



World Bank Administrative Tribunal Annual Report

Fiscal Year 2021

Message from Tribunal President Andrew Burgess



The World Bank Administrative Tribunal continued in Fiscal Year (FY) 2021 to advance its work as the independent judicial forum of last resort for the resolution of employment grievances submitted by staff of the World Bank Group. Pandemic-related working arrangements remained in place to safeguard the health and safety of the Tribunal judges and Secretariat, as well as World Bank staff and their lawyers. I am happy to report that the Tribunal was able to continue its work remotely.

The Tribunal held two productive sessions in November and June. Our seven judges participated from locations around the world via audio-visual conferencing. During the spring session, the judges held oral proceedings online, a first for the Tribunal. The Tribunal Secretariat and staff did an exemplary job in ensuring a near-seamless process as the Tribunal issued judgments and orders in 28 cases.

As the Tribunal pushed into its fifth decade, it deepened its imprint on workplace inclusion, gender equity, and international administrative law. In ruling on a sexual harassment case, the judges praised the Applicants for calling out a supervisor’s improper behavior, while two other cases, which focused on fairness in pregnancy and parental leave, prompted the Tribunal to encourage the Bank to examine its policies “to ensure that it remains a place where the employment status of pregnant staff is not placed at undue risk and new parents are not placed at an unfair disadvantage.”

From its very first decision, the Tribunal has ensured workplace fairness, and this annual report underscores the Tribunal’s continuing importance. Decisions in FY 2021 elevated diversity and inclusion at many levels and acknowledged the rights of staff in other significant ways.

The original designers of the World Bank Administrative Tribunal firmly and explicitly established the Tribunal’s independence. That independence is entrenched in the first article of the statute, and it remains an unflinching commitment – indeed, a sacred trust – for all the judges on the Tribunal today.

Executive Summary

Although the World Bank Administrative Tribunal's work in FY 2021 was marked by challenges created by the COVID-19 pandemic, the Tribunal's judges and Secretariat stepped up to ensure that proceedings were handled in a fair and timely manner. This enabled the Tribunal to decide 28 cases in FY 2021, including 16 cases that were carried over from the previous year.

The number of cases submitted, meanwhile, rose to 27 in FY 2021, a significant increase over the 18 filings during FY 2020. Because of the COVID-19 outbreak and safety protocols, the Tribunal in FY 2021 – for the first time – held oral proceedings using a virtual platform. The cases involved claims relating to sexual harassment allegations.

Since its first decision in *de Merode et al v. International Bank for Reconstruction and Development*, which addressed the salary and tax formula for D.C.-based staff, the Tribunal has rendered 719 judgments and orders. Its rulings have crossed a spectrum of employment issues while safeguarding the rights and due process of staff, upholding the values of the World Bank Group, and ensuring the Bank can deliver powerful outcomes as a premier development institution.

Cases of significant impact in FY 2021 addressed safety and standing for claimants in sexual harassment investigations, non-extension and maternity leave, reasons given for non-extension, due process and domestic court orders, and dependent relocation benefits in circumstances of joint custody. On average, the time that lapsed between the filing of an application to the rendering of a judgment was less than 10 months.

During the Tribunal's fall session, the Tribunal issued judgments and orders in 12 cases. In its spring session, the Tribunal issued 12 judgments; three additional cases were withdrawn by the applicants. Some 39 percent of the cases addressed contract issues. Complaints involving jurisdiction or ethical or respectful behaviors were the drivers of most of the other applications. The full judgments can be found at <https://tribunal.worldbank.org>.

In recent years, applications by female staff at the World Bank Group have outweighed those of male staff. In FY 2021, however, the applicant demographics mirrored those of the overall Bank Group staff. Female staff submitted 54 percent of the claims; male staff submitted 46 percent of the applications. The percentage of country office-based applicants has steadily increased, to 44 percent in 2021 from only 8 percent in 2019. It is believed virtual outreach activities helped increase awareness that the Tribunal is accessible to all staff regardless of duty station.

The Tribunal in FY 2021 continued the dissemination of *The Bench*, its twice-a-year electronic newsletter. *The Bench* launched in September 2020 as a resource for keeping World Bank Group staff updated on the Tribunal's work and role.

