REPORT OF THE GOVERNANCE AND PARTNERSHIP COMMITTEE

Outline: This report from the Governance and Partnership Committee with its nine (9) annexes gives an overview of the committee’s activities and deliberations and offers several recommendations for decision by the Board.

Decision Points:

It is recommended that the Board:


2. Adopt the revised version of the Policy on Ethics and Conflict of Interest for Global Fund Institutions (Annex 5).

3. Adopt the proposed amendment to Article A. Paragraph 1 of the Board Operating Procedures as underlined below:

   Board Members terms shall begin at the opening of the first Board meeting in a given year, and end at the opening of the first Board meeting in the second calendar year following the commencement of their term.

4. Mandate the GPC to consider the issue of non-overlapping terms of Board membership and the terms of Board Chair and Vice Chair in order to determine, whether any adjustments should be made to allow Board Chairs and Vice Chairs to serve their full two-year terms.

5. The Board requests the GPC to address the conditions under which the Communities delegation can become a voting member of the Board and report back with decision point(s) to the Eighth Board Meeting.
Part 1: Introduction

1. In addition to the ongoing mandate of the Governance and Partnership Committee (GPC), several further issues were assigned to the committee at the Sixth Board Meeting in Chiang Mai, Thailand. The current Terms of Reference are attached as Annex 1. The GPC decided to work initially by conference call and then to meet in January to finalise recommendations for the Board.

2. Three additional matters that were brought to the attention of the Chair and Vice Chair of the GPC during this period. These issues were:

   - Funding of constituency meetings (see Part 7 below);
   - the Ukraine grants (see Part 9 below);
   - Terms of Board Members (see Part 10 below).

Part 2: Additional Safeguard Policy

1. At the Sixth Board meeting the following decision was taken:

   The Board requests the GPC to develop with reference to the Framework Document guidelines recommendations for alternative funding mechanisms where particular constraints exist about funding the proposed Principal Recipients and sub recipients. These recommendations should reflect the humanitarian spirit of the Global Fund and the desire to direct funds quickly and accountably to affected populations. These modalities, subject to approval by the Board, should also apply to all approved proposals in Round 3.

2. The GPC considered the matter in the light of a presentation by the Secretariat on the current practice in regard to countries which may present difficulties for implementation. The Secretariat explained the cautious approach currently being adopted in certain challenging circumstances (the examples of Democratic People’s Republic of Korea and Myanmar were given). It was highlighted that a different approach was called for when the technical evaluation of the countries implementation modalities and capabilities were reviewed and distinct challenges came to light. Thereafter, a step by step approach is used to develop an appropriate response in consultation with the CCM. The Secretariat highlighted the PR assessment as the key entry point for the technical view. This is often the trigger for additional action.

3. It was acknowledged by the GPC that concerns regarding the appropriate use of funds were a global concern and that Secretariat processes needed to be sufficiently robust to highlight problems wherever they may arise and not just areas where there might be existing political concerns. For this reason, and based on experience to date, the GPC worked with the Secretariat to elaborate an Additional Safeguard Policy (attached here as Annex 4) which
outlines the additional action required when the technical evaluation raises issues of concern regarding implementation.

4. The GPC therefore proposes that the Board direct the Secretariat to proceed with implementation in difficult circumstances based on the principles and guidance set forth in the Additional Safeguard Policy.

**Decision Point:**

*The GPC recommends that the Board adopt the paper on the Additional Safeguard Policy as outlined in Annex 4.*

**Part 3: Conflict of Interest**

1. The GPC reviewed the existing Ethics and Conflict of Interest Policy, making both technical drafting changes and recommending several substantive adjustments to the current policy. The drafting changes were previously circulated by the GPC to the Board by e-mail, and the GPC incorporated all comments received. The substantive changes proposed by the GPC are as follows:

   a. **Giving of Gifts.** Section six was revised to prohibit the giving of a gift where it could be reasonably construed that a gift is intended to affect the policies or practices of the Fund or any of the programs it funds.

   b. **Post-Board Employment.** A new section seven prohibits the Global Fund from employing Board Members, Alternates, Committee Members, and the Chair or Vice Chair of the Technical Review Panel until eighteen months have passed from their last date of service. The provision allows for a waiver of the provision by the Ethics Committee.

   c. **Country Coordinating Mechanisms.** A new section eight adds a policy statement on the need for CCMs to operate transparently, with appropriate safeguards against conflict of interest. This section has been added as a policy statement, because the Global Fund cannot control CCM behaviour through the conflict of interest policy, as that only applies to individuals in direct service of the Global Fund. Separate consideration has been given to Global Fund control over conflicts of interest at the CCM and PR level, discussed more particularly in Part 4.

