



World Bank Administrative Tribunal

2015

Decision No. 507

**Andres Pizarro,
Applicant**

v.

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

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

**Andres Pizarro,
Applicant**

v.

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

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Stephen M. Schwebel (President), Mónica Pinto (Vice-President), Ahmed El-Kosheri, Andrew Burgess, Abdul G. Koroma, Mahnoush H. Arsanjani, and Marielle Cohen-Branche.

2. The Application was received on 1 August 2014. The Applicant was represented by Marie Chopra of James & Hoffman, P.C. The Bank was represented by David R. Rivero, Chief Counsel (Institutional Administration), Legal Vice Presidency.

3. The Applicant challenges the Bank's decisions concerning the publication of allegations by the Argentine newspaper, *La Nación*, of wrongdoing in a Bank-financed project. He seeks damages for loss of earnings, emotional distress and reputational harm.

FACTUAL BACKGROUND

4. The Applicant joined the Bank in November 2003 as full-time staff member on an open-ended appointment as a level GG Senior Transportation Specialist in the Latin America and Caribbean Region (LAC). In November 2007 he was posted to the World Bank's Country Office in Buenos Aires, Argentina. Three years later, in 2010, the Applicant was promoted to the level GH position of Lead Transportation Specialist in the South Asia Region (SAR). The Applicant remained in Buenos Aires and continued his employment with the Bank until his resignation on 31 July 2011. After this date the Applicant became a short-term consultant ("STC") with the Bank and also served as an independent consultant for other entities.

5. This case concerns the Bank's handling of allegations of corrupt practices made by the Argentine newspaper *La Nación* against the Bank and the Applicant. The parties have provided the Tribunal with English translations of the newspaper articles which were originally published in Spanish.

6. While serving as Senior Transportation Specialist at the Bank, the Applicant was the Task Team Leader (TTL) in the LAC region for a project in Argentina, the Argentine Metropolitan Areas Urban Transport Project (PTUMA). One of the contracts financed by the PTUMA project was a consulting contract for the supervision of the creation and installation of electronic cards for fare payment in the transportation system in the Buenos Aires Metropolitan area, known as the SUBE project. As part of his responsibilities as TTL, the Applicant signed off on "No Objection" letters for contracting decisions which had been vetted and approved by the Bank's Regional Procurement Manager for Latin America.

7. On 16 May 2012, *La Nación* published an article questioning the impartiality of the bidding process conducted in the PTUMA project and in particular the SUBE project. The bidding process was executed by the Secretaria de Transporte, the government agency in charge of the implementation of the project. The purpose of the bidding process was to hire a firm to supervise the installation and operation of electronic fare payment cards. The 16 May 2012 article and subsequent articles published by *La Nación* questioned the award of the contract to a consortium consisting of Global Infrastructures S.A. (GI), IRV S.A., Latasa S.A., and Gonzales Fischer y Asociados S.A. (GFA). *La Nación* alleged that the financial proposal presented by the consortium was 10 million dollars more expensive than its closest competitor while the technical proposal was essentially the same. *La Nación* identified the World Bank as the entity which was responsible for overseeing the procurement process and financing the contract.

8. On 16 May 2012, the Bank's External Communications Office (ECR) issued a statement to Iván Ruiz, a journalist at *La Nación*, in response to allegations of a conflict of interest on the part of the Bank officials involved in the bidding process. The ECR also clarified the Bank's role and explained the Bank's policies on conflict of interest in the following terms:

Iván,

Here is a more detailed statement:

“The Bank did not receive a request for an exception to be made with regard to the selection of a consultant. In accordance with the World Bank’s Guidelines, consultants with a potential conflict of interest shall not be hired. For example, in certain circumstances, consultants (including their staff) that have a close business or family relationship with a staff member of the borrower shall not be hired, unless such conflict has been resolved in a manner acceptable to the Bank, which did not occur in this case.”

I have attached the Guidelines. Paragraph 1.9 covers conflicts of interest. The situation with respect to former staff members (see Footnote 11) is outlined on pages 5 and 6.

9. On 17 May 2012, *La Nación* published the Bank’s official response:

In response to queries from LA NACION, the World Bank clarified that no request for an exception with respect to the bid to supervise the SUBE card system had been submitted, and confirmed that it had approved the bid because they were unable to “identify” the aforementioned relationships.

10. Between 21 May and 16 July 2012, *La Nación* published several articles on the SUBE project and the allegations of corruption in both print and electronic media.

11. On 16 July 2012, the ECR contacted *La Nación* and issued a statement attributed to the World Bank Sustainable Development Sector Leader for Argentina, Uruguay and Paraguay:

We, like the Government of Argentina, are extremely concerned about the information published relating to a contract to supervise the installation and operation of the SUBE system, which is part of the Metropolitan Urban Transportation Project being financed in part by a World Bank loan. Any reports of possible violations of the procedures established under the loan agreement are taken very seriously by the World Bank. We are therefore reviewing all procedures followed during this procurement process, as well as the publicized accusations of alleged irregularities relating to its execution. The World Bank unit tasked with handling these matters is currently investigating the case.

12. On 19 July 2012, *La Nación* published an article naming the Applicant for the first time. This article contained an interview with Stephen Chandler, the owner of GI. In the interview Mr. Chandler defended himself against allegations of wrongdoing in the bidding process and instead accused the Argentine Secretaria de Transporte, the World Bank, and other members of the consortium of using him to cover illicit acts. Mr. Chandler claimed that he interacted with the Applicant and called the Applicant to warn him about the contract.

13. On 19 July 2012, the Applicant was contacted by the LAC Transport Sector Manager who reminded the Applicant of his obligation of confidentiality to the Bank and told him not to speak with the press.

14. On 20 July 2012, the Applicant contacted the Country Director of the World Bank office in Buenos Aires. The Applicant spoke with the Sustainable Development Sector Leader and requested that the Bank communicate with the press “so as to mitigate individualized blame.” According to the Applicant, the Country Director refused to meet him on the grounds that the Bank’s Institutional Integrity, Vice-Presidency (INT) had forbidden it.

15. On 22 July 2012, INT opened a preliminary inquiry into the allegations made by *La Nación*.

16. On 24 July 2012, the Applicant sent an email to World Bank officials in the Buenos Aires office and at headquarters entitled “False allegations by the newspaper La Nacion regarding my actions as Task Team Leader for the Argentina Metropolitan Areas Urban Transport Project.” The Applicant stated:

I am perfectly aware of what you are going through with the allegations published in La Nacion newspaper, I wish you could imagine what I am going through. I have always been fully aware of my obligations regarding the confidentiality that binds me to the Bank, however La Nacion is slandering me personally. I understand and agree with the Bank’s communication strategy overall; that there is no need to answer allegations made by a newspaper, however my name is being singled out as if I had not been the Team Leader of just that – a team, or that I had not acted for an institution, and under the norms and regulations of the institution. And worst of all, as if the Regional Procurement Manager for Latin America had not given the “no objection” for this particular contract.

