

## Investigation Report

# Global Fund Grants to Burkina Faso Programme d'Appui au Développement Sanitaire

Non-compliant expenditures: €9,016,028

Cost incurred due to non-compliant expenditures: €11,849

Proposed recoveries: €9,027,877

Categories – Fraud / Non-Compliance with Grant Agreements / Product Issues

GF-OIG-15-019

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 **The Global Fund**

Office of the Inspector General

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# I. Background and Scope

Burkina Faso has a high malaria and tuberculosis burden and a generalized HIV/AIDS epidemic. The Global Fund to Fight AIDS, Tuberculosis and Malaria (Global Fund) is a major contributor to the essential diagnosis and treatment of these three diseases. The Global Fund has signed 17 grants in Burkina Faso across the **three diseases, with a total of €221,048,358<sup>1</sup>** disbursed to date.

Of these grants, the Global Fund has signed four (BUR-809-G08-M, BUR-810-G10-T, BUR-M-PADS, and BFA-T-PADS) **with the Principal Recipient, le Programme d'Appui au Développement Sanitaire (PADS)**. PADS was created by the Ministry of Health in Burkina Faso in 2005 to manage resources mobilized for the National Health Development Plan. The Global Fund signed its first grant agreement, BUR-809-G08-M, with PADS on 07 August **2009**. **A total of €31,708,863** was disbursed to PADS under BUR-809-G08-M. To date, the Global Fund has disbursed **€77,749,586** to PADS.

In October 2009, PADS executed a tender for 6.6 million insecticide-treated nets (PADS Tender) as part of a 2010 mass campaign to distribute insecticide-treated bed nets across Burkina Faso. The PADS Tender was funded under BUR-809-G08-M and was split into thirteen lots, with each lot supplying nets to one of the thirteen administrative regions in Burkina Faso. The winning bidders were required to both procure and deliver the nets in-country, up to the district level, to each of the administrative regions related to each lot.

Long-lasting insecticidal nets (insecticide-treated nets) are factory-treated mosquito nets made with netting material that has insecticide incorporated within or bound around the fibers. The net must retain its effective biological activity without re-treatment for at least twenty World Health Organization (WHO) standard washes under laboratory conditions and three years of recommended use under field conditions.<sup>2</sup> Pursuant to the Standard Terms and Conditions of Global Fund program grant agreements, grant funds may only be used to purchase insecticide-treated nets that are recommended for use by the WHO Pesticide Evaluation Scheme (WHOPES).

The Investigations Unit of the Office of the Inspector General (OIG) initiated an investigation into the procurement of insecticide-treated nets funded by the Global Fund as a result of an email alleging that more than 2 million counterfeit mosquito nets without the required WHOPES recommendation had been acquired and distributed as part of the 2010 mass distribution campaign. The investigation focused on the PADS Tender and on the two local suppliers who allegedly supplied the counterfeit nets, Liz Telecom/Azimmo and Disgefa.

The Global Fund financed 6.45 million (out of a total of 6.6 million) of the insecticide-treated nets purchased under the PADS Tender through a disbursement **of €27.5 million**.<sup>3</sup> The total amount of winning bids for the entire **6.6 million nets was €28.4 million**, which was higher than the amount budgeted under the grant agreement. The Government of Burkina Faso agreed to cover the amount of contracts that were over budget.

The thirteen lots of the PADS Tender were awarded to six bidders. One of the winning bidders was an international bed net manufacturer and the other five winning bidders were wholesalers. Four of the five wholesalers who won contracts in the PADS Tender were based in Burkina Faso. The investigation concentrated on two of the winning Burkinabé wholesalers:

- Liz Telecom/Azimmo won contracts to deliver 1,879,433 Global Fund-financed WHOPES-recommended insecticide **treated nets valued at €8,915,655**.

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<sup>1</sup> Most disbursements to PADS were made in Euro. For disbursements made in U.S. Dollars, the Euro equivalent was used to determine the full disbursement amount noted in this report. The Euro equivalent was based on the foreign currency exchange rates in effect on the date of the disbursement to PADS.

<sup>2</sup> Insecticide-Treated Mosquito Nets: A WHO Position Statement, WHO Global Malaria Programme, p. 2, August 2007, found at <http://www.who.int/malaria/publications/atoz/itnspospaperfinal/en/>, accessed on 04 September 2014.

<sup>3</sup> All Disbursements under BUR-809-G08-M to Burkina Faso were made in Euros (€) while expenditures incurred by the recipients of the funds were typically in West African CFA Francs (FCFA). This report describes Global Fund disbursements and recipient expenditures in Euros. **The FCFA is guaranteed by the French treasury and has a fixed exchange rate of €1=FCFA 655.957**. BCEAO - Histoire du Franc CFA, available at <http://www.bceao.int/Histoire-du-Franc-CFA,55.html>, accessed 04 February 2014.

- Disgefa won contracts to deliver 869,250 Global Fund-financed WHOPES-recommended insecticide-treated nets valued at **€3,310,213**.

The OIG worked in close collaboration with the Office of Inspector General for the United States Agency for International Development (USAID-IG) in the investigation of this case. At the request of USAID-IG, the OIG postponed publication of its findings pending the results of USAID-IG's criminal investigation, in coordination with the U.S. Department of Justice, into the supply of counterfeit nets to Burkina Faso. This was done to allow the OIG to assess any relevant additional evidence and to avoid impeding the ongoing criminal investigation. On 29 October 2015, the U.S. **Attorney's Office**, Southern District of New York, unsealed an indictment against the head of Liz Telecom/Azimmo for a fraudulent scheme to obtain payment for counterfeit mosquito nets.

## II. Executive Summary

The OIG investigation confirmed that two Burkinabé wholesalers, Liz Telecom/Azimmo and Disgefa, supplied counterfeit bed nets that did not have the requisite WHOPEs-recommendation. The investigation revealed that these counterfeit nets were substandard as they were not properly treated with insecticide.

Liz Telecom/Azimmo won contracts to provide 1,876,433 Global Fund-financed WHOPEs-recommended insecticide-treated nets. However, Liz Telecom/Azimmo only purchased 50,000 WHOPEs-recommended insecticide-treated nets and delivered 1,826,433 Global Fund-financed counterfeit nets which did not have the required WHOPEs recommendation and were also substandard. The value of the substandard Liz-Telecom/Azimmo supplied nets financed by the **Global Fund is €8,639,028.09**.

Disgefa was awarded contracts to deliver 869,250 Global Fund-financed WHOPEs-recommended insecticide-treated nets but only delivered 769,250 of them. Disgefa delivered 100,000 counterfeit nets, which did not have the required WHOPEs-recommendation and were also substandard. The **value of these substandard nets financed by the Global Fund is €377,000**.

In 2012, the Global Fund Secretariat was forced to take action in order to minimize the impact of the public health risk caused by the delivery of substandard nets in Burkina Faso. To mitigate the health risks, the Global Fund Secretariat inventoried the undistributed nets remaining from the 2010 mass distribution campaign. In addition, the Secretariat collected a sample of undistributed nets from the 2010 mass distribution campaign for quality testing. The cost incurred by the Global Fund to **inventory and quality test the undistributed nets was €11,849.38**.

### Root Causes

The Global Fund Secretariat did not exercise sufficient oversight of the Principal Recipient in its approval of the PADS Tender. Nor did the Secretariat have a mechanism in place that would trigger enhanced oversight, such as requiring the review and guidance of a procurement expert for large-value procurements like the PADS Tender. In addition, the Principal Recipient did not comply with the program grant agreement with regard to procurement practices by setting tender specifications that facilitated the award of tenders to bidders that did not possess the ability to successfully perform the contracts. Specifically, the PADS Tender did not require bidders to prove that they had experience with prior executions of tenders either of a similar nature or similar financial volume.

