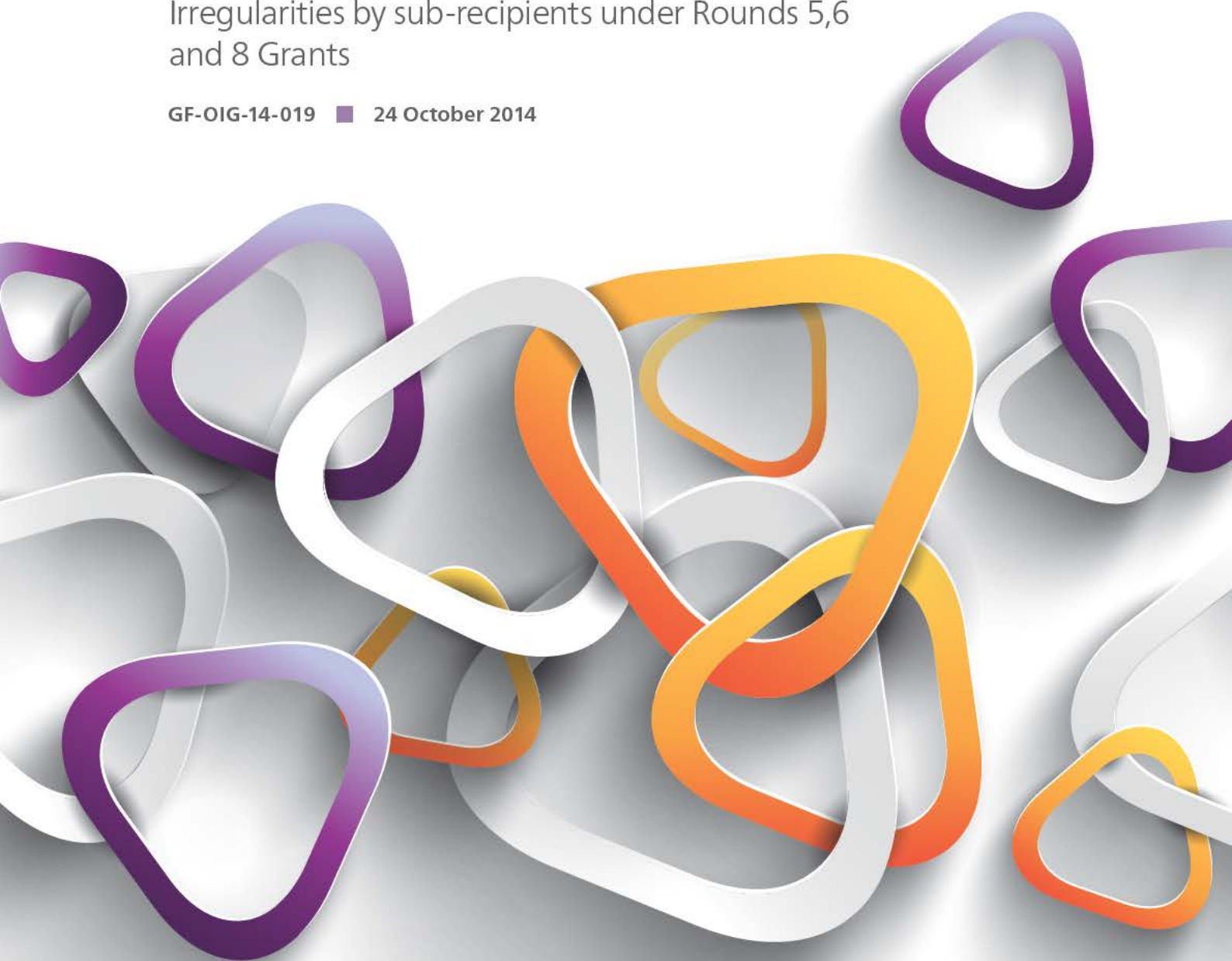


INVESTIGATION REPORT

Global Fund Grants to the Democratic Republic of Congo

Irregularities by sub-recipients under Rounds 5,6
and 8 Grants

GF-OIG-14-019 ■ 24 October 2014



Investigation of Global Fund Grants to the Democratic Republic of Congo

Irregularities by sub-recipients under Rounds 5, 6 and 8 Grants (Case N°: 249/2011)

GF-OIG-14-019

Categories – Fraud / Collusion / Mismanagement Issues

Non-compliant expenditures - US\$ 2,043,763

Proposed recoveries - US\$ 1,428,718

Report published: 24 October 2014

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1. Background and Scope

From 2003 to 30 June 2014, the Global Fund has made commitments through 20 grants to the Democratic Republic of Congo (DRC) totaling US\$ 896.1 million with US\$ 804.7 million disbursed.

In 2011, the Principal Recipients in DRC included the United Nations Development Programme (UNDP), *Eglise du Christ au Congo – Soins de Santé Primaires en Milieu Rural* (SANRU) and the Catholic Organization for Relief and Development Aid, Congo (CORDAID).

At the request of the Global Fund Secretariat, in 2011 the Local Fund Agent, PricewaterhouseCoopers, reviewed the internal controls of the ten sub-recipients below under eight grants to the Principal Recipients:

1. *Bureau Diocésain des Oeuvres Médicales à Bukavu* (BDOM Bukavu);
2. *Caritas Congo ASBL* (CARITAS);
3. CORDAID (in addition to being a Principal Recipient, it also acted as a sub-recipient of UNDP);
4. *Direction de Développement des Soins de Santé Primaires, Ministère de la Santé Publique* (DDSSP);
5. *Memisa Belgique*;
6. *Programme National de Lutte contre la Tuberculose* (PNLT);
7. *Programme National de Lutte contre le Paludisme* (PNLP);
8. *Programme National de Lutte contre le SIDA* (PNLS);
9. *Programme National de Santé de la Reproduction* (PNSR); and
10. *Programme National de Transfusion Sanguine* (PNTS).

The Local Fund Agent further verified a sample of sub-recipient expenditures totaling US\$ 6,472,134. Subsequently, the Local Fund Agent reported various issues including allegations of potential fraud, collusion, and mismanagement totaling US\$ 3,543,979 from ten sub-recipients (see Appendix A).

In September 2011, the Secretariat shared the Local Fund Agent's findings with the Office of the Inspector General (OIG). In the same year, UNDP's Office of Audit and Investigations also alerted the OIG to allegations of fraud and collusion identified during an internal audit of *Programme National de Lutte contre la Tuberculose* (PNLT), a sub-recipient of UNDP.

The OIG undertook desk review and cost-benefit analysis of allegations when deciding which expenditures to investigate further. From the issues identified by both the Local Fund Agent and UNDP's Office of Audit and Investigations, the OIG investigated expenditures totaling US\$ 2,906,383 (transactions between 2007 and 2010) and fielded a mission to DRC in July/August 2013 (see Appendix A). The OIG collaborated with the UNDP's Office of Audit and Investigations with regard to allegations into fraudulent transactions of PNLT.

