



World Bank Administrative Tribunal

2021

Decision No. 661

**Parminder Brar,
Applicant**

v.

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

(Merits)

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

**Parminder Brar,
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 Andrew Burgess (President), Mahnoush H. Arsanjani (Vice-President), Marielle Cohen-Branche (Vice-President), Janice Bellace, Seward Cooper, Lynne Charbonneau, and Ann Power-Forde.

2. The Application was received by the Tribunal on 25 January 2021. The Applicant was represented by Marie Chopra and Brita Zacek of James & Hoffman, P.C. The Bank was represented by David Sullivan, Deputy General Counsel (Institutional Affairs), Legal Vice Presidency.

3. The Applicant alleges that the Bank (i) improperly divested him of his duties as Country Manager (CM) for Sierra Leone following the publication of a media article in the *Sierra Leone Telegraph* in January 2018; (ii) improperly failed to shortlist him for CM positions in the Republic of Yemen (hereinafter Yemen) and in the Lao People's Democratic Republic (hereinafter Lao PDR); and (iii) improperly failed to provide him with feedback regarding his exclusion from the aforementioned shortlists and his non-selection for a CM position in Mongolia.

FACTUAL BACKGROUND

4. The Applicant is a Lead Governance Specialist, Grade Level GH, based in Nigeria. His previous position was that of CM for Sierra Leone. He joined the Bank in January 2003 in its Operations Policy and Country Services (OPCS) division as Lead Financial Management Specialist and moved to the Africa Region (AFR) in 2006.

5. On 1 October 2015, the Applicant was appointed to the role of CM for Sierra Leone. It was a two-year appointment.

6. On 10 November 2017, the Applicant was informed by his Country Director that the Vice President, Africa (hereinafter AFRVP), had granted the Applicant a six-month extension of his CM appointment through the end of March 2018 to coincide with the Sierra Leone presidential election on 7 March 2018.

End of Sierra Leone CM Term Appointment

7. During the course of his tenure, the Applicant's performance was generally positive. His Fiscal Year (FY) 2016 Annual Review observed that he had made a "strong start" gaining trust at the highest levels while maintaining leverage on achieving reforms. It noted his successful resolution of issues on several projects, including Information and Communications Technology and Fisheries, and his "strong, engaging and proactive leadership" was commended. However, it was also observed that "a more diplomatic approach" was warranted under certain circumstances and that his being "too blunt" and his "strong opinions" could lead to tension with Bank teams.

8. Following a visit to Sierra Leone from the Bank's Communications Team, the Applicant was advised in July 2017 on several matters, including strategic communications, risk management issues, and the need for compliance with the Bank's external communications policies. It was pointed out that the Bank's "overwhelming media presence" to announce new funding could be seen as "perpetuating bad government" where people clearly do not trust the government. The Communications Team also observed that the Bank practiced "false diplomacy" by not taking tougher action with the government when needed.

9. The Applicant's FY 2017 Annual Review noted that his performance assessment had overall been positive with staff citing his "can do" attitude, strong collaboration, and knowledge sharing. The review also confirmed notable improvements to the Applicant's managerial ratings. However, controversy occurred in September 2017 following the Applicant's publication of a video on social media in response to an amateur journalist who had uploaded a video about the

August 2017 Freetown mudslides. A British lawyer representing the journalist complained to the Bank that the Applicant had threatened his client. Thereafter, the Bank's Counsel wrote to clarify the circumstances at the heart of the matter and to deny any intent on the part of the Applicant to incite the arrest of the journalist. In October 2017, the Country Director expressly advised the Applicant in his FY 2017 review that he will "need to be more selective with media interactions as the country heads to elections in March 2018."

10. In late 2017 and early 2018, as the end of his tenure as Sierra Leone CM approached, the Applicant applied for four CM positions in Nepal, Yemen, Mongolia, and Lao PDR.

11. Specifically, in December 2017, the Applicant applied for the Nepal, Yemen, and Mongolia CM positions. On 19 December 2017, he was informed by Human Resources (HR) that he was not shortlisted for the Nepal CM position. The Applicant was provided with the contact information of a Senior HR Specialist with whom he could make contact if he had any questions. According to the Applicant, he emailed the Senior HR Specialist on the same day but never received a response.

12. On 11 January 2018, the Applicant sent an email to the Country Director regarding his transition plans for the weeks leading up to the end of his appointment in late March 2018. In the correspondence, he touched upon several topics, including his leave plans, stating:

I have been in touch with my [Global Practice] regarding my next assignment and there are several good options on the table. I am currently preparing for our forthcoming CMU [Country Management Unit] retreat that will take place during the first week of February. After the retreat I will be proceeding on [Rest and Recuperation (R&R) leave]. In March I will take administrative leave in order to prepare for my transition, as well as my pre-assignment trip to my next position. I therefore have around four weeks left for work in Sierra Leone [...].

13. In response to the Applicant's email, the Country Director, on the same day, replied:

Many thanks for the detailed plans for your transition. I fully appreciate that this has been unsettling for you.

Could we arrange to have an audio to discuss the details of the transition and options[?] One of the options is whether you would consider a short extension to end June.

I met with [the AFRVP] today and he asked me about a possible short extension of your appointment to the end of FY [20]18, i.e. June 2018. He will look into this and let me know. In the meantime, could you also let me know if this is feasible – coming so late in the midst of your transition plans?

14. On 12 January 2018, the Applicant replied by stating, “Thanks for your [email]. Best to hear first from [the AFRVP].” On the same day, he was informed that he was shortlisted for the Mongolia CM position and would be interviewed during the week of 22 January 2018.

15. The Applicant states that he was invited by the government of Sierra Leone in his capacity as Co-Chair of the Development Partners Committee to speak at an event held on 16 January 2018 to thank the private sector for donations to victims of the August 2017 mudslides in Freetown, Sierra Leone. The Applicant contends that during his speech he stated the position of key international development partners that the donations were being properly managed by the government, a fact that he claims was already made public by the government and its private audit firm prior to his speech.

16. According to the Applicant, he stated:

Let nobody say that any of the money given to the government of Sierra Leone was chomped. It was not. We don’t need to wait for the audit report to come; we [the Like-Minded Partners’ Group] have spoken to the private audit firm and the funds have been managed and they have been managed well.

17. On 20 January 2018, four days after the Applicant’s speech, a diaspora online opposition publication based in the United Kingdom, the *Sierra Leone Telegraph*, published what the Applicant describes as a slanderous article accusing him of acquiring unexplained wealth through his work in Sierra Leone, and of personally receiving some of the funds, which were donated by the Bank for the disaster, in exchange for his campaigning for the current President of Sierra Leone. The Applicant states that the media article also had racist undertones as it accused the Applicant, an Indian national, of facilitating corrupt deals for the Indian community in Sierra Leone.

18. That same day, the Country Director forwarded the media article to the Applicant by email. The Applicant claims that he had not been aware of the media article at the time. In the email, the Country Director stated, “Could you call me tomorrow to discuss[?] This is causing significant concern in the AFRVP front office.”

19. The following day, 21 January 2018, the media article came to the attention of the World Bank Group (WBG) President, who received it that morning via a forwarded email from a friend. The WBG President then forwarded the media article to the WBG Chief Executive Officer (CEO), along with the message, “From [redacted]. Understand there are politics but hope the story is not true.”

20. That same day, the AFRVP responded to the WBG President’s and the WBG CEO’s email exchange, stating:

I am on the case. We had reprimanded [the Applicant] in the past on the tone of his public statements. [The Applicant’s] stay in Sierra Leone is ending in two months and he will not be extended, we are interviewing for his replacement in 10 days. Our communication team is working to correct his statement and I am in [contact with] the CMU. I will revert to you as soon as possible.

21. The WBG President responded, stating:

So if he’s been warned before, why am I only hearing about this now and why did I have to hear about this from a friend? Are we going to remove him now or wait for two months wondering if he’ll say more trying to gain favor with the President [of Sierra Leone]?

22. The WBG CEO replied, stating, “On this particular case, we have been communicating with [the AFRVP] – we need to know whether staff rules have been broken. And if so there will be consequences.”

