

# The Global Fund Policy to Combat Fraud and Corruption

15 November 2017<sup>1</sup>

## 1. BACKGROUND & PURPOSE

1.1 **Fraud and Corruption Impede the Global Fund’s Mission.** The Global Fund recognizes that fraud and corruption,<sup>2</sup> in all their forms, are a threat to the fight to end the epidemics: they corrode public health institutions and systems and facilitate human rights abuses, ultimately stunting the quality and quantity of interventions needed to save lives. They divert funds, medicines and other resources away from countries and communities in need, limiting impact and reducing trust essential to the Global Fund’s multi-stakeholder partnership model.

1.2 **The Ethics and Integrity Framework.** The Global Fund’s Ethics and Integrity Framework<sup>3</sup> (the “E&I Framework”) states “the strength of the Global Fund is contained in its values, of which ethics and integrity are integral.” The E&I Framework directs the ethical values of integrity, duty of care, accountability, and dignity and respect to be “fully integrated into the Global Fund’s culture and activities, including its grant programs, and complied with by all entrusted with Global Fund resources and/or responsibilities.” The E&I Framework calls for an “integrated compliance and anti-corruption framework” which will “engender stakeholder trust in the Global Fund and safeguard resources dedicated to health.”

1.3 **Anti-Corruption is Integral to Achieving Impact.** The Global Fund further recognizes, pursuant to the E&I Framework, that an integrated compliance and anti-corruption framework (“Anti-Corruption Framework”) is imperative to achieving impact and obtaining value for money. By properly managing fraud and corruption risk, the Global Fund puts into practice its values of integrity, duty of care, and accountability to its donors and people affected by or living with the diseases.

1.4 **The Purpose of the Policy to Combat Fraud and Corruption.** This Global Fund Policy to Combat Fraud and Corruption<sup>4</sup> (the “Policy”):

- Comprehensively restates the Global Fund’s commitment to preventing, detecting and responding to fraud and corruption;

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<sup>1</sup> As approved by the Board in November 2017 under decision point GF/B38/DP09 and as set forth in Annex 4 to GF/B38/06 - Revision 2.

<sup>2</sup> The Global Fund considers all “Prohibited Practices” as defined herein to be forms of fraud and corruption, and the terms are used interchangeably in this document.

<sup>3</sup> The Ethics and Integrity Framework, as approved by the Board in November 2014 under decision point GF/B32/DP09 and as set forth in GF/B32/18 – Revision 1, as may be amended from time to time.

<sup>4</sup> This Policy may be amended from time to time.

- Establishes definitions of Prohibited Practices, which the Global Fund shall apply and enforce in all Global Fund Activities; and
- Directs the Global Fund to maintain and enhance a fit-for-purpose, risk-based Anti-Corruption Framework applicable to all Global Fund Activities.

## 2. SCOPE OF APPLICATION

2.1 **Covered Activities.** This Policy applies to “Global Fund Activities,” which are all activities the Global Fund, directly or indirectly, through grant implementers or other Counterparties, engages in (e.g., governance processes, Secretariat operations, partner engagements, policy discussions, convening activities) or finances, in whole or in part, whether through grant programs or any other form of payment, worldwide.

2.2 **Covered Parties.** This Policy covers the following institutions and individuals, collectively referred to as “Covered Parties”:

- Governance Level.** Global Fund governance officials, including members of the Board, alternates, focal points, members of any committee, task force, the Technical Review Panel, the Technical Evaluation Reference Group, or any other advisory or affiliate body of the Global Fund;
- The Secretariat and OIG.** Secretariat and OIG, including its employees, secondees, and interns employed directly or indirectly by the Global Fund;
- Implementers.** Institutions and individuals who, directly or indirectly, (i) receive Global Fund financing through grants or (ii) are involved in the implementation or oversight of Global Fund grant programs (including members and employees of Country Coordinating Mechanisms); and the directors, officers, employees, affiliates and agents of the foregoing;
- Counterparties.** Contractual counterparties to the Global Fund or to Implementers, on a commercial basis or otherwise (including, without limitation, vendors, consultants whether individuals or entities, Local Fund Agents, and other providers of goods and/or services) and the directors, officers, employees, affiliates, agents, contractors and sub-contractors of the foregoing.

