

**Decision No. 376**

**T,  
Applicant**

**v.**

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

1. This judgment is rendered by a Panel of the Tribunal established in accordance with Article V(2) of the Tribunal's Statute, and composed of Jan Paulsson, President, and Judges Florentino P. Feliciano, Zia Mody and Francis M. Ssekandi. The application was received on 1 May 2007. The Applicant's request for anonymity was granted on 11 May 2007. The Bank has raised jurisdictional objections which are the sole matters decided by this judgment.

2. The Applicant's employment with the Bank ended pursuant to a Mutually Agreed Separation (MAS) which contained a release provision expressed as follows:

In accepting these terms and conditions, you fully and finally settle and release all claims you might otherwise have against the Bank Group arising out of circumstances occurring or decisions taken on or before the date of your acceptance. You understand that the settlement of these claims includes relinquishing of the right to appeal to the Appeals Committee, the Workers' Compensation Administrative Review Panel and the World Bank Administrative Tribunal.

The present judgment deals only with the issue of whether the Tribunal may hear the Applicant's grievance notwithstanding this release, which the Applicant contends he signed under duress.

*Factual Background*

3. The Applicant joined the Bank's Department of Institutional Integrity (INT) as a Level G Senior Investigator in February 2001. His three-year Term appointment was converted to Open-Ended in August 2003 with the title Senior Institutional Investigator, or Senior Institutional Integrity Officer, as the post was renamed.

4. After three years at the Bank during which he consistently received positive performance evaluations, the Applicant accepted an offer in November 2004 to serve as Acting Regional Team Leader (RTL) in one of the regional teams of INT. Here his managers were not pleased with his performance.

5. In September and November 2005, and February 2006, the Applicant's supervisor met with him to discuss his performance as Acting RTL, verbally criticizing his performance on the grounds, *inter alia*, (as the Applicant recalls the events in an affidavit provided to the Tribunal) that: (i) the database for the Applicant's team was a "mess"; (ii) the priority of cases in the Applicant's team was not consistent with that of other teams in INT; (iii) he had never seen one of the Applicant's written reports; and (iv) he could not rely on the Applicant as team leader. The Applicant disagreed and provided detailed responses to the effect that these criticisms were unfounded.

6. In January 2006, a new Director took over at INT and relieved the Applicant of his responsibilities as Acting RTL in May that year. Thereafter, the Applicant continued to work as a Senior Investigator in the same regional unit of INT.

7. On 19 September 2006, the Applicant's supervisor and another manager in INT met with the Applicant to

discuss the Applicant's draft 2006 Overall Performance Evaluation (OPE) for the period covering April 2005 to March 2006. In this OPE, the supervisor rated him "Partially Successful" in seven of nine performance categories. The Applicant's supervisor, the Applicant, and the INT Director each signed the 2006 OPE, respectively, on 2 October, 4 October and 11 December 2006.

8. At the 19 September 2006 meeting, the Applicant's supervisor also gave him a memorandum containing a four-month Performance Improvement Plan (PIP), anticipated to begin on 25 September 2006 and end on 26 January 2007. The Applicant reviewed the terms and conditions of the PIP contained in the memorandum and signed it on 22 September 2006.

9. Sometime in September 2006 the Applicant sought advice about the PIP from two managers in INT. According to the Applicant, they advised him that there was a high likelihood that a PIP exercise would result in his termination, which would make it very difficult for him to find another job. They further advised the Applicant that a preferable alternative to risking termination for poor performance pursuant to a PIP exercise would be to negotiate a favorable separation package with the Director of INT. The Applicant also consulted the Staff Association (SA), which advised him not to accept the MAS, but to appeal the PIP because, as explained in a memorandum from the then Chair of the SA to the then President of the Bank, "the PIP had not been done correctly and was appealable, as [it] contains a condition that he perform overtime."