[...]

In sum, my whole career and reputation is being slandered by a newspaper for being the Team Leader of a team that took actions following Bank guidelines. My future career now depends on how my reputation is affected by these newspaper lies, innuendos, and errors.

Due to the confidentiality that binds me, I respectfully request that you find a way to make public declarations regarding the Bank procurement process, that would help to clear some things up, and limit the already enormous damage my reputation has suffered. I would hope at least the following information is provided:

1 – For consulting services the selection quality-cost selection process is the most common, therefore the selected firm is not necessarily the one with the lowest price.

2 – The “no-objection” for consulting contracts for more than US\$2 million in Argentina is given by the Regional Procurement Manager.

3 – It is mandatory that firms that present proposals as a consortium, constitute a joint legal entity (denominated in Argentina, UTE) to be able to sign the contract that they may have been awarded.

17. The Applicant did not receive a response to this email.

18. On 31 July 2012, a journalist from *La Nación* contacted the Applicant and asked for an interview. According to the Applicant the journalist claimed he would publish negative articles specifically about the Applicant. The Applicant was told that it was in his “interest” to speak with the journalist. The Applicant informed the journalist that he would first consult the Bank.

19. On 1 August 2012, after repeated calls to the Bank’s Country Office in Argentina, the Applicant was told that the Bank’s external relations department preferred that he not make any statements to the press.

20. On 3 August 2012, *La Nación* published an online article specifically about the Applicant titled “The SUBE Case: Pizarro, World Bank manager with close ties to Kirchnerism.”

21. On 4 August 2012, *La Nación* publishes the same article in print with the title “Manager of the World Bank is a Kirchnerista.”

22. On 3 August 2012, in response to an email message from *La Nación*, the subject of which was the Applicant, ECR issued the following statement to *La Nación* via email:

The World Bank Integrity Vice Presidency (INT) is responsible for investigating allegations of fraud and corruption in Bank-financed projects. As per INT's disclosure policy – which aims to protect the integrity of investigations – we are unable to share information on matters pertaining to investigations.

23. On 6 August 2012, *La Nación* published an article online entitled “The World Bank investigates the monitored bidding for SUBE.” The article referred to the Applicant stating:

The Office of the Integrity Vice Presidency, based in Washington, is analyzing the internal procedures which authorized the signing of a contract of 65 million pesos. The Bank will seek to establish whether the process, by the Secretary of Transportation, [was] developed in compliance with the norms of consultant selection. It will also determine the responsibility of its officials responsible for auditing the competition that began in 2009 and ended in 2011.

Andres Pizarro, former manager of the institution, was charged with endorsing every step of the bidding by issuing “no objection” documents. By signing, Pizarro allowed Transport to hire the integrated Global Infrastructure, IRV, and Gonzalez Iatasa Fisher and Associates consortium, despite having a bid 10 million pesos cheaper.

[...]

...The World Bank has maintained secrecy since began the various irregularities in the allocation of the contract were revealed. While Pizarro was questioned on several occasions, the Bank would not let him talk.

[...]

Strictly off the record, sources other than the agency agreed that he “found a way around” the procurement rules of the WB. In tendering for price and quality, the Bank favors the latter with 80% of importance. This quality assessment is performed by a committee comprising officials of the agencies – the Department of Transport in the case SUBE.

“They know that if you give a certain score to the proposals, then it is impossible that it can be reversed with the offers,” said a source at the Bank, a specialist in this type of competition.

24. On 6 August 2012, the Applicant was contacted by the Latin America and the Caribbean Region Sustainable Development Director (hereinafter referred to as Mr. X) who informed him that he had been assigned to be the Applicant's contact person in the Bank. The Applicant sent Mr. X the 24 July 2012 email he sent to World Bank officials in Argentina.

25. On 7 August 2012, *La Nación* published an online article referring to the same information in the 6 August 2012 publication. It added the following extract about the Applicant:

A Kirchnerista

Pizarro has a close relationship with officials of Transport which he was supposed to control. These contacts are incompatible with the rules that the organization requires of its staff. After passing the bids, the manager resigned and made explicit his Kirchner militancy.

26. On 8 August 2012, *La Nación* published an article online titled "AGN argues that the oversight of SUBE was 'highly irregular.'" The article referred to statements made by the President of the Auditor General's Office in Argentina. It also included the following extracts about the World Bank and the Applicant:

"The World Bank deserves a special paragraph. Because these institutions have lectured the Argentine for many years on what to do, but the no objection of this tender is absolutely irresponsible of its officials. The Bank had all the powers to prevent this contract and did not do it." Argued the auditor Oscar Lamberto. And he added: "At the least this was incompetence and ineffectiveness by the official of the World Bank."

As manager of the World Bank, Andrés Pizarro signed dozens of "no objection" documents that approved every step of the bidding contest carried out by the Secretary of Transportation. *La Nación* revealed [...] links between the then-manager and the officials who should control the project. After endorsing the hiring of those who would monitor SUBE, Pizarro resigned from the World Bank. Months earlier he had made explicit his political activism in the Kirchnerismo.

27. On 9 August 2012, *La Nación* published an article online titled "SUBE: Audit objects to supervision contract." It repeated in substance the content of its 8 August 2012 article.

28. On 9 August 2012, Mr. X sent the Applicant an email thanking him for his proposal and noting that the communication proposal was sent to the “EXT team”. Mr. X stated: “The points that you suggested to discuss with the media had actually been shared much earlier so they have the information on processes that you mention. At this stage, we will maintain the approach to media. [...] If there are any changes in the approach to media, particularly in reference to you, we will inform you accordingly without delay.”

29. On 10 August 2012, the Applicant responded enquiring whether, in the event of “a judicial inquiry on this affair,” the Bank would use a lawyer or be willing to provide the Applicant with a lawyer.

30. Mr. X responded the same day stating he would check with the Bank’s Legal Department.

31. On 16 August 2012, *La Nación* published an online article entitled: “Entrepreneurs who audited SUBE financed the campaign of Cristina Kirchner.” This article referred to the interview with Stephen Chandler in which he alleged that the Applicant was friendly with members of the consortium.

32. On 17 August 2012, the Applicant sent an email to Mr. X stating:

Another article came out yesterday on the SUBE contract, repeating the allegation that I participated in orchestrating all of this [affair]. I am extremely tired of this and I really need a response from the legal team on how to proceed. I understand you are on holiday, but please could you tell them I need a response soon. I also need you to send me the contact information on the Bank Ombudsman who I need to consult regarding the Bank’s communication strategy and its effect on my reputation.

