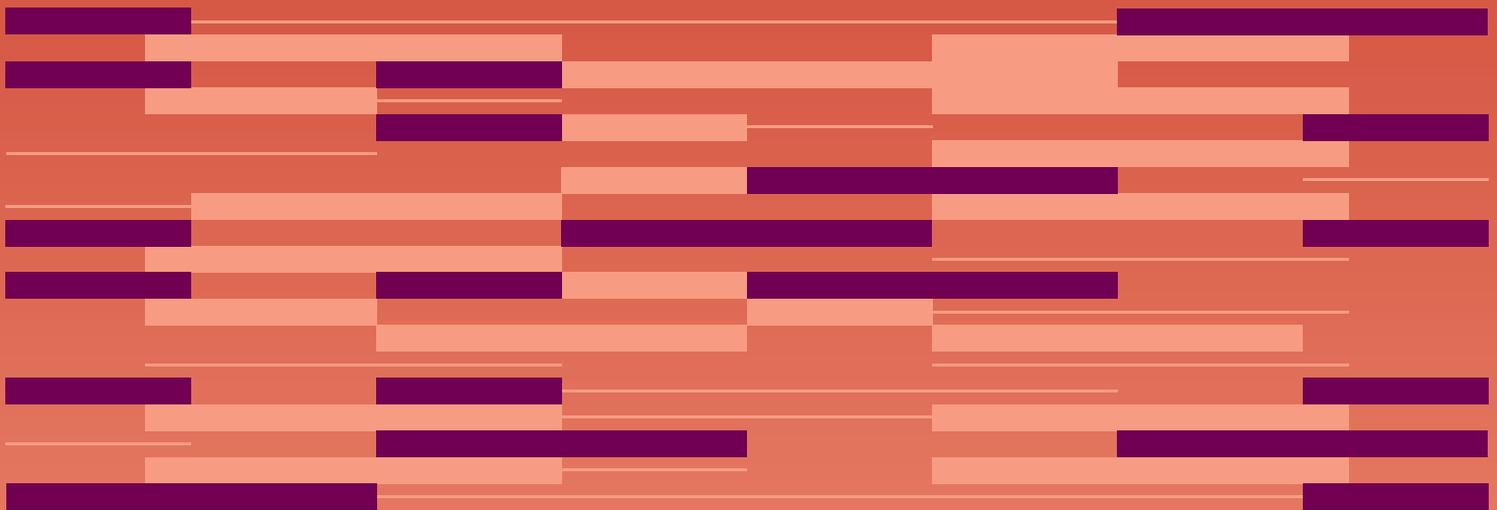




COUNTRY COORDINATING MECHANISMS
CONFLICT OF INTEREST



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Country Coordinating Mechanisms (CCMs) serve multiple functions, from developing proposals and allocating funds to providing oversight for implementation. The potential for conflicts of interest is considerable, particularly as CCM members increasingly become recipients of funds and are responsible for implementation. To investigate this potential for conflict further, case studies were commissioned to examine policies and procedures in place to mitigate these within the CCMs of **Jamaica, Kenya** and **Zimbabwe**.

Policies

CCMs in all three countries have documented conflict of interest policies. The Kenyan guidelines require CCM members to acknowledge and declare their conflicts. However, clearly defined parameters - including a conflict of interest declaration form - have yet to be developed. Likewise, there was no evidence of systems to identify or manage conflicts. The CCM in **Zimbabwe** has an ethics and conflict of interest policy. Here too, there was little evidence of its implementation, and the committee for oversight, which was referenced in the policy, had not been established. Furthermore, CCM members in **Kenya** and **Zimbabwe** showed little knowledge of their conflict of interest policies or means of recourse in instances of problems.

Jamaica's CCM was an exception, as it had documented guidelines and an operational conflict of interest plan.

This initiative was spearheaded by the Joint United Nations Programme on HIV/AIDS (UNAIDS) and included an oversight committee to spot and resolve problems. Among other steps to mitigate conflicts, CCM members completed declaration of conflict of interest forms on an annual basis.

