



**World Bank Administrative Tribunal**

**2010**

**No. 437**

**AI (No. 2),  
Applicant**

**v.**

**International Bank for Reconstruction  
and Development,  
Respondent**

**World Bank Administrative Tribunal  
Office of the Executive Secretary**

**AI (No. 2),  
Applicant**

v.

**International Bank for Reconstruction  
and Development,  
Respondent**

1. This judgment is rendered by a Panel of the Tribunal, established in accordance with Article V(2) of the Tribunal's Statute, composed of Jan Paulsson (Acting Vice President of the Tribunal) as President, and Judges Francis M. Ssekandi and Mónica Pinto.
2. The Application was received on 30 November 2009. The Applicant was not represented by counsel. The Bank was represented by David Rivero, Chief Counsel (Institutional Administration), Legal Vice Presidency.
3. The Applicant challenges the Bank's decision to terminate his employment for unsatisfactory performance.

**FACTUAL BACKGROUND**

4. The Applicant, who holds a Ph.D. in economics and had several years of relevant experience, joined the Bank's Development Economics Data Group ("DECDG") in 1995 as a consultant. In 1999 he received a Term appointment as Economist at the GG level. In 2000 his title changed from Economist to Senior Economist to conform to the nomenclature for grades and titles in the Bank. In 2003 his Term appointment was converted to an Open-Ended appointment.
5. At DECDG, the Applicant worked with the International Comparison Program ("ICP") (for details *see AI*, Decision No. 402 [2010]). It is not in dispute that the Applicant had a considerable record of good performance in DECDG. According to the Applicant:

I [have] stellar performance for over 10 years as Team Leader and Deputy Global Manager. The fact that I led the ICP work between 1999 and 2002 cannot be denied. During my time as Team Leader (2001-2002) the [ICP] program was transformed from a one man project to the World's Largest Statistical endeavor. Between 2003 and 2008 I was Deputy Global Manager and from 2007 to 2008 I served as ICP Team leader. My contributions ... are explicitly acknowledged in my Overall Performance Evaluations ("OPEs") over the years.

6. In 2002 a new governance structure for the ICP was established and the Bank advertised for the ICP Global Manager position. The Applicant applied for the position but Mr. X, a candidate from outside the Bank, was ultimately selected. The Applicant believed that DECDG management promised him in 2002 that he would be made the ICP Global Manager when Mr. X would retire in 2005.

7. The Applicant was disappointed that, when Mr. X ultimately retired from the Bank in 2006, he was not made the ICP Global Manager. According to the Bank:

Up until 2006, Applicant was a good performer, and his managers generously acknowledged so in his performance evaluations. However, since late 2006, Applicant's performance deteriorated, as he had not been able to handle his disappointment at not being assigned the functions of the Global Manager of the [ICP]. Applicant became consumed by his grievance to the detriment of his work performance.

8. Following the Appeals Committee proceedings, on 15 September 2008, the Applicant filed his first application with the Tribunal raising three main claims: (i) the Bank breached its promises to make him the ICP Global Manager and to propose him for promotion to level GH; (ii) the Bank discriminated against him and did not give him the ICP Global Manager title because of his race and origin as a "black Sub-Saharan African"; and (iii) the Bank retaliated against him because he filed an appeal with the Appeals Committee.

9. While the proceedings relating to the first application were pending before the Tribunal, on 15 December 2008, the Bank informed the Applicant by a written

memorandum (“PIP Notice Memorandum”) that he would be placed on a Performance Improvement Plan (“PIP”) starting from 17 December 2008. On 28 January and 4 March 2009 the Applicant requested provisional relief including suspension of his PIP. On 1 April 2009 the Tribunal denied the Applicant’s request to suspend the PIP but noted “the Bank’s obligation to act in strict compliance with the requirements of the applicable Staff Rules and the Applicant’s due process rights, especially with respect to its handling of the PIP process.”

10. After the end of the PIP period (from 17 December 2008 to 15 May 2009), on 21 May 2009, the Director, DECDG, wrote a memorandum to the Applicant (“PIP Evaluation Memorandum”) in which she provided her written evaluation of the Applicant’s performance concluding that the Applicant’s performance remained unsatisfactory and accordingly recommended the termination of his employment.

11. On 15 June 2009 the Senior Vice President and Chief Economist (“Senior Vice President”) informed the Applicant by memorandum that he had decided to terminate the Applicant’s employment stating:

I regret to inform you that following the written evaluation of your Performance Improvement Plan and the recommendation of your Supervisors, [the Director, DECDG] and [the Manager, DECDG], and with the concurrence of ... Director, Human Resources Operations, and ... Manager, Networks Human Resources Team, I have decided to terminate your employment with the World Bank Group for unsatisfactory performance .... I want to assure you that in making this decision, I have considered your various inputs.

12. The Applicant decided to challenge both the imposition of the PIP and the termination decision before the Tribunal. While his first application was still pending before the Tribunal, the Applicant decided to come directly to the Tribunal to challenge these two new administrative decisions and explored the possibility of consolidating this

change with his first application. The Bank acceded to this consolidation, but ultimately the Applicant changed his mind, and insisted on challenging the termination decision in an entirely new set of proceedings.

13. On 23 March 2010 the Tribunal rendered its judgment on the Applicant's first application, in which it dismissed all of the Applicant's claims. As part of this first application the Tribunal addressed the question of whether the imposition of the PIP was retaliatory. The Tribunal found that the Bank had a proper basis to place the Applicant on a PIP, while making clear that it did not review "the Bank's conduct during the PIP period as well as its subsequent [termination decision]."

14. In the meantime on 30 November 2009 the Applicant filed the present Application challenging the Bank's conduct during the PIP and its subsequent termination decision.

#### SUMMARY OF THE PARTIES' CONTENTIONS

15. The Applicant claims that (i) the Bank's conduct during the PIP period was arbitrary, (ii) its PIP evaluation lacked a reasonable basis, and (iii) the termination decision was unlawful. He requests the following remedies from the Tribunal: (i) reinstatement; (ii) if not reinstated, appropriate compensation that takes into account loss of salary, loss of pension and other benefits, and mental pain and suffering; (iii) appropriate recognition of the Applicant's contribution in the Bank's publications; and (iv) costs.

16. The Bank answers that the decision to terminate the Applicant's employment was consistent with the applicable Staff Rules and the Applicant was not denied any procedural rights. Accordingly, the Bank requests the Tribunal to dismiss this Application.

#### THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

17. Principle 2.1(d) of the Principles of Staff Employment states that the Bank "shall provide staff members security in their employment consistent with the terms of their

appointments, their satisfactory performance and conduct, and the efficient administration of the Organizations.” This does not mean that once a staff member obtains an Open-Ended position in the Bank, mandatory retirement is the only way that staff member ends his or her employment at the Bank. In fact Principle 7.1 of the Principles of Staff Employment and Staff Rule 5.03 also provide that a staff member’s employment may be terminated for unsatisfactory performance.

18. Termination of employment for unsatisfactory performance is not automatic. Staff Rule 5.03, paragraph 3.02, requires that a staff member whose performance is not satisfactory be placed on a PIP, and provides that:

If a staff member’s performance is not satisfactory, the Manager or Designated Supervisor shall provide the staff member a period to improve performance in the staff member’s position. If there are good prospects for satisfactory performance in another position, the Manager or Designated Supervisor may consider, in consultation with the Reviewing Manager, reassignment to another position under Rule 5.01 or assignment to a lower level position under Rule 5.06.

19. A staff member may challenge the Bank’s decision to terminate his or her employment before the Tribunal. With respect to the review of such decisions, the Tribunal stated in *Lopez*, Decision No. 147 [1996], para. 36, that:

The question for decision by the Tribunal is whether the Applicant’s service was properly terminated by the Respondent for unsatisfactory performance in accordance with both the substantive requirements and the procedural guarantees required by the internal law of the Bank. The Tribunal has repeatedly stated that it will not substitute its judgment for the discretionary decisions of the Bank’s management, particularly in terms of the evaluation of staff performance, and that the “Administration’s appraisal in this respect is final, unless the decision constitutes an abuse of discretion, being arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure” (*Saberi*, Decision No. 5 [1982], para. 24; *Suntharalingam*, Decision No. 6 [1982], para. 27; *Buranavanichkit*, Decision No. 7 [1982], para. 26; *Durrant-Bell*, Decision No. 24 [1985], para. 25).

20. Termination of a staff member's employment for unsatisfactory performance is a serious matter, and raises particular concerns where the staff member, like the Applicant in this case, has a record of good performance. The Tribunal observes that in the Applicant's 2005 OPE, the Director, DECDG, praised the Applicant's performance in the following manner: "[The Applicant] continues to be a very strong performer .... I have no doubt that he will continue to be a high performer and use his excellent technical and inter-personal and client skills." In the Applicant's 2006 OPE, the Director commented that: "[The Applicant] brings much value to our work and I have the highest regards for his expertise and for his dedication and hard work."

21. According to the Bank, the Applicant's performance started to deteriorate in 2006. Ultimately, in December 2008, the Bank placed him on a PIP. In reviewing his first application (*see AI*, Decision No. 402 [2010]), the Tribunal found that the Bank's decision to place him on a PIP was well-founded. In this Application, the task before the Tribunal is to review the Bank's conduct during the PIP period (17 December 2008 to 15 May 2009) and its decision to terminate the Applicant's employment.

#### SUBSTANTIVE REQUIREMENTS

22. Under Staff Rule 5.03, paragraph 3.02, the Bank is required to provide the Applicant a "performance improvement plan which includes the work program and the professional behaviors expected from the staff member during the performance improvement period." The same Rule also provides that "after the end of the performance improvement period, the Manager or Designated Supervisor shall discuss and provide the staff member with a written evaluation."

23. On 15 December 2008, the Director, DECDG, sent to the Applicant the PIP Notice Memorandum informing him that he would have to improve his performance in the areas of

Work Program Delivery and Critical Workplace Behaviors. As part of the Work Program Delivery, the PIP Notice Memorandum set out the following six specific assignments the Applicant would have to complete during the PIP:

*Assigned Task No. 1:* Management of activities financed with funds provided by the Knowledge for Change Program (KCP) trust fund for the project on Methodology for Aggregating Poverty Specific PPPs.

*Assigned Task No. 2:* Management of activities financed with funds provided by the Islamic Development Bank (IsDB) to develop ICP tools, training, and technical support for member countries of IsDB.

*Assigned Task No. 3:* Management of activities financed with funds provided by the Islamic Development Bank to support price data collection, training work shops, technical assistance, and data publication for IsDB member countries.

*Assigned Task No. 4:* Editorship of ICP Bulletin.

*Assigned Task No. 5:* Authorship of the review of the 2005 round Ring report.

*Assigned Task No. 6:* Learning and practice on DECDG's Statistical Capacity Building work.

24. After the end of the PIP period, on 21 May 2009, the Director, DECDG, sent the PIP Evaluation Memorandum to the Applicant in which she provided her written evaluation of the Applicant's performance under the Work Program Delivery and of his Critical Workplace Behaviors. The Director concluded that the Applicant's performance remained unsatisfactory and accordingly recommended the termination of his employment. The main substantive question before the Tribunal is whether the Director had a "reasonable and objective basis for [her] adverse judgment on [the Applicant's] performance" (*see Desthuis-Francis*, Decision No. 315 [2004], para. 23).



25. As the PIP Evaluation Memorandum contains strong criticism of the Applicant's performance with respect to the first three Assigned Tasks described above and Critical Workplace Behaviors, the Tribunal will focus on those parts of the evaluation.

*Assigned Task No. 1*

26. For Assigned Task No. 1, the PIP Notice Memorandum of 15 December 2008 stated that the Applicant's detailed work program would be to provide: "(i) Estimates of Poverty PPPs; (ii) Extrapolation of poverty PPP to non-benchmark countries; (iii) PPP indexes for Philippines and Vietnam; and (iv) Final report to KCP [Knowledge for Change Program] secretariat." As for the "Deliverables" under this Assigned Task, the PIP Notice Memorandum stated as follows: "(i) Paper by [Mr. A] (consultant) & [Mr. B] (DECDG); (ii) Paper by [Mr. C] (DECDG); (iii) Final report by [the Applicant] explaining the work done in these countries; and (iv) Completion Report by [the Applicant] incorporating the outcome of the 3 activities and resulting recommendation." The PIP Notice Memorandum also stated that the Final Report to the KCP Secretariat should be completed by 31 December 2008.

