

UPDATE ON LOSSES AND RECOVERIES

Purpose:

This paper is a response to Board Decision GF/B23/DP28 that requires both the Secretariat and the OIG to jointly present a Table to the FAC and the Board on the status and extent of the losses and recoveries in the reporting period. The paper presents contextual information and tables with data on losses and recoveries since the last update to the Board in May 2011.

EXECUTIVE SUMMARY

This paper is provided to the Finance and Audit Committee (“FAC”) pursuant to the decision of the Board at its 23rd meeting (GF/B23/DP24) that requires both the Secretariat and the Office of the Inspector General (“OIG”) under the oversight of the FAC to jointly publish before each regular scheduled meeting of the Board a Losses & Recoveries Report containing background information and an updated table regarding the status of losses identified by the OIG.

The paper presents a brief introduction and provides the context within which the losses and recoveries are being handled.

Finally the data on losses and recoveries is presented in two distinct tables.

1. Table 1 features losses presented to the Board in May with an update on the recovery process and contextual information for each country. The notes to this table highlight progress made and some challenges the Secretariat faces in the recovery exercise.
2. Table 2 has data on recently published audits and investigations. This data has been issued by the OIG to the Secretariat and the Secretariat and the OIG will work closely to determine the final figures as per the checks required under Board Decision GF/B23/DP28.

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

Introduction

The Global Fund is fully committed to the principles of transparency and accountability. To fulfill this commitment, the Fund is working to expose irregularities and abuse of resources. Key measures and recent efforts have been dedicated towards prevention but where abuse and misuse has materialized, early and timely actions are taken to address the underlying weaknesses and seek recovery of losses as appropriate.

For instance, US\$ 18 million has been recovered and or accounted for following audits and investigations. Also in extreme cases of abuse such as Mali, Mauritania and Zambia grants have either been suspended or terminated.

Nonetheless, reports on losses should be read in full awareness of the context and broad environment within which Global Fund operates. Specifically, the Fund continues to work in countries where often governance, programmatic and oversight capacities are weak, or where financial controls are inadequate and this carries inherent risk.

However, the Global Fund maintains a zero tolerance to fraud and corruption and will take swift and appropriate action when cases of misuse of funds are reported. The Global Fund will therefore continue to ensure that all irregularities are identified and as in the past communicated responsibly and in a timely manner to the Board and other stakeholders.

Method and Process for Determining Loss

Under the Board decision on communication of losses and recoveries (GF/B23/DP28) (the “Board Policy on Communication of Losses and Recoveries”), the loss and recoveries table shall only contain information on identified losses and the status of recoveries upon the satisfaction of the following conditions:

- The principle of country ownership has been respected by notifying the Country Coordinating Mechanism (CCM) and the entities involved, of the details of the losses claimed, where they have been provided with appropriate time to respond, and this response is incorporated by the OIG in the publicly available reports;
- The details of losses identified have been submitted to the Global Fund Secretariat and comments have been considered by the OIG;
- The Global Fund’s Legal Counsel has made a determination that the Global Fund is entitled to make a claim for recovery against an entity based on the work of the OIG; and
- These figures have been made public, i.e. the OIG has reported a number either through a specific public report or through the OIG Progress report to the Board which will also be made public, or the OIG has notified the FAC in writing.

Efforts are underway to streamline and clearly define how the Secretariat and the OIG work together. Part of this effort will be to better define the process of determining refunds due following audits and investigations. This will outline operating procedures that reflect the requirements set forth in Board Decision GF/B23/DP28 and help resolve difficult cases.

In addition to the operating procedures under development by the Secretariat, the Legal Counsel has adopted a process and methodology for determining that a sound legal basis for recovery

exists before any claims for recovery are made by the Global Fund, in fulfillment of the Legal Counsel's responsibility under GF/B23/DP28. Through this process, recoverable amounts may be identified through a fair, objective and independent manner, informed by professional judgement. In making this determination the Legal Counsel shall work closely with the OIG to ensure that the legal determinations are fully informed by OIG findings. The process and methodology employed in the Legal Counsel in the conduct of this exercise are summarized in Annex 2.

