



**The Global Fund**

To Fight AIDS, Tuberculosis and Malaria

*Office of the Inspector General*

## **Investigation of Global Fund Grants to Kyrgyzstan**

### **Global Fund Tuberculosis Grants managed by the National Center of Phthysiology under the Ministry of Health of the Kyrgyz Republic**

**GF-OIG-13-023**

**28 August 2013**

## A. Table of Contents

A.	Table of Contents .....	1
B.	Executive Summary .....	3
C.	Message from the Executive Director of the Global Fund .....	5
D.	Background.....	7
D.1.	Sub-Grants Reviewed .....	7
D.2.	TB Round 2 .....	7
D.3.	TB Round 6 .....	8
D.4.	OIG Investigations Unit .....	9
D.5.	Origins of Investigation .....	9
E.	Methodology.....	11
E.1.	Scope of Investigation .....	11
E.2.	Investigative Process .....	11
E.2.1.	In-country Mission.....	11
E.2.2.	Document Analysis .....	11
E.2.3.	Interviews .....	12
E.2.4.	Limitations of the Investigation .....	12
E.3.	Relevant Definitions .....	12
E.3.1.	Relevant Kyrgyz Law.....	13
E.3.2.	Applicable Rules and Regulations .....	13
E.4.	Due Process.....	14
E.5.	Exchange Rate .....	14
F.	Investigative Findings.....	15
F.1.	Misappropriation.....	15
F.1.1.	Unaccounted for Payments to NCP Staff Members.....	16
F.1.2.	Misrepresentations Regarding Non-Grant Related Expenses Paid to Staff	20
F.2.	Conflict of Interest .....	21
F.2.1.	A senior PR official directed the establishment of several NGOs in the TB sector and installed relatives in those NGOs.....	21
F.2.2.	A senior PR official purchased a vehicle for the NCP from his wife.....	23
F.2.3.	Correlation between Conflicts of Interest and Mismanagement.....	25
F.3.	Mismanagement .....	25
F.3.1.	The Senior PR Official Colluded with the Association of Societies to Fight TB to Secure Contract Awards .....	26
F.3.2.	The Association of Societies to Fight TB was awarded funding for three projects that do not align with the grant program or planned activities .....	29
F.3.3.	Fish Farming for Supplement Nutrition Project.....	30

F.3.4.	The Association of TB Specialists received funding for a project unrelated to grant activities.....	32
F.4.	Fraudulent Procurement.....	33
F.4.1.	NCP Program Officials Colluded with Stroy-Avto-Group to Secure the Contract Award for the Renovation of the RRC.....	35
F.4.2.	The PR changed the bid submission deadline to an earlier date and signed the contract with Stroy-Avto-Group prior to a Tender Committee review 35	
F.4.3.	The NCP Steered Three Contracts to Talantbek Abdykerimov .....	42
F.4.4.	Unauthorized additional payments for renovation at the Vorontsovka Clinic 49	
F.5.	The NCP Failed to Exercise Fiduciary Oversight over the RRC Project and Overpaid for Low Quality Work Performed.....	50
F.6.	Unauthorized Transfer of Grant Funds to Fixed Deposit Accounts .....	52
G.	Fiduciary Oversight.....	55
G.1.	Project Implementation Unit of the NCP .....	56
G.1.1.	Roles and Responsibilities of the PIU .....	56
G.1.2.	GF Reviews of the PIU .....	56
G.2.	External Audits .....	56
G.2.1.	The Purpose of External Audits.....	56
G.2.2.	Significant External Audit Report Findings.....	57
G.3.	Local Fund Agent.....	58
G.3.1.	Roles and Responsibilities of the LFA.....	58
G.3.2.	Weaknesses Identified by the LFA .....	58
G.4.	CCM.....	60
G.4.1.	Background .....	60
G.4.2.	Roles and Responsibilities of the CCM.....	60
G.4.3.	Global Fund Evaluation of the CCM.....	61
H.	Ineligible Grant Expenses .....	62
H.1.	The Global Fund's Right to Reimbursement .....	62
H.2.	Ineligible Amounts Calculation.....	63
I.	Concluding Summary.....	64
J.	Recommendations .....	65
K.	Acronyms.....	66
L.	Annex 1: Response and Comments Received from the PR (NCP) in response to OIG Investigation Report .....	67

## B. Executive Summary

USD 53,577 of grant funds misappropriated

1. This Report presents the results of an investigation conducted between February 2010 and August 2012 by the Investigations Unit of the Office of the Inspector General (OIG) of the Global Fund to Fight AIDS Tuberculosis and Malaria (The Global Fund) of the National Center of Phthisiology (hereinafter “NCP”), the Principal Recipient (PR) of the Global Fund Tuberculosis Round 2 and Round 6 grants in Kyrgyzstan. Ultimately, in connection with these grants, the OIG has identified that USD 53,577 was compromised through misappropriation and gross mismanagement of grant funds.

Investigation initiated after OIG audit found irregularities

2. The OIG initiated this investigation following the findings of the OIG Audit Unit. During the course of its audit of the Global Fund grants to Kyrgyzstan in 2009, the OIG identified significant financial irregularities in the NCP’s management of Global Fund Project Grant funds. As a result of the OIG Audit’s findings, the NCP was removed as the PR for Global Fund Tuberculosis grants in Kyrgyzstan. The Audit Unit has prepared a separate report detailing different analyses.

Grant funds were misappropriated between 2003 and 2009

3. As a result of its investigation, the OIG finds that between 2003 and 2009, senior officials and staff at the NCP colluded with favored vendors to secure contract awards and misappropriate grants funds. In particular, the OIG found credible and substantive evidence that the NCP did not comply with provisions of the Program Grant Agreements which require recipients of Global Fund grant funds to ensure that: funds are properly managed and used solely for program purposes; transactions funded by Global Fund grant monies are not conducted with an entity in which a family member has a financial interest; program monies are held in an authorized bank account; and procurement exercises are competitive and conducted in a transparent manner.

A senior PR official created SRs that employed family members

4. Specifically, the OIG investigation found that:

- a PR official directed the establishment of four NGOs that were subsequently appointed as Sub-Recipients (SRs) of Global Fund grant funds;
- three of these SRs employed family members of a PR official;
- the PR colluded with one of these NGOs (the Association of Societies to Fight Tuberculosis) to secure Global Fund grant funds for non-grant related activities;
- a PR official entered into a contract to purchase a vehicle from his wife with Global Fund grant funds;
- the PR made unauthorized cash advances to staff members with Global Fund grant funds; and
- a PR official transferred Global Fund grant funds to a non-authorized bank.

PR engaged in irregular procurements that are contrary to the Grant Agreements and possibly Kyrgyz Law.

The OIG finds that the PR conduct amounted to gross mismanagement in awarding contracts to vendors who overcharged or quoted inflated prices, often for incomplete or poor quality work, disregarded, apparently willfully, patent similarities in bid submissions and violated contract provisions in the execution of multiple contracts. Such conduct is prohibited by the Program Grant Agreements; The OIG further understands that Kyrgyzstan State Law on Procurement mandates that the bidders genuinely compete against one another; the PR’s conduct may have breached this requirement<sup>1</sup>.

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<sup>1</sup> The OIG has not sought specific advice from a national lawyer and this interpretation does not constitute legal advice.

PR failed to exercise fiduciary oversight.

5. Further, the OIG found financial irregularities in the PR's management of Global Fund grant funds: USD 2,936 of the funds investigated were wasted as a consequence to the PR's failure to exercise reasonable care in the oversight of the repair project for the construction and refurbishing projects at the Jety-Oguyz Republican Rehabilitation Center (RRC). Additionally, the transfer of Global Fund project funds from the approved bank account to an unauthorized bank by a senior PR official resulted in an unnecessary cost of USD 4,215 to grant funds due to bank fees. This amount was never repaid to the Global Fund account.

CCM failed in their oversight of the PR's activities.

6. The OIG also found that the grant programs were negatively affected by serious gaps in oversight and fiduciary controls which notably prevented the misappropriation and mismanagement of grant funds from being discovered at an earlier stage. The OIG investigation also identified that the Kyrgyzstan multi-stakeholder Country Coordinating Body (CCM) failed to identify either that grant funds were not being used for their intended purposes or that procurement exercises were conducted in a way that in the OIG's view amounts to gross misconduct and lacking any good faith competition. The OIG finds the CCM did not provide a meaningful fiduciary oversight of the PR's activities.

Former FPM failed to mitigate risks identified by the LFA.

7. Finally, the OIG investigation revealed that the Secretariat staff did not successfully mitigate the risks highlighted by the local fund agent (LFA) and, in turn, attempt to remedy or prevent the mismanagement, notably the gross mismanagement of procurement processes that took place. Despite the fact that in its 2003 and 2007 reports, the LFA highlighted significant issues regarding the PR's management of Global Fund Grant funds—including the lack of capacity and knowledge of procurement, as well as the lack of proper fiduciary oversight of SRs by the PR—the Secretariat did not effectively follow up on the LFA's findings. Moreover, irrespective of the fact that the Global Fund Secretariat was aware that these issues had not been resolved by the time of the Round 6 grant agreement, the Global Fund nevertheless disbursed grant funds to the PR in full under this grant.

OIG investigation identified an amount of USD 53,577 resulting from misappropriation (4,043) and mismanagement (49,534)

8. On the basis of the investigation, the OIG recommends that the Global Fund:

- Seek to recover to the maximum extent possible from the responsible parties the grant funds compromised by fraud and abuse identified herein, an amount currently identified as USD 53,577.
- Takes steps in accordance with its policies and procedures to ensure principal recipients do not provide large advance payments to vendors for goods or services without proper performance guarantees, other than a reasonable amount required as a deposit.
- Takes steps in accordance with its policies and procedures to prevent disbursement of grant funds to Principal Recipients in circumstances where the Principal Recipient has not met the applicable terms and conditions of the Global Fund Program Grant Agreement, unless such a disbursement is properly supported by a waiver of said terms and conditions.

## C. Message from the Executive Director of the Global Fund



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27<sup>th</sup> August 2013

### MESSAGE FROM THE EXECUTIVE DIRECTOR OIG Investigation Kyrgyzstan

I would like to thank the Office of the Inspector General for its thorough and insightful work on the investigation of Global Fund grants to Kyrgyzstan.

The report summarizes the results of an investigation carried out between February 2010 and August 2012 of the National Center of Phthisiology (NCP), which was the Principal Recipient of the Round 2 and Round 6 tuberculosis grants in Kyrgyzstan. Under the two grants, US\$11.06 million was awarded and US\$ 9.0 million disbursed to the National Centre.

The investigation was initiated following an audit. As a result of the audit's findings, the National Center was removed as the Principal Recipient for Global Fund tuberculosis grants in Kyrgyzstan.

The Office of the Inspector General's subsequent investigation discovered that US\$ 53,577 was compromised through misappropriation and "gross mismanagement" of grant funds.

The investigation found that, between 2003 and 2009, senior officials and staff at the National Center colluded with favored vendors to secure contract awards and misappropriate grant funds.

The investigation also found that the Principal Recipient, the Country Coordinating Mechanism and the Secretariat failed to provide adequate and responsible financial management and oversight so as to prevent this situation from arising.

In particular the Office of the Inspector General found credible and substantive evidence that the National Centre did not comply with provisions of the program grant agreements which require, among other things, that grant recipients ensure funds are used solely for program purposes and that procurement exercises are competitive and conducted in a transparent manner.

The investigation found that the Principal Recipient awarded contracts to vendors who overcharged or quoted inflated prices, often for incomplete or poor quality work, disregarded – apparently wilfully – blatant similarities in bid submissions and violated contract provisions in the execution of multiple contracts.

The Office of the Inspector General also discovered that the grant programs were negatively affected by serious gaps in oversight and fiduciary controls which prevented the misappropriation and mismanagement of grant funds from being discovered earlier.

The Global Fund Secretariat for its part did not successfully mitigate the deficiencies and risks repeatedly brought to its attention by the Local Fund Agent in both Principal Recipient assessment and audit reports.

The Office of the Inspector General has recommended that the Secretariat seek to recover all amounts identified as ineligible, an amount currently identified as US\$ 53,577. Now that the investigation report is finalized, we will pursue recovery of this amount. Another recommendation was that the Secretariat should ensure that Principal Recipients do not provide large advance payments to vendors for goods and services, other than a reasonable amount required as a deposit. In this case, management of the program was transferred from NCP to UNDP and Project Hope already in January 2011. The current PRs' financial controls prevent large advance payments to vendors for goods or services and include strict controls on cash payments.

In addition, the OIG recommended that the Secretariat should take steps to prevent disbursement of grant funds to Principal Recipients where the Principal Recipient has not met the applicable terms and conditions of the Global Fund grant agreement, unless such a disbursement is properly supported by a waiver of the said terms and conditions. Current policy prevents disbursement where applicable conditions precedent are not fulfilled or properly waived, and a number of controls are in place to ensure compliance including the process for approval of disbursements. The Secretariat is in the process of automating certain grant management processes, which will add further controls over disbursement of funds in relation to unfulfilled conditions.

The Office of the Inspector General provides an essential form of quality control for the Global Fund. It plays an indispensable role in helping us all achieve our mission of effectively investing the world's money to save lives.

Sincerely



## D. Background

### D.1. Sub-Grants Reviewed

Investigation focused on R2 and R6 TB grants totaling USD 11,058,884 awarded to the NCP

9. OIG’s investigation focused on a discrete portion of two Global Fund TB grants to Kyrgyzstan in Rounds 2 and R6. Under these two rounds, a total of USD 11,058,884 was awarded, and USD 8,998,002 disbursed<sup>2</sup>, to the PR, the National Center of Phthisiology (NCP) of the Kyrgyz Republic. These grants were awarded in order to fund two specific projects: (i) ‘Development of preventive programmes on HIV/AIDS, Tuberculosis and Malaria aimed at reduction of social and economic consequences of their spread’ (Round 2)<sup>3</sup>; and (ii) ‘Enhancing DOTS implementation by strengthening strategic planning and management of the National TB Program (NTP) under the Manas Taalimi National Health Care Reform Program and by its further integration into health care services, scaling-up DOTS-plus implementation beyond the pilot phase, and reducing the burden of TB, TB/HIV and MDR-TB in the penitentiary system’ (Round 6).<sup>4</sup>

Fig. 1 – Kyrgyzstan TB Grants to the NCP

Grant	Round	Grant Duration	Approved (USD)	Disbursed (USD)
KGZ-202-G02-T-00	Round 2	1/3/04 – 28/2/09	2,771,070	2,771,070
KGZ-607-G04-T	Round 6	1/7/07 – 30/6/12	8,287,814	6,226,932
<b>TOTALS</b>			<b>11,058,884</b>	<b>8,998,002</b>

A senior PR official established four NGOs that were appointed as SRs.

The PR established a PIU to implement the Grant projects

First grant to the NCP was a USD 2.77 million grant in 2003 to support the development of TB preventive programs

10. In 2003, a Project Implementation Unit (PIU) was established within the NC by the PR to implement the Global Fund financed projects.

### D.2. TB Round 2

11. The Global Fund’s first grant to the NCP, the TB Round 2 Grant for an approved amount of USD 2,771,070, commenced on 1 September 2003.<sup>5</sup> The grant supported the development of preventive programs on TB, aimed at the reduction of social and economic consequences of their spread, including the provision of treatment, care and support in high prevalence states.

12. The grant comprised two phases, with USD 1,212,835 allocated for Phase 1 and USD 1,558,235 allocated for Phase 2. Authorized expenditures for each Phase were stipulated in the Grant Agreement as follows:

<sup>2</sup> Global Fund Grant Performance Reports, 27 and 29 January 2011.

<sup>3</sup> Global Fund Grant KGZ-202-G02-T-00

<sup>4</sup> Global Fund Grant KGZ-607-G04-T

<sup>5</sup> Global Fund Grant KGZ-202-G02-T-00



Fig. 2– Summary Budget of Authorized Expenditure for Phases 1 and 2 of the TB Round 2 Grant

Category	TOTAL Phase 1 (USD)	TOTAL Phase 2 (USD)	Grant Total (USD)
Human Resources	n/a	41,806	41,806
Planning & Management	39,836	124,998	164,834
Infrastructure & Equipment	275,058	308,140	583,198
Training	74,901	200,514	275,415
Health Products (including drugs)	548,649	n/a	548,649
Drugs	n/a	358,016	358,016
Commodities & Products	n/a	224,255	224,255
Monitoring & Evaluation	53,035	109,190	162,225
Information & Education Campaigns	122,687	137,056	259,743
Administrative Expenses	44,735	n/a	44,735
Involving NGOs & volunteers in the process of treatment	n/a	12,000	12,000
<b>TOTALS</b>	<b>1,212,835</b>	<b>1,558,235</b>	<b>2,771,070</b>

### D.3. TB Round 6

Second grant to the NCP was a USD 8.28 million grant in 2007 to improve the diagnosis and treatment of TB

13. The Global Fund's second TB grant to the PR, Round 6, commenced on 1 July 2007 for an approved amount of USD 8,287,814.<sup>6</sup> The grant focused on treatment of TB, as well as strengthening other areas related to TB, such as improving diagnosis.

14. The grant comprised two phases, with USD 4,244,578 allocated for Phase 1 and USD 4,043,236 allocated for Phase 2. Authorized expenditures for each Phase were stipulated as follows:

Fig. 3 – Summary Budget of Authorized Expenditure items for the Round 6 TB Grant

Category	TOTAL Phase 1 (USD)	TOTAL Phase 2 (USD)	Total (USD)
Human Resources	226,872	349,317	576,189
Training	48,731	128,833	177,564
Health Products & Health Equipment	223,624	235,773	459,397
Medicines & Pharmaceutical Products	2,871,550	2,934,900	5,806,450
Procurement & Supply Management Costs	n/a	5,000	5,000
Infrastructure and Other Equipment	699,732	8,490	708,222
Monitoring & Evaluation	n/a	41,454	41,454
Living Support to Clients / Target Population	n/a	37,608	37,608
Planning & Administration	174,069	288,286	462,355
Overheads	n/a	13,575	13,575
<b>TOTAL</b>	<b>4,244,578</b>	<b>4,043,236</b>	<b>8,287,814</b>

<sup>6</sup> Global Fund Grant KGZ-607-Go4-T

#### D.4. OIG Investigations Unit

The OIG investigates misappropriation and mismanagement of grant funds

15. 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 (“PRs”), Sub-recipients (“SRs”), collectively, “grant implementers,” Country Coordinating Mechanisms (CCMs), Local Fund Agents (LFAs), as well as suppliers and service providers.

16. 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 be compromised by fraud and abuse, and (iv), place the Organization in the best position to effectuate recoveries through identification of the location or uses to which the misused funds have been put.

Standards of evidence

17. 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 evidence. All available evidence is considered by the OIG, including inculpatory and exculpatory information.

18. The OIG finds, assesses and reports on facts and makes risk-prioritized recommendations on the basis of such facts. It does not decide on how the Global Fund will address the recommendations, or make judicial decisions or issue sanctions. Recommendations to the Global Fund primarily aim to help identify, mitigate and manage risks to the Global Fund and its recipients’ activities.

19. 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 the Global Fund reserves vis-à-vis the entities contractually, on its Codes of Conduct for Recipients and Suppliers, and on the willingness of witnesses and other interested parties to voluntarily provide information.

Type of recommendations

20. Upon concluding its findings, the OIG makes recommendations to the Global Fund, which may include identification of expenses deemed ineligible for considerations of recovery, recommended administrative action related to grant management and recommendations for action under the Code of Conduct for Suppliers, as appropriate. It 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.

#### D.5. Origins of Investigation

UNICEF and in country partners informed the OIG of suspicions of financial impropriety within the NCP

21. Allegations of financial impropriety within the PR were first brought to the attention of the OIG in October 2009, when the OIG received a briefing note that had been prepared by the United Nations Children’s Fund (UNICEF) representative for Kyrgyzstan.<sup>7</sup> The note, supported by other in-country development partners (UNAIDS, DFID, USAID and the World Bank), highlighted concerns of irregularities of GF grants, including: overpricing for repair and maintenance of buildings; corruption in connection with tenders and purchase orders for goods; nepotism and

<sup>7</sup> Briefing note from UNICEF Kyrgyzstan, dated 30 September 2009.

An OIG audit of the NCP found significant irregularities in financial accounting and procurements

other conflicts of interest between the PR and SRs, as well as between the PR and the PIU; and kickbacks to high-level officials. In response, in November 2009 the OIG undertook an audit mission in-country.

22. The OIG audit and subsequent report identified irregularities in financial accounting and procurement exercises, as well as non compliance with the Grant Agreements with the Global Fund.<sup>8</sup> The following issues were highlighted:

- discrepancies between the amount of Global Fund grant funds advanced to NCP staff members and the accountability received;
- the PR advertised for procurement of civil works for the renovation of a rehabilitation center. Identical bids were received from two of the three bidders;
- invitations to tender failed to include vital information on the project schedule, deadlines of work, advance payment, date of commencing of works, penalties, defects liability period, and performance security;
- the PR changed the conditions of contracts stated in the bid documents after contractors had been identified and awarded contracts. In all purchases undertaken, the PR amended the supplier conditions in favor of the suppliers;
- the NCP made fixed-term bank deposit placements with funds drawn from Round 6 bank accounts; and
- the OIG identified within the audit sample an amount of USD 21,951 ineligible expenditures, consisting of USD 1,860 spent outside the scope of the grant and USD 20,091 in unsupported expenditures that were charged to the grant.<sup>9</sup>

OIGs audit findings were conveyed to the CCM and the NCP was replaced as PR by UNDP and Project HOPE

23. The irregularities were disclosed to key stakeholders in Kyrgyzstan during the OIG audit team's report back to the parties. As a result of the OIG audit, on 6 August 2010 the CCM nominated UNDP to take over all active Global Fund grants from the NCP. Subsequent to this decision, the Global Fund Round 9 TB grant in Kyrgyzstan was implemented through two new PRs, Project HOPE and UNDP.

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<sup>8</sup> Report 'Audit of Global Fund Grants to the Kyrgyz Republic' dated 2 October 2012. Report No: GF-OIG-09-012. This report can be accessed at: <http://www.theglobalfund.org/en/oig/reports/>

<sup>9</sup> Ibid. p.47

## E. Methodology

### E.1. Scope of Investigation

Following the audit, OIG launched an investigation into the activities of the NCP's PIU

24. Following the OIG audit, in February 2010 the OIG launched an investigation of the NCP. On the basis of the findings of the Audit Report, the investigation focused on the following activities of the NCP and its PIU:

- procurement of furniture for TB hospitals;
- procurement of construction work for the Jety-Oguz Republican Rehabilitation Center (RRC);
- recruitment of PIU and NGO staff and salary payments;
- salaries, travel, travel claims and purchases associated with the PIU and Sub-Recipients;
- establishment and operation of projects associated with the NGO SR 'Association of Societies to Fight TB';
- expenditures on non-grant related activities with Global Fund grant funds;
- cash advance payments to staff members; and
- any other misappropriation or mismanagement of the Global Fund grant funds.

### E.2. Investigative Process

25. The OIG's investigation consisted of an in-country investigation mission; obtaining, organizing and conducting a forensic analysis of thousands of pages of program documentation; and interviewing key individuals.

#### E.2.1. In-country Mission

26. An investigation team travelled to Kyrgyzstan in February 2010, and again in September of that year. A senior OIG investigator coordinated all investigation activities, conducted interviews and scanned, reviewed and analyzed all relevant documentation. An OIG computer forensic specialist obtained all available and relevant electronic data.

27. The OIG made site visits to the NCP as well as the National TB Center (NTC)<sup>10</sup>, the Republican Rehabilitation Center (RRC)<sup>11</sup>, and the Suburban Clinic Base (SCB).<sup>12</sup> The latter three of these visits were conducted in order to determine the extent and quality of the renovations made and furniture purchased using project funds at these locations.

#### E.2.2. Document Analysis

28. The OIG conducted an in-depth analysis of the documents collected. The key documents reviewed were the:

- PR audit report conducted by Marka Audit;
- agreement between the PR and SRs;
- financial documents and contracts, including contract price schedules and Tender Committee documents;

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<sup>10</sup> The National TB Center located at 90a Akhunbaeva, Bishkek, Kyrgyzstan

<sup>11</sup> Located at Jety-Oguz, Kyrgyzstan

<sup>12</sup> Located at Varantsovka, Kyrgyzstan

- contract bids submitted by vendors and tender specifications for relevant projects;
- list of authorized cash advances for personnel and related documentation;
- asset lists relating to Round 2 and Round 6 grants;
- a senior PR official's tax records for 2008;
- contract of sale of a senior PR official's apartment in Bishkek; and
- documents relating to the PIU's purchase of a 1996 Mitsubishi.