27. In her PIP Evaluation Memorandum of 21 May 2009 the Director concluded that the Applicant's performance in this Assigned Task "did not meet expectations." The Director evaluated the Applicant's performance as follows:

As required, a report was to be completed by you and submitted to KCP Secretariat by December 31, 2008, which would "respond to the reporting requirements of the KCP." This final report was to "incorporate the outcomes of the 3 activities and resulting recommendations."

You did submit the first report on December 14, 2008. On December 29, the KCP Secretariat asked you to expand on the report and make it as comprehensive as possible. It was noted that "the length of the report is not the most important factor, but the quality is. Your two-page report does not even qualify as an interim report for an \$81k KCP grant where almost all the funds have been disbursed."

You submitted the second version of the report on January 28, 2009. Again, you received comments from the KCP Secretariat on March 13 which noted that “it is disappointing that you were not able to complete the two pilot studies that you had set out to do in your KCP application. Since you spent all the funds except \$5.7k, it looks like your project was not as cost efficient as we expected from your KCP application.” In addition to the Secretariat’s comments, [the Manager, DECDG] and I thought that the TTL conclusions should have offered a comprehensive discussion of the results of the research work done and on how the result of this work will feed into the ICP 2011 round.

In addition to the comments and questions from the KCP Secretariat noted above, as the task manager of this project, you should have had more intellectual and hands-on involvement with these subprojects. You should have also better anticipated the difficulties encountered in the delivery of the third part of this project [work relating to the Philippines and Vietnam] and attempted to accelerate the processes for that part of the project, change course, or to write a status report to alert the KCP Secretariat to explain that the project was changing from what you originally submitted as a proposal. After all, this proposal and particularly the third component was developed by you and put forward for KCP funding. These issues have been raised by [the Manager, DECDG] in several work program meetings with you. Overall, your work on this project did not meet expectations.

28. The Applicant claims that this evaluation by the Director, DECDG, lacks a proper basis for the following reasons. First, the evaluation wrongly suggests that the Applicant missed the 31 December 2008 deadline. Second, Mr. A, who was leading the research work, made it clear to the Applicant and DECDG management that he would not be able to complete his work before January 2009. It was clear to DECDG management that, in order to prepare a project completion report for the KCP Secretariat, the Applicant needed the final report of the research from Mr. A. Third, the Applicant submitted a full final report soon after he had received the final report from Mr. A and Mr. B, and the Manager, DECDG, cleared the Applicant’s report. Fourth, the Applicant updated the KCP Secretariat about the progress of the completion of his report. Fifth, the project relating to the Philippines and Vietnam was not complete because the Applicant faced what he describes as a “data problem,” about which he had informed DECDG management in good time.

Sixth, the claim by DECDG management that the KCP project was not cost effective is invalid because the project required considerable work.

29. The Applicant raised the following questions for the Bank in his Reply to the Bank's Answer:

The termination memo boldly and unfairly claimed that (i) I have failed to meet the December 31, 2008 deadline, and (ii) "the report should have offered a comprehensive discussion of the results." First, why did [the Senior Vice President] and [the Manager, DECDG] extend the deadline if they knew they were going to hold me responsible for not meeting the original deadline of December 31, 2008? Second, how do they imagine that I could do a project completion report in December 2008 before I have access to the results of the study? Third, if management thought I should offer a comprehensive discussion of the results why did [the Manager, DECDG] tell me before I submitted the report that he did not think there was anything more I could do with the report? Fourth, the report was prepared for KCP. KCP's guidelines do not require preparing a comprehensive discussion of the results.

30. The Bank states that the deadline of 31 December 2008 was set by the KCP Secretariat and could not be revised. The Bank adds that: "Despite having missed the deadline, Applicant's managers tried to help and advise him on the delivery of an acceptable report. In the end, Applicant had not made out a claim of malice, unfairness or significant error which would make the assessment of his work on the KCP report an abuse of discretion."

31. The Tribunal notes that the Bank in its submissions ignored the valid questions raised by the Applicant about the performance evaluation. The Bank in fact failed to provide convincing responses to the Applicant's rebuttal of the Director's evaluation with respect to Assigned Task No. 1. The rebuttal is supported by the record. DECDG management knew that the completion of the final report to the KCP Secretariat by 31 December 2008 was not entirely within the Applicant's control. It knew that the consultants involved in the research and studies had to complete their work in a timely

manner for the Applicant to produce a final report. Mr. A, who was leading the research work, sent an e-mail message to the Applicant (copying Mr. B, a staff member in DECDG) on 2 December 2008 stating: “It is not possible to be precise about how long a major and innovative research project of this nature will take, nor about the conclusions that it will reach, and Bank management must surely recognize that fact.” The Bank has not questioned the Applicant’s claim that it was necessary for the Applicant to have Mr. A’s report for completing the Applicant’s final report to the KCP Secretariat. DECDG management knew about this e-mail message but did not advise the Applicant to proceed to finalize his report before Mr. A completed his work.

32. Moreover, on 8 January 2009, the Manager, DECDG, sent an e-mail message to the Director, DECDG, copying the Applicant, stating that: “It was agreed that after the paper by [Mr. A] and [Mr. B] is given to [the Applicant] this week, he will submit a final report to the KCP.” The record does not show that the KCP Secretariat insisted on the 31 December 2008 deadline. The Applicant in fact asserts that the KCP Secretariat “routinely grants extensions,” which has not been denied by the Bank. The record suggests that once he received the reports from Mr. A and Mr. B, the Applicant submitted his final report to the KCP Secretariat on 28 January 2009. It cannot be concluded that the Applicant unreasonably delayed producing the final report to the KCP Secretariat or missed the deadline without any legitimate excuse.

33. In her PIP Evaluation Memorandum, the Director, DECDG, criticized the Applicant’s final report to the KCP Secretariat stating that “[the Manager, DECDG] and I thought that [the Applicant] should have offered a comprehensive discussion of the results of the research work done and on how the result of this work will feed into the ICP 2011 round.”

