



**World Bank Administrative Tribunal**

**2009**

**No. 424**

**Farah Aleem & Irfan Aleem,  
Applicants**

**v.**

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

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

**Farah Aleem & Irfan Aleem,  
Applicants**

v.

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

1. This judgment is rendered by the Tribunal in plenary session with the participation of Jan Paulsson, President, and Judges Florentino P. Feliciano, Stephen M. Schwebel, Francis M. Ssekandi, and Ahmed El-Kosheri. On 13 March 2009 Ms. Farah Aleem filed her Application with the Tribunal. On 1 June 2009 Mr. Irfan Aleem filed his Application with the Tribunal. On 14 August 2009 the Tribunal consolidated the two Applications.

2. Ms. Aleem initially asked the Bank to give effect to a Maryland divorce decree directing Mr. Aleem to pay half of his Bank pension to her. Mr. Aleem objected, stating that the Bank should give effect to a Pakistani divorce decree under which his former spouse was not entitled to any portion of his pension. The Bank's Pension Benefits Administration Committee ("PBAC") decided to suspend payments of the disputed portion of the pension until the matter was resolved by mutual agreement or by the Tribunal.

**RELEVANT FACTS**

3. Mr. Aleem joined the Bank in 1985. After working for almost 20 years in the Bank he retired in 2004. Ms. Aleem is Mr. Aleem's former wife.

4. Mr. and Ms. Aleem are citizens of Pakistan. They were married in Pakistan in 1980 under the laws of Pakistan. At the time of their marriage Ms. Aleem was 18 years

old and Mr. Aleem was 29. A few weeks after the marriage, Mr. Aleem moved to England to pursue his doctoral studies at Oxford. The parties never lived together in Pakistan. Ms. Aleem eventually joined Mr. Aleem in England and the two lived there together for four years.

5. After his studies in England, Mr. Aleem joined the Bank in 1985 and the couple moved to the U.S. They lived in Maryland for almost 20 years. They have two children together, one born in 1985 and the other in 1988. Both children were born in the U.S. and are U.S. citizens. During their marriage, Ms. Aleem was mainly a homemaker, caring for the children, the household, and her husband. Mr. Aleem has not sought permanent residence in the U.S., but Ms. Aleem has recently become a permanent resident or green card holder.

6. On 3 March 2003 Ms. Aleem filed a “Complaint for Limited Divorce, Custody, Support, Use and Possession and Other Relief” with the Circuit Court for Montgomery County, Maryland. She requested *inter alia* that she “be granted a limited divorce.” Mr. Aleem filed his “Answer to Complaint” on 1 May 2003 requesting *inter alia* that the Circuit Court “[g]rant [Ms. Farah Aleem] a limited divorce on the basis of voluntary separation without cohabitation and no reasonable expectation of reconciliation.”

7. While the Maryland proceedings were in progress, on 30 June 2003 Mr. Aleem went to the Pakistani Embassy in Washington, DC, where he signed a document prepared by himself titled “Divorce Deed,” which *inter alia* states that:

WHEREAS, a marriage contract was entered into at Karachi, Pakistan under the laws of Pakistan on 22nd May, 1980 BETWEEN me, Irfan Aleem ... and Farah Aleem ....

...

AND WHEREAS, as a consideration of the Marriage contract a sum of Rs. 150,000 (equivalent to about US \$2500.00 approximately) was fixed

as Maher in accordance with the Nikah Nama (Deed of Marriage Contract) to be paid by me (the husband), if the marriage is being dissolved, before dissolution.

Now this deed witnesses that I the said Irfan Aleem, do hereby divorce Farah Aleem ... by pronouncing upon her Divorce/Talaq three times irrevocably and by severing all connections of husband and wife with her forever and for good.

1. I Divorce thee Farah Aleem
2. I Divorce thee Farah Aleem
3. I Divorce thee Farah Aleem

A check dated June 30, 2003 for \$2500.00 as Maher in full and final settlement is enclosed.

8. Mr. Aleem sent the Divorce Deed and the check to Ms. Aleem by private process server on 23 July 2003. He submits a written opinion from a Pakistani attorney to the effect that: "Under Pakistan law ... the divorce pronounced by Mr. Irfan Aleem on his former wife Mrs. Farah Aleem, became effective on the 23rd July, 2003 when Mrs. Farah Aleem was served with the Divorce Deed dated 30 June, 2003."

9. In September 2003 Mr. Aleem went to Pakistan and filed an application with the Arbitration Council in Karachi for official confirmation of the divorce. Under the laws of Pakistan, the function of the Arbitration Council, according to its own explanation (see paragraph 11 below), is "only to see whether both husband and wife want to reconcile and live again as husband and wife." The Arbitration Council sent notices to both Mr. Aleem and Ms. Aleem inviting them to appear in person before the Council "for confirmation of Divorce along with original Documents."

10. On 15 December 2003 the attorney representing Ms. Aleem in the Maryland proceedings wrote to the Arbitration Council stating: "We respectfully request that the application of Mr. Aleem be denied since there is a previously filed action here in the

jurisdiction [of Maryland] in which both Mr. and Ms. Aleem reside, the jurisdiction in which they jointly own real property, and the jurisdiction in which both of their children ... have been born and raised.”

11. On 31 January 2004 the Arbitration Council wrote to Ms. Aleem’s attorney stating:

Please refer to your letter dated 15th December 2003, on behalf of your client Ms. Farah Aleem, I may inform you that the marriage was solemnized in Pakistan within the jurisdiction of this [Arbitration] Council and that both your client and Mr. Aleem are Pakistani citizens and therefore this [Arbitration] Council has jurisdiction in the matter. We had sent notices to your client as provided under Section 7 of the Muslim Family Laws Ordinance 1961. The purpose of notices is to ascertain whether both parties want to reconcile in which case the divorce shall not become final. In case both parties or any one of them does not want reconciliation, the divorce shall become final after 90 days of such notice. We have sent three notices ... to your client and three notices to Mr. Aleem .... Mr. Aleem had responded in writing that he does not want to reconcile but there is no information from your client in spite of the fact that your client has received the notice which will be presumed that she does not want any reconciliation. It may also be mentioned that the function of the Arbitration Council is only to see whether both husband and wife want to reconcile and live again as husband and wife.

