



## Investigation Report

# Global Fund grant in Burkina Faso

## Supplier wrongdoing in motorbikes purchase

GF-OIG-17-019  
1 September 2017  
Geneva, Switzerland

# What is the Office of the Inspector General?

*The Office of the Inspector General (OIG) safeguards the assets, investments, reputation and sustainability of the Global Fund by ensuring that it takes the right action to end the epidemics of AIDS, tuberculosis and malaria. Through audits, investigations and advisory work, it promotes good practice, reduces risk and reports fully and transparently on abuse.*

*Established in 2005, the OIG is an independent yet integral part of the Global Fund. It is accountable to the Board through its Audit and Finance Committee and serves the interests of all Global Fund stakeholders. Its work conforms to the International Standards for the Professional Practice of Internal Auditing and the Uniform Guidelines for Investigations of the Conference of International Investigators.*

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### Audit Report

OIG audits look at systems and processes, both at the Global Fund and in country, to identify the risks that could compromise the organization's mission to end the three epidemics. The OIG generally audits three main areas: risk management, governance and oversight. Overall, the objective of the audit is to improve the effectiveness of the Global Fund to ensure that it has the greatest impact using the funds with which it is entrusted.

### Advisory Report

OIG advisory reports aim to further the Global Fund's mission and objectives through value-added engagements, using the professional skills of the OIG's auditors and investigators. The Global Fund Board, committees or Secretariat may request a specific OIG advisory engagement at any time. The report can be published at the discretion of the Inspector General in consultation with the stakeholder who made the request.

### Investigations Report

OIG investigations examine either allegations received of actual wrongdoing or follow up on intelligence of fraud or abuse that could compromise the Global Fund's mission to end the three epidemics. The OIG conducts administrative, not criminal, investigations. Its findings are based on facts and related analysis, which may include drawing reasonable inferences based upon established facts.

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# 1. Executive Summary

## 1.1. Summary Paragraph

In June 2014, a local supplier in Burkina Faso, Sogedim-BTP Sarl (Sogedim), delivered 35 counterfeit motorbikes, valued at EUR73,366,<sup>1</sup> to the Principal Recipient, PAMAC-SP/CNLS.<sup>2</sup> The motorbikes were needed to provide community program services to people affected by tuberculosis. The investigation confirmed that the supplier, Sogedim, engaged in fraudulent practices in the supply of counterfeit and low-quality motorbikes and did not cooperate with reasonable requests for information from the Global Fund during the investigation. The terms and conditions of the Principal Recipient's purchase contract were not clear, allowing it to accept the irregular delivery. The Principal Recipient did not take sufficient action against the supplier and the motorbikes have not been used. Nor has the supplier replaced the motorbikes to date. Notwithstanding the above OIG findings, the Global Fund Secretariat has considerably improved risk mitigation measures for the Burkina Faso portfolio. For example, independent third parties like UNICEF and UNOPS now conduct local procurement of all major non-health products.

## 1.2. Main OIG Findings

Based on the evidence it found, the OIG investigation concluded that Sogedim deceived the Principal Recipient regarding the nature of the products provided and profited from the difference in value between what it delivered and what was in its bid.

The motorbikes were not put to use immediately after delivery due to an incorrect category of number plate registration. They were stored at sub-recipients' locations awaiting the change of number plates. The sub-recipient noticed the rapidly deteriorating condition of the motorbikes and alerted the Principal Recipient.

Following the alert, an independent technical evaluation firm retained by the Principal Recipient concluded that the motorbikes were counterfeits of an internationally recognized brand (Yamaha V80 model). Sogedim refuted the evaluation firm's findings yet did not produce documentation, either to the Principal Recipient or to the OIG, certifying the authenticity of the motorbikes, confirming their manufacturing origin, or validating their shipping and importation. Sogedim also declined the Principal Recipient's request to replace the counterfeit motorbikes. Sogedim has not been used again for any other Global Fund financed contracts in Burkina Faso.

The Principal Recipient's contractual provisions were vague and did not include the Code of Conduct for Suppliers of the Global Fund as mandated by the Grant Agreement. The contractual provisions did not explicitly allow the Principal Recipient to hold the supplier accountable for the quality of the products delivered. Also, the Principal Recipient was unable to demonstrate to the OIG that it took prompt and appropriate remedial actions once it had become aware of the non-compliance of its supplier, as required by Section 8 of the Global Fund's Code of Conduct for Recipients of Global Fund Resources.<sup>3</sup> The actions of the Principal Recipient, therefore, contributed to a loss for the Global Fund.