34. The validity of this criticism is not clear from the record. On 27 January 2009 the Applicant sent his draft final report to the Manager, DECDG, by e-mail stating: "Please let me know if you approve the draft. I cannot submit it without your approval." After reviewing the draft, the Manager sent an e-mail message to the Applicant on the same day stating: "I do not think you can do more in the report." If the Manager, DECDG, thought that the Applicant "should have offered a comprehensive discussion of the results of the research work done" as stated in the PIP Evaluation Memorandum, then the Manager should have provided this feedback when the Applicant sought his approval of the report on 27 January 2009. Two weeks later, on 9 February 2009, the Manager updated the Director, DECDG, on the Applicant's progress by e-mail (copying the Applicant) stating: "On the KCP we noted that the project completion report was submitted to the KCP Secretariat in DECVP in January. I noted that the report is weak in covering the third item on the original project TOR." The Applicant asked the Manager: "If this was true why didn't you raise this before I submitted my report to KCP? Why did you tell me there is not much that can be done?" The record contains no response from the Manager.

35. The PIP Evaluation Memorandum also faults the Applicant's work on the Philippines and Vietnam projects. The Applicant explains his position as follows:

The study [relating to the Philippines and Vietnam] was supposed to have three sections. I delivered two of the three. The third was supposed to be a small part of the project designed to replicate [Mr. A's] methodology using data from Philippines and Vietnam. The objective was to calculate poverty PPPs for each country by regions and urban and rural areas. Because of the data problem this was not done. I have informed [the Manager, DECDG] about this as soon as I encountered this problem.

36. The record supports the assertion that the Applicant put both the Manager and the Director, DECDG, on notice that he was facing a data problem with respect to the work relating to the two countries. On 6 January 2009 the Applicant briefed the Manager,

DECDG, about the problem. This is confirmed in a subsequent e-mail message from the Manager to the Director, DECDG, in which the Manager updated the Director about his meeting with the Applicant as follows:

During the work program meeting on January 6, 2009, we discussed with [the Applicant] two items on his work program. ... [The Applicant] said that the third part of the project namely “PPP indexes for the poor in Philippines and Vietnam” was not done because Asian Development Bank is doing it for Philippines and the data submitted by Vietnam is of low quality. This will be explained in the final report.

37. The PIP Evaluation Memorandum states that the Applicant should have done things differently. It reads:

You should have also better anticipated the difficulties encountered in the delivery of the third part of this project [work relating to the Philippines and Vietnam] and attempted to accelerate the processes for that part of the project, change course, or to write a status report to alert the KCP Secretariat to explain that the project was changing from what you originally submitted as a proposal.

38. The record does not show that DECDG management provided this sort of feedback to the Applicant in a timely manner, even though the Applicant had notified them about the problem. The Manager, DECDG, stated that the problem “will be explained in the final report,” which could be read as an expression of his satisfaction with the Applicant’s explanation.

39. In reviewing the Bank’s conduct during the PIP and the termination decision, the Tribunal is required to consider whether management made “[e]fforts ... to help the Applicant lift his performance to the level required.” *See Oraro*, Decision No. 341 [2005], para. 78. The Tribunal finds that, by telling the Applicant what he should have done in the PIP Evaluation Memorandum - after the PIP period – his managers’ conduct did not satisfy the requirement to provide timely feedback with a view to improving the Applicant’s performance.

40. In view of the foregoing, the Tribunal finds that the Bank has not demonstrated that it had a reasonable and objective basis for its conclusions regarding the Applicant's performance with respect to Assigned Task No. 1.

*Assigned Task No. 2*

41. The PIP Notice Memorandum stated that the Applicant's detailed work program would be as follows: "As project manager, ensure delivery of work to develop ICP CPI lite tool pack (a computer software tool along with user guide)." The "Deliverables" under this Assigned Task No. 2 were: "The development of the project plan and delivery of planned activities. [Mr. D, a Senior Information Officer in DECDG] will participate as the systems task manager in this project."

42. In the PIP Evaluation Memorandum, the Director, DECDG, concluded that the Applicant's performance in respect of this Assigned Task was unsatisfactory:

Overall, you poorly managed the ICP/CPI lite toolpack project and failed to provide adequate project management oversight. The project has missed the goals it was set to meet in helping with the ICP 2011 Round. It was never intended to be a full-fledged CPI system. The tool was to take advantage of the CPI data collection processes in countries, to harmonize some of those processes with the ICP data collection, and to support the ICP processes. The peer reviewers' comments, several meetings with your manager, and many e-mails brought these issues to your attention. Unfortunately, you failed to take the feedback and constructive suggestions into consideration or to correct the problems highlighted for you. The issue here is not about making a mistake, but about refusing to accept feedback and guidance to correct the mistake. To conclude, your performance as the project manager has been unsatisfactory.

43. The Applicant provided a detailed rebuttal of this evaluation in his Application as follows:

I was co-manager (with [Mr. D]) overseeing the development of software for Consumer Price Index (CPI). After we managed the development of the software [the Manager, DECDG] claimed that what I was asked was to develop an integrated ICP/CPI system and not a full fledged CPI. I have ample supporting evidence proving (i) I was instructed to develop CPI Tool,

and (ii) I was explicitly instructed not to develop an integrated ICP/CPI system until the existing ICP software is evaluated.

As recently as in March 2009 [the Manager, DECDG] had noted in writing that “the ICP Tool Pack might change, if an evaluation indicated the need for improving it.” The ICP system is yet to be evaluated. In March 2008 a detailed proposal was prepared. The software to be developed was referred in the proposal as “ICP Tool Pack for CPI” and “CPI ‘Lite’ Software Tool.” The proposal explicitly notes “the CPI software tool to be developed will have a database to capture the price data and the master data on products, outlets and time periods and tools to maintain the database.”

On May 9, 2008, before we initiated the software development process, [Mr. D] (co-manager of the project) and I met with [the Manager, DECDG] and [Mr. D’s Manager] to agree on what is being developed. We were instructed to focus on CPI and not to do anything on ICP.

The following are some highlights supporting my position:

In July 2008, [Mr. D] drafted terms of reference (TOR) to hire software developer based on instruction given to us at the May 9 meeting with [the Manager, DECDG] and [Mr. D’s Manager]. The TOR approved in writing by [the Manager, DECDG], states the following: “the main outcome of this project is to build a CPI TP (Tool Pack) that can be easily maintained, implemented and one on which the country statistical staff can be trained.”

As per the PIP requirement, on January 13, 2009 I sent [the Manager, DECDG] three documents. The e-mail message reads:

Here are three documents that you may find useful about the work on CPI Tools. The first MS Word file provides you the big picture. The Excel file includes three folders (i) Systems Architecture, (ii) Module, and (iii) Database Diagram. The third MS Word file specifies requirements.