**Decision Point:**

*The GPC recommends that the Board adopt the revised version of the Policy on Ethics and Conflict of Interest for Global Fund Institutions as outlined in Annex 5.*
Part 4: Country Coordinating Mechanisms

1. On the overall issue of CCMs the GPC appreciates the importance of addressing possible conflicts of interest with respect to CCM members. To this end, the GPC has decided to submit a more comprehensive package of information and recommendations relative to CCMs to the Board at its Eighth meeting in June 2004. This package will include results, analysis and recommendations emerging from the ongoing case studies of CCMs, a survey on affected community representation and involvement in CCMs, a Tracking Study, and additional analytical and statistical data from the Secretariat. The Secretariat agreed, if possible, to hold a briefing on the pre-meeting day of the Seventh Board Meeting in Geneva on the results of the CCM case studies. The Chair of the GPC noted that MEFA would need to be kept informed of the outcomes of the CCM review.

2. However, although this approach is strongly supported by the GPC, it was also noted the need to more immediately review the Secretariat's procedures for accepting for TRP review proposals developed outside of the CCM process (so-called Non-CCM Proposals) given that Round Four will take place before the Seventh meeting. The Secretariat also requested guidance from the Committee to avoid the controversy that arose after the last round. This issue is therefore addressed below.

Criteria for Non-CCM Proposals

3. This issue was raised for consideration by the GPC at the Sixth Board Meeting with the following decision point:

   The Board requests the PMPC and GPC to examine the issue of non-CCM proposals that have been approved by the Board and that may be against the criteria for non-CCM proposals, and report to the Seventh Board Meeting.

   The Board requests the PMPC and GPC to review the applicability of the eligibility criteria to future non-CCM applications.

4. The Chair of the GPC was to consult with the Chair of the PMPC on how to proceed further. The GPC considered the history of the Secretariat screening process in general as well as in the specific cases where non-CCM proposals had been screened in (this review is attached as Annex 6). They were assisted in this process with an additional paper from Thailand providing their perspective on a Round Three that brought this issue forward (included in Annex 6).

5. The GPC was of the opinion that in general the three eligibility criteria for Non-CCM proposals were appropriate and in most cases easy to interpret. Indeed, GPC noted that 116 applications received in rounds 2 and 3 were rejected because they were not compliant with requirements for CCM
endorsement. GPC recognized that in some cases it may be extremely difficult to determine whether a particular civil society group is indeed repressed. It was also noted that in many of these difficult cases it may well be a vulnerable group of concern to the Fund that is marginalized and whose access to the CCM and to appropriate medical interventions is compromised. These are the cases that become very sensitive. It was also recognized that the Fund is not necessarily the only possible source of funding for these groups and that in many cases their needs would be favorably considered by bilateral or other donors. The GPC further discussed avoiding recommending or funding actions which contravene local law. Such funding would put the Fund on a collision course with national authorities and could raise questions about the Fund’s work in these countries.

6. Annex 6 explains the approach that will be taken by the Secretariat in reviewing these cases in the future. The most notable strengthening as a result of the lessons learned is the requirement that the Fund contacts the relevant CCM on receipt of such a proposal and gives them an opportunity to comment on the submission. This would not necessarily sway the screening in one way or another and strict deadlines would have to be observed. The Secretariat would still have to use its best judgment on whether to submit the proposal to the TRP for their consideration or not. The GPC also recommended clarifying criteria number ii regarding countries facing natural disasters by adding that if governments become inoperable due to natural disasters then non-CCM applications would be accepted.

7. The GPC was of the opinion, especially when reviewing the list of screened out proposals, that in general the record of the Secretariat showed that they had applied the criteria well and that the problem cases had been relatively few. It was also noted that the issues raised in the discussion also related to the wider review of CCMs and would need to be taken up for the June presentation.

CCM Composition review

8. The studies on CCM composition are ongoing. Initial results do indicate some reasons for concern. More specifically, government entities still represent a majority of CCM members, representation and participation of communities living with the diseases, civil society and those living and working outside of major cities or capitals remains extremely low. These concerns raise questions of inclusivity, transparency and accessibility to decision making processes. A full analysis will be available in June

Conflict of Interest re: CCM/PR and Procurement and State Production

9. Two issues arose as a result of these two decision points at the Sixth Board Meeting:
1. The Board requests the GPC to examine the possible conflicts of interest between the Chairs of CCMs and the Principal Recipients, particularly in the process of selecting Principal Recipients.

