

**IPPF BOARD OF TRUSTEES EXTRAORDINARY MEETING
Held on 2 July 2021 (Virtual Meeting)**

DRAFT MINUTES

Present - Trustees:	In attendance:
Isaac Adewole	Aileen McColgan, Honorary Legal Counsel
Abhina Aher	Mina Barling, Director, External Relations Division
Rosa Ayong-Tchonang	Fadoua Bakhadda, RD, Arab World Region
Kate Gilmore – Chair	Alvaro Bermejo, Director-General
Surakshya Giri	Mariama Daramy-Lewis, Director, People, Organisation & Culture Division
Jacob Mutambo	Tomoko Fukuda, RD, ESEAOR
Sami Natsheh	Manuelle Hurwitz, Director, Programmes Division
Donya Nasser	Eugenia Lopez Uribe, RD, Americas and the Caribbean Region
Aurélia Nguyen	Sonal Mehta, RD, South Asia Region
	Sam Ntelamo, Acting RD, Africa Region
Apologies	Achille Togbeto, Director, Governance & Accreditation
Bience Gawanas	Varun Anand, Director, Finance & Technology Division
Elizabeth Schaffer	Karmen Ivey, Media & Communications Advisor
	Riva Eskinazi, Director, Strategic Partnerships & Development
Absent	Caroline Dickinson, Minute Taker
Ulukbek Batyrgaliev	

Welcome and Introductions

Kate Gilmore, Chairperson, welcomed everyone to the extraordinary meeting of IPPF's Board of Trustees, the purpose of which was to discuss one agenda item only, namely IPPF's action in response to cuts in its funding as communicated by the UK Foreign, Commonwealth and Development Office (FCDO).

1. PROCEDURAL ITEMS

1.1 Apologies for absence and acceptance of proxies

Apologies for absence had been received from Bience Gawanas and Liz Schaffer. It was noted that Bience had given her proxy to Kate Gilmore and Liz had given her proxy to Isaac Adewole. Sami Natsheh advised he would be leaving the meeting early and would give his response to the draft resolution, which had been presented, before leaving the meeting. It was noted that the meeting was quorate.

1.2 Conflicts of Interest

The Chair asked Board members if any had a conflict of interest to declare with regard to the business of this extraordinary Board Meeting. No conflicts of interest were declared. It was noted that while Aurélia Nguyen is employed by GAVI, an international organisation in receipt of FCDO funding, that fact did not create a conflict of interest for her.

1.3 **Adoption of Agenda and Timetable**

The Chair explained that - as the agenda conveyed - the Board would consider what action IPPF could take in response to the FCDO funding cuts after first hearing from the Director-General on the impact of the cuts and from the IPPF Honorary Legal Counsel as to whether it would be advisable and proportionate to take legal action.

It was noted that the Notice of the meeting, agenda and papers had been circulated to Board members within the required timescale.

*The Board **adopted** the agenda and timetable for this meeting.*

2. **IPPF RESPONSE TO FCDO CUTS**

The Board had received in advance of the meeting paper no. BoT/07.21/DOC/1. The document was a Briefing Paper providing background on the FCDO cuts to IPPF funding, including their impact and an explanation of a possible course of legal action including a proposed legal pathway, risk management and communications matters. Annexes to the Paper were included as follows:

1. Proposed Resolution
2. Lord Macdonald QC advice, 18 March 2021
3. Bates Wells advice
4. Cost Estimate
5. Preliminary advice from Edward Fitzgerald QC
6. Draft Risks and Benefits of Decision to Pursue Judicial Review
7. Item pending: draft Pre-Action Letter

2.1 **Context/impact/General Strategy**

The Chair made introductory remarks, advising trustees of the importance of their keeping in mind three key dimensions: Gravity, Principle and Responsibility:

- *Gravity* concerns the catastrophic impacts on the wellbeing of thousands, if not millions, and on the health systems of many UK partner countries, that arise from the UK government's decision to cut funding to IPPF programmes as part of its sudden change of the development assistance target from 0.7% to 0.5% of the UK's gross national income (GNI).
- *Principles* at issue include IPPF's loyalty to the international norms and standards governing official development assistance, such as those enshrined in the Paris Principles for Effective Development Assistance and in the OECD norm of the 0.7%. The decision by the UK government has an immediate effect on IPPF and its ability to deliver its objectives and it sets a grave precedent.
- *Responsibility*, and specifically the responsibilities of the Board. It is the Board's duty to examine the issue through the window of IPPF's charitable objects as laid out in the IPPF Act 1977 and the Regulations. The IPPF Act also sets out the powers, including the legal powers, that the Board shall exercise in defence and fulfilment of those objects. In other words, the only way the Board can weigh possible courses of action in response to the FCDO cuts is in terms of its duties and responsibilities to those charitable objects and within the limits of the powers given to the Board by the Act.

