



Investing in our future

The Global Fund

To Fight AIDS, Tuberculosis and Malaria

Thirteenth Board Meeting
Geneva, 27 - 28 April 2006

GF/B13/6

REPORT OF THE ETHICS COMMITTEE

Outline: The report proposes three decision points for action by the Board.

Summary of Decision Points:

The Board approves the whistle-blowing policies set forth in Annex 1A and 1B in document GF/B13/6 and encourages the Office of the Inspector General to implement these policies as soon as practical.

The Board approves the “Code of Conduct for Contacts with Members of the Global Fund Involved in Funding Decisions” set forth as Annex 2 to document GF/B13/6 and decides that this code of conduct shall be put on the Global Fund website and that a copy shall be sent to all Country Coordinating Mechanisms and Principal Recipients with all funding application materials. The Board further decides that all violations of this Code of Conduct shall be reported promptly to the Ethics Committee for action, which may include, among other things, placing funding in jeopardy by reporting all violations of the code as part of the information used in the funding decision.

The Board notes with concern the questions raised by the Ethics Committee on existing Secretariat secondment practice, and requests that the Ethics Committee undertake a review of the Secretariat policy on secondments and associated conflict of interest issues and report back to the Board at the Fourteenth Board meeting

Part 1: Introduction

1. The Ethics Committee met three times by teleconference on the following dates: 10 February 2006, 10 March 2006, and 31 March 2006. Minutes of each call are available on the Ethics Committee section of the Global Fund website.

Part 2: Issues

A. Whistle-blowing Policy

1. At the 11th Board Meeting the Board asked the Ethics Committee (EC) to explore the development of a whistle-blowing policy. The EC noted at the time that the Board-approved Terms of Reference Office of the Inspector General (OIG) called on the office to “establish and oversee the Global Fund’s reporting hotline and other complaint-reporting mechanisms.” The EC was charged with developing a whistle-blowing policy to serve as the basis of the reporting hotline set up by the OIG.

2. The EC has been working on this issue since that meeting, and has relied heavily on the support and expertise of the Ethics Advisor and coordinated its efforts with the Inspector General. At the Twelfth Board Meeting the Committee presented two background papers to the Board that set the overall framework for the whistle-blowing policy. The first paper was a survey of global best practice in structuring whistle-blowing policies generally, and a description of how such a policy could be structured for the Global Fund¹ The second paper² introduced the concept of an overall “ethics framework” for the Global Fund, of which the whistle-blowing policy is a part. Together these two papers guided the work of the committee in developing a policy for the Global Fund.

3. The committee has followed the mandate of the Board and the structure it set out in these background papers to develop the policies set out in Annex 1A and 1B. The committee proposes two policies to the Board for approval, one for reporting of “in-country” activity under the whistle-blowing hotline (for example, activity by contractors and suppliers, recipients, and others involved in Global Fund programs) and one for reporting of activity at the Secretariat and with the governance structures of the Global Fund (for example, the Board, Committees or Technical Review Panel). The committee took this “two policy” approach in order to streamline the in-country policy and keep it as simple as possible, improving its “digestibility” among in-country groups by taking out the Secretariat-specific provisions that may weigh down the policy and make translation and communication more difficult.

4. Some of the key elements of the policy are as follows:

a. Broad Definition of Misconduct. The policies emphasize that their objective is to bring information to light and allow the Global Fund to act on misconduct that interferes with its mission and objectives. This misconduct includes not only fraud, abuse, and similar transgressions in its programs or operations, but other conduct that, more broadly defined, could pose serious reputational risk to the institution.

b. Confidential and Anonymous Reporting. The policies give those who observe or know of wrongdoing a choice between reporting the wrongdoing “anonymously,” preserving their identity, or “confidentially,” disclosing their identity to allow for any investigation follow-up while having the assurance that their identity will be kept confidential.

¹ This document can be found as Annex A to GF/B12/13, here: http://www.theglobalfund.org/en/files/boardmeeting12_protected/GFB-12-13-EC_Report_Whistleblowing.pdf

² Can be found as Annex B to GF/B12/13, here: http://www.theglobalfund.org/en/files/boardmeeting12_protected/GFB-12-13-EC_Report_Organizational_Ethics.pdf

c. Reports to the Office of Inspector General. Both policies make it explicit that, whatever the mode of reporting, all reports will be provided to the Office of Inspector General. This will allow for independent treatment and follow-up of all reports by a governance unit of the Global Fund with direct-line reporting to the Board.

d. Assurance of Follow-Up. The specific procedures for the whistle-blowing mechanism are under development by the Office of the Inspector General and will be outlined in a forthcoming document *Whistle-blowing Procedures*. These specific mechanics (call-in contact details, follow-up timelines...etc.) have been kept outside of the Board-approved policy to allow flexible and dynamic changes by the OIG to keep pace with lessons learned and experienced gathered through operation of the hotline. Even so, there is assurance in the policy to those who report under the whistle-blowing line that their report will be logged and followed up by the OIG.

