



Investing in our future

# The Global Fund

To Fight AIDS, Tuberculosis and Malaria

**Tenth Board Meeting  
Geneva, 21 - 22 April 2005**

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**GF/B10/9  
Revision 1**

## **REPORT OF THE PORTFOLIO MANAGEMENT AND PROCUREMENT COMMITTEE**

**Outline:** This report covers the deliberations of the Portfolio Management and Procurement Committee, including on the Guidelines for Proposals, lessons learned from the Technical Review Panel, Phase 2, continuity of services, quality assurance of single- and limited-source pharmaceutical products, and the restructuring of Board committees. This is the revised version of the original report distributed on 1 April 2005 and includes relevant details of an additional teleconference held on 31 March 2005 to address the topic of quality assurance of single- and limited-source pharmaceutical products.

### **Summary of Decision Points:**

1. This document contains two recommendations for decision on quality assurance of single- and limited-source pharmaceutical products following the teleconference on 31 March 2005. These are provided in their entirety in Part 6.
2. As noted below, since the last Board Meeting, the PMPC presented a decision point to the Board on the Guidelines for Proposals.

## Part 1: Introduction

1. The Portfolio Management and Procurement Committee met on 15 February 2005 and 18 March 2005 in Geneva. The Chair and Vice-Chair of the meetings were Professor Francis Omaswa (East and Southern Africa) and Dr. Kate Taylor (Private Sector), respectively. These meetings were complemented by a teleconference on 18 January 2005. An additional teleconference was held on 31 March 2005. The agendas for the two meetings are included as Annexes 1A and 1 B, the lists of attendees for the two meetings are included as Annexes 2A and 2B, and the list of participants for the teleconference is included as Annex 2C and 2D.

## Part 2: Guidelines for Proposals

1. At the Ninth Board Meeting, the Board of the Global Fund requested the PMPC “to further revise the Guidelines for the Fifth Call for Proposals in time for the Board to approve the Guidelines for their release by the March 2005 Replenishment Conference.”

2. The PMPC undertook this work with a particular focus on incorporating other decisions taken at the Ninth Board Meeting, such as on eligibility criteria for Country Coordinating Mechanisms. Additionally, the committee introduced a new criterion for proposal review (Section IV of the Guidelines for Proposals) that the Technical Review Panel looks for proposals that “demonstrate successful implementation of previously funded Global Fund programs, including, as appropriate, disbursement and use of funds.”

3. The committee discussed changes to the eligibility criteria for proposals from Upper-Middle Income countries at length, but did not reach consensus on introducing any changes for the Fifth Call for Proposals. Therefore, in keeping with the discussions and agreements reached during past Board Meetings, the eligibility criteria for Upper-Middle Income countries will remain the same as for the Fourth Call for Proposals.

4. On 2 March 2005, the PMPC recommended that the Board approve by email the Guidelines for Proposals for the Fifth Call for Proposals. On 16 March, the Board approved the Guidelines, and the Call for Proposals was issued on 17 March (immediately following the Replenishment Conference, as determined by the Ninth Board Meeting decision).

5. The committee also established a working group to look at possible changes to the eligibility criteria. This group, chaired by the Latin America and the Caribbean constituency, was asked to examine a number of issues that had arisen in the context of PMPC discussions on eligibility criteria, including:

- a. Legal constraints of donors (e.g., if donors would face legal obstacles to expanding the eligibility criteria so that more Upper-Middle Income countries would be in a position to receive Global Fund financing);
- b. Possible solutions and other outstanding issues concerning Upper-Middle Income country eligibility:
  - i. Defining "vulnerable" and "poor" populations;
  - ii. Introducing transitions within the World Bank income thresholds (e.g., disaggregating the World Bank's Upper-Middle Income category into several income bands);
  - iii. Capping the size of proposals from Upper-Middle Income countries, prioritizing them after all proposals from other income categories, and/or establishing a discrete fund for proposals from Upper-Middle Income countries;
  - iv. Utilizing the OECD-DAC income thresholds rather than the World Bank thresholds;
  - v. Changing the disease burden criteria (e.g., replacing the current HIV/AIDS threshold with one based purely on HIV seroprevalence);
  - vi. Strengthening the co-financing criteria;

- vii. Adding provisions for emergency and/or disaster situations; and
- viii. Allowing financing for public goods (e.g., MDR-TB).

6. At the final PMPC meeting in March, UNAIDS presented a discussion paper on defining “vulnerable” and “poor” populations that was developed with input from some of the working group members. The committee thanked UNAIDS for the work but felt that it was not possible for PMPC to develop recommendations to the Board on this issue at the moment. Rather, the committee felt that the work should be passed on to the committee that will be responsible for eligibility criteria in the new Board committee structure.

### **Part 3: Lessons Learned from the TRP, Rounds 1 – 4**

1. At the request of the Chair and Vice-Chair of the Board, the committee reviewed the document “Lessons Learned from the TRP, Rounds 1 – 4,” GF/B9/14.
2. The committee noted that many of the recommendations made had already been incorporated in the revisions to the Guidelines for Proposals and the Proposal Form and/or in the preparations for the next review of proposals by the TRP. The committee discussed two areas in which work is still ongoing: technical assistance and the terms of reference of the TRP.
3. On the former, the committee noted that an ad hoc working group of the Board had deliberated and provided recommendations to the Board, and that further work was still being carried out. On the latter, the Secretariat observed that the TRP’s terms of reference required modification based on discussions at the Tenth Board Meeting on the role of the TRP in the Phase 2 process, and that a comprehensive revision would therefore be presented to the appropriate committee prior to the Eleventh Board Meeting.
4. The committee noted that one of the recommendations (on conflict of interest of TRP members leaving the TRP) had already been discussed by the Board, which had felt that it would be inappropriate to restrict the activities of former TRP members.

### **Part 4: Phase 2**

1. The committee discussed the Phase 2 renewal process twice, initially in the context of the possibility of establishing an appeals mechanism for Phase 2 decisions and the second time in light of a Secretariat presentation on lessons learned in the Phase 2 process.
2. The Secretariat prepared a discussion paper on the issue of appeals for Phase 2, which is included as Annex 3. The paper covered the Phase 1 internal appeals mechanism, the Phase 2 renewal process, and the operational considerations of establishing a Phase 2 appeals mechanism.
3. The discussion at the February meeting on appeals focused on parallels with Phase 1 and the need for an appeals mechanism. In reviewing the multilayered review process as well as the opportunities that the Board itself had to examine Phase 2 renewal requests (as set out in the revised Phase 2 decision-making policies in GF/B9/8, Report of the Monitoring and Evaluation, Finance and Audit Committee), the committee felt that the Phase 2 process was of such a different nature to the Phase 1 review that a simple analogy could not be drawn between the two. For example, the Phase 1 review occurs in a very condensed period of time, may rely considerably on documents that have been translated, and involves a limited number of reviewers. In contrast, the Phase 2 process is the culmination of twenty months of experience that the Secretariat has had in managing a grant, involves CCMs and PRs in an iterative manner to ensure that information is available and reliable (which is not possible in Phase 1), and utilizes Local Fund Agents and several levels of review in the Secretariat (including by staff

not directly involved in managing the grant). The committee felt that the Phase 2 process considerably reduces the likelihood of any “significant and obvious” errors occurring (to use the terminology of the Phase 1 internal appeals mechanism).