33. The Applicant and Mr. X exchanged further email messages between 29 and 30 August 2012. In the email exchange they scheduled a meeting and the Applicant requested further information on his inquiry to the Legal Department. He also expressed frustration that he received no response or expression of solidarity from the World Bank officials in the Buenos Aires office.

34. On 25 January 2013, the Applicant received an email from an INT Senior Investigator (hereinafter referred to as Mr. Y) which stated:

I am writing to inform you of the outcome of the preliminary inquiry that INT has conducted into allegations that you may have engaged in collusion or corruption, or otherwise had a financial interest in the outcome of the procurement for the SUBE contract under PTUMA.

The scope of INT's preliminary inquiry was exhaustive. However, INT did not find evidence of staff misconduct.

Based on the totality of the facts and circumstances found during the preliminary inquiry, INT has determined that further proceedings under Staff Rule 8.01 are not warranted as no evidence was found in support of the allegations that you may have engaged in collusion or corruption, or otherwise had a financial interest in the outcome of the procurement of the SUBE contract under PTUMA.

Therefore, INT will close this matter and no further action is anticipated with regard to the allegation against you.

[...] As discussed with you during your interview, this preliminary inquiry, your participation in an interview, and this outcome are strictly confidential. Except for the Office of Ombuds Services, the Staff Association, any personal legal advisor, or your family members, please do not discuss the preliminary inquiry with anyone without prior consultation with INT.

35. The Applicant acknowledged receipt of the notice on the same day and stated: "Thank you very much for the information, and your rapid handling of this affair. As you suggested when we met, I may want or need a letter from your part to send to a couple of potential employers that I know have avoided hiring me because of this case. Would you be so kind as to consider this possibility? If so, I shall give more details after analyzing when and how to go about sending this communication."

36. On 28 January 2013, Mr. Y responded informing the Applicant that disclosure of the outcome of the Preliminary Inquiry was possible under the World Bank Rules (Staff Rule 2.01 Confidentiality of Personnel Information). He informed the Applicant that the Applicant could submit such a request for notification for consideration.

37. On 14 February 2013, the Applicant contacted Mr. X, requesting assistance from the Bank to address the damage to his professional reputation. He made the following requests:

As you probably know, the INT investigation is over.

And as I come out of this ordeal, my professional reputation has been damaged and my employment possibilities in Argentina have been reduced drastically. I have personal knowledge of a couple of opportunities I have lost because of the newspaper articles. The reputational damage I have suffered is, ironically, due to having carried out my job as required per Bank guidelines, and because of communication decision the Country Director took and the Management team took during the period the newspaper articles came out.

As I wrote to you several months ago, I require that the World Bank help me reduce the damage this has caused me. In this respect, I repeat my requests:

- I would like the Bank to finance my lawyers to sue La Nacion newspaper for damages;
- I would like the Bank to write to the Director of La Nacion, energetically defending my reputation and requesting that my name and photograph be stricken from their on-line articles in association to the allegations they have made.

I would ask you to respond to these requests as soon as possible, as I intend to take action soon.

Thanks,

Andres

38. Mr. X responded the same day stating “I’ll send the request right away to our management team, including the legal department, working on this process and come back to you soon.”

39. On 15 February 2013, the Applicant informed Mr. Y that he would like INT to inform the Minister of the Interior and Transport and the Transport Secretary of Argentina of the outcome of the INT investigation, noting that both functionaries have “had knowledge of the accusations leveled at me by the newspaper, which I would like to clearly dispel.”

40. On 20 February 2013, Mr. Y responded stating: “I need to consider your request in consultation with the Legal Department. I will provide you with a response as soon as possible.”

41. On 25 February 2013, The Applicant contacted Mr. X requesting a response to his 14 February 2013 request.

42. On 15 March 2013, the Applicant contacted Mr. X stating: “It has been a month since my original email with my request regarding the La Nacion allegations. And more than two weeks since my reminder email. Could you please acknowledge [receipt] of this email, and tell me what has happened to the [response] to my request.”

43. On 18 March 2013, Mr. X responded to the Applicant apologizing for the delayed response stating: “I am currently on mission returning to DC on Wednesday and my assistant is coordinating a face-to-face meeting with the legal department and regional management to try to come to closure and practical solutions. I will come back to you as soon as the meeting takes place. Again, sorry for the delay.”

44. On the same day the Applicant sent Mr. X an email correspondence he had with a representative of a brokerage firm in Argentina. The representative had asked the Applicant to submit “documentation that will allow us to prove that you are not charged nor are you under investigation for irregularities in your position as a World Bank functionary. We make this request as a result of information from our reports and internet searches.”

45. The Applicant was also asked to “send ... a sworn declaration on your character in which you declare that you are not charged or prosecuted for any cases of money laundering, nor that you are being investigated for this, nor that there are any court rulings against you.” The representative also sent the Applicant the uniform resource locators (URLs) of the online articles published by *La Nación*.

46. In his email message the Applicant explained to Mr. X:

Please find enclosed an exchange with the legal department of a broker where I would like to open an account. On the telephone I was told my request had been denied. When I showed surprise and demonstrated the gravity of the matter, I was sent the first email. I asked for additional details and I got the second email.

This broker is the largest and most important in Argentina.

As you can see, the real and tangible damage I have suffered is evident here. You may not believe the impact it has had on my employment chances and I would have more difficulty proving it – but believe me it has had an impact. Please have this in mind, when you decide to answer my request and please believe me that I am not being whimsical, and I may even be underestimating the impact I have suffered.

47. On 19 March 2013, Mr. Y informed the Applicant that INT would not notify the Minister of the Interior and Transport and the Secretary of Transport directly, but informed the Applicant that he could present the email of 25 January 2013 from Mr. Y (notifying the Applicant of the outcome of the preliminary inquiry and that INT had found no evidence of misconduct) “to any prospective employer, who may have questions as to the merits of the allegations leveled against [him] or the outcome of the World Bank (INT)’s investigation into this matter.” This authorization to present the notification email was made with “the understanding that the prospective employer should not be provided with a copy of the preliminary inquiry outcome notification e-mail.”

48. The Applicant was informed that “[o]ther than as permitted in these exceptional instances, please do not discuss the preliminary inquiry outcome with anyone else without prior consultation with INT.”

49. On 2 April 2013, the Applicant contacted Mr. X stating: “I am sorry to keep insisting, but I need a response so that I can get on with my life. Please give me a response to my requests.”

50. On 8 April 2013, having received no response from Mr. X, the Applicant sent him an email stating: “Could you tell me what is going on and why I am not getting a response to my requests? Would it be useful if I were to write directly to the vice-president?”

51. On 9 April 2013, Mr. X responded to the Applicant stating: “I just returned to the office. Sorry for my silence as I had intermittent access to email. I have found that a final solution has not been reached. I am not personally involved to make sure we come to a resolution as soon as possible. Will keep you posted. I’m collecting all groups together to come to closure. You are welcome to write to the vice-president, but I’m on the case right now. Please give me a few days.”

52. On 16 April 2013, having heard nothing from Mr. X, the Applicant contacted him requesting an update.

53. On 22 April 2013, Mr. X responded stating: “In the last meeting to review options for your request, the legal department asked for a copy of the communication that we understand INT allowed you to share with external parties. I went through my files and was not able to find it. Can you send me a copy? This would help us in our review of options. Have you shared it with external parties so far, as INT authorized you to do so?”

54. On 23 April 2013, the Applicant responded stating:

I answered your email yesterday and I am awaiting the response from INT to be able to forward you the authorization email. I must say your request is surprising as I understand INT consulted legal services to provide the authorization in the first place. However, I have complied with your request. I feel, nonetheless, that your decision making process is taking an amount of time that is incompatible with the hardship I am suffering and that I have made clear to you. Furthermore, I am trying to be patient and respectful of your timing, but I am not getting any of the information I need on how your process is going and when it is expected to end. I stress to you that you are dealing with somebody’s life and livelihood.

As I said to you in a previous email, I shall be informing the Vice-president and requesting support from peer-review services today. This will be carried out in parallel, so I am sure it will not disturb your decision making process.

55. Mr. X responded the same day stating: “I understand your concerns and the communications you indicate are avenues available to you. We will continue the process in the more expeditious manner in parallel.”

56. On 5 June 2013, the Applicant sought mediation through the Bank’s Mediation Office.

57. On 16 December 2013, the Applicant contacted the LAC Vice-President, Hasan Tuluy, by email requesting his intervention:

I have enclosed a letter to you requesting intervention regarding a request I have made to the Sustainable Development Department and the Argentina CMU. This is being handled directly by [Mr. X]. As [Mr. X] did not provide a response to my request sent by email on

February 14th, 2013, I had to begin a Mediation process on June 5th, 2013. Despite being engaged in this Mediation process, [Mr. X] has not been able to give a response to my request. Given the time elapsed during mediation, and having been told by the mediators that I have been more than patient, I turn to you to intervene as a last resort, before I make a request for Peer Review Services and the Bank Administrative [Tribunal].

58. He attached his email correspondence with Mr. X as well as a five-page letter addressed to Mr. Tuluy detailing the background to the case in which he stated:

I have been respectful of Bank procedures throughout, even when speaking to the newspaper may have mitigated the attack on me. I respected the confidentiality clause, while Bank staff did not react with the tact, speed, or even professionalism I was in my right to expect.

59. On 10 January 2014, the Mediation Office closed the case.

60. On 15 February 2014, Hasan Tuluy sent the Applicant an email stating:

Your request has been given careful consideration by management after consultation with various units within the Bank. I am writing to inform you that the Bank does not accede to either of your two requests; however, you will be receiving a letter from INT shortly which indicates that you may share, and if you wish, make public the same to show that with respect to specific allegations brought against you to INT's attention, INT has investigated and no evidence has been found and that no further proceedings are envisaged at this point.

61. On 18 February 2014, Mr. Leonard McCarthy, Vice-President of INT sent the Applicant the letter alluded to by Mr. Tuluy. The letter stated that the Applicant may “disclose, without restriction, the outcome of the World Bank’s administrative inquiry into allegations of misconduct on your part that was conducted by the Integrity Vice Presidency (INT).”

62. On 12 March 2014, the Applicant filed a request for review with Peer Review Services (PRS).

63. On 19 March 2014, the Applicant was informed by a prospective employer that she was no longer able to employ him in light of the allegations published online by *La Nación*. She informed

the Applicant that a World Bank staff member had suggested an internet search on the Applicant which revealed the news articles.

64. On 7 April 2014, PRS dismissed the Applicant's request for review on the grounds that it lacked jurisdiction to review the request.

65. On 1 August 2014, the Applicant filed this Application before the Tribunal. He contests the 15 February 2014 decision by Mr. Tuluy to deny him any compensation for the damage caused by the allegations published by *La Nación* and the Bank's refusal to allow the Applicant to defend himself. He also contests the Bank's "unconscionable, inexplicable, and repeated delays in responding ... and permitting him to inform the public and/or potential employers of his innocence."

66. The Applicant requests the Tribunal to order: a) compensation for the amount of lost earning calculated as \$332,174 resulting from the defamatory media stories and his inability to defend himself; b) the cost of a defamation lawsuit against *La Nación* estimated at US\$250,000; c) attorney's fees in the amount of \$21,749.38; and d) such additional amount as the Tribunal deems just "for the terrible damage to [his] professional and personal reputation, his unknown losses of employment opportunities in the future, as well as the impact on his health resulting from the Bank's demand that [the Applicant] not defend himself from the false accusations made against him in the press of Argentina."

67. The Applicant further seeks specific performance in the following manner: a public statement from the World Bank issued in both English and Spanish and specifically sent to *La Nación* indicating that he has been completely cleared of any wrongdoing in connection with the PTUMA project and stating that press reports to the contrary are false; publication in a prominent position of the above statement in the Argentine press and, specifically, in *La Nación*; and a letter from the Vice-President of the LAC Region, or from the World Bank's President, to the Argentine Minister of Transport and the Argentine Secretary of Transport stating that the Applicant was completely cleared in January 2013 of any wrongdoing in connection with the PTUMA project.

68. On 2 October 2014, the Applicant was contacted by email by Iván Ruiz, the journalist at *La Nación*. Mr. Ruiz stated: “Andrés, I learned of an internal opinion of the World Bank regarding the SUBE case in which you are mentioned. We are going to publish something in the paper and I would like to talk with you about it.”

69. On 4 October 2014, *La Nación* published an online article about the SUBE project in which it noted that a federal judge had initiated investigations into Stephen Chandler. The article noted that Chandler had blamed the Applicant and others of “orchestrating” the tender.

70. On 7 October 2014, *La Nación* published an online article titled “SUBE case: the World Bank acquitted the auditor who became a Kirchnerista militant.” The article noted that “[t]he office of the Integrity Vice Presidency of the World Bank, responsible for the administrative investigation, considered that the former manager Pizarro did not violate any internal rules in the process which culminated in the controversial award of the contract to the joint venture led by Stephen Chandler.” The article referred to an internal World Bank document dated 18 February 2014 which *La Nación* obtained. It noted that *La Nación* attempted to obtain more details about the internal investigation from INT but received no response.

