

Advisory

The Global Fund's Internal Justice Mechanisms (IJM)

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Acronyms

CERN	European Council for Nuclear Research
EBRD	European Bank for Reconstruction and Development
EGC	Global Fund Ethics and Governance Committee
HBIC	Harassment, bullying, and inappropriate conduct
HR	Human Resources
IFAD	International Fund for Agricultural Development
IJM	Internal Justice Mechanisms
ILO	International Labour Organization
ILOAT	Administrative Tribunal of the International Labour Organization
IMF	International Monetary Fund
MEC	Management Executive Committee
OIG	Office of the Inspector General
SOP	Standard Operating Procedures
UN	United Nations
UNAT	United Nations Appeal Tribunal
UPU	Universal Postal Union
WHO	World Health Organization
WMO	World Meteorological Organization

Context

Given the privileges and immunities the Global Fund enjoys under its headquarters agreement with Switzerland, the Global Fund must provide an avenue for resolution of employment-related disputes — referred to as a set of “**internal justice mechanisms**” (IJM). Beyond the obligation, these mechanisms also contribute to a fair and just workplace.

The Global Fund has established an IJM system comprising policies, processes, and roles and responsibilities to implement internal justice. This system has evolved over time, particularly in response to various independent assessments. However, some questions remain about its suitability. Concurrently, the Secretariat is working on initiatives to enhance psychological safety and foster a culture of care and candor, both of which require an effective IJM system.

In this context, the Global Fund Executive Director requested the Office of the Inspector General (OIG) to carry out an advisory review to assess the current IJM system and advise on opportunities for improvement.

Scope and methodology

A holistic assessment of IJM should address four complementary dimensions that are interlinked and mutually reinforcing:

- **Design** — to determine whether the IJM system is well-designed, clear, and consistent with accepted good practice.
- **Delivery** — to determine whether the IJM system is executed as designed.
- **Experience** — to determine how IJM providers (such as Human Resources) and staff feel about their experience with the IJM system.
- **Awareness and perception** — to determine to what extent staff know when and how to engage with the IJM system, how they perceive the system and its outcomes, and how this influences how they use it.

The advisory’s steering committee requested that the OIG focus on assessing the **design** of the IJM system, which is the scope of this report. The Secretariat will later consider how best to assess the above, while taking into consideration potential conflicts of interest and confidentiality concerns.

The advisory comprised process mapping, interviews with IJM providers and supporting functions, assessment of the Global Fund’s IJM system against a set of criteria, benchmarking against relevant international organizations and expert analysis.¹ Though there is no single “one-size fits all” model or best practice, there are hallmarks of a well-functioning, effective and efficient IJM system; these include neutrality, impartiality, employee trust, and facilitating early resolution. Equally there are “good practices” that organizations can use to implement these basic principles while also ensuring an approach suited to their organizational context.

Assessment outcome and recommendations

The advisory concludes that the design of the Global Fund’s IJM system is generally aligned to that of comparable international organizations. It also identifies several key areas for improvement to the IJM system’s design. This non-exhaustive summary highlights recommendations related to two major areas:

a. Encourage and enable greater use of informal dispute resolution approaches

Early and informal resolution of cases is a characteristic of an effective IJM system. It is also a good investment. While the Global Fund’s IJM system requires upfront attempts to informally resolve cases, its design does not fully facilitate this and it misses opportunities to make better use of informal dispute resolution techniques, such as facilitated discussions and mediation.

Notable recommendations²

- Remove Human Resources (HR) as the recipient of requests for mediation to avoid any perceived conflict of interest and deterrence effect and shift the coordination of mediation logistics to the Ombudsperson, who would rely (as currently) on a roster of external mediators.
- Explicitly encourage and provide access to mediation and other dispute-resolution techniques at every IJM stage, even after an appeal has been lodged, as well as in harassment, bullying, and inappropriate conduct (HBIC) cases as appropriate, and clarify in what circumstances a request for mediation can be denied.

¹ Analyses have been performed between October 2022 and June 2023.

² Additional recommendations are laid out in the main body of this report.

In addition, the Secretariat should assess the following *promising avenues*:³

- Expand the terms of reference of the Ombudsperson to strengthen their role in facilitating independent dispute resolution.
- Remove the explicit requirement on staff to show that they have raised their grievance with their manager or department head as a pre-requisite to formal steps.
- Remove the exclusion of performance disputes from eligibility for mediation to better enable informal resolution of *underlying issues*, such as interpersonal or workplace culture conflicts.

b. Amend key IJM system documents to improve clarity and align more closely to good practices of comparator organizations

The IJM system is explained in a set of documents available to staff and IJM providers, mainly the *Employee Handbook*. The assessment found multiple instances where these documents provide unclear explanations or leave room for interpretation.

Notable recommendations

- Update sections of the Employee Handbook, in order to:
 - Specify the mandates of all IJM providers that relate to the informal stage and the outcomes staff can expect from engaging with them.
 - Clarify the process and criteria for handling formal disagreements relating to performance evaluation ratings, with a focus on objectivity and fairness.
 - Amend the content, structure, and order of IJM chapters and annexes in the Employee Handbook to maximize clarity and user friendliness for the reader (e.g., removing overlaps between chapters), and carefully define terms.
 - Clarify the Handbook's Harassment, Bullying and Inappropriate Conduct (HBIC) and Grievance and Dispute Resolution annexes to remove the apparent overlap between them in relation to HBIC cases.
- Amend the Appeal Board Operating Procedures to appropriately address cases in which the Appeal Board Chair is unable to sit on the panel (e.g., due to a conflict of interest or unavailability), including by introducing a vice-chair.

The report makes other important recommendations, for example concerning disciplinary procedures and HR periodic case reporting for greater transparency.

The assessment also highlights some shortcomings in the mandates related to investigations. Given the OIG's involvement in this area, the report does not make any change recommendations, but advises the Secretariat to take forward the implications of the assessment.

Finally, the report suggests updating and concluding the analysis begun in 2017 and continued in 2019 to determine whether the Global Fund and staff would be better served by a different independent external dispute resolution mechanism than the ILOAT. To decide how to prioritize this, the Secretariat might review the extent of challenges (to staff, IJM providers and the organization) currently posed by the ILOAT-based system and the effort involved in updating the analysis of alternatives.

Way forward

The OIG suggests that the Secretariat carry out the following **three next steps** (the final two of which will be important to carry out simultaneously given that they involve overlapping activities and stakeholders):

- I. **Consider and implement the recommendations** as an immediate next step.
- II. **Further examine the promising avenues** put forward in this report. These require broader analysis to ensure that they respond to stakeholder needs.
- III. **Consider assessing the remaining three IJM dimensions to complete the holistic assessment of the Global Fund's IJM system.** The analysis could go beyond the *design* dimension and examine the IJM system through the lens of *IJM delivery*, *experience*, and *awareness and perception*.

³ Actions that require further analysis to ensure they respond to the needs of staff and IJM providers.

1. The Global Fund's current IJM system

Internal Justice Mechanisms (IJM)

1.1 Context

Given the privileges and immunities the Global Fund enjoys under its headquarters agreement with Switzerland, the Global Fund must provide an avenue for resolution of employment-related disputes — referred to as a set of “**internal justice mechanisms**” (IJM). Beyond this obligation, these mechanisms also contribute to a fair and just workplace.

There is no single model for an internal system of justice within an international organization. The Global Fund, similar to other international organizations, is required to provide employees with access to a competent final appeal tribunal,⁴ and its internal justice mechanisms should meet the legal standards developed under the jurisprudence of that tribunal.

The Global Fund has established an IJM system comprising policies, processes, and roles and responsibilities to implement internal justice. These are laid out in the *Global Fund Human Resources Policy Framework* and the *Employee Handbook*, as well as other documents.⁵

While the Global Fund's IJM system has evolved over time, notably in response to various independent assessments (e.g., in 2015 and 2016),⁶ some questions remain about its suitability. For example, there is a perception that informal dispute resolution is used too infrequently, and that some roles have a conflict of interest.

In 2022, the Staff Council commissioned an independent law firm to conduct a desk review of the Global Fund's IJM system, which yielded 32 recommendations.⁷ In addition, the Secretariat is working to improve workplace psychological safety and create a culture of care and candor, both of which require a trusted, effective IJM system.

In this context, the Executive Director asked the Office of the Inspector General (OIG) to assess the Global Fund's IJM system and advise on opportunities to optimize it.

⁴ The final tribunal must meet the standards described in Article 6 of the European Convention on Human Rights, notably: an independent and impartial tribunal, with the power to make binding decisions, within a reasonable timeframe.

⁵ Including *The Global Fund Appeal Board Operating Procedures for Appeal*, the *Whistle-blowing Policy and Procedures for the Global Fund to Fight AIDS, Tuberculosis and Malaria*, the *Code of Conduct*.

⁶ *Report on the Appeal Board of the Global Fund*, Joan S Powers, 2015; and *Review of the Employee Grievance and Dispute Resolution System*, the Hon. Louise Otis, 2016.

