

Developing Country NGO Constituency Statements on Key Issues of the 38th Board Meeting

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1. Input into the Development of a Human Rights Crisis Protocol

Protecting human rights and gender equality is a key objective of The Global Fund. Addressing human rights concerns and implementing gender transformative interventions is well-recognized as a necessary investment towards ending the epidemics of HIV, TB and Malaria. Our progress towards this essential objective is negatively impacted by our current inability to adequately respond to human rights crises occurring across the Global Fund portfolio.

The Human Rights Crisis response Protocol under development by the CRG Department is positioned to address this gap. The Protocol provides an opportunity to mitigate against the programmatic and fiduciary risks associated with breaches of human rights principles, by enforcing a Secretariat/OIG coordinated mechanism for responding to programme and access challenges emerging as a result.

We believe the spirit of this document should build upon documents such as the 2014 “Guidance for UN Agencies and Programmes: Preventing and Responding to HIV Related Human Rights Crises,” developed in partnership with UN Agencies, The International Labour Organization (ILO) and The Global Fund¹. As one of the largest investors in health we support the development of a Global Fund-owned Crisis Protocol; one that has the ability to respond to human rights issues across all three diseases.

This guidance is particularly urgent as HIV, TB and Malaria-related human rights crises have increased in recent years². There is a gap of systematic and strategic guidance for adequately

¹ UNDP (2014). Guidance for UN Agencies and Programmes: Preventing and Responding to HIV Related Human Rights Crises. Available Online at: <https://goo.gl/4V47DK>

² The European Union (2017). Shrinking Space for Civil Society: The EU Response. Directorate-General for External Policies Policy Department. Available Online at: <https://Goo.Gl/Widmy>

responding to such crises. Failure to respond in these regards pose a risk to communities and compromise access to programmes and essential community-delivered services, creates potential loss of lives and carries significant reputational risk to the Fund.

Guided by these experiences, we expect that the Global Fund Human Rights Crisis Protocol should include these among other elements:

1. Tailored mechanisms and steps to identify and prevent human rights crises as identified in the initial risks assessments conducted at grant development;
2. Short and long-term actions for addressing crises;
3. Consideration for the risks faced by local communities, organizations, key populations and other indirect local actors as a result of responses or actions taken by the Fund (Do no harm);
4. Key markers (indicators) that will serve to determine a situation as a human rights crisis - within the context and ambit of The Global Fund; and
5. Communications guidance on how The Global Fund, including Board Members, respond to requests for information and commentary from individuals, organizations and the media; as well as guidance for Board Members and governance officials, on speaking for and on behalf of The Global Fund in any official capacity and within a crisis.

We also recommend the following key deliverables:

1. Review and report on the draft and the final version of the Protocol by and to the Strategy Committee around and after its 6th Committee meeting as part of the Board's oversight function into projects and policies impacting strategy implementation and risk – of which human rights and gender is a critical part.
2. A side-event to be organized at the 39th Board Meeting to highlight the results of human rights interventions implemented by Global Fund primary and sub recipients as well as sub-sub recipients. This event will allow the Board and the Secretariat to review the impact and results of Global Fund-supported human rights interventions, their results, efficacy as well as challenges faced in the implementation of Human Rights and Gender protection and promotion programmes.

Substance Implementation

We request the following elements be included as part of the protocol development and implementation.

1. Add the Human Rights Crisis Protocol to the Organizational Risk Register as a component of control and mitigating actions for addressing Risk Area 9: Human Rights and Gender Equality.
2. Engage the OIG in the response coordination in order to carry out its investigative or audit function as may be necessary
3. The OIG monitors and provides an audit of the Secretariat's implementation of the Protocol - within its ambit and at the appropriate time.

2. Annual Report of the Interim Executive Director (GF/B38/08)

Our Constituency expresses sincere gratitude to the Interim Executive Director for steering the Fund through a period of transition, which began on the heels of some uncertainty both within and outside of the Secretariat. We are grateful also for this update that is very informative.

Cofinancing and Grant Making

We want to applaud both the Global Fund and the national governments for mobilizing domestic resources for health. We are however concerned that Upper Lower Middle Income and Upper Middle Income countries have the lowest percent increase over the minimum co-financing requirements. This might speak to the national government resistance to taking over essential programming and impacting transition in multiple countries.

We request that the OIG review of Sustainability Transitioning and Cofinancing, currently underway, provides also an explanation into the rationale for this specific reduction.

On page 4, the report states that most countries have met and exceeded their obligations in co-financing. This meets one financial target and achieves our assumption that cofinancing is linked to programmatic sustainability.

What relationship can we establish between meeting and exceeding co-financing requirements and controlling the epidemics and reducing or eliminating human rights barriers to accessing HIV, TB and Malaria services?