The Chair noted that Section 5, sub section 9 of the IPPF Act, states: *“To promote or oppose any bill, order scheme or application in parliament or before any government, department or authority or tribunal and to prosecute or defend any legal proceedings.”*

In short, the Board is both empowered and, arguably, obliged to take legal action when IPPF’s charitable objects are threatened. This is a statutory obligation of the Board.

The Chair further clarified that the Board was not holding an extraordinary meeting to consider legal action against the UK government because of its decision to reduce its funding to IPPF but because of the manner in which it was done. The Government is entitled to change funding levels, but it must do so lawfully. IPPF whole heartedly disagrees with the logic and consequence of the funding cuts made to its programming and has made those views known publicly. However, expert legal advice received suggests there is a very brief technical window open for legal action on the grounds of the way in which the decision was taken. That legal advice highlights concerns such as the mechanism they used and the lack of parliamentary scrutiny.

Having said that, the Board will also have to consider what such legal action would mean for the Federation and its relationship with the UK government, other donors and stakeholders. Furthermore, we must consider what it means for IPPF to enter into such action alone. For technical reasons, IPPF would have to act quickly, but may wish to seek the support of others in due course.

The Chair noted that the costs of taking this legal action should be considered, including how to do so without depleting IPPF’s ordinary operating income or disturbing approved allocations. Finally, the Chair acknowledged that while IPPF might win the legal challenge at Court, and it might find that the UK government then acts to legislate the reduction of its development assistance target.

The Director General briefed the Board on the impacts of the UK’s funding decisions. The cuts had put IPPF’s ability to conduct complex operations in many countries in different regions of the world under enormous jeopardy. It has translated into the closure of hundreds of clinics and the loss of jobs for thousands of frontline MA staff -- all having an enormous impact in terms of unwanted pregnancies, unsafe abortions and translating into thousands of maternal and newborn deaths and injury. There could hardly be a government decision that would affect IPPF’s operations more severely. The impact goes far beyond the £72 million IPPF has lost directly. It creates enduring instability when a government unilaterally cuts five-year contracts and gives 90 days’ notice to close projects down. Additionally, the cuts made by the FCDO to others, such as UNFPA commodities programme, have deepened the impacts on our MAs, with many being dependent on UNFPA for at least 50% of their commodities, either directly or indirectly. Those cuts will further drive up the price of commodities.

The DG advised that, in his view given the gravity of the impacts, IPPF has an obligation to pursue the legal avenue. Although the size of the FCDO cut was the same size as that lost when the US reintroduced the Global Gag Rule, the impact of the UK’s cuts are far greater. IPPF did not expect the UK government to default on its commitments nor to do so in this sudden and unplanned way. The DG highlighted again the enormity of the impact of these cuts on women and girls specifically including unwanted pregnancies, unsafe abortions and with more lives likely to be lost from this decision than if the country were to go to war.

2.2 Legal Strategy Option

IPPF Honorary Legal Counsel explained that what was proposed was an action for judicial review to challenge the legality of the decision to reduce FCDO funding from 0.7% to 0.5% of GNI and the application of that decision. Legal Counsel stated that this was a respectable course of action from which there were reasonably good prospects of success. IPPF had received advice from its lawyers, Bates Wells. It had also seen the advice from Lord Macdonald QC, of a general nature and helpful to IPPF's confidence that legal action was a plausible course. Preliminary advice had also been received from Edward Fitzgerald QC, a highly respected human rights lawyer, and he too was robust on the prospects of success in a legal challenge. In summary, this was a plausible, respectable, hard edged legal challenge, with good prospects for success, that was entirely appropriate for IPPF to take.

2.3 Risk Management and Communications

The DG emphasised that winning a legal case and winning is not the same thing. Even if the case was upheld, the UK government could then introduce legislation to lawfully lower the development assistance percentage. To win therefore in the broader sense, an effective communications and political strategy is needed to go alongside the legal strategy.