### E.2.3. Interviews

OIG conducted interviews with key staff of the PIU, SRs and the LFA

29. Interviews were conducted with a senior official of the PR; an official and employees of the PIU; the director of the RRC; the PIU procurement specialist; the director of the NCP Suburban Clinic; both the current and former director of the Association of Societies to Fight TB; the director of Emerek Furniture and directors of a number of construction firms.

30. The OIG also visited the office of the former Local Fund Agent (LFA) for Global Fund grants, Pricewaterhouse Coopers (PwC), in Kazakhstan. Key LFA staff members associated with the Round 2 and Round 6 grants were interviewed in order to determine whether any indicators of grant mismanagement were overlooked.

### E.2.4. Limitations of the Investigation

31. All documentation and electronic evidence obtained from the PIU was in the Russian language. Therefore, it was necessary for the OIG to contract a translator to analyze and translate documents of interest. This process lengthened the investigation considerably. Additionally, this investigation report could not be issued until after publication of the OIG Audit Report.

## E.3. Relevant Definitions

32. The following definitions are applicable to this report:

**“Conflict of Interest” means:**

*A conflict of interest arises when a Recipient or Recipient Representative participates in any particular Global Fund matter that may have a direct and predictable effect on a financial or other interest held by: (a) the Recipient; (b) the Recipient Representative; or (c) any person or institution associated with the Recipient or Recipient Representative by a contractual, financial, agency, employment or personal relationship.<sup>13</sup>*

**“Collusive Practice” means:**

*An arrangement between two or more persons or entities designed to achieve an improper purpose, including influencing improperly the actions of another person or entity.<sup>14</sup>*

**“Misappropriation” means:**

*The intentional misuse or misdirection of money or property for purposes that are inconsistent with the authorized and intended purpose of the money or assets,*

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<sup>13</sup> Code of Conduct for Recipients of Global Fund Resources, Annex I (16 July 2012)

<sup>14</sup> Ibid.

*including for the benefit of the individual, entity or person they favour, either directly or indirectly.*<sup>15</sup>

**“Mismanagement” means:**

*Inappropriate, imprudent, inefficient or incompetent management of funds, notably through an absence of transparency, fairness, accountability or honesty in the management of said funds.*

**“Gross Mismanagement” means:**

*Reckless or intentional behaviour leading to inappropriate, imprudent, inefficient or incompetent management of funds, notably through negligence, absence of transparency, fairness, accountability or honesty in the management of said funds.*

### E.3.1. Relevant Kyrgyz Law

Relevant Kyrgyzstan legislation applicable to the NCP’s procurement and other activities

33. The relevant Kyrgyzstan legislation applicable to the activities of the NCP includes the:

*(a) Law of the Kyrgyz Republic on state procurement of goods, construction and services 1997- Article 8 / Article 30; and*

*(b) Tax Code of the Kyrgyz Republic 1996 - Article 74.*

34. There has been on-going communication between the OIG and the Prosecutor’s Office of the Kyrgyz Republic.

35. The Prosecutor’s Office has advised that:<sup>16</sup>

- as per Article 2 of the Law on State Procurement of the Kyrgyz Republic, this Law applies to the procurement of goods, works, services and consultancy services fully or partially effected by means of the state funds;
- as per Article 1 of the same Law, the funds that are provided as a foreign aid on the basis of international agreements—i.e., Global Fund Grant funds—are considered as the state funds, unless other mechanisms of the funds’ utilization have been stipulated by those agreements.

36. It is also a Global Fund Program Grant Agreement requirement that the PR’s activities are in compliance with host country law and other applicable law.<sup>17</sup>

### E.3.2. Applicable Rules and Regulations

Global Fund Grant Agreement provisions contravened by the PR

37. The applicable rules and regulations contravened by the PR and others identified in this report are the following articles of the relevant program grant agreements:<sup>18</sup>

- Compliance with Laws (Article 5)
- Management of Grant Funds (Article 9)
- Disbursement of Grant Funds (Article 10)
- Bank Accounts, Interest and Other Program Revenues (Article 11)

<sup>15</sup> Ibid.

<sup>16</sup> Email from Prosecutors Office to the OIG dated 18 October 2010. The OIG has not sought independent legal advice in this matter and the information in this report is derived from the opinion of the Prosecutor or from the plain reading of the statutes.

<sup>17</sup> Article 5 (d) ‘compliance with laws’ – Global Fund Grant Agreement KGZ-607-G04T & KGZ-202-G02-T-00

<sup>18</sup> Global Fund Grant agreements KGZ-202-G02-T & KGZ-607-G04-T signed between The Global Fund to Fight AIDS, Tuberculosis and Malaria and the National Center of Phthisiology of the Government of the Kyrgyz Republic.

- Contracts for Goods and Services (Article 18)
- Conflicts of Interest; Anti-Corruption (Article 21)

#### E.4. Due Process

Global Fund Secretariat, LFA, CCM and PR had opportunity to review and comment on OIG's findings

38. OIG provided the Global Fund Secretariat, the CCM, and the subjects of the investigation an opportunity to review and comment on the investigation's findings prior to the publication of the report. Senior officials of the PR and PIU<sup>19</sup> were fully informed of the scope of allegations. The OIG separately interviewed a senior official of the PR, and a senior official of the PIU, on two occasions, addressing the issues set forth in this report. They were both afforded ample opportunity to present relevant documents and information to the OIG.

39. The information and documents provided by the PR were carefully examined by the OIG and fully incorporated into this report.

40. The information and documents provided by the PIU procurement specialist, comprising of tender and contract documents and other documents (i.e. cash advance records) have also been examined and fully incorporated into this report.

#### E.5. Exchange Rate

Exchange rate throughout this report is KGS 42.00 to USD 1.00

41. This report describes amounts in United States Dollars (USD), with the Kyrgyzstan Som (KGS) being noted where appropriate, for ease of reading. For the purposes of this report, the exchange rate from KGS to USD has been set as the average of the published daily exchange rate from the period between 2004 and 2010: KGS 42 to USD 1. This value was obtained by compiling a data set of the daily exchange rates for the period in question and calculating the average of those values.<sup>20</sup>

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<sup>19</sup> Interview conducted between PIU manager & OIG on 11 Feb 2010 and on 23 Sep 2010

<sup>20</sup> Based on historical exchange rates, see <http://www.oanda.com/currency/historical-rates>

## F. Investigative Findings

The investigation found that the PR did not comply with its grant obligations, compromising an amount of USD 53,577 (KGS 2,250,220) of grant funds

42. OIG's investigation found that between 2005 and 2009 the NCP did not comply with its obligations related to anti-corruption; conflict of interest; compliance with applicable laws; misappropriation; misconduct and mismanagement. These failures compromised an amount of USD 53,577 of the USD 9,007,963 of grant funds OIG investigated.

43. The issues presented herein present compliance issues with the Global Fund grant agreements regarding: compliance with laws (Article 5); management of grant funds (Article 9); disbursement of grant funds (Article 10); bank accounts, interest and other program revenues (Article 11); contracts for goods and services (Article 18); and conflicts of interest and anti-corruption (Article 21).<sup>21</sup>

44. Additionally, although the OIG has not sought a legal opinion from in-country legal counsel, the issues presented herein possibly breach the Law of the Kyrgyz Republic regarding state procurement. The issues presented herein will be referred to the Prosecutors Office of the Kyrgyz Republic for consideration of prosecution if warranted.

### F.1. Misappropriation

USD 4,043 of grant funds were misappropriated

45. Misappropriation tainted USD 4,043 of the funds investigated. These funds were wasted due to the PR's failure to exercise proper fiduciary oversight, and significant issues uncovered included the following: (i) the payment of project funds for unrelated travel and food expenses of TB clinic staff; and (ii) unacquitted cash advances to PIU staff.

USD 1,457 of grant funds were used to pay for travel and food expenses

46. The OIG found that the PR misappropriated USD 1,457 of Global Fund project funds earmarked for grant related projects in order to pay for unrelated travel and food expenses for employees of regional TB clinics. In order to conceal these transactions, the NCP fraudulently represented these payments as related to grant-related project activities.

USD 2,586 in cash advances were unacquitted

47. The OIG also found that USD 2,586 in cash advances made to a PIU official were either fraudulent or unacquitted.

48. During this investigation, 121 cash advances totaling USD 68,584 (KGS 2,880,537) to a PIU official between March 2004 and February 2008 were analyzed. The analysis showed that all of the advances were acquitted but there were 19 instances, totaling USD 2,586 (KGS 108,625), of fraudulent or incomplete justifications for expenditures. These 19 instances included: individual amounts being altered; no receipt; unsigned receipts; and unclear expenses.

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<sup>21</sup> Global Fund Grant agreements KGZ-202-G02-T-00 & KGZ-607-G04-T signed between the Global Fund and the National Center of Phthysiology of the Government of the Republic of Kyrgyzstan



**F.1.1.Unaccounted for Payments to NCP Staff Members**

A PIU official failed to return USD 430 to the PIU out of a USD 2,200 advance that was used to purchase goods totaling USD 1,770

49. On 12 June 2006, a PIU official received an advance of USD 2,200 of Global Fund grant funds for the purchase of a laptop.<sup>22</sup> The accounts office provided a 12 June 2006 receipt from the vendor showing the purchase of a DELL Inspiron e1405 laptop and a bag for a total of USD 1,770.<sup>23</sup> There is no evidence that the remaining balance of USD 430 was ever returned. The unaccounted for amount of USD 430, for which the PIU official failed to provide documentation of its return to the PR, should be reimbursed to the Global Fund.

Fig. 4 – PIU cash disbursement voucher No. 1 dated 12 June 2006 regarding the advance of USD 2, 200 to a PIU official for purchase of laptop.

Глобальная форма № КО-1

Проект Глобального фонда при НЦФ

Форма по ОКУД по ОКПО

Коды 0310001

ПРИХОДНЫЙ КАССОВЫЙ ОРДЕР

Номер документа 1

Дата составления 12.06.06

Дебет	Кредит			Сумма	Код целевого назначения
	код структурного подразделения	корреспондирующий счет, субсчет	код аналитического учета		
1100.1120		1200.1220		2200-00 USD	

Принято от ОАО "Дес-Кредобанк"

Основание: Чек 3247476

Сумма: Две тысячи двести долларов 00 центов 2200-00 USD

Приложение: на приобретение оргтехники

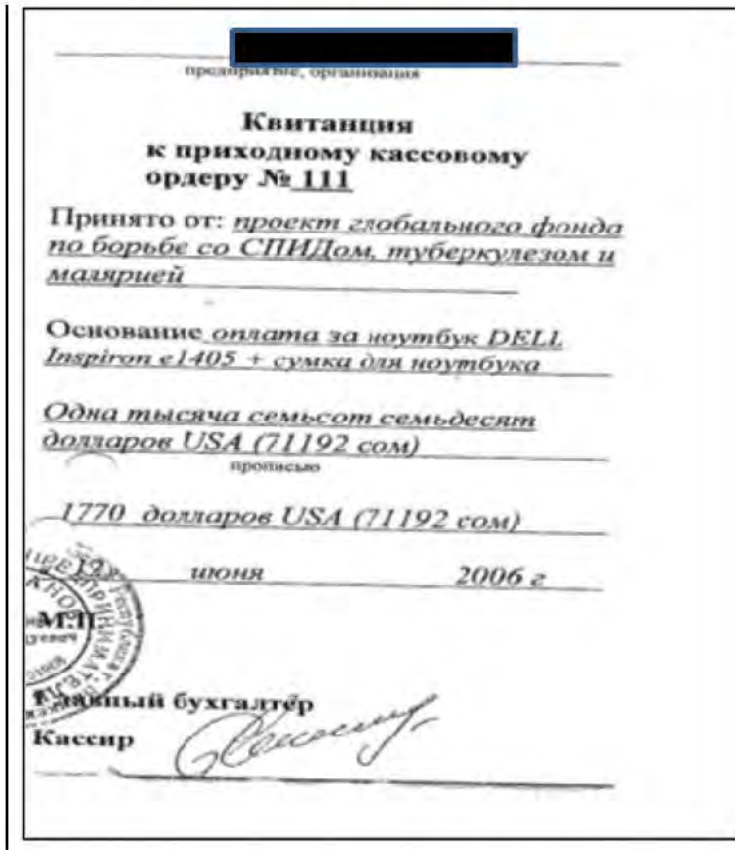
Amount

Date

<sup>22</sup> PIU cash disbursement voucher #1 dated 12.06.2006

<sup>23</sup> Receipt No.111 dated 12 June 2006.

Fig. 5 – Receipt for Dell laptop and bag in amount of USD 1,770



A PIU official failed to acquit USD 4,762 in advances.

50. During an interview with the OIG, a former employee of the PR stated that upon leaving the PIU in 2008 a total of USD 4,762 (KGS 200,000) in advance payments issued in 2007 to a PIU official had not been accounted for. According to the interviewee, attempts were made to have the PIU official to account for these advances, however, the official failed to do so. Consequently, the former employee brought the matter to the attention of the LFA at that time, PricewaterhouseCoopers, and the FPM. Although the FPM responded by sending a note requiring the situation to be rectified, this mandate was not enforced. The former employee ultimately resigned from the position at the PIU because of the conflict with the PIU official, regarding the unaccounted for cash advances.<sup>24</sup>

51. The OIG reviewed the Round 2 and Round 6 electronic expense reports provided by the PIU pertaining to cash advances issued to the same PIU official.<sup>25</sup> The Round 2 report states that between February 2006 and December 2009, the PR official submitted 103 expense reports, indicating total cash advances of USD 40,338 (KGS 1,694,214) and total acquittals for this same amount. The Round 6 report states that between April 2007 and December 2008, the official submitted 45 expense reports, indicating total advances of USD 18,925 (KGS 794,865) and total acquittals of USD 19, 127 (KGS 803,362) for this period. The Round expense report indicated that the official was in credit USD 202 (KGS 8,497) at the end of the

<sup>24</sup> Interview between OIG and XXX at Bishkek on 9 March, 2010.

<sup>25</sup> Card Account Number:1500.1520: employees XXXX for 01.04.07 – 31.12.09 Round 6 & Card Account Number: 1500.1520:employee XXXX for 01.04.07 – 31.12.08 Round 2

reporting period (31 December 2008). It should be noted that the official left the PIU on 12 May 2008, although he returned to the PIU in 2009.

52. The OIG audit identified that the PIU official did not fully acquit all the cash advances as indicated in the electronic expense reports provided to investigators. For example, documentation associated with a cash advance to the official in 2006 to purchase a laptop computer indicates an unaccounted for amount of USD 430.<sup>26</sup>

53. OIG investigators obtained scanned copies of all cash advance vouchers and associated expenditure receipts made available by the PIU (121 vouchers) relating to the PR official, and analyzed the cash advance vouchers and associated expenditure receipts for the period between 1 March 2004 (R2 grant starting date) and 8 Feb 2008 (date of the last cash advance voucher and expenditure receipts provided).

54. Analysis of the vouchers and receipts provided by the PIU revealed that the PR official's expenditures and acquittals included a total of USD 2,156 (KGS 90,565) of unjustified expenditures as shown in the following table:

USD 2,156 of PIU manager's expenditure was unjustified

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<sup>26</sup> Cash Advance voucher dated 12 June 2006 and associated receipts obtained from the PIU.

Fig. 6 – Missing or Incorrect Justification of Expenses

Date of Advance	Voucher	Expenditure amount (KGS)	Expenditure Details	Missing or Incorrect Justification of Expenditure
18.11.05	10/00609	600	Transportation reimbursements	Individual amounts have been altered. Another person has signed for the receipt instead of the intended recipient
		4174	Air Ticket	Expenditure included in the expense report, but no receipt provided
		144	Luggage	
17.10.05	10/00539	2,451	DSA	No receipts provided for accommodation or transportation
17.12.04	122	1,637	Honorarium for presenter	Receipt is not signed by the intended recipient
18.12.04	7	1,842	DSA	Additional DSA receipt, which represents part of the total DSA paid, was not taken into account
	136	43,400	Bank transfer	Unclear bank transfer instruction
20.07.04	10/00161	6,822	Honorarium for presenter	Receipt is not signed by intended recipients
15.06.04	36/27	10,381	DSA for participants (16.06.04 – 18.06.04)	Additional amounts paid have not been reported
09.06.04	10/00133	913	DSA	No receipts provided for accommodation or transportation
14.04.04	0308002	863	DSA (Ms. ██████)	Payment was made to the recipient directly by the project, but was expensed by the PIU official
		431	DSA (Mr. ██████)	
		863	DSA (Mr. ██████)	
		863	DSA	
		863	DSA	
06.11.07	172	2,800	Construction Materials	Additional receipt, included in the total invoice amount, was not taken into account
01.02.06	10/00051	7,550	Meals for 24 persons	Earlier advance payment not taken into account
		3,968	Telephone (Oct-Nov 06 re 5280762704 & Jul-Aug 06 re 5280762704)	Calculation of the expense amount claimed is not clear and does not correspond to invoice
<b>TOTAL</b>		<b>90 565</b> <b>USD 2,156</b>		

55. As no documentation could be provided to justify USD 2,156 in Global Fund grant funds advanced to the PIU official in question, these funds constitute unsupported expenses.

56. In an interview with OIG auditors, a senior PR official was asked about outstanding advance payments identified during the course of the audit. He stated that he had no knowledge of these payments, as he is not involved in the day-to-day operations of the PIU. He relied on the reports of the LFA and the Kyrgyzstan Chamber of Audit. Since these reports did not detect these advances, the senior PR official was unaware of them prior to the OIG audit.<sup>27</sup> Although the OIG found that the senior PR official was correct in that the LFA and the Kyrgyzstan Chamber of Audit did not detect these advances, the PR demonstrated no effort or concern to exercise its fiduciary duty to protect grant funds as it failed to remedy this issue.

<sup>27</sup> OIG interview with the senior PR official, 25 Feb 2010.

### F.1.2.Misrepresentations Regarding Non-Grant Related Expenses Paid to Staff

The PR misappropriated project funds to pay for unrelated travel and food expenses

57. The OIG found that the PR misappropriated Global Fund project funds earmarked for grant related projects in order to pay for unrelated travel and food expenses for employees of regional TB clinics. In order to conceal these transactions, the PR misrepresented these payments as project activities related to the Program Grants.

58. As per the project budget, for Rounds 2 and 6 grants a total of USD 716,899 (KGS 30,109,758) was allocated to the: supply of reagents for microscopy, purchase of reagents and consumables for microscopy and culture in accordance with procurement plan;<sup>28</sup> procurement of reagent supplies for microscopic examination;<sup>29</sup> reagents and supplies for bacteriology;<sup>30</sup> Culture, DST investigations and clinical laboratory tests for MDR-TB patients;<sup>31</sup> Reagents and supplies for TB laboratory diagnosis;<sup>32</sup> and Laboratory Supplies.<sup>33</sup>

59. The project budgets also provided for a total of USD 120,058 (KGS 5,042,436) for “Social support for patients with MDR-TB and medical social support for 50 MDR patients in the maintenance phase of treatment” under Round 2, and for “Social support for MDR-TB patients during the continuation phase of treatment” under Round 6. The Round 6 Work Plan and Budget submitted by the PR to the Global Fund stated that “patients will be provided transport charges for improving quality of daily direct observation of drug intake (DOT) and close monitoring of side effects.”<sup>34</sup> The budget does not include any reference to or authorization for payments to medical staff or non-patients.

60. Protocol 8/2 of 16 October 2007 provided for two projects, one for social support to MDR-TB patients in the penitentiary system, and the other for the social support of MDR-TB patients in the ambulatory phase of treatment.

61. USD 1,457 allocated for grant activities was paid to employees at the National TB center for travel expenses and meals

The PR misappropriated USD 1,457 in grant funds to pay for expenses unrelated to the grant

62. In contravention of the budgets for these projects, however, the PR provided USD 1,457 in cash of the funds allocated for these projects to employees at the National TB center for travel expenses and meals. Analysis of PIU cash vouchers identified that the PR fraudulently represented these payments as legitimate expenditures in the accounting documents for these projects.

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<sup>28</sup> NCP Work Plan and Budget for R2 grant years 1&2 and years 3&5

<sup>29</sup> NCP Work Plan and Budget for R2 grant year 3

<sup>30</sup> NCP Work Plan and Budget for R6 grant year 1&2

<sup>31</sup> NCP Work Plan and Budget for R6 grant year 1&2, year 3, year 4.

<sup>32</sup> NCP Work Plan and Budget for R6 grant year 3, year 4.

<sup>33</sup> NCP Work Plan and Budget for R6 grant year 5.

<sup>34</sup> NCP Work Plan and Budget for R6 year 3-5

Fig. 7 – PIU Cash Vouchers associated with payments for milk and travel expenses for TB employees.

Date	PIU Cash Voucher	Amount	Recipient	Purpose	
				Stated	Actual
03/12/2008	365	USD262 (11,016 KGS)	Deputy Director, RRC	Social Support of 50 MDR-TB patients	Milk and Travel expenses for TB department employees
09/12/2008	375	USD 257 (10,812 KGS)	Director, RRC	Procurement of reagents and expendable materials	Milk and Travel expenses for TB department employees
25/12/08	428	USD 463 (19,431 KGS)	Chief Nurse, SCB	Social Support of 50 MDR-TB patients	Milk and Travel expenses for TB department employees
25/12/08	429	USD 192 (8,058 KGS)	Matron, MDR-TB Department of the National TB Center	Social Support of 50 MDR-TB patients	Milk and Travel expenses for TB department employees
30/12/2008	441	USD 283 (11,883 KGS)	Laboratory Technician, Republican Reference Laboratory	Social Support of 50 MDR-TB patients	Milk & Travel expenses for TB department employees

## F.2. Conflict of Interest

A senior PR official established several NGO's that were later appointed as SRs.

63. The OIG investigation found that a senior PR official acted contrary to both the Global Fund Grant Agreement conditions and also host country law regarding conflict of interest and corruption. The senior PR official's family members were appointed to three of the four NGOs awarded contracts for Global Fund grant projects by the NCP. These four organizations were awarded 60 percent of Global Fund grant funds distributed to SRs for the Round 2 and 6 grants. This constitutes a compliance issue with the article 21(b) (i) of the Agreement between the Global Fund and the NCP and a potential breach of the Article 5 of the Law of The Kyrgyz Republic on state procurement of goods, construction and services.

### F.2.1.A senior PR official directed the establishment of several NGOs in the TB sector and installed relatives in those NGOs

64. Under the Round 2 and Round 6 TB grants, a tender committee awarded USD 162,877 (KGS 6,840,834) of Global Fund grant funds to ten NGOs. The total grant awards comprised 18 projects (14 under Round 2 and four under Round 6) which were awarded to these NGOs: eight projects totaling USD 98,212 (KGS 4,124,904) were awarded to the Association of Societies to Fight TB,<sup>35</sup> two projects totaling USD 14,173 (KGS 595, 260) were awarded to the Kyrgyz Society for the Rational Use of Medical Drugs,<sup>36</sup> two projects totaling USD 7,043 (KGS 295,814) were awarded to the Association of TB Specialists<sup>37</sup> and one project totaling USD 6,780 (KGS 284,760) was awarded to El Med Plus.<sup>38</sup> Six projects totaling USD 64,665 (KGS

<sup>35</sup> Protocol 9 – 06/10/08, Protocol 4-15/03/07 & 05/03/07, Protocol 8/2 – 16/10/07, Protocol 3-07/08/06

<sup>36</sup> Protocol 9-06/10/08 & Protocol 8/2-16/10/07

<sup>37</sup> Ibid.