Additionally, as we celebrate gains in domestic contributions, we should not forget that our ultimate goal is eliminating the three diseases. Much more remains to be done, both in directing funds to interventions that impact populations most affected and ensuring that considerations for human rights and gender equality are in play when programs are planned.

The Global Fund Strategy & Fit for Future

Like the Interim Executive Director, we are concerned about work overload at the level of Secretariat staff. Within the reporting on Strategy and KPIs it is evident that staff commitments are multiple and that some Global Fund strategy objectives and KPI-performance are eventually prioritized over others because of heavy workloads. It is our observation that this is a recurring issue and we urge the Secretariat to take heed to issues of staff wellness, less this escalates.

We seek solutions from the Fund Secretariat's management team to institute better prioritization and workflow strategies that would ensure that staff is not constantly overburdened and that performance on essential KPIs is not lagging behind, because of this specific rationale. In this regard we seek additional details on the Fit for the Future review, when its results might be available and how it may potentially address issues like these.

Impact of Eligibility on Finding Missing Cases of TB

We fully support the efforts made by the Fund to move forward the initiative in finding missing TB cases. Identifying TB cases, and treating them early, remains critical for eliminating TB. We however are concerned that Indonesia, which is one of the 8 High-Impact Asian countries and has one of the highest number of missing TB cases worldwide, will become ineligible next year, if the G20 rule is further supported. We therefore encourage the careful review of the Eligibility Policy and call on this review to be sensitive to the progress we have already made in TB.

Decision Point on Venezuela (GF/B37/DP11)

At the 37th Board Meeting (Kigali) the Board approved GF/B37/DP11 Health Situation in Venezuela. The decision came after a vigorous and healthy debate at the Board table and in closed executive sessions. To our best knowledge, this was, as requested, discussed at the 4th and 5th Strategy Committee Meetings.

This report of the Executive Director has no mention of GF/B37/DP11 - whether with regards to discussions, negotiations, research or actions taken or not taken. We express our disappointment in this regard. We also note that GF/B37/DP11 'Health Situation in Venezuela' is not recorded or mentioned in Board Document GF B38 16 'Annual Report on Board Decisions.'

We request feedback from the Interim Executive Director as to why this was omitted from this report as well as the Annual Report on Board Decisions. Was there any work done or follow up from the Secretariat or Board Committee?

We regard this as a humanitarian catastrophe and are disappointed that The Fund has not offered any feasible recommendation, but more so not officially disclosed its incapacity to act, to our constituents and the Board.

Human Rights Crises

We remain deeply concerned as a Constituency about the apparent increases in human rights abuses which have escalated into humanitarian and media crises where Global Fund programmes or the three diseases are negatively impacted. Venezuela, Myanmar with Rohingya peoples, and the detention of people who use drugs in the Philippines, Kenya TB cases and Tanzania come to mind.

As one practical action for control and mitigation in this regard, we have recommended the acceleration and encouraged Board Committee engagement in the development of a Human Rights Crisis Protocol. We believe there is appetite for this and remain at the disposal of the CRG to assist in moving this forward.

Leadership Transition

Lastly, we seek greater clarity from the Interim Executive Director on any transition planning and implementation that will take place as the new ED begins his or her tenure.

We again express our thanks to Marijke Wijnroks, Interim Executive Director. We look forward to a smooth and efficient transfer of power.

3. Office of the Inspector General Progress Report (GF/B38/09)

The Developing Country NGO Delegation thanks the Office of Inspector General for another clear, concise and detailed report.

The OIG report provides useful insight into the work conducted to ensure that Global Fund invests the world's money in the most effective way possible and that the risks to delivering on the Fund's Strategy are identified and addressed.

At the same time, however we are concerned that while OIG reports reflect Management Actions agreed by all parties involved, we seldom see these Actions and response-plans being reflected in reporting of other departments. We also learn of these first and almost only in OIG reports - reports which often carry an air of sensitivity and urgency. We encourage Secretariat

management to speak more openly on OIG reports, their Agreed Management Actions, as well as how these are being responded to both in Geneva and at country level.

4. Risk Management Report (GF/B38/18)

We thank the Chief Risk Officer for this report and for the increased implementation and optimization of risk, particularly through the development and presentation of the Organizational Risk Register. The Register is an optimal system for cataloguing risks and their control measures, however we seek clarity on whether there is country by country breakdown of the results and actions, now presented here in an aggregate way - in clusters .

Kindly describe the response and guidance process provided to country teams on [mitigating] these risks with country-specific context. If such safeguards and processes do not exist, we recommend that they [be] urgently developed.

We also request the CRO's opinion on wambo.org. In the Risk Register, wambo.org is slated as a key risk mitigation strategy for supply chain and procurement challenges. At the same time, the OIG reports significant flaws within the wambo.org platform. Does this still reflect cohesion between the Risk and OIG reports under this risk category and or what changes can be expected in this risk category as it relates to wambo.org.

