



Pakistan TB grant recipient sub-contractor refuses to accept OIG findings and takes the Global Fund to court in South Africa

On 26 May 2021, GFO 397 reported on an Office of the Inspector General (OIG) report on its investigation into three separate events relating to the tuberculosis (TB) grant for Pakistan for which The Indus Hospital (TIH) was the Principal Recipient (PR) ([OIG Report on its Investigation of Misconduct Affecting a Global Fund Grant in Pakistan](#))

This article looks at the ramifications of the OIG report and resulting court case against the Global Fund. In looking at why the case has been brought in South Africa, it also raises the issue of privileges and immunities (Ps&Is) for Global Fund donor countries and implementing countries; and what this means in practice.

Background

To remind readers of the discussion: in April 2016, the Global Fund contracted with the organisation [Interactive Research and Development](#) (IRD) under a long-term technical assistance (LTTA) agreement to support the implementation of the Global Fund-supported TB program for an amount of \$1,918,801 for the period May 2016 to December 2017. Under the agreement, IRD would provide technical advice, oversight and personnel services to The Indus Hospital (TIH), the TB program's Principal Recipient (PR). This agreement was later extended to December 2018.

To cut a long story short (you can read about the details in our aforementioned article in GFO 397 as per the link above), in December 2018 OIG received information relating to alleged conflicts of interest, procurement and implementation irregularities involving IRD. In assessing this information, the OIG saw that routine Global Fund oversight processes had also flagged related irregularities in the procurement of services from IRD and the other related party supplier, [Interactive Health Solutions](#) (HIS). The OIG investigation sought to verify the allegations received, including reviewing the Secretariat's role in the initial handling of the reports of irregularities in this grant. The scope of the investigation covered the

period 1 January 2016 to 31 December 2018.

The OIG's three main findings were:

1. TIH, the Global Fund grant's PR, engaged in anti-competitive and collusive practices and failed to properly mitigate actual or apparent conflicts of interest in its selection of IRD as a supplier for four projects to be funded as part of the grant. This resulted in a non-compliant amount of \$1,062,076 and a potentially recoverable amount of \$341,791.
2. Subsequently, following a procurement process compromised by anti-competitive, fraudulent and collusive practices, TIH engaged IHS, an entity majority-owned by an executive manager and owner of IRD and his wife, to provide IT services. This resulted in a non-compliant amount of \$1,070,085 and a potentially recoverable amount of \$519,624.
3. TIH, with the subsequent agreement of the Secretariat, selected IRD as an LTTA supplier without conducting a competitive tender. The safeguards proposed to mitigate the related conflicts of interest proved to be ineffective. The costs of this contract to the grant were materially higher than the costs of delivery by IRD and those costs did not reflect the true nature of the amounts invoiced. In some instances, costs invoiced could not be supported. This resulted in a non-compliant and potentially recoverable amount of \$310,174.

IRD refuses to give up the fight

As an article in May 2023 in [The Lancet](#) reported, "the dispute between Interactive Research and Development (IRD) and The Global Fund to Fight AIDS, Tuberculosis and Malaria has been simmering for several years. It relates to IRD's partnership with a recipient of The Global Fund tuberculosis grant for Pakistan, in which capacity it ran several research and implementation programmes, including psychosocial support services for patients with multidrug-resistant tuberculosis and conducting prevalence surveys. But in 2021, The Global Fund published a report saying that an investigation into IRD revealed "evidence of non-delivery, fabricating and inflating programmatic achievements, and unsupported expenses"."

IRD denied the accusations and sought an injunction against the Global Fund requiring it to remove the report from its website. Strangely, it did so through bringing the case in the South African courts rather than in Pakistan – why, we explain later in this article. However, on 6 February this year, a Judge in the South African High Court dismissed the case, after concluding that he "lacked jurisdiction". But he also stated that "The Global Fund had made false assertions and intentionally smeared IRD". On 3 May, the same judge granted IRD the right to appeal.

The OIG report that forms the basis for this court case was published in April 2021, but it seems that a draft version was leaked to the media earlier in the year. One news outlet reported that TIH had been accused of "embezzling", a word that does not appear in the final version of the OIG investigation report. In May 2021, a spokesperson for The Global Fund told The Lancet that there was "no indication that this leak came from The Global Fund".