Voting

Policies to mitigate conflicts of interest generally require concerned individuals to remove themselves from discussions and voting. However, this practice appeared to be the exception rather than the rule. In instances where the majority of CCM members were either Principal Recipients (PRs) or sub-recipients, it was noted that few people would be left in the room if such policies were enforced. **Zimbabwe** allowed all CCM members to remain present. However, even when members did not participate in voting, their presence was felt to influence the outcome, partly because voting was operated on a consensus basis.

Reports of Conflicts of Interest

Various concerns were expressed in relation to the balance of CCM membership and its influence on decision-making. These concerns included PRs serving as Chairs and Vice-Chairs, and the dominance of individuals and interest blocks – particularly with respect to processes for reviewing proposals and selecting PRs and sub-recipients. Concerns were also expressed in relation to CCM members being responsible for oversight of their own organizations.

The independence of CCM secretariats emerged as an important consideration. For instance, the CCM secretariat in **Kenya** was perceived to be biased, because it was hosted, financed and staffed by the Ministry of Health. It was also noted that CCMs/secretariats with poor governance and management procedures can fuel misconceptions concerning conflicts of interest. For instance, delays in circulating key documents can be interpreted as efforts to withhold information.

Wherever difficulties in ensuring impartiality arose, it appeared beneficial for CCMs to seek support from parties perceived as relatively neutral. Given the widespread lack of clarity on matters of conflict of interest and the potential for abuse, it appears imperative that proactive measures be taken to improve policies and enforce practices.



CCMs remain relatively new in aid management terms. The rationale of key stakeholders being responsible for Global Fund grants stemmed from several considerations, including aspirations that programs would be country led, informed by relevant insights and better suited to local needs.

The CCM construct was also expected to result in greater accountability and democratic decision-making processes, by virtue of bringing affected individuals and communities into the role of oversight. CCMs were left to define their own governance principles, demonstrate transparency and efficiency in resource use and ensure that funds would be used as intended to serve communities. By default, therefore, it was assumed that systems would be put in place to mitigate potential misuse of power and funds.

Beyond program outcomes, the Global Fund's success hinges on the work of CCMs being perceived as rational and fair. An analysis of CCMs that submitted proposals in Round 4 showed that 96 percent were chaired by a government representative. Seventy-five percent also had a government representative as Vice-Chair.¹ At the time of this report, approximately 60 percent of CCMs were chaired by representatives of Ministries of Health which, in turn, also happened to be the PR. Furthermore, CCM members' organizations were increasingly becoming sub-recipients. Oftentimes, these arrangements

are considered necessary and even desirable. However, enforcing systems to mitigate conflicts of interest is clearly essential to protect the integrity of all concerned.

Following requests for greater guidance, the Global Fund recommended² that each CCM elect a Chair and Vice-Chair from different sectors.

To avoid conflict of interest, it is recommended that PRs and Chairs or Vice-Chairs of the CCMs not be the same entity. When the PRs and Chair or Vice-Chairs of the CCM are the same entity, the CCM must have a written plan in place to mitigate this inherent conflict of interest. This plan must be documented and made public to ensure the highest levels of transparency and integrity. This plan should include, at a minimum, that the PR, or prospective PR, shall recuse itself from participation at the CCM meeting and shall not be present during deliberations or decisions related to the monitoring and oversight of the PR, such as decisions related to:

- the selection of the PR;
- PR renewal for Phase 2;
- a substantial reprogramming of grant funds; and
- items that have a financial impact on the PR, such as contracts with other entities, including sub-recipients".

¹ *Secretariat Analyses of CCM Composition, Rounds One to Four*, available at www.theglobalfund.org/documents/ccm/AnalysisOfCCMMembershipAtRounds1-4.pdf
² *Guidelines on the Purpose, Structure, Composition and Funding of Country Coordinating Mechanisms and Requirements for Grant Eligibility*, available at: www.theglobalfund.org/en/ccm/guidelines

These guidelines are reinforced by one of the six CCM minimum eligibility criteria³ which require CCMs to have a written plan in place to mitigate “this inherent conflict of interest”.