5. The committee notes that many of the determinations on the cost associated with the whistle-blowing line are dependent on several unknown variables, such as the volume of reports (which will determine costs associated with outside service providers that may run the hotline), extent of publication and promotion of the policies in-country, and others. Many of these costs will be developed and determined in parallel with the implementation of the policy when the effectiveness of expenditures may be determined more precisely. All costs, however, will be incorporated in the budget of the OIG, and the Board will have the opportunity through the budget process and regular reporting from the OIG to adjust its investment in the whistle-blowing line on a continual basis as it better understands the resource needs of the mechanism.

6. The committee recommends that the Board approve both whistle-blowing policies and ask the Office of Inspector General to implement them as soon as practical in line with the development of capacity within the OIG office.

Decision Point 1:

The Board approves the whistle-blowing policies set forth in Annexes 1A and 1B in document GF/B13/6 and encourages the Office of the Inspector General to implement these policies as soon as practical.

B. Lobbying Policy

1. At the Eleventh Board Meeting the committee advised the Board that it had learned that some grantees had engaged in advocacy efforts with Board members in an effort to influence the Phase 2 decision on their grants. Some of this conduct appeared to have gone beyond simple advocacy and risen to a point of undue influence, creating conflicts of interest that appeared to have a direct effect on the ability of constituency members to fulfill their independent role in the governance processes of the Global Fund. The committee was asked to develop a policy to control lobbying activity and report back to the Board at its 13th meeting.

2. The committee considered various options for controlling inappropriate behavior in the funding processes, guided by a recognition that (1) not all lobbying conduct was inappropriate, for example, providing information or undertaking advocacy based on the merits of a Board decision was not inherently problematic; (2) all participants in the decision-making process – not just Board members – could be affected by inappropriate lobbying conduct; and (3) many actors with an interest in a grant – not just CCMs and grantees – may engage in inappropriate lobbying activities.

3. The committee recognized that it does not have the power to set up any “legal” regulation of lobbying conduct given that this conduct falls under national legal systems. Even so, it recognized that it could develop and publicize standards of conduct that define when contacts cross the line from advocacy and become inappropriate, and that it could “enforce” these through its own actions through its funding decisions and by other Board action where appropriate.

4. The standards developed by the committee are attached as Annex 2. The committee recommends that these standards be approved and communicated as set out in the following decision.

Decision Point 2:

The Board approves the “Code of Conduct for Contacts with Members of the Global Fund Involved in Funding Decisions” set forth as Annex 2 to document GF/B13/6 and decides that this code of conduct shall be put on the Global Fund website and that a copy shall be sent to all Country Coordinating Mechanisms and Principal Recipients with all funding application materials. The Board further decides that all violations of this Code of Conduct shall be reported promptly to the Ethics Committee for action, which may include, among other things, placing funding in jeopardy by reporting all violations of the code as part of the information used in the funding decision.

C. Secondment Activity at the Secretariat

1. The committee was notified of the existence of several potential conflicts of interest, or the appearance of conflicts of interest, resulting from secondment practice within the Secretariat. The committee decided to address the issue as a matter of general policy, and reviewed the history and extent of secondments approved by the Secretariat.

2. The committee noted with concern both the seniority of the positions that had been filled through secondment as well as the approval of secondments from institutions serving as contractors to the Global Fund or to Global Fund programs. It determined that it would be necessary to undertake a comprehensive review of the issue and the practice before determining how best to address it under existing committee authority under the Conflict of Interest policy. It resolved to develop a general committee practice on applying the Conflict of Interest Policy to this issue immediately following the Thirteenth Board Meeting.

3. The committee further determined, however, that to effectively address the issue it should review the practice and policy in the Secretariat more broadly. As a result, it requests a mandate from the Board to place the Secretariat policy on secondments under review by the committee, and a request for it to report back to the Board on a comprehensive approach to the issue at the Fourteenth Board Meeting.

Decision Point 3:

The Board notes with concern the questions raised by the Ethics Committee on existing Secretariat secondment practice, and requests that the Ethics Committee undertake a review the Secretariat policy on secondments and associated conflict of interest issues and report back to the Board at the Fourteenth Board Meeting.

D. Post-Employment Regulation of Secretariat Staff

1. At its 12th meeting the Board asked the Ethics Committee to develop a policy to cover conflict of interest issues that arise “in relation to former staff members of the Secretariat.”