The investigation concluded that EUR73,366 is non-compliant expenditure as per the terms and conditions of the Global Fund's grant agreement with the Principal Recipient. The supply of counterfeit motorbikes, rather than the brand model described in the bid proposal, is a breach of the Global Fund's Code of Conduct for Suppliers. Paragraph 10 of the code requires that "suppliers and supplier representatives will not, directly or indirectly, including through an agent or other intermediary, engage in corrupt, fraudulent, collusive, anticompetitive or coercive practices in bidding for, or performing, a Global Fund-financed contract or activity."<sup>4</sup> Additionally, by not fully cooperating with the OIG's request for information, Sogedim did not comply with paragraph 17 of the code, which requires

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<sup>1</sup> FCFA 48,125,000

<sup>2</sup> National Council for the Fight against HIV/AIDS and STI of the Government of Burkina Faso for the National network linking community groups of people living with HIV and AIDS (Programme d'Appui au Monde Associatif et Communautaire)

<sup>3</sup> [https://www.theglobalfund.org/media/6013/corporate\\_codeofconductforrecipients\\_policy\\_fr.pdf](https://www.theglobalfund.org/media/6013/corporate_codeofconductforrecipients_policy_fr.pdf)

<sup>4</sup> [https://www.theglobalfund.org/media/3275/corporate\\_codeofconductforsuppliers\\_policy\\_en.pdf](https://www.theglobalfund.org/media/3275/corporate_codeofconductforsuppliers_policy_en.pdf)

<sup>1</sup> September 2017

Geneva, Switzerland

suppliers and suppliers' representatives to cooperate with the Global Fund and comply with any reasonable request for documentation, account and records.

The Secretariat's Burkina Faso country team was not alerted by the Principal Recipient to the counterfeit supply of motorbikes until July 2015, a year after the wrongdoing had occurred. Moreover, the incident was not reported by the Secretariat to the OIG until December 2016, a further delay of 18 months and more than two years since the fraud occurred. The OIG found that a lack of understanding of when to report such issues contributed to the delay, despite having clear policies in the Global Fund. As part of its anti-corruption efforts, under the '[I Speak Out Now!](#)' banner, the OIG encourages both the Secretariat and implementers to report fraud and corruption as early as possible to avoid the risk of compromising grant objectives.

### 1.3. Actions Already Taken

The Global Fund's Secretariat has considerably improved risk mitigation measures for the Burkina Faso portfolio since the procurement of the motorbikes in response to an earlier investigation by the OIG (published in late 2015). The earlier investigation exposed large-scale procurement of counterfeit Long Lasting Insecticidal Nets (LLIN) by one of the Governmental Principal Recipients during the year 2010. These enhanced risk mitigation measures include:

- procurements of all health products for Burkina Faso are carried out through the pooled procurement mechanism coordinated centrally by the Global Fund,
- local procurement of all major non-health products for different Principal Recipients go through independent third parties like UNICEF and UNOPS, and
- a fiscal agent verifies and provides assurance on program implementation by different implementers in a more proactive manner.

### 1.4. Summary of Agreed Management Actions

The Global Fund Secretariat and the OIG have agreed on specific actions, which are detailed in Section 5 of this report, and include:

- The recovery of an appropriate amount based on the findings of this report
- Appropriate action against the supplier through the policy on supplier misconduct and the Global Fund Sanctions Panel procedures

## 2. Context

### 2.1. Country Context




Burkina Faso is one of the poorest countries in the world, with nearly half of the country's population living below the poverty line. Its population, estimated at 18 million inhabitants in 2015, grows annually at 3% thanks to declining mortality<sup>5</sup> linked to improved health care, hygiene, and sanitation combined with high fertility and birth rates. It has suffered from recurring droughts, military coups and power struggles, and has faced concerns over the state of its economy and human rights.<sup>6</sup> In recent years, Burkina Faso has also put in place a set of reforms aimed at moving towards universal access to health services with a social health protection scheme.



Burkina Faso ranks 72 out of 176 countries evaluated in the Corruption Perceptions Index 2016 published by Transparency International.<sup>7</sup> Corruption remains a pervasive challenge in all sectors of the economy and government. Although new anti-corruption legislation was introduced in 2015 to broaden the anti-corruption legal framework of the country, implementation is still lacking.<sup>8</sup>

### 2.2. Differentiation Category for Country Investigations

The Global Fund has classified the countries in which it finances programs into three overall portfolio categories: focused, core and high impact. These categories are primarily defined by the size of allocation amount, disease burden and impact on the Global Fund's mission to end the three epidemics. Countries can also be classed into two cross-cutting categories: Challenging Operating Environments and those under the Additional Safeguard Policy. Challenging Operating Environments are countries or regions characterized by weak governance, poor access to health services, and man-made or natural crises. The Additional Safeguard Policy is a set of extra measures that the Global Fund can put in place to strengthen fiscal and oversight controls in a particularly risky environment.

Burkina Faso is:

-  Focused: (Smaller portfolios, lower disease burden, lower mission risk)
-  **Core: (Larger portfolios, higher disease burden, higher risk)**
-  High Impact: (Very large portfolio, mission critical disease burden)

-  *Challenging Operating Environment*
-  *Additional Safeguard Policy*

### 2.3. Global Fund Grants in the Country

As of 19 June 2017, the Global Fund had disbursed a total of EUR342.2 million<sup>9</sup> (US\$390.5 million) to Burkina Faso, out of a total commitment of EUR358 million<sup>10</sup> (US\$408.5 million). The tuberculosis program grant, BUR-810-G11-T, concerned by this investigation, ended on 31 May 2015 and is currently under financial closure. The Global Fund, however, continues to invest in and implement tuberculosis programs in Burkina Faso through another implementer. The Global Fund has five active grants in Burkina Faso for the three disease components with a total commitment of EUR169.9 million and an un-disbursed amount EUR30.7 million.