As The Lancet reports, IRD has rejected all the OIG accusations. It argued that it received permission from the Global Fund's then Fund Portfolio Manager (FPM) for Pakistan for every one of the alleged collusive and anti-competitive practices. The OIG acknowledged that there was "insufficient or ineffective oversight on the part of The Global Fund Secretariat in reviewing and endorsing the Indus Hospital's selections". But it stressed that the "oversight decisions by the Secretariat do not, however, mitigate the prohibited practices in the management of grant funds by the Principal Recipient [Indus Hospital]". IRD's Executive Director responded to this by asserting that "IRD was completely open with the Fund Portfolio

Manager, we got his approval every step of the way, and The Global Fund is saying that does not count for anything.”

The court case is based on the Fund Portfolio Manager’s messages with IRD

The Lancet contends that the conduct of the FPM during the time covered by the OIG report “is one of the most intriguing elements of the story”. The FPM’s Pakistan portfolio was his last responsibility at The Global Fund, after which he left; but the Global Fund would not clarify the circumstances of his departure to The Lancet who was unable to track down the individual in question. However, IRD’s Executive Director provided The Lancet with text messages that he exchanged with the FPM in March 2021 and which have been submitted as evidence in the South African court case.

One message from the FPM said: “I really want to convey to you that this abrupt end of the TIH [The Indus Hospital] implementation was not my decision at all. That came from above. It was even difficult to get this closure period approved, as everyone here saw you as a kind of Chicago gangsters”. He described the OIG report as “wrong” and “extremely biased”, he called his employers “cowards”, and implied that he was made to write particular emails and messages. He also sounded depressed: “Honestly, I will resign. Have lost hope. I have hope in Bach and Goethe, not in GF”.

IRD initiated legal action against the Global Fund in May 2021 and the South African judge ruled that “The published report substantially retains alleged findings against IRD that are demonstrably inaccurate, misleading and false....Given IRD’s detailed submissions and responses, the Global Fund had before it all the relevant and true facts. Its smearing of IRD and maintaining false assertions against IRD is without, any question, intentional.”

The article in The Lancet lists several experts in global health who have written letters to the Global Fund in support of IRD. One US-based organisation described TIH and IRD as being “among the best implementers of TB control in the world”, in a letter to the Fund’s Executive Director dated 25 March 2021. In another letter, a professor from Department of Epidemiology at the Johns Hopkins Bloomberg School of Public Health pointed out that “IRD is one of only a handful of organizations that is owned and operated in the Global South and that has achieved globally recognized success in the fight against TB”. He worried that the affair has the potential for “serious negative consequences for the TB control community as a whole, as it will discourage other organizations in the Global South to take up these efforts”

The reason for choosing South Africa for the case against the Global Fund

Aside from appealing the High Court’s decision on jurisdiction, IRD intends to file a defamation case against the Global Fund. IRD’s Executive Director told The Lancet that IRD had chosen the South African judicial system because the Global Fund is generally immune from legal proceedings and prosecution in Switzerland, where it is headquartered. He said that IRD wanted to “seek justice” in a country with a strong legal framework and justice system. He also said that IRD had deliberately picked South Africa because of its projects and partnership with the Global Fund and the Fund’s presence there.

However, doubtless the fact that South Africa is not a Global Fund Privileges and Immunities country was also a factor.

What does this mean?

The Annual Report on Privileges and Immunities (GF/B49/10) presented an update at the recent Board meeting in Hanoi in May.

1. Countries can confer Privileges and Immunities (P&Is) on the Global Fund in one of two ways. First, they may sign (and ratify, where required by domestic law) the P&I Agreement, a treaty which entered into force on 19 April 2019 and is registered at the United Nations Treaty Section. Second, they may enact domestic legislation and/or execute a bilateral agreement with the Global Fund.
2. Currently, 22 countries have conferred P&Is on the Global Fund: Afghanistan, Burkina Faso, Côte d'Ivoire, Eswatini, Ethiopia, Gabon, Georgia, Kenya, Lesotho, Liberia, Malawi, Moldova, Mozambique, Niger, Rwanda, Sao Tome and Principe, Senegal, Switzerland, the United States, Togo, Uganda, and Zimbabwe. In addition, four countries have signed but not yet ratified the P&I Agreement: Burundi, Guinea Bissau, Moldova, and Montenegro.
3. The Secretariat's strategy to expand P&Is adoption and implementation, which was endorsed by the Ethics & Governance Committee (EGC), describes both the business case for P&Is and the costs of their absence, while acknowledging that the pursuit of P&Is can be time and labour-intensive with uncertain results.
4. The Board recognizes that there is a strong business case for P&Is. This is true for the Global Fund, donor countries and countries implementing Global Fund grants, even though the Global Fund does not have offices in implementing countries. The Board has historically supported Secretariat efforts to expand adoption of P&Is. And the EGC recently endorsed the Secretariat's proposed updated strategies to advance P&Is adoption and implementation in Grant Cycle 7 (GC7).
5. P&Is provide Global Fund officials, staff, programs, and resources with essential protections, including:
 - a) Protecting against resource diversion and ensuring maximum resources are directed to Global Fund programs.
 - b) Immunizing the Global Fund from legal process in country.
 - c) Protecting Global Fund property and assets (e.g., grant funds and assets procured using grant funds), "wheresoever located and by whomsoever held," from legal process, seizure, confiscation or interference.
 - d) Ensuring tax and customs duty exemptions and speedy customs clearance.
 - e) Facilitating travel of the Global Fund's governance officials, experts, and staff, to enable in-country engagement on program implementation.
 - f) Enabling the Global Fund to operate with a comparable level of protections as those enjoyed by partner international organizations.
6. The above protections also benefit implementing countries. In particular:
 - a) Maximizing Global Fund resources directed to program implementation saves lives in implementing countries. P&Is protect against having resources diverted to nonprogrammatic purposes, whether costs of defending in-country litigation or payment of taxes or customs duties. Implementing countries also have an interest in avoiding non-compliant expenses related to taxes or duties that ultimately must be repaid or potentially deducted from their allocations.
 - b) Additionally, P&Is can remove administrative bottlenecks associated with the importation of health products, and thus advance timely and effective program implementation.
 - c) In-country missions conducted by the Secretariat also support program implementation. P&Is facilitate these missions by providing critical protections for Global Fund officials, staff and