The same points are reinforced by other Global Fund reference documents, such as the CCM performance and self-assessment checklists. CCMs that do not meet these criteria are screened out of eligibility for consideration in a proposal round. During the same year that these eligibility criteria came into force (2005), an analysis⁴ found that of those CCMs with a potential conflict of interest, 23 percent had a written plan to mitigate against them. This result underscored the need to track progress in this area.

Study Design and Methodology

This is one in a series of eight reports which examine different aspects of the work of CCMs. In brief, three country case studies were conducted by independent consultants to examine practices with regards to conflict of interest in **Jamaica**, **Kenya**, and **Zimbabwe**. In each case, relevant documents (including Global Fund documents and guidelines and CCM policies and procedures for each country), were reviewed. Consultants visited countries to interview CCM members and other stakeholders. A total of ten to twelve days (five to seven in country) were dedicated to each investigation between September and October 2007.

Aim

Case studies were conducted to examine conflicts of interest in the work of CCMs, steps taken to mitigate the same and the degree to which Global Fund guidelines were followed.

Consultants used structured questionnaires to guide interviews in **Zimbabwe** and **Kenya**. People were generally interviewed individually, although group discussions were also held in **Zimbabwe** and **Jamaica**.

An attempt was made to assess how CCM members perceived conflicts of interest with respect to CCM functions and their own roles. CCM members and other stakeholders were asked to describe how governance instruments and policy documents were developed and whether or not they were applied. Opinions were also sought in terms of whether or not current guidelines and practices were sufficient and if not, why not and what could be improved. Examples of conflicts of interest were sought, and questions were asked as to how these had been handled. The role of CCM secretariats in terms of contributing to or mitigating conflicts was also investigated.

Limitations

There were some constraints in interviewing people. Difficulties included limited access to persons outside the capital city and inadequacies of time as well as outdated contact information for stakeholders (**Zimbabwe**). Some problems also emerged with accessing documents (**Zimbabwe**).

³ Clarifications on CCM Minimum Requirements, Round Seven. March 2007. Available at: www.theglobalfund.org.



Jamaica

In **Jamaica**, UNAIDS led the process of developing and documenting a conflict of interest management plan. The process was reported to have met with considerable satisfaction and to have involved wide consultation with civil society representatives and CCM members. Key components of the plan included CCM members completing a disclosure of conflict of interest form on an annual basis for review by the entire CCM membership. The plan detailed steps to be taken to mitigate conflicts of interest for regular tasks of the CCM, including PR and sub-recipient selection.

The plan was reported to be operational and supported by a CCM oversight monitoring committee. This committee was comprised of five CCM members, none of whom could be representatives of PRs or sub-recipients. The committee’s responsibilities included monitoring, reviewing and investigating conflicts of interest – presumably using the information on disclosed conflicts of interest as a reference. The duties of this committee extended to recommending recusal and sanctions. When questioned, CCM members appeared to be widely aware of the plan and its contents. There was evidence that the conflict of interest forms were regularly completed, and there were reports of individuals refraining from participating in meetings or voting on the basis of declared conflicts.

CCM Jamaica - Conflict of Interest Management Strategies

- Full disclosure of conflicts of interest;
- Recusal of members from discussions and decision-making related to their interests;
- Inclusion of independent committee members for decision-making;
- Transfer or reassignment of members’ responsibilities to avoid conflict of interest;
- Recommendation of specific sanctions in instances of failure to disclose conflicts of interest.

Kenya

The **Kenya** CCM’s Governance Manual defined conflict of interest as, “When a CCM members’ status, private affairs or financial interest are in conflict with his/ her duties and responsibilities”. All CCM constituency sectors were reported to have participated in producing this manual. The status of the document was, however, uncertain. One account referred to it as having been endorsed by the CCM (May 2007), while others stated that it remained under review. Details on the subject of conflict of interest, and guidelines for mitigation, were referred to as being unclear. Furthermore, a clause in the document allowing CCM members with declared conflicts of interest to remain part of deliberations and to vote was pointed out as a cause for concern.

