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# Annual Report on Privileges and Immunities

## 42<sup>nd</sup> Board Meeting

GF/B42/16

14-15 November 2019, Geneva, Switzerland

### **Board Information**

The purpose of this paper is to inform the Board of the Secretariat's efforts to secure privileges and immunities, as overseen by the Ethics and Governance Committee.

1. The Ethics and Governance Committee (the “EGC”) is responsible for the oversight of the acquisition of privileges and immunities for the Global Fund, including the activities of the Privileges and Immunities Advisory Group (the “PIAG”). The EGC reports to the Board on the acquisition of privileges and immunities by the Global Fund on an annual basis.
2. Privileges and immunities provide critical protections and rights which reduce risk exposure to Global Fund officials, staff and resources in the fight against the three diseases, with a view to enabling it to fulfill its mission and exercise effectively its functions as an international organization. Acknowledging the serious challenges and risks faced by Global Fund staff in the discharge of their duties in many countries as well as risks to Global Fund-financed programs, the Board has reaffirmed repeatedly the importance of privileges and immunities on three separate occasions, in December 2009, December 2010 and November 2014. The relevant decisions of the Board and the EGC on privileges and immunities are set out in Annex 1 to this paper.
3. Implementing and donor countries may confer privileges and immunities on the Global Fund either through application of their domestic legislation or by signing the Board-endorsed Agreement on Privileges and Immunities (the “P&I Agreement”).
4. The following States have granted the Global Fund certain privileges and immunities under their domestic laws: Switzerland, Uganda, the United States of America, and Zimbabwe.
5. Since the EGC’s last annual report to the Board on privileges and immunities (November 2018):
  - a. The P&I Agreement entered into force on 19 April 2019 following the 10<sup>th</sup> ratification by Senegal and was registered at the United Nations Treaty Section.
  - b. The number of signatory States (18) remains unchanged; namely: Burkina Faso, Burundi, Côte d’Ivoire, Eswatini, Ethiopia, Georgia, Ghana, Liberia, Malawi, Moldova, Montenegro, Mozambique, Niger, Rwanda, Senegal, Togo, Uganda, and Zimbabwe. The Secretariat received a copy of a presidential directive regarding the conferral of P&Is to the Global Fund in Botswana under domestic law and the signature and ratification of the P&I Agreement but is awaiting to be provided with a copy of instrument of ratification and the legislation adopted in Botswana.
  - c. Burkina Faso, Senegal, Uganda and Zimbabwe formally ratified the P&I Agreement with the result that 13 of the 18 signatories have ratified the P&I Agreement; namely: Burkina Faso, Eswatini, Ethiopia, Georgia, Liberia, Malawi, Moldova, Mozambique, Rwanda, Senegal, Togo, Uganda and Zimbabwe.
  - d. The EGC appointed the new members of the PIAG in June 2019 and the PIAG held a meeting in July 2019, in which the PIAG members made a number of proposals regarding possible advocacy measures and expressed their availability to support the advocacy efforts in a number of target countries.<sup>1</sup>
  - e. Following the input received by the PIAG, the EGC was informed in its October 2019 meeting that Management agreed on the need to take a prioritized and targeted approach to P&I that focuses Senior Management and Board Leadership efforts on (i) States that signed but did not ratify the P&I Agreement yet; and, (ii) donor and implementer States where due to specific circumstances – including the size of the portfolio and importance of operations – conferral of P&Is is considered important.

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<sup>1</sup> It is recalled that the PIAG has mandate to undertake advocacy efforts in order to expand the granting of privileges and immunities to the Global Fund. The appointed PIAG members are Pierre d’Argent, Edward Kwakwa, Vulindlela David Msibi, Jesus Sierra, and Jason Wright.

6. The EGC highlights that privileges and immunities provide critical protections and rights which reduce risk exposure to Global Fund, its governance officials, its staff and its resources in the fight against the three diseases, with a view to enabling it to fulfill its mission and exercise effectively its functions as an international organization. Becoming a party to the P&I Agreement (i) signals a strong international support for the Global Fund's efforts to reduce burden of three diseases and promote public health as a public good; (ii) helps to generate resource savings from tax exemptions for reinvestment in programs to fight the three diseases and (iii) enables the Global Fund staff – including staff within the Office of the Inspector General – to conduct safe field activities to adequately review the impact of the programs and thereby contributes to increased transparency and oversight over grants.