10. Nevertheless, on 12 October 2006, after "some discussions" (as he puts it) with an HR manager, the Applicant met with five INT and HR managers to discuss the terms of an MAS. One of the managers present was among those the Applicant had consulted earlier about whether to accept a PIP. At that meeting, according to the Applicant, he proposed a separation date in June 2007 because he needed sufficient time to take care of medical problems and other matters associated with his departure. The Applicant states that the INT managers rejected his proposed separation date. The meeting ended without an agreement regarding the MAS.

11. Later that day, however, the INT and HR managers met again with the Applicant and verbally proposed the following main terms for the MAS: (i) a separation date of 31 December 2006; (ii) 23 days of accrued annual leave, followed by administrative leave with full pay for one month, thus satisfying the Applicant's request for full pay and benefits through the end of the calendar year; and (iii) a severance payment in an amount equivalent to four months' salary. The INT managers also told him that he would have to sign a confidentiality agreement in connection with the MAS. At that meeting, the Applicant verbally agreed to the proposed terms of the MAS, and to sign the confidentiality agreement.

12. On 16 October 2006, a senior INT manager gave the Applicant a two-page memorandum entitled "Confidentiality Agreement in Connection with Impending Mutually Agreed Separation." The memorandum contained the proposed terms of the MAS as had been agreed on 12 October. The INT managers also stated that the agreed terms were contingent upon the Applicant's adherence to the confidentiality agreement. According to the memorandum,

[t]he purpose for this confidentiality agreement is two fold: (i) To enable INT management to disclose to INT staff your departure from the Bank in a light more favorable to you; and (ii) the accommodations INT management has afforded you with respect to enabling you to continue to receive full pay and benefits through the end of this calendar year are above and beyond the norm for a MAS and were made for compassionate reasons based on your specific set of circumstances. Accordingly, confidentiality is necessary to avoid the appearance or perception that you were afforded preferential treatment in contrast to other staff who may seek a MAS but may not warrant similar accommodations.

The substantive core of the confidentiality agreement was that the Applicant "understood and agreed" not to discuss the circumstances or terms of the "impending MAS" with anyone except INT's senior management, its HR team, and the Applicant's immediate family. The Applicant signed the confidentiality agreement on the same day.

13. On 21 October 2006, pursuant to the Applicant's agreement with the INT managers, the Applicant left on his annual leave.

14. On 16 November 2006, the Bank finalized the terms of the MAS in a memorandum to the Applicant. The MAS contained *inter alia* the following terms: (i) the Applicant's last day of service would be 31 December 2006; (ii) he would remain in regular work and pay status until then; and (iii) on or about his last day of service, he would receive a Lump Sum severance payment in an amount equivalent to four months of his then current salary. These terms were consistent with the proposed terms agreed during the meeting on 12 October, and memorialized in the confidentiality agreement memorandum of 16 October. In addition, it contained the release provision quoted in Paragraph 2 above.

15. On 28 November 2006, the date of his return from annual leave, the Applicant received the final MAS memorandum (dated 16 November).

16. On 12 December 2006, the Applicant sent a memorandum marked as "Personal and Confidential" to an HR manager in which the Applicant requested an extension of his 31 December 2006 departure date until 30 June 2007. The Applicant explained that "[s]ince accepting the MAS on October 16, 2006, [he had] attempted to cooperate with the date of December 31, 2006 but [had found] that it [was] creating undue hardship for [him] and [his] family." The memorandum also referred to a number of matters he hoped to resolve before leaving the U.S.

17. On 19 December 2006, the INT and HR managers met with the Applicant. Those present were the same persons who had attended the meeting on 12 October. Prior to the meeting on 19 December, the Applicant had requested permission to bring an SA counselor with him. The INT managers had denied this request, stating that the meeting was one "between your manager and you," and that managers "have the discretion to meet with their staff without the presence of an 'advocate.'" The meeting proceeded without the Applicant being accompanied by an SA counselor. During the meeting, the INT managers made the following points to the Applicant, as confirmed in a detailed e-mail to him the next day:

- he had received the MAS on 28 November, and should have signed and returned it at that time given that he had chosen to accept the offer on 12 October;
- even though he had not signed the MAS, he had been on administrative leave with full pay and benefits since 28 November, the day he ended his annual leave, pursuant to the agreed terms of the MAS;
- after having signed the confidentiality agreement, on 12 December he submitted a memorandum to HR requesting new terms and conditions for the impending MAS (i.e., an extension of the departure date);
- his failure to sign the MAS while accepting the administrative leave benefit pursuant to their agreement amounted to a misrepresentation; and
- he must either sign the MAS by 5 p.m. the same day, or resume the PIP exercise, which would be considered to have become effective on 25 September according to the terms of the PIP, which the Applicant had signed on 22 September.