23. Also on 21 January 2018, the Applicant’s Country Director contacted the Africa External Communications and Partnership unit (AFREC) for guidance. In one exchange, with the Applicant in copy, the Country Director wrote:

[The Applicant] should send the full text/record of the statements he made. The news article has been brought to [the WBG President's] attention!

In the meantime [the Applicant] should refrain from any public events that could have political connotations.

24. In its correspondence, AFREC advised:

Our guidance is that we generally should be out of the media limelight all together at least three months [prior] to an election. Our statements can be seen as an endorsement of one candidate or a government that people may have lost trust in. Our approach therefore should be to lie low, avoid public events and let the bilaterals who have a political mandate [...] take on more presence.

25. Later that day, the Country Director wrote to the Applicant, stating:

Further to our discussion earlier today, [the AFRVP] has indicated that he will not extend your term beyond March 2018.

Based on your email of 11 January, we will need to start putting in place the transition arrangements ahead of the next CM coming on board. Assuming that you would take your R&R from mid-February and admin leave in March, I will plan to have the transition arrangements from mid-February. We will need to inform [Country Office] staff and the government about the transition arrangements during my visit to Sierra Leone [from] February 4–10.

26. On 22 January 2018, the Country Director informed the Applicant that he had informed the AFRVP of the Applicant's transition arrangements.

27. On the same day, the Applicant was interviewed for the Mongolia CM position. According to the Applicant, following that interview "he never received any feedback or formal decision as to its outcome" despite making multiple requests for feedback.

28. On 26 January 2018, the Bank's HR Executive Resources representative emailed the proposed Yemen CM shortlist, containing six candidates including the Applicant, to the WBG CEO for her final review. That same day, the WBG CEO responded with an email, stating:

Please wait with the notifications of staff proposed for the [shortlist]. I have concerns about the suitability of one of the candidates based on track record as CM

and would like to discuss them with [the Vice President, Middle East and North Africa (MNAVP)] before the list is approved.

[MNAVP], I will call you over the weekend.

29. In February 2018, the Applicant applied for the Lao PDR CM position.
30. On 6 February 2018, Sierra Leone’s Minister of Finance and Economic Development wrote to the AFRVP in his “capacity as a Governor of the World Bank Group” in support of the Applicant. He addressed the *Sierra Leone Telegraph* media article, stating, “This kind of slander is unfortunately not an isolated incident in Sierra Leone especially during an election year.” He also stated that the remarks “by the CM [were] twisted out of context in the [media] article.”
31. The Minister’s letter praised the Applicant’s work as Sierra Leone CM and advocated for an extension of his appointment, noting that previous CMs “have served between three and five years.” The letter stated that the government was “deeply concerned regarding this slanderous attack,” and added, “If the Bank were to launch an internal investigation into the totally unfounded allegations against the CM – we would welcome that.”
32. On 12 February 2018, after the CMU retreat had ended, the Applicant started his R&R leave. Thereafter, he then took annual leave until 9 March 2018.
33. On 14 February 2018, the Country Director emailed the Applicant, stating, “Could you update me on your plans for March[?] [Mr. A] has agreed to be the substantive Acting CM with [Mr. B] as the ‘Head of Office’ with authority to approve/sign RM [Resource Management] related documents.”
34. Later that day, the Applicant replied, stating:

As you know, my term as CM ends at the end of March 2018. I would be grateful if you could please provide reasons as to why [Mr. A] has been requested to be “substantive CM” before the end of my term. So far as I am concerned – I see no reason why I should not continue to be the substantive CM as I have been starting from October 1, 2015.

You had mentioned to me in Tokeh that this seems to be due to the highly slanderous article published about me on a website that carries anti Government articles. I have explained the rationale in the multiple [emails] I have sent you – as well as the circumstances as to how such articles are regular features in Sierra Leone – and Heads of UN [United Nations] Agencies are regularly targeted. I have also sent you and [the AFRVP] a detailed ppt on Slander in Sierra Leone. In the case of this article the Independent Media Commission has requested the website to provide proof or issue an apology.

However it seems that the decision to remove me as substantive CM seems to have been made by [m]anagement without providing me an opportunity to give any explanation. To the best of my knowledge – there are no Bank guidelines issued to [CMs] which preclude the making of public statements on behalf of the donor community before the official start of the election campaign.

I am really appalled that [m]anagement has taken this view and instead of defending the reputation of a staff member in the face of malicious slander – is appearing to take punitive action without even ascertaining the facts. This seems to suggest that [m]anagement believes the slander, contrary to the reputation I have built throughout my career for professionalism and integrity. The Heads of WHO [World Health Organization] and UNICEF [United Nations Children’s Fund] in Sierra Leone have been through similar slanderous attacks in the past over a period of six months and their agencies first ascertained the facts and then stood by their staff, which is what any staff member should be able to expect the Bank to do. I would really like to know why it has not been done in this case.

35. On 16 February 2018, the Country Director responded to the Applicant, stating:

Thank you for your email. Firstly, regarding the slanderous nature of the newspaper article, you may recall that this was referred to colleagues in AFREC to advise on what steps should be taken by the Bank in response. I understand that you interacted with AFREC, who recommended that it would be best to manage the potential reputational risks by: (i) not making any public statements on the issue to the media; (ii) using quiet diplomacy to contain any further media publications on the issue; (iii) encouraging the Government to be transparent about the audit report and an action plan on the use of donated funds; and (iv) ensuring that you completely stay out of the limelight both in the media and all public events.

Secondly, while [s]enior [m]anagement appreciate the difficulties CMs face with the media in many countries, they were particularly unhappy with one statement you made during the event on January 16 regarding the use of funds by the government of Sierra Leone donated in the aftermath of the mud slides. Senior management noted that the statement you made could be seen to be political in nature, at a time when the country is in the midst of election campaigns. Senior [m]anagement were particularly sensitive to potential accusations of political

interference by the Bank in the aftermath of press reports on Doing Business the previous week, and the focus on making the case for the Capital [I]ncrease. I should add that [s]enior [m]anagement also considered past complaints about public statements you made in the media that stirred controversy. Concern was expressed about the way you communicate in the media and to the public.

Senior [m]anagement was concerned about any further statements you might make during the remaining period of your term as CM in Sierra Leone, which could be picked up by the media. In view of the above, [s]enior [m]anagement recommended that your position as CM in Sierra Leone should not be extended beyond March 31, and that ways should be found to reduce further exposing you to the charged environment in Sierra Leone. This was not just important for the Bank's reputation but also for your own safety and security.

In deciding arrangements for the transition period to the end of your term in Sierra Leone, I took into account your request to take R&R during the second half of February, followed by administrative leave, and subsequent pre-assignment trip in March to your next position. In order to have continuity in managing the Sierra Leone office, staff and client relations, I decided it would be best to have one person acting as the substantive CM during the transition period till March 31st.

36. On 20 February 2018, the Country Director sent an email to staff in the Sierra Leone Country Office, stating:

As you may know, [the Applicant] is coming to the end of his term as [CM] for Sierra Leone on March 31. Ahead of his next assignment, [the Applicant] is taking Rest and Recuperation, which will be followed by [a] pre-assignment visit, and then leave to prepare for his relocation before the end of March. To minimize the disruption to the work program, and to ensure continuous management of staff and client relations, we have agreed to assign [Mr. A] as the Acting CM till March 31, with [Mr. B] as the Acting Head of the SL [Sierra Leone] Country [O]ffice. Teams should continue to copy [the Applicant] on work related matters till March 31.

37. On 20 February 2018, the revised shortlist for the Yemen CM position of five candidates was sent to the MNAV. The Applicant was not included on the list.

38. On 23 February 2018, the MNAV approved the Yemen CM shortlist and re-sent it to the WBG CEO. No objection was received and it was finalized accordingly.

39. On 26 February 2018, the Applicant was informed by HR that he was not shortlisted for the Yemen CM position. He was advised by HR to contact the Senior HR Specialist if he had any questions.

40. On 9 March 2018, following the end of the Applicant's annual leave, he took a ten-day administrative leave to prepare for his departure from Sierra Leone and his pre-assignment visit to WBG headquarters.

41. On 15 March 2018, the Applicant was informed by HR that he was not shortlisted for the Lao PDR CM position, and he was directed to the Senior HR Specialist for any questions.