The Systems Architecture makes it clear that the system is a full-fledged CPI Tool. Similarly, there is no mention of ICP in the System Modules and the database diagram. The specifications requirement MS Word document (20 pages long) talks all about CPI Tool and does not say anything about an integrated ICP/CPI Tool.

On 01/21/09 [the Manager, DECDG] signed my mission TOR instructing me that I “will travel to Cairo, to attend an Expert Advisory Group workshop on CPI Tool Pack development and implementation. The workshop will discuss the general framework of the CPI Tool that has been developed based on the blueprint charted at the July 2008 expert group meeting in Washington.” The noted blueprint refers to the documents I sent [the Manager, DECDG] on January 13 (see above). The title of the mission



TOR was CPI Tool Pack Expert Advisory Group Workshop, Cairo, Egypt – January 24-29, 2009.

Despite overwhelming evidence showing that I was instructed to develop CPI system and management was aware of this throughout the development process, the PIP evaluation accused me of failing to produce an integrated ICP/CPI system. I have provided [the Senior Vice President] concrete evidence that shows the falsity of the accusation. But he showed no interest and respect for the truth.

44. The Tribunal notes that neither the Bank's Answer nor its Rejoinder responds to this detailed explanation, which is to some extent supported by the record. As part of the PIP, the duty is upon the manager to communicate clearly to the staff member what the latter is expected to deliver as part of a particular work program. That is more so when the assignment is technical in nature. The PIP Notice Memorandum should set out details of what the staff member is expected to deliver. The Tribunal cannot conclude that DECDG management provided clear instructions in the PIP Notice Memorandum to the Applicant regarding what he was expected to deliver as part of Assigned Task No. 2.

45. The record does not show the Manager, DECDG, gave the Applicant timely feedback and guidance. Furthermore, nothing in the record suggests that the co-manager of the project, who was more of a technical expert, disagreed with the Applicant's understanding of the project or raised any concerns to the Applicant. In addition, the Tribunal finds some merit in the Applicant's observation that, as co-manager of the project, Mr. D should share some of the responsibility for the result, which should be reflected in Mr. D's performance evaluation. If the criticism of the Applicant is that he designed a wrong product, some blame should rest, it would appear, with the co-manager who was the technical expert for the project. Mr. D's OPE shows that DECDG management rated Mr. D's performance in this project as "Fully Successful." The record does not provide a

convincing explanation of why the Applicant's performance was unsatisfactory but the co-manager's performance was "Fully Successful."

46. The PIP Evaluation Memorandum also concludes that the Applicant's "response to feedback and suggestions from [his] colleagues was antagonistic and dismissive," and that the Applicant "failed to take the feedback and constructive suggestions into consideration or to correct the problems highlighted for [him]." But the Bank produced no documents in support of this conclusion. The Bank has produced no correspondence from his colleagues or other verifiable evidence. In *Oraro*, Decision No. 341 [2005], para. 68, the Tribunal upheld the manager's negative evaluation of the applicant because the manager's "view was supported by the views of several colleagues who had worked with the Applicant during the PIP." There is no evidence that the Applicant's colleagues found him to be antagonistic and dismissive and reluctant to take their constructive suggestions into consideration during the PIP period. In fact, in his Application, the Applicant stated: "I ... challenge management to show what part of my comments are antagonistic or dismissive." The Bank did not take up that challenge.

47. In view of the foregoing, the Tribunal finds that the Bank has not demonstrated that it had a reasonable and objective basis for its conclusions regarding the Applicant's performance with respect to Assigned Task No. 2.

*Assigned Task No. 3*

48. The PIP Notice Memorandum of 15 December 2008 stated that the Applicant's detailed work program would be as follows: "Methodological papers: (i) survey frame development; (ii) product selection process; (iii) national accounts work; (iv) health and education PPPs and productivity adjustment; (v) outstanding issues with construction survey; and (vi) optimizing the number of products and basis headings." As for the

“Deliverables” under this Assigned Task, the PIP Notice Memorandum required “completion and interim reports on all items by [the Applicant] based on consultants reports in each of the 6 areas.” The Notice Memorandum stated that by 2 March 2009 the Applicant was required to submit a “status report” and, by 1 July 2009, a “report showing recommendations for each of the six areas and supporting analysis.”

49. In the PIP Evaluation Memorandum, the Director, DECDG, evaluated the Applicant’s performance regarding this Assigned Task as follows:

Your role in this project was to structure the work and oversee the implementation of different sub-activities and to integrate the results of these sub-activities into a coherent set of actions relevant for the ICP 2011 round implementation. It took a long time for you to get started on this project and to hire consultants. The delayed start was due to your persistent arguments with your manager about the TORs and timetables for delivery. It is important to note that this task has been part of your work program since May 2008. With support from [the Manager, DECDG], six consultants were commissioned to produce six papers. You missed the first deadline to produce a report on the status of the project on March 2, claiming that it was too early to report on the status. You produced a report on April 15 as required by the adjusted PIP work plan. However, your April 15 report contained only two out of the six papers which were to be reviewed by members of Interim Technical Advisory Group (ITAG). One of these two papers was not even in the initial agreed list and was supposed to be consultant’s input to your paper on Ring evaluations (item 5 on your work program matrix). Finally on the last day of your PIP on May 15 you sent an e-mail with a number of consultants’ papers attached. Most of these papers were rough drafts and not ready for a formal peer review, which was the agreed next step. Such highly technical reports from outside expert consultants are useful when the task manager brings the results together highlighting key questions and issues to be considered for the project. Without a report from you to integrate the consultants’ individual work, the papers independently have a questionable utility for the ICP 2011 round and could not by themselves be counted as high quality contributions from you personally. Aside from the questionable utility of these individual papers, it is clear that the management of the project and its processes was weak. You did not plan the project well enough to ensure an integrated report as required by the PIP. You did not engage at an appropriate level in the work of the consultants in order to bring together the outcome of their work. Your supervision of the consultants’ work was not adequate and as a result they did not get the intellectual input one would expect from a TTL of a technical project using highly-paid consultants.

50. The Applicant provided a detailed response to the above evaluation as follows:

First, the PIP imposed unrealistic deadline. After the intervention of [the Senior Vice President] the deadline was revised. Unfortunately, the PIP Evaluation uses the original deadline and concludes that I have not met the deadline. The evaluation goes as far as denying a 10-page status report that I have submitted by e-mail on March 2.

