



Investing in our future

The Global Fund

To Fight AIDS, Tuberculosis and Malaria

Twenty-Third Board Meeting
Geneva, Switzerland, 11-12 May 2011

GF/B23/7
Board Decision

RECOMMENDATIONS OF THE ETHICS COMMITTEE

PURPOSE:

1. This document summarizes the recommendations of the Ethics Committee to the Twenty-Third Board Meeting in relation to the Whistle-blowing Policies and the Declaration of Interest Form attached to the Ethics and Conflict of Interests Policy.

PART 1: INTRODUCTION

1.1 The Ethics Committee met in Geneva on 28 February 2010. The Chair was Karlo Boras (Developing Country NGOs); the Vice-Chair was Marijke Wjinroks (Point 7).

1.2 The deliberations of the Ethics Committee are confidential and so are not reported here, but the following recommendations are made by the Ethics Committee to the Board.

1.3 Items for Board Decision included in this paper are as follows:

- i. Part 2: Revisions to the Whistle-blowing Policies;
- ii. Part 3: Revisions to the Declaration of Interest Form.

PART 2: REVISIONS TO THE WHISTLE-BLOWING POLICIES

Decision

2.1 The Whistle-blowing Policies for the Global Fund were approved by the Board at its Thirteenth Board Meeting (GF/B13/6). Two policies are currently in place namely the Whistle-blowing Policy for the Secretariat and Governance Bodies of the Global Fund and the In-country Whistle-blowing Policy of the Global Fund.

2.2 Whistle-blowing allows for safe and effective procedures for the disclosure of misconduct so that appropriate remedial action can be taken.

2.3 Following discussions with the Inspector General and deliberations by the Ethics Committee, it was decided to recommend that the existing policies are replaced with one new policy and procedures document which:

- i. Amalgamates the current policies into one new policy and procedures document;
- ii. Updates the policies by providing non-retaliation provisions to ensure that no action will be taken against a whistle-blower who makes a disclosure in good faith. This is in accordance with standard wording used in the whistle-blower policies of other international organizations;
- iii. Updates the scope of reportable conduct;
- iv. Updates the details of confidential and anonymous reporting as well as the contact details for making a complaint so that they are consistent with the OIG's procedures (for example, the OIG's alert line reporting details have been incorporated);
- v. Updates the terminology used to describe inappropriate conduct so that it is consistent with the HR Regulations and Disciplinary Procedures - the terms 'misconduct' and 'gross misconduct' have been used; and
- vi. Provides a more readable document for whistle-blowers.

2.4 If approved the policy document will be translated into different languages and will be posted on the OIG's section of the Global Fund webs-site.

2.5 The proposed new Whistle-blowing Policy and Procedures is set out in Annex 1 to this document. The Ethics Committee proposes the following decision point for the Board to give effect to the new Policy and Procedures document:

Decision Point 1: Revisions to the Whistle-blowing Policies

The Board decides to replace the Whistle-blowing Policy for the Secretariat and Governance Bodies of the Global Fund and the In-country Whistle-blowing Policy for the Global Fund (approved at the Thirteenth Board meeting) with the new Whistle-blowing Policy and Procedures as set forth in Annex 1 of the Report of the Ethics Committee (GF/B23/XX).

This decision does not have material implications for the 2011 Operating Expenses Budget.

PART 3: REVISIONS TO THE DECLARATION OF INTEREST FORM

Decision

3.1 As a requirement of the Ethics and Conflict of Interests Policy (“the Policy”) approved in October 2002 and amended by GF/B18/DP10, all Covered Individuals (as defined in the Policy) are required to complete, sign and return a Declaration of Interest to the Ethics Official each year and whenever there is a material change in the information disclosed. The format of the Declaration of Interest is prescribed in the Policy.

3.2 Following the review of declarations by Covered Individuals, the Ethics Committee has decided that the Declaration of Interest Form needed to be radically overhauled in order to simplify it and make it relevant to the information which the Ethics Committee wants to review.

3.3 After comparing the declaration of interest forms from other international organizations, a new Declaration of Interest Form is recommended by the Ethics Committee to the Board which will replace the existing Declaration Form prescribed by the Policy.