<sup>5</sup> World Bank 2015 - <http://www.worldbank.org/en/country/burkinafaso>

Note: according to the CIA World Factbook updated 1 May 2017, the population is 19.5M <https://www.cia.gov/library/publications/the-world-factbook/geos/uv.html>

<sup>6</sup> <http://www.bbc.com/news/world-africa-13072774>

<sup>7</sup> <https://www.transparency.org/country/BFA>

<sup>8</sup> <http://www.business-anti-corruption.com/country-profiles/burkina-faso>

<sup>9</sup> Based on the exchange rate as of 30 June 2017, i.e., 1 Euro = 1.14093 USD as per Oanda.com

<sup>10</sup> Based on the exchange rate as of 30 June 2017, i.e., 1 Euro = 1.14093 USD as per Oanda.com  
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The Global Fund is a key partner of the government in the health sector. Multidrug-resistant TB and TB/HIV co-infection remain priority areas for future investments. In a country with one of the highest malaria burdens in the Africa, the Global Fund's investment is crucial and demonstrates impact through increased access to diagnosis and treatment. The country is facing a generalized HIV epidemic with high prevalence in key populations such as men who have sex with men and sex workers.

## 2.4. The Three Diseases



**HIV/AIDS<sup>11</sup>:** Burkina Faso is facing a generalized HIV epidemic with high prevalence in sub-populations (men who have sex with men, sex workers).

The most vulnerable groups are children under the age of five and pregnant women.

Early infant diagnosis rate is 30%

89% coverage of HIV positive pregnant women receive antiretroviral treatment

**110,000 People living with HIV**  
**Infection prevalence rate of 1%**  
**57,000 People currently on antiretroviral therapy**



**Malaria<sup>12</sup>:** Burkina Faso has one of the highest malaria burdens among the Africa region (fourth expressed as a proportion of the population). Burkina Faso is Global Fund's eight largest portfolio in terms of malaria disease burden.

Malaria is a priority health problem as it is the leading cause of consultation (46.5%), hospitalization (61.5%) and death (30.5%).

The most vulnerable groups are children under the age of five and pregnant women. In 2016, the Government introduced targeted gratuity, providing ACT treatment free of charge to children under 5 and pregnant women.

**7 million cases estimated annually**  
**2.9% of global malaria burden in Burkina Faso**  
**15,000 deaths estimated annually**  
**More than 20 million Insecticide-treated nets distributed**



**Tuberculosis<sup>13</sup>:** Tuberculosis is also one of the public health problems in the country. Multidrug-resistant TB and TB/HIV co-infection remain priority areas for future investments.

TB mortality is 11% partly due to lack of case notification and cases diagnosed in late stages

Multi-drug resistant tuberculosis remains a problem. In 2012, WHO estimated the proportion of MDR-TB cases among TB cases which had already been treated at 19% (75 cases) and the proportion of MDR-TB cases among new TB cases at 1.8% (79 cases).

**5,808 TB cases detected in 2015**  
**60% TB treatment coverage**  
**81% treatment success rate for new and relapse cases in 2014**  
**22,600 New smear-positive TB cases detected and treated**

<sup>11</sup> Information collated from UNAIDS Aidsinfo and the Global Fund Concept notes and Burkina Faso country profile at <https://www.theglobalfund.org/en/portfolio/country/?loc=BFA&k=5f1b1f25-2479-438c-a84f-8093d3477a36>

<sup>12</sup> Information collated from World Malaria Report 2016 and the Global Fund Concept notes and Burkina Faso country profile at <https://www.theglobalfund.org/en/portfolio/country/?loc=BFA&k=5f1b1f25-2479-438c-a84f-8093d3477a36>

<sup>13</sup> Information collated from World Health Organization, Global Tuberculosis Report and the Global Fund Concept notes and Burkina Faso country profile at <https://www.theglobalfund.org/en/portfolio/country/?loc=BFA&k=5f1b1f25-2479-438c-a84f-8093d3477a36>  
 1 September 2017



## 3. The Investigation at a Glance

### 3.1. Genesis and Scope of the Investigation

**June 2014:** Start of wrongdoing

**December 2016:** OIG alerted to wrongdoing

#### Source of the alert:

<input checked="" type="checkbox"/>	Secretariat
<input type="checkbox"/>	Principal Recipient
<input type="checkbox"/>	Sub-Recipient
<input type="checkbox"/>	Local Fund Agent
<input type="checkbox"/>	Anonymous whistle-blower
<input type="checkbox"/>	Audit referral
<input type="checkbox"/>	Other

On December 13, 2016, the Secretariat shared communication with the OIG about a delivery of 35 counterfeit motorbikes in June 2014, totaling EUR73,366 (FCFA 48,125,000). The Principal Recipient, PAMAC-SP/CNLS, made this purchase from Sogedim, a local supplier.

The beneficiaries of the motorbikes, sub-recipients of PAMAC-SP/CNLS, were concerned about the deteriorating quality of motorbikes while they were in storage. The Principal Recipient subsequently asked the supplier to provide a certificate of authenticity of the motorbikes and to replace them. The supplier did not comply. Later in January 2015, an independent technical verification of the motorbikes by the Principal Recipient confirmed that they were a low-quality counterfeit of a Yamaha V80 model as described in the bidding document.

The Principal Recipient did not follow up with the supplier or take any legal action.