42. On 2 April 2018, the Applicant started his current assignment as a Lead Governance Specialist in Nigeria.

43. On 2 May 2018, the Applicant emailed the Senior HR Specialist following up on his 19 December 2017 email to her in which he had requested feedback for his non-shortlisting for the Nepal CM position. On the same day, the Applicant also sent emails to the Senior HR Specialist requesting a meeting and inquiring about the reasons for his non-shortlisting for the Yemen and Lao PDR CM positions, and also requesting feedback on his non-selection for the Mongolia CM position.

44. On 3 May 2018, the Applicant emailed the Senior HR Specialist asking when HR would inform the shortlisted candidates for the Mongolia CM position of the outcome of the selection process. He added, "Just by way of information – I was at the OPCS meeting in Vienna on [5 and 6 April 2018] and the [Director of HR] informed all the participants that all CM positions that had been advertised had been filled. Is that the current position?"

45. According to the Applicant, he never received a response from HR or management to his requests for feedback.

Peer Review Services

46. On 18 May 2018, the Applicant filed Request for Review No. 428 with Peer Review Services (PRS) challenging (i) the Bank's decision to "divest [him] of all authority" and "end [...] [his] assignment" as Sierra Leone CM; (ii) the Bank's failure to automatically shortlist him for the CM positions for Yemen, Lao PDR, and Nepal; and (iii) the Bank's failure to respond to his requests for feedback as to the non-shortlisting decisions as well as his non-selection for the Mongolia CM position (also referred to as Inactions in the record). The Applicant also claimed that a technical malfunction in the WBG's job application portal, whereby the system did not automatically shortlist technical Grade Level GH staff for managerial positions, negatively affected him.

47. The Applicant asserted that WBG practice and procedures in place since 2007 were not followed when he was not "automatically shortlisted" for the CM positions in Nepal, Yemen, and Lao PDR. Citing a July 2010 Kiosk Announcement entitled "Increased Support to Current and Returned FCS [Fragile and Conflict-Affected States] Staff," the Applicant asserted that there was supposed to be "automatic shortlisting" for the first three positions to which a staff member applied after completing an assignment in an FCS country.

48. The Applicant also asserted that he had requested feedback on his applications for the four CM positions for which he had applied but never received any response from the Bank.

49. By way of relief, the Applicant sought

(i) "reassignment to a [CM] position;" (ii) compensation; (iii) the WBG's "legal action against the website that published the article" against him; (iv) "[m]anagement commitment that going forward the term of the assignment will be clearly mentioned in the appointment letter;" (v) "[c]lear guidance from [AFREC]" regarding elections and the WBG's interaction with the media; and (vi) "discussion regarding adequate support and understanding from [m]anagement of the difficulties that [CMs] face in countries such as Sierra Leone."

50. According to the Applicant, he learned through the PRS process that, apparently, management had determined in March 2018 that "his performance as a CM in Sierra Leone made

shortlisting for CM positions untenable in the spring of 2018” and also that “he was a poor fit for the CM role,” though he states that he “was never previously made aware of any performance concerns and had actually received excellent performance reviews.”

51. The Applicant contends that during the PRS process it was revealed that he had originally been shortlisted for the Yemen CM position and later removed. After the MNAVVP endorsed the shortlist of six candidates (including the Applicant) in January 2018, it was sent to the WBG CEO, who replied that she had “concerns about the suitability of one of the candidates based on [his] track record as CM and would like to discuss them with [the MNAVVP] before the list is approved.” A shortlist of five candidates, with the Applicant not included, was later sent to the MNAVVP, who approved it and re-sent it to the WBG CEO.

52. On 13 January 2020, PRS issued a document entitled “Panel’s Decisions of Partial Dismissal of the Request for Review and Written Proceedings,” informing the parties that PRS did not have jurisdiction to review all of the Applicant’s claims set forth in his Request for Review No. 428.

53. The PRS Panel clarified that it would review only the Yemen and Lao PDR CM non-shortlisting and non-feedback decisions and Mongolia CM non-feedback decision, stating:

The Panel will review [the Applicant’s] timely claims regarding the Yemen and Lao PDR CM Non-Shortlisting Decisions, including whether he was entitled to “automatic” shortlisting under applicable WBG rules and policies. The Panel will also review whether managerial and/or Human Resources (HR) was obligated to provide [the Applicant] with details about these Non-Shortlisting Decisions in response to his requests for feedback.

[...] The Panel will review [the Applicant’s] timely claim regarding the Mongolia CM Decision. [The Applicant] was shortlisted and interviewed for the position. The Panel notes that the RFR [Request for Review] did not dispute the non-selection itself. Therefore, the Panel will review solely the WBG’s alleged lack of response to [the Applicant’s] request for feedback regarding the Mongolia CM Decision following his interview for the position.

54. The PRS Panel dismissed other claims in the Request for Review, including the contested Nepal CM non-shortlisting decision and claims related to the duration of the Applicant’s term

appointment as Sierra Leone CM, due to untimeliness pursuant to the 120-day filing deadline expressed in Staff Rule 9.03, paragraphs 8.01 and 8.02 (Time Limitations for Submitting Requests for Review), stating:

The Panel determined that [the Applicant's] claim regarding the Nepal CM Non-Shortlisting Decision was untimely. HR notified [the Applicant] about the recruitment outcome on December 19, 2017, and [the Applicant] did not file the RFR until May 18, 2018, on or around 150 calendar days later. The Panel, therefore, will not further review the Nepal CM Non-Shortlisting Decision.

The Panel will not review any claim relating to the duration of [the Applicant's] Term Appointment as CM for Sierra Leone. The Panel notes that [the Applicant's] claims in his RFR do not pertain to the term of [the Applicant's] appointment as CM for Sierra Leone, nor the duration of his CM term. The Panel notes further that, even if the RFR had sought the review of the terms of [the Applicant's] CM appointment for Sierra Leone, this claim would have been untimely given that the underlying CM appointment, and subsequent extension decisions, occurred more than 120 calendar days before [the Applicant] filed the RFR.

55. The PRS Panel also dismissed the Applicant's divestment of duties claim because it was outside the scope of PRS's review pursuant to Staff Rule 9.03, paragraphs 7.01–7.05 (Review of Disputed Employment Matters), stating:

The Panel determined that [the Applicant's] alleged "divestment" from "all authority as [CM], Sierra Leone" involves allegations and/or relates to purported facts – including "the publication of a defamatory and slanderous article against [the Applicant] on a website on January 20th 2018" – that fall outside PRS'[s] mandate under Staff Rule 9.03. The World Bank Administrative Tribunal (Tribunal) stated in *Sekabaraga v. IBRD [(Preliminary Objection)]*, Decision No. 494 [2014], para. 42: "[T]here are good grounds for having EBC [the Ethics and Business Conduct Department] undertake a review of allegations of [staff misconduct] before such allegations are considered by PRS or by the Tribunal. EBC is the unit with the primary mandate and the resources to review (...) and review by EBC could make an important contribution to a proper consideration of the often complex factual background."

[...] Accordingly, [the Applicant] may wish to avail himself of EBC regarding the alleged "divestment" from "all authority as [CM], Sierra Leone."

56. Following the PRS Panel's decision, the Applicant subsequently brought his claim regarding the removal of his authority as Sierra Leone CM to EBC.

57. On 31 March and 9 April 2020, EBC conducted intake interviews with the Applicant.

58. On 24 June 2020, EBC informed the Applicant that it was closing the case, stating in part:

We are writing to inform you that following a thorough preliminary enquiry of the allegations of misconduct you first reported to EBC on March 31, 2020, EBC could not find sufficient evidence of a violation of staff rules to move forward with a formal investigation regarding your complaint that you were divested of your authority as [C]ountry [M]anager in 2018, and we are therefore closing our review.

59. On 6 July 2020, the Applicant wrote to EBC requesting that it review its decision to close the case, stating, “Can I request that you review this decision and at least provide me an opportunity to discuss the facts of the case, that you are completely unaware of, before you close this case?”

60. On 9 July 2020, EBC agreed that it would meet with the Applicant on 14 July 2020 to obtain any additional relevant information.