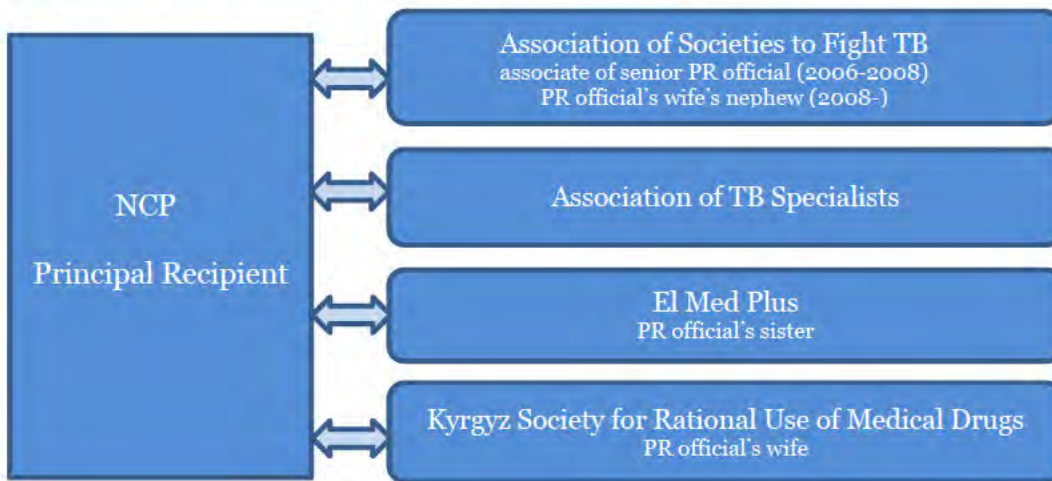
<sup>38</sup> Protocol 9-06/10/2008

2,715,930) were awarded to six other NGOs (Sanaalash, Ulukman-Daryger, Tuberculosis-a global challenge, Zone Aid, The New Status of Young and Samat). A senior PR official had the right of final approval of the Tender Committee's decisions.

A senior PR official appointed his wife, sister and his wife's nephew to three NGOs that were later appointed as SR's

65. A senior PR official's family members were appointed to three of the four NGOs awarded contracts for Global Fund grant projects by the NCP. The Kyrgyz Society for Rational Use of Medical Drugs employed his wife: his sister was employed at El Med Plus; and his wife's nephew was appointed as the director of the Association of Societies to Fight TB after the removal of the association's former director, and also served as the director of another SR, the Association of TB Specialists.

Fig. 8 – NGO Sub-Recipients established at the direction of the NCP



66. In an interview with OIG, the senior PR official involved did not deny that family members and a personal friend were employed at NGOs that were SRs for Global Fund grants. However, he justified these appointments with the claim that these persons were appointed only because they were best qualified for these positions.<sup>39</sup> On this matter the OIG found the following:

- Association of Societies to Fight TB

A retired medical doctor and former head of the TB prison hospital was asked by the senior PR official to start an NGO aimed at serving the TB community. The retired doctor subsequently formed the Association of Societies to Fight TB in early 2007.<sup>40</sup>

The senior PR official's wife's nephew<sup>41</sup> was initially hired by the association's former president to work as his assistant in 2007.<sup>42</sup> Upon the former president's resignation in 2008 the senior PR official's wife's nephew was appointed as the president of the Association of Societies to Fight TB. The appointee was unqualified for the position of Director of the Association because he did not have any TB-related experience and was trained as a lawyer and biologist.

<sup>39</sup> Interview between OIG and senior PR official at Bishkek on 25 Feb 2010

<sup>40</sup> Interview between OIG and former president of the Association of Societies to Fight TB at Bishkek on 22 Sept 2010

<sup>41</sup> Information provided by XXXXX to OIG on 23 Feb 2010.

<sup>42</sup> Interview between OIG and XXXX at Bishkek on 15 Feb 2010.

- El Med Plus

The senior PR official's sister, a paediatric doctor, was employed by El Med Plus as a lecturer. Although the senior PR official conceded in his interview with OIG that his sister is employed at El Med Plus, another PR official stated to the OIG investigators that the senior PR official had previously instructed him to ensure that his sister's name was not reflected in any of the documentation concerning El Med Plus. When the PR official indicated that it would be impossible to do this if she were to receive payments for services rendered, the senior PR official consented and instructed him to reflect her as a teacher in documentation.

- Kyrgyz Society for Rational Use of Medical Drugs

The senior PR official's wife was employed as a lecturer at the NGO 'Kyrgyz Society for Rational Use of Medical Drugs'.

**F.2.2.A senior PR official purchased a vehicle for the NCP from his wife**

A senior PR official purchased a vehicle for the PIU from his then wife using grant funds and without any procurement process

67. The OIG identified evidence that the PR, represented by a senior official, purchased a vehicle from his wife with Global Fund grant funds without any procurement process or record of this asset in NCP's accounting documentation.

68. Articles 21 (b) (vi) and 21(c)(i) of the grant agreement between the PR and the Global Fund, and Article 5 (2) of Kyrgyzstan law on State Procurements, prohibit procurements of goods or services from a supplier who is a spouse or family member. In addition, both the grant agreement (Article 18) and possibly Kyrgyzstan state law (Article 18) require a competitive tender process for procurement of goods. According to Article 18 of Kyrgyzstan state law, election of any other procurement method by the procuring entity "shall be done with the consent of the State Agency". Thus, in the absence of consent from the State Agency, this procurement required a tender with unlimited participation. The OIG has not sought specific legal opinion from in-country legal counsel on this issue, but the matter will be referred to the Prosecutors Office of the Kyrgyz Republic for consideration.

69. The 18 October 2006 purchase voucher for the vehicle, set forth below, reflects the PIU as "buyer" and the purchase price of the 1996 model Mitsubishi RVR as KGS 234,747 (USD 5,589). The senior PR official is the signatory of both the purchase order and of the contract for the vehicle.



Fig. 9 - PIU purchase voucher for Mitsubishi, indicating the seller as the senior PR official's wife and signatory as the senior PR official

Проект Глобального фонда при НЦФ		Форма по СКУД по ОКПО		Коды 0310002	
РАСХОДНЫЙ КАССОВЫЙ ОРДЕР				Номер документа 302	Дата составления 18.10.06
код структурного подразделения	Дебет корреспондирующий счет, субсчет	код аналитического учета	Кредит	Сумма	Код целевого назначения
	1500.1520		1100.1110	234747-00 Сом	

Выдать: [Redacted] → Mitsubishi 1996

Основание: за автомобилем Мицубиси RVR, 1996 г. в Двести тридцать четыре тысячи семьсот сорок семь сомов 00 тыйынов  
Приложение: договор купли продажи автомобиля

Годитель: [Redacted] → Senior PR Official

Главный бухгалтер: [Redacted]

Получил: [Redacted]

200 г. Подпись: [Redacted]

По: Паспорт: серия № Кем выдан: Дата выдачи: 0 г.

Выдал кассир: [Redacted]

PR purchased the vehicle without any competitive process

70. In an interview with the OIG, the senior PR official proffered that the purchase of this vehicle did not directly benefit a family member because the vendor was his ex-wife at the time of the purchase.<sup>43</sup> However, both the vendor and a PR official told investigators that indeed she was at that time married to the senior PR official.<sup>44</sup> The PR official did note that at the time of the purchase of the vehicle, the senior PR official and his wife were not living together. Nevertheless, this had no material effect on the legal status of their marriage.

71. In selecting his wife as the supplier of the vehicle for the PR, the senior PR official failed to engage in a competitive procurement process — specifically, the PR failed to solicit other bids or to obtain other price quotes prior to the purchase of the vehicle from the senior PR official's wife. Indeed, in his interview with the OIG, the senior PR official conceded that neither a procurement process nor an independent price valuation was conducted prior to the purchase of the vehicle. When investigators highlighted the fact that the Global Fund grant agreement requires a competitive procurement process, the senior PR official conceded that the purchase of the vehicle did not comply with the agreement's terms. As he was a PR official, he further conceded that his failure to exercise appropriate oversight was a "mistake".<sup>45</sup>

72. Moreover, although the vehicle was purchased with Global Fund grant funds, and both the senior PR official and PIU official indicated to investigators that the

<sup>43</sup> Interview between OIG and a senior PR official at Bishkek on 22 Sep 2010

<sup>44</sup> Interview between OIG and vendor on 23 Feb 2010, and between OIG and PR official on 23 Sep, 2010.

<sup>45</sup> Interview between OIG and PIU official at Bishkek on 23 Sep 2010

The amount of Global Fund money used to purchase the vehicle (USD 5,589) is ineligible

vehicle was used for grant related purposes, an inspection of the PR's Round 2 and Round 6 asset lists revealed that the vehicle was never recorded as an asset.<sup>46</sup>

73. Thus, the purchase price of the vehicle USD 5,589 (KGS 234,747) is compromised by procurement irregularities. The OIG recommends that contractual remedies be considered by the Global Fund and that the matter be referred to the Prosecutor's Office of the Kyrgyz Republic for further consideration.

### F.2.3. Correlation between Conflicts of Interest and Mismanagement

Collusion between the NCP and two SRs resulted in misappropriation of grant funds

74. As the evidence demonstrates, the PR and program officials breached the Global Fund Grant agreement by installing several family members and close friends in positions at SRs. The OIG further found significant evidence of collusion between the PR and two of the SRs, The Association of Societies to Fight TB and the Association of TB Specialists, that resulted in the misuse of grant funds. Throughout the investigation, the OIG found that that these two corrupt practices—the hiring of friends and family at SRs and the misappropriation of grant funds—were inextricably linked and led to increased collusion and corruption.

Grant funds provided to SRs that employed family members of the senior PR official

75. The characteristics of this overlap provide insight about the nature of the PR and a senior PR official. The senior PR official helped create SRs with his friends and family members, and gave Global Fund funds for projects that violated the grant agreement. It is reasonable to infer some level of coordination, collusion, and misappropriation between the PR and the SRs, due to the conflict of interest apparent in the hiring of the SRs' staff. At the very least, the senior PR official and the PR failed to exercise proper fiduciary oversight of Global Fund grant funds, resulting in amounts being used contrary to the terms of the Grant Agreement, including expenses for which no supporting records exist.

### F.3. Mismanagement

The NCP mismanaged USD 46,729 (KGS 1,962,612) of grant funds

76. Mismanagement and gross mismanagement tainted USD 49,534 of this amount, and significant issues uncovered included the following: (i) a senior official of the PR directed the establishment of four NGOs that were appointed as sub-recipients (SRs) of Global Fund grant funds by the NCP; (ii) the PR colluded with one of these NGOs, the Association of Societies to Fight TB, in securing Global Fund grant funds for non-grant related activities; (iii) these NGOs/SRs employed family members and a close friend of the senior PR official; (iv) the senior PR official entered into a contract to purchase a vehicle for the PIU from his wife with Global Fund grant funds and this purchase was not reflected in the PIU's account records; (v) the senior PR official transferred Global Fund grant funds to a non-authorized bank; and (vi) the PR failed to account for a multitude of financial irregularities and unaccounted for expenses.

77. The OIG concludes that there is substantive and credible evidence that the PR mismanaged a total of USD 46,729 (KGS 1,962,612) in funds. Gross mismanagement, as outlined above, is defined as "Reckless or intentional behaviour leading to inappropriate, imprudent, inefficient or incompetent management of funds, notably through negligence, absence of transparency, fairness, accountability or honesty in the management of said funds."

<sup>46</sup> Round 6 PIU asset list for period 01.07.2007 and Round 2 PIU asset list for period 2005-2009.

An SR was instructed by the PR to submit a project proposal unrelated to the grant agreement and received USD 20,211

78. The OIG investigation found evidence that the senior PR official instructed a close friend to submit to the PR a proposal for grant funds to create fish and dairy farm ventures. These projects, which received USD 20,211 (KGS 848 858) in Global Fund grant funds, were unrelated to the grant agreement objectives. In authorizing these projects, the PR breached its fiduciary duty to protect Global Fund grant funds in funding projects for an unauthorized purpose. This amount should be returned immediately to the Global Fund.

79. Further, as set forth herein, there is evidence of collusion between the PR and the Association of Societies to Fight TB in securing Global Fund grant funds. The OIG identified evidence of the following: (i) PR staff provided assistance to the Association in preparing its application for Global Fund grant funds; (ii) the Association shared offices with the PR; and (iii) the Association was awarded a contract for a non-grant related project without any review by the Tender Committee.

Senior PR official awarded 13 projects totaling USD 126,748

80. The senior PR official, by his own admission,<sup>47</sup> was instrumental in the establishment of four of the NGOs awarded contracts as SRs for Global Fund grant projects—namely, the Association of Societies to Fight TB, the Association of TB Specialists, El Med Plus, and the Kyrgyz Society for the Rational Use of Medical Drugs. As noted above, these NGOs were awarded a total of thirteen projects totaling USD 126,748 (KGS 5,323,416) of Global Fund grant funds.

81. In an interview with the OIG, the senior PR official stated that he directed the creation of these NGOs to fulfill the grant agreement's requirement for the involvement of civil society in grant related projects given that there were no such organizations in the TB field in Kyrgyzstan in 2004.<sup>48</sup> However, this explanation lacks credibility given that the tender committee awarded Global Fund Round 2 grant funds for TB-related projects to six other extant NGOs (Sanaalash, Ulukman-Daryger, Tuberculosis-a global challenge, Zone Aid, The New Status of Young and Samat), apart from the four created at the direction of the senior PR official.

82. The senior PR official also stated that he identified key areas where NGOs could perform valuable work and then established four NGOs to service these areas—specifically, to provide nourishment to TB patients; to promote the rational use of drugs in the fight against TB; and to provide training to physicians. However, the grant agreement does not include the first of these objectives—i.e., providing nourishment to TB patients—under grant related activities.

83. The OIG investigation found evidence of collusion between the PR and the SRs, the Association of Societies to Fight TB and The Association of TB Specialists. The senior PR official's close friend ran both NGOs.

### **F.3.1. The Senior PR Official Colluded with the Association of Societies to Fight TB to Secure Contract Awards**

Association of Societies to Fight TB was awarded 8 projects totaling USD 98,212

84. In July 2006, the Association of Societies to Fight TB was established as an organization to unite groups of TB specialists.<sup>49</sup> The Association was awarded eight Global Fund grant projects totaling USD 98,212 (KGS 4,124,904) by the NCP.<sup>50</sup>

<sup>47</sup> Interview between OIG Audit Team and senior PR official on 1 Nov 2009

<sup>48</sup> Ibid

<sup>49</sup> Interview between OIG and PIU official, 11 Feb 2010.

<sup>50</sup> Interview between OIG and XXXX at Bishkek on 12 Feb 2010 and 22 Sep 2010

The senior PR official colluded with one SR to award two projects unrelated to the Grant agreement.

85. A senior PR official colluded with the Association of Societies to Fight TB to secure Global Fund grant funds for two projects unrelated to those stipulated in the Grant Agreement. In an interview with the OIG, the former president of the association stated that the senior PR official formulated the idea for fish breeding and milk projects to provide nutritional support to TB patients, and then instructed him to propose these projects to the NCP. Further, according to the association's former president, PR staff assisted in the preparation of the Association's proposal that was then submitted to the NCP for consideration.<sup>54</sup>

Fig. 10 – Projects awarded to the 'Association of Societies to Fight TB' by the PR

Project	Project Duration	Amount (USD)
To the future without Tuberculosis	Aug 06 – Jan 07	25,000 (KGS 1,050,000)
Farming of Cyprinid fish for providing the supplemental nutrition for TB patients in the Suburban Clinical Base of NCP	Apr 07-Apr 08	11,800 (KGS 495,580)
Providing of TB patients with natural milk	Apr 07-Apr 08	8,411 (KGS 353,278)
Conducting seminars for medical personnel ACSM	Nov 08- Jan 09	11,996 (KGS 503 832)
The workshops for agency staff and training of prisoners.	Mar 07-Nov 07	12,461 (KGS 523 378)
Passports for prisoners with TB and social support in the Jalalabad and Chuy Oblasts	Mar 07 – Mar 08	12,461 (KGS 523,378)
Social support of MDR-TB patients in the penitentiary system	Nov 07 –May 08	13,402 (KGS 562,892)
Providing social support for patients with MDR-TB in the ambulatory phase of treatment in the civilian sector	Jul 08-Nov 08	14,481 (KGS 608,202)
<b>TOTAL</b>		<b>98,212 (KGS 4,124,904)</b>

Letterhead of the PR and SR very similar with same address

86. The OIG compared the letterheads of the NCP and the Association and found that the two have striking similarities, including the same stamp and the same address listed.

<sup>54</sup> Ibid.

Fig. 11 – (1.) Letterhead of the NCP & (2.) Letterhead of the Association of Societies to Fight TB



Senior PR official proposed projects to an SR that was subsequently awarded those projects

87. The OIG found that contrary to Article 18 of the relevant grant agreements, projects were not awarded to the Association of Societies to Fight TB on a competitive basis. According to the association’s former president, he did not see any advertisements calling for additional bids. Rather, he submitted his proposal to the PR at the request of the senior PR official, who had discussed the milk and fish projects with him. Although other projects may have been considered by the PR, the Association of Societies to Fight TB had an unfair advantage because the proposed two projects were those that the senior PR official had informed the association’s former president that he wanted to create.<sup>52</sup>

Projects awarded to one SR were not awarded on a competitive basis

88. The PR’s failure to hold a competitive tender process for funds awarded to the Association for Societies to Fight TB possibly violates Kyrgyzstan law on state procurement. This law requires that all applicable procurements to which this law applies—including all Global Fund grant agreements mentioned herein—are awarded through a competitive tender process with unlimited participation. Selection of any other procurement method by the procuring entity can only be done with the consent of the State Procurement Agency.<sup>53</sup>

No assessment of SR’s capacity to implement the projects

89. With regard to the selection of an SR, the Global Fund grant agreement requires that the PR assess the capacity of each sub-recipient to implement program activities and enter into a grant agreement creating obligations of the SR that are generally equivalent to those of the PR under the Global Fund grant agreement. Contrary to the terms of the Grant Agreement, the PR failed to engage in an assessment of the Association of Societies to Fight TB’s capability to implement program activities.

<sup>52</sup> Interview between OIG and XXXX on 12 Feb 2010

<sup>53</sup> Law of the Kyrgyz Republic on state procurement of goods construction and services. Article 18

### F.3.2. The Association of Societies to Fight TB was awarded funding for three projects that do not align with the grant program or planned activities

Three projects awarded to "The Association of Societies to Fight TB" were unrelated to grant activities

90. The PR funded three projects by the Association for Societies for TB that were unrelated to any planned activities under either the Round 2 or 6 grant agreements:

- 'Providing of TB patients with natural whole milk';
- 'Farming of Cyprinid fish for providing the supplemental nutrition for TB patients in the Suburban Clinical Base of NCP'; and
- 'Provision of Passports to Prisoners with TB'. These projects received a total of KGS 1,372,236 (USD 32,672) of Global Fund grant funds.

Fig. 12 – Association of Societies to Fight TB projects

Project	Project Activities	Project Duration	Amount
Breeding of cyprinids to provide additional supply of TB patients in the ZKB NTSF*	Breeding Cyprinids for supplementary feeding of tuberculosis patients at ZKB NTSF	Apr 07 – Apr 08	KGS 495,580 (USD 11,800)
Provision of TB patients with natural milk	Provision of TB patients with natural milk	Apr 07 – Apr 08	KGS 353,278 (USD 8,411)
Provision of Passports to Prisoners with TB	Provision of passports for prisoners with TB Jalabad and Chuy Oblasts	Mar 07 – Mar 08	KGS 523,378 (USD 12,461)
<b>TOTAL</b>			<b>KGS 1,372,236 (USD 32,672)</b>

\*Suburban Clinic of the NCP at Vorontsovka

91. Despite the existence of a contract between the PR and the Association of Societies to Fight TB regarding the Milk project<sup>54</sup> and the fish breeding project<sup>55</sup>, both signed by the senior PR official on 1 April 2007, the Tender Committee's Protocol documents do not contain mention of a cyprinid fish project, or any amount to be spent on a similar project.<sup>56</sup>

An audit of the SR by the PIU found USD 3,697 in unsupported expenditure and the PIU took no action

92. An audit of the Round 2 and Round 6 TB grants by Marka Audit, contracted by the PIU, included a random check of SRs' reports on implemented projects. The audit identified that accounting documentation submitted by the Association of Societies to Fight TB regarding the 'Fish farming for supplementary nourishment of TB patients' and 'Provision of TB patients with natural milk' projects, could not support a total of USD 3,697 (KGS 155 255).<sup>57</sup> Specifically, of the USD 11,800 (KGS 495,580) that was received by the Association of Societies to Fight TB for the project 'Fish farming for supplementary nourishment of TB patients' USD 1,731 (KGS 72,684) indicated as expenditures was not supported by primary accounting documents. The audit also found that of the USD 8,411 (KGS 353,278) received by the Association for the milk project, USD 1,731 (KGS 72,684) indicated as expenditures was not supported by primary accounting documents. The PR failed to take any action to correct or report these discrepancies.

<sup>54</sup> Contract number 9, dated 1 April 2007

<sup>55</sup> Contract number 10, dated 1 April 2007

<sup>56</sup> Interview between OIG and XXXX at Bishkek on 15 Feb 2010

<sup>57</sup> Marka Audit conducted an audit on July 4, 2008 regarding grant KGZ-607-Go4 for the period 1 January 2007 to 31 December 2007, and an audit in July 2009 regarding grant KGZ-607-Go4-T for the period 1 January 2008 to 31 December 2008.

Former PIU employee stated the projects were not viable and had little credibility.

93. The OIG interviewed a former PIU employee who left the PIU in January 2008. At this same time, the president of the 'Association of Societies to Fight TB' offered the former PIU employee a position within his organization, which was accepted. The former PIU employee was aware that the record keeping of the association was poor and had doubts about whether the Association's projects were within the core function of the TB funding. The former PIU employee checked the balance sheets of the fish and milk projects and thought these projects were not viable and had little financial credibility given that purchasing the fresh products from existing markets would have been more cost effective.<sup>58</sup>

SR's accountant was unable to obtain financial records or documents

94. Upon taking up the position with the Association of Societies to Fight TB, the former PIU employee requested financial records and documents related to the fish and milk projects from the Association's chief accountant. However, no financial records or documents were provided. Due to concerns about the credibility of the Association, after two weeks the former PIU employee resigned.

No evidence that the projects were personal ventures of the senior PR official

95. A colleague of the senior PR official claimed that the latter had expressed an interest in starting his own fish and dairy farming ventures prior to the establishment of the Association of Societies to Fight TB.<sup>59</sup> He stated that the senior PR official instructed the Director of the Association to propose this project as a means to start his own farming venture by presenting the farming activity as a program beneficial to TB patients. The OIG investigated this allegation and is unable to provide evidence directly supporting the claim that these projects were personal farming ventures of the senior PR official.

Projects were not cost-effective, did not align with any grant activities and constitute a misappropriation of grant funds

96. Nevertheless, irrespective of whether the senior PR official benefitted financially from these projects, they did not align with any of the Round 2 or Round 6 grant planned activities and thus constitute a misappropriation of Global Fund grant funds. Moreover, these projects were not cost effective, as fresh fish and natural milk could have been purchased at that time at local markets at a cheaper rate. With regard to the nutritional needs of TB patients, the senior PR official's claims regarding the nutritional value of 'raw' milk over pasteurized milk and fresh fish over commercially available fish have no scientific basis. A study by the Nutrition Information Centre of the University of Stellenbosch (NICUS) titled "Tuberculosis (TB) and Nutrition" concluded that "There is no documented evidence that any specific food on its own can alter the course of the disease or can for that matter be effective in the treatment of malnutrition. TB and HIV/AIDS patients are encouraged to eat a healthy, varied diet."<sup>60</sup>

### F.3.3.Fish Farming for Supplement Nutrition Project

USD 11,800 expended on a fish farming project

97. Under a signed agreement between the PR and the Association of Societies to Fight TB, dated 1 April 2007, a total of USD 11,800 (KGS 495,580) of Global Fund Round 2 grant money was allocated to and expended on this project.

98. The project coordinator and president of the Association of Societies to Fight TB received a total salary (12 months) of USD 3,111 (KGS 130,680) to manage the project. Construction costs of USD 5,093 (KGS 213,900) and other costs of USD

<sup>58</sup> Interview between OIG and XXX on 9 March 2010.

<sup>59</sup> Interview between OIG and XXX on 18 March 2010.

