



Investigation Report

Global Fund Grants to the Republic of Kenya

Fraudulent Practices in NTLDP Activities

GF-OIG-18-004
9 February 2018
Geneva, Switzerland

What is the Office of the Inspector General?

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

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

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The Global Fund believes that every dollar counts and has zero tolerance for fraud, corruption and waste that prevent resources from reaching the people who need them. If you suspect irregularities or wrongdoing in the programs financed by the Global Fund, you should report to the OIG using the contact details below. The following are some examples of wrongdoing that you should report: stealing money or medicine, using Global Fund money or other assets for personal use, fake invoicing, staging of fake training events, counterfeiting drugs, irregularities in tender processes, bribery and kickbacks, conflicts of interest, human rights violations...

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Audit Report

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

Advisory Report

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

Investigations Report

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

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1. Executive Summary

1.1. Summary of OIG Findings

In October 2016, the OIG received an allegation from an external source, relating to the misuse of funds from Global Fund grant KEN-T-TNT. In February 2017, an in-depth Local Fund Agent review of 2016 training expenditures, requested by the Secretariat and OIG, also suggested potential fraud. Based on these results, the OIG opened an investigation.

For the period 2014-2016, the OIG investigation found no reasonable assurance of delivery of services amounting to KES5,766,200 (US\$56,813).¹ The OIG was unable to find confirmation that 120 people had participated in various activities, including training and meetings organized by the National Tuberculosis, Leprosy and Lung Disease Program (NTLDP).

In addition, two other activities, a quarterly review meeting and another training event, reportedly conducted by NTLDP could not be verified. The OIG investigation also found that 17 people had received per diems valued at KES583,000 (US\$5,744) although they had not attended any activities. As a result, the OIG concludes there were non-compliant expenditures amounting to US\$62,557. The OIG proposes the amount of US\$50,625 as a proposed recoverable amount, which is the total amount of non-compliant expenditures less KES 1,211,000 (US\$11,932) that has been returned to the program account at NTLDP.

During its assessment of the allegation received in October, the OIG learned that the Secretariat had received a report in June 2016 from the Local Fund Agent identifying red flags of fraud in various 2015 NTLDP activities (June 2016 report). The Secretariat sought an explanation from the Principal Recipient (the National Treasury) and NTLDP regarding these concerns, which prompted NTLDP to conduct its own investigation. In September 2016, NTLDP sought disciplinary action from the Ministry of Health against the individuals involved in the misappropriation of funds. NTLDP sits under the Division of National Strategic Health Programs in the Department of Preventive and Promotive Health at the Ministry of Health. The individuals involved refunded most of the amounts to the TB program.

Given the corrective actions taken by the Secretariat and the subsequent remedial actions implemented by the PR and NTLDP on the 2015 activities subject of the June 2016 report, the OIG did not include these activities in the scope of this investigation. Nevertheless, the OIG notes that it was not consulted or informed by the Secretariat about these red flags of fraud in the June 2016 report in a timely manner and thus requests the Secretariat, without prejudice to other actions it undertakes, to immediately inform the OIG of any issues concerning fraud when they arise.

1.2. Actions Already Taken

Since October 2016, the Secretariat has instructed the Principal Recipient and NTLDP to implement appropriate measures to address the risks relating to an imprest system used to pay cash advances for particular tasks. In response, the Principal Recipient has provided additional oversight resources, i.e., the secondment of a senior accountant and the appointment of an additional internal auditor for reviews and spot checks. Furthermore, county coordinators are now required to submit the names of their nominees in advance, including relevant information that will assist in ensuring correct allocation of budget for per diems and transport allowances.

Use of imprests has been reduced and, as of May 2017, over 70% of payments of per diems and transport allowances are made using Electronic Funds Transfer. NTLDP has also improved its internal processes in implementing program activities in general. In particular, in order to ensure that the right participants are attending NTLDP activities, the Secretariat proactively facilitated an

¹ Where an original amount in KES has been converted into US\$, the exchange rate used is 1 US\$ = KES 101.494. See <https://www.oanda.com/currency/converter/>

in-county risk workshop to further sensitize program staff on risk identification and mitigation. The Global Fund Ethics Officer participated in the workshop and delivered several presentations.

1.3. Summary of Agreed Management Actions

The Global Fund Secretariat and the OIG have agreed on specific actions, which are detailed in Section 5 of this report and which include the recovery of an appropriate amount based on the findings of this report; and compliance by NTLDP with its internal controls to guarantee that program activities are attended by the right participants.

