Report and Decisions of the Second Conference of the Parties of the African Risk Capacity (ARC) Agency

ARC/COP2/D014.2811_13

Second ARC Conference of the Parties

Nairobi, Kenya
26-28 November 2013
1. The Second Meeting of the Conference of the Parties of the African Risk Capacity (ARC) Agency was convened by the Director General ad interim of the ARC Agency on behalf of the Chairperson of the First Conference of the Parties (Government of Senegal), pursuant to decision 14 of the First Conference of the Parties to hold its second meeting in November 2013. The meeting, which took place from 26-28 November 2013 in Nairobi, Kenya, at the kind invitation of the Government of the Republic of Kenya, has recorded the participation of the following State parties of the ARC agency: Comoros, Cote d’Ivoire, The Gambia, Kenya, Malawi, Mauritania, Mozambique, Niger, Rwanda, Senegal, Togo, and Zimbabwe.

2. The Meeting of the Conference of the Parties was formally opened by H.E. Henry Rotich, Cabinet Secretary for the National Treasury of the Republic of Kenya, who welcomed the delegates on behalf of the people and Government of Kenya. H.E. Mr. Rotich stressed the importance of initiatives like ARC for Kenya, with regard to adverse effects of natural disasters that significantly undermine economic growth and Government efforts in fighting poverty. He concluded by suggesting that long-term, sovereign-level programmes like ARC could go a long way toward building resilience among vulnerable populations, and thanked the Governing Board, particularly Chairperson Dr Ngozi Okonjo-Iweala, for her commitment to contribute to raising the profile of ARC at the global level.

3. Dr Bruce Mukanda of the African Union Interafrican Bureau for Animal Resources based in Nairobi, Kenya delivered remarks on behalf of H.E. Tumusiime Rhoda Peace, African Union Commissioner for Rural Economy and Agriculture, stating that Commissioner Peace regretted not being able to attend the meeting in person, and expressed the Commission’s strong support for the ARC as a tool to address the need for improved risk management in Africa in the context of a changing climate.

4. Interim Director General of the ARC Agency Dr Richard Wilcox welcomed the delegates and outlined the progress made by the ARC Agency since the first Conference of the Parties in February 2013. Dr Wilcox informed delegates that the Agency’s financial affiliate, ARC Insurance Company Limited, had officially been established provisionally in Bermuda while the Conference of the Parties was in session.

5. Speaking on behalf of the ARC Agency Governing Board, Mr Ouhoumoudou Mahamadou informed the delegates of the actions undertaken by the Institution since the First Conference of the Parties in February 2013. He went on to inform the Conference of the Parties of the initiative to establish an initial risk pool that enabled six countries to set up the Agency’s Peer Review Mechanism. This Mechanism aims to set continental standards and fundamentally change the way the African governments interact with their development partners.

6. In his statement, Mr Tosi Mpanu-Mpanu, an ARC Agency Governing Board Member and Member of the Peer Review Mechanism, highlighted the importance of the work of the Board, especially the emphasis on the Board’s oversight of the contingency planning process under the capable stewardship of Dr Jacques Diouf as the Chairperson of the Peer Review Mechanism. He stressed the importance of government ownership over the process, which is a guarantee of the political legitimacy of the process.
7. The Conference of the Parties selected by consensus the following as Members of the Bureau, as provided for in Article 12.4 of the Establishment Agreement, and decided that the Bureau would also serve as the Credentials Committee of the Conference of the Parties:

<table>
<thead>
<tr>
<th>Chairperson</th>
<th>Kenya (East)</th>
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</thead>
<tbody>
<tr>
<td>1st Vice Chairperson</td>
<td>Senegal (West)</td>
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<tr>
<td>2nd Vice Chairperson</td>
<td>Mauritania (North)</td>
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<tr>
<td>3rd Vice Chairperson</td>
<td>Malawi (South)</td>
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<tr>
<td>Rapporteur</td>
<td>Niger (West)</td>
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8. The conference of the Parties adopted the Agenda for its meeting as set out in Annex1.

9. The Conference of the Parties considered the items on its agenda as well as the recommendations made by the meeting of the Senior Government Officials, and took the following decisions, that:

   a. Actions and activities for which funding is fully secured in the Work Programme for the year 2014 are approved while focusing on resource capacity building at the country level. The Programme of Work and Budget for 2014 is approved. The associated documents are attached as Annex 2, as required by the Establishment Agreement, Article 17, paragraph 5(c).

   b. The Conference of the Parties endorses the steps taken to date regarding the establishment of ARC Insurance Company and confirms its approval of the ongoing activities performed by the ARC Secretariat as consistent with the prior instructions of the Conference of the Parties held in Dakar in February 2013 and the Establishment Agreement.

   c. The Conference of the Parties reaffirms the authority of the CoP to liquidate the Company under the Establishment Agreement, Article 13.2.i. and recognizes that the Company may be liquidated if required under Bermuda law, or if required as the only way a Class C Member, as defined by the Company bye-laws, can withdraw its capital as permitted in the Company bye-laws. The Conference of the Parties may in the present case authorize the liquidation of the ARC Company in the circumstances set forth in the Memorandum of Understanding entered into between the ARC Agency and the Company.

To that effect, the ARC Board is instructed to finalize negotiations on a Memorandum of Understanding between the ARC Agency and the Company, on substantially similar terms to those contained in the draft Memorandum of Understanding Outline in Annex 3, which will include an option for the Company to reimburse the Agency for services, including but not limited to, support to the Class A members, and research and development, while ensuring that no conflicts of interest arise from this provision.
The ARC Board is also instructed to designate a Board member to sign the Memorandum of Understanding when it is in final form.

d. The following Criteria for Granting Certificates of Good Standing (CGS), attached as Annex 4, are adopted:
   A country must:
   1. Be a signatory to the Establishment Agreement
   2. Have an approved Contingency Plan
   3. Have completed its review and customization of Africa RiskView
   4. Be up to date in its financial obligations to the ARC Agency
   5. Comply with its approved Contingency Plan

e. A Certificate of Good Standing may be withdrawn under the following circumstances:
   i. When a regular review by the Board indicates that a country does not fulfil the CGS Criteria, provided that the country has received written notification from the Board on the outstanding issues and time period to cure, and has not cured the situation; or
   ii. If a country has violated the Compliance Rules adopted by the Conference of the Parties, and the Board has determined that removal or suspension of the Certificate of Good Standing is an appropriate penalty.

f. There shall be three categories of deviation from Contingency Plans:
   i. Intentional Deviation
   ii. Unintentional Deviation
   iii. Misuse of Funds

g. The Board shall take the following steps for evaluating deviations from Contingency Plans:
   determination of:
   i. the type of deviation
   ii. the scope of deviation
   iii. the cause of deviation
   iv. the total damage that the deviations caused
   v. the appropriate penalty

h. With respect to evaluation, the Conference of the Parties asks for the following three categories of damage assessment to be applied:
   i. Class I: between 5% and 15% of the total monetary value of the ARC payout;
   ii. Class II: between 15% and 25% of the total monetary value of the ARC payout;
   iii. Class III: greater than 25% of the total monetary value of the ARC payout.
   Moreover, a misuse of Funds with a monetary value in Class II or Class III, or an Intentional or Unintentional deviation with a monetary value of Class III should be considered a Serious Deviation.

   For that effect, the following are possible penalties that the Board may apply when a country has deviated from its approved Contingency Plan:
   iv. Additional Monitoring
   v. Restrictions on Future Plans
vi. Removal of Certificate of Good Standing  
vii. Suspension  
viii. Repayment  

i. The Conference of the Parties adopts the steps in the Adjudicative Process as outlined in the rules for ensuring Parties’ compliance with approved Contingency Plans (the Compliance Rules), attached hereto as Annex 5 to this Report.  

j. The Board is mandated to review the Compliance Rules and advise the next session of the Conference of the Parties on possible improvements, if any, particularly taking into account the recommendations of the independent review of the Contingency Planning process that will be conducted in early 2014.  

k. The terms of office of members of the Board are extended for an additional nine months to ensure continuity in the work of the Board, in conformity with the term limits in the chart attached to this report as Annex 6 to this Report.  

10. The Conference of the Parties took note of three possible scales of assessment for membership fees for the ARC Agency:  
a. African Union Capacity to Pay;  
b. United Nations; and,  
c. Equal Payments.  

11. The Conference of the Parties noted that the regular-term Director General of the ARC Agency must be a national of an ARC Member State. For purposes of selecting the regular Director General, a candidate may be considered so long as she or he is a national of a State that has signed the Establishment Agreement prior to the third meeting of the Conference of the Parties.  

12. The Conference of the Parties encouraged the ARC Agency to develop products and services to respond to other types of natural disasters and extreme weather events such as flooding, locusts and cyclones.  


14. The Conference of the Parties decided that its third meeting be scheduled to take place in the first week of September 2014 and should be held at the African Union Headquarters in Addis Ababa, Ethiopia where the Parties have permanent representation in order to ensure the widest participation by the Agency Member States as well as to reinforce linkages between the Agency and the African Union.  