It is also recognized that Board Decision GF/B23/DP28 cannot be applied retroactively to resolve past cases on losses and recoveries that exist. For these cases we propose a tailored approach, case by case where the Secretariat will engage with OIG and the country partners to jointly come up with suitable solutions.

Ongoing recoveries of losses

So far, a total of US\$ 18,853,401 has been recovered and or accounted for following audits and investigations¹. The Secretariat has made significant gains particularly in Zambia and Mauritania with US\$ 5.6 million and US\$ 4.2 million recovered respectively. This has been through a concerted effort with partners in country. For instance, to expedite the recovery process the Secretariat and the Mauritania authorities worked on a joint protocol, similarly a written commitment, to reimburse US\$ 7 million, with Ministry of Finance and National Planning in Zambia helped facilitate repayment. Recovery has also progressed in Cameroun US\$ 3.3 million, Cambodia US\$ 1.6 million as well as in Uganda with a total of US\$ 1.14 million refunded.

However, there are cases of losses following audits and or investigations that present the Secretariat and the OIG with unique challenges. In these few instances progress is hampered by the failure to agree on final figures. There are also cases where the figures presented as loss need further clarity.

The next sections present the data on losses and recoveries in two distinct tables.

Table 1 features loss data presented to the Board in May 2011 alongside the recent data on recovery. The accompanying notes in Annex 1 provide contextual information for each country and highlight some of the key challenges the Secretariat faces in the recovery exercise.

Table 2 has data on recently published audits and investigations. This data was recently issued by the OIG and lists amounts that result from fraud, lack of supporting documents and or are ineligible. This data has been reviewed by Legal Counsel as per the checks required under Board Decision GF/B23/DP28, and the legal determination has been issued by the Legal Counsel to the Chair of the Board on 14 October 2011.

Annex 1 provides notes and contextual information on losses and recoveries reported to the Board in May 2011.

Annex 2 describes the process and methodology for the Legal Counsel's determination of an entitlement to a recovery claim on the basis of OIG findings.

¹ The Secretariat recognizes recovery when a direct payment is made to the Global Fund's Trustee account, the program account and or when lost, damaged and unaccounted for assets are replaced with equivalent assets or fully accounted for following the audits and investigations.

Table 1: Losses Reported in May 2011 updated with Recent Recoveries as at 4 November 2011

Table 1 below covers loss data reported previously to the Board in May 2011. This has been updated with commitments and amounts recovered in each country (greyed out area). So far a total of US\$ 18,853,401 has been recovered. Notes to specific contextual issues are provided in Annex 1.

Country (or PR)	Type of Examination	OIG Report Reference Number	Fraud (US\$)	Unsupported (US\$)	Ineligible (US\$)	Other (Income/drugs not accounted for) (US\$)	TOTAL (US\$)	Amount recovered/ accounted for or withheld as at 1 November 2011 (US\$)	Commitments made by Country/PR to pay (US\$)
Uganda	Audit	TGF-OIG-09-005	-	-	-	1,600,000	1,600,000	1,146,000	1,600,000
Mali	Investigation	GF-OIG-11-002	4,074,444	1,034,935	-	122,106	5,231,485	303,897	303,897
Mauritania	Investigation	OIG 8 th September 2009	6,755,000	-	-	-	6,755,000	4,208,380	4,227,143
Cambodia	Audit	GF-OIG-09-14	-	222,706	-	1,362,466	1,585,172	1,578,180	1,585,172
Cameroon	Audit	GF-OIG-09-10	33,455	2,199,530	3,370,322	-	5,603,307	3,296,364	3,370,322
Zambia	Audit	GF-OIG-09-015	13,000	5,808,446	4,998,389	-	10,819,835	6,493,291	7,058,188
Tanzania	Audit	OIG-10 June 2009	-	-	-	819,000	819,000	819,000	819,000