2. Executive Summary

The OIG investigation reviewed US\$ 2,906,383 of potentially non-compliant expenditures and confirmed irregularities and unsupported/ineligible expenses totaling US\$ 2,043,763. The resulting proposed recoveries of US\$ 1,428,718¹ comprise overpricing amounts, and unsupported and ineligible expenses (see Appendix B for full details). The key findings included:

PNLT - non-compliant expenditures of US\$ 1,936,623

Unsupported expenses of US\$ 1,285,712 by PNLT between 2007 and 2009 were identified by the Local Fund Agent's verification and then confirmed by the OIG's investigation. In addition, there were persistent procurement irregularities between 2007 and 2010 within PNLT. Evidence of *collusive practices*² was found between PNLT staff and companies who supplied and overcharged for air transportation services. At least three current (lead pharmacist, logistician and accountant) and two ex-PNLT staff members (ex-Director for Administration and Finance and ex-pharmacist - chief of warehouse) were either part of, or were fully or partially aware of, such practices.

The investigation identified overpricing of US\$ 319,452. After the discovery of the irregularities during the internal audit of PNLT in 2010, UNDP took corrective action and recovered US\$ 180,236 from the transportation companies by reducing the amounts payable to them (this amount had been reused in the grant). The remaining balance of the overpricing identified by the OIG, a total of US\$ 139,216, has yet to be recovered.

DDSSP (sub-recipient of UNDP) - collusive procurement of US\$ 104,445

In 2010, the Head of Office of a DDSSP's sub sub-recipient, engaged in *collusive practices* with vendors for a procurement worth US\$ 104,445. Whilst the OIG noted that services were provided and there was no evidence to suggest the procurement was overpriced, had the proper procurement processes been followed, benefits from economies of scale could have been leveraged.

Root causes

The OIG investigation identified several factors that contributed to the large amount of unsupported expenditures and loss of documentation within PNLT. These include: devolving the custody of financial documents to PNLT's in-country coordination offices; insufficient financial reconciliation of transactions between PNLT's head office and its coordination offices and overall weak financial record-keeping by PNLT.

The investigation highlighted that there was inadequate oversight of the sub-recipient operations by the Principal Recipient, UNDP, and that the procurement controls were deficient at the sub-recipient and sub sub-recipient level.

¹ Proposed recoveries are determined when there is no reasonable assurance of delivery of goods or services, amounts which constitute overpricing between the price paid and comparable market price for such goods or services, or amounts which are ineligible to the grant scope or not included in the approved work plans and budgets.

² Terms in italics are defined in Appendix E – The OIG Methodology, attached to this report.

Following the internal audit of PNLT, UNDP reviewed the fraudulent invoices to settle with the transportation companies. They limited further disbursements to PNLT, and took over procurements of transportation services at the Principal Recipient level. Activities under Round 5 and Round 6 Tuberculosis grants have now ended.

Actions already taken

In 2011, following the receipt of the Local Fund Agent's findings and allegations from other sources, the Secretariat implemented safeguard measures in the portfolio and froze disbursements under some grants. In August 2011 it invoked the Additional Safeguards Policy. The Secretariat required Principal Recipients to increase supervision and implement additional control measures over sub-recipients i.e. increased cash and transaction controls at sub-recipient level and transaction reviews by the Principal Recipients. A number of sub-recipients were replaced and disbursements were limited to essential activities. As of 30 June 2012, UNDP relinquished its role as the Principal Recipient of two grants. The last grant managed by UNDP expired on 30 June 2013. This was part of a wider re-structuring of the implementation arrangements of the DRC portfolio to strengthen risk management and to accelerate the delivery of programmatic results.

The Global Fund re-structuring in 2012 resulted in a significant expansion of the DRC Country Team with an increased focus on operational risk management, particularly the mitigation of financial risks of the type highlighted in this report.

In late 2012, after re-selection and new capacity assessments of sub-recipients, the Global Fund lifted its embargo of disbursements to the DRC portfolio. The non-governmental Principal Recipients recruited additional resources to enhance sub-recipient monitoring at a provincial level and to ensure monthly reviews of expenditures. At the request of the Secretariat, the Ministry of Public Health (the new governmental Principal Recipient, which receives approximately ten percent of grant funds) appointed a fiduciary agent, which now reviews and approves all Principal Recipient expenditures prior to disbursement and reviews sub-recipient expenditures.

It should be noted that the Country Coordinating Mechanism has nominated PNLT as a sub-recipient under the Tuberculosis/HIV Program funded through the Global Fund's New Funding Model. However, the Secretariat believes this is appropriate, given its critical role in leading the national tuberculosis response, and given the safeguards and procedures established to mitigate the issues and risks summarized in this report. In addition to the points discussed above, since 2012, the leadership of the PNLT has changed. The Local Fund Agent, fiduciary agent and the Secretariat monitor grant expenditures, health and non-health procurement, and adherence to procedures by recipients of grant funds. The Principal and sub-recipients now use in-country transportation companies that have been selected by competitive tender, verified by the Local Fund Agent.

Further agreed actions

In addition to the numerous actions already taken to strengthen the implementation arrangements for the DRC portfolio, the Secretariat (the DRC Country Team) agreed to

the actions described in section 5 of this report. Among those agreed actions are the following key immediate items:

- referring the findings of the report to the Recoveries Committee, who will assess the amount to be recovered from the Principal Recipient, UNDP, as guided in Appendix B; and
- working with the DRC Principal Recipients and sub-recipients to ensure that the specific individuals identified in this report as having committed wrongdoing do not participate in Global Fund programs going forward.

The Secretariat agreed to certain longer term key actions designed to prevent the reoccurrence of the activities identified in this report, including:

- The Secretariat may require DRC Principal and sub-recipients to establish and maintain lists of authorized suppliers of goods and services for all procurements with Global Fund funding, and the Local Fund Agent will verify the address and contact details of those suppliers.
- The Secretariat's monitoring of the oversight performed by the Principal Recipients over their sub-recipients will be formalized.

3. Investigation Findings and Agreed Actions

3.1 Round 5 and Round 6 Tuberculosis grants to UNDP

Unsupported expenses by PNLT between 2007 and 2009

The Local Fund Agent's verification identified a list of US\$ 1,285,712 PNLT procurement expenditures between 2007 and 2009, for which adequate supporting documents were not available (e.g. only a cash voucher was available, but no delivery note or supporting documents). The OIG requested PNLT to provide the required supporting documents; however, nothing has been provided to date. The OIG notes that the documentation could be absent due to various reasons: documents relating to expenditures were held at multiple office sites; insufficient financial reconciliation of transactions by the PNLT head office with coordination offices (i.e. the liquidation of advances); weak record-keeping; loss of documentation; or possible misappropriation of funds. This also indicates inadequate oversight of the sub-recipient's operations at the time by the Principal Recipient, UNDP.

In response to the OIG's findings, PNLT's accountant stated that external audits of PNLT, undertaken prior to the Local Fund Agent's verification, had not asserted that any of these expenditure items were unsupported. In 2009, PNLT reorganized their office, records moved, and subsequent audits caused disarray of records. During the Local Fund Agent's verification (in 2011), the previous authorizing officers of this expenditure were no longer in office, and only the PNLT accounting unit could provide explanations. The accountant further stated that the Local Fund Agent had not raised the issue of unsupported expenditures with PNLT before reporting it to the Global Fund, and that following the Local Fund Agent's verification, UNDP's subsequent audits had not reached the same conclusions as the OIG. In the accountant's opinion, other audits had found that the expenditures had been justified by PNLT. In his opinion, the OIG had not taken into account the context in which the project was implemented. Specifically, the accountant of PNLT stated that:

- Records for US\$ 834,583 expenditures between 2007 and 2009 had been disarranged due to management changes in PNLT. PNLT would need time to search for documents to draw conclusions about their current state.
- US\$ 217,586 expenditures in 2008 were transfers to the PNLT coordination offices recorded by the PNLT accounting unit as expenses on the basis of transfer receipts. Considering the time required recovering supporting documents from the coordination offices, the accountant stated these expenditures were considered as 'justified' by the Principal Recipient (UNDP).
- The procurement procedure for a printing contract worth US\$ 233,543 was undertaken by UNDP, while PNLT was requested to award and follow up on the contract. [However, the Local Fund Agent and the OIG could not obtain from PNLT the delivery notes for the above contract].