The CCM had a code of conduct document which went into further detail. This document contained the following relevant clauses:

- CCM members and alternate members will always strive to act in the best interests of the CCM.
- CCM members and alternate members will declare any conflict of interest, or any circumstance that might be viewed by others as a conflict of interest, as soon as it arises.
- CCM members and alternate members will submit to the judgment of the CCM and do as it requires regarding potential conflicts of interest.

The general mandatory requirement was that CCM members declare potential conflicts of interest. The code of conduct indicated that the CCM Chair was responsible for reviewing reported conflicts and that those disclosures were to be recorded in relevant CCM meeting minutes. The provision for CCM seats to have alternate members was reported to allow for a quorum to be maintained in instances of unavailability of members or where recusal might be necessary on the basis of conflicting interests.

However, it appeared that these procedures were not in place. For instance, a declaration of conflict of interest form had yet to be developed, and there was no evidence of a committee devoted to the oversight of ethics/conflicts of interest. That said, persons interviewed were clearly

aware of conflicts of interest – when they were asked, they had no difficulty volunteering examples.

Zimbabwe

The CCM's Ethics and Conflict of Interest Policy (2005) for **Zimbabwe** contained the following definition, "A conflict of interest arises when a covered individual participates personally and substantially in an official capacity in any particular matter in which, to his or her knowledge, he or she or an associated person or associated institution has a financial interest, if the particular matter will have a direct and predictable effect on that interest".

This document goes on to state that all CCM members, delegated bodies of the CCM and employees of the CCM secretariat have to submit an annual declaration of interest form to the secretariat, and are responsible for keeping the same updated should circumstances change. It also describes a process whereby such forms are to be held by the secretariat and made available to a delegated Ethics and Conflict of Interest Committee. This committee would determine whether waivers might be granted allowing compromised individuals to participate in discussions and voting. According to the policy, conflicts of interest must be documented in the minutes of relevant meetings. In instances where conflicts are discovered without prior disclosure, the Ethics and Conflict of Interest Committees were responsible

for recommending options for the CCM to consider.

Despite this documentation, the majority of persons interviewed were neither familiar with this policy nor aware of options should problems arise. The situation was summarized by the consultant as follows:

"The understanding of the meaning of conflict of interest is inferred but not defined. This is further indicated by an apparent lack of appreciation and regular use of procedure and process, and the absence of transparency and disclosure documents for review. One or two CCM members have in the past excused themselves when affected by deliberations as "covered" individuals, but no motions have been raised or documented in this regard. Apart from this reference and other vague indications of awareness, there is no other available evidence to suggest that CCM members, in general, have seriously considered or appreciate their mitigating roles with respect to conflict of interest".

There was also no evidence to suggest that the Ethics and Conflict of Interest Committee had met or had ever been constituted.

When respondents were asked for examples of conflicts of interest, several instances were offered. The reports are included below but should not be interpreted as implying agreement. Investigating such statements was beyond the remit of these studies.

Membership Balance and Decision-Making

Various respondents referred to conflicts of interest when positions of power (e.g., Chair/Vice-Chair and committee chairs) were held by persons whose organizations were recipients of funds. In **Jamaica**, both the Chair and Vice-Chair represented HIV/AIDS organizations. This was mentioned alongside the fact that CCM members did not have to declare their HIV status – the implication being, presumably, that the subject of HIV/AIDS may have received disproportionate attention.

In **Kenya** and **Zimbabwe**, some respondents stated that CCMs were biased because voting was stacked in favor of certain constituencies. In all instances, government members constituted the largest block (approximately 30 percent in all three countries). Beyond numbers, however, it appeared that political posturing may have contributed to such perceptions. For instance, in **Kenya**, the representative of the Ministry of Finance was reported to have assumed a position of authority within the CCM because the status of this ministry ranked immediately

below that of the Office of the President. Here, too, a UN member of the CCM was referred to as pushing agendas “identical to its mandate”. In **Zimbabwe**, older members, referred to as “pioneering organizations”, were reported to be strongly influential, so influential that CCM members were not entirely free to voice their own views. These comments appeared particularly important in that decisions were made on the basis of consensus rather than on a system of voting. Mention was made of the fact that the voting system had changed following 2005, when “correct procedures were instituted”.