61. On 20 August 2020, PRS issued a document entitled “Peer Review Panel’s Report in Request for Review No. 428,” detailing the Panel’s overall conclusion and recommendation as follows:

Upon considering the totality of the evidence, including facts related to [the Applicant’s] out-of-scope alleged divestment claim inasmuch as potentially pertinent to the facts within the Panel’s mandate to review, the Panel concluded that: (a) The Yemen and Lao PDR Non-Shortlisting Decisions had reasonable and observable bases, followed proper process under the FCV [Fragility, Conflict, and Violence] recruitment framework, and were made in good faith; (b) the Inactions were not in line with best recruitment practices and lacked reasonable and observable bases, however there was no evidence of bad faith; and (c) The MyJobWorld [job portal] Malfunction did not rise to the level of a breach of [the Applicant’s] rights who was not prejudiced from it in his applications for the Yemen and Lao PDR CM positions.

[...] Under management’s and HR’s shared responsibility in terms of recruitment, the Panel recommends that HR ensure that hiring managers are made aware of the up-to-date HR guidance and WBG recruitment best practices when they advertise a position; and that hiring managers fulfill their responsibilities.

[...] The Panel determined that [the Applicant's] contract of employment and terms of appointment were not breached, therefore it did not recommend that [the Applicant] be granted his requested reassignment to a CM position and/or compensation. The Panel observed that [the Applicant's] other relief requests are all out-of-scope in PRS.

62. On 25 August 2020, EBC informed the Applicant that it would not be re-opening its review of the Applicant's allegations.

63. On 27 August 2020, the Vice President, Western and Central Africa, wrote to the Applicant officially accepting the PRS Panel's recommendations. The letter added:

If you are dissatisfied with this decision, the next step [...] would be recourse to the World Bank Group Administrative Tribunal, which has its own rules and procedures for the filing of claims.

Application and preliminary objections

64. On 15 December 2020, the Tribunal granted the Applicant an extension, until 25 January 2021, to file his Application.

65. On 25 January 2021, the Applicant submitted this Application to the Tribunal making a broad range of claims, some twelve in total, relating to the Bank's treatment of him during his final months as CM of Sierra Leone following publication of the media article in January 2018.

66. The Applicant requests specific performance from the Bank, including (i) a public statement from the Bank, specifically sent to the *Sierra Leone Telegraph* and to the government of Sierra Leone, stating that the accusations set forth in the 20 January 2018 media article are false and that the Applicant never engaged in any improper partisan conduct; and (ii) proactive action taken by the Bank to have the media article removed from the internet.

67. The Applicant requests compensation in "an amount that the Tribunal deems fair and just" to compensate the Applicant for the Bank's failure to extend his appointment as CM for Sierra Leone, his loss of income and benefits as a result of his non-selection to the Mongolia CM position,

and lost opportunities to be selected for other CM or Country Director positions through non-shortlisting. The Applicant also seeks compensation for the harm to his career, his professional reputation, and his personal life, as well as for all other intangible damages and distress caused to the Applicant as a result of the challenged Bank decisions.

68. The Applicant further claims legal fees and costs in the amount of \$32,262.50.

69. On 16 February 2021, the Bank filed preliminary objections requesting that the Tribunal “confine this proceeding to cover only those claims that the Applicant timely submitted to PRS,” namely (i) the divestment of duties claim; (ii) the non-shortlisting claims for the Yemen and Lao PDR CM positions; and (iii) the non-feedback claims for the Yemen, Lao PDR, and Mongolia CM positions, and that the Tribunal otherwise dismiss each of the Applicant’s remaining claims in full.

70. In *Brar (Preliminary Objection)*, Decision No. 647 [2021], the Tribunal considered all twelve of the Applicant’s claims and determined that nine claims were inadmissible on the grounds of untimeliness or failure to exhaust internal remedies.

71. The Tribunal determined that the claims concerning (i) the divestment of duties; (ii) the non-shortlisting for the Yemen and Lao PDR CM positions; and (iii) the non-feedback for Yemen, Lao PDR, and Mongolia CM positions were admissible.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Applicant’s Contention No. 1

Management deprived the Applicant of due process by removing him from his CM duties and appointing an Acting CM

72. The Applicant contends that the Bank denied him due process when it initiated the removal of his CM responsibilities, and later appointed an Acting CM in his place, on the basis of the publication of a “slandorous news article” about him without providing him with notice or an opportunity to respond before implementing discipline. The Applicant asserts that, following the

publication of the slanderous media article, the Bank punitively and “effectively removed” his CM responsibilities, “within just one day,” “without bothering to investigate the allegations or defend [the Applicant] – despite requests by [the Applicant] and members of Sierra Leone’s government.”

73. The Applicant contends that management’s decision to remove him from duty in Sierra Leone was a direct result of the media article and not – “as the [Bank] now claims – simply an endorsement of an earlier leave request.” He asserts that two documents “unequivocally” prove this contention: (i) a 16 February 2018 email to him from his Country Director informing him that an Acting CM would be installed “during the transition period till [31 March]” and stating that “ways should be found to reduce further exposing [the Applicant] to the charged environment in Sierra Leone” for the Bank’s reputation and the Applicant’s “safety and security”; and (ii) an email chain from 21 January 2018 between the WBG President, the WBG CEO, and the AFRVP shortly after they learned of the media article. The Applicant asserts that, during this exchange, the WBG President “tried and convicted [the Applicant] without any investigation whatsoever,” and displayed “anger, and his clear desire that [the Applicant] be removed immediately from his function as CM.”

74. With respect to the appointment of an Acting CM, the Applicant contends that the appointment was motivated by the publication of the media article and not the Applicant’s “earlier email about possible leave arrangements.” The Applicant asserts that “the policies certainly do not establish that management may use the practice as it did here – to punish a staff member by divesting him of his duties and appointing another individual in his place, thereby conveying to all the world that the Bank endorsed the slanderous statements made in the news article.” Further, the Applicant contends that, “even if such an arrangement *were* allowed as punishment, management certainly cannot invoke it without providing due process.” (Emphasis in original.)

The Bank's Response

The Applicant was not removed from his role or from active duties, and the Bank's appointment of an Acting CM was not improper

75. The Bank contends that it did not, at any time, formally “remove” or “divest” the Applicant from his role as CM for Sierra Leone. To the contrary, the Bank states that the record clearly shows that the Applicant’s appointment as CM for Sierra Leone was scheduled to conclude at the end of March 2018. The Bank submits that the Applicant remained “formally appointed to the [CM] position until that time and, therefore, held that position, for the full term of his scheduled appointment.”

76. Further, the Bank submits that it did not improperly “remove [the Applicant] from active duty” as CM at any time. Rather, the Bank states that the record shows that, on 11 January 2018, the Applicant expressly requested that he be entitled to take leave (both R&R leave and administrative leave) towards the end of his appointment in order to “prepare for [...] transition” to his next assignment with his former Global Practice. Moreover, the Bank states that, when requesting that leave on 11 January 2018, the Applicant expressly stated to his manager that, in light of his transition plans, he would only have around “four weeks left for work in Sierra Leone.” To the Bank, this statement demonstrates that “the Applicant, himself, only envisaged continuing to engage in active duties in Sierra Leone until around early February 2018.”

77. Based on the Bank’s contentions above, the Bank submits that “this is not a case where the [Bank] unilaterally placed the Applicant on administrative leave against his will,” but rather a case where the Bank approved the Applicant’s own leave requests, “which the Applicant had accrued, and to which [he] was entitled” under the Bank’s applicable policies and procedures. To the Bank, the fact that management ultimately endorsed and approved the Applicant’s leave request after publication of the media article, and in furtherance of the Bank’s own managerial discretion, as well as reputational and operational priorities for Sierra Leone at the relevant time, “could not on any view be reasonably construed” as the Bank improperly removing the Applicant “from active duty” as CM.

78. The Bank contends that it did not improperly appoint an Acting CM in this case. To the contrary, the Bank submits that its “appointment of [Mr. A] as [Acting CM] for Sierra Leone was entirely consistent with the [Bank’s] applicable policies and procedures,” including the Bank’s Procedure on Signature Authority, its Directive on Delegation of Functional Authority, and its Procedure on Position Management. Those policies and procedures expressly provide for an alternative staff member to be appointed to act in place of managerial staff members while they are absent from office due to leave, illness, mission, training, or otherwise and thus not in a position to actively perform their official duties. The Bank’s Procedure on Position Management permits a position, such as the Applicant’s CM position, to be “double-encumbered for a limited period of time to accommodate a handover period.”

