFB/B.26/5 containing further legal, operational and financial analysis on the implications of various linkages with the GCF, for consideration by the Board at its twenty-ninth meeting.”

This presents a real opportunity to provide helpful input to substantive deliberations on whether to seek GCF accreditation or not – not only by making reference to the latest indubitably clear versions of the GCF rules and guidelines, but also by proposing concrete steps available to the Board if there are any remaining obstacles. However, for this to be truly useful, there needs to be a stake-holder consultation and an independent review process of the draft of the update, in order to ensure that all concerns are adequately met and all aspects correctly covered.

## **At the Conference of the Parties of the UNFCCC (COP)**

### *COP21 (Paris)*

The finance section of the Paris Decisions to give effect to the Agreement (1/CP.21) recognized that the AF ‘may serve the Agreement’, subject to relevant decisions by the CMP and the CMA and invited the CMP to make a recommendation to the CMA, which it did. In the range of modal verbs used in negotiations, ‘*may*’ is rather at the weaker end of the spectrum (with the *decision* that the GCF, the GEF, the LDCF, and the SCCF *shall* serve the agreement, at the opposite end), but it was the best the supporters of the AF were able to get, and it did put the issue of the AF serving the Paris Agreement (PA) on the agenda of the international negotiations.

There are governance and financial stakes involved in the ‘serving-the-Agreement’ issue. For one, there is the post-2020 governance issue, which is tied to the fate of the Kyoto Protocol after the end of its second commitment period. As the [Doha Amendment](#) to the KP (which defines this period) has not as yet entered into force, and given the entry into force of the PA, it is extremely unlikely that there will be a post-2020 commitment period, without which the KP really becomes redundant. Given that the AF is under the authority of the KP, this clearly could present the AF with some potentially serious consequences. However, there is a fairly straightforward solution. The Kyoto Protocol does not have a termination clause, which is why the most likely outcome in 2020 is for the CMP to be suspended indefinitely, having transferred any of its functions that need to be ongoing to another body implementing the Convention, namely the CMA. There will therefore be no post-2020 governance vacuum for the AF, provided it is serving the Paris Agreement. Of course, this sort of transition will require some adjustments in AF Board membership eligibility, which will have to be extended to all PA Parties.

Article 6 of the Paris Agreement establishes a market mechanism, which some have started referring to as the ‘Sustainable Development Mechanism’ (SDM). Following in the footsteps of the Kyoto Protocol, indeed quoting it verbatim (KP Art. 12.8), the Agreement introduces a share of proceeds from the SDM “to assist developing country Parties that are particularly vulnerable to the adverse effects of climate change to meet the costs of adaptation.” Given that the AF was purpose built to receive the share of CDM proceeds, there are obvious expectations that it could also become the recipient of the SDM proceeds, but that is only possible if it serves the Paris Agreement.



### *COP 22 (Marrakech)*

In response to the invitation by the CMP in Paris, the COP in Marrakech requested the Ad Hoc Working Group on the Paris Agreement ([APA](#)) “to undertake the necessary preparatory work concerning the issue that the Adaptation Fund may serve the Paris Agreement.” The ensuing debate was, unfortunately, highly politicized, with a CMA deciding ([1/CMA.1](#)) that “the Adaptation Fund should serve the Paris Agreement, following and consistent with decisions to be taken ... that address the governance and institutional arrangements, safeguards and operating modalities of the Adaptation Fund.”

Although the modality level for the AF was thus raised from ‘may’ to ‘should’, it was curious why it was not possible to resolve the outstanding governance, institutional, and operating issues even though these really do not seem to be insurmountable; this has led some commentators to think that some Parties would like to keep the ‘serving-the-Agreement’ issue open as a bargaining chip for future negotiations. This, of course, would not be an uncommon strategy, but it is not without risks, in particular the risk of throwing out the bargaining chip with the bath water.