### 3.2. Type of Wrongdoing Identified

<input type="checkbox"/>	Coercion
<input type="checkbox"/>	Collusion
<input type="checkbox"/>	Corruption
<input checked="" type="checkbox"/>	Fraud
<input type="checkbox"/>	Human Rights Issues
<input checked="" type="checkbox"/>	Non-Compliance with Grant Agreement
<input checked="" type="checkbox"/>	Product Issues

### 3.3. Non-Compliant Expenditure

**EUR73,366 (FCFA 48,125,000):** The OIG investigation found that the counterfeit supply of 35 motorbikes from Sogedim to the Principal Recipient amounting to EUR73,366 (FCFA 48,125,000) is a non-compliant expenditure as per the terms and conditions of the Global Fund grant agreement.

### 3.4. Proposed Recoverable Amount

**EUR73,366 (FCFA 48,125,000):** The OIG found that the low-quality counterfeit motorbikes purchased by the Principal Recipient were not used for programmatic purposes. The OIG proposes the entire non-compliant expenditure of EUR73,366 (FCFA 48,125,000) as a proposed recoverable amount.



### 3.5. Progress on Previously Identified Issues

An OIG investigation in Burkina Faso in 2015 found sub-standard and untreated counterfeit mosquito nets valued at EUR9.1 million, bought through local suppliers. The nets did not meet the requisite World Health Organization recommendations, posing a significant public health risk. The Secretariat agreed to seek recovery of the full non-compliant amount of EUR9.1 million. The Government of Burkina Faso has already paid around EUR1.57 million, and the remaining amount will be paid in annual installments through to September 2020. In addition to the ongoing recoveries, and to address the control gaps that were identified in this investigation, the Secretariat has also implemented the additional mitigation measures discussed in Section 1.3 above.

#### **Previous relevant OIG work**

GF-OIG-15-019  
[Investigation of Global Fund grants in Burkina Faso](#)

## 4. Findings

### 4.1. Supplier engaged in fraudulent practices when supplying low quality and counterfeit motorbikes and did not fully cooperate with the investigation

The investigation found that the motorbikes supplied by Sogedim remained in storage pending changes to the number-plates originally provided by the supplier and due to quality concerns raised by the sub-recipients of PAMAC-SP/CNLS. Due to their poor quality, the motorbikes were not used for the Global Fund program's purposes.

An independent evaluation carried out by the Principal Recipient confirmed that the motorbikes were counterfeits of a Yamaha V80 model, the model described by the supplier in its bidding documents. The technical evaluation found that:

- the hood and accessories such as headlamp, indicator, mirror and ignition key were fragile and of bad quality
- the drum brake was much weaker than in the original Yamaha motorbikes
- the exhaust pipe and petrol tank were different from the original Yamaha motorbikes
- the central foot rest was not in conformity with the Yamaha model
- the fuel tap was counterfeit, the flywheel case and the clutch were also of inferior quality compared with the Yamaha motorbikes
- the bikes made a different sound compared to the Yamaha product and the paint used was also of bad quality

The OIG found that, by supplying counterfeit motorbikes rather than the specific model described in its bidding documents, Sogedim misrepresented information. The OIG finds that Sogedim intentionally provided counterfeit products, rather than the Yamaha product described in its bidding documents. Therefore, Sogedim engaged in fraudulent practices and did not comply with paragraph 10 of the Global Fund's Code of Conduct for Suppliers<sup>14</sup>. Paragraph 10 of the Global Fund's Code of Conduct for Suppliers requires that they do not engage in fraudulent practices in bidding for, or performing, a Global Fund-financed contract or activity.

The supplier did not fully cooperate with the Principal Recipient's request to provide a certificate of authenticity and to replace the counterfeit motorbikes. Instead of acting in good faith and replacing the motorbikes, the supplier protested that the Principal Recipient's request to replace the motorbikes fell outside the 15-day deadline after the date of delivery as per the conditions of the tender dossier.

To reconcile the issue with Sogedim, in April 2015, the Principal Recipient approached 'L'Autorité de Regulation de la Commande Publique' (ARCOP), a public procurement regulatory authority also responsible for non-judicial settlement of disputes in public procurement. However, Sogedim did not appear at the hearing and the matter remained unresolved.

To confirm the origin of the motorbikes, the OIG also requested a certificate of origin of the motorbikes from Sogedim together with related bills of lading and import documentation. The supplier, however, has not provided the documentation to date.

By not answering the OIG's request, Sogedim did not comply with paragraph 17 of the Global Fund's Code of Conduct for Suppliers. Paragraph 17 of the Code of Conduct requires suppliers and their representatives to cooperate and to comply with any reasonable request by the Global Fund, to allow

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<sup>14</sup> [https://www.theglobalfund.org/media/3275/corporate\\_codeofconductforsuppliers\\_policy\\_en.pdf](https://www.theglobalfund.org/media/3275/corporate_codeofconductforsuppliers_policy_en.pdf)

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access to relevant staff, in order to inspect any relevant accounts and records and other documents relating to bidding for or performing Global Fund-financed contracts.

The OIG notes that Sogedim was not directly bound by the terms of the Code of Conduct for Suppliers of the Global Fund, as the Principal Recipient neglected to incorporate this code into its contract, as mandated by the Grant Agreement. Nevertheless, the Principal Recipient is responsible for breaches by its suppliers of the terms of the Code of Conduct for Suppliers, under article 21.b of the Standard Terms and Conditions of the Grant Agreement.