In a subsequent response, PNLT said that a working group consisting of PNLT, the UNDP, the Local Fund Agent and the Country Coordinating Mechanism should be set up to identify the missing supporting documents.

Taking into account the above responses and the fact that these expenditure items were not reported by other audits, the OIG is of the opinion that this does not waive PNLT's responsibility to maintain records of all grant related transactions.

In response to the above OIG findings, the Principal Recipient, UNDP, indicated that it will discuss them with the Global Fund's Recoveries Committee.

Agreed Action 1: If PNLT is unable to provide supporting documents for verification by the Local Fund Agent, the Secretariat will refer the findings of the report to the Recoveries Committee, who will assess the amount to be recovered from the Principal Recipient, UNDP, as guided in Appendix B;.

Agreed Action 2: The Secretariat's monitoring of the oversight performed by the Principal Recipients over their sub-recipients will be formalized.

Procurement irregularities, involving collusion with transportation companies, in PNLT between 2007 and 2010

The OIG identified that from 2007 to 2010, persistent procurement irregularities took place within PNLT. The weights and the quantities of drugs and other products transported by air to destinations in country were overstated. PNLT outsourced air transportation services (the value of which was also overstated) to local companies, and *collusive practices* existed between PNLT staff and these companies. The lead pharmacist, logistician, accountant, ex-Director for Administration and Finance and ex-pharmacist - chief of warehouse were either part of, or were fully or partially aware of such practices. The value of such services procured by PNLT (i.e. the value at risk) was approximately US\$ 1.6 million (the OIG estimate based on PNLT general ledger data) since the inception of the grants, and the OIG identified that the value of compromised procurements of such services was at least US\$ 647,911. Following an internal audit of PNLT and another assessment by UNDP, in 2011, UNDP recovered US\$ 180,236 from the transportation companies through a reduction of the amounts payable to them (this amount had been reused in the grant). The OIG estimates that an additional US\$ 139,216 associated with the overpricing of such services has still to be recovered.

There was an internal audit in 2010, ordered by the ex-Director of PNLT, and conducted by an internal commission of seven staff, covering a limited period between 2009 and 2010. It was reported that staff from three PNLT business units (pharmacy, laboratory, and logistics) were involved in falsely overstating weights and/or including false items in waybills, and were involved in collusion with transportation companies. In addition, the audit found that finance staff did not properly verify the invoices received from these companies. The internal audit undertaken by PNLT stated that this scheme could have existed long before the period covered by the audit. Following the audit, in October/November 2010, the Ministry of Public Health temporarily suspended four PNLT staff: the lead pharmacist (*le Pharmacien Responsable*), the logistician (*le Chargé d'Entretiens*), the accountant (*le Comptable Titulaire*), and the ex-pharmacist - chief of

warehouse (*la Pharmacienne Chef du Dépôt*), without pay for three months. Three of the staff (except for the ex-pharmacist - chief of warehouse) were later reinstated.

When the OIG shared its overall findings with PNLT, the lead pharmacist of PNLT responded that the internal audit undertaken by PNLT, had no terms of reference and was undertaken without the knowledge of the pharmacy unit. He also claimed he was “verbally accused” after the audit. He claimed he and other staff were never given the opportunity to defend themselves and they had never seen a copy of the audit report. In response to the audit finding regarding falsely overstated weights, the lead pharmacist stated that any differences in weights were due to defective scales, which had been used for weighing parcels. He further stated that since their acquisition in 2007, they had never been calibrated and had since been replaced with newer scales. He said he was not directly involved in the stating of weights for such shipments, but that his subordinate and other staff were. PNLT acknowledged the overstatement of air transportation services received and UNDP made partial recoveries from transportation companies.

The irregularities discovered by the internal audit indicate that there was inadequate oversight of the sub-recipient’s operations by the Principal Recipient, UNDP, and that PNLT’s internal controls were deficient. This resulted in the misuse of grant funds intended for essential grant activities. Internal control weaknesses in PNLT (and other sub-recipients) were also reported during the Local Fund Agent’s verification, subsequent to which the Secretariat implemented safeguard measures. Following the internal audit of PNLT, UNDP undertook a review of the fraudulent invoices for settlement with the transportation companies, limited further disbursements to PNLT, and took over further procurements of transportation services at the Principal Recipient level. Activities under Round 5 and Round 6 Tuberculosis grants have ended to date. Recent procurements of transportation services for PNLT are undertaken by the Ministry of Public Health under Round 9 Tuberculosis grant.

During its own investigation and, with the assistance of the UNDP’s Office of Audit and Investigations, and other parties, the OIG verified the existence of 19 transportation companies (winning and losing “bidders”) and the authenticity of bids and invoices submitted by them to PNLT, and attempted to verify the registration of these companies. The OIG found that:

- Out of 19 companies, only four actually were independent and functioning transportation companies.
- Other companies acted as intermediaries for larger legitimate businesses, or there was no evidence to confirm the existence and activity of such companies. Bids of these companies were prepared either by these companies or another party to simulate the competition in procurement process of PNLT. The larger businesses often also submitted bids for the same procurements.
- Bids and invoices often did not include mandatory details such as registration, national identification and tax identification numbers, or included false addresses, phone numbers and registration numbers, or included close similarities with bids and invoices of other companies.
- At least two companies confirmed shared ownership with another company.

- None of the 19 companies were on the list of in-country transportation companies used in 2010/2011 by UNDP.

The OIG investigation found that regularly, between 2007 and 2010, at least three current and one ex-PNLT staff member³ formed a tender committee and were part of the procurement process for transportation services that included bids from the 19 transportation companies. Throughout this period, they accepted bids from these and other companies as valid and competing bids, which also included overcharges due to false weights and false items, as found by the 2010 internal audit.

In response to the OIG's findings, PNLT's lead pharmacist stated that the tender committee was appointed by the then Director of PNLT and that the bids reviewed were always received from transportation companies.

PNLT's logistician stated that some of the companies not found by the OIG either existed (e.g. at a different address) or had ceased operations. As stated above, the OIG did not find these companies through various available means. He confirmed that some of the companies functioned as intermediaries for others. This confirms that PNLT's procurement process to select these companies was not competitive because related companies were considered as competitors in the selection process. Further, he stated that direct delivery was preferred over interrupted transport to avoid the risk of loss or theft, and smaller rather than larger companies were used because the latter were slow and kept the parcels for a long time in warehouses affecting the quality of products. He also stated that DRC's economy was based on the informal sector, with many unregistered companies who were used for deliveries in emergency cases. He also stated that companies submitted their own bids (they were not fabricated) and that PNLT used the same companies after the internal audit, considering the provided advantages and their experience.

PNLT also stated that the Ministry of Public Health uses the services of a number of the same transportation companies because there are few companies who work in the market.

While taking into account the above explanations, the OIG still finds, by the preponderance of evidence, that the tender committee members were either part of, or were fully or partially aware of *collusive practices* with transportation companies.

