
Governance Issues Discussion Paper

A discussion of issues relating to governance of the
Global Fund to Fight AIDS, Tuberculosis and Malaria

November 2001

Submitted by the
Global Health Council

Prepared by
Progressive Health Partners

Contents

1	Core Principles.....	3
1.1	Partnership	3
1.2	Science and Innovation	3
2	Leadership.....	43
2.1	Board of Directors.....	4
2.1.1	Board Membership.....	4
2.1.2	Board Diversity.....	54
2.1.3	Role of the Board	5
2.1.4	Funding Decisions	5
2.1.5	Meetings of the Board.....	5
2.1.6	Board Accountability	65
2.1.7	Terms of Office.....	6
2.1.8	Appointment of Board Chair	6
2.1.9	Conflict of Interest	6
2.1.10	Methods of work, including voting rights.....	6
2.2	Secretariat	76
2.2.1	Appointment of Head of Secretariat	7
2.2.2	Secretariat Staffing.....	7
2.2.3	Relationship to Board	87
2.2.4	Method of work.....	Error! Bookmark not defined.
2.2.5	Communications	8
2.2.6	Application Process	8
2.3	Fiduciary Agent	98
2.3.1	Roles and Responsibilities of the Fiduciary Agent.....	98
2.3.2	Using an Established Entity as Fiduciary Agent.....	98
2.4	Scientific and Technical Advisory Panel.....	109
2.4.1	Ad Hoc Advisory Panels.....	1140
2.4.2	Technical Support to Develop Proposals and Implement Programs	1140
2.4.3	Technical Support for Country-Level Assessments	11
2.4.4	Multi-Disciplinary Technical Support Capacity.....	1244
2.4.5	Technical Support for the Secretariat	1244
2.4.6	NGOs as Technical Assistance Providers.....	1244
3	Country-Level coordination & Communication.....	1244
3.1	Coordination with Other Relief Efforts	12
3.1.1	Debt Relief and Multilateral Assistance	12
3.1.2	Coordination with UNAIDS, WHO and UNAIDS.....	12

Governance Framework Paper

The Global Fund to Fight AIDS, Tuberculosis and Malaria (the Fund) offers great promise as an instrument of global action to address three devastating diseases. Yet the enormity of its promise also speaks to the scope and its mission: to facilitate the financing by governments, corporations, philanthropies, and individuals of a massive effort to address three epidemics that have to date outpaced previous efforts at effective control.

A key challenge is to devise a governance structure that makes effective action likely, satisfies donors, responds efficiently, and produces observable results. This paper seeks to outline facets of the governance challenge for consideration by the Transitional Working Group (TWG) established to put the Fund together, and by community and non-governmental organization representatives seeking to provide meaningful input to the TWG.

1 CORE PRINCIPLES

1.1 PARTNERSHIP

At its core, the Fund represents a broad partnership of constituencies across multiple sectors: donors, civil society, non-governmental organizations (NGOs), governments, countries and individuals already deeply affected or at significant risk, and private entities. Leadership of the Fund must be predicated on respect of and support for this partnership, as success for the Fund will be possible only when all sectors of this partnership are successful. This spirit of partnership must be fully realized in the leadership and decision-making structures of the Fund. Put simply, if the Fund ignores the needs of its various partners, it will fail. If the benefits seen by the various partners to the achievement of their individual principal goals outweigh the inevitable transaction costs of a complex interaction with multiple partners, their engagement will deepen and it will succeed. At the heart of this partnership must be the explicit recognition that the true ultimate customers of this endeavor are the individuals and communities infected and affected by these scourges.

1.2 SCIENCE AND INNOVATION

Emphasizing scientific validation as a key consideration in assessing applications for funding will help to ensure that the Fund's resources are committed to the most effective strategies. However, there is an equally compelling need to support innovation and cultural relevance in order to improve the efficacy of prevention and care interventions. Criteria established for application review must not stifle creativity by restricting funding to interventions that have fully established track records of success. Instead, the review process must be more dynamic and responsive to innovation and risk-taking, support creative new approaches that seek to expand the methods of prevention and care strategies as a way of testing their applicability to large scale efforts, and adapting older

approaches to meet the unique needs of particular cultures and communities. By sequential testing, validation and modification, and expansion on an accelerated basis, effective interventions can be more rapidly proven and brought to scale.

2 LEADERSHIP

Currently under consideration is a leadership structure that includes a Board of Directors, a Secretariat responsible for supporting the leadership, Technical Advisory Councils, and a Fiduciary Agent responsible for managing and disbursing funds.

2.1 BOARD OF DIRECTORS

The Board of Directors (the Board) should serve as the primary decision-making body with respect to activities of the Fund.

2.1.1 Board Membership

Membership of the Board should reflect the underlying partnership represented by the Fund. To maximize its efficiency, the Board should be constituted of no more than 15 members; alternate members should also be chosen, particularly for those who might find participation a special challenge such as those living with HIV/AIDS. Membership should be conditioned upon an individual's commitment to fairly represent a particular constituency and not their own or their organization's more narrow perspective. In addition regular consultations and clear communication and accountability mechanism with their constituents, supported by the Secretariat, should be mandated.

Participation from the following groups is advised:

- Affected persons, including those living with HIV/AIDS;
- Donor representatives, including governmental, corporate, and philanthropic interests;
- Representatives of civil society, including local, national, and multinational NGOs (there are many different kinds of NGOs, and it is critical that a diversity of NGO perspectives be represented and that designated members for this group can speak on behalf on many organizations);
- Representative(s) of the private sector, such as pharmaceutical and biotechnical companies;
- Representative of the Fund's scientific advisory panel;
- Representative of the Fund's Fiduciary Agent; and
- Representatives from UNAIDS and WHO.

Expectations of Board members should be clearly established, with selection contingent upon candidates' agreement to fulfill their responsibilities. Board members representing constituencies must demonstrate the capacity and commitment to fully represent those interests, and should be provided the resources to meet these challenges.

2.1.2 Board Diversity

In addition to representational issues, careful consideration should be given to:

- Geographic diversity, with substantial participation by those from heavily affected, resource-poor countries;
- Racial, ethnic, gender and age diversity;
- Skill diversity, including care providers, physicians, development experts, researchers, program evaluators, senior health systems managers and ethicists;
- NGO representation should not only balance expertise in HIV/AIDS, TB and malaria, but should also include a balance between HIV/AIDS treatment and prevention and the proven ability to bridge differing viewpoints; and
- Affected group diversity, such as women, injection drug users, gay and bisexual men, and those caring for children orphaned by AIDS.

Achieving diversity is not an exercise in “political correctness,” but instead reflects the imperative to embody the principles of partnership. Diversification and efficiency are both possible if the Board member criteria and selection process are thoughtfully constructed.

2.1.3 Role of the Board

Roles of the Board should include:

- Establishing and maintaining a broad and inclusive consultative process to actively engage other partnership sectors in the administration of the Fund;
- Defining overall Fund policy, rules, and regulations;
- Determining strategic priorities and developing a budget reflective of those priorities;
- Setting eligibility criteria to access Fund resources;
- Soliciting major contributions to the Fund;
- Overseeing the work of the Fund’s Fiduciary Agent and the Secretariat; and
- Appointing and overseeing the Fund’s Scientific Advisory Panel.

2.1.4 Funding Decisions

As noted above, the Board should provide broad guidance on funding priorities, and establish the Fund’s budget to reflect those priorities. However, decisions on specific applications should be left to either the Scientific Advisory Panel or to the Secretariat. Fiduciary oversight could be maintained by the Board retaining veto control of funding decisions (either individually or as a group).

2.1.5 Meetings of the Board

The Board should meet according to an established schedule to accomplish its functions. Meetings in a variety of locations should be considered to allow more direct interaction with a variety of interested parties and constituencies and to promote transparency and broad ownership. All meetings should be open to the public, with mechanisms to

communicate the Board's proceedings broadly (e.g., internet publishing of transcripts, web-casting of the meetings, etc.), including to those who may lack access to technology.

2.1.6 Board Accountability

From its outset, the Board should put into place a monitoring and evaluation process to ascertain whether it is achieving its own internal objectives (transparency, participatory decision-making, lean procedures, etc.). The Fund will be more credible if it models what will be expected of its funding recipients.

This monitoring and evaluation should be predicated on clearly defined goals and objectives established for each component of the Fund's work, with clear delineation between global and country- or region-specific aims.

For further discussion, a separate briefing paper has been prepared on "accountability, eligibility, technical review and advice."

2.1.7 Terms of Office

Each representative on the Board should serve a three-year staggered term (i.e., only a limited number of members will leave the Board at a given time to ensure continuity). After the completion of a three-year term, a representative would not be eligible for re-appointment to the Board until another two years had passed.

2.1.8 Appointment of Board Chair

The Board Chair should be appointed following a vote of the entire Board. Each representative on the Board should have one vote in this process.

2.1.9 Conflict of Interest

Clear rules should be established for managing conflicts of interests, particularly where Board members might represent interests seeking support from the Fund. At a minimum, Board members must provide written, public disclosure of possible conflicts and must recuse themselves from any actions affecting those self-interests. Careful consideration should be given to inviting representation from private, for-profit entities (or foundations established by those entities), as well as from civil society organizations that could have substantial and ongoing conflicts of interest with the decisions or the resource deployment of the Fund.

2.1.10 Methods of Work, Including Voting Rights

All work done by the Board should be by consensus with equal voting rights for all Board members.

In addition, the Board must be willing to change policies and procedures following a thorough evaluation process. Operating procedures should not be frozen at an early stage in the development process, and a formal annual review should be conducted for at least the first two years of Board operation to seek improvements in operation.

2.2 SECRETARIAT

The Secretariat should be responsible for day-to-day management and decision-making within agreed parameters set by the Board. It would be the only standing body, and would function at the center of a constellation of partners. The Secretariat would act on and implement the decisions of the Board, and would be responsible for communicating the decisions taken by the Board to the partners and the broader public. In addition, the Secretariat should:

- Prepare and staff meetings of the Board, Scientific Advisory Panel, and Fiduciary Agent;
- Support Board members in fulfilling their responsibilities (including communicating with those they are representing on the Board);
- Ensure proposals go through due process;
- Manage day-to-day external relations and communications, including those with the Fiduciary Agent;
- Prepare annual budgets and business plans for consideration and approval by the Board;
- Support the provision of technical assistance to entities that have received funding or are working to develop competitive applications (utilizing, to the maximum extent possible, existing technical assistance capacity and funding resources); and
- Provide regular reports on Fund assets and liabilities, based on reporting from the Fiduciary Agent.

The Secretariat should be small and would be located in an appropriate setting that balances the need for independence with the desire to build on and utilize existing technical, logistical, and administrative mechanisms and/or agencies. The Board should consider housing the Secretariat in a developing country as long as these technical, logistical and administrative issues can be adequately addressed.

2.2.1 Appointment of Head of Secretariat

Nominations for the Head of the Secretariat should be solicited from civil society, governments, the private sector and NGOs. Following these nominations, the Board should appoint a Head of the Secretariat through a consensus process confirmed by a vote of the members of the Board. Each member of the Board should have one vote in this process.

2.2.2 Secretariat Staffing

The Secretariat should include positions dedicated to outreach and communication; with at least one person focused on the NGO community and another on infected and affected communities (primarily through PLWA associations and networks). These individuals would also help monitor the success of the Fund in supporting the work of NGOs, which remain key actors in the struggle against AIDS.

The Secretariat should also include positions dedicated to outreach and coordination with UNAIDS, WHO, and other UN and multilateral agencies working to address AIDS, TB,

and/or malaria. The Secretariat's staffing should be designed and have the knowledge and skills to access and utilize the resources and expertise of these other organizations rather than to replicate that capacity.

The Secretariat should include people who are from and who have worked extensively in resource-poor and highly affected countries in each of the regions designated to receive substantial resources from the Fund to serve as a channel for voicing the needs and realities of these countries.

The Secretariat should include at least one position responsible for external relations and communications, including publication and dissemination of the Fund's activities, finances, proceedings, decisions, evaluations, and achievements.

The Secretariat should include development staff skilled in soliciting large donations from private and philanthropic sources, and in maintaining relations with those donors to promote long term giving.

As with Board members, those serving on the Secretariat should have clear conflict of interest rules and they must serve the interests of the Fund not those of a specific organization, country, agency or component of the Fund. Clear expectations of responsibility should be established for staff seconded from other organizations and governments.

2.2.3 Relationship to Board

The Board should expect and authorize the Secretariat to manage day-to-day activities of the Fund. Within the budgetary and priority parameters established by the Board, the Secretariat should be provided with necessary latitude to operate with independence and efficiency.

2.2.4 Method of Work

The work of the Secretariat should be done in an open and transparent manner.

2.2.5 Communications

All activities of the Secretariat should be done in a transparent fashion and significant efforts must be made to inform the Fund's partners—including NGOs—of its activities.

2.2.6 Application Process

The application process to the Fund must be clear and forthright, with the Fund Secretariat supporting pre-application coordination between the various sectors (government, civil society, multilaterals, affected communities and NGOs).

Requirements and pre-conditions for funding consideration must be clearly stated in a fashion that is readily understood by potential applicants, and periodic review of these requirements should include consideration of whether they pose undue obstacles to the achievement of the Fund's objectives.

Decision-making must be transparent. All decisions relating to the creation, governance and activities of the Fund must be made with active participation by people living with HIV/AIDS, affected communities, developing country governments, and NGOs. All information related to the Fund and application must be accessible to the public.

2.3 FIDUCIARY AGENT

The Fiduciary Agent (the Agent) should be responsible for managing and disbursing resources following instructions from the Board of the partnership and on receipt of resources. It would receive contributions to the Fund, managing and investing escrowed funds appropriately and using only investment instruments that are socially responsible. Regular accounting data, supported by annual audit, should be provided to the Secretariat (which in turn will provide those data to the Board and to the public). If a not-for-profit legal entity must be created to receive tax-deductible contributions, that entity's directors should be the Fund's Board (or a subset thereof) to maximize accountability and transparency.

2.3.1 Roles and Responsibilities of the Fiduciary Agent

The Agent should be responsible for dispersing the funds and monitoring the expenditure of funds and should have no authority to countermand funding decisions approved by the Board. The Agent should early in the process develop mechanisms for, and routinely monitor, disbursement processes carried out by the initial recipients of funds. The Agent should not set up parallel mechanisms for programmatic monitoring and oversight of the beneficiaries of these resources. However, the Agent should communicate any concerns relative to improper use of funds, corruption, or any similar issue pursuant to its fiduciary obligations. The Secretariat should be given authority to suspend disbursements until these concerns are addressed, subject to contemporaneous communication to the Board.

2.3.2 Using an Established Entity as Fiduciary Agent

Consideration is being given to using an existing international institution, such as the World Bank, as the Fund's Agent. Alternatively, a new entity could be created solely for this purpose. There are advantages and disadvantages to either approach, with tension between the desire to minimize bureaucracies and inefficiencies with an equally compelling need to avoid institutional bias.

For NGOs, the primary consideration is the fair and rapid dissemination of funds made pursuant to decisions by the Board and Secretariat. To the extent that the responsibilities and authorities of the Agent are properly delineated, and that the Secretariat's oversight can be relied upon to identify and correct institutional bias, it makes the most sense to use an existing entity.

The decision on which existing entity to utilize should be based on willingness to operate strictly within the boundaries established by the Board and the Secretariat. The Board should also seek an Agent that offers it maximum flexibility in its funding decisions (e.g., using a United Nations agency may limit funding directed to non-governmental or regionally-based entities).

The Fund must maintain the authority to provide funding to NGOs, even without the full support of the host government. This will help to insure the flow of vital resources, even if a nation's government is unable or unwilling to properly manage or utilize Fund resources in the fight against AIDS, TB, and malaria.

2.4 SCIENTIFIC AND TECHNICAL ADVISORY PANEL

The TWG has appropriately identified the need to engage scientific and technical advisors to assist the Board in establishing funding criteria and priorities. Consideration is being given to the creation of two panels, one of which would provide support to the Board in establishing its policies and the other to participate in the review of funding applications.

The current model under consideration is to constitute the following:

- **Technical Advisory Panel** (Policy and Implementation) with responsibility for taking forward decisions of the Board. In particular the TAP would make recommendations to the Board on key policy issues, on standards for assessing proposals and on cost-effectiveness of interventions based on the most up-to-date scientific evidence. They would also advise the Board on links with existing bilateral and multi-lateral support to ensure the fund is complementary. This TAP would constitute no more than 10 people drawn from senior technical positions in key donors, developing countries, technical agencies, NGOs and academic institutions.
- **Independent Proposal Review Panel** with responsibility for assessing country proposals against the agreed criteria and standards. This panel would include no more than 10 people who are selected as experienced individual technical experts (rather than representing countries or organizations) with a balance of expertise in HIV/AIDS, TB and malaria. It would need to be independent to guarantee integrity and consistency of the review process. The majority of panel members would be drawn from developing countries to provide a peer review. They would meet on an ad hoc basis in advance of Board meetings to assess proposals and make recommendations to the board.

This structure raises several concerns. First, it is unclear as to whether these panels report to the Board or to the Secretariat. While reporting to the Board would promote the use of science-based and objective criteria for establishing the Fund's policies and priorities, it may also invite unwarranted influence by Board members on individual funding decisions. A potential resolution would be to have the "Technical Advisory Panel" report directly to the Board (with support from the Secretariat) and to the "Independent Proposal Review Panel" report to the Secretariat, which would in turn be ultimately responsible to the Board.

A second concern is that the proposed size of both panels—10 members each—would make it very difficult to have the full range of expertise needed and to review proposals expeditiously and thoroughly. Funding decisions must be made by those with regional and cultural expertise, with thorough knowledge of the three different diseases, and with

care, treatment, and prevention research. In addition, there are significant differences of approach and knowledge with respect to at-risk and affected populations (e.g., women, injection drug users, men who have sex with men, commercial sex workers, etc.). Consideration might be given to having a set of sub-panels constituted by area of expertise (prevention and care, for example), regional expertise (one for each continental region, for example), and population expertise that could be engaged depending on the nature of the individual application. These sub-panels would then report their recommendations to the full panel for final decision. In addition, the Secretariat should have authority to do an initial review of applications to insure their completeness and consistency with broad parameters established by the Board.