71. On 26 January 2015, the World Bank Staff Association filed an amicus curiae brief in this case pursuant to Rule 25(2) of the Rules of the World Bank Administrative Tribunal.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

THE APPLICANT’S CONTENTION NO. 1

The Bank failed to act in accordance with Staff Principles 2.1 and 9.1, to protect the Applicant and treat him fairly

72. The Applicant argues that the Bank failed to protect him and refused to allow him to defend himself against the allegations by *La Nación*. First the Applicant observes that once the first article by *La Nación* was published naming him, he was instructed by the Bank not to speak to the press. As a result, the Applicant avers, he was unable to defend himself against the disparaging statements made about him. He contends that an explanatory statement about the procurement process, the

fact that “no-objections” for this consulting contract were given by the Regional Procurement Manager, and that firms presenting proposals as a consortium must constitute a joint legal entity would have helped to “clear some things up, and limit the already enormous damage [his] reputation [had] suffered.” However, the Applicant states that the Bank refused to produce such a statement even upon his request. According to the Applicant, the Bank’s statement to *La Nación* that it was commencing investigations “poured fuel on the fire,” since it was evident to the press that he was the subject of the investigation.

73. The Applicant contends that the instructions by the Bank to maintain confidentiality even after INT’s inquiry was completed were detrimental to his career and reputation. The Applicant contends that the Bank further failed in its responsibilities to treat him fairly when, following the INT inquiry, the Bank did not issue a statement to *La Nación* informing the press of the outcome of the inquiry, and did not inform others within the organization that the Applicant was cleared of wrongdoing. As a result of this failure to act, an internal communication ban remained against the Applicant for over a year after he was cleared of wrongdoing by INT and the press articles remain accessible on the internet. The Applicant asserts that “as a result of the Bank’s inaction and its frankly incomprehensible secrecy and silence, [the Applicant] – through no fault of his own – was left swinging in the wind. His career has been ruined, his reputation irreparably damaged, and his physical and mental health harmed from the terrible stress he has suffered.”

THE BANK’S RESPONSE

The Bank acted reasonably and fairly

74. The Bank contends that it acted reasonably and fairly from the moment *La Nación* published the first article. The Bank observes that it sent three statements to *La Nación* seeking to clarify its role in the project and explaining the bidding process and safeguards inherent in it. In particular, the Bank statements explained that (i) the World Bank was a financier of, but not the implementer of the PTUMA project, (ii) the World Bank was not aware of the conflict of interest allegedly present in the bidding process, (iii) its rules and policies that were relevant to the accusations; and (iv) it took the allegations made in *La Nación* seriously and would investigate them accordingly.

75. According to the Bank once the investigation was completed the Bank did not impede the Applicant from defending himself, and he was provided with authorization to show the outcome of INT's preliminary inquiry. The Bank argues that "[a]part from prohibiting Applicant from commenting on an ongoing investigation, at no point did the World Bank prohibit Applicant from informing the public and/or potential employers of his innocence. Nor did the World Bank stop him from refuting the allegations made by *La Nación*."

THE APPLICANT'S CONTENTION NO. 2

The Bank is responsible for the harm the Applicant suffered as a result of his work at the World Bank

76. The Applicant argues that the Bank's claim that his interest "is personal and not organizational" is false as the events which transpired were entirely a result of his World Bank employment. The Applicant contends that the Bank is also liable because it failed to take all reasonable and timely measures to protect him and to treat him fairly. Further, the Applicant asserts that in giving him clear and definite instructions not to respond to the press charges, the Bank must be held liable for the consequences.

77. In particular the Applicant notes that at no time did the Bank dispute any of the inaccuracies in the press reports and the official notification about an investigation was far more damaging than any unofficial leak. According to the Applicant, given that the Bank was responsible for *La Nación's* knowledge of the INT preliminary inquiry, it should have ensured that the newspaper was also informed of the outcome of that inquiry. The Applicant argues that there can be no principled reason for its failure to do so. The Applicant maintains that the problems he faced were directly caused by the Bank's actions.

THE BANK'S RESPONSE

The Bank is not responsible for the damage suffered by the Applicant. The Applicant has failed to demonstrate a causal link between the damage he claims and any actions or inactions of the Bank

78. The Bank asserts that assuming, without accepting, that the Applicant was adversely affected in the job market because of the articles published by *La Nación*, the damage the Applicant

is asking the Bank to help address was caused neither directly nor indirectly by the World Bank. The Bank contends that the Applicant's claims lie against *La Nación*, and the Applicant had other avenues open to him to defend himself.

79. The Bank confirms that it expressly referred to an internal investigation three days before the Applicant's name was first mentioned in *La Nación* but did not disclose the Applicant's identity. According to the Bank its statements were part of its efforts to set the record straight with *La Nación* and to show that the Bank was taking the matter seriously.

THE APPLICANT'S CONTENTION NO. 3

Calculation of compensation should be based on actual and projected losses

80. The Applicant states that, since he was a GH level staff member when he left the Bank, he would be expected under normal circumstances to earn \$205,700 per annum, which represents the midpoint of the salary range for the GH level at the Bank. However, over the entire two-year period he earned \$79,226. He argues that a reasonable calculation of his damages is the difference between two years' salary at GH level (\$411,400) and the total he actually earned, which amounts to \$332,174.

81. The Applicant further notes specific instances of lost employment and calculates his known losses over the two-year period as \$202,900. The breakdown of this sum is as follows. The Applicant notes that in August 2012 he signed a contract with the Corporación Andina de Formento which provided for up to 150 days work at \$400 net per day. Worth up to \$60,000 this contract was terminated and he was informed that this was due to the articles published by *La Nación*. The Applicant also refers to a contract which he negotiated in March 2014 with the Implementation Unit for a project financed by the Inter-American Development Bank (IADB) and the World Bank in Argentina. He notes that this would have been regular employment at \$30,000 per year which would have allowed him to continue as an STC with the Bank. However, these contract negotiations were discontinued once the manager with whom the Applicant was negotiating became aware of the press articles. The Applicant observes that even though he sent

the manager the INT clearance notification, this was insufficient and he lost that employment opportunity.

82. The Applicant asserts that he was similarly dropped by others. For instance he refers to the fact that regular contracts with IADB, which would have earned him \$46,000 abruptly stopped. He also states that, because there was an internal communication ban and staff in the LAC region were instructed not to speak with him, he was not given STC contracts estimated at \$6,900 with LAC after the press articles were published. He observes that even after the INT preliminary inquiry found no evidence of wrongdoing, the communication ban was not lifted and he was not hired by these staff members. Finally, he claims \$60,000 in lost earnings from Argentine government or private employers in Argentina. The Applicant states that these specific examples do not include other likely losses such as his lack of continued employment with UN-ECLAC, and other unknown contracts.