The OIG finds that in circumstances where irregularities, including *collusive practices*, have been confirmed with respect to services charged to the grants, the prices charged by the vendors cannot be considered reasonable market prices. Consequently, the OIG assessed the overpricing of transportation services charged to the grants. As stated above, UNDP's Office in DRC already recovered US\$ 180,236 from the transportation companies broken down as follows:

- US\$ 118,249 based on a calculation by PNLT following its internal audit, for exclusion of false weights and false items in 45 invoices between 2009 and 2010.

³ Lead pharmacist (*le Pharmacien responsable*), logistician (*le Chargé d'entretiens*), accountant (*le Comptable titulaire*), and ex-Director for Administration and Finance (*le Directeur d'administration et finances*)

- An additional US\$ 61,987 based on an overpricing calculation by UNDP for the same 45 invoices and for recovery of excessive rates charged per kg, which were above normal rates paid by UNDP.

The OIG analysed the overpricing of transportation services (excessive rates charged per kg, for each destination) for 134 invoices between 2007 and 2010 from companies involved in *collusive practices* and totaling US\$ 647,911. Comparable 2013 market rates (retro-adjusted for inflation and changes in exchange rate) from several transportation companies in Kinshasa were obtained, as well as 2010 price lists for transport companies used by UN agencies in Kinshasa,⁴ and the OIG calculated average comparable rates for each destination and compared them to the rates charged to PNLT. According to the OIG's best estimate, at least 100 of the 134 invoices assessed were overpriced compared to market rates. The invoices assessed also included 45 invoices, for which recoveries had been made by UNDP, and the OIG deducted from its calculations the amounts already recovered. The OIG concluded that an additional US\$ 136,154 in excessive rates charged per kg had yet to be recovered (see the OIG calculations in Appendix C).

The OIG's analysis also found that in 16 of the 134 invoices, the 2010 internal audit of PNLT either identified false weights, or determined that the invoice was not recognized by the transportation company, or no delivery note existed to prove the rendering of service. These overcharges totaled US\$ 3,062 and had also not yet been recovered by UNDP or PNLT from responsible parties (see the OIG calculations in Appendix D).

In its response to the OIG's findings, PNLT said that the OIG, when estimating the overpricing, had not taken into account separate cases of "underpricing" that had been identified by the PNLT internal audit at the time. The OIG finds that any economies that PNLT may have made through the vendors charging competitively, should not be off-set against the confirmed instances of over-pricing identified by the OIG investigation.

The Principal Recipient, UNDP, in response to the OIG's findings, indicated that it will discuss them with the Global Fund's Recoveries Committee.

Agreed Action 3: The Country Team will work with the Principal Recipients and sub-recipients to ensure that the specific individuals identified in this report as having committed wrongdoing do not participate in Global Fund programs going forward.

Agreed Action 4: The Country Team may require Principal and sub-recipients to establish and maintain a list of authorized suppliers for smaller purchases of goods and services with Global Fund funding. This list, classified into groups and categories, includes specific details (name of the supplier, address (not a PO Box), phone number, registration, and bank account numbers) and approved by the Country Team after Local Fund Agent's verification in the field.

⁴ For comparison purposes, the OIG retro-adjusted 2013 rates, considering the changes in consumer price index (www.bcc.cd/downloads/stat/indeco/indic_macro-eco_07_13.pdf) and changes in average exchange rates (www.bcc.cd/index.php?option=com_content&view=category&id=40&Itemid=70) between 2010 and 2013 and published by the Central Bank of Congo.

Lack of inventory control mechanism in PNLT's coordination office in Lubumbashi

With assistance from other parties and on a sample basis, in 2013 the OIG verified the deliveries by transportation companies to some of PNLT's in-country coordination offices. The OIG noted that the inventory control mechanism was not functioning in PNLT's coordination office in Lubumbashi. The OIG provided its detailed findings to PNLT. The OIG understands that PNLT's head office also had limited means of oversight of its in country coordination offices. While it was evident that products were received and distributed by the office in Lubumbashi, the OIG could not obtain assurance that all relevant deliveries were received and subsequently distributed by this office.

In response to the OIG findings, the PNLT's lead pharmacist informed that staff changes and a lack of training caused the above issues and that in March 2014, the PNLT head office launched mentoring of this coordination office in stock management matters.

The Principal Recipient, UNDP, did not have comments to the above OIG findings.

Agreed Action 5: The Country Team will request the PNLT to instigate inventory controls for its coordination offices (and other recipients, where relevant) and will reiterate to the PNLT relevant guidelines to them for inventory recording of received, stored, and distributed products, and for periodical counts of such products.

Ineligible expenses by PNLT in 2009

The Local Fund Agent's verification identified and the OIG confirmed that on 28 March 2009, under the Round 5 Tuberculosis grant, PNLT charged two transactions to the activity "quarterly supervision of staff of PNLT coordination offices". These two transactions were not related to this activity but were travel costs of the then PNLT management for official missions to Brazil (US\$ 1,000) and China (US\$ 2,000). Furthermore, travel costs to China were for the most part unsupported. The fact that these costs remained charged to the above activity indicates that the reconciliation of PNLT financial reports by UNDP was not comprehensive. In response to the OIG's findings, PNLT's accountant stated that the mission costs of PNLT staff were borne by the Global Fund grants. However, the OIG finds that these expenses were ineligible to the above activity.

The Principal Recipient, UNDP, did not have comments to the above OIG findings.

Fabricated templates of bids and invoices on a PNLT staff member's computer

The OIG identified nine Word documents (dated between 2009 and 2013) on a computer in PNLT showing blank and pre-filled templates of unsigned bids and invoices in the names of several vendors. The format of the documents indicated these were fabricated templates. For instance, some of the documents showed several unsigned bids in the name of several vendors (sometimes for the same products) in the same document. The OIG provided its detailed findings to PNLT. Considering the above, the OIG finds it more probable than not that one or several of PNLT staff members were responsible for fabrication of all or most of the abovementioned bids and invoices. The OIG did not identify the perpetrator(s) of the fabricated documents and could not determine if these bids and invoices were submitted to PNLT or resulted in any misappropriation of Global

Fund or other funds. Nevertheless, the OIG considers such fabrication as a *fraudulent practice*.

In response to the OIG's findings, PNLT's lead pharmacist who was the primary user of the computer on which the fabricated documents were found, stated that this computer was used by various PNLT staff, including the logistics unit which shared the office with the pharmacy unit, and that he, the lead pharmacist, did not create the above documents.

PNLT's logistician stated that the above bids and invoices related to other donors' funding, and that various vendors came to PNLT with handwritten bids for PNLT staff to type them into the computer. His response showed that he was aware of these documents.

Considering the lack of any corroboration that the above bids and invoices were genuine, the OIG finds they were fabricated.

The Principal Recipient, UNDP, did not have comments regarding the above OIG findings.

3.2 Round 8 Malaria grant to UNDP

Collusive procurement by DDSSP's recipient in 2010

The Local Fund Agent's verification identified and the OIG confirmed that a Head of Office (*le Chef de Bureau*) of DDSSP's recipient (sub sub-recipient), Provincial Health Directorate of Kinshasa (*la Direction Provinciale de Santé de Kinshasa*), engaged in *collusive practices* when undertaking a procurement worth US\$ 104,445 involving lodging, boarding and room rental services for a training workshop. These funds were advanced by DDSSP to the sub sub-recipient and subsequently charged to the grant.