2. Context

2.1. Country Context

With a population of over 43 million, Kenya is the biggest and most advanced economy in East and Central Africa.² A new constitution in 2010 and related changes to the government structure have transformed political and economic governance.³ While there are still challenges facing the healthcare system, decentralized healthcare and increased spending on health and education have resulted in free maternal health care at all public health facilities and a more equitable health care system.⁴

Kenya has a robust national response to HIV with strong grassroots community-based work including empowering women, fighting stigma and discrimination and providing psychological support. While Kenya is one of the 22 highest TB burden countries worldwide, it has a strong TB program. The country has achieved WHO targets for TB case detection and treatment thanks to its committed health facilities and community health workers. Malaria continues to be a leading cause of morbidity and mortality in the country, although there has been a steady decline in prevalence thanks to the rapid scale-up of interventions on diagnosis and case management.

2.2. Differentiation Category for Country Investigations

The country ranks 145 out of 176 countries in the 2016 Corruption Perceptions Index published by Transparency International, an international Non-Governmental Organization active in the fight against corruption.⁵ Its score on the index is 26/100, a score of 0 means that the public sector is perceived to be highly corrupt. The country's score improved from a score of 25 in 2015. In an effort to further fight corruption, the Government of Kenya has undertaken governmental process reforms and adopted an Integrated Financial Management Information System for accounting, budgeting and procurement activities.

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

Kenya is:

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

Challenging Operating Environment

Additional Safeguard Policy

² Global Fund's country profile, if not specified otherwise. <https://www.theglobalfund.org/en/portfolio/country/?k=013e944b-94da-41e1-90d1-b22b4f87ficc&loc=KEN>, accessed on 15 November 2017.

³ <http://www.worldbank.org/en/country/kenya/overview>, accessed on 15 November 2017.

⁴ Ibid.

⁵ https://www.transparency.org/news/feature/corruption_perceptions_index_2016#table, accessed on 15 November 2017.

2.3. Global Fund Grants in the Country

As of 15 November 2017, the Global Fund had disbursed a total of US\$975 million to the country, out of a total commitment of US\$1.037 billion.⁶

The implementation period for the TB program grant covered by this investigation, KEN-T-TNT, is from 1 October 2015 to 31 December 2017. The Global Fund has disbursed US\$47.9 million from this grant out of a committed amount of US\$63.9 million.⁷

The Global Fund has five other active grants in Kenya for the three disease components with a total commitment of US\$581 million and an undisbursed amount of US\$45 million.

2.4. The Three Diseases



HIV/AIDS:⁸ The country is affected by an HIV epidemic. In 2016, there were 36,000 AIDS-related deaths.

1.5 million people living with HIV

There were 62,000 new HIV infections documented in 2016.

1 million people currently on antiretroviral therapy



Malaria:⁹ 70% of the Kenyan population is at risk of malaria and 66% of the population is at risk of malaria in endemic, highland-epidemic prone and seasonal transition areas.

21 million insecticide-treated nets distributed

There were 15,061 malaria-reported deaths in 2015.



Tuberculosis:¹⁰ WHO estimates the number of multidrug resistant tuberculosis patients and patients resistant to rifampicin at 1,400.

222,000 new smear-positive TB cases detected and treated

⁶ <https://www.theglobalfund.org/en/portfolio/country/?loc=KEN&k=013e944b-94da-41e1-90d1-b22b4f87ficc>, accessed on 15 November 2017.

⁷ <https://www.theglobalfund.org/en/portfolio/country/grant/?k=88152098-e6ae-49d0-85d7-9daa21ad2733&grant=KEN-T-TNT>, accessed on 15 November 2017.

⁸ Information is compiled from <http://aidsinfo.unaids.org/> and the Global Fund's country profile

<https://www.theglobalfund.org/en/portfolio/country/?k=013e944b-94da-41e1-90d1-b22b4f87ficc&loc=KEN>, accessed on 15 November 2017.

⁹ Information is compiled from the 2016 World Malaria Report (World Health Organization), the Global Fund's country profile and the Integrated Grant Description for Grant KEN-M-TNT: Scaling up Malaria Control Interventions for Impact, accessed on 15 November 2017.

¹⁰ https://extranet.who.int/sree/Reports?op=Replet&name=/WHO_HQ_Reports/G2/PROD/EXT/TBCountryProfile&ISO2=KE&outtype=pdf and the Global Fund's country profile, accessed on 15 November 2017.