15. During the Closing Ceremony, Dr Geoffrey Mwau, Economic Secretary in the National Treasury of the Republic of Kenya, thanked all participants for their availability and the quality of work before declaring the meeting of the Conference of the Parties closed while wishing the delegations a safe journey home.
Annex 1
Draft Agenda

I. Adoption of the Agenda and Programme of Work
II. Briefing by representatives of the ARC Agency Governing Board
III. Consideration of the Programme of Work and Budget for 2014
IV. Update on the establishment of the African Risk Capacity Insurance Company Limited
V. Consideration of the rules governing the issuance and withdrawal of Certificates of Good Standing
VI. Consideration of the Compliance Rules
VII. Consideration of a proposal for extension of the terms of office of members of the ARC Agency Governing Board
VIII. Consideration of the criteria and scale of assessment for membership fees for Parties to the ARC Establishment Agreement
Annex 2
2014 Programme of Work and Budget for the ARC Agency

The purpose of the ARC is to establish and operate an African-owned, continent-wide, parametric weather insurance pool and early response mechanism that will provide participating African countries with predictable, quick-disbursing funds in the case of a drought to implement pre-defined, timely and effective responses. By introducing new approaches of identifying, quantifying and managing the financial risk of disasters, and by linking insurance payouts to effective operational response plans, the ARC aims to create a new way of managing weather risk in Africa and to build capacity within AU member states to manage these predictable risks instead of managing the crises these risks cause. The objective is to capitalize on the natural diversification of weather risk across Africa, allowing countries to manage their risk as a group and to secure funds for responding to probable but uncertain risks from donors and the international risk market in a financially efficient manner. Risk pooling in this way can bring valuable savings to countries over commercial market prices, while reducing the collective reserves countries would need to keep by approximately a half.¹

However, ARC is more than a timely risk-financing tool. As a Specialized Agency of the African Union it is also a powerful African-owned platform that will promote dialogue at both the national and continental level on how best to support vulnerable populations at-risk to natural disasters, setting the groundwork for continental standards in planning for early responses to food security emergencies through its member-country peer review structure. The ARC Agency will not only provide political oversight and accountability to the African Risk Capacity Insurance Company Limited (ARC Ltd), but also capacity building services in food security risk management and contingency planning to participating governments. ARC Ltd operates the sovereign risk insurance scheme.

This document outlines a provisional programme of work and budget for the ARC Agency Secretariat to work towards the objectives elaborated above during the transition period between the Interim Director General and the regular-term Director General taking office, allowing the work of the Agency to move forward during this transition period.

There are four major milestones to be achieved in 2014:

1) Construct and Finalise ARC’s First Two Insurance Portfolios
2) Conduct Research and Development on Africa RiskView
3) Review of ARC Contingency Planning
4) Thought Leadership and Institutionalizing ARC Secretariat Functions

1. Construct and Finalise ARC’s First Two Insurance Portfolios

Six countries have entered into pre-participation Memoranda of Understanding with the ARC Secretariat with the intent to take out insurance and participate in the first risk pool going to market in February 2014: Kenya, Niger, Senegal, Malawi, Mauritania and Mozambique. Countries that participate in the first pool will likely continue coverage with the second pool in February 2015. The following countries have expressed interest in joining the second pool: Chad, The Gambia, Lesotho, Rwanda, Swaziland, Zambia and Zimbabwe.

The ARC Secretariat provides support to the ARC Government Coordinator in each country who manages a national-level multi-stakeholder capacity-building programme with the aim of improving weather risk management systems through a) customising Africa RiskView weather risk quantification software;

b) selecting risk transfer parameters; and c) developing drought-response contingency plans linked to ARC pay-out. Countries wishing to participate in the second pool will commence the pre-participation programme in October 2013.

**Africa RiskView Customization.** Customization of the *Africa RiskView* (ARV) software entails defining criteria for each of the four layers of the software – rainfall, drought, populations affected and response costs. The aim of the ARV customization process is to produce a robust model that can accurately capture drought events in a country and, as well as possible, predict the impact of these drought events on vulnerable households. In addition to allowing countries and their partners to review the efficacy of ARV for their risk management needs, this process will also ensure each participating country understands how the model inputs and limitations work, and how it can be used as the basis for indexing ARC insurance contracts and triggering ARC payouts.

The ARC Secretariat and ARC Technical Team liaise with in-country counterparts on a weekly basis and in person monthly. Opportunities for peer-to-peer learning across countries will be taken advantage of as much as possible during the year-long capacity building programme.

**Risk Transfer Simulations.** Once ARV has been customized, a country will have to decide what portion of that modelled risk it wants to transfer to the ARC risk pool via an insurance contract by specifying its ARC risk transfer parameters. This decision will depend on several factors unique to the each country, from its ARV-defined drought risk profile vis-à-vis available resources to fund potential drought responses, to the country’s premium-payment capacity.

To support this decision making process, the ARC Secretariat will provide training and guidance to countries on risk transfer, particularly on risk transfer parameter setting and its impact on premium levels. In many cases, countries will need donor support to meet their initial annual insurance premium payment requirements. It is envisaged that these discussions will be primarily bilateral between countries and their existing development and humanitarian partners in the context of on-going food security and disaster risk management programmes. As requested, the Secretariat will support countries in these discussions with partners. It will also work with countries to ensure that premium payment schedules align with national budget processes when possible.

**Contingency Planning.** ARC is more than an insurance mechanism. In return for an annual insurance premium, ARC will provide participating African Union Member States access to financial resources in order to implement pre-approved drought response plans quickly and proactively in the event of an extreme drought. ARC insurance payouts are designed to be released to countries early – often before other funds are available – reducing the time it takes to assist vulnerable populations impacted by drought. It is expected – and supported by research carried out both through in-country discussions and ARC’s Cost-Benefit Analysis – that this provision of early funds linked to robust operations plans will result in greater livelihood savings for beneficiaries in participating countries who will receive assistance earlier. Preparing ARC operations plans for potential ARC insurance pay-outs is a key part of the in-country pre-participation process. This contingency planning process will contain three steps for participating countries. The first step for countries is to submit an initial operations plan to the ARC Governing Board for approval in order to obtain a Certificate of Good Standing that allows the country to access the insurance pool. In order to be approved by the Board, each activity specified in the plan will have to satisfy ARC’s basic eligibility and implementability criteria. As a second step, a final operations plan submission will need to be made by a

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2 In 2012, ARC commissioned a Cost Benefit Analysis to determine the economic impacts of earlier drought intervention in countries that would potentially participate in ARC. This study was conducted by Ruth Vargas Hill at IFPRI and Daniel Clarke from Oxford University.
country one to two months before an imminent pay-out. This final submission gives a country receiving a pay-out an opportunity to refine their initial submission and effectively update their pay-out use proposal using the most up-to-date information about the current food security and operational costs. Last is a reporting step, in which countries implement the activities associated with the pay-out and report on progress against their logframe. The ARC Secretariat will assist countries in preparing these submissions and establishing systems for meeting the reporting requirements.

2. Conduct Research and Development on Africa RiskView

Development of a Flood Model. The ARC has secured USD 300,000 from the Swiss Agency for Development and Cooperation to cover the development of a flood component to ARV. Using these funds, the ARC Secretariat will partner with a research and modelling firm to develop an African flood model that could be used for ARC insurance purposes. A tender to select a firm has just begun and work is scheduled to begin in the second quarter of 2014. Given the complexity of modelling flood risk across the continent 18 months has been allocated for the work, which means at the very earliest ARC could begin offering flood coverage to countries in 2016.

Refinement of ARV. ARV has already been designed to be flexible both as an early warning and as a risk transfer tool and work will continue to ensure ARV is as user-friendly for the widest range of stakeholders as possible. In addition to the current work-plan of in-country customization and scheduled improvements, including those suggested through user feedback, the ARC Technical Team plans to further improve the drought modelling component, add new hazards (such as flood outlined above), and further develop ARV’s online portal which will allow countries that have entered into the risk pool to monitor their insurance contract progress.

Climate Change Simulations. In 2010 the ARC started working closely with the Italian National Agency for New Technologies, Energy and Sustainable Economic Development (ENEA) on climate change stress tests, and since late 2011 continued to work with ENEA under the umbrella of the EU’s IMPACT2C project. While IMPACT2C has a predominantly European focus, a working group led by ENEA has been assigned the task of evaluating impacts in the energy and food security sectors in vulnerable countries in Africa.