⁷ While they provide useful context and input for this advisory, it is not the purpose of this exercise to assess each of these recommendations.

1. The Global Fund's current IJM system

Internal Justice Mechanisms (IJM)

1.2 IJM case types

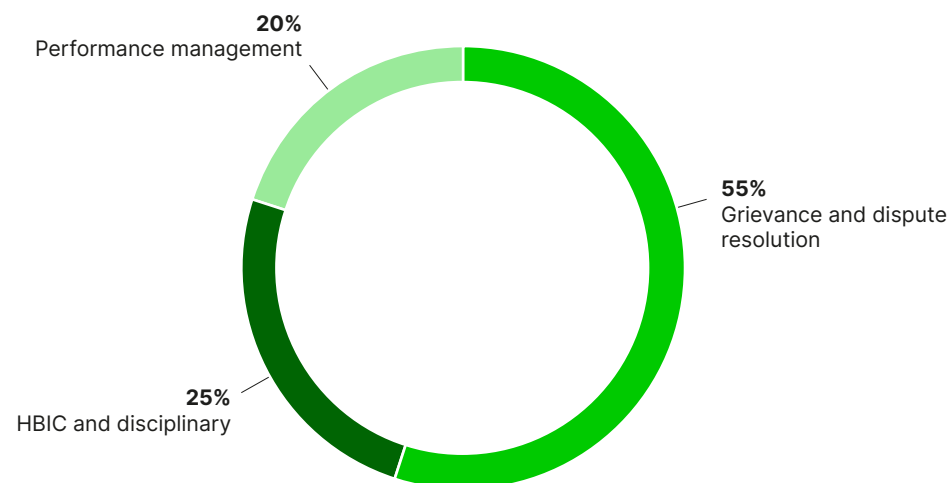
The Global Fund's IJM system is designed to deal with four types of cases:⁸

- **Grievance and dispute resolution cases**, which include complaints relating to administrative decisions, health and safety, equal opportunity, and fair treatment.
- **Performance management cases**, which relate to disagreements about performance evaluation at the end of the evaluation cycle.
- **Harassment, bullying, and inappropriate conduct (HBIC) cases**, which encompass complaints of harassment, bullying, and other inappropriate conduct (for example unwanted physical contact or derogatory comments).
- **Disciplinary cases**, which focus on the potential consequences of substantiated instances of misconduct.

The policies and procedures for these case types are articulated in the annexes of the Employee Handbook.⁹

From 1 June 2018 to 31 October 2022, 231 cases were recorded in the IJM system¹⁰ (see Figure A). Approximately 55% of those were grievance and dispute resolution cases. Performance management cases account for about 20% of cases, and the remaining 25% are HBIC and disciplinary cases.

Figure A: Breakdown of IJM case types recorded in the HR case management system (from 1 June 2018 to 31 October 2022)



⁸ There is an additional case type relating to Provident Fund disputes, which follows a process managed by the Provident Fund. The Global Fund is not responsible for managing these disputes in their early stages (though decisions can be appealed through the Appeal Board). Provident Fund disputes are therefore not considered in this assessment.

⁹ The application of the processes contained in these annexes and the ensuing decisions can be escalated to the Appeal Board and, ultimately, the ILOAT. They are included in this report on that basis.

¹⁰ Entries made by HR Business Partners and Employee Relations & Policy team in the ServiceNow Employee Relations Case Management system. Not all complaints which were addressed informally were entered into the system.

1. The Global Fund's current IJM system

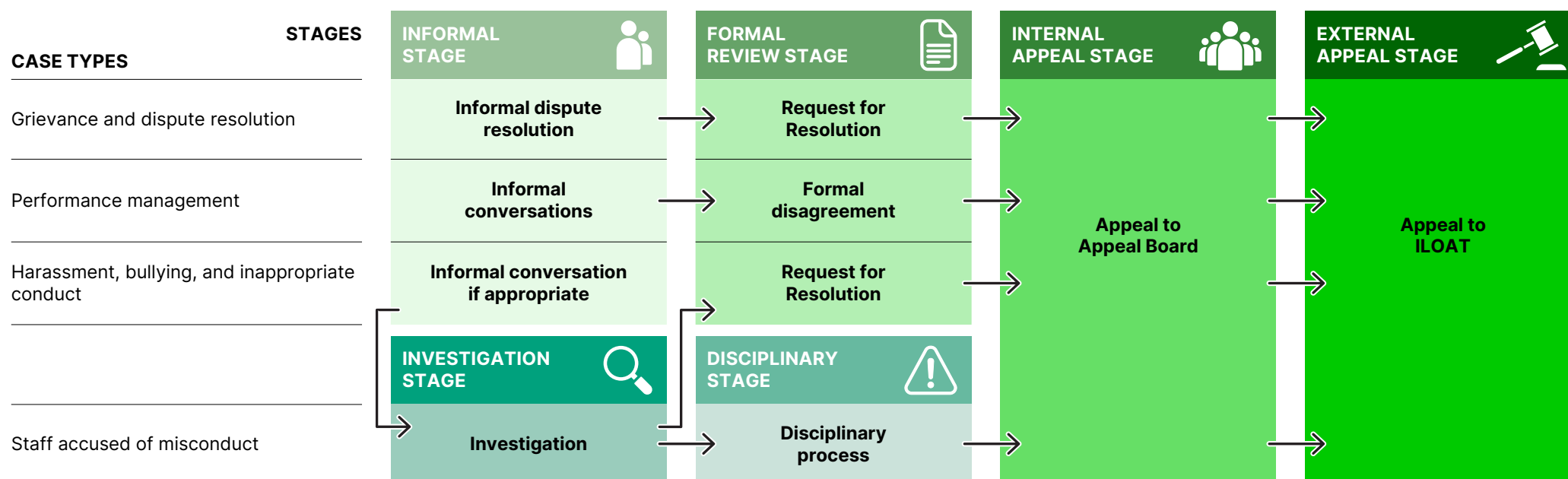
Internal Justice Mechanisms (IJM)

1.3 IJM stages

For as long as they remain unresolved, cases move through a series of steps that may differ depending on case type. These steps can be clustered into six thematic groups ("stages") that apply as shown in Figure B:¹¹

- In the **informal stage**, staff can use various means to try to resolve the issue informally, such as discussion with a manager or mediation.
- In the **formal review stage**, staff can request HR to review a situation or prior decision and determine whether to maintain or change it. The staff request is called a "Request for Resolution"; for performance management cases, it is a "formal disagreement".
- In the **investigation stage**, which applies only when misconduct has been alleged, the relevant Global Fund entity assesses the allegation and potentially performs or commissions an investigation.
- In the **disciplinary stage**, which applies only to specific cases, the relevant entity determines whether disciplinary measures are warranted.
- In the **internal appeal stage**, staff can request the Global Fund's Appeal Board to review the case.
- In the **external appeal stage**, staff can make a final appeal to the ILO's Administrative Tribunal (ILOAT).

Figure B: IJM stages for each case type



¹¹ Figure B is drawn based on a desk review of the Employee Handbook.

1. The Global Fund's current IJM system

Internal Justice Mechanisms (IJM)

1.4 Stakeholders delivering and supporting the IJM system

The IJM system includes stakeholders responsible for delivery (the “providers”) and stakeholders who can help support staff engaging with the IJM system.

The IJM system *providers* are the following:¹²

- **HR** helps staff resolve cases informally, makes decisions in response to Requests for Resolution, considers requests for mediation and coordinates mediation logistics, acts as a respondent for the Global Fund in the internal appeals stage, supports Legal during the external appeals stage, and implements the outcomes of case resolutions.
- **Legal** provides advice to HR during the internal appeal stage, and acts as the respondent for the Global Fund during the external appeal stage at the ILOAT.
- The **Appeal Board** staff coordinates the internal appeal stage and assists employees through the appeals process.
- The **Chief of Staff**¹³ is responsible for managing some exceptions in the system, for example when the Chief HR Officer has a conflict of interest.
- The **OIG** assesses cases of alleged prohibited practices and conducts investigations when necessary. It also receives allegations of any type of misconduct (including through the hotline), that it then refers to the appropriate entity for assessment.
- The **Ethics Office** is an intake channel for receiving any type of misconduct allegations – which are then referred to the appropriate entity for assessment. It may also help staff who have experienced or witnessed HBIC, either by helping to resolve a matter informally where appropriate or by supporting the submission of a formal complaint.

The IJM system's *supporting stakeholders* can assist when approached by staff:

- The **Ombudsperson** is able to help staff navigate the IJM system, hold facilitated discussions¹⁴ in cases of interpersonal conflict, and provide coaching to staff.
- The **Staff Council** can also help staff navigate the IJM system.
- The **Staff Counselor** can provide moral support to staff that are engaging with the IJM system.

¹² This text refers generally to Global Fund departments; however, some IJM system responsibilities are assigned specifically (and exclusively) to particular roles or teams within those departments.

