



World Bank Administrative Tribunal

2021

Decision No. 665

**GK,
Applicant**

v.

**World Bank Group,
Respondent**

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

**GK,
Applicant**

v.

**World Bank Group,
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 on 21 May 2021. The Applicant was represented by Ryan E. Griffin and Brita Zacek of James & Hoffman, P.C. The World Bank Group (Bank) was represented by David Sullivan, Deputy General Counsel (Institutional Affairs), Legal Vice Presidency. The Applicant's request for anonymity was granted on 21 October 2021.

3. The Applicant challenges (i) the decision of the Vice President, Human Resources (HRVP) that he committed misconduct in violation of Staff Rule 8.01, paragraphs 2.01(a)–(c) and 4.06, and (ii) the imposition of disciplinary sanctions therein.

FACTUAL BACKGROUND

4. The Applicant joined the Bank in April 2017 as an Advisor to an Executive Director of the Bank. Prior to joining the Bank, the Applicant worked as an advisor to the Somalian Ministry of Finance (MoF) from July 2012 to April 2017. The Applicant also served as an Executive Director with the Islamic Development Bank (IsDB) from approximately September 2014 to December 2017. His IsDB appointment overlapped with his Bank appointment. The Applicant declared this potential conflict of interest to the Bank and received permission to finish his IsDB term.

5. The Applicant's Letter of Appointment (LOA), dated 2 March 2017, expressly stated that his appointment was "subject to the conditions of employment, including the Staff Rules and the

relevant Procedures of the World Bank Group, presently in effect and as they may be amended from time to time.” The Applicant signed the LOA on 5 March 2017, certifying that he had received, read, and understood the relevant Staff Rules and the Code of Conduct for Board Officials. Upon joining the Bank, the Applicant declared in his Bank Personal History Form that neither he nor any of his relatives had “any ownership, employment, or other interest in an entity that has a business relationship with a World Bank Group institution.” Further, throughout his tenure the Applicant did not disclose any such interests in his annual Disclosure of Interest filings.

6. In his role as an Advisor to an Executive Director, the Applicant was “responsible for the Somalia and Sudan portfolios in addition to the EDS14 Fragility, Conflict, and Violence (FCV) strategy.” The Applicant claims that neither he nor his Executive Director “had any direct involvement in the procurement or bidding processes for Bank-financed contracts, nor did they play any role in awarding contracts for Bank-financed projects.”

The initial Notice of Alleged Misconduct

7. In June 2018, the Integrity Vice Presidency (INT) received an anonymous complaint from self-described “[c]oncerned world citizens” alleging that the Applicant personally enriched himself through multiple Bank-financed consultancy contracts awarded to Company X, a Somalia/Kenya-based company in which the Applicant had a financial interest and management role. The complaint further alleged that the Applicant concealed his involvement with Company X through his alleged brother, Mr. A (also known by other names), and his alleged sister, Ms. B. The complaint also alleged that the Applicant’s close friend acted as Company X’s managing director but accepted instructions from the Applicant.

8. More specifically, the anonymous complaint stated:

[The Applicant] recruited his brother [Mr. A] from UK to control [Company X] Somalia. He also sent his maternal sister from US to Nairobi Kenya and instructed her to open a shell company with similar name. His brother accompanied her when she was opening this fake company. [...]

Attached bank statements show that [Mr. A] has access to the shell company's Nairobi bank account. These two brothers, their maternal sister and another man, all of whom with UK/US passports committed prosecutable international financial crimes.

[Company X] Somalia was awarded [...] contracts by the World Bank through [Company Y]. However, [the Applicant] diverted funds to his shell company in Nairobi, Kenya with the help of [Company Y]'s Nairobi office. As you can see in the attachments and mentioned above, he registered another (shell) [Company X] entity in Nairobi, Kenya under his maternal sister's name and opened a bank account at First Community Bank. He then convinced an associate of his at [Company Y] to deposit [Company X] Somalia's funds into this account.

[Company X] Somalia is now controlled by [the Applicant]. Because of his wealth from scamming World Bank projects, he made sure the organization is run by his brother, [Mr. A] and his close friend, [Mr. C] (with British passport). [Mr. C] is also a senior advisor to the prime minister of Somalia.

According to First Community Bank, Nairobi account received large deposits from [Company Y]. This money that was intended for [Company X] Somalia ended up being pocketed by [the Applicant], his [*sic*] and his co-conspirators. If you follow the money trace from Nairobi account, you will see that he [...] purchased real estate properties in Nairobi. [Mr. C] also bought an apartment with his share of the proceeds.

9. INT initiated a preliminary inquiry based on the anonymous complaint. According to the Bank, this preliminary inquiry included

i) reviewing information provided by the complainant; ii) reviewing [the] Applicant's WBG [World Bank Group] personnel records; iii) reviewing relevant project and procurement records; iv) conducting public record and social media research regarding the involved parties; v) requesting access to and forensically reviewing [the] Applicant's WBG email computer and phone records; vi) conducting two missions to audit [Company X] and its partner organizations on WBG financed contracts [Company Y], [and three other companies]; vii) reviewing records from the audited entities; viii) interviewing and requesting information from witnesses; and ix) interviewing [the] Applicant and reviewing information that he provided, including a forensic accounting review of his personal financial records.

10. The Bank states that the preliminary inquiry corroborated several elements of the allegations, and, accordingly, on 14 January 2020 INT issued a Notice of Alleged Misconduct to

the Applicant and conducted an interview with the Applicant. Paragraph 2 of the Notice alleged that the Applicant

- a) had a financial interest and management role in [Company X], an organization based in Somalia and Kenya that participated in multiple Bank Group-financed consultancy contracts in Somalia;
- b) personally benefited from Bank Group-financed consultancy contracts awarded under [Project 1] and [Project 2];
- c) misrepresented or failed to disclose [his] [Company X] financial interests and management role to the Bank Group;
- d) misrepresented or failed to disclose [his] family members' [Company X] financial interests and management role to the Bank Group;
- e) colluded with government officials, project implementation unit ("PIU") officials and/or bidders to influence Bank Group-financed contract awards under [Project 1] and [Project 2]; and
- f) improperly engaged in plans to bid on a Bank Group-financed [Project 1] contract through [Company Z].

11. The Notice also provided:

In accordance with Staff Rule 8.01, you are required to cooperate fully in addressing the allegations under investigation. This includes: (i) making yourself available for and responding meaningfully to questions during one or more interviews with INT staff; and (ii) responding in writing to the allegations. Failure or refusal to cooperate may constitute misconduct under Staff Rule 8.01 or be deemed an aggravating circumstance to be considered by the decision maker in determining whether misconduct has occurred and the appropriate disciplinary measures, if any, to impose. In your written response, you are encouraged to identify any witnesses and provide whatever documents you believe may support your position.

12. Prior to conducting the interview with the Applicant on 14 January 2020, INT had received

authorization from the INT Vice President, the Senior Vice President and General Counsel, the Managing Director and Chief Administrative Officer, as well as the ITS [Information and Technology Solutions] Vice President and Chief Information Officer to collect and review [the] Applicant's Bank issued mobile devices and other electronic records.

13. At the beginning of the 14 January 2020 interview, the Applicant noted his objection to INT's investigation, expressing his concern that INT did not have jurisdiction over the matter because, as an Advisor to an Executive Director, he was subject to the Code of Conduct for Board Officials and to the Board Ethics Committee established thereby. INT noted in its Final Report that it had confidentially submitted the anonymous complaint to the Chair of the Board Ethics Committee and was instructed to make a preliminary inquiry. The Final Report further noted that, following the preliminary inquiry, the Board Ethics Committee determined that an investigation should proceed in accordance with the rules and procedures applicable to staff members.

14. During the interview, the Applicant was asked about his siblings, specifically how many siblings he had and what their names were. The Applicant stated that he had "many" siblings and assented to INT's following up by email to learn the names of his parents and siblings. The Applicant was also asked about his relationship with Mr. A. During the interview, the Applicant stated that he had met Mr. A through the Somali expatriate community in London, that he was not his brother, and that he had never had any financial transactions with him. The Applicant was also asked about Ms. B, and he stated that he did not know her.

15. INT also requested during the interview that the Applicant sign an authorization form allowing INT to request bank statements from the Applicant's financial institutions, noting that it would allow INT to confirm that there were no financial transactions with Company X or any relevant personnel. The Applicant declined to sign the authorization, expressing that he would rather print the statements to give to INT. INT indicated that it would be interested in the Applicant's bank statements since October 2015, as that was when Company X began receiving Bank contracts.

16. INT next asked if the Applicant would be willing to allow INT to run a limited search on his personal email address, using only "search terms related to the matters we discussed and allegations that are in the Notice." The Applicant declined, stating that he would be happy to forward to INT any information that it wanted.

17. Finally, INT informed the Applicant that it had received authorization to obtain and review the Applicant's Bank-managed electronic devices and asked to obtain the Applicant's devices. INT stated that it could show the Applicant the authorization signed by the General Counsel and the Managing Director and noted that it would review the devices solely as related to the allegations of misconduct and would keep track of any search terms used in case there was ever any question. The Applicant refused to provide his Bank iPhone, referencing his objections to INT's investigation and noting that he wanted to consult with his attorney.

18. A few hours after the interview concluded, INT emailed the Applicant, writing:

[W]e had requested your Bank-issued electronic devices, i.e., iPhone XR and iPad Air. We referenced requesting and receiving authorization to access such electronic information and property owned by the Bank, as approved by the Bank's General Counsel and Managing Director. Please find attached a copy of the underlying authorization memorandum. We also explained your duty to fully cooperate with the INT investigation pursuant to the Staff Rules. You declined to provide the devices to INT until having an opportunity to consult your attorney.

Pending INT's custody over the devices, we will request that ITS remotely lock them, in order to preserve any evidence relevant to the investigation. However, in order to minimize disruption of work, ITS has readily available a replacement iPhone to which your data can be transferred for your use. Such action would also be consistent with the authorization memorandum.

Please let us know if you would like to further coordinate regarding provision of a replacement device and data backup.

19. Following this email, ITS remotely placed the Applicant's iPhone in lock/lost mode, whereby "the phone can still receive incoming phone and FaceTime calls, allowing [the] Applicant's family to reach him, however, only the emergency number 911 can be dialed as an outbound call." The Bank explains that the lock/lost mode also prevents the use of the device unless it is intentionally disabled by the user through a Device Firmware Update.

20. On the same day, shortly after his iPhone was placed in lock/lost mode, the Applicant called INT and stated that he was willing to provide the iPhone the following day but urgently needed the iPhone for personal reasons to communicate with his family. In a follow-up phone call a few minutes later, INT advised the Applicant that he could still obtain a replacement phone that day if

he provided his device to INT before the close of business. Following the phone calls, INT emailed the Applicant to memorialize the conversation, noting that the Applicant's iPhone could not be unlocked until it was in INT's possession and that a replacement phone would be available until the close of business.

21. According to the Applicant, after speaking with INT he went to the ITS/IT Mobility and Service Center (ITS/GRAS) office to get his replacement phone but was informed that the office was closed for the day and could not give him a replacement. The Applicant claims that an ITS staff member witnessed this interaction and could support his claim. In an email to INT on 17 January 2020, the ITS staff member wrote that he observed the Applicant go to the ITS/GRAS office on 14 January 2020 after his iPhone was placed in lock/lost mode but stated that the Applicant did not check in for assistance or make contact with anyone working in the office.

22. According to INT's Final Report, while the Applicant's iPhone was in lock/lost mode, he was still able to use his Bank-issued iPad to communicate through text, iMessage, and video or audio calls and he could access his Apple iCloud account to obtain any needed contact information.