2. The committee has reviewed the approaches that many governments and other publicly-funded institutions have developed on the issue, and the fact that post-employment policies are a generally-accepted element of the overall conflict of interest frameworks of these institutions. The committee has considered several alternative approaches to the issue in an attempt to balance (1) the interest of permitting individuals with particular expertise developed during their tenure at the institution to put that expertise to work upon leaving service, with (2) the interest of ensuring that nothing associated with new appointment of the individual gives rise to any suspicion of impropriety.

3. The committee has determined, however, that given the complexity of the questions involved and the need for further consultation, it would be useful to defer Board consideration of the issue at this time to allow further development of the policy for presentation at the 14th Board meeting.

E. Conflict of Interest Considerations Arising out of the IOS Report

1. At the Twelfth Board Meeting the Board decided the following:

- The Board requests that the management present an action plan to the Board's Ethics Committee; and
- The Board requests that the Ethics Committee review the action plan and report to the Thirteenth Board Meeting; and
- The Board asks the Ethics Committee to review and make recommendations to strengthen the Global Fund's conflict of interest policy in light of the deliberations of the 12th Board meeting.

2. The committee has received an action plan in the form of a timetable from the Secretariat setting out its anticipated schedule for producing an approach to the issue (attached as Annex 3), but at the time of issuance of this report it has not received any substantive proposal on the issue from the Secretariat management team for its consideration.

3. As a result, the committee is unable to report back to the Board on this issue beyond noting its receipt of the timetable but expects that it will be in a position to do so at the 14th Board meeting.

This document is part of an internal deliberative process of the Fund and as such cannot be made public. Please refer to the Global Fund's documents policy for further guidance.

Whistle-blowing Policy

for

The Secretariat and Governance Bodies of The Global Fund to Fight AIDS, Tuberculosis and Malaria

1. What is whistle-blowing?

To blow the whistle on someone is to alert a third party that that person has done, or is doing, something wrong. So, literally, “whistle-blowing” means that one makes a noise to alert others to misconduct.

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

2. The Global Fund’s duty of trust

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

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

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

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

- irresponsibly or wasted.
- second, and most importantly, the intended beneficiaries — namely, those affected by AIDS, tuberculosis and malaria — would be harmed.

3. Why have a whistle-blowing policy?

The main purpose of this whistle-blowing policy is to give effect to the Global Fund’s duty of trust by protecting its funds.

Therefore, this document sets out the Global Fund’s *written, formal* whistle-blowing policy, consisting of *safe* and *effective* procedures for misconduct disclosure or reporting so that appropriate *remedial action* can be taken.

A written, formal policy — properly communicated — is also a means of *preventing* and *detering* misconduct that might be contemplated but has not yet taken place.

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

With its whistle-blowing policy, the Global Fund's wishes to call upon others to assist it with its responsibility of being *custodian* or *trustee* of funds designated for worthy recipients and deserving beneficiaries.

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

The Global Fund calls on everyone who cares about the worldwide fight against AIDS, tuberculosis and malaria to *support* its whistle-blowing policy.

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

4. On what should one blow the whistle?

What is *reportable* misconduct?

Any serious concerns you may have about any aspect of the operations of the Global Fund Secretariat, Board, any of its governance bodies (for example, the Technical Review Panel), or those who work with them, can be reported under this policy. This may be conduct that:

- is against the Global Fund's governing rules, procedures, and policies, or established standards of practice;
- amounts to improper, unethical, or unlawful conduct;
- amounts to waste of Global Fund resources;
- makes you feel uncomfortable in terms of your experience with the standards you believe the Global Fund subscribes to; or
- amounts to an attempt to cover up any of these types of actions.

Conduct becomes reportable when it happens or when it is reasonably likely to occur.

Harm to the Global Fund may occur when any of this conduct is unchecked or unaddressed. Importantly, in determining whether to report conduct, harm is not only measured in terms of funds lost, or damage to a particular program or initiative, but harm may also be done to the integrity and reputation of the Global Fund itself, on which a program depends for its support and survival.

Reportable conduct falls into the following categories:

4.1 Illegal or unlawful conduct

Conduct may be *illegal* or *unlawful* in terms of the laws of countries and international law. We all have legal responsibilities, obligations or duties. Criminal offences — such as theft, fraud, corruption (for example, bribery), or money laundering — are in breach of legal duties and therefore constitute reportable misconduct.

4.2 Unprocedural conduct

Conduct may be *unprocedural* since it violates clearly communicated *procedures* (in the form of *policies, regulations, or rules*) governing the operations of the Global Fund.

Specific Global Fund rules and processes, together with other best-practice procedures, guide accounting practices and controls, financial reporting, auditing matters, the transfer of funds to recipients, approved recipient accounts, and the like.

Such procedures are important for good governance, and breaching them may expose the application of funds to risk of loss or real loss.

4.3 Unethical conduct

Conduct may be *unethical* since it undermines universal, core ethical values, such as integrity, respect, honesty, responsibility, accountability, fairness and the like even though there may not (yet) be any laws (Section 4.1 above) or procedures (Section 4.2 above) governing such unethical conduct.