The aim of the ARC climate change stress test activities is to provide data to contribute to a more systematic understanding of the range of uncertainty in estimating needs and costs for food security in Africa under different climate change scenarios. The performance of ARV driven by the climate model data will be more systematically investigated in the context of IMPACT2C. Results will be produced as new datasets, produced under the Coordinated Regional Downscaling Experiment (CORDEX) framework, become available. CORDEX has been designed in response to the increasing need for regional-to-local scale climate information to be used to assess the impact of climate change on human and natural systems. In late 2012, new downscaled (i.e. high resolution) datasets over the African domain were made available to the IMPACT2C consortium for the first time. As they are released, the climate model datasets are being processed by ENEA through ARV with the aim of improving the systematic biases observed during the first climate change stress tests conducted in 2010-11 on global climate models with lower resolution. Preliminary results were presented by the ARC Technical Team at the recent International Conference on Regional Climate CORDEX 2013 in Brussels in November 2013 and final results will be published once the work is complete.
3. Review of ARC Contingency Planning

At their second meeting on 7 June 2013 in Abuja, Nigeria, the ARC Agency Governing Board adopted the ARC Contingency Planning Standards and Guidelines provisionally, with the intent of testing the guidelines, reviewing the process this year and improving the guidelines and process as necessary in the future. After reviewing the operational plans submitted by ARC Member States and the related work of an independent Technical Review Committee, the Peer Review Mechanism (PRM) subcommittee of the Board recommended and the ARC Agency Governing Board decided that the ARC Secretariat update the Standards and Guidelines based on experience of and lessons learned from the review process for these plans. From there, the ARC Secretariat would collate and disseminate these lessons learned on contingency planning for drought-related food security risk management, and in particular, the efficient channeling of funds to the relevant sectors. This information will be used to improve the contingency planning process for ARC related funds and future submissions to the Board.

Pursuant to the Board’s decision to endorse the PRM’s request for a summary of lessons learned and best practices from the initial application for Certificate of Good Standing process, the ARC Secretariat is now commissioning an independent review of ARC contingency planning standards, the current status of operational planning and the overall ARC contingency planning process. The purpose of the review is to identify options for improvements in the ARC contingency planning process described above for current and future rounds of the insurance pool, and to give recommendations for how the ARC could achieve its overall goal of catalyzing improved drought risk management across Africa through promoting effective and efficient contingency planning and financing.

The final study design and the results of the study will be coordinated by and shared with an independent review steering committee composed of members of the Board, the ARC Secretariat and donor partners that will review the report. This steering committee will set forth recommendations for consideration by the Board on potential improvements to a) the standards required, b) the procedures for approval and c) the existing operations plans as they are turned into potential Final Implementation Plans (FIPs) in the event of a payout. It should also consider d) future investments to ensure that ARC, in the long-term, can best serve as the peer review mechanism for drought-related food security risk management on the continent.

4. Thought Leadership and Institutionalizing ARC Secretariat Functions

In addition to the specific tasks described above, the Secretariat will support the ARC Agency Governing Board in several of its key duties and in strategic decision-making as well as ensure that the ARC harmonises its policies and strategic direction with prominent African and global platforms, including Regional Economic Communities, agencies of the United Nations and International Financial Institutions. This includes supporting all ARC Member States in developing their own positions and policies on early intervention and disaster response, resilience building and holistic agricultural risk management through economic research and documenting best practices across the ARC network. The Secretariat will also be responsible for providing administrative support for the Governing Board in preparation for meetings and in the organisation of all future Conferences of the Parties (COP), to be held at least annually.

Attached is a provisional budget for the ARC Agency through December 2014 for consideration by the Parties.
ARC Budget Summary

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<thead>
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<th>Year</th>
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<tr>
<td>Period</td>
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<tr>
<td>Operations (ARC SA)</td>
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<tr>
<td>Research and Development</td>
<td>2 911 684</td>
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<td>Capacity Building</td>
<td>3 099 683</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>8 692 017</strong></td>
</tr>
</tbody>
</table>

As per the Administrative Services Agreement, WFP will deduct 7% for the provision of support services to the ARC Secretariat.
Annex 3
ARC Agency and ARC Insurance Company Memorandum
of Understanding and Cooperation Outline

1. Collaboration to Achieve Objectives of ARC Agency.

The parties will collaborate to achieve the joint objectives of African Risk Capacity Agency ("ARC Agency") and the ARC Insurance Company Ltd ("ARC Insurance Company"). The parties will cooperate in order to align their respective organizational processes and to ensure timely responses to matters affecting both organizations.

2. Contingency Planning and the Peer Review Mechanism.

[Note: the details of the Contingency Planning process may change subject to the recommendation of the independent review outlined below; however these are the fundamental principles that ARC Agency Governing Board has approved to date:]

(a) The ARC Agency Governing Board is responsible for approving Contingency Plans in accordance with the standards that it has adopted and will do so through the Peer Review Mechanism that it has established.

(b) ARC Agency Member States must submit two different types of plans: "Operations Plans" and "Implementation Plans" (collectively, the "CP"), which will together constitute an ARC Agency Member State’s Contingency Plan.

(c) Once an ARC Agency Member State has had its Operations Plans approved, it may receive a Certificate of Good Standing ("CGS"), if it has met all of the criteria established by the Conference of the Parties for receiving a CGS. The ARC Agency Secretariat will communicate to ARC Insurance Company which ARC Agency Member States have received a CGS and are, therefore, eligible to acquire an insurance policy ("Policy") from ARC Insurance Company;

(d) ARC Insurance Company will only offer a Policy to ARC Agency Member States that have received a CGS.

(e) The CPs are reviewed through the Peer Review Mechanism ("PRM") comprising members of the ARC Agency Governing Board with expertise in agriculture, disaster response and extreme weather events, supported by an independent technical review committee.

(f) In order to acquire a Policy from the ARC Insurance Company, an ARC Agency Member State must have a CP approved by the ARC Agency Governing Board. When an ARC Agency Member State has an approved CP and has met all of the criteria for granting of CGS ("CGS Criteria") adopted by the Conference of the Parties, it may purchase a Policy from the ARC Insurance Company. The CGS Criteria require that a country: (1) be a signatory to the Establishment Agreement of the ARC Agency; (2) has an approved CP; (3) has completed its review and customization of Africa RiskView; (4) after that Member State has ratified the Establishment Agreement treaty, has is current on its financial obligations to the ARC Agency as an ARC Agency Member State; and (5) complies with its approved CP when using any ARC Insurance Company Policy payout funds.

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3 See the Establishment Agreement, Article 15, paragraph 1 (k-l).
(g) If it appears that a Policy payout is likely, the affected ARC Agency Member State will be required to submit a Final Implementation Plan (“FIP”) detailing how the Policy payout will be used, given the specific situation. The ARC Insurance Company may not make a Policy payout until the ARC Agency Governing Board has approved the applicable FIP.

(h) The ARC Agency shall commission an annual external independent review of the ARC Agency CP process, including the in-country CP development process and the PRM. The independent consulting team conducting the initial review will evaluate the overall ARC Agency CP planning process and make recommendations for strengthening it and for on-going annual reviews. The firm selected to conduct the initial review shall be appointed through a transparent and competitive process, and the engagement will be subject to terms of reference reviewed by donor partners. The ARC Agency will share the results of the first review with an independent review steering committee composed of members of the ARC Agency Governing Board, the ARC Secretariat, the ARC Insurance Company Members . and other partners agreeable to the foregoing to formulate a set of recommendations for actions, improvements and investments in ARC CP planning and on-going reviews of the process, for consideration by ARC Agency Member States that have submitted operations plans, the ARC Agency Governing Board and, as appropriate, the Conference of the Parties.

3. Joint Meetings, Observers, and Duty to Consult on Key Matters.

The ARC Agency Governing Board and the ARC Insurance Company Board will operate on transparency principles between the organizations. The ARC Insurance Company will provide reports on its activities to the ARC Agency at least twice per year.

(a) The ARC Agency and ARC Insurance Company will strive to hold in-person board meetings for both organizations at the same time or physical location once per year. Such meetings will be held separately so each organization has time to conduct its own governance matters, but the organizations will also schedule joint sessions for consultation and information sharing that is relevant to both organizations. Such joint sessions will be held to inform each organization regarding current and future activities and to provide consultation sessions to facilitate collaboration between the two organizations and their respective members and directors.

(b) The ARC Agency Director General, or his/her designee, has the right to serve as observer to any ARC Insurance Company meeting and receive the relevant documentation for such meeting, excluding matters taken in executive session by the ARC Insurance Company Board and any related documentation, for example, that may be subject to confidentiality restrictions.

(c) The ARC Insurance Company Board Director chairperson, or his/her designee, has the right to serve as observer to any ARC Agency Governing Board meeting and receive the relevant documentation for such meeting, excluding matters taken in executive session by the ARC Agency Governing Board and any related documentation, for example, that may be subject to confidentiality restrictions.

(d) In particular, ARC Agency Governing Board chairperson and the ARC Insurance Company Board chairperson will meet and when agreed by them, call a joint meeting of the ARC Agency Governing Board and the ARC Insurance Company Board, to meet and consult on key matters, including without limitation following:

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4 Likely is defined as when the certainty of an insurance payout is greater than 70% within two months of the potential payout date. The ARC Insurance Company Board may also declare a payout likely on the advice of the ARC Secretariat based on the monitoring of the Africa RiskView Software.
(i) If any Class C Member of ARC Company notifies the ARC Company Board that a Class C Member intends to exercise its right to withdraw its capital as permitted by the ARC Insurance Company Bye-Laws.

(ii) If a Class C Capital withdrawal event occurs.

(iii) For any other matter that affects the legal rights of both parties.

4. ARC Insurance Company Capital Withdrawal & Liquidation Events.

(a) The ARC Insurance Company may be liquidated and wound-down upon a decision by the Conference of the Parties.