4. Furthermore, the nature of Board involvement in the two processes differs considerably. While in Phase 1, the Board is approving a slate of proposals en masse based on a single TRP recommendation, in Phase 2 Board members see the individual Secretariat commentaries on each proposal and have the opportunity to object to Secretariat recommendations on a case-by-case basis. Given this level of Board involvement in the process, the committee also felt that it would be odd to have any appeals mechanism report to the Board itself (but recognized that there was no other body to which it could report).

5. The committee therefore decided that it would not recommend the creation of an appeals mechanism for Phase 2. Instead, it requested the Secretariat to monitor the experience with Phase 2 and report back as necessary.

6. At the March meeting, the Secretariat presented a series of lessons learned from the experience of reviewing the first 29 Phase 2 renewal requests, and the recommendations that the Monitoring and Evaluation, Finance and Audit (MEFA) Committee developed based on experience to date. The lessons learned and the recommendations are contained in the Report of the MEFA Committee, GF/B10/8.

7. The PMPC discussion focused on the following areas:

- a. The appropriateness of the current timeframe for Phase 2 decision-making: The current two-year initial financial commitment by the Board necessitates starting the Phase 2 renewal process well in advance of the expiry of Phase 1 grants. The practical implications of this are that the time allotted to recipients to prepare their Phase 2 Requests for Continued Funding and for the Secretariat to carry out its review are both limited. Furthermore, the latest data available to CCMs and PRs at the time of the Phase 2 renewal process may only cover the first twelve months of program implementation, a period that may largely be occupied with setting up systems and/or conducting initial procurements, rather than implementing program activities.
- b. The high costs of the current process, at country and particularly at Secretariat level, and the implications of this: Committee members voiced concern about the implications of the labor-intensive nature of the process on the rest of the work of the Secretariat and queried the impact that the process was having on organizational effectiveness and staff satisfaction. Some members suggested that alternative approaches should begin to be explored, including reshaping the role of the TRP to be able to accommodate a new role in performance evaluation. Committee members also questioned the added-value of the involvement of the Board in the process, given the volume of materials to be reviewed in a limited timeframe as well as the fact that the Secretariat had previously undergone an extension assessment itself.
- c. The role of the TRP: The Committee noted the feedback on the evolving role of the TRP and agreed with the recommendations from the MEFA Committee, the Chair of the TRP, and the Secretariat that the TRP focus on evaluation of the technical merit of reprogramming, rather than building a new capacity in performance evaluation. However, Committee members also noted that this approach may change over time, as the organizational implications for the Secretariat of the Phase 2 process become clearer.
- d. The extent to which the process was building upon existing systems: The importance of building on existing performance evaluation systems and harmonizing Global Fund requirements with existing systems was highlighted.

8. The committee also proposed two additions to the MEFA Committee recommendations in order to clarify that the use of the Secretariat’s authority to commit additional resources should

be exceptional and that the Secretariat should report back to the Board about its use of this provision.

## **Part 5: Continuity of Services**

1. At the Ninth Board Meeting, the Board discussed the issue of ensuring continuity of services. The Board decided to take a two-pronged approach to the issue, approving the creation of a provision to allow recipients to make an “Extra-ordinary Request for Continued Funding for Treatment” while also asking the PMPC to address the longer-term issues around continuity of services.
2. The Extra-Ordinary Request enables recipients who have not been continued into Phase 2 to request additional resources to cover the cost of maintaining people who have started receiving life-long treatment for a period of up to two years.
3. The Board decision on the longer-term process broadened the scope of services to be considered to include care and support, and prevention. It also asked the Secretariat to work with a broad array of partners and to report back to PMPC on the process prior to Tenth Board Meeting, but to the full Board only at the Eleventh Board Meeting.
4. The Secretariat described the process that it had planned for consultation with partners. This included developing a technical paper that would be the basis of discussions with other stakeholders by the end of March, initial one-on-one conversations with partners in April, and a larger follow-up meeting with an array of partners in May or June.
5. The Secretariat explained reasons why Global Fund financing could be discontinued, including poor performance and the lack of availability of Global Fund resources. The Secretariat also described the possible scope of work that would be discussed with partners. The process could either concentrate narrowly on interventions financed by the Global Fund or could encompass the broader set of services funded by other financiers as well as by the Global Fund.
6. In its discussion, the committee noted the importance of this topic and the need to start addressing it. It felt that the Secretariat should also look at what happens when successful programs reach the end of their financial commitment from the Global Fund (e.g., at the end of Phase 2), as this raises significant concerns about the continuity of services. The committee noted that it was appropriate for the Secretariat’s discussions with partners to be (at least initially) broad-based, encompassing services financed by others as well as by the Global Fund.
7. Further, the committee encouraged the Secretariat to look at the possibility of using existing processes to address the issues of continuity of services (and sustainability more broadly), although it recognized that doing so might take additional time (and that it might nonetheless be necessary to embark on a more specific endeavor if no existing initiative was suitable). Finally, the committee suggested that the Secretariat look at differentiated approaches based on the income categorization of the country involved.

## **Part 6: Quality Assurance of Single- and Limited-Source Pharmaceutical Products**

1. At its Eighth Meeting, the Board of the Global Fund extended the transition period during which single- and limited-source pharmaceutical products only needed authorization by national drug regulatory authorities from December 31, 2004 to April 30, 2005. After this transition period expires, Global Fund financing can only be used to procure single- and limited-source pharmaceutical products that meet two further quality standards agreed by the Board at the Third Board Meeting (GF/B4/2, p. 23), namely products that:

- a) "Have been found to be acceptable by the UN Procurement Quality and Sourcing Project (also known as the WHO Prequalification Project)<sup>1</sup>; or
- b) "Have been authorized for consumption in their country by a stringent regulatory authority<sup>2</sup>."

2. The Board also requested the PMPC to "develop options on the quality assurance of single- and limited-source pharmaceutical products and to report to the Tenth Board Meeting." The World Health Organization prepared a background paper on the subject that is included as Annex 4.

3. The committee felt that it had not had sufficient time to consult between the circulation of WHO's paper and the committee meeting. It therefore decided that a teleconference would be necessary to develop a recommendation from the committee to the Board. A conference call was held on 31 March 2005.

4. The PMPC discussion focused on the following areas:

- a. Recommendations elaborated in the background paper to facilitate and ensure the procurement of high-quality drugs and necessary collation of related information were discussed and endorsed by the committee. These in particular concerned the need for more detailed collation of PSM information to enable more informed decision-making and strengthening of national capacities of countries to improve procedures to ensure the quality of products in national markets. In addition, it was agreed that donor countries will need to provide more support, for example, with human resources, for successful implementation of the WHO Prequalification Project. Funds could be channeled through an alternate agency other than the Global Fund.
- b. The potential impact of the Indian Patent Law may reduce availability and increase pricing of generic anti-retrovirals. The committee agreed this should be discussed again at a later point in time when effects are clear.
- c. The four options provided in the Background Paper concerning the continuation of Option (c) and contributions from committee members were elaborated in detail. There was near consensus for adoption of Option 1 as presented in the Background Paper with some modifications. The US delegation proposed that Option 1 not apply to ARVs and instead will provide an alternate approach for discussion at the April Board Meeting. The delegate for China supported Option 2. The delegate for the Private Sector recommended a modified version of Option 4 and specifically advocated that the Board maintain the existing procurement policy but allow for exceptions on a case by case basis where products compliant with Global Fund quality standards are in a way that effects program implementation.
- d. Delegates requested additional information concerning challenges for the implementation of Option 1, some to be undertaken by WHO and others by the Global Fund. These include:
  - i. Providing updated and accessible lists of relevant products;
  - ii. Providing a list of established international procurement agencies including other relevant information. At the moment no such list exists. Information would need to be collated and could take between six to twelve months. Costs could involve US \$200,000 - \$ 300,000;
  - iii. Obtaining information on products which become 'unavailable' as defined in the Decision Point. Determining whether a product is available is difficult, and knowing how to respond, how quickly and how often, can be most challenging and significant. It could involve informing PRs of the 'unavailability' of a product and their need to change suppliers quickly. Information may not be verified and therefore inaccurate.

