



Investing in our future

The Global Fund

To Fight AIDS, Tuberculosis and Malaria

**Eleventh Board Meeting
Geneva, 28-30 September 2005**

GF/B11/11

ANNUAL REPORT OF THE ETHICS COMMITTEE

Outline: This report is the Annual Report of the Ethics Committee, which summarizes the activity of the Committee since its report to the Board at the Eighth Board Meeting in June, 2004.

The report also proposes one decision point for the Board as a result of its work over this period.

Decision Point:

The Board requests the Ethics Committee to explore the development of a whistleblowing policy, and appropriate structures for its oversight and implementation in light of the existing Terms of Reference of the Office of Inspector General, for consideration by the Board at its Twelfth Board meeting.

Part 1: Summary

1. The Ethics Committee met four times by teleconference, on the following dates: October 12, 2004, March 10, 2005, July 15, 2005, and September 6, 2005. Minutes of each call are available on the Ethics Committee section of the Global Fund website, with the exception of the call on March 10, for which no minutes were prepared (the issues discussed during that call are summarized in the Special Report of the Ethics Committee to the Board, Board Document GF/B10/6).

Part 2: Membership

2. During the reporting period the membership of the Ethics Committee was altered, and certain constituencies changed their membership for the October, 2004 and March 2005 calls.

3. At the time of the October meeting the membership consisted of Dr. Helene Rossert-Blavier (Chair, Developed Country NGO), Dr. Brian Brink (Private Sector), Mr. Himamauli Das (United States of America), Ms. Rodio Diallo (West and Central Africa), Ms. Sigrun Møgedal (Point Seven), and Ms. Mariangela Batista Galvão Simão (Latin America and the Caribbean). At the time of the March 2005 meeting Ms. Peggy Hoyle served as the member for the United States of America, and Ms. Oswaldo Rada served as the member for Latin America and the Caribbean.

5. Following the changes in committee membership at the Tenth Board Meeting, the membership was as follows: Anandi Yuvaraj (Chair, Communities), Helene Gayle (Vice Chair, Foundations), Brian Brink (Private Sector), Renate Koch (Latin America and the Caribbean), Natasha Leonchuk (Communities), Sigrun Møgedal (Point Seven), and Lucy Ng'ang'a (Developing Country NGO).

Part 3: Main Activities

A. Conflict of Interest Determinations.

6. The Committee considered its first reported case of a conflict of interest during this period (a detailed discussion is contained in the July 15, 2005 meeting minutes).

7. The case was referred to the Ethics Committee by the Secretariat in order for the Committee to consider the conflict of interest (COI) issues associated with the acceptance of a grant of \$750,000 from Johnson and Johnson for the purpose of supporting specific Secretariat procurement activities. These activities consisted of: (1) the assessment and "pre-qualification" of entities to serve as procurement agents in Global Fund programs (to be conducted by an external consultant selected by the Secretariat), (2) the addition of two new staff positions in the Secretariat's procurement department, and (3) the assessment of regional procurement workshops carried out by the WHO's AIDS Medicines and Diagnostics Service Group (AMDS) to support Global Fund recipients in the development and implementation of procurement plans (to be conducted by an external consultant selected by the Secretariat).

8. The Committee considered whether the grant should be accepted given the perception of a COI that it may generate. Certain delegations held the view that the grant should not be accepted at all, while others believed that the grant should be given serious consideration in light of the enhanced program results it would likely provide and the possibility that COI issues could be appropriately mitigated.

9. The Committee decided that the Secretariat may accept the grant from Johnson & Johnson, conditioned on the following measures being put in place to mitigate against conflict of interest concerns:

- i. The Secretariat should put in place a written understanding with Johnson & Johnson which safeguards against conflict of interests concerns raised by the Committee.
- ii. Any individuals employed as a result of the Johnson & Johnson funding should be recruited under standard competitive recruitment processes applicable to all competitively-hired Secretariat employees.
- iii. The Secretariat shall not provide information to Johnson & Johnson on the use of grant funds in a manner that could give rise to the perception of influence by Johnson & Johnson on key decisions. For example, while the Secretariat may provide curricula vitae of procurement staff or terms of reference for external contractors, it should do so after hiring decisions have been made and contractors have been selected, not before.
- iv. The Ethics Committee will continue to monitor and oversee implementation of this grant through regular updates from the Secretariat.

B. Application of the Ethics and Conflict of Interest Policy (COI Policy) to Secretariat Staff.

10. During the reporting period the Committee considered options for addressing the World Health Organization's (WHO) position that the COI Policy could not be applied to Secretariat staff given their status as WHO employees. The full development of this issue was separately reported to the Board at its tenth meeting in document GF/B10/6.

11. The Committee notes that there have been no developments on this issue since the Tenth Board meeting, and notes that it has recommended that the issue be formally addressed with the WHO in writing by the Chair of the Board and that the Global Fund use all efforts to pursue an amendment to the WHO staff rules or otherwise secure the independent authority of the Ethics Committee.