7. Indeed, by signing and ratifying the P&I Agreement, States grant privileges and immunities to the Global Fund that:

- Protect the Global Fund's governance officials and staff against legal process;
- Facilitate the travel of the Global Fund's governance officials and staff;
- Exempt assets, income and property of Global Fund from taxes;
- Protect the Global Fund from being sued and any assets from being seized;
- Protect the Global Fund archives, data and working documents; and,
- Enable the Global Fund to operate with a comparable level of protections as those enjoyed by partner international organizations.

8. The EGC strongly encourages therefore all States represented on the Board to signal their commitment to protection and safeguarding of Global Fund resources through their adhesion to the P&I Agreement.

## Annex 1 – Relevant Past Decisions

Relevant past Decision Point	Summary and Impact
<b>GF/EGC09/EDP02: Appointment of members of the Privileges and Immunities Advisory Group (June 2019)</b>	The Ethics and Governance Committee appoints the following individuals to serve as members of the Privileges and Immunities Advisory Group for a one-year period starting on 1 July 2019: 1. Edward Kwakwa; 2. Pierre d'Argent; 3. Jason Wright; 4. Jesus Sierra and 5. Vulindlela David Msibi.
<b>GF/B39/EDP04: Review of the terms of reference and renewal of the term and composition of the PIAG (June 2018)</b>	The Board approved the review of the terms of reference and renewal of the term and composition of the Privileges and Immunities Advisory Group (“PIAG”) and requested the EGC to select and appoint the members of the PIAG and to inform the Board of the outcome of the selection process.
<b>GF/EGC02/EDP02: Privileges and Immunities (October 2016)</b>	The Ethics and Governance Committee acknowledges the serious challenges and risks faced by Global Fund and its staff members in the discharge of their duties in many countries; stresses the importance of states granting to the Global Fund privileges and immunities through the signature of the Agreement on Privileges and Immunities of the Global Fund (“P&I Agreement”); and, requests the Secretariat to develop, in consultation with the Privileges and Immunities Advisory Group, proposals to further enhance the levels of signature and ratification of the P&I Agreement.
<b>GF/B32/EDP12: Terms of Reference of the Privileges and Immunities Advisory Group (March 2015)<sup>2</sup></b>	The Board approved the Terms of Reference of the Privileges and Immunities Advisory Group, a dedicated group of donor and implementer representatives to identify strategies and advocate for the acquisition of privileges and immunities for the Global Fund.
<b>GF/B32/DPO6: Privileges and Immunities (November 2014)<sup>3</sup></b>	The Board acknowledges past decisions on privileges and immunities and further requests: <ul style="list-style-type: none"> <li>• the Secretariat to dedicate required resources for the acquisition of privileges and immunities;</li> <li>• the FOPC and the Audit and Ethics Committee to oversee jointly the acquisition of privileges and immunities, and report on progress to the Board on an annual basis; and</li> <li>• the Board Leadership to constitute a dedicated group of donor and implementer representatives to identify strategies and advocate for the acquisition of privileges and immunities.</li> </ul>

<sup>2</sup> <https://www.theglobalfund.org/board-decisions/b32-edp12/>

<sup>3</sup> <https://www.theglobalfund.org/board-decisions/b32-dp06/>

<p><b>GF/B22/DP21: Privileges and Immunities (December 2010)<sup>4</sup></b></p>	<p>The Board acknowledges the serious challenges and risks faced by the Global Fund staff in the discharge of their duties in many countries, reiterates the importance of states granting to the Global Fund privileges and immunities, and encourages members of the Board and their respective constituencies to support, facilitate and promote the Secretariat's efforts in securing privileges and immunities.</p>
<p><b>GF/B20/EDP04: Global Fund Privileges and Immunities (December 2009)<sup>5</sup></b></p>	<p>The Board recognizes the importance of the Global Fund obtaining such privileges and immunities as necessary for the effective exercise of its functions and efficient use of its resources. The Board recommends that states consider granting privileges and immunities to the Global Fund by:</p> <ul style="list-style-type: none"> <li>• applying domestic legislation that specifically confers on the Global Fund status, capacities, privileges and immunities equivalent to those enjoyed by international organizations within their respective legal systems; and/or</li> <li>• adhering to the Agreement on Privileges and Immunities of the Global Fund.<sup>6</sup></li> </ul> <p>The Board requests the Secretariat to report back to the Board on measures taken by states in response to the decision point.</p>

<sup>4</sup> <https://www.theglobalfund.org/board-decisions/b22-dp21/>

<sup>5</sup> <https://www.theglobalfund.org/board-decisions/b20-edp04/>

<sup>6</sup> Attachment 1 - Revision 1 of the Policy and Strategy Committee's Report to the Board (GF/B20/4)