



## Investigation Report

# Global Fund Grants to South Sudan

GF-OIG-16-018

5 July 2016

Geneva, Switzerland

Non-compliant Expenditure: US\$500,564

Proposed recoveries: US\$500,564

Categories – Non-Compliance with Grant Agreements

 **The Global Fund**

Office of the Inspector General

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# I. Background and Scope

In April 2015, an OIG audit of Global Fund grants to the Republic of South Sudan identified possible misuse of resources by a Sub Recipient (hereinafter "the Sub Recipient"). The OIG audit revealed the following significant financial management weaknesses in three grants implemented by the Sub Recipient, including:

- a) The Sub Recipient did not pay service providers directly in cheque. It issued cheques in the name of staff, usually the cashier, for significant cash withdrawals from the bank account and then paid various service providers in cash. The OIG sample identified US \$476,540 withdrawn from the grants' bank accounts that could not be reconciled with the Sub Recipient's general ledger and third party supporting documentation.
- b) The Sub Recipient did not have a local currency account under the HIV and malaria grants to enable them to make payments to service providers in local currency. While the Sub Recipient asserts that all foreign exchange transactions were undertaken through the banking system, it could not provide the evidence.
- c) The audit team's review of some payments recorded in the Sub Recipient's general ledger revealed that most payments were either not approved or approved by the wrong staff and not adequately supported with third party documentation.

The Sub Recipient worked on a Global Fund malaria grant managed by a Principal Recipient, and on tuberculosis and HIV grants managed by an international organisation ("the IO"). Under the malaria grant, between January 2012 and April 2015, the Sub Recipient received a total of US\$1,112,082 in disbursements from the Principal Recipient to scale up coverage of malaria prevention and control interventions in South Sudan, particularly for children under five years and pregnant women.

Issues of weak financial management within the Sub Recipient regarding the HIV and tuberculosis grants were identified by the IO in 2013, resulting in funding being suspended. Funding was again suspended by the IO in early 2015, as a result of a further review, which found no improvement. In addition, the Global Fund Country Team, between 2012 and 2015, sent several management letters to the Principal Recipient regarding the timeliness and accuracy of sub-recipient financial reports, including those from the Sub Recipient.

South Sudan is Africa's newest country, established in 2011 following a civil war. The country has poor health outcome indicators. Malaria is endemic, with 100 percent of the population at risk, and accounts for the highest proportion of the disease burden in South Sudan. Since 2005, the Global Fund has signed a total of 11 grants amounting to US\$410 million, US\$321 million of which has been disbursed to date. The Global Fund currently has three active grants in South Sudan amounting to US\$130 million - a tuberculosis and HIV grant managed by the IO, and a malaria grant managed by the Principal Recipient.

## II. Executive Summary

The OIG investigation confirmed that the transfer of malaria program funds to the Sub Recipient program staff through bank transfers and cheques was common practice. The nature of many of these transactions, including the end use of the funds, could not be established due to a lack of supporting documents such as cash payment vouchers, payment requisition forms, invoices, or other documents.

In August 2014, the IO undertook a financial review of the HIV and tuberculosis programs delivered by the Sub Recipient, which resulted in funding being suspended and the appointments of a new program head, finance manager, senior accountant and finance advisor. Consequently, the new finance team, also responsible for the malaria grant, were unable to give any meaningful insight or assistance to the OIG investigators apart from providing what documents were available. None of the employees identified in this report were still in position at the time of the OIG's visit and they could not be contacted.

The Sub Recipient provided the OIG with details of an account claimed to be a local currency (SSP), malaria program account. However, the Sub Recipient was not able to show any bank statements relating to this account. The investigation confirmed that the Sub Recipient, contrary to its sub-recipient agreement with the Principal Recipient, did not make its foreign exchange transactions through the banking system. It transferred program funds to the personal accounts of project staff with no evidence of the actual foreign exchange or end use of the funds. Only one transaction from the US dollar program account to the claimed local currency program account could be identified.