For example, one could exert undue pressure on a person in position of power in order to gain an advantage. That would be unfair to others, and as such unethical, although neither unlawful nor unprocedural.

But not all unethical conduct is reportable. For example, some kinds of conduct may be disrespectful, and therefore undesirable, without harming any serious interests other than personal feelings. This would not be reportable misconduct.

4.4 Wasteful conduct

Conduct constituting a gross waste of resources is a reportable category in its own right since responsible stewardship of resources is so crucial to the success of the Global Fund. All individuals in the service of the Global Fund have an obligation to ensure that contributions to the Global Fund are used prudently and efficiently. If resources are spent in a wasteful manner, and in breach of the public trust under which they are provided to the Global Fund, this would be reportable under the whistle-blowing mechanism.

5. Who should blow the whistle?

Any individual who has observed reportable misconduct (as defined in Section 4, and, for staff of the Secretariat, wherever conduct amounts to wrongdoing under policies of the World Health Organization) at the Secretariat or in any governance body of the Global Fund has an obligation to report that conduct, and may do so as described in Section 8 below.

Anyone can report conduct under these policies – for example, participants in Global Fund mechanisms, beneficiaries, accountants and auditors, consultants and members of the general public.

The Global Fund has two sets of whistle-blowing policies — one specifically for conduct occurring at its Secretariat in Geneva or in its governance structures (such as in its Board, committees, or Technical Review Panel), and one for all other reporting (“in-country” reporting). Between them, these two whistle-blowing policies form a comprehensive vehicle available to *every stakeholder* in the Global Fund initiative.

This specific whistle-blowing policy is for reporting conduct at the Secretariat or any of the governance bodies of the Global Fund.

6. Assurances of confidentiality and anonymity

The Global Fund wishes to assure the *safety* of whistle-blowing, and therefore undertakes to treat all whistle-blowing reports as either *confidential* or *anonymous*. The choice between confidential or anonymous whistle-blowing is that of the whistle-blower alone.

The Global Fund gives the assurance that its systems are set up in such a way that electronic reporting is *non-traceable* through devices such as a caller ID.

6.1 What is confidential whistle-blowing?

A whistle-blower may *choose to reveal his or her identity* when a report or disclosure is made. Should this be the case, the Global Fund will respect and protect the *confidentiality* of the whistle-blower, and gives the *assurance that it will not reveal the identity of the whistle-blower to any third party*.

The only exception to this assurance relates to an *overriding legal obligation* to breach confidentiality. Thus, the Global Fund is obligated to reveal confidential information relating to a whistle-blowing report if ordered to do so by a court of law.

An advantage for the Global Fund of a confidential (as opposed to anonymous) report is that it is better placed to investigate the report.

Importantly, the Global Fund assurance of confidentiality can only be completely effective if the whistle-blower likewise maintains confidentiality.

6.2 What is anonymous whistle-blowing?

Alternative to confidential reporting, a whistle-blower may choose not to reveal his or her identity. With the reporter's *anonymity* thus assured, the *identity of the reporter cannot be ascertained by anyone*. This advantage to the reporter is counter-balanced by a disadvantage to the Global Fund, namely, that it compromises further investigation of the facts.

The anonymous whistle-blower should be careful not to reveal his or her identity to a third party.

By setting up the necessary systems safeguarding confidentiality and offering anonymity, the interests of the whistle-blower are protected from possible harm through retribution by those who stand to benefit from the reported misconduct.

7. Whistle-blower protection

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

Safety is a concern because those who benefit from misconduct may attempt to *retaliate* against or *victimize* a whistle-blower for loss, or potential loss, of that ill-gotten benefit.

- Such adverse consequences can only materialise if the identity of the whistle-blower is known through a breach of confidentiality.
- An anonymous whistle-blower cannot be victimised, provided that the whistle-blower also protects the anonymity of his or her identity.

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

Retaliation means any direct or indirect detrimental action recommended, threatened or taken because an individual reports conduct described in Section 4 of this Policy. When established, retaliation is by itself misconduct which may be pursued under the appropriate mechanisms — for example, through disciplinary action initiated through mechanisms of the Secretariat or more broadly and as appropriate through other mechanisms of World Health Organization and the United Nations system in the case of retaliation by Secretariat staff, and through Board governance processes if retaliation by other actors in Global Fund governance mechanisms.

Reporting under this policy, however, in no way immunizes or shields a whistle-blower against action following from his or her intentional misconduct, which includes willfully making allegations through the whistle-blowing mechanism that the individual knows to be false or makes with an intent to misinform. In short, *blowing the whistle is no escape hatch for complicity in misconduct*.

8. Whistle-blowing procedures

The manner of reporting conduct under this policy is dependent on whether the reporter chooses to provide the information anonymously or confidentially.

