



**GREEN
CLIMATE
FUND**

Meeting of the Board
8 – 10 March 2016
Songdo, Incheon, Republic of Korea
Provisional agenda item 27 (c)

GCF/B.12/21

3 March 2016

Administrative Tribunal of the Green Climate Fund (Status Update)

Summary

This document proposes options for the establishment of an administrative tribunal, an independent judicial forum of last resort to serve the Fund, for the resolution of employment cases and disputes. It forms part of the Grievance Procedures of the Fund.

I. Background

1. This document proposes options for and seeks the guidance of the Board in respect of the administrative tribunal of the Fund. Following the Board's decision, it is proposed that the Secretariat explore or develop, as appropriate, the relevant legal arrangements required to implement the Board's decision.
2. Pursuant to the 'Administrative guidelines on human resources', staff members are entitled, as an ultimate recourse and after having exhausted all other administrative remedies, to elevate their grievance to an Administrative Tribunal whose decision will be binding on the Fund and the concerned staff member.
3. The Fund is in the process of establishing procedures and processes for an internal justice system to resolve employment-related disputes. The final element of such a system is the recourse to an independent tribunal which has the power to issue binding rulings.
4. In line with the principles recognized in literature and developed in international jurisprudence, the Fund is required to guarantee due process in staff matters and offer staff members an impartial, fair and thorough dispute settlement mechanism. The grant of privileges and immunities is widely seen as a corollary of such obligation. Consequently, there is a risk that without giving staff access to an independent administrative tribunal, national courts in the Republic of Korea and other country Parties to the United Nations Framework Convention on Climate Change may exercise jurisdiction over employment claims brought by aggrieved staff members, notwithstanding the privileges and immunities granted to the Fund by the Republic of Korea and other countries. The establishment of an Administrative Tribunal is therefore a matter of urgency.

II. Options for the Green Climate Fund Administrative Tribunal

5. In order to settle employment-related disputes, multilateral entities which operate under privileges and immunities have typically either established their own administrative tribunals or recognised the jurisdiction of such a tribunal established by another organization. For example, while the World Bank and all multilateral development banks have established their own administrative tribunal, the Global Fund to Fight AIDS, Tuberculosis and Malaria (Global Fund) has instead chosen to recognize the jurisdiction of the ILO Administrative Tribunal (ILOAT) in respect of employment-related disputes.
6. On this basis, the Board is invited to consider the two following options for the Administrative Tribunal of the Fund:
 - (a) Recognizing the jurisdiction of an existing, established administrative tribunal; or
 - (b) Establishing an independent Administrative Tribunal to serve the Fund exclusively.

III. Option 1: Recognizing the jurisdiction of an existing administrative tribunal

7. As the Fund is still at its early stages of operation and institutional capacity, the Board may consider it an advantage to explore options for conferring jurisdiction on an already established and functioning international tribunal. If that approach should be followed, the most appropriate approach may be for the Fund to recognize the jurisdiction of the ILOAT. It is currently open to approximately 46,000 international civil servants who are serving or former

officials of some sixty organizations. The Tribunal is composed of seven judges, all of different nationalities, who are appointed for a renewable period of three years.

8. The advantage of the Fund to join the ILOAT is that it already has expertise, is highly regarded in this area and has established case-law of about 3000 decisions. In addition, the process for recognizing the jurisdiction of another tribunal can be relatively quick and will not involve additional resources in terms of having to develop a statute for an independent tribunal to be established by the Board.

IV. Option 2: Establishing an administrative tribunal to serve the Fund

9. As an alternative to the above-mentioned option, the Board may want to consider the option of creating an administrative tribunal exclusively for the Fund.

10. This will involve establishing a separate tribunal exclusive for staff and former staff which will include the Board adopting a Statute for the Tribunal, together with relevant rules of procedure. Once the tribunal has been established, the Fund will need to initiate a selection process to identify, select and appoint members of the tribunal and support staff.

11. The main advantages of this approach include the fact that the Board will retain the ability to design (and amend) the statute of the tribunal, appoint the members of the tribunal and will be able to specify the tribunal's seat (e.g. in Songdo).

12. The main disadvantages include the fact that as a new institution, the tribunal will not have any established precedent (and this may create uncertainty during its initial stages) and the time that it may take to make the tribunal operational. While the statute and rules of procedure can be developed and finalized relatively quickly, identifying, selecting and appointing members of the tribunal and support staff may take time.

V. Costs

13. Either option will entail cost for the Fund. If the jurisdiction of an existing tribunal, such as the ILOAT, is to be recognized, the costs will be determined by the ILOAT in accordance with an established formula. On the other hand, if the Board decides to establish its own independent tribunal, the associated administrative cost will need to be borne directly by the Fund. The detailed cost requirement of both options will be submitted to the Board at B.13.

VI. Next Steps

14. It is recommended that the Board adopt the draft decision presented in Annex I to this document. The purpose of this decision is to mandate the Secretariat to undertake a full analysis of both options presented in this paper, including their budgetary implications, for consideration by the Board at its thirteenth meeting.

15. With respect to Option 1, the analysis should specify the structure of the ILOAT and its proceedings, the steps which the Fund must take in order to recognize the jurisdiction of the ILOAT, the expected timeframe for doing so and the related costs.

With respect to Option 2, the analysis should also include a proposed draft statute for the Fund's own administrative tribunal and proposed draft rules of procedure.

Annex I: Draft decision of the Board

The Board, having considered document GCF/B.12/21 titled “Administrative Tribunal of the Green Climate Fund”;

- (a) Takes note of the status of preparations and the urgent need to agree upon institutional arrangements for the Fund’s administrative tribunal; and
 - (b) Requests the Secretariat to prepare a document for consideration by the Board at its thirteenth meeting setting out the two options referred to in document GCF/B.12/21 titled “Administrative Tribunal of the Green Climate Fund”. In particular, the document should set out:
 - (i) The structure and mandate of the ILO administrative tribunal (ILOAT), a summary of the ILOAT’s rules of procedure, the steps which the Fund must take in order to recognize the jurisdiction of the ILOAT, the expected timeframe for doing so and an estimate of the annual costs associated with adopting such an approach; and
 - (ii) A separate proposal for the Board to establish an independent administrative tribunal to exclusively serve the Fund, which proposal shall include a draft statute for such administrative tribunal and its draft rules of procedure, details of the expected timeframe for establishing an independent tribunal and an estimate of the annual costs associated with adopting such an approach.
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