12. On 26 February 2004 the Arbitration Council sent a letter entitled “Confirmation Certificate of Divorce” to both Mr. and Ms. Aleem noting that “no reconciliation took place ... the divorce is confirmed ... on the day 26th February, 2004.”

13. In Maryland, the divorce proceedings continued and both Mr. Aleem and Ms. Aleem filed numerous motions after March 2003. On 20 November 2003 the Circuit Court in Maryland issued a “Pendente Lite Order” instructing Mr. Aleem to pay Ms. Aleem alimony and child support.

14. On 6 February 2004 Ms. Aleem filed an “Amended and Supplemental Complaint for Absolute Divorce.” This Complaint was later modified to conform to the requirements of Maryland law.

15. On 5 April 2004 Mr. Aleem filed with the Circuit Court a Motion to Dismiss the Maryland proceedings because “the Pakistani authorities have already decided the issues of divorce and property distribution.” After a hearing, the Circuit Court dismissed Mr. Aleem’s Motion in May 2004 stating that “this Court is not required to grant comity to the Pakistani divorce decree.”

16. On 27 June 2006 the Circuit Court, after a three-day trial in which Mr. Aleem participated, granted an absolute divorce. On 29 June 2006 the Court also issued an order for spousal support (“Circuit Court Order” or “Maryland Order”) directing Mr. Aleem to pay his former wife, until the death of either party, 50% of his monthly benefit from the Bank’s Staff Retirement Plan (“Plan” or “SRP”). The Order of 29 June states as follows:

The Participant [Mr. Aleem] is hereby ordered to pay to the Former Spouse [Ms. Aleem] the amount specified ... below, as spousal support, from Participant’s monthly benefit from the Plan at retirement. Such payments shall commence as soon as may reasonably be done following the issuance of this Order. Payment shall continue until the death of either the Participant or the Former Spouse.

The Participant is hereby ordered to pay to the Former Spouse fifty percent (50%) of Participant’s monthly benefit from the Plan.

17. The day after the date of the Order, Ms. Aleem’s attorney sent the Maryland Order of 29 June to the Bank’s Pension Administration Division (“Pension Administration”) and requested payments from Mr. Aleem’s pension. Section 5.1(c) of the Plan authorizes payment of support to a retiree’s former spouse if the retiree is legally obligated to make such payments by a final court order. Mr. Aleem objected and asked

Pension Administration to give effect to the Pakistani divorce under which his former wife was not entitled to a share of the pension. He stated that he had filed an appeal against the Circuit Court Order and insisted that the Bank should not start payments to Ms. Aleem until the conclusion of the appeal process.

18. In response, in August 2006, Pension Administration informed both parties that it had concluded that the Circuit Court Order was not a “final order” within the meaning of Section 5.1(c) of the SRP and thus it would not commence deductions from Mr. Aleem’s pension for the benefit of Ms. Aleem.

19. Mr. Aleem appealed to the Court of Special Appeals of Maryland arguing that the Circuit Court erred in its decision not to “give comity to Pakistani law under which his divorce by *talaq* did not include any equitable division of marital property titled in his name.” In September 2007 the Court of Special Appeals denied his appeal. Mr. Aleem then appealed to the Court of Appeals of Maryland, the highest court of that State. On 6 May 2008 the Court of Appeals dismissed his appeal stating:

Maryland has enacted a comprehensive statutory scheme designed to effectuate a fair division of property acquired by the parties during the time of their marriage, just as the pension at issue in this case was acquired. To accept *talaq* and to accept the silence of the “contract” signed by the wife on the day of her marriage in Pakistan, as a waiver of her rights to marital property acquired during the marriage, is, in direct conflict with our public policy. Additionally, the Pakistani statutes proffered by petitioner as establishing that all of the property titled in his name, however and whenever acquired, is his property free of any claim by the wife arising out of the marriage, are also in direct conflict with the Maryland statutes governing those same issues.

...

The *talaq* divorce of countries applying Islamic law, unless substantially modified, is contrary to the public policy of this state and we decline to give *talaq*, as it is presented in this case, any comity. The Pakistani statutes providing that property owned by the parties to a marriage, follows title upon the dissolution of the marriage unless there are agreements otherwise, conflicts with the laws of this State where, in the

absence of valid agreements otherwise or in the absence of waiver, marital property is subject to fair and equitable division. Thus the Pakistani statutes are wholly in conflict with the public policy of this State as expressed in our statutes and we shall afford no comity to those Pakistani statutes.

Additionally, a procedure that permits a man (and him only unless he agrees otherwise) to evade a divorce action begun in this State by rushing to the embassy of a country recognizing *talaq* and, without prior notice to the wife, perform “I divorce thee . . .” three times and thus summarily terminate the marriage and deprive his wife of marital property, confers insufficient due process to his wife. Accordingly, for this additional reason the courts of Maryland shall not recognize the *talaq* divorce performed here.

20. On 13 May 2008 Ms. Aleem’s attorney notified Pension Administration of the ruling of the Maryland Court of Appeals and requested payment to Ms. Aleem pursuant to the Order of the Circuit Court. Mr. Aleem objected, stating that he would contest the matter through the Bank’s grievance system. Pension Administration then decided to suspend the disputed portion of the pension effective May 2008. Pension Administration determined that the monthly suspended amount would be equal to 50% of Mr. Aleem’s pension less \$1,000 per month, on account of Mr. Aleem’s monthly payment of \$1,000 to Ms. Aleem as court-ordered *pendente lite* alimony payments. Mr. Aleem’s monthly pension since May 2008 has been approximately \$8,000, of which he receives around \$5,000 per month, the rest being suspended.