3.4 The new Declaration of Interest Form has been reduced to two pages (including guidance on its completion) and asks two simple questions. Where the answer is “no” to either question, tick boxes have been provided making the document simple to complete. Where the answer is “yes” the Declarant must provide details for the Ethics Committee to consider in accordance with the Policy and its terms of reference set by the Board.

3.5 The Ethics Committee intends the form to be available in different languages to assist Declarants although the declarations themselves must be made in the English language.

3.6 The Ethics Committee recommends the revisions to the Declaration of Interest Form as set out in Annex 2. It should be noted that none of the changes affect the Policy which will continue to remain in full force.

3.7 The Ethics Committee proposes the following decision point to the Board:

Decision Point 2: Revisions to the Ethics and Conflict of Interest Policy's Declaration of Interest Form

The Board decides to replace the Declaration of Interest form attached to the Policy on Ethics and Conflict of Interest for Global Fund Institutions (approved in October 2002 and amended by GF/B18/DP10) with a new Declaration of Interest form as set forth in Annex 2 of the Report of the Ethics Committee (GF/B23/XX).

This decision does not have material implications for the 2011 Operating Expenses Budget.

This document is part of an internal deliberative process of the Global Fund and as such cannot be made public until after the Board meeting.

Whistle-blowing Policy and Procedures
for
The Global Fund to Fight AIDS, Tuberculosis and Malaria

1. What is whistle-blowing?

To blow the whistle is to alert a third party that a person or entity has done, or is doing, something wrong. So, literally, “whistle-blowing” means that one informs or notifies others of misconduct.

By blowing the whistle on misconduct *in an organization*, one alerts the organization to the fact that its stakeholders are being wrongfully put at risk or have been, or are being, harmed. .

2. The Global Fund’s duty of trust

The Global Fund was formed in pursuit of a humanitarian, moral objective. It directs funds from donors to in-country organizations managing programs to combat HIV, tuberculosis and malaria.

As a conduit of funds designated for addressing global health needs, the Global Fund is the custodian or trustee of the funds entrusted to it.

It follows that it is the Global Fund’s overriding duty to manage those funds responsibly, including proactively protecting those funds from abuse or misdirection so that they can reach their intended destinations for their intended purposes.

For the Global Fund, intentional mismanagement or misappropriation of its funds is a serious breach of trust, for two obvious reasons:

- First, the intended beneficiaries – namely, those affected by AIDS, tuberculosis and malaria – would be harmed as the funds earmarked for their benefit are diverted and not used for their benefit.
- Second, donors cannot be expected to continue donating funds that are managed irresponsibly or wasted.

3. Why have a whistle-blowing policy?

The main purpose of this whistle-blowing policy is to help the Global Fund exercise its duty of trust to protect its funds.

Therefore, this document sets out the Global Fund's written, formal whistle-blowing policy, consisting of effective and confidential procedures for reporting possible misconduct or irregularities so that appropriate remedial action can be taken. A written, formal policy – properly communicated – is also a means of preventing and deterring misconduct that might be contemplated but has not yet taken place.

A written, formal policy is also a transparent method of addressing issues relating to whistle-blowing, such as answering standard questions, giving assurances, providing information, and offering explanations.

With its whistle-blowing policy, the Global Fund calls upon others to assist it with its custodial responsibility of the funds designated for and provided to intended recipients and deserving beneficiaries.

The Global Fund abides by a philosophy that its duties as custodian or trustee of donated funds clearly outweigh possible personal, cultural, or historical objections to a practice of whistle-blowing.

Through this whistleblower policy, the Global Fund calls on all who cares about the worldwide fight against AIDS, tuberculosis and malaria to support this further step to safeguard donated funds intended for benevolent purposes.

In summary, this whistle-blowing policy springs from the duty of the Global Fund to act as a responsible custodian or trustee of funds entrusted to it, by protecting the interests and assets of all its stakeholders – donor countries, recipient countries, or diverse beneficiaries alike.

4. Who are whistle-blower reports made to?

Whistle-blower reports are made to the Office of the Inspector General (OIG). The OIG was established by the Board of the Global Fund to Fight AIDS, Tuberculosis and Malaria in July 2005 and began work in December 2005. The OIG is an independent unit of the Global Fund, reporting directly to the Board.