<sup>1</sup> This project is managed by the Essential Medicines and Policy Department of WHO.

<sup>2</sup> For the purposes of this policy a stringent drug regulatory authority is defined as a regulatory authority in one of the members of the Pharmaceutical Inspection Cooperation Scheme (PIC/S) and/or the International Conference on Harmonization (ICH) of Technical Requirements for Registration of Pharmaceuticals for Human Use. See Annex 2 for a list of these countries.

Determining who would collate and verify this information, a serious undertaking, would need to be addressed and decided. This could have significant cost effects and therefore additional resources would be required;

- e. WHO and the Global Fund will provide more details of the financial and human resources implications of implementation of Option 1.

5. Two recommendations for decision points are provided by the PMPC for deliberation by the Board. These are a majority recommendation and alternate recommendation advocated by the US delegation.

**Decision Point:**

**Majority Recommendation:**

- ***Concerning the Board decision on quality assurance (compliance with quality standards) from the Third Board Meeting (GF/B4/2, p. 23), the Board replaces the phrase “Option (c) is applicable only until December 31, 2004, after which suppliers must comply with one of the two standards as set out in (a) and (b) – and in all cases are subject to monitoring product quality standards prescribed by the Fund as in 6.1” with the following:***
  - ***“With respect to a given single or limited source product, if there are two or more equivalent pharmaceutical products that meet the quality assurance standards in Option (a) or Option (b), then Option (c) is only applicable to other equivalent pharmaceutical products until April 30, 2005, after which such products must comply with one of the two standards as set out in Option (a) and Option (b). Contracts signed on or before April 30, 2005 with suppliers for products that qualified for purchase under Option (c) will be honoured until they expire. No new purchase contracts or contract extensions for such products will be allowed.***
  - ***“With respect to a given single or limited source product, if there is only one or no equivalent pharmaceutical product that meets the quality assurance standards in Option (a) or Option (b), then Global Fund resources may be used to procure other equivalent pharmaceutical products, provided that the product to be procured is selected in accordance with the following order of priority:***
    - (i) An equivalent pharmaceutical product is currently in the process of being pre-qualified by the UN Pilot Procurement Quality and Sourcing Project and has successfully passed the Good Manufacturing Practices (GMP) inspection; or***
    - (ii) If no product meets the standard in clause (i) above, an equivalent pharmaceutical product has been found to be acceptable by established international procurement agencies based on assessment and inspection; or***
    - (iii) If no product meets the standards in clauses (i) or (ii) above, an equivalent pharmaceutical product is registered for use in the country that intends to purchase such product.”***
- ***When products of the highest quality assurance standard applicable are unavailable<sup>3</sup> for a period of time that impacts program implementation, then Global Fund resources may be used to procure products of the next highest quality assurance standard as described above.***

<sup>3</sup> 'Unavailable' is defined as: inability of any manufacturer to supply the desired quantity of finished product within 90 days from date of order. In case of an emergency, the 90 day period may be defined as per the existing situation.

- ***In all cases, products purchased with Global Fund resources are subject to the monitoring product quality standards prescribed by the Fund as in Section 6 of the Report of the Third Board Meeting.***

**Alternate Recommendation (US delegation):**

- ***The Board replaces the phrase “Option (c) is applicable only until December 31, 2004, after which suppliers must comply with one of the two standards as set out in (a) and (b) – and in all cases are subject to monitoring product quality standards prescribed by the Fund as in 6.1” in the Board decision on quality assurance (compliance with quality standards) from the Third Board Meeting (GF/B4/2, p. 23) with the following:***
  - ***“If there are two or more suppliers for a given anti-malaria, tuberculosis, or non-ARV HIV product that meet the quality assurance standards in Option (a) or Option (b), then Option (c) is applicable only until April 30, 2005.***
  - ***“If there are fewer than two suppliers for a given anti-malaria, tuberculosis, or non-ARV HIV product that meet the quality assurance standards in Option (a) or Option (b), then Global Fund resources may be used to procure products that meet the following quality assurance standards, in the prescribed order of priority:***
    - 1. Products that are currently in the process of being prequalified by the UN Pilot Procurement Quality and Sourcing Project and have successfully passed the GMP inspection;***
    - 2. Products found acceptable by established international procurement agencies based on assessment and inspection;***
    - 3. Products registered for use in the country that intends to purchase the product.***
  - ***Effective April 30, 2005, anti-retroviral drugs (ARV) must meet the quality-assurance standards in Option (a) or Option (b).***
  - ***Global Fund resources may be used to purchase ARV drugs under Option (c) only under the following limited and exceptional circumstances:***
    - Existing, signed contracts for Option (c) ARV drugs can continue for current patients. However, no new patients will be put on drugs under Option (c), and no new purchase contracts or contract extensions may be signed for ARV drugs that do not meet Option (a) or Option (b).***
    - If recipients have stocks of drugs currently on hand that do not Option (a) or Option (b), they may draw down these supplies, but cannot make any new orders of these drugs***

***In the event that demonstrable, long-term supply problems preclude procurements of ARV products that have received approval under Options (a) or (b), recipients of Global Fund grants may petition the Secretariat to purchase from manufacturers that are pursuing, but have not yet received, WHO prequalification or approval from an ICH/PICS regulatory authority or the product in question, and have successfully passed an inspection for Good Manufacturing Practices. In this instance, the recipient must make the case to the Global Fund Secretariat why it cannot purchase a drugs that has received approval under Categories A or B drug, and recipients may only make purchases of ARVs through Category C suppliers for the specific duration of time during which the shortage can be predicted to be in effect.***



## Part 7: Restructuring of Board Committees

1. The committee discussed the work and recommendations of the Committee Restructuring Working Group, focusing in particular on the options prepared by the working group on the structure and leadership of the Policy and Strategy Committee (PSC).
2. The committee was unanimous in supporting the option that the PSC have only the same number of members as the other two committees (i.e., rather than being a “shadow board” with representatives from every constituency) and that it not be chaired by the Vice-Chair of the Board. In both cases, the committee felt that this would be inappropriate, inefficient, and worsen rather than improve the functioning of the committee structure.
3. Further, the committee suggested that it might not be appropriate for committee members to be Board members, both for practical reasons (in light of the busy schedules typical of Board members) and because the committee felt that it was often useful to have technical staff deliberate on matters before involving Board members. The committee also indicated that having committee members chosen or approved by the Board Chair and/or Vice Chair would not be appropriate, preferring instead to leave this responsibility in the hands of individual Board constituencies. Finally, the committee recommended that the participation of technical partners (WHO, UNAIDS, and the World Bank) in the new committee structure should be more flexible than is currently envisioned, in light of the periodic need to draw upon the competencies of technical partners on a range of topics.