¹³ The Chief of Staff position was vacant at the time of this assessment.

¹⁴ At the Global Fund, a facilitated discussion is a meeting between staff members and a neutral third-party with the goal of informally resolving an interpersonal conflict. Unlike what can happen with mediation, a facilitated discussion does not conclude with a formal agreement.








2. Assessment of the Global Fund's IJM system

2.1 Introduction

Internal Justice Mechanisms (IJM)

2.1.1 Overview

This section presents the conclusions from the OIG's assessment of the IJM stages:

 Informal stage (section 2.2).	 Formal review stage (section 2.3).
 Investigation stage (section 2.4).	 Disciplinary stage (section 2.5).
 Internal appeal stage (section 2.6).	 External appeal stage (section 2.7).
 Issues that cut across the entire IJM system (section 2.8).	

To this effect, each of the following sub-sections describes:

- The Global Fund's **current approach** for that IJM stage.
- **Assessment outcomes** relating to the design of the stage and **ratings** against the assessment criteria (the latter are detailed in section 2.1.2).
- **Recommendations** and **promising avenues** (those terms are explained in section 2.1.3).

2.1.2 Structure of the assessment

The assessment is done against a set of **criteria** that characterize credible and effective IJM systems, which are defined in Figure D. They were developed based on:

- input from an external legal and HR expert with significant experience of IJM systems in other international organizations drawing on the legal principles and standards enunciated by the ILOAT, and
- criteria used in the legal literature to assess justice systems.¹⁵

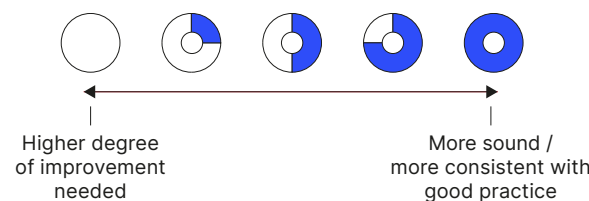
The generally accepted principles underlying a credible and effective IJM system, which should be ensured for all users, include:

- Justice should be accessible.
- Fast, early, and informal resolution of disputes should be favored.

- Every stage in the process should be an opportunity for resolution.
- Staff should be treated equally and fairly.

The OIG assessment is carried out against the criteria that are relevant to the IJM stage under review (some criteria do not apply) and that can be assessed within the approach of this advisory.¹⁶ Ratings are provided against each assessed criterion, using the scale presented in Figure C.

Figure C: Rating scale for assessment against the criteria



2.1.3 Assessment conclusions: recommendations and promising avenues

Based on the assessment, this report provides two categories of advice to improve the Global Fund's IJM system — recommendations and promising avenues:

- **Recommendations** are actions that, in the view of the OIG, the Secretariat can consider endorsing on a prompt basis, for example in instances where:
 - there are self-evident changes that need to be made (e.g. inconsistencies in process definitions), or
 - multiple benchmarks from other international organizations indicate that the design of the Global Fund's IJM system is not aligned with good practice.
- **Promising avenues** are actions that require further analysis to ensure they respond to the needs of staff and stakeholders responsible for delivering and supporting the IJM system. (This further analysis requires access to case data or interviews with staff that have experienced the IJM system). The OIG recommends that the promising avenues be examined further as one of the next steps, as described in section 3 on the "Way Forward".

¹⁵ See, for instance: Measuring the quality of justice, European Commission for the Efficiency of Justice, 7 December 2016 (<https://rm.coe.int/1680747548>).

¹⁶ In particular, the fact that this assessment was mostly desk-review based.

2. Assessment of the Global Fund's IJM system

2.1 Introduction

Internal Justice Mechanisms (IJM)

Figure D: Criteria to assess the Global Fund's IJM system

Criterion	Description	Rationale
Clarity	<ul style="list-style-type: none"> Well-defined processes Clearly allocated roles and responsibilities Clear scope and expectations 	<ul style="list-style-type: none"> Facilitates access for employees who want to raise concerns Minimizes deviations from procedure
Robustness	<ul style="list-style-type: none"> Fit-for-purpose processes that meet legal standards Complete system capable of addressing any employment dispute 	<ul style="list-style-type: none"> Contributes to fairness Protects against decisions being overturned at ILOAT Provides pathway for all employment disputes
Trustworthiness	<ul style="list-style-type: none"> Independence from management interference Appropriate confidentiality (e.g. "need-to-know" basis) 	<ul style="list-style-type: none"> Builds staff confidence in IJM system Prevents reputational damage
Accessibility	<ul style="list-style-type: none"> Multiple entry points Easy-to-engage-with processes (e.g. legal training not needed) 	<ul style="list-style-type: none"> Removes barriers for staff to access the IJM system
Timeliness	<ul style="list-style-type: none"> Well-defined, appropriate timelines 	<ul style="list-style-type: none"> Helps resolve grievances promptly while allowing necessary time Reduces burden and cost
Pragmatism	<ul style="list-style-type: none"> Multiple opportunities for informal settlement Opportunities to de-escalate formal proceedings to informal resolution 	<ul style="list-style-type: none"> Favors informal resolutions Puts focus on pragmatic resolution (rather than on process, which may discourage IJM system use)
Equity	<ul style="list-style-type: none"> Level playing field for all participants (i.e. information shared with all parties, equal opportunity to make their case) 	<ul style="list-style-type: none"> Contributes to fairness of outcomes
Adequacy of resources	<ul style="list-style-type: none"> Adequate resources to implement mechanisms (funding, training, management, monitoring) 	<ul style="list-style-type: none"> Ensures appropriate delivery of IJM system
Transparency	<ul style="list-style-type: none"> Periodic, credible reporting (e.g. on number, type, outcome of cases) while preserving confidentiality 	<ul style="list-style-type: none"> Builds trust in IJM system Provides accountability

Note: *Adequacy of resources* and *transparency* are criteria that apply to the entire IJM system,¹⁷ rather than individual IJM stages.

¹⁷ For this reason, these criteria are addressed in the assessment of cross-cutting characteristics in section 2.8.

2. Assessment of the Global Fund's IJM system

2.2 Assessment of informal stage

Internal Justice Mechanisms (IJM)

2.2.1 Current approach


Attempts at informal resolution are generally the first step across IJM case types. In grievance and dispute resolution cases and performance management cases, staff are expected¹⁸ to approach their manager or department head with any grievances. They may also access informal support channels. These include: the HR Business Partner, mediation (which requires HR approval), the Ombudsperson, the Staff Counsellor (available for wellbeing support), and Staff Council (which can provide general guidance and support, but has no representative or mediating role).


Mediation is the only informal channel that can lead to an official, signed agreement between the parties; the other informal channels provide support, guidance, or facilitated discussions.¹⁹ Staff must raise a written request for mediation with HR, which — if it grants the request — will inform the other party (which must be willing to enter mediation) and engage an external mediator. The mediator determines whether mediation is appropriate and, if so, conducts the process and documents the conclusion. When mediation leads to a binding written agreement, HR must approve that document.

Mediation is not permitted for performance management disputes. Furthermore, the Employee Handbook does not specify whether mediation is available in HBIC cases; however informal resolution is encouraged through direct conversation with the person subject of the complaint, through facilitated discussions, or the use of the HR Business Partner or Ethics Officer as an intermediary.


2.2.2 Assessment outcome


The informal support channels available at the Global Fund align broadly with those provided in comparator organizations. WHO, ILO, IMF and others all offer an Ombudsperson, access to mediation, confidential advice and assistance, and some form of staff council or union.

 **Clarity:** The informal support options are generally clearly laid out in the Employee Handbook. However, one key missed opportunity for greater clarity is that there is no single written place for employees to compare informal channels and understand which best suits their case, and what outcomes they can hope to achieve through each channel. Further, the Employee Handbook does not specify whether, and under what circumstances, HR may choose to deny a request for mediation.

 **Robustness:** The design of the Global Fund's informal processes is generally strong, with a range of resources available to help staff informally resolve disputes. At the same time, the Ombudsperson role is underutilized in facilitating informal dispute resolution compared to other organizations. For example:

- At WHO, the Ombudsperson is the primary pillar of informal resolution, responsible also for mediation services.
- At the UN, the informal process sits within the Office of the Ombudsperson and Mediation Services.
- Organizations with a separate Office of the Mediator, such as IMF, have the Ombudsperson as a source of informal resolution.

 **Trustworthiness:** Staff have the choice to engage directly with management, or with HR, or to access independent and confidential support, which is a good practice. At the same time, HR's role in both agreeing to mediation through the request for mediation and coordinating its logistics reduces the perceived independence of mediation as a resource for resolving the dispute. This is because HR is both an IJM provider (notably for the formal review stage) and a party to administrative complaints following a Request for Resolution. Some comparator organizations arrange mediation through the Ombudsperson (WHO, UN) or an independent "Office of the Mediator" (IMF, ILO).

 **Accessibility:** Informal resolution is available to all staff and most informal steps are easy to initiate. However:

- The requirement to submit a written mediation request specifically to HR may deter employees seeking informal resolution.