This case indicates that there was inadequate oversight of the operations by the Principal Recipient, UNDP, and procurement controls were deficient at the sub-recipient and sub sub-recipient level. The OIG noted that the above services were provided by the vendor and, according to the unit prices charged by the vendor, the procurement was not overpriced. However, if a proper procurement procedure had been followed, it could have resulted in economies of scale that could have been used for other grant activities.

The OIG identified that the Head of Office of the sub sub-recipient supported the procurement with the invoice (dated 15 December 2010) from the selected vendor, *l'Hôtel Restaurant En Vrac*, three bids of the selected and two losing vendors, and a bid comparison table prepared by the Head of Office. The winning vendor confirmed to the OIG that she dealt with the Head of Office in person in this procurement. One of the losing vendors confirmed that he was asked by a sub sub-recipient's representative to submit a bid with increased prices for this procurement. The OIG could not locate the other losing vendor. Bids of both losing vendors were poorly prepared and indicated only unit prices but not the number of items offered. Considering that the Head of Office in person was in charge of this procurement and unilaterally prepared the bid comparison table, the OIG finds it more probable than not that he colluded with vendors to simulate procurement competition.

In response to the OIG's findings, DDSSP admitted that the sub sub-recipient had not followed the procurement procedures and had not received appropriate training at the time. DDSSP had undertaken corrective measures since 2011 by establishing a manual of procedures, a monitoring mechanism and an internal audit service.

The Principal Recipient, UNDP, did not have comments to the above OIG findings.

Conflict of interest and unsupported expenses within PNSR in 2010

The Local Fund Agent's verification identified and the OIG confirmed that:

- On 29 June 2010, PNSR charged to the grant an invoice for US\$ 1,674 from a catering vendor whose manager was the cashier of PNSR. The OIG found a *conflict of interest* in this case, considering that the cashier was handling the cash of the grant. A delivery note indicated that services were provided by the vendor, and the OIG did not find the procurement to be overpriced.
- On 14 September 2010, PNSR charged to the grant an invoice for printing services. The delivery was short of 79 copies (at US\$ 10 per copy), according to delivery notes. Thus, US\$ 790 was an unsupported expense.

The above cases indicate that procurement controls were insufficient at the sub-recipient level. The OIG provided its detailed findings to PNSR whose Director responded that she could not comment on these cases since she was not employed with PNSR at the time.

The Principal Recipient, UNDP, did not have comments to the above OIG findings.

3.3 Round 8 Malaria grant to SANRU

Ineligible expenses by CARITAS in 2010

The Local Fund Agent's verification identified and the OIG confirmed that in 2010, CARITAS charged to the grant medical expenses totaling US\$ 231 for two staff who were not on the Global Fund project staff list.

The OIG provided its detailed findings to CARITAS and the Principal Recipient, SANRU. The Executive Secretary of CARITAS explained that these staff members were neither Global Fund nor any other project staff, and that these expenses were exceptionally charged at the time to the Global Fund grant, considering that the services of these staff members contributed to all of CARITAS projects. The OIG found these expenses were ineligible to the grant. Subsequently, CARITAS reimbursed these expenses to the grant account of SANRU.

4. Conclusion

The investigation confirmed non-compliant expenditures of US\$ 2,043,763 with proposed recoveries of US\$ 1,428,718. Inadequate oversight of the sub-recipients' operations by the Principal Recipient, UNDP, was found in a number of cases, resulting in misuse of grant funds that could have been used for essential grant activities.

Based on the preponderance of evidence,⁵ the OIG concluded that the UNDP did not entirely comply with the Standard Terms and Conditions (STC) of the program grant agreements for the Phase 1 of the grants ZAR-506-G04-T, ZAR-607-G05-T and ZAR-810-G09-M, specifically Articles 2 and 10.b. Further, in accordance with Article 10.b, the ultimate accountability for the use of grant funds by the sub-recipients remains with the Principal Recipient, UNDP. In accordance with Article 8, the Global Fund may require the Principal Recipient to refund grant amounts that were not used in accordance with these agreements.

⁵ Reasonable conclusions supported by adequate evidence

5. Table of Agreed Actions

The OIG had previously undertaken an audit of the Global Fund grants to DRC in 2009/2010, in which it made recommendations to the Secretariat, the UNDP (the main Principal Recipient at that time) and other counterparts.⁶ The Secretariat followed up on these recommendations and incorporated obligations on their implementation in the ongoing and new program grant agreements with the Principal Recipients.

In 2013, the OIG undertook a recent consulting engagement for the Secretariat on key financial and procurement controls in place over grants to DRC. This review covered four recent Principal Recipients under Round 9 and SSF⁷ grants. The recent review identified good practices such as fiduciary agents in place at all Principal Recipients to monitor sub-recipient expenditure, and management oversight tools of several Principal Recipients. However, issues were raised in financial management and procurement process of the various Principal Recipients.⁸ The Secretariat is following up on the OIG recommendations from this review.

Safeguard measures have already been implemented by the Secretariat following the Local Fund Agent's verification and allegations from other sources, and the following actions were agreed with the Secretariat:

No.	Category	Agreed action	Due date
1	Fraud/ Collusion/ Mismanagement	If PNLT is unable to provide supporting documents for verification by the Local Fund Agent, the Secretariat will refer the findings of the report to the Recoveries Committee, who will assess the amount to be recovered from the Principal Recipient, UNDP, as guided in Appendix B.	3 months following the publication of the report
2	Mismanagement	The Secretariat's monitoring of the oversight performed by the Principal Recipients over their sub-recipients will be formalized.	31 December 2014
3	Fraud/ Collusion/ Mismanagement	The Country Team will work with the Principal Recipients and sub-recipients to ensure that the specific individuals identified in this report as having committed wrongdoing do not participate in Global Fund programs going forward.	31 December 2014
4	Collusion	The Country Team may require Principal and sub-recipients to establish and maintain a list of authorized suppliers for smaller purchases of goods and services with Global Fund funding. This list, classified into groups and categories, includes specific details (name of the supplier, address (not a PO Box), phone number, registration, and bank account numbers) and approved by the Country Team after Local Fund Agent's verification in the field.	31 December 2014
5	Mismanagement	The Country Team will request the PNLT to instigate inventory controls for its coordination offices (and other recipients, where relevant) and will reiterate to the PNLT relevant guidelines to them for inventory recording of received, stored, and distributed products, and for periodical counts of such products.	31 December 2014

⁶ http://www.theglobalfund.org/documents/oig/OIG_CountryAuditOfGrantsRDC_Report_en/

⁷ Single stream of funding

⁸ Key Financial and Procurement Controls in Place over Grants to DRC, an OIG consulting engagement report (23 July 2013)