18. On 20 December 2006, the Applicant returned to work intending to resume the PIP exercise rather than sign the MAS. In his application, he writes that he was "seeking to buy an additional month." On that day, an INT manager gave the Applicant a memorandum outlining the assignments that would serve as the basis for his performance evaluation under the PIP exercise. This manager was one of those the Applicant had originally consulted about whether to accept a PIP, and who had attended the meetings on 12 October and 19 December. Later that day, the INT manager gave the Applicant a second memorandum which detailed three specific work assignments, defining the deadlines for each of them, respectively, as 28 December 2006, 30 December 2006 and 12 January 2007.

19. After reviewing his work assignments under the PIP, according to the Applicant, it "was immediately clear to [him] that it would be impossible for him to pass the PIP – just as [the INT managers he had consulted] had predicted back in October." Late that afternoon, the Applicant met with the manager who had given him his work assignments under the PIP. At the conclusion of this meeting, the Applicant decided to abandon the PIP,

and signed the MAS. On the same day, the Applicant also sent a memorandum to the INT Director stating: "I request that the World Bank accept the attached MAS, dated November 16, 2006, which I signed on December 20, 2006. I signed this MAS freely and voluntarily after full consideration."

20. On 21 December 2006, the Chair of the SA wrote to the President of the Bank requesting his review of the Applicant's case. Following a verbal notification on 22 December, the Bank on 27 December informed the Applicant that "the President has upheld the INT management decision in your case but has granted an extension on your MAS termination date to January 31, 2007 on humanitarian grounds."

21. On 24 January 2007, the Applicant requested the Bank's Legal Department to permit him to file an application directly with the Tribunal. The Legal Department agreed to the request on 7 February 2007, provided that "the World Bank does not waive and expressly reserves the right to raise any applicable defenses to your claim, including the settlement and release as well as any other jurisdictional defenses."

22. The Applicant filed his application on 1 May 2007 challenging the following three decisions of the Bank:

- The Applicant's 2006 OPE, for the period of 1 April 2005 to 31 March 2006, signed by the INT Director on 11 December 2006;
- The work assignments given to the Applicant on 20 December 2006 under a PIP; and
- The Applicant's termination on 31 January 2007, under an MAS allegedly signed under duress on 20 December 2006, and amended by the President of the Bank on 22 December 2006.

23. As remedies, the Applicant requests the following: (i) reinstatement; (ii) appropriate compensation; and (iii) legal costs.

#### *The Bank's Jurisdictional Objection*

24. The Bank objects that the application is barred by the release provision of the MAS. Its arguments may be summarized as follows.

25. The Bank contends that the purpose of an MAS is to provide for a consensual separation of a staff member from the Bank, with reasonable compensation to the staff member, while avoiding the litigation that sometimes results from involuntary termination of employment. The signed MAS contained the standard release provision, as quoted in Paragraph 2 above, that the Bank includes in every MAS. The Applicant thus agreed to "fully and finally settle and release all claims" against the Bank "arising out of circumstances occurring or decisions taken on or before the date" of his acceptance of the MAS, i.e., before 20 December 2006. All three decisions the Applicant challenges before the Tribunal were made by the Bank on or before the date the Applicant signed the MAS on 20 December 2006. The release provision bars all of the Applicant's claims before the Tribunal because it expressly states that the Applicant has agreed to the "relinquishing of the right to appeal to ... the World Bank Administrative Tribunal."