¹⁸ This requirement may be waived in "exceptional circumstances", which are not defined in the Employee Handbook.

¹⁹ Facilitated discussions are not defined in the Employee Handbook, but involve an internal third party such as the HR Business Partner or Ombudsperson supporting a structured conversation between the relevant parties. In contrast, mediation at the Global Fund is conducted confidentially by an external mediator, who facilitates discussion and enables the parties to work toward a formal negotiated agreement.



2. Assessment of the Global Fund's IJM system

2.2 Assessment of informal stage

Internal Justice Mechanisms (IJM)

- In order to access the formal review process, the Employee Handbook requires the employee to demonstrate attempts at informal resolution, beginning with their manager or department head (or HR Business Partner (HRBP), in the case of performance disputes). This appears to be the case regardless of whether the challenged decision emanates from the manager, department head or HRBP, or whether the grievance is about those individuals — which may discourage the employee from approaching HR for the formal review stage. Unlike the Global Fund, no benchmarked organization requires staff to address their complaint with their manager or department head as a pre-requisite to accessing the formal review stage of the IJM system.



Pragmatism: The emphasis on informal resolution is pragmatic and in line with comparator organizations, such as ILO, IMF, WHO, and also the UN. Given the focus on early and informal resolution of disputes before they rise to the level of formal complaints, it is a missed opportunity to not make mediation accessible for all interpersonal conflicts, including performance-related interpersonal disputes (as distinct from simple challenging of the performance ratings), because these disputes can often escalate into formal harassment complaints. Although IJM providers state that mediation may occur in HBIC cases, it is not explicitly offered for these cases in the HBIC annex of the Employee Handbook, which is a missed opportunity. Mediation is also not referred to in the Grievance and Dispute Resolution annex of the Employee Handbook. Finally, though it is possible to access mediation after the formal review stage has been started, this possibility is not explicitly stated in the Employee Handbook.



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Timeliness and **equity** cannot be assessed for the informal stage because the Global Fund does not have timelines for informal processes,²⁰ and equity of the informal stage cannot be determined based on a design-focused desk review.

2.2.3 Recommendations

2.2.3.1

Remove HR as the recipient of requests for mediation to avoid any perceived conflict of interest and other deterrents, and **shift the coordination of mediation logistics to the Ombudsperson**, relying (as currently) on a roster of external mediators.

2.2.3.2

Update the Employee Handbook and create an Engage intranet page to **clearly specify the mandates of all IJM providers** that relate to the informal stage, the differences between them, optimal entry points, and the support, confidentiality, and outcomes that staff can expect from engaging with each of them.

2.2.3.3

Explicitly encourage and provide access to mediation and other informal dispute-resolution techniques at every stage, even after an appeal has been lodged, as well as in HBIC cases as appropriate, and clarify in what circumstances a request for mediation can be denied.

2.2.4 Promising avenues

2.2.4.1

Expand the terms of reference of the Ombudsperson to strengthen their role in facilitating independent dispute resolution.²¹

2.2.4.2

Remove the explicit requirement on staff to demonstrate that they have raised their grievance with their manager or department head as a pre-requisite to invoking the formal review process, while continuing to encourage recourse to informal resolution.

2.2.4.3

Remove the exclusion of performance disputes from eligibility for mediation, to better enable informal resolution of *underlying issues*, such as interpersonal or workplace culture conflicts.²²

20 There is a set timeline for staff wishing to access the formal stage following lack of success with the informal stage, which is addressed in section 2.3.

21 Practical implications of this promising avenue should be considered, including the impact of facilitated discussions on timelines for filing a Request for Resolution (which is an existing issue, as some facilitated discussions already occur; mitigation measures can likely be developed if needed).

22 Additional mediations have cost implications, but they are also an investment in avoiding — through early resolution — greater effort and costs later in the IJM process. In implementing this, attention should be paid to rapidly excluding unreasonable requests for mediation.



2. Assessment of the Global Fund's IJM system

2.3 Assessment of formal review stage

Internal Justice Mechanisms (IJM)

2.3.1 Current approach

When an employee cannot resolve a grievance or a dispute informally with their manager or department head, they can submit to the Chief Human Resources Officer a Request for Resolution — which is the start of the formal resolution process. It is a request for the Global Fund to take a formal decision to resolve a complaint. The Request for Resolution must be made within 90 days²³ of the relevant decision or act, and it is only receivable if the employee can demonstrate they have attempted informal resolution with their line manager or department head beforehand.

The Employee Handbook (in Annex VII) provides for a specific process to resolve disputed performance ratings. Where informal efforts to resolve disagreements about performance ratings have been unsuccessful and exceptional circumstances are met (for example, if there were procedural flaws in the conduct of the evaluation), an employee can initiate a “formal disagreement”. They must commence the formal disagreement process within 90 days²⁴ of receiving the performance evaluation.

HR has 60 days²⁵ to respond to Requests for Resolution and formal disagreements on performance evaluations. The Chief Human Resources Officer makes a formal decision on the remedial action sought in both processes.

2.3.2 Assessment outcome

The Global Fund's formal review stage is similar to that of most international organizations in that it is a review process, conducted by HR, with the dual objective of establishing facts and the applicable legal framework concerning an employment-related situation, and then re-examining the relevant decision, action, or omission. This type of formal review stage is also seen at WHO, ILO, and other comparator organizations.



Clarity: The Request for Resolution process is on the whole clearly laid out in the Employee Handbook. However:

- It is not entirely evident from the Employee Handbook how staff wishing to pursue HBIC cases should understand which process to follow, as different parts of the Handbook suggest different pathways;²⁶ this issue is discussed in further detail in section 2.8.2.
- The Request for Resolution process also states that administrative decisions relating to performance management processes fall under its purview, even though the Employee Handbook separately states that any dispute of performance ratings must follow the formal disagreement process (Annex VII).
- For the formal disagreement on performance management cases, the Employee Handbook is also not clear: the formal disagreement process starts with an initial review of the “relevance and significance” of the employee's issue, but neither the process nor the criteria to ensure an objective review are defined.



Robustness: That a Request for Resolution is a mandatory first step in the formal review process before an employee can file an internal appeal is aligned with good practices seen in comparator organizations, including WHO. While the Chief Human Resources Officer can permit an employee to raise a grievance directly with the Appeal Board, the Employee Handbook does not specify under what circumstances this would be permissible.



Timeliness: The Global Fund's timelines for the filing of, and responding to, formal review requests are generally within the typical 30-90 calendar day range of comparator organizations.²⁷ However, the Global Fund could appear out of step with comparator organizations, such as WHO, that have removed deadlines for the filing of HBIC complaints in recognition of the difficulties victims often have in coming forwards to report such cases. Though the HBIC annex does not provide a time limit for the making of a formal complaint, the Grievance and Dispute Resolution annex indicates that Requests for Resolution must be lodged within 90 days of the most recent instance of behavior that is inconsistent with the Code of Conduct.

²³ The Employee Handbook does not specify whether this timeline refers to calendar days or working days. See section 2.8.2 for further discussion of this. (When asked, HR has informed the OIG that it is calendar days.)

²⁴ Idem.

²⁵ Idem.

²⁶ HR has informed the OIG that Requests for Resolution arising from HBIC cases are only allowable if they challenge a procedural aspect of the case. There is nothing in writing in the Employee Handbook to indicate this.

²⁷ At the Global Fund, a Request for Resolution must be filed within 90 days; WHO gives 60 days; the ILO gives over 90 days. HR response times are generally aligned or shorter: the Global Fund gives HR 60 days to respond, as does the WHO, but IMF gives HR 45 days to respond to an escalated request.



2. Assessment of the Global Fund's IJM system

2.3 Assessment of formal review stage

Internal Justice Mechanisms (IJM)



Pragmatism: The emphasis on informal resolution is pragmatic, and staff continue to have the ability to access informal resources, such as the Ombudsperson, after initiating the formal review process. However, mediation is not explicitly offered during the formal disagreement process (see section 2.2.2).



Not
rated

Trustworthiness is not rated for the formal review stage: The Request for Resolution process provides an opportunity for HR to re-examine its decisions, or those of managers, to clarify facts and attempt to resolve staff grievances. This is standard practice for such processes and is in line with all comparator organizations. Beyond this, trust in this stage depends on how successfully it delivers on that potential; analysis of delivery and experience is necessary to further evaluate this question, as recommended in section 3.1. Similarly, **equity** and **accessibility** are not rated for this stage.

2.3.3 Recommendations

2.3.3.1

Clarify the process and criteria for the handling of formal disagreements relating to performance evaluation ratings, including their potential interaction (or not) with the Request for Resolution process, with a focus on objectivity and fairness.

2.3.3.2

Remove reference in the Grievance and Dispute Resolution annex that indicates that Requests for Resolution must be lodged within 90 days of the most recent instance of behavior that is inconsistent with the Code of Conduct.