Appendix A – The OIG investigation scope, US\$

Grant	PR/SR ⁹	Grant disbursements, as at 31/12/2010	Scope reviewed by the Local Fund Agent	Allegations and issues raised by the Local Fund Agent	Scope reviewed by the OIG
Round 5 TB ¹⁰ (ZAR-506-G04-T) & Round 6 TB (ZAR-607-G05-T)	UNDP	24,737,621 8,182,300			
	PNLT		3,012,867	1,912,324 additional allegations raised by the OAI ¹¹ : approx. US\$ 700,000 ¹²	2,074,710 ¹³
Round 7 HIV (ZAR-708-G06-H)	UNDP	20,155,729			
	CORDAID		102,941	63,134	1,398
	PNLS		259,746	89,230	66,086
	PNTS		204,235	53,495	41,060
Round 8 Malaria (ZAR-810-G08-M)	SANRU	30,026,877			
	CARITAS		150,894	76,457	54,146
	Memisa Belgique		86,343	78,710	17,050
Round 8 Malaria (ZAR-810-G09-M)	UNDP	14,296,632			
	DDSSP		508,711	353,550	112,390
	PNLP		867,552	236,243	71,714
	PNSR		358,478	336,974	341,948
Round 8 HIV (ZAR-809-G10-H)	UNDP	23,206,985			
	CORDAID		231,891	92,098	30,892
	Memisa Belgique		161,695	71,516	40,014
	PNLS		155,922	22,955	10,438
	PNTS		157,860	65,499	28,633
Round 8 HIV (ZAR-810-G11-H)	CORDAID	3,953,291			
	BDOM Bukavu		122,671	24,254	15,904
Round 8 HIV (ZAR-810-G12-H)	SANRU	5,385,016			
	Memisa Belgique		90,328	67,540	-
Total		129,944,451	6,472,134	4,243,979	2,906,383

⁹ Principal Recipient/sub-recipient

¹⁰ Tuberculosis

¹¹ UNDP's Office of Audit and Investigations

¹² Difference between the total value at risk relating to transportation services for PNLT (US\$ 1.6 million, as estimated by the OAI & OIG) and the value of related issues also raised by the Local Fund Agent (around US\$ 0.9 million)

¹³ The OIG reviewed PNLT expenditures totaling US\$ 788,998. The scope was subsequently extended to cover PNLT procurement expenditures totaling US\$ 1,285,712 and reported by the Local Fund Agent as inadequately supported (see Section 3.1).

Appendix B – Non-compliant expenditures identified by the OIG, US\$

Grant	PR/SR	Scope reviewed by the OIG	Noncompliant expenditures	Of which proposed recoveries:		
				Overpricing due to irregular expenses	Unsupported expenses	Ineligible expenses
Round 5 TB & Round 6 TB	UNDP					
	PNLT	2,074,710	1,936,623	139,216	1,285,712	3,000
Round 7 HIV	UNDP					
	CORDAID	1,398	-	-	-	-
	PNLS	66,086	-	-	-	-
	PNTS	41,060	-	-	-	-
Round 8 Malaria	SANRU					
	CARITAS	54,146	231 ¹⁴	-	-	-
	Memisa Belgique	17,050	-	-	-	-
Round 8 Malaria	UNDP					
	DDSSP	112,390	104,445	-	-	-
	PNLP	71,714	-	-	-	-
	PNSR	341,948	2,464	-	790	-
Round 8 HIV	UNDP					
	CORDAID	30,892	-	-	-	-
	Memisa Belgique	40,014	-	-	-	-
	PNLS	10,438	-	-	-	-
	PNTS	28,633	-	-	-	-
Round 8 HIV	CORDAID					
	BDOM Bukavu	15,904	-	-	-	-
Round 8 HIV	SANRU					
	Memisa Belgique	-	-	-	-	-
Total		2,906,383	2,043,763	139,216	1,286,502	3,000
Total proposed recoveries: US\$ 1,428,718						

¹⁴ The amount has been reimbursed by CARITAS.

Appendix C: Non-recovered overpricing in PNLT due to excessive rates charged per kg

Invoice date	Vendor	Final invoice value (revised or not following the PNLT internal audit), US\$	Of which: cost directly related to parcel weight, US\$	Delivery destination	Final weight (x volume, where applicable), kg	Average comparable transportation rate, US\$/kg	Estimated overpricing, US\$
A	B	C	D	E	F	G	H=D-(F×G)
18/02/2009	Agence Eurêka	6,158.00	6,153.00	Gemena	1,758	1.96	2,703.55
22/02/2009		17,967.00	17,962.00	Lubumbashi	5,132	1.49	10,298.24
3/04/2009		691.00	686.00	Lubumbashi	196	1.49	393.31
3/04/2009		521.00	516.00	Goma	129	1.59	311.52
4/04/2009		266.00	261.00	Kananga	87	1.30	148.13
5/04/2009		218.50	213.50	Gemena	61	1.96	93.81
20/04/2009		1,685.00	1,680.00	Goma	420	1.59	1,014.26
10/11/2009		41,951.00	41,951.00	Lubumbashi	11,986	1.49	24,051.97
10/11/2009		14,848.00	14,848.00	Gemena	4,242	1.96	6,524.04
10/11/2009		5,808.00	5,808.00	Goma	1,452	1.59	3,506.43
23/11/2009		588.00	588.00	Gemena	168	1.96	258.36
5/12/2009		3,208.00	3,208.00	Goma	802	1.59	1,936.75
20/03/2010		13,590.50	13,590.50	Lubumbashi	3,883	1.62	7,308.93
12/05/2010		7,119.00	7,119.00	Lubumbashi	2,034	1.62	3,828.58
30/04/2008	Congo Trading Service	5,790.80	5,707.80	Lubumbashi	2,114	1.37	2,802.96
30/04/2008		3,538.00	3,455.00	Kalemie	768	2.97	1,171.23
30/04/2008		2,655.00	2,572.00	Bukavu	643	1.70	1,479.39
30/04/2008		2,425.10	2,342.10	Goma	633	1.46	1,418.86
30/04/2008		2,118.80	2,035.80	Kananga	783	1.19	1,101.12
30/04/2008		1,959.40	1,876.40	Bunia	447	2.62	705.41

Invoice date	Vendor	Final invoice value (revised or not following the PNLT internal audit), US\$	Of which: cost directly related to parcel weight, US\$	Delivery destination	Final weight (x volume, where applicable), kg	Average comparable transportation rate, US\$/kg	Estimated overpricing, US\$
A	B	C	D	E	F	G	H=D-(FxG)
30/04/2008	Etoile Aviation	1,225.40	1,142.40	Inongo	476	0.98	677.32
28/11/2009		2,236.60	2,236.60	Mbandaka	860	1.44	1,000.47
18/02/2009		1,396.00	1,344.00	Lisala	336	2.80	402.39
31/03/2009		185.00	133.00	Lodja	35	3.03	26.84
10/06/2009		517.60	465.60	Kalemie	97	3.23	152.12
10/06/2009		208.60	156.60	Tshikapa	54	1.56	72.58
10/06/2009		200.80	148.80	Kamina	31	3.23	48.62
15/07/2009		6,405.10	6,353.10	Lubumbashi	2,353	1.49	2,839.30
27/07/2009		11,180.00	11,128.00	Tshikapa	4,280	1.56	4,468.90
27/07/2009		1,752.00	1,700.00	Kamina	340	3.23	601.20
27/07/2009		786.40	734.40	Lubumbashi	272	1.49	328.21
29/09/2009		342.00	290.00	Kisangani	116	1.61	103.42
23/11/2009		8,816.80	8,764.80	Lisala	2,739	2.80	1,089.02
24/11/2009		17,148.00	17,096.00	Kalemie	4,274	3.23	3,283.44
24/11/2009		7,221.40	7,169.40	Lodja	1,707	3.03	1,991.66
24/11/2009		4,352.40	4,300.40	Tshikapa	1,654	1.56	1,727.00
24/11/2009		3,684.00	3,632.00	Kalemie	908	3.23	697.56
24/11/2009		3,395.20	3,343.20	Lodja	796	3.03	928.74
18/02/2010		1,463.20	1,411.20	Kamina	336	3.50	235.20
18/02/2010		718.90	666.90	Lubumbashi	247	1.62	267.33
5/01/2007	Galaxie Cargo	6,907.00	6,818.00	Mbuji-Mayi	3,247	1.10	3,246.85
5/01/2007		2,449.00	2,360.00	Kikwit	1,180	1.05	1,122.10
5/01/2007		1,361.00	1,272.00	Tshikapa	636	1.43	365.35