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**Agenda, 15 February 2005 meeting of the Portfolio Management and Procurement Committee**

**MEETING OF THE PORTFOLIO MANAGEMENT AND PROCUREMENT COMMITTEE**

15 FEBRUARY 2005  
GENEVA

**Agenda**

|   |               |
|---|---------------|
| Welcome coffee  | 8:30          |
| 1. Introductory comments from the Chair and approval of the agenda  | 9:00 - 9:15   |
| 2. Guidelines for Proposals, Round 5<br>Health system strengthening<br>Eligibility criteria<br>Factoring in past performance<br>Other | 9:15 - 10:45  |
| Coffee break  | 10:45 - 11:00 |
| 2. Guidelines for Proposals, Round 5 (cont.)  | 11:00 - 12:30 |
| Lunch   | 12:30 - 1:30  |
| 2. Guidelines for Proposals, Round 5 (cont.)  | 1:30 - 3:00   |
| Coffee break  | 3:00 - 3:15   |
| 3. Phase 2 Appeals  | 3:15 - 4:00   |
| 4. WHO update on quality assurance of single- and limited-source pharmaceutical products  | 4:00 - 4:30   |
| 5. Agenda items for March meeting   | 4:30 - 4:45   |
| A.O.B.  |               |

**Agenda, 18 March 2005 meeting of the Portfolio Management and Procurement Committee**

**MEETING OF THE PORTFOLIO MANAGEMENT AND PROCUREMENT COMMITTEE**

18 MARCH 2005  
GENEVA

**Draft agenda**

|   |               |
|---|---------------|
| Welcome coffee  | 8:30          |
| 6. Introductory comments from the Chair and approval of the agenda                                      | 9:00 - 9:15   |
| 7. Continuity of services   | 9:15 - 11:00  |
| Coffee break  | 11:00 - 11:15 |
| 8. Quality assurance of single- and limited-source pharmaceutical products                              | 11:15 - 12:30 |
| Lunch   | 12:30 - 1:30  |
| 3. Quality assurance of single- and limited-source pharm. products (cont.)                              | 1:30 - 2:30   |
| 9. Lessons learned from the TRP, Rounds 1 – 4   | 2:30 - 3:45   |
| Coffee break  | 3:45 - 4:00   |
| 10. Eligibility criteria of proposals from Upper-Middle Income countries<br>(update from working group) | 4:00 - 4:30   |
| 11. Update on restructuring of Board committees   | 4:30 - 5:00   |
| 12. Phase 2 update  | 5:00 - 5:30   |
| A.O.B.  |               |

## Attendance list, 15 February 2005 meeting of the Portfolio Management and Procurement Committee

### Constituency

### Name

#### PMPC Members:

|  |                          |
|--|--------------------------|
| Affected Communities                   | Anandi Yuvaraj           |
| Canada (Germany, UK & Switzerland)     | Thomas Fetz              |
| Developed Country NGOs                 | Mohga Kamal Smith        |
| East & Southern Africa                 | Francis Omaswa (Chair)   |
| Eastern Europe                         | Zhanna Tsenilova         |
| European Commission (Austria, Belgium) | Lena Sund                |
| France (Luxembourg, Spain)             | Frédéric Goyet           |
| Italy                                  | Flavio Lovisolo          |
| Japan                                  | Yasuhisa Nakamura        |
| Latin America & Caribbean              | Peter Figueroa           |
| Private Sector                         | Kate Taylor (Vice-Chair) |
| South-East Asia                        | Viroj Tancharoensathien  |
| USA                                    | Pamela Pearson           |
| WHO                                    | Alex Ross                |

#### Observers:

|     |                 |
|-----|-----------------|
| WHO | Phyllida Travis |
|-----|-----------------|

#### Members not present:

|                                |                |
|--------------------------------|----------------|
| China (Western Pacific Region) | Han Mengjie    |
| Eastern Mediterranean          | Tariq Farook   |
| World Bank                     | Jonathan Brown |

#### Secretariat:

Brad Herbert  
 Toby Kasper  
 Jhoney Barcarolo  
 Nicole Delaney  
 Paul Lalvani (in part)  
 Hans Zweschper (in part)  
 Mick Matthews (in part)

**Attendance list, 18 March 2005 meeting of the Portfolio Management and Procurement Committee**

**Constituency**

**Name**

PMPC Members:

|  |                            |
|--|----------------------------|
| Affected Communities                   | Anandi Yuvaraj             |
| Canada (Germany, UK & Switzerland)     | Thomas Fetz                |
| China (Western Pacific Region)         | Han Mengjie                |
| Developed Country NGOs                 | Mohga Kamal Smith          |
| East & Southern Africa                 | Francis Omaswa (Chair)     |
| Eastern Europe                         | Zhanna Tsenilova           |
| European Commission (Austria, Belgium) | Patrick Berckmans          |
| France (Luxembourg, Spain)             | Frédéric Goyet             |
| Italy                                  | Flavio Lovisolo            |
| Latin America & Caribbean              | Peter Figueroa             |
| Private Sector                         | Kate Taylor (Vice-Chair)   |
| South-East Asia                        | Churnrurtai Kanchanachitra |
| USA                                    | Peter Mamacos              |
| WHO                                    | Alex Ross                  |

Observers:

|                                |                              |
|--------------------------------|------------------------------|
| France (Luxembourg, Spain)     | Catherine Bonnaud            |
| Management Sciences for Health | Denis Broun (in part)        |
| UNAIDS                         | Catherine Hankins            |
| WHO                            | Fabienne Jouberton (in part) |
| WHO                            | Maryse Dugue (in part)       |
| WHO                            | Jos Perriens (in part)       |
| WHO                            | Lembit Rago (in part)        |
| WHO                            | Ashwin Vasani (in part)      |
| WHO                            | Peter Graaff (in part)       |

Members not present:

|                       |                   |
|-----------------------|-------------------|
| Eastern Mediterranean | Tariq Farook      |
| Japan                 | Yasuhisa Nakamura |
| World Bank            | Jonathan Brown    |

Secretariat:

Brad Herbert (in part)  
 Toby Kasper  
 Paul Lalvani (in part)  
 Hans Zweschper (in part)  
 Jhoney Barcarolo (in part)  
 Nicole Delaney (in part)

**Participant list, 18 January 2005 teleconference of the Portfolio Management and Procurement Committee**

**Constituency**

**Name**

PMPC Members:

|  |                            |
|--|----------------------------|
| Affected Communities                   | Anandi Yuvaraj             |
| Canada (Germany, UK & Switzerland)     | Thomas Fetz                |
| China (Western Pacific Region)         | Han Mengjie                |
| Developed Country NGOs                 | Mohga Kamal Smith          |
| East & Southern Africa                 | Francis Omaswa (Chair)     |
| European Commission (Austria, Belgium) | Patrick Berckmans          |
| France (Luxembourg, Spain)             | Frédéric Goyet             |
| Italy                                  | Flavio Lovisolo            |
| Latin America & Caribbean              | Peter Figueroa (in part)   |
| Private Sector                         | Kate Taylor (Vice-Chair)   |
| South-East Asia                        | Churnrurtai Kanchanachitra |
| USA                                    | Pam Pearson (in part)      |
| WHO                                    | Alex Ross                  |
| World Bank                             | Jonathan Brown             |

Members not present:

|                       |                   |
|-----------------------|-------------------|
| Eastern Mediterranean | Tariq Farook      |
| Japan                 | Yasuhisa Nakamura |

Secretariat:

Brad Herbert  
 Toby Kasper  
 Jhoney Barcarolo  
 Nicole Delaney  
 Paul Lalvani (in part)  
 Hans Zweschper (in part)

