



World Bank Administrative Tribunal

2022

Decision No. 679

**GS,
Applicant**

v.

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

(Merits)

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

**GS,
Applicant**

v.

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

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Mahnoush H. Arsanjani (President), Marielle Cohen-Branche (Vice-President), Janice Bellace (Vice-President), Andrew Burgess, Seward Cooper, Lynne Charbonneau, and Ann Power-Forde.

2. The Application was received on 1 October 2021. The Applicant was represented by Ryan E. Griffin and Brita Zacek of James & Hoffman, P.C. The Bank was represented by David Sullivan, Deputy General Counsel (Institutional Affairs), Legal Vice Presidency. The Applicant's request for anonymity was granted on 23 May 2022.

3. The Applicant challenges the failure to consider her for the positions of Regional Safeguard Coordinator for West Africa and Regional Safeguard Coordinator for Latin America and the Caribbean.

FACTUAL BACKGROUND

4. The Applicant joined the Bank in 2003 as a Young Professional in the World Bank Group (WBG) Young Professionals Program. She has served as Program Manager, WBG Young Professionals Program and as a Senior Social Development Specialist in the Regional Director for "AFR [Africa] 2" unit. In Fiscal Years 2015 and 2016, the Applicant served as acting Regional Safeguard Coordinator for Latin America and the Caribbean. She currently serves as a Grade Level GG Sector Leader, Sustainable Development, in the Regional Director for AFR 2 unit based in a country office in Africa. The Applicant states that she holds a PhD in Social Anthropology and throughout her career with the Bank, the Applicant's Salary Review Increase ratings (SRIs) have ranged from 3 to 5.

5. In 2020, Human Resources (HR) posted two different requisitions – Requisition No. 5537 and Requisition No. 7260 – in the WBG’s job portal, Compass, in connection with various Lead Social Development Specialist positions. According to the Bank, Lead Social Development Specialists are also referred to as Regional Safeguard(s) Coordinators.

Requisition No. 5537

6. On 3 January 2020, HR posted Requisition No. 5537 as a batch recruitment for Lead Social Development Specialists at Grade Level GH.

7. Requisition No. 5537 was advertised as an international recruitment with the location listed as “Singapore, Kenya or Washington, DC.” The closing date was listed as 31 January 2020. As included in the advertisement:

Each region has a full work program supporting operational teams in the application and implementation of social safeguards policies as well as the ESF [Environmental and Social Framework]. AFR, EAP [East Asia and Pacific], ECA [Europe and Central Asia], and LCR [Latin America and the Caribbean], each are seeking a lead safeguards/social risk management specialist to fill the role of the regional social safeguard coordinator. Depending on the region, the position may be based in Washington, DC or in the respective regions.

The Social Practice [G]roup is looking to recruit a batch of regional safeguards coordinators to perform [...] duties within the respective regions[.]

8. The “Selection Criteria” for Requisition No. 5537 included the following:

- Advanced degree in a relevant social science (anthropology, sociology, political economy, social development, economics, etc.) with a substantive professional experience (a minimum of 12 years in the case of a PhD or 15 years in the case of a Master’s degree) working on social risk management and sustainability or other social development areas (community-driven development, citizen engagement/empowerment, fragility and conflict, etc).

[...]

- Excellent oral and writing skills in English [are] required.
- French or Spanish language skills would be a plus (dependent on the region).

9. The hiring manager for Requisition No. 5537 was the Global Director, Social Development (Global Director). According to the Global Director, the Africa position listed in the advertisement was a Regional Safeguard Coordinator for East Africa.

10. On 6 January 2020, the Global Director sent an email to “Social GP [Global Practice] All Staff” circulating Requisition No. 5537. She stated, “I would like to share with you the vacancy announcement for Regional Safeguards Coordinators. We have at least two vacancies that are open so we are not yet specifying the specific regions that are hiring at this point. The vacancy announcement will close on January 31st.”

11. On 31 January 2020, Requisition No. 5537 was closed. According to the Global Director, the vacancy “was re-opened on February 3rd for two days to allow two part 2 candidates who had expressed interest to apply.” Within the WBG, members of the International Development Association are classified as Part I or Part II, with Part II members referring mostly to developing countries.