23. On 16 January 2020, INT emailed the Applicant again, writing:

We would like to please again remind you regarding your obligation to provide INT with your Bank-issued electronic devices, in order for INT to conduct a forensic review and complete its investigation.

Please note your duty to cooperate with the INT investigation. Staff Rule 8.01, section 4.06, states: "*A staff member who is the subject of a preliminary inquiry or an investigation has a duty to cooperate with the person conducting the investigation. A staff member believed to have knowledge relevant to a preliminary inquiry or an investigation also has a duty to cooperate absent a showing by the staff member of reasons, determined by the person conducting the investigation, to be sufficient to justify failure to cooperate. Failure or refusal to cooperate may constitute misconduct under the Rule.*"

In addition, the Bank defines obstruction, a separate form of misconduct, as "*deliberately destroying, falsifying, altering or concealing evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to*

prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation.”

Kindly revert to INT by email at your earliest convenience regarding the electronic devices. As noted, some advance notice is required in order to coordinate the Bank staff to assist with providing you a temporary replacement device and transferring data as needed. [Emphasis in original.]

24. The same day, the Applicant provided his iPhone and iPad to INT and received a temporary replacement phone. The Bank states that it was evident to INT upon receiving the iPhone that the lock/lost mode had been disabled. Further, after review of the iPhone, it was apparent that the iPhone had been wiped clean and that data was only partially restored. According to the Applicant, he inadvertently deleted data from his iPhone when he disabled the lock/lost mode so that he could communicate with his family. The Applicant claims that, when he realized data had been deleted, he restored it through an iCloud backup before giving the iPhone to INT.

25. The INT Digital Forensics Report regarding the Applicant’s devices concluded that the Applicant

likely deleted but only partially restored call log, chat (SMS/MMS), web history, and other data. Although a limited amount of such data was available on the iPhone XR, INT was unable to review data that appeared to be missing, as indicated by contrary information available from other sources and by gaps in time during which data sets were expected but absent from the device.

26. Specifically, INT found that there were several encrypted messaging applications, such as WhatsApp, Viber, and Telegram, that had previously been installed on the iPhone but were deleted before the iPhone was given to INT. ITS reported that these applications were reinstalled on the iPhone on 30 January 2020, after it was returned to the Applicant. INT also found several data points referencing WhatsApp usage, such as references to WhatsApp under the “Network Usage – Application Date” artifact category, chat messages referencing communicating on WhatsApp, and multiple calendar entries for WhatsApp conversations.

27. INT also found that, while the iPhone contained chat messages on nearly a daily basis since 15 March 2017, no messages were available between 3 December 2019 and 10 December 2019 or

after 15 December 2019. INT noted that 3 December 2019 was the date on which the Applicant was first contacted regarding an interview.

28. When reviewed, the iPhone's call log contained only calls made or received on 15 and 16 January 2020. INT noted, however, that chat messages and calendar entries on the iPhone referred to calls that were not reflected in the call log. Further, T-Mobile carrier records indicated more than 10,000 calls on the iPhone between August 2017 and February 2020. The T-Mobile records notably contained nearly 90 calls with persons of interest in the investigation, including Mr. A, that were not in the iPhone's call log. INT also noted that 18 of the iPhone's 287 calendar entries were marked as deleted and that 4 of these deleted entries possibly concerned phone calls with individuals related to Company X.

29. Also on 16 January 2020, INT emailed the Applicant with additional questions following the interview. Specifically, INT requested:

1. Please provide us with names (including name variations) of your parents and siblings.
2. As discussed during the interview, you may have corresponded with several individuals allegedly affiliated with Bank-financed contractor [Company X] through your personal email account(s). Please share with us any relevant emails, including with the following individuals and e-mail addresses.
 - a. [Mr. C] [...]
 - b. [Mr. D] [...]
 - c. [Mr. E] [...]
 - d. [Mr. F] [...]
 - e. [Mr. A] [...]
3. Attached please find a financial disclosure form, which would authorize INT to request records related to your banking accounts from October 1, 2015, to date. As noted during our meeting, such records could help disprove allegations of your personal benefits related to World Bank contracts. Kindly review and return a separate signed copy for each of your financial institutions, including the Bank-Fund Staff Federal Credit Union [BFSFCU], Barclays, and any others. We also thank you for your offer to directly submit to us copies of the relevant monthly bank statements. However, we must state our preference for instead receiving your authorization to request such records directly.

30. On 22 January 2020, INT emailed the Applicant again to transmit to him a copy of the transcript of the 14 January 2020 interview. INT noted in the email that, while written responses to allegations are generally due in ten days upon receipt of the interview transcript, INT would be willing to grant an extension in light of the Applicant's family emergency. The email also reminded the Applicant of the follow-up questions in the 16 January 2020 email.

31. On 27 January 2020, INT emailed the Applicant again to seek confirmation and response to its previous email. On the same day, the Applicant responded to INT that his father had passed away and that he was unable to provide a response. The following day, INT emailed the Applicant expressing condolences and informing the Applicant that the response deadline was set to 6 March 2020, noting that the Applicant should let INT know if he needed a further extension.

32. On 6 March 2020, the Applicant emailed INT providing answers to the follow-up questions as well as his written response to the allegations. In his email, the Applicant listed his parents' names and wrote, "I would also like to reiterate that the individuals alleged to be my Siblings are not my Siblings ([G], [H], [I], [J] are my siblings [providing four first names])." He also noted his belief that he was not required to disclose the interests of his siblings under the Code of Conduct for Board Officials. The email also stated that he would provide statements from both of his bank accounts that day. The Applicant also wrote:

Let me state that they're [*sic*] no emails correspondence between myself and the emails you provided on the issues under investigation. However, given [Mr. E] and [Mr. D] were my colleagues at the Ministry, I forward snapshot of the typical discussion we had about Somalia and common issues we are concerned.

The Applicant forwarded six emails total from these two individuals and provided no information regarding emails from the three other individuals requested.

33. In his written response to the allegations, the Applicant again objected to INT's jurisdiction over the investigation, asserting that INT does not have jurisdiction to investigate Board officials. The Applicant went through the listed allegations as written in the Notice and denied each one. He emphasized that he had never had any kind of relationship with Company X, had never had any contract with the Bank or benefited from any procurement process, and had not engaged in any

plans to bid on Bank-financed projects. He recognized that he is familiar with several individuals purported to be linked to Company X but averred that, with the exception of one, he did not know of any of their associations with Company X.

34. Following these emails, the Applicant provided monthly bank statements from his Barclays account (April 2016 to present) and his BFSFCU account (April 2017 to present).

35. On 15 April 2020, INT emailed the Applicant with additional questions relating to his bank statements and Bank-issued iPhone. The email noted that INT's request was for bank statements dating back to October 2015.

36. On 29 April 2020, the Applicant responded to INT's requests for additional information. Included in his response was a communication from Barclays which referenced a 28 April 2020 request by him for bank statements dating back to October 2015 and stated that the copy statements were ordered and should arrive in seven to ten working days. The Applicant provided explanations for some transactions about which INT had inquired, for example writing, "This was a deposit from the IsDB" for a 21 April 2017 transaction and "Member to Member" for a 22 February 2019 transaction. The Applicant also wrote that he sends a significant amount of money abroad to support families in Somalia, adding:

With all due respect, it was my understanding that the investigation was about Bank-financed projects in Somalia and it is unfortunate that this investigation turns into how and why I support needy families in Somalia. It is unacceptable and inappropriate in many levels to share the names of the families that receive my financial support.

37. The Applicant also responded to INT's inquiries regarding the deletion of data on his iPhone. The Applicant first objected to an INT investigation of a Board official and then explained that he had disabled the lock/lost mode on his iPhone out of necessity because it was his only form of communication with his family. He also wrote that he had inadvertently erased the data on the iPhone and that he had researched how to restore the data through a backup. With regard to specific phone calls, the Applicant stated that he did not recall discussing Company X with any of the noted individuals while at or prior to joining the Bank.

38. On 8 May and 14 May 2020, INT and the Applicant exchanged further emails, with INT asking for additional clarifications and the Applicant responding. The exchange was as follows, with the Applicant's responses emphasized:

1. Kindly provide October 2015–April 2016 Barclays statements. Your response indicated that you requested those records from Barclays on April 28, but INT has not received them to date. If possible, please provide in PDF or other electronic format, given the ongoing COVID-19 situation.

Ans: As stated earlier, I have requested the records from October 2015–April 2016 from Barclays, but I have not received them to date. I don't know whether this relates to COVID-19 postal delays or whether it is not in their system. I checked my online banking and the records that are available in online banking dates from April 2016.

2. The account statements you provided show no banking activity from September 2016 to April 2017. Did you bank with any other institutions during this time period? If so, please share monthly statements from those accounts.

Ans: NO

3. Could you please provide INT with a copy of your [IsDB] and African Development Bank [AfDB] employment agreements? We are requesting this information in order to confirm that your income for these two positions was in fact deposited into either your Barclays or BFSFCU accounts. Please feel free to redact sensitive information, as long as you are able to share with us the contractual portions concerning payment.

Ans: I didn't have any employment agreements with any of the institutions. The IsDB role was an appointment and didn't require us to sign any agreement. Similarly, the AfDB, my agreement was with the MoF, and the agreement didn't contain information about accounts.

4. Please provide any supporting documents (receipts, etc.) or information for the following Barclays transaction: 9/27/2017, received GBP 21,945.29 from "1 / African Develo 51 6907 general fe" for GBP 21,945.29. (You previously kindly provided an explanation but no supporting documentation.)

a. Did you receive any other AfDB payments? If so, how did you receive them? Could you please identify any such transactions in your account statements?

Ans: Unfortunately, I do not have documents on this as it dates back to many years ago.

5. Please provide any supporting documents (receipts, etc.) or information for IsDB payments.

a. We note that IsDB on 7/20/2017 and 8/1/2017 made direct wire deposits to your account, rather than unidentified credits to your account as per your explanation. Could you explain this discrepancy?

b. We also note that the three BFSFCU transactions you stated were IsDB payments were not among those for which you requested BFSFCU details. Why was this the case? How do you know they were IsDB payments? Any BFSFCU explanations/documents would be very helpful.

Ans: Please see attached cash payment order documents for clarification. As stated previously, the honorary payments were paid on cash, and the two direct payments relate to when I participated in the meeting virtually. Secondly, please see attached BFSFCU records for an explanation of BFSFCU transactions. I knew the three periods as it relates to deposits that I made after attending the IsDB Board meeting. Also, before I wrote to BFSFCU, I called them to find details of the transactions and it was at this initial call that I asked these transactions including the payment from the World Bank.

6. For the 11 BFSFCU transactions for which you requested information from [a BFSFCU employee], could you provide additional details (who to/from in particular) and supporting documentation. We ask because a number of the transactions identified as “member-to-member” you inconsistently stated were transactions from IsDB, your own charitable contributions, or money sent to a friend in Ohio.

Ans: Please see an attached detailed record from BFSFCU. My charitable contribution was wired to [Ms. K], who is a member of BFSFCU, hence her account ending [...]. She is also a retiree of the Bank.

7. Please provide any supporting documents (receipts, etc.) or information for the following Barclays transaction: 6/20/2016, Received GBP 3,500 with description “Receipt: 42Holloway [the Applicant’s name].”

Ans: I believe this was a deposit I made at Barclays Branch at Holloway Road, London UK.

8. Please provide any supporting documents (receipts, etc.) or information for the following Barclays transaction: 7/13/2016, paid GBP with description “Bill payment to [Mr. A].”

