

35th Board Meeting

# Annual Report of the Ethics Official (2015)

GF/B35/18

Board Information

**PURPOSE:** This Annual Report of the Ethics Official is provided to the Board for information regarding the activities of the Ethics Official supporting the Audit and Ethics Committee and advising the Secretariat over the course of 2015 and during the first quarter of 2016.

# I. Executive Summary

1. This paper describes the activities of the Ethics Official in her support of the Audit and Ethics Committee (“AEC”), and in advising various departments in the Secretariat, over the course of 2015 and through the first quarter of 2016 to strengthen the Global Fund’s ethics-based policies and systems and to mitigate potential ethics-related risks across the institution.
2. This paper provides (i) a description on the activities undertaken in strengthening the institution’s ethics policy framework and working towards the transition to a standalone ethics function; (ii) a description of the conflict of interest assessment work undertaken by the Ethics Official, including illustrative individual conflict of interest cases addressed by the Ethics Official and the AEC over the reporting period, organized by thematic areas; (iii) a statement on the quality and implementation of the Global Fund’s ethics-related policies; and (iv) a reflection on the current Ethics Official term covering 2009 to the beginning of 2016.
3. Over the last year, the Global Fund has shown its commitment to incorporating ethics and integrity into all aspects of the work of the Global Fund. From dedicating considerable time at the governance level to finding balance in the development of ethics policies impacting governance officials to the collaborative efforts of cross-departmental teams of staff in strengthening the Global Fund’s codes of conduct, the importance of ethics in upholding principles of good governance has been widely recognized. The pervasive nature of ethics-related issues, and the resulting need to manage ethics-related risks across the organization, has also been pushed to the forefront of the Global Fund’s operations. The extended reach of ethics matters has shown itself, as examples, through the increasing instances of ethics-related questions being raised and the tailoring of the terms of reference for the ethics officer to include both specific governance level and operational level activities.
4. Many gains have been made in the effort, which intensified when the Board Leadership formally began the Ethics and Integrity Initiative in 2014, to further integrate ethics into the normal course of the day-to-day business of the Global Fund. However, the overall Ethics and Integrity Initiative must be viewed as an ongoing project. With the selection and on-boarding of an Ethics Officer, Nick Jackson, who will begin his employment at the Global Fund in May 2016, a key piece of the Initiative will be in place. Continuing the work to strengthen the Global Fund’s core ethics-related policies, regularizing guidance updates and training to stakeholders, and implementing the new policies based on the new mandate of the Ethics Officer, will move the Global Fund closer to a full integration of ethics into our systems and practices and closer to arriving at a place where the Global Fund is able to focus on the strategic dimensions of ethical considerations.

## II. The Global Fund’s Framework for Ethics

5. The unique nature of the Global Fund’s governance system and stakeholder base results in decision-making taking place amid a diversity of interests and perspectives. Over time there has been increased focus on ensuring that the ethical foundation of the Global Fund is solid to protect this unique system and maintain trust. Since 2014, the Global Fund has continued to make efforts to ensure that each stakeholder is aware of his/her obligations in identifying potential areas where ethical issues may need to be addressed. In light with these efforts, the policy framework for ethics is continuing to be refined to be more comprehensive and to better align the guidance and requirements for each set of stakeholders.
6. As of the beginning of 2016, norms of ethical behavior are articulated through the following core ethics-related policies:
  - a) Ethics and Integrity Framework of the Global Fund (the “Ethics Framework”);
  - b) Policy on Ethics and Conflict of Interest for Global Fund Institutions (the “Ethics Policy”);
  - c) Standards of Conduct for Contacts with Members of the Global Fund Involved in Funding Decisions (the “Standards of Conduct for Funding Decisions”);

- d) Code of Ethical Conduct for Governance Officials (the “Governance Official Code”);
- e) Code of Conduct for Recipients of Global Fund Resources (the “Recipient Code”);
- f) Staff Code of Conduct (the “Staff Code”); and
- g) Code of Conduct for Suppliers (the “Supplier Code”).

In addition, stakeholders such as the members of the Technical Review Panel (“TRP”), Country Coordinating Mechanisms (“CCMs”), and Local Fund Agents (“LFAs”) have customized conflict of the interest guidelines and/or requirements incorporated into their terms of reference or legal agreements, as applicable.