In addition, the requirement of local delivery of the nets to the district level significantly impeded the award of contracts to international net manufacturers. Furthermore, the PADS Tender did not require bidding wholesalers to obtain an attestation from the manufacturers indicating that: (a) the manufacturer had the capacity to produce the specific number of nets being bid on; and (b) the manufacturer could produce and deliver the necessary number of nets within the required time-frame.

### Actions Already Taken

The Global Fund Secretariat was quick to implement remedial controls once they were informed in May 2012 of the existence of counterfeit and substandard nets in Burkina Faso. With respect to the **OIG's** findings and key issues raised in this report, the Secretariat has also taken a number of significant actions regarding Global Fund grants to Burkina Faso.

To date, the Secretariat has implemented the following measures with regard to the counterfeit and substandard nets supplied during the 2010 mass distribution campaign:

- In May 2012, a Task Force was created to develop a strategy to contain the public health risk and to mitigate any damage connected to the distribution of substandard nets in Burkina Faso.
- Quality testing of the remaining bed nets was conducted and the results confirmed that the counterfeit nets were substandard.

- In October 2012, 150,000 nets were procured through Voluntary Pooled Procurement and were delivered to Burkina Faso in April 2013 to replace the substandard and counterfeit nets remaining from the 2010 mass distribution campaign.
- A subsequent mass distribution campaign was undertaken to replace the substandard nets in use by the population with quality nets. A total of 9,273,750 WHOPES-recommended nets were procured through Voluntary Pooled Procurement in December 2012. The distribution to the population was completed in November 2013.

In addition, the Global Fund Secretariat engaged with the relevant in-country stakeholders and adopted additional and enhanced precautionary measures covering the entire Burkina Faso portfolio in order to safeguard grant funds and reduce procurement and financial risks:

- Since February 2012, the procurement of health products for the HIV and malaria grants was transferred to the Pooled Procurement Mechanism and to the Global Drug Facility, a procurement partner of the Global Fund, for the tuberculosis grant.
- Since October 2012, an independent, international fiscal agent has been retained to verify all Principal Recipient expenditures and advancements prior to payment being made.
- Since September 2013, all sub-recipients operate under a restricted cash policy. For activities that require advances and fixed costs, no subsequent disbursements are made until the supporting documentation for previous disbursements has been verified.

#### Agreed Management Actions

As a result of its investigative findings, the OIG worked closely with the Secretariat to formulate actions to be implemented as set out in Section 5:

- **The Secretariat will update its ‘Guide to Global Fund Policies on Procurement and Supply Management’ to clarify that pre-shipment testing for nets is required under current Quality Assurance requirements, reflecting Section C of the Operational Policy Note on ‘Implementing the Quality Assurance Policies for Pharmaceutical, Diagnostics and Other Health Products’ (dated 10 November 2014).**
- **To address the issues of bidders’ relevant experience and the appropriateness of tender specifications in procurements, the Secretariat will identify criteria to trigger enhanced oversight at both Secretariat and implementer levels, and will update Global Fund policies and guidelines accordingly.**
- Based on the findings of this report, the Secretariat will finalize and pursue, from all entities responsible, an appropriate recoverable amount. This amount will be determined by the Secretariat in accordance with its evaluation of applicable legal rights and obligations and associated determination of recoverability.

### III. Findings and Agreed Management Actions

#### 01 Counterfeit and Substandard Nets

##### Liz Telecom/Azimmo

Liz Telecom is a Burkinabé company that was founded in 2008 as a distributor of IT equipment. Azimmo is a Burkinabé company founded in 1997, and specializes in construction and real estate. Liz Telecom and Azimmo formed a partnership in their bids for the PADS Tender. Neither Liz Telecom nor Azimmo had any previous experience procuring insecticide-treated nets. Groupe Aliz Holdings owns both Liz Telecom and Azimmo.

Liz Telecom/Azimmo, submitted bids for all thirteen lots of the PADS Tender to supply 6.6 million WHOPES-interim<sup>4</sup> recommended DAWAPlus 2.0 brand name insecticide-treated nets (DAWAPlus nets). At the time of the PADS Tender, Tana Netting manufactured DAWAPlus nets in Thailand. Tana Netting is the only company authorized to manufacture and sell WHOPES-recommended DAWAPlus nets.

Liz Telecom/Azimmo won four lots of the PADS Tenders to provide 2,023,100 insecticide-treated nets. This comprised of 679,950 DAWAPlus nets to the Boucle du Mouhoun region (lot 1); 536,750 DAWAPlus nets to the Centre Est region (lot 3); 559,050 DAWAPlus nets to the Nord region (lot 10); and 247,350 DAWAPlus nets to Sud Ouest region (lot 13). The Global Fund funded 1,876,433 of these nets. The total value of the contracts awarded to Liz Telecom/Azimmo to be funded by the Global Fund was **€8,915,655**.

On 11 March 2010, Liz Telecom/Azimmo ordered 100,000 DAWAPlus insecticide-treated nets from Tana Netting. After Tana Netting informed Liz Telecom/Azimmo that they could not deliver the nets until 16 July 2010, Liz Telecom/Azimmo changed their order to 50,000 DAWAPlus nets. Liz Telecom/Azimmo claimed that they would order an additional 50,000 DAWAPlus nets once the first container of nets was delivered.

On 12 April 2010, Liz Telecom/Azimmo signed contracts with PADS to provide insecticide-treated nets for lots 1, 3, 10 and 13. Liz Telecom/Azimmo never informed Tana Netting that they had won four lots in the PADS Tender to provide 2,023,100 DAWAPlus nets.

On 09 July 2010, Tana Netting shipped 50,000 DAWAPlus insecticide-treated nets to Liz Telecom/Azimmo in Ouagadougou. These are the only nets that Tana Netting ever sold to Liz Telecom/Azimmo.

Tana Netting is the sole authorized manufacturer of DAWAPlus nets. At the time of the PADS Tender, this manufacturing took **place exclusively in Tana Netting's factory in Thailand**. During the course of the investigation, the OIG found an email from an international freight company addressed to **PADS' Chief of Procurement**, regarding eight shipments of nets supplied by Liz Telecom/Azimmo. The shipping information found in this email showed that of the eight shipments of alleged DAWAPlus nets, only one shipment originated from Thailand. According to the bill of lading number listed in the email, the nets shipped from Thailand were the same nets that Tana Netting sent to Liz Telecom/Azimmo in July 2010. The other seven shipments of 8,970 bales of nets each originated from Shanghai, China.

The PADS Tender required that the insecticide-treated nets be delivered in-country within four months of signing contracts with the winning bidders. As mentioned above, Liz Telecom/Azimmo bid to provide more than six million DAWAPlus insecticide-treated nets but never inquired into Tana **Netting's capacity to produce DAWAPlus** nets. At the time of the PADS Tender, it would have taken Tana Netting six months to produce two million DAWAPlus nets and a year and a half to produce six million. Therefore, Tana Netting did not have the capacity to provide two million nets, let alone more than six million nets, in the time frame required by the PADS Tender.

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<sup>4</sup> For long-lasting insecticidal mosquito nets, the World Health Organization may – pending the completion of long-term studies that may be required to fully evaluate such long lasting insecticide treated nets and subject to certain conditions being met – issue an interim recommendation for the use of such long-lasting insecticidal mosquito nets for malaria prevention and control. Report of the Twelfth WHOPES Working Group, p. i-ii, 08-11 December 2008.

One indication that Liz Telecom/Azimmo did not intend to provide genuine DAWAPlus nets, is found in **Liz Telecom/Azimmo's submission** for the PADS Tender. The submission claimed that Liz Telecom/Azimmo would provide nets that are packed in bales of one hundred nets per bale. The OIG investigation identified that, in fact, the alleged DAWAPlus nets provided by Liz Telecom/Azimmo were packed in bales of one hundred. However, Tana Netting packages DAWAPlus nets in bales of fifty, not bales of one hundred.