Enquiries revealed that a former staff member held the dual role of cashier and accountant and transferred large sums of money to her own account. Again, the nature of these transfers or the actual end use of these funds could not be established.

The OIG's review of the program bank account also revealed the diversion of malaria program funds to pay salaries for a health program funded by another donor. The OIG was unable to obtain reasonable assurance that, in relation to any of the undocumented transactions, any program related goods or services were received. Thus, the amounts relating to those transactions are considered to be non-compliant expenditure and therefore, potentially recoverable.

### Root Cause

The OIG's audit and subsequent investigation into the malaria program delivered by the Sub Recipient found significant weaknesses in its internal financial controls. The weaknesses, affecting all three programs delivered by the Sub Recipient were not addressed by either the Principal Recipient or the Sub Recipient, despite periods of funding suspension and several management letters from the Global Fund Country Team, and continued until the OIG audit.

The investigation found that the Sub Recipient did not have complete records, such as invoices and cash vouchers, to support a number of transactions appearing in the malaria program bank statement. The OIG also discovered that many documents, including bank statements, trial balances and cash ledgers were not available, and despite repeated requests, have not been provided to date.

Also, prior to the OIG audit in the first quarter of 2015, the Global Fund's Local Fund Agent did not have a role in checking quarterly expenditure records at the sub-recipient level. In view of the weaknesses identified, the Country Team engaged the Local Fund Agent to undertake sub-recipient expenditure verification on an annual basis.

## Agreed Management Actions

Following the investigation, the OIG and the Secretariat agreed on the following corrective actions, which are set out in detail in Section V:

The Global Fund Secretariat will:

1. finalise and pursue an appropriate recoverable amount;
2. request the Principal Recipient to develop and implement a supervision plan to ensure that sub-recipients apply appropriate financial policies and procedures to the disbursement of grant funds; and
3. require the Principal Recipient to verify sub-recipients' project costs before reimbursement.

### III. Findings and Agreed Management Actions

The investigation found that, between January 2012 and April 2015, US\$1,112,081 was deposited by the Principal Recipient into the Sub Recipient’s malaria program bank account. The Sub Recipient expended the entire amount during the same period. Of the total expenditure, 97 transactions, totaling US\$447,564 were found to have no supporting documents to verify the nature of the transaction or the actual use of the program funds involved. The OIG was unable to obtain reasonable assurance that the funds had been used for their intended purposes. Consequently, this amount is considered non-compliant expenditure and therefore potentially recoverable.

The investigation also found an additional transaction involving the withdrawal of US\$53,000 from the malaria program bank account to pay salaries associated with an HIV program funded by another donor. This amount is also considered non-compliant expenditure and potentially recoverable.

The OIG analyzed extensively the malaria program bank account, a US dollar account held with Kenya Commercial Bank, South Sudan, which included a reconciliation of all transactions for the period January 2012 to April 2015, including receipted payments, bank to bank transactions, cheque withdrawals and cash withdrawals.

The purpose of the analysis was to identify the recipients of the transactions based on the transaction descriptions in the bank statement or the cash payment voucher, and any other supporting documents available. All the payment transactions in the program bank statement were mapped and reconciled with (where available) the cash ledger, other bank account statements, human resource and payroll data, cash payment vouchers and other available supporting documents, trial balance, and funds diverted from the malaria program account.

Table 1: transaction types and amounts

		Number of Transactions	Total US\$
Unsupported Non-Compliant Expenditure	Bank transfers	82	383,494
	Cheques deposited into other accounts	2	14,712
	Cash withdrawals	2	23,000
	Cheques cashed	11	26,358
	Sub-Total	97	447,564
Supported Non-Compliant Expenditure	Cheque withdrawal – payment of non-Global Fund program salaries	1	53,000
	Sub-Total	1	53,000
Non-compliant expenditure - TOTAL		98	500,564

## 01 Bank transfers to staff for alleged cash payment to suppliers

The investigation included a review of the Sub Recipient's bank statements for the period between January 2012 and April 2015. The review identified 97 unexplained bank transfers, totaling US\$447,564, of which 82 transfers totaling US\$383,494 were to thirteen former malaria program staff of the Sub Recipient. The nature of these transactions could not be identified from the description or supporting documents available. There were cash vouchers available for only nine of these transactions, which were claimed to be foreign currency transactions.