7. The Ethics Framework sets out the four core ethical values all individuals involved in Global Fund activities are expected to uphold: Integrity, Duty of Care, Accountability, and Dignity and Respect. It also gives a road map of how the framework is implemented and communicated, and where responsibility lies for each piece of the implementation process. The Ethics Policy defines conflict of interest in the context of Global Fund operations, and describes the process for identifying and resolving potential conflicts. While the Ethics Policy aims to generally address situations where the objectivity or independence of Global Fund stakeholders may be impacted by factors or interests outside of their individual roles at the Global Fund, it heavily focuses on financial interests. Each Code of Conduct builds on and enhances the baseline requirements together provided by the Ethics Framework and the Ethics Policy.

### III. Strengthening Ethics-Related Policies and Processes

8. The Ethics and Integrity Initiative, first spearheaded by the Board Leadership in 2014, has been critical in showing the commitment to the development of a comprehensive ethics and integrity framework for the Global Fund and enhancing the tools available to maintain strong ethical conduct across the Global Fund’s operations. Following the approval of the overarching Ethics Framework at the end of 2014, the work of the Ethics and Integrity Initiative focused on development of Terms of Reference for the Ethics Officer, along with a Code of Ethical Conduct for Governance Officials. In addition, efforts were undertaken to improve and refine existing Codes for suppliers and staff.

#### 01 Transition to a Dedicated Ethics Function

9. While the Global Fund has had an ethics function for several years, these activities have been undertaken by the Legal Counsel in addition to the full-time responsibilities of the Legal Counsel position. As such, the institution of a dedicated, full-time Ethics Officer is a major element of the strengthened ethics framework. To articulate the scope of work and reporting arrangements of this new dedicated function, the Ethics Officer Terms of Reference (“TORs”) were developed following an extensive consultation process. This process included two rounds of Board constituency consultations and intensive involvement by the AEC and Ethics Steering Committee, whose members and observers include the Board and AEC Leadership, the AEC’s independent ethics expert, the Inspector General and senior Secretariat management.

10. Following Board approval of the TORs (GF/B33/EDP14), a recruitment process was undertaken for the Ethics Officer, leading to Board appointment in January 2016 (GF/B34/EDPo8). The Ethics Officer TORs reflect the overarching goal of fully embedding ethics and integrity into operations, including compliance monitoring and consequence management. Consequently, the Ethics Officer’s remit encompasses the Global Fund Secretariat, its governance bodies and the activities it finances, which include the activities of grant implementers, CCMs and third-party providers (e.g., LFAs, suppliers).

11. In order to facilitate the successful launch of this dedicated function, the Board Leadership has tasked a cross-functional working group, including both Secretariat and Office of the Inspector General (“OIG”) staff, to develop and implement a communications strategy to advise internal and external stakeholders on the Ethics Officer’s key functions and how they intersect and differ from other Global Fund functions or

departments, such as Human Resources and the OIG. In addition, an in-depth induction program will be provided to the Ethics Officer to ensure an efficient handover of ethics matters.

## 02 Governance Official Code of Conduct

12. During the risk survey that preceded the planning of the Ethics and Integrity Initiative, it was noted that while the Global Fund has established Codes of Conduct for staff, grant recipients and suppliers, it had not established a similar code for Board/Committee members. As such, there was not a policy describing the standards of behavior expected of governance officials, or one describing procedures for addressing ethical misconduct. This gap was particularly noticeable owing to the fact that governance officials have a heightened responsibility to exhibit ethical behavior, given the example they set for the organization.

13. Against this background, the Board took a major step forward through its adoption, in March 2015, of the Governance Official Code (GF/B33/DP10). The Governance Official Code details how the four core ethical values articulated in the Ethics Framework translate into specific responsibilities of, and actions which must be undertaken by, governance officials. It provides guidance on the appropriate way to balance constituency interest with those of the Global Fund, and builds on the concept of a conflict of interest as originally set forth in the Ethics Policy. In addition to defining ethical expectations, the Governance Official Code also establishes a system for enforcement by detailing procedures for addressing potential ethical misconduct.