<sup>60</sup> Nutrition Information Centre University of Stellenbosch (NICUS) "Tuberculosis (TB) And Nutrition" available at:

[http://sun025.sun.ac.za/portal/page/portal/Health\\_Sciences/English/Centres%20and%20Institution/s/Nicus/Nutrition\\_Facts\\_sheets/TB%20and%20Nutrition.pdf](http://sun025.sun.ac.za/portal/page/portal/Health_Sciences/English/Centres%20and%20Institution/s/Nicus/Nutrition_Facts_sheets/TB%20and%20Nutrition.pdf)

3,595 (KGS 151,000) made up the rest of the USD 11,800 (KGS 495,580) total project budget.

Fig. 13 – Fish Farming project expenses

Fish Farming for Supplemental Nutrition Project			
Total Budget	Construction	Other Costs	Salary (one person)
KGS 495,580 (USD 11,800)	KGS 213,900 (USD 5,093)	KGS 151,000 (USD 3,595)	KGS 130,680 (USD 3,111)

99. The fish farm was constructed in 2007 on unused land at the suburban TB clinic in Vorontsovka. OIG investigators inspected the former fish farm in Vorontsovka and interviewed the director of the clinic.

100. The clinic's director stated that the fish pond was operational for about 18 months (Oct 2007 – March 2009) with the fish first becoming available in November or December 2007. Approximately three tons of fish had been produced for consumption.

Former president of association stated that it would have been cheaper to purchase fish at the market

101. In his interview with the OIG, the former president of the Association conceded that as compared to the total amount of funds expended on the fish project, it would have been cheaper to purchase the same amount of fish produced at the market (for an amount between KGS 100 and KGS 120 per kilo).

#### F.3.3.1. Provision of TB Patients with Natural Milk Project

USD 8,411 expended on a natural milk project

102. Under a signed agreement between the PR and the Association of Societies to Fight TB, dated 1 April 2007, a total of KGS 353,278 (USD 8,411) of Global Fund grant money was allocated to this project. Project funds were used to purchase cows and construct a shed for the cows at the NCP at Varontsovka.

Fig. 14 – Natural Milk Project expenditure items

Provision of TB Patients With Natural Milk Project			
Total Budget	Construction	Other Costs	Salaries (3 people)
KGS 353,278 (USD 8,411)	KGS 109,378 (USD 2,604)	KGS 135,900 (USD 3,236)	KGS 108,000 (USD 2,571)

103. In an interview with the OIG, the clinic's director stated that after the fish project started, between 3 and 6 cows arrived at the clinic and were kept behind the fish ponds in a constructed cow shed. After three or four months, the cow shed was dismantled and together with the cows, sent to the Republican Rehabilitation Center (RRC) at Jetty Oguz. The clinic was provided with meat and milk several times while the cattle were at the clinic but had not received anything since they were moved to Jetty Oguz.<sup>61</sup>

104. Investigators made further enquiries at the RRC and spoke with the RRCs Deputy Director of Administration, Logistics and Buildings who stated that

<sup>61</sup> Interview between OIG and XXXX on 20 Sep 2010



approximately 13 cows were kept at the RRC, but grazed in the mountains between April and September.<sup>62</sup>

Former president of SR unable to provide any results of the project

105. OIG interviewed the former president of the Association of Societies to fight TB, who stated that the project provided milk for TB patients at the Suburban Clinic (Vorontsovka) and also at the NCP (Bishkek).<sup>63</sup> However, he failed to provide information to show how much milk was provided or why it was of significant value to TB patients at these locations.

**F.3.3.2. Passports for Prisoners Project**

USD 12,461 expended on a project to provide prisoners with passports

106. According to the NCP's Tender Committee Protocol No. 4, on 5 March 2007, the PR Tender Committee met to review the funding proposals submitted by three NGOs. The funding proposal submitted by one of these NGOs, the Association of Societies to Fight TB, was for a project 'To provide passports to sick people released from prison and to provide social assistance in two regions, Jalalabad Oblast and the Chuy Oblast'. The Tender Committee awarded the Association of Societies to Fight TB USD 12,461 (KGS 523,378) for this project for the period of one year (March 2007 to March 2008).<sup>64</sup>

Project was unsuccessful and shut down

107. OIG interviewed the current president of the Association of Societies to Fight TB who took over as president after the former president resigned at the end of 2008. The current president of the association stated that during 2008, the former president launched the project, 'Provision of passports to the TB patients discharged from prisons'. The current president stated this project was unsuccessful and soon was shut down.<sup>65</sup>

Project does not align with any grant related activities

108. The project 'to provide passports to sick people with TB released from prison' does not align with any of the planned activities under either the Round 2 or Round 6 Grant Agreements. This project received a total of KGS 523,362 (USD 12,461) of Global Fund grant funds. This amount should be returned in full to the Global Fund.

**F.3.4. The Association of TB Specialists received funding for a project unrelated to grant activities**

A PIU official stated that the SR 'Association of TB Specialists' was a 'sham' and a misuse of money

109. In an interview with the OIG, a PIU official stated that the former president of the Association of TB specialists established the Association at the instruction of a senior PR official. The PIU official stated that this NGO was appointed as an SR without any competitive process and received funding from the Global Fund TB grant. The PIU official believed this organization to be "sham" and a complete misuse of money from the Global Fund.<sup>66</sup> The OIG investigated the projects funded by the GF grant to determine if they met those stipulated in the grant agreement.

The PR assisted the SR with their proposal

110. In an interview with the OIG, the association's former president stated that in 2006, after he retired from his position as Head of the TB Prison Hospital, he met with a senior PR official and they discussed starting an NGO that would arrange seminars and training sessions for TB specialists. Soon after, he launched the NGO Association of TB Specialists. He stated that he prepared his proposal with the help of PR staff. The proposal was approved by the PR, and his association was appointed as a Sub-Recipient (SR) of the Global Fund TB program by the senior PR official.

<sup>62</sup> Interview between OIG and XXX at RRC Jety-Oguz on 18 Sep 2010

<sup>63</sup> Interview between OIG and XXX at Bishkek on 22 Sep 2010

<sup>64</sup> NCP Tender Committee Protocol No. 4 dated 5 March 2007

<sup>65</sup> Interview between OIG and XXX at Bishkek on 15 February 2010.

<sup>66</sup> Interview between OIG and PIU official at Bishkek on 11 Feb 2010.

Two projects totaling USD 7,043 were awarded

111. The Association of TB Specialists ran two projects: 1) ‘Status and prospective financing of the anti-TB services and controls in Kyrgyzstan’, awarded on 6 October 2008; and 2) ‘Conducting of training among TB patients’, awarded on 16 October 2007.<sup>67</sup>

112. Protocol documents of the tender commission indicate that the PIU awarded these two projects a total of USD 7,043 (KGS 295,814).

Fig. 15 – Projects awarded by Association of TB Specialists

Project	Amount USD
Status and prospects for funding and control of TB services in Kyrgyzstan <sup>68</sup>	3,710 (KGS 115,814)
Conducting training with TB patients <sup>69</sup>	3,333 (KGS 140,000)
TOTAL	7,043 (KGS 295,814)

One of the projects did not align to any grant activities

113. The project ‘Status and prospects for funding and control of TB services in Kyrgyzstan’ did not align with any of the planned activities in either the round 2 or round 6 grant. This project received a total of USD 3,710 from Global Fund grant funds. This amount should be refunded to the Global Fund.

114. The project ‘Conducting trainings in TB patients’ aligned with the Round 2 grant planned activity ‘Improving awareness of the patient of the consequences of incomplete treatment’ and therefore is considered a legitimate use of grant funds.

#### F.4. Fraudulent Procurement

Multiple instances of non-transparent and anti-competitive procurements found

115. The OIG also identified multiple cases in which general principles of fair and competitive procurement were not followed. Article 18 of the Grant Agreements for the Round 2 and Round 6 grants states that procurement practices must meet the following criteria:

- Contracts shall be awarded on a transparent and competitive basis;
- All solicitations for contract bids must be clearly notified to all prospective bidders, which shall be given a sufficient amount of time to respond to such solicitation ...;
- Contracts shall be awarded only to responsible contractors that possess the ability to successfully perform the contracts; and
- No more than a reasonable price (as determined, for example, by a comparison of price quotations and market prices) shall be paid to obtain goods and services.

The PR’s procurement practices breached Kyrgyzstan law

116. Article 18 (2) of Kyrgyzstan State Procurement law states that “the preferred procedure for conducting State Procurement are tenders with unlimited participation.” In the event that any other procurement method is to be followed, the procuring entity must secure the consent of the State Procurement Agency.<sup>70</sup> Again, the OIG has not sought specific legal opinion from in-country legal counsel but the matter will be referred to the Prosecutors Office of the Kyrgyz Republic for consideration. Under the procurement and supply management (PSM) plan for the Round 2 TB grant, the PR may have been obliged to comply with this law.<sup>71</sup> In addition, the PSM plan for the Round 6 TB grant states that “the following principles

<sup>67</sup> Interview between OIG and XXX at Bishkek on 17 Feb 2010.

<sup>68</sup> Protocol 9 – 6 Oct 2008

<sup>69</sup> Protocol 8- 16 Oct 2007

<sup>70</sup> *Law of the Kyrgyz Republic on state procurement of goods, construction and services* –Article 18.2

<sup>71</sup> Procurement Plan submitted by the NCP in conformity of article 18 of the program agreement.

corresponding to the good international procurement practice and the Kyrgyz Law on public procurement will be applied to procurement under the GFATM grant: For procurements between USD 1,000 and USD 5,000, a quotation method with a minimum of three quotations is required. For procurements of USD 5,000 or more, a quotation method with an extended Tender Commission review is required.”<sup>72</sup>

117. The OIG identified multiple cases in which one or all of these provisions were violated. The pattern of significant irregularities in procurement exercises conducted by the PR and disregard of contract provisions in the execution of multiple contracts indicates the PR’s willful knowledge and facilitation of these schemes.

Significant issues found with the PR’s procurement of Stroy-Avto-Group

118. The OIG investigation found the following in relation to procurement exercises involving a third party vendor, Stroy-Avto-Group:

- The PR changed the bid closing date to 30 days earlier than that which was originally advertised with no valid reason and, in fact, signed the contract with Stroy-Avto-Group the day before the amended bid closing date;
- The PR failed to detect patent similarities between the three bids submitted;
- When Stroy-Avto-Group was no longer able to fulfill its contractual duties, the PR, without conducting a re-tender, entered into a separate contract with a third party vendor, Grand Format LLC, for work stipulated under its contract with Stroy-Avto-Group; and
- The PR contracted with Grand Format for additional works over and above the allowed percentage awarded instead of undertaking a procurement process as required by law.

Evidence that the PR colluded with Stroy-Avto-Group regarding a construction contract valued at USD 53,493

119. Such evidence constitutes circumstantial evidence of collusion between the PR and Stroy-Avto-Group. In analyzing evidence, it is axiomatic that a single piece of evidence is never viewed in isolation from other evidence. Rather, evidence is viewed in the aggregate, and in its totality. Findings of facts can therefore be made when the accumulation of mutually corroborating evidence leads to one reasonable inference over all other alternative explanations.<sup>73</sup> In this case, the totality of the circumstances, based upon all reasonable inferences that may be drawn, leads to a conclusion that it is more likely than not that the PR colluded with Stroy-Avto-Group to secure the contract for repairs for the RRC in the amount of USD 53,493 (KGS 2,246,720).

Evidence that the PR steered USD 62,960 in furniture contracts to a particular vendor

120. A second prevalent case of procurement irregularities relates to a vendor, who was awarded three contracts for a total of USD 62,960 in Global Fund grant funds. Although key individuals told the OIG that a senior PR official received kickbacks on these contracts, the OIG was unable to identify direct evidence to substantiate this claim. Nevertheless, at the very least, there is credible and substantive evidence that the PR steered contracts to this vendor without any proper justification, contrary to the grant provisions and possibly Kyrgyzstan law.

Successful bidder was less qualified and 25% more expensive

121. First, the vendor was awarded a contract for the provision of furniture to a TB hospital in Bishkek despite the fact that his bid was over 25 percent higher than that of a second, more established bidder. Further, the PR made fraudulent representations in tender committee documents and to OIG investigators to justify this award.

<sup>72</sup> Round 6 PSM plan submitted to the Global Fund. Para 2.3 ‘Procurement and Planning’

<sup>73</sup> For precedent in common law, see Jack B. Weinstein & Margaret A. Berger, 2 Weinstein’s Federal Evidence § 401.04[2][d] (McLaughlin, ed.) (2011); for precedent in civil law, see Civil Procedure in France, Peter Herzog, para. 7.31, p. 316; See also Corfu Channel Case, Judgment of April 9th, 1949, I.C.J. Reports 1949, p. 4, at pp. 18, 19, 20, 22-23. Available at <http://www.icjij.org/docket/files/1/1645.pdf> (accessed 23 August, 2011)

Evidence of collusion found	122. Second, a PIU official stated to the OIG that a senior PR official insisted on awarding the contract to the vendor. A former member of the Tender Committee confirmed that a PIU official had informed him of the involvement of a senior PR official in the procurement.
Winning bidder's bid did not comply with Kyrgyzstan law	123. Third, with regard to a contract for the provision of furniture to the Suburban Clinical Base in Varantsovka, the PR failed to recognize patent evidence of collusion in the bid documents—namely, the inclusion of the only other bidder's name on documents submitted by the winning bidder. In addition, by awarding the vendor the contract, the PR may have breached Kyrgyzstan public procurement law, which requires at least three bids for a valid procurement exercise.
No evidence of PR staff receiving any financial benefit	124. Fourth, the PR awarded a contract for the provision of furniture to the vendor despite the fact that: (i) his bid represented a 110 percent increase in price over the course of one month as compared to his quote for the same bid specifications for the Varantsovka clinic; and (ii) his failure to submit required tax and social certificates as required under Kyrgyzstan law.
	125. The OIG is unable to conclude whether PR program officials received any financial benefit from these instances, or whether anything was received at all.

**F.4.1.NCP Program Officials Colluded with Stroy-Avto-Group to Secure the Contract Award for the Renovation of the RRC**

PR steered a construction contract for the RRC to Stroy-Avto-Group	126. The OIG's investigation identified that the PR steered the contract award for works for reconstruction and major repairs of the therapeutics department building at the Republic Rehabilitation Centre (RRC) at Jety-Oguz to Stroy-Avto-Group.
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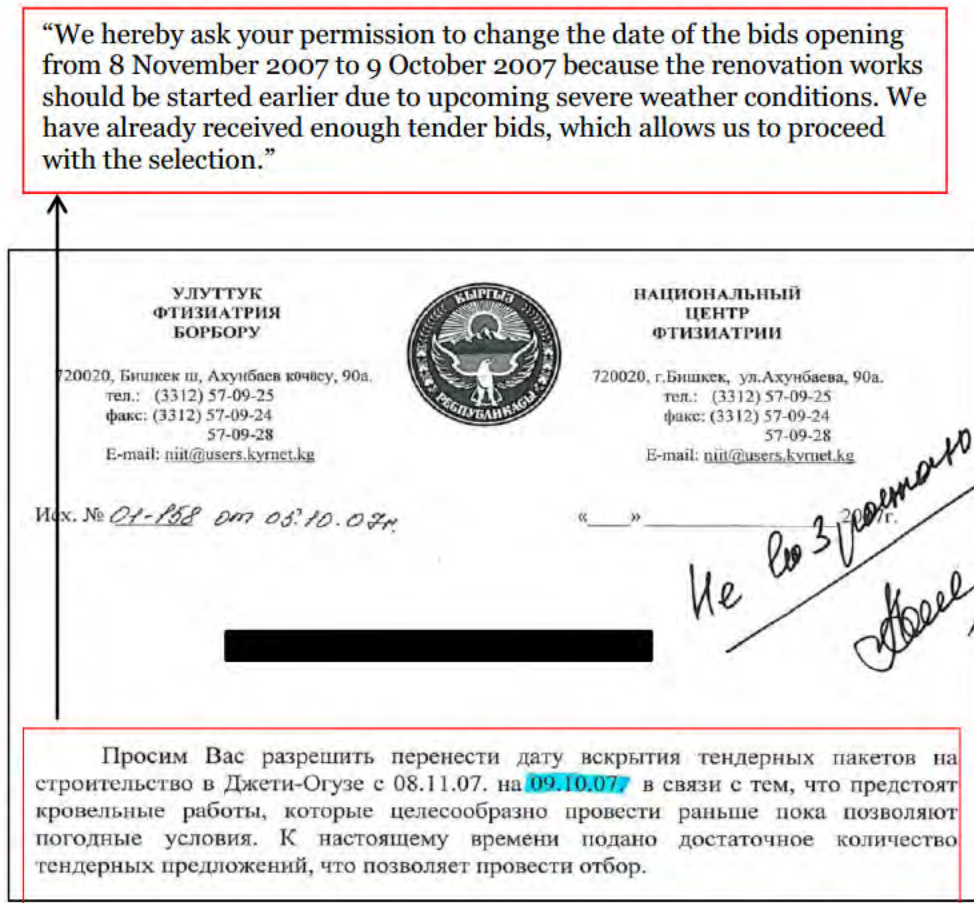
**F.4.2.The PR changed the bid submission deadline to an earlier date and signed the contract with Stroy-Avto-Group prior to a Tender Committee review**

Bid submission deadline was shortened from the advertised closing date by one month	127. The PR eliminated any possibility of a competitive procurement process when it signed the contract with Stroy-Avto-Group for the RRC renovation on 8 October 2007, the day before the bid submission deadline. Moreover, prior to this date, the PR had changed the bid submission deadline itself from that which was originally advertised (8 November 2007) to almost one month earlier (9 October 2007) without any valid reason or authorization.
	128. The original announcement for the renovation tender was placed in the 'Slovo Kyrgyzstana' newspaper on 25 September 2007 with the stated submission deadline of 8 November 2007. <sup>74</sup> Three companies submitted bids:
	<ul style="list-style-type: none"> <li>• Stroy-Avto-Group for KGS 2,246,720 (USD 53,493);</li> <li>• NTC Technopark for KGS 2,921,327 (USD 69,555); and</li> <li>• Spetsenergostroy for KGS 2,274,514 (USD 54,155).</li> </ul>
Permission to shorten the bid deadline granted by senior PR official	129. On 5 October 2007, a PIU official wrote to a senior PR official seeking permission to change the submission deadline from 8 November to 9 October 2007 <sup>75</sup> —thereby, pushing forward the deadline to allow for only fourteen days between the publication of the tender announcement and the deadline. The English translation of the document below reads:

<sup>74</sup> Advertisement in 'Slovo-Kyrgyzstana' newspaper 25 September 2007 p.16

<sup>75</sup> Letter from senior PIU official to senior PR official, 5 October 2007

Fig. 16 - 5 October 2007 Letter from senior PIU official to a senior PR official requesting change of bid opening date



Contract with winning bidder was signed the day before the new (shortened) bid closing date

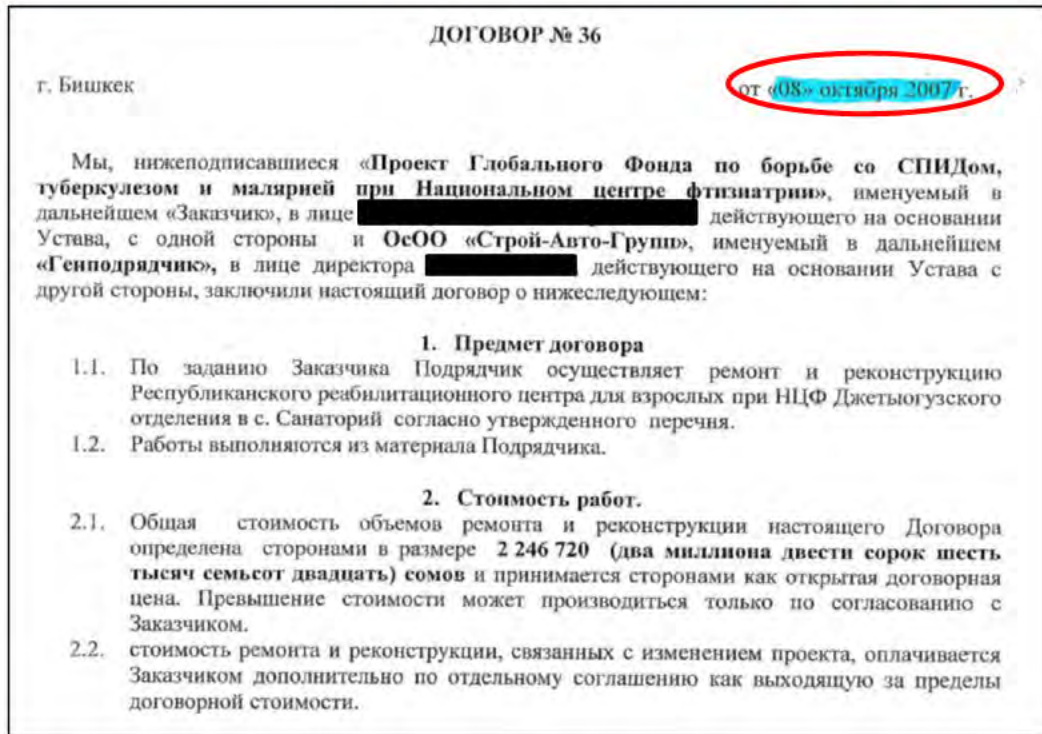
130. The contract was ultimately awarded to Stroy-Avto-Group in the amount of USD 53,493 (KGS 2,246,700).

131. A review of the contract (Contract No. 36) between the PR and the winning bidder, Stroy-Avto-Group, signed by a senior PR official, reveals that the contract is dated 8 October 2007—the day before the bid submission deadline of 9 October 2007.<sup>76</sup>

<sup>76</sup> Contract No. 36 between the NCP and Stroy-Avto-Group dated 8 October 2007 for renovation works at the RRC Jety-Oguz with a contract price of KGS 2 246 720.

Fig. 17 - 8 October 2007 Contract between the NCP and Stroy-Avto-Group regarding the RRC

Contract showing date of 8 October 2007



Kyrgyzstan legislation requires a minimum deadline of at least three weeks

132. According to the PR's PSM Plan submitted to the Global Fund under the Round 6 grant procurement, the relevant Kyrgyz legislation to be applied is the 'Law of the Kyrgyz Republic on public procurement'. Article 23 of this Law, 'Deadline for submission of tenders', requires that "the procuring entity shall establish the deadline for submission of tenders, which must be: the implementation of tendering with unlimited participation – at least three weeks after the announcement of tenders."<sup>77</sup>

No provision to shorten the bid deadline

133. There is no provision in this Act that allows for a change in the advertised bid submission deadline to an earlier date. Rather, the Act allows only for the extension of the deadline for submission of tenders in certain cases.<sup>78</sup>

The PR breached Kyrgyz law and grant agreement provisions by shortening the deadline

134. By changing the submission deadline from 8 November to 9 October, the PR breached this law. Additionally, by signing a contract with Stroy-Avto-Group the day before the new shortened bid submission deadline, the PR acted contrary to the terms of the Global Fund Program grant agreement between the PR and the Global Fund. Article 18 of this agreement stipulates, "All solicitations for contract bids must be clearly notified to all prospective bidders, which shall be given a sufficient amount of time to respond to such solicitation."

<sup>77</sup> 'Law of the Kyrgyzstan Republic on public procurement' May 24, 2004 No. 69

<sup>78</sup> 'Law of the Kyrgyz Republic on public procurement' (Article 23).

**F.4.2.1. The OIG identified multiple similarities between bids submitted for the RRC project**

Identical quotes for major articles of work found in two bids indicates dummy bidding or collusion

135. Bids from three different vendors were submitted in response to the advertised invitation to bid for the RRC renovation project: Stroy-Avto-Group, SpetserngoStroy, and NTC Technopark. The wording of the different tasks to be performed was identical across all three bids. In addition, Stroy-Avto-Group and Spetsernergostroy submitted identical quotes for major articles of work. The following table shows the cited quotes for the 15 major articles of work submitted by the two vendors.