### **At the Conference of the Parties serving as the Meeting of the Parties of the KP (CMP)**

#### *CMP 11 (Paris)*



In Paris, Hans Olav Ibrekk (photo), Chair of the AF Board, following the decision of the AF Board (B.26/38), invited the CMP “to provide guidance on the mandate of the AF Board to take a decision on linkages between the GCF and the AF.” However, all the CMP was willing to do was *to note* the “ongoing discussion on linkages between the Adaptation Fund and the Green Climate Fund.” ([Decision 1/CMP.11](#): “Report of the Adaptation Fund Board”), which was not particularly helpful as guidance.

#### *CMP 12 (Marrakech)*


The CMP decision regarding the [Report of the AF Board in Marrakech](#) was more obliging, by actually *encouraging* the AF Board:

- (i) *in implementing its resource mobilization strategy, to further consider all potential sources of funding* [para. 10], and
- (ii) *to continue its consideration of linkages between the Adaptation Fund and other funds, including the Green Climate Fund* [para. 11].

Home > British & World English > consider

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Definition of *consider* in English:

**consider** 

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**VERB**

[WITH OBJECT]

1 Think carefully about (something), typically before making a decision:

Why? How exactly does this constitute ‘guidance’, as requested by the AF Board Chair in Paris? To answer this, we need to ask ourselves what exactly the CMP encourages the AF Board to do, namely to ‘consider’ something. What does that mean? Not being a native English speaker, I have to rely on authority, and I am told there is no greater authority in this respect than the [Oxford English Dictionary](#), which

defines the verb ‘to consider’ (see box) as “to think carefully about (something), *typically before making a decision*.” Given this typical reading, the CMP is thus encouraging the AFB not to engage in some metaphysical contemplations on linkages and potential funding sources, but to take decisions! What about? About potential funding sources, and more precisely about approaching all potential sources for resources.

In short, in Marrakech, the CMP has not only affirmed the mandate of the AFB to take decisions about linkages with other funds (including the GCF), and about approaching it (and all other potential funding sources) for funding, it has actively encouraged the AF Board to take these decisions. To appreciate the implications of this, it is important to set it in the context of the AF’s resource mobilization and fund raising activities.

## Adaptation Fund Resource Mobilization and Fundraising

### *Chronology*

The fact is that the AF Board has been taking this sort of decision for some time, “in implementing its resource mobilization strategy” and before. Thus, in December 2011, the Board requested the manager of its Secretariat not to contemplate or consider, but “*to undertake* fundraising activities with donors in consultation with the Board Chair”. ([Decision B.16/24](#))

In June 2012, the AF Board requested the Secretariat to “proceed with all necessary arrangements and efforts to reach out to foundations and philanthropic organizations, ... in order to raise funds”. In November, the Board established a partnership with the UN Foundation; a ‘[Donate](#)’ button on the AF and the UNF websites was introduced in December, when the Board also established a Board task force to work with the secretariat on outreach, strategy, and other efforts to achieve an interim US\$100 million fundraising target by the end of 2013. ([Decision B.19/29](#))

A year later, the task force was renamed “resource mobilization task force in order to convey the idea of a continuous activity” and the Secretariat was requested to “prepare a summary document of the fundraising strategy”, which was published in October 2014. ([Decision B.24/28](#))

Finally, in March this year, the Board “set a new resource mobilization target of US\$80 million per year for the biennium 2016-2017.”

### *The Strategy*

The AF’s [Resource Mobilization Strategy](#), as mentioned above, was published in October 2014. Its vision and goal was *to create ongoing, sustainable and predictable funding streams for the Adaptation Fund through robust and consistent operations*. [page 3]



*Proposed funding streams to be considered included contributor governments and, to a lesser degree, exploring potential private sector foundation grants. Revenue streams from private sector involvement could be a new direction for the Fund, and partnerships with the private sector could serve well to raise the Fund's visibility and status. Individual public contributions were not a critical component in this strategy, as the potential amounts that could be raised this way are appreciated but might require more resources. [page 3]*

In implementing this strategy the Secretariat and the task force have started *cultivating potential private sector partners and supporters: relationships initiated with private sector include [SwissRe](#), [BBC Media Action](#), [Rockefeller Foundation](#), [ND-GAIN](#), and others. [page 5]*

## **What now?**

In sum, the AF Board ***has for years*** been taking decisions to engage in fundraising or resource mobilization from a variety of sources, both public and private, and ***all without involvement of the CMP***. The added value of the [Marrakech CMP decision](#) is, in my opinion, simply to reassure the AF Board – and indeed to encourage it – to do this for *all* potential funding sources, including the GCF.