79. Notwithstanding its entitlement to do so, the Bank submits that in this particular case it did not actually purport to “double-encumber” the position by formally appointing another CM for Sierra Leone during the Applicant’s tenure. Instead, it opted to put in place an acting arrangement in order to “minimize disruption to the [Sierra Leone] work program, and to ensure the continuous management of staff and client relations” during the Applicant’s absence on leave. In addition, the Bank notes that it expressly instructed its staff in Sierra Leone to “continue to copy [the Applicant] on work related matters” until the end of his tenure on 31 March 2018. Therefore, the Bank contends that the appointment of Mr. A as Acting CM “during the Applicant’s leave period” was entirely consistent with the Bank’s applicable policies and procedures and was neither improper nor “highly irregular” as alleged by the Applicant.

The Applicant’s Contention No. 2

Management’s failure to shortlist the Applicant breached the terms of the FCS Shortlisting Policy

80. The Applicant contends that he was not shortlisted for the first three positions for which he applied, in contravention of the FCS Shortlisting Policy, because he was removed from the Yemen shortlist. He asserts that management’s decision to remove him from the shortlist before finalizing it “is equivalent to excluding him from it.” The Applicant also contends that his “track record” as CM of Sierra Leone was excellent, and he rejects management’s contention that “special

circumstances” existed based on concerns about “[his] track record as CM” to enable senior management to “opt-out” of the FCS Shortlisting Policy with regard to his job applications. The Applicant asserts that his “2018 Annual Review, which covered nine months of the FY [20]18 evaluation period including of course January 2018, makes no reference at all to any shortcomings in his CM role in Sierra Leone.”

81. The Applicant contends that management’s violation of the FCS Shortlisting Policy “is another instance of punishment without due process.” He asserts that

top Bank management deemed [the Applicant] blacklisted from all CM positions based on the media article, but never informed him that it was doing so, never gave him an opportunity to respond and defend himself, and never even bothered to investigate the allegations or understand the context in which his speech was given.

The Applicant further asserts that “the Tribunal’s precedent and the Staff Rules are clear that management has no right to take such a sweeping punitive action without affording a staff member basic due process.”

The Bank’s Response

The shortlisting decisions were consistent with the Bank’s applicable policies and were not an abuse of discretion

82. The Bank contends that there were two principal guidelines applicable to the substantive shortlisting process for the Grade Level GH Yemen and Lao PDR CM positions for which the Applicant applied – namely, the Managerial Recruitment Accountability and Decision-Making (ADM) matrix and the FCS Shortlisting Policy – and that its shortlisting decisions were consistent with those policies and were not an abuse of discretion.

83. The Bank submits that the shortlisting decisions were conducted consistently with the Managerial Recruitment ADM because the record shows that

[t]he proposed shortlist for each of the Yemen and Lao PDR [CM] positions was initially compiled by the shortlisting committee, being the Operations Talent

Council, having regard to, among other things, the suitability of candidates to the requirements of the roles and diversity considerations;

The proposed shortlist for each position was formally recommended by the relevant Line Director (being the Yemen and Lao PDR Country Directors respectively) and approved by the relevant Line Vice President (being the MENA [Middle East and North Africa] and EAP [East Asia and Pacific] Regional Vice Presidents respectively);

The proposed shortlist for each position was then sent to [s]enior [m]anagement, namely the World Bank Group's CEO, as notice and for any final comments, prior to finalization; and

In the case of the Yemen [CM] role, the above process was repeated after the Applicant was removed from the proposed shortlist following discussions between the World Bank Group's CEO and the Vice President for the MENA Region, before the shortlist for that position was ultimately finalized.

84. The Bank also submits that the shortlisting decisions were consistent with the FCS Shortlisting Policy. The Bank contends that “the Applicant was, in fact, included on the preliminary shortlist for three of the five positions to which he applied during late 2017 – early 2018, as envisaged by the FCS Shortlisting Policy” – namely, a Practice Manager position within the Bank's Governance Global Practice, the CM position for Mongolia, and the CM position for Yemen.

85. The Bank further contends that the Applicant's subsequent removal from the shortlist for the Yemen CM position and his non-shortlisting for the Lao PDR CM position do not constitute violations of the FCS Shortlisting Policy because the Policy “did not give the Applicant, or for that matter any other eligible FCS candidates, an *unqualified* guarantee that they would be always shortlisted for the first three positions to which they applied.” (Emphasis in original.) To the contrary, the Bank contends that the FCS Shortlisting Policy expressly reserved senior management's discretion to “opt-out” of the Policy “under special circumstances,” including, among other things, a “staff's performance history, any potential organization risk, and other justifiable business reasons.” The Bank submits that the Bank's decision to remove the Applicant from the shortlist for the Yemen CM position was a proper and permissible exercise of senior management's discretion under the FCS Shortlisting Policy because the removal was due to senior management's “concerns about the [Applicant's] suitability [for shortlisting ...] based on his track

record as [CM]” and, further, that those concerns fell squarely within the recognized category of “special circumstances” mentioned above.

86. In addition, the Bank contends that there were “clearly sound and justifiable bases” for senior management’s concerns at the time of the decision to remove the Applicant from the Yemen CM position shortlist. Unlike the earlier shortlisting decisions for the Practice Manager and Mongolia CM positions, the Bank submits that the Yemen CM shortlisting decision “was made *after* senior management had become aware” of (i) the politically charged speech the Applicant delivered publicly on 16 January 2018 in Sierra Leone; (ii) the publication of the 2018 media article; (iii) the fact that the Applicant’s conduct had already stirred up media controversy in the past; and (iv) the fact that the Applicant had previously been warned to be more selective about his media engagement in the lead-up to the general and presidential elections in Sierra Leone. (Emphasis in original.) The Bank contends that the record shows that the Applicant’s conduct and, in particular, the content of his speech delivered on 16 January 2018 were considered by senior management to be “poor judgment” and inappropriately “political in nature” given that Sierra Leone was in the midst of presidential campaigns for an impending election.

The Applicant’s Contention No. 3

The Bank improperly refused to provide the Applicant with feedback as to his CM applications

87. The Applicant contends that the Bank improperly refused to provide him with feedback regarding his CM applications and that it offers no legitimate excuse for failing to follow its own recruitment practices. The Applicant asserts that the “boilerplate” information provided to him by the Bank when he was notified that he was not selected for the Yemen and Lao PDR positions “cannot possibly be considered appropriate feedback” because the “information provides no useful insight to an applicant that he or she can use to strengthen future applications,” in contravention of the Bank’s obligations under Principle 2.1 of the Principles of Staff Employment.

88. The Applicant further contends that the Bank’s mention of his not contemporaneously requesting feedback when he received the non-shortlisting and non-selection notices is without merit. The Applicant asserts that it “is simply ridiculous to suggest that a staff member is required

to request feedback immediately or forfeit forever his right to it.” The Applicant asserts that the Bank is “required to provide feedback in order to fulfil its transparency obligations to staff members and to observe good recruitment practices.” The Applicant rejects the Bank’s assertion that he ultimately received explanations for his non-shortlisting during the PRS process, stating, “To force staff members to resort to PRS to obtain feedback is ludicrous.”

89. Finally, the Applicant dismisses the Bank’s assertion that the Applicant was not prejudiced because he had already accepted another position by the time he had requested the feedback. The Applicant contends that his “acceptance of another position is irrelevant to the Bank’s obligation to provide feedback; no Bank policy or Tribunal precedent states that feedback is conditioned upon the Applicant not having yet found a different position.” The Applicant contends that, even under these circumstances, feedback serves an important purpose in that it provides applicants with information that they can use to improve their candidacy for similar roles in the future.

The Bank’s Response

The Applicant was not prejudiced by the Bank’s failure to provide contemporaneous feedback as to his CM applications

90. The Bank contends that its failure to respond directly to the Applicant’s requests for feedback regarding the Yemen, Lao PDR, and Mongolia CM positions did not result in any material detriment to, or otherwise prejudice, the Applicant.