## 3. PRINCIPLES

3.1 The Global Fund’s mission and four principles of transparency, partnership, performance based financing, and country ownership set the strategic direction for the Global Fund’s approach to fraud and corruption prevention, detection, and response in the following manner:

3.2 **Zero Tolerance.** The Global Fund takes a zero-tolerance approach towards Prohibited Practices. As an institution entrusted with investing public monies for the public good, and consistent with its principle of linking financing to performance, the Global Fund maintains an effective and adequate response to instances of Prohibited Practices when detected.<sup>5</sup> It will respond firmly to such instances with appropriate and adequate measures that could include disciplinary actions, recovery of funds, termination or freezing of grants, referrals to supranational and/or national administrative, civil or criminal authorities, formal letters of censure, conditional

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<sup>5</sup> This principle is consistent with the Global Fund’s E&I Framework, which states that the Global Fund takes “strong and immediate action to address proven ethical misconduct.” E&I Framework, at supra footnote 3, para. 14.

continued engagement, debarment, and/or other compensatory or punitive remedies as may be available and applicable.

**3.3 Anti-Corruption Advances Impact.** The Global Fund recognizes that fraud and corruption infiltrate not only financial management, but also strategic decision-making, governance, public health systems, program quality and reporting. It therefore affirms that fraud and corruption are program and mission risks and prioritizes the prevention, detection and response to prohibited practices to advance the Global Fund’s mission of ending the epidemics.

**3.4 Align with International Anti-Fraud and Anti-Corruption Norms.** The Global Fund will implement this Policy by aligning, where appropriate, with existing best practices such as international conventions, the practices of international financing institutions, and compliance systems and environments.

**3.5 Engage with Partners.** The Global Fund will engage with its partners in the collective effort to prevent, detect and respond to fraud and corruption.

**3.6 Enable Prevention and Detection through Transparency.** The Global Fund reiterates its commitment to transparency in Global Fund Activities, recognizing the challenging yet essential role public disclosure and transparency play in driving accountability as well as fraud and corruption prevention and detection.<sup>6</sup>

**3.7 Countries Own Anti-Corruption.** Consistent with the Global Fund principle of Country Ownership, and recognizing that country stakeholders are the ultimate owners of the fight against the three diseases, they also own the responsibility to prevent, detect, and respond to Prohibited Practices in their activities supported by the Global Fund.

**3.8 Strengthen Sustainable Systems for Health.** For health systems to sustainably deliver on public health, they too need to prevent, detect, and respond to Prohibited Practices. The Global Fund will support anti-corruption measures as part of its efforts to strengthen sustainable health systems.

**3.9 Support Community Engagement.** The Global Fund will continue to contribute to the empowerment of affected communities, ensuring their meaningful engagement in Global Fund-related processes, recognizing that community empowerment is critical for ensuring accountability of programs and is an effective means of preventing, detecting, and responding to fraud and corruption.

## **4. PROHIBITED PRACTICES**

**4.1** The Global Fund collectively refers to Corrupt Practices, Fraudulent Practices, Coercive Practices, Collusive Practices, Abusive Practices, Obstructive Practices, Retaliation, Money Laundering, and Financing of Terrorism as “Prohibited Practices.”

**4.2 Corrupt Practices.** A Corrupt Practice is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.<sup>7</sup>

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<sup>6</sup> Key elements of this commitment are the public disclosure of instances of fraud and corruption by the Office of the Inspector General, and the response to those events.

<sup>7</sup> A “party” can be a Covered Person or any other individual or institution.

Corrupt Practices include, but are not limited to, bribery, kickbacks and facilitation payments in connection with a Global Fund Activity.<sup>8</sup> For the avoidance of doubt, facilitation payments are considered corrupt practices as well.

**4.3 Fraudulent Practices.** A Fraudulent Practice is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation. For avoidance of doubt, this includes without limitation health product substitution and counterfeiting, as well as misrepresentation or manipulation of any information arising from or relating to Global Fund Activities such as proposals, plans, evaluations, invoices, signatures, performance data, epidemiological data, reports, and audits.