C. Appointment of the Ethics Advisor

12. The Committee appointed Prof. Willem Landman, Chief Executive Officer of the Ethics Institute of South Africa, as the Ethics Advisor to the Committee (as authorized by the Board at its Eighth Board meeting). A brief biography of Prof. Landman, and the Ethics Advisor Terms of reference, are attached as Annex A.

D. Whistleblowing Policy

13. The Committee considered the merits of developing a whistleblowing policy to compliment the Ethics and Conflict of Interest Policy. It noted that the Office of Inspector General (OIG) has within its terms of reference the task of developing a whistleblowing mechanism, or "hotline" for reporting fraud and abuse, and noted that this was one of many areas where the lines of authority between the OIG and the Ethics Committee may need greater clarification. It emphasized that while the terms of reference for the OIG call for it to "establish and oversee the Global Fund's reporting hotline and other complaint reporting mechanisms," the establishment and oversight of a whistleblowing mechanism is different from the development of a whistleblowing policy, which remains within the policy development function of the Board.

14. The Committee further noted that the development of such a policy involves many complex considerations, and that it should avail itself of the expertise of the Ethics Advisor as it considers the issue. It therefore recommends that the Board adopt the following decision point to clarify the role of the Committee in developing such a policy:

Decision Point:

The Board requests the Ethics Committee to explore the development of a whistleblowing policy, and appropriate structures for its oversight and implementation in light of the existing Terms of Reference of the Office of Inspector General, for consideration by the Board at its Twelfth Board meeting.

E. Declaration of Interest Filings

15. The Committee has continued to oversee the annual process of filing Declaration of Interest Forms, and the annual circulation of the COI Policy to all individuals covered by the Policy.

F. Ethics Committee Sections of the Committee Rules.

16. The Committee notes that the Ethics Committee sections of the Committee Rules and Guidelines were inadvertently eliminated during the approval of the revised Rules by the Board at its Tenth Board Meeting. The Committee notes that it intends to seek re-instatement of its rules by the Board at the Twelfth Board meeting following a review and any necessary updates to its governing rules and internal procedures.

G. Ethics Issues Related to the Phase 2 Process

17. It has come to the attention of the Ethics Committee that some grantees have engaged in advocacy efforts with Board members in an effort to influence the Phase 2 decision on their grants. Some of this conduct appears to have gone beyond simple advocacy and risen to a point of undue influence, which has created conflicts of interest that have had a direct and material effect on the ability of constituency members to fulfill their independent role in the governance processes of the Fund. The Committee will be holding meetings on the day preceding the Eleventh Board meeting to consider the issue and will report to the Board on its deliberations. The Committee will also be considering this activity in detail in its meetings following the Eleventh Board meeting in order to determine whether and how inappropriate conduct may be regulated by the Board as a conflict of interest matter, either under the existing COI Policy or through an amendment to the Policy.

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.

Ethics Advisor to the Ethics Committee of the Global Fund to Fight AIDS, Tuberculosis and Malaria
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TERMS OF REFERENCE

<p><u>Role of the Ethics Advisor:</u> To advise the Ethics Committee on a range of ethical issues including, but not limited to, conflicts of interest and enforcement of the Ethics and Conflict of Interest Policy, the establishment of new systems to ensure ethical practices, and ethical issues arising in the management of the Global Fund's grant portfolio. The Ethics Advisor will also be called upon to identify specialized expertise (e.g. in medical ethics) where necessary.</p>

Background

The Ethics Committee is a standing sub-committee of the governing Board of the Global Fund. It was established to enforce the Policy on Ethics and Conflict of Interest for Global Fund Institutions (the "Ethics Policy", available at: www.theglobalfund.org/pdf/policy_ethics_conflict_of_interest.pdf) and to prevent situations that might negatively affect the reputation and integrity of the Fund. The Ethics Committee has six members. It reports to the Board of the Global Fund at least once a year and usually meets once each calendar quarter.

At its Eighth Meeting, the Global Fund's Board decided that the Ethics Committee shall appoint one independent, non-voting expert who will be responsible for providing to the Committee advice and guidance on ethical issues.

Scope of Services

The Ethics Advisor will, generally, assist the Committee in achieving the purpose of the Ethics Policy, which is to ensure fairness and transparency in the Global Fund's decision and grant-making activities and protect its reputation and integrity.

More specifically, the Ethics Advisor will advise on possible conflicts of interest reported to the Committee, and on new procedures and mechanisms (such as, for example, the establishment of mechanism for the receipt of reports from whistle-blowers) that could be established to promote the objectives of the Ethics Policy.

