



Independent observer
of the Global Fund

The Inspector General Complains and GFO's Editor Responds

Also: Open board discussions versus hallway negotiations

The Editor writes:

Inspector General. On 17 December 2010, GFO published a commentary (see www.aidspan.org/index.php?issue=136&article=3) in which Bernard Rivers, the GFO Editor, made some criticisms of the Fund's Inspector General, John Parsons.

Parsons wrote to the Editor later that day as follows:

I find it most unfortunate that you have mischaracterized and sought to diminish the significance of grant funds for which there is “undocumented expenditure”, drawing stark distinctions with “fraud” in your recent newsletter. First, as a legal matter, undocumented expenditure is indeed a “loss” under the terms of the Global Fund Grant Agreement, just as is fraud. It is axiomatic that the burden rests on the PR to demonstrate that the funds bestowed upon it in a fiduciary capacity are indeed used properly in furtherance of grant purposes, namely, to save lives. In addition to the Grant Agreement, the GF Legal Unit has issued an opinion firmly supporting this conclusion, and I would gladly provide it to you upon request.

Further, as a practical matter, through numerous investigations and audits throughout my career, as well as those of my staff, it is absolutely clear that one method of disguising diversion of grant funds is to eliminate, or fail to generate, appropriate records. Therefore, there is no question that in some instances, missing records are the result of nefarious acts.

As this is a critical issue, and your comments have potentially profound implications to the Global Fund

and the conduct of PRs, the OIG [Office of the Inspector General] would respectfully request that you make a clear and prominent correction to your report, and that prior to doing so, you share with me what you intend to say in draft.

I would also ask that you use the GFO Newsletter as a good medium to inform your readership of the complaints procedure agreed with the Chair/Vice Chair in February. I provided you with the details last night and it is unfortunate that you did not seek to relate what process is in place in the Newsletter you released this morning.

As a lesson learned it might have been sensible to have shared a draft of this material before release.

GFO is more than willing to issue corrections if it has reported facts incorrectly. But this is not the case here. In our opinion, the commentary did not “mischaracterize” anything, and did not make a “stark distinction” between undocumented expenditure and fraud. It made a stark distinction between (a) inadvertently failing to obtain/retain/provide documentation for an expenditure that genuinely happened and was justified, and (b) engaging in any form of fraud, including pretending to incur an expenditure which was not in fact incurred. The commentary said that anyone who engaged in the former is a fool, and that anyone who engaged in the latter is a thief.

In a subsequent email exchange, the Inspector General, after confirmation by the Global Fund’s Legal Unit, has requested GFO to make it clear (a) that the PR is legally required by the grant agreement to keep, and to produce upon request, authentic and accurate documentation which proves that all grant funds were used by the PR and its sub-recipients for appropriate and approved purposes, and (b) that failure to do so triggers the right of the Global Fund under the terms of the grant agreement to seek reimbursement of those funds that cannot be proved to have been properly used in furtherance of grant purposes.

Regarding the issue of a “complaints procedure”: Parsons said at the Board meeting that there is a complaints procedure whereby PRs who feel they have been badly treated by the OIG can lodge a protest that will be reviewed not just by the Inspector General, but also by the chair and vice-chair of the Board. As mentioned above, on 16 December Parsons forwarded to GFO an email exchange between Parsons, the Global Fund Chair, and the Global Fund Executive Director. Parsons says, above, that this exchange described a complaints procedure. In our view, a proper complaints procedure is one that describes the steps anyone can take if they feel they have grounds for complaint, as well as how the complaint will be handled. The forwarded email describes a process which nobody outside the Fund was told about, for the Fund to respond to OIG-related complaints if they happen to turn up.

We will be happy to write an article in GFO describing an OIG complaints procedure once we are informed exactly how complainants can trigger it and what will happen thereafter.

Board discussion. On another matter, we said in that same Commentary about the recent Global Fund board meeting that the compromise resolution on Rounds 10 and 11 that had been worked out by a small contact group was not discussed by board members before they approved it. It turns out that board members had discussed it, but only in various private meetings and in the hallways. By the time the compromise resolution was brought to the meeting, everyone apparently knew about it except observers, who – rightly – were not involved in those hallway negotiations.

The process and deliberations were not transparent, which is not good governance. On the other hand, if the entire discussion had taken place in the full board meeting, there would have been lots of posturing and very little compromise. Effective democracy is inevitably somewhat messy. So on balance, what happened was fine. But the Chair should have informed the full meeting how the decision was arrived at, and should have provided assurances that all board members were consulted.