Further, evidence shows that Liz Telecom/Azimmo knew that they were providing counterfeit and substandard nets. Liz Telecom/Azimmo purchased the counterfeit and substandard nets supplied for the mass distribution campaign for a fraction of the price it would have cost to purchase WHOPEs-recommended insecticide-treated nets. At the time of the PADS Tender, the average price the Global Fund paid per net for a WHOPEs-recommended insecticide-treated net was **approximately €3.41. The investigation uncovered that Liz Telecom/Azimmo paid as little as € 0.34** for the counterfeit and substandard nets supplied for the 2010 mass distribution campaign. In addition, despite bidding to provide nets manufactured in Thailand, Liz Telecom/Azimmo purchased the counterfeit and substandard nets from a Chinese manufacturer.

In April 2012, the OIG visited eight storage facilities in three of the four regions supplied by Liz Telecom/Azimmo. The OIG identified approximately 22,500 suspected counterfeit DAWAPlus nets from the 2010 mass distribution campaign remaining in storage facilities in the Liz Telecom/Azimmo-supplied regions of Boucle de Mouhoun, Nord, and Centre Est.<sup>5</sup>

The OIG determined the approximate amount of suspected counterfeit DAWAPlus nets remaining from the 2010 mass distribution campaign by identifying suspected counterfeit DAWAPlus bale bags and then counting the number of suspected counterfeit DAWAPlus bale bags that remained in each storage facility visited by the OIG. Tana Netting confirmed that the suspected counterfeit nets and bale bags identified by the OIG in the storage facilities in the Liz Telecom/Azimmo-supplied regions were indeed counterfeit DAWAPlus nets and bale bags.

While Liz Telecom/Azimmo submitted invoices to PADS for 1,876,433 Global Fund-financed WHOPEs-recommended insecticide-treated nets, Liz Telecom/Azimmo only purchased 50,000 legitimate WHOPEs-interim recommended DAWAPlus nets. There is no evidence that Liz Telecom/Azimmo provided nets from any other WHOPEs-recommended manufacturer.

Therefore the OIG finds that Liz Telecom/Azimmo delivered 1,826,433 Global Fund-financed counterfeit DAWAPlus nets. Furthermore, due to the counterfeit nature of the nets delivered by Liz Telecom/Azimmo, the nets did not have the requisite WHOPEs-recommendation, and thus were not in compliance with Article 19(j) of the Standard Terms and Conditions of the Global Fund Round 8 Malaria Program Grant Agreement.

### Disgefa

Disgefa, a Burkinabé company, markets and sells pharmaceutical products.

Disgefa submitted bids for the PADS Tender for lots 4 and 6 to provide 869,250 brand-named WHOPEs-recommended insecticide-treated nets, which were manufactured by an international net manufacturer (Net Manufacturer A). Disgefa won bids to provide 869,250 Global Fund-financed insecticide-treated nets for two administrative regions in Burkina Faso, Centre Nord (lot 4: 565,900 nets) and Centre Sud (lot 6: 303,350 nets). The total value of the contracts awarded to Disgefa was **€3,310,213.**

On 12 April 2010, Disgefa signed contracts with PADS to provide insecticide-treated nets for lots 4 and 6.

In 29 April 2010, Disgefa requested to change net suppliers from Net Manufacturer A to provide WHOPEs-recommended insecticide-treated nets from another international bed net manufacturer (Net Manufacturer B). Disgefa claimed the change of suppliers was necessary because Net Manufacturer A could not provide the nets within the required time frame.

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<sup>5</sup> See Annex B.01: Counterfeit DAWAPlus Nets Found in Liz Telecom/Azimmo-Supplied Regions.

**In October 2010, the Burkina Faso Ministry of Health approved Disgefa's request to change** from Net Manufacturer A to Net Manufacturer B. On 16 November 2010, Disgefa signed an amended contract with PADS reflecting this change in net manufacturer.

Disgefa agreed to supply 869,250 Global Fund-financed WHOPES-recommended insecticide-treated nets to two regions in Burkina Faso. Disgefa submitted invoices to PADS that reflect that Disgefa obtained and distributed 869,250 WHOPES-recommended insecticide-treated nets. However, Net Manufacturer B only supplied 769,250 nets to Disgefa. Moreover, there is no evidence to indicate that Disgefa purchased the remaining 100,000 nets from any WHOPES-recommended net manufacturer. Disgefa delivery receipts show that Disgefa delivered 98,447 DAWAPlus nets.<sup>6</sup> Tana Netting never had a contractual or other relationship with Disgefa and never sold any DAWAPlus nets to Disgefa.

The OIG visited six storage facilities in the two regions supplied by Disgefa and identified approximately 72,200 suspected counterfeit DAWAPlus nets from the 2010 mass distribution campaign remaining in storage facilities in the Disgefa-supplied regions of Centre Nord and Centre Sud.<sup>7</sup> The OIG determined the approximate amount of suspected counterfeit DAWAPlus nets remaining from the 2010 mass distribution campaign by identifying suspected counterfeit DAWAPlus bale bags and then counting the number of suspected counterfeit DAWAPlus bale bags that remained in each storage facility visited by the OIG. Tana Netting confirmed that the suspected counterfeit nets and bale bags identified by the OIG in the Disgefa-supplied regions were indeed counterfeit DAWAPlus nets and bale bags.

Disgefa stated that they were only able to purchase and deliver 769,250 nets from a WHOPES-recommended manufacturer. This left a gap of 100,000 nets that Disgefa needed to deliver. According to Disgefa, PADS instructed Disgefa to contact Liz Telecom/Azimmo. Disgefa was told by PADS that Liz Telecom/Azimmo had already delivered more than two million nets to PADS and that Liz Telecom/Azimmo had extra nets.

According to Disgefa, Liz Telecom/Azimmo directly delivered 98,422 alleged DAWAPlus nets on behalf of Disgefa. Disgefa did not provide any explanation to the OIG as to the source of the remaining 1,558 nets.

Disgefa supplied no documents to the OIG to support these claims.

Therefore, the OIG concludes that Disgefa delivered 100,000 Global Fund-financed counterfeit DAWAPlus nets. Furthermore, due to the counterfeit nature of the nets delivered by Disgefa, the nets did not have the requisite WHOPES-recommendation, and thus were not in compliance with Article 19(j) of the Standard Terms and Conditions of the Global Fund Round 8 Malaria Program Grant Agreement.

#### The Counterfeit Nets Delivered by Liz Telecom/Azimmo and Disgefa Are Substandard

The OIG conducted a mission in cooperation with the Office of the Inspector General, the independent law enforcement branch of the United States Agency for International Development (USAID-IG), which is based in Washington, D.C., and the United States Centers for Disease Control and Prevention (CDC). In April 2012, the OIG, USAID-IG and the CDC as a joint team visited storage facilities, supplied by Liz Telecom/Azimmo and Disgefa that still contained undistributed nets from the 2010 mass distribution campaign. Three of the four Liz Telecom/Azimmo-supplied regions were visited and both of the Disgefa-supplied regions were visited.

The joint team visited fourteen storage sites in five of the administrative regions of Burkina Faso where Liz Telecom/Azimmo and Disgefa supplied nets. Custodians at these locations identified the nets remaining from the 2010 mass distribution campaign. In addition, the net bags had specific logos that identified them as being part of the 2010 mass distribution campaign.<sup>8</sup>

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<sup>6</sup> See Annex B.03: Disgefa Delivery Receipts.

<sup>7</sup> See Annex B.02: Counterfeit DAWAPlus Nets Found in Disgefa-Supplied Regions.