**Participant list, 31 March 2005 teleconference of the Portfolio Management and Procurement Committee**

**Constituency**

**Name**

PMPC Members:

|  |                            |
|--|----------------------------|
| Affected Communities                   | Anandi Yuvaraj             |
| Canada (Germany, UK & Switzerland)     | Thomas Fetz                |
| China (Western Pacific Region)         | Han Mengjie                |
| Developed Country NGOs                 | Mohga Kamal Smith          |
| East & Southern Africa                 | Francis Omaswa (Chair)     |
| European Commission (Austria, Belgium) | Patrick Berckmans          |
| France (Luxembourg, Spain)             | Catherine Bonnaud          |
| Italy                                  | Flavio Lovisolo            |
| Latin America & Caribbean              | Peter Figueroa (in part)   |
| Private Sector                         | Brian Brink                |
| South-East Asia                        | Churnrurtai Kanchanachitra |
| USA                                    | Peter Mamacos              |
| UNAIDS                                 | Catherine Hankins          |
| WHO                                    | Alex Ross                  |

Members not present:

|                       |                   |
|-----------------------|-------------------|
| Eastern Europe        | Zhanna Tsenilov   |
| Eastern Mediterranean | Tariq Farook      |
| Japan                 | Yasuhisa Nakamura |
| World Bank            | Jonathan Brown    |

Secretariat:

Brad Herbert  
Toby Kasper  
Nicole Delaney  
Paul Lalvani

## DISCUSSION PAPER ON A RECOURSE MECHANISM FOR PHASE 2 RENEWAL DECISIONS

### I. Background

1. At its Ninth meeting, the Board of the Global Fund decided on the process for the approval of funding for the second phase of the proposals currently under management. However, the issue of whether a Phase 2 decision can be appealed was not part of the policy framework presented to the Board for approval. Although it was briefly discussed by the Monitoring and Evaluation, Finance and Audit Committee at its 12-13 October 2004 meeting, the issue was referred to the Portfolio Management and Procurement Committee, which designed the Internal Appeals Mechanism for Phase 1 decisions. On its part, the Portfolio Management and Procurement Committee decided that the topic merited additional work and so noted to the Board that the committee would consider it prior to the Tenth Board Meeting<sup>4</sup>.
2. This paper explores the need for an appeal mechanism for recipients that are not recommended for Phase 2 funding, or that are awarded additional resources in an amount lower than requested in the Request for Continued Funding. In order to learn from past practices, it provides an overview of the rationale and operation of the Internal Appeal Mechanism (IAM) for Phase 1 decisions, describes its utilization to date, and explores the parallels that might exist between the two of them.

### II. The Internal Appeal Mechanism for Phase 1

3. An IAM was adopted by the Board at its Fourth Meeting to allow CCMs with proposals rejected in two consecutive Rounds to apply for reconsideration.
4. The appeal mechanism for Phase 1 was established primarily in response to the perceived potential shortcomings of *the process* the Global Fund utilizes to identify proposals to finance. Although the proposal review process has an internal system of cross-checks, which includes the review of the same proposal by two different disease experts and a final review by the whole group, it was felt that the time constraint (fourteen days) and the heavy workload (hundreds of proposals) imposed on the Technical Review Panel (TRP) could lead TRP members into unintentionally overlooking/misinterpreting certain proposal elements that would warrant a different recommendation category, potentially penalizing countries with high-quality proposals.
5. At that time the Board decided to set the grounds and scope for an appeal in such a way as to ensure equal opportunity for any unsuccessful proposals, rather than basing eligibility for appeals on need (e.g., disease burden and/or poverty), and to focus on those countries with less technical capacity (as demonstrated by multiple rejection rates). The scope of eligibility for appeal was limited to proposals not recommended for funding (i.e., categories 3 and 4) twice consecutively. It was also decided that appeals can only be submitted on the grounds

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<sup>4</sup> Page 9, PMPC Report to the Ninth Board Meeting.



of significant and obvious errors made by the TRP regarding the information contained in the second proposal.

6. The composition of the IAM panel includes two members from the TRP (who must not have been either the primary or secondary reviewer of a proposal being appealed) to ensure broad consistency with the TRP's standard of measurement, plus three additional experts designated by WHO, UNAIDS and the World Bank. The appeal process is based on information contained within the original applications, rather than on new material. Final approval is given by the Board via email.
7. Since its inception, the IAM has reviewed a total of 8 proposals (2 from Round 2 and 6 from Round 3), and recommended for funding four of them.

### **III. The Phase 2 Renewal Process**

8. As with any performance-based system, a portion of Global Fund recipients will not be able to meet the performance criteria required to secure Phase 2 funding. However, it is not yet clear under what, if any, circumstances Phase 2 decisions should be eligible for an appeal. In order to address this question, it is important to properly review the process that has been put in place to arrive at Phase 2 renewal recommendations<sup>5</sup>, its potential weaknesses and how these relate to the rationale that underpinned the adoption of the Phase 1 appeal mechanism.
9. Structurally, the process to arrive at a Phase 2 renewal decision has been designed in such a way as to maximize the quality and robustness of the Secretariat's recommendations to the Board by leveraging the experience and expertise of different actors within and outside the Secretariat.
10. First, it captures at least sixteen months of continued interaction between country-level implementers, CCMs, and the Global Fund Secretariat and its partners. In contrast with the Phase 1 process (in which the TRP has to work primarily on documentary evidence and with limited contextual information), the Phase 2 renewal process is based on a wealth of information and experience collected throughout the lifetime of a grant that far exceeds and expands the focus and mandate of the TRP's evaluation process.
11. Second, the Phase 2 process is based on a multi-layer review that, as described below, involves the Secretariat – at three different levels – the Local Fund Agent (LFA) and, where deemed appropriate, the TRP itself.
12. Upon receipt of the Request for Continued Funding, which is expected eighteen months after a Program's Starting Date, the LFA prepares a report that addresses performance in Phase 1, contextual considerations, and the Phase 2 budgets, workplans, implementation arrangements, objectives and performance targets.
13. Portfolio Management staff – including the Fund Portfolio Manager responsible for the grant and the Cluster Leader responsible for the geographic area – review the Request for Continued Funding, the LFA report, and inputs from the Strategic Information and Evaluation Team at the Secretariat. Based on this information and their knowledge of the grant, the Portfolio Management staff perform an evaluation of performance and review other contextual considerations. The Portfolio Management staff then provide a recommendation to the Phase 2 Panel.

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<sup>5</sup> More information on the Phase 2 decision-making process can be found in the "Background Note on Phase 2 decisions" sent out to Board members on 28 January 2005.