As it happens, this is not just my opinion. Following the events in Marrakech, the [Legal Response Initiative](#) was requested to assess *whether paragraph 10 of the CMP 12 Decision on the AF Board Report, encouraging the AFB “to further consider all potential sources of funding”, is sufficient as (an affirmation of) a mandate for the AFB to take a decision as to whether to seek GCF funding.*

Having carried out a detailed interpretation of the constitutive rules and the practice of the AF Board with the CMP, the Assessment (appended below in full) concludes that “the AFB enjoys an implicit delegation to apply for accreditation and later conclude a Master Accreditation Agreement with the GCF. This function, necessary to implement a key option for the resource mobilization strategy, should be seen as additional to the ones enlisted in Decision 1/CMP.3 and is confirmed by the hortatory language of the latest CMP decisions, as well as the relevant permissive practice of the CMP in analogous circumstances.”

The CMP has thus delivered – now it's for the AF Board to buckle down and take a decision on whether to seek GCF accreditation or not. The time for protracted debates has passed. It is now time to decide!

## Annex. Independent Legal Assessment

This legal assessment by David Rossati, Lecturer in Law at the [Salford Business School](#), was first provided in response to a query by the author of this Note to the Legal Response Initiative<sup>21</sup> (LRI). It is available through the [LRI database](#).

**Query:** “*whether paragraph 10 of the CMP 12 Decision on the AF Board Report, encouraging the AFB ‘to further consider all potential sources of funding;’ is sufficient as (an affirmation of) a mandate for the AFB to take a decision as to whether to seek GCF funding*”.

### Summary:

According to a detailed interpretation of the constitutive rules and the practice of the Adaptation Fund Board (AFB) with the CMP, it appears that the AFB enjoys an implicit delegation to apply for accreditation and later conclude a Master Accreditation Agreement with the GCF. This function, necessary to implement a key option for the resource mobilization strategy, should be seen as additional to the ones enlisted in Decision 1/CMP.3 and is confirmed by the hortatory language of the latest CMP decisions, as well as the relevant permissive practice of the CMP in analogous circumstances.

### Advice:

1. This query follows a previous LRI advice addressing the issues of i) whether the Adaptation Fund Board (AFB) could decide to seek accreditation as a Green Climate Fund (GCF) implementing entity on its own accord or with a mandate from the CMP; and ii) whether an accreditation, once it has occurred, would nonetheless need some form of approval from the CMP. The LRI advisor offered a negative answer to point i), based primarily on a textual interpretation of the CMP Decision establishing the mandate of the AFB (Decision 1/CMP.3). Consequently, it did not consider issue ii).
2. This query coherently extends the interpretative domain of this issue. In essence, the question of whether the AFB could independently seek accreditation to the GCF concerns the *extent of competence* that the CMP has bestowed upon the AFB. In the law and practice of international organizations, delegated powers can be either expressed (in the constitutive instrument of the institution or organ) or implied by reference to the functions that such organ is delegated to fulfil, as well as its practice.<sup>22</sup> The fact that the constitutive instrument of the AFB, Decision 1/CMP.3, does not expressly attribute to the AFB the competence of independently becoming an accredited entity of another multilateral trust fund it is not a sufficient argument to exclude this possibility. Rather, one should carefully look at the following elements: interpreting Decision 1/CMP.3 and all relevant CMP decisions in light of a) the legal nature of accreditation to the GCF under the ongoing discussions on ‘linkages’ between the two funds; and b) the previous practice of the AFB acting in analogous cases independently from the CMP.
3. Paragraph 5 of Decision 1/CMP.3 enlists the functions that the CMP has attributed to the AFB. Importantly, the paragraph clarifies that “[...] the functions of the Adaptation Fund Board shall include the following functions and *any other functions assigned to it by [the CMP]*”. Hence, the