<sup>8</sup> See Annex B.01: Counterfeit DAWAPlus Nets Found in Liz Telecom/Azimmo-Supplied Regions and Annex B.2: Counterfeit DAWAPlus Nets Found in Disgefa-Supplied Regions.

The joint team seized seventy-four suspected counterfeit DAWAPlus nets and net bags from storage facilities in the Liz Telecom/Azimmo and Disgefa-supplied regions. In addition, the team took photographs of suspected counterfeit DAWAPlus bale bags and net bags in the Liz Telecom/Azimmo and Disgefa-supplied storage facilities.

Experts from Tana Netting examined five of the suspected counterfeit DAWAPlus nets and net bags that the joint team seized from the Liz Telecom/Azimmo and Disgefa-supplied regions and determined that the nets and net bags that they reviewed were counterfeit. In addition, an expert from Tana Netting reviewed twenty-five photographs of suspected counterfeit DAWAPlus bale bags and net bags taken in the storage facilities visited by the joint team and determined that the photographs depicted counterfeit DAWAPlus bale bags and net bags. The joint team identified approximately 94,700 counterfeit DAWAPlus nets: approximately 72,200 in the Disgefa-supplied regions and approximately 22,500 at the Liz Telecom/Azimmo-supplied regions.

The CDC undertook testing of a sample of counterfeit DAWAPlus nets seized from the Liz Telecom/Azimmo and Disgefa-supplied regions and found that the counterfeit nets did not have the required amount of the insecticide deltamethrin.

On learning that Global Fund grant money had been used to purchase counterfeit and substandard nets in Burkina Faso, the Global Fund carried out quality assurance testing of the stocks of nets remaining from the 2010 mass distribution campaign. The quality assurance testing implemented by the Global Fund confirmed that the counterfeit DAWAPlus nets were not properly treated with insecticide.

In addition to the testing, during the in-country mission the joint team learned from staff at the storage facilities and from several end-users that the quality of the nets was poor. For example, end-users from the regions supplied by Liz Telecom/Azimmo and Disgefa reported that the nets were not durable, did not repulse or kill mosquitos and that mosquitos could land on the nets. In addition, one end-user reported that some of the nets had a very strong odor and caused a slight burning sensation when they came into contact with skin. Furthermore, in January 2012, the Head of the Liz Telecom/Azimmo partnership was questioned by a Burkina Faso Parliamentary Investigation Commission about the negative effects (i.e. itchiness, suffocation) that the nets Liz Telecom/Azimmo supplied during the 2010 mass distribution campaign had on the population. The Head of the Liz Telecom/Azimmo partnership responded that he had provided WHO-recommended nets.

At the time of the PADS Tender, PADS did not have the capacity or the funds to quality test the nets procured for the mass distribution campaign. Because insecticide-treated nets for Burkina Faso are now procured through the Pooled Procurement Mechanism, the nets are subject to pre-shipment quality testing.

Currently pre-shipment quality assurance testing of Global Fund-financed insecticide-treated nets is only conducted in a number of countries.

***Agreed Management Action 1: The Secretariat will update its 'Guide to Global Fund Policies on Procurement and Supply Management' to clarify that pre-shipment testing for nets is required under current Quality Assurance requirements, reflecting Section C of the Operational Policy Note on 'Implementing the Quality Assurance Policies for Pharmaceutical, Diagnostics and Other Health Products' (dated 10 November 2014).***

## **02 Structure of the PADS Tender Put Global Fund Monies at Risk**

While the investigation uncovered no evidence that international bed net manufacturers were specifically excluded from bidding on the PADS Tender, certain aspects of the PADS Tender provided an advantage to local Burkinabé companies and consequently hindered the award of contracts to international bed net manufacturers. The structure and specification of the PADS Tender not only hindered the award of contracts to international net manufacturers, it also facilitated the award of tenders to less experienced bidders, which resulted in the delivery of substandard nets and placed Global Fund monies at risk.

## The PADS Tender Required Distribution In-Country

The decision to divide the procurement into thirteen lots was extensively discussed during the grant negotiation phase. PADS reasoned that the risk of suppliers failing to deliver on time and failing to manage storage for the nets was higher if the tender was issued as one lot, rather than split into multiple lots.

**Given the country's inability to store such a large quantity of nets in one central location, PADS** decided to require the suppliers to both procure and deliver the insecticide-treated nets in-country to the thirteen administrative regions.

There were twenty bidders in the PADS Tender. Ten of the bidders were local Burkinabé wholesalers, six were wholesalers from outside Burkina Faso and four were international bed net manufacturers. The bids were awarded to six bidders. Of the winning bidders, four were local Burkinabé wholesalers, one was a wholesaler based in Belgium and one was an international bed net manufacturer who won two lots to deliver nets to the two urban centers of Burkina Faso (Ouagadougou and Bobo Diolosso). These centers did not present the same difficulties as the delivery of nets to the rural or remote areas of Burkina Faso. Ten of the thirteen lots in the PADS Tender were awarded to local Burkinabé wholesalers. **Of the €28,242,062 total contract value of the PADS Tender, €19,960,975 was awarded to local Burkinabé wholesalers.**

Given that the vast majority of the PADS Tender was awarded to local Burkinabé wholesalers, the OIG concludes that the requirement of delivery of the nets to the district levels in Burkina Faso likely hindered the selection of international net manufacturers. Such manufacturers would have faced more difficulties delivering their products to the district levels without a previously established local company presence in Burkina Faso.

The OIG finds that the requirement of local delivery of the nets to the district level impeded the award of contracts to international net manufacturers in the PADS Tender. This facilitated the selection of local companies, like Liz Telecom/Azimmo and Disgefa, that had little or no experience in the supply and delivery of insecticide-treated nets to win contracts to provide almost three million nets.

## Failure to Require Experienced Bidders

The Round 8 Malaria Program Grant Agreement required that grant recipients only award contracts to contractors who have the ability to successfully perform the contract. The 2009 Global Fund procurement policy recommended that Global Fund-financed procurements be conducted in **accordance with guidelines as outlined in the WHO's Operational Principles for Good Pharmaceutical Procurement**. Those guidelines state that one of the four strategic objectives of pharmaceutical procurement includes the selection of reliable suppliers of high quality products.

The 2010 PADS Tender, however, did not require bidders to prove that they had experience with prior executions of tenders of a similar nature, or similar financial volume.

## Manufacturer's Authorization Was Inadequate

**The PADS Tender required wholesalers to provide a manufacturer's authorization (authorisation du fabricant/constructeur), yet the PADS Tender did not provide any specifications as to the form and substance of the authorization.** Specifically, the PADS Tender did not require bidding wholesalers to obtain an attestation from the manufacturers indicating that: (a) the manufacturer had the capacity to produce the specific number of nets being bid on, and (b) the manufacturer could produce and deliver the required number of nets within the required time frame.

**The failure to require such attestations as part of the manufacturer's authorization facilitated the supply of counterfeit nets because information critical to the successful delivery of DAWAPlus nets by Tana Netting was omitted from the manufacturer's authorization.** Liz Telecom/Azimmo, obtained a **legitimate manufacturer's authorization from Tana Netting, however, the authorization did not include any reference to the volume of nets or the delivery schedule.** In August 2009, Liz Telecom/Azimmo contacted Tana Netting regarding pricing for DAWAPlus insecticide-treated nets, in relation to an upcoming tender to be conducted by the Government of Burkina Faso. Liz

Telecom/Azimmo informed Tana Netting that they were interested in purchasing approximately 600,000 nets, which is significantly less than 6.6 million nets Liz Telecom/Azimmo bid to supply under the PADS Tender. Liz Telecom/Azimmo never informed Tana Netting that they had won any lots to provide nets in the PADS Tender in April 2010.