He noted that the financial costs of the legal challenge were set out in Annex 4 of the Briefing Paper received by the Board. These costs were significantly, but not entirely, front-end loaded.

Mina Barling, Director, External Relations, spoke to the Board about the plans for the communication and engagement strategy. The Secretariat would be working with a PR firm (Portland Communications), who have a lot of experience working specifically on judicial reviews. The Secretariat and the PR firm were designing a bipartisan communication strategy to foster public support and mitigate against any negative coverage or retaliatory action that might arise. The costs of the communications strategy were likely to be just under £100,000. The intention is that IPPF promote a dialogue on the matter, with the government, our partners and the broader public.

The DG advised that taxpayers' money would not be used to fund the legal challenge. It would not draw on MA funding or on funding to front-line services. Instead, IPPF would establish a dedicated fundraising channel and fundraise from individuals and private foundations to cover all costs. The Secretariat already had secured the support of one donor who was willing to cover the legal costs as necessary and was open to plugging other gaps.

2.4 Discussion

During discussion trustees thanked the Secretariat for all the work that had been done to reach this stage. Trustees expressed grave concern about the impact of these cuts on the people who need IPPF's services the most. Trustees commented that the process was as important as the outcome, with IPPF winning the moral and legal argument even if the UK government then changes the law. Trustees agreed they needed to be aware that taking such action might trigger intensive scrutiny of IPPF and urged the Board and Secretariat to be prepared for that. The Secretariat, which had also talked to Oxfam, warned that people were likely to brief journalists and others against IPPF, which in turn might trigger an inquiry from the Charity Commission.

In answer to a question about forming alliances with other organisations, the DG explained that the goal is to bring other organisations on board, but that the window for

the legal challenge was too short to involve other organisations from the very start. However, the Secretariat was already in discussion with the MAs most seriously affected by the cuts, and the plan was that they would contribute to the action thus enabling it to be a combination of UK and southern based organisations.

A trustee asked whether there were precedents that could help to inform on how to proceed with the proposed course of action, and to warn of any pitfalls. The DG advised that IPPF itself does not have recent experience in such matters. However, there was experience both within and outside the sector to which it could refer, and advocacy organisations that were used to handling calls for judicial reviews. The most relevant example was an environmental organisation that challenged the government on failing to meet its own environmental standards and they won the case.

In answer to a question about whether the government gave any reasons for their decision, the DG advised that the government had justified it as a technical necessity driven by the debt incurred through Covid, rather than as a political decision. However, no other government had taken such a step. He noted that the UK government had reduced its aid budget but increased its defence budget by twice the amount. The DG recalled that IPPF was not querying the reduction per se. It was querying the way the decision had been made, without involving parliament and without prior consultation with the affected organisations to whom it had contractual obligations.

A trustee asked if it was possible to negotiate with the UK government, especially as the amount of the cuts was so large. The DG advised the Board that the Secretariat had already undertaken considerable dialogue with the FCDO attempting to negotiate the impacts in every possible way but with no success. The DG added that the Secretariat was in ongoing dialogue with Members of Parliament who disagreed with the government's action, and that there was some support for reinstating the 0.7% target within the Conservative Party.

A trustee asked if a more cautious approach could be taken. The DG reiterated that a delay would mean no legal action given that under UK law IPPF had only a short window of time to plead for a judicial review. Judicial reviews must be filed promptly, and not later than three months after the grounds for the claim first arose.

A trustee referred the Board to a previous discussion about IPPF's need to help Member Associations become more sustainable, to help them to reach out within their countries for more funding. The Secretariat was asked if the proposed legal challenge would help MAs become more sustainable, or whether it might undermine the efforts of others in coming forward to fill the gap. The DG was of the view that a legal challenge might help to initiate funding from other sources. For instance, the Danish government had just advised that it would be doubling its funding to IPPF.

A Trustee commented that the way the legal challenge was pitched was very important, coming from a perspective of human rights, emphasising that health is a human right and that the cuts would lead to the loss of many lives. IPPF should also step up its advocacy and engagement and make maximum use of social media, to generate pressure from the countries in which IPPF works. The DG agreed with this and the Director, External Communications advised that this work was ongoing, and that the most effective social media activity had been a Podcast with The Guardian (a UK newspaper), which would be shared with the Board.