(b) The ARC Insurance Company may also be liquidated and wound-down as required by Bermuda law, or by court order in Bermuda.

(c) The ARC Insurance Company may be liquidated and wound-down, if required to ensure that one or more ARC Insurance Company Class C Members are able to exercise the right to withdraw its (or their) Capital from the Company pursuant to the Bye-laws, without any additional approval for liquidation by the Conference of the Parties.

(d) In any liquidation and wind-down event, any ARC Insurance Company Member with capital in its “Capital account”, will receive the entire amount of its then-current capital in accordance with Bermuda law and subject to usual and customary wind-down costs, which will be shared pro rata in accordance with the current capital in the respective capital accounts by the ARC Insurance Company Members.

5. Status of ARC Agency.

Except as specifically agreed in this MoU, nothing herein will impair the status of the ARC Agency as an independent international organization established by the Establishment Agreement treaty and which organization is solely responsible for its own decisions and actions. Nothing in this MoU will in any way imply responsibility of WFP or the African Union Commission for the decisions or actions of the ARC Agency, the Conference of the Parties or the ARC Agency Governing Board.

6. Compliance Policy.

(a) Creating and following the CPs is critical for ensuring the integrity of ARC Agency and ARC Insurance Company and the continued access to funding for both organizations. Both the Conference of the Parties and the ARC Agency Governing Board have critical roles to play in making sure that ARC Insurance Company Policy payouts are used effectively, thereby maintaining the reputations of ARC Agency and ARC Insurance Company. The Conference of the Parties will approve “Compliance Rules” from time to time to ensure that ARC Agency Member States are complying with their approved CPs. The ARC Agency Governing Board, in turn, will monitor each ARC Agency Member State’s compliance through the monitoring and evaluation process, most importantly the “Final Report” and the “Audit Report” which will be provided to the ARC Agency Director General.

(b) If the monitoring and evaluation process indicates that an ARC Agency Member State has not followed its approved CPs, or has otherwise failed to use its Policy payout in a way that conforms to the principles of ARC Agency, then the ARC Agency Governing Board will take action to ensure compliance, in
conformity with the rules established by the Conference of the Parties. The ARC Agency Governing Board will investigate alleged deviations from the approved CPs, and determine which penalties are most appropriate in the situation. If the ARC Agency Governing Board has decided to suspend an ARC Agency Member State, the Conference of the Parties will review the decision. All decisions of the Conference of the Parties shall be final.

(c) The ARC Agency Governing Board will notify the ARC Insurance Company Board any time there is an allegation that an ARC Agency Member State has deviated from its approved CP. If the ARC Agency Governing Board believes that a deviation is a serious one, for example, because there has been an alleged misuse of Policy payout funds, the deviation had a high monetary value, or other circumstances, it may temporarily suspend the ARC Agency Member State, pending a decision. Such a suspension would also suspend that ARC Agency Member State from participation in the ARC Insurance Company because the ARC Agency Member State would no longer have a CGS necessary as a condition to acquiring a Policy. Suspension shall not affect any Policy that is already in effect.

(d) If any allegation is communicated to the ARC Insurance Company Board in accordance with the ARC Insurance Company “Anti-Corruption and Whistleblower Policy”, the ARC Insurance Company will inform the ARC Agency Governing Board which will investigate the misuse, as soon as feasible after the ARC Insurance Company Board is so notified.

7. Disputes.

The interpretation, construction and performance of this MoU, including any agreements and/or documents entered into in connection therewith, and any dispute or controversy arising hereunder or thereunder or in connection herewith or therewith (a “Dispute”) is exclusively governed by general principles of law and the terms and conditions of this MoU, to the exclusion of any choice of law rules which would defer this MoU to the laws of any given jurisdiction.

(a) The parties shall, to the extent possible, attempt to resolve promptly and amicably questions of interpretation and application of this MoU and any Disputes. Any such Dispute which has not been settled amicably by the parties, at the request of any party, will be settled by final and binding arbitration in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (“UNCITRAL”) then in effect.

(b) The arbitral tribunal shall consist of three arbitrators. One arbitrator shall be appointed by each of the Parties. The two arbitrators so appointed will choose the third arbitrator, with the agreement of the parties, who will act as the president of the arbitral tribunal. In the event that the two arbitrators appointed pursuant to this paragraph and the parties cannot agree on the selection of the presiding arbitrator, or if either party fails to appoint its arbitrator, within twenty-one days of the appointment of the second arbitrator, in the former case, and within twenty-one day of receipt of a request from the other party to so nominate an arbitrator, in the latter case, then such other arbitrator(s) shall be appointed by the Secretary-General of the Permanent Court of Arbitration. The arbitral tribunal cannot award punitive damages. The arbitration award shall be binding upon both parties and shall constitute the final, non-appealable settlement of the Dispute between the parties.
8. Privileges and Immunities.

Nothing in this MOU or any document entered into in connection thereof shall imply a waiver, express or implied, by the ARC Agency of any privileges and immunities enjoyed by them pursuant to the Establishment Agreement, the 1965 OAU General Convention on Privileges and Immunities, the 1980 Additional Protocol to the OAU General Convention on Privileges and Immunities, customary international law, other relevant international or national agreements, and under domestic law.

9. Entire Agreement; Amendment.

This MoU is the entire agreement between the parties. This MoU may only be amended by the written agreement of both parties.

Agreed:

ARC Agency:__________________
Date:________________________

ARC Insurance Company Ltd:__________________
Date:________________________
Annex 4
Criteria for Granting Certificates of Good Standing

Introduction

The African Risk Capacity (ARC) comprises two entities: the ARC Specialized Agency of the African Union (ARC Agency), and the ARC Insurance Company Limited (ARC Insurance Ltd). ARC Insurance Ltd will provide insurance to ARC Agency member states that have Certificates of Good Standing granted by the Governing Board of the ARC Agency (the Board). The Agreement for the Establishment of the African Risk Capacity (ARC) Agency (the Establishment Agreement) gives the ARC Conference of the Parties (CoP) the authority to determine the criteria for granting Certificates of Good Standing to ARC member states (the CGS Criteria). At a minimum, the CGS Criteria should require a country to have a Contingency Plan, approved by the Board, detailing the use of an ARC Insurance Ltd insurance payout, as required by the Establishment Agreement. An Operations Plan together with the Final Implementation Plan (FIP) submitted in the event of a payout, comprise the Contingency Plan as referred to in the Agreement. The CoP may establish additional CGS Criteria, as they deem appropriate.

Once the CoP has established the CGS Criteria, the Board will apply them and instruct the Secretariat to issue Certificates of Good Standing to eligible countries. The Secretariat will communicate to ARC Insurance Ltd which countries have Certificates of Good Standing and are therefore eligible to join ARC Insurance Ltd by taking out an insurance policy. The Board has established a subcommittee, called the Peer Review Mechanism (PRM) to review the Operations Plans submitted to the Secretariat. The first group of countries, Kenya, Malawi, Mauritania, Mozambique, Niger and Senegal, submitted Operations Plans with the intention to purchase insurance coverage for seasons beginning in 2014. The PRM recommended to the full Board to issue Provisional Certificates of Good Standing to those countries on an interim basis, prior to the CoP’s establishment of the CGS Criteria. The Provisional Certificates of Good Standing will be converted into regular Certificates of Good Standing to the extent appropriate, once the CGS Criteria are established. Prior to the establishment of the CGS Criteria, countries with Provisional Certificates of Good Standing are eligible to purchase insurance from, and become members of, ARC Insurance Ltd.

Contingency Plans

The Establishment Agreement requires that countries submit Contingency Plans detailing the intended use of any ARC Insurance Ltd insurance payout. The Board has provisionally approved Standards and Guidelines for Contingency (Operations) Plans (the Standards), governing the development and approval of Contingency Plans (attached as Annex 1). The Board will modify these Standards over time as the Board, the CoP, and the participating countries gain greater experience with the Contingency Planning process.

According to the provisional Standards, Contingency Plans should include an Operations Plan and an Implementation Plan for each proposed activity. Operations Plans are intended to be flexible. Some countries may propose several potential activities that could be funded by an ARC payout with the

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5 See the Establishment Agreement, Article 13, paragraph 2 (l).
6 See the Establishment Agreement, Articles 13 (h and l) and 15 (k-l).
7 For example, in the future, ARC may also wish to expand the scope of the Certificate of Good Standing review so that it can serve as a continental peer review mechanism, allowing countries that do not wish to enter into an insurance contract with ARC Insurance Ltd to nonetheless obtain a Certificate of Good Standing indicating that their national Operations Plans meet the standards of ARC.
intention of choosing from among the activities based on the specific situation at the time of a payout. Other countries may include only one activity that they believe will be suitable in any drought situation.

ARC aims to improve the speed at which drought response activities are implemented in participating countries through the provision of funds to countries before other disaster funds are available. The purpose of the Operations Plan is to delineate the use of an ARC payout in advance so that if a country receives such a payout in a drought situation, it will be prepared to use the funds immediately and effectively, capitalizing on the advantages of early intervention. Operations Plans should take into account existing national systems and deploy an ARC payout to support activities to reach vulnerable, food-insecure households with assistance in a timely and cost-effective manner. The current Standards suggest that “eligible” activities require that assistance reaches targeted populations within 120 days of a payout.