The failure to require specific attestations from net manufacturers that they could produce the required number of nets in the requisite period facilitated the supply of counterfeit and substandard nets. Today, given changes to Global Fund policies, processes and procurement mechanisms, as a practical matter and for efficiency, such large procurements would be encouraged to be done using the Pooled Procurement Mechanism.

### 03 Fiduciary Controls Related to the Procurement of Insecticide-Treated Nets

The investigation confirmed that the Global Fund Secretariat did undertake some level of oversight in respect to the original tender process and the specifications included in the tender materials. As part of this oversight, the Secretariat reviewed the PADS Tender specifications prior to the launch of the tender, requested the assistance of the Local Fund Agent to review the PADS Tender results, and then asked the Pharmaceutical Management Advisory Services team of the Global Fund Secretariat to review the Local Fund Agent's report on the results of the PADS Tender.

After the tender was awarded, the Local Fund Agent explicitly recommended to the Secretariat that PADS follow up with the international bed net manufacturers, to ensure that they had the capacity to produce the millions of nets that were bid on their behalf. There is no evidence that the Secretariat communicated this recommendation to PADS and there is no evidence that PADS contacted the international bed net manufacturers. During the OIG investigation, Tana Netting confirmed it did not have the requisite production capacity to supply the two million nets to Liz Telecom/Azimmo for the 2010 mass distribution campaign.

The Secretariat did not **challenge PADS' decision to** exclude a requirement of prior experience as an evaluation criterion in the PADS Tender. By not including this requirement, two inexperienced companies, Disgefa and Liz Telecom/Azimmo, were able to win high-value contracts that they fulfilled by delivering counterfeit and substandard products.

The OIG notes that after the PADS Tender had been conducted, the Pharmaceutical Management Advisory Services Team, at the request of the Global Fund Secretariat, reviewed the results of the **Local Fund Agent's PADS Tender analysis**. Based on advice from the Pharmaceutical Management Advisory Services Team, the Global Fund Secretariat instructed PADS to include penalty clauses in the contracts with winning bidders for late delivery of the nets. The penalty clauses for late delivery were added to the contracts, in an effort to mitigate the fact that PADS did not ask bidders to demonstrate previous experience with tenders of a similar nature or similar financial volume.

However, it should be noted that the Global Fund Secretariat did not seek guidance from the Pharmaceutical Management Advisory Services Team during the **Secretariat's** review and approval of the PADS Tender requirements. The high-value PADS Tender procured over six million insecticide-treated nets at a total price of €28,424,062. There was no evidence that the Secretariat sought assistance of a procurement expert in approving the specifications of the PADS Tender.

*Agreed Management Action 2: To address the issues of bidders' relevant experience and the appropriateness of tender specifications in procurements, the Secretariat will identify criteria to trigger enhanced oversight at both Secretariat and implementer levels, and will update Global Fund policies and guidelines accordingly.*

### 04 Non-Compliant Expenditures and Related Costs

#### Non-compliant Expenditures: Substandard Nets

The OIG calculated the non-compliant expenditures incurred as a result of the counterfeit, non-WHOPES recommended nets delivered by Liz Telecom/Azimmo by multiplying the average price per net by the number of non-WHOPES recommended nets delivered by Liz Telecom/Azimmo and

financed by the Global Fund. The average price of the nets provided by Liz Telecom/Azimmo, €4.73, was determined by dividing the final contract price paid by the Global Fund, after late delivery fees were deducted, for the nets supplied by Liz Telecom/Azimmo (€8,869,114.40) by the total amount of Global Fund-financed nets Liz Telecom/Azimmo supplied (1,876,433). Liz Telecom/Azimmo delivered 1,826,433 Global Fund-financed counterfeit nets that did not have the required WHOPEs recommendation and were also substandard. Therefore, the total cost of these substandard nets financed by the Global Fund is €8,639,028.09.

Figure 1: Non-compliant expenditures related to counterfeit and substandard nets supplied by Liz Telecom/Azimmo

Liz Telecom/Azimmo Lots		Units (Nets)	Price (EUR)
Lot 1		533,283 <sup>9</sup>	2,684,266.23
Lot 3		536,750	2,645,637.43
Lot 10		559,050	2,454,721.06
Lot 13		247,350	1,084,489.68
<b>Total</b>		<b>1,876,433</b>	<b>8,869,114.40</b>
Average Unit Price of Nets $8,869,114.40 / 1,876,433 =$			4.73
Units Financed by the Global Fund		1,876,433	
Legitimate DAWAPlus nets delivered		- 50,000	
Counterfeit nets that were purchased by the Global Fund		1,826,433	
<b>Total Non-Compliant Expenditures <math>1,826,433 \times 4.73 =</math></b>			<b>8,639,028.09</b>

The OIG calculated the ineligible expenditures incurred as a result of the counterfeit, non-WHOPEs recommended nets delivered by Disgefa by multiplying the average price per net by the number of non-WHOPEs recommended nets delivered by Disgefa. The average price of the nets provided by Disgefa, €3.77, was determined by dividing the final contract price paid by the Global Fund, after late delivery fees were deducted, for the Disgefa lots in the PADS Tender (€ 3,276,069.19) by the total amount of Global Fund-financed nets Disgefa supplied (869,250). Disgefa delivered 100,000 Global Fund-financed counterfeit nets that did not have the required WHOPEs recommendation and were also substandard. Therefore, the total value of these substandard nets financed by the Global Fund is €377,000.

Figure 2: Non-compliant expenditures related to counterfeit and substandard nets supplied by Disgefa

Disgefa Lots		Units (Nets)	Price (EUR)
Lot 4		565,900	2,120,936.31
Lot 6		303,350	1,155,132.88
<b>Total</b>		<b>869,250</b>	<b>3,276,069.19</b>
Average Unit Price of Nets $3,276,069.19 / 869,250 =$			3.77
Number of Counterfeit Nets provided by Disgefa		100,000	
<b>Total Non-Compliant Expenditure <math>100,000 \times 3.77 =</math></b>			<b>377,000.00</b>

#### Expenses Incurred by the Global Fund Secretariat as a Direct Result of Non-Compliant Expenditures

In May 2012, after being notified by the OIG that counterfeit and substandard nets had been delivered as part of the 2010 mass distribution campaign, the Global Fund Secretariat took action to mitigate the public health risk caused by the purchase and delivery of Global Fund-financed, counterfeit and substandard nets to the people of Burkina Faso.

<sup>9</sup> Liz Telecom/Azimmo won four lots in the PADS Tender to provide 2,023,100 insecticide-treated nets. However, because the PADS Tender was over budget, the cost for the nets for Lot 1 was divided, with the Global Fund financing 533,283 nets and the government of Burkina Faso financing 146,667 nets.