**4.4 Coercive Practices.** A Coercive Practice is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party. For avoidance of doubt, this includes without limitation reputational or other impairment or harm, as well as physical harm.

**4.5 Collusive Practices.** A Collusive Practice is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party. For avoidance of doubt, this includes without limitation arrangements involving Global Fund governance officials, staff and/or third parties which are intended to, or may have the effect of or result in, circumvention of Global Fund policies, regulations or procedures.

**4.6 Abusive Practices.** Abusive Practices include the theft, misappropriation, embezzlement, waste or improper use of property, either committed intentionally or through reckless disregard. For avoidance of doubt, this includes without limitation diversion of Global Fund money, as well as assets purchased with Global Fund money, including health products.

**4.7 Obstructive Practices.** An Obstructive Practice is (i) deliberately destroying, falsifying, altering or concealing evidence material to an inquiry by the Global Fund,<sup>9</sup> or making false statements in order to materially impede a Global Fund inquiry into allegations of Prohibited Practices; (ii) threatening, harassing or intimidating any party to prevent it from disclosing, or as retaliation for disclosing, its knowledge of matters relevant to a Global Fund inquiry or from pursuing the inquiry; (iii) engaging in acts which impede the exercise of the Global Fund's access rights, including the access rights described in this Policy; or (iv) failing to comply with the duty to report as defined in the Whistleblowing Policy,<sup>10</sup> or under relevant obligations including para. 5.4 of this Policy, in a timely manner.

**4.8 Retaliation.** Retaliation is any intentional or reckless act of discrimination, reprisal, harm, harassment or retribution, direct or indirect, which is recommended, threatened, or taken against anyone who either refuses in good faith to participate in the facilitation or commission of

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<sup>8</sup> Facilitation payments are payments made in connection with a Global Fund Activity to a public official to secure or expedite the performance of a certain routine action.

<sup>9</sup> For avoidance of doubt, the destruction, falsification, alteration or concealment of evidence in contravention of contractual obligations to maintain books, records, or other information will be among the circumstances deemed to constitute deliberately and materially impeding a Global Fund inquiry.

<sup>10</sup> Whistle-blowing Policy and Procedures for the Global Fund to Fight AIDS, Tuberculosis, and Malaria (the "Whistleblowing Policy"). As adopted at the Thirteenth Board meeting in April 2006 (Document GF/B13/6) and amended at the Twenty-Third Board meeting in May 2011 (Decision Point GF/B23/DP19) and at the Thirtieth Board meeting in November 2013 (Decision Point GF/B30/DP4), and may be further amended from time to time.

any Prohibited Practice, or who in good faith reports suspicion or knowledge of Prohibited Practices to the appropriate channels in the Global Fund or within Implementers or Counterparties.

4.9 **Money Laundering.** Money Laundering is: (i) the conversion or transfer of property, directly or indirectly, knowing that such property<sup>11</sup> is derived from criminal activity, or helping any person who is involved in such activities evade the legal consequences of their actions; (ii) concealing or disguising the illicit origin, source, location, disposition, movement or ownership of property knowing that such property is derived from criminal activity; or (iii) the acquisition, possession or use of property, knowing at time of receipt that such property is derived from criminal activity.

4.10 **Financing of Terrorism.** Financing of Terrorism is the provision or collection of funds by any means, directly or indirectly, with the intention that they should be used or in the knowledge that they are or will be used, in full or in part, in order to carry out acts of terrorism. For the avoidance of doubt, this includes without limitation the provision or collection of funds in contravention of the United Nations Security Council resolutions and sanctions applicable to the financing of terrorism.<sup>12</sup>

## 5. REQUIREMENTS

5.1 **Compliance.** Compliance with this Policy is the ethical and professional responsibility of every Covered Person. Each Covered Person which is an *entity* must ensure compliance with this Policy in its organization. Each Covered Person who is an *individual* is expected to lead by example by adhering to, respecting and communicating this Policy in connection with (i) her/his own activities, (ii) the activities of any employees s/he supervises, and (iii) where possible, in relation to the activities of Implementers and Counterparties with whom s/he works, at the outset of the relationship and on an ongoing basis thereafter.