12. The Applicant did not apply to Requisition No. 5537.

13. On 11 February 2020, the Selection Advisory Committee – composed of three Practice Managers, two Lead Social Development Specialists, and an HR Business Partner – prepared a shortlist of seven candidates to be interviewed for the positions available under Requisition No. 5537. According to the Global Director,

[d]uring the shortlisting process, it became clear that there might be an opening in West Africa, as the incumbent RSC [Regional Safeguard Coordinator] had applied for a position in the batch and was shortlisted thereby opening her DC based RSC AFR-W [West Africa] position.

14. On 18 February 2020, HR confirmed to management that the Requisition No. 5537 batch could include a West Africa position.

15. The Selection Advisory Committee conducted candidate interviews in the second half of February 2020.

16. On 12 March 2020, the Selection Advisory Committee's interview report, shortlisting report, and application packages were sent to the Practice Board for review, and due diligence reference checks of the candidates were requested to be carried out by a consultant. The record indicates that 23 candidates applied to Requisition No. 5537 and eight were interviewed. The Shortlisting Report stated:

The panel reviewed the candidates on the competencies indicated in the terms of references, specifically:

- Multi-regional experience, within and outside the World Bank Group
- Knowledge and experience of ESF
- Coordination and leadership (at and with all levels)
- Mentoring
- Communication skills
- Has experience handling high risk and complex cases
- Additional languages are an added advantage: Spanish and French.

17. Further, the Interview Summary Report stated:

The interview panel assessed all candidates as being above the bar or below the bar (through Yes, Maybe, or No), with the aim of utilizing a systematic approach for determining suitability for the role of Regional Safeguards Coordinator. Then a ranking of the candidates resulted in the determination of which candidates [were] above the bar.

The Interview Summary Report further stated that "there were five candidates who were above the bar and stronger than the others. They were deemed suitable for the work program, team and specific regions." One candidate was "deemed at the bar," and two were assessed to be "below the bar."

18. On 3 May 2020, the Global Director consulted with the Regional Directors via email regarding proposed selections for Regional Safeguard Coordinators for East Africa, East Asia and Pacific, Europe and Central Asia, and Latin America and the Caribbean. The Global Director indicated that the incumbent Regional Safeguard Coordinator for West Africa had been selected for the Europe and Central Asia position, and the deputy Regional Safeguard Coordinator for West Africa had been chosen for Latin America and the Caribbean. The Global Director also stated in her email:

With the planned move of [the incumbent Regional Safeguard Coordinator for West Africa] to ECA, the practice will advertise for a GH/RSC position for West Africa. [The incumbent Regional Safeguard Coordinator for West Africa] will move to her ECA assignment after the RSC slot for West Africa is filled.

19. On 3 May 2020, the Regional Directors for Latin America and the Caribbean and East Asia and Pacific responded to the Global Director’s email, stating that they had no objections. The Regional Director for Africa also responded on 3 May 2020 expressing “serious concerns about the two key people currently covering West Africa who we may lose (we hope not).”

20. On 6 and 7 May 2020, the Global Director and the ESF Implementation Support Unit Director exchanged emails discussing possible placements of candidates for the Regional Safeguard Coordinator positions. Specifically, on 7 May 2020, the ESF Implementation Support Unit Director sent an email to the Global Director, stating:

We may have another solution, [...]. [A candidate] will not be able to do East Asia – too much of a stretch for him – can explain more when we talk. But it seems we may have strong interest in [Ms. A]. Let’s chat today.

21. On 7 May 2020, the Global Director responded to the ESF Implementation Support Unit Director, stating:

[T]hanks – spoke with [a candidate] – he is keen to stay. Although would move if asked. [Ms. A] would be great. We have opened the position for one week – can you get her to apply.

The record does not indicate that when the position was reopened it was publicly advertised.