Operations Plans must also include draft Implementation Plans for each activity proposed, and any other supporting documentation necessary to fulfill the requirements set by the Board. Once the Board has determined that an activity meets the basic eligibility criteria applied to Operations Plans, it will evaluate whether the proposed activity can be implemented, monitored and evaluated by assessing it across five different areas: Operations, Administration and Flow of Funds, Needs Assessment, Targeting, and Monitoring and Evaluation (M&E) System.

Once the Board has determined that some or all of a country’s proposed activities meet the eligibility and implementation standards that it has established, it may approve a country’s Operations Plan. The Board may approve the entire plan, or a part of it. If the Board partially approves an Operations Plan by approving certain activities but not others, the country may be granted a Certificate of Good Standing based on a partial approval of its Operation Plan. In that case, if the country receives an ARC Insurance Ltd insurance payout, it may only implement the activities that were approved by the Board. A country will be entitled to resubmit its Contingency Plan as often as necessary to obtain full approval.

When a country has received a Certificate of Good Standing, it is eligible to enter into an insurance contract with ARC Insurance Ltd. In the event that an ARC Insurance Ltd payout is likely, a country will be required to submit a FIP to the Board not less than 30 days before the anticipated payout date in order to receive the funds. While an Operations Plan may include a range of potential activities, the FIP should focus on the specific activity or activities that will be undertaken to address the current situation in the country with a greater level of detail. It should only include activities that were previously approved by the Board as part of the Operations Plan, unless the Board determines that a deviation as justified by the country ahead of implementing that activity and as outlined in the FIP is indeed necessary and an appropriate use of ARC funds.

Additional CGS Criteria

The Secretariat recommends that the CoP establish three further criteria for Certificates of Good Standing:

**Customization of Africa RiskView Parameters.** The Secretariat recommends that in order to receive a Certificate of Good Standing, an ARC member State must have completed its customization of the Africa RiskView (ARV) Software. ARV is the technical engine of ARC, which allows the entity to pool risk across

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8 Likely means that the certainty of payout is greater than 70% within 2 months of the potential payout date, or as requested by the Board on the advice of the ARC Secretariat through the monitoring of Africa RiskView.
borders and also reflects the parameters of the insurance coverage. ARV is a software tool that aims to quantify and monitor weather-related food security risks in Africa by translating satellite-based rainfall information into near real-time agricultural production and grazing impacts. By overlaying these data with information on vulnerability, the software also estimates drought-affected populations and therefore response cost estimates. To date the model only focuses on drought risk, but work is beginning to eventually include flood risk and other hazards.

ARC Insurance Ltd insurance policies are indexed to the national response cost estimate provided by ARV. At the end of the insurance contract period, should the ARV response cost estimate exceed a pre-defined threshold, a country would be due a payout based on this ARV estimate and as specified by the risk transfer parameters outlined in their insurance policy. Before being eligible for an insurance policy from ARC Insurance Ltd, the country and ARC must agree that ARV reflects the country’s exposure to drought and that the insurance policy is covering the agreed portion of this exposure.

It is therefore important that ARC member states independently review the parameters in the ARV software, customize them as necessary based on available in-country information and in their expert opinion, validate the model’s performance to ensure that it reflects the country’s drought risk profile and the method to determine the costs it may incur in responding to such an event. Without this review – that is customization and validation made by in-country experts -- the country also runs the risk of basing its insurance policy on inaccurate data or assumptions, and therefore of not receiving an insurance payout when there is a drought or receiving an insurance payout when there is no drought.

Thus, the Secretariat recommends that the CoP require that in order to receive a Certificate of Good Standing, an ARC Member State has completed its review, customization and validation of ARV, as reflected in the Customization Report that has been signed by the Government, and is satisfied that the model adequately describes the country’s drought risk.

**Up to date in Payment of ARC Agency Annual Membership Fees.** In addition, the Secretariat suggests that in order to receive a Certificate of Good Standing, an ARC member state must be up to date in the payment of its annual membership fees to the ARC Agency.

According to the Establishment Agreement and regular African Union practice, ARC member states shall pay an annual membership fee to the ARC Agency.\(^9\) The CoP has the authority to determine the membership fees, and to establish penalties should a country fail to pay them.\(^10\) However, such a membership fee will not be assessed until the Establishment Agreement has been ratified by 10 countries, and no financial obligations may be imposed on a State Party until it has ratified the Establishment Agreement.\(^11\)

Once the Establishment Agreement is ratified by 10 countries and has entered into force definitively, it will cease to be provisionally applied to countries that have not ratified. Thus, countries that have not ratified the Establishment Agreement when it goes into force definitively will lose access to the benefits available to Parties, and will no longer be eligible to receive a Certificate of Good Standing. Signatory countries should have two years in which to ratify the Establishment Agreement once it has entered into force definitively, in order to preserve their Certificates of Good Standing and ability to take advantage of the

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\(^9\) Establishment Agreement, Article 18.  
\(^10\) Establishment Agreement, Article 13, paragraph 2 (h).  
\(^11\) Establishment Agreement, Article 26, paragraph 5.
insurance pool. Without this requirement, it would be possible for some ARC member states to receive all the benefits of ARC membership, including participation in the ARC insurance scheme, without contributing to the support of the ARC Agency.

**In Conformity with the Compliance Rules.** The Establishment Agreement gives the CoP the authority to adopt rules for ensuring Parties’ compliance with approved Contingency Plans (the **Compliance Rules**) and gives the Board the authority to enforce such rules. It is suggested that if an ARC member state deviates from its approved Contingency Plan for the use of an ARC Insurance Ltd payout in a manner that violates the Compliance Rules, it should not be eligible to receive a Certificate of Good Standing until it has cured the violation, or for a period of time determined by the Board in conformity with the Compliance Rules, depending on the situation. The specific treatment of such situations should be outlined in the Compliance Rules, and final determinations regarding the application of the Compliance Rules and any cure of Compliance Rules violations, should be made by the Board, or, in certain cases, the CoP.

**Withdrawal of Certificates of Good Standing**

**CGS Criteria non-compliance at the time of an Operations Plan Review.** ARC member states must submit updated Operations Plans to the Board every two years, in order to ensure that the plans are current. When a country has a new plan to be approved, the Board will also evaluate whether the country continues to meet any other CGS Criteria established by the CoP from time to time. If the Board finds that a country does not fulfil all of the CGS Criteria at the time its new Operations Plan is reviewed, the Board will send a written notification to the country informing it of the Board’s intention to withdraw that country’s Certificate of Good Standing and giving it a time-frame in which to fulfil the CGS Criteria before the withdrawal occurs.

**Violation of Compliance Rules.** The Board may withdraw a country’s Certificate of Good Standing immediately if the Board finds that the country has violated the Compliance Rules. A country may not purchase insurance from ARC Insurance Ltd after its Certificate of Good Standing has been withdrawn. If a withdrawal occurs after a country has entered into an insurance contract and the policy is still active, any insurance payout that a country is entitled to receive shall be placed in an escrow account. The specific actions to be taken in such a situation will be outlined in the Compliance Rules.

Without a Certificate of Good Standing, a country may not take out insurance from ARC Insurance Ltd. If an ARC member state’s Certificate of Good Standing is withdrawn, it will cease to be a member of ARC Insurance Ltd, as laid out in the Bye-Laws of ARC Insurance Ltd.

**Proposed Criteria for Certificates of Good Standing (the CGS Criteria)**

If the CoP adopts the suggested criteria above, the CGS Criteria would be as follows:

In order to obtain and maintain a Certificate of Good Standing, a country must:
- be a signatory to the Establishment Agreement of the African Risk Capacity Specialized Agency of the African Union (the ARC Agency);
- have an approved Contingency Plan;

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12 Establishment Agreement, Article 13, paragraph 2 (h) and Article 15, paragraph 1 (m).
c. have completed its review and customization of *Africa RiskView* and validated its performance to ensure it accurately reflects the country’s drought risk profile;
d. have paid and is up to date in its financial obligations to the ARC Agency; and
e. comply with its approved Contingency Plan when using an ARC Insurance Ltd payout, as outlined in the Compliance Rules adopted by the CoP.
Annex 5
Compliance Rules

Background

The Agreement for the Establishment of the African Risk Capacity (ARC) Agency (the Establishment Agreement) vests in the ARC Conference of the Parties (CoP) the authority to “adopt rules for ensuring Parties’ compliance with approved Contingency Plans.” These rules for ensuring Parties’ compliance with approved Contingency Plans (the Compliance Rules) will help ensure the integrity and continuity of ARC, and are therefore a critical part of the overall ARC structure.

Implementation of approved Contingency Plans will be monitored through a Final Report submitted by the ARC Member State (the Member) detailing the use of its insurance payout, and through the report of the auditor (the Audit Report) (collectively, the Monitoring Reports). The ARC Agency Secretariat (the Secretariat) will evaluate the Monitoring Reports and report to the Governing Board of the ARC Agency (the Board). The Board is responsible for considering the reports of the Secretariat and for taking action, if necessary, to ensure that Members comply with their approved Contingency Plans, in accordance with the Compliance Rules established by the CoP.