Ans: I have no recollection to this payment.

9. Please provide monthly statements from your BFSFCU mortgage account. We are requesting this information in order to cross verify your explanations regarding the “principle [*sic*] withdrawal” transactions.

Ans: My monthly mortgage statement is in my monthly statement. Please also see the confirmation of the BFSFCU records.

10. You stated that you borrowed money from a colleague [...]. Although you stated that the 11/21/2019 transaction note “Deposit (37079) Sums up to \$4700” refers to the total amount borrowed, the relevant BFSFCU transactions do not add up to US \$4,700. To clarify our understanding could you please explain?

Ans: Please see records from BFSFCU.

39. Later, on 14 May 2020, the Applicant provided INT with a copy of one of his monthly mortgage statements, and on 20 May 2020 the Applicant provided INT with copies of his yearly mortgage statements.

The Supplemental Notice of Alleged Misconduct

40. On 27 May 2020, INT and the Applicant had a phone call regarding supplemental allegations of misconduct. During the phone call, INT requested an interview with the Applicant to discuss the supplemental allegations, but the Applicant declined and expressed a preference to respond in writing only.

41. On 2 June 2020, INT issued a Supplemental Notice of Alleged Misconduct, alleging that the Applicant failed to cooperate fully with an INT investigation. Specifically, the Supplemental Notice alleged that the Applicant

- a) failed to cooperate fully with an INT investigation, including through the following acts and omissions;
- b) failed to respond truthfully to INT interview questions and information requests;
- c) in response to INT’s request for personal financial records that could prove or disprove transactions or relationships with parties engaged on Bank Group–financed contracts, [...] failed to provide supporting documents and

misrepresented that [his] only banking accounts during the relevant time period were with the Bank-Fund Staff Federal Credit Union and Barclays; and

- d) tampered with and destroyed evidence on [his] Bank Group-issued iPhone, including by (i) overriding a device lock placed on the iPhone for the purpose of preserving evidence, which resulted in the deletion of data; and (ii) removing from the iPhone communications with parties related to INT's investigation.

42. In its email transmitting the Supplemental Notice to the Applicant, INT noted the Applicant's preference to respond in writing and included a number of questions relating to four topic areas: family relationships, employment prior to the Bank, banking records, and mobile phone records.

43. The Applicant provided his written comments and responses to INT's questions on 8 June 2020. In his comments, the Applicant again expressed his concern regarding the jurisdiction of INT over Board officials and stated that the supplemental allegations had no basis, as, in his view, he had "been nothing but a cooperative subject and truthful throughout the process." He further expressed that he had provided all the financial records that INT requested and reiterated that unlocking his iPhone was a necessity and that the data was inadvertently deleted.

44. INT's questions regarding the Applicant's family relationships asked the Applicant to clarify why he did not name his siblings during the interview, asked for the full names of his siblings, and asked if he had any other siblings or half-siblings. The Applicant responded:

I believe at the interview I stated that I have many siblings and my father has young children, which is true statement, but I never stated that I need to consult with my records. INT never pressed me to provide the names of my siblings during the interview.

However, the names ([G], [H], [I], and [J] [providing first and last names]) given in my March 6 response relates to my full siblings. My father left behind young children, which I am now responsible. As my family has nothing to do with any Bank-financed projects, I would appreciate getting privacy for my family, and you should not be asking the details of my other family members. In a conflict society, I believe such accusation usually leads to severe crimes, and it is unfortunate that INT is not showing any sensitivity to this and continue to bring my family into this baseless malign, witch-hunt.

I want to make a note of this for the record. You asked a detailed transaction of my personal life for the last five years, and you ask me to recall and justify the specific transactions of my life. This is an invasion of my privacy and rights, and it needs to stop as it has no bearing on the issue. You cannot continue asking me to recall and justify payments to friends, family, and personal affairs, including charity.

45. With regard to the questions relating to his employment prior to joining the Bank, the Applicant questioned the relevance of the questions and stated:

INT does not seem to appreciate the working environment in Fragile and Post Conflict situations. The kind of questions you are asking, such as contract agreement, consistent salary, and banking facilities does not seem to apply in FCV, especially in Somalia. While I had received payment for my contract with MoF, there are many months and years that I worked without a salary. Also, the banking facility was a rare commodity up until 2016, when few banks emerged in Mogadishu. Even then, it is not easy to do banking transactions due to security considerations. Therefore, we always opt for cash payments.

46. With regard to banking records, INT noted that it still had not received bank statements from October 2015 to April 2016. The Applicant responded that, as he had stated before, he had requested the statements but had yet to receive them. In response to a question regarding an 11 November 2016 order for cash payment from the IsDB, in particular with regard to where the cash was deposited, the Applicant responded that he did not deposit the \$11,404.00 cash payment. The Applicant was also asked to explain his statement in his 14 January 2020 interview that he had no financial transactions with Mr. A in light of a GBP 2,000.00 payment to Mr. A on 13 July 2016 found in his Barclays bank statements. The Applicant responded that he had no recollection of the transaction but that it could have been a contribution to charity. When asked about his relationship with Mr. A, the Applicant responded, "This is someone that I know."

47. With regard to mobile phone records, the Applicant restated his previous explanation for overriding the iPhone's lock/lost mode and claimed that he had restored all of the data to its original status. The Applicant further wrote that he viewed WhatsApp and Viber as private applications that he did not use for Bank business and that he deleted these applications from his iPhone from time to time. Finally, with regard to questions on specific phone calls with individuals of interest in the investigation, the Applicant wrote that he did not have a recollection of the dates

of the calls but could “confirm that [he] ha[d] never discussed these individuals with the matter at hand or anything related to Bank matters.”

48. On 10 June 2020, INT emailed the Applicant with two follow-up questions. The first question pertained to a banking gap in the Applicant’s Barclays records from September 2016 to August 2017 when the account was not used for any transactions. The Applicant explained, “During this period, I didn’t conduct any financial transactions as I was in Mogadishu” and that any payments would have been received and made in cash. The second question pertained to the Applicant’s statement during his 14 January 2020 interview that he may have had a bank account with First Community Bank in Kenya “during [his] first years in Kenya.” The Applicant responded that he did not have a bank account with First Community Bank and that he had never lived in Kenya.

49. On 10 August 2020, the Applicant was provided with a copy of INT’s draft report. On 18 August 2020, the Applicant provided his comments on the draft report, disputing INT’s findings.

50. On 19 October 2020, INT issued its Final Report to the HRVP and transmitted a copy to the Applicant and his attorney. In its Final Report, INT stated that it was not able to establish sufficient evidence to prove or disprove the allegations contained in its original Notice of Alleged Misconduct. INT also stated that it had established sufficient evidence that the Applicant

i) failed to cooperate fully with the INT investigation; ii) in several instances failed to respond truthfully to INT; iii) tampered with and destroyed evidence on his Bank issued iPhone; and, iv) misrepresented his relevant personal financial records by providing incomplete or noncredible information.

51. On 13 January 2021, the HRVP issued her decision letter, in which she stated:

After a careful and thorough review of the Final Report, I have determined that these established facts legally constitute misconduct under Staff Rule 8.01, namely:

- a) Paragraph 2.01(a) – Failure to observe Principles of Staff Employment, Staff Rules, and other duties of employment;
- b) Paragraph 2.01(a) – Abuse or misuse of Bank property;

- c) Paragraph 2.01(b) – Reckless failure to identify, or failure to observe, generally applicable norms of prudent professional conduct;
- d) Paragraph 2.01(c) – Acts or omissions in conflict with the general obligations of staff members set forth in Principle 3 (“General Obligations of Staff Members”) of the Principles of Staff Employment and Staff Rule 3.01 (*i.e.*, staff members must comply with obligations embodied in the Principles of Staff Employment, the Staff Rules, and all other policies and procedures of the Bank [...]; in particular, staff members have a special responsibility to avoid situations and activities that might reflect adversely on the Bank, compromise its operations, or lead to real or apparent conflicts of interest); and
- e) Paragraph 4.06 – Failure to cooperate.

52. The HRVP continued:

After having carefully examined the record, including your statements, I do not find your explanations credible, nor do I find them exculpatory and they do not alter INT’s findings. Under the Staff Rules, misconduct does not require malice or guilty purpose, and it includes failure to observe the Principles of Staff Employment, Staff Rules and Bank Group policies.

I note as an aggravating factor that you were not fully truthful or forthcoming in your responses to INT. Your statements were inaccurate, inconsistent, misleading or implausible. You provided INT with differing versions of events that contradicted one another or were refuted by other evidence. Although you provided what appeared to be voluminous personal financial records, there were notable gaps in the materials, and you failed to provide important documents relevant to INT’s review.

Moreover, INT’s forensic review established that you disabled the lock/lost mode on your Bank-issued iPhone, which wiped and reset the phone data. This action was taken after being specifically instructed by INT that the phone should not be unlocked for evidence-preservation purposes. You admitted that you disabled the iPhone lock/lost mode and claimed that this was “out of necessity,” as the Bank-issued phone was your only mobile phone, which you used to communicate with your family. However, INT specifically offered an immediately available replacement iPhone to you on five separate occasions. Therefore, your claim that you were “forced” to override the iPhone lock/lost mode and thereby inadvertently deleted the phone data is not credible. You intentionally violated INT’s instruction to preserve evidence and instead tampered with and destroyed evidence on your Bank-issued iPhone that may have been relevant to the investigation. This deprived INT of the opportunity to collect and review potentially exculpatory or inculpatory evidence relevant to the original allegations.

I find the allegations against you are very serious. Your lack of truthful cooperation, misrepresentations, and evidence tampering directly and materially impacted the investigation. Without exception, all staff have a duty to cooperate with investigations. Your egregious behavior gives rise to serious concerns with respect to the standards of conduct that are expected of staff. I find your conduct deeply troubling and entirely unacceptable, as condoning conduct that impedes the institution's ability to investigate allegations of misconduct would compromise the integrity of the entire investigative process.

53. The HRVP imposed the following sanctions:

- 1) termination of [the Applicant's] WBG employment effective January 15, 2021;
- 2) ineligibility for future WBG employment;
- 3) access restriction to all WBG premises; and
- 4) written censure in the form of this letter to remain in [the Applicant's] personnel record.

The present Application

54. The Applicant filed the present Application with the Tribunal on 21 May 2021. The Applicant challenges the HRVP's determination that he engaged in misconduct and the disciplinary measures imposed therein.

55. The Applicant requests the following relief: (i) rescission of the 13 January 2021 misconduct determination and all disciplinary measures imposed therein; (ii) reinstatement to his former position, or to a comparable position for a term of at least three years, or compensation in lieu thereof; and (iii)

an additional amount deemed just and reasonable by the Tribunal to remedy the damages to [the Applicant's career] and professional reputation resulting from the unjust imposition of disciplinary sanctions and the significant financial and emotional burdens on himself and his family as well as the significant health risk as the result of having to relocate to a fragile-country environment on a very short timeframe and at a time when the COVID-19 was killing thousands in that country as the result of the challenged termination decision and concomitant loss of his G4 visa.

56. The Applicant claims legal fees and costs in the amount of \$37,424.50.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Applicant's Contention No. 1

The Applicant's actions do not amount to misconduct

57. The Applicant contends that his actions do not amount to misconduct because INT was unable to substantiate any of the original allegations of misconduct contained in the original Notice, INT's inability to disprove its original allegations was an impermissible foundation for the supplemental allegations of misconduct, and he did not directly and materially impede INT's investigation.