3. The Investigation at a Glance

3.1. Genesis and Scope of the Investigation

November 2014 – June 2016: Scope of investigation

October 2016: OIG alerted to wrongdoing

Source of the alert:

- Secretariat
- Principal Recipient
- Sub-Recipient
- Local Fund Agent
- Anonymous whistle-blower**
- Audit referral
- Other

In October 2016, the OIG received an allegation relating to the misuse of funds from grant KEN-T-TNT. The Secretariat also informed the OIG that the LFA had reviewed 2015 KEN-T-TNT activities and found red flags of fraud, which the OIG subsequently confirmed. In response to the allegation, the OIG and the Country Team requested the Local Fund Agent to review a sample of 2016 NTLDP training activities. The 2016 review also identified red flags of fraud in three training activities.

The OIG investigation focused on the three activities as well as on all 2015¹¹ and 2016 activities that were not in the scope of the Local Fund Agent review. The OIG went to Kenya in May 2017 and met with NTLDP, county health staff, and a sample of training participants.

3.2. Type of Wrongdoing Identified

- Coercion
- Collusion
- Corruption
- Fraud**
- Human Rights Issues
- Non-Compliance with Grant Agreement**
- Product Issues

3.3. Non-Compliant Expenditure

US\$62,557: The OIG investigation found that fraudulent per diems valued at KES583,000 (US\$5,744) were given to people who had not attended activities. The OIG investigation further found no reasonable assurance of delivery of services amounting to KES5,766,200 (US\$56,813). There was insufficient evidence to confirm the attendance of 120 recorded participants under various NTLDP activities. Nor was there proof of expenditure for two other NTLDP activities.

3.4. Proposed Recoverable Amount

US\$50,625: The OIG proposes the amount of KES 5,138,200 (US\$50,625) as a proposed recoverable amount, which is the total amount of non-compliant expenditures less the KES 1,211,000 (US\$11,932) that has been returned to the program account at NTLDP.

¹¹ This includes activities that took place in 2014, but for which the liquidation of funds occurred in 2015.

4. Findings

4.1. Misrepresentation of Per Diems and Transport Allowances

One of NTLDP's imprest holders (Holder A) falsely indicated that 17 people had received per diems and/or transport allowances for attending various activities.

The investigation reviewed the attendance of 148 recorded participants of various NTLDP activities between 2014 and 2016 under Holder A because:

- (i) they were not on the list of nominees of their respective county coordinators as required under NTLDP standard process;
- (ii) their respective county coordinators did not provide the OIG with a list of nominees; or
- (iii) their counties could not be determined and the OIG could not verify the nominees list with the relevant county coordinator.

OIG contacted a randomly selected sample of 81 from the 148 names in question. The OIG found that 17 people (21%) who were recorded as having attended various NTLDP activities, and who had received per diems and/or transport allowances, had not actually been present at the activities.

During this verification exercise, the OIG confirmed that:

- 23 people contacted had attended the activity in question.
- 41 people could not be reached through the information provided or could otherwise not confirm attendance.
- 17 people recorded as receiving per diems and/or transport allowances confirmed they had not attended the activities.

Imprest Holder A received program funds to pay for NTLDP activity expenses. Holder A's signature was present on all the payment schedules for the payments made to the sample group of 81 participants.

The amount of KES583,000 (US\$5,744) in per diems and/or transport allowances paid to the 17 people who did not attend the activities is the result of a misrepresentation of facts. Payments made through this fraudulent practice are non-compliant expenditures.

In response to the investigation findings, the Principal Recipient, the Ministry of Health, and NTLDP committed to take disciplinary measures against Holder A. The Principal Recipient, the Ministry of Health, and NTLDP also confirmed that 'where applicable, the questioned funds will be recovered and refunded'. To date, the OIG confirmed that Holder A has refunded KES583,000 (US\$5,744) to NTLDP.

Agreed Management Action 1

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

Owner: Chair, Recoveries Committee
Due date: 30 June 2018
Category: Financial & Fiduciary Risks

Agreed Management Action 2

The Secretariat and Principal Recipient will ensure compliance by NTLDP on internal controls including ensuring that program activities are attended by the right participants and avoid duplication or “repeat” participants nominated.

Owner: Head, Grant Management

Due date: 30 September 2018

Category: Governance, Oversight and Management Risks

4.2. Inadequate Assurance over Participants' Attendance

There is no reasonable assurance on the validity of expenditures related to the attendance of 120 participants at NTLDP-sponsored activities and on two separate NTLDP activities. The total value of these expenditures is KES5,766,200 (US\$56,813).

There was insufficient evidence that 120¹² participants, who were recorded as having received per diems and/or transport allowances from two NTLDP imprest holders A and B, actually attended any activities. As mentioned in Finding 2.1, 50% of the sample group for Holder A's activities could not be reached through the information provided or could otherwise not confirm attendance. The OIG also could not reach all 12 of the recorded participants for Holder B's activity using the telephone numbers provided. The numbers were either wrong, not in service, not picked up or the person refused to speak to OIG.