91. First, with respect to the Yemen and Lao PDR CM positions, the Bank asserts that it provided the Applicant with timely notice that he had not been shortlisted for the positions and simultaneously gave him a clear explanation as to why that was the case, namely, because “other candidates were assessed to match more closely the required criteria” for the role.

92. Second, the Bank contends that, despite the Applicant’s becoming aware that he was not shortlisted for the Yemen and Lao PDR CM positions on 26 February and 15 March 2018, respectively, and being notified that he was not selected for the Mongolia CM position on 5 April 2018, he did not actually request feedback from the Bank contemporaneously. The Bank asserts

that, instead, the Applicant “sent all his requests for feedback in early May 2018, in a series of separate emails issued in relatively quick succession, approximately two weeks before filing his Request for Review with PRS, and without following up on, or reiterating, his requests for feedback with HR thereafter.” The Bank asserts that, once the Applicant initiated the PRS proceedings, it provided detailed explanations together with supporting documentation as to why he was not shortlisted for the Yemen and Lao PDR CM positions or selected for the Mongolia CM position as part of the PRS process. This “went well beyond the kind of information the [Bank] would ordinarily provide to unsuccessful candidates seeking feedback on the [Bank’s] recruitment decisions.”

93. Last, the Bank contends that, by the time the Applicant made the feedback requests in 2018, he “had already exercised his right to re-enter, and had accepted a future assignment with, his former Global Practice” in a technical Grade Level GH position. The Bank contends that the Applicant did not therefore suffer any material detriment or prejudice arising from the non-feedback.

THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

WHETHER THE APPLICANT WAS DIVESTED OF HIS DUTIES BY THE BANK’S DECISION TO APPOINT AN ACTING CM AND, IF SO, WHETHER THIS CONSTITUTED AN ABUSE OF DISCRETION

94. The Tribunal observes the Applicant’s contention that the Bank divested him of his CM duties by placing him on leave and appointing an Acting CM in his place following the publication of a media article about him in an online publication on 20 January 2018. It further notes that the Applicant contends that the Bank took these actions without providing him with notice and an opportunity to respond, thereby taking disciplinary action against him without due process.

95. In *ET*, Decision No. 592 [2018], para. 91, citing *DO*, Decision No. 546 [2016], para. 33, the Tribunal reaffirmed that

it will not overturn a discretionary managerial decision, unless it is demonstrated that the exercise of discretion was “arbitrary, discriminatory, improperly motivated,

carried out in violation of a fair and reasonable procedure, or lack[ed] a reasonable and observable basis, constitute[ed] an abuse of discretion, and therefore a violation of a staff member's contract of employment or terms of appointment.”

See also AK, Decision No. 408 [2009], para. 41; *Desthuis-Francis*, Decision No. 315 [2004], para. 19; *Marshall*, Decision No. 226 [2000], para. 21.

96. The Tribunal will now review whether the Bank's decision with regard to the Applicant's CM term and the appointment of an Acting CM following the publication of the media article on 20 January 2018 constituted an abuse of discretion.

97. The record indicates that in the fall of 2017 the Applicant's CM term was extended by the AFRVP by six months to the end of March 2018 to coincide “with the end of the elections in [Sierra Leone].” The record further indicates that the Applicant's 2017 performance review, conducted three months prior to the speech he delivered in January 2018, had advised him, specifically, of the “need to be more selective with media interactions as the country heads to elections in March 2018.”

98. The record further indicates that on 11 January 2018 the Applicant wrote to his manager regarding his transition plans out of the CM of Sierra Leone role, stating that he had been in touch with his Global Practice regarding his next assignment and that there were several good options on the table. He stated that he was preparing for the forthcoming CMU retreat that would take place during the first week of February 2018. He stated that after the retreat he would be proceeding on R&R. He further stated that in March 2018 he would be taking administrative leave in order to prepare for his transition, as well as his pre-assignment visit. In his own words, he therefore had around four weeks left for work in Sierra Leone from 11 January 2018.

99. Four weeks from the date of the Applicant's email of 11 January 2018 would have taken him to 8 February 2018. This was the approximate period the Applicant had expected to continue to work as CM in Sierra Leone. After that (at the end of the CMU retreat) he intended to take two weeks of R&R leave, followed by annual leave until 9 March 2018, and thereafter ten days of administrative leave in order to prepare for his transition. He also made a pre-assignment visit to

WBG headquarters. All of this taken together would have brought him through to the end of March 2018, which coincided with the official end of his CM term.

100. The Tribunal observes that a subsequent brief email exchange between the Applicant and Country Director took place on 11 January 2018 which raised, in tentative terms, the possibility of a potential extension of the Applicant's CM term. The Applicant's short reply, "Best to hear first from [the AFRVP]," expressed neither interest nor disinterest, but, in fact, no actual offer of an extended term was ever made. The Tribunal further observes that on 21 January 2018, following the publication of the media article, the Country Director wrote to the Applicant confirming that the AFRVP would not extend his term "beyond March 2018." The Country Director also stated:

Based on your email of 11 January, we will need to start putting in place the transition arrangements ahead of the next CM coming on board. Assuming that you would take your R&R from mid-February and admin leave in March, I will plan to have the transition arrangements from mid-February. We will need to inform [Country Office] staff and the government about the transition arrangements during my visit to Sierra Leone [from] February 4–10.

101. The Tribunal observes that the next day, on 22 January 2018, the Country Director finalized, via email, the Applicant's transition arrangements in line with the terms proposed by the Applicant in his 11 January 2018 email. The Country Director added that he was "still sorting out Acting CM arrangements" in the Applicant's absence from the office.

102. The Tribunal observes that on 14 February 2018, some weeks after the publication of the media article, the Country Director emailed the Applicant requesting an update on his plans for March 2018. He informed the Applicant that two staff members in the Country Office had agreed to be the "substantive Acting CM" and "Head of Office," respectively, during his absence "with authority to approve/sign RM related documents."

103. The record demonstrates that later that day the Applicant replied to the Country Director asking why a "substantive CM" had been appointed before the end of his term, stating, "[I]t seems that the decision to remove me as substantive CM seems to have been made by [m]anagement without providing me an opportunity to give any explanation."

104. The Tribunal observes that the Country Director responded to the Applicant's email on 16 February 2018 explaining management's decision. The Country Director recalled that the matter had been referred to colleagues in AFREC for advice as to what steps should be taken by the Bank in response. AFREC had made recommendations regarding the best way to manage the potential reputational risks, advising that the Applicant (i) should not make any public statements on the issue to the media; (ii) use quiet diplomacy to contain any further media publications on the issue; (iii) encourage the government to be transparent about the audit report and an action plan on the use of donated funds; and (iv) ensure that he stays out of the limelight both in the media and at all public events.

105. The Applicant was further advised that, while senior management appreciated the difficulties CMs face with the media in many countries, it was particularly unhappy with a statement he had made during the event on 16 January 2018 regarding the use of funds donated to the government of Sierra Leone in the aftermath of the August 2017 mudslides. In the view of senior management, the statement made could be seen as political in nature, at a time when the country was in the midst of election campaigns. Senior management was particularly sensitive to potential accusations of political interference by the Bank in the aftermath of press reports. Senior management had also considered past complaints about public statements made by the Applicant in the media which had stirred controversy, and concern was expressed about the way he had communicated in the media and with the public.

106. The Tribunal observes that, additionally, management was concerned about any further statements which the Applicant might make during the remaining period of his term as CM in Sierra Leone, which could be picked up by the media, and that it recommended that his position as CM in Sierra Leone should not be extended beyond 31 March 2018, and that, in the meantime, ways should be found to reduce his further exposure to the charged environment in Sierra Leone.

107. The Tribunal notes that, in deciding on arrangements for the transition period to the end of the Applicant's CM term in Sierra Leone, regard was had to four factors, namely, (i) the Applicant's request to take R&R during the second half of February 2018; (ii) that this would be followed by annual leave until 9 March 2018; (iii) that thereafter he would be on administrative

leave; and (iv) that he would make a pre-assignment visit in March in preparation of his next position. In order to ensure continuity in managing the Sierra Leone office, staff, and client relations, it was decided that it would be best to have a person acting as the substantive CM during the transition period until 31 March 2018.