14. Independently from Portfolio Management the Strategic Information and Evaluation unit (SIE) also performs an evaluation of the grant's performance, reviewing the latest data and contextual considerations. Its recommendation is provided to the Phase 2 Panel alongside that of Portfolio Management.
15. The Phase 2 Panel is the group within the Global Fund's Secretariat responsible for making the final Phase 2 recommendation to the Board. Composed of the Chief of Operations, the Director of Strategic Information and Evaluation, the Chief Administrative Officer, and the Chief Financial Officer, the Phase 2 Panel classifies each Request for Continued Funding into one of four categories ("Go", "Conditional Go", "Revised Go", and "No Go") and provides its recommendations to the Board by the end of month 21.
16. Requests classified as either "Revised Go" (recommended for funding but with significant departures from the original proposal in scope and/or coverage) or "No Go" (not recommended for funding) are typically forwarded by the Secretariat, together with the necessary underlying documentation, to the TRP, which acts in cases in which it feels that the Secretariat has made an error in the process of deriving a recommendation. By doing so, the Secretariat adds on another layer of verification that seeks to minimize the likelihood of unjustly discontinuing funding for well-performing recipients.
17. Therefore, before being delivered to the Board, recommendations on Requests for Continued Funding are reviewed and assessed by up to five different actors within and outside the Secretariat, all of whom contribute to increase the confidence level of information available to the Phase 2 Panel and to minimize its potential misjudgments.
18. In addition to the Secretariat processes, the involvement of the Board adds further elements of quality control to the system, in several ways.
19. First, in the voting process, Board constituencies can provide additional information based on their knowledge of the context of a Request for Continued Funding.
20. Second, the Board will review the Phase 2 process (particularly the decision-making aspect of it) by the Thirteen Board Meeting.
21. The Technical Evaluation Reference Group (TERG) will also oversee a review of the Secretariat's implementation of the Phase 2 process, to examine compliance with Board policies and the soundness of the decision-making process. The TERG is also conducting a broader assessment of the data quality and verification systems, which, though not focused on Phase 2, will also contribute to reducing the possibility of erroneous Phase 2 decisions.
22. The flowchart in Annex A summarizes the various steps described above. Green boxes indicate actors within and outside the Secretariat who take part in collating and analyzing evidence for Phase 2 decision making.

#### **IV. Considerations for the creation of a Phase 2 Recourse Mechanism**

23. The fundamental arguments for and against the establishment of a Phase 2 recourse mechanism revolve around the robustness of the Phase 2's data collection and review process, the possibility of recipients securing funding in a new Round of Global Fund financing and the implications for ongoing programs of discontinuing Global Fund financing.
24. The complexity involved in operationalizing a recourse mechanism for Phase 2 decisions can be considerable. The Board receives recommendations from the Secretariat on Requests for Continued Funding by the end of month 21 and acts upon them within ten days,

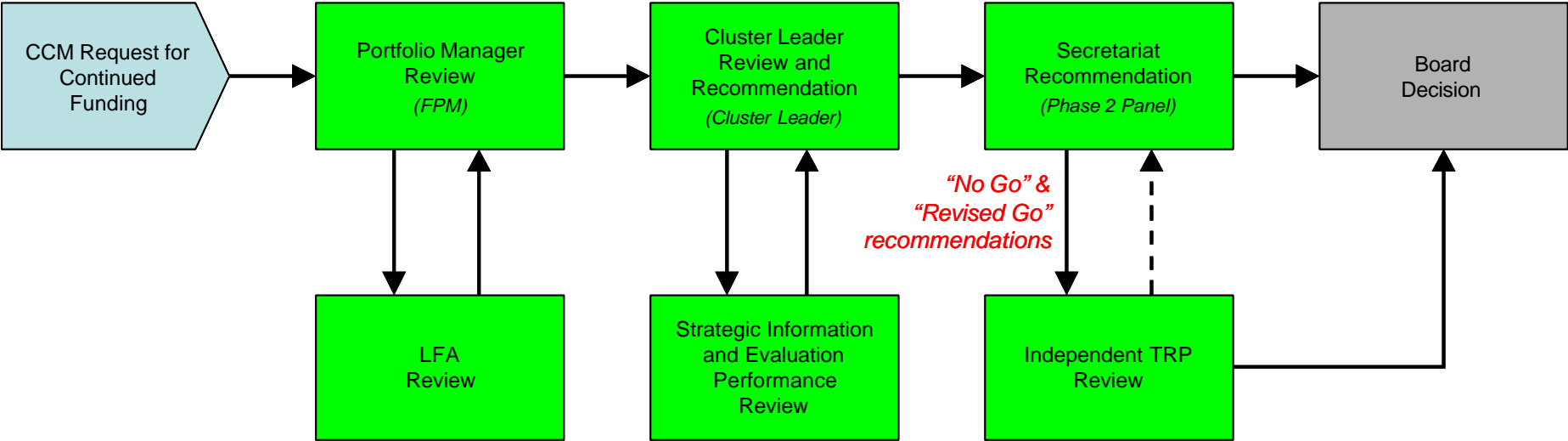
so as to allow recipients and the Secretariat some time during which to negotiate exact budget allocations, activities, indicators and targets for performance measurement prior to the expiry of Phase 1 grant agreements at the end of month 24. Were a recourse mechanism to be implemented, it would need to fit a framework which is already time-scarce, while still leaving enough room for transitioning safely from Phase 1 to Phase 2, or from Phase 1 to an Extraordinary Request for Continued Funding for Treatment (in case of “No-Go” decisions).

25. Further, the institutional consequences of appealing a recommendation on performance taken by the Secretariat at its highest levels, and which is based on substantial feedback and input from the LFA and the TRP, should not be underestimated. If not properly managed, the process may unduly jeopardize the credibility of the Secretariat and its partners, incentivize appeals on the part of all recipients not continued into Phase 2, and create mistrust towards the Secretariat that may threaten the relationships needed to ensure the successful implementation of current and future grants.

| General considerations on the need for a Phase 2 appeal mechanism   |   |
|---|---|
| Supporting considerations   | Opposing arguments  |
| <ul style="list-style-type: none"> <li>- Despite several layers of review, system is not immune to errors;</li> <li>- The consequences of the Phase 2 decision may be significant for recipients and for the control of HIV/AIDS, tuberculosis and/or malaria, and therefore all efforts should be made to minimize errors;</li> <li>- Although recipients are allowed to submit proposals in future rounds, their approval is not assured, meaning that Global Fund financing may be cut off for a given country.</li> </ul> | <ul style="list-style-type: none"> <li>- Existing systems may adequately minimize the risk of miscalculations;</li> <li>- Independent review is already provided by the TRP;</li> <li>- A decision to discontinue funding does not systematically exclude recipients, as they are still allowed to apply for funding in subsequent Rounds;</li> <li>- Proposals that are not recommended for continued funding have the option of submitting an Extraordinary Request for Continued Funding for Treatment;</li> <li>- Operationalization is likely to be complex, especially in light of the tight timeframe utilized for Phase 2 decision-making.</li> </ul> |

26. A number of operational issues would need to be considered should the PMPC decide to recommend to the Board that a recourse mechanism be established. Annex B addresses seven of these, including the grounds for appeals, the criteria for determining who is eligible for appeals, the composition of the Phase 2 Appeals Panel, and the process for appealing.

**Annex A: Phase 2 Renewal Review and Decision-Making Process**



## **Annex B: Operational aspects of a Phase 2 Recourse Mechanism**

1. As noted above, there are a number of complexities associated with operationalizing any decision to create a recourse mechanism for Phase 2. A number of these are explored below, along with possible approaches to addressing them and some of the advantages and disadvantages of each option.