Due to the absence of cash vouchers, invoice receipts or other supporting documentation, the OIG is unable to obtain reasonable assurance that services or goods were received. This amount is considered to be non-compliant expenditure and therefore potentially recoverable.

**Table 2: US\$383,494 in transfers made to staff with no evidence of goods/services received**

Former Staff Member	Number of Unidentified Transfers	Dates	Amount (US\$)
Cashier/Accountant	44	Jan 2012-Nov 2014	266,048
Managing Director #1	11	Feb 2015 – April 2015	57,550
Finance Officer #1	10	April 2014-Oct 2014	14,588
Finance Officer #2	4	Jan 2015	16,366
M & E Officer	3	July 2013-Jan 2015	3,400
Chief Accountant	1	Jul 2014	7,600
Health Coordinator	1	Oct 2012	4,500
Accountant –Food Security	1	Jul 2013	1,500
Health Accountant	1	Oct 2012	1,450
M & E Officer	1	Jan 2015	834
Chancellor	1	Jul 2013	357
Managing Director #2	1	Jan 2015	200
Driver	1	Jan 2015	100
<b>TOTAL</b>	<b>82</b>		<b>383,494</b>

Agreed Management Action 1: The Secretariat will finalise and pursue an appropriate recoverable amount. This amount will be determined by the Secretariat in accordance with its evaluation of applicable legal rights and obligations and associated determination of recovery.

## 02 Foreign exchange payments – no local currency account

The Sub Recipient did not have a local currency account under the HIV and malaria grants to enable them to make payments to service providers in local currency. While it asserts that all foreign exchange transactions were undertaken through the banking system, it could not provide evidence.

As per its sub-agreement with the Principal Recipient, the Sub Recipient received malaria program funds in a designated account, which was a US dollar account held with Kenya Commercial Bank. The grant sub-agreement required currency exchanges to be carried out by the Sub Recipient's beneficiary bank into which sub-agreement funds are disbursed. The transfer of funds to third parties not directly related to the implementation of the program is strictly prohibited.

During this investigation, the Sub Recipient provided the OIG with details of a claimed malaria program account held in local currency (SSP) but did not supply any bank statements associated with this account. Analysis of the US dollar program account identified only one transfer to the local currency account.

While the Sub Recipient asserts that all foreign exchange transactions were undertaken through the banking system, it could not provide evidence of this.

Of the 82 unidentified transfers to former Sub Recipient employees described in the previous section, nine transactions totaling US\$42,177 were traced as “foreign currency transaction vouchers” and were mapped to transfers from the malaria bank account to the personal accounts of two former Sub Recipient finance officers and the former accountant/cashier. This was supported by hand-written vouchers completed by Sub Recipient staff.

Due to a lack of documentation, the actual nature of the transactions or the end use of the funds could not be established. As the OIG was unable to obtain reasonable assurance that these funds had been used for the designated purpose, this amount is considered to be non-compliant expenditure and therefore potentially recoverable.

Agreed Management Action 2: The Secretariat will send a formal management letter to the Principal Recipient informing it that, due to the OIG’s findings, and in order for sub-recipients to continue receiving grant funds, an agreed supervision plan must be developed and implemented before November 2016. The plan must ensure that sub-recipients apply appropriate financial policies and procedures to the disbursement of grant funds, including adequate supporting documentation for expenditures incurred against the grant budget and maintaining proper accounting records.