108. The record shows that on 20 February 2018 the Country Director informed staff in the Sierra Leone Country Office of the upcoming transition arrangements in an email titled “Sierra Leone Acting CM interim arrangements.” He recalled that the Applicant was coming to the end of his term as CM for Sierra Leone on 31 March 2018 and apprised them of the various reasons why he would be on leave. He informed the staff that, to minimize the disruption to the work program and to ensure continuous management of staff and client relations, it had been agreed to assign an Acting CM until 31 March 2018. He expressly advised that “teams” should continue to copy the Applicant on work-related matters until 31 March 2018.

109. The Tribunal notes that the Applicant’s term ended, as scheduled, on 31 March 2018. He started his new position as Lead Governance Specialist in Nigeria on 2 April 2018.

110. Having considered the record, the Tribunal does not find anything thereon to suggest that the Applicant was divested of his CM duties at any point prior to the end of his term. On his own account, he had intended to be away from the office on leave for at least six of the last eight weeks of his CM appointment. The Tribunal considers that, in the circumstances that prevailed, it was entirely prudent and in line with good practice for management to appoint an Acting CM to ensure business continuity and a seamless transition. This approach was consistent with the relevant policies and procedures governing such occurrences, including, in particular, the Bank’s Directive on Delegation of Functional Authority and its Procedure on Position Management. That the Applicant’s term was due to expire at the end of March 2018 was reiterated in numerous emails between the Country Director and the Applicant. For the short period in question prior to the Applicant’s departure, the Bank chose not to “double-encumber” his position as it could have done in order to accommodate the handover period. Instead, it chose to put in place an arrangement whereby another staff member was to be designated as “Acting CM” in the absence of the Applicant while he was on leave for legitimate reasons. The Country Director emailed staff in the

Sierra Leone Country Office and expressly instructed them to copy the Applicant on all work-related matters until 31 March 2018. This direction demonstrates that management recognized the Applicant as CM until 31 March 2018 and conveyed this position to all relevant personnel. The emails confirm that interim arrangements were to be put in place such that, during the Applicant's leave of absence (to which he was entitled), a system of "Acting" CM would operate.

111. Nor does the Tribunal find anything in the record to support the Applicant's contention that he was "disciplined." No disciplinary proceedings or punitive measures of any kind were initiated against him. On the contrary, the Bank, on 10 February 2018, accommodated his own request for leave and transition planning as set out in his 11 January 2018 email. He had specifically indicated that from approximately 8 February 2018 he would be proceeding on R&R leave and that in March 2018 he would be taking administrative leave as he wanted time to prepare for his transition to his next appointment. The record does not support the Applicant's contention that he was disciplined by the Bank's decision to end the Applicant's CM term on 31 March 2018, the date on which it was due to end.

112. The Tribunal considers that it was reasonable for the Bank to consider that the sensitivity of the issues and allegations that had arisen in the aftermath of the media article had the potential to damage the Bank's reputation. The advice received from AFREC on which the Bank acted was important not just for the Bank's reputation but also for the Applicant's own protection. By requiring the Applicant to maintain a low profile and to exercise discretion and diplomacy in accordance with AFREC's recommendations, the Bank was exercising appropriate managerial discretion.

113. The Tribunal does not accept the Applicant's contention that the Bank "endorsed" the "slandorous statements" in the media article. His appointment by the Bank to his current Grade Level GH position as Lead Governance Specialist in Nigeria undermines, entirely, his contention in this regard.

114. In summary, the Tribunal does not consider that the record shows any impropriety regarding the transitional arrangements that were put in place by the Bank in the lead-up to the

expiry of the Applicant's term as CM for Sierra Leone. The arrangements made cannot be viewed in any way as disciplinary actions against the Applicant. The record is clear that the Applicant was not terminated from his CM position or from any other position and was in fact appointed to an important position in Nigeria.

115. That being so, the Applicant's contention that he was "tried and convicted" by an email exchange on 21 January 2018 between the WBG President, the WBG CEO, and the AFRVP is not supported by the evidence. The Tribunal acknowledges that this email exchange illustrated the urgency, apprehension, and grave concern generated by the disturbing allegations published in the media article and the potential they had to cause irreparable damage to the Bank's reputation. The AFRVP's reference to a prior "reprimand" in his reply to the WBG President and the WBG CEO was, undoubtedly, a reference back to warnings and advice which the Applicant had received regarding his interactions with the media. Given the WBG President's and the WBG CEO's understandable alarm about what had just transpired, the AFRVP reassured them that the Applicant was coming close to the end of his term and that the Bank's Communications Team was working to limit the damage caused by his speech. In view of the Tribunal's finding that the Applicant was not divested of his position as CM prior to the end of his term, the Applicant's contention concerning the email exchange is not sustained.

116. Based on the foregoing, the Tribunal finds that the Applicant was not divested of his duties prior to the end of his term. Accordingly, it finds that the Bank's decision to appoint an Acting CM in the period between the Applicant's taking leave and the ending of his term was entirely reasonable and did not constitute an abuse of discretion.

WHETHER THE BANK'S DECISION NOT TO SHORTLIST THE APPLICANT FOR THE YEMEN AND LAO
PDR CM POSITIONS COMPLIED WITH THE APPLICABLE POLICIES AND WAS NOT AN ABUSE OF
DISCRETION

117. The Tribunal observes that the Yemen and Lao PDR CM positions were each Grade Level GH managerial positions, and thus the only Bank policies applicable at that time to the substantive shortlisting process were the Managerial Recruitment ADM and the FCS Shortlisting Policy.

118. The Managerial Recruitment ADM is contained in a document titled “WBG Governance: Executive, Managerial and Technical Appointments” and provides that, in respect of competitive recruitments, Line Directors are responsible for making recommendations about shortlisting and selection of candidates, Line Vice Presidents are responsible for deciding on shortlisting and selection of candidates, and the WBG CEO is to be given notice of the proposed shortlist and selection before the shortlist is finalized.

119. The FCS Shortlisting Policy, which was in place at the relevant time, was codified in a July 2010 Kiosk Announcement titled “Increased Support to Current and Returned FCS Staff.” It provided, inter alia, as follows:

Since 2008, HR has made several policy and practice enhancements to better support staff working in fragile and conflict affected states (FCS).

The latest enhancement provides for automatic short-listing through [MyJobWorld] for the first three Bank positions to which current and recently-returned FCS assignees apply. The short-listing “window of opportunity” opens the day the staff member begins his/her FCS assignment and ends six months after the FCS assignment end date, or earlier if the three short-listing opportunities are used up before the window closes.

120. The WBG could decide, under certain circumstances, not to apply the automatic shortlisting policy within the “window of opportunity.” The “opt-out” provision stated:

Under certain special circumstances, however, senior management may opt out in shortlisting. Circumstances in which management may opt out of automatic shortlisting may be due to the following, including, but not limited to, staff’s performance history, any potential organizational risk, and other justifiable business reasons.

121. With respect to the selection and recruitment of staff members, the Tribunal in *Riddell*, Decision No. 255 [2001], para. 23, stated that

no staff member has a right to be selected to a particular position or to be included in a list of candidates for a position. The decision to select an applicant for a particular position, or to include him or her in a list of candidates, is discretionary and the Tribunal will not overturn such a decision unless it finds that it is tainted by bias or abuse of discretion.

122. In *Jassal*, Decision No. 100 [1991], para. 37, the Tribunal held:

It is not for the Tribunal, in assessing the validity of the selection or non-selection of a staff member, to undertake its own examination of that staff member's record, or a criterion-by-criterion assessment of his or her qualifications. That is for the Bank to do in the first instance, subject to review by the Tribunal only for abuse of discretion. But the Tribunal is charged with determining whether the Bank's decision was the product of bias, prejudice, arbitrariness, manifest unreasonableness, or unfair or improper procedure. Thus, if the Bank's conclusion regarding the [a]pplicant's qualifications [...] altogether lacks support in factual evidence or reasonable inference, that conclusion must be found to be an abuse of discretion.

123. The Tribunal observes that on 26 January 2018, six days after the publication of the media article concerning the Applicant's public comments, the WBG CEO received a shortlist, prepared by the Operations Talent Council, for the Yemen CM position and that the Applicant was one of the proposed candidates. The WBG CEO then shared her concerns about the suitability of the Applicant with the MNAV, and the Applicant's name was removed. The Tribunal notes that on 26 February 2018 the Applicant was notified that he was not shortlisted as other candidates had been assessed to match more closely the required criteria.

124. The Tribunal further observes that the Operations Talent Council decided not to shortlist the Applicant for the Lao PDR CM position in early March 2018. The shortlist was sent to the WBG CEO on 15 March 2018, and it was finalized on the same day. Later that day, the Applicant was notified by HR that he was not shortlisted as other candidates had been assessed to match more closely the required criteria.

125. The Tribunal observes that the Bank had identified and published certain circumstances in which the automatic shortlisting policy would not apply. The FCS Shortlisting Policy was subject to clear criteria and limitations, such as a right for senior management to "opt-out" of applying the automatic shortlisting in "special circumstances" including, but not limited to, "staff's performance history, any potential organizational risk, and other justifiable business reasons." The record shows that the Bank was deeply concerned about the adverse publicity generated by the Applicant's remarks at a politically sensitive time in Sierra Leone and about the potential risk of damage which his politically charged statement could pose to the Organization's reputation and

integrity. It further shows that, prior to the speech in question, the Applicant had been given feedback and support regarding areas for improvement in his employment, particularly in the area of interpersonal skills, diplomacy, and his interactions with the media.

126. The Tribunal is satisfied that, having regard to the conditions which prevailed at the time, the Bank was entitled to regard them as constituting “special circumstances” and to exercise the “opt-out” provision of the FCS Shortlisting Policy. It considers that the Bank was justified in its concerns arising from the Applicant’s speech at the public event in Sierra Leone and from the associated adverse media coverage generated thereby. While acknowledging the generally positive nature of the Applicant’s performance reviews, the Tribunal finds that, having regard to the serious reputational risk which his actions brought upon the institution, senior management was justified in exercising its discretion under the “opt-out” provision of the FCS Shortlisting Policy when it decided not to shortlist the Applicant for the Yemen and Lao PDR CM positions.

127. Moreover, the Tribunal recalls its jurisprudence that “no staff member has a right to be selected to a particular position or to be included in a list of candidates for a position.” *Riddell* [2001], para. 23. The position of CM is an important and visible one, and those appointed to such an office play an important ambassadorial role within the Bank. In many cases, the CM may be the face of the Bank in a given country. The Tribunal considers that management is entitled to exercise broad discretion and to take into account factors such as a candidate’s capacity for diplomacy and discretion when choosing persons for the position of CM. In this regard, the Tribunal observes that the vacancy notice for the Yemen CM position specified that management may consider many factors in appointing the candidate, including “[s]trong political, diplomatic, and partnership skills.” The Bank could be justified in its consideration that the Applicant’s ostensible endorsement of the government of Sierra Leone in January 2018, at a particularly important and sensitive time just prior to an election, demonstrated, arguably, a want of discretion on his part – particularly in circumstances where his most recent performance review, conducted just three months earlier, had warned him about the need to be more selective about media interactions in the lead-up to the election. The Tribunal is satisfied that the Bank was entitled to exercise its discretion, broadly, when choosing the Bank’s representative in a Country Office and that, in the Applicant’s case, it did not exercise that discretion in an improper or arbitrary fashion.

128. Based on the foregoing, the Tribunal is satisfied that the Bank complied with the Managerial Recruitment ADM for both the Yemen and Lao PDR CM positions. In both cases, the shortlists were decided by the Operations Talent Council (chaired by the OPCS Vice President), recommended and approved by the applicable and respective Line Directors and Vice Presidents, and sent to the WBG CEO as notice for her final review. Furthermore, the Tribunal is satisfied that the Bank's decision not to shortlist the Applicant for the Yemen and Lao PDR CM positions did not contravene the applicable and relevant policies, including the FCS Shortlisting Policy, and was not an abuse of discretion.

WHETHER THE BANK'S FAILURE TO PROVIDE FEEDBACK TO THE APPLICANT ON THE MONGOLIA,
YEMEN, AND LAO PDR CM DECISIONS WAS AN ABUSE OF DISCRETION

129. The Tribunal observes that the Mongolia, Yemen, and Lao PDR CM positions were each Grade Level GH managerial positions and that, consequently, the provisions of the Non-Managerial Recruitment Guide for Open-Ended/Term Staff relating to the obligations to provide feedback did not apply to the Applicant's non-feedback claims. In view of the Applicant's grade level, the applicable provisions relating to feedback for the positions in respect of which the Applicant applied are to be found in the "Interview Guide – World Bank Group GH+" (GH+ Interview Guide).

130. In the GH+ Interview Guide under the heading of "General Guidelines," the following is stated:

Notification to candidates who have not been shortlisted

- As soon as possible after the short-lists have been cleared, the candidates who have not been short-listed will be advised in writing by [HR] that their application(s) has been unsuccessful.
- The [HR] recruiter involved in the shortlisting committee would normally keep a copy of the notes and provide feedback to candidates *as requested*. [Emphasis added.]

131. The Tribunal observes that the GH+ Interview Guide provides that feedback should be provided upon request but that it does not specify a particular time frame within which such feedback should be delivered following a request being made.

132. The Tribunal recalls that the Applicant was informed of his non-shortlisting for the Yemen CM position on 26 February 2018 and for the Lao PDR CM position on 15 March 2018. He did not seek feedback for either of these non-shortlisting decisions until 2 May 2018. It further recalls that he was informed of his non-selection for the Mongolia CM position on 5 April 2018. He did not request feedback on this decision until 3 May 2018.

133. The Tribunal observes that, in order for feedback to be given in accordance with the provisions of the GH+ Interview Guide cited above, an unsuccessful candidate must, in the first instance, request such feedback. Absent such a request there is no automatic obligation on the Bank to provide feedback. In this regard it observes that the Applicant did not request feedback until nine weeks after the Yemen CM non-shortlisting decision, seven weeks after the Lao PDR CM non-shortlisting decision, and over four weeks after the Mongolia CM non-selection decision.

134. While some lapse of time might reasonably be allowed for a candidate to process the disappointment of non-shortlisting or a non-selection decision, the delay on the Applicant's part in this case appears somewhat inordinate. The Tribunal observes that, having so delayed, the Applicant decided to seek feedback only two weeks prior to submitting his PRS complaint. Having waited nine, seven, and over four weeks, respectively, to make a request for feedback, his allowing the Bank only two weeks to reply to his delayed request appears somewhat unreasonable in all the prevailing circumstances. In the Tribunal's view, and as a general principle, reasonableness should be displayed by both parties when it comes to seeking and providing supportive feedback in the context of career development. Whereas, arguably, there may exist a greater onus on the Bank to be somewhat more proactive in providing less experienced employees with detailed feedback so as to nurture them in their career development, those in more senior positions, such as the Applicant, may reasonably be expected to know that they are required to request feedback if such is desired. Finally, the Tribunal observes that, once the Applicant filed a Request for Review with PRS, he did, of course, receive the feedback which he had sought, rather belatedly, two weeks

prior to the filing thereof. For the avoidance of doubt, the Tribunal confirms that PRS is not, in principle, the appropriate mechanism through which feedback should be given to a staff member who requests it. However, the circumstances of this case were such that the Applicant had not afforded the Bank a reasonable opportunity to furnish feedback in advance of filing his PRS Request for Review.

135. Based on the foregoing and in view of the totality of the circumstances, the Tribunal does not find any significant failure on the part of the Bank in terms of providing feedback for the Mongolia, Yemen, and Lao PDR CM decisions. It is further satisfied that, in view of the Applicant's continued position which is consistent with the terms of his appointment, he has suffered no detriment or prejudice for which the Bank may be liable.

136. Finally, the Tribunal recalls that, in *Brar (Preliminary Objection)* [2021], it reserved the question of legal fees and costs for determination at the merits stage. Upon consideration, the Tribunal has decided not to award the Applicant any legal fees and costs.

DECISION

The Application is dismissed.

/S/ Andrew Burgess

Andrew Burgess

President

/S/ Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C., * 8 November 2021

* In view of the public health emergency occasioned by the COVID-19 pandemic and in the interest of the prompt and efficient administration of justice, the Tribunal conducted its deliberations in these proceedings remotely, by way of audio-video conferencing coordinated by the Office of the Executive Secretary.