OVERVIEW

The World Bank Administrative Tribunal (WBAT) is the independent judicial forum of last resort for the resolution of cases submitted by Bank Group staff members alleging non-observance of their contracts of employment or terms of appointment. Article I(2) of the Tribunal's statute emphasizes that "The Tribunal is a judicial body that functions independently of the management of the Bank Group. The independence of the Tribunal shall be guaranteed and respected by the Bank Group at all times." The Tribunal's decisions are final and binding.

WHO WE ARE

WBAT is composed of seven independent judges who are nationals of different member states of the Bank Group. The Tribunal's statute states that the judges "shall be persons of high moral character and must possess the qualifications required for appointment to high judicial office or be jurisconsults of recognized competence." The Board of Directors appoints judges from a list of candidates nominated by the World Bank Group President after appropriate consultation. The judges are appointed for a term of five years, renewable once.

The judges on the Tribunal in FY 2021 were Andrew Burgess (Tribunal President), a national of Barbados; Mahnoush H. Arsanjani (Tribunal Vice President), a national of Iran; Marielle Cohen-Branche (Tribunal Vice President), a national of France; Janice Bellace, a national of the United States; Seward Cooper, a national of Liberia; Lynne Charbonneau, a national of Canada; and Ann Power-Forde, a national of Ireland.

The Secretariat, the administrative arm of the Tribunal, is managed by the Executive Secretary. As specified by the Tribunal's statute, the Executive Secretary, in discharging duties, is responsible solely to the Tribunal.

CASE SUMMARY

During FY 2021, the Tribunal for the first time held oral proceedings virtually. This unprecedented action was precipitated by the ongoing COVID-19 pandemic. The case involved claims relating to sexual harassment allegations.

Caseload. Twenty-seven cases were filed with WBAT in FY 2021, compared to 18 in FY 2020. Overall, WBAT decided 28 cases in FY 2021, compared to 29 cases in FY 2020. Of the 28 cases decided, 16 cases were carried over from FY 2020. All judgments are published online and can be viewed at tribunal.worldbank.org.

Issues Raised. The issues most frequently brought to the Tribunal during FY 2021 related to employment contracts (39 percent), jurisdiction (24 percent), and ethical/respectful behaviors (24 percent). Notable issues addressed by the Tribunal in FY 2021 included due process and domestic court orders; non-extension and maternity leave; reasons given for non-extension; dependent relocation benefits in circumstances of joint custody; and safety and standing for claimants in sexual harassment investigations.

Demographics. Applicant demographics were closely aligned with World Bank Group demographics in FY 2021, following three previous FYs during which applications were disproportionately submitted by female staff. Females accounted for 54 percent of Tribunal applications in FY 2021, while males submitted 46 percent of the applications.

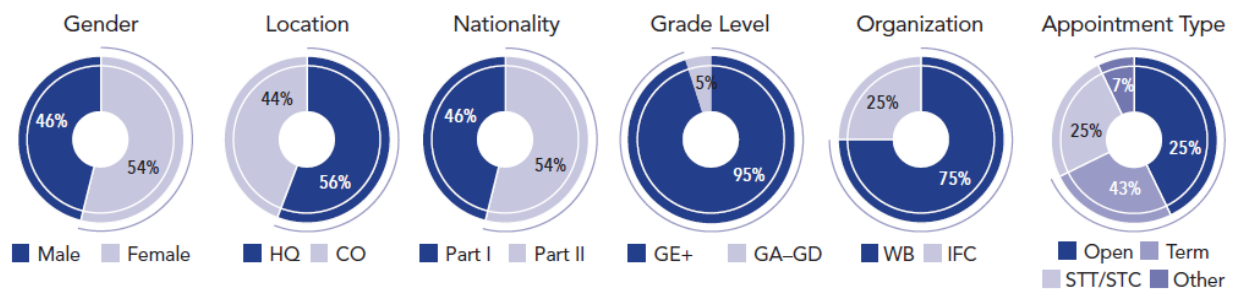
Some 56 percent of applicants were based at Bank Group headquarters, compared to 44 percent of applicants in country offices. However, the country-based applications reflected a steep and ongoing increase. In FY 2019, only 8 percent of Tribunal applicants were based in country offices. The increase may be a consequence of virtual outreach activities designed to ensure that the Tribunal is accessible to all staff regardless of duty station.