2.4.1 Ad Hoc Advisory Panels

The TWG is considering the use of *ad hoc* technical panels that would focus on issue- and time-specific needs of the Board. This is an appropriate way to ground the work of the Board in thoughtful and science-based policies. While the need to minimize the size of these panels is respected, quality should not be sacrificed for expedience. Panels must be constituted with diversity of expertise and perspective, and must include those with both theoretical and academic backgrounds and with those with practical, on-the-ground experience. NGOs, both large and small, must be included to ensure that advice by the panels is informed by those that have been, and will continue to be, in the front lines of work on AIDS, TB, and malaria.

2.4.2 Technical Support to Develop Proposals and Implement Programs

The Fund should support independent technical assistance to governments to assist in the development of comprehensive and coordinated applications to the Fund. This must include outreach to and joint planning with NGOs working in that country (who may be applying independently for Funds), along with other key sectors (civil society, PLWAs and affected populations, etc.).

2.4.3 Technical Support for Country-Level Assessments

Country-level inventories of need and capacity will be needed to assess the merits of individual applications. While these inventories may exist for one or more of the three-targeted diseases, there are likely few countries that have thorough inventories of all three. Technical assistance will be required to help assess prevention, treatment, and care needs at the regional and country levels. Special effort will be needed to develop assessments that objectively assess community needs, which can be used to insure that government proposals reflect real needs and that populations are not ignored because they are politically disenfranchised (e.g., many countries do not sponsor prevention or care programs for men who have sex with men, injection drug users, or commercial sex workers, because they officially deny their existence). NGOs can and should play a key role in providing this technical support as they are often in a position to provide objective analysis based on grounded program experience. It would be preferable for this technical assistance to be funded and supported by donor and technical agencies, so that Fund resources can be focused on the programs themselves. This requires a high level of partnership and commitment on the part of donors and agencies that are already engaged with the early stages of the Fund.

2.4.4 Multi-Disciplinary Technical Support Capacity

Technical assistance capacity should include a range of expertise, including the design, implementation, and evaluation of foreign assistance projects. This should include health experts, along with those experienced in development, communication, participatory planning, and organizational infrastructure support (e.g., management, finance, grants management, personnel).

2.4.5 Technical Support for the Secretariat

Given the strong pressures on the Secretariat to implement the Fund rapidly and successfully, there will most likely be a need for at least initial technical assistance support. The Board should support the Secretariat in utilizing an appropriate level of technical assistance services for its own internal development process and to assist in some of its start-up operations.

2.4.6 NGOs as Technical Assistance Providers

There is a wealth of experience among NGOs in the provision of a broad range of technical assistance services. These should be fully utilized. However, the Secretariat should avoid over-dependence on NGOs from developed countries and seek to the maximum extent possible, to use and to build technical assistance capacity from heavily affected and resource-poor countries. They are in the best position to provide knowledgeable, culturally relevant and sustainable support to Fund grantees.

3 COUNTRY-LEVEL COORDINATION & COMMUNICATION

The Fund should support multiple and overlapping mechanisms to engage developing countries, donors, civil society, multilateral agencies and the private sector in shared priority setting, decision-making, program implementation, and outcomes assessment. These mechanisms should build upon existing coordinating mechanisms and committees whenever possible. Care should be taken to avoid mechanisms that are, or foster, unnecessary bureaucracy and transaction costs.

3.1 COORDINATION WITH OTHER RELIEF EFFORTS

3.1.1 Debt Relief and Multilateral Assistance

Country-level mechanisms should be used to coordinate plans for the Fund with those related to applications for debt relief (and related assistance from multinational institutions like the World Bank, International Monetary Fund and Export-Import Bank).

3.1.2 Coordination with UNAIDS, WHO and UNAIDS

Country-level coordination mechanisms should also build on, not duplicate, efforts by UNAIDS, WHO, reproductive health commodity boards, and other that are already in place and functional.

Conclusion/Discussion Questions

This paper was unable to provide guidance on all issues. Following are some additional items that will require discussion during the consultative process:

1. What additional parameters should be set around the method of work of the Secretariat?
2. How should the Secretariat address the business aspects of the Fund?
3. What type of business plan should be established for the Fund?
4. What type of budgeting and financing principles should be put in place?
5. How should the Secretariat work with the Fiduciary Agent?