## 03 Supplier Code of Conduct

14. Through a consultation process involving internal stakeholders, including the Grant Management Division, the Legal and Compliance Department, the Sourcing Department, the Risk Management Department and the OIG, work has begun to update the Global Fund's Supplier Code of the Conduct to strengthen and clarify supplier obligations, align the Fund's anti-corruption and fraud standards with those of peer institutions, and introduce, for suppliers who directly contract with the Global Fund, specific social and environmental expectations. To best formulate these revisions the consultation process also involved discussions with peer institutions such as the World Bank and the Asian Development Bank so that the Fund's revision work could benefit from lessons learned and best practice. With the arrival of the Ethics Officer, work will continue to further refine and complete the revision of the Supplier Code of Conduct.

## 04 Staff Code of Conduct

15. Similar to the work on the Supplier Code of Conduct, extensive cross-departmental work, led by the Human Resources Department, and involving the Legal and Compliance Department, the Risk Management Department, OIG and Staff Council, resulted in a refinement of the Staff Code of Conduct. The updates to the Code were made with the objectives of clarifying manager responsibilities in maintaining a culture of respect, introducing enhanced guidance on managing external appointments, and strengthening the systems for monitoring and enforcing the Code. In connection with these changes, the Human Resources Department will also be introducing a new Bullying and Harassment Policy. Both the revised Staff Code of Conduct and the Bullying and Harassment Policy, which required approval at the level of the Secretariat, are effective as of March 2016.

## IV. Conflict of Interest Assessments During 2015 and First Quarter of 2016

16. The Ethics Official provides confidential ethics advice and guidance for officials across the organization, including staff, management, members of advisory bodies, such as the Technical Review Panel, and governance officials. Regular requests for advice cover a broad range of ethics-related issues, including permissibility of outside engagements, conflicts raised due to outside interests or interests of family members, gift acceptance,

policy advice and support for standard-setting. This advice, particularly with respect to the activities of governance officials, is provided under the oversight of the AEC, which receives regular reports from the Ethics Official on ethics-related matters. Below is a summary of illustrative cases showing the types of conflicts of interest matters reviewed by the Ethics Official and a description of the specific conflict of interest assessments undertaken during 2015 and the first quarter of 2016.

## 01 Illustrative Individual Conflict of Interest Cases

17. During the reporting period, significant ethics-related matters addressed by the Ethics Official and the AEC concerned (i) potential misconduct due to failure to follow policy provisions; (ii) conflicts of interest due to potential involvement in dispute; (iii) addressing reinstatement of previously recused governance members; and (iv) certain recurring conflict of interest matters.

### a) Potential Misconduct Due to Failure to Follow Policy Provisions

18. In the event that an individual covered under one of the Global Fund's ethics-related policies fails to abide by the provisions of that ethics policy or an associated decision stemming from that ethics policy, the facts surrounding this non-compliance must be examined to determine the impact, or potential impact, of the non-compliance and the actions required to be taken in response. During this reporting period, the AEC, with the assistance of the Ethics Official, considered two instances of a potential failure to follow either a key ethics policy provision or a decision connected to an ethics policy provision.
19. Due to the potential severity of actions which may be taken to respond to misconduct, the AEC and the Ethics Official are careful to ensure that all facts connected to the underlying actions are considered and that the Chair and Vice-Chair of the Board, relevant Committee, or advisory group, as applicable, are consulted prior to a decision being taken and are involved in the implementation of the resulting decision.

### b) Conflict of Interest Due to Potential Involvement in Dispute

20. The fact that a governance official or staff member may be involved in potential litigation concerning a subject under discussion at the Committee or Board level could present a conflict of interest of sufficient materiality to require such individual's recusal from participating in discussions or decision-making on such subject. During 2015, the AEC addressed two interrelated instances of conflicts of interest due to potential disputes/litigation concerning individuals either acting in a governance capacity or directly supporting those acting as a member of Global Fund governance.
21. In reviewing cases involving potential disputes, the AEC has considered whether the potential dispute could bias the individual when carrying out functions on behalf of the Global Fund, and whether the existence of a potential dispute could result in a perceived conflict of interest requiring recusal in the interest of good governance.