Sogedim was not contracted for any other major procurements under Global Fund grants in Burkina Faso.

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#### **Agreed Management Action 1**

Based on the findings of this report, the Secretariat will finalize and pursue an appropriate recoverable amount. This amount will be determined by the Secretariat in accordance with its evaluation of applicable legal rights and obligations and associated determination of recoverability.

Owner: Chair, Recoveries Committee

Target date: 31 December 2017

Category: Financial & Fiduciary Risks

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#### **Agreed Management Action 2**

Based on the findings of this report, the Secretariat will address the supplier misconduct in accordance with the Secretariat's policy on supplier misconduct and the Sanctions Panel Procedures.

Owner: Head Grant Management

Target date: 31 March 2018

Category: Governance, Oversight and Management Risks

## 4.2. Inadequate terms and conditions in Principal Recipient motorbike purchase contract which allowed irregular delivery acceptance

The OIG investigation found that the terms and conditions of the contract did not require the supplier to provide a certificate of authenticity and assist in arranging for a specific category of number plates registration for the motorbikes to be used in the programs. The contract also did not incorporate the Code of Conduct for Suppliers of the Global Fund, as mandated by the grant agreement.

The Principal Recipient did not provide a clear and accurate description of the product in the contract to purchase the motorbikes. For example, the purchase contract included only general specifications as detailed in the Principal Recipient's request for a tender document, rather than the specific model described in the bidding documents by the supplier. While there was an expectation that the delivered product would correspond to the accepted bid; this uncertainty caused further confusion and doubt in the follow-up actions by the Principal Recipient.

Nevertheless, the motorbikes delivered bore the Yamaha logo and design, and the outward appearance of the V80 model. This is the basis for finding the product counterfeit.

The delivery acceptance commission, comprising of six people selected by the Principal Recipient, accepted the delivery of the motorbikes. The commission did not check the origin of the motorbikes as it was not specified in the contractual terms and conditions. The commission confirmed, after physical inspection, that the motorbikes were compliant with the model described in the supplier's bidding documentation.

The program coordinator, PAMAC-SP/CNLS, informed the OIG that it was difficult for the delivery commission to identify that the motorbikes were counterfeits of the Yamaha V80 model through a physical verification rather than an expert technical verification.

The sub-recipients could not use the motorbikes immediately as the supplier arranged the wrong category of number plate's registration. The Principal Recipient thereby provisionally accepted the delivery with the wrong category of number plates and instructed the supplier to assist in altering the number plate's category in June 2014.

While the Principal Recipient was waiting for the change of number plates, the sub-recipients raised concerns about the poor quality of the motorbikes. In January 2015, a technical verification of the motorbikes by an expert technical evaluation firm hired by the Principal Recipient identified that the motorbikes were in fact counterfeit.

The Principal Recipient did not provide any documented proof of communications with different stakeholders to demonstrate that:

- it had requested the supplier to change the specific category of number plates of the motorbikes;
- between June 2014 and November 2014, before the motorbikes were identified as counterfeit, it had followed up with the supplier regularly and diligently to address the number plates and quality issues; and
- it had ensured that the Global Fund's Code of Conduct for Suppliers was communicated to the supplier as per Article 21 (d) of the terms and conditions of the Global Fund grant agreement (refer annex A);

### 4.3. The Principal Recipient's actions following the supplier wrongdoing failed to mitigate consequences to the program

The OIG found that the Principal Recipient did not act in a timely and diligent manner following the delivery of counterfeit motorbikes by Sogedim.

The Principal Recipient requested the supplier to change the number plates in June 2014 and waited until November 2014, to request a certificate of authenticity. During this period, the motorbikes remained unused. No communication trail between the Principal Recipient and the supplier was found. In the absence of communications for five months, the OIG found that the Principal Recipient failed to demonstrate that it had taken prompt and appropriate corrective actions to avoid resources lying idle, or that it had taken other remedial actions to ensure that programmatic activities were not otherwise impacted. Notably, it did not inform the Global Fund of the issue during this period.

As per section 8 of the Global Fund's Code of Conduct for Recipients of Global Fund Resources, recipients of the Global Fund grants are required to exercise diligence in regularly examining program operations and taking timely and appropriate remedial or corrective actions.

Subsequently, the Principal Recipient requested a certificate of authenticity from the supplier after the sub-recipients had raised concerns about the quality of motorbikes. The Principal Recipient hired an independent technical expert firm, to evaluate the motorbikes. In January 2015, the technical expert firm confirmed that the motorbikes were poor quality counterfeits of the Yamaha V80 model. On 12 February 2015, the Principal Recipient asked Sogedim to replace the motorbikes. However, Sogedim refused to replace the counterfeit motorbikes in a letter dated 25 February 2015.

In April 2015, a month before the scheduled Global Fund grant closure date, the Principal Recipient referred the case to the Permanent Secretary of SP/CNLS and requested assistance from the Judicial Agency of the Treasury (JAT). The Permanent Secretary of SP/CNLS, however, followed up with JAT only in July 2015, more than two months later. During these two months, no communication trail between the Principal Recipient and the Permanent Secretary of SP/CNLS was available to demonstrate that the Principal Recipient had diligently followed up on this issue.