5.2 **Ban on Prohibited Practices.** No Covered Person may, directly or indirectly, participate, aid, abet or conspire with another in the facilitation or commission of any Prohibited Practice in connection with Global Fund Activities. The Global Fund will make determinations of Prohibited Practices consistent with its administrative standard of evidence, of “balance of probabilities” and does not require that an act be completed or succeed in its purpose in order for the act to constitute a Prohibited Practice.<sup>13</sup> As part of its response to Prohibited Practices, the Secretariat will maintain a sanctions process ensuring due process and accountabilities.

5.3 **Emphasis on Conflict of Interest.** Recognizing that conflicts of interest are often at the root of Prohibited Practices, the Global Fund includes prevention, detection and response to

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<sup>11</sup> Property means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets.

<sup>12</sup> Accordingly, providing funds to or collecting funds for such a sanctioned entity or individual shall be deemed to constitute an intention that funds should be used, in full or in part, in order to carry out acts of terrorism.

<sup>13</sup> For example, agreeing to accept a bribe (*quid pro quo*) from another party constitutes a corrupt practice, whether or not a payment or exchange of value is actually made or an improper purpose achieved. Similarly, to constitute Financing of Terrorism, it shall not be necessary that an act of terrorism be completed.

the failure to declare a conflict of interest as an obligation,<sup>14</sup> in accordance with its Anti-Corruption Framework.

**5.4 Duty to Report.** The Global Fund, in its dealings with Covered Parties, applies and enforces a duty to report suspicion or knowledge of Prohibited Practices in Global Fund Activities. Implementation of the duty to report will take into account the Whistle-blowing Policy<sup>15</sup> and other appropriate instruments.

**5.5 Protection Against Retaliation.** The Global Fund implements and maintains processes to prevent, detect and respond to any retaliation against any Covered Person who, consistent with the Global Fund's E&I Framework<sup>16</sup> and the Whistleblowing Policy,<sup>17</sup> either refuses in good faith to participate in the facilitation or commission of any Prohibited Practice, or who in good faith reports suspicion or knowledge of Prohibited Practices to the appropriate channels in the Global Fund.

**5.6 Integrated Anti-Corruption Framework.** The Global Fund implements, maintains, and enhances, as needed, a fit-for-purpose, risk-based Anti-Corruption Framework that enables adequate prevention, detection and response to Prohibited Practices within the Global Fund as well as in relation to all other Covered Parties. The Anti-Corruption Framework should be consistent with international best practices and be comprised, at a minimum, of the following elements:

- a. Tone at the Top at Governance and Management Levels
- b. Fraud and Corruption Risk Assessment
- c. Accountabilities & Incentives
- d. Policies, Procedures, & Controls (inter alia):
  - Contracts
  - Conflict of Interest Policies
  - Codes of Conduct
  - Due Diligence Processes
  - Risk Management Processes
  - Controls, Assurance & Oversight
- e. Training and Communication
- f. Whistleblowing and Investigations
- g. Response: Enforcement, Sanctions and Other Remedies
- h. Monitoring and Testing
- i. Reporting to Board

The Global Fund should also work with Implementers and Counterparties to develop appropriate, risk-based Anti-Corruption Frameworks.

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<sup>14</sup> Obligations relating to Conflict of Interest are outlined, among other documents, in the Policy on Ethics and Conflict of Interest for Global Fund Institutions, approved 10-11 October 2002, as amended at the Eighteenth Board Meeting (GF/B18/8) and at the Twenty-Seventh Meeting GF/B27/DP05), and may be further amended from time to time.

<sup>15</sup> See supra footnote 10.

<sup>16</sup> See supra footnote 3, para 12: "The Global Fund commits to protecting those who identify and report, in good faith, violations of the organization's policies or other acts of fraud, corruption, or dishonesty from retaliation or reprisal, including through the procedures set forth in the Whistleblowing Policies and Procedures approved by the Board."