### c) Addressing Reinstatement of Previously Recused Governance Members

22. In the event that a governance official is recused from taking part in governance-related activities owing to ethics-related issues, a change in circumstance or the successful completion of required actions may result in a need to consider whether such governance official should be reinstated and allowed to partially or fully reenter governance activities.
23. In reviewing cases of this nature, the AEC and the Ethics Official look to the rationale behind the initial recusal and whether the circumstances leading to the recusal still exist or if they have been resolved or removed. In addition, the AEC, and as needed the Secretariat and/or Board Leadership, look to

whether it is appropriate to lift a required recusal in light of the need to ensure that the integrity of the Global Fund's systems and processes is protected.

**d) Recurring Conflict Inquiries: Concurrent Service for the Global Fund and its Grant Recipients and Service for the Global Fund while acting as a Contractual Counterparty to the Global Fund**

24. During the reporting period, the most common categories of disclosures and ethics-related questions and issues arose in the context of conflicts related to members of the Board, its Committees and/or advisory groups: 1) holding concurrent professional roles with Global Fund grant recipients; and 2) having a concurrent affiliation with an organization submitting bids and/or negotiating a contract to provide goods and/or services to the Global Fund.
25. In the cases where a governance officer holds a professional role with a grant recipient, the Ethics Official and the AEC emphasize the importance of transparency and targeted recusal, when needed. As an example, in addition to informing the relevant Chair and Vice-Chair of the circumstance resulting in the potential conflict of interest, governance officials with this type of potential conflict are asked to recuse themselves from Board/Committee deliberations for any matter directly relating to the source of their potential conflict as a mitigation measure.
26. In connection with cases where a governance official is or has an affiliation with an organization submitting bids and/or negotiating a contract to provide goods or services to the Global Fund, the facts of the relevant case are examined by the AEC and/or the Ethics Official, as applicable, to ensure that neither the selection process or the creation of the terms of reference/work request suggest the presence of a conflict of interest which may have impacted the decision-making process. In addition, safeguard measures are recommended to protect against any real or perceived pressure which could be present for Secretariat staff when negotiating a contract with a member of governance or an advisory group or an organization affiliated with a member of governance or an advisory group.

## **02 Disclosure of Potential Conflicts and Adapting to Policy Changes**

27. Significant efforts were made over the course of 2015 to reach a 100% compliance level with respect to the submission of Declaration of Interest forms, the principal vehicle for disclosing potential conflicts of interest, across the sphere of stakeholders bound by the Ethics Policy. At the Board, Committee, advisory group and Secretariat levels, an increased focus on compliance with this requirement resulted in the highest compliance rate for submission of Declaration of Interest forms in recent years. By having the engagement of the Chairs and Vice-Chairs of the Board and the Committees, as well as senior management, the importance of fulfilling this requirement and ensure that all necessary disclosures are made was highlighted.

28. During 2015, the Legal and Compliance Department worked with the Information Technology Team to establish the use of a system where covered individuals could electronically submit their Declaration of Interest forms. This system was successfully used in advance of the 33<sup>rd</sup> Board Meeting for Board Members and Committee Members. In addition, with the adoption of the Governance Official Code of Conduct, delegation members at Board Meetings also became the equivalent of "Covered Individuals", as described under the Ethics Policy, and are required to submit a Declaration of Interest form to the Ethics Officer on an annual basis. This policy change resulted in over 200 Declaration of Interest forms needing to be collected and reviewed in the weeks leading up to the 33<sup>rd</sup> Board Meeting. Through the collaborative work in setting up the electronic form, and assistance of the Office of Board Affairs, this policy change was successfully and efficiently implemented.

## **03 Conflict of Interest Assessment for Board Leadership**

29. In advance of the appointment by the Board of a new Board Chair and Vice-Chair, the Ethics Official worked with the full AEC to complete a thorough conflict of interest assessment of the nominees and propose,

where necessary, measures to ensure that any actual, potential, or perceived conflicts of interest are proactively identified and appropriately managed.

## 04 Conflicts Assessment for Committee Nominees

30. In keeping with the improvements introduced in 2014, the advance submission and review of Declaration of Interest forms for Committee member nominees is being closely monitored to ensure full compliance and review by the leadership of the AEC. During 2015, each proposed new Committee member was reviewed in advance of his/her appointment by the Ethics Official, in consultation with the AEC leadership, to determine whether any potential conflicts of interest presented the need for proactive mitigation measures.