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<sup>21</sup> LRI is an institutional lead member of the [European Capacity Building Initiative](#) (ecbi)

<sup>22</sup> *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion (1949) ICJ Rep. 174, 178; with regards to competence of organs see *Certain Expenses of the United Nations*, Advisory Opinion (1962) ICJ Rep. 151.

functions of the AFB are not exhausted by those listed in this decision, but also consist of all those that *expressly or implicitly* the CMP has attributed to the Board. Within the realm of the relevant listed functions, while the same paragraph gives full domain to the AFB in developing and deciding on ‘specific operational policies’ (letter (b)), it also requires the Board to seek adoption by the CMP of ‘strategic priorities, policies and guidelines’ (letter (a)). None of the two expressions fully captures the legal nature of a process of accreditation by the AFB to the GCF: in the technical language of climate finance institutions, an ‘operational policy’ usually consists of a decision by the executive organ regulating the internal operations of the institution (e.g. access modalities, project approval cycle, environmental and social safeguards). Instead, accreditation requires external institutional engagement and some form of agreement between two entities. By the same token, the expression ‘strategic priorities, policies and guidelines’ appears sufficiently broad to include the ongoing discussion on linkages between the AF and the GCF. Indeed, the recent practice between the AFB and the CMP seems to have followed the structure of a controlled activity of the former by the latter, where the CMP has ‘noted’ and ‘encouraged’ the consideration of linkages with the GCF by the AFB.<sup>23</sup> However, also this language and practice is insufficient to clearly include the accreditation to the GCF within the area of ‘strategic priorities’ of the AF. Rather, a crucial point here is to recognise that different legal options have been identified in the issue of linkages and, among these, it is key to distinguish between two types of options: i) those that are controlled by the CMP as ‘strategic priorities’, so that the latter must eventually adopt them as per Decision 1/CMP.3; and ii) those that could, instead, be regarded as other type of arrangements under full control of the Board. This requires a close analysis of the legal nature of accreditation as one linkage option to the GCF and in light of the AFB’s practice.

4. Accreditation as an implementing entity is a necessary requirement to directly access GCF’s financial resources. Legally speaking, it is a formal appointment that the GCF Board makes after the applying entity successfully passes the vetting by the GCF Secretariat and Accreditation Panel, according to a detailed administrative procedure and substantive requirements.<sup>24</sup> As well as being formally accredited, an entity must enter into an *ad hoc* Master Accreditation agreement with the GCF, which details the relationship and operations between the accredited entity and the GCF.<sup>25</sup> Therefore, becoming an accredited implementing entity requires both initiating an administrative process as well as entering into a bilateral agreement with the GCF; it does not entail or require any delegation of authority, governance change, nor any specific ‘strategic priority, policy or guideline’ by the AFB. Moreover, accreditation is but one ‘linkage’ option currently under scrutiny between the AF and the GCF. As both the AF Secretariat<sup>26</sup> and the UNFCCC Standing Committee on Finance<sup>27</sup> noted, there are different levels of institutional linkage that the AF can set up with the GCF. Some of them, such as serving as a specialised

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<sup>23</sup> Decision 1/CMP.11, para 4(h); and Draft decision -/CMP.12, paras 10 and 11.

<sup>24</sup> B.07/02, adopting the “Initial guiding framework for the Fund’s accreditation process”, 19 June 2014, GCF/B.07/11, Annex I.

<sup>25</sup> Cf. [“Template accreditation master agreement”](#), 17 February 2016, GCF/B.12/32, Annex XXVI.

<sup>26</sup> AF Secretariat, [“Potential Linkages between the Adaptation Fund and the Green Climate Fund”](#), 12 February 2015, AFB/B.24-25/1.