JAT answered on 8 July 2015 directing the Principal Recipient to the local reconciliatory body, ARCOP. The Principal Recipient applied to ARCOP in August 2015 to request the reconciliation; however, Sogedim did not appear at the hearing. Thus, the reconciliation was unsuccessful.

After that, JAT, in a letter dated 6 May 2016, indicated that a reconciliatory report was mandatory for the Principal Recipient to file a litigation case against Sogedim. JAT did not refer to a specific legal statute that required a reconciliatory report for the Principal Recipient to initiate a legal action against Sogedim. In contradiction with JAT, ARCOP concluded that, as per Article 37 of the 'décret#2014-554/PRES/PM', the affected parties could initiate legal action 15 working days after the request for reconciliation, notwithstanding the absence of a report of non-reconciliation.

The OIG found that the Principal Recipient has taken no further action to date since September 2016. The program coordinator, PAMAC-SP/CNLS, explained that the Principal Recipient was awaiting clarifications from JAT to file a legal case in the absence of a reconciliatory report from ARCOP. Because of the circumstances described above, the motorbikes have not been used for community outreach programmatic purposes. It is not possible to make a causal link between the unavailability of the motorbikes and the performance of the program as a whole. However, the Principal Recipient has generally underperformed on indicators linked to several monitoring and intervention activities. The Principal Recipient purchased the motorbikes to address several program delivery challenges previously raised by them. This included lack of transport as a major constraint for implementing partners, particularly for those carrying out community support services; remote location of many homes, making it difficult for outreach workers to follow-up; and the inability of community actors to locate homes of TB patients lost to follow-up and absentees from treatment without adequate transportation.

The program coordinator, PAMAC-SP/CNLS, refuted the indirect impact of the non-usage of motorbikes on the program's performance indicators. The coordinator claimed that the only impact was on the program indicator related to the number of TB patients who received services in the community. He further claimed that the lack of motorbikes had a minimal impact, as only 35 out of 200 sites were budgeted to use the motorbikes.

## 5. Table of Agreed Actions

<b>Proposed Agreed Management Action</b>	<b>Proposed Target date</b>	<b>Owner</b>	<b>Category</b>
1. Based on the findings of this report, the Secretariat will finalize and pursue an appropriate recoverable amount. This amount will be determined by the Secretariat in accordance with its evaluation of applicable legal rights and obligations and associated determination of recoverability.	31 December 2017	Recoveries Committee	Financial & Fiduciary Risks
2. Based on the findings of this report, the Secretariat will address the supplier misconduct in accordance with the Secretariat's the Secretariat's policy on supplier misconduct and the Sanctions Panel Procedures.	31 March 2018	Head Grant Management	Governance, Oversight and Management Risks



## Annex A: Methodology

The Investigations Unit of the OIG is responsible for conducting investigations of alleged fraud, abuse, misappropriation, corruption and mismanagement (collectively, “fraud and abuse”) within Global Fund financed programs and by Principal Recipients and Sub-recipients, (collectively, “grant implementers”), Country Coordinating Mechanisms and Local Fund Agents, as well as suppliers and service providers.<sup>15</sup>

While the Global Fund does not typically have a direct relationship with the recipients’ suppliers, the scope of the OIG’s work<sup>16</sup> encompasses the activities of those suppliers about the provision of goods and services. The authority required to fulfill this mandate includes access to suppliers’ documents and officials.<sup>17</sup> The OIG relies on the cooperation of these suppliers to discharge its mandate properly.<sup>18</sup>

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

OIG conducts administrative, not criminal, investigations. Its findings are based on facts and related analysis, which may include drawing reasonable inferences based upon facts. Findings are established by a preponderance of credible and substantive evidence. All available evidence is considered by the OIG, including inculpatory and exculpatory information.<sup>19</sup>

The OIG finds, assesses and reports on facts. On that basis, it determines the compliance of expenditures with the grant agreements and details risk-prioritized Agreed Management Actions. Such Agreed Management Actions may notably include the identification of expenses deemed noncompliant for considerations of recovery, recommended administrative action related to grant management and recommendations for action under the Code of Conduct for Suppliers<sup>20</sup> or the Code of Conduct for Recipients of Global Fund Resources<sup>21</sup> (the “Codes”), as appropriate. The OIG does not determine how the Secretariat will address these determinations and recommendations. Nor does it make judicial decisions or issue sanctions.<sup>22</sup>

Agreed Management Actions are agreed with the Secretariat to identify, mitigate and manage risks to the Global Fund and its recipients’ activities. The OIG defers to the Secretariat and, where appropriate, the recipients, their suppliers and/or the concerned national law enforcement agencies, for action upon the findings in its reports.

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<sup>15</sup> Charter of the Office of the Inspector General (19 March 2013), available at:

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

<sup>16</sup> Charter of the Office of the Inspector General (19 March 2013) § 2, 9.5 and 9.7.

<sup>17</sup> Ibid., § 17.1 and 17.2

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

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

<sup>19</sup> These principles comply with the *Uniform Guidelines for Investigations*, Conference of International Investigators, June 2009; available at: <http://www.un.org/Depts/oios/pages/uniformguidelines.html>, accessed 01 November 2013.