### **A. Grounds for appeal**

2. The Phase 2 renewal process, however robust, will never be entirely immune from errors. Valuable information may be overlooked during the data collection process, or the system may pick up and reproduce a factual inaccuracy during the course of decision-making that may lead the Secretariat into recommending the discontinuation of funding for well-performing grants, or into recommending Phase 2 financial commitments that do not reflect the full amount of programmatic needs, as originally asked for in the Request for Continued Funding.
3. Therefore, significant and obvious errors made by the Global Fund in the course of the arriving at a Phase 2 decision could be deemed grounds for appeals. This is the same standard and language used for Phase 1 appeals.
4. In order to ensure consistency and fairness to those recipients which choose not to appeal (or are not eligible to), the information the recipient claims has been overlooked or misinterpreted must already have been submitted in the course of the Phase 2 renewal process (as is done in the Phase 1 resource mechanism).
5. It is important to bear in mind, though, that the Secretariat may make a recommendation based upon information collected confidentially by the LFA. Were the disclosure of such information to be accepted as a valid basis for appeals, it could jeopardize the capacity and willingness of LFAs to obtain and relay such findings to the Secretariat in the future, thus depriving the Phase 2 renewal process from potentially valuable inputs.
6. Disagreements over the merit of technical decisions (e.g., the extent to which the integrity of original proposals should be preserved) taken by the Phase 2 Panel were considered as potential grounds for appeals, but were discarded given the fact that this would require the creation of a parallel performance evaluation structure, a costly and time-consuming initiative.

### **B. Eligibility criteria**

7. The definition of eligibility criteria is critical to estimate the potential demand for, and workload of, a Phase 2 Appeals Panel.
8. Two possible options are:
  - a. Recipients to whom no additional resources are committed for Phase 2; and/or
  - b. Recipients to whom additional resources are committed, but in an amount lower than requested.
9. The first approach restricts the appeal window only to a small sub-set of grants passing Phase 2, since the number of "No-Go"s is estimated to remain in the range of 10-20% of all

proposals submitted for Phase 2 renewal<sup>1</sup>. The practical consequence would be a lighter workload for the Phase 2 Appeals Panel. However, it could also be perceived as being unfair to those recipients that have not been awarded the full amount of resources requested in their Request for Continued Funding.

10. The second option focuses on the recipients that have been awarded additional resources, but in an amount lower than requested. Under the policy framework for Phase 2 renewals<sup>2</sup>, budgets submitted along with Requests for Continued Funding are assessed in the course of the Phase 2 renewal decision process, and the Secretariat may choose to recommend to the Board that a Request be funded only partially. Nevertheless, the grounds for appeal would still focus on errors in the determination of the amount of funding committed, and not on the Secretariat's judgment on its reasonableness and feasibility. Operationally, it may impose a higher workload on those involved in the Phase 2 Appeals Panel, especially if both criteria are adopted as eligibility for appeals.

| Option  | Pros   | Cons   |
|---|--|--|
| All Requests for Continued Funding that have not been awarded additional resources      | - Limits number of potential appeals.  | - May be perceived as unfair by recipients that have not been awarded the full amount of resources requested.  |
| All Requests for Continued Funding that have not been awarded the full amount requested | - Ensures recipients who have not been awarded full amount requested are also able to appeal.  | - Increases the number of potential appeals, and may overload members of Phase 2 Appeals Panel;<br>- Likely to be difficult for the Phase 2 Appeals Panel to come up with a more appropriate amount without considerable additional work (and potentially without expertise not present in the Panel). |
| Both options above are adopted as eligibility criteria                                  | - Allows any recipient who feels that it has not received fair treatment in the Phase 2 process the opportunity to present its case. | - Results in the highest volume of potential appeals, requiring a considerable larger Phase 2 Appeals Panel.   |

### C. Needs-based appeals mechanism

11. In a resource-constrained environment, it is certainly a legitimate objective to ensure that the majority of Global Fund monies are channeled to where they are most needed. A needs-based approach could therefore be applied on top of, or concomitantly to, any of the

<sup>1</sup> In 2005, the total number of proposals being evaluated for Phase 2 is estimated to be 111.

<sup>2</sup> Policy to Continue Grant Funding Beyond the Initially Committed Two Years (Phase 2 Grant Renewals), GF/B7/8, Annex 4, Attachment 3.

eligibility criteria discussed above. By its very nature, it further limits accessibility to the system, decreasing its potential uptake and the workload for those involved in it.

12. However, the incorporation of need as criteria for resource allocation may be perceived as introducing an element of unfairness into the system, since it may exclude recipients who may not qualify on the grounds of need but who may have been subject to a similar procedural error during the Phase 2 renewal process.
13. The Phase 1 Appeal Mechanism adopted “lack of technical capacity”, as measured by the rate of repeated rejections, as an additional<sup>3</sup> criterion on which to assess need. Countries unable to submit high quality proposals to the TRP twice consecutively were deemed to be precisely those where resources were scarcer and needs greater, and should, therefore, be given priority if an appeals mechanism were to be established at all<sup>4</sup>.
14. A similar argument could be built in the context of the Phase 2 renewal process. Were a Phase 2 Appeal Panel to be established, countries that need the Global Fund financing the most, as measured by the “relative reliance on Global Fund monies to implement activities in AIDS, tuberculosis and malaria control”, could be given priority in presenting their cases. In some countries, the Global Fund is the only major donor involved in financing large-scale expenditures in AIDS, tuberculosis and malaria. Were the Global Fund to withdraw, no other donors would be available to support the continuation of successful program sub-components, or provide the technical assistance needed to internalize the lessons learnt during Phase 1 and submit a robust proposal in a new round.
15. The operationalization of “level of reliance on Global Fund resources” presents, nevertheless, formidable challenges, which include the definition of appropriate indicators, the compilation of suitable data and, at last, the definition of controversial cut-off points. On the first issue, a potential candidate would be the share of total AIDS, tuberculosis and malaria expenditures covered with Global Fund resources. Although appealing, disease-specific national accounts are still incipient, when they exist at all beyond HIV/AIDS. Even when available, though, the robustness of self-reported data is questionable and difficult to verify, and may not provide a methodologically coherent manner to compare reports from different countries.
16. Under such circumstances, it not clear whether the transaction costs involved in establishing and monitoring a needs-based framework, as the one described above, would be worth incurring.

| Option                           | Pros   | Cons   |
|----------------------------------|--|--|
| Needs-based criteria for appeals | <ul style="list-style-type: none"> <li>- In a resource-constrained environment, it may assist in allocating Global Fund resources to where they are most needed;</li> <li>- Reduces the number of potential appeals</li> </ul> | <ul style="list-style-type: none"> <li>- May be perceived as being unfair to those grants that might have been subject to a similar procedural errors during the Phase 2 renewal process;</li> <li>- Operationalization of “level of reliance” is challenging, since it entails the definition of appropriate indicators, gathering and systematizing</li> </ul> |

<sup>3</sup> The Global Fund already utilizes (i) disease burden and (ii) poverty as criteria for identifying proposals to finance.