26. The Applicant claims he was not aware that his MAS would include a release provision when he agreed to its terms. Yet he could hardly have believed that it would be possible for him at the same time to agree to separation and to challenge the separation. In any event, the Applicant admits to becoming aware of the release provision no later than 28 November 2006 (see Paragraph 15 above), and then having at least three weeks to consider the release provision before he signed the MAS. This was ample time for the Applicant to give full consideration to the terms of the MAS, and to make an informed, voluntary decision.

27. After the Applicant signed the MAS on 20 December 2006, he had about six additional weeks to further contemplate its terms. He could have attempted to renounce it completely at that time. Instead, on 31 January 2007, he accepted a severance payment pursuant to the MAS in an amount equivalent to four months' net pay, and simultaneously announced his intent to renounce his obligations under the MAS by proceeding with a legal challenge. Like other applicants before him who have challenged their MASs, the Applicant now claims that he was not aware of the terms of the MAS, and that the MAS was signed under duress. Cases such as *Kirk*,

Decision No. 29 [1986], demonstrate that the Tribunal will not easily invalidate an MAS.

28. The Applicant claims that the INT managers prevented him from consulting with the SA and others about whether he should sign the MAS. Still, he acknowledges that in September 2006 he had received advice from the SA to appeal the PIP and not to sign an MAS. This advice came well before he agreed to the terms of the MAS in October 2006, and signed it in December.

29. The Applicant argues that the SA's advice preceded the date on which he learned that the MAS included a release provision. The Bank counters that it is difficult to understand how the Applicant could have been surprised by the release provision in the context of an MAS. In any event, the Applicant could have renounced the MAS completely once he learned of the release provision for the first time, but he did not. The Applicant's argument that the confidentiality agreement prevented him from seeking further advice is not plausible. His decision to proceed with the application in this very case demonstrates that he has never considered himself bound by either the MAS or the confidentiality agreement. Neither agreement inhibited him from seeking legal advice for this application, asking the Bank to agree to allow him to proceed directly before the Tribunal, or filing his application in early 2007. There is no reason to believe that either agreement inhibited him from obtaining advice in December 2006.

30. The Applicant alleges that he was "bullied and coerced" by the INT managers during the 19 December 2006 meeting, and complains that he was provided "very little time in which to consider whether or not to sign the MAS." By his own admission, however, he "decided not to sign the MAS" during that meeting. Instead, he left the Bank for the day, and likely further considered his options that evening. It was not until the following day that he actually signed the MAS. On that day, he also signed a memorandum stating that he "signed this MAS freely and voluntarily after full consideration."

31. The Bank argues that in light of the foregoing, and on the basis of the Applicant's own statements and the attachments to his application, the factual allegations on which the Applicant bases his claim of duress are completely undermined. One cannot accept the benefits of an agreement while simultaneously renouncing the obligations imposed under the same instrument. The release provision in the MAS bars the Applicant's claims.

#### *The Applicant's Response*

32. The Applicant's arguments may be summarized as follows.

33. The release is not valid because the Applicant signed the MAS under duress. He was unable to obtain any independent advice on the MAS once the negotiation of its terms began. In upholding a release provision in cases such as *Courtney*, Decision No. 144 [1995], and *Kehyaian (No. 2)*, Decision No. 130 [1993], the Tribunal found it significant that the staff member in question had been advised by counsel throughout the negotiations for the MAS. In this case, however, the INT managers took action to ensure that the Applicant would not be able to obtain advice from any independent source. When on 12 October 2006, the Applicant agreed in principle to an MAS, after only two working days the INT managers required the Applicant to sign an exceptionally broad confidentiality agreement without proper justification. The agreement prevented the Applicant from seeking advice from the SA or legal counsel.

34. The Tribunal should reject the Bank's assertion that the Applicant has never considered himself bound by either the MAS or the confidentiality agreement. On 21 December 2006, after he had escaped from the environment of the INT managers, the Applicant recognized that he had been coerced into signing his own resignation and decided that, regardless of the terms of the confidentiality agreement, he must take further advice and action.

35. The Applicant argues that the INT managers further kept the Applicant in the dark by not revealing to him until late November that the MAS would include a release provision relating to his PIP and his OPE. By the time he learned of the release clause in November, the INT managers had already placed the Applicant in a situation where he had to take administrative leave. The Bank argues that the Applicant consulted the SA



before agreeing to an MAS, but fails to mention that the SA provided advice to the Applicant before he reached a verbal agreement on the MAS on 12 October 2006, before he signed the confidentiality agreement on 16 October 2006, before he saw the written terms of the MAS, before he met with the INT managers on 19 December, and before he was faced with the abusive terms of a renewed PIP on 20 December 2006.

36. The INT managers gave the Applicant little time to consider whether or not to accept the MAS. In upholding an MAS and a release provision in *Courtney*, Decision No. 144 [1995], the Tribunal found it significant that the staff member disposed of much time (over a year) to negotiate the terms of an MAS. In contrast, the Applicant was given an extremely short period of time to make his decision. He began discussions with INT in early October, agreed in principle to the terms on 12 October, and was obliged to sign the confidentiality agreement just two working days later. The Applicant did not receive the MAS until 28 November. The INT managers insisted that he sign it immediately because he was supposed to begin administrative leave pursuant to their agreement. When the Applicant requested reconsideration of the terms of the MAS, the Bank took the position that the Applicant had rejected the MAS, presented him with a revised, retroactive PIP with impossible terms, and gave him only a few hours in which to sign the MAS. When he finally signed the MAS on 20 December 2006, his termination date was to be only eleven days later. Thus, at each stage the Applicant was told he had to make up his mind immediately, and was denied the right to weigh his options carefully. This was coercive and renders his signature on the MAS involuntary.

37. The INT managers improperly influenced, bullied and coerced the Applicant into signing the MAS. When the Applicant first learned in September that he was being placed on a PIP, he sought advice from senior managers in INT. Instead of giving him advice in his best interest, they improperly influenced the Applicant to negotiate an MAS. The INT managers bullied and coerced the Applicant at the 19 December 2006 meeting by:

- forbidding him to be accompanied by an SA counselor;
- facing him with the three most senior managers of INT and with INT's HR manager, all of whom took turns in abusing him;
- falsely charging him with breaching the confidentiality agreement because he sent a request for more favorable terms to HR;
- accusing him of "misrepresentation" for not signing the MAS in November;
- insisting that he should sign the MAS;
- telling him that if he returned to work under the PIP, it would be made retroactive to 25 September;
- telling him that he would fail the PIP; and
- telling him that he had to decide on the spot whether to sign the MAS or return to work under the PIP, and eventually relenting only to the extent of allowing him until 5 p.m. that day to sign the MAS.

38. Moreover, the bullying and coercion continued the next day. When the Applicant did not sign the MAS on 19 December and returned to work the next day, the INT managers gave him work assignments under the PIP that would have been impossible to complete within the time period dictated. Even when the Applicant ultimately signed the MAS on 20 December, one senior INT manager attempted to force the Applicant to sign a statement to the effect that he had signed the MAS on the advice and with the consent of the SA.

39. The Applicant contends that the Tribunal in *Y*, Decision No. 25 [1985], para. 32, held that "no release or settlement of claims should be given effect if concluded under duress." He asserts that the facts of his case, including the behavior of the INT managers as described above, are such that duress cannot be in doubt. Therefore, the release provision in the MAS has no force. The Tribunal should deny the Bank's jurisdictional objection and permit the application to proceed on the merits.

#### *The Bank's Additional Jurisdictional Objection*

40. The Bank also contends that the claim must be dismissed on a second ground. Although Article II,

paragraph 2(i) of the Statute of the Tribunal is satisfied because the Bank agreed to allow the Applicant to proceed directly before the Tribunal, the Applicant has failed to comply with the timeliness requirements under paragraph 2(ii) because he did not file the application within 120 days of the later of the occurrence of the events giving rise to the application or the receipt of notice from the Bank that the relief sought would not be granted. The Applicant avers in the application that 22 December was the date he received verbal notice of the President's decision to uphold the MAS. Counting 120 days from 22 December would result in a filing deadline of 21 April 2007. However, the Applicant missed the deadline when he submitted the application on 1 May 2007.