8.1 Procedures for anonymous whistle-blowing

If an individual chooses, conduct reportable under this policy – whatever its nature – may be reported anonymously.

The Global Fund has set up an *internal* whistle-blowing line for anonymous reporting intended to assure its maximum *effectiveness*. Detailed procedures on how to report to the whistle-blowing line (contact information, procedures, and information on what to expect when you report) are set out in the document *Whistle-blowing Procedures*, available on the Global Fund website.

8.2 Procedures for confidential whistle-blowing

Reportable misconduct may be made *confidentially* through established *internal* mechanisms.

For Secretariat Staff, this means directly to the Office of the Inspector General, or, if appropriate, the head of the office concerned, with a copy to the Inspector General.

For Board Members and Others in the Global Fund Governance Structures, this means the Office of the Inspector General, or, if appropriate, the Chair of the Board, Committee, or governance unit (such as the Technical Review Panel) concerned, with a copy to the Inspector General.

If conduct is not reported directly to the Office of the Inspector General, the individual receiving the report must immediately send a copy of the initial report to the Office of the Inspector General and shall similarly send a written report upon final resolution of the matter. At any time, the Office of the Inspector General may assume full responsibility for investigating the matter.

In all cases, conduct must be reported in writing and shall clearly identify that it is being provided confidentially and under this policy. It is the duty of the Global Fund to ensure the confidentiality of the reporter at all stages of the matter.

8.3. Procedures for external whistle-blowing

An individual may report serious misconduct to an entity or individual *outside* of established internal mechanisms where the following three criteria apply³:

- (a) Such reporting is necessary to avoid:
 - (i) A significant threat to public health and safety; or
 - (ii) Substantial damage to the Global Fund's operations; or
 - (iii) Violations of national or international law; and
- (b) The use of internal mechanisms is not possible because:
 - (i) The individual has previously reported the same information confidentially through the established internal mechanisms; and
 - (ii) The Global Fund has failed to inform the individual in writing of the status of the matter within six months of such report; and
- (c) The individual does not accept payment or any other benefit from any party for such report.

8.4 Procedures following whistle-blowing

The Global Fund is committed to *investigating and addressing* all cases of reported misconduct.

To this end, the *Whistle-blowing Procedures* document sets out all the steps that are followed upon receipt of a report under this policy. This procedures document sets out the roles and responsibilities of the offices in the Global Fund charged with investigation and follow-up.

Most importantly, the *whistle-blower may seek follow-up information* about an investigation of a report or any consequent action taken by the Global Fund. If the report was anonymous, the onus is on the whistle-blower to contact the whistle-blowing line for this follow up.

The Global Fund undertakes to collect all relevant *data* on the whistle-blowing line, which will be used to improve its effectiveness. Periodic *feedback* to the Board will be provided, for example, on the level of utilisation of the whistle-blowing line, issues reported, its effectiveness and shortcomings, and implementing improvements.

³ In the case of the Secretariat, staff shall have the right to report externally if such conditions are satisfied notwithstanding World Health Organization Staff Regulation 1.6 and other normally applicable Standards of Conduct for International Civil Servants [consultation with the World Health Organization on the application of this section to Secretariat Staff is ongoing at the time of circulation of this Policy, and will be reported to the Board at the 13th Board Meeting].

In-country Whistle-blowing Policy

for

The Global Fund to Fight AIDS, Tuberculosis and Malaria

1. What is whistle-blowing?

To blow the whistle on someone is to alert a third party that that person has done, or is doing, something wrong. So, literally, “whistle-blowing” means that one makes a noise to alert others to misconduct.

By blowing the whistle on misconduct *in an organization*, one alerts the organisation to the fact that its stakeholders are being wrongfully harmed, or that they are at risk of harm.

2. The Global Fund’s duty of trust

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

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

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

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

- First, donors cannot be expected to continue donating funds that are managed irresponsibly or wasted.
- Second, and most importantly, the intended beneficiaries — namely, those affected by AIDS, tuberculosis and malaria — would be harmed.

3. Why have a whistle-blowing policy?

The main purpose of this whistle-blowing policy is to give effect to the Global Fund’s duty of trust by protecting its funds.

Therefore, this document sets out the Global Fund’s *written, formal* whistle-blowing policy, consisting of *safe* and *effective* procedures for misconduct disclosure or reporting so that appropriate *remedial action* can be taken.

A written, formal policy — properly communicated — is also a means of *preventing* and *detering* misconduct that might be contemplated but has not yet taken place.

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

With its whistle-blowing policy, the Global Fund wishes to call upon others to assist it with its responsibility of being *custodian* or *trustee* of funds designated for worthy recipients and deserving beneficiaries.

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

The Global Fund calls on everyone who cares about the worldwide fight against AIDS, tuberculosis and malaria to *support* its whistle-blowing policy.