21. Pension Administration acted under Section 12.2 of the Plan, which provides that “[i]f there is a dispute about the right of any person to payments under the Plan, the Bank may withhold payment until the dispute has been resolved by the Administration Committee or the World Bank Administrative Tribunal, or settled, whether by agreement, arbitration, or a court with proper jurisdiction over the matter.”



22. The dispute was then referred to PBAC, which decided to continue the suspension of the disputed portion of the pension until the matter was resolved by mutual agreement or by the Tribunal. On 14 November 2008 PBAC, through Pension Administration, so informed Mr. and Ms. Aleem, explaining that:

[T]he Committee noted that the Plan has been presented with two valid divorce decrees, one from Pakistan and the other from Maryland, United States. The Committee noted the importance in a multicultural institution of paying due respect to all cultural traditions and legal systems. The Committee also recognized that while it had the authority to interpret the Plan, it did not have the competence to determine whether either of the two divorces would necessarily supersede the other.

...

The PBAC decided to continue the suspension of the disputed portion of Mr. Aleem's pension until the dispute is resolved. The Committee encourages the parties to come to a mutually agreeable settlement or appeal this decision to the Tribunal to seek resolution of their differences.

23. On 13 March 2009 Ms. Aleem filed her Application with the Tribunal. On 1 June 2009 Mr. Aleem intervened, arguing that the Tribunal lacked jurisdiction over Ms. Aleem's Application. On the same day, Mr. Aleem filed a separate Application seeking full disbursement of his pension to himself. On 10 July 2009 the Bank filed its comments on Mr. Aleem's jurisdictional challenge, stating that "Ms. Aleem's Application clearly complies with the jurisdictional requirements under the Tribunal's Statute."

24. On 14 August 2009 the Tribunal informed the parties that it had decided to consolidate the two cases and join Mr. Aleem's jurisdictional challenge to the merits, and thus would address the jurisdictional challenge and the merits in the same judgment.

#### SUMMARY OF THE CONTENTIONS OF THE PARTIES ON THE JURISDICTIONAL CHALLENGE

25. Mr. Aleem contends that the Tribunal lacks jurisdiction over the marital dispute brought to the Tribunal by Ms. Aleem for the following reasons. First, PBAC has not made a decision against which one could file an application with the Tribunal. It simply continues to withhold half of Mr. Aleem's pension pending a resolution of the dispute by the parties or pending a Tribunal decision. Until Mr. and Ms. Aleem agree about the allocation of Mr. Aleem's pension, or until the Bank determines that it will honor the law of one jurisdiction over another, there is no decision for the Tribunal to consider. Thus, the Tribunal should remand the case to PBAC instructing it to hold a hearing and reach a decision. Second, the Tribunal lacks jurisdiction over this marital dispute because it has neither the mandate nor the expertise to hear, let alone pass judgment on, the religious questions involved here. Third, the Tribunal lacks jurisdiction to hear this particular dispute because the Tribunal's current composition, "without the presence of a Muslim voice," is incompatible with governance structures laid out in the Bank's Articles of Agreement.

26. The Bank responds that Article II of the Tribunal's Statute merely requires the denial of relief as a precondition for admitting an application. In this case, PBAC clearly denied the requests of both Ms. Aleem and Mr. Aleem, even if it did not affirmatively decide which of the two competing claims is superior. Ms. Aleem has certainly exhausted all avenues of the Bank's internal grievance process. Remanding the case to PBAC would merely delay resolution of the matter. Moreover, Ms. Aleem's Application involves interpretation and application of the SRP, and these are matters within the Tribunal's subject-matter jurisdiction. Finally, Mr. Aleem's suggestion that the composition of the Tribunal should somehow change from case to case to match the

religion, nationality, or ethnicity of each applicant or intervener is inconsonant with the policies adopted by the Board of Governors, in approving the Tribunal's Statute, and defeats the objective of a systemic approach to adjudicating claims against the Bank Group or under the SRP.

27. Ms. Aleem agrees with the Bank's position and adds: "Mr. Aleem's filing of a new case before the Tribunal (which is substantially identical to Ms. Aleem's case) while simultaneously arguing that the Tribunal has no jurisdiction to hear the matter at all completely defies logic."

#### SUMMARY OF THE CONTENTIONS OF THE PARTIES ON MERITS

##### *Ms. Farah Aleem's contentions*

28. Ms. Aleem claims that the Bank should give the disputed portion of Mr. Aleem's pension to her pursuant to the Maryland Order for the following reasons. First, there is no genuine conflict between the Maryland divorce decree and the Pakistani divorce decree. Under the Maryland divorce, Ms. Aleem is entitled to spousal support in an amount equivalent to one-half of Mr. Aleem's pension. But the Pakistani divorce did not provide for alimony or support to Ms. Aleem after the dissolution of marriage. Therefore, the two divorce decrees are not actually in conflict; the Maryland divorce orders Mr. Aleem to pay alimony, while the Pakistani divorce is silent on the issue.

29. Moreover, the Maryland laws articulate the "divisible divorce" principle, according to which a party can be divorced by the action of the spouse in another state or country, and Maryland will continue to have jurisdiction under the circumstances presented in this case. Both in the case of property dispositions and support, a domiciliary of Maryland like Ms. Aleem continues to have access to the courts of

Maryland to resolve these issues if that domiciliary did not participate in the foreign proceedings, or was otherwise not subjected to the foreign jurisdiction. Mr. Aleem could obtain a valid foreign decree of divorce in another country and Maryland could continue to have jurisdiction to enter appropriate financial orders on behalf of Ms. Aleem. In this particular case, Mr. Aleem submitted to the jurisdiction of the Maryland courts, a jurisdiction which he cannot subsequently defeat simply by electing proceedings in a more favorable forum. In the instant case before the Bank, the concept of the divisible divorce provides another reason why the Maryland and the Pakistani divorces are not in conflict in this case, and the Bank should give effect to the Maryland Order, since doing so would not call into question the validity of the Pakistani decree.