Led by the Inspector General, the mission of the OIG is to provide the Global Fund with independent and objective assurance over the design and effectiveness of controls in place to manage the key risks impacting the Global Fund's programs and operations.

The scope of work of the Inspector General encompasses all aspects of the Global Fund's activities including those carried out on its behalf by its program recipients, partners and suppliers. All systems, processes, operations, functions and activities within the Global Fund are subject to the Inspector General's review. The activities of the Office of the Inspector General are:

- Audit;
- Inspection;
- Counter-fraud and promotion of ethical conduct;
- Investigations;
- Assurance validation; and
- Functional reviews.

Further details on the Office of the Inspector general can be found on the OIG's web-pages through the following link: <http://www.theglobalfund.org/en/oig/?lang=en>

The OIG has been tasked by the Global Fund Board to provide appropriate mechanisms for whistle-blowers to report irregularities falling within the mandate of the OIG. The types of matters that should be reported to the OIG and further information on the process of reporting is provided below.

5. Who should report misconduct and what should be reported?

All Global Fund stakeholders, including Secretariat staff, LFAs, Principal Recipients, CCM members, and Board members, have a duty to inform the OIG of any of the circumstances, past or present, listed below.

- (a) Gross Misconduct on the part of Global Fund staff.¹
- (b) In the case of programs funded by the Global Fund or persons and entities involved in the facilitation of such programs:
 - a. Theft or diversion of funds or other assets (including embezzlement, theft of assets procured with grant funds);
 - b. Fraud (e.g. bribery, kickbacks, inappropriate gratuities, forged signatures, false travel claims, travel with no legitimate purpose);
 - c. Knowingly communicating false information (including false financial or programmatic reporting and other misrepresentation of information) and inappropriate disclosure of information,
 - d. Waste of resources, assets and monies (e.g. knowingly purchasing expired drugs, supplying faulty test kits);
 - e. Unethical conduct (Conduct that undermines universal, core ethical values, such as integrity, respect, honesty, responsibility, accountability, and fairness);
 - f. Actions damaging the Global Fund's reputation and which may lead to an investigation;
 - g. Abuse of power or authority;
 - h. Mismanagement;
 - i. Inappropriate use of program assets;
 - j. Non-compliance with the Global Fund Procurement Policies (including irregularities in tender processes);
 - k. Maladministration (for example, failure to take proper action to rectify reported problems, failure to respond to complaints);
 - l. Conflict of interest;
 - m. Product substitution and counterfeit drugs; and
 - n. Any breach of the Supplier Code of Conduct
<http://www.theglobalfund.org/documents/business/CodeOfConduct.pdf>
<http://www.theglobalfund.org/documents/business/SanctionsProcedures.pdf>

¹ Gross misconduct is defined in the Global Fund Disciplinary Regulation as including: association in any way with criminal or non-criminal activities which may bring the Global Fund into disrepute; bullying and/or harassment; deliberate damage to Global Fund property; discrimination; fraud; improper use or attempt to make use of his/her position as an official for his/her personal advantage; physical aggression and/or abusive behaviour; serious health and safety infringements; serious breach of confidentiality; theft; and undertaking private work on Global Fund's premises or in working hours which interferes with the performance of an employee's duties.

Any other person who has information relating to any such matter should report the matter to the OIG.

6. Assurances of confidentiality and anonymity

The Global Fund is committed to safeguard whistle-blowers, and provides the opportunity to treat all whistle-blowing reports as either confidential or anonymous. The choice between confidential or anonymous whistle-blowing is that of the whistle-blower alone.

7. What is the difference between confidential and anonymous whistle-blowing?

Allegations notified to the OIG may be made *confidentially* (in which case the person's identity will be known to the Office of the Inspector General only and will be kept confidential) or *anonymously* (in which case no one, not even the Office of the Inspector General, will know that person's identity).

If you provide your personal details when making a confidential report, the Office of the Inspector General will not disclose these details to other areas of the Global Fund or to external organizations unless you give your consent. The only exception to this assurance may be where the Global Fund is required to comply with a separate legal obligation such as an order issued by a court. Importantly, the Global Fund assurance of confidentiality can only be completely effective if the whistle-blower likewise maintains confidentiality.