22. On 7 May 2020, HR sent the Requisition No. 5537 job application link to Ms. A, a “target-sourced candidate” who had been identified for the Regional Safeguard Coordinator position for Latin America and the Caribbean. According to the Global Director, four staff members not yet in the Requisition No. 5537 applicant pool were considered for target-sourcing, including the Applicant. According to the Bank, “only one was ultimately invited to submit an application.”

23. On 8 May 2020, Ms. A applied to Requisition No. 5537, and, on the same day, the HR Business Partner requested non-objection from the Practice Board to the adding of this “target-sourced candidate” for the Latin America and the Caribbean position to the Requisition No. 5537 shortlist.

24. On 10 May 2020, the Global Director sent an email to the Regional Directors, stating:

I propose that we push back our meeting planned for tomorrow on the RSCs. This week we are exploring some solutions that may be satisfactory to all and I would like to see how these pan out. In addition, we have advanced on the PM hiring process for ECA and EAP, and are currently doing reference check[s] on the candidates, and would like to wait for that outcome to meet with you – as that could have implications for our [Grade Level] GH complement as well.

25. On 13 May 2020, Ms. A was interviewed.

26. On 20 May 2020, the Regional Director for Latin America and the Caribbean responded to the Global Director’s 10 May 2020 email, stating:

I would like to ask that we meet soon to discuss the status of RSC recruitments. This recruitment is urgent for LCR and the longer the process is drawn out, the more risk of further derailment. We delayed the LCR recruitments to be aligned with corporate/multi region process. A recruitment process led by the SB was followed, you made a recommendation on May 3 and we are now again in limbo. It would be important that we have a clear discussion of the process and that decisions are transparent. The role of SB in managing talent will continue to be crucial to making our model work post July – identifying talent, facilitating staff movement across units, nurturing new talent – so all the more important that we get it right now.

27. On 20 May 2020, the Global Director responded to the Regional Director for Latin America and the Caribbean, stating:

I appreciate your concerns on the RSC recruitment. As you know, we interviewed a candidate for the LCR position last Wednesday. We received the references list from the candidate on Thursday evening [...]. If the reference check is satisfactory, which I expect, we will have an immediate virtual meeting with the RSC hiring panel to confirm the candidate for the LCR position. If the references do not work, as a backup we have placed an announcement in COMPASS for [S]panish and

French speakers that closes on Monday – we will explore options for both the West Africa RSC and LCR RSC positions to ensure that we have the best complement of RSCs across all regions.

28. On 26 May 2020, the Selection Advisory Committee sent, via email to the Practice Board, “the shortlist and interview reports, reference checks and recommendation to hire” for the Regional Safeguard Coordinator positions for West Africa, East Africa, East Asia and Pacific, Europe and Central Asia, and Latin America and the Caribbean, and sought “comments/objection” from the Practice Board. The candidate selected for West Africa was then the deputy Regional Safeguard Coordinator for West Africa who had applied to Requisition No. 5537 on 7 January 2020. The candidate selected for Latin America and the Caribbean was Ms. A, the “target-sourced candidate.”

29. The updated Interview Summary Report stated that “there were five candidates who were above the bar and stronger than the others.” Ms. A was one of two candidates “deemed at the bar.” Specifically, the Interview Summary Report stated that Ms. A “lacks extensive operational experience at the frontline but is deep in her understanding of ESF.” The Interview Summary Report further stated that “[t]he panel unanimously recommended that after due diligence references is conducted by a consultant for all current GG level candidates deemed above and at the bar [...] then regional assignments, with language requirements, be considered.”

30. On 27 May 2020, a Practice Manager, Social Development, responded to the 26 May 2020 email “to highlight a couple of concerns on the revised recommended list for the RSC position,” specifically noting “some reservations with regard to [Ms. A’s] candidacy for the RSC position.”

31. On 27 May 2020, another Practice Manager, Social Development, also responded to the 26 May 2020 email “second[ing] the concerns raised by [the other Practice Manager, Social Development],” and further stating “I also have some concerns about [Ms. A] as RSC,” and “I am not convinced [...] she has the qualifications for a RSC position.”

32. On 27 May 2020, the Global Director responded via email to the Practice Managers regarding their concerns about Ms. A and stated that Ms. