PAPER ON THE STATUS AND CHRONOLOGY of the INP+ ISSUE, OIG REPORT AND PFI

Population Foundation of India (PFI) has been the Principal Recipient (PR) since 2005 for Rounds 4 and 6 and continues to be the PR for the current Rolling Continuous Channel (RCC) Phase 1 (2010-2013) in the Global Fund funded programme for Promoting Access to Care and Treatment for People Living with HIVAIDS. INP+ was one of the Sub-Recipient (SR) with which PFI had an agreement to implement the programme through its state level and district level networks, which delivered the services to the PLHIV community in India. INP+ was responsible for all programmatic and financial management of the programme under the terms of the Agreement with the PR. The Budget contained detailed item-wise expenditure lines and disbursements were made by the PR on the basis of the approved budget and audited expenditures supported by utilisation certificates from independent Auditors / Auditing firm submitted by INP+. Based on the Local Fund Agent (LFA) of the Global Fund in India's six monthly reviews, the Global Fund rated PFI from July 2006 to March 2010 as "A" or "A1" for its financial management and implementation of the programme.

Over the last two years PFI has been subjected to misconceived and ill-informed barrage of emails and letters by a few persons who were a part of the INP+ networks on PFI's lack of oversight relating to transfers of money by INP+ to an entity named Positive Support Fund (PSF). The issue was first raised in late 2009 by an individual who was a member of the INP+ networks with the Country Coordinating Mechanism (CCM) India. Since then, the complainant seems to have made his/her mission to target one individual in INP+ and in this 'personal' vendetta has in the months that followed greatly weakened the networks. Unfortunately, PFI has been drawn into the ensuing turmoil and it can even be said, become a scapegoat to the networks' internal conflicts and personal animosities. This is despite the fact that the terms of the Agreement signed with the Global Fund by PFI and the Agreement signed by PFI with INP+ devolves no responsibility on PFI to manage the networks. PFI has time and again explained the actual position with evidence and facts to the CCM, state level networks, other SRs, etc., yet these misconceptions and mis-information persist among some; indeed, there would seem to be deliberateness in not even trying to understand the true and correct situation.

With this paper, PFI seeks to bring the facts of the position for the sake of clarity and information to the readers:

1. Funds were disbursed to SRs as per the approved itemised budget for carrying out the programme activities, including itemised managerial and administrative expenditures. Till end March 2010, the SRs were allowed to also charge 'overheads/management fee' at a lump sum of 8% of the actual expenditure incurred. The eight per cent overheads were not itemised and there were no guideline or policy on what expenditures should be met out from this amount. Therefore, no audit by the independent auditor of the SR or review by the LFA was carried out on how the SRs used the amount received as eight per cent overheads.

2. The complainant raised the issue of transfer of Global Fund moneys by INP+ to Positive Support Fund in the CCM meeting and subsequently, wrote to the Global Fund and the Office of the Inspector General. Yet, the person who wrote to the CCM and the OIG was party to the decisions to set up and finance the Positive Support Fund. Extracts from the INP+ Board meeting minutes are placed below:

Board Meeting dated 21st April 2006 at Chennai

NATIONAL TREATMENT FUND:

"Mr. Abraham stated that HIV and Human Development Resource Network (HDRN) had raised fund around 20 lakhs and together from various other sources the corpus fund of INP+ has reached around 75 – 80 lakhs. Abraham recommended that the corpus fund could be built as Positive Support Fund, which will be helping positive friends for accessing second line drugs and will develop other support services.

Mr. Elango suggested that the existing fund can be sustained in the form of immovable properties by which it would give confidence for executing advocacy activities independently. Mr. Abraham informed that the fund would be launched nationally by June 2006.

The board unanimously agreed to set up Positive Support Fund with separate Guidelines, Terms of Reference and Autonomous status."

(The complainant was a participant in this Board meeting.)

Board Meeting dated 17th March 2007 at New Delhi

The following resolutions were passed by the board members unanimously:

1. The asset (Land) of INP+ can either be disposed for gains or be utilized for the organizational purpose.
2. The Fund Transferred to PSF from INP+ will be utilized for meeting the medical expenses, Develop health infrastructural facilities providing Care & Support to People Living with HIV in India."

(Members of two SLNs who subsequently wrote to PFI and the Global Fund were part of this meeting.)

Board Meeting dated 17-18th July 2009

"Following the presentation, the board member appreciated the financial and accounting system of INP+ and thanked Ms. Renuka and her team for clarifying all queries related to the same. The board members also expressed that they are well aware and clearly understood the activities of the Positive Support Fund [PSF]. "

(Members of two SLNs who subsequently wrote severally to PFI and the Global Fund were part of this meeting)

3. PFI on receiving the complaint through the NACO on 6th January 2010 wrote promptly to INP+ to bring back Global Fund sourced moneys transferred by it to PSF. PFI also had an audit conducted by an independent CA firm in January 2010. The firm confirmed that transfers had taken place but could not determine the exact amount transferred from the Global Fund grants. The CCM not satisfied with the report asked PFI for another audit to be conducted by one of the Big Four. The CCM approved the Terms of Reference (ToRs) and selected KPMG to conduct a Fiduciary Review and Institutional Assessment of INP+ and the nine SLNs.

4. It is relevant to mention that contractually and technically in the absence of any policy or guideline on the use of moneys received as lump sum overheads, the SR was free to build its own fund from unspent balances. This being a central pool was then available for the recipient to use as it wished after following its approved decision making process, appropriate approvals and adherence to statutory regulations. PFI obtained opinions from an independent Chartered Accountant firm and a Legal firm both of whom confirmed this interpretation. Moreover, neither the INP+'s auditors nor the Global Fund's LFA raised any issue on the use of the overheads moneys. Nevertheless, on ethical and moral grounds PFI has been pursuing with INP+ since January 2010 to bring back the transferred moneys from the Global Fund grant for use on programme related activities, including strengthening and building of the networks.

5. The KPMG report submitted to the CCM in October 2010 assessed the financial management of INP+ and the nine SLNs as weak in several areas. It did not however, identify any fraud or misappropriation of programme funds even though the KPMG audit team comprised several Forensic auditors. The report made recommendations to build and strengthen capacities and governance, but could not/did not determine the exact amount of Global Fund moneys transferred by INP+ to PSF. As it were, the position of determining the exact amount of transfers remained where it was at the beginning of the year. Almost the entire 2010 was lost with conflicting opinions and queries resulting in mistrust and misinformation among stakeholders, especially, between the CCM and PFI. Even the recommendations of the KPMG on how to strengthen capacities and improve governance remained unattended. PFI was given a copy of the KPMG report only in December 2010 after repeated requests to the Global Fund.

6. In January 2011, PFI proposed to the Global Fund to conduct yet another audit with forensic components to determine the amounts transferred, amounts spent from out of the overheads amounts, verify the authenticity and eligibility of the amounts spent, trace the transactions and the balances in all the INP+ bank accounts. The ToRs were approved by the Global Fund and by the OIG, but immediately thereafter, the OIG stopped the audit and Global Fund informed PFI that OIG will be doing an investigation in February 2011 of INP+. As desired by the Global Fund, PFI asked INP+ to extend full cooperation to the OIG team which they did.

7. PFI was not provided with any information, no queries were raised and no comments or replies were sought from PFI by the OIG during the entire investigative exercise. There was no information on when the results of the investigation would be known. Another programme year was being lost in trying to determine the exact money transfers and PFI had no inkling on when the OIG report would be finalised. PFI with the approval of the Global Fund restarted the process

of selection of an Audit Firm on terms as indicated above. The firm RiskPro was engaged by INP+ as directed by PFI to complete the assignment in September / October 2011. This would have also cleared the way for the RCC to move forward from 1 October 2011 under the management plan prepared by PFI with INP+ and approved by the Global Fund. In readiness, INP+ selected and recruited Programme Manager and Finance Manager, carried out amendments in their Bye Laws, enlarged their office space, etc.

8. On PFI's persuasion and follow-up INP+ had brought back Rs 1.6 crores (about USD355,000) in April 2011 from PSF in the interest of the program and with the hope that with planned implementation of approved reforms and capacity building in the networks would bring a reformed INP+ back in to the RCC. As per the last information this amount is held in a Fixed Deposit with INP+. With the re-transfer of Rs 1.6 crores INP+ claimed to have brought back the entire Global Fund money transferred to PSF. INP+ committed itself to use this amount on strengthening governance and capacities at all the levels of the networks as approved by the Global Fund. INP+ also provided proof of recusal of the identified three Board members from all fiduciary and programmatic decision making in respect of the Global Fund grant. INP+ continued to work on the basis of the management plan which was as per the Global Fund's management letter of 27th June 2011 shared by PFI with INP+.

9. Not accepting these developments the complainant (s) once again took action. A copy of a MoU signed in August 2011 by the 'recused' Board member and General Secretary with a new SLN was sent to the OIG. INP+'s explanation that it was a generic MOU with a new affiliate fell on deaf ears. The OIG reacted as before—accepted unquestioningly the information and document received by it from the complainant, and stopped the management plan from proceeding ahead. The RCC, which was to commence from 1st October 2011, was stopped on 29th September 2011.