I met with [the Senior Vice President] twice to discuss the unrealistic deadline that I was given. [The Senior Vice President] noted in our meeting and in a follow up e-mail that the PIP is, and should be, forward looking. Accordingly, he assured me that the PIP evaluation will be based on what I have or have not delivered since the PIP period, not for what I have or have not done before the PIP was issued. The PIP evaluation wrongly suggests that I failed to meet a “very realistic goal” of submitting substantive content status report on March 2.

The TOR that [the Manager, DECDG] approved in December 2008 notes that the first drafts of the six studies are due on April 15, 2009. However, the PIP required me to provide a summary of the consultants’ drafts by March 2, 2009, highlighting the key issues and questions raised by the consultants. The PIP notes that the March 2 status report “on content” was to be sent for external review. I do not know how management expected me to produce a status report highlighting questions and issues raised by the consultants six weeks before the consultants are supposed to submit their first draft? The PIP Evaluation claims the PIP deadlines represent “very realistic goal?”

To justify its claim the PIP evaluation goes as far back as May 2008 and wrongly alleges performance problem since May 2008. The Research proposal was initially developed by me in May 2008. DECDG Management approved it in June 2008. It took four more months to get the approval from the funding institution (IsDB). We did not get the approval of the IsDB until the end of October. Both [the Director and the Manager, DECDG] knew that we could not start the project before we got approval from IsDB. Soon after we got the go ahead from IsDB, we processed the contracts in December, with a beginning date of December 26. It should be noted that the PIP was issued on December 17, 2008.

If the PIP is forward looking as [the Senior Vice President] assured me, it should focus on what was agreed in December, not what was done or not done between May 2008 and December 2008.

On March 2, I submitted a status report (10 pages long) to [the Manager and the Director, DECDG]. This report presented the status of each project highlighting the main issues and questions the consultants are supposed to investigate. It also provided brief summaries of methods and approaches the

consultants will use. The PIP Evaluation wrongly claims that I “missed the first deadline to produce a report of the status of the project on March 2.” [The Senior Vice President] knew this was a pure and blatant lie. I had showed him a hard copy of the e-mail as well as the attachment.

As far as content report goes, [the Senior Vice President] asked [the Director, DECDG] to revise the deadline. On 03/27/09 the March 2 deadline was pushed to April 15. On 04/07/09, I sent an e-mail to [the Senior Vice President] noting that it would still be difficult for me to prepare a content report on six papers and submit the report to management for external review the very day that I am supposed to receive the first draft from six consultants. Based on discussions he had with [the Director, DECDG], [the Senior Vice President] sent me an e-mail on 04/10/09 noting that “the expected outcome for this specific item is a ‘status report’ which seems doable to me. Since you are the TTL for this research project you should be able to do a status report at any point during the research project cycle.”

Following [the Senior Vice President’s] guidance, on April 15, I sent a status report highlighting the status of each study including three first drafts submitted by the consultants (the PIP wrongly suggests that I submitted only two papers). I noted that two of the papers were ready for external review. These were drafts that I had a chance to comment on and get revised draft. I noted in the status report that the consultant is revising the third draft taking into consideration comments from ICP TAG and me. I suggested not sending the third draft for external review until we get the revised draft. Furthermore, I noted that I have also received two other papers, but they need to be revised, based on ICP TAG and my inputs. At the time I had not heard from the sixth consultant. It should be stressed that April 15 was the deadline for the consultants to submit their report and it is not in my control if a consultant misses a deadline. What I have submitted on April 15 meets the expectation that [the Senior Vice President] expressed in his 04/10/09 e-mail. The PIP Evaluation, however, notes that my April 15 “report contained only two out of six papers.” The PIP suggests that “without a report from (me) to integrate the consultants’ individual work the papers independently have a questionable utility for ICP 2011 round. It goes on to conclude that I “did not plan the project well enough to ensure an integrated report as required by the PIP.” It must be noted that the PIP never required an integrated report.

On May 15, 2009, I sent four revised drafts and two drafts that are still being revised. The scope of one of the papers (health PPP) was expanded at the suggestion of the ICP TAG. I submitted the first part of the study that was completed and noted in my report that the second part is being written incorporating TAG’s suggestions that were sent to the consultant at the end of February. [The Manager, DECDG] was aware of the additional work that

I asked the consultant to add to his study. It is with [the Manager's] concurrence that I asked the consultant to do so.

Without any evidence the PIP suggests that "the consultants did not get the intellectual input one would expect from a TTL." This is both unfair and unjust. I was the one who developed the research agenda, wrote detailed TOR highlighting the key questions to be addressed, and the methodology to be considered.

51. The Tribunal notes that yet again neither the Bank's Answer nor its Rejoinder responds to this detailed explanation, which is to some extent corroborated by the record. The Tribunal notes the completion of the project was not entirely up to the Applicant because it also depended on timely contributions from the consultants. The record does not show that DECDG management gave due consideration to this factor. Although the Tribunal cannot judge whether DECDG management rightly concluded that the papers produced had "questionable utility," the Tribunal notes that the Bank did not provide any supporting documents or statements from the members of the Technical Advisory Group ("TAG") supporting management's assessment. On the other hand, the Applicant provided comments from the members of TAG providing positive feedback about the report and papers produced as part of Assigned Task No. 3.

52. Moreover, DECDG management concluded that the Applicant "did not engage at an appropriate level in the work of the consultants" and that his supervision of "the consultants' work was not adequate and as a result they did not get the intellectual input" from the Applicant. The record does not contain any evidence that management, in arriving at this evaluation, sought feedback from the consultants.

53. In view of the foregoing, the Tribunal finds that the Bank has not demonstrated that it had a reasonable and objective basis for its conclusions regarding the Applicant's performance with respect to Assigned Task No. 3.

*Critical Workplace Behaviors*

54. The Director's PIP Evaluation Memorandum with respect to "Critical Workplace Behaviors" reads as follows:

During the PIP period ... you did not work more collaboratively with others nor treat colleagues with respect. You repeatedly questioned your colleagues' and your managers' motives and competence in many correspondences. When ... colleagues were asked to submit feedback as part of a peer review process, you denounced their contributions, questioning their knowledge and expertise. You shared otherwise confidential e-mail messages with individuals beyond the generally accepted scope of "need-to-know." When we raised our concern that you might have left highly confidential material in a public place, you implied that material may have been removed by someone from your office or computer. And you continue, almost weekly, to accuse others of wrong doing of some sort, such as your e-mail regarding a colleague being asked to organize a session at the upcoming ISI meeting on which you sent numerous e-mails. In most of these e-mails you insist that you are being retaliated against. You are argumentative and never acknowledge you may be wrong.