A trustee was concerned whether this activity could become all-encompassing for management, and recommended a strong risk management approach, building in milestones and time points for review, to avoid a more general risk to the organisation. IPPF Honorary Legal Counsel assured the Board that judicial reviews are very front loaded, with the most effort involved in issuing the legal challenge. After that it would principally be a matter for the lawyers, with limited engagement from IPPF staff.

3. RESOLUTION

The Chair presented the proposed Resolution to the Board. The text set out that, in support of its charitable purposes, action would be taken to call for a judicial review of suddenly terminating IPPF programmes as a direct result of the UK government's decision to cut development assistance funding from 0.7% to 0.5% GNI.

Additional key points for resolution were as follows:

- The Board would establish a Judicial Review Sub-Committee, comprising Kate Gilmore, Isaac Adewole, Elizabeth Schaffer and Uluk Bayyrgaliev, to oversee and guide the judicial review process. The Chair advised that although Uluk was not able to be present at this meeting, he had consented to joining the Sub-Committee. The Sub-Committee would report back to the Board.
- The necessary evidence and documentation, including Pre-Action correspondence, would be finalized and issued, after review by the Sub-Committee where required.
- If no response, or an unsatisfactory response, was received from the respondent to the Pre-Action notice, within the timeframe set out, IPPF would issue a claim for permission to bring judicial review proceedings.
- The Board would instruct the Secretariat to fund the judicial review proceedings via new, restricted funding.
- IPPF would work with Bates Wells to prepare and submit a serious incident report to the Charity Commission.

A trustee asked for clarification as to whether IPPF was allowed by law to use restricted funding for this purpose. The DG confirmed that it was, and that it would use only restricted funding raised specifically for this purpose.

The IPPF Board of Trustees agreed unanimously to adopt the following Resolution:

(1) The Board of Trustees (BoT), having considered the information set out in the board paper relating to agenda item 1, in particular Annex 6 which explores the risks and benefits of the decision in detail, and being satisfied that proceeding with judicial review is in the charity's best interests, resolve:

- I. to establish:*
 - a. a Judicial Review sub-committee of the Board which shall consist of Kate Gilmore, Isaac Adewole, Elizabeth Schaffer and Uluk Batyrgaliev, to oversee and guide the judicial review process (the **Board Committee**); and*
 - b. a working group of staff to manage the process, with the Honorary Legal Counsel ex-officio (the **Staff Working Group**);*
- II. (in accordance with the BoT's powers of delegation at section 2(22) of the constitution, both of which will work within any guidance and terms of reference provided by the BoT from time to time) to issue the Pre-Action Correspondence*

in the draft form set out at Annex 7, subject to amendments agreed by the Board Committee;

- III. contemporaneously, to prepare or procure any evidence and documentation necessary or desirable to issue a claim for judicial review;*
- IV. if no response, or an unsatisfactory response is received from the respondent (i.e. the decision is not rescinded) within the timeframe set out for a response, IPPF shall issue a claim for permission to bring judicial review proceedings; subject to regular review by the Board Committee and the Staff Working Group working with IPPF's legal advisers to ensure that the continuance of the judicial review proceedings remains in the charity's best interests, including at key decision points identified by the charity's legal advisers (such as, for example, at permission stage).*

(2) The BoT instructs the Secretariat to fund the judicial review proceedings via new, restricted funding and from dedicated crowdfunding or other private sources, rather than from existing funds of the charity which could otherwise be applied directly to the charity's programmatic work in support of its charitable purposes.

(3) The BoT instructs the Board Committee and the Staff Working Group to work with Bates Wells to prepare and submit a serious incident report to the Charity Commission to inform it of the cuts to the charity's funding and its decision to pursue judicial review proceedings.

Board members reiterated their concern on the impact of the FCDO cuts to the work of Member Associations.

Close of meeting

In closing the meeting, the Chairperson thanked the IPPF Honorary Legal Counsel for her wise counsel and the DG and staff for all the work they were undertaking to protect IPPF's interests and enable it to fulfil its charitable purposes. The DG thanked trustees for the deep and meaningful debate and for their aligned position on this matter.

The Chairperson thanked the support staff, IT support, interpreters, minute taker and technicians for their fine support to this meeting.