<sup>17</sup> See supra footnote 10, para. 8: "The Global Fund will not tolerate any retaliation... against a whistle-blower or its relatives or associates by any person because the whistle-blower has made a disclosure under this policy in good faith, reasonably believing it to be true."

5.7 **Right to Access.** The Global Fund must be able to directly oversee and verify all aspects of Global Fund activities, including for the purpose of preventing, detecting and responding to Prohibited Practices. To this aim, all Covered Parties must collaborate, participate and enable related activities, notably by granting unfettered access to the Global Fund and its representatives to any records, individuals and sites linked to Global Fund Activities. This will notably be done through contractual instruments making this duty applicable by the Secretariat to all Covered Parties.

## 6. GLOBAL FUND ACCOUNTABILITIES FOR OVERSEEING AND IMPLEMENTATING THE POLICY

6.1 **The Board.** The Board has ultimate ownership over this Policy, arising from the greater responsibility of the Board and its Committees to embody the highest standards of integrity against fraud and corruption. The Board delegates to its standing Committees oversight of matters relating to the Policy and its implementation as follows:

- The Charter of the Ethics and Governance Committee confers oversight authority with respect to the E&I Framework. Accordingly, the Ethics Officer shall report to the Ethics and Governance Committee on the implementation of this Policy, as part of regular updates under the E&I Framework.
- The Charter of the Audit and Finance Committee confers oversight and advisory authority with respect to the audits and investigations conducted by the Office of the Inspector General (OIG), risk management, fiduciary matters, internal controls and policies related to financial and operational oversight. Accordingly, where the implementation of this Policy may affect such matters, the OIG and/or Secretariat (as appropriate) shall report to the Audit and Finance Committee.

6.2 **The Executive Director.** The Executive Director is responsible for implementation of this Policy within the Global Fund's operations pursuant to authority delegated under Article 10.1 the Global Fund Bylaws.<sup>18</sup> The Executive Director shall define roles and responsibilities within the Secretariat and for the Secretariat's management of relations with Implementers and Counterparties.

6.3 **The Inspector General.** The Inspector General has the responsibility to provide independent and objective assurance over the design and effectiveness of controls or processes in place to ensure ethical behavior in the Global Fund's operations and the activities it finances, including providing periodic reviews of this Policy and its implementation. Also, consistent with the Charter of the Office of the Inspector General, the OIG is responsible for undertaking investigations of alleged Prohibited Practices in Global Fund Activities for all Covered Parties. It is also tasked under the Whistle-blowing Policy<sup>19</sup> to provide appropriate mechanisms for whistle-blowers to report all irregularities relating to Global Fund Activities.

6.4 **The Ethics Officer.** The Ethics Officer's responsibilities include providing an annual opinion to the Board on (i) the quality of the Global Fund's ethics and integrity systems, including anti-corruption controls, based on an assessment of key risk areas; and (ii) the extent to which the

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<sup>18</sup> Bylaws of the Global Fund to Fight AIDS, Tuberculosis and Malaria, approved by the Board on 28 January 2016 (GF/B34/EDPo7) and effective as of the conclusion of the 35th Board Meeting held on 26 – 27 April 2016, , as may be amended from time to time.

<sup>19</sup> See supra footnote 10.

Global Fund has complied with ethics and integrity-related policies, codes, and requirements as well as (iii) playing a 2<sup>nd</sup> line of defense role in accordance with the Ethics and Integrity Framework.

## **7. REVIEWS**

7.1 The Global Fund will, at regular intervals, make arrangements to assess compliance with this Policy on an organizational, divisional/departmental and program basis, in accordance with risk-based assessments, and will notably include the results of such assessments in reports to the Global Fund Board and its standing committee(s) with delegated authority as to fraud or misuse of Global Fund resources and the E&I Framework.

7.2 In addition, this Policy may be updated to reflect evolving norms and practices among international financing institutions, changes to Global Fund policies or procedures or as and when the Global Fund deems necessary and appropriate to affirm its commitment against fraud and corruption. Amendments to this Policy may be recommended by the Secretariat for approval of the Ethics and Governance Committee, in consultation with the Audit and Finance Committee (or their respective successor committee(s) having delegated authority for such matters from the Board).