Country (or PR)	Type of Examination	OIG Report Reference Number	Fraud (US\$)	Unsupported (US\$)	Ineligible (US\$)	Other (Income/drugs not accounted for) (US\$)	TOTAL (US\$)	Amount recovered/ accounted for or withheld as at 1 November 2011 (US\$)	Commitments made by Country/PR to pay (US\$)
Haiti	Audit	GF-OIG-09-13	-	519,326	1,253,869	704,730	2,477,925	752,977	752,977
DRC	Audit	TGF-OIG-09-007	-	1,110,107	933,586	-	2,043,693	Nil	Nil
Philippines	Audit	TGF-OIG-09-008	-		2,021,280	-	2,021,280	255,312	255,312
Total (US\$)			10,875,899	10,895,050	12,577,446	4,608,302	38,956,697	18,853,401	19,972,011

Table 2: Losses from Recently published Reports

Table 2 has data on recently published audits and investigations. This data was recently issued by the OIG and lists amounts that result from fraud, lack of supporting documents and or are ineligible. The Global Fund Legal Counsel has reviewed this data and has noted certain recommendations pertaining to recovery.

Country (or PR)	OIG Report Reference	Type of examination	Period covered	Fraud (US\$)	Unsupported (US\$)	Ineligible (US\$)	Other (US\$)	Total (US\$)	Amount recovered or Commitment to repay
Dominican Republic	GF-OIG-10-005	Audit	2004 - 2010	-	-		-	-	-
Sri Lanka	GF-OIG-10-006	Audit	2003 - 2010	-	982,030	1,665,126	-	2,647,156	-
Nigeria	GF-OIG-10-008	Audit	2003 - 2009	-	5,838,217	1,169,570	-	7,007,787	-
Swaziland	GF-OIG-10-013	Audit	2003 - 2010	-	2,296,951	2,948,068	599,200	5,844,219	-
PSI - South Sudan	GF-OIG-10-019	Audit	2008 - 2010	-	262,295	265,100	-	527,395	-
PSI - Madagascar	GF-OIG-10-020	Audit	2003 - 2010	-	-	82,475	200,448	282,923	-
PSI - Togo	GF-OIG-10-021	Audit	2005 - 2010	-	-	248,539	616,330	864,869	-
PSI	GF-OIG-10-022	Review	N/A	-	-	-	-	-	-
Global Fund Travel	GF-OIG-11-008	Audit	2009 - 2010	-	-	-	-	-	-

Mauritania ²	GF-OIG-11-009	Investigation	2004 - 2008	4,070,000	2,760,000	70,000	-	6,900,000	4,230,000
PSF - India	GF-OIG-11-010	Investigation	2006 - 2011	1,284,166	-	-	-	1,284,166	-
YGC - Nigeria	GF-OIG-11-011	Investigation	2005 - 2009	874,000	-	-	-	874,000	-
TOTAL (US\$)				6,228,166	12,139,493	6,623,638	1,415,978	26,232,515	4,230,000

² Mauritania is reported on both Tables 1& 2 as is an ongoing investigation. An initial report was issued on 8 Sept 2009 for Phase 1 and this reported a total loss of US\$ 4,227,147. Further investigations on UNDP SRs have reported additional losses under Phase 2 at US\$ 2,500,000.

Annex 1

**NOTES AND CONTEXTUAL INFORMATION ON LOSSES AND RECOVERIES
REPORTED TO THE BOARD IN MAY 2011**

- 1.1. **Uganda:** The US 1.6 million being followed up for recovery is based on recommendations in the Ugandan Government White Paper endorsed in November 2006. As reported by the OIG to the FAC in April 2010 a total of US\$1.146 million has been refunded to the program in Uganda. The Secretariat will follow up to recover the outstanding balance of US\$ 454,000 that has not yet been paid up. Amount in the Government White Paper are denominated in Uganda Shilling hence , the Secretariat is aware of likely variance in figures reported (losses or gains) due to fluctuating exchange rates.

The amount recovered needs to be used on program activities or transferred to the Global Fund Trustees account.

- 1.2. **Mali:** The investigation in Mali uncovered fraud by senior officials working for grant implementers, through submission of false documents and overcharging for goods and services, particularly in relation to training activities. A total of US\$ 300,000 was initially refunded by MoH to the Mali program following the investigation. OIG finalised and published the investigations report on 1 June 2011. The Secretariat is working closely with the OIG and the Mali authorities to resolve all pending issues and work out modalities that will ensure recovery of losses.
- 1.3. **Mauritania:** In February 2009 the Local Fund Agent (LFA) in Mauritania, notified the Secretariat of alleged fraud in the Global Fund program. As a result of the LFA findings, the OIG launched a formal investigation in April 2009.