2. Board refers to the Governance and Partnership Committee the issue of potential conflict of interests when products are manufactured in a state-owned laboratory and the Principal Recipient is a public entity and when products are manufactured or purchased in a state-owned structure and the state is responsible for quality.

10. The GPC undertook an initial review and discussion of these issues based on discussion papers prepared by the Secretariat and looks forward to addressing them as part of the comprehensive review planned for June. The GPC had previously shared initial thoughts and questions on these issues with the Board but received very little feedback. Any comments from Board Members on these issues are welcome, and should preferably be provided in writing to the committee.

Part 5: Voting Rights for Communities

1. At the Sixth Board meeting the GPC was given the following mandate:

   The Board requested the GPC to address the conditions under which the Communities delegation can become a voting member without affecting the existing voting mechanism, and report back to the Seventh Board Meeting.

2. This issue has been raised by several members of the GPC at various times since the establishment of the GPC, without formal resolution by the Committee or the Board.

3. This GPC discussed the scope of the Board mandate, and the structural background and some general issues related to two possible approaches:

   - Addition of the Communities constituency to an existing voting group;
   - Agreement to add the Communities constituency to one voting group contingent upon a subsequent decision to add a balancing constituency to the other voting group.

4. In the opinion of the GPC, the Communities Living with the Diseases could not simply be added as a voting member of the Board without affecting the existing voting mechanism of the Board. The GPC therefore decided not to pursue this discussion further (the discussion paper is attached as Annex 7). The GPC requests the Board to give it a broader mandate to discuss the question of granting voting rights to the Communities delegation.
Part 6: Vision for Partnerships

1. The GPC has had several discussions on how to approach the issue of partnerships in the course of reviewing various draft Memoranda of Understanding (MOUs), most notably those with Stop TB and Roll-Back Malaria. The GPC took the view that before requesting any further consideration by the Board of individual partnership agreements, there was a need to establish a vision for partnerships against which various partnerships, including those of a more formal nature, could be measured. A paper on Partnerships was developed by the Secretariat in consultation with the GPC and is attached as Annex 8.

2. The GPC decided not to seek formal approval of the paper since it is not a policy document but rather captures the approach the GPC will use when reviewing and monitoring partnerships, and in deciding which should necessarily be formalised (by MOU or exchange of letters) and which by their nature and purpose are more fluid and flexible.

3. The GPC has been assured by the Secretariat that its work in promoting a vision for partnerships more generally before considering proposed MOUs with Stop-TB and Roll-Back Malaria will lead shortly to the presentation of formal MOUs for GPC’s consideration and possible referral to the Board if necessary. GPC has already had two discussions over the nature of these particular proposed partnerships. While the GPC look forward to consideration of these MOUs, several points were noted in this discussion, including the view that the Fund has no preferred partnerships and that approvals for proposals are based on the recommendations of the TRP and a vote of the Board; no outside organization can determine funding decisions of the Fund.

4. The GPC will continue to monitor and review partnerships and to follow the progress of the Partnership Forum Steering Committee.

Part 7: Funding Delegates of Constituency Meetings

1. The Chair of the GPC was requested to examine the issue of funding for constituency meetings, recognising that it is sometimes difficult for some Board member’s to adequately consult and inform their constituencies before major policy decisions take place at Board meetings without an opportunity to meet in person. The GPC reviewed the matter based on the paper prepared by the Secretariat and decided not to recommend any change in the current policy to the Board.

2. Rather the GPC has encouraged the Secretariat to assist constituencies to work with other partners to ensure they meet with adequate frequency and are able to keep their constituency informed. It was noted that many of the bilateral agencies, multilateral agencies, foundations, and other donors have
provided significant support to constituency groups, and that this should be continued and encouraged.

Part 8: Legal Status of the Fund in Switzerland

1. As indicated by the representative of the Swiss authorities at the Sixth Board meeting, the Swiss government sent their proposal for the new Headquarters Agreement for the Global Fund to the Secretariat on 14 November. It was then translated and sent to all Board Members for their review and comment on 18 December (Annex 9 contains all relevant documentation).

2. The Secretariat entered into negotiations with the Swiss authorities immediately following receipt of the draft Headquarters Agreement, with a negotiating team led by Dr Richard Feachem, Dee Jay Mailer and Dominique Hempel.