30. Second, Ms. Aleem argues that the Maryland Order should be given effect because the Maryland divorce decree was obtained after extensive adversarial adjudicatory proceedings, while the Pakistani divorce was obtained without any such proceedings.

31. Third, Ms. Aleem contends that if Mr. Aleem is now permitted to ignore the adjudicated Maryland Order based on an administrative procedure only available to husbands, it would do violence to the policies of the Bank and other international organizations that recognize that, so long as their staff members are permitted to reside and work in the U.S., they must fulfill their legal obligations to support their children and spouses. A decision denying compliance with the Maryland Order might encourage other staff members to ignore support obligations imposed by law. Such a decision might also encourage staff members, notwithstanding ongoing divorce actions in the U.S., to seek to

obtain quick, unilateral divorces elsewhere, leaving their spouses in the U.S. without support. Such a decision would harm the Bank's reputation.

32. Finally, Ms. Aleem submits, the equities involved warrant the payment of spousal support from Mr. Aleem's pension as ordered by the Maryland courts. After the marriage, Ms. Aleem dutifully left her home and followed Mr. Aleem, first to England, to complete his studies, and then to Maryland so he could begin his employment at the Bank. For over 20 years, she was a devoted wife to Mr. Aleem. She raised their two children. Contrary to Mr. Aleem's assertion, Ms. Aleem did not receive assets worth "well over half a million dollars" under the Pakistani divorce. What he refers to as the "valuable apartment in Pakistan," although held in Ms. Aleem's name, is actually the home of her parents. The Circuit Court of Maryland held a hearing, and after considering the financial situations of both parties, determined that Mr. Aleem should pay spousal support to Ms. Aleem. The Bank should respect this equitable resolution by the Maryland Court. Notably, contrary to Mr. Aleem's position, Ms. Aleem did not sign any marriage contract or pre-nuptial agreement waiving her rights to Mr. Aleem's pension. It would not be an equitable solution if Mr. Aleem were allowed to evade the Maryland Order by paying a one-time *de minimis* payment of \$2,500 to Ms. Aleem.

33. Ms. Aleem requests the Tribunal to order the Bank to "promptly give effect to the Maryland Judgment and Order for Spousal Support, and provide Ms. Aleem with the sum due her from Dr. Aleem's ongoing retirement entitlement, as well as the sums withheld pending this resolution." Ms. Aleem also requests attorney's costs.

*Mr. Irfan Aleem's contentions*

34. Mr. Aleem contends first that Pakistani laws should govern the marriage and terms of the divorce. During their marriage, the couple signed a *Nikah Nama*, which is a marriage contract or pre-nuptial agreement. The *Nikah Nama* not only established the terms of the marriage but also established the terms of a divorce should that occur, notably to the effect that Mr. Aleem retained the right of a traditional *talaq* divorce. They also agreed that in the event of the divorce, they would follow the Pakistani tradition of dividing assets based on title. In other words, property titled in Ms. Aleem's name – regardless of when it was acquired – would be hers, property in Mr. Aleem's name would be his, and all jointly titled property would be divided equally. Under the terms of the *Nikah Nama* and the Pakistani laws, Ms. Aleem is not entitled to any part of Mr. Aleem's pension, which is titled solely in his name. The law of the place where the contract was made applies in interpreting the meaning of the contract. The marriage contract was made in Pakistan in accordance with the laws and traditions of that country and the terms of any future divorce were included in that contract. Accordingly, the laws of Pakistan, and not those of Maryland, are applicable. Moreover, they were both Pakistani citizens throughout Mr. Aleem's service at the Bank and were living in Maryland only under diplomatic visas. Thus, Pakistani laws should govern their marriage and the terms of their divorce.

35. Second, according to Mr. Aleem, the divisible divorce doctrine does not apply in this case. This doctrine only applies when one party is not subject to jurisdiction in the forum that issued the divorce. There is no question that the Pakistani legal system had jurisdiction over Ms. Aleem on the basis of her Pakistani citizenship. As both the

Maryland courts and PBAC have recognized that the Pakistani divorce was valid, and this recognition necessarily entails the corollary recognition that the Pakistani legal system properly exercised jurisdiction over Ms. Aleem. Moreover, as Ms. Aleem was not domiciled in Maryland at the time of the Pakistani divorce, the Maryland courts could not properly rely on the divisible divorce doctrine. When the Pakistani divorce proceedings began, Ms. Aleem had been able to reside in Maryland for many years only because of a temporary diplomatic visa tied to Mr. Aleem's employment in the Bank. Under Article VII, Section 8(ii), of the Bank's Articles of Agreement, Mr. Aleem is entitled to retain his rights as a diplomat subject to the laws of his native country. In addition, the Pakistani marriage contract is an Islamic contract permeated with religious beliefs. It is not possible to break the contract into different pieces and pick and choose which parts to accept and which parts to ignore.