<sup>20</sup> See fn. 16, *supra*

<sup>21</sup> Code of Conduct for Recipients of Global Fund Resources (16 July 2012) available at:

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

<sup>22</sup> Charter of the Office of the Inspector General (19 March 2013) § 8.1

1 September 2017  
Geneva, Switzerland

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

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

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

## 01 Applicable Concepts of Fraud and Abuse

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

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

Such agreements with Sub-recipients must notably include pass-through access rights and commitments to comply with the Codes. The Codes clarify the way in which recipients are expected to abide by the values of transparency, accountability and integrity which are critical to the success of funded programs. Specifically, the Code of Conduct for Recipients prohibits recipients from engaging in corruption, which includes the payment of bribes and kickbacks about procurement activities.<sup>23</sup>

The Codes notably provide the following definitions of the relevant concepts of wrongdoings:<sup>24</sup>

- “Anti-competitive practice” means any agreement, decision or practice which has as its object or effect the restriction or distortion of competition in any market.
- “Collusive practice” means an arrangement between two or more persons or entities designed to achieve an improper purpose, including influencing improperly the actions of another person or entity.
- “Conflict of Interest”: A conflict of interest arises when a Recipient or Recipient Representative participates in any particular Global Fund matter that may have a direct and predictable effect on a financial or other interest held by: (a) the Recipient; (b) the Recipient Representative; or (c) any person or institution associated with the Recipient or Recipient Representative by contractual, financial, agency, employment or personal relationship. For instance, conflicts of interest may exist when a Recipient or Recipient Representative has a financial or other interest that could affect the conduct of its duties and responsibilities to manage Global Fund Resources. A conflict of interest may also exist if a Recipient or Recipient Representative’s financial or other interest compromises or undermines the trust that Global Fund Resources are managed and utilized in a manner that is transparent, fair, honest and accountable.
- “Corrupt practice” means the offering, promising, giving, receiving or soliciting, directly or indirectly, of anything of value or any other advantage to influence improperly the actions of another person or entity.
- “Fraudulent practice” means any act or omission, including a misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a person or entity to obtain a financial or other benefit or to avoid an obligation.

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<sup>23</sup> Code of Conduct for Recipients of Global Fund Resources, section 3.4.

<sup>24</sup> Available at: <http://theglobalfund.org/documents/corporate/CorporateCodeOfConductForRecipientsPolicyen/> and [http://theglobalfund.org/documents/corporate/Corporate\\_CodeOfConductForSuppliers\\_Policy\\_en/](http://theglobalfund.org/documents/corporate/Corporate_CodeOfConductForSuppliers_Policy_en/)

- “Misappropriation” is the intentional misuse or misdirection of money or property for purposes that are inconsistent with the authorized and intended purpose of the money or assets, including for the benefit of the individual, entity or person they favor, either directly or indirectly.

## 02 Determination of Compliance

The OIG presents factual findings which identify compliance issues by the recipients with the terms of the Global Fund’s Standard Terms and Conditions (STC) of the Program Grant Agreement. Such compliance issues may have links to the expenditure of grant funds by recipients, which then raises the issue of the eligibility of these expenses for funding by the Global Fund. Such noncompliance is based on the provisions of the STC.<sup>25</sup> The OIG does not aim to conclude on the appropriateness of seeking refunds from recipients, or other sanctions based on the provisions of the Program Grant Agreement.

Various provisions of the STC provide guidance on whether a program expense is eligible for funding by the Global Fund. It is worth noting that the terms described in this section are to apply to Sub-Recipients as well as Principal Recipients.<sup>26</sup>

At a very fundamental level, it is the Principal Recipient’s responsibility “to ensure that all grant funds are prudently managed and shall take all necessary action to ensure that grant funds are used solely for Program purposes and consistent with the terms of this Agreement”.<sup>27</sup>

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

Even when the expenses are made in line with approved budgets and work plans, and properly accounted for in the program’s books and records, such expenses must be the result of processes and business practices which are fair and transparent. The STC specifically require that the Principal Recipient ensure that: (i) contracts are awarded on a transparent and competitive basis, [...] and (iv) that the Principal Recipient and its representatives and agents do not engage in any corrupt practices as described in Article 21(b) of the STC in relation to such procurement.<sup>28</sup>

The STC explicitly forbid engagement in corruption or any other related or illegal acts when managing Grant Funds: “The Principal Recipient shall not, and shall ensure that no Sub-recipient or person affiliated with the Principal Recipient or any Sub-recipient [...] participate(s) in any other practice that is or could be construed as an illegal or corrupt practice in the Host Country.”<sup>29</sup>

Amongst prohibited practices is the rule that the Principal Recipient shall not and shall ensure that no person affiliated with the Principal Recipient “engage(s) in a scheme or arrangement between two or more bidders, with or without the knowledge of the Principal or Sub-recipient, designed to establish bid prices at artificial, non-competitive levels.”<sup>30</sup>

The Global Fund’s Code of Conduct for Suppliers and Code of Conduct for Recipients further provide for additional principles by which recipients and contractors must abide, as well as remedies in case of breaches of said fundamental principles of equity, integrity and good management. The Codes also provide useful definitions of prohibited conducts.<sup>31</sup>

<sup>25</sup> The STC are revised from time to time, but the provisions quoted below applied to all Principal Recipients at the time of the investigation.