The Importance of Contingency Plans

ARC aims to improve the speed at which drought response activities are implemented in participating Members through the rapid provision of funds. The purpose of the Contingency Plans is to delineate the use of an ARC payout in advance so that if a Member receives such a payout in a drought situation, it will be prepared to use the funds immediately and effectively, capitalizing on the advantages of early intervention. Such planning is critical to ensuring that payouts from ARC’s insurance affiliate, the African Risk Capacity Insurance Company Limited (ARC Insurance Company Ltd), are used quickly and effectively.

Creating and following the Contingency Plans is also important for ensuring the integrity of ARC and its continued access to funding. In its early years, ARC Insurance Company Ltd will be capitalized by development partners, although it is hoped that over time ARC Insurance Company Ltd will become financially self-sufficient. ARC Insurance Company Ltd will also rely on market-based financial transactions to manage risk. Both the financial markets and development partners will be very sensitive to the perception that ARC Insurance Company Ltd insurance payouts are being used inappropriately. Both the CoP and the Board have critical roles to play in making sure that ARC Insurance Company Ltd payouts are used effectively, thereby maintaining the reputation of ARC.

The Contingency Planning Standards

The Establishment Agreement requires that the Board establish standards for the development and updating of Contingency Plans. According to the Standards for Contingency Plans (the Standards) that were provisionally approved by the Board, Members must submit two different types of plans:

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13 See the Establishment Agreement, Article 13, paragraph 2 (h).
14 See the Establishment Agreement, Article 17, paragraph 5 (f).
15 See the Establishment Agreement, Article 15, paragraph 1 (m).
16 See the Establishment Agreement, Article 15, paragraph 1 (k-l).
17 See the Standards, CoP Reference Documents.
Operations Plans and Implementation Plans (collectively, the Plans), which will together constitute a Member’s Contingency Plan.

In order to take out insurance from the ARC Insurance Company Ltd, a Member must have an Operations Plan approved by the Board.\textsuperscript{18} This Operations Plan must meet the criteria for Operations Plans laid out in the Standards, including the requirements that an Operations Plan be sufficiently detailed to: 1. allow the Member to initiate appropriate activities immediately after a payout; 2. identify the resources necessary for each activity; and 3. provide for appropriate procedures to ensure transparency and safeguard against corruption.\textsuperscript{19}

Operations Plans are intended to be flexible. Some Members may propose several potential activities that could be funded by an ARC payout with the intention of choosing from among the activities based on the specific situation at the time of a payout. Other Members may include only one activity that they believe will be suitable in any drought situation. Each proposed activity should have both an Operations Plan and a draft Implementation Plan.\textsuperscript{20}

When a Member has an approved Operations Plan and has met all of the Criteria for Granting of Certificates of Good Standing (the CGS Criteria) adopted by the CoP, it may purchase insurance from the ARC Insurance Company Ltd. If it appears that an insurance payout is likely,\textsuperscript{21} the affected Member will be required to submit a Final Implementation Plan (FIP) detailing how the ARC payout would be deployed, given the specific situation. The FIP should be a more detailed version of the draft Implementation Plan that the Member submitted prior to purchasing insurance, and it should include only activities that were previously approved as part of the Operations Plan. If a Member wishes to implement an activity that was not included in its approved Operations Plan, it may amend its Operations Plan prior to submission of the FIP, or it may seek a waiver from the Board if it wishes to amend its FIP after implementation has begun.\textsuperscript{22} The ARC Insurance Company Ltd may not make an insurance payout until the Board has approved the FIP.

What constitutes an appropriate Plan will vary from Member to Member, but whatever Plans a particular Member has submitted, it will be important for a Member to use the ARC Insurance Company Ltd insurance payout in a way that conforms to those Plans. The Board will monitor each Member’s compliance through the monitoring and evaluation process, most importantly the Final Report and the Audit Report which will be provided to the Secretariat.

If the Monitoring Reports indicate that a Member has not followed its approved Plans, or has otherwise failed to use its insurance payout in a way that conforms to the principles of ARC, then the Board should take action to ensure compliance as outlined in the following. If the Monitoring Reports are not sufficient to demonstrate that a Member has complied with its approved Plans, the Board may be forced to assume that the Member has not complied with its approved Plans and to take action accordingly.

\textsuperscript{18} See the Establishment Agreement, Article 15, paragraph 1 (k-l).
\textsuperscript{19} The Standards, Overview.
\textsuperscript{20} For more detailed information on the Standards and requirements for Operations Plans, see CoP Documentation.
\textsuperscript{21} Likely is defined as when the certainty of an insurance payout is greater than 70% within two months of the potential payout date. The Board may also declare a payout likely on the advice of the ARC Secretariat based on the monitoring of the Africa RiskView Software.
\textsuperscript{22} The Standards.
1. Overview of Steps

Each Member will be required to submit the Monitoring Reports, which will demonstrate that a Member has complied with its approved Plans. The Secretariat will analyze the Monitoring Reports and in case of an indication that a Member has deviated from its plan in a material way, will bring that deviation to the attention of the Board and to the Member. The Member will then have six weeks to provide a written explanation of any apparent deviation, if it has not already provided an explanation within the Monitoring Reports. The Secretariat will provide the Monitoring Reports, a report from the Secretariat, and the Member’s written explanation to the Board for consideration.

The Board should then take the following steps, outlined in detail in Sections 2-7 below, to evaluate the seriousness of a deviation and determine the appropriate course of action to ensure compliance:

1. **Determine the type of deviation.** A Member may deviate from its approved Plans for a variety of reasons, but it is likely that a deviation will fit into one of the following categories:
   a. **Intentional Deviation.** An Intentional Deviation is a deviation that is taken to respond to a dramatic or unforeseeable event, but is still in keeping with the principles of ARC. For example, if another natural disaster occurs while the Member is implementing its approved Plans, that Member may be forced to deploy its ARC Insurance Company Ltd payout in a way that differs from the original Plans, but is still reasonable under the circumstances.
   b. **Unintentional Deviation.** An Unintentional Deviation is a deviation that results from an unintentionally flawed implementation of the approved Plans.
   c. **Misuse of Funds.** A Misuse of Funds is a deviation from approved Plans that is intentional and does not conform to the principles of ARC.

2. **Scope of deviation.** The Board should determine the nature and magnitude of the deviation.

3. **Cause of deviation.** The Board should determine the cause of the deviation from the approved Plans.

4. **Damage.** The Board should ascertain the damage and overall monetary cost of deviation.

5. **Penalty.** Based on the type of deviation, its scope, cause and the damage resulting from the deviation, the Board should determine the appropriate penalty.

2: Intentional Deviations

It is possible that a Member could find itself in a situation where the best use of an ARC payout is an activity that was not included in its Operations Plan. In that case, the Member may intentionally deviate from its approved Plans in a way that is in keeping with the principles of ARC and is reasonable given the circumstances. This should be considered an Intentional Deviation.

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23 A Material Deviation is defined as a deviation 1. with a monetary value of 10% of the total payout; 2. when there is insufficient evidence of the allocation of the payout; 3. when there are indications of malfeasance including money-laundering, embezzlement, bribery; 4. when there is a 10% or greater deviation from the logframe indicators; or 5. a combination of these factors.

24 Under the Establishment Agreement, the Secretariat is responsible for monitoring Parties’ compliance with approved Contingency Plans. By approving these Compliance Rules, the CoP is authorizing the Secretariat to take the steps outlined in these rules as necessary to facilitate and support the work of the Board and the CoP.
If the Board determines that a Member has committed an Intentional Deviation, it should consider the following issues:

1. **Scope of Deviation**

   When it appears that an ARC Insurance Company Ltd insurance payout is likely,\(^{25}\) the Member should choose which of the proposed activities from its Operations Plan is most appropriate for the emergency it is facing. It should then submit a FIP that lays out the details of the implementation of whichever activity the Member has chosen.

   If a Member wishes to implement an activity that does not appear in its Operations Plan, it may amend the Operations Plan to include that activity before submitting a FIP. The rules for amending Operations Plans are in the Standards.\(^{26}\) Similarly, if a Member experiences an unexpected event after the submission of its FIP or discovers from the Needs Assessment Survey that it would be preferable to implement a different activity, or if the time available does not suffice to amend the Operations Plan, the Member may ask for an Emergency Waiver. The process for requesting an Emergency Waiver is also included in the Standards.\(^{27}\)

   If a Member goes forward with the unauthorized activity without seeking a waiver or other Board approval, the Board should consider whether the Member had the time to seek approval and chose not to, or if it did not have time to seek Board approval. The Board may wish to obtain additional information from the Member to clarify the timing and intent of the deviation. If a Member had opportunity to seek Board approval and did not do so, the Board should consider this when determining whether to assess a Penalty.