experts in country, including repatriation rights in times of crisis. These protections are increasingly important considering the political context in certain countries where Global Fund-financed programs are implemented. P&Is also provide for expedited visa issuance, an area where delays in the past have prevented the timely participation of Global Fund officials to country missions.

7. Donor countries also have an interest in conferring P&Is on the Global Fund. The protections P&Is provide also accrue in donor countries – for example, the immunity from legal process and the protection of funds in Global Fund bank accounts. And donor countries' conferral of P&Is on the Global Fund is a clear message of support of the broader effort to expand P&I adoption including in implementer countries.
8. Both the Global Fund and implementing countries bear the costs of not having P&Is. For example:
 - a) Without P&Is, both the Global Fund and implementing countries bear the cost of in- country litigation. This is a substantial risk both in terms of costs of defence and with respect to operations in country. For example, a claimant could sue the Global Fund in a third country because of the size of the Global Fund grant portfolio and the possibility to seize Global Fund grant funds in the country and serve court documents and compel individuals (including Board members and Global Fund staff) through domestic court processes. Litigation, either because of pending matters or adverse decisions, can also prevent the Global Fund from complying with decisions from its governance bodies, and cause tensions with specific expectations or requirements from donors.
 - b) In one implementing country, approximately \$4 million in health products were delayed at a port of entry because domestic authorities failed to timely renew the applicable administrative privileges relating to imports of goods procured through Grant Funds. Ultimately, the health products cleared customs, but with several months delay, and only after the Principal Recipient was charged substantial demurrage costs. As the privileges still have not been renewed, these bottlenecks will continue to occur as additional health products are imported.

Note that 5 b) above states “P&Is provide Global Fund officials, staff, programs, and resources with essential protections.... including Immunizing the Global Fund from legal process in country”. And 8 a) says: “Both the Global Fund and implementing countries bear the costs of not having P&Is. For example: Without P&Is, both the Global Fund and implementing countries bear the cost of in- country litigation. This is a substantial risk both in terms of costs of defence and with respect to operations in country. For example, a claimant could sue the Global Fund in a third country because of the size of the Global Fund grant portfolio and the possibility to seize Global Fund grant funds in the country and serve court documents and compel individuals...through domestic court processes”.

Switzerland is a P&Is country but South Africa is not; however, it has sizeable Global Fund resources through Global Fund supported programs. It's clear therefore why IRD sought to bring changes against the Global Fund in a non-P&Is country.

Watch this space!

The Global Fund will not back down regarding its OIG report. “The Global Fund is of the view that the various IRD entities, and other entities controlled by the same group of people, have engaged in prohibited practices as described in the OIG report, and such practices have enriched IRD and deprived patients and health systems in Pakistan of much needed resources”, a Global Fund spokesperson told The Lancet. But, with IRD management also confirming that it too has no intention of backing down, what

is clear is that sparks will continue to fly until a resolution to the matter can be found: and one of the two parties will not be happy with the final result.

Please do read The Lancet [article](#) for a more detailed summary of the issues concerned!

The Annual Report on Privileges and Immunities (GF/B49/10) should soon be available online at <https://www.theglobalfund.org/en/board/meetings/49/>.

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