58. The Applicant avers that INT extensively and thoroughly investigated the allegations contained in the original Notice yet was unable to substantiate any of them. In the Applicant's view, INT had access to all of the Bank's project and procurement records and as such it should have been evident to INT that "this was never really a case about potential fraud in the procurement of Bank-funded services, but rather *at most* a case about an alleged undisclosed financial interest in a Bank contractor." (Emphasis in original.) Further, to the Applicant, the fact that INT was unable to identify any evidence of fraud or corruption despite its substantial efforts should have ended the matter because, "where there is insufficient evidence to meet the WBG's standard of proof, fairness in the investigative process dictates that the benefit of the doubt as to what actually occurred must go to the subject staff member" (quoting *INT Guide to the Staff Rule 8.01 Investigative Process*). The Applicant contends that INT instead concluded that it could not disprove the allegations and made a "neither-innocent-nor-guilty finding" for which the Applicant was unfairly disciplined.

59. It is the Applicant's position that, in making the allegations of noncooperation with the investigation, INT "abandoned both the presumption of innocence and the benefit of the doubt to which [the Applicant] was entitled as a matter of due process and instead effectively concluded that he must be guilty of something even though they could not prove it." To the Applicant, the

basis for the Supplemental Notice was that he was “unable to conclusively disprove the underlying allegations of misconduct.” The Applicant contends that the result of INT’s “departure from the well-established principles governing misconduct investigations is the arbitrary dispensation of sanctions based on the investigators’ ‘impressionistic’ sense of guilt instead of any actual evidence in the required quantum,” and that, for this reason alone, the Tribunal should overturn the finding of misconduct.

60. The Applicant further contends that he did not directly and materially impede INT’s investigation of the original allegations of misconduct. Specifically, despite the Applicant’s “alleged lack of transparency regarding his limited relationships with the individuals associated with [Company X],” INT was aware of how often the Applicant spoke to these individuals through his call logs from his cell carrier and was able to interview the individuals directly. With regard to a lack of transparency regarding his siblings, the Applicant asserts that he denied being related to the two individuals who were identified in the complaint as his siblings and that “INT never found any evidence to the contrary.” To the Applicant, INT’s demand for a list of the Applicant’s full and half-siblings was “at best a red herring” and the Applicant’s decision not to provide the latter did not impede INT’s investigation. The Applicant also claims that, regarding his “allegedly incomplete financial records, there is no dispute that he provided INT with all statements from both of his personal bank accounts covering the entire period of his employment with the Bank.”

61. With regard to his “inadvertent deletion of data from his phone,” the Applicant avers that

this deletion-and-restoration hardly rises to the level of a material impediment to INT’s investigation given that it was still able to review [the Applicant’s] call logs, to reconstruct various pieces of data beyond what was restored using forensic analysis techniques, to review his Bank-issued iPad that was synced with his Bank-issued iPhone, and to directly interview all individuals of interest with whom he talked.

Instead, the Applicant contends that the deletion of data from his iPhone was “at most a minor obstacle” to INT’s investigation and that INT could not “simply presume the worst about what it might have found.”

62. The Applicant concludes this contention by observing that the misconduct found

on the supplemental allegations appears to be more reflective of [INT's] subjective suspicions and frustrations than on any serious effort to identify any material connection between [the Applicant's] actions and INT's ultimate conclusions as to the original allegations. And for this reason, its findings of misconduct as to the supplemental allegations should be rejected.

The Bank's Response

The Applicant's actions legally amount to misconduct

63. The Bank contends that INT found sufficient evidence establishing that the Applicant failed to cooperate fully with the INT investigation, failed to respond truthfully to INT, tampered with and destroyed evidence on his Bank-issued iPhone, and misrepresented his relevant personal financial records by providing incomplete or noncredible information. In response to the Applicant's contentions, the Bank avers that "the claims presented in the Application as justification for his concerted efforts to undermine the investigation are implausible and do not excuse nor adequately explain his extremely uncooperative conduct while under investigation."

64. The Bank first contends that the Applicant failed to cooperate fully and respond truthfully during the INT investigation. Specifically, the Bank asserts that the Applicant was evasive in his responses to INT's questions regarding his siblings. The Bank disputes the Applicant's claim that questions regarding his siblings were not relevant to the investigation, noting that an alleged sibling relationship was an element of the anonymous complaint and that the question of relevance is to be determined by investigators. The Bank also asserts that the Applicant was untruthful or misleading during the INT investigation regarding his relationship with various Company X associates. Further, the Bank contends that the Applicant failed to cooperate by denying INT's request to conduct a limited search on his personal email account and then by selecting a "snapshot" of emails to share with INT. To the Bank, these failures seriously impeded INT's ability to investigate the allegations.

65. The Bank next asserts that the Applicant tampered with and destroyed evidence on his Bank-issued iPhone. The Bank notes the Applicant's contention that he inadvertently deleted the data on his iPhone and observes that "misconduct does not require a malicious or guilty purpose," referencing Staff Rule 8.01, paragraph 2.01. The Bank also cites a statement by an INT digital

forensics specialist that it is impossible to inadvertently override the lock/lost mode and that a user would have to take a series of intentional and specific steps. The Bank also disputes the Applicant's claim that his deletion of data was a "minor obstacle" to INT's investigation and contends that the Applicant's "deliberate deletion and select restoration seriously impeded [INT's] ability to investigate the original claims, as INT was unable to recover the totality of the lost data." The Bank further contends that the Applicant's claims that he periodically deleted messages, data, or content are not credible as the "data and evidence on [the] Applicant's phone demonstrate a pattern of use that is not consistent with his attempts to justify the selective deletions."

66. The Bank also asserts that the Applicant misrepresented relevant personal financial records over the course of the investigation. In particular, the Bank is unconvinced by the Applicant's explanations regarding a gap in any banking transactions from August 2016 to February 2017, which the Applicant states was due to the lack of banking infrastructure in Somalia and a cash-based economy. The Bank notes that the Applicant's claim does not explain why he did not have a similar banking gap before August 2016 when he was similarly based in Somalia. Further, it does not explain how the Applicant banked while he traveled during this time period for meetings in Kenya and the United Kingdom or how he banked while traveling to Saudi Arabia several times a year for IsDB meetings. The Bank also notes that the Applicant declined INT's request to directly request relevant records from Barclays and BFSFCU and that the Applicant subsequently failed to provide INT with all of his bank statements, as he never provided any statements from October 2015 to March 2016. The Bank contends that these actions "seriously limited" INT's ability to conduct a full investigation.

67. With regard to the Applicant's contention that INT and the HRVP abandoned the presumption of innocence and failed to give the Applicant the benefit of the doubt, the Bank notes that the Applicant was treated fairly and with respect throughout the investigation and was provided the opportunity to respond to all allegations and have his responses taken into consideration in INT's Final Report and the HRVP's decision. The Bank avers that the original allegations have been neither substantiated nor refuted and that therefore no finding of misconduct was made with regard to the initial Notice. The Bank explains that the Applicant

was found to have committed misconduct pursuant to the Supplemental Notice. This is not the same as being found guilty, which implies a criminal act has been committed. Although [the] Applicant may believe he is “guilty”, in the eyes of the Bank, he is a former staff member who committed misconduct by violating a range of ethical standards and obligations relating to a subject staff member’s conduct in the course of an ongoing investigation. The serious nature of this offense alone warrants the imposition of serious discipline.

The Applicant’s Contention No. 2

The sanctions imposed are significantly disproportionate to any misconduct that occurred

68. The Applicant contends that, even if the Tribunal were to disagree that the disciplinary sanctions should be rescinded in their entirety, it should find that the decision to terminate the Applicant’s employment and bar him from future Bank employment was significantly disproportionate to any misconduct that he may have actually committed. The Applicant asserts that the HRVP improperly considered the unproven misconduct allegations when determining an appropriate sanction for the misconduct found. To the Applicant,

when the unproven corruption allegations are properly removed from the equation instead of being considered under INT’s and [the HRVP’s] flawed not-entirely-disproven rubric, termination is plainly disproportionate to any finding of noncooperation that may be affirmed.

The Bank’s Response

The sanctions imposed are proportionate with the seriousness of the Applicant’s offenses

69. The Bank contends that the disciplinary measures imposed are provided for under the Staff Rules and meet the Tribunal’s standard for proportionality. The Bank avers that the Applicant’s “concerted efforts to undermine the investigation were very serious, deeply concerning and entirely inconsistent with the standards applicable to all staff,” noting that these factors were considered by the HRVP when making her decision on disciplinary sanctions. The Bank asserts that noncooperation with an investigation is especially serious as the Bank’s “legal framework in misconduct matters is predicated on the staff member’s cooperation.”

70. The Bank notes that failure to cooperate with an investigation is a standalone form of misconduct and that the Applicant was warned of such multiple times throughout the investigation. The Bank asserts that, despite INT's warnings, the Applicant "engaged in behavior that amounted to an unprecedented and shocking level of noncooperation and obstruction, warranting the issuance of a separate Notice of Alleged Misconduct." The Bank contends that the Applicant's noncooperation was particularly serious as it "hindered INT's ability to investigate serious allegations of fraud and corruption: misconduct that the Tribunal itself has found to be one of the most serious forms of misconduct as it poses significant financial and reputational risk to the institution." The Bank explains that "[a]llowing a staff member to deliberately hinder an investigation would render the institution powerless in its efforts to combat fraud and corruption in its operations."

71. The Bank submits that the HRVP

found that [the] Applicant subverted INT's investigative process, taking extraordinary measures that resulted in an inconclusive finding for the serious original allegations of fraud and corruption. This behavior is entirely incompatible with the professional and ethical expectations of international civil servants, irrespective of whether the underlying original allegations were well-founded or not. Therefore, the HRVP's decision to remove [the] Applicant from the staff of the WBG was reasonable and aligned with the interests of the institution.

72. The Bank also notes that, as an Advisor to an Executive Director, the Applicant was entrusted with responsibilities that aim to support and strengthen countries affected by national conflict and high violence, and that, "[w]ith this position and work program, there is a strong opportunity to influence policy and strategy in FCV countries, which requires utmost sensitivity and integrity."

73. The Bank responds to the Applicant's assertion that the underlying corruption allegations were improperly considered when making the decision on disciplinary sanctions by submitting that the Applicant "was not terminated for a minor infraction related to underlying substantive allegations." Rather, according to the Bank, the Applicant's conduct warranted a Supplemental Notice of Alleged Misconduct and a separate investigative process. To the Bank, the conduct substantiated by this investigative process alone was sufficient to warrant termination.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

SCOPE OF THE TRIBUNAL'S REVIEW IN DISCIPLINARY CASES

74. The scope of the Tribunal's review in disciplinary cases is well-established. In *Koudogbo*, Decision No. 246 [2001], para. 18, the Tribunal stated that

its scope of review in disciplinary cases is not limited to determining whether there has been an abuse of discretion. When the Tribunal reviews disciplinary cases, it “examines (i) the existence of the facts, (ii) whether they legally amount to misconduct, (iii) whether the sanction imposed is provided for in the law of the Bank, (iv) whether the sanction is not significantly disproportionate to the offence, and (v) whether the requirements of due process were observed.” (*Carew*, Decision No. 142 [1995], para. 32.)

See also, e.g., FA, Decision No. 612 [2019], para. 138; *EZ*, Decision No. 601 [2019], para. 67; *CH*, Decision No. 489 [2014], para. 22.