Anonymous reports are sometimes difficult to assess where it is not possible to obtain further information from the complainant. Therefore, if an allegation is made anonymously, it should be as complete as possible, providing as much detail as possible to enable the investigator to follow up on information that may be needed to pursue the investigation, and include any supporting documentation. Whistleblowers are therefore encouraged to report misconduct confidentially, as such a report has the greatest likelihood of impact as the OIG will have a greater ability to pursue the complaint, and will be able to seek clarifications from the complainant, if and when, necessary. To be actionable, complaints ultimately must be supported by sufficient evidence to find misconduct has occurred.

In 2009 the OIG introduced a new reporting system to enable those persons wishing to report irregularities to remain anonymous, while at the same time providing a mechanism for further (anonymous) contact where necessary. This process has been made possible by the use of a third-party reporting system called the [OIG's Integrity Hotline](#). By using this method of reporting, a report number and PIN are assigned. The identity of the person making the report is not known to the third-party reporting agency or to the OIG unless the person making the report chooses to pass on this information. By using the report number and PIN, the person making the report is able to check back at a later time to obtain an update - and this also allows the OIG to pass on any questions that we have or requests for clarification.

8. Whistle-blower protection

Both confidential and anonymous whistle-blowing options are aimed at safe reporting.

The Global Fund is also committed to preventing those who benefit from misconduct from attempting to retaliate against or victimize a whistle-blower for loss, or potential loss, of that ill-gotten benefit. However, importantly:

- Such adverse consequences can only materialize if the identity of the whistle-blower becomes known through a breach of confidentiality; and
- An anonymous whistle-blower cannot be victimized, if the whistle-blower also protects his own or her own anonymity and does not disclose the complaint or supporting information to anyone other than the OIG.

The reporting process outlined above has been introduced by the Office of the Inspector General to allow confidential or anonymous reports to be made, while at the same time safeguarding the identity of the person making the report to the fullest extent possible.

Where an individual makes a report under this policy in good faith, reasonably believing it to be true, there will be no retaliation against the individual should the disclosure turn out to be misguided or false.

Where it is considered necessary, the OIG may recommend the temporary reassignment of a person who has allegedly been the subject of retaliation or other measures appropriate to protect against further acts of retaliation. Any such recommendation will only be submitted with the approval of the staff member involved and appropriate measures will be taken to safeguard employee confidentiality to the fullest extent possible.

Reporting under this policy in no way protects a whistle-blower from disciplinary or other action arising from their own intentional misconduct. In other words, blowing the whistle is no 'escape hatch' for complicity in misconduct.

9. OIG action in the case of retaliation or false reports

Any staff member of the Global Fund who is alleged to have retaliated against a person who has made a report to the OIG in good faith will be the subject of an OIG investigation. Should the allegation be substantiated, the staff member will face disciplinary action for gross misconduct.

Allegations of retaliation by people and entities external to the Global Fund, such as in-country partners and suppliers, will be dealt with through governance mechanisms and other appropriate action including the debarment of suppliers through the Global Fund Sanctions Procedures.

Making allegations through the whistle-blowing mechanism that the individual knows to be false or with an intent to misinform will also be investigated by the OIG and may result in disciplinary or other action (such as the sanctions procedures in the case of suppliers or referrals to local law enforcement agencies in the case of third parties).

10. How do I report fraud or abuse?

There are two ways to make a complaint.

- i. Through a third-party reporting service

You can make a complaint by telephone or internet through a reporting service provided by a compliance reporting company, Global Compliance. This service will provide the details of your report to the Office of the Inspector General. It will ask if you wish to be anonymous or if you wish to provide your contact information.

If you provide your contact information, the Office of the Inspector General will contact you directly for more information.

If you choose to be anonymous, Global Compliance will provide you with a report number, a PIN number and a follow-up date. Because Global Compliance will not have your contact information any further contact will need to be initiated by you.

Reports can be made by internet (web-reporting) or by telephone to Global Compliance.

Web-reporting

The third party compliance reporting company, Global Compliance, can be contacted by through the [OIG's Integrity Hotline](#). This service is operated in 21 languages.