As part of the effort to manage the public health risk caused by the substandard nets distributed in Burkina Faso, the Global Fund Secretariat inventoried the nets remaining from the 2010 mass **distribution campaign. The cost of inventorying the remaining nets was €5,262.38. In addition, the** Global Fund Secretariat collected a sample of undistributed nets and had those nets quality tested. The cost incurred by the Global Fund to tests **the nets was €6,587.**

The cost to inventory and test the remaining nets was incurred by the Global Fund as a direct result of non-compliant expenditures (i.e., the purchase and delivery of counterfeit and substandard nets) of Global Fund grant money in Burkina Faso. The total cost to the Global Fund to mitigate the public **health risk caused by the delivery of substandard nets to Burkina Faso was €11,849.38.**

PADS did not comply with Standard Terms and Conditions of their program grant agreement (BUR-809-G08-M), in particular Article 18(a)(v) and Article 19(j). Pursuant to Article 27(b) of the program grant agreement, the Global Fund can require PADS to reimburse grant funds because PADS has breached provisions of the grant agreement. The total amount of non-compliant expenditures related to the procurement of substandard nets is **€9,016,028.09.**

Under the principles of law governing the grant agreement, the UNIDROIT principles allow the Global Fund to seek reimbursement of expenses incurred by the Global Fund due to PADS' breach of the grant agreement.<sup>10</sup> The expenses incurred by the Global Fund to inventory and quality test the **undistributed nets was €11,849.38.** The cost of the counterfeit and substandard nets, totalling **€9,016,028.09,** has been determined to be non-compliant with the terms and conditions of the program grant agreement. **The Global Fund incurred expenses totalling €11,849.38 as a direct result** of PADS non-compliance with the program grant agreement. Therefore the total amount of funds **eligible for reimbursement is €9,027,877.47.**

*Figure 3: Non-compliant expenditures and related costs*

<b>Category</b>	<b>Amount (EUR)</b>
Cost of counterfeit and substandard nets delivered by Liz Telecom/Azimmo	8,639,028.09
Cost of counterfeit and substandard nets delivered by Disgefa	377,000.00
Cost of non-compliant expenditures to the Global Fund	11,849.38
<b>Total</b>	<b>9,027,877.47</b>

***Agreed Management Action 3: Based on the findings of this report, the Secretariat will finalize and pursue, from all entities responsible, an appropriate recoverable amount. This amount will be determined by the Secretariat in accordance with its evaluation of applicable legal rights and obligations and associated determination of recoverability.***

<sup>10</sup> UNIDROIT principles (2004) provide in article 7.4.1, for the right of the Global Fund to seek damages from the Principal Recipient in cases of non-performance, in addition to any other remedies the Global Fund may be entitled to.

## IV. Conclusion

The investigation found evidence that PADS purchased 1,926,433 counterfeit and substandard nets through two local suppliers that were found to have little or no experience in the procurement of health products. **€9,016,028.09 of Global Fund grant money was used to pay for these counterfeit and substandard nets.** The investigation revealed that the manner in which the tender was structured facilitated the selection of the inexperienced vendors and led to the delivery of substandard nets. Specifically, the OIG finds that the requirement of delivery of nets up to the district level, the failure to require previous experience of bidders and the inadequate **manufacturer's** authorization all contributed to the delivery of the substandard nets.

On discovering that counterfeit bed nets had been delivered, the Global Fund Secretariat took immediate steps to manage the public health risk caused by the counterfeit and substandard nets distributed to the people of Burkina Faso. This included procuring 150,000 nets in October 2012 to replace the substandard and counterfeit nets remaining in storage facilities from the 2010 mass distribution campaign and a subsequent mass distribution campaign was undertaken to replace the substandard nets in use by the population with quality nets.

This investigation concludes that PADS is responsible for placing Global Fund monies at risk and that the purchase of counterfeit and substandard nets without the required WHOPES recommendation is a non-compliant expenditure.<sup>11</sup>

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<sup>11</sup> Standard Terms and Conditions of Program Grant Agreement (BUR-809-G08-M), Article 18(a)(v) and Article 19(j).

## V. Table of Agreed Management Actions

#	Category	Agreed Management Action	Due date	Owner
1	Health Services & Products Risks	<b>The Secretariat will update its ‘Guide to Global Fund Policies on Procurement and Supply Management’ to clarify that pre-shipment testing for nets is required under current Quality Assurance requirements, reflecting Section C of the Operational Policy Note on ‘Implementing the Quality Assurance Policies for Pharmaceutical, Diagnostics and Other Health Products’ (dated 10 November 2014).</b>	January 2016	<b>Head of Grant Management Division</b>
2	Governance, Oversight & Management Risk	<b>To address the issues of bidders’ relevant experience and the appropriateness of tender specifications in procurements, the Secretariat will identify criteria to trigger enhanced oversight at both Secretariat and implementer levels, and will update Global Fund policies and guidelines accordingly.</b>	December 2016	<b>Head of Grant Management Division</b>
3	Recovery of Funds	Based on the findings of this report, the Secretariat will finalize and pursue, from all entities responsible, an appropriate recoverable amount. This amount will be determined by the Secretariat in accordance with its evaluation of applicable legal rights and obligations and associated determination of recoverability.	December 2017	<b>Recoveries Committee</b>

## Annex A: Methodology

The Investigations Unit of the OIG is responsible for conducting investigations of alleged fraud, **abuse, misappropriation, corruption and mismanagement (collectively, “fraud and abuse”)** within Global Fund financed programs and by Principal Recipients and Sub-recipients, **(collectively, “grant implementers”)**, **Country Coordinating Mechanisms and Local Fund Agents, as well as suppliers and service providers.**<sup>12</sup>

**While the Global Fund does not typically have a direct relationship with the recipients’ suppliers, the scope of the OIG’s work**<sup>13</sup> encompasses the activities of those suppliers with regard to the provision of goods and services. The authority required to fulfil **this mandate includes access to suppliers’ documents and officials.**<sup>14</sup> The OIG relies on the cooperation of these suppliers to properly discharge its mandate.<sup>15</sup>

OIG investigations aim to: (i) identify the specific nature and extent of fraud and abuse affecting Global Fund grants, (ii) identify the entities responsible for such wrongdoings, (iii) determine the amount of grant funds that may have been compromised by fraud and abuse, and (iv), place the organization in the best position to obtain recoveries through the identification of the location or the uses to which the misused funds have been put.

OIG conducts administrative, not criminal, investigations. Its findings are based on facts and related analysis, which may include drawing reasonable inferences based upon established facts. Findings are established by a preponderance of credible and substantive evidence. All available evidence is considered by the OIG, including inculpatory and exculpatory information.<sup>16</sup>

The OIG finds, assesses and reports on facts. On that basis, it makes determination on the compliance of expenditures with the grant agreements and details risk-prioritized Agreed Management Actions. Such Agreed Management Actions may notably include the identification of expenses deemed non-compliant for considerations of recovery, recommended administrative action related to grant management and recommendations for action under the Code of Conduct for Suppliers<sup>17</sup> or the Code of Conduct for Recipients of Global Fund Resources<sup>18</sup> **(the “Codes”)**, as appropriate. The OIG does not determine how the Secretariat will address these determinations and recommendations. Nor does it make judicial decisions or issue sanctions.<sup>19</sup>

Agreed Management Actions are agreed with the Secretariat to identify, mitigate and manage risks **to the Global Fund and its recipients’ activities. The OIG defers to the Secretariat and, where appropriate, the recipients, their suppliers and/or the concerned national law enforcement agencies, for action upon the findings in its reports.**

The OIG is an administrative body with no law enforcement powers. It cannot issue subpoenas or initiate criminal prosecutions. As a result, its ability to obtain information is limited to the rights to

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<sup>12</sup> Charter of the Office of the Inspector General (19 March 2013), available at:

<http://theglobalfund.org/documents/oig/OIGOfficeOfInspectorGeneralCharteren/>, accessed 01 November 2013.

<sup>13</sup> Charter of the Office of the Inspector General (19 March 2013) § 2, 9.5 and 9.7.

<sup>14</sup> *Ibid.*, § 17.1 and 17.2

<sup>15</sup> Global Fund Code of Conduct for Suppliers (15 December 2009), § 17-18, available at:

<http://theglobalfund.org/documents/corporate/CorporateCodeOfConductForSuppliersPolicyen/>, accessed 01 November 2013. Note: Every grant is subject to the Global Fund’s Standard Terms and Conditions (STC) of the Program Grant Agreement signed for that grant. The above Code of Conduct may or may not apply to the grant.

<sup>16</sup> These principles comply with the *Uniform Guidelines for Investigations*, Conference of International Investigators, June 2009; available at: <http://www.un.org/Depts/oios/pages/uniformguidelines.html>, accessed 01 November 2013.