75. The Tribunal has held that the burden of proof in misconduct cases lies with the respondent organization. It has also stipulated on several occasions that “there must be substantial evidence to support the finding of facts which amount to misconduct.” *FQ*, Decision No. 638 [2020], para. 88. *See also FG*, Decision No. 623 [2020], para. 67; *EZ* [2019], para. 69. In other words, the standard of evidence “in disciplinary decisions leading [...] to misconduct and disciplinary sanctions must be higher than a mere balance of probabilities.” *Dambita*, Decision No. 243 [2001], para. 21.

76. The Tribunal has also stated that its role is to “ensure that a disciplinary measure falls within the legal powers of the Bank.” *M*, Decision No. 369 [2007], para. 54. This, however,

does not mean that the Tribunal is an investigative agency. The Tribunal simply takes the record as it finds it and evaluates the fact-finding methodology, the probative weight of legitimately obtained evidence, and the inherent rationale of the findings in the light of that evidence. *Id.*

77. The present case will be reviewed in light of these standards.

EXISTENCE OF THE FACTS AND WHETHER THOSE FACTS LEGALLY AMOUNT TO MISCONDUCT

78. Following the approaches in *BP*, Decision No. 455 [2011] and *FG* [2020], the Tribunal considers it advantageous in this case to begin by setting to the side allegations against the Applicant which are peripheral to, and do not form, the basis of the misconduct findings against the Applicant. These include the allegations in the original Notice of Alleged Misconduct that the Applicant

- a) had a financial interest and management role in [Company X], an organization based in Somalia and Kenya that participated in multiple Bank Group-financed consultancy contracts in Somalia;
- b) personally benefited from Bank Group-financed consultancy contracts awarded under [Project 1] and [Project 2];
- c) misrepresented or failed to disclose [his] [Company X] financial interests and management role to the Bank Group;
- d) misrepresented or failed to disclose [his] family members' [Company X] financial interests and management role to the Bank Group;
- e) colluded with government officials, project implementation unit (“PIU”) officials and/or bidders to influence Bank Group-financed contract awards under [Project 1] and [Project 2]; and
- f) improperly engaged in plans to bid on a Bank Group-financed [Project 1] contract through [Company Z].

These allegations are undoubtedly of a most serious nature. However, they do not form the basis of the misconduct findings against the Applicant by the HRVP.

79. Following INT’s investigation, the HRVP determined that the Applicant’s conduct legally constituted misconduct under Staff Rule 8.01, specifically:

- a) Paragraph 2.01(a) – Failure to observe Principles of Staff Employment, Staff Rules, and other duties of employment;
- b) Paragraph 2.01(a) – Abuse or misuse of Bank property;

- c) Paragraph 2.01(b) – Reckless failure to identify, or failure to observe, generally applicable norms of prudent professional conduct;
- d) Paragraph 2.01(c) – Acts or omissions in conflict with the general obligations of staff members set forth in Principle 3 (“General Obligations of Staff Members”) of the Principles of Staff Employment and Staff Rule 3.01 (*i.e.*, staff members must comply with obligations embodied in the Principles of Staff Employment, the Staff Rules, and all other policies and procedures of the Bank [...]; in particular, staff members have a special responsibility to avoid situations and activities that might reflect adversely on the Bank, compromise its operations, or lead to real or apparent conflicts of interest); and
- e) Paragraph 4.06 – Failure to cooperate.

80. The HRVP noted that INT had found sufficient evidence demonstrating that the Applicant

(i) failed to cooperate fully with the INT investigation; (ii) in several instances failed to respond truthfully to INT; (iii) tampered with and destroyed evidence on [his] Bank-issued iPhone; and (iv) misrepresented [his] relevant personal financial records by providing incomplete or non-credible information.

81. The HRVP further noted that INT

could not establish sufficient evidence to prove or disprove the original allegations listed in the Notice of Alleged Misconduct dated January 14, 2020 because [the Applicant’s] attempts to undermine the INT’s investigation directly and materially impeded INT’s ability to thoroughly investigate the original allegations.

82. The HRVP wrote in her decision letter:

After having carefully examined the record, including [the Applicant’s] statements, I do not find [his] explanations credible, nor do I find them exculpatory and they do not alter INT’s findings. Under the Staff Rules, misconduct does not require malice or guilty purpose, and it includes failure to observe the Principles of Staff Employment, Staff Rules and Bank Group policies.

83. The Tribunal observes that there are three categories of conduct by the Applicant which form the basis for the finding that the Applicant failed to cooperate with the INT investigation: (i) failure to respond fully and truthfully to questions and information requests; (ii) tampering with and deleting data from the Bank-issued iPhone; and (iii) misrepresentation of financial records. The Tribunal will now review the evidence which the Bank has submitted pertaining to each

category to determine whether that evidence rises to the standard of substantiality necessary to discharge the Bank's burden of proof in misconduct cases.

84. Notwithstanding the Applicant's objections to INT's jurisdiction in the investigation given his status as an Advisor to an Executive Director, the Tribunal observes that the Applicant's LOA expressly stated that his appointment was "subject to the conditions of employment, including the Staff Rules and the relevant Procedures of the World Bank Group, presently in effect and as they may be amended from time to time," and that the Applicant signed the LOA on 5 March 2017, certifying that he had received, read, and understood the relevant Staff Rules and the Code of Conduct for Board Officials.

Failure to respond fully and truthfully

85. The Bank contends that the HRVP was correct in finding that the Applicant was "not fully truthful or forthcoming in [his] responses to INT. [His] statements were inaccurate, inconsistent, misleading or implausible. [He] provided INT with differing versions of events that contradicted one another or were refuted by other evidence." The Applicant, however, submits that his conduct did not materially impede INT's investigation into the original allegations.

86. As one example of the Applicant's failure to respond fully and truthfully, the Bank states that the Applicant "fail[ed] to provide the full names (and variations of the names) of all of his siblings." The Applicant avers that

the fact of the matter is that [he] denied being related to the two individuals he was anonymously accused of being related to and INT never found any evidence to the contrary. [...] Not only that, but INT obtained or had access to substantial records from both [Company X] and [Company Y] identifying all of the individuals holding roles with [Company X], meaning that if they really wanted to investigate whether any of these individuals were somehow related to [him], they could have. In short, INT's demand for a list of [his] full siblings and other more extended relations was at best a red herring, and [his] decision to provide the former while reasonably declining to provide the latter did not impede INT's investigation into [his] supposed [Company X] connections in any material way.

87. The Tribunal first observes that a crucial element of the original allegations was that the Applicant concealed his involvement with [Company X] through two individuals alleged to be his brother and sister. The record shows that the Applicant was first asked about his siblings during the 14 January 2020 interview with INT. During this interview, the INT Investigator asked:

Would you mind providing us, either during this meeting or after, by email, follow-up email, a list of your immediate family members, for example, the names of your parents or your siblings? Would you mind providing us that information just to – as you mentioned, this is an opportunity to clear up any allegations or possible misconceptions. So that would really assist us to make sure there is no sort of conflict. Would that be an issue?

The Applicant responded:

No, no. I think there will be sort of issues, but you need to understand that the context that we're coming from. Family members are, you know, slight, you know, extended. You know. So, I think will be very sort of, you know, difficult to get access that list of – my dad is still producing. Still in a sort of – you know, having kids. But, happy to provide.

88. The following exchange occurred next:

[INT Investigator]: Do you have siblings?

[The Applicant]: I've got siblings, yes.

[INT Investigator]: How many siblings?

[The Applicant]: There are many. They're still young, I mean, as I said to you.

89. The record shows that the Applicant was next asked about his siblings in a follow-up email sent on 16 January 2020: "Please provide us with names (including name variations) of your parents and siblings." The Applicant responded on 6 March 2020, writing:

On Parent ([the Applicant's father and mother]). As you know my family and I are grieving the loss of my father (God Bless his soul) I'd appreciate keeping them out of this as they've no business whatsoever on this issue.

I would also like to reiterate that the individuals alleged to be my Siblings are not my Siblings ([G], [H], [I], [J] are my siblings [providing four first names]). I also want to make note of the Code of Conduct for Board Officials, which I signed onto,

which defines immediate family as Spouse and dependent that requires for my disclosures. Nevertheless, I provide more than the code of conduct requires.

90. In considering the Applicant's responses thus far, the Tribunal observes that the Applicant neither offered the full names for the four individuals he listed as his siblings nor gave any indication as to whether this was a complete list of his siblings. The Tribunal recalls that the Applicant had stated in his INT interview that he had "many" siblings.

91. The record shows that the Applicant was next asked about his siblings when he received the Supplemental Notice of Alleged Misconduct on 2 June 2020:

1. During the January 14, 2020 INT interview, you stated that you had "many siblings," which required you to further consult your records before being able to provide INT with a full list of their names. (Pages 26–28 of transcript.) In contrast, in your March 6 response to INT, you stated that you had only four siblings, named [G], [H], [I], and [J].
2. Please explain these differing responses and why could you not recall your siblings' names during the interview?
3. What are your siblings' full names?
4. Do you have any other siblings or half-siblings?

92. The Applicant responded on 8 June 2020, writing:

I believe at the interview I stated that I have many siblings and my father has young children, which is true statement, but I never stated that I need to consult with my records. INT never pressed me to provide the names of my siblings during the interview.

However, the names ([G], [H], [I], and [J] [providing first and last names]) given in my March 6 response relates to my full siblings. My father left behind young children, which I am now responsible. As my family has nothing to do with any Bank-financed projects, I would appreciate getting privacy for my family, and you should not be asking the details of my other family members. In a conflict society, I believe such accusation usually leads to severe crimes, and it is unfortunate that INT is not showing any sensitivity to this and continue to bring my family into this baseless malign, witch-hunt.

I want to make a note of this for the record. You asked a detailed transaction of my personal life for the last five years, and you ask me to recall and justify the specific transactions of my life. This is an invasion of my privacy and rights, and it needs to stop as it has no bearing on the issue. You cannot continue asking me to recall and justify payments to friends, family, and personal affairs, including charity.

93. There is nothing in the record which indicates that the Applicant provided any further information regarding the identities of his siblings. The Tribunal observes that, while the Applicant provided the full names of the four individuals he had already identified as his siblings, he refused to provide names or other information for any other siblings or half-siblings. The Tribunal notes the Applicant's expressed concern for his family's privacy and safety, but considers that, as INT investigations are strictly confidential processes, the Applicant's concern may not excuse his failure to fully respond. Further, the Tribunal considers that the Applicant could have made a greater effort to cooperate with INT by providing further information regarding his siblings.

94. The Tribunal notes the Applicant's contention that INT's demand for a list of his full and half-siblings was "at best a red herring," as, according to the Applicant, INT could have investigated whether any of the individuals alleged to be his siblings were in fact related to him. The Tribunal does not agree, however. First, the Tribunal finds that INT's scope of inquiry was reasonable given the circumstances of the case. Further, whether INT could have established the relationship through other sources is irrelevant to the question of whether the Applicant responded fully or truthfully to INT's questions. The record demonstrates that INT was in fact unable to make any findings regarding the relationship between the Applicant and the two individuals alleged to be his siblings, and the Tribunal finds that the Applicant was best placed to provide the information on this matter to INT. Accordingly, the Tribunal finds that the record is clear that the Applicant was not forthcoming in his responses to INT regarding his siblings and that he failed to answer INT's questions fully and truthfully.

95. The Bank also contends that the Applicant was "untruthful or misleading" regarding his relationship with individuals associated with Company X, in particular with Mr. A, his alleged brother. The record shows that, during his interview with INT, the Applicant stated that he had not talked to one of the founders of Company X since joining the Bank. The record of the Applicant's

T-Mobile call logs, however, indicates that the Applicant did communicate with this founder after joining the Bank, contrary to his statements during the interview process.