Reporting _____ by _____ telephone

You can call Global Compliance free of charge from any country in the world on the following US collect call telephone number +1 704 541 6918. If you do not speak English, an interpreter will be arranged while you are on the line.

ii. Directly to the Office of the Inspector General by telephone, fax, email or letter

Telephone: +41-22-341-5258 (24 hour secure voicemail)

Fax: +41-22-341-5257 (dedicated secure fax)

Email: inspector.general@theglobalfund.org

Mail: Office of the Inspector General,
The Global Fund to Fight AIDS, Tuberculosis and Malaria
Chemin de Blandonnet 8, 1214 Vernier,
Geneva, Switzerland

11. What details should I include in my report?

Please make your complaint as specific as possible and include details such as:

- The type of alleged wrongdoing you are reporting;
- Where and when did these events occur;
- Who are the people involved and who has knowledge about the matters you are reporting;
- How the individual, organisation or company committed the alleged wrongdoing; and
- Why do you believe the conduct should be investigated and why are you reporting the matter.
- All documents and references to other sources that support the complaint

Complainants are strongly encouraged to submit all supporting documents, or advise the OIG where such documents might be located, and identify other possible witnesses who could provide relevant information. Disclosure of further information or evidence (for example, documents) that you believe will enable us to make a proper assessment, should be provided to the Office of the Inspector General as soon as possible.

12. What happens after I make a report?

All reports to the OIG are acknowledged within one day of receipt wherever possible and all reports are reviewed by OIG staff.

Where a matter falls within the Charter and Terms of Reference of the OIG an assessment will be made to determine the most appropriate action. This may lead to an investigation by the OIG, or a referral of the matter to national authorities for prosecution in the event of a breach of national criminal laws. Alternatively, where appropriate, the matter may be referred to other areas of the Global Fund if there is no apparent conflict of interest with that area. For example, certain issues of misconduct (as defined in HR Regulations) may be within the responsibility of the HR Unit to determine any necessary action. In such cases the OIG will refer the matter to the Director of HR, unless the HR department has a conflict of interest in the matter, or the Complainant has already complained to HR and has not been satisfied with the response. It is important to reiterate that the OIG will not pass on the identity of a person making a report of irregularities unless that person has consented to the OIG doing so.

An investigation is a legally based, analytical process designed to gather information in order to determine whether wrongdoing occurred and, if so, the persons or entities responsible.

Investigations are conducted by the OIG in a diligent, complete, focused and objective manner. All reasonable steps are taken to ensure that pertinent issues are sufficiently examined. The OIG exercises complete independence from other parts of the Global Fund in conducting investigations.

The OIG's aims in conducting investigations are to:

- Determine, on the basis of all available evidence, whether the allegations are factual;
- Assess the extent of any loss or damage to the Global Fund and seek to prevent any further loss or damage;
- Determine the nature and extent of any involvement by participants (either external or internal);
- Seek the recovery of funds or assets and in certain cases recommend corrective action;
- Recommend measures that will prevent any future loss or damage; and
- Forensically gather all available evidence in accordance with internationally recognised investigation standards; and
- Refer matters to the relevant agencies in-country for criminal investigation and prosecution as appropriate.

Periodic reports are provided by the OIG on the number and nature of matters reported to the OIG. The OIG also analyses reports and the results of investigations to identify any systemic issues, which are passed to the Secretariat to assist in the development of more robust controls where appropriate.

13. Need more information?

We hope that this document has provided a useful overview of the Global Fund Whistleblower process. Should you have any questions, please contact the OIG through any of the contact mechanisms listed above.

DECLARATION OF INTEREST FORM

In compliance with the Global Fund's Ethics and Conflict of Interest Policy, all Covered Individuals² are required to complete this form in respect of themselves, their spouses³ and any dependent children annually or in the event of a material change or at the request of the Ethics Committee.

What type of interest needs to be declared?

Covered Individuals must report any interest in (including association with) any entity with which they may be required, directly or indirectly, to have official dealings on behalf of the Global Fund or which has a financial interest in the work of Global Fund.