2. **Cause of deviation**

   The Board should next consider the cause of the deviation. This is tied closely with scope and timing as the cause of an Intentional Deviation may be an event. If the deviation was precipitated by incomplete planning or by lack of adequate consideration of events, the Board may wish to impose additional restrictions on the Member in future Plans. If the deviation was caused by events that could not have been foreseen or mitigated, then the Board may decide not to impose any penalty or restrictions. The Board should also seek to obtain any information that identifies the decision making process around the deviation, which parties were involved and at what level of Governing the decisions were made.

3. **Damage.**

   The Board must ascertain if there was any damage and monetary cost associated with the intentional deviation, as described in Section 5 below.

4. **Penalty.**

   Based on the answers to the questions above, the Board will determine the appropriate penalty, as described in Section 5 below.

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\(^{25}\) Likely is defined as when the certainty of an insurance payout is greater than 70% within two months of the potential payout date. The Board may also declare a payout likely on the advice of the ARC Secretariat based on the monitoring of the *Africa RiskView* Software.

\(^{26}\) The Standards.

\(^{27}\) The Standards.
3. Unintentional Deviations

An Unintentional Deviation is a deviation that results from an unintentionally flawed implementation of the approved Plans. The Board should assess the scope of the deviation and any damage that resulted from it to determine any penalty that may be applied.

1. Scope of Deviation

The Board should consider the extent of the failure to follow approved Plans, including, but not limited to, the following questions:

- a. What was the nature and extent of the deviation?
- b. Can the deviations be isolated to a single cause, or were there issues throughout the implementation?
- c. If a Member implemented more than one activity, were the deviations present in every activity or just one?

2. Cause of deviation

The Board should next consider the cause of the deviation, including, but not limited to, the following questions:

- a. Did the problems stem from flaws in the Plans themselves, or from the implementation of the Plans?
- b. Did external factors out of control of the Member, such as consequences of weather events or unforeseeable unavailability of certain food items on the markets, cause the deviation?
- c. Did the Member lack the resources necessary to adequately implement its proposed Plans?
- d. Was it a result of incomplete planning?
- e. Was it the result of a lack of monitoring and oversight?
- f. Could and should the ARC Agency have helped the Member to comply with its Plans?
- g. Were there other mitigating factors?
- h. Did the country realize it was deviating during implementation?
- i. What actions were taken to try and mitigate deviations, if any?

3. Damage

The Board must ascertain if there was any damage and monetary cost associated with the unintentional deviation, in accordance with Section 5 below.

4. Penalty

Based on the answers to the questions above, the Board will determine the appropriate penalty, as described in Section 5 below.

4. Misuse of Funds

A Misuse of Funds is the most serious deviation, and the one that will have the greatest impact on the reputation and sustainability of ARC. As noted above, development partners and financial markets will be
sensitive to both real and perceived misuses of ARC insurance payouts. Thus it is critical for the Board to be able to respond effectively to Misuse of Funds.

Whether a Member has complied with its approved Plans should be discernible from the Monitoring Reports. However, it may not be easy to ascertain whether a Member has intentionally Misused Funds or has done so unintentionally. If the Board suspects that a Member has intentionally Misused Funds, the Board may take one of the following additional actions:

1. Request additional reporting from the Member. As is the case of any deviation, if a Member’s Monitoring Reports are not sufficient to demonstrate that a Member has complied with its approved Plans, the Board may be forced to assume that the Member has not complied. To avoid such a situation, the Board may request additional reporting from the Member.

2. Engage an independent third party to conduct an evaluation or investigation of the situation. If the need for an independent evaluation is the result of inadequate reporting by the Member, the Member should bear the cost of the independent evaluation. If the independent evaluation is necessary for another reason, the ARC Agency may bear the cost, at the sole discretion of the Board.

Once the Board is satisfied that it has sufficient information regarding the deviation, it should consider the following questions.

1. **Scope of Deviation**
   The Board should consider the extent of the failure to follow approved Plans, including, but not limited to, the following questions:
   
   a. What was the nature and extent of the Misuse of Funds?
   b. Were there multiple examples of Misuse of Funds, or just one?
   c. Was the Misuse of Funds systematic across the implementation, or can it be localized to a single individual or group?
   d. Was the independent auditor misled?
   e. Was the ARC Agency misled?
   f. Was there other fraud?
   g. Was the Final Report inaccurate or incomplete, or did it contain misstatements?
   h. Has this Member Misused Funds from previous ARC payouts?
   i. How many times has the Member deviated from its approved Plans, including intentional deviations and unintentional deviations?

2. **Cause of deviation**
   The Board should next consider the cause of the deviation, including, but not limited to, the following questions:
   
   a. Was the Misuse of Funds intentional or unintentional?
   b. If it was intentional, what was the extent of energy undertaken to bring about the deviation?
   c. Does the Member lack the resources necessary to adequately oversee its proposed Plans?
d. At what level of implementation did the Misuse of Funds occur? Was it perpetrated by highly placed government officials, or at the local level?

e. What could and should have been done by the Member or by the ARC Agency to prevent the Misuse of Funds?

3. Damage.

The Board must ascertain if there was any damage and monetary cost associated with the misuse of funds, as described in Section 5 below.

4. Penalty.

Based on the answers to the questions above, the Board will determine the appropriate penalty, based on the list in Section 5 below.

5. Damage Assessment

The Board should consider the extent of the damage caused by the deviation from the approved Plans when determining a penalty.

1. What was the monetary value of the funds that were diverted?
   a. Class I: between 5% and 15% of the total monetary value of the ARC payout
   b. Class II: between 15% and 25% of the total monetary value of the ARC payout
   c. Class III: greater than 25% of the total monetary value of the ARC payout.

2. How many deviations were there?

3. What was the total monetary value of all of the deviations together?

4. What was the monetary value of each deviation separately? Was it a single large deviation, or a number of small deviations?

5. Is it possible to assess the monetary damage to potential beneficiaries who did not receive assistance to which they may have been entitled?

6. Did potential beneficiaries or actual beneficiaries suffer non-monetary damage?

7. Was there other non-monetary damage as a result of the deviation, such as reputational damage?

A Misuse of Funds with a monetary value in Class II or III, or an Intentional or Unintentional deviation with a monetary value in Class III should be considered a Serious Deviation.

6. Possible Penalties

The Board should consider both the monetary value and the circumstances of the deviation, such as whether it was intentional and whether the Member took any steps to mitigate the deviation. A single penalty may be applied, or a combination of penalties, as the Board considers appropriate in the situation. Below is a suggested range of penalties. However, the Board may assess other penalties as it deems appropriate.

1. Additional Monitoring. For less serious deviations, particularly for Unintentional Deviations, the Board may require that the Member engage additional or independent monitoring of any future
payouts in the Member’s Certificate of Good Standing. Additional monitoring could be provided by the ARC Secretariat or an independent outside monitor and should be paid for out of the insurance payout.

2. **Restrictions on Future Plans.** The Board may prohibit the Member from undertaking certain activities with future payouts, or require that such activities may only be implemented if additional implementing partners and/or monitoring is engaged.

3. **Removal of a Certificate of Good Standing.** The Board may take away a Member’s Certificate of Good Standing and require for its Certificate of Good Standing by resubmitting Operations Plans for approval.

4. **Suspension.** For serious deviations, a Member may have its Certificate of Good Standing suspended, and may be prevented from receiving another Certificate of Good Standing for a period of time from 1 year to 10, at the discretion of the Board. For the most serious deviations, a Member may be suspended from participating in the ARC Agency. If the Board recommends either type of suspension of a Member, its decision must be reviewed by the CoP.

5. **Repayment.** If a Member commits a deviation, it may be required to repay its insurance payout, in whole or in part, to the ARC Insurance Company Ltd. If a Member is suspended, such repayment shall be required. In other cases, repayment is left to the discretion of the Board. A Member may not receive a new Certificate of Good Standing, and therefore may not take out insurance from the ARC Insurance Company Ltd, until it has repaid the required funds.

7. **Adjudicative Process**

The steps for reaching a decision regarding a deviation from approved Plans should proceed as follows:

1. If the Secretariat determines that a Member may have violated its Plans, it shall bring the suspected deviation to the attention of the Board and to the Member. The Member shall then have six weeks to provide a written explanation of any apparent deviation. The Secretariat will provide the Monitoring Reports, a report from the Secretariat, and the Member’s written explanation to the Board for consideration.

2. The Board should meet to consider the Monitoring Reports, written explanation from the Member and the report of the Secretariat. If the Board believes that the deviation is a serious one, for example, because there has been an alleged Misuse of Funds, the deviation had a high monetary value, or other circumstances, it may temporarily suspend the Member and its Certificate of Good Standing, pending a decision. The Board may establish a committee to conduct the initial review of an alleged deviation. It may also engage an independent third party to conduct an evaluation or investigation of the situation.

3. The Board shall notify the Member in writing that it is evaluating the Member’s compliance, including an explanation of the type of actions taken or considered, and the reasons behind the decision.

4. The Board should set a time and date by which the Member may respond to the Board’s notification, as well as establishing guidelines for the type of information that must be provided.

5. If the Board deems necessary, it may establish a date and time for Member representatives to appear in person before the Board to answer questions.
6. The Board will then meet to consider the Member’s situation and take a decision regarding the alleged deviation. The Board shall produce a written report of its findings. Such decisions shall be taken by the Board itself rather than a committee.