The US \$ 6,755,500 figure reported in Table 1 is made up of two numbers. The first figure US\$ 4,227,147 Round 5 HIV grant is based on the initial OIG investigations report issued on 8 Sept 2009. The OIG recently issued an investigation report that covers the difference a total of US\$ 2,500,000.

Following the initial report, the Secretariat moved swiftly to recover. To date the Secretariat has recovered the entire amount due for refund under Round 5 HIV grant managed by SENLS. Of the total US\$ 4,227,147, US \$ 1,679,359 was refunded earlier and a Protocol drawn later to recover the difference US\$ 2.53 million. The Mauritania authorities have fully paid as per the agreed protocol through two disbursements an initial US\$ 1,685,688 and a second payment of US\$ USD 843,333.

- 1.4. **Cambodia:** The US\$ 1,362,466 unaccounted for program income was reinvested back into the program following review and approval by Global Fund Secretariat. A further, US\$ 197,931 was accounted for as the audit report was being finalized. At this point the

CCM provided supporting documents with the Country Response to the Draft OIG report. The supporting documents were later reviewed by the Secretariat and the expenditures were considered appropriate and in line with approved program activities. An additional US\$ 17,783 was refunded to the program and the reimbursement confirmed through the LFA review. The final balance of US\$ 7,000 has been refunded but is yet to be reviewed by the LFA.

- 1.5. **Cameroun:** The Program was disrupted in 2008 following alleged corruption and arrests of key personnel within the Ministry of Health. This led to an investigation by the OIG and a subsequent audit. The audit report issued in September 2010 highlights the total losses as US\$ 5,603,307.

This amount included ineligible expenditure of US\$ 3,370,322 due from CENAME (procurement agent for drugs) for an irregular mark-up on drugs procured for the program. The Secretariat, following the audit, held discussions with CNLS and reached an agreement that the overpayments to CENAME will be recovered in future payments and invoices raised by the procurement agent. So far, an equivalent of US\$ 3,296,364 has been recovered and the LFA will soon review the documents that support the specific transactions.

The Secretariat will continue to work closely with the OIG to speed up recovery of the remaining balance of US\$ 2,199,530.

- 1.6. **Zambia:** The Secretariat was alerted to fraud at MOH in May 2009. This led to an investigation by the Zambia Anti-Corruption Commission and later an audit by the OIG. The OIG audit reported a total loss of US\$ 10,819,835 in Zambia. Recovery of the losses from the Government PRs has progressed well and the Secretariat got a written commitment from the Zambia's authority on a scheduled mode of repayment. So far, US\$ 5,638,291 has been refunded through the Global Fund Trustees account. An additional US\$ 855,000 was subsequently cleared through LFA verification as adequately supported and accounted for.

Further, the Secretariat will continue to follow up and recover losses and funds that have not yet been reimbursed.

- 1.7. **Tanzania:** The US\$ 819,000 relates to the PR's failure to fully reconcile drug receipts with distribution and consumption figures. This was initially highlighted by the LFA and later picked up during the OIG audit. As a result the Secretariat withheld US\$ 1 million from subsequent funding.
- 1.8. **Haiti:** A total of US\$ 752,977 has since been recovered or accounted for. This includes US\$ 688,796 that relates to unaccounted for income generated by PSI from the sales of bed nets. An additional US\$ 64,181 has been accounted for and the supporting documents verified by the LFA. However, US\$ 1,253,869 has been contested by SOGEBANK following the audit and the OIG and Secretariat are working to resolve concerns raised by SOGEBANK.
- 1.9. **Democratic Republic of Congo:** No amount has been recovered so far from UNDP or the SRs in DRC. UNDP is in the process of establishing the exact amounts owed and due

from the SRs audited by the OIG. The Secretariat will work closely with the OIG and UNDP to speed up the recovery process.

- 1.10. **Philippines:** US\$ 255,312 has already been refunded to Global Fund as a credit to the World Bank Trustees account. The remaining US\$ 1.76 million has been disputed by TDF a former PR and on-going negotiations are likely to result in revised figures. Recovery will begin once concerns surrounding the losses identified by OIG have been address and all parties are clear on the amounts owed to Global Fund.