Invoice date	Vendor	Final invoice value (revised or not following the PNLT internal audit), US\$	Of which: cost directly related to parcel weight, US\$	Delivery destination	Final weight (x volume, where applicable), kg	Average comparable transportation rate, US\$/kg	Estimated overpricing, US\$
A	B	C	D	E	F	G	H=D-(FxG)
29/12/2007		7,613.00	7,524.00	Goma	2,280	1.45	4,212.66
29/12/2007		446.20	357.20	Inongo	188	0.97	174.29
29/04/2008		9,209.00	9,120.00	Kamina	1,824	2.97	3,696.04
29/04/2008		7,790.20	7,701.20	Mbuji-Mayi	2,962	1.10	4,429.66
29/04/2008		2,331.50	2,242.50	Mbandaka	897	1.32	1,056.15
29/04/2008		2,309.00	2,220.00	Kindu	555	1.32	1,489.12
29/04/2008		1,221.00	1,132.00	Lodja	283	2.79	342.15
26/12/2007	Inter Business Aviation	4,856.40	4,856.40	Goma	1,349	1.45	2,897.19
26/12/2007		3,397.80	3,397.80	Bukavu	809	1.69	2,028.93
26/12/2007		1,996.00	1,996.00	Kalemie	499	2.96	518.42
26/12/2007		1,898.10	1,898.10	Kananga	703	1.19	1,062.47
26/12/2007		1,248.00	1,248.00	Bunia	312	2.61	434.13
26/12/2007		1,004.00	1,004.00	Kindu	287	1.31	627.65
26/12/2007		762.00	762.00	Gemena	254	1.80	305.36
21/04/2009	Kavatsi	1,055.00	1,050.00	Bukavu	420	1.85	274.38
5/05/2009		1,247.50	1,242.50	Isiro	355	3.15	122.54
17/10/2009		4,975.00	4,970.00	Isiro	1,420	3.15	490.16
19/10/2009		4,255.00	4,250.00	Bukavu	1,700	1.85	1,110.57
19/10/2009		3,670.00	3,665.00	Kisangani	1,466	1.61	1,306.98
19/10/2009		3,447.00	3,442.00	Kindu	1,721	1.43	978.89
2/12/2009		2,855.00	2,850.00	Bukavu	1,140	1.85	744.74
2/12/2009	La Femme Vertueuse	1,497.00	1,492.00	Kindu	746	1.43	424.32
16/12/2009		4,146.90	4,086.90	Kisangani	1,404	1.61	1,828.61

Invoice date	Vendor	Final invoice value (revised or not following the PNLT internal audit), US\$	Of which: cost directly related to parcel weight, US\$	Delivery destination	Final weight (x volume, where applicable), kg	Average comparable transportation rate, US\$/kg	Estimated overpricing, US\$
A	B	C	D	E	F	G	H=D-(FxG)
26/02/2009	Salem-Agency	16,062.50	16,052.50	Mbuji-Mayi	6,421	1.20	8,344.93
26/02/2009		6,895.00	6,885.00	Lisala	1,530	2.80	2,597.33
26/02/2009		6,885.00	6,875.00	Mbandaka	2,750	1.44	2,922.25
26/02/2009		5,160.00	5,150.00	Mbandaka	2,060	1.44	2,189.03
26/02/2009		2,758.00	2,748.00	Inongo	916	1.06	1,775.33
28/03/2009		77.50	67.50	Mbandaka	27	1.44	28.69
15/04/2009		767.50	757.50	Mbuji-Mayi	303	1.20	393.79
15/04/2009		235.00	225.00	Lisala	50	2.80	84.88
15/04/2009		175.00	165.00	Kikwit	55	1.14	102.03
15/04/2009		77.50	67.50	Mbandaka	27	1.44	28.69
15/04/2009		61.00	51.00	Inongo	17	1.06	32.95
23/04/2009		2,032.50	2,022.50	Mbuji-Mayi	809	1.20	1,051.40
5/11/2009		10,570.00	10,500.00	Mbuji-Mayi	4,200	1.20	5,458.45
5/11/2009		7,055.00	7,005.00	Kananga	2,802	1.30	3,369.90
5/11/2009		6,800.00	6,750.00	Mbandaka	2,700	1.44	2,869.11
5/11/2009		6,650.00	6,600.00	Kikwit	2,640	1.14	3,577.29
5/11/2009		6,413.00	6,363.00	Inongo	1,818	1.06	4,432.53
5/11/2009		1,878.50	1,868.50	Inongo	534	1.06	1,301.46
16/11/2009		1,445.00	1,435.00	Mbuji-Mayi	574	1.20	745.99
15/12/2009		1,337.50	1,297.50	Mbandaka	515	1.44	557.26
15/12/2009		477.50	457.50	Mbuji-Mayi	179	1.20	242.63
15/12/2009		477.50	457.50	Kananga	179	1.30	225.28
12/01/2010		2,786.00	2,776.00	Lisala	694	3.04	669.71

Invoice date	Vendor	Final invoice value (revised or not following the PNLT internal audit), US\$	Of which: cost directly related to parcel weight, US\$	Delivery destination	Final weight (x volume, where applicable), kg	Average comparable transportation rate, US\$/kg	Estimated overpricing, US\$
A	B	C	D	E	F	G	H=D-(FxG)
15/03/2010		1,798.00	1,788.00	Lisala	447	3.04	431.36
15/03/2010		1,159.00	1,149.00	Inongo	383	1.15	708.55
31/05/2010		7,237.00	7,227.00	Kikwit	2,536	1.42	3,616.55
31/05/2010		4,085.00	4,075.00	Kananga	1,630	1.41	1,784.85
31/05/2010		1,612.00	1,602.00	Inongo	534	1.15	987.90
31/05/2010		955.00	945.00	Lisala	210	3.04	307.65
31/05/2010		787.00	777.00	Mbuji-Mayi	311	1.30	372.70
15/12/2010		656.50	588.00	Inongo	168	1.15	394.80
24/11/2008	Tanzair Service	8,640.00	8,568.00	Kamina	240	2.97	7,854.32
23/11/2009		15,694.00	15,622.00	Kamina	3,720	3.23	3,601.33
24/11/2009		8,640.00	8,568.00	Kamina	240	3.23	7,792.38
Total (100 invoices):							198,141.17
Less additional recovery made by UNDP:							-61,986.86
Overpricing not yet recovered:							136,154.31

Appendix D – Non-recovered overpricing in PNLT due to false weights or false invoices