Related to the above, the processes by which CCM members were selected were mentioned. It appeared that the CCM in **Jamaica** had changed substantially since its inception and that the process which led to the reformed CCM was consultative and had met with general approval. In **Zimbabwe**, however, the CCM, constituted largely by the Ministry of Health, the World Health Organization (WHO) and other “active partners”, had not changed in five years. The fact that the founding members remained in place led to perceptions that “barriers to entry” were “being subtly established”. The implication was that CCM members were consolidating positions to the detriment of other potentially eligible representatives which, if true, would suggest the violation of fair play principles.

Selecting Principal Recipients and Sub-recipients

Processes for selecting PRs were not described in detail. However, there were some signs of dissatisfaction with the outcomes, coupled with suggestions of undue influence. In **Kenya**, the representative from the Ministry of Finance, who also serves as a PR, was reported to be insistent that the Ministry of Finance serve as PR for all Global Fund grants. While in **Zimbabwe**, the choice of the United Nations Development Programme (UNDP) as a temporary PR - replacing the National AIDS Council - was said by some to have been “forced on the CCM” which was the preferred PR. And yet, when this was investigated further, it was found that during the initial grant negotiation phase, the proposed PR, the National AIDS Council, had been determined to lack certain capacity requirements. Consequently, UNDP was proposed as an interim PR and a plan was established to build the capacity of the National AIDS Council to take over when the grant entered its second phase, which is what eventually took place.

In **Kenya**, members of an independent review panel constituted to review proposals for Round 7 were considered not to be all that independent – some were consultants for government agencies represented on the CCM. This, combined with the “numerical strength” of government representation on the CCM, was felt to have resulted in dedicating close to 90 percent of the budget to government-

implemented programs. Furthermore, the **Kenya** AIDS Nongovernmental Organization's Consortium (KANCO), a nongovernmental organization (NGO) umbrella organization, was reported by some to have unfairly used its position on the CCM to ensure that its own affiliated organizations qualified for – and were more likely to get – funding. While possibly a moot point, given that the Kenyan conflict of interest policy was not considered to be operational, the guidelines did not extend to persons involved in independent committees constituted to select PRs and sub-recipients.

In **Zimbabwe**, despite improvements in rationalizing selection procedures over the years, the report stated that the “impartiality of the selection committee and subsequent ratification methods of the CCM cannot be accurately determined”. The fact that PRs and sub-recipients had changed little over the years was offered as a potential conflict of interest, a charge which apparently did not take into consideration the fact that Zimbabwe had had proposals approved in only two rounds, Rounds 1 and 5.

Oversight

Conflict of interest concerns largely focused on instances where recipients of funds were involved in providing oversight for their own organizations.

In **Kenya**, representation of government ministries as the CCM Chair (Ministry of Medical Services), a PR (Ministry of Finance), and a leading

sub-recipient (Ministry of Health), and the fact that many CCM members were recipients of funds, was felt to compromise this CCM's ability to exercise oversight. In **Zimbabwe**, it was felt that the membership of the Ministry of Health and Child Welfare presented difficulties with reviewing government-related implementation.

Country Coordinating Mechanism Secretariats

In **Kenya**, the CCM secretariat was located within the Ministry of Health. The Ministry provided the staff, equipment and finances. This secretariat was reported to have “always advanced the interests of the Ministry in particular and that of the government in general”.

The CCM secretariat in **Zimbabwe** had a recent staff change. Previous staff members had been provided by the National AIDS Council. These members have since been replaced by persons financed and appointed by UNICEF and the U.S. Centers for Disease Control (CDC) in **Zimbabwe** using a process that involved others and was recognized as transparent. The fact that the newly appointed staff had been employees of the Ministry of Health and the National AIDS Council was, however, considered by some – but not all – to constitute a “serious breach” of the code on management of conflicts of interest. References were made to the need for such individuals to maintain cordial relationships with their previous employers, as the

continuity of the Global Fund, and, therefore, job security, could not be assured. That said, some expressed high hopes that this newly constituted secretariat would be able to help enforce **Zimbabwe's** conflict of interest policy by providing the needed independent managerial support.