<sup>27</sup> [“Working paper on possible future institutional linkages and relations between the Adaptation Fund and other institutions under the Convention”](#), Tenth meeting of the Standing Committee on Finance, Bonn, Germany, 12-13 June 2015 SCF/2015/10/12, 12 June 2015.

funding window of the GCF, might indeed require strategic reconsideration of the authority and the function of the AFB in terms of ‘priorities and policies’ to be later adopted by the CMP.<sup>28</sup>

A final element to consider in understanding the legal nature of accreditation is to fit it within the wider strategic priorities of the AF: it should be not only considered as a ‘linkage option’ to the GCF, but also, and more importantly, as part of the ‘resource mobilization strategy’ that the AFB has been developing due to the low revenue streams from CERs’ monetization.<sup>29</sup>

5. It is under this understanding of the nature and rationale of accreditation that one should look at the existing practice of the AFB, particularly regarding analogous engagements with other entities. After the conferral of legal capacity under German Law,<sup>30</sup> the AFB has entered into agreements with numerous entities. Of these, a relevant precedent is the 2012 Framework Agreement between the UN Foundation (UNF) and the AFB,<sup>31</sup> which sets the conditions and modalities for the UNF’s support to the AFB in sourcing and transferring private donations to the AF Trust Fund. This agreement i) was adopted by the Board in the context of its nascent resource mobilization strategy;<sup>32</sup> ii) it was not recommended to the CMP for approval; iii) it was not included in the following annual report of the AFB to the CMP<sup>33</sup>; and iv) the CMP did not give subsequent approval of the agreement.<sup>34</sup> *Given these circumstances, it appears that the AFB can institute formal engagements with other entities in the strategic area of resource mobilization without the formal approval of the CMP.* Moreover, the adoption of the Framework Agreement with the UNF can be regarded as analogous to contracting an Accreditation Master Agreement with the GCF in the process of accreditation, as they both seek to regulate the cooperative relationship between independent entities in sourcing and transferring resources.
6. Finally, it is important to contextualise two other relevant practices that might be used to argue for a necessary mandate/approval by the CMP: i) the one between the AFB and the CMP concerning the institutional relationship with the Global Environment Facility as provider of secretarial services to the AF; and ii) the one of contracting trustee services with the International Bank for Reconstruction and Development.<sup>35</sup> It is constant practice that the arrangements, their amendments and extensions between the AFB and the two entities are formally adopted by the CMP. However, this is done in implementation of *explicit* delegations set out in Decision 1/CMP.3 (para 5(j)) and not under the broader functions under letters (a) and (b) discussed above. Therefore, it is not sound to infer automatically that, because of this practice, all ‘institutional linkages’ by the AFB require approval or adoption by the CMP.
7. To conclude, according to a detailed interpretation of the constitutive rules and the practice of the AFB with the CMP, it appears that the AFB enjoys an implicit delegation to apply for accreditation and later conclude a Master Accreditation Agreement with the GCF. This function, necessary to implement a key option for the resource mobilization strategy, should be seen as

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<sup>28</sup> Ibid, para 55.

<sup>29</sup> See “[Resource Mobilization Strategy](#)”, AFB/B.28/8, 26 September 2016, Decision B.27/39.

<sup>30</sup> Cf. Decision 5/CMP.6, para 3.

<sup>31</sup> “[Framework Agreement between the United Nations Foundation and the Adaptation Fund Board](#)”, adopted on 5 October 2012.

<sup>32</sup> The strategy was originally conceived as a fundraising activity by the Secretariat and became a formal strategy after the adoption of the agreement: cf. “[Report of the Sixteenth Meeting of the Adaptation Fund Board](#)”, Decision B.16/24, 29 February 2012.

<sup>33</sup> “[Report of the Adaptation Fund Board](#)”, FCCC/KP/CMP/2013/2, 29 August 2013, Ninth Session, Warsaw, 11-22 November 2013.

<sup>34</sup> Decision 1/CMP.9, paras 11 and 12.

<sup>35</sup> Both adopted originally by Decision 1/CMP.4.

additional to the ones enlisted in Decision 1/CMP.3 and is confirmed by the hortatory language of the latest CMP decisions, as well as the relevant permissive practice of the CMP in analogous circumstances.