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

4. On what should one blow the whistle?

What is *reportable* misconduct?

Any serious concerns you may have about any aspect of the programs funded by the Global Fund, in particular actions by Principal Recipients or Sub-recipients, Country Coordinating Mechanisms, or those who work with them or supply goods or services to them, can be reported under this Policy. This may be conducting that:

- Is against the Global Fund's governing rules, procedures, and policies, or established standards of practice;
- Amounts to improper, unethical, or unlawful conduct;
- Amounts to waste of Global Fund resources;
- Makes you feel uncomfortable in terms of your experience with the standards you believe the Global Fund subscribes to; or
- Amounts to an attempt to cover up any of these types of actions.

Conduct becomes reportable when it happens or when it is reasonably likely to occur.

Harm to the Global Fund may occur when any of this conduct is unchecked or unaddressed. Importantly, in determining whether to report conduct, harm is not only measured in terms of funds lost, or damage to a particular program or initiative, but harm may also be done to the integrity and reputation of the Global Fund itself, on which a program depends for its support and survival.

Reportable conduct falls into the following categories:

4.1 Illegal or unlawful conduct

Conduct may be *illegal* or *unlawful* in terms of the laws of countries and international law. We all have legal responsibilities, obligations or duties. Criminal offences — such as theft, fraud, corruption (for example, bribery), or money laundering — are in breach of legal duties and therefore constitute reportable misconduct.

4.2 Unprocedural conduct

Conduct may be *unprocedural* since it violates clearly communicated *procedures* (in the form of *policies, regulations, or rules*) governing the operations of the Global Fund.

Specific Global Fund rules and processes, together with other best-practice procedures, guide accounting practices and controls, financial reporting, auditing matters, the transfer of funds to recipients, approved recipient accounts, and the like.

Such procedures are important for good governance, and breaching them may expose the application of funds to risk of loss or real loss.

4.3 Unethical conduct

Conduct may be *unethical* since it undermines universal, core ethical values, such as integrity, respect, honesty, responsibility, accountability, fairness and the like even though there may not (yet) be any laws (Section 4.1 above) or procedures (Section 4.2 above) governing such unethical conduct.

For example, one could exert undue pressure on a person in position of power in order to gain an advantage. That would be unfair to others, and as such unethical, although neither unlawful nor unprocedural.

But not all unethical conduct is reportable. For example, some kinds of conduct may be disrespectful, and therefore undesirable, without harming any serious interests other than personal feelings. This would not be reportable misconduct.

4.4 Wasteful conduct

Conduct constituting a gross waste of resources is a reportable category in its own right since responsible stewardship of resources is so crucial to the success of the Global Fund. All individuals in the service of the Global Fund have an obligation to ensure that contributions to the Global Fund are used prudently and efficiently. If resources are spent in a wasteful manner, and in breach of the public trust under which they are provided to the Global Fund, this would be reportable under the whistle-blowing mechanism.

5. Who should blow the whistle?

Anyone who knows of misconduct associated with Global Fund activity — or who has reasonable grounds for inferring misconduct — is strongly encouraged to report this, using his or her preferred reporting option (see Section 8 below).

While the Global Fund anticipates and encourages reports from individuals associated with its operations (for example, employees of Principal Recipients, sub-recipients, suppliers of goods, or members of Country Coordinating Mechanisms), all stakeholders and members of the general public are encouraged to report.

The Global Fund has two sets of whistle-blowing policies — one specifically for conduct occurring at its Secretariat in Geneva or in its governance structures (such as in its Board, Committees, or Technical Review Panel), and one for all other reporting (“in-country” reporting). Between them, these two whistle-blowing policies form a comprehensive vehicle available to every stakeholder in the Global Fund initiative.

This specific whistle-blowing policy is for “in-country” reporting only, that is, reporting on misconduct in its grant operations wherever it occurs — for example, misconduct by a supplier or service provider to Global Fund programs outside of a recipient country or by an implementing organisation in a recipient country.

6. Assurances of confidentiality and anonymity

The Global Fund wishes to assure the *safety* of whistle-blowing, and therefore undertakes to treat all whistle-blowing reports as either *confidential* or *anonymous*. The choice between confidential or anonymous whistle-blowing is that of the whistle-blower alone.

The Global Fund gives the assurance that its systems and procedures are set up in such a way that electronic reporting is *non-traceable* through devices such as a caller ID.

6.1 What is confidential whistle-blowing?

A whistle-blower may choose to reveal his or her identity when a report or disclosure is made. Should this be the case, the Global Fund would respect and protect the whistle-blower’s confidentiality, and gives the assurance that it would not reveal the whistle-blower’s identity to any third party.

The only exception to this assurance may be where the Global Fund complies with a legal obligation to breach confidentiality.