83. According to the Applicant because of the lasting impact of the online articles, his damages, far from being overestimated, have been radically underestimated because the harm is likely to last for the rest of his working life – at least 17 years – with not only a severe loss of earnings but also loss of pension and savings. The Applicant contends that had the Bank taken immediate firm action, responded publicly to the inaccuracies in the articles, and ensured that his innocence was proclaimed, the harm would have been minimized.

THE BANK'S RESPONSE

Calculation of compensation should be based on the Applicant's earnings at the Bank as an STC

84. According to the Bank, calculation of damages, if any, should be made on the basis of the Applicant's net earnings as a consultant between August 2011 and July 2012 and not on the basis of his full-time level GH position since he terminated that position on his own volition. According to the Bank's records the Applicant worked as an STC for a total of 49 days for the period August 2011 – August 2012, (ii) 30 days for the period of July 2012 – June 2013, and (iii) 40 days for the period of July 2013 – June 2014. The Bank notes that between August 2011 and June 2012, i.e. before the newspaper articles were published, the Applicant worked for the World Bank only nine

days more than in the period after the articles allegedly made him lose employment opportunities within the World Bank.

STAFF ASSOCIATION AMICUS CURIAE BRIEF

85. The Staff Association claims that it has a strong interest in this case because of its commitment to ensure that the Bank complies with the Principles of Staff Employment, in particular Principles 2.1, 9.1 (*see* para. 88 below), and Staff Rule 2.01 paragraph 5.03 (*see* para. 109 below) in its treatment of all staff. According to the Staff Association, it is of paramount importance that the Bank takes “appropriate measures to ensure that a staff member who is accused publicly but exonerated privately is provided by [the] Bank with the support necessary to minimize, if not eliminate, the dire consequences that can result.” The Staff Association asserts that the Bank cannot “count on continuing to send staff out onto the front lines of highly visible projects every day if those staff do not feel they will be protected in the event that such false accusations are broadcast.”

86. The Staff Association argues that the Bank cannot “ignore the fact that public awareness of an internal investigation might be equated with guilt in the public eye and the failure of the Bank to counter such an assumption with news of an exoneration can leave a staff member forever guilty as far as the public is concerned.” While the Staff Association does not question the primacy of the Bank’s concern for organizational responsibilities, it argues that the Bank has not demonstrated that such “concerns prevented it from also taking into account the Applicant’s very serious concerns and assisting him when assistance was most needed.”

THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

87. The Tribunal considers that there are two core issues present in this case. The first is whether the Bank treated the Applicant fairly in the decisions it took concerning the allegations published by *La Nación*. These decisions concern: a) the Bank’s handling of *La Nación*’s allegations; and b) the restrictions on discussing the outcome of the INT preliminary inquiry until

February 2014. The second core issue is one of causation, namely whether the Bank's decisions, if wrongful, caused or contributed to the damage suffered by the Applicant.

WHETHER THE BANK TREATED THE APPLICANT FAIRLY IN THE DECISIONS IT MADE CONCERNING
THE ALLEGATIONS PUBLISHED BY LA NACIÓN

88. International organizations have a recognised duty of care towards their employees and former employees. This duty of care stems from the terms of the contract of employment and all pertinent regulations and rules in force at the time of the alleged non-observance. It is on this basis that the Applicant invokes Staff Principles 2.1 and 9.1 which provide:

Staff Principle 2.1

The Organizations shall at all times act with fairness and impartiality and shall follow a proper process in their relations with staff members. They shall not differentiate in an unjustifiable manner between individuals or groups within the staff and shall encourage diversity in staffing consistent with the nature and objectives of the Organizations. They shall respect the essential rights of staff members that have been and may be identified by the World Bank Administrative Tribunal.

Staff Principle 9.1

Staff members have the right to fair treatment in matters relating to their employment.

The Bank's handling of La Nación's allegations

89. The Tribunal has repeatedly stated that "in matters involving the exercise of discretion by the Bank, the Tribunal is not charged with the task of re-examining the substance of the Bank's decision with a view to substituting the Tribunal's decision for the Bank's." *de Raet*, Decision No. 85 [1989], para. 56. However, the Tribunal has a duty to "assess the Bank's decision – as to both its content and the manner in which it has been made – to determine whether it constitutes an abuse of discretion, being arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure." *Id.*

90. In view of the fact that the Bank's response or lack of response to the articles published by *La Nación* would have a direct impact on the Applicant's reputation, the Bank was obliged to ensure that, in accordance with the duty of care owed to current and former staff members, its approach to the media allegations was implemented in a manner which was fair to the Applicant. At a minimum, the Bank's treatment of media accusations should, insofar as possible, neither cause nor contribute to the Applicant suffering harm.

91. The record shows that once *La Nación* began publishing allegations of wrongdoing in the SUBE project the Bank responded to the media explaining: (i) that the World Bank was a financier of, but not the implementer of the PTUMA project; (ii) that the World Bank was not aware of the conflict of interest allegedly present in the bidding process; (iii) its rules and policies that were relevant to the accusations; and (iv) that the World Bank took the allegations made in *La Nación* seriously and would investigate them accordingly.

92. The Tribunal takes note of the Bank's contention that as an intergovernmental organization it was "trying to convey to the public that [it] took its fiduciary obligation and supervisory role seriously." There is no question that the Bank owes a fiduciary duty to its member countries. Indeed the Bank was correct to issue a statement that "violations of its rules and procedures were taken seriously" and that "the unit tasked to investigate these matters was already investigating the case" in order to provide the public assurance that it was fulfilling its fiduciary responsibility towards its member countries. However, the Bank's duty to member countries and its duty of care to its staff members are not necessarily incompatible. As was held in *AJ*, Decision No. 389 [2009], para.149, the Bank's constant effort to eliminate corruption while very important "cannot be invoked as a *laissez-passer* to excuse disregard for the interests of staff members, and in particular their rights to due process."

93. The Tribunal finds that, in the circumstances of the present case, the Bank could have taken the minimum step of affirming, in its public statements, the presumption of innocence of all parties involved pending the outcome of the INT inquiry. Such a minimum step could have helped safeguard the Applicant's interests during the course of the INT inquiry and would not have adversely affected the Bank's organizational interests.