<sup>26</sup> Standard Terms and Conditions (2012.09) at Art. 14(b):

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

<sup>27</sup> Id. at Art. 9(a) and Art 18(f)

<sup>28</sup> Id. at Art. 18(a)

<sup>29</sup> Id., at Art. 21 (b)

<sup>30</sup> Id. at Art. 21(b)

<sup>31</sup> Available at: <http://www.theglobalfund.org/documents/corporate/CorporateCodeOfConductForSuppliersPolicyen> ;

The Codes are integrated into the STC through Article 21(d) under which the Principal Recipient is obligated to ensure that the Global Fund's Code of Conduct for Suppliers is communicated to all bidders and suppliers.<sup>32</sup> It explicitly states that the Global Fund may refuse to fund any contract with suppliers found not to be in compliance with the Code of Conduct for Suppliers. Similarly, Article 21(e) provides for communication of the Code of Conduct for Recipients to all Sub-recipients, as well as mandatory application through the Sub-recipient agreements.<sup>33</sup>

Principal Recipients are contractually liable to the Global Fund for the use of all grant funds, including expenses made by Sub-recipients and contractors.<sup>34</sup>

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

### 03 Reimbursements or Sanctions

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

Such remedies may notably include the recovery of funds compromised by contractual breaches. Article 27 of the STC stipulates that the Global Fund may require the Principal Recipient “to immediately refund the Global Fund any disbursement of the grant funds in the currency in which it was disbursed [in cases where] there has been a breach by the Principal Recipient of any provision of this (sic) Agreement [...] or the Principal Recipient has made a material misrepresentation with respect to any matter related to this Agreement.”<sup>35</sup>

According to Article 21(d), “in the event of non-compliance with the Code of Conduct, to be determined by the Global Fund in its sole discretion, the Global Fund reserves the right not to fund the contract between the Principal Recipient and the Supplier or seek the refund of the grant funds in the event the payment has already been made to the Supplier.”<sup>36</sup>

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

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

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

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<http://www.theglobalfund.org/documents/corporate/CorporateCodeOfConductForRecipientsPolicyen>

<sup>32</sup> Standard Terms and Conditions (2012.09) at Art. 21(d)

<sup>33</sup> Id. at Art. 21(e)

<sup>34</sup> Id. at Art. 14

<sup>35</sup> Id. at Art. 27(b) and (d)

<sup>36</sup> Id.

## Annex B: Summary of Subject Responses

On 17 May 2017, the OIG provided PAMAC-SP/CNLS and the supplier, Sogedim, with a copy of its statements of findings from this investigation. The OIG's statement of findings represented the full record of all relevant facts and findings considered in support of this final report. All parties responded to the OIG's findings within the agreed timescales.

The OIG duly considered all points made by the respondents and appropriate revisions were made to its findings in this final report. The OIG then proceeded to the next stage of the investigation as per its [Stakeholder Engagement Model](#).

## Annex C: Message from the Interim Executive Director

Burkina Faso, one of the poorest countries in the world, faces a considerable burden of HIV, malaria and tuberculosis. The country has one of the highest malaria burdens in West Africa and the disease is a leading cause of medical consultations, hospitalization and death. The HIV prevalence rate is high, and TB and multidrug-resistant TB are an ongoing challenge. In response, the Global Fund has invested US\$400 million in the country, and is a key health partner of the government of Burkina Faso.

Progress is being made. Sixty percent of people living with HIV are on antiretroviral therapy – all of them through Global Fund-supported programs. With support from the Global Fund, the government and partners, 83 percent of HIV-positive pregnant women receive treatment to prevent transmitting the virus to their unborn children. More than 20 million insecticide-treated nets have been distributed to protect families from malaria through programs supported by the Global Fund. Collaborative efforts have resulted in significantly improving the implementation and effectiveness of Global Fund grants.

In order to protect and build on these gains, we need to do more with the money we have, and safeguard our investments to ensure that donor funds are going to programs for people most in need. The Office of the Inspector General (OIG) is an integral and important part of risk management and controls, conducting independent audits and investigations to complement the active risk management and controls put in place by the Secretariat with oversight by the Board of the Global Fund. An earlier OIG investigation into the procurement of mosquito nets in 2010, for example, helped the Global Fund Secretariat to considerably strengthen our risk mitigation measures in Burkina Faso. Local procurement of all major non-health products for different Principal Recipients now go through independent third parties; procurement of all health products are made through the Global Fund's pooled procurement mechanism, ensuring the procurement of quality-assured and competitively priced products; and a fiscal agent verifies and provides assurance on program implementation in a more proactive manner.

I want to thank the Office of the Inspector General for this investigation report, which was launched after an alert from the Principal Recipient managing the grant. In this case, a local supplier provided counterfeit and poor-quality motorcycles worth EUR73,366 to a TB program in 2014. This is unacceptable and a breach of the Global Fund's Code of Conduct for Suppliers. The Global Fund Secretariat will seek recovery of funds spent on the counterfeit vehicles, and take appropriate action against the supplier based on the Global Fund's policy on supplier misconduct and the Global Fund Sanctions Panel procedures. The supplier has not been used for any other Global Fund grants in Burkina Faso.

The Global Fund is committed to constantly strengthening measures to increase value for money, and improving the effectiveness of health investments so they can reach the people most in need, in countries and communities all over the world.

Marijke Wijnroks