Process and Methodology for Legal Counsel Determination of an Entitlement to a Recovery Claim based upon OIG Findings and Conclusions³

When determining the presence of an adequate legal basis for a recovery claim by the Global Fund, Legal Counsel does not scrutinize the OIG's findings of fact, which are regarded as purely within the scope of work of the OIG. For example, Legal's analysis does not entail reviewing evidence obtained by the OIG that certain activities were not adequately supported by documentation, or that documentation submitted was forged, etc. Rather, Legal Counsel relies on the OIG's factual conclusions as presented in OIG reports and considers additional information provided in response thereto by implicated parties and the Secretariat.

In accordance with the purpose of the Board Policy on Communication of Losses and Recoveries, the Legal Counsel's analysis considers whether conclusions of recoverability drawn by the OIG could withstand attack by a PR in dispute situations, including within an arbitration setting. As such, the Legal Counsel's determination includes review of:

- i. The OIG's interpretation of applicable legal concepts, rules and obligations, including those contained in the Grant Agreement;
- ii. The reasonableness of the assumptions and methodology used by the OIG to form conclusions of law from its fact findings; and
- iii. The satisfaction of various elements of due process prior to initiation of recovery efforts, including provision of adequate time for responses by the applicable Country Coordinating Mechanism and entities involved, and due consideration of such responses as appropriate.

The approach adopted by the Legal Counsel respects the role of the OIG as finder of fact while ensuring the integrity of the Global Fund's legal claims. In this way, scrutiny of assumptions and methodology provides a check to ensure that the Global Fund is not subject to legal and/or reputational damage as a result of premature reimbursement claims that may lack sufficient legal bases or require further clarifications. The process for the conduct of this exercise by Legal Counsel is as follows:

1. Following receipt of the draft audit or investigation report by the OIG, the Legal Counsel initiates review of the legal bases for recovery of claims identified within the report and consults with the OIG and the Secretariat to seek clarifications, as needed.
2. Prior to the public release of the applicable audit or investigation report, the Legal Counsel and the Inspector General collaborate to reach consensus regarding the description and quantification of recoverable losses.

³ The process and methodology may be further refined based on lessons learned

3. The Legal Counsel issues a determination of the Global Fund's entitlement to make a claim for recovery, including assumptions relied upon, recommendations and reservations, if any. This determination is submitted to the Chair of each of the Finance and Operational Performance Committee and the Audit and Ethics Committee on a confidential basis, with copy to the Executive Director and Inspector General.⁴ Given the role of the Legal Counsel as legal advisor to the Global Fund, the determination is covered by attorney-client privilege and its circulation is restricted to intended recipients within the Global Fund.
4. The losses identified by the OIG are released to the Board and to the public in accordance with applicable Global Fund policies, with the note that the Legal Counsel has reviewed the loss figures and provided a legal determination pertaining to such figures.
5. The Secretariat initiates the recovery process based on the losses figures released by the OIG and with consideration of the determination issued by the Legal Counsel.

While it is the expectation of the Legal Counsel that consultations with the Inspector General will result in consensus concerning the description and quantification of losses, instances may arise entailing divergence between the loss figure identified by the OIG and the recoverable amount identified by the Legal Counsel. In such instances, the Legal Counsel will note this divergence as part of the guidance provided to the Chair of each of the Finance and Operational Performance Committee and the Audit and Ethics Committee.

This approach appropriately reconciles the findings of the OIG with the legal advisory responsibility of the Legal Counsel in a manner that (i) acknowledges the independence of the OIG in the reporting of its findings to the Board; (ii) ensures that the recovery claims brought by the Global Fund have a sound legal basis; and (iii) avoids potential reputational and legal risks associated with the issuance of inconsistent communications to the public by the Global Fund concerning losses.

⁴ In consideration of the current transition associated with the Governance Reform Initiative, the legal determination associated with the loss findings contained in Table 2 have been provided by the Legal Counsel to the Board Chair, rather than to the Chair of each of the Finance and Operational Performance Committee and the Audit and Ethics Committee.