Table 3: US\$42,177 claimed as foreign exchange transfers made to staff

#	Amount (US\$)	Date	Transferred from	Transferred to
1	2,954	15-Feb-13	malaria program (5500216570)	Former accountant/cashier
2	3,815	09-Apr-13	malaria program (5500216570)	
3	2,657	15-Apr-13	malaria program (5500216570)	
4	12,544	13-May-13	malaria program (5500216570)	
5	10,943	10-Jul-13	malaria program (5500216570)	
6	3,335	02-Oct-14	malaria program (5500216570)	Former finance officer #1
7	3,884	02-Oct-14	malaria program (5500216570)	
8	1,611	03-Oct-14	malaria program (5500216570)	
9	434	23-Jan-15	malaria program (5500216570)	Former finance officer #2

### 03 Unapproved payments

The audit team's review of some payments recorded in the Sub Recipient's general ledger revealed that most payments were either not approved or approved by the wrong staff and not adequately supported with third party documentation.

During this investigation, the OIG reviewed 295 payment vouchers. 110 of the vouchers for payments totaling US\$414,183 and payments in local currency totaling SSP136,883 (US\$4,550<sup>1</sup>) did not contain all four required names and signatures from the requestor, approver, payee and recipient.

These approvals are a key internal control, intended to minimize the occurrence of errors or fraud by ensuring that no employee has the ability to both perpetrate and conceal errors or fraud in the normal course of their duties.

The requestor was generally found to be the malaria program monitoring and evaluation officer, the approver was the malaria program managing director, and the payee was the malaria program cashier/accountant.

Table 4: Payment approvals without required signatures (X denotes missing signature)

Requestor	Approver	Payee	Recipient	Qty
X				12
	X			48
X			X	9
X	X		X	5
			X	19
		X		12
	X		X	3
		X	X	1
X	X		X	1
TOTAL				110

Agreed Management Action 3: The Secretariat will send a formal management letter to the Principal Recipient informing it that, due to the OIG's findings, sub-recipients claimed project costs must be verified before reimbursement.

### 04 Unauthorized diverted funds from Malaria Program to HIV Program

The investigation identified a payment voucher and an associated banking transaction dated 9 April 2013, involving the withdrawal of US\$53,000 from the malaria program bank account to pay for salaries associated with a health program funded by another donor.

The grant sub-agreement between the Principal Recipient and the Sub Recipient states that the transfer of funds for activities not directly supporting the program is strictly prohibited.

The investigation found no evidence of any Global Fund approval for these transfers and the total amount is considered to be non-compliant expenditure and therefore potentially recoverable.

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<sup>1</sup> Bank of South Sudan exchange rate of 1 US\$= 30.0798 SSP on 9 May 2016.  
<https://bosshq.net/>

## IV. Conclusion

In 2015, an OIG audit of the Sub Recipient found significant weaknesses in financial management of the Global Fund financed malaria program. The weaknesses required further investigation.

This investigation confirmed that the Sub Recipient exercised weak financial management and controls over the disbursement of program funds, including lack of or inadequate supporting documents, proper bookkeeping and accounting records. The OIG investigation also found that, between January 2012 and April 2015, US\$1,112,082 was deposited and disbursed from the Sub Recipient's malaria program bank account. Disbursements totaling US\$447,564 were not adequately supported with appropriate documentation such as cash payment vouchers, payroll data, payment requisition forms, pay slips, bank advice or other documents.

Of the US\$447,564 in disbursements inadequately supported, US\$383,494 was transferred to the personal bank accounts of Sub Recipient staff, the end use of which could not be determined. These disbursements constitute non-compliant expenditure.

In addition to the transactions and amounts detailed above, a single transaction involving the withdrawal of US\$53,000 from the malaria program account to pay salaries associated with a HIV program funded by another donor was found. This disbursement also constitutes non-compliant expenditure.