<sup>17</sup> See fn. 16, *supra*

<sup>18</sup> Code of Conduct for Recipients of Global Fund Resources (16 July 2012) available at:

<http://theglobalfund.org/documents/corporate/CorporateCodeOfConductForRecipientsPolicyen/>, accessed 01 November 2013. Note: Every grant is subject to the STC of the Program Grant Agreement signed for that grant. The above Code of Conduct may or may not apply to the grant.

<sup>19</sup> Charter of the Office of the Inspector General (19 March 2013) § 8.1

it under the grant agreements agreed to with recipients by the Global Fund, including the terms of its Codes, and on the willingness of witnesses and other interested parties to voluntarily provide information.

The OIG also provides the Global Fund Board with an analysis of lessons learned for the purpose of understanding and mitigating identified risks to the grant portfolio related to fraud and abuse.

Finally, the OIG may make referrals to national authorities for prosecution of any crimes or other violations of national laws, and supports such authorities as necessary throughout the process, as appropriate.

## 01 Applicable Concepts of Fraud and Abuse

The OIG bases its investigations on the contractual commitments undertaken by recipients and suppliers. It does so under the mandate set forth in its Charter to undertake investigations of allegations of fraud and abuse in Global Fund supported programs.

As such, it relies on the definitions of wrongdoing set out in the applicable grant agreements with the Global Fund and the contracts entered into by the recipients with other implementing entities in the course of program implementation.

Such agreements with Sub-recipients must notably include pass-through access rights and ensure their obligations to the Principal Recipient are generally equivalent to those of the Principal Recipient under the **Global Fund's Standard Terms and Conditions (STC) of the Program Grant Agreement**. The STC clarify the way in which recipients are expected to abide by the values of transparency, accountability and integrity which are critical to the success of funded programs. The STC prohibit recipients from engaging in corruption, specifically, the STC require that:<sup>20</sup>

The Principal Recipient shall not, and shall ensure that no Sub-recipient or person affiliated with the Principal Recipient or any Sub-recipient:

- i. participate(s) in the selection, award or administration of a contract, grant or other benefit or transaction funded by the Grant, in which the person, members of the **person's immediate family or his or her business partners, or organizations** controlled by or substantially involving such person, has or have a financial interest;
- ii. participate(s) in transactions involving organizations or entities with which or whom that person is negotiating or has any arrangement concerning prospective employment;
- iii. offer(s), give(s), solicit(s) or receive(s), directly or indirectly, gratuities, favors, gifts or anything else of value to influence the action of any person involved in the procurement process or contract execution;
- iv. misrepresents or omits facts in order to influence the procurement process or the execution of a contract;
- v. engage(s) in a scheme or arrangement between two or more bidders, with or without the knowledge of the Principal Recipient or Sub-recipient, designed to establish bid prices at artificial, non-competitive levels; or
- vi. participate(s) in any other practice that is or could be construed as an illegal or corrupt practice in the Host Country.

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<sup>20</sup> Standard Terms and Conditions (2009.06) at Art. 21):

<http://www.theglobalfund.org/en/portfolio/country/grant/?grant=BUR-809-G08-M>.

## 02 Determination of Compliance

The OIG presents factual findings which identify compliance issues by the recipients with the terms of the STC. Such compliance issues may have links to the expenditure of grant funds by recipients, which then raises the issue of the eligibility of these expenses for funding by the Global Fund. Such non-compliance is based on the provisions of the STC.<sup>21</sup> The OIG does not aim to conclude on the appropriateness of seeking refunds from recipients, or other sanctions on the basis of the provisions of the Program Grant Agreement.

Various provisions of the STC provide guidance on whether a program expense is eligible for funding by the Global Fund. It is worth noting that the terms described in this section are to apply to Sub-Recipients as well as Principal Recipients.<sup>22</sup>

**At a very fundamental level, it is the Principal Recipient's responsibility "to ensure that all grant funds are prudently managed and shall take all necessary action to ensure that Grant funds are used solely for Program purposes and consistent with the terms of this Agreement".**<sup>23</sup>

In practice, this entails abiding by the activities and budgetary ceilings proposed in the Requests for Disbursement, which in turn must correspond to the Summary Budget(s) attached to Annex A of the Program Grant Agreement. While this is one reason for expenses to be ineligible, expending grant funds in breach of other provisions of the Program Grant Agreement also results in a determination of non-compliance.

Even when the expenses are made in line with approved budgets and work plans, and properly **accounted for in the program's books and records, such expenses must be the result of processes and business practices which are fair and transparent.** The STC specifically require that the Principal Recipient ensures that: (i) **contracts are awarded on a transparent and competitive basis, [...] and** (vii) that the Principal Recipient and its representatives and agents do not engage in any corrupt practices as described in Article 21(b) of the STC in relation to such procurement.<sup>24</sup>

The STC explicitly forbid engagement in corruption or any other related or illegal acts when **managing Grant Funds: "The Principal Recipient shall not, and shall ensure that no Sub-recipient or person affiliated with the Principal Recipient or any Sub-recipient [...] participate(s) in any other practice that is or could be construed as an illegal or corrupt practice in the Host Country."**<sup>25</sup>

Amongst prohibited practices is the rule that the Principal Recipient shall not and shall ensure that **no person affiliated with the Principal Recipient "engage(s) in a scheme or arrangement between two or more bidders, with or without the knowledge of the Principal or Sub-recipient, designed to establish bid prices at artificial, non-competitive levels."**<sup>26</sup>

Principal Recipients are contractually liable to the Global Fund for the use of all grant funds, including expenses made by Sub-recipients and contractors.<sup>27</sup>

The factual findings made by the OIG following its investigation and summarized through this report can be linked to the prohibited conducts or other matters incompatible with the terms of the Program Grant Agreements.

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<sup>21</sup> The STC are revised from time to time, but the provisions quoted below applied to all Principal Recipients at the time of the investigation.

<sup>22</sup> Standard Terms and Conditions (2009.06) at Art. 14(b):

<http://www.theglobalfund.org/en/portfolio/country/grant/?grant=BUR-809-G08-M>.

<sup>23</sup> Id. at Art. 9 and Art 18(f).

<sup>24</sup> Id. at Art. 18(a).

<sup>25</sup> Id., at Art. 21 (b) and (vi)

<sup>26</sup> Id. at Art. 21(b)(v).

<sup>27</sup> Id. at Art. 14

### 03 Reimbursements or Sanctions

The Secretariat of the Global Fund is subsequently tasked with determining what management actions or contractual remedies will be taken in response to those findings.

Such remedies may notably include the recovery of funds compromised by contractual breaches. Article 27 of the *STC stipulates that the Global Fund may require the Principal Recipient “to immediately refund the Global Fund any disbursement of the grant funds in the currency in which it was disbursed [in cases where] there has been a breach by the Principal Recipient of any provision of this (sic) Agreement [...] or the Principal Recipient has made a material misrepresentation with respect to any matter related to this Agreement.”*<sup>28</sup>

Furthermore, the UNIDROIT principles (2004), the principles of law governing the grant agreement, in their article 7.4.1, provide for the right of the Global Fund to seek damages from the Principal Recipient in case non-performance, in addition to any other remedies the Global Fund may be entitled to.

In determining what non-compliant expenditures are to be proposed as recoverables, the OIG advises the Secretariat that such amounts typically should be: (i) amounts, for which there is no reasonable assurance about delivery of goods or services (unsupported expenses, fraudulent expenses, or otherwise irregular expenses without assurance of delivery), (ii) amounts which constitute overpricing between the price paid and comparable market price for such goods or services, or (iii) amounts which are ineligible (non-related) to the scope of the grant and its approved work plans and budgets.