36. Third, the property Ms. Aleem received as a result of the Pakistani divorce was fair and equitable. Mr. Aleem explains as follows:

Under the terms of the *Nikah Nama*, Ms. Aleem had – and received – very substantial property rights. The \$2,500 dower was only a tiny portion of the property to which she was entitled. She owned an apartment in the Pakistani city of Karachi which had been purchased years before for \$50,000 and at the time of the divorce was worth many times that amount. She had, in accordance with Pakistani tradition, much valuable jewelry – all of which she retained. She had a new car which Dr. Aleem had just bought for her. She took substantial amounts of the family furniture. Under Pakistani law, she was entitled to – and received – half the sale value of the jointly titled family home. Ms. Aleem's own estimate for these items was over half a million U.S. dollars, and that valuation was extraordinarily low compared to the real value of the items. At the time she walked out of the home, she also took \$30,000 from the parties' equity line. In addition, Dr. Aleem was responsible, under Pakistani tradition, for child support and for the cost of the children's education and for their considerable medical expenses; Ms. Aleem has not contributed to these expenses. ... Finally, it should be remembered that Ms. Aleem has a good job of her own.

37. Fourth, conveying half of Mr. Aleem's pension, which is in reality a division of property assets and not the support payments the Maryland courts made it appear, is a violation of Section 5.1(c) of the SRP. This Section permits only support payments and not the conveyance of Mr. Aleem's interest in his pension which is at issue here.

38. Finally, PBAC violated Mr. Aleem's due process rights by denying him an oral hearing.

39. As remedies, Mr. Aleem requests that the Tribunal (i) declare that Pakistani laws apply; (ii) order the Bank to restore Mr. Aleem's full pension rights; and (iii) award him compensation and costs.

*The Bank's contentions*

40. First, the outcome which Mr. Aleem advocates is "rather extreme." He argues that a one-time *de minimis* payment of \$2,500 under the *Nikah Nama* should absolve him of any further obligations to his former spouse, and effectively allow him to evade the obligations under the Maryland Order. A decision adopting Mr. Aleem's position would have serious implications for Bank Group policies designed to ensure that staff and retirees comply with their spousal support obligations, as it could provide a pathway for the evasion of such obligations. It could also present a reputational risk to the Bank Group, and thereby undermine respect for the institutions' immunities.

41. Second, since the Plan was amended in 1995 to incorporate the provisions of Section 5.1(c), numerous spousal support orders concerning non-U.S. staff, retirees and spouses have been submitted to the Plan. In the case of staff assigned to headquarters, many staff and spouses holding G-4 visas have availed themselves of divorce proceedings in the jurisdiction where they reside, typically the District of Columbia,



Maryland or Virginia. This is consistent with the precedent established by the U.S. Supreme Court (*Toll v. Moreno*, 458 U.S. 1 (1982)) that G-4 visa holders can indeed establish domicile in the U.S., and avail themselves of the benefits available to other local residents. Mr. Aleem's assertion that the laws of the home country, or the laws of the country where the marriage took place, should always govern the divorce is at odds with the prevailing practice. His theory, if adopted by the Tribunal, might interfere with the desires of many staff or spouses holding G-4 visas.

42. Third, Mr. Aleem's case has nothing to do with Article VII, Section 8(ii), of the Bank's Articles of Agreement. During the period of his Bank employment in the U.S., Mr. Aleem, unlike diplomats, was subject to the applicable U.S. laws except to the extent of the immunities granted under the Articles of Agreement and the U.S. International Organizations Immunities Act. Unlike diplomats, Bank staff holding G-4 visas and living in the U.S. are fully subject to U.S. laws.

43. Fourth, the Maryland Order imposes a legal obligation on Mr. Aleem to provide spousal support to Ms. Aleem and the Order is consistent with Section 5.1(c) of the Plan.

44. Finally, the Bank states that "while the Bank wishes to alert the Tribunal to the institution's policies and concerns, it declines to urge the Tribunal to adopt a particular result, consistent with the position taken by the PBAC. ... Of course ... the Plan would be obliged to implement the Tribunal's decision and to apply it to any future similar cases, as applicable."

45. With respect to Mr. Aleem's complaint about a due process violation by PBAC, the Bank states that the lack of an oral hearing before PBAC was consistent with PBAC's

established practice, and PBAC has not violated Mr. Aleem's due process rights in any manner.

## THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

### JURISDICTION

46. The Tribunal's Statute provides the following regarding the Tribunal's jurisdiction:

### ARTICLE II

1. The Tribunal shall hear and pass judgment upon any application by which a member of the staff of the Bank Group alleges non-observance of the contract of employment or terms of appointment of such staff member. The words "contract of employment" and "terms of appointment" include all pertinent regulations and rules in force at the time of alleged non-observance including the provisions of the Staff Retirement Plan.
2. No such application shall be admissible, except under exceptional circumstances as decided by the Tribunal, unless:
  - (i) the applicant has exhausted all other remedies available within the Bank Group, except if the applicant and the respondent institution have agreed to submit the application directly to the Tribunal; and
  - (ii) the application is filed within one hundred and twenty days after the latest of the following:
    - (a) the occurrence of the event giving rise to the application;
    - (b) receipt of notice, after the applicant has exhausted all other remedies available within the Bank Group, that the relief asked for or recommended will not be granted; or
    - (c) receipt of notice that the relief asked for or recommended will be granted, if such relief shall not have been granted within thirty days after receipt of such notice.
3. For the purpose of this statute:

the expression “member of the staff” means any current or former member of the staff of the Bank Group, any person who is entitled to claim upon a right of a member of the staff as a personal representative or by reason of the staff member’s death, and any person designated or otherwise entitled to receive a payment under any provision of the Staff Retirement Plan.

### Article III

In the event of a dispute as to whether the Tribunal has competence, the matter shall be settled by the Tribunal.

47. Section 10.2(f) of the SRP states that PBAC

shall decide all questions of interpretation of the Plan provisions relating to participation, retirement, elections, and benefits, and any claim of any person for benefits or other payments under the Plan. ... A decision of the [PBAC] shall be conclusive and binding on all persons concerned, subject to the appeal of the decision to the World Bank Administrative Tribunal.