96. The Applicant avers that “INT obtained [his] call logs from his cell carrier and was thus well aware when and how often he talked to [the Company X associates] regardless of his answers to their questions. [...] And it was also able to interview each of these individuals directly to confirm that they knew [him].” The Tribunal notes the Applicant’s contention but reiterates that whether INT was able to obtain information from other sources is irrelevant to whether the Applicant responded fully and truthfully during the investigation.

97. The Applicant was also asked about his relationship with Mr. A during his interview with INT. In response to these questions, the Applicant stated that he was not related to Mr. A, that he was unaware Mr. A worked for Company X, and that he never had any financial transactions with Mr. A. The Tribunal finds that this final statement is false, however, as the record shows that there was a payment made to Mr. A on 13 July 2016 for GBP 2,000.00. When asked about the payment, the Applicant responded, on 29 April 2020, that he had “no recollection” regarding this payment. When the Applicant was asked about the discrepancies in his answers regarding the payment to Mr. A in the Supplemental Notice of Alleged Misconduct, he responded that he had no recollection of the payment but stated that it could have been a contribution to charity. When asked again about his relationship with Mr. A, the Applicant replied, “This is someone that I know.” Having considered this established record, the Tribunal finds that, once again, the Applicant failed to be forthcoming and truthful in his responses.

98. As a final example of the Applicant’s failure to respond fully and truthfully to INT, the Bank states that the Applicant failed to cooperate by

i) denying INT’s request to conduct a very limited search of his personal email, and then ii) declining to produce the full results of such limited search he performed himself. INT requested [the] Applicant’s consent to conduct a very limited search using narrowly tailored terms in [the] Applicant’s personal email address for correspondence related to the original allegations, yet [the] Applicant refused. [...] Instead, [the] Applicant cherry picked a couple of innocuous emails and provided them to INT as a “snapshot” of the communication he had with individuals known to be involved with [Company X/Company Z].

99. The transcript of the INT interview shows that, when INT asked if it could conduct a limited search of the Applicant's personal email, the Applicant said no but added that he was "happy to forward any information that you want." It was agreed that INT would follow up by email with this request. The record shows that INT did follow up a few days later, requesting that the Applicant share relevant emails from his personal email account, including emails with six listed Company X associates. The Applicant responded to this request by forwarding six emails in total from two of the listed individuals. The Tribunal considers that this partial response to INT's request for relevant emails with Company X associates in the Applicant's personal email account was insufficient and finds that the Applicant again failed to answer INT's requests fully and truthfully.

Tampering with and deleting data from Bank-issued iPhone

100. The Tribunal will next review the facts related to the Bank's contention that the Applicant tampered with and destroyed evidence on his Bank-issued iPhone.

101. First, it is apparent from the record that INT received proper authorization to search the Applicant's Bank-issued devices, and the Applicant does not contest the reasonableness of INT's request to review the device. The record also shows that INT first requested the iPhone during its interview of the Applicant and that the Applicant declined to hand over the device at the time, expressing his intention to first consult his attorney. INT emailed the Applicant afterward, noting that he had a duty to cooperate with the investigation and informing him that his iPhone would be remotely locked in order to preserve evidence. INT also informed the Applicant that a replacement phone would be made available for him once he handed over his device. The Applicant's iPhone was then placed in lock/lost mode.

102. There is some dispute as to what happened next. The Applicant stated in a 29 April 2020 response to INT that he went to the ITS/GRAS office to get a replacement phone but was told that the office was closed and that he could not be helped. An ITS staff member, however, wrote in an email to INT on 17 January 2020 that he saw the Applicant enter the ITS/GRAS office but that the Applicant never checked in or contacted anybody before leaving. The Tribunal observes that the

ITS staff member's statement was made only days after the event, while the Applicant's statement was drafted more than three months later. Considering this, the Tribunal finds the ITS staff member's version of events more credible.

103. It is undisputed that, after the Applicant left the ITS/GRAS office, he overrode the lock/lost mode on the iPhone, resulting in the deletion of all of the data on the device and that, following the erasure, the Applicant restored some of the data through his iCloud backup.

104. The Applicant claims that he needed to communicate with his family and was therefore forced to unlock the iPhone. The Applicant states that he did not intentionally delete any data from the iPhone but rather inadvertently did so when he unlocked the device. In light of the multi-step process that must be deliberately undertaken to unlock the iPhone, the Tribunal does not find credible the Applicant's claim that his deletion of data was inadvertent. In any event, the Tribunal recalls, however, that Staff Rule 8.01, paragraph 2.01, makes clear that "[m]isconduct does not require malice or guilty purpose" and includes "[f]ailure to observe Principles of Staff Employment, Staff Rules, and other duties of employment." Even if the deletion of the data by the Applicant was inadvertent, he would not be absolved from any finding of misconduct. Further, the record shows that the Applicant was warned multiple times by INT, in the context of the locked iPhone, that he had a duty to cooperate with INT and that failure to do so may constitute misconduct.

105. The Tribunal considers the Bank's explanation that the locked iPhone could "still receive incoming phone and FaceTime calls, allowing [the] Applicant's family to reach him, however, only the emergency number 911 [could] be dialed as an outbound call." The Tribunal also considers INT's statement that, while the Applicant's iPhone was locked, his

Bank-issued iPad remained unlocked and available for [his] use, including the opportunity to access his phone contacts and send/receive chat messages. Moreover, [the Applicant] could have logged into his Apple iCloud account through a computer in order to retrieve any needed contact information. [The Applicant] disregarded the opportunity to communicate with his family by e-mail, SMS text messages through his iPad/iCloud, his Bank landline phone, video or audio calls via his other Bank personal devices, or any other phone or means.

Based on these considerations, INT did not find credible the Applicant's claim that his Bank-issued iPhone was his sole means of communication, such that overriding the lock/lost mode was necessary. The Applicant has stated that INT's explanation is "absurd" but offered no explanation for why he was unable to communicate through these other means listed above. The Tribunal agrees with the Bank and finds that the Applicant's actions in relation to his locked iPhone were unreasonable.

106. The Applicant also claims that, once he realized data had been deleted from the iPhone, he used his iCloud backup to restore the data before giving the device to INT for review. To the Applicant,

this deletion-and-restoration hardly rises to the level of a material impediment to INT's investigation given that it was still able to review [his] call logs, to reconstruct various pieces of data beyond what was restored using forensic analysis techniques, to review his Bank-issued iPad that was synced with his Bank-issued iPhone, and to directly interview all individuals of interest with whom he talked. In short, while things might have been smoother for both INT and [the Applicant] had INT been able to review his phone from the outset, [the Applicant's] inadvertent phone deletion was at most a minor obstacle to INT's overall efforts, not a major roadblock of the type that might allow it to simply presume the worst about what it might have found.

107. The Tribunal notes INT's findings following its analysis of the Applicant's iPhone, presented in its Digital Forensics Report. First, the Applicant's iCloud account contained applications that were not on the Applicant's iPhone or iPad, notably the encrypted messaging applications WhatsApp, Viber, and Telegram. The Applicant's iPhone applications store indicated that these applications had previously been downloaded on the device, and ITS reported that the applications were reinstalled on the Applicant's iPhone after the device was returned to him. INT noted in its Digital Forensics Report that it found several data points referencing WhatsApp usage, such as references to WhatsApp under the "Network Usage – Application Date" artifact category, chat messages referencing communicating on WhatsApp, and multiple calendar entries for WhatsApp conversations. Data on the iPhone also showed that the Applicant had performed a Google search for "whatsapp" approximately twelve hours before giving the iPhone to INT. As these messaging applications were not downloaded on the iPhone at the time of INT's review, INT was prevented from recovering data from the messages or call logs of these applications.

108. INT also noted in its Digital Forensics Report that, while the iPhone contained chat messages on nearly a daily basis since 15 March 2017, no messages were available between 3 December 2019 and 10 December 2019 or after 15 December 2019. INT noted that 3 December 2019 was the date on which the Applicant was first contacted regarding an interview.

109. INT also noted that, when reviewed, the iPhone's call log contained only calls made or received on 15 and 16 January 2020. INT noted, however, that chat messages and calendar entries on the device referred to calls that were not reflected in the call log. Further, T-Mobile carrier records indicated more than 10,000 calls on the iPhone between August 2017 and February 2020. The T-Mobile records notably contained nearly 90 calls with persons of interest in the investigation, including Mr. A, that were not in the iPhone's call log. INT also noted that 18 of the iPhone's 287 calendar entries were marked as deleted and that 4 of these deleted entries possibly concerned phone calls with individuals related to Company X.

110. Having considered the record, the Tribunal agrees with INT's conclusion that the Applicant likely deleted, but only partially restored, relevant data on his iPhone. Further, the Tribunal agrees with the Bank's assertion that the Applicant's conduct with respect to his iPhone was more than a "minor obstacle" to INT's investigation, as it is clear from the record that INT was prevented from reviewing data that was likely relevant to its investigation, such as WhatsApp and text messages that were no longer available on the device. Further, the Tribunal notes that, although INT was able to review call logs for the iPhone through T-Mobile carrier records despite the deletion of call logs on the device, such a review only confirmed that data had been deleted from the iPhone even though the Applicant was warned that the iPhone would be locked to preserve data. Therefore, the Tribunal agrees with the Bank's assertion that, in overriding the lock/lost mode on his iPhone and only partially restoring data, the Applicant tampered with and deleted evidence relevant to INT's investigation.

Misrepresentation of financial records

111. The Tribunal will next review the facts related to the Bank's contention that the Applicant misrepresented his financial records.

112. First, the Bank contends that the Applicant did not adequately explain a long gap in the banking records provided by him. The record shows that no transactions were made in the Applicant's Barclays account from October 2016 to August 2017. The record also shows that the Applicant opened his BFSFCU account in April 2017. Noting that the record showed no banking transactions at all from October 2016 to the beginning of April 2017, INT asked the Applicant if he banked anywhere else during this time, to which the Applicant responded "NO." (Emphasis in original.) The Applicant asserts that his lack of banking activity during the noted period can be explained because Somalia was a cash-based economy with an unreliable banking infrastructure.

113. The Bank contends that the Applicant's explanation for the banking gap is not plausible, stating that the Applicant does not adequately explain

i) his monthly Barclays transactions before August 30, 2016 when [the] Applicant was similarly based in Somalia yet carried out banking transactions and did not rely solely on cash transactions as he claimed to have done during the eight-month banking gap, ii) how he banked while traveling during this time period, including for meetings and other trips to Kenya, the United Kingdom and other locations [...], and iii) how he banked during this period for IsDB meetings in Saudi Arabia, which he stated occurred at least seven times per year as part of his primary job during which he only remotely supported the MoF.

114. The Tribunal agrees that the Applicant's early banking activity and travel schedule during the noted banking gap could cast some doubt on the Applicant's explanation that he only used cash from October 2016 to April 2017. However, the Tribunal also notes that the Applicant maintains that he was often paid in cash and paid irregularly by the MoF and the IsDB. The Tribunal further recognizes that Somalia does have limited banking infrastructure such that it may not be unreasonable for one to rely only on cash transactions for an extended period of time. The Tribunal observes the Applicant's 8 June 2020 response to INT:

INT does not seem to appreciate the working environment in Fragile and Post Conflict situations. The kind of questions you are asking, such as contract agreement, consistent salary, and banking facilities does not seem to apply in FCV, especially in Somalia. While I had received payment for my contract with MoF, there are many months and years that I worked without a salary. Also, the banking facility was a rare commodity up until 2016, when few banks emerged in Mogadishu. Even then, it is not easy to do banking transactions due to security considerations. Therefore, we always opt for cash payments.