94. The Tribunal observes that although the Bank asserts that many of the issues raised in this case were matters of first impression, the record contains a previous example in which the Bank publicly defended a staff member who was similarly accused of wrongdoing by the media in a Bank-funded project. An article published in a Peruvian newspaper in 2004 and titled “World Bank defends Peruvian official linked to complaint” stated that the “World Bank today expressed support for one of its Peruvian officials [...] named by a news program for allowing an alleged misuse of a loan of five million dollars in an entity created to promote the development of indigenous peoples.” The Bank issued a statement in which it asserted that the staff member involved had no professional connection with the project in question and confirmed that she was “one of its most respected Peruvian officials in the Andes.”

95. The Bank does not explain, when challenged by the Applicant, why a similar defense was not launched in his favor either during or after the INT inquiry. As the Tribunal has held above, the requirement of fair treatment means that at a minimum the Bank should have included a statement on the presumption of the Applicant’s innocence during the investigation. Such a statement would have mitigated the reputational damage the Applicant suffered. In the Tribunal’s view, the Bank should have taken further steps, in particular by stating that not only does the Applicant enjoy the presumption of innocence but that he had an unblemished record of professional service at the Bank.

96. The Bank should be aware of how seriously the Tribunal has taken the issue of protecting the reputation of staff members when confronted with publicity concerning misconduct investigations. The Tribunal’s jurisprudence contains cases which concerned press leaks of misconduct investigations. These cases should have served as a guide to the Bank. In *M*, Decision No. 369 [2007], para. 96, the Bank’s handling of the leak of the investigation was criticized as “hardly conducive to due process.” The Tribunal noted in that case that the “Bank took no steps to counter the damaging publication and offered no explanation for its failure to do so other than the fact that its practice is not to do so.” Finding that public statements would have been appropriate, the Tribunal considered disturbing and inexplicable the “Bank’s passivity in this respect, when the matter so clearly called for clarifications from protagonists...” *Id.* para. 97. Similarly the Tribunal found in *AJ* that the Bank’s response to the leaks of information about the Applicant’s investigation

was inadequate and inconsistent with his due process rights. In *AJ*, though the applicant was found guilty of misconduct, the Tribunal held that this fact did not leave him bereft of his rights.

97. In the present case INT did not find evidence of staff misconduct against the Applicant. The Applicant suffered harm as a result of doing his work at the Bank. In addition to failing to support him, the Bank may have prejudiced his situation by informing *La Nación* that an investigation by the Bank was in progress without providing the clarifications mentioned in para. 93 above.

98. The Tribunal notes that once the Applicant was publicly mentioned in the media allegations, the Bank declined to issue statements and clarifications which he asserts could have safeguarded his interests as well as the Bank's organizational interests. The Bank does not explain why it did not consider the Applicant's plea to "make public declarations regarding the Bank procurement process, that would help to clear some things up, and limit the already enormous damage [his] reputation [had] suffered." In particular the Applicant suggested clarifying in the media that "'no-objection' for consulting contracts for more than US\$2 million in Argentina is given by the Regional Procurement Manager." This clarification would have been helpful to the Applicant who was being described in the media as the manager who signed off on the contracts. The Tribunal notes Mr. X's 9 August 2012 response to the Applicant, mentioned in para. 28 above, that the points the Applicant suggested to discuss with the media "had actually been shared much earlier so they have the information on processes that you mention." However, the record does not show that the Applicant's exact suggestions were indeed communicated at any point in time to *La Nación*.

99. The Tribunal finds that though the Bank had the discretion to decide whether or not to accede to the Applicant's request, the Bank's response to the Applicant in this case was inappropriate and insufficient. The Tribunal recognizes the need for individual members of staff not to speak out publicly on allegations of wrongdoing. However, that confidentiality restriction then requires the Bank to take reasonable steps to protect the interests or mitigate reputational harm of staff members who are accused in the press of impropriety in the course of their duties as staff members of the Bank. In this case the Bank failed to do so.

100. According to the Bank “[a]part from prohibiting Applicant from commenting on an ongoing investigation, at no point did the World Bank prohibit Applicant from informing the public and/or potential employers of his innocence. Nor did the World Bank stop him from refuting the allegations made by *La Nación*.” This statement by the Bank is not supported by the record. On 19 July 2012, prior to the formal initiation of a preliminary inquiry on 22 July 2012, the Applicant asserts, and the Bank does not contest, that he was contacted by the LAC Transport Sector Manager and reminded of his obligations of confidentiality. The Applicant was told not to speak with the press. The record also shows that after the INT preliminary inquiry was completed and the Applicant was cleared of all wrongdoing, he was again prohibited from speaking about the outcome of the inquiry.

101. The Tribunal concludes that the Bank’s decisions on its “communication strategy” and its implementation of those decisions, essentially by unresponsiveness and inaction, while denying the Applicant the possibility of his publicly rebutting accusations against him, were unfair. The Bank apparently did not weigh the impact that course of action or inaction would have on the Applicant’s reputation.

The restrictions on discussing the outcome of the INT preliminary inquiry until 18 February 2014

102. The Tribunal observes that over a year elapsed between the date the Applicant was cleared of wrongdoing by INT and the date he was permitted to publicly discuss and disclose the outcome of the INT preliminary inquiry without restrictions. In the 25 January 2013 email in which the Applicant was informed of his exoneration, he was informed that the outcome of the inquiry was strictly confidential and he was limited in the category of individuals with whom he could discuss the outcome of the inquiry. When the Applicant requested a letter to send to potential employers, this request was denied and the Applicant was instead told that he could present, but not give, the 25 January 2013 email to potential employers. Once again, the scope of individuals to whom he could show the email was limited to particular individuals, and the Applicant was expressly told “other than as permitted in these exceptional instances, please do not discuss the preliminary inquiry outcome with anyone else without prior consultation with INT.”

103. The record shows that it was only on 18 February 2014 that the Applicant was finally informed that he may “disclose, without restriction, the outcome of the World Bank’s administrative inquiry into allegations of misconduct on your part that were conducted by the Integrity Vice Presidency (INT).” At this point an inordinate amount of time, over a year, had already passed – time which would have been useful to the Applicant in the rehabilitation of his reputation. The Bank’s pleading in effect acknowledges this noting, “[t]o be sure, the World Bank’s response to Applicant’s February 14, 2013 request could have, ideally, been provided in a more timely manner.”

104. The Tribunal considers this acknowledgment an understatement. It finds the Bank’s reasons for the delay – the novel nature of the matter, and the fact that the Applicant sought assistance through many internal avenues – unpersuasive. Although the case was sensitive, this period was excessively long and the Bank failed to respect the need to address the matter expeditiously. The Bank did not act with sensitivity towards the Applicant, nor apparently did it take into consideration the impact the undenied allegations and ensuing INT inquiry would have had on the Applicant, as well as the ongoing damage to his reputation to which those uncontested allegations gave rise.