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<sup>28</sup> Id. at Art. 27(b) and (d)

# Annex B: Legitimate DAWAPlus Bales and Insecticide-Treated Net Bags

Tana Netting packages its insecticide-treated nets in bales of fifty. Tana Netting bales are blue and have “DAWAPlus made in Thailand” printed in black on the sides.

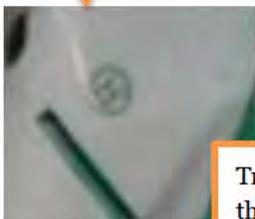


## Genuine DAWAPlus Net Bag

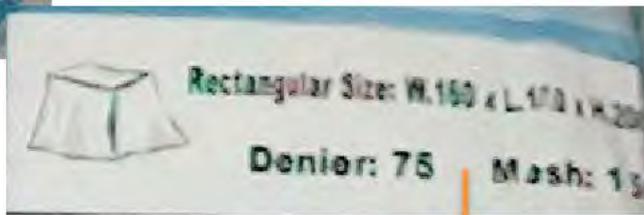


Hang hole

DAWAPlus insecticide-treated nets delivered to Burkina Faso were packaged in bags with this artwork and no Burkina Faso-specific logos



Trademark symbol on the upper left corner of the net bag



Sticker indicating dimensions of the insecticide-treated nets

# 01 Counterfeit DAWAPlus Bales and Net Bags Found in Liz Telecom/Azimmo-Supplied Regions

The counterfeit DAWAPlus nets found in the Liz Telecom/Azimmo-supplied regions were packed 100 nets per bale and the bales were packaged distinctly differently from the Tana Netting bale packages.

## Bale Bags Containing Counterfeit DAWAPlus Nets

The Counterfeit DAWAPlus bales and net bags



Bales of counterfeit DAWAPlus nets found in Boucle de Mouhoun region (lot 1). These counterfeit nets are packed in bales with no printing on the side

Genuine DAWAPlus bale bag



The genuine Tana Netting bale bags are blue with black printing on the sides

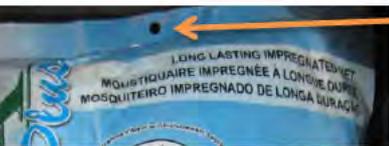


The label on the outside of the counterfeit bale bag differs from the label on the genuine DAWAPlus bale bags



## Counterfeit DAWAPlus Net Bags

All the counterfeit DAWAPlus net bags identified in the Liz Telecom/Azimmo-supplied regions had logos related to the 2010 mass distribution campaign, **Ministre de la Sante Burkina Faso, PNLP, and Plan Burkina** printed directly on the net bag.

<p>Counterfeit DAWAPlus net bag</p> 	<p>The counterfeit net bags have specific <b>Burkina Faso logos</b> on the net bag; while the authentic net bags do not have the logos on the net bag</p>	<p>Genuine DAWAPlus net bag</p> 
	<p>Counterfeit net bags do not have a <b>Trademark Symbol</b> in the upper left corner of the net bag</p>	
	<p>Counterfeit net bags had <b>round hang holes</b></p>	
<p>Authentic DAWAPlus net bags do not have <b>round hang holes</b></p>		

## 02 Counterfeit DAWAPlus Bales and Net Bags Found in the Disgefa-Supplied Regions

The counterfeit DAWAPlus nets found in the Disgefa-supplied regions were packed 100 nets per bale and the bales were packaged distinctly differently from the Tana Netting bale packages.

### Bale Bags Containing Counterfeit DAWAPlus Nets

The Counterfeit DAWAPlus bales and net bag



Bales of counterfeit DAWAPlus nets found the Centre Nord region (lot 4).

Genuine DAWAPlus bale bag



These counterfeit nets are packaged in white bales with no printing on the side

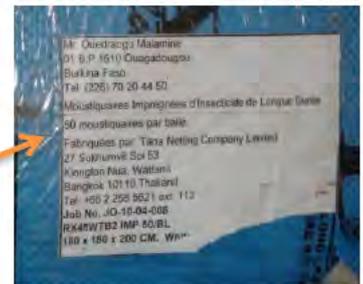
The genuine Tana Netting bale bags are blue with black printing on the sides



Counterfeit DAWAPlus bale bags with a red label with black Chinese characters



Authentic DAWAPlus bale bags have the address of the recipient in a white label with black writing on the side of the bale



Counterfeit DAWAPlus Net Bags

All counterfeit DAWAPlus nets identified in the Disgefa-supplied regions had logos related to the 2010 mass distribution campaign, Ministre de la Sante Burkina Faso, PNLP, and Plan Burkina printed directly on the net bags.

<p>Counterfeit DAWAPlus net bag</p>	<p>The counterfeit net bags have specific <b>Burkina Faso logos</b> on the bags; while the authentic net bags do not have the logos on the net bags</p>	<p>Genuine DAWAPlus net bag</p>
	<p>The counterfeit bags do not have a <b>white sticker</b> on the front of the package detailing the dimension of the nets</p>	
	<p>There is no <b>Trademark symbol</b> on the upper left corner of the counterfeit net bag as there is on the authentic DAWAPlus net bag</p>	
	<p>The counterfeit net bag has a round <b>hang hole</b> and the genuine net bag does not</p>	



## Annex C: Summary of Subject Responses

On 27 July 2015, the OIG provided copies of the OIG's **statement of findings and supporting** annexes on its investigation into the procurement and delivery of counterfeit and substandard nets in Burkina Faso to PADS, Liz Telecom/Azimmo and Disgefa. PADS, Liz Telecom/Azimmo and Disgefa were also afforded **the opportunity to provide comments and supporting documents on the report's** content, findings and conclusions. **The OIG's statement of findings represented the full record of all** of the relevant facts and findings considered in support of this final report. The response from Disgefa was received on 14 August 2015 and the response from PADS was received on 17 August 2015. The OIG did not receive any response from Liz Telecom/Azimmo. All points made by PADS and Disgefa were duly considered by the OIG and appropriate revisions were made to its findings, as applicable and relevant, as part of this final report.

PADS stated that the PADS Tender was conducted in compliance with the public tender regulations in Burkina Faso. Prior to the launch of the PADS Tender, the terms of the tender were reviewed and approved by the Global Fund Secretariat.

PADS also noted that after the opening of the bids, the Global Fund Secretariat, through the Local Fund Agent, reviewed the tender process and the Global Fund Secretariat provided comments about the tender process to PADS. PADS took into account the comments made by the Global Fund Secretariat and the Global Fund Secretariat approved the tender results.

PADS stated that the PADS Tender required winning bidders to provide WHOPES-recommended nets. This provision was put in place to prevent the distribution of nets which were substandard. In light of the OIG report, PADS acknowledged that Liz Telecom/Azimmo and Disgefa did not comply with their commitment and supplied nets from sources that were not WHOPES-recommended.

PADS also stated that at the time of the PADS Tender, PADS did not have the necessary means to investigate and to test the nets before their distribution. According to PADS, in 2013 and for grants to be distributed in 2016, PADS requested the Global Fund Secretariat, without success, for grant monies to be ear-marked for post-delivery quality assurance testing

Disgefa stated that they were only able to purchase and deliver 769,250 nets from a WHOPES-recommended manufacturer. This left a gap of 100,000 nets that Disgefa needed to deliver.

According to Disgefa, the then Director of PADS instructed Disgefa to contact Liz Telecom/Azimmo. Disgefa was instructed by PADS that Liz Telecom/Azimmo had already delivered more than two million nets to PADS and that Liz Telecom/Azimmo had extra nets. According to Disgefa, this **recommendation was made to save time because the delivery of Disgefa's nets was already late.**

According to Disgefa, Liz Telecom/Azimmo directly delivered 98,422 alleged DAWAPlus nets on behalf of Disgefa. Disgefa did not provide any explanation to the OIG as to the source of the remaining 1,558 nets.