41. The Applicant answers that the Bank agreed on 7 February 2007 to allow him to proceed directly before the Tribunal. He filed his application on 1 May 2007, well within 90 days of 7 February, the time limit required by Rule 7, paragraph 8, of the Rules of the Tribunal.

### *The Tribunal's Analysis*

42. The core difficulty with this application is the fact that the Applicant signed an MAS containing the release provision quoted in Paragraph 2 above and accepted the benefits provided under the MAS. In essence, he seeks to overcome this difficulty by alleging that he signed the MAS under duress. The Tribunal evaluates and disposes of this allegation as follows.

43. The Tribunal has in previous cases accepted the validity of, and given effect to, MAS agreements between the Bank and staff members for the release of claims against the Bank. In the first of these cases, Y, Decision No. 25 [1985], para. 26, the Tribunal explained the rationale for giving effect to such release provisions as follows:

In an enterprise employing as many staff members as does the World Bank Group, it is inevitable that there will be claims of improper treatment, as witness the appeals to the Appeals Committee and applications to this Tribunal. It would unduly interfere with the constructive and efficient resolution of these claims if the Bank could not negotiate – in exchange for concessions on its part – for a return promise from the staff member not to press his or her claim further. If such an agreed settlement were not binding upon the affected staff member, there would be little incentive for the Bank to enter into compromise arrangements, and there might instead be an inducement to be unyielding and to defend each claim through the process of administrative and judicial review. It is therefore in the interest not only of the Bank but also of the staff that effect should be given to such settlements.

44. At paragraph 32 of the same judgment, however, the Tribunal also stated that “no release or settlement of claims should be given effect if concluded under duress.”

45. To succeed with a claim of duress, the Applicant must provide convincing evidence; as “an allegation is not a substitute for proof.” (*Malekpour*, Decision No. 322 [2004], para. 29.) Here, as evidence of duress, the Applicant claims that the confidentiality agreement he signed on 16 October 2006 prevented him from obtaining any independent advice on the MAS, such as from the SA or legal counsel. Yet he concedes that he had consulted the SA and an HR manager before he entered into substantive discussions on the proposed MAS on 12 October 2006. The SA advised him not to accept an MAS, but rather to challenge his PIP through the Conflict Resolution System (CRS). In other words, he did seek independent advice from the SA, but chose not to follow it when he proceeded with negotiations for an MAS.

46. Deciding whether to sign the confidentiality agreement, the Applicant had two options: (i) refuse the MAS agreement altogether, and challenge the terms of the PIP through the CRS; or (ii) accept the confidentiality agreement as part of the MAS agreement and continue to negotiate the MAS independently. The Applicant's self-description suggests sufficient maturity and acumen to deal with such a situation. In his application, the Applicant introduces himself as someone who “came to the Bank with more than thirty years of international investigative experience, including over ten years with the International Criminal Police Organization (Interpol).” By the time he started negotiations regarding the MAS, he had already worked in the Bank for more than five

years as a Senior Investigator. The fact that the Applicant considered and refused the advice of the SA not to accept an MAS demonstrates independence of mind. The Tribunal concludes that the Applicant was under no proven duress to sign the confidentiality agreement in the first place. At any rate, the mere existence of that document is not evidence of duress.

47. The Applicant states that in upholding release provisions, “the Tribunal has found it significant that the staff member in question was advised by counsel throughout the negotiations for the MAS.” (He cites *Courtney*, Decision No. 144 [1995], and *Kehyaian (No. 2)*, Decision No. 130 [1993].) However, neither *Courtney* nor *Kehyaian (No. 2)* held that counsel must be available throughout the negotiation process for an MAS to be valid. In other cases involving MASs, such as *Y*, Decision No. 25 [1985], and the recent case of *H*, Decision No. 342 [2005], the Tribunal rejected claims of duress without inquiring into whether the staff members involved had been advised by counsel. If the Applicant believed that the confidentiality agreement of 16 October 2006 was too restrictive because it would deprive him of independent advice, he could have rejected the MAS altogether. But he did not. He instead agreed to the confidentiality agreement as a condition of the MAS. He did not raise the issue whether the agreement, due to its broad and perhaps inadvertent wording, precluded obtaining legal advice. If he had done so, there is no reason to assume that his managers would have sought to impose such an unacceptable condition.