10. To keep the programme running and to ensure that care, access and treatment was available to the intended beneficiaries PFI entered into direct agreements with some 200+ district level networks spread across nine states in August 2010. This was foreseen as an interim arrangement but had to be extended every three months to date—a period of about 20 months.

The information below reflects, in terms of the numbers, what went in to directly managing RCC with the district level networks during this period:

S. No.	Particulars	Quantity
1	Number of MOUs signed	1466
2	Number of quarterly reports received	6692
3	Number of monthly reports received	7731
4	Number of times finance review conducted (for all DLNs)	17
5	Number of PLHIV benefitted	100,604

11. And throughout the period enquiries, complaints and allegations continued. Managing 200+ DLNs has thrown up tremendous challenges which the PFI staff has met with commitment, patience and trust and at a great deal of personal risk and stress. Like those at the PFI headquarters, the PFI field coordinators in the nine states have been harassed and threatened by individuals from three of nine state level networks.

Extracts from the email of 1 March 2012 sent to Mr Manoj Pardesi and others by Andreas Tamberg of the Global Fund Programme Team while on a visit to India:

"We understand that there was a disturbance at a recent computerized MIS training program for DLNs, held 16th February 2012 in the Amer Palace hotel in Bhopal. Two representatives of the Madhya Pradesh Network of People living with HIV/AIDS (MPNP+) asked the PFI team to stop the training program until the SLN was not awarded payments for work performed under INP+. In the current context, this is not an appropriate course of action.

Permit me to again state the Global Fund's position on the future course of IDA-405-G05-H RCC. PFI is responsible for continued program implementation, including its DLN component. Pending final recovery of funds misused by INP+, the Global Fund has approved direct DLN management arrangement, taking into account the relative management capacities of the PR, SLNs and third parties, related cost implications and fiduciary risk to the Global Fund. It stands to reason that, having approved this arrangement, the Global Fund fully supports it."

12. The OIG, which started its investigation in February 2011, released its draft report – *Report of Investigation of India HIVAIDS (Round 4 and Round 6) Funds Transfers to Positive Support Fund* – in October 2011. It is important to note that the report focussed mainly on the activities of Mr KK Abraham as an Executive Member of the Positive Support Fund. How PFI owes the responsibility for transactions in PSF, or for Mr Abraham's activities in PSF an entity over which PFI has neither any contractual jurisdiction nor any association, is not reasoned out or explained in the report. In so far as the transfer of funds was concerned, the draft report relied on several untenable and unrealistic assumptions in working out the 'loss'. Instead of determining the amounts actually transferred, OIG has drawn the conclusion that maximum 'loss' to the GF shall be equal to total fund transferred to PSF from the INP+ corpus; or that GF money to total monies transferred to PSF by INP+ shall be proportionate to GF grant to total Grant of INP+ received from other donors, irrespective of the opening balance as of 1st April 2005, expenditures incurred from overhead amounts, and the audited accounts for the period. This is not only unfair and unjustified, it is rather bizarre. The table below explains the position:

Snapshot of financial issue:

According to the PFI's books of accounts:

Total amount transferred by PFI to INP+ (April2005 to March 2010)	INR 48,88,47,038 ~ USD 10,863,267

Overhead (Management fee) disbursed by PFI to INP+ (~ 8% of total actual expenses)	INR 3,33,04,214 ~ USD 740,000

OIG's calculation of the "loss" amounts is as follows: (figures in USD)

Total grants received by INP+ from all donors (1)	16.09 million
Total grants received by INP+ from the Global Fund (2)	10.88 million
% of grants received from the Global Fund: (2)/ (1)	68%
Total amount transferred from INP+ to PSF which is the Maximum loss	1.28 million
Minimum Loss	8,72,000 (68% of 1.2 million)

USD 8,72,000 ~ INR 3,92,40,000

13. As would be observed from the table above, the amounts transferred and therefore the 'loss' is far more than what was allowed as overheads in the five years even supposing that all the overhead amounts were transferred. Without any substantial evidence in their report, it seems to have been assumed by OIG that programme funds were systematically diverted in making up the amounts transferred to PSF. Further, such an assumption means that programme activities relating to the targeted beneficiaries at the district levels were not carried out and therefore the audit certificates and the Local Fund Agent's reviews in all these years were incorrect and false. INP+ transferred moneys to the SLNs and the DLNs against budgeted expenditure items which were duly audited and certified by independent auditors and thereafter, reviewed by the Local Fund Agent, who in all the five years did not raise any issue on the use of programme funds. In assigning the responsibility and liability to PFI for the recovery of transferred moneys is totally contrary to the agreement or practice approved by both the Global Fund and the Local Fund Agent and assigning to PFI the responsibility for recovery and liability to make good the 'loss' is, at best, a poor afterthought.