## V. Table of Agreed Management Actions

#	Category	Agreed Management Action	Target date	Owner
1	Financial & Fiduciary Risks	The Secretariat will finalise and pursue an appropriate recoverable amount. This amount will be determined by the Secretariat in accordance with its evaluation of applicable legal rights and obligations and associated determination of recoverability	Nov 2016	Recoveries Committee
2	Governance, Oversight & Management Risks	The Secretariat will send a formal management letter to the Principal Recipient informing it that, due to the OIG's findings, and in order for sub-recipients to continue receiving grant funds, an agreed supervision plan must be developed and implemented before November 2016. The plan must ensure that sub-recipients apply appropriate financial policies and procedures to the disbursement of grant funds, including adequate supporting documentation for expenditures incurred against the grant budget and maintaining proper accounting records.	Jul 2016	Head - Grant Management Division
3	Governance, Oversight & Management Risks	The Secretariat will send a formal management letter to the Principal Recipient informing it that, due to the OIG's findings, sub-recipients claimed project costs must be verified before reimbursement.	Jul 2016	Head - Grant Management Division

## Annex A: Methodology

The Investigations Unit of the OIG is responsible for conducting investigations of alleged fraud, abuse, misappropriation, corruption and mismanagement (collectively, “fraud and abuse”) within Global Fund financed programs and by Principal Recipients and Sub-recipients, (collectively, “grant implementers”), Country Coordinating Mechanisms and Local Fund Agents, as well as suppliers and service providers.<sup>2</sup>

While the Global Fund does not typically have a direct relationship with the recipients’ suppliers, the scope of the OIG’s work<sup>3</sup> encompasses the activities of those suppliers with regard to the provision of goods and services. The authority required to fulfill this mandate includes access to suppliers’ documents and officials.<sup>4</sup> The OIG relies on the cooperation of these suppliers to properly discharge its mandate.<sup>5</sup>

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

OIG conducts administrative, not criminal, investigations. Its findings are based on facts and related analysis, which may include drawing reasonable inferences based upon established facts. Findings are established by a preponderance of credible and substantive evidence. All available evidence is considered by the OIG, including inculpatory and exculpatory information.<sup>6</sup>

The OIG finds, assesses and reports on facts. On that basis, it makes determination on the compliance of expenditures with the grant agreements and details risk-prioritized Agreed Management Actions. Such Agreed Management Actions may notably include the identification of expenses deemed non-compliant for considerations of recovery, recommended administrative action related to grant management and recommendations for action under the Code of Conduct for Suppliers<sup>7</sup> or the Code of Conduct for Recipients of Global Fund Resources<sup>8</sup> (the “Codes”), as appropriate. The OIG does not determine how the Secretariat will address these determinations and recommendations. Nor does it make judicial decisions or issue sanctions.<sup>9</sup>

Agreed Management Actions are agreed with the Secretariat to identify, mitigate and manage risks to the Global Fund and its recipients’ activities. The OIG defers to the Secretariat and, where

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<sup>2</sup> Charter of the Office of the Inspector General (19 March 2013), available at:

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

<sup>3</sup> Charter of the Office of the Inspector General (19 March 2013) § 2, 9.5 and 9.7.

<sup>4</sup> *Ibid.*, § 17.1 and 17.2

<sup>5</sup> Global Fund Code of Conduct for Suppliers (15 December 2009), § 17-18, available at:

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

<sup>6</sup> These principles comply with the *Uniform Guidelines for Investigations*, Conference of International Investigators, June 2009; available at: <http://www.un.org/Depts/oios/pages/uniformguidelines.html>, accessed 01 November 2013.

<sup>7</sup> See fn. 16, *supra*

<sup>8</sup> Code of Conduct for Recipients of Global Fund Resources (16 July 2012) available at:

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

<sup>9</sup> Charter of the Office of the Inspector General (19 March 2013) § 8.1

appropriate, the recipients, their suppliers and/or the concerned national law enforcement agencies, for action upon the findings in its reports.

