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# Annual Report on Privileges and Immunities

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## 44<sup>th</sup> Board Meeting

GF/B44/11

11-12 November 2020, *Virtual*

### **Board Information**

The purpose of this paper is to inform the Board of the Secretariat's efforts to secure and implement privileges and immunities for the Global Fund, 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 (P&Is) 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”) which 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.
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 2019):
  - a. The number of signatory States has increased by two following the signature of the P&I Agreement by Gabon and Lesotho. Accordingly, the total number of signatory States is now twenty (20): Burkina Faso, Burundi, Côte d’Ivoire, Eswatini, Ethiopia, Gabon, Georgia, Ghana, Lesotho, Liberia, Malawi, Moldova, Montenegro, Mozambique, Niger, Rwanda, Senegal, Togo, Uganda, and Zimbabwe.
  - b. The Secretariat received a copy of a presidential directive regarding the conferral of P&Is to the Global Fund in Botswana and is continuing to follow up on receiving a confirmation of P&Is granted under domestic law, the signed P&I Agreement and the instrument of ratification. The Secretariat has also received some official documents from Afghanistan and is liaising with the country to obtain missing documents to complete the process.
  - c. The number of signatories that formally ratified the P&I Agreement has increased by one following the receipt of the acceptance instrument of Lesotho (14 of the 20 signatories); namely: Burkina Faso, Eswatini, Ethiopia, Georgia, Lesotho, Liberia, Malawi, Moldova, Mozambique, Rwanda, Senegal, Togo, Uganda and Zimbabwe. The Secretariat is liaising with the Gabon authorities to clarify whether any procedures are required under domestic law for the P&I Agreement to enter into force now that it has been signed. The Secretariat has also been informed that the ratification process of the P&I Agreement was completed in Côte d’Ivoire and should receive the instrument of ratification in the near future.
  - d. Increased advocacy measures have also been undertaken in a number of countries (e.g. Ghana and Peru) in collaboration with the PIAG members appointed by the EGC in June 2019 and the Legal and Governance Department has taken steps to discuss the practical implementation of the P&I Agreement with the permanent missions in Geneva of the States that have ratified the said agreement. In March 2020, before the lockdown imposed in Switzerland due to the COVID-19 pandemic, the Global Fund’s General Counsel had a meeting with the Rwanda representation in Geneva to discuss the implementation of P&Is for Global Fund’s staff and assets in Rwanda.

In Zimbabwe, the Ministry of Health facilitated meetings in February 2020 between the Global Fund and the Ministry of Foreign Affairs to outline a streamlined protocol for obtaining visas and ensuring Global Fund staff P&Is during visits and missions. Progress toward a final protocol has been impeded by COVID-19 but local officials in Zimbabwe and the Permanent Mission in Geneva have committed to establishing a formal protocol.

6. At its 14<sup>th</sup> meeting (6-7 October 2020), the EGC discussed the impact of the COVID-19 crisis on the Secretariat's efforts to secure and implement P&Is in countries, and asked the Secretariat how P&Is would be reinforced within the COVID-19 context. The Secretariat acknowledged that the work on P&Is had slowed down, primarily due to the closure of Mission offices, ban on travel and priorities that were put on grants and support to Country Teams. While it is expected that efforts to secure P&Is will continue to be impacted by the COVID-19 crisis, as soon as the situation permits, the Legal and Governance Department will work to resume discussions with the permanent missions in Geneva and engage with PIAG members to revive the collaboration for obtaining P&Is in an increased number of countries.

## 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>1</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.

<sup>1</sup> <http://www.theglobalfund.org/Knowledge/Decisions/GF/B32/EDP12/>

<p><b>GF/B32/DPO6: Privileges and Immunities (November 2014)<sup>2</sup></b></p>	<p>The Board acknowledges past decisions on privileges and immunities and further requests:</p> <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>
<p><b>GF/B22/DP21: Privileges and Immunities (December 2010)<sup>3</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>4</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>5</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>2</sup> <http://www.theglobalfund.org/Knowledge/Decisions/GF/B32/DP06/>

<sup>3</sup> <http://www.theglobalfund.org/Knowledge/Decisions/GF/B22/DP21/>

<sup>4</sup> <http://www.theglobalfund.org/Knowledge/Decisions/GF/B20/EDP04/>

<sup>5</sup> Attachment 1 - Revision 1 of the Policy and Strategy Committee's Report to the Board (GF/B20/4)