48. It is not in dispute that Ms. Aleem has standing to file her Application with the Tribunal and that the Application is timely. It is questionable whether Mr. Aleem has standing to file his jurisdictional challenge. Rule 8 of the Tribunal’s Rules allows the Bank, and not an applicant or an intervenor, to raise preliminary objections including a jurisdictional challenge. But even assuming that Mr. Aleem has standing to raise the jurisdictional challenge the Tribunal rejects it for the following reasons.

49. As to Mr. Aleem’s contention that the Tribunal lacks jurisdiction because PBAC has not made any decision, PBAC’s letter to Mr. and Ms. Aleem dated 14 November 2008 informed them that:

The PBAC decided to continue the suspension of the disputed portion of Mr. Aleem’s pension until the dispute is resolved. The Committee encourages the parties to come to a mutually agreeable settlement or appeal this decision to the Tribunal to seek resolution of their differences.

The decision of the PBAC is conclusive and binding on all persons concerned, subject to the appeal of the decision to the World Bank Administrative Tribunal by either party within 120 days of receiving this letter.

50. This letter clearly apprised the parties of the fact that PBAC had made a conclusive and binding decision to continue the suspension of the disputed portion of the pension. True, PBAC has not established who has the superior claim over the disputed pension. But it certainly made a decision, which was to continue the suspension of the disputed portion of the pension. This decision is thus a proper object of an appeal to the Tribunal under the terms of the Tribunal's Statute and the SRP.

51. The Bank states that: "Article II of the Statute merely requires the denial of relief as a precondition for admitting an application. In this case, the PBAC clearly denied the requests of both Ms. Aleem and Mr. Aleem, even if it did not affirmatively decide which of the two competing claims is superior."

52. The Tribunal finds the Bank's argument convincing. Ms. Aleem first requested Pension Administration to pay her the disputed portion of the pension. Pension Administration denied the request and instead decided to suspend the disputed amount of the pension. She then approached PBAC, which also decided to continue the suspension and informed her that she could appeal this decision to the Tribunal. Under the Tribunal's Statute and the SRP, she clearly "exhausted all other remedies available within the Bank Group" and has been informed that her requested relief would not be granted. Thus, her Application meets the jurisdictional requirements under the Tribunal's Statute.

53. Mr. Aleem next argues that "the Tribunal lacks jurisdiction over this dispute because it has neither the mandate nor the expertise to hear, let alone pass judgment on, religious questions involved in the marriage contract and divorce."

54. The Tribunal rejects this contention. The Tribunal is not asked to hear or decide "religious questions" (whatever Mr. Aleem means by them). The current dispute

involves a “claim ... for benefits or other payments under the Plan.” Under Section 10.2(f) of the SRP, the Tribunal is the final arbiter of any disputes involving such claims. Under Article II of the Tribunal’s Statute, Ms. Aleem can pursue her claim under the Plan as a “person designated or otherwise entitled to receive a payment under any provision of the Staff Retirement Plan.” Therefore, the dispute is clearly within the subject-matter jurisdiction of the Tribunal under Section 10.2(f) of the SRP and Article II of the Tribunal’s Statute.

55. As for Mr. Aleem’s argument that the “Tribunal lacks jurisdiction to hear this particular dispute as its current composition, without the presence of a Muslim voice, is incompatible with governance structures laid out in the Articles of the Bank,” the Tribunal rejects it summarily. It has no substantive foundation (in addition to being factually inaccurate).

56. The Tribunal accordingly decides that it has jurisdiction over the consolidated cases.

#### MERITS

57. The dispute must be resolved under the SRP applying the rules and policies contained therein. As shall be seen, it follows that there is no need for the Tribunal to pronounce upon the validity of the Maryland and Pakistani divorce decrees or to assess their relative merits. Section 5.1(c) of the SRP provides as follows:

A participant or a retired participant, pursuant to a legal obligation, as evidenced by a final order of a court, arising from a marital relationship to support one or more former spouses, or a spouse from whom there is a decree of legal separation, may direct that a specified amount or part of a pension payable under Section 3.1, 3.2 or 3.3, of a lump sum payment commuted from such a pension under Section 4.4(a), or of a withdrawal benefit payable under Section 4.3, shall be paid to one or more such former spouses or the spouse. If the participant or retired participant is

obligated by a final order of a court to direct that such a payment be made, the Benefits Administrator shall pay the pension or lump sum payment accordingly after receipt of the order; provided, however, that neither the participant, retired participant, nor the Benefits Administrator may convey an interest in the Retirement Trust Fund of the Plan or in the pension or other benefits of a participant or retired participant to any person.

58. The SRP was amended in 1995 to include the above provision. The purpose of the amendment was to ensure that Bank Group retirees comply with their family legal obligations in retirement. Previously, it had been possible for Bank Group staff members to divorce their spouses in retirement or shortly before retirement and leave them without means of support in their old age. Because of the Bank's immunities, and the SRP's prohibition on alienation (including garnishments and assignments) of Plan benefits, former spouses had no legal ability to recover portions of a Bank Group retiree's pension if the retiree left the jurisdiction or otherwise refused to pay the former spouse directly, whether voluntarily or following a valid court order. To address this problem, with the support of the Staff Association and the World Bank Volunteer Services (a group of Bank Group spouses now known as the World Bank Family Network), the Bank amended the SRP in 1995.

59. In *E*, Decision No. 325 [2004], paras. 20-22, the Tribunal explained the context of the 1995 amendment of the SRP as follows:

The Bank's treatment of spousal-support claims directed against staff members is a consequence of its institutional immunity from garnishment orders issued by national courts. The Articles of Agreement of the World Bank provide in Article VII, Section 3, that "[t]he property and assets of the Bank shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Bank." This immunity from court orders garnishing the wages of Bank staff was upheld by the United States courts in 1988. *Atkinson v. Inter-American Development Bank*, 156 F.3d 1335 (D.C. Cir. 1988). Concerned that staff members of the Bank not unfairly invoke this immunity as a means of circumventing their private legal

obligations, the Bank included the following provision in Principle 3.3 of its Principles of Staff Employment:

Staff members shall enjoy, in the interests of their Organizations, privileges, immunities, and facilities to which the Organizations, their officers and employees are entitled under their respective Articles of Agreement or other applicable treaties or international agreements or other laws. Such privileges, immunities, and facilities *shall not excuse staff members from the performance of their private obligations or from the due observance of the law.* (Emphasis added.)

