



Independent observer
of the Global Fund

IS THE GLOBAL FUND ADHERING TO ITS OWN ETHICAL PRINCIPLES?

“Quod scripsi scripsi – What we have written, we have written,” answered the Honourable Justice Barry O’Keefe, a member of the High-Level Panel (HLP), when asked by the Chair of the Global Fund Board, Simon Bland, during the special Board meeting in September 2011, if the compromise the Board had reached would satisfy the members of the HLP. Ever since Ancient Rome, this expression has been used to refer to writings as “canonical,” meaning that no further discussion is in order and actions must now be taken based on what has been written.

When the Global Fund Board engaged the HLP to provide recommendations on how to improve fiduciary control mechanisms, it had no idea how far the panel’s recommendations would extend. And it certainly did not think that the panel would expect the Board to treat its recommendations as if they were the word of law.

It is no secret that the Global Fund has been going through some difficult times. The crisis had been smouldering for a long period of time within the institution. In the end, because the Fund’s Board was obviously unable to deal with the situation on its own, solutions were imposed by a panel of independent and distinguished individuals (the HLP).

But then some strange things happened. First, Charles Johnson, former co-leader of the HLP support team, was appointed acting Chief Risk Officer of the Global Fund, a position that was only established

after the HLP proposed that it be created. And then, a member of the HLP, Gabriel Jaramillo, was appointed by the Chair and Vice-Chair of the Board to act as the Fund's General Manager for one year, with terms at first known only to them (and possibly to members of the Board's Coordinating Group). Mr Jaramillo has been given all the powers formerly held by the Executive Director.

With respect to the Jaramillo appointment, the news was publicly announced on 24 January 2012, but Board members were not asked to "formally acknowledge" this decision until two days later. Then another three weeks passed before members were informed of the General Manager's terms of reference. The Board, it appears, had become a body merely ratifying decisions already made.

Soon, the four independent members of the Global Fund's Audit and Ethics Committee (AEC) will be selected. One of them will serve as the Chair of that Committee. (The AEC is made up of seven members, three from the Global Fund Board and four independent. One of its important roles will be to oversee the Office of the Inspector General.) This will complete the current phase of restructuring of the Fund's governing bodies.

The Chair of the AEC will become a member of the Board's Coordinating Group, meaning that he or she will be one of eight individuals making the majority of operational decisions related to the governance of the Global Fund between Board meetings. It would not surprise me at all if another member of the HLP were selected as Chair.

In my opinion, all of the above raises some serious ethical issues.

The Policy on Ethics and Conflict of Interest for Global Fund Institutions refers to what it calls "a one-year cooling off period," and defines it as follows:

"Any individual who has served as a Board member, Alternate, a member of a Board Committee, or as Chair or Vice-Chair of the Technical Review Panel shall not be eligible for employment by the Global Fund Secretariat until one year following their last date of service in such a position."

This definition does not explicitly cover HLP members, not least because the HLP did not exist when that policy was written. But let's look at the reasons why the one-year-cooling-off-period provision was adopted in the first place. First, it was considered unethical for a person participating in governance processes within the Global Fund to be in a position to influence the creation of a new post that they may apply for in the near future. The second reason arose from the need to preserve the independence of the work of the Global Fund Secretariat from constituencies sitting on the Board. It was recognised that a person serving on the Board cannot simply become "independent" overnight.

Should not the same principles apply to the HLP, a group of people that I would argue was serving as an advisory body to the Global Fund – perhaps even more than an advisory body if one considers the fact

that almost all of its recommendations were adopted by the Board?

If a member of the HLP is appointed to the AEC in the coming weeks, the ethical issues would become even more worrying. The AEC Charter states that:

“Members of the governance, advisory and administrative bodies of the Global Fund (‘Global Fund Officials’) may not serve as independent Committee members... Global Fund Officials include, but are not limited to, Board members and alternates, members of Board Committees, members of the Technical Review Panel and other advisory bodies, and employees, consultants and contractors of the Secretariat and the OIG.” (Emphasis added.)

As I have argued above, the HLP was de facto an advisory body to the Global Fund. In addition, it seems obvious that the members of the HLP and its support team fall into the category of “consultants and contractors.” Indeed, they were remunerated for the work they performed.

I do not know if members of the HLP have signed statements that say explicitly that upon completion of their tasks they will not apply for any paid Global Fund positions. If the contracts they signed did not contain such a clause, this constitutes a serious oversight on the part of the Global Fund. Even if HLP members did not sign such a statement, the existing Global Fund guidelines cited above ought to apply. Even now, it is not clear whether the new General Manager, once he has completed the task of transitional management within the Secretariat, will be eligible to apply for the Executive Director position in the future. His terms of reference are silent on this point.

Institutions with a mission and core values such as those of the Global Fund ought to work extra hard to adhere to ethical principles in governance. Until recently, I have been proud of the Fund’s record in this respect. However, seeking loopholes and ways to avoid procedural compliance with its own rules weakens this institution at a time when it must be strong. The months to come will reveal how much of the Global Fund’s ethical foundation still exists.

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