Fig. 18 – Identical labour costs cited for the RRC repair project

Description of Work	Stroy-Avto	Spetsernergostroy
Installation of new slate roof	169 494	169 494
Alignment of walls and ceilings primed	121 320	121 320
Disassembly of the old slate roof	66 300	66 300
Improved water-based paint composition of the interior	62 700	62 700
Partial repair of stucco façade of marble mortar	39 000	39 000
Improved plaster of walls	32 400	32 400
Scraping lime whitewash from walls	31 350	31 350
Punching grooves in the brick walls for the constructions	27 600	27 600
Enhanced oil painting of the walls	25 200	25 200
Sheathing eaves of the boards	21 500	21 500
Enhanced oil painting of the floor	20 460	20 460
Scraping mortar from a ceiling	19 460	19 460
Installation of drain discharges (chute)	18 000	18 000
Change the old skirting boards for the floor	17 800	17 800
Large repair of the door panels	15 000	15 000
<b>TOTAL</b>	<b>1 342 368</b> <b>(USD 31,961)</b>	<b>1 342 368</b> <b>(USD 31,961)</b>

Identical quotes for materials submitted by all three bidders indicates dummy bidding or collusion

136. Further, all three bidders cited the exact same prices for materials in documents submitted to the PR:

Fig. 19 – Identical costs cited for materials for the RRC repair project

Item	Stroy-Avto-Group	Spetsenergostroy	Technopark
Slate	115 500	115 500	115 500
Window blocks bivalve	93 900	93 900	93 900
Doors internal	85 350	85 350	85 350
Rafters 15x5	73 100	73 100	73 100
Balcony door	46 400	46 400	46 400
Galvanized sheet	42 900	42 900	42 900
Cement-mortar	36 500	36 500	36 500
Batten (rake 5x5 cm	35 200	35 200	35 200
Concrete	30 800	30 800	30 800
Putty	28 000	28 000	28 000
Brick	27 200	27 200	27 200
Moldings	22 250	22 250	22 250
Plates (floor, curtain)	20 740	20 740	20 740
Steel pipes 015 mm - 020mm	20 000	20 000	20 000
Paint (enamel)	19 200	19 200	19 200

Quotes submitted in bids were not checked by PIU

137. In an interview with the OIG, a PR official was asked why the PR failed to note identical prices quoted both by two of the three bidders for major articles of work and by all three bidders for materials. The PR official replied that neither she nor anyone else at the NCP checked these quotes stated in the bids at the time of their submission. Rather, she reviewed the bidding documents for the first time only after she had been contacted by the OIG regarding this issue. Upon reviewing the bid submission documents at this time, she realized that while the total prices of the bids were not identical, the unit prices were identical. She attributed the NCP's failure to flag these similarities across the three vendors' bid documents to the lack of an engineer on staff.<sup>79</sup>

138. However, the PR official's attribution of the failure to identify these similarities to the lack of an engineer on staff is not credible. By any common sense standard, identical prices for materials and work in two of the three bids as well as the wording in all three bids are easily recognizable without the assistance of an engineer.

Evidence of collusion

139. Moreover, the identical prices quoted by all three bidders for materials and by two of the three for major articles of work suggests that the three bidders were involved in a collusive ring.

Directors of Stroy-Avto-Group and NTC Technopark claimed 'coincidence'

140. During this investigation OIG investigators met and interviewed the director of Stroy-Avto-Group, and the proprietor of NTC Technopark. They both attributed any similarities between the bid documents for the three companies to "coincidence". Whilst both denied knowledge of the other's company, Stroy-Avto-Group and NTC Technopark are, in fact, situated next-door to each other on the same street.<sup>80</sup>

Claims by the directors of Stroy-Avto-Group and NTC Technopark that they had no knowledge of the other two bidders is false

141. Further, their claim that they had no knowledge of either of the two other bidders is belied by the statement to the OIG by the Director of Grand-Format that all three companies had previously worked together on an unrelated project. According to him, Spetsenergostroy had sub-contracted Grand Format and NTC Technopark for civil construction works and Stroy-Avto-Group for road construction in order to implement a construction contract for a large company. During this project, according to the director of Stroy-Avto-Group, the directors and employees of all four companies interacted frequently and now have personal relationships with one another.<sup>81</sup>

**F.4.2.2. Stroy-Avto-Group underbid to win the RRC contract**

Independent engineer determined that Stroy-Avto-Group and Spetsnergostroy underbid for the contract.

142. According to a specialist engineer contracted by the OIG, Stroy-Avto-Group and Spetsenergostroy underbid, and Technopark overbid, for the RRC project. Comparative analysis by the engineer of prices for similar construction works in July 2007, the time of the bid submissions, found that the proposed identical costs of repair works from Stroy-Avto-Group and Spetsenergostroy were 1.3 times lower than the market price for comparable works at the time of the bid submissions.<sup>82</sup> By contrast, the costs stipulated in the Technopark bid were on average twice as high as

<sup>79</sup> Interview between OIG and XXXX at Bishkek on 19 February 2010.

<sup>80</sup> Interview between OIG and XXX in Bishkek on 12 March 2010; Interview between OIG and XXX in Bishkek on 12 March 2010.

<sup>81</sup> Interview between OIG and XXX in Bishkek on 13 March 2010.

<sup>82</sup> 'Report on assessment of preparation and carrying out repair of Jety-Oguz Rehabilitation Center at the National Centre of Phthisiology (NCR) performed from November 2007 to August 2008 under the Global Fund to Fight Tuberculosis Project' – XXXX, engineer.



the Stroy-Avto-Group and Spetsenergostroy bids. According to the engineer, the Technopark bid was unduly inflated as compared to similar works performed at the time of the bid submission.<sup>83</sup>

Stroy-Avto-Group underbid to ensure award of the contract and increased the contract amount after being awarded the contract.

143. In fact, Stroy-Avto-Group was ultimately awarded approximately 40 percent in excess of its initial bid estimate (which was below the current market rate) in Global Fund grant funds through four subsequent Acts of Acceptance agreements. Whereas Stroy-Avto-Group's bid estimate for the repairs at the RRC was USD 53,493 (KGS 2,246,720), the final actual cost of the repairs amounted to USD 74,970 (KGS 3,148,752).

144. Based on the conditions of the contract,<sup>84</sup> and according to payment order No. 39 (dated 10 October 2007), an advance payment of USD 42,795 (KGS 1,797,375) was transferred to Stroy-Avto Group—i.e., 80 percent of the amount stipulated in the original contract.<sup>85</sup>

Fig. 20 - TB PIU payment voucher No. 39, dated 10 October 2007, for 80 percent advance payment to Stroy-Avto-Group.

**Stroy-Avto-Group**      10 October

ТОЛОО ТАПШЫРМАСЫ № 00000039 ДАТА **10 октября 2007 г.** Жөнөтүү ыкмасы      Форма коду 401060  
 ПЛАТЕЖНОЕ ПОРУЧЕНИЕ      Способ отправления      Код формы

ОКПО	02134897	Толочу	Проект Глобального фонда при	Дебет	1280010020532013
ИНН	02211199610073	Плательщик	ИЦФ	Счет №	
Регистр. № СФКР	0400565-02	Талочунун банкы	Кыргызский Инвестиционно-Кредитный Банк в г. Бишкек	Кредит	1110200020238584
БИК(МФО)	128001	Банк плательщика		Счет №	
Алуучу	ОсОО "Строй-Авто-Групп"				
Получатель					
БИК(МФО)	111001	Алуучунун банкы	АКБ "Банк Азии" в г. Бишкек		
Суммасы соз менен	Сумма прописью: Один миллион семьсот девяносто семь тысяч триста семьдесят пять сомов 00 тыйынов		Сумма	<b>1'797'375=00</b>	
Толочу коду	149000	Толочун багыты	предоплата 80% реконструкции здания Дзержинска		
Код платежа		Назначение платежа			

Кол тамгасы:      Талочу банктын белгиси

Подписи:      Отметка Банка-плательщика

USD 42,795

145. Subsequent to this advance payment, Stroy-Avto-Group entered into four additional 'Acts of Acceptance' with the NCP between November 2007 and August 2008 for a total of USD 74, 970.<sup>86</sup>

<sup>83</sup> Ibid.

<sup>84</sup> Contract No. 36 between NCP and Stroy-Avto-Group dated 8 October 2007

<sup>85</sup> PIU payment order No. 39 dated 10 October 2007 to Stroy-Avto-Group for amount of KGS1 797 375.

<sup>86</sup> Acts of Acceptance Nov 2007 / Dec 2007 / Mar 2008 / Aug 2008

Fig. 21 – Acts of Acceptance regarding further works at Jety Oguz

Acts of Acceptance	Total Actual Cost (KGS)	Total Actual Cost (USD)
Act Of Acceptance Nov 2007 (repairs to roof and balcony doors)	1,391,793	33,138
Act of Acceptance Dec 2007 (Windows, doors, pipes, lights)	1,006,106	23,955
Act of Acceptance Mar 2008 (Kitchen)	401,408	9,557
<b>TOTAL</b>	<b>3,148,752</b>	<b>74,970</b>

Stroy-Avto-Group were paid an additional 40% in excess of the winning bid despite the contract only allowing for an additional 20%

146. Although unanticipated works on the RRC may have required additional funds, by awarding Stroy-Avto-Group a total of 40 percent in excess of the amount stated in the initial contract the PR nevertheless did not comply with its contractual obligations. The PR's 8 October 2007 agreement with Stroy-Avto-Group "On the introduction of modifications and supplements to the contract for work and labor,"<sup>87</sup> stipulates that the final payment should not exceed 20 percent of the original contract price, in this case KGS 449,300 (USD 10,698),<sup>88</sup> irrespective of unexpected expenses.

Kyrgyzstan law only allows an additional 10% to be paid

147. In addition, the PR may have violated Kyrgyzstan State Procurement Law by awarding Stroy-Avto-Group forty percent in excess of the total contract price without conducting a new tender. Clause 38 of the Law of the Kyrgyz Republic on Public Procurement states that "The procuring entity, by notice to the Authority, shall be entitled to carry out single-source procurement in the following cases: Implementation of additional orders within 6 months from the date of the contract not to exceed 10 per cent value of previous purchases of the same rules, parameters and standards." This issue will be referred to the Prosecutors Office of the Kyrgyz Republic for consideration.

**F.4.2.3. The PR entered into a contract with another vendor for the RRC repair works contract already awarded to Stroy-Avto-Group without conducting a new tender**

Stroy-Avto-Group were unable to do the work and a new contract was entered into with another Vendor without a new procurement process

148. Without conducting a re-tender, on 9 January 2008, the PR signed a new contract in the amount of USD 10,901 (KGS 457,840) with a third party vendor, Grand-Format LLC ("Grand-Format"), for all of the RRC repair works originally covered in its contract with Stroy-Avto-Group.<sup>89</sup> Stroy-Avto-Group had received an 80 percent advance payment, as noted above, for the provision of these works eventually performed by Grand-Format. A final payment of USD 16,116 (KGS 676,912) was made to Grand Format for the RRC work on 25 February 2008.<sup>90</sup>

Additional works were contracted without a procurement process

149. On 28 Feb 2008, without conducting a tender,<sup>91</sup> the PR and Grand-Format entered into a second contract with Grand-Format, for the repair of the canteen in the amount of USD 9,245 (KGS 388,301).<sup>92</sup> According to the agreement with Grand-Format, the period of performed works was to span from 28 February to 26 March 2008.

<sup>87</sup> Contract #36 dated 8 October 2007, between the NCP and Stroy-Avto-Group, para 8.3

<sup>88</sup> Contract No. 36 dated 08 October 2007 between the NCP and Stroy-Avto-Group

<sup>89</sup> Contract No. 37 dated 09 January 2008 between the NCP and Grand Format.

<sup>90</sup> TB PIU payment voucher No. 38 dated 25 February 2008 for balance of RRC construction cost to Grand Format

<sup>91</sup> Interview between OIG and director of Grand-Format LLC in Bishkek on 13 March 2010

<sup>92</sup> Contract No.40 dated 28 February 2008 between the NCP and Grand Format in the amount of KGS 388,301.

PR breached Kyrgyzstan law and the grant agreement

150. By failing to undertake a tender process for these contracts, the PR did not comply with the requirements set out in the PSM Plan and possibly breached Kyrgyzstan Law on public procurement. The approved Procurement and Supply Management (PSM) plan submitted by the PR to the Global Fund requires an advertised bid invitation and no less than three submissions for procurements greater than USD 5,000.<sup>93</sup> Given that these two contracts were for amounts greater than USD 5,000, the PIU was obligated to conduct new tenders.

#### F.4.3. The NCP Steered Three Contracts to Talantbek Abdykerimov

Vendor improperly favored

151. A prevalent case of procurement irregularities relates to the vendor Mr. Abdykerimov who was awarded three contracts for a total of USD 62,960 by the NCP.<sup>94</sup>

152. During the OIG audit, a PIU official, who at that time was no longer employed at the PIU, alleged that a senior PR official improperly favored Mr. Abdykerimov over several, less expensive, bids to manufacture beds and other furniture for several TB hospitals.<sup>95</sup> Notably, the PR's Tender Committee documents only list two bid submissions for this procurement exercise.

PIU official stated that the vendor had been favored by the senior PR official

153. In 2005, Mr. Abdykerimov was awarded a Round 2 contract for the supply of furniture to a TB hospital in Bishkek for USD 21,328 (KGS 895,750).<sup>96</sup> In 2007, Mr. Abdykerimov was awarded two additional Round 6 contracts by the NCP for the supply of furniture to the Suburban NCP clinic at Vorontsovka for USD 15,721 and the RRC at Jety-Oguz for USD 25,912.<sup>97</sup>

154. When later re-interviewed by OIG investigators on 11 February 2010, the PIU official—who by this time had been re-employed at the PR—confirmed that he had earlier stated that the senior PR official had improperly selected Mr. Abdykerimov for manufacturing contracts. However, he stated that he did not have documents or other evidence to substantiate his allegation, and that he was unable to provide any further details concerning this matter.<sup>98</sup>

Allegation that the tender process is controlled by the senior PR official

155. A former member of the PR's tender committee for manufacturing orders, corroborated the PR official's allegation, and added that the PR's tender system was closely controlled by the senior PR official, who directs contract awards to favored bidders. In addition, the former tender committee member stated that the senior PR official received kickbacks on all tenders.

No evidence of any kickback's being received

156. Although the OIG did not identify any direct evidence that the senior PR official received any kickbacks, the totality of evidence, including statements by a PIU official and the former member of the tender committee, indicates that the PR, at the very least, steered contracts to Mr. Abdykerimov in procurement exercises for three furniture tenders.

Furniture was overpriced and low quality

157. Further, the OIG investigation found that the furniture provided by Mr. Abdykerimov was overpriced and low quality. Indeed, Mr. Abdykerimov operated a small business that specialized in the production of kitchen cabinets and admitted

<sup>93</sup> NCP PSM Plan for period July 2007 to June 2009.

<sup>94</sup> Kyrgyzstan R6 TB Workplan Year 1 (2007) 'refurbishment of and equipment for MDR-TB departments (2) Chui Oblast and Issy Kul' showing USD 225,000 budgeted for this activity.

<sup>95</sup> Interview between OIG and PR official at Bishkek 21/11/2009

<sup>96</sup> Protocol No. 3 of the NCP tender committee dated 11 February 2005

<sup>97</sup> Protocol No. 2 of the NCP tender committee dated 2 October 2007 (Vorontsovka) & Protocol No. 5 of the NCP tender committee dated 20 November 200

<sup>98</sup> Interview between OIG and PIU official at Bishkek on 11/02/2010

that he had no experience manufacturing beds other than the beds he made for his family.<sup>99</sup>

158. The OIG refers the matter of whether the senior PR official received kickbacks for these contract awards to the Kyrgyzstan authorities for further investigation.

#### F.4.3.1. Contract for the Provision of Furniture to the TB Hospital in Bishkek

159. On 13 January 2005 the PR placed an advertisement in the local newspaper ‘Slovo Kyrgyzstana’ requesting bids for the manufacture and supply of 60 beds, 30 wardrobes, 25 tables, 70 stools, 30 chairs and other pieces of furniture for the TB Hospital in Bishkek under the Round 2 Global Fund Grant. In response to this invitation to bid, Mr. Abdykerimov and a furniture manufacturer known as “Emerek” submitted tender proposals. Mr. Abdykerimov’s bid of USD 21,327 (KGS 895,750) was approximately 27 percent higher than that of Emerek of USD 16,790 (KGS 705,200). Price comparison of the major items in the two bids reveals considerable differences, as demonstrated in the table below.

Fig. 22 – Identical costs cited for materials for the RRC repair project

ITEM	Qty	Price KGS Abdykerimov (Winning Bid)	Price KGS Emerek (Losing Bid)	Price Difference (KGS)
Beds	60	4375	4200	+10500 total
Bedside Table	60	1437	920	+31020 total
Wardrobe	30	6833	4300	+75990 total
Table	25	2250	1000	+31250 total
Stool	70	1375	280	+76650 total
Chair	30	1375	1500	-3750 total
Shelving unit with cupboard	6	5500	3200	+13800 total
Cupboard unit (6 doors)	3	13750	6900	+20550 total
Open shelving unit	1	4875	3400	+1475 total
Couch	1	3875	2800	+1075 total
Small table	1	2500	2400	+100 total
Small table with wheels	1	1500	2400	-900 total
Large Desk and overhead shelving	2	4145	6500	-4710 total
Double Sink	1	8750	6500	+2250 total
China cabinet	1	5000	6500	-1500 total
Small Desk	10	4000	3100	+9000 total
Three Piece Suite	3	15000	14000	+3000 total
TV Trolley	2	1875	2300	-850 total
Large shelving unit	1	19000	10000	+9000 total
<b>TOTAL</b>		<b>895 750</b> <b>(USD 21,327)</b>	<b>705 200</b> <b>(USD 16,790)</b>	<b>+190 550</b> <b>(USD 4,537)</b>

Losing bidder was a substantially larger and more experienced furniture manufacturer

160. In addition, Emerek had a substantially larger business operation than that of Mr. Abdykerimov. The information provided in the two bid proposals indicates that the amount of manufacturing orders completed in the past three years by Mr. Abdykerimov totaled 4.6 million KGS, whereas Emerek’s orders for that same period totaled 25.1 million KGS. Emerek has been in business for 50 years, whereas Mr. Abdykerimov had only opened his small, family run business in 2003.<sup>100</sup>

<sup>99</sup> Interview between OIG and XXX at Bishkek on 23/2/2010

<sup>100</sup> OIG interview with xxx, 26 February 2010; OIG interview with xxx at Bishkek on 23 Feb 2010

The Tender Committee's claim that the losing bidder was rejected due to not meeting the specifications was found to be false

161. The tender committee ultimately rejected Emerek's bid, although it was over twenty five percent lower than that from Mr. Abdykerimov. The tender committee documents of 8 February 2005 provided the following rationale for its decision:<sup>101</sup> "Based on the report upon visiting and inspecting the furniture manufacturing premises, the tender committee determined that JSC Emerek had not included into their pricing and had not taken into account the conditions of the client that the furniture shall be manufactured with the metal frame and heat-resisting material. Upon visiting and inspecting the manufacturing premises of PE Abdykerimov by the members of tender committee and on the results of the bids evaluation procedures, the tender committee has decided to enter into the procurement contract with PE Abdykerimov for the total amount of 895 750 Soms as he fully complies with the clients requirements."

The Tender Committee's claim that they inspected furniture produced by the winning bidder during their bid evaluation was found to be false

162. In an interview with the OIG, a PR official stated that Emerek's bid was rejected because the price submitted in the tender proposal failed to consider the costs of manufacturing beds with a metal frame and heat resistant material. In addition, the PR official stated the decision to award the contract to Mr. Abdykerimov was based on Emerek's presentation to the tender committee of a sample bed made of wood, and therefore ill-suited for hospital use. The committee then visited the manufacturing premises of Mr. Abdykerimov and was satisfied that the sample bed that he presented to them better suited the project requirements.<sup>102</sup>

163. By contrast, in an interview with OIG, Mr. Abdykerimov stated that he had never showed the tender committee a sample bed, but rather samples of kitchen cabinets as these were the only manufacturing samples he had on site.<sup>103</sup>

164. In an interview with OIG, the Deputy Director of Emerek Furniture denied that Emerek intended on supplying wooden beds. Instead, he stated that he presented the tender committee with a bed with a metal frame.<sup>104</sup>

The winning bidder should not have been awarded the contract and the PR should refund USD 4,537

165. Given the evidence that Emerek's bid was KGS 190,550 lower than Abdykerimov's bid and that Mr. Abdykerimov himself stated that he had not shown the tender committee a sample bed, OIG finds that there was no valid reason that Emerek should not have been awarded the contract. Thus, the failure to award Emerek the contract in favor of Mr. Abdykerimov's higher bid wasted Global Fund grant funds. The PR is required to return to the Global Fund USD 4,537 (KGS 190,550), the difference between the Emerek bid and that of Mr. Abdykerimov.

**F.4.3.2. Contract for the provision of furniture to the Suburban Clinical Base in Vorontsovka**

Examination of bids submitted for a furniture contract show evidence of clear collusion

166. On 19 September 2007 a bid solicitation was published in Slovo-Kyrgyzstana newspaper for tender of supply of furniture under the Round 6 grant project. Mr. Abdykerimov and another bidder, Mr. Kubanychbek Shayakhmetov, submitted bids. Examination of the two bids reveals clear and substantive evidence of collusion between the two bidders in securing the contract for Mr. Abdykerimov.

The contract was awarded to both bidders.

167. The tender committee awarded KGS 660,288 (USD 15,721) of the total of KGS 970,495 (USD 23,107) proposed in Mr. Abdykerimov's bid for the manufacture of all the required hospital furniture except for the required beds and bedside tables. Since Mr. Abdykerimov had quoted a slightly higher price (KGS 4,920/USD 117 and KGS 2,500/USD 60 each respectively) than Mr. Shayakhmetov (KGS 4,716/USD 112 and

<sup>101</sup> Tender committee documents 8 February 2005.

<sup>102</sup> Interview between OIG and xxx at Bishkek on 19 February 2010

<sup>103</sup> Interview between OIG and xxx at Bishkek on 23 Feb 2010

<sup>104</sup> OIG interview with xxx, 26 February 2010

One bid mistakenly contained the other bidder's name.

KGS 2,160/USD 51) for the beds and bedside tables, the tender committee awarded the latter the contract for these items.

168. While the tender committee awarded manufacturing contracts for the Vorontsovka clinic on the basis of the lowest price quoted, evidence identified by the OIG demonstrates that the two bidders colluded in securing these contracts. Specifically, in Mr. Abdykerimov's tender documents, under the heading, "Qualification Data of PE Abdykerimov" is also written "Qualification Data of PE Shayakhmetov".<sup>105</sup> The inclusion of Mr. Shayakhmetov's name on Mr. Abdykerimov's, while likely an error, demonstrates that the two bidders not only had knowledge of, but also directly involved in the preparation for one another's bid.

Fig. 23 - Qualification Data of PE Shayakhmetov" included in Mr. Abdykerimov's tender document

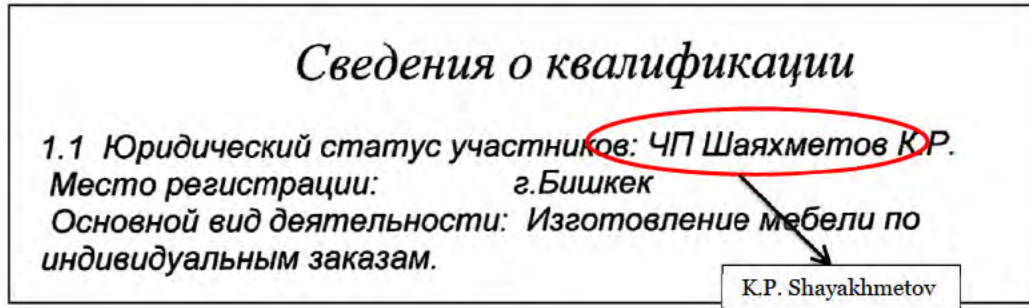
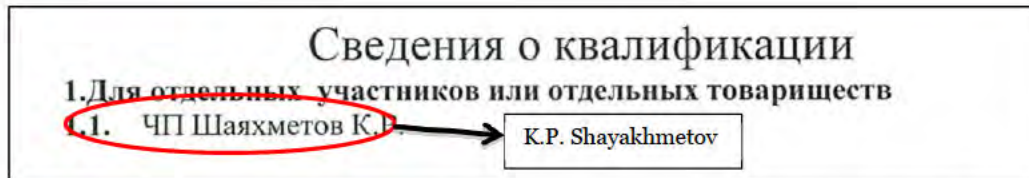


Fig. 24 - Qualification Data of PE Shayakhmetov" in Mr. Shayakhmetov's tender document Shayakhmetov name



The Tender Committee failed to identify the mistakes in the bid documents and as only two bids were received the tender should have been cancelled.