115. The Tribunal notes that banking systems in FCV countries may be interrupted and, here, finds that the Bank has not provided sufficient evidence to establish to a standard higher than a mere balance of probabilities that the Applicant misrepresented his financial records with respect to the noted gap in banking activity.

116. The Bank also contends that the Applicant failed to provide banking records as requested by INT. The record shows that, following the 14 January 2020 interview, INT emailed the Applicant and requested that he authorize INT to request records related to his bank accounts from 1 October 2015 to date. The Applicant responded on 6 March 2020, stating that he would instead provide statements from both his bank accounts. The Applicant then provided INT with bank statements from his Barclays and BFSFCU accounts from April 2016 to present and April 2017 to present, respectively.

117. On 15 April 2020, INT emailed the Applicant with additional questions and noted that it had requested bank statements dating back to October 2015. The Applicant's response on 29 April 2020 included a communication from Barclays which referenced a 28 April 2020 request by him for bank statements dating back to October 2015 and stated that the statements were ordered and should arrive in seven to ten working days.

118. On 8 May 2020, still having not received the Applicant's bank statements from October 2015 to April 2016, INT emailed the Applicant and again requested these bank statements. The Applicant responded on 14 May 2020, stating that he had not yet received the statements from Barclays. The Applicant gave no indication that he had taken any action to follow up with Barclays given that seven to ten working days had passed. In the Applicant's 8 June 2020 response to the Supplemental Notice of Alleged Misconduct, the Applicant stated that he had still not received the statements from Barclays but gave no indication that he had contacted Barclays again to follow up on his earlier request. INT never received these requested bank statements.

119. Based on the record, the Tribunal agrees that the Applicant failed to provide INT with the requested bank statements from October 2015 to April 2016. The Tribunal notes the Applicant's statements that he had requested these records from Barclays but never received them. However,

the Tribunal observes that the Applicant failed to show any reasonable steps he took to comply with INT's request. After ten working days had passed and the Applicant had yet to receive the bank statements, the Applicant should have contacted Barclays to check on the status of his request, yet the record contains no indication that the Applicant took any such action. Accordingly, the Tribunal finds that the Applicant failed to provide adequate personal financial records to INT.

Whether the established facts constitute misconduct

120. The Tribunal's review of the record has established that the Applicant failed to respond to INT fully and truthfully with respect to his siblings and his relationships and communications with Company X associates, tampered with and deleted evidence on his Bank-issued iPhone, and failed to adequately represent his financial records to INT. The Tribunal will now consider whether such actions legally constitute misconduct.

121. Staff Rule 8.01, paragraph 4.06, provides:

A staff member who is the subject of a preliminary inquiry or an investigation has a duty to cooperate with the person conducting the investigation. A staff member believed to have knowledge relevant to a preliminary inquiry or an investigation also has a duty to cooperate absent a showing by the staff member of reasons, determined by the person conducting the investigation, to be sufficient to justify failure to cooperate. Failure or refusal to cooperate may constitute misconduct under this Rule.

122. INT's *Guide to the Staff Rule 8.01 Investigative Process* gives some context as to what is expected pursuant to the duty to cooperate:

Subject staff members must cooperate fully. This includes: (i) making themselves available for interviews; (ii) responding meaningfully and truthfully to questions during one or more interviews; and if required to do so by investigator, (iii) responding in writing to the allegations. Failure or refusal to cooperate may constitute misconduct under Staff Rule 8.01, or be considered an aggravating factor by the decision-maker in determining whether misconduct has occurred and the appropriate disciplinary measures, if any, to impose.

INT investigations are administrative in nature. As recognized by the WBG Administrative Tribunal, this means that many due process rights or procedural

formalities provided in criminal or civil law actions are not applicable. For example, staff do not have the “right to remain silent” as is provided to criminal defendants under U.S. law. The rights and obligations of Bank Group staff are instead governed by the Principles of Staff Employment and the Staff Rules. This includes the duty of staff to respond personally to allegations against them and to requests for information from investigators.

123. The Tribunal has had little opportunity to consider in its jurisprudence what constitutes failure to cooperate under the Staff Rule. In *AJ*, Decision No. 389 [2009], para. 105, the Tribunal stated, “What constitutes failure to cooperate must be decided on a case-by-case basis.” In that case, INT had found that the applicant “violated his duty to cooperate by refusing to submit to an interview on 25 October 2005 in the context of an ongoing investigation.” *Id.*, para. 100. The Tribunal disagreed with INT’s finding in that case, stating at para. 111 that it

would not be a reasonable application of paragraph 4.06 of Staff Rule 8.01 to characterize as misconduct a staff member’s request to defer an INT interview regardless of whether the request is reasonable, whether the staff member promises to have the interview another day, and whether the staff member otherwise cooperates with INT.

124. The Bank contends that the Applicant’s actions constitute misconduct as they seriously impeded INT’s ability to investigate the allegations. The Tribunal considers that the standard of seriously impeding INT’s ability to investigate allegations is a useful framework by which to review allegations of noncooperation.

125. The record demonstrates that the Applicant’s actions prevented INT from reviewing material that was relevant and significant to the allegations. Specifically, the Applicant failed to respond fully and truthfully to questions from INT regarding his siblings when a crucial element of the allegations was that the Applicant was related to certain individuals. Further, the Applicant deleted relevant data from his Bank-issued iPhone, such as messages and call logs, which prevented INT from investigating the Applicant’s communications with individuals related to the allegations. The Applicant also failed to provide complete financial records pursuant to INT’s request, which prevented INT from investigating whether the Applicant had any financial relationship with Company X, or persons associated with Company X.

126. The Tribunal contrasts the present case with the facts in *AJ* [2009]. In that case, the Tribunal determined that a request to defer an interview was not a sufficient ground for misconduct under Staff Rule 8.01, paragraph 4.06. The Applicant's conduct here, by contrast, is far more extensive in its impact on INT's ability to pursue its investigation. Here, the Applicant was not only being uncooperative; rather, as discussed above, the Applicant took steps that actually prevented INT from completing its investigation. Accordingly, the Tribunal finds that there is substantial evidence on the record to establish that the Applicant committed misconduct by failing to cooperate with an INT investigation.

127. The Tribunal notes that the HRVP also determined that the Applicant committed misconduct in violation of Staff Rule 8.01,

- a) Paragraph 2.01(a) – Failure to observe Principles of Staff Employment, Staff Rules, and other duties of employment;
- b) Paragraph 2.01(a) – Abuse or misuse of Bank property;
- c) Paragraph 2.01(b) – Reckless failure to identify, or failure to observe, generally applicable norms of prudent professional conduct; [and]
- d) Paragraph 2.01(c) – Acts or omissions in conflict with the general obligations of staff members set forth in Principle 3 (“*General Obligations of Staff Members*”) of the Principles of Staff Employment and Staff Rule 3.01 (*i.e.*, staff members must comply with obligations embodied in the Principles of Staff Employment, the Staff Rules, and all other policies and procedures of the Bank [...]; in particular, staff members have a special responsibility to avoid situations and activities that might reflect adversely on the Bank, compromise its operations, or lead to real or apparent conflicts of interest).

128. The Tribunal recalls that the record has established that the Applicant failed to respond to INT fully and truthfully with respect to his siblings and his relationships and communications with Company X associates, tampered with and deleted evidence on his Bank-issued iPhone, and failed to adequately provide his financial records to INT. Considering the totality of this conduct, the Tribunal finds that there is substantial evidence to establish that the Applicant failed to observe the Principles of Staff Employment and Staff Rules in violation of Staff Rule 8.01, paragraph 2.01(a) and failed to observe generally applicable norms of prudent professional conduct in violation of Staff Rule 8.01, paragraphs 2.01(b) and (c).

129. With regard to Staff Rule 8.01, paragraph 2.01(a), abuse or misuse of Bank property, the Tribunal observes that Administrative Manual Statement (AMS) 6.20A – Information Security Policy for Information Users, in force at the relevant time, provides that information users cannot use Bank information technology in ways that conflict with Bank Group policies and that information users “must not test, explore, disable, or otherwise attempt to compromise any Information Security control, whether internal or external, unless specifically authorized under operational or systems development procedures.” The record shows that the Applicant deliberately disabled the lock/lost mode on his Bank-issued iPhone, deleting the data stored on the device, after INT had provided a written warning that the device would be locked to preserve evidence and that failure to cooperate may constitute misconduct. The Tribunal considers that the Applicant took this action in furtherance of his noncooperation with the INT investigation and, in so doing, violated the acceptable use provisions of AMS 6.20A. Accordingly, the Tribunal finds that there is substantial evidence to establish that the Applicant committed misconduct by misusing Bank property.

WHETHER THE SANCTIONS ARE SIGNIFICANTLY DISPROPORTIONATE TO THE OFFENSE

130. The Tribunal notes that the Applicant does not challenge whether the sanctions imposed are provided for in the law of the Bank. Rather, the Applicant contends that the decision to terminate the Applicant’s employment and bar him from future Bank employment was significantly disproportionate to any misconduct that he may have actually committed. The Applicant asserts that the HRVP improperly considered the unproven misconduct allegations when determining an appropriate sanction for the misconduct found. The Tribunal considers that the crux of the Applicant’s misconduct was his failure to cooperate with the INT investigation and will therefore consider whether the disciplinary measures imposed were significantly disproportionate to the finding of noncooperation.

131. In this case, the following sanctions were imposed:

- 1) termination of [the Applicant’s] WBG employment effective January 15, 2021;
- 2) ineligibility for future WBG employment;

- 3) access restriction to all WBG premises; and
- 4) written censure in the form of this letter to remain in [the Applicant's] personnel record.

132. In *Gregorio*, Decision No. 14 [1983], para. 47, the Tribunal held that, in order for a sanction to be proportionate,

there must be some reasonable relationship between the staff member's delinquency and the severity of the discipline imposed by the Bank. The Tribunal has the authority to determine whether a sanction imposed by the Bank upon a staff member is significantly disproportionate to the staff member's offense, for if the Bank were so to act, its action would properly be deemed arbitrary or discriminatory.

133. In *Houdart*, Decision No. 543 [2016], para. 95, the Tribunal reiterated the principle of proportionality and observed that,

in addressing the issue of proportionality, its job is not to decide what sanction the Tribunal would impose or whether the HRVP chose the best penalty, but, rather, whether the HRVP reasonably exercised his discretion in this matter. [...] [T]here is no mechanical formula on how to weigh these considerations. The selection of the sanction in a given case requires a judgment of balancing the relevant factors by the HRVP. That discretionary judgment is for the HRVP to make, and as long as [the] HRVP's decision was not unreasonable, the Tribunal will not interfere.

134. Staff Rule 8.01, paragraph 3.01, requires that,

[u]pon a finding of misconduct, disciplinary measures, if any, imposed by the Bank Group on a staff member will be determined on a case-by-case basis. Any decision on disciplinary measures will take into account such factors as the seriousness of the matter, any extenuating circumstances, the situation of the staff member, the interests of the Bank Group, and the frequency of conduct for which disciplinary measures may be imposed.

135. In considering whether the HRVP properly exercised her discretion in determining the sanctions imposed, the Tribunal will examine the five factors enumerated in Staff Rule 8.01, paragraph 3.01. *See S*, Decision No. 373 [2007], para. 52.