55. This evaluation relates mostly to the Applicant's workplace behavior with respect to his colleagues. Yet the Bank has failed to provide the basis for the above evaluation. It has not, for example, produced evidence of any communications from the Applicant to his colleagues during the PIP period that lends support to the above evaluation.

56. In assessing the Applicant's workplace behavior with respect to "Working with External Parties," the PIP Evaluation Memorandum reads:

During the PIP you were asked to show tact and good judgment in communications with external parties. Overall, the concern raised by the external parties prior to the PIP about your e-mail to them stating your intention to sue them in a US court still remains. Although we have not had an episode as significant as this during the PIP, there have been occurrences that concern us. For example, it has come to our attention that you invoked your current performance issues when interacting with external consultants. We have been informed that you asked consultants to deliver on their commitments because you were under performance review and could be terminated. We have heard that you discussed similar information with consultants, even during the contracting process. Sharing such information was inappropriate and irrelevant to consultants. In summary you did not

meet expectations regarding your communication with external parties as specified in the PIP.

57. Yet the Bank does not give details as to who provided the “information,” and from whom it “heard” reports of the Applicant’s conduct. The Tribunal cannot determine whether these reports were hearsay. The Tribunal cannot simply conclude that because the Applicant sent some questionable e-mail messages to external parties *prior* to the PIP – for which the Tribunal notes that the Applicant has since apologized, on record - it must be assumed that he also engaged in unprofessional communication with external parties *during* the PIP period. In *AI*, Decision No. 402 [2010], the Tribunal sustained the Bank’s decision to place the Applicant on a PIP because the Bank provided a reasonable basis, supported by documentary evidence, for that decision. Here the Tribunal’s only focus is the Applicant’s conduct during the PIP. The Tribunal finds that the Bank has not provided the basis for its adverse evaluation of the Applicant’s behavior with external parties during the PIP.

*Conclusion on the performance evaluation of the Applicant*

58. Based on the record as a whole, the Tribunal is not convinced that the Bank provided a reasonable and objective basis for its evaluation of the Applicant. The Tribunal cannot sustain the Bank’s adverse PIP evaluation of a staff member when the Bank fails to provide a reasonable basis for such an evaluation. It recalls its statement in *Desthuis-Francis*, Decision No. 315 [2004], para. 23:

The Tribunal considers that failure on the part of the Respondent to submit a reasonable basis for adverse evaluation and performance ratings is evidence of arbitrariness in the making of such an evaluation and rating. Lack of a demonstrable basis commonly means that the discretionary act was done capriciously and arbitrarily.

PROCEDURAL REQUIREMENTS, DUE PROCESS, AND ULTIMATE TERMINATION



59. Staff Rule 5.03, paragraph 3.02(c), states that the “Manager or Designated Supervisor shall discuss and provide the staff member with a written evaluation.” In *Oraro*, Decision No. 341 [2005], para. 89, the Tribunal stated that

staff members affected by a PIP should have an opportunity to discuss the evaluation and to comment on the written evaluation before a recommendation is made to the final decision maker .... That is the only period in which there is any realistic opportunity to affect the outcome.

60. The Applicant claims that his managers denied him due process and the opportunity to challenge the PIP evaluation. The Bank has not demonstrated that it had afforded the specific due process rights to the Applicant as required under Staff Rule 5.03 and articulated in *Oraro*. The record lacks any evidence that the Director, DECDG, discussed her 21 May PIP evaluation with the Applicant and gave him any opportunity to comment on the PIP evaluation before sending the recommendation to terminate the Applicant’s employment to the Senior Vice President. The absence of any such record suggests that the Applicant was denied “any realistic opportunity to affect the outcome,” i.e., the termination of his employment.

61. Moreover, Staff Rule 5.03, paragraph 3.02(c), states that: “The Manager or Designated Supervisor may recommend to the Senior Vice President responsible for the position ... termination from service, after consultation with the Reviewing Manager, and with the concurrence of the Manager, Human Resources Team, for the Bank ... staff.” The Tribunal called upon the Bank to produce any document demonstrating that the Manager, Human Resources Team, concurred with the Director, DECDG, when she recommended the termination of the Applicant’s employment in her memorandum of 21 May 2009, but no contemporaneous documents were provided.

62. The record also suggests that the Senior Vice President who ultimately made the decision to terminate the Applicant's employment did not give serious and thorough consideration to the Applicant's rebuttal of the 21 May PIP Evaluation Memorandum. On 10 June 2009 the Applicant met with the Senior Vice President. According to the Applicant: "he asked me to send him a detailed reply to the PIP evaluation so that he can raise it with [the Manager, DECDG]." On 12 June 2009 at 10:54 AM the Applicant sent a detailed 28-page rebuttal to the PIP Evaluation Memorandum to the Senior Vice President.

63. On 15 June the Applicant met with the Senior Vice President. According to the Applicant:

[The Senior Vice President] handed me his termination letter that was dated and signed on 06/15/2009. He told me that it was a very difficult decision and that he had read all my submissions. He said he spent considerable time over the weekend before making his final decision. Obviously, this was not true.

64. The Tribunal has on record an e-mail message from the Senior Vice President to the Vice President of Human Resources sent on Friday, 12 June 2009 at 12:47 PM, which states that:

I intend to inform [the Applicant] on Monday June 15, 2009 of his termination from the Bank on grounds of unsatisfactory performance. I have reached this conclusion following his unsuccessful PIP and in consultation with [the Director, Human Resources Operations, and Manager, Networks Human Resources Team]. Given that his services are no longer required and concerns about the impact of continued presence in the office during his notice period, which ends August 17, 2009, I request that he be placed on administrative leave effective June 18, 2009.