48. As for the Applicant’s contention that the INT managers gave him insufficient time to consider whether or not to accept the MAS, the record demonstrates the chronological developments leading up to the final signing of the MAS by the Applicant on 20 December 2006 to be as follows:

(i) in late September 2006, the Applicant discussed with two INT managers the options of a PIP or an MAS;

(ii) sometime in late September or early October 2006, the Applicant consulted with the SA and an HR manager about an MAS. The SA advised him not to accept an MAS and to appeal the PIP;

(iii) on 12 October 2006, the Applicant met twice with the INT and HR managers to discuss the terms of the proposed MAS. At the conclusion of the second meeting, he verbally agreed to the proposed terms of an MAS;

(iv) on 16 October 2006, the Applicant signed the memorandum containing the proposed terms of the impending MAS and the confidentiality clause that had been agreed on 12 October 2006;

(v) on 16 November 2006, the Bank finalized the terms of the MAS in a memorandum to the Applicant, its substantive terms other than the release provision being consistent with the 12 October 2006 agreement and the 16 October 2006 memorandum;

(vi) on 28 November 2006, the Applicant received the MAS memorandum of 16 November 2006;

(vii) on 12 December 2006, the Applicant sent a memorandum to HR requesting an extension of the departure date stipulated in the MAS memorandum;

(viii) on 19 December 2006, the Applicant again met with the INT and HR managers regarding the MAS, and the INT managers told him to sign the MAS memorandum of 16 November 2006 by 5 p.m. that day;

(ix) the Applicant did not sign the MAS memorandum on 19 December 2006, but decided to return to work the following day to resume the PIP exercise; and

(x) on 20 December 2006, the Applicant again spoke to one of the INT managers about the PIP and the MAS. At the conclusion of the meeting, he finally decided to sign and give his final assent to the MAS.

49. It is thus evident that the Applicant was not suddenly asked to sign an MAS in a short-notice, closed-door meeting. At each stage over three months, the Applicant was free to weigh his options and to reject the MAS before finally signing on 20 December 2006. On that day, moreover, he had the same option to challenge the



PIP directly as he had had on 12 October 2006. This period cannot be considered an insufficient amount of time in which to make a voluntary decision about an MAS.

50. In *Courtney*, the Tribunal did not require that an MAS negotiation must last for a year or any other minimum time before the MAS could be valid. Requiring such a long period of negotiations for an MAS would likely be detrimental to the Bank's legitimate business interests in entering into MAS negotiations to achieve an "efficient resolution" of personnel matters and any related potential claims.

51. The Tribunal is not convinced that the Applicant's managers gave him so little time from early October until 20 December 2006 to consider and accept the MAS as to amount to duress.

52. As for the Applicant's particular complaints about the 19 December 2006 meeting, they must be considered in the context of the development of the MAS. The Applicant agreed on 12 October 2006 to the proposed terms of the MAS and gave written consent on 16 October 2006. Pursuant to these verbal and written agreements, he went on annual leave and then on paid administrative leave before finalizing the MAS. When he received the MAS memorandum and learned of its release provision on 28 November 2006, he did not complain. Nor did he sign the MAS memorandum at that time. Instead, he remained on annual leave and then on paid administrative leave. On 12 December 2006, before signing the MAS memorandum, the Applicant requested an extension of the departure date in the MAS.

53. The Applicant's delay in signing the MAS memorandum, while availing himself of it by taking first annual leave and then paid administrative leave, and also by requesting an extension of his agreed departure date, might reasonably have prompted the INT managers to urge him to sign the MAS memorandum forthwith. Their insistence evidently did not force the Applicant to sign the MAS memorandum by 5 p.m. the same day. He refused to sign the MAS and returned to work the next day intending to resume the PIP exercise.