2. Assessment of the Global Fund's IJM system

2.4 Assessment of investigation stage

Internal Justice Mechanisms (IJM)

2.4.1 Current approach

An investigation may be undertaken when there is an allegation of misconduct. Misconduct can be any breach of an obligation or policy; there is no exhaustive list. Examples of misconduct include bullying and harassment, sexual exploitation and abuse, and other prohibited practices²⁸ (e.g. fraud, corruption).

Several entities at the Global Fund have a mandate to investigate, or oversee the investigation of, staff misconduct. They are: HR, the OIG, the Ethics and Governance Committee (EGC), in some cases supported by the Ethics Office, and the Chief of Staff.

The process applied in the investigation stage depends on who the allegation is made against (the “subject”) and on the type of misconduct. There are three relevant categories of subjects: roles that report directly to the Board (i.e. Executive Director, Inspector General, and Ethics Officer),²⁹ HR Department staff, and other Global Fund staff.

Misconduct allegations can be made to line managers, HR, the Ethics Office, and the OIG (including through the “I Speak Out Now!” platform).

When one of the above entities receives a misconduct allegation, if the allegation is within its mandate, it undertakes an assessment and triage. If the allegation is not within its mandate, it passes the allegation to the appropriate entity.

An investigation is commenced if the assessment determines that it is warranted. The OIG and HR³⁰ can undertake their own investigations; other entities oversee investigations undertaken by an external party.

The mandates for each of the entities are described in Figure E:

Figure E: Global Fund investigation mandates

Subject of allegation	Mandated entity	
	For most cases	For prohibited practices
Executive Director, Inspector General, or Ethics Officer	EGC (coordinated by its Chair)	OIG ³¹
Human Resources Department staff	Chief of Staff	OIG
All other Global Fund staff	Human Resources Department	OIG

A disciplinary stage follows the investigation stage, in which the mandated entity must decide what action to take based on the outcome of the investigation. The disciplinary stage is discussed in section 2.5.

²⁸ Defined in the *Global Fund Policy to Combat Fraud and Corruption*.

²⁹ The Ethics Officer has a double reporting line to the Executive Director and to the Board via the Ethics and Governance Committee.

³⁰ HR can also deploy external investigators, and it engages external investigators when the subject is a MEC member.

³¹ Except for allegations of retaliation against the Executive Director or Inspector General, in which case the investigation is done by an external party chosen by a Board committee.



2. Assessment of the Global Fund's IJM system

2.4 Assessment of investigation stage

Internal Justice Mechanisms (IJM)

2.4.2 Assessment outcome

While investigation-stage processes and mandates cover most cases, the assessment highlighted some gaps — particularly regarding special cases — as well as unclear areas within the mandates.



Clarity: The processes and roles and responsibilities for allegations relating to Global Fund staff are generally clear. However, a few points have been noted:

- Where it exists, the information on investigation mandates and processes is spread across multiple documents³² that may make it difficult for staff to locate and understand.
- There is no description of how cases against sensitive roles (Executive Director, Ethics Officer, Inspector General) are managed, which could represent a barrier for staff to report an allegation.



Robustness: Investigation-stage processes relating to general Global Fund staff appear complete and are recorded in documents such as the Employee Handbook. However, there are gaps in the policies and unclear areas, particularly with regard to special cases and roles:

- The EGC has the mandate to manage allegations against roles that report directly to the Board.³³ However, there are no standard operating procedures (SOPs) describing:
 - how the EGC would commission an investigation (including ensuring a conflict-of-interest check is done, and how the process should be coordinated if the Chair and Vice-Chair are conflicted);
 - who would support an assessment in cases involving the Executive Director, Inspector General or Ethics Officer (the Ethics Office is conflicted in both Ethics Officer and Executive Director-related cases); or
 - how subjects will be given due process to respond to substantiated claims and the decision-making process for disciplinary action following investigation.

- Similarly, the Chief of Staff is responsible for investigation when the subject of the allegation is an HR Department staff member, but there is no defined process for how they would undertake an assessment and commission an investigation.

- Finally, some special cases are not covered by existing policies, in particular:

- How an investigation would be conducted if the Inspector General is accused of a prohibited practice.
- How to handle cases in which both HR and the Chief of Staff have a conflict of interest.



Trustworthiness: Investigation-stage processes generally address exceptions to prevent conflicts of interest. However, investigations whose subject is the Executive Director may incur a conflict of interest during the internal appeal stage. If a staff member makes a Request for Resolution about such an investigation and the matter reaches the Appeal Board, the Executive Director will be required to decide on its recommendation (unless the matter is immediately directed to the ILOAT). Further, it is not communicated to staff how their confidentiality will be protected when making an allegation. While protection for whistleblowers is stated as a general principle, the process is not described; this could be a barrier to making a report.



Accessibility: There are multiple intake channels, which lowers barriers to reporting misconduct. The current design relies on allegations being appropriately and efficiently passed between the relevant channels. If this is not the case, complaints raised through more than one channel could create confusion and inconsistencies.

³² Documents include the Ethics and Governance Committee Charter, the Employee Handbook, the Policy to Combat Fraud and Corruption, the PSEAH Operational Framework.

³³ Executive Director, Inspector General, Ethics Officer (who has a dual reporting line to the EGC and to the Executive Director).



2. Assessment of the Global Fund's IJM system

2.4 Assessment of investigation stage

Internal Justice Mechanisms (IJM)



Timeliness: There are no defined timelines for responding to allegations of misconduct relating to roles that report directly to the Board, as the processes are entirely ad hoc. In contrast, the Employee Handbook imposes timelines for the investigation of staff: the preliminary evaluation must take place within 30 days, and the investigation must be completed within 90 days of notification that an investigation has been initiated. (The Executive Director can extend the period). Other comparable organizations tend to impose “reasonable” investigation timelines rather than a set period of days.



Equity: In investigations relating to Global Fund staff, the subject can review draft substantiated allegations and has 10 days to provide comments on them. This is generally aligned to the practice of comparator organizations. However, no such process exists in writing for roles that report directly to the Board.



Pragmatism (which relates to informal settlement and de-escalation of disputes) is not relevant to the investigation stage.

Not
rated

Given the OIG's involvement in investigation-stage processes, this report does not make change recommendations for the investigation stage (see scope exclusions in section 4.1.2).



2. Assessment of the Global Fund's IJM system

2.5 Assessment of disciplinary stage

Internal Justice Mechanisms (IJM)

2.5.1 Current approach

The disciplinary stage begins with an investigation substantiating an allegation of misconduct. In this stage, the relevant entity (see Figure F) can decide to initiate the disciplinary procedure.

The disciplinary procedure consists of an employee receiving a letter detailing the potential misconduct and its evidentiary basis. The employee has an opportunity to provide a response. The relevant entity will then decide which disciplinary measure, if any, is appropriate.

Figure F: Mandates for disciplinary decisions

Subject of allegation	Mandated entity	
	For most disciplinary measures	For dismissal or summary dismissal decisions
Executive Director, Inspector General, or Ethics Officer	EGC	Board
Human Resources department staff	Chief of Staff	Executive Director ³⁴
MEC members	Executive Director	Executive Director
All other Global Fund staff ³⁵	Chief Human Resources Officer	Executive Director ³⁶

³⁴ CoS determines the decision, but approval of the Executive Director is required.

³⁵ For OIG staff, the Inspector General may impose disciplinary measures in consultation with the Executive Director.

³⁶ CHRO determines the decision, but approval of the Executive Director is required.

³⁷ Details from the analysis have been shared with the relevant stakeholders in the Secretariat.

2.5.2 Assessment outcome

The disciplinary stage for staff as subjects of allegations is largely aligned to that of comparator international organizations in ensuring due process (that is, employees are given details of the case against them and a reasonable time period in which to respond before any disciplinary measure is taken). WHO, IMF, and EBRD follow a similar process, though some particulars may differ. Another comparable international organization has an internal committee that advises the head of the organization on the appropriate disciplinary measures to impose.

Similarly to the Global Fund, other comparable organizations also do not have a defined disciplinary stage approach for roles that report directly to the Board.



Clarity: There are some inconsistencies between the Employee Handbook and the HR Policy Framework that impede clarity.³⁷



Robustness: According to the Employee Handbook, the Chief Human Resources Officer (or Chief of Staff or Executive Director depending on the subject) may decide, “if necessary”, to invite an employee accused of misconduct to a disciplinary meeting prior to the adoption of a decision. While the discretion to decide whether to invite a staff member to a disciplinary meeting may create some ambiguity, this represents an optional step, additionally to the due process given by the opportunity for the employee to provide a response.



2. Assessment of the Global Fund's IJM system

2.5 Assessment of disciplinary stage

Internal Justice Mechanisms (IJM)



Timeliness: The disciplinary-stage timeline for employees is similar to that at comparator international organizations. The Chief Human Resources Officer must send the post-investigation letter to the employee within 15 working days of the conclusion of the investigation. The employee has 15 working days to provide a response. At EBRD, no timeline is specified for sending a post-notification letter to the staff member; however, the staff member has “no less than 15 days” to respond (which can be reduced to five days for serious misconduct).³⁸ At another international organization, the staff member has 10 working days to respond.