Program activity documents indicated 88¹³ of the 120 recorded participants identified themselves as Ministry of Health staff on activity registration or payment sheets. However, none of these 88 individuals are included in the ministry staff database. This inconsistency further supports the conclusion that it is not clear whether certain recorded participants attended the activities, and if so, whether they were the intended participants selected by the county coordinators.

Holder A's and Holder B's signatures were present on all the payment schedules for the above activities. The per diem and transport allowance payments for the 120 recorded participants totalled KES4,195,800 (US\$41,340).

The OIG was also not able to verify two NTLDP activities, a Quarterly Review meeting and a training event, under Holder A's supervision. This is because NTLDP could not provide expenditure records, despite multiple requests. The expenditure associated with these activities is KES1,570,400 (US\$15,473). Without this information and a verification of its accuracy, there is no evidence that the participants attended the two NTLDP activities or that they were the participants who were supposed to attend.

During the period reviewed, NTLDP did not have adequate controls and oversight to mitigate effectively the risk of misappropriation of imprest funds.

In response to the investigation findings, the Principal Recipient, the Ministry of Health and NTLDP agreed to impose disciplinary measures and where applicable, to recover funds from Holders A and B. To date, the OIG confirmed that Holder B has refunded KES 628,000 (US\$6,188) to NTLDP.

Please refer to Agreed Management Action 1 and Action 2

¹² This number is comprised of the 148 questioned participants referred to in Finding 1 under Holder A and 12 questioned participants for activity under Holder B, less the number of people (40) from whom OIG obtained a firm answer regarding attendance: 23 affirmative and 17 negative.

¹³ 76 and 12 recorded participants under Holders A and B, respectively.

5. Agreed Management Actions

Agreed Management Action	Target date	Owner	Category
1. Based on the findings of this report, the Secretariat will finalize and pursue an appropriate recoverable amount. This amount will be determined by the Secretariat in accordance with its evaluation of applicable legal rights and obligations and associated determination of recoverability.	30 June 2018	Chair, Recoveries Committee	Financial & Fiduciary Risks
2. The Secretariat and Principal Recipient will ensure compliance by NTLDP on internal controls including ensuring that program activities are attended by the right participants and avoid duplication or “repeat” participants nominated.	30 September 2018	Head, Grant Management	Governance, Oversight and Management Risks

Annex A: Investigation Methodology

Why we investigate: Wrongdoing, in all its forms, is a threat to the Global Fund’s mission to end the AIDS, tuberculosis and malaria epidemics. It corrodes public health systems and facilitates human rights abuses, ultimately stunting the quality and quantity of interventions needed to save lives. It diverts funds, medicines and other resources away from countries and communities in need, limits impact and reduces the trust which is essential to the Global Fund’s multi-stakeholder partnership model.

What we investigate: The OIG is mandated to investigate any use of Global Fund funds, whether by the Secretariat of the Global Fund, by recipients of grants funds, or their respective suppliers. OIG investigations identify instances of wrongdoing, such as fraud, corruption and other types of non-compliance with the grant agreements. The Global Fund Policy to Combat Fraud and Corruption¹⁴ generally outlines the prohibited practices which will result in investigation findings.

OIG investigations aim to:

- (i) identify the specific nature and extent of wrongdoing affecting Global Fund grants;
- (ii) identify the entities responsible for such wrongdoing;
- (iii) determine the amount of grant funds that may have been compromised by wrongdoing; and
- (iv) place the Global Fund in the best position to recover funds, and take remedial and preventative action, by identifying where and how the misused funds have been used.

OIG conducts administrative, not criminal, investigations. It is the recipients’ responsibility to demonstrate their compliance with the grant agreement in their use of grant funds. Its findings are based on facts and related analysis, which may include drawing reasonable inferences. Findings are established by a preponderance of evidence. All available information, inculpatory or exculpatory, is considered by the OIG.¹⁵ As an administrative body, the OIG has no law enforcement powers. It cannot issue subpoenas or initiate criminal prosecutions. As a result, its ability to obtain information is limited to the access rights it has under the contracts the Global Fund and its recipients enter into, and on the willingness of witnesses and other interested parties to voluntarily provide information.

The OIG bases its investigations on the contractual commitments undertaken by recipients and suppliers. Principal Recipients are contractually liable to the Global Fund for the use of all grant funds, including those disbursed to Sub-recipients and paid to suppliers. The Global Fund’s Code of Conduct for Suppliers¹⁶ and Code of Conduct for Recipients, included in these contracts, provide additional principles that recipients and suppliers must respect, and the Global Fund Guidelines for Budgeting generally define how expenditures must be approved and evidenced to be recognized as compliant with the terms of the grant agreements.