169. In addition to failing to note the inclusion of Mr. Shayakhmetov's name in Mr. Abdykerimov's bid submission, the tender committee failed to exercise fiduciary oversight in evaluating bid submissions, given that Mr. Abyderkimov's bid submission may have violated several articles of Kyrgyzstan law on state procurement. As such, the tender committee was required to reject both bid submissions, as they did not satisfy the provisions set forth in this law. In fact, the PR was required to cancel the tender all together under Article 30 of this law, which stipulates that "the procuring entity shall cancel a tender when less than two valid applications are submitted."

Both bids did not comply with Kyrgyzstan procurement law.

170. Further, the two bids that were submitted possibly violated Kyrgyzstan law on the requisite qualifications of suppliers. First, as this procurement exercise fell under Round 6 of Global Fund grant funding, the Kyrgyzstan law on public procurement may apply. Article 8 of this law requires a bidder to provide qualification information for the preceding three years—i.e., in this instance, from 2003 to 2006.<sup>106</sup> However, in the qualification data provided by Mr. Abdykerimov in 2007, an exact match to the data he provided in 2005, he provided information regarding the total volume of works and services only between the years of 2002 to 2004.<sup>107</sup>

<sup>105</sup> Tender document dated 2 October 2007 submitted by xxxx to the NCP

<sup>106</sup> Law of the Kyrgyz Republic on State Procurement of goods, construction and services – Article 8 (qualifications of suppliers)

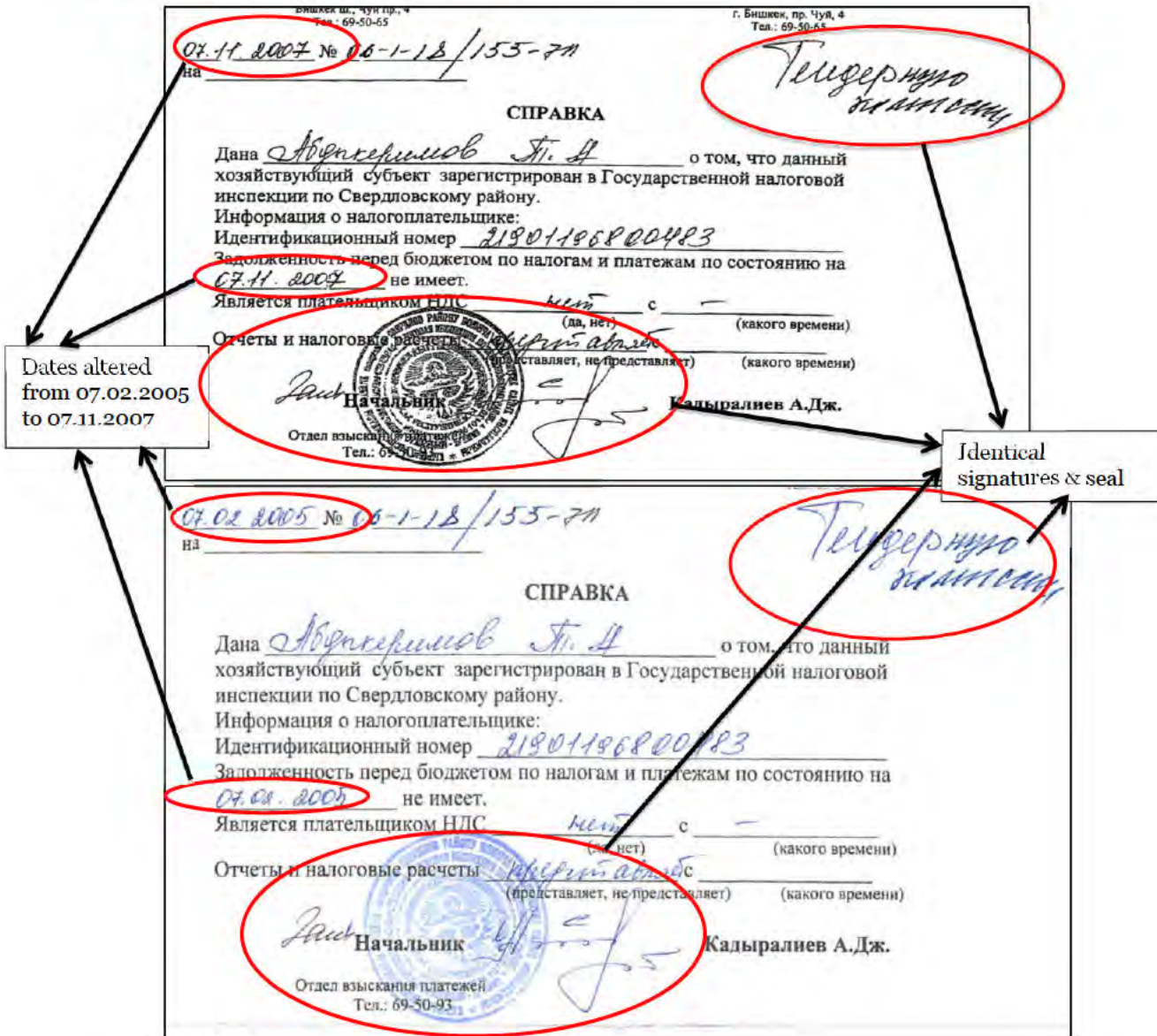
<sup>107</sup> Tender documents of xxxx dated 08/02/2005

Mr. Shayakhmetov provided data for only one year, citing the total volume of works performed in 2007 (totaling USD 4,761).<sup>108</sup>

A forged tax certificate was included in the bid documentation of the winning bidder

171. Second, Article 8 ‘Qualification of Suppliers’ requires bidders to have “fulfilled their obligations to pay taxes and other obligatory payments in the Kyrgyz Republic.” In order to fulfill this requirement, bidders are required to submit certificates from the local tax inspection agency confirming its registration and that it has no outstanding tax liabilities.<sup>109</sup> Mr. Abdykerimov provided this certificate, but it was apparent that the document has been altered and the date was changed from “07.02.2005” to “07.11.2007”.

Fig. 25 - 2007 tax certificate submitted by Mr. Adykerimov



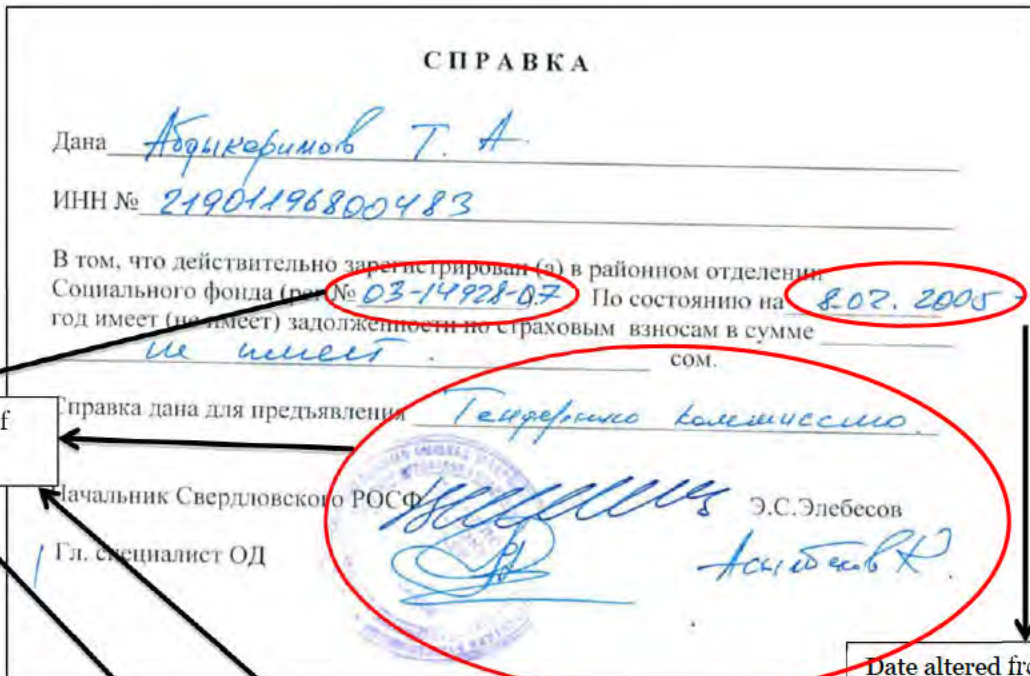
<sup>108</sup> KGS 200,000

<sup>109</sup> Law of the Kyrgyz Republic on state procurement of goods, construction and services – Article 8 (qualification of suppliers)

Forged Social Fund certificate was included with bid documents

172. Mr. Abdykerimov also submitted a forged Social Fund certificate from the district department of the Social Fund. As demonstrated below, the date in the certificate submitted in his 2005 bid has been altered from "08.02.2005" to "07.11.2007".

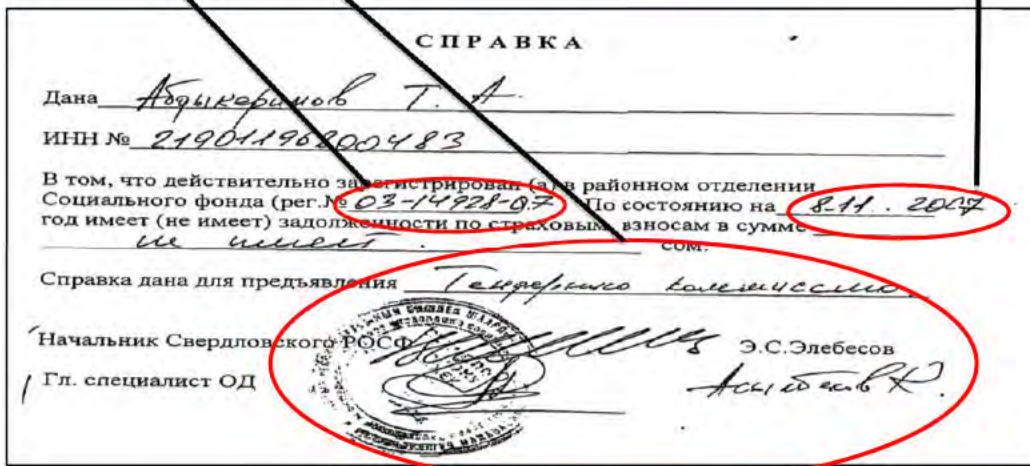
Fig. 26 - Social Fund certificate submitted in Abdykerimov's 2005 NCP bid



Identical features of both documents

Date altered from 8.02.2005 to 8-11.2007

Fig. 27 - Social fund certificate submitted in Abdykerimov's 2007 Vorontsovka bid



Bid was invalid

173. It is evident from the forged certificates supplied by Mr. Abdykerimov, as well as the inclusion of Mr. Shayakametov's name in his tender documents, that his application was invalid.

**F.4.3.3. Purchase of furniture for the RRC**

174. On 19 October 2007, the PR placed an advertisement in the local newspaper 'Slovo Kyrgyzstana' requesting bids for the manufacture and supply of furniture for the RRC at Jety Oguz under the Round 6 Grant agreement. The furniture



<p>PR continued with procurement process despite only receiving one bid. Kyrgyzstan law requires three bids</p>	<p>specifications and quantities required were identical to the requirements and specifications for the clinic at Vorontsovka.</p> <p>175. Under Article 36 of Kyrgyzstan public procurement law, which may govern Round 6 procurements, at least three bids are required for a valid procurement exercise; the tender committee should have canceled the tender given that according to tender committee documents, Mr. Abdykerimov submitted the only bid for the manufacture of furniture for Jety-Oguz Republican Center.<sup>110</sup> In possible breach of this law, the PR awarded a contract to Mr. Abdykerimov for USD 26,000 (KGS 1,088,288).<sup>111</sup></p>
<p>Required certificates were not included with the bid documentation</p>	<p>176. Article 8 on Kyrgyzstan public procurement law ‘Qualifications of suppliers (contractors)’ requires bidders to submit certificates issued by the state tax agency and social fund.<sup>112</sup> Nevertheless, possibly in breach of this law, Mr. Abdykerimov did not provide a tax or social fund certificate in his tender documentation for this procurement.</p>
<p>Winning bidders bid was 110% more compared to the same vendors bid to supply the same amount and type of furniture one month previously</p>	<p>177. Moreover, the tender committee awarded the contract for the Jety Oguz clinic project to Mr. Abdykerimov despite the fact that his bid represented an 110 percent increase (KGS 970,495 / USD 23,107) in price over the course of one month as compared to his bid to supply the same amount and type of furniture to the Vorontsovka clinic (priced at KGS 1,074,288 / USD 25,578). The committee justified this decision based on the “urgent need to place an order for manufacture of the furniture and to fulfill the order prior to completion of renovation works at the MDR department as well as taking into consideration the relevant experience of the bidder, his bid shall now be accepted”.<sup>113</sup></p>
<p>The PIU official stated to OIG that the PR had received other bids and that the senior official insisted on procuring the more expensive beds.</p>	<p>178. In an interview on 21 November 2009 with the OIG audit team, a PIU official, who had at that time resigned from the PIU, stated, ‘The [senior PR official] insisted on procuring the more expensive beds.’<sup>114</sup> This statement indicates that more than one bid may have been received. The PIU official, when re-interviewed by OIG investigators in February 2010, confirmed his earlier statement, but refused to provide any further details or information related to this exercise.<sup>115</sup></p> <p>179. The tender committee documents for this procurement show a particular person, as one of the tender committee members, although his signature is not on the document. However, when OIG interviewed this person, he stated that he was not involved in this procurement.</p>
<p>The PR official told a member of the Tender Committee that the senior PR official would insist the contract was awarded to a particular vendor</p>	<p>180. This person explained that whilst he was a member of the tender committee for one year from November 2007 to November 2008 and attended two bid openings, he did not participate in the RRC selection exercise because he had learned from a PIU official that a senior PR official manipulated bids for the procurement of furniture and works for the RRC Centre. Specifically, the PIU official informed this person that the senior PR official would insist that the contract was awarded to Mr. Abdykerimov.<sup>116</sup></p>

<sup>110</sup> NCP Tender Committee Protocol number 5, dated 20 November 2007.

<sup>111</sup> Tender documents of xxx re RRC Jety-Oguz dated 12 November 2007.

<sup>112</sup> Law of the Kyrgyz Republic on state procurement of goods, construction and services – Article 8 (qualification of suppliers)

<sup>113</sup> NCP Tender Committee Protocol number 5, dated 20 November 2007.

<sup>114</sup> Interview between OIG and PIU official, 21 November 2009.

<sup>115</sup> Interview between OIG and PIU official at Bishkek on 11/02/2010.

<sup>116</sup> Interview between OIG and xxxx on 30/1/2012

The director of the facility that received the furniture stated the furniture was of very poor quality

181. In addition, OIG interviewed the Director of the RRC at Issy-Kul who stated that he attended the opening of the renovated TB center at Issy-Kul and he observed that the furniture was of very poor quality and that the building renovations were “really shocking”. Specifically, the furniture was already partly broken, wardrobes from the same supplier were without handles as they fell off after one month, fabric on the beds was not suitable as it could not be cleaned and the furniture supplied was unsuitable for hospital use.<sup>117</sup>

182. The OIG examined the furniture tender specifications,<sup>118</sup> which had been prepared by a PR official. The OIG noted that the furniture delivered by Mr. Abdykerimov to the SCB, NCP and RRC, although of low quality, met the tender specifications drafted by the PR official. As such, the specifications provided by the PR were faulty.

#### F.4.4. Unauthorized additional payments for renovation at the Vorontsovka Clinic

The PR did not undertake a fair and transparent procurement process regarding renovations to the Vorontsovka Clinic

183. The OIG found that the PR did not follow legitimate procurement exercises when making additional payments for renovations of the Vorontsovka Clinic. In so doing, the PR breached both relevant Kyrgyzstan law on public procurements and the Grant Agreement with the Global Fund. The PR’s failure to follow proper procedure again resulted in the OIG’s inability to establish whether fair value was obtained.

After the initial contract was awarded, PR awarded a further USD 41,878 of work which was 20% over the initial bid

184. On 28 July 2006, the PR’s tender committee considered three bids received in response to an advertisement in the Slovo-Kyrgyzstana newspaper for the renovation of a hospital for TB patients in Vorontsovka under the Round 6 grant agreement.

185. The PR awarded the contract to Kyrchyn-Ata Ltd on 2 August 2006.<sup>119</sup> A month later, on 4 September 2006, the PR made an additional agreement with Kyrchyn-Ata Ltd in the amount of KGS 1,758,863 (USD 41,878)<sup>120</sup> for extra materials and works. A review by OIG of the associated tender documents was unable to identify any documented explanation of this expense, which was 20% over the budget submitted by Kyrchyn-Ata Ltd in their initial bid. Some of the largest items from the initial bid increased as shown in the following table:

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<sup>117</sup> Interview between OIG and xxxx at Issy-Kul on 19/09/2010

<sup>118</sup> Technical Specifications for furniture of the Global Fund Project at the department of the MLU NCF (undated) / Technical Specifications for furniture of the Global Fund Project at the Suburban Clinical Base Vorontsovka (undated) / Technical Specifications for furniture of the Global Fund Project at the Republican Rehabilitation Centre Jety-Oguz.

<sup>119</sup> Contract Number 6 dated 2 August 2006

<sup>120</sup> Contract Number 6a ‘Amendment of Contract number 6 of 02.08.2006’ dated 4 September 2006

Fig. 28 - Table of 15 Major construction items in Kyrchyn-Ata Ltd bid

Works and Materials	Unit	Quantity of units	Unit Price (KGS)	Bid Costing (KGS)	Actual Cost (KGS)	Increase (KGS)
Repair of metal roof	M2	1 310	550	720,500	721,500	1000
Installation of plastic door blocks	Piece/ M2	64/138.5	3,000	415,500	466,738	51,238
Installation of plastic window assemblies	Piece/ M2	73/215.13	2,400	516,312	564,335	48,023
A continuous wall leveling by filler	M2	3 765	55	207,075	370,579	163,504
Install tiled floors in bathrooms, balcony and main entrance	M2	311	550	170,775	176,251	5,476
Facing walls with tiles in bathrooms	M2	298	600	178,800	214,860	36,060
Install linoleum on floors with sizing	M2	1 007	440	442,948	566,148	123,200
Oil painting of walls	M2	2 800	75	208,600	265,180	56,580
Installation of ceiling lights	Piece	238	2,100	499,800	543,900	44,100
Installing radiators M90	Piece	89	4,500	400,500	472,500	72,000
Laying of cable in the trench cross-section of 90mm	M	300	700	210,000	224,000	14,000
<b>TOTALS</b>				<b>3,970,810</b>	<b>4,585,991</b>	<b>615,181</b>

#### F.5. The NCP Failed to Exercise Fiduciary Oversight over the RRC Project and Overpaid for Low Quality Work Performed

PR failed to exercise fiduciary oversight over the RRC project.

186. In addition to the findings of fraud and unjustified expenditure, described above, the OIG identified that the PR failed to exercise proper fiduciary oversight over the RRC renovation project, including overpaying for work that was low quality and unfinished. As noted above, whereas the PR had initially contracted with Stroy-Avto-Group for this project, the work on the RRC was, in fact, performed by Grand-Format. Nevertheless, by the time work on the RRC commenced, the PR had already paid Stroy-Avto-Group an 80 percent advance payment for this project.

The PR overpaid the contractor and failed to impose late penalties.

187. The PR overpaid for work performed and failed to impose late penalties for delayed repairs at the RRC. In turn, these actions resulted in the overpayment of USD 2,936 (KGS 123,325) to Stroy-Avto-Group for the RRC project—specifically, (i) an overvaluation of the actual construction works completed by USD 2,474 (KGS 103, 910); and (ii) failure to enforce a late completion penalty clause (Contract No. 40) for a total of USD 462 (KGS 19,415).

PR paid the contractor an additional USD 16,128 over the bid amount which breached Kyrgyzstan law

188. Notably, the PR's Payment of USD 16,128 (KGS 677,382) was above the allowable USD 5,349 (KGS 224,670), 10 percent of the contract price, for additional works under Kyrgyzstan law governing state procurements.

189. According to an analysis by a specialist engineer contracted by the OIG, the PR overpaid USD 2,474 (KGS 103 900) for the RRC project in terms of the cost of materials and quality of work performed. The OIG investigation also discovered that the contractor had not performed pipe-changing works for the amount of USD 1,326 (KGS 55,697).<sup>121</sup>

<sup>121</sup> 'Report on assessment of preparation and carrying out repair of Jety-Oguz Rehabilitation center at the National Centre of Phthisiology (NCR) performed from November 2007 to August 2008 under the Global Fund to Fight Tuberculosis Project' – xxxxx

Renovation of the RRC was sub-standard

190. Specifically, major shortcomings in the following types of works and material consumption were identified:<sup>122</sup>

- low quality and insufficient amount of material and poor installation of roof tiles;
- low quality of wood and paint for doors, as well as only a partial replacement of door frames, in patients' chambers;
- insufficient quantity of paint used for walls, doors, window frames and floors
- inflated price for the disassembly of the old slate roof: price of works
- inflated price for the installation of new slate roof
- poor quality of linoleum for floors

191. OIG investigators inspected the renovations at the RRC on 18 September 2010. Photographs taken on site- of post-renovation roof works are included below.

Fig. 29 - Incomplete and poor quality roof renovation



Fig. 30 - Poor quality roof renovation



192. The photos above clearly show the sub-standard renovation work. The roof is constructed of corrugated cement sheeting and is unfinished. Zinc capping is not properly fitted and the roofing project is unfinished.

PR is required to refund USD 2,474

193. Based on the engineer's calculations of the actual quality and amount of materials used during the renovation, as well as work not performed, the cost of the

<sup>122</sup> Report on assessment of preparation and carrying out repair of Jety-Oguz Rehabilitation center at the National Centre of Phthisiology (NCR) performed from November 2007 to August 2008 under the Global Fund to Fight Tuberculosis Project' - xxxx

repairs to the RRC, USD 74,970 (KGS 3,148,752), was overvalued by USD 2,474 (KGS 103,901)—i.e., a total “corrected cost” of USD 72,496 (KGS 3,044,851). The PR is required to immediately refund the amount of USD 2,474 to the Global Fund.<sup>123</sup>

Fig. 31 - Total corrected cost calculation of Republican Rehabilitation Centre

Actual Cost USD 74,970	Correction by price USD 1,251	Correction by quality USD 2,833	Correction by observed qty/vol USD 892	Total Corrected Cost USD 72,496
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PR’s advance payment of 80% of the contract price unduly risked grant funds

194. The OIG also notes that the PR’s advance payment to Stroy-Avto-Group of 80 percent of the contract price—i.e., USD 42,795—unduly risked Global Fund grant funds. Staged payments to the contractor, paid on satisfactory completion of stages of work, would have ensured not only completion of the contracted works, but also completion of works to an agreed standard.

The PR authorized an extension to the completion deadline rather than seek a late penalty fee

195. Approximately one month after the 26 March 2008 contractual deadline for substantial completion of works, Grand-Format requested a postponement of the deadline to August 2008. In its 28 April 2008 letter to a senior PR official, Grand-Format justified this postponement as due to a routine audit of the company by the Chamber of Accounts of the Kyrgyz Republic.<sup>124</sup> The senior PR official agreed to this request, writing by hand “I don’t mind” (translated from the Russian) on the letter and signing it.

PR failed to impose a late penalty

196. No penalty was imposed for Grand Format’s failure to complete the repairs in accordance with its contract deadline. According to clause 8.1 of its contract with the PR, a late penalty fee of 5 percent of the total amount stipulated—e.g., USD 462 (KGS 19,415)—should have been levied. This amount should be refunded to the Global Fund.

197. Moreover, the fact that Grand-Format requested a postponement one month after the contractual deadline demonstrates a lack of fiduciary oversight by the PR in that the latter failed to identify that the repair works at the canteen had not been completed by this date.

**F.6. Unauthorized Transfer of Grant Funds to Fixed Deposit Accounts**

The senior PR official transferred USD 600,000 of grant funds from the authorized bank account into a fixed deposit account

198. The OIG identified that a senior PR official manipulated Global Fund grant proceeds by transferring these funds out of the established Global Fund bank account at the Kyrgyz Investment and Credit Bank (KICB) in Bishkek to a newly established bank, Kyrgyzstan-Bank.