The following is provided for guidance and is a non-exhaustive list of types of interest:

1. a financial interest, e.g., shares or bonds, in a commercial entity with which a Covered Individual may be required, directly or indirectly, to have official dealings on behalf of the Global Fund, or which has a commercial interest in the work of the Global Fund (except share holdings through general mutual funds or similar arrangements where the Covered Individual has no control over the selection of shares⁴);
2. an employment, consultancy, directorship, or other position or association, whether or not paid, in any entity with which a Covered Individual may be required, directly or indirectly, to have official dealings on behalf of the Global Fund, or which has a commercial interest in the work of Global Fund, or an ongoing negotiation concerning prospective employment or other association with such entity;
3. a proprietary interest in a substance, technology or process (e.g., ownership of a patent), relevant to the Global Fund's work;
4. performance of any paid work or research commissioned by an entity with which a Covered Individual may be required, directly or indirectly, to have official dealings on behalf of the Global Fund, or which has a commercial interest in the work of the Global Fund; and
5. a family interest in which, for example, a spouse or dependent child is employed by an entity from which goods and/or services are purchased using Global Fund resources.

How to complete this Declaration: Please answer questions 1 and 2 of the form in the English language and sign and date the form before submitting it under confidential cover, to the Ethics Official of the Global Fund, Ms Gülen Newton, Legal Counsel, at ethics@theglobalfund.org.

Assessment and outcome: Information disclosed on this Declaration Form by Covered Individuals shall be kept on behalf of the Ethics Committee of the Global and may be made available to the Chair and Vice-Chair of the Global Fund and/or the Office of the Inspector General. The information may be made available to persons outside of Global Fund only when

² A Covered Individual means a member of the Board of the Global Fund, an alternate, a member of any committee, task force, the Technical Review Panel, or any other subsidiary body of the Global Fund, and professional employees of the Secretariat.

³ For the purposes of this Declaration, "spouse" includes a legally recognized domestic partner.

⁴ This exception would not apply to funds or similar arrangements which focus on industries which have commercial interests in the work of the Global Fund.

the objectivity of the work of the Global Fund has been questioned and when the Chair of the Ethics Committee considers disclosure to be in the best interests of the Global Fund, and then only after the Covered Individual concerned has had an opportunity to comment.

Please respond to the following two requests for information:

Declaration:

1) Have you, your spouse or dependent child(ren) any interest in (including association with) any entity with which you may be required, directly or indirectly, to have official dealings on behalf of the Global Fund, or which has a financial interest in the work of the Global Fund?

Yes: No: If yes, please give details in the box below. (If additional space is needed, please continue on a separate page and sign and date that page.)

Type of interest, e.g. patent, shares (including number and current market value); employment, association, payment (including details on any compound, work, etc.);	Name of entity	Indicate whether held by you, or your spouse, or your dependent child(ren)?

2) Is there anything else that could affect your objectivity or independence in the performance of your duties for Global Fund, or the perception by others of your objectivity and independence?

Yes: No: If yes, please give details below or on a separate page and sign and date that page.

I confirm that I have read, understood and comply with the Policy on Ethics and Conflicts of Interest for Global Fund Institutions⁵. I declare that the information which I disclose in this Declaration of Interest Form is correct and complete. I undertake to update the information in this Declaration of Interest Form in the event of any material change in these circumstances⁶ and, in any event, at least annually.

Signature

Date

Name (please print)

Title (please print)

⁵ See <http://www.theglobalfund.org/documents/policies/PolicyonEthicsandConflictofInterestforGlobalFundInstitutions.pdf>

⁶ The concept of “material change” allows for some flexibility of interpretation, thus in the event of any doubt the staff member should consult the Ethics Official. However, as an example, any change in the companies in which stocks are held should be reported, but it is safe to assume that any change of less than 20% in the *number* of a stock of a company already held would not be a material change. An increase in the *value* of stock, without a change in the number, would not by itself be a material change.

GUIDANCE ON LOCATION OF FURTHER INFORMATION

The below table indicates where further information on items dealt with in this report can be found:

Where indicated documents are available on the Governance Extranet:
<http://extranet.theglobalfund.org/cme/default.aspx>

Item:	Further information available:
1. Revisions to the whistle-blowing Policies	http://www.theglobalfund.org/documents/oig/Whistle-blowing_Policy_for_the_secretariat.pdf and http://www.theglobalfund.org/documents/oig/In-Country-Whistle-blowing_Policy_for_the_Global_Fund.pdf
2. Revisions to the Declaration of Interest Form	http://www.theglobalfund.org/documents/policies/PolicyonEthicsandConflictofInterestforGlobalFundInstitutions.pdf