<sup>4</sup> The adoption of some kind of eligibility criteria was prompted by the fear that the IAM and the Secretariat would be overwhelmed by a very high number of appeals. Imposing some sort of eligibility criteria was perceived to be the only tool available to address this possibility.

|  |  |   |
|--|--|---|
|  |  | <p>of data which may not be always available and the definition of appropriate cut-off points;</p> <ul style="list-style-type: none"> <li>- The transaction costs involved in establishing and monitoring a needs-based approach may be excessive.</li> </ul> |
|--|--|---|

#### D. Composition of Phase 2 Appeals Panel

17. The composition of the Phase 2 Appeals Panel will largely depend on the level of independence that is sought from the original actors involved in the Phase 2 renewal process. It is possible, on this scale, to envision a Phase 2 Appeals Panel composed of TRP members or Secretariat staff not directly involved in evaluating the grant under question, plus representatives from technical partner institutions. It would also be possible to draw members from the TERG, although appropriate attention should be paid to perceived and/or real conflict of interests if the two groupings are to be in fact maintained independent from each other.
18. The composition of the Phase 2 Appeals Panel will depend not only on the number of appeals that are expected to be handled, but, above all, on the nature of the work that Panel members are expected to undertake. In this context, it is important to briefly touch upon the Terms of Reference of Panel members.
19. If appeals are submitted exclusively on procedural grounds, it is likely that most of the work of the Phase 2 Appeals Panel will be conducted electronically and will not require travel, as is the case with the Internal Appeals Mechanism for Phase 1. Nevertheless, were the grounds for appeals to be expanded to include, for instance, disagreements over technical or scientific issues, it is possible that extensive research and field trips would need to be undertaken, severely limiting the capacity of members to analyze more than one appeal at a time.
20. In any event, although the majority of the work of the Phase 2 Appeals Panel will likely be conducted electronically, it may be prudent to have at least two distinct "Appeals Teams" (e.g., with 3 members each) to ensure that due process is not put at risk in case of unforeseen events, such as the need for travel or the unavailability of some members.
21. Under these circumstances, the nature of the Phase 2 Appeal Panel – whether it is ad hoc (membership not fixed) or standing (membership is fixed, with time-limited terms) – becomes relevant, since the timeframe under which the Appeal Mechanism would operate is very tight and it may not be possible to find suitable available members on such short notice, or without losing valuable time. If ad hoc, the dependability of the system can be improved by relying on a roster of pre-defined experts that can be called upon as appeals reach the Secretariat.

| Option                   | Pros  | Cons   |
|--------------------------|---|--|
| Sub-group of TRP members | <ul style="list-style-type: none"> <li>- Technical quality of reviewers is tested and known;</li> <li>- Membership is already defined so operationalization is</li> </ul> | <ul style="list-style-type: none"> <li>- TRP is already involved in evaluating "No-Go" recommendations before they are sent out to the Board;</li> <li>- Purely internal to the</li> </ul> |



|  |   |  |
|--|---|--|
|  | <p>easier;</p> <ul style="list-style-type: none"> <li>- Prior knowledge of Global Fund processes may speed up the process</li> <li>- Experience in handling proposal review is also helpful.</li> </ul>   | <p>Global Fund system, without any external input;</p> <ul style="list-style-type: none"> <li>- TRP members may feel constrained to contradict their colleagues involved in the Phase 2 renewal process;</li> <li>- Appellants may lose trust in TRP measurement, thus refusing to accept the recommendations;</li> <li>- Timing of appeals may conflict with TRP regular sessions.</li> </ul>   |
| <p>Mixed Appeal Panel (Secretariat, TRP Members and/or technical partners)</p>                                   | <ul style="list-style-type: none"> <li>- Ensures consistency in standards used for judgment by involving actors that participated in the Phase 2 renewal process;</li> <li>- By incorporating external members, may assist in the identification of any significant and obvious errors committed in the process;</li> <li>- Can draw on disease-specific technical expertise of partner organizations.</li> </ul> | <ul style="list-style-type: none"> <li>- Participation of technical partners such as WHO, UNAIDS and the World Bank may raise conflict of interest issues since they are active members of many CCM's;</li> <li>- May be perceived as biased and unreliable by appellants;</li> <li>- Logistics associated with organizing changing Appeals Panels may be cumbersome on Secretariat, especially if country visits are entailed.</li> </ul>   |
| <p>Independent Appeal Panel (membership could be drawn from the Technical Evaluation Reference Group [TERG])</p> | <ul style="list-style-type: none"> <li>- Ensures full independence from all actors involved in the Phase 2 renewal process.</li> </ul>  | <ul style="list-style-type: none"> <li>- Members' lack of experience with Phase 2 process may negatively impinge on the objectiveness and speed of the appeal;</li> <li>- TERG may not be perceived as impartial enough by appellants;</li> <li>- May create a tension between TERG and TRP in case of divergent opinions;</li> <li>- May be necessary to design a policy on conflict of interest that would in other ways impede the work of TERG or its individual members.</li> </ul> |

## E. Process for submitting appeals

22. As previously discussed, the timing for submitting appeals is a critical aspect that must be carefully considered not only within the framework of operationalizing an appeal mechanism, but also when analyzing the appropriateness of establishing a recourse mechanism itself.
23. In the Internal Appeals Mechanism for Phase 1, appellants have up to 28 days to interpose an appeal with the Secretariat, and the TRP has the same amount of time to evaluate it and arrive at a recommendation. The Board then takes a decision within 14 days of notification of the TRP's recommendation. Overall, the process can take up to 10 weeks to be completed.
24. This timeframe, however, is inconsistent with the compact framework under which Phase 2 renewal decisions need to be taken. Recommendations from the Secretariat are sent out to the Board by the end of month 21, who, in turn, acts upon them within 10 days. Assuming the Board confirms the Secretariat recommendations – which it may choose not to, instead requesting additional information – this leaves recipients and the Secretariat about 10 weeks during which to negotiate budget allocations, activities, indicators and targets for performance measurement before Phase 1 funding runs out.
25. Were an appeals mechanism for Phase 2 to be implemented, it is questionable whether it could follow a timeframe shorter than the one currently employed for Phase 1 appeals, given country realities (e.g., difficulties in communication), concerns over due process and other external reasons (e.g., unavailability of Panel members, more time needed for verification).
26. More important, however, is the fact that there may not be enough time left for the Secretariat and successful appellants to negotiate and sign Phase 2 grant extensions before Phase 1 resources expire. This is particularly critical in those environments where the Global Fund supports interventions that require a continued and reliable funding stream, such as antiretroviral treatment. In this event, it may be necessary to apply the “bridge funding” provision approved at the Ninth Board Meeting.<sup>5</sup>

## **F. Cost implications**

27. The various possible approaches to setting up a Phase 2 Appeals Panel have considerably different cost implications, rendering it impossible to provide meaningful cost estimates until an approach is identified. Should the PMPC decide to recommend the creation of a recourse mechanism, the Secretariat would provide cost estimates prior to the consideration of the subject at the April Board Meeting.

## **G. Retroactive Applicability**

28. The Board cannot take a decision on the creation of a recourse mechanism until April at the earliest. This means that it is likely that one or more Requests for Continued Funding will have been unsuccessful by the time of any Board decision, raising the question of whether the ability to appeal a Phase 2 decision could be instated retroactively.

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<sup>5</sup> *“In circumstances in which insufficient resources remain in Phase 1 to cover financing needs until a Board decision on Phase 2 procedure can be operationalized, the Board authorizes the Secretariat to extend the terms of the grants by up to six months, and to provide bridge funding for such grants as appropriate. The Board authorizes the Secretariat to commit up to a maximum of one-half of the first year budget contained in the Request for Continued Funding in question for these purposes, which would be financed by utilizing the Phase 2 renewal funding of the proposal.”* Phase 2 Decision-Making Policies and Procedures, BF/B9/8, Annex 3.

29. One approach would be to allow all recipients who have had their Request turned down prior to a Board decision establishing a recourse mechanism to file an appeal immediately after the Board decision is operationalized. However, the gap between when some Phase 2 decisions will be made and when any Board on a recourse mechanism could be operationalized may be considerable, meaning that grant agreements may have reached their end dates. Restarting programs that have already terminated (and in which the Secretariat would have begun operationalizing procedures to wind down financing) may prove to be quite complicated operationally.
30. An added complexity is the fact that some recipients may have, in the period prior to the Board's decision, availed themselves of the provisions of the Extraordinary Request for Continued Funding. The resources made available through this would have to be replaced with any amount of financing made available as a result of a successful appeal.