54. The fact alone that the INT managers insisted during the meeting of 19 December 2006 that the Applicant sign the MAS memorandum without further delay is insufficient to show duress. On 20 December, when he decided to sign the MAS, the Applicant still had the same option he had had on 16 October to challenge the PIP rather than to agree to the MAS, just as the SA had advised him. The same option existed on 28 November when the Applicant says he learned that the MAS contained a release provision. As the Applicant faced these options throughout the period from late September until 20 December 2006, he had several considerations to balance. Certainly he could have feared that he might be terminated for unsatisfactory performance, which would have been harmful to his future employment prospects. He also had to consider that a challenge to the PIP might not be successful, in which case he would still be subjected to it. On the other hand, the Applicant knew that an MAS included a number of benefits such as a severance payment, paid administrative leave, and the avoidance of termination on performance grounds. After weighing his options for more than two months, he finally decided to sign the MAS. The INT managers' insistence that the Applicant sign the MAS memorandum on 19 December did not affect the Applicant's options. Indeed he returned to work the following day to resume the PIP exercise. Whatever insistence by INT managers and an HR manager during the 19 December meeting that the time had come for the Applicant to sign the MAS memorandum did not constitute duress. Although the Tribunal considers that it was inappropriate for the INT management to deny the Applicant's request to be accompanied by an SA counselor at the 19 December meeting, this did not constitute duress.

55. The Tribunal observes that in *Kehyaian (No. 2)*, Decision No. 130 [1993], para. 26, it stated that

[i]n all cases of release agreements the staff member is assumed to have balanced the benefits resulting from the different options he or she has, and finally to have decided to consent to the proposed agreement. In each case the staff member must have been under certain pressures leading him to opt for what appeared to him to be the more advantageous alternative. This kind of pressure is inherent in the process and cannot be treated as by itself constituting duress.

Similarly, in *Y*, Decision No. 25 [1985], para. 33, the Tribunal stated that

[e]ven though the Applicant may have felt under some pressure to sign the release, it was no more than the pressure derived from the fact that he was urgently seeking an extension of his special-leave period and other perquisites and that he appears to have regarded those additional benefits as more important than the release of his claims against the Respondent. That, however, is the kind of balancing of priorities that inheres in every settlement, and it cannot properly be regarded as duress.

56. Here too, the Tribunal is not convinced that the pressures present in the Applicant's decision between entering into or challenging the PIP on the one hand, and accepting an MAS on the other hand, constituted duress.

57. The Applicant argues that when he decided to re-initiate the PIP exercise on 20 December 2006, he was given unreasonable deadlines for his work assignments. The Tribunal is concerned that by making the PIP retroactive the INT management did put the Applicant in a difficult situation. But again, he could have refused to sign the MAS and challenged the retroactive application of the PIP. The fact remains that he had the option of directly challenging the Bank's decisions with respect to the PIP rather than signing the MAS. The Applicant indicated that he had originally entered negotiations for an MAS because he did not believe he would succeed in the PIP exercise, and his decision not to follow the advice of the SA suggests that he did not wish to challenge the PIP. The Applicant's position in early October was substantially congruent with his position on 20 December 2006. The Tribunal is not convinced that the Bank's decision with respect to the Applicant's PIP work assignment deadlines placed the Applicant under duress to sign the MAS.

58. In sum, considering the Applicant's background, the development of the MAS over a three-month period, and the availability to the Applicant of the PIP or a challenge thereto, the Tribunal is not satisfied that the Applicant signed the MAS memorandum under duress. Consequently, the MAS, including the release provision, remains binding on both parties.

59. The Applicant fully and finally settled and released all claims he might have against the Bank "arising out of circumstances occurring or decisions taken on or before the date of [his] acceptance" of the MAS on 20 December 2006. His claims (see Paragraph 22 above) fall within this release and are barred. It is therefore unnecessary to rule on the Bank's additional objection of untimeliness.

### **Decision**

For the above reasons, the Tribunal dismisses the application.

/S/ Jan Paulsson  
Jan Paulsson  
President

/S/ Zakir Hafez  
Zakir Hafez  
Counsel

At Washington, DC, 14 December 2007