Applicants from Part II countries submitted 54 percent of the cases; the remainder were from Part I countries. Of the applicants holding graded positions, 95 percent were staff members at grade levels GE and above. The remaining 5 percent were submitted by staff members at grade levels GA–GD.

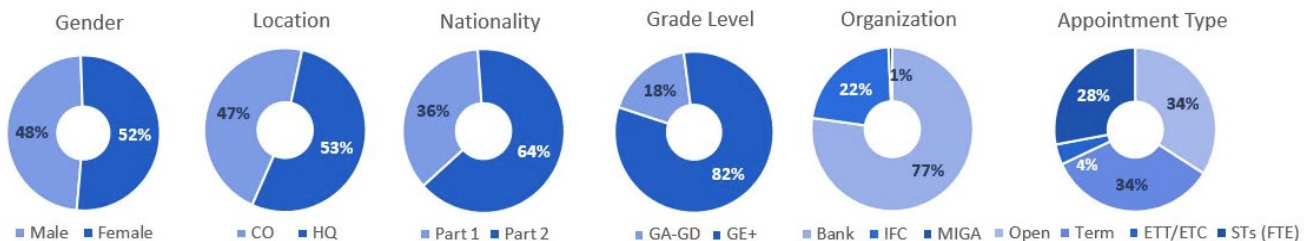
Forty-three percent of the applicants held Term appointments, 25 percent held Open-ended appointments, 25 percent held Short Term or Extended Term appointments, and 7 percent did not hold appointments. In comparison, the majority of applicants in FY 2020 held Open-ended appointments. The increase in applicants holding Term, Short Term, or Extended Term appointments may reflect a shift in the Bank Group workforce and/or targeted outreach to staff holding Short and Extended Term appointments.

The charts below display the demographics for Tribunal applicants alongside the World Bank Group’s staff demographics for visual comparison of the data.

Tribunal Applicant Demographics FY 2021



World Bank Group Demographics FY 2021



Average Processing Time. The exchange of written pleadings between an applicant and respondent takes close to six months before a case is ready for the Tribunal’s deliberation. Factors that affect processing time may include: the number of cases decided in one session, whether jurisdiction and merits were decided in the same judgment, whether a hearing was held, the nature and complexity of the case and the scheduling of Tribunal sessions, and whether the parties have requested an extension or a stay of proceedings. During FY 2021, on average, it took the Tribunal less than 10 months to dispose of a case counting from the time of filing an application to the rendering of a judgment.

PROGRAM ACTIVITIES

Overviews of the Tribunal’s decisions were conducted after each of its FY 2021 sessions, providing World Bank Group staff with opportunities to ask questions and discuss their reactions to the judgments. The Tribunal is committed to increasing awareness of the services available to staff, and it regularly participates in New Staff Orientation, outreach events, and the Internal Justice Services Retreat. The Tribunal, since September 2020, has also disseminated an electronic newsletter, *The Bench*, to keep staff updated on Tribunal rulings and activities.

NOTABLE CASES

FW and FX v. IBRD, Decision No. 649 [2021]

Issue: The Applicants contended that they were subjected to sexual harassment by their superior, Mr. C, in violation of Bank policies; that the Bank failed to provide adequate protections for them; and that the Ethics and Business Conduct Department (EBC) investigation was flawed. The Bank contended that the Applicants did not have standing before the Tribunal because the Human Resources Development Vice President (HRDVP) had determined that Mr. C committed some form of misconduct.

Decision: The Tribunal found that a determination of misconduct by the HRDVP does not, in and of itself, bar an application to the Tribunal on the part of a complainant in respect of either an EBC investigation or an HRDVP decision, the outcome of which affects adversely the observance of that complainant’s contract of employment or terms of appointment.

The Tribunal noted that, at the conclusion of the proceedings, the parties appeared to agree that the HRDVP’s failure to label the misconduct as sexual harassment was undermined by the record and not based on a reasonable and observable basis. The Tribunal further noted the statements made by the current HRDVP during the oral proceedings, namely that she “would conclude that sexual harassment took place,” that “there was clearly a hostile work environment,” and that she is “deeply sorry [the Applicants] had this experience.” In view of all of these prevailing circumstances, the Tribunal found it unnecessary to direct that any further action be taken with respect to the misconduct decision.