The OIG is an administrative body with no law enforcement powers. It cannot issue subpoenas or initiate criminal prosecutions. As a result, its ability to obtain information is limited to the rights to it under the grant agreements agreed to with recipients by the Global Fund, including the terms of its Codes, and on the willingness of witnesses and other interested parties to voluntarily provide information.

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

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

## 01 Applicable Concepts of Fraud and Abuse

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

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

Such agreements with Sub-recipients must notably include pass-through access rights and commitments to comply with the Codes. The Codes clarify the way in which recipients are expected to abide by the values of transparency, accountability and integrity which are critical to the success of funded programs. Specifically, the Code of Conduct for Recipients prohibits recipients from engaging in corruption, which includes the payment of bribes and kickbacks in relation to procurement activities.<sup>10</sup>

The Codes notably provide the following definitions of the relevant concepts of wrongdoings:<sup>11</sup>

- “Anti-competitive practice” means any agreement, decision or practice which has as its object or effect the restriction or distortion of competition in any market.
- “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.
- “Conflict of Interest”: 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 contractual, financial, agency, employment or personal relationship. For instance, conflicts of interest may exist when a Recipient or Recipient Representative has a financial or other interest that could affect the conduct of its duties and responsibilities to manage Global Fund Resources. A conflict of interest may also exist if a Recipient or Recipient Representative’s financial or other interest compromises or undermines the trust that Global Fund Resources are managed and utilized in a manner that is transparent, fair, honest and accountable.

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<sup>10</sup> Code of Conduct for Recipients of Global Fund Resources, section 3.4.

<sup>11</sup> Available at: <http://theglobalfund.org/documents/corporate/CorporateCodeOfConductForRecipientsPolicyen/> and [http://theglobalfund.org/documents/corporate/Corporate\\_CodeOfConductForSuppliers\\_Policy\\_en/](http://theglobalfund.org/documents/corporate/Corporate_CodeOfConductForSuppliers_Policy_en/)

- “Corrupt practice” means the offering, promising, giving, receiving or soliciting, directly or indirectly, of anything of value or any other advantage to influence improperly the actions of another person or entity.
- “Fraudulent practice” means any act or omission, including a misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a person or entity to obtain a financial or other benefit or to avoid an obligation.
- “Misappropriation” is 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, including for the benefit of the individual, entity or person they favor, either directly or indirectly.

## 02 Determination of Compliance

The OIG presents factual findings which identify compliance issues by the recipients with the terms of the Global Fund’s Standard Terms and Conditions (STC) of the Program Grant Agreement. Such compliance issues may have links to the expenditure of grant funds by recipients, which then raises the issue of the eligibility of these expenses for funding by the Global Fund. Such non-compliance is based on the provisions of the STC.<sup>12</sup> The OIG does not aim to conclude on the appropriateness of seeking refunds from recipients, or other sanctions on the basis of the provisions of the Program Grant Agreement.

Various provisions of the STC provide guidance on whether a program expense is eligible for funding by the Global Fund. It is worth noting that the terms described in this section are to apply to Sub-Recipients as well as Principal Recipients.<sup>13</sup>

At a very fundamental level, it is the Principal Recipient’s responsibility “to ensure that all grant funds are prudently managed and shall take all necessary action to ensure that grant funds are used solely for Program purposes and consistent with the terms of this Agreement”.<sup>14</sup>

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

Even when the expenses are made in line with approved budgets and work plans, and properly accounted for in the program’s books and records, such expenses must be the result of processes and business practices which are fair and transparent. The STC specifically require that the Principal Recipient ensures that: (i) contracts are awarded on a transparent and competitive basis, [...] and (iv) that the Principal Recipient and its representatives and agents do not engage in any corrupt practices as described in Article 21(b) of the STC in relation to such procurement.<sup>15</sup>

The STC explicitly forbid engagement in corruption or any other related or illegal acts when managing Grant Funds: “The Principal Recipient shall not, and shall ensure that no Sub-recipient or person affiliated with the Principal Recipient or any Sub-recipient [...] participate(s) in any other practice that is or could be construed as an illegal or corrupt practice in the Host Country.”<sup>16</sup>

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<sup>12</sup> The STC are revised from time to time, but the provisions quoted below applied to all Principal Recipients at the time of the investigation.