There are no defined disciplinary-stage timelines for roles that report directly to the Board.



Not
rated

The remaining criteria are not rated for this stage. **Accessibility** and **pragmatism** are not applicable. **Trustworthiness** and **equity** of the disciplinary stage are highly dependent on its delivery.

2.5.3 Recommendations

2.5.3.1

Ensure consistency across Global Fund policy documents.

³⁸ It is not specified whether this refers to calendar or working days.



2. Assessment of the Global Fund's IJM system

2.6 Assessment of internal appeal stage

Internal Justice Mechanisms (IJM)

2.6.1 Current approach

Staff can lodge an internal appeal against a decision reached in a Request for Resolution.³⁹ This is the last internal step, with an external appeal to the ILOAT possible as the last resort.

The body that deals with internal appeals is the Appeal Board. It is made up of an independent chair and twelve members, and is supported by a legally qualified coordinator. The Appeal Board Chair is an external consultant selected through a competitive, public tendering process. The *Global Fund Appeal Board Operating Procedures for Appeal* state that the selection panel is led by the Office of the Executive Director and comprises representatives from HR, Legal, the Sourcing Department, and Staff Council. The Appeal Board members are Global Fund employees, of which six are chosen by management and six by Staff Council.

Staff have 45 calendar days to submit a request for appeal once they have received a Request for Resolution decision or have been directed by HR to bring their cases directly with the Appeal Board.⁴⁰ An appeal can be considered by the Appeal Board either based only on written submissions (without a hearing), or with a hearing after a short exchange of written submissions.⁴¹

For each appeal, a three-member panel (the Appeal Board Chair plus two of the twelve Appeal Board members) undertakes a confidential review of the merits of the case following receipt of submissions (written, plus oral if there is a hearing). Within 30 calendar days after the conclusion of the panel's deliberations, the Appeal Board Coordinator submits a report on its findings and recommendations to the Executive Director, who then has 15 calendar days to make a final decision.

2.6.2 Assessment outcome

The structure of the Appeal Board is aligned to the prevailing trend for international organization appeal boards. For example, WHO, EBRD, IMF, and other international organizations have an appeal board comprised of staff and an external chair with legal/judicial expertise in employment or international administrative law.



Clarity: The operating procedures are generally clear on the appeals process.



Robustness: The use of an external chair with legal expertise together with staff members is an appropriate balance of judicial and non-judicial backgrounds. However, the operating procedures do not state that the Chair is under a duty to declare any conflict of interest, nor do they mention how such a situation would be addressed (there are provisions for other Appeal Board members, but not the Chair). In contrast, another international organization has a standing president who nominates for each case a chair from among the appeal board members (including the president); the chair is required to declare any conflict of interest and may be removed when warranted. Other organizations, such as WHO, have both a chair and deputy chair for their internal appeal body. This deputy chair, who is also an external consultant, can chair a panel when the chair is unable to (e.g. due to a conflict of interest or unavailability).



Trustworthiness: The Chair of the Appeal Board is independent. The operating procedures contain provisions to protect the confidentiality of the proceedings before it.



Accessibility: The Appeal Board provides clear guidance documents and forms that assist staff to navigate the appeals process. It also has a legally qualified coordinator available to help staff.



Timeliness: There is no time limit on the Appeal Board's deliberations (i.e. on the time for reaching a decision after all documents are filed or for when the hearing, if there is one, is concluded). This lack of time limit could cause delays in case resolution, but actual delivery times and capacity considerations have not been assessed in this exercise. As a comparison, WHO and another international organization have time limits of 90 days,⁴² which can be extended if needed.



Pragmatism: The Chair can suspend proceedings at any time to allow efforts to achieve informal resolution.⁴³

³⁹ Or any other relevant administrative decision, e.g., a disciplinary decision or decisions relating to a formal disagreement over a performance evaluation.

⁴⁰ If no decision is received, staff have 60 days after the date on which it should have been received to submit a request.

⁴¹ Request for Appeal and Response to Appeal.

⁴² In the case of WHO, time commences after all written pleadings are received; at another international organization, time commences once the request for review is received.

⁴³ Whether proceedings are actually suspended in practice to this effect is a question that could be resolved by an assessment focused on the "delivery" dimension of the IJM system.



2. Assessment of the Global Fund's IJM system

2.6 Assessment of internal appeal stage

Internal Justice Mechanisms (IJM)



Equity: The Appeal Board has provisions to ensure that information shared with it by one party is also shared with the other party, and equal opportunity to cross-examine witnesses if a hearing is held. The Appeal Board expressly does not entertain requests for reimbursement of costs. Other comparator international organizations generally remain silent on the question of reimbursement of costs but may award them if a staff member is successful (for example, where an external legal counsel has assisted in the drafting of pleadings or has had to travel for a hearing and has entered an application for costs which has been recommended by the appeal board).

2.6.3 Recommendations

2.6.3.1

Explore with the Chair of the Appeal Board the opportunity to amend the *Appeal Board Operating Procedures* to **appropriately address cases where the Appeal Board Chair is unable to sit on the panel (e.g., due to a conflict of interest or unavailability)**, including by introducing a vice-chair.



2. Assessment of the Global Fund's IJM system

2.7 Assessment of external appeal stage

Internal Justice Mechanisms (IJM)

2.7.1 Current approach

Since 2008 the Global Fund has recognized the jurisdiction of the ILOAT, the administrative tribunal set up by the ILO that is currently open to current and former employees of 58 international organizations. It is the final recourse available for resolution of employee disputes at the Global Fund.

The ILOAT generally requires that all internal mechanisms have been exhausted prior to external appeal. The decision under appeal before the ILOAT is the Executive Director's decision on the recommendation of the Appeal Board. Employees have 90 calendar days following receipt of the Executive Director's decision to appeal to the ILOAT. There are fixed deadlines for documents to be provided from each side during the process. After all the documents are filed, the Global Fund and the staff member must wait for the tribunal to issue its judgment, which typically takes up to two years. The Global Fund has had about 40 cases reviewed in front of the ILOAT to date.

The Powers (2015) and Otis (2016) reports examined the ILOAT as part of their broader assessments of the Global Fund's IJM system, and both recommended further analysis of whether the tribunal meets the specific needs of the Global Fund. In 2016, following those reports, the Board asked the Secretariat to explore possible mechanisms for final resolution of employee disputes and to assess the feasibility of implementing alternatives to the current system. A joint Secretariat-Staff Council working group was set up to review three concrete options: remaining with the ILOAT; establishing a dedicated administrative tribunal; and creating a system of arbitration. This process ended without resolution due to a disagreement between the Secretariat and Staff Council members. The Management Executive Committee (MEC) decided in 2017 to remain with the ILOAT, with the agreement to review the situation in the future.

The MEC considered the use of the ILOAT again in 2019. A final decision was not reached at the time partly due to the outbreak of COVID-19 and other competing priorities.

2.7.2 Assessment outcome

The ILOAT is a long-standing, well-established final appeals tribunal. For the purposes of this advisory, the ILOAT's processes have been assessed against the same criteria as have the Global Fund's own internal mechanisms; however, given that the ILOAT is independent of the Global Fund and the Fund therefore has no means to influence its processes, no rating has been given.

Clarity: The ILOAT procedures are clear, with step-by-step guides available publicly.

Robustness: The ILOAT is the oldest judicial body amongst the various international employment tribunals established to adjudicate employment disputes. Judgments are delivered by panels of judges.

Trustworthiness: The ILOAT is a long-established tribunal with a solid reputation for delivering impartial judgments. It is independent, though the Global Fund pays a portion of the ILOAT's costs through a flat annual fee and a fixed fee per case.

Timeliness: The ILOAT has a significant backlog of cases, driven by high caseload across the many organizations it serves. Judgments of Global Fund cases over the past five years averaged just over 1,000 calendar days from the time a staff member files the ILOAT appeal to the judgment being issued. These delays can have a significant impact on the employees affected, and lead to a much higher cost in terms of potential awards (which are subject to interest), staff time, and lingering organizational impact.

Equity: Appellants to the ILOAT that choose to access legal advice are typically awarded compensation for related costs if they are successful. Most successful complaints against the Global Fund have been awarded some legal costs, though it is unclear if their actual full costs were met.

Transparency: The ILOAT's judgments are publicly available, and semi-anonymized. In the majority of cases,⁴⁴ claimants are identified by their initials, grade, and role. Other identifying information may be shared as relevant (such as details of their career with the Global Fund, contract type, nationality).