31. In 2016, in connection with the constituency nomination process for leadership positions on the three newly formed standing Committees of the Board, the Ethics Official, in consultation with the Chair of the AEC and the AEC's independent ethics specialist undertook a conflict of interest assessment for the nominees to the Audit and Finance Committee, the Ethics and Governance Committee, and the Strategy Committee. The Ethics Official has continued performing enhanced due diligence utilizing available resources in the OIG and the Sourcing Department to undertake additional ethics-related screening steps for each conflict of interest assessment for Committee nominees. For any potential conflicts of interest identified for each nominee, the Ethics Official proposed measures to assist in the management of the potential conflicts which were shared with the Board leadership.

## 05 Conflicts Assessment for Working Groups

32. During the course of 2015, the Ethics Official also reviewed the proposed members of the Board established Privileges and Immunities Advisory Group. As with all Board established working group, this review is intended to help ensure the decision-making processes undertaken by these groups are free from any actual or perceived ethics issues.

## 06 Day-to-Day Guidance to Secretariat Management and other Staff

33. In addition to the Ethics Official's work engaging with Board and Committee members, the Ethics Official and other staff in the Legal and Compliance Department address individual and organizational conflict of interest questions and concerns across the Secretariat- either through established conflict of interest guidelines and procedures or on an ad hoc basis. As examples, these can involve direct personal inquiries from staff members, issues with third parties, including suppliers, protecting the independence of the Local Fund Agents, advisory group members, or potential new donors and partners.

# V. Quality and Implementation of Ethics-Related Policies

34. The importance of ethics and integrity in a well-functioning, mature organization is clear. As an institution, the Global Fund continues to move forward in this area. The need to identify and manage risks associated with ethics and integrity matters has further entrenched itself in the practices of Global Fund's stakeholders. At the Board and Committee level and at the Secretariat and OIG, substantial time has been devoted to raising the profile of ethics and integrity and better incorporating ethics into everyday practices.

35. The unique nature of the Global Fund creates an environment where potential conflicts of interest cannot be fully avoided or eliminated. While some of the unique structural elements resulting in inherent conflicts may be specific to the Global Fund, the tools which can be used to standardize reporting and management of these conflicts and their associated risks are not. Implemented initiatives such as moving to an electronic reporting system and the potential to adopt new initiatives to streamline due diligence processes and anti-corruption systems, can standardize the Global Fund's protections against instances of misconduct or perceived bias based on a conflict of interest. Creating efficiencies will allow for attention to be focused on

proactive interventions and on core ethics and integrity risks that impact the Global Fund mission on a strategic level.

36. The Global Fund has moved forward with policy improvements and raising awareness regarding how the policies impact the individuals covered and what actions need to occur to achieve compliance with the policy provisions. However, there continues to be a need to regularize and increase communications to stakeholders to reinforce the requirements and contextualize policy provisions to individual circumstance. In reviewing Declarations of Interest from a variety of stakeholders, the need to help with this contextualization is made more apparent. The Global Fund's system relies heavily on covered individuals self-reporting on potential conflicts of interest. If individual responses do not acknowledge inherent conflicts, it is difficult to ensure that these conflicts are being flagged and appropriately managed in governance or operational settings.

37. As noted in the last Ethics Official Annual Report, the Global Fund continues to display a strong desire to make decisions and conduct operations following the highest standards of ethical conduct. And while the existing policies already in place at the beginning of 2015 were sufficient to allow the Global Fund to address and manage identified conflicts of interest and to reactively respond to instances of misconduct by its officials and suppliers, the policy enhancements put in place over 2015 will allow this to be a more proactive process. With the selection of a dedicated Ethics Officer, the Fund is now directly investing resources in creating better policy visibility and allowing for reinforcement. This general reinforcement, through communications and training, will help focus attention on areas where conflicts of interest may be present and will result in more informed disclosures.