<sup>13</sup> Standard Terms and Conditions (2012.09) at Art. 14(b):

<http://www.theglobalfund.org/documents/core/grants/CoreStandardTermsAndConditionsAgreementen>

<sup>14</sup> Id. at Art. 9(a) and Art 18(f)

<sup>15</sup> Id. at Art. 18(a)

<sup>16</sup> Id., at Art. 21 (b)

Amongst prohibited practices is the rule that the Principal Recipient shall not and shall ensure that no person affiliated with the Principal Recipient “engage(s) in a scheme or arrangement between two or more bidders, with or without the knowledge of the Principal or Sub-recipient, designed to establish bid prices at artificial, non-competitive levels.”<sup>17</sup>

The Global Fund’s Code of Conduct for Suppliers and Code of Conduct for Recipients further provide for additional principles by which recipients and contractors must abide, as well as remedies in case of breaches of said fundamental principles of equity, integrity and good management. The Codes also provide useful definitions of prohibited conducts.<sup>18</sup>

The Codes are integrated into the STC through Article 21(d) under which the Principal Recipient is obligated to ensure that the Global Fund’s Code of Conduct for Suppliers is communicated to all bidders and suppliers.<sup>19</sup> It explicitly states that the Global Fund may refuse to fund any contract with suppliers found not to be in compliance with the Code of Conduct for Suppliers. Similarly, Article 21(e) provides for communication of the Code of Conduct for Recipients to all Sub-recipients, as well as mandatory application through the Sub-recipient agreements.<sup>20</sup>

Principal Recipients are contractually liable to the Global Fund for the use of all grant funds, including expenses made by Sub-recipients and contractors.<sup>21</sup>

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

### 03 Reimbursements or Sanctions

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

Such remedies may notably include the recovery of funds compromised by contractual breaches. Article 27 of the STC stipulates that the Global Fund may require the Principal Recipient “to immediately refund the Global Fund any disbursement of the grant funds in the currency in which it was disbursed [in cases where] there has been a breach by the Principal Recipient of any provision of this (sic) Agreement [...] or the Principal Recipient has made a material misrepresentation with respect to any matter related to this Agreement.”<sup>22</sup>

According to Article 21(d), “in the event of non-compliance with the Code of Conduct, to be determined by the Global Fund in its sole discretion, the Global Fund reserves the right not to fund the contract between the Principal Recipient and the Supplier or seek the refund of the grant funds in the event the payment has already been made to the Supplier.”<sup>23</sup>

Furthermore, the UNIDROIT principles (2010), the principles of law governing the grant agreement, in their article 7.4.1, provide for the right of the Global Fund to seek damages from the Principal Recipient in case of non-performance, in addition to any other remedies the Global Fund may be entitled to.

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<sup>17</sup> Id. at Art. 21(b)

<sup>18</sup> Available at: <http://www.theglobalfund.org/documents/corporate/CorporateCodeOfConductForSuppliersPolicyen> ; <http://www.theglobalfund.org/documents/corporate/CorporateCodeOfConductForRecipientsPolicyen>

<sup>19</sup> Standard Terms and Conditions (2012.09) at Art. 21(d)

<sup>20</sup> Id. at Art. 21(e)

<sup>21</sup> Id. at Art. 14

<sup>22</sup> Id. at Art. 27(b) and (d)

<sup>23</sup> Id.

Additional sanctions, including with respect to Suppliers, may be determined pursuant to the Sanction Procedure of the Global Fund, for breaches to the Codes.

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