One persistent matter of concern to the Bank were the obligations of its staff in connection with the support of their divorced or legally separated spouses, and of their children. Until 1995, the Bank had no elaborated procedure specifically designed to implement the terms of divorce settlements and decrees. Rather, when the Bank received a garnishment order or a claim that a staff member had not satisfied a court order, the matter was referred to the Ethics Officer, who had the authority to conduct investigations of “misconduct” claims and ultimately to impose disciplinary measures. ...

Considering that such measures might be inappropriate for handling such matters, the Bank in 1995 revised the terms of its Staff Retirement Plan (SRP) to permit the payment of amounts due as a result of a divorce settlement or court decree directly from the SRP.

60. The policy rationale behind Section 5.1(c) of SRP is clearly to protect the interests and welfare of the retired staff members’ former spouses. The amendment was enacted to prevent the staff members from evading domestic court orders using the legal loopholes that existed prior to the amendment.

61. In this case, Ms. Aleem claims that she should be given half of Mr. Aleem’s pension under the Maryland divorce decree whereas Mr. Aleem contends that her claim should be denied because the Bank should give effect to the Pakistani divorce decree under which his former wife was not entitled to any portion of his pension. The question before the Tribunal is what would be the proper solution given the context and policy

rationale contained in Section 5.1(c) of the SRP. It should be noted that the Tribunal is not the first forum to address this type of dispute. The International Monetary Fund Administrative Tribunal addressed a similar matter in *Mr. "P" (No. 2), Applicant v. International Monetary Fund, Respondent*, IMF Administrative Tribunal, Judgment No. 2001-2 (November 20, 2001).

62. The Tribunal finds that Mr. Aleem has no legal basis to evade the Maryland Order. He voluntarily submitted to the jurisdiction of the Maryland Circuit Court. While the Maryland proceedings were in progress, he went to the Pakistani Embassy in Washington, DC, and unilaterally divorced his wife by signing his self-prepared document, the "Divorce Deed." It is questionable whether this was done in good faith. In any event, after this unilateral divorce under the Pakistani laws, he applied to the Maryland Circuit Court for a dismissal of the ongoing proceedings on the ground of his Pakistani divorce. The Maryland Circuit Court refused to grant comity to the Pakistani divorce and ordered Mr. Aleem to pay half of his pension to his former wife. His challenge to the highest court of Maryland failed.

63. Thus, the Maryland Circuit Court Order is now final and he is bound by that Order. Pension Administration and the Tribunal are not the right fora to challenge the decision of the highest court in a jurisdiction where both parties lived for over 20 years and made their home. It is a recognized principle of private international law that the law of the place with which the spouses have the closest connection applies to matters of divorce. In this case, the spouses established their home in Maryland where they lived for over 20 years and raised their two children. Although they were married in Pakistan, they never lived there during their marriage. The Maryland Circuit Court legitimately



assumed jurisdiction to award a divorce to Ms. Aleem and to apply the Maryland law for property disposition and spousal support and its decree qualifies as a decree of a court of competent jurisdiction under the Plan.

64. Mr. Aleem argues that he is not bound by the Maryland Order because under Section 8(ii) of Article VII of the Bank's Articles of Agreement he is "entitled to retain his rights as a diplomat subject to the laws of his native country. ... [He] and his ex-wife were both Pakistani citizens throughout his time at the World Bank and were living in Maryland only under diplomatic visas. Thus, Pakistani law should govern their marriage and the terms of their divorce."

65. The Tribunal is unconvinced. He is neither a diplomat under international law nor under the Bank's Articles of Agreement. He is an international civil servant who has lived in the U.S. for two decades as an employee of the Bank. He is not immune from U.S. court orders relating to his marital obligations. Section 8(ii) of Article VII of the Articles of Agreement states:

All governors, executive directors, alternates, officers and employees of the Bank ... not being local nationals, shall be accorded the same immunities from immigration restrictions, alien registration requirements and national service obligations and the same facilities as regards exchange restrictions as are accorded by members to the representatives, officials, and employees of comparable rank of other members.

66. In this regard the Tribunal endorses the following statements from the Bank:

Section 8(ii) is rather narrow and only grants certain specific immunities on the same basis as diplomats. These are the "immunities from immigration restrictions, alien registration requirements and national service obligations." ... These particular immunities ensure that Bank staff may enter and remain in the host country during employment, in order to enable them to perform their functions for the organization. No mention is made in Section 8(ii) of any immunity from family law or other personal legal obligations imposed by the host country. Also, Article VII, Section 8(i) is quite clear that Bank staff only possess a functional immunity "with

respect to acts performed by them in their official capacity,” consistent with the notion that Bank staff do not possess the full range of personal immunities that are extended to diplomats. ...

Unlike diplomats, Bank staff holding G-4 visas and living in the United States are subject to the full panoply of U.S. laws, including traffic laws, criminal laws, income taxation on U.S. source income other than Bank compensation, sales taxation, real estate laws, property taxation, etc. They may also be sued in local courts in regard to matters that do not concern official Bank Group duties.

67. The Bank’s Principles of Staff Employment and the Staff Rules make it clear that Mr. Aleem cannot avoid his personal legal obligations by appropriating the Bank’s immunity. Principle 3.3 of the Principles of Staff Employment states that:

Staff members shall enjoy, in the interests of their Organizations, privileges, immunities, and facilities to which the Organizations, their officers and employees are entitled under their respective Articles of Agreement or other applicable treaties or international agreements or other laws. Such privileges, immunities, and facilities *shall not excuse staff members from the performance of their private obligations or from the due observance of the law.* (Emphasis added.)