Invoice date	Vendor	Final invoice value (revised or not following the PNLT internal audit), US\$	Of which: cost directly related to parcel weight, US\$	Delivery destination	Final weight (x volume, where applicable), kg	Indications on invoices by the PNLT internal audit (in French)	Estimated overpricing, US\$
20/04/2009	Agence Eurêka	1,685.00	1,680.00	Goma	420	Poids reel = 280 kg; ecart = 140 kg	221.9
18/02/2009	Etoile Aviation	7,421.10	7,357.10	Boma	3,679	Poids reel seringues = 221 kg au lieu de 237 kg; surpoids = 16 kg	32.00
18/02/2009		2,720.75	2,682.75	Kimpese	1,533	Poids reel seringues = 104 kg au lieu de 146 kg; surpoids = 42 kg	73.50
26/12/2007	Inter Business Aviation	4,856.40	4,856.40	Goma	1,349	Poids reel (lame porte objet) = 240 kg au lieu de 468 kg; surpoids = 228 kg	331.13
5/06/2009	Kap Fret	217.50	217.50	Lodja	87	Pas de bon de livraison	217.50
17/11/2009		524.00	519.00	Lodja	173	Facture non reconnue par le transporteur, pas de bon de livraison	524.00
17/11/2009		266.00	261.00	Lodja	87	Facture non reconnue par le transporteur, pas de bon de livraison	266.00
21/04/2009	Kavatsi	1,055.00	1,050.00	Bukavu	420	Poids reel 280 kg au lieu de 420 kg; surpoids = 140 kg	258.54
15/04/2009	Massala Diata-Bawu Groupe	862.60	862.60	Popokabaka	454	Poids surcharge sur lame. Poids reel 196 kg au lieu de 336 kg; ecart 140 kg.	266.00
26/02/2009	Salem-Agency	6,885.00	6,875.00	Mbandaka	2,750	Poids reel 1210 kg au lieu de 1375 kg; ecart 165 kg	237.17
28/03/2009		77.50	67.50	Mbandaka	27	Poids reel 13 kg; ecart 14 kg	20.12
15/04/2009		767.50	757.50	Mbuji-Mayi	303	Poids reel 156 kg au lieu de 303 kg; ecart 147 kg	176.45
15/04/2009		235.00	225.00	Lisala	50	Poids reel 39 kg; ecart 11 kg	30.83
15/04/2009		175.00	165.00	Kikwit	55	Poids reel 39 kg; ecart 16 kg	18.32
15/04/2009		61.00	51.00	Inongo	17	Poids reel 13 kg; ecart 4 kg	4.25
23/04/2009		2,032.50	2,022.50	Mbuji-Mayi	809	Poids reel : crachoirs 100kg, lames 280 kg. Ecart : crachoirs 180 kg. lames 140 kg.	384.12
Total (16 invoices):							3,061.84

Appendix E – The OIG Methodology

The OIG Investigations

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.¹⁵

While the Global Fund does not typically have a direct relationship with the recipients’ suppliers, the scope of OIG’s work¹⁶ encompasses the activities of those suppliers with regard to the provision of goods and services. The authority required to fulfill this mandate includes access to suppliers’ documents and officials.¹⁷ The OIG relies on the cooperation of these suppliers to properly discharge its mandate.¹⁸

Investigation methodology in this report included: a forensic review of red flag transactions; interviews; review of vendor data in business registry; vendor and delivery verifications; imaging and analysis of computer forensic evidence; and a pricing analysis. The OIG also collaborated with the UNDP’s Office of Audit and Investigations, with regard to allegations into fraudulent transactions.

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

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. Findings are established by a preponderance of credible and substantive evidence. All available evidence is considered by the OIG, including inculpatory and exculpatory information.¹⁹

¹⁵ Charter of the Office of the Inspector General (19 March 2013), available at http://theglobalfund.org/documents/oig/OIG_OfficeOfInspectorGeneral_Charter_en/, accessed 01 November 2013.

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

¹⁷ Ibid., § 17.1 and 17.2.

¹⁸ Global Fund Code of Conduct for Suppliers (15 December 2009), § 17-18, available at http://theglobalfund.org/documents/corporate/Corporate_CodeOfConductForSuppliers_Policy_en/, 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.

¹⁹ 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.

The OIG finds, assesses and reports on facts. On that basis, it makes determination on the compliance of expenditures with the grant agreements and details risk-prioritized Agreed Actions.

Such Agreed Actions may notably include identification of expenses deemed non-compliant for considerations of recovery, recommended administrative action related to grant management and recommendations for action under the Code of Conduct for Suppliers²⁰ or the Code of Conduct for Recipients of Global Fund Resources²¹ (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.²²

Agreed 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.

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 the purpose of 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.

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 set forth in its Charter to undertake investigations of allegations of fraud and abuse in Global Fund supported programs.

²⁰ See fn. 23, supra.

²¹ Code of Conduct for Recipients of Global Fund Resources (16 July 2012) available at http://theglobalfund.org/documents/corporate/Corporate_CodeOfConductForRecipients_Policy_en/, accessed 01 November 2013.

Note: Every grant is subject to the STC of the Program Grant Agreement signed for that grant. The above-referenced Code of Conduct was incorporated by reference into many Global Fund grant agreements, but may not, for timing or other reasons, be included in a particular program Grant Agreement, and the terms of that Grant Agreement are the governing provisions for that Agreement.

²² Charter of the Office of the Inspector General (19 March 2013) § 8.1

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 in relation to procurement activities.²³

The Codes notably provide the following and other definitions of the relevant concepts of wrongdoings:²⁴

- *“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.*
- *“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.*

²³ Code of Conduct for Recipients of Global Fund Resources, section 3.4.

²⁴ Available at

http://theglobalfund.org/documents/corporate/Corporate_CodeOfConductForRecipients_Policy_en/

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 non-compliance is based on the provisions of the STC.²⁵ The OIG does not aim to conclude on the appropriateness of seeking refunds from recipients, or other sanctions on the basis of 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.²⁶

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".²⁷

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 non-compliance.

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 ensures 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.²⁸

The STCs 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

²⁵ Note: The STC are revised from time to time, and specific STCs exist for certain Principal Recipients which are United Nations organizations (including UNDP) due to their legal status. Every grant is subject to the STC of the Program Grant Agreement signed for that particular grant.

²⁶ Standard Terms and Conditions (2012.09) at Art. 14(b):

http://www.theglobalfund.org/documents/core/grants/Core_StandardTermsAndConditions_Agreement_en

²⁷ Id. at Art. 9(a) and Art 18(f)

²⁸ Id. at Art. 18(a)

practice that is or could be construed as an illegal or corrupt practice in the Host Country.”²⁹

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 Recipient or the Sub-Recipient, designed to establish bid prices at artificial, non-competitive levels.”³⁰

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.³¹

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.³² 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.³³

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

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.

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 to 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

²⁹ Id., at Art. 21 (b).

³⁰ Id. at Art. 21(b)

³¹ Available at

http://www.theglobalfund.org/documents/corporate/Corporate_CodeOfConductForSuppliers_Policy_en ;

http://www.theglobalfund.org/documents/corporate/Corporate_CodeOfConductForRecipients_Policy_en

³² Standard Terms and Conditions (2012.09) at Art. 21(d)

³³ Id. at Art. 21(e)

³⁴ Id. at Art. 14

has made a material misrepresentation with respect to any matter related to this Agreement.”³⁵

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.”³⁶

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 case 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 pursuant to 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 overpricing between the price paid and comparable market price for such goods or services, or (iii) amounts which are ineligible (non-related) to the grant scope or not included in the approved work plans and budgets.

³⁵ Id. at Art. 27(b) and (d)

³⁶ Id.