199. The Round 6 Global Fund Grant Agreement (Article 11) requires that “Grant funds in the possession of the Principal Recipient or Sub-Recipients remain, to the extent practicable, in a bank account which bears interest at a reasonable commercial rate available in the Host Country until they are expended for Program purposes.” In accordance with this agreement, Round 6 Global Fund Grant funds were held in an account at the KICB. Contrary to the terms of the Grant Agreement, under the senior PR official’s instruction, the PR withdrew USD 600,000 from Round 6 bank accounts at KICB and transferred these funds to a fixed-term bank

<sup>123</sup> Report of consultant engineer reevaluation of repairs at Jety-Oguz

<sup>124</sup> Letter from Director of Grand Format to NCP dated 28 April 2008 requesting to extend completion date to August 2008.

deposit at Kyrgyzstan-Bank on 7 August 2007. The placement of grant funds in fixed term deposits not only contradicts the terms of the grant agreement,<sup>125</sup> which requires that all grant funds to be held in cash, but also exposes the grant funds to risk.<sup>126</sup>

200. According to a transfer request dated 16 August 2007, the PR transferred USD 600,000 from its Global Fund account at the KICB to a fixed term deposit account at the Commercial Bank, Kyrgyzstan for three months at a 5 percent annual interest rate.<sup>127</sup> The PR received a total of USD 3,255 in interest on this deposit.<sup>128</sup>

201. The PIU's former finance manager met with a senior PR official prior to this transfer to express disapproval of his decision to transfer grant funds to Kyrgyzstan-Bank given that he considered this a violation of the Grant Agreement.<sup>129</sup> According to the former finance manager, the senior PR official responded, incorrectly, that it was the Central Government's policy to require companies and organizations to keep their funds in the Kyrgyzstan-Bank.<sup>130</sup>

202. The former finance manager stated that he/she met with the LFA to alert them about the issue, but found that they "did not have a clear position on the issue." The PIU official stated that when the matter was reported to the LFA, it held the position that the PR was entitled to make such a transfer.<sup>131</sup>

203. In a 13 September 2010 interview with an accountant who worked for the LFA, the accountant stated that the transfer of funds was discovered during an LFA audit of bank statements. The accountant also stated that it was outside the limits of the LFA's duties to investigate this matter, and, thus, the matter was reported to the FPM. The FPM responded immediately, and funds were transferred back into the original account.

204. The transfer of Global Fund project funds from the approved bank at KICB to the Commercial Bank Kyrgyzstan and the subsequent repayment of the funds from the Commercial Bank to KICB, resulted in an amount of grant funds of USD 4,216 being wasted and lost to the program.

205. The total amount of ineligible expenses is based on the following calculations:

- a total of USD 3, 254 in net interest was wasted due to the early termination of the deposit agreements with the Commercial Bank;
- USD 361 of tax was imposed by the Commercial Bank for the accrued interest income for August and September 2007; and
- a tax of USD 600 was imposed for the transfer of USD 600,000 from the Commercial Bank account to the original KICB account.

Transfer of funds was identified by the LFA

USD 4,216 was lost due to the PR's actions

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<sup>125</sup> Article 11. Bank Accounts, Interest and Other Program Revenues

<sup>126</sup> OIG audit report, p. 45

<sup>127</sup> According to the memorial order No. 134 dated 8 October 2007, on the basis of the payment order and transfer request dated 8 October 2007, the PR withdrew USD 300,000 from the fixed deposit account at the Commercial Bank Kyrgyzstan and repaid the money into the Global Fund project account at the KICB. On the following day, 9 October 2007, the PR paid USD 1,627.40 to the Commercial Bank for early termination. According to the memorial order No. 162 dated 23 October 2007, on the basis of the payment order and the transfer request dated 23 October 2007, the PR transferred the remaining USD 299,400 from the fixed deposit account at the Commercial Bank and repaid the money into the Global Fund project account at the KICB. On the same day, 23 October 2007, the PR paid USD 1,627.40 to the Commercial Bank in connection with the early termination of the deposit.

<sup>128</sup> USD 3,616.45 less government taxes of USD 361.45 (10%)

<sup>129</sup> Former Financial Manager, PIU, Record of Conversation with OIG, 9 March 2010.

<sup>130</sup> Interview between OIG and xxx at Bishkek on 9 March 2010.

<sup>131</sup> OIG interview with PIU official at Bishkek on 17 March 2010

206. The senior PR official did not deny that he transferred project funds from Round 6 of the TB grant to Commercial Bank. The senior official stated that he did it because the bank manager had contacted him and offered him “a very good interest rate” if the money was deposited for a fixed period of time. He further stated that the transfer of these funds would not have resulted in a loss to the program had he not been forced to end the agreement prematurely. He contended that if the agreement had run its course, a profit would have been made from interest accrued on the deposit.<sup>132</sup>

207. It is not clear what if any advantage was offered to the senior PR official in making the transfer to Kyrgyzstan-Bank.

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<sup>132</sup> Interview with OIG, 25 February 2010

## G. Fiduciary Oversight

Five structures constituted the fiduciary framework for the grants in Kyrgyzstan

208. In Kyrgyzstan, five structures—the PIU, the LFA, external auditors, the CCM, and the Global Fund’s own staff—constituted the fiduciary framework that ought to have ensured that funds were used for their intended purposes. However, the OIG’s review of key documents issued by these structures, as well as interviews with staff within these structures, demonstrates that :

The PIU did not have the capacity to manage the grants and issues identified by the LFA were not addressed by the Secretariat

- the PIU did not have the capacity to manage the GF grants; and
- although the LFA identified issues with the PR’s capacity to manage grant funds, the Secretariat did not successfully mitigate those risks and capacity issues were not effectively addressed. It was only the OIG’s audit of the PR that first brought to light a number of irregularities that the PR’s fiduciary structures failed to discover.

209. Lessons can therefore be learned about each fiduciary structure to strengthen the Global Fund’s fiduciary framework in future grants. This section outlines:

- the roles and responsibilities of each fiduciary structure;
- how the Global Fund perceived the robustness of each;
- issues each structure identified over the life of the grants; and
- the structural weaknesses that may have prevented each from detecting fraud and abuse.

The Global Fund has instituted additional safeguards

210. It should be noted that OIG’s observations only address fiduciary oversight of two grants in Kyrgyzstan between 2003 and 2009. Therefore, they do not necessarily apply to the Global Fund’s current approach to addressing misappropriation and mismanagement. The Global Fund has begun to adopt the following safeguards:<sup>133</sup>

- reinforcing and prioritizing the mandate of firms that monitor expenditure in countries in order to enhance fraud prevention and detection;
- consideration of strengthening the role of country coordinating bodies in grant oversight;
- additional scrutiny of activities considered at higher risk of fraud, such as training;
- redirecting a proportion of all grants to assess and strengthen financial controls at country level; and
- increasing the number of the Global Fund’s staff responsible for financial management

211. It should also be noted that any potential risk around the procurement and supply chain management of health and non-health products has been mitigated through the change in PR to UNDP and Project HOPE in 2010. The new PRs have been assessed as having capacity to perform the procurement. In addition, a procurement review is budgeted for under LFA services for 2013. Supply Chain Management, while still through the MoH structures, is supported by the PRs and includes regular monitoring and supervision.

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<sup>133</sup> See Global Fund announcement from February 4, 2010, available at [http://www.theglobalfund.org/en/announcements/?an=an\\_110209](http://www.theglobalfund.org/en/announcements/?an=an_110209)



## G.1. Project Implementation Unit of the NCP

### G.1.1. Roles and Responsibilities of the PIU

A Project Implementation Unit was established to implement the grants

212. In 2003, the CCM established a Project Implementation Unit (PIU) at the NCP (the PR for the R2 and R6 TB grants), that was directly responsible for the implementation and operational management of the grants. Specifically, the PIU is responsible for the day-to-day management and monitoring of project implementation tasks, as well as reporting activities and communication with representatives of the Global Fund and the LFA.

213. The General Director of the National TB Center, as the authorized representative of the PR, was tasked with the general management of all the aspects of the PR's activity within the framework of the implemented project. As such, he acted as the funds administrator with the right of first signature.

### G.1.2. GF Reviews of the PIU

PIU did not have the capacity to properly manage and oversee the Global Fund grants. Deficiencies were highlighted in LFA assessments but never acted upon

214. The OIG investigation found that the PIU did not have the capacity required to properly manage and oversee the Global Fund grants. The PIU official, when interviewed by the OIG, conceded that the staff of the PIU did not have the requisite qualifications to perform required tasks related to the implementation of project funds. In particular, two specific PIU officials lacked the necessary qualifications and skills to effectively perform their assigned functions.<sup>134</sup> These deficiencies were highlighted in assessments of the PR undertaken by the LFA, but were never acted upon.

## G.2. External Audits

### G.2.1. The Purpose of External Audits

Audits of PRs and SRs are a core component of the Global Fund's fiduciary framework

215. A core component of the Global Fund's fiduciary framework is the audit of PR and SR financial statements. Incomes and expenditures of PRs must be audited annually. The Global Fund Guidelines for Annual Audits of PR and SR Financial Statements explain the purpose of external audits:

*"These annual audits are important parts of the assurance process regarding proper use of Global Fund money and provide the basis for decision-making on the disbursement of funds and the renewal of grants within the framework of Global Fund's performance-based funding principles. The audits are to provide the Global Fund with reasonable assurance that disbursed funds were used for the intended purposes in accordance with the Grant Agreement, the approved budget and the Performance Framework."*<sup>135</sup>

216. In relation to the TB grants managed by the PR, the grants were both subject to Article 13 of the Standard Terms and Conditions, which states "The Principal Recipients shall have annual financial audits of Program revenues and expenditures conducted by an independent auditor" and "shall ensure that annual audits of the revenues and expenditures of each Sub-recipients of Grants funds are carried out." The PR is responsible for selecting "an independent auditor acceptable to the Global

<sup>134</sup> Interview between OIG and PIU official on 19 February 2010.

<sup>135</sup> The Global Fund Guidelines for Annual Audits of Principal Recipients' and Sub-Recipients Financial Statements, para. 2.3

Fund,” and the PR is to “furnish” the audit reports “within six months after the end of the period under audit.”<sup>136</sup>

### G.2.2. Significant External Audit Report Findings

Audits of the PR revealed significant internal control weaknesses involving financial management and procurement

217. In April 2008, the Chamber of Accounts of the Kyrgyz Republic conducted an audit pertaining to the PR’s management of Rounds 2 and 6 of the Global Fund TB grant between 2003 and 2008. This audit identified significant internal control weaknesses involving financial management and procurement, including:

- the chief accountant was performing the position of accountant and the functions of a cashier, contrary to Kyrgyzstan law;
- expense reports were not submitted on time;
- in carrying out procurements, the PIU did not coordinate with the State Agency on State Procurements and Material Reserves;
- a bid submitted by the vendor NTC Technopark contained an expired license, and this was not reflected in Tender Committee documents; and
- supplementary agreements associated with a construction contract in the amount of 20% were concluded between the PIU and a contractor in violation of Kyrgyzstan law on state procurements.

Significant internal control weaknesses were identified

218. In July 2008 and June 2009, Marka Audit conducted two additional audits of the Global Fund TB projects managed by the PR for the 2007 and 2008 calendar years. The audits identified significant internal control weaknesses, including:

- lack of budget control, particularly in relation to expenses and lack of supporting documentation;
- non-adherence to procurement guidelines and operational practices;
- ineffective accounting system which also lacks transparency;
- lack of adherence to the grant agreement on taxation issues; and
- inadequate submission of information to State tax agencies regarding payments to employees under labour contracts.

The LFA submitted a detailed report to the Global Fund highlighting main weaknesses

219. The LFA submitted a detailed report reviewing the Marka Audit Report for the 2008 calendar year to the Secretariat via email on 4 February 2010.<sup>137</sup> The LFA report highlighted the main areas of weakness identified by Marka Audit and underscored the necessity of adopting Marka Audit’s recommendations to improve internal control procedures for the Round 6 grant implementation.<sup>138</sup> However, no action—but for two emails to the PIU manager that went unanswered—was taken by the Global Fund Secretariat to address any of the issues raised in the two Marka Audit reports.<sup>139</sup>

Audits did not identify significant issues found by OIG

220. Notably, although these external audits indicated that the PR’s financial management and monitoring of sub-recipients was sub-standard, these audits failed to raise significant issues identified by the OIG herein—notably, collusion between the PR and a SR to misappropriate grant funds, conflicts of interests, unaccounted

<sup>136</sup> Article 13 of Kyrgyzstan grant agreements

<sup>137</sup> Email from Crown Agents to [former] FPM dated 4 February 2010.

<sup>138</sup> Report titled ‘Audit Reports for Grant KGZ-607-G04-T’ dated 1 February 2010, from LFA Crown Agents, addressed to Global Fund Secretariat.

<sup>139</sup> Emails from Global Fund Secretariat to NCP PIU dated 30 November 2010 and 10 June 2011. Specifically, on 30 November 2010 the new FPM sent an email to a PIU official, requesting the status of implementation of the recommendations from the 2009 audit report. As the PIU failed to answer this communication, the Global Fund Secretariat sent a second email to the PIU official on 10 June 2011 highlighting the fact that the previous email had not been answered as well as questioning as to why the audit report did not include the audit of Sub-Recipient financial statements.

for cash advances, fraudulent procurement exercises and a number of financial irregularities, such as the transfer of Global Fund grant funds to an unauthorized bank account.

### G.3. Local Fund Agent

#### G.3.1. Roles and Responsibilities of the LFA

The Global Fund contracts LFAs to assess PRs capacity to implement grants and verse program performance and the accountable use of funds

221. The Global Fund does not have a country-level presence outside of its offices in Geneva, Switzerland. Instead it hires LFA's to oversee, verify and report on grant performance. KPMG served as the LFA between 2004 and 2007. In April 2007, Pricewaterhouse Coopers (PwC) replaced KPMG as the LFA.

222. The role of the LFA is described in a comprehensive reference guide, the LFA manual.<sup>140</sup> The LFA works closely with the Global Fund, and in particular with the relevant FPM, to provide the following services:

- **Work performed before the Global Fund signs a grant agreement with the Principal Recipient.** This includes assessing the Principal Recipient's capacity to implement the grant, reviewing proposed budgets and work plans and otherwise assisting the Global Fund in grant negotiations.
- **Work performed during program implementation.** The Local Fund Agent is contracted to independently oversee program performance and the accountable use of funds (known as Verification of Implementation). This includes reviewing the Principal Recipient's periodic requests for funds, undertaking site visits to verify results and reviewing the Principal Recipient's annual audit report.
- **Work performed with respect to the Phase 2 review.** The Local Fund agent's review of a grant as it approaches Phase 2 (years three to five of the grant's lifespan) is crucial in assisting the Global Fund to make its decision on whether to continue funding beyond the first two years.
- **Work performed with respect to grant closure.** When a grant ends, the LFA is involved in assisting the Global Fund with closure of the grant.
- Ad hoc assignments undertaken at the request of the Global Fund, such as investigations relating to the suspected misuse of funds.

#### G.3.2. Weaknesses Identified by the LFA

Prior to the signing of the R2 grant LFA identified that the PR needed reinforcement

223. In early 2004, prior to the signing of the Round 2 TB Grant Agreement with the PR, KPMG was engaged to "perform a limited-scope review of the PRs general monitoring and evaluation capacities."<sup>141</sup> KPMG's report evaluated the PR's management of the grant as "B level" on the basis of the rating system established by the Global Fund. The B level equates to an evaluation that the "PR needs reinforcement, which will delay implementation slightly."<sup>142</sup>

LFA recommended that the Global Fund should require the PR to enhance its organizational capacity.

224. The report recommended that the Global Fund should require the PR to obtain assistance to enhance its organizational capacity to implement the following reforms:

- establish institutional, programmatic and financial policies and procedures to guide the Working Group responsible for project implementation;

<sup>140</sup> <http://www.theglobalfund.org/en/lfa/documents/>

<sup>141</sup> KPMG Principal Recipient Assessment Report dated 26 February 2004 – p.26

<sup>142</sup> Principal Recipient Assessment Report on Financial Management & Systems and Institutional & Programmatic Capacities – KPMG 16 July 2003

Prior to the signing of the R6 grant the LFA identified that the PR had not implement recommendation including a more transparent procurement system

- expand financial and accounting staff, infrastructure and systems;
- appoint external auditors;
- develop policies and procedures to manage and monitor SRs; and
- review and harmonize financial and programmatic management policies, procedures and systems.

225. In April 2007, Pricewaterhouse Coopers (PwC), which replaced KPMG as the Local Fund Agent (LFA), undertook a Principal Recipient Assessment Report regarding the NCP's capacity to implement the proposed R6 grant. The assessment report included a number of key observations and recommendations:<sup>143</sup>

- the PR did not implement recommendations suggested by the LFA during the regular verification of implementation, including the necessity to create a more transparent procurement system and include representatives of the WHO, CCM, Ministry of Finance, and Ministry of Health on the Tender Commission;<sup>144</sup>
- the PR should improve procedures on procurement of medicines and services—in particular, all documentation required from the tender participants should be verified before a contract award;<sup>145</sup>
- the PR should monitor grant implementation by SRs through field visits and develop a procedures manual for SRs describing the requirements for reporting and budgetary monitoring and analysis;<sup>146</sup> and
- written manuals for procurement and supply management should be developed to ensure efficient and transparent operations.<sup>147</sup>

226. In addition, the PwC report highlighted that a “significant amount” of refurbishment activities of TB treatment and laboratory facilities was outstanding. It underscored the urgency of completion of these activities in order to accommodate the large number of patients to be enrolled during the expansion of DOTS-Plus in Phase 1 grant implementation.<sup>148</sup>

The PR failed to implement any of the LFAs recommendation

227. However, the PR failed to implement either the aforementioned KPMG recommendations in 2004 or the PwC recommendations in 2007. For example, with regard to the procurement irregularities and fraud identified by the OIG, the PR disregarded the PwC audit's recommendation to include representatives of the WHO, CCM and the Ministry of Health on the Tender Committee to increase transparency in procurement exercises. The Tender Commission met a number of times after the April 2007 report without these representatives to determine NGO sub-recipients under the Round 6 Grant and to award contracts for numerous procurements. In addition, despite PwC's recommendations in 2007, at the time of the OIG investigation the PIU had failed to hire an experienced procurement officer or train the current procurement officer in good procurement and supply management practices. There is no evidence that the LFA brought the PR's failure to implement recommendations to the attention of the Secretariat.

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<sup>143</sup> Grant KGZ-202-G02-T-00 'Development of preventive programmes on HIV/AIDS, Tuberculosis and Malaria aimed at reduction of social and economic consequences of their spread'.

<sup>144</sup> Ibid, p. 13

<sup>145</sup> Ibid

<sup>146</sup> Ibid, p. 19

<sup>147</sup> Ibid, p. 24

<sup>148</sup> Ibid, p. 32

## G.4. CCM

### G.4.1. Background

228. The Country Coordinating Mechanism (CCM) is a country-level multi-stakeholder partnership, unique to the Global Fund's grant model, that includes representatives from the public and private sectors, including governments, multilateral or bilateral agencies, non-governmental organizations, academic institutions, private businesses and people living with the diseases.<sup>149</sup>

Establishment and composition of the Kyrgyzstan CCM

229. Established on August 10, 2002, the Coordination Committee of the Kyrgyz Republic on Control of HIV/AIDS, Tuberculosis and Malaria (CCM) was comprised of 29 members from existing collective coordinating bodies and members of technical expert groups including representatives of: UNICEF, the World Bank, WHO, USAID, UNDP, DFID and Project HOPE; as well as members of the National Coordinating Committee on TB control under the Presidential Administration of the Kyrgyz Republic and the National Emergency Epidemics Control Commission of the Kyrgyz Republic. A representative from the Government (First Vice Prime Minister) and a representative from the NGO sector (Chair of the National Red Crescent Society) were appointed as the Co-Chairs of the CCM.<sup>150</sup>

### G.4.2. Roles and Responsibilities of the CCM

230. The CCM is responsible for:

- coordinating the development and submission of national grant proposals;
- nominating Principal Recipients;
- overseeing implementation of the approved grant and submit requests for continued funding;
- approving any reprogramming and submitting requests for continued funding; and
- ensuring linkages and consistency between Global Fund grants and other national health and development programs.<sup>151</sup>

231. The Kyrgyzstan CCM met at least four times per year and its major functions as detailed in its Round 2 grant proposal form are:

- collective management of the organization and implementation of activities to fight HIV/AIDS, TB and Malaria financed by the Global Fund;
- coordination of activities of different sectors in utilization of the Global Fund
- planning and evaluation of results of the projects;
- appointment of technical expert examination of the projects; and
- interaction with the national coordinating committees and UN Theme Groups.<sup>152</sup>

232. It should be noted that although CCMs have always been responsible for grant implementation oversight, the Global Fund did not emphasize this responsibility in the first several years of operation, as it was primarily focused on operationalizing the model and receiving grant proposals from the CCMs.<sup>153</sup> While CCM-related functions were managed with the Operational Partnerships and Country Support

<sup>149</sup> <http://www.theglobalfund.org/en/ccm/>

<sup>150</sup> Global Fund Proposal Form dated July 2002 p.7

<sup>151</sup> <http://www.theglobalfund.org/en/ccm/>

<sup>152</sup> Global Fund Proposal Form dated July 2002 p.8

<sup>153</sup> As the Global Fund was a new funding mechanism and CCMs were also being created, the priority in the first years was to operationalize the model, which primarily consisted of applying for grants and obtaining maximum functionality.

Unit, the Global Fund only instituted a formal CCM unit charged with overseeing CCM activities in 2008 and has been promoting oversight management tools since late 2008.<sup>154</sup>

#### **G.4.3. Global Fund Evaluation of the CCM**

233. The OIG uncovered no evidence that the Kyrgyzstan CCM identified concerns that grant funds were not being used for their intended purposes, procurement exercises were corrupt and lacked transparency, and other issues raised herein.

The CCM did not take steps to ensure implementation of key audit recommendations

234. The OIG investigation identified that independent audits of the NCP's management of the Global Fund grants were undertaken as required. However, the CCM does not appear to have taken any steps to ensure the implementation of key audit recommendations, designed to protect grant funds from fraud or mismanagement, and which directly relate to issues identified in this report. This lack of oversight is reflected, for example, in the repetition of the vast majority of the issues identified in the 2008 Marka audit report in the 2009 report.

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<sup>154</sup> OIG has no opinion as to the ability of the Dashboard to uncover fraud or abuse of Global Fund grants.

## H. Ineligible Grant Expenses

### H.1. The Global Fund's Right to Reimbursement

Any breach of grant provisions may require the PR to refund disbursement of grant funds.

The investigation has established that the PR did not comply with a number of grant agreement provisions

235. Article 27 of the Global Fund's Grant Agreement with the PR establishes that the Global Fund may require the PR to immediately refund disbursement of the Grant funds if "there has been a breach by the Principal Recipient of any provision of this Agreement."<sup>155</sup>

236. The OIG has found that the following provisions of the Grant Agreement have not been honored:

- According to Article 2 (a), the PR committed to "implement the Program as described in the "Program Implementation Description" included as Annex A of the Grant Agreement."<sup>156</sup>
- Under Article 4, the PR committed to "only use Grant funds for Program activities which occur during the Program Term or as otherwise agreed in writing by the Global Fund."<sup>157</sup>
- Under Article 5 (d), it was required that the PR's "activities are operated in compliance with Host Country law and other applicable law, including but not limited to intellectual property law."<sup>158</sup>
- Under Article 9, the PR agreed 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>159</sup>
- Under Article 18 (a), the PR agreed to follow Global Fund's procurement practices, which require at a minimum that "contracts shall be awarded on a transparent and competitive basis" and that "contracts shall be awarded only to responsible contractors that possess the ability to successfully perform the contracts."<sup>160</sup>

237. In addition, under Article 21 (b), the PR agreed to standards of conduct to ensure that the PR "shall not, and shall ensure that no sub-recipient or person affiliated with the Principal Recipient or any sub-recipient: (i) participates 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; ....(v) engages in a scheme or arrangement between two or more bidders, with or without the knowledge of the PR or SR, designed to establish bid prices at artificial, non-competitive levels; or (vi)

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<sup>155</sup> Article 27 of the Standard Terms and Conditions of the Amended and Restated Program Grant Agreement between the Global Fund and the NCP, KGZ-202-G02-T-00 (Round 2); Article 27 of the Standard Terms and Conditions of the Program Grant Agreement between the Global Fund and the NCP, KGZ-607-G04-T (Round 6).