The Ethics Advisor will also assist the Committee in identifying other material ethical issues (including but not limited to those affecting the Global Fund's grant portfolio), and provide options and make recommendations on how to address them. In addition, the Ethics Expert will assist in identifying and retaining the services of persons with specialized expertise in the field of ethics (e.g. medical ethics) as necessary.

The Ethics expert will brief the Ethics Committee in writing, attend its meetings, and make presentations, as required.

The workload of the Ethics Advisor will depend on the Ethics Committee's future requirements. Her work will be compensated based on an hourly / daily rate to be negotiated based on Global Fund / WHO internal rules and guidelines.

Qualifications:

- Recognized expert in Ethics, preferably with emphasis on conflicts of interest, corporate ethics, investigations and corporate governance.
- Demonstrated ability to access individuals with specialized expertise in the field of Ethics and who can be called upon to advise the Committee on specific issues when the need arises.
- Outstanding oral and communications skills, fluent in English

Biographical Sketch:

Willem A Landman, BProc (SA), MA (Oxon), MA, DPhil (Stell)

Landman is currently Chief Executive Officer, Ethics Institute of South Africa (EthicSA), a not-for-profit company based in Pretoria, South Africa (since 2000). He was Professor and Chair, Department of Philosophy, University of the Western Cape, South Africa (1986-1995), Full Professor with tenure, Department of Medical Humanities, The Brody School of Medicine, East Carolina University, Greenville, North Carolina, USA (1994-2000); Visiting Professor, Department of Philosophy, University of Stellenbosch (1997-1999); and Professor Extraordinaire, Department of Philosophy, University of Stellenbosch (2000-2006).

Landman holds degrees in philosophy, political philosophy, theology and law – BA Philosophy and Greek (*cum laude*), Honours BA Philosophy (*cum laude*), MA Philosophy (*cum laude*) and DPhil Political Philosophy from the University of Stellenbosch; BProc from the University of South Africa; and BA Philosophy and Theology with honours (first class) and MA Philosophy and Theology from the University of Oxford, England. At the University of Oxford he studied on a South Africa-at-Large Rhodes Scholarship (1973-1977).

Landman is co-founder and co-editor of the international journal *Developing World Bioethics*, published in Oxford, England, by Blackwell Publishers (since 2000). He serves on several ethics committees (for example, in the biotechnology industry), research ethics committees (for example, in the mining industry), and editorial boards (such as the *South African Journal of Philosophy*). He has taught ethics to students in medicine and bioethics in the USA and South Africa; published book chapters and peer-reviewed articles (about 40) on issues in philosophy and applied ethics; and addressed academic audiences in Africa, North America, Europe, and the Middle East.

Landman's responsibilities at EthicSA, apart from directing and managing the company, entails ethics advocacy, writing editorial, making presentations at numerous forums (more than a 150 since 2000), education and training in ethics, ethics consultation, and generally facilitating ethics-related initiatives in the professions and public and private sectors. Since 2000, he has made many appearances on radio and television and in the printed media on various ethics-related issues.

EthicSA started a subscription membership programme for individuals and organisations in October 2003, giving ethics support and advice to members. Some 150 organisations, including many of South Africa's largest companies, have joined. For more than three years, EthicSA has been publishing a twice-weekly e-mail based newsletter, *Business Ethics Direct*, monitoring business ethics and corporate governance news. It includes a weekly *Corruption Watch*, monitoring corruption in Africa. The EthicSA website – www.ethicsa.org – is one of the best of its kind in the world.

Since 2000, Landman has initiated four extensive research projects on ethical issues in South African public life, all designed to have maximum practical impact. Each resulted in a scientific report – on the ethics of South African doctors' business practices (2000); an ethics audit at Chris Hani Baragwanath Hospital (2001); an ethics audit at Universitas Hospital (2002); and corporate ethics governance and management in top JSE Securities Exchange-listed companies (2002) following the *King Report on Corporate Governance for South Africa - 2002*. During 2000-2001, he wrote two booklets on general ethical guidelines for doctors, dentists and health researchers for the Health Professions Council of South Africa (HPCSA).

Four research projects are current – two on company reporting lines (hotlines, whistle-blowing lines) and one on public-sector ethics. Landman is also authoring a manual for Ethics Officers on setting up and managing an organisational ethics office.

In March 2005, Landman brought together an international team at EthicSA to develop an instrument to audit externally organisations' ethics programmes, focusing on formal ethics structures, ethical culture, and outcomes. The instrument is being patented in South Africa and copyrighted in the USA. EthicSA has completed the first ethics audits of companies, including some listed on the NYSE.

Landman is Deputy-Chairperson of the Ethics Society of South Africa (ESSA), member of the Council of the Institute of Directors of Southern Africa (IoD) and chair of the Ethics Board of PricewaterhouseCoopers (PwC). He has consulted on ethics in numerous sub-Saharan countries – involving various forms and levels of ethics awareness training, Code of Ethics development, and ethical risk assessment.

***Hatfield
Pretoria***

11 August 2005