44 In highly sensitive situations the case may be fully anonymized (e.g. "Mr. X.").



2. Assessment of the Global Fund's IJM system

2.7 Assessment of external appeal stage

Internal Justice Mechanisms (IJM)

More generally, the ILOAT is one of two major international tribunals, the other being the UN Appeal Tribunal (UNAT). In addition, several organizations have established their own tribunals. Among the comparator organizations, the ILOAT is used by ILO and WHO. EBRD and IMF have their own employment tribunals, as do other organizations like Gavi. Recently a few international organizations including UPU, IFAD, and WMO, have withdrawn from the ILOAT's jurisdiction to move to UNAT or establish their own tribunal.⁴⁵ An assessment undertaken by IFAD⁴⁶ noted concerns about: the ILOAT's high standard of proof ("beyond reasonable doubt") required in disciplinary cases, including for cases involving sexual exploitation and harassment; the lack of consistency of ILOAT's awarded damages and mandated actions (e.g. requiring staff to be reinstated); and the ILOAT's backlog of delayed cases impacting the timeliness of judgments. IFAD has since joined UNAT, which was possible as it is a UN agency.

It is noted that:

- The ILOAT is a long-standing, reputable and generally trusted tribunal.
- Previous Global Fund reviews and other organizations have raised concerns around the long average time for a case to come to judgment before ILOAT, the high standard of proof in disciplinary cases, and the impact of ILOAT's ability to reinstate staff in those cases.
- A full assessment of the extent to which the ILOAT serves the needs of both the Global Fund and staff in practice requires looking at delivery, experience, and perception, which is beyond the scope of this design-focused advisory review.
- The Secretariat has previously been asked — including through a Board request — to consider alternatives to ILOAT and to decide on the best solution. While an analysis of alternatives and some MEC discussions took place in 2017 and 2019, the task has not been completed.
- Time has passed since the last review in 2019, and certain circumstances that affect decision-making may have changed; also, more international organizations have left the ILOAT's jurisdiction since then. The Global Fund has not conducted a full, up-to-date review of the alternatives to ILOAT to be able to determine whether some could better satisfy its needs (including resolving the concerns about ILOAT, such as timeliness).

Given the above, the OIG suggests the following promising avenue:

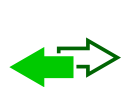
2.7.3 Promising avenue

2.7.3.1

Consider updating the analysis begun in 2017 to determine whether the Global Fund and staff would be better served by a different independent external dispute resolution mechanism. To decide how to prioritize this, the Secretariat could review the extent of challenges (to staff, IJM providers and the organization) currently posed by the ILOAT-based system (e.g. the long timelines for ILOAT judgments) and the effort involved in updating the analysis of alternatives.

45 Organizations that withdrew from the ILOAT (and their withdrawal year) are: UPU (2021); IFAD (2020); AITIC (2018); OTIF (2018); WMO (2017); PCA (2016).

46 IFAD's Appeal Process: Assessment and Recommendations, IFAD, <https://webapps.ifad.org/members/eb/126/docs/EB-2019-126-R-35.pdf>.



2. Assessment of the Global Fund's IJM system

2.8 Assessment of cross-cutting characteristics

Internal Justice Mechanisms (IJM)

2.8.1 Background

In addition to the issues specific to each IJM stage raised in the preceding sections, certain issues cut across the entire IJM system. They relate to:

- the system-wide IJM assessment criteria (adequacy of resources and transparency), and
- the descriptions of the IJM mechanisms in the Employee Handbook, the core reference for staff and IJM providers on the functioning of the IJM system.

2.8.2 Assessment outcome

Assessment criteria

Adequacy of resources: This criterion is not properly assessable through a design-focused desk review because consideration of IJM delivery and stakeholder experience is necessary to determine the adequacy of resources.⁴⁷

Transparency: The IJM system has a good level of transparency across several of its stages:

- The Ombudsperson reports on the number of visitors received and categorizes visits by topic.
- The Appeal Board issues an annual report with a sanitized version of the cases it has addressed.
- The ILOAT publishes its decisions in a semi-anonymized format.

HR, however, does not currently provide any internal reporting on IJM cases — meaning that the number of cases HR is addressing, their types, status, and outcomes are not known to Global Fund staff. Such reporting is feasible while preserving confidentiality: for example, CERN includes a chapter in its annual report on the “settlement of disputes and discipline”.⁴⁸

Description of mechanisms

There are shortcomings in the clarity and presentation of the Employee Handbook sections that explain the IJM system. These may impact understanding, usability and effective enforcement of the rules. They pertain to:

- **Presentation:** There is an overlap between the scope of some annexes in the Employee Handbook. For instance, HBIC cases can seemingly be addressed through both the process given in Annex XI, and the different process in Annex X (the exact intent is difficult to discern due to complex wording). In addition, the Employee Handbook annexes are not presented in a logical order: Misconduct is referred to in Annex IX (Investigations) and Annex XII (Disciplinary), while the Grievance and Dispute Resolution (the most common IJM case type) and the HBIC policy appear between these, in Annexes X and XI respectively.
- **Definitions:** The Employee Handbook contains ambiguous or undefined terms:
 - *Inconsistent timing:* The annex on the process for Grievance and Dispute Resolution states that employees should raise concerns or grievances “no later than 3 months” after an incident has occurred; the same annex later states that a Request for Resolution should be raised “no later than 90 days” after the relevant decision or action. In practice those may differ slightly, which could have consequences in a context where non-respect of timelines can be grounds for case dismissal.
 - *Unclear reference to working or calendar days:* While the distinction is made in some places, it is not always specified whether timelines quoted in days refer to working days or calendar days. This is the case, for example, for the 60- and 90-day time limits in the Grievance and Dispute Resolution process.
 - *Undefined key terms:* Some capitalized terms in the Employee Handbook are not defined. For instance, “Commencement Date” in the mediation annex and “HR Policies” in the “Welcome to the Global Fund!” section are not explained. Lack of definition of key terms may influence the interpretation of Global Fund policies, and case outcomes, in circumstances where IJM providers may already have a clear understanding of what those terms mean.
- **Updates:** There is nothing to indicate the history of Employee Handbook updates. In addition, previous versions of the Employee Handbook are not available, yet they may be relevant to older but still-active cases for which the circumstances pre-date recent Handbook updates. Though recent updates are highlighted in red, it is not evident when those amendments were made. Another international organization exercises clearer version control by including a list with the dates of all amendments on the front page of its equivalent of the Employee Handbook.

⁴⁷ Preliminary IJM provider interviews suggest a potential need for additional resources in the Office of the Appeal Board, particularly to support administrative tasks.

⁴⁸ See, for instance, CERN's 2022 annual report: <https://home.cern/news/official-news/cern/2022-annual-report-chapter-vi-staff-rules-and-regulations-settlement>



2. Assessment of the Global Fund's IJM system

2.8 Assessment of cross-cutting characteristics

Internal Justice Mechanisms (IJM)

2.8.3 Recommendations

2.8.3.1

Amend the content, structure, and order of IJM chapters and annexes in the Employee Handbook as needed to maximize clarity and user friendliness for the reader, and carefully define terms.

2.8.3.2

Clarify the HBIC and Grievance and Dispute Resolution annexes to specify which process applies to HBIC cases and in what circumstances the Grievance and Dispute Resolution annex applies.

2.8.3.3

Clearly indicate the history of amendments to the Employee Handbook, and make available previous versions that might be relevant for older, still-active cases.

2.8.3.4

Implement periodic (e.g. annual) written reporting by HR on the number, type, status, and outcomes of IJM cases, while maintaining the confidentiality of case details.

3. Way forward

3.1 Three next steps

The OIG suggests that the Global Fund Secretariat take the following three next steps:

- I. **Consider and implement the recommendations:** Some recommendations can, in the OIG view, be acted on without further discussion (for example amendments to the Employee Handbook); others (like shifting mediation logistics from HR to the Ombudsperson) may require senior-level discussion to agree on the specifics for implementation.
- II. **Further examine the promising avenues:** These have been labeled as such because they require broader analysis — beyond the design-focused, desk review nature of this assessment — to ensure they respond to stakeholder needs. (For instance, for promising avenue 2.2.4.2, interviews about stakeholders' experience and perception will help determine how much the present requirement to attempt informal resolution is in practice a barrier to accessing the formal review process.)
- III. **Consider assessing the remaining three IJM dimensions:** An examination of IJM *delivery*, *experience*, and *awareness and perception* would complement the current design-focused exercise, and together provide a holistic assessment of the IJM system capable of considering linkages between dimensions and opining on past and potential future trade-offs. As part of moving forward on this, the Secretariat could consider the level of staff and IJM-provider engagement required, as well as how best to preserve confidentiality (e.g. if analyzing past cases).

If the Secretariat carries out next steps II and III it would be logical to conduct them simultaneously as they involve the same activities (examination of the same data, interviews with the same stakeholders).

Taken together, the three next steps would equip the Global Fund to fully tackle any residual concerns and challenges about the IJM system.