38. Despite the need to treat the Ethics and Integrity Initiative as an ongoing project and to strive for greater awareness and understanding, the further embedding of ethics into all the Global Fund's operations continues to be noted through the elevation of discussions around ethics and integrity. The broadening of the mandate for the new Ethics Officer function with respect to the scope of substance covered and with the new focus on grant implementation activities shows the commitment at the governance level to successfully manage ethics-related risks across Global Fund-financed activities. Over the course of 2015, this commitment has continued to influence the rest of the organization, as shown through a steady increase in ethics-related inquiries and a better focus on coordinating across teams in the Secretariat and the OIG to maximize efforts to integrate ethics and integrity. In order to embrace the expanded definitions of acting with integrity under the Global Fund's policies and continue the trend towards fully embedding ethics in the Global Fund's operations, this coordinated approach must continue and further expand and develop with the commencement of the term of the Ethics Officer.

## VI. Reflection on Term and Looking Forward

39. In 2002, the position of the Ethics Official was created with the Board's adoption of the Ethics Policy. Under the Ethics Policy, the Ethics Official has a limited function which is primarily to assist in the work of the Audit and Ethics Committee. However, as the Global Fund grew and matured as an institution, the dimensions of this mandate became too narrow and the role has demanded additional space to grow and address the needs of the Fund's stakeholders. Over the term of the current Ethics Official, and particularly over the last three years, this demand has been present in the desire of staff, advisory group members, and governance officials to flag and discuss concerns related to, among other topics, potential conflicts of interest, third-party due diligence and what should be within the scope of "ethics and integrity" in the context of Global Fund activities.

40. With the adoption of the Ethics Policy, the Global Fund established its first standard guidance to address the need of managing the diverse interests of its decision-makers. Over the term of the Ethics Official, additional policies, guidelines, and codes have been formulated piece-by-piece and adopted by the Board or at the Secretariat level to support the fundamental concept underpinning the Ethics Policy, namely, that the Global Fund must operate in a balanced, ethical, collaborative, transparent, and open manner. The work achieved by the Global Fund, whether through the direct development of policies and codes of conduct (e.g.

the existing Code of Conduct for Suppliers) or through the creation of functions which help enforce our policies (i.e. the Sanction Panel), has helped create an environment prepared for a further enhancement and expansion of the scope of ethics and integrity.

41. The Ethics and Integrity Initiative, adopted by the Board in November 2014, has already expanded the scope of ethics and integrity considerations which must be part of decision-making processes, to focus on anti-corruption controls, and to include principles around duty of care, accountability, dignity and respect. And with the introduction of a dedicated Ethics Officer position, the Board has provided a resource who can focus on leading the efforts to promote ethics and integrity across Global Fund operations and provide additional support, monitoring, and training to stakeholders. It will take time to further enhance and develop the ethics-related policies and put processes in place, and to systematize the controls and checks for fully embedding ethics and integrity into Global Fund activities. However, with focused resources and through collaboration with governance officials, departments within the Secretariat, the OIG, and key external stakeholders, the foundation for such embedding is already being built.

42. Once the foundation is complete, the ethics function can continue to mature in parallel with the overall maturing of the Global Fund as an institution. With this foundation and the standardization of ethics-related process, there will be opportunity to further explore the scope and reach of ethics and integrity in the Global Fund's system. The Ethics Official role will inevitably continue to evolve and the Global Fund and all its stakeholders will need to continue to address and examine where the key ethical risks are apparent or hidden and where the promotion of our core ethical values can help the institution fulfill its mandate and accelerate the end of AIDS, tuberculosis and malaria.

## VII. Conclusion

43. The Global Fund is continuing to make consistent gains in its further efforts to embed ethics and integrity considerations throughout its governance and operations. Through further enhanced policies and standardized systems across the Fund, stakeholders should be able to more clearly understand and proactively manage potential ethics issues before they arise. The introduction of an independent Ethics Officer will allow for the ethics and integrity initiative to continue to move forward in a more entrenched and visible manner. The expanded mandate of this function will allow for the Global Fund to have a firmer understanding and more fulsome picture of the key ethics-related risks faced by the Fund, which will in turn allow for the Fund to better mitigate and protect against these risks. Coordination, communication and collaboration will be critical factors in the effective delivery of this updated function setting it on the correct path to more comprehensively address ethics in our systems and practices, and formulate strategies to use ethics and integrity considerations to actively promote the Global Fund's mission.