WHETHER THE BANK’S DECISIONS CAUSED OR CONTRIBUTED TO THE DAMAGE SUFFERED BY THE
APPLICANT

105. Having found that the Bank’s decisions were unfair and prejudicial to the Applicant, the Tribunal must consider whether a causal link exists between the decisions taken by the Bank and the damage suffered by the Applicant. According to the Bank the Applicant’s claim lies against *La Nación*, the publication which issued allegations of wrongdoing against him. While the Applicant may have a claim against *La Nación*, that fact does not absolve the Bank of responsibility if the Bank’s conduct contributed to the harm suffered by the Applicant.

106. It is clear that the Bank’s disclosure restrictions affected the Applicant’s ability to refute the allegations and inform the public of his innocence before, during and after the INT preliminary inquiry. The Tribunal finds that there are steps the Bank could have taken in accordance with its

duty of care towards the Applicant which would have mitigated the reputational damage the Applicant suffered. In the first instance the Bank could have included in its correspondence with *La Nación* a statement emphasizing the presumption of the Applicant's innocence. Secondly, the Bank could have explained its procurement process which was incorrectly reported by *La Nación* in this case. Thirdly, once the INT inquiry was concluded and found no evidence of staff misconduct, the Bank should have informed *La Nación* of the outcome since it had confirmed to the newspaper that an inquiry into the allegations was being launched. The Bank's failure to inform *La Nación* of the outcome of the inquiry was prejudicial to the Applicant. The fact that *La Nación* published a story in October 2014 stating that the Applicant was found innocent a year and a half after the Applicant was exonerated by INT does not remedy the wrong to which the Bank contributed, and does not compensate the Applicant for the two years in which he suffered damage from the allegations, the public knowledge that he had been the subject of investigation and the Bank's silence that extended to the outcome of the inquiry. That the Applicant suffered damage from the public's knowledge of the inquiry is evident from the request by the brokerage firm that the Applicant confirm that he was no longer under investigation.

107. Furthermore, not all staff members who were told to restrict contact with the Applicant pending the INT inquiry were informed when the restrictions were removed. These staff members included those who might have engaged or recommended the Applicant for a consultancy position. As a result, the Applicant apparently lost potential consultancy opportunities. Two illustrations of this conclusion can be found in the record. The first is that the Applicant was contacted on 7 April 2014 by a former colleague at the World Bank who received, from the Applicant, the INT letter exonerating him. This colleague informed the Applicant that he had "heard about the clearance from INT unofficially but was trapped in the situation of not being able to make contact until we heard something officially." The Applicant responded asking for any consulting work and the colleague then stated he would "circulate the letter to the broader transport team and contact [the Applicant] when the opportunity arises."

108. The second illustration is an example of how failure to disclose within the Bank the fact that the Applicant was exonerated impacted the Applicant's employment opportunities outside the Bank. As noted in para. 81 above, the Applicant's contract on a joint IADB and World Bank

financed project was dropped once the newspaper allegations were brought to the attention of the manager. The record shows that an official of the project was advised to undertake an internet search on the Applicant by a World Bank staff member, whereupon the prejudicial news articles surfaced. When the Applicant contacted the World Bank staff member allegedly involved, that staff member responded that he had merely mentioned to the project official that the Applicant's name had appeared in the press.

109. The Bank recognizes an obligation to safeguard the reputation of those investigated for misconduct. It is for this reason that the Staff Rules include provisions on confidentiality. *See* Staff Rule 2.01, "Confidentiality of Personnel Information." However, the Staff Rules also recognize certain exceptional circumstances where the Bank may disclose personnel information. Staff Rule 2.01, paragraph 5.03 provides that:

Personnel Information may also be disclosed outside the Bank Group in response to inquiries from or reports in the media, if the Vice President for Human Resources Services for the Bank, in consultation with the Vice President for External Affairs and the General Counsel, decides that:

- a. disclosure is necessary to correct false or misleading information

110. As noted above, Mr. Y had initially indicated to the Applicant that disclosure of the outcome of the preliminary inquiry was possible under the World Bank Rules (Staff Rule 2.01 Confidentiality of Personnel Information). The record does not provide a reason for the Bank's failure to apply Staff Rule 2.01, paragraph 5.03 in the Applicant's case. In apparently focusing solely on its perception of its organizational interests, the Tribunal finds that the Bank unjustifiably contributed to the Applicant's economic and other harm.

Quantum of Damages

111. The burden lies on the Applicant to substantiate his claims for damages. The Applicant seeks compensation in the amount of \$332,174 representing the difference between two years of a salary he expected to earn as a GH level staff and his actual earning during that two-year period. The Bank contests this calculation, arguing that an assessment of the Applicant's damages, if any,

should be made on the basis of his net earnings as a consultant between August 2011 and July 2012 prior to the allegations of wrongdoing.

112. The Tribunal considers that none of these are reasonable grounds to calculate damages. The Applicant does not provide any explanation as to why he could expect to have earned at his GH salary level while working as a consultant. Furthermore, the Bank's proposal does not fully consider the Applicant's loss.

113. The Tribunal takes note that the actual known losses in the two-year period claimed by the Applicant is \$202,900. This quantification of actual losses was not specifically contested by the Bank. The Tribunal understands that the Applicant may have lost other opportunities which are unknown to him but to take account of them would be speculative.

114. In addition to assessing the Bank's responsibility for the actual losses suffered by the Applicant, the Tribunal will also consider non-pecuniary harm such as emotional distress and harm to the Applicant's reputation. That the Applicant suffered emotional distress is evident from the email messages he sent to various staff of the World Bank seeking assistance in this matter. The Tribunal also takes note of the physician's letter appended to the Application. The Tribunal is satisfied, from the factual circumstances in this case, that the Applicant also suffered harm to his reputation which he continues to rehabilitate. As the Tribunal's jurisprudence shows, the Tribunal takes seriously a finding that the Bank's actions and inactions caused professional and personal harm to its staff or former staff.

Concluding remarks

115. For the foregoing reasons the Tribunal finds that the Bank did not treat the Applicant fairly in the way it handled the allegations by *La Nación* and its implementation of those decisions. Furthermore, the Bank's actions and inactions contributed to the Applicant suffering harm. Therefore, the Tribunal finds that the Applicant should be compensated for his losses in employment, reputational harm and emotional distress.

DECISION

- (1) The Bank shall pay the Applicant compensation in the amount of \$350,000 net of taxes.
- (2) The Bank shall pay the Applicant's attorney's fees in the amount of \$21,749.38.
- (3) All other claims are dismissed.

/S/ Stephen M. Schwebel

Stephen M. Schwebel

President

/S/ Zakir Hafez

Zakir Hafez

Acting Executive Secretary

At Washington, D.C., 29 May 2015