As to the sanction decision, the Tribunal noted that, under the circumstances, several factors were inappropriately considered in mitigation. The Tribunal observed, however, that security restrictions that were later imposed on Mr. C were largely in line with the remedies requested by

the Applicants and adequately discharged the Bank of its duty to “make all reasonable efforts to ensure appropriate protection and safety” for the Applicants. The Tribunal also determined that, overall, it was satisfied that EBC operated in good faith and conducted a fair investigation into the Applicants’ allegations.

The Tribunal ordered the Bank to take reasonable steps to notify the Applicants, in advance, of the following circumstances: any instance in which Mr. C seeks to access World Bank Group or IMF premises and any reconsideration of the security restrictions imposed on Mr. C. The Bank was further ordered to seek and take into account the Applicants’ views on the above-mentioned circumstances prior to forming a decision regarding Mr. C’s access to World Bank Group or IMF premises.

The Tribunal encouraged the Bank to continue to reflect on the treatment of the subjective elements of a finding of sexual harassment (e.g., whether behavior was known to be unwelcome), the relevancy of certain mitigating factors for purposes of determining disciplinary sanctions, and the importance of labeling misconduct as sexual harassment when the defined elements are present.

GC v. IBRD, Decision No. 650 [2021]

Issue: The Applicant challenged the Bank’s decision not to extend her appointment and the Bank’s failure to provide a reason for the non-extension.

Decision: The Tribunal found that the Bank’s justifications for the non-extension decision depended on facts inextricably tied to the Applicant’s pregnancy and maternity leave. The Tribunal noted that the Bank failed to acknowledge and account for pregnancy and maternity leave as the cause of the same facts it used to underpin its justification for the non-extension decision. The Tribunal considered that this approach indirectly and unfairly penalizes pregnancy and maternity leave. When faced with staff reductions, the Bank may choose not to renew the appointment of a person who is pregnant or on parental leave but must make this decision fairly and in good faith on the basis of factors other than those which are inextricably intertwined with the pregnancy or parental leave. The Tribunal considered that if not for the Applicant’s pregnancy and maternity leave, the non-extension decision would not have been made as it was. Accordingly, the Tribunal found that the non-extension decision was an abuse of discretion.

The Tribunal also found due process violations where the Bank failed to provide the Applicant with the specific and true reasons for the non-extension decision at the time the decision was communicated to her and where the Bank failed to adequately inform the Applicant of any potential problems concerning her position. Finally, the Tribunal found that the Bank effectively shortened the Applicant’s notice period to three months by providing such notice while she was on maternity leave.

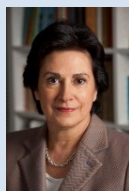
The Tribunal rescinded the non-extension decision and ordered the Bank to pay the Applicant compensation and to cover the legal fees and costs incurred by the Applicant.

WORLD BANK ADMINISTRATIVE TRIBUNAL AND SECRETARIAT COMPOSITION

FY 2021 TRIBUNAL COMPOSITION



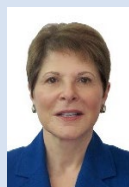
Andrew Burgess – President
(Barbados)



Mahnoush H. Arsanjani –
Vice President
(Iran)



Marielle Cohen-Branche –
Vice President
(France)



Janice Bellace – Judge
(United States)



Seward Cooper – Judge
(Liberia)



Lynne Charbonneau – Judge
(Canada)



Ann Power-Forde – Judge
(Ireland)

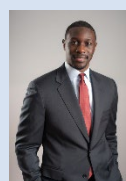
SECRETARIAT COMPOSITION



Zakir Hafez
Executive Secretary



Devon Bromfield
Counsel



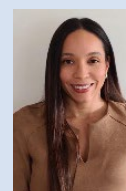
Mohammad Edirissa Faal
Counsel



Farkanda Haseen
Legal Analyst



Tara Ippoliti
Extended Term Consultant



Kaara Martinez
Short Term Consultant



Robert Newman
Extended Term Temporary