4. Annex

4.1 Focus

Internal Justice Mechanisms (IJM)

4.1.1 Holistic approach to IJM system assessment

The objective of a holistic IJM assessment is to ensure that the IJM system:

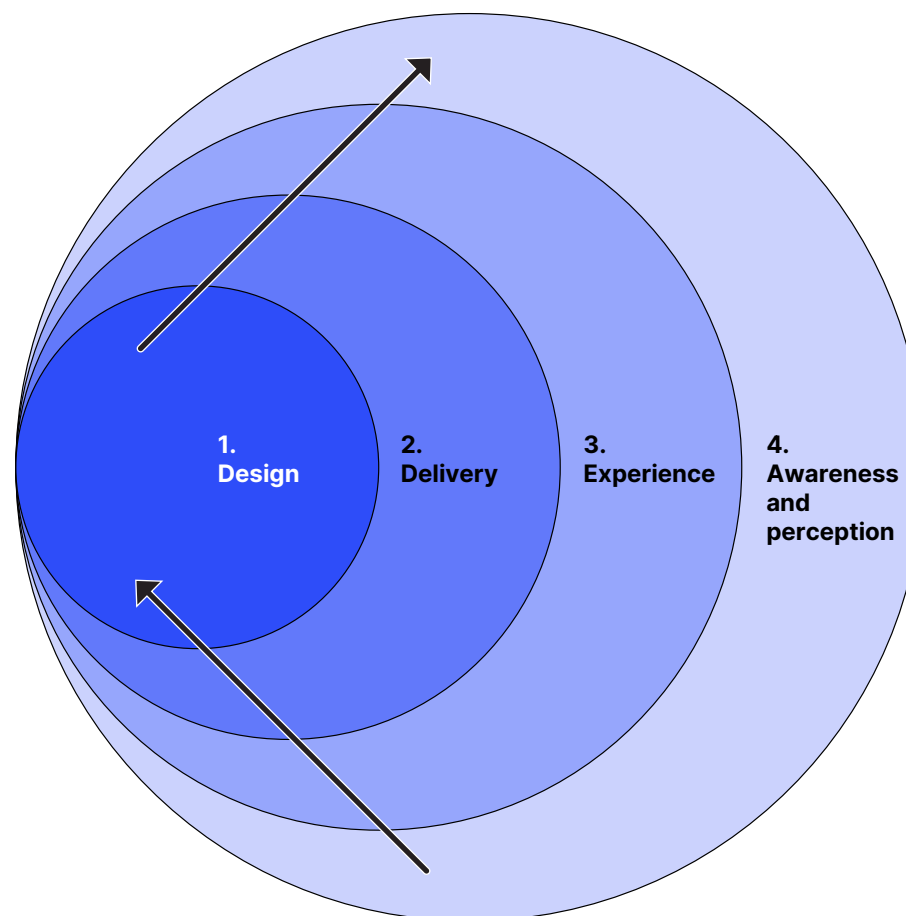
- appropriately and impartially manages staff grievances and formal complaints;
- promotes conflict prevention and, where possible, early and informal resolution of disputes;
- effectively, efficiently, and fairly resolves cases for both staff and the Global Fund;
- is understood by, and accessible to, staff; and
- is perceived by staff as just, dependable, and effective.

A holistic assessment involves considering the following four complementary dimensions of the IJM system (Figure G):

- **Design** — to determine whether the IJM system is well-designed, clear, and consistent with accepted good practice.
- **Delivery** — to determine whether the IJM system is delivered as designed.
- **Experience** — to determine how IJM providers (such as HR) and staff feel about their experience with the IJM system.
- **Awareness and perception** — to determine to what extent staff know when and how to engage with the IJM system, how staff perceive the system and its outcomes, and how this influences its use by staff.

A holistic assessment must also look at the linkages between these four dimensions. This takes into account that the design and delivery of the IJM system affect user experience and overall staff perception of it. Conversely, how people perceive and experience the IJM system informs any adjustments potentially needed to its delivery and design.

Figure G: Dimensions of a holistic IJM system assessment



4. Annex

4.1 Focus

4.1.2 Scope of the report

Design focus

The Secretariat steering committee overseeing this advisory requested that the OIG focus on assessing the **design** of the IJM system. The Secretariat will later consider how best to assess the other three dimensions of the IJM system, while taking into consideration potential conflicts of interest and confidentiality concerns.

Therefore, this report covers solely the design of the Global Fund's IJM system.

Scope exclusions

The assessment scope has been narrowed for two areas that may give rise to actual or perceived conflict of interest:

- Investigations processes in which the OIG plays a role (e.g. the OIG's mandate to investigate staff fraud).
- IJM processes relating to particular or sensitive roles (i.e., the Executive Director, the Inspector General and the Ethics Officer).

This report covers these two areas in terms of mapping and description of the status quo, and highlighting any challenges that may exist in their design. However, because of the potential for conflict of interest, it does not provide any recommendation on how the design of these areas should change. Where relevant, this is left to the Secretariat to take forward.

In addition, disputes relating to the Provident Fund are out of scope as these cases are managed by the Provident Fund in their early stages.

4. Annex

4.2 Methodology

Internal Justice Mechanisms (IJM)

4.2.1 Activities and outputs

Conducting the IJM advisory comprised the following activities:



Process mapping: Mapping out and clarifying the Global Fund's current IJM processes for each type of case.



Interviews: Gathering basic information and insights from key IJM providers and supporting stakeholders, including Human Resources, the Ombudsperson, the Appeal Board Coordinator, and the Staff Council.



Criteria development: Determining a suitable set of criteria for assessing the Global Fund's IJM system.



Desk review: Assessing the design of the Global Fund's IJM system against the identified criteria.



Benchmarking: Comparing the Global Fund's internal justice mechanisms to those of relevant ("comparator") international organizations, mostly drawing on publicly available documents.



Expert analysis: Obtaining from an external legal and human resources expert a systematic assessment of the Global Fund's IJM system — based on their understanding of, and experience with, internal justice processes and practices in comparable international organizations — and their identification of potential areas of risk or areas for improvement.

Analyses have been performed between October 2022 and June 2023.

Based on these activities, section 2 of this report provides a systematic assessment of the *design* of each process stage of the Global Fund's existing internal justice mechanisms. It also suggests recommendations and promising avenues for each IJM stage.

Section 3 recommends next steps for taking forward the report's conclusions and potentially expanding the assessment beyond the design dimension to include IJM *delivery, experience, and awareness and perception*.

4.2.2 Comparator organizations

There is no single "one size fits all" model or best practice for an effective functioning IJM system. There are, however, hallmarks of a well-functioning, effective and efficient IJM system (e.g. neutrality, impartiality, employee trust in the system, facilitation of early resolution), and **good practices** that comparator international organizations implement to achieve those, while also adopting an approach suited to their organizational context.

It is therefore valuable to look to comparable international organizations. By reviewing their IJM practices, the Global Fund can understand how its IJM system compares to those of other organizations and draw lessons from their practices, as well as ideas for how to address its own IJM areas that stand to benefit from improvement.

To this effect, the OIG has examined the IJM systems of the following international organizations:

- European Bank for Reconstruction and Development (EBRD)
- International Labour Organization (ILO)
- International Monetary Fund (IMF)
- World Health Organization (WHO)

The OIG has also received documents from another relevant organization about its IJM system and benefited from expert input on the good practices of a few other comparable international organizations. These were used as additional comparators and can only be referred to in general terms in this report.

The comparator organizations were selected — drawing on the input of experts knowledgeable about other organizations' IJM systems — based on their relative similarity to the Global Fund (for instance, giving preference to funds with large central offices and avoiding organizations with significant in-country field operations). In addition to these comparators, the OIG has drawn examples from other international organizations whose relevant good practices have been identified through expert input.

4. Annex

4.2 Methodology

4.2.3 Limitations

Several inherent limitations to the IJM assessment presented in this report should be kept in mind.

- i. This assessment focuses exclusively on the design of the Global Fund's IJM system. Thus, it will miss IJM issues wholly unrelated to design, for instance those that only manifest in the delivery of IJM processes or staff's experience of the IJM system. And, even where an IJM element is found to align with design good practice, its implementation could still fall short if there are issues in delivery, staff experience, awareness or perception relating to this element — which this design-focused exercise would be unable to detect.
- ii. Apart from the handful of interviews with IJM providers and supporting stakeholders listed in section 1.4, this assessment consisted of a *desk review* of the Global Fund's IJM policies, processes, and roles and responsibilities. It did not benefit from access to case data (apart from a few high-level, summary figures) nor interviews with staff that have experienced the IJM system. This limits the ability to test, validate, and perform root-cause analysis on the issues identified in this assessment. It is also possible that additional design concerns are missed that would emerge only when examining how the design operates in practice and how it is understood by staff.
- iii. A purely design-focused, mostly desk-based review, which also has *no access to case data*, is unable to assess design trade-offs that the Global Fund might have made between providing extra IJM features and being pragmatic (e.g. considering factors like the actual low frequency of certain situations, or resourcing constraints).
- iv. As a *point-in-time exercise*, this assessment cannot account for the impact of IJM system changes currently under way or planned, such as ongoing efforts to update the Employee Handbook and bolster IJM training for managers.

Section 3 of the report presents the OIG's recommendations for further analysis to overcome many of these limitations.