¹⁴ (16.11.2017) Available at https://www.theglobalfund.org/media/6960/core_combatfraudcorruption_policy_en.pdf

¹⁵ These principles comply with the *Uniform Guidelines for Investigations*, Conference of International Investigators, 06.2009; available at: http://www.conf-int-investigators.org/wp-content/uploads/2015/05/CII-Uniform-Principles-and-Guidelines-for-Investigations_2ed-2009.pdf, accessed 1.12.2017.

¹⁶ Global Fund Code of Conduct for Suppliers (15.12.2009), § 17-18, available at: https://www.theglobalfund.org/media/3275/corporate_codeofconductforsuppliers_policy_en.pdf, and the Code of Conduct for Recipients of Global Fund Resources (16.07.2012), §1.1 and 2.3, available at: https://www.theglobalfund.org/media/6011/corporate_codeofconductforrecipients_policy_en.pdf. Note: Grants are typically subject to either the Global Fund’s Standard Terms and Conditions of the Program Grant Agreement, or to the Grant Regulations (2014), which incorporate the Code of Conduct for Recipients and mandate use of the Code of Conduct for Suppliers. Terms may vary however in certain grant agreements.

Who we investigate: Principal Recipients and Sub-recipients, Country Coordinating Mechanisms and Local Fund Agents, as well as suppliers and service providers.¹⁷ Secretariat activities linked to the use of funds are also within the scope of work of the OIG. While the Global Fund does not typically have a direct relationship with the Secretariat's or with recipient's suppliers, the scope of OIG work¹⁸ encompasses their activities regarding the provision of goods and services. To fulfill its mandate, the OIG needs the full cooperation of these suppliers to access documents and officials.¹⁹

Sanctions when prohibited practices are identified: When the investigation identifies prohibited practices, the Global Fund has the right to seek the refund of grant funds compromised by the related contractual breach. The OIG has a fact finding role and does not determine how the Global Fund will enforce its rights, nor does it make judicial decisions or issue sanctions.²⁰ The Secretariat determines what management actions or contractual remedies to take, in response to the investigation findings.

However, the investigation will quantify the extent of any non-compliant expenditures, including amounts the OIG proposes as recoverable. This proposed figure is based on:

- (i) amounts, for which there is no reasonable assurance about delivery of goods or services (unsupported expenses, fraudulent expenses, or otherwise irregular expenses without assurance of delivery);
- (ii) amounts which constitute over pricing between the price paid and comparable market price for such goods or services; or
- (iii) amounts incurred outside of the scope of the grant for good and services not included in the approved work plans and budgets or expenditures over approved budgets.

How the Global Fund prevents recurrence of fraud: Following an investigation, the OIG and Secretariat agree on management actions that will mitigate the risks of prohibited practices to the Global Fund and its recipient's activities. The OIG may make referrals to national authorities for criminal prosecutions or other violations of national laws, and supports such authorities as necessary throughout the process, as appropriate.

¹⁷ Charter of the Office of the Inspector General (19.03.2013), § 2, 9.5, 9.6, 9.7 and 9.9 available at: https://www.theglobalfund.org/media/3026/oig_officeofinspectorgeneral_charter_en.pdf

¹⁸ Charter of the Office of the Inspector General § 2 and 17

¹⁹ Global Fund Code of Conduct for Suppliers § 16-19

²⁰ Charter of the Office of the Inspector General § 8.1

Annex B: Summary of Subject Responses

On 14 October 2017, the OIG provided the Principal Recipient and NTLDP with a copy of its statements of findings from this investigation. The OIG's statement of findings represented the full record of all relevant facts and findings considered in support of this final report. All parties responded to the OIG's findings within the agreed timescales. The OIG duly considered all points made by the respondents and appropriate revisions were made to its findings in this final report. According to NTLDP, one person changed the answer provided to OIG of 'no attendance' and subsequently confirmed attendance of the activity in question. However, the OIG maintains that this person did not attend the activity given his initial answer and the fact that the relevant county coordinator told the OIG that he had not received an invitation for the activity. The Principal Recipient and the NTLDP otherwise did not dispute any other OIG findings. Moreover, as discussed in findings 4.1 and 4.2, the Principal Recipient, the Ministry of Health and NTLDP agreed to impose disciplinary measures and to recover and refund questioned funds from Holders A and B, where applicable. The OIG then proceeded to the next stage of the investigation as per its Stakeholder Engagement Model.