14. PFI submitted a detailed point-wise response with facts and figures to the draft report within the time-line required by the OIG. Immediately on receipt of PFI's response OIG threatened that it would be adding a paragraph on PFI's lack of oversight on use of funds by INP+ and PFI's failure to recover amounts transferred. This section was added in the final report of the OIG uploaded on the Global Fund website on 31 October 2011.

Extract from the letter written by PFI's Executive Director to Chairman, The Global Fund Board on 23rd December, 2011:

"There has been NO clarity in the entire exercise of the OIG. The draft report to which our response was asked for did not conclude on the PR lack of oversight, etc. Yet we are being accused of something for which our comments were not called for. We would think that norms world over would require the accuser to give ample opportunity to accused to provide defense/justification to a given charge. Indeed, we responded to the draft report with all seriousness and genuineness that the OIG was obliged to correct several facts and figures in its draft report including those given in the annexure to our letter. What OIG chose to ignore are the fallacies and flaws in the logic and rationale pointed out by us in the reported observations and conclusions. We believe that this could be the reason that our substantive response has not been up-loaded on the GF website."

15. The Global Fund has 'accepted' the 'loss' worked out by the OIG. What disappoints PFI is that this 'loss' calculated by the OIG should also be accepted by some CCM members, and amazingly, by a few SLNs who were closely associated with the decision-making process in the INP+ Board. At the risk of repeating, if the intent of the complainants or whistleblowers, if so called, is personal vendetta against individual(s) then the ultimate sufferer are the networks. It is for the networks to themselves resolve and manage their internal conflicts. What may have started as an unthought-of mail has since then blown out of proportion and control, created unmanageable situations, caused trust deficits, rivalries and animosities, besmirched reputations, and overall resulted in a tragic loss of good faith among all.

16. Through all these months PFI has kept the CCM informed on developments, positions and clarified points and issues related to Round 4 and Round 6 and RCC 1. It was the Chair of the CCM who said in the meeting held in October 2010 and thereafter repeated by succeeding Chairmen that this matter is solely between the PR and the SR and the CCM has no role to play in it.

Extract from the letter of December 2011 from Ms Poonam Muttreja, PFI's Executive Director, to Mr PK Pradhan, Chairman, CCM and Secretary, Ministry of Health and Family Welfare:

"The CCM has consistently held the view that the various issues between PFI as the PR and INP+ as the SR are for PFI to resolve and that CCM has no legal jurisdiction in the matter. We understand this and have respected this position. In fact, the conclusions of the CCM Chair after discussions on the KPMG report in the CCM meeting held in October 2010 were that it was for the GF and PFI to take decisions on the way forward. This was reiterated by the Chair, Mr. Chandramouli in the CCM meeting on August 16, 2011. Therefore, may we state that had PFI been allowed to be present in this CCM meeting also we would have been able to apprise, clarify and provide factual information directly to the CCM on the issues on Agenda No. 4, including PFI's efforts in getting INP+ to retrieve the moneys it had transferred to the Positive Support Fund (PSF) and which resulted in April 2011 on re-transfer of Rs 1.6 crore from PSF to INP+. In fact, I informed Mr Chandramouli of this fact by my letter dated June 2, 2011 (with a copy to Dr Charles Gilks, UNAIDS)."

Furthermore, every action taken in developing the management plan, conduct of the audits, the latest in September / October 2011, and approach to issues arising from implementation of the programme have been with the explicit approval of the Global Fund. Yet PFI is now being named by the OIG for its lack of oversight and pilloried by the very people who were party to the decisions to set up PSF and transfer moneys to PSF from INP+'s central fund.

17. In these past couple of years, PFI has singlehandedly carried on the RCC programme directly with the DLNs. This has not been at all easy. The challenges have been enormous ranging from systems and procedural weaknesses that needed strengthening and improvement to individuals who raised emotional and personal problems with the field or the headquarter staff for help and solution. Implementation of the RCC 1 (up to 31 March 2013) is increasingly becoming difficult with the state level networks raising demands for immediate inclusion in the structure and to receive funds. As shown by the KPMG in their report, the SLNs have limited capacities for financial management. It will be a high risk to trust the SLNs with funds without clear identification of a role for them and for which they have established, ready and robust capacities. For PFI to continue as the PR for RCC 2 is fraught with even greater risks.

PFI reiterates that its commitment to the PLHIV is strong as ever and hopes that Truth and Honesty will triumph.

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