7. If the Board determines that a Member’s deviation is a Misuse of Funds with a monetary value in Class II or III, or an Intentional or Unintentional deviation with a monetary value in Class III, it shall inform the CoP that there has been a Serious Deviation.

8. In the case of a Serious Deviation, the CoP shall review the decision of the Board and make the final determination regarding the penalty. The Certificate of Good Standing of the Member in question shall be suspended, or if the Member is due to apply for a new Certificate of Good Standing none may be granted, until the CoP reaches its final decision.

9. When there is a Serious Deviation, the Board shall provide its decision to the CoP, along with any supporting documentation, the Monitoring Reports, report of the Secretariat and any submissions made by the Member. The Member will be allowed to submit a written statement on its own behalf to the CoP.

10. In cases of Serious Deviation, any penalty assessed shall not go into effect until the CoP has taken its final decision.

11. Any decision of the CoP shall be final.
Annex 6

Extension of the Terms of Office Served by Members of the ARC Agency Governing Board

Introduction

The ARC Conference of the Parties (CoP) is the supreme organ of the ARC Agency and has the power to undertake the functions necessary to achieve the objectives of the Agreement for the Establishment of the ARC Agency (the Establishment Agreement)28 29, including election of the Governing Board Members30. In particular, to ensure continuity in the work of the Board, the CoP was mandated to adopt at its first session a scheme for the staggering of the terms of Governing Board Members31 32. The scheme for staggering of the terms ensures that the mandates of Governing Board Members do not all expire at the same time so that newly elected Members may benefit from the knowledge and support of the remaining/longer serving Governing Board Members. Accordingly, the terms of the first Governing Board Members were determined by the CoP in such a way as to give effect to that scheme.

The first Conference of the Parties (CoP) of the African Risk Capacity (ARC) Agency and the election of Governing Board Members

The first CoP was convened by the Managing Director, a.i. of the African Risk Capacity Project, pursuant to the Final Act of the Conference of Plenipotentiaries on the Establishment Agreement from 23 – 27 February 2013, in Dakar, Senegal33. In addition to taking other decisions, the CoP elected Governing Board Members with due consideration to their expertise and the principle of regional representation. In order to ensure continuity and compliance with the staggering scheme for the terms of Governing Board Members, the CoP elected the Members for the various regions, with the following terms, and with the possibility of renewal for an additional three year term:

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28 See the Establishment Agreement, Articles 12, paragraph 3 and 13, paragraph 1.
29 The ARC Agency has the following organs: a) the Conference of the Parties; b) the Governing Board; the Secretariat—See the Establishment Agreement, Article 10.
30 See the Establishment Agreement, Article 13, paragraph 2 (e).
31 See the Establishment Agreement, Article 14, paragraph 6.
32 In order to get the staggering effect started for the terms of Governing Board Members, the CoP in its first session provided alternative period/length of terms for the different Governing Board Members. The staggering scheme works in the following manner: Governing Board Members have a maximum term of 3 years. During the first CoP, Members representing the Central African region were elected for a 1 year term and the West and South African regions for 2 years. At the expiry of those terms, newly elected members for the Central African region will serve for a 2 year term and those elected for the West and South African regions will serve for a 3 year term. Eventually all Governing Board Members will be elected for a 3 year term with expiry of terms staggering one after the other, thus ensuring continuity in the work of the Governing Board.
Members of the ARC Agency Governing Board

<table>
<thead>
<tr>
<th>REGION</th>
<th>NAME</th>
<th>EXPERTISE</th>
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<td>African Union Commission</td>
<td>Hon. Dr. Ngozi Okonjo-Iweala (Nigeria – AU Chair Appointee)</td>
<td>Development Finance</td>
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<tr>
<td>3-year term</td>
<td>Coordinating Minister for the Economy and Minister of Finance for Nigeria</td>
<td></td>
</tr>
<tr>
<td>African Union Commission</td>
<td>Mr. Tosi Mpanu-Mpanu (DRC – AU Chair Appointee)</td>
<td>Climate Change, Climate Risk Finance</td>
</tr>
<tr>
<td>3-year term</td>
<td>Honorary Chair of the UNFCCC African Group of Negotiators and Alternate Board Member of the Green Climate Fund</td>
<td></td>
</tr>
<tr>
<td>Central Africa</td>
<td>Mr. Ouhoumoudou Mahamadou (Niger)</td>
<td>Finance, Economic Development, Disaster Management</td>
</tr>
<tr>
<td>1-year term</td>
<td>Managing Director of the “Banque Internationale pour l’Afrique BIA-Niger” and former Minister of Finance</td>
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<td>Hon. Mr. Mahama Zounggrana (Burkina Faso)</td>
<td>Rural Development, Food Security</td>
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<td>Minister for Agriculture and Food Security</td>
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<td>North Africa</td>
<td>Hon. Diombar Thiam (Mauritania)</td>
<td>Finance, Development</td>
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<td>3-year term</td>
<td>Minister of Finance</td>
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<td></td>
<td>Mr. Bouh Ould Sid’ Ahmed (Mauritania)</td>
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<td>Mr. Alexis Kanyankole (Rwanda)</td>
<td>Agricultural Finance, Marketing</td>
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<td></td>
<td>Chief Executive Officer of the Development Bank of Rwanda</td>
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<td>2-year term</td>
<td>Member of Parliament</td>
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<td></td>
<td>Dr. Desire Mutize Sibanda (Zimbabwe)</td>
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35 In accordance with Article 14 of the ARC Establishment Agreement, Chairperson of the African Union Commission H.E. Dr Nkosazana Dlamini-Zuma appointed Dr Okonjo Iweala to the ARC Agency’s Governing Board for her development finance expertise and, in consultation with the WFP Executive Director Ms Ertharin Cousin, Mr Mpanu-Mpanu for his climate change expertise. Titles are listed for identification purposes only.
36 In the absence of eligible candidates from the Central Africa region, the Conference of the Parties agreed that the seat should be occupied by West Africa for an interim period of one year.
Expiry of term & timing of the 2nd Conference of the Parties (CoP) of the African Risk Capacity (ARC) Agency for the election of Governing Board Members

The 1 year term of the Governing Board Member for the Central African region—and that of the respective alternate—will expire at the end of February 2014. The 2nd CoP has been convened for November 2013 and could elect a Governing Board Member for the Central African region to begin his or her term of office in February 2014.

However presently, none of the states from the Central African region satisfy the requirements defined in the Procedures for the Election of Members of the Governing Board (the Election Procedures) adopted by the first CoP. Specifically, the Election Procedures require that candidates for seats on the Governing Board be put forward by Parties that have signed pre-participation Memoranda of Understanding in anticipation of taking out insurance from the African Risk Capacity Insurance Company Limited (ARC Insurance Ltd), in addition to having signed the Establishment Agreement. Moreover, considering the on-going establishment of the ARC Insurance Ltd, there is a great need for continuity within the ARC Agency Governing Board. The establishment of ARC Insurance Ltd should be finalized in 2014, but at the moment, the Secretariat believes it is critical to maintain the relevant expertise within the Board until the establishment process has been concluded.

Recommendation of the Secretariat

The issue of continuity in the work and procedures of the ARC Agency Governing Board is of the utmost importance. In order to maintain any such continuity, along with the prescribed staggering scheme for the terms served by its Governing Board Members, the Secretariat recommends that the CoP extend the terms of all Governing Board Members for an additional 9 months, with immediate effect from the date of the CoP’s decision in November 2013. The result would be that the CoP would not appoint any Members to the Governing Board at its meeting in November 2013, but instead would appoint the Member to the Central African Board seat at the third CoP, and to the other Board seats in subsequent years.

The Secretariat further recommends that the terms of the Board members continue to be defined as terms of years, but with the understanding that a Board member may be appointed at any time within three months of the end of his or her term. For example, if a Board Member’s term is due to expire in November 2016, he or she may be appointed at any time between August 2016 to February 2017, and take office within 3 months of the appointment date.

37 The Election Procedures, included as a Sub-Annex to Annex 2 of the Report and Decisions of the First Conference of the Parties of the African Risk Capacity (ARC) Agency says: “Such Members [of the Governing Board] shall be elected from among the candidates put forward by the Parties that have, at the time of the election, current contracts for Insurance with an ARC Agency Subsidiary or Affiliated Entity. During the initial period before Parties have entered into contracts for Insurance with an ARC Agency Subsidiary or Affiliated Entity, the members of the Governing Board and alternates shall be elected from Parties that have signed pre-participation Memoranda of Understanding with WFP regarding the ARC Project and have notified in writing to the Chairperson of the Conference of Parties their intention to take out contracts for Insurance once such contracts are available.”

38 In essence, currently serving Governing Board Members would serve for the duration of their initial term in addition to another 9 months, which will expire every November when the CoP is convened.
Should the CoP endorse the recommendation of the Secretariat the terms served by the current Governing Board Members—and their respective alternates—would expire on the following dates:

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<td><strong>Mr. Tinga Ramde (Burkina Faso)</strong></td>
<td>Alternate November 2014</td>
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<td>Executive Secretary of the National Council for Food Security</td>
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