An advantage for the Global Fund of a confidential (as opposed to anonymous) report is that it is better placed to investigate the report.

Importantly, the Global Fund assurance of confidentiality can only be completely effective if the whistle-blower likewise maintains confidentiality.

6.2 What is anonymous whistle-blowing?

Alternative to confidential reporting, a whistle-blower may choose not to reveal his or her identity. With the whistle-blower’s anonymity thus assured, his or her identity cannot be ascertained by anyone. This advantage to the whistle-blower is counter-balanced by a disadvantage to the Global Fund, namely, that it compromises further investigation of the facts.

The anonymous whistle-blower should be careful not to reveal his or her identity to a third party.

By setting up the necessary systems safeguarding confidentiality and offering anonymity, the interests of the whistle-blower are protected from possible harm through retribution by those who stand to benefit from the reported misconduct.

7. Whistle-blower protection

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

Safety is a concern because those who benefit from misconduct may attempt to *retaliate* against or *victimize* a whistle-blower for loss, or potential loss, of that ill-gotten benefit. However, importantly:

- Such adverse consequences can only materialize if the identity of the whistle-blower is known through a breach of confidentiality; and
- An anonymous whistle-blower cannot be victimised, provided that the whistle-blower also protects his own or her own anonymity.

In addition to the assurance given by the Global Fund that it would set up the necessary internal systems and procedures to protect confidentiality, several countries use *legislation to protect* those who disclose misconduct by blowing the whistle (see *Addendum 1*).

Where a confidential disclosure is made in good faith, reasonably believed to be true, a reporter will not be victimized or disadvantaged in any way by the Global Fund should the disclosure turn out to be *misguided* or *false*.

However, reporting in no way immunizes or shields a whistle-blower against action following from his or her intentional misconduct. In short, *blowing the whistle is no escape hatch for complicity in misconduct*.

8. Whistle-blowing procedures

The Global Fund has set up a whistle-blowing line intended to assure its maximum *effectiveness*. Detailed procedures on how to report under the whistle-blowing line (contact information, procedures, and information on what to expect when you report) are set out in the document *Whistle-blowing Procedures*, available on the Global Fund website.

You can blow the whistle *confidentially* or *anonymously*.

The Global Fund is committed to *investigating and addressing* all cases of reported misconduct.

To this end, the *Whistle-blowing Procedures* document sets out all the steps that are followed upon receipt of the report under the whistle-blowing policy. This procedures document also sets out the roles and responsibilities of the offices in the Global Fund charged with investigation and follow-up.

Most importantly, the *whistle-blower may seek follow-up information* about an investigation of a report or any consequent action taken by the Global Fund. If the report was anonymous, the onus is on the whistle-blower to contact the whistle-blowing line for this follow up.

The Global Fund undertakes to collect all relevant *data* on the whistle-blowing line, which will be used to improve its effectiveness. Periodic *feedback* to the Board will be provided, for example, on the level of utilisation of the whistle-blowing line, issues reported, its effectiveness and shortcomings, and implementing improvements.

ADDENDUM 1: International whistle-blowing protection legislation

Source: *International Business Ethics Review*, Volume 7, Issue 2, Fall 2004, p 7 (copyright permission required).

Australia: Public Interest Disclosure Act, 1994

Employees in the public sector and those who disclose information of public concern receive protection from retaliation under this Act. In many cases, whistle-blowers must file reports with the appropriate regulatory body in order to receive protection. State-wide legislation varies from the national law in some areas.

Canada: Public Servants Disclosure Protection Act, 2004

The Act protects public sector employees from retaliation after they report misconduct. However, employees of cabinet ministers and national security agencies do not receive protection under this law. The legislation also requires agencies to draft codes of conduct and establishes the position of the *Public Sector Integrity Commissioner* to pursue investigations.

China: Article 41 of the Chinese Constitution

China is the only country in the world at this time to have enshrined whistle-blower protection as a constitutional right for all citizens. It empowers all citizens to report misconduct and forbids retaliation.

European Union: Whistle-blowers' Charter, 1999

The Charter establishes the Anti-Fraud Office in the European Commission (EU). It also creates procedures that require EU employees to report misconduct and guarantees due process and protection of the whistle-blower if they report misconduct internally. Employees must exercise all internal avenues for reporting misconduct before they can blow the whistle externally and qualify for protection.

New Zealand: Protected Disclosure Act, 2000

Provides a four-tiered system where whistle-blowers must report through internal channels in order to obtain protection, with a few minor exceptions. The whistle-blower must approach each point in their organization and industry hierarchy before being able to blow the whistle publicly and obtain guaranteed protection.

South Africa: Protected Disclosures Act, 2000

Employees in both the public and private sector receive protection from retaliation under the Act. However, the law only applies to employer-employee relationships and fails to protect other stakeholders. In addition, protection in the case of dismissal is limited, e.g. employees obtain a maximum of 24 months pay after dismissal.