136. With regard to the seriousness of the matter, the Tribunal notes the Bank's statement on the significance of the Applicant's misconduct:

The Bank's legal framework in misconduct matters is predicated on the staff member's cooperation. Both EBC [Ethics and Business Conduct Department] and INT investigations depend on it, as investigators have limited means to collect and/or compel the production of evidence. Should a staff member be able to escape a finding of misconduct by simply not cooperating with an investigation – or worse, taking overt actions to actively frustrate an investigation – then the effectiveness of the entire internal justice system would be in question. Moreover, without potential for consequence, any subject to an investigation may decide to provide little cooperation simply because it is easier and less time consuming to do nothing than to comply with requests from investigators, and the institution would have no ability to enforce the obligation to cooperate. This would deprive investigators of tools necessary to developing the facts, as their ability to collect both exculpatory and inculpatory evidence would be severely curtailed. As a result, the institution would be denied meaningful and conclusive final investigative reports, thereby preventing it from upholding the ethical standards applicable to staff and ensuring personal accountability.

137. The Tribunal also notes the HRVP's statement in her decision letter:

I find the allegations against you are very serious. Your lack of truthful cooperation, misrepresentations, and evidence tampering directly and materially impacted the investigation. Without exception, all staff have a duty to cooperate with investigations. Your egregious behavior gives rise to serious concerns with respect to the standards of conduct that are expected of staff. I find your conduct deeply troubling and entirely unacceptable, as condoning conduct that impedes the institution's ability to investigate allegations of misconduct would compromise the integrity of the entire investigative process.

138. Recognizing that the Bank's investigative process relies largely on staff cooperation, as the Bank is limited in its ability to compel testimony in its investigations, the Tribunal is convinced by the statements of the Bank and the HRVP. Failure to cooperate in an investigation, particularly to the extent of the conduct in this case, is an extremely serious frustration of the integrity of the Bank's investigative processes.

139. The Tribunal next notes that the Applicant does not assert any extenuating circumstances for his failure to cooperate. While the Applicant has offered justifications for his actions with regard to unlocking his iPhone, the Tribunal has already concluded that the Applicant's

justifications were not credible. The Tribunal has also concluded that the Applicant's conduct, which surpassed failure to cooperate in that he deleted data on a Bank-issued device in direct contravention of INT instructions and in circumvention of measures to preserve the same, was unreasonable.

140. With regard to the situation of the staff member, the Tribunal has explained that it will consider the staff member's contributions and performance. *S* [2007], para. 62. The Tribunal notes here the Bank's consideration that, as an Advisor to an Executive Director, the Applicant was entrusted with responsibilities that aim to support and strengthen countries affected by national conflict and high violence, and that, "[w]ith this position and work program, there is a strong opportunity to influence policy and strategy in FCV countries, which requires utmost sensitivity and integrity." The Tribunal considers that the Applicant's level of responsibility in his position made his noncooperation even more serious.

141. With regard to the interests of the Bank Group, the Tribunal notes the Bank's contention that the Applicant's noncooperation was particularly serious as it "hindered INT's ability to investigate serious allegations of fraud and corruption: misconduct that the Tribunal itself has found to be one of the most serious forms of misconduct as it poses significant financial and reputational risk to the institution." The Bank explains:

Allowing a staff member to deliberately hinder an investigation would render the institution powerless in its efforts to combat fraud and corruption in its operations. Not only is it understandable for an HRVP to impose severe sanctions for fraud and corruption, but it is equally understandable to impose severe sanctions for conduct that would frustrate the institution's ability to reliably identify and address fraud and corruption committed by its staff. Indeed, without means for enforcement and deterrence, there would be no accountability, jeopardizing the integrity and reputation of the institution, as allegations of misconduct would go substantially uninvestigated and unsanctioned.

142. In *FU*, Decision No. 646 [2021], para. 156, the Tribunal stated:

It is the Bank's duty to investigate all forms of misconduct. Moreover, the WBG endeavors to be a leader in international efforts to eliminate corruption and to improve governance. Where financial discrepancies or irregularities are suspected or identified in any part of the Bank's workforce, it is incumbent on the Bank, in

pursuit of its commitment to integrity and its promotion of the highest standards by staff members in the performance of their duties, to investigate such discrepancies and irregularities and to be satisfied that any such discrepancies and/or irregularities have been fully accounted for and satisfactorily explained. It cannot “turn a blind eye” to such matters.

143. Considering this, the Tribunal is fully cognizant of the Bank’s interest in preserving its integrity as an institution and upholding its impartiality in client relations – goals which may be undermined if staff members are able to frustrate investigations into serious misconduct allegations through their noncooperation. It is therefore understandable that the HRVP may wish to seriously sanction conduct which could undermine those goals.

144. Finally, in consideration of the frequency of the conduct, the record demonstrates that the Applicant was warned multiple times throughout the investigation that failure to cooperate could constitute misconduct under the Staff Rules. The record also demonstrates that the Applicant was given multiple opportunities to clarify or supplement his answers regarding his siblings, communications with relevant individuals, and banking activities, but the Applicant continued to be evasive in his responses to INT’s questions.

145. In considering the proportionality of the sanctions, the Tribunal requested from the Bank three charts consisting of (i) all instances during the past five years in which the Bank Group has disciplined a staff member for noncooperation; (ii) all instances in the past five years in which the Bank Group has disciplined a staff member for failing to disclose a financial interest; and (iii) all instances during the past five years in which the Bank Group has terminated a staff member’s employment for misconduct.

146. With regard to the first chart, the Bank noted that this is a case of first impression and that there has not been another case in the past five years where a staff member was disciplined for failure to cooperate with an investigation. To the Applicant, this confirms the “highly irregular nature of INT’s sanctions here.”

147. The second chart included one case of misconduct where the staff member failed to disclose ownership in a private consultancy firm. The sanctions imposed in that case were termination, ineligibility for future employment, access restriction, and written censure.

148. The third chart included twenty cases of misconduct that led to the termination of the staff member's employment. The misconduct found in these cases was

failure to disclosure [*sic*] ownership in a consultancy company, failure to disclose or mitigate conflict of interest, sexual harassment, misappropriation of office supplies, medical insurance fraud, misuse of WBG funds (travel funds and petty cash), submitting fraudulent tax exemption claims, abuse of authority, theft, failure to return United Nations Laissez Passer and diplomatic license plate, allowing non-WBG staff access to WBG property/equipment (access card, office, internet), and removal of WBG assets without proper authorization. In many of the cases, the failure to cooperate, or inversely, the staff member's cooperation with the investigation, was considered as an aggravating or mitigating factor, respectively.

149. In response to the third chart, the Applicant asserts that the Bank's

data show at least seven instances where INT or EBC flagged actions such as "deliberate[ly] delet[ing]" information; "ma[king] multiple false representations;" giving "misleading and contradictory testimony;" "actively conceal[ing]" information; "fail[ing] to provide records requested;" or "sidestepping" questions. Yet not in a single one of these cases did INT or EBC separately charge the staff member with noncooperation.

The Tribunal observes, however, that, while the noted examples did contain noncooperative acts that were not treated as separate findings of misconduct, none of the cases involved noncooperation to the extent that the investigation could not be completed.

150. The Applicant cautions the Tribunal against upholding the imposed sanctions, stating that INT's approach could be

something that can potentially be leveraged against staff members in future investigations beyond the possibility of merely treating noncooperation as an aggravating factor with respect to the sanctions imposed if any of the primary allegations in an investigation are substantiated.

The Tribunal disagrees, noting that Staff Rule 8.01, paragraph 4.06, provides for noncooperation to serve as the basis for a separate finding of misconduct. While noncooperation can be, and certainly has been found to be, an aggravating factor considered in the determination of sanctions, the Applicant's noncooperation here rose to such a level that it warranted a separate finding of misconduct under the Staff Rule.

151. Having considered the seriousness of the matter, any extenuating circumstances, the situation of the staff member, the interests of the Bank Group, and the frequency of conduct for which disciplinary measures may be imposed, as well as the Bank's document production and the Applicant's comments thereon, the Tribunal finds that the sanctions imposed in this case were proportionate to the misconduct found. In so finding, the Tribunal notes that this is a novel issue, and that noncooperation is highly fact specific. The Tribunal considers that, as an employer, the Bank was within its power to send a strong signal that it takes allegations of misconduct, and especially of financial impropriety, seriously and that, in the course of its investigation, it was entitled to demand that the Applicant be completely honest and fully cooperate with the investigation. However, the Applicant took overt actions which actively frustrated the investigation, and the Tribunal finds that the Bank's decision to impose serious sanctions for such actions was appropriate.

WHETHER THE REQUIREMENTS OF DUE PROCESS WERE OBSERVED

152. The Tribunal notes that the Applicant has not alleged any procedural irregularities related to the INT investigation. However, the Applicant asserts that, in making the allegations of noncooperation with the investigation, INT "abandoned both the presumption of innocence and the benefit of the doubt to which [the Applicant] was entitled as a matter of due process and instead effectively concluded that he must be guilty of something even though they could not prove it." To the Applicant,

INT's supplemental charge of noncooperation was inextricably tied to his inability to conclusively prove his own non-culpability under INT's flawed "prove or disprove" approach to evaluating the underlying corruption charges. [...] And this standard in turn handed INT essentially uncabined discretion to bring supplemental misconduct charges based on investigators' subjective suspicions about conduct

they could not substantiate while at the same time making it impossible for a staff member to defeat such a charge once it was levied.

153. The Bank notes that there was no finding of misconduct related to the first Notice of Alleged Misconduct as the original allegations “have not been substantiated or refuted.” The Bank adds:

[The] Applicant was found to have committed misconduct pursuant to the Supplemental Notice. This is not the same as being found guilty, which implies a criminal act has been committed. Although [the] Applicant may believe he is “guilty”, in the eyes of the Bank, he is a former staff member who committed misconduct by violating a range of ethical standards and obligations relating to a subject staff member’s conduct in the course of an ongoing investigation. The serious nature of this offense alone warrants the imposition of serious discipline, as discussed above, though it appears from the Application that [the] Applicant still fails to recognize the gravity and severity of his actions.

154. The Tribunal observes that the Applicant’s contentions regarding due process rely on INT’s, and later the HRVP’s, statement that the Applicant’s “attempts to undermine INT’s investigation directly and materially impeded INT’s ability to thoroughly investigate the original allegations, which INT could not establish sufficient evidence to prove or disprove as a result.” However, the Tribunal does not view such a statement as requiring the Applicant to disprove misconduct. Whereas every staff member enjoys the presumption of innocence, they are nevertheless obliged not to frustrate or deliberately impede a legitimate investigation into misconduct. The Tribunal considers that the crux of INT’s statement is that the Applicant’s actions impeded INT’s ability to complete its investigation into the original allegations. There is a distinction between the completion of an investigation and disproving the allegations. The finding of misconduct in this case is tied to the former, not the latter. Accordingly, the Tribunal finds that the conclusion that the Applicant committed misconduct in the form of noncooperation did not violate the Applicant’s due process rights.

CONCLUDING REMARKS

155. The Tribunal considers that the Applicant’s misconduct in this case is of a most serious nature. The Tribunal has found that the Applicant’s actions, namely his failure to respond to INT

fully and truthfully with respect to his siblings and his relationships and communications with Company X associates, his tampering with and deletion of evidence on his Bank-issued iPhone, and his failure to adequately provide his financial records to INT, materially impeded INT's investigation into serious allegations of misconduct. Administrative investigations into misconduct depend largely on staff cooperation, as the Bank has no power to issue subpoenas and does not enjoy the same range of investigative tools available to other investigative bodies. While the Bank has a duty to conduct procedurally fair investigations and to respect the right to the presumption of innocence, staff members also have a duty to the Bank, which is to cooperate with such investigations fully and truthfully. In this regard, the Tribunal considers the Applicant's noncooperation and dubious justifications therefor particularly egregious.

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.