65. The chronology, as demonstrated by this message, does not support the view that due consideration was given to the Applicant's rebuttal to the PIP evaluation over the weekend before the Senior Vice President made his decision on Monday, 15 June 2009. Moreover, the record also includes an HR Office Memorandum to the Applicant dated 12

June 2009 entitled “Information/Benefits Upon Ending Employment.” This suggests that the Applicant’s departure package was ready even before the Senior Vice President had a chance to consider the Applicant’s rebuttal to the PIP Evaluation Memorandum, which the Applicant sent to the Senior Vice President on 12 June 2009. The Tribunal is persuaded that consideration could not have been given to the Applicant’s rebuttal of the PIP Evaluation Memorandum with the seriousness and thoroughness it required.

#### OVERALL CONCLUSION

66. The purpose of a PIP is not to dismiss a staff member but to give him or her an opportunity to improve, and to achieve required performance standards. This is why it is called a “Performance Improvement Plan” not a “Termination Plan.” The Bank must demonstrate that it made reasonable efforts to lift the staff member’s performance and that it provided timely feedback and guidance.

67. The record in this case suggests undue haste in the steps taken resulting in the termination of the Applicant’s employment. The Applicant was not provided with a realistic and meaningful opportunity to respond to the PIP evaluation. If the Bank decides to terminate a staff member’s employment following an adverse PIP evaluation it must demonstrate that it had an objective and reasonable basis for the evaluation. In this case the Bank has failed to demonstrate such a basis.

68. The Tribunal concludes that the Applicant’s performance evaluation during the PIP period and the resulting termination were an abuse of discretion. The record, however, does not demonstrate that the termination of the Applicant’s employment was act of retaliation.

69. Neither the Tribunal’s Statute nor its Rules require that the Tribunal must order reinstatement when it finds a termination decision to be arbitrary. The Applicant

demonstrated certain unprofessional behavior when he was not appointed as the ICP Global Manager. Over the years, he has criticized his managers and engaged in communications that failed to meet the standard expected of a Bank staff member (*see AI*, Decision No. 402 [2010]). He has made no secret of his contempt for the institution where he now seeks reinstatement. In these circumstances, the Tribunal does not consider reinstatement to be an appropriate remedy. Instead, the Bank must pay compensation to the Applicant.

*The Applicant's allegations regarding racism in the Bank*

70. The Applicant argues that the termination of his employment provides not only a classic example of how the Bank mistreats African staff members who bring racial discrimination charges against their managers, but also shows how far the Bank would go to stifle racial discrimination charges. The Applicant alleges “blatant racism in the Bank in general and in DECDG in particular” and points out the virtual absence of black professionals in DEC Vice Presidency.

71. The Tribunal recalls that the Applicant made allegations of racial discrimination in his first application. Those allegations relate to his non-appointment as the ICP Global Manager. The allegations have been considered by the Tribunal and are irreceivable under the principle of *res judicata* (*see AI*, Decision No. 402 [2010], paras. 38-77). No new facts or arguments regarding racial discrimination, beyond his bare assertions, have been provided by the Applicant; at any rate, the Applicant has not provided any evidence suggesting that racial discrimination played a part in the conduct of the PIP and the termination of his employment.

DECISION

The Tribunal decides that:

- (i) the Bank shall pay compensation to the Applicant in the amount of three years' salary, net of taxes, based on the last salary drawn by the Applicant;
- (ii) the Bank shall pay the Applicant's costs and expenses in the amount of \$10,000; and
- (iii) all other pleas are dismissed.

/S/ Jan Paulsson  
Jan Paulsson  
President

/S/ Olufemi Elias  
Olufemi Elias  
Executive Secretary

At Paris, France, 29 October 2010

**LETTERS RELATING TO DECISION NO. 437**

The following letter was addressed by the Executive Secretary of the Tribunal to the parties on 19 November 2010:

With reference to the Applicant's request for clarification regarding the implementation of the Tribunal's judgment in *AI (No. 2) v International Bank for Reconstruction and Development*, Decision 437 [2010], of 29 October 2010, the President of the Tribunal has instructed me to inform you as follows:

The Tribunal's decision of 29 October 2010 requires the Bank to compensate the Applicant for the unlawful termination of his employment, rather than to reinstate him. The decision also requires the Bank to remove from the Applicant's personnel file all records relating to the evaluation of the Applicant's performance during the Performance Improvement Plan (17 December 2008 to 15 May 2009) and the termination of the Applicant's employment for reasons of unsatisfactory performance.

Yours sincerely,

/S/ Olufemi Elias  
Olufemi Elias  
Executive Secretary

The following letter was addressed by the Executive Secretary of the Tribunal to the parties on 13 December 2010:

On 30 November 2010 the Tribunal received a letter from the Applicant seeking additional clarifications regarding the implementation of the Tribunal's judgment in *AI (No. 2) v International Bank for Reconstruction and Development*, Decision No. 437 [2010]. A copy of the letter is enclosed for the Respondent.

The President of the Tribunal has instructed me to inform you as follows:

- (i) regarding "Issue Number 2," which the Applicant describes as "Clarification on my separation from the Bank," the President of the Tribunal refers the parties to the Tribunal's letter of 19 November 2010, which states that:

The decision also requires the Bank to remove from the Applicant's personnel file all records relating to the evaluation of the Applicant's performance during the Performance Improvement Plan (17 December 2008 to 15 May 2009) and the termination of the Applicant's employment for reasons of unsatisfactory performance.

Accordingly, the manner in which the Applicant's separation from the Bank is recorded must be consistent with the clarification provided in the letter of 19 November 2010;

- (ii) regarding "Issue Number 3," which the Applicant describes as "Access to Bank Building," the question of access was not before the Tribunal for its proper consideration and was therefore not addressed in the judgment; and
- (iii) regarding the remaining issues in the Applicant's letter, i.e. "Payment of Separation Grant," "Unused Vacation Time," "Unused Sick Leave," "Spousal Travel Points," and "Allowance for Children and Spouse," the attention of the parties is drawn to the phrase "all other pleas are dismissed" at the end of Decision No. 437. The compensation awarded by the Tribunal (the equivalent of three years' salary, net of taxes) "takes into account loss of salary, loss of pension and other benefits, and mental pain and suffering" as requested by the Applicant. The Tribunal was mindful of the provisions of Staff Rules, including paragraph 11 of Staff Rule 7.02, in deciding the amount of compensation to be awarded, which it considers to be adequate in the circumstances of the case.

Yours sincerely,

/S/ Olufemi Elias  
Olufemi Elias  
Executive Secretary