<sup>156</sup> Article 2(a) and Annex A of the Standard Terms and Conditions of the Amended and Restated Program Grant Agreement between the Global Fund and the NCP, KGZ-202-G02-T-00 (Round 2)

<sup>157</sup> Article 4 of the Standard Terms and Conditions of the Amended and Restated Program Grant Agreement between the Global Fund and the NCP, KGZ-202-G02-T-00 (Round 2)

<sup>158</sup> Article 5(d) of the Standard Terms and Conditions of the Amended and Restated Program Grant Agreement between the Global Fund and the NCP, KGZ-202-G02-T-00 (Round 2)

<sup>159</sup> Article 9 of the Standard Terms and Conditions of the Amended and Restated Program Grant Agreement between the Global Fund and the NCP, KGZ-202-G02-T-00 (Round 2)

<sup>160</sup> Article 18(a) of the Standard Terms and Conditions of the Amended and Restated Program Grant Agreement between the Global Fund and the NCP, KGZ-202-G02-T-00 (Round 2)

OIGs finds the PR did not comply with the grant agreement

participates in any other practice that is or could be construed as an illegal or corrupt practice in the Host Country.”<sup>161</sup>

238. OIG’s findings of mismanagement, gross mismanagement, and misappropriation at the PR runs contrary to the terms of Article 2 (a) and Article 4 of the Grant agreement, as the PR did not ensure that the funds were used for the purposes of the agreement. In addition, findings of corruption and procurement irregularities at the PR run contrary to the terms of Article 18, Article 21, and Article 4 of the Grant Agreements. Finally, the PR’s mismanagement of grant funds is contrary to the terms of Article 9 of the Grant Agreement.

## H.2. Ineligible Amounts Calculation

Ineligible grant funds totals USD 53,577 (KGS 2,250,220)

239. As a result of its investigation, the OIG has calculated total amount of funds identified as ineligible under the Grant Agreement across the two grants to be at least KGS 2 250 220 (USD 53 577). The table below summarizes the categories that make up this amount.

Fig. 32 – Table of ineligible categories and amounts

Category		KGS	USD
<b>Findings of Gross Mismanagement</b>			
1	<b>Expenses outside of the scope of the grant</b>		
1.a	Breeding of cyprinids for supplementary feeding of tuberculosis patients at ZKB NTSF	495,580	11,800
1.b	Provision of TB patients with natural milk	353,278	8,411
1.c	Providing the TB patients released from prisons with passports	523,362	12,461
2	<b>Expenses compromised by inappropriate procurement activities</b>		
2.a	1. Purchase of senior PR official’s wife’s vehicle	234,747	5,589
2.b	2. Non selection of most competitive bid re NCP furniture	190,550	4,537
2.c	3. Over valuation of renovation works at RRC	103,901	2,474
<b>Category Total</b>		<b>1,901,418</b>	<b>45,272</b>
<b>Findings of Mismanagement</b>			
3	Loss of interest and penalties re grant funds transferred to fixed deposit	136,668	3,254
4	Failure to recover late construction penalties	42,315	1,008
<b>Category Total</b>		<b>178,983</b>	<b>4,262</b>
<b>Partial or total diversion of assets to non-program uses</b>			
5	Payment of project funds for travel and food expenses for TB clinic staff unrelated to the project	61,194	1,457
6	Cash advances with missing supporting expenditure documentation [senior PIU official] including laptop.	108,625	2,586
<b>Category Total</b>		<b>169,819</b>	<b>4,043</b>
<b>Total – All Categories</b>		<b>2,250,220</b>	<b>53,577</b>

<sup>161</sup> Article 21 of the Standard Terms and Conditions of the Amended and Restated Program Grant Agreement between the Global Fund and the NCP, KGZ-202-Go2-T (Round 2)



## I. Concluding Summary

The PR and SRs engaged in corruption, anti-competitive and collusive practices and other illegal behavior.

240. The OIG finds that officials within the Principal Recipient and Sub-Recipients in the TB program grossly mismanaged grant funds. The OIG finds that these programs were tainted by: corruption; anti-competitive and collusive practices; conflicts of interest; gross mismanagement; misappropriation and misuse by individuals, vendors, and members of Principal and Sub-Recipients who intentionally and knowingly allowed for an amount of USD 53,577 of Global Fund program funds to be compromised and ineligible for funding under the terms of the Grant Agreement. The OIG further finds that the Principal Recipient, the CCM and the Secretariat failed to provide adequate and responsible financial management and oversight so as to prevent this situation.

Procurements were grossly mismanaged

241. Under the two TB grants managed by the Principal Recipient, the OIG finds that between March 2004 and November 2009 senior officials engaged in a number of grossly mismanaged procurements, including steering contracts to favored bidders. These procurements violated the Global Fund Grant Agreements and possibly Kyrgyzstan procurement law.

Senior PR official created SRs that employed family members.

242. The OIG investigation identified that a senior PR official was instrumental in the creation of a number of Sub-Recipients, which, in turn, employed several family members and close friends in positions of authority. These Sub-Recipients were subsequently awarded a number of Global Fund financed TB projects, including projects that were not related to any planned grant activities and which constitute misappropriation of Global Fund grant funds.

Global Fund Secretariat did not address deficiencies identified by the LFA  
The Global Fund Secretariat did not address deficiencies identified by the LFA

243. The OIG also finds that the Global Fund Secretariat did not successfully mitigate the deficiencies and risks repeatedly brought to its attention by the LFA in both PR assessment and audit reports. First, although the LFA and external audits identified that PR staff lacked requisite financial management and procurement skills and experience, these issues remained unaddressed and persisted throughout the duration of the grant. Second, whilst a number of the deficiencies identified were the subject of Conditions Precedent to Disbursements in Grant Agreements, disbursements were made irrespective of the fact that the majority of these deficiencies were not remedied during either the Round 2 or 6 grants.

Identified risks were not addressed.

244. The OIG seeks to identify and mitigate risk posed to the Global Fund. Whereas 'zero risk' is an impossibility for an organization such as the Global Fund, which deals with critical health needs in high risk environments, this report demonstrates that the Global Fund Secretariat was repeatedly made aware of significant risks associated with the Principal Recipient's management of Sub-Recipients and procurement issues, yet there is little evidence that meaningful or effective attempts were made to address these highlighted risks.

## J. Recommendations

245. The OIG makes the following recommendations as a result of the findings of this investigation:

- That the Secretariat seeks to recover all amounts identified as ineligible, an amount currently identified as USD 53,577.
- That the Secretariat takes steps in accordance with its policies and procedures to ensure Principal Recipients do not provide large advance payments to vendors for goods or services, other than a reasonable amount required as a deposit.
- That the Secretariat should take steps in accordance with its policies and procedures to prevent disbursement of grant funds to Principal Recipients in circumstances where the Principal Recipient has not met required Global Fund **Program Grant Agreement 'conditions precedent' to disbursement**, unless such a disbursement is properly supported by a waiver of conditions precedent.

Global Fund should seek reimbursement of USD 53,577

Large advance payments to Vendors should not be provided

Grant funds should not be disbursed **until 'conditions precedent' are met** unless the disbursement is supported by a waiver

## **K. Acronyms**

CCM	Country Coordinating Mechanism
DFID	Department for International Development (UK)
EECA	Eastern Europe and Central Asia
FPM	Fund Portfolio Manager
KGS	Kyrgyzstan Som
LFA	Local Fund Agent
MDR-TB	Multi-Drug Resistant Tuberculosis
MOU	Memorandum of Understanding
NCP	National Center of Phthisiology
NGO	Non-Governmental Organization
NTC	National Tuberculosis Center
NTP	National TB Program
OIG	Office of the Inspector General (of the Global Fund)
PIU	Project Implementation Unit
PR	Principal Recipient
RRC	Republican Rehabilitation Center
PWC	PricewaterhouseCoopers
SCB	Suburban Clinical Base
SR	Sub-Recipient
TB	Tuberculosis
UNAIDS	The joint United Nations Programme on HIV/AIDS
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
USD	United States Dollar

## L. Annex 1: Response and Comments Received from the PR (NCP) in response to OIG Investigation Report

Response and Comments Received from the PR (NCP) in response to OIG Investigation Report.		
Para	PRs comments	OIG's response
N/A	An important note is that this report is not the same as the final version of the OIG report on the website of the GFATM.	<p>The report on the website of the GFATM '<i>Audit of Global Fund Grants to the Kyrgyz Republic</i>' is a report on the results of the OIG's audit of Global Fund grants to the Kyrgyz Republic (6 grants).</p> <p>The report referred to as not the same as the final version of the OIG report on the website is a completely different report. This report is an investigation report resulting from an investigation of certain matters solely concerning the TB PR (NCP).</p>
24	<p>In Art. D.2. paragraph 24, states that "As a result of the OIG audit, 6 August 2010, the CCM nominated UNDP to take over the management of all activities of the Global Fund grants from NCPH" End quote.</p> <p>This statement is inaccurate. The decision was based on the letter of the CCM Co-ordinator of the Temporary Government of the Kyrgyz Republic for Social Affairs, Mrs. Ibraimova, dated 21.06.2010, due to the extremely complex socio-political situation in the country.</p>	<p>OIG disagrees with this claim. OIG maintains that as a result of the OIG's audit and report to key stakeholders in country, on 6 August 2010, the CCM nominated UNDP to take over all active Global Fund grants from the NCP.</p> <p>Paragraph 24 will not be changed</p>
N/A	It should be noted that at the time of the decision of the CCM, there was no official OIG draft report.	Agreed, but OIG reported the irregularities discovered during OIG's audit to key stakeholders as described in para. 24.
E 3.2	<p>On the content of questions and accusations, I draw your attention to the fact that Art. E 3.2. falls only under the following article of the Programme Grant Agreement:</p> <p>E.3.2. Applicable Rules and Regulations</p>	<p>OIG maintains that the applicable rules and regulations contravened by the PR and others identified in OIG's investigation report are as stated in paragraph 38.</p> <p>Para. 38 will not be changed.</p>

Investigation of Global Fund Grants to Kyrgyzstan

	<p>38. Applicable rules and regulations violated PR and other persons identified in the Report are as follows:</p> <ul style="list-style-type: none"> <li>• Compliance with the law (Article 5)</li> <li>• Manage grant funds (Article 9)</li> <li>• The payment of grant funds (Article 10)</li> <li>• Bank Accounts, interest and other income programs (Article 11)</li> <li>• Agreement on goods and services (Article 18)</li> <li>• The conflicts of interest; anti-corruption (Article 21)</li> </ul>	
	<p>Obviously, the Program Grant Agreement (GA) can not be viewed in isolation from other articles and Regulations and are inseperable.</p>	<p>OIG agrees with this statement.</p>
	<p>It is logical to consider and adhere to all articles of GA. In particular, Article 35 of the Programme Agreement for GFATM “Arbitrage”:</p> <p>“Any disputes, controversy or claim arising out of or relating to this Agreement, or arising out of the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the United Nations Commission on International Trade Law (UNCITRAL), which are currently in force. The Global Fund and the Principal Recipient will agree with the decision of arbitration <i>as a final judgement</i> about the conflict arose, controversy or claim. Appointment of authority for such Judge shall be made of the International Chamber of Commerce International Court of Arbitration. The number of judges shall be three. The place of arbitration shall be Geneva, Switzerland. The language of the arbitration proceedings shall be English”. End quote.</p> <p>This means that the final decision on the report of the Mission OIG will be taken to arbitration in Geneva. Only on the basis of this decision should there be (or not be) conducted investigations and court proceedings in the Kyrgyz Republic.</p>	<p>OIG disagrees with the statements.</p> <p>The grant agreement does not prevent the Global Fund from referring matters to authorities for consideration of prosecution.</p>

<p>45</p>	<p>Art. F., paragraph 45 of the report the OIG conflicts with Articles GA</p> <p>In addition, in accordance with paragraph (c) of Article 8 of the Agreement Program Round 2:</p> <p>“The right to claim compensation provided for in paragraph a) and b) of this section, regardless of any other provisions of the Agreement. Retained for three years from the date of the last payment is made in accordance with this Agreement.”</p> <p>The last payment was made by Grant June 10, 2008. Which means that the statute of limitations has been expired. And all of the requirements for Grant Round 2 should be excluded from the report.</p>	<p>Grant agreement KZG-202-G02-T-00 was amended and restated on 10 May 2006, for the extension in Phase 2 of the program. The article, and language, quoted above are no longer part of the grant agreement. The applicable terms include the following survival clause:</p> <p>Article 39. SURVIVAL  (a) All covenants, agreements, representations and warranties made by the Principal Recipient in this Agreement shall be considered to have been relied upon by the Global Fund and shall survive the execution and delivery of this Agreement, regardless of any investigation made by the Global Fund or on its behalf and notwithstanding that the Global Fund may have had notice or knowledge of any fact or incorrect representation or warranty at any time in the Program Term, and shall continue in full force and effect until the Phase 1 Ending Date, or, if a Phase 2 Approval is issued by the Global Fund, the Phase 2 Ending Date.  (b) The provisions of Article 6 ( Covenants Of The Principal Recipient), Article 8 ( Local Fund Agent), Article 9 ( Management Of Grant Funds), paragraphs (a), (f)and (g) of Article 13 (Audits And Records), paragraph (c) of Article 15 ( Programmatic Progress Reports), Article 17 ( Evaluations By The Global Fund), Article 18 (Contracts For Goods And Services), Article Article 19 (Pharmaceutical And Other Health Products), Article 21 (Conflicts Of Interest; Anti-Corruption), Article 27 (Refunds), Article 28 (Limits Of Global Fund Liability) and Article 29 (Indemnification) shall survive and remain in full force and effect regardless of the expiry of the Program Term or the termination of this Agreement.</p> <p>This is to be read in conjunction with the refunds clause:</p> <p>Article 27. REFUNDS  Notwithstanding the availability or exercise of any other remedies under</p>
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Investigation of Global Fund Grants to Kyrgyzstan

		<p>this Agreement, the Global Fund may require the Principal Recipient to immediately refund to the Global Fund any disbursement of the Grant funds in the currency in which it was disbursed in any of the following circumstances:</p> <ul style="list-style-type: none"> <li>(a) this Agreement has been terminated or suspended;</li> <li>(b) there has been a breach by the Principal Recipient of any provision of this Agreement;</li> <li>(c) the Global Fund has disbursed an amount to the Principal Recipient in error; or</li> <li>(d) the Principal Recipient has made a material misrepresentation with respect to any matter related to this Agreement.</li> </ul> <p>The language quoted by the respondent (from the Phase 1 GA, which was replaced with revised language in 2006) is also incorrect. Original language was “8. c. The right under paragraphs (a) or (b) of this Article to require a refund of a disbursement will continue, notwithstanding any other provision of this Agreement, for three years from the date of the last disbursement under this Agreement.”</p> <p>With regard to the reference to the dispute resolution mechanism, the Global Fund is entitled to make a request for refunds under the terms of the grant agreement, and to report on the programmatic and financial performance of the program. If the recipient disputes the request, it is indeed entitled to bring a claim in from of an arbitral tribunal as stipulated in the grant agreement.</p>
	<p>For items of the charges, I would state the following: Art. F.1.1.  Claim 50</p>	<p>The cash disbursement voucher indicates that USD 2,200 (KGS 88,993,74 according to NCP) was disbursed to the PIU official for purchase of a laptop.</p>

Investigation of Global Fund Grants to Kyrgyzstan

<p>50</p>	<p>In accordance with financial reporting, xxx [senior PIU official] received on 12.06.06 an imprest for the amount of 88993,74 KGS for the purchase of a laptop.</p> <p>The return of the imprest was made 30.06.06. Receipt #5 in the amount of 14,210 KGS and 04.09.06 Receipt #17 in the amount of 6,262.</p> <p>An extract from the journal of entries was applied to previous comments.</p>	<p>A Dell laptop and bag was purchased for USD 1,770 (KGS 71,192)</p> <p>Based on your own calculation and the receipt for purchase of the Dell laptop and bag, the balance to be returned was KGS. 17,801. The amounts of KGS 14,210 and KGS 6,262 total KGS 20,472 and do not relate to the cash disbursement for the laptop.</p> <p>Paragraph 50 will not be changed.</p>
<p>52</p>	<p>Paragraph 52, indicates that a senior official PIU had no outstanding advance payments.</p> <p>Given that the automated system of financial reporting 1C captures actual amounts in bank and cash balances, we can assume that the documentation was in order. Bank statements on this issue have greater credibility.</p> <p>Thus, contrary to the p.p. 53-57 claim p.52, and in accordance with the presumption of innocence declared OIG doubts and contradictions testify in favour of the accused.</p>	<p>OIG does not agree with this statement. As articulated in paragraph 53, OIG’s investigation found that the PIU official did not fully acquit all the cash advances as indicated in the electronic expense reports.</p> <p>Paragraph 54 and 55 of the report indicate how OIG arrived at its conclusion.</p> <p>Paragraph 52 will not be changed.</p>
<p>60</p>	<p>Art. F.1.2. p.60</p> <p>These expenses were incurred for payment in accordance with Action 3.1.2 “Social support for patients with MDR-TB patients and health workers” Work plan and budget of grant in round 2. Annex 10.</p> <p>The formulation of the event mentioned in the OIG report does not correspond to the formulation of the approved Work plan and Budget of the Project.</p>	<p>The round 6 workplan and budget as stated in para 60 of OIGs report did not provide for any payments to medical staff or non-patients. The workplan and budget as indicated in para 60 provided for social support to MDR patients.</p> <p>Para 60 will not be changed.</p>



Investigation of Global Fund Grants to Kyrgyzstan

66-67	<p>Art. F.2</p> <p>The former wife of the PR official [xxx], was not hired by “Kyrgyz society for the safe and rational use of medicines” for the implementation of sub-grant program, as outlined in the OIG report. xxx was a member of this NGO long before receiving sub-grant of GFATM by NGO. Note, by that time the official PR was not cohabitating with xxx and did not share any joint household.</p>	<p>Paragraph 66 states ‘The Kyrgyz Society for Rational Use of Medical Drugs employed his wife’. This was the case and OIG will not amend this statement.</p>
	<p>The sister of the PR official was an employee of NGO “E-Med Plus” since the founding of NGO and was one of the few health professionals in nursing. The decision on who will participate in the activities of the sub-grant projects, was taking by the management of the NGO.</p>	<p>Paragraph 66 states ‘his sister was employed at El-med Plus’. This was the case and OIG will not amend this statement.</p>
	<p>The appointed director of the Association for Anti-tuberculosis is not, the nephew of senior official PR. He is the nephew of his ex-wife which is not the same thing.</p>	<p>OIG will amend the statement to read ‘and his wife’s nephew was appointed as the director of the Association of Societies to Fight TB’ At the time of her appointment she was still the wife of the senior PR official.</p>
	<p>The former director of the Association of Societies for TB control was not a <b>close</b> friend of the official. His appointment was made by a vote of the General Assembly of the Association. There is no legal base to believe the former director of the Association was a “close friend”.</p>	<p>OIG will amend the statement to read ‘.....the association’s former director, and also served as the director of another SR, the Association of TB specialists’. The words ‘who was a close personal friend’ will be removed.</p> <p>Fig 5 will also be amended with the removal of ‘Close friend of the PR official’.</p>
68,72	<p>Art. F.2.2. Claim 68,72</p> <p>The choice of vehicle in the process of acquisition has been carried out on the basis of the analysis of prices and product range in the trade publication “Auto-Guide” which for many years has been selling vehicles. The lowest price car with the proper state and specifications was selected.</p>	<p>OIG’s investigation found that no procurement process had been undertaken regarding the purchase of this vehicle contrary to Global Fund requirements.</p> <p>Paragraph 68 and 72 will not be changed.</p>

Investigation of Global Fund Grants to Kyrgyzstan

	<p>Art. F.3.3 – 3.4</p> <p>The supplementary feeding projects worked well so far and have shown their resilience and usefulness.</p> <p>The reflection of the OIG about the opportunity to acquire additional food at the expense of the GF have no basis. For many years NTP seeks to increase the funding for food, but unfortunately the problem is not solved due to the state budget deficit.</p>	<p>OIG’s investigation found that the projects did not ‘work well’ as claimed. OIG’s investigation found unsupported expenditure (refer para 92) and that the projects were not viable and had little financial credibility.</p> <p>OIG’s investigation also found that the projects did not align with any of the Round 2 or Round 6 grant planned activities.</p>
	<p>Art. F.3.4.</p> <p>None of the Project activities could be implemented without the consent of the GFATM Secretariat, FPM and LFA. All implemented activities and sub-projects have receive appropriate approval and were executed with the approved work plan and budget.</p>	<p>The project activities were not implemented with the consent of the GFATM Secretariat, FPM and LFA as claimed.</p> <p>OIG’s investigation found that the Tender Committee’s protocol documents did not mention a cyprinid fish project’. (para 91)</p>
<p>198-207</p>	<p>Art. F.6.</p> <p>The description of the background does not reflect the reality. In fact, the issue of the disputed transfer of funds was raised by LFA, after the regular, routine, quarterly evaluation of PR. After that, at a meeting with the FPM, a senior official of the PIU has been instructed to convey to the chief officer of the PR, the instruction for the immediate re-transfer of funds. The FPM has sent a letter to the chief officer of the PR on the subject of this refund. At the same time, it should be noted that the Bank “Kyrgyzstan” has transferred to the account of the Project as interest on the deposit the following amounts:</p> <p>25.09.06 - \$ 900</p> <p>23.04.07 - \$ 1,350</p>	<p>Para 203 of the OIG report clearly articulates that the transfer of funds was reported by the LFA to the FPM resulting in the FPM instructing the PR to transfer the funds back to the original account.</p> <p>OIG’s investigation found no evidence of the interest being paid into the project bank account as claimed by the NCP.</p>

Investigation of Global Fund Grants to Kyrgyzstan

	Thus, the statement that “the total amount of \$ 3,254 USD net interest was wasted due to early termination of the agreement with the “Commercial Bank Kyrgyzstan” (end of quote) is wrong and incorrect.	
208	<p>Conclusion</p> <p>In accordance with the conclusion of the OIG No. 208. “In Kyrgyzstan, the five structures, namely, PIU, LFA, the external auditors, the CCM and the Global Fund staff, constitute a fiduciary system, which should ensure the proper use of funds”. End quote</p> <p>Also, a verification of PRs activities was carried out by the tax authorities, the Accounting Chamber and the Prosecutor’s Office. Only OIG appears to reveal violations which varied in the different versions of reports from US \$880 thousands to \$ 21 k.</p>	OIG makes no comment in relation to this statement.
	The OIG staff’s professionalism is questionable as for four (4) years there have not been a final report.	OIG could not publish the investigation report until the OIG Audit report had been published due to the OIG Audit Report being referenced in OIG’s investigation report.
	Note that during the interviews, the members of all three OIG missions OIG guaranteed to all interviewees absolute anonymity. However, the latest report clearly indicates who said what and when. It is fairly easy to determine of all of the OIGs informants. This attitude to the privacy policy is at least puzzling.	OIG makes no comment in relation to the NCP’s claims.
	<p>Dear Mr/Mrs,</p> <p>Finally, once again I we request clarity on the need to follow the signed GA and execute the following:</p> <p>Article 8 of the Grant Round 2</p> <p>The right to claim compensation provided for in paragraph a) and b) of this</p>	Please see comments to the paragraph 45 above.

Investigation of Global Fund Grants to Kyrgyzstan

<p>section, regardless of any other provisions of this Agreement has to be retained for three years from the date of the last payment is made in accordance with this Agreement”</p> <p>Article 35, Grant Round 6</p> <p>“Any disputes, controversy or claim arising out of or relating to this Agreement, or arising out of the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the United Nations Commission on International Trade Law (UNCITRAL), which are currently in force. The Global Fund and the Principal Recipient will agree with the decision of arbitration <i>as a final judgement</i> about the conflict arose, controversy or claim. Appointment of authority for such Judge shall be made of the International Chamber of Commerce International Court of Arbitration. The number of judges shall be three. The place of arbitration shall be Geneva, Switzerland. The language of the arbitration proceedings shall be English.</p>	<p>The grant agreement does not prevent the Global Fund from referring matters to authorities for consideration of prosecution.</p>
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