Lastly, we are grateful to the CRO for clearly outlining the risks related to Human Rights and Gender. At the last Board Meeting, our Delegation highlighted the lack of focus on the risks in this area as a concern. We are however disappointed to see no role for CCMs and community partners in mitigating the risks associated with this objective. To us, this underlines the fact that the space for civil society contributions is shrinking instead of expanding, and we urge a change to this dynamic.

We would like the CRO and the Secretariat to consider a more robust involvement of CCMs and regional and national civil society networks in mitigating the risks associated with human rights barriers. We would also like to be apprised of the roles of the OIG and the CRO in the development and implementation of the new Human Rights Crisis Protocol that is being developed.

5. Annual Report on Privileges and Immunities (GF/B38/15)

We acknowledge the progress reflected in the brief Annual Report on Privileges and Immunities. As presented in the report, dedicated efforts have also led to the increase in the number of ratifications of the P&I Agreement. At the same time we note that since November 2016 the

PIAG and Secretariat's efforts resulted in the signature of the P&I Agreement by 2 additional states (Niger and Senegal). We definitely would like to see more progress and more active Secretariat's role in reaching out countries to ensure that the Global Fund is accorded with privileges and immunities.

Are there specific targets for the number of countries signed / ratified P&I Agreements per year and where, if anywhere, do these targets sit?

We noted that additional proposals presented at the October 2017 EGC meeting include increased advocacy efforts at Board and country levels, including with respect to requests for the hosting of Global Fund sponsored events which could be made subject to the conferral of privileges and immunities to the Global Fund. Such recommendation brings important additional mechanism to increase a number of countries signing the P&I Agreement. At the same time it is critical to not restrict the pool of countries eligible for hosting of Global Fund sponsored events based on this sole criteria, as there might be logistic, programmatic or strategic rational in hosting events in particular countries.

Besides we would like to recommend, that as a number of countries are entering or are in the middle of grant negotiations for the 2018-2020 allocation, we suggest to the GFS to find a mechanism for using these grant negotiations with countries for addressing signing agreements on privileges and immunities to the Global Fund.

6. Evolving Country Coordinating Mechanisms to Align with The Global Fund Strategy (GF/B38/21)

We are in support of the CCM evolution project and the CCM differentiation process, in particular in the revision of the composition of the CCMs to be more representative of affected populations. We also support the proposal that promotes appointment 3-year terms that are aligned with the duration of Global Fund grants.

We would like to see the CCM composition evolving to being more representative of CSOs, key and vulnerable populations. Therefore, within "at least 40% on non-government representation" we would like to propose that at least 60% out of that 40% is represented by CSOs, KPs and youth while the rest of 40 out of 40% be represented by academia, private sector, FBOs – as per country context.

Participation of key and vulnerable populations of the three diseases on the CCM is crucial to steering programs and resources to where they are most needed. However, in many countries

individuals selected for key affected population seats are often under pressure from PRs and others on the CCM to align in decision making and may be limited in their ability to address controversial issues. We recommend that there be an opportunity for technical assistance and independent support to the CCMs which could include advising, supporting and mentoring KP CCM members.

We also encourage continued conversations on the structure of CCMs for countries in transition and for putting mechanisms in place that could embed CCMs at national and local levels for further program oversight and resource mobilization after transitioning. We also recommend that as discussions of innovative financing continue, opportunities for CCMs to function as oversight bodies of blended finance grants be included.

We would like to propose that the CCMs be encouraged to include committee structures for better operationalization and ensure a thorough analysis of issues related to the grant. Such committees could look at the Grant's operational and programmatic performance; compliance of PR and SR/SSR with human rights principles; financial and programmatic risk assessment and mitigation; procurement and supply chain, potential conflicts of interests, etc.

We encourage the team to look at the operations of CCMs in countries where health service provision is decentralized as this has been a stumbling block for the roll out of the GF grants, in some countries. In these scenarios more than one CCM might be needed to oversee grant implementation at the local level.

We also recommend that as discussions of blended financing continue, opportunities for CCMs to function as governing and oversight bodies of blended finance grants/loans are included within the development of its framework.

We are concerned about the discussions around incorporation of CCM budgets into country grants raised in the OPEX discussion .We firmly believe that the use of country allocations for any disease and RSSH should not be allocated to CCMs as these funds are specifically earmarked for programs. The CCM mechanism must remain sufficiently and independently funded in order to sufficiently carry out its oversight function. In this regard, we would like to note that providing funding allocations to CCMs within country allocations should not continue as such an arrangement presents a grave Conflict of Interest in PR - CCM relationship in which the body responsible for grant management and oversight, also makes disbursements for its own function.###