3. The Secretariat received a letter on January 19, 2004, from the lead counterpart in the Swiss authority charged with negotiating the Agreement, which communicated a requirement that the Secretariat meet certain structural changes prior to entering into the Agreement (attached in Annex 9). The conditions require the transfer of a substantial portion of Secretariat employees from employment with the WHO through the Administrative Services Agreement to direct employment by the Global Fund. While it appears that the possibility of employee transfers was discussed with the Secretariat negotiating team, the Secretariat notes that this had been discussed in terms of an option that the Board could consider at a later date, and not in terms of a mandatory internal restructuring of the Secretariat as a condition for granting the liability protections in the Agreement. No such pre-conditions were included in any prior written communications from the Swiss authorities, including the letter transmitting the Agreement and the Agreement itself.

4. The Secretariat noted to the GPC that it does not understand why Swiss authorities are asking the Secretariat to undertake an internal reorganization at this stage. The late notice of this precondition, and the complicated issues it raises, requires that consideration of the Headquarters Agreement be deferred until these issues are discussed with the Swiss authorities in more detail. The GPC requested that the Secretariat pursue these issues on an urgent basis and report back to the committee regularly on the status of these discussions. The Secretariat stated that it could not commence work on a paper requested by the Board to review the strengths and weaknesses of the different options so long as the Swiss maintained their position on altering the internal structure of the Secretariat.

Part 9: Update on the Ukraine Issue
1. The Executive Director explained to the GPC the circumstances surrounding the Secretariat task team that was sent to review the grant arrangements in the Ukraine in the third week of January. He assured the GPC that the Board would be kept informed of developments but also raised the issue of the response capacity of the Fund for such incidents. While in this case the Secretariat had been able to take swift action, it was, according to the Executive Director, clear that should more than one such situation develop simultaneously or when several investigations and reviews were ongoing, the Secretariat would not have the capacity to address all with the attention necessary to ensure a quick and effective response.

Part 10: Board Member Terms

1. In connection with the commencement of the new Board terms, the GPC considered whether the terms of Board Members were intended to run on a calendar-year cycle, or whether the two-year cycle was intended not to be tied to the calendar year, but rather to begin and end on a particular Board meeting.

2. The issue was discussed by the GPC, based in part on guidance from the Global Fund’s external Swiss council. Under the current language of the Bylaws and Board Operating procedures, resolution of the issue is unclear. That is, although it is reasonable to conclude that the two-year term corresponds to the calendar year, under current provisions it would not be arbitrary to conclude that the term for Board members coincides with Board meetings that fall approximately on a two-year cycle (e.g., that the terms begin and end on the first Board meeting of the year). The GPC expressed that it intended for Board member terms to run on cycles starting and ending at a Board meeting, and not on the calendar year. It was noted that the Secretariat would not fund two Board delegations from the same constituency to attend the same meeting.

3. As a result, the GPC proposes the following amendment (underlined text) to the Board Operating Procedures to clarify that the two-year term begins and ends at the opening of the first Board meeting of the year.

A. BOARD MEMBER REPRESENTATION

1. Board Members

Seats on the Board of The Global Fund are allocated in the By-Laws to representatives of donors, developing countries, civil society, and the private sector, international organizations, and the communities living with the diseases. Board Members terms shall begin at the opening of the first Board meeting in a given year, and end at the opening of the first Board meeting in the second calendar year following the
commencement of their term. Board Members serve as the representatives of the particular country, organization or other entity, or other constituency holding the Board seat. Except as provided for in Sections A.4 and A.5 below, only properly accredited Board Members have the right to vote and to participate in Board deliberations.

Certain Board seats are allocated to or may be held by constituencies, including groups of organizations or countries. In such circumstances, each constituency will develop its own process to designate its representatives to the Board and determine the members of its delegation, and shall provide this process to the Board for reference.

The seven developing country seats are allocated to six constituencies based on each of the six World Health Organization (WHO) regions and to an additional constituency from Africa. WHO has no role in selecting Board Members. WHO regions are used only as a reference for the purpose of aggregating developing nations into regional groups.

4. The GPC further notes that, even with this change, the two-year terms of Chair and Vice Chair do not directly overlap with the two-year terms of Board members. The GPC requests a mandate from the Board to consider the issue, and determine whether any adjustments should be made to allow Board Chairs and Vice Chairs to serve their full two-year terms.