68. Moreover, in 1998, the Bank had adopted a policy – known as the Bank Policy on Spousal and Child Support – “to deduct from the wages of staff members court-ordered spousal and child support payments, when such staff did not provide evidence showing that they had satisfied their support obligations. This 1998 Policy was designed to ensure that staff did not seek to hide behind the Bank’s immunity from garnishment orders.” *E*, Decision No. 325 [2004], para. 10. Staff members’ obligations with respect to marital matters are now provided in detail in Staff Rule 3.06. Paragraph 2.01 of this Staff Rule states that: “Staff members must comply with their personal legal obligations and observe applicable law, including all obligations involving financial support to family members through spouse and/or child support.” Paragraph 3.01 also adds that “staff members may

be subject to disciplinary measures ... for failure to comply with their personal legal obligation(s), including payment of court-ordered spousal and child support.”

69. Retired staff members cannot avoid these obligations either. As early as 1995 the Bank amended its SRP to ensure that the Bank Group retirees comply with their family legal obligations in retirement. The Bank’s policy in this respect is now explicitly stated in Section 5.1(c) of the SRP. In *Homayoun*, Decision No. 403 [2009], para. 23, the Tribunal observed that:

In order to keep its staff members from evading legitimate court orders relating to spousal support (by improperly insulating their pension entitlements behind the Bank’s own privileges and immunities), the Bank has, by virtue of the 1995 reforms, made it possible, by agreement or under final court orders, for spouses of staff members to obtain direct payments from Pension Administration.

70. In light of the context of the 1995 amendment of the Bank’s SRP and its policy rationale, and further considering the record before it, the Tribunal decides that the Bank must give effect to the Maryland Order and accordingly release the disputed portion of Mr. Aleem’s monthly pension including the amount already suspended to his former spouse.

*Other matters*

71. Mr. Aleem argues that “conveying half of [his pension], which is in reality a division of property assets and not the support payments the Court made it appear (at Ms. Aleem’s request), is a violation of the Staff Retirement Plan and Trust, Article 5.1(c). That article permits only support payments and not the conveyance of Dr. Aleem’s interest in his pension which is what is at issue here.” Ms. Aleem and the Bank insist that the Maryland Order met the requirements of Section 5.1(c).

72. The Tribunal agrees with Ms. Aleem and the Bank. In *Mills*, Decision No. 383 [2008], a Bank retiree raised a similar argument stating that the Maryland court order in his case did not comply with Section 5.1(c). The Tribunal rejected this argument and concluded that the order was indeed an order for spousal support consistent with Section 5.1(c) of the SRP. The Tribunal observed at paras. 43-44:

The Bank understood the parts of the Court Orders concerning spousal support in their only possible meaning and sense as directing the implementation of the Original Order. No dispute could be reasonably believed to exist in this respect .... [T]he Bank was well within its powers in not requiring that the Order be referred elsewhere for interpretation.

In addition, it was clearly explained in the Original Order that it did not require the Plan to provide any type or form of benefit, option or payment to Mrs. Mills that was not permitted by the Plan. The Order also clearly stated that it should not be deemed to effect a division of the property rights between the Applicant and Mrs. Mills. The Order thus carefully ensured its compatibility with the Plan, and respected the Bank's privileges and immunities.

73. This observation also applies to the Maryland Order submitted to the Plan by Ms. Aleem. The Order imposes upon Mr. Aleem a "legal obligation arising out of the marital relationship to provide support" for Ms. Aleem. The Order further states that the amounts deducted from Mr. Aleem's pension should be directed to Ms. Aleem as "spousal support." The Order further clarifies that: "Nothing in this Order shall be deemed to direct or effect any transfer of assets from the Participant or from the Plan to the Former Spouse, nor shall this Order be deemed to divide any property rights of the parties." The Tribunal is satisfied that the Order imposes upon Mr. Aleem a legal obligation to provide spousal support to Ms. Aleem, and is consistent with Section 5.1(c) of the SRP.

74. Mr. Aleem also argues that PBAC violated his due process rights because it failed to hold an oral hearing and also because the composition of PBAC lacked a voice familiar with the traditions and laws of Pakistan and of Islam. In denying Mr. Aleem's requests for a hearing and to alter the composition of the Committee, PBAC explained to Mr. Aleem that:

The PBAC is an administrative committee established to interpret the Plan, but it is not a judicial body. The Committee has never held a hearing in any other case and lacks the infrastructure to manage the oral hearing process, including taking witness testimony, allowing for cross-examination and producing transcripts. The requests for an oral hearing were therefore denied. The PBAC also denied Mr. Aleem's request for an adjustment to the composition of the Committee, noting that the PBAC was established pursuant to Section 10.2 of the Plan, which provides a single Committee to decide all cases, with a quorum of at least five members. There is no Plan provision that would allow for the exclusion of some members, and the inclusion of others, to consider one particular case.

75. The Tribunal finds that this explanation was cogent. It is not in dispute that Mr. Aleem was given a reasonable opportunity to explain his position and submit written statements and documents. An oral hearing is not an absolute requirement. On the record before it, the Tribunal finds no violation of due process.

76. Finally, the Tribunal determines that the parties will bear their own costs.

## DECISION

The Tribunal decides that:

- (i) the Bank shall give effect to the Maryland Order and accordingly release the disputed portion of Mr. Aleem's monthly pension, including the amount already suspended, to Ms. Aleem; and

(ii) all other pleas are dismissed.

/S/ Jan Paulsson  
Jan Paulsson  
President

/S/ Olufemi Elias  
Olufemi Elias  
Executive Secretary

At Washington, DC, 9 December 2009