Each of the three CCMs included in this study had documented policies for conflicts of interest and, therefore, fulfilled the basic eligibility requirement of the Global Fund. While the reports were not systematic in their assessments of the contents, deficiencies were noted. Some policies were cited as being “unclear” or “thin on procedure”. There were instances where conflicts arising through sub-recipients and persons outside CCMs, who conducted work on their behalf, were not covered. One country’s policy appeared to allow persons with declared conflicts to participate in discussions and voting.

Beyond requiring documentation, the Global Fund encourages policies to be widely available. While the Kenyan and Zimbabwean policies were relatively simple to locate on the web, CCM members from **Kenya** and **Zimbabwe** were unfamiliar with their own documents, indicating the need for additional steps to ensure that CCM members are, at the very minimum, aware of their own guidelines.

The foremost concern emerging from this study was, however, that documentation does not guarantee practice. The CCM in **Jamaica** was exceptional in having made concerted efforts to implement a conflict of interest plan.

The case studies presented difficulties with interpretation as little in the way of contextual information was provided.

For instance, reports of dominance of CCMs by government, individuals or interest groups, could be interpreted as positive outcomes – even the explicit intention behind the original construct of CCM membership. Without indications that such dominance resulted in unfair practices or advanced interests at odds with the mandate of CCMs, conclusions concerning conflicts of interest cannot be drawn.

However, there were many references to situations in which the potential for conflict was obvious, such as the involvement of applicants for funds or their representatives in selection processes. Conflicts could also arise in situations where CCM members had oversight of their own organizations or beneficiaries when those organizations either manned or otherwise supported secretariats.

Lax approaches to enforcing conflict of interest policies may have contributed to unfair suspicions in the workings of CCMs in **Kenya** and **Zimbabwe**. Alternatively, real instances of conflicting interests may have deliberately held up progress. Either way, these studies indicate that perceptions carry considerable significance in terms of the reputation of, and faith in, CCMs.

While not always explicit, country reports suggested factors which may hamper CCMs’ abilities to establish and enforce conflict of interest policies themselves. These factors included:

i) the vested interests of and the interdependent relationships between CCM members; ii) instances where the NGO sector is perceived to be allied with opposition to the ruling political party, such that tensions and mutual mistrust between the public and NGO sectors run deep; iii) countries with pervasive economic and political uncertainties, such that competition for funds is a matter of survival for CCM members themselves; iv) sectors with longstanding reputations for corruption, fueling distrust in CCMs just by virtue of their inclusion.

The participation of relatively neutral or external parties was generally welcomed. In the instance of **Jamaica**, it was the leadership of UNAIDS that made it possible to develop, document and get the conflict of interest plan implemented. Having external and independent persons involved in committees to oversee conflict of interest and PR and sub-recipient selection also helped secure trust. In **Zimbabwe's** case, the recent involvement of the CDC and UNICEF in providing support for the secretariat was viewed with optimism. In **Kenya**, the seemingly sensible provision for alternates, whereby each CCM seat could be held by more than one representative, unfortunately appeared untested with respect to ensuring impartiality.

In conclusion, expectations that CCMs would determine their own solutions seem optimistic in hindsight. While not necessarily representative, the case

studies indicated that existing policies may be far from comprehensive and unevenly enforced. It appears imperative that more proactive measures be taken to strengthen policies and enforce practices to protect the integrity of the work of CCMs and the persons involved.



The study of the conflict of interest policies in place in the **Jamaica, Kenya** and **Zimbabwe** Country Coordinating Mechanisms gave rise to a number of recommendation to assist other countries in avoiding either the appearance or the fact of conflicts of interest among the members of their CCMs:

- Establish and enforce policies with clear procedures and tools for addressing conflicts of interest.
- Ensure CCM members are fully aware of conflict of interest policies and mitigation procedures.
- Consider the support of external entities, such as United Nations agencies and other partners, in the development and implementation of conflict of interest policies.
- Wherever possible, house and finance CCM secretariats independently from CCM members/Global Fund recipients.

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