**Decision Point:**

1. The GPC recommends that the Board adopt the proposed amendment to Article A. Paragraph 1 of the Board Operating Procedures as underlined below:

   Board Members terms shall begin at the opening of the first Board meeting in a given year, and end at the opening of the first Board meeting in the second calendar year following the commencement of their term.
### Governance and Partnership Committee

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<tr>
<th>General Terms of Reference</th>
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<td>2. CCM partnership and policies related to expanding partnerships at the global level;</td>
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<td>3. Policies on interactions among Board, TRP, Secretariat and Partnership Forum; and</td>
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<td>4. Personnel policies.</td>
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<td>4. Legal Status of the Fund in Switzerland</td>
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<td>5. Alternative Funding Mechanisms</td>
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<td>6. Voting Rights for Communities (David Sullivan)</td>
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<td>7. Funding of Constituency Meetings (Dianne Stewart)</td>
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<td>8. Terms of Board members</td>
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## DRAFT AGENDA

### GOVERNANCE AND PARTNERSHIP COMMITTEE

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<th>Tuesday 27 and Wednesday 28 January 2004</th>
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<td>Venue:</td>
<td>Ground Floor Conference Room, Global Fund Office</td>
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<tr>
<td>Chair:</td>
<td>Dr Lieve Fransen</td>
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<td>Vice-Chair:</td>
<td>Mr Rodrigo Pascal</td>
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<tr>
<td>Focal Point:</td>
<td>Dianne Stewart (resource people in brackets below)</td>
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### Tuesday 27 January 2004

**Morning 9.00 – 12.30:**

1. **Review and Approval of the Agenda**

2. **Legal Status of the Fund in Switzerland** (David Sullivan)
   - Update on negotiations with the Swiss

3. **Alternative Funding Mechanisms** (Brad Herbert)
   - Review of paper and issues related to funding in constrained environments

**Lunch 12.30 – 14h00**

**Afternoon 14.00 – 18.00**

4. **Conflict of Interest** (David Sullivan)
   - COI Policy
   - COI Specific Questions (CCM/PR; Procurement)

5. **Vision for Partnerships** (Christoph Benn/Brad Herbert)
   - Review of Revised Paper
   - Update on RBM and STB MOUs (consequences of delay)
   - Update on Partnership Forum SC

6. **Voting Rights for Communities** (David Sullivan)
   - Review and Approval of the paper

### Wednesday 28 January 2004

**Morning 9.00 – 12.30:**

7. **CCMs** (Brad Herbert; Doris D’Cruz-Grote)
   - Criteria for Non-CCM proposals (historical review and recommendations for the future)
   - Update on review of CCM composition (Case Studies and Survey)

8. **Funding of Constituency Meetings** (Dianne Stewart)
   - Review and Approval of paper

9. **Any Other Business**

**Lunch 12.30 – 14.00**

**Afternoon 14.00 – 17.00**

10. **Approval of Final Papers and Recommendations**
Annex 3

GOVERNANCE AND PARTNERSHIP COMMITTEE

LIST OF ATTENDEES

Date : Tuesday 27 and Wednesday 28 January 2004
Venue : Hope Plaza, Global Fund Secretariat
Chair : Dr Lieve Fransen
Vice –Chair : Mr Rodrigo Pascal
Focal Point : Dianne Stewart

Attendees:

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<th>Constituency</th>
<th>Nominated Member</th>
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<th>Email address</th>
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<tbody>
<tr>
<td>China (Western Pacific)</td>
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<tr>
<td>Eastern Med. Region</td>
<td>Dr Ejaz Rahim</td>
<td>None</td>
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Invited Guests:

Ms. Margaret Grebe, Chair Representative
Ms. Cha-aim Pachanee, Vice Chair’s Representative
Mr. Henrik Hansen, European Commission

Resource Staff:

Ms. Dianne Stewart (Secretariat)
Mr. David Sullivan (Secretariat)
Mr. Brad Herbert (Secretariat)
Dr. Purnima Mane (Secretariat)
Dr. Yoshiko Saito (Secretariat)
Dr. Christoph Benn (Secretariat)
Ms. Doris D’Cruz-Grote (Secretariat)
Additional Annexes Attached as Separate Documents:

Annex 4: Additional Safeguard Policy
Annex 5: Policy on Ethics and Conflict of Interest for Global Fund Institutions
Annex 6: An Examination of the issue of non-CCM proposals already approved by the Board that may be against the criteria for non CCM proposals
Annex 7: Voting Rights for the Communities Delegation
Annex 8: Vision for Partnerships
Annex 9: Legal Status: Documentation