South Korea: Anti-Corruption Act, 2001

This legislation establishes the *Korea Independent Commission Against Corruption*, whose mission includes the encouragement, protection, and compensation of whistle-blowers.

United Kingdom: Public Interest Disclosure Act, 1998

The Act protects employees in all sectors from dismissal and other forms of retaliation. In a case where a whistle-blower receives notice of termination, the burden of proof falls on the employer to show that the dismissal was unrelated to whistle-blowing.

United States of America: Whistle-blower Protection Act, 1998

Public sector employees receive protection from retaliation when disclosing information. The *Patriot Act* of 2001 infringes on some of these protections in cases of national security.

United States of America: Sarbanes-Oxley Act, 2002

The Act expands protection from retaliation to whistle-blowers in the private sector. An aggrieved employee must file a complaint with the Secretary of Labor within ninety days of the retaliation.

**Standards of Conduct for Contacts with Members of
the Global Fund Involved in Funding Decisions**

Global Fund stakeholders (including Principal Recipients, sub-recipients, members of Country Coordinating Mechanisms, and others) and all participants in the Global Fund funding review and decision process (for example, members and alternate members of the Board, members of Board delegations, Secretariat staff and members of the Technical Review Panel) shall abide by the following standards of conduct:

1. Individuals contacting participants in the Global Fund funding review and decision process must clearly state who they are representing;
2. Individuals must not act in any manner that will undermine public confidence and trust in the Global Fund funding review and decision process. For example, they must not:
 - a. offer anything of value in return for action by a participant in the Global Fund review and decision process, or accept anything of value in return for action (this is not limited to items of financial value, and includes any inducement which would cause the decision maker to act on something other than the merits of the pending decision);
 - b. attempt to influence the outcome of a decision through any form of threat, extortion or blackmail; or
 - c. contact anyone in a decision maker's organization for the purpose of threatening, intimidating, or in any way exerting undue influence over the decision maker through the organizational hierarchy.
3. Individuals must not encourage anyone to take any actions listed under (2).
4. Individuals must report any action listed under (2) when it comes to their attention.

Breaches of any of these standards shall be promptly notified to the Ethics Committee for formal determination and action under its authority. Such action may include, but not be limited to, (1) formally noting the breach in the Phase 2 or Proposal documentation sent to decision-makers in the funding process, allowing them to determine whether breaches of the code should result in the denial of new or continuing funding from the Global Fund, or (2) in the case of inappropriate conduct by Covered Individuals that fall under the Ethics and Conflict of Interest Policy, referring the issue to the Board for action.

1 March 2006

Dear Anandi,

I refer to Richard's communication to you of last Friday regarding the implementation of the Management Response relating to the involvement of family members. Under a decision taken at the Twelfth Board Meeting, the Ethics Committee is responsible for overseeing the implementation of the action plan in this area and I would therefore like to share with you, as Chair of the Ethics Committee, a suggested plan of action for taking this matter forward.

The steps that we would propose for your consideration are as follows:

- **Step 1:** Identify a consultant to prepare a paper that will provide i) an overview of family relationship policies in other organizations and corporations; and ii) briefly discuss how these policies, if adopted by the Global Fund, would interact with the existing policy and applicable rules (including the Global Fund's current conflict of interest policy). The paper would address the employment of family members as well as uncompensated family member involvement.
Status: DLA Piper has offered to conduct the research and produce this paper on a pro bono basis. A first draft has already been submitted to the Secretariat and is in the process of a second iteration.
Timing: Second draft of *the DLA Piper* paper requested.
- **Step 2:** The Secretariat will ascertain applicable rules under WHO framework and consult WHO on feasibility of and process for amendments, if any.
Status: In progress
Timing: Consultations with WHO to be completed by 10.03.06
- **Step 3:** Memorandum to be sent to the Ethics Committee by the Secretariat. The memorandum would highlight areas that the current WHO framework does not cover and be accompanied by a revised DLA Piper paper with examples of policies of other organizations and certain options. Together this would then form the basis of discussion by the Ethics Committee.
Status: Not yet commenced
Timing: Late March
- **Step 4:** If any changes to the existing policy are made, the matter would then become part of the Ethics Committee's work plan. The development of policies involving ethics normally is, as you are aware, a responsibility that lies with the Board rather than with the Secretariat. The Ethics Committee may therefore wish to recommend that new policies in this area be considered, working with WHO and the Secretariat.

I would appreciate receiving your views on the proposed plan, including any suggestions that you may have for handling this differently.

In the meantime, I am of course happy to discuss further should you wish to do so.

With best regards

Anne Duke
Manager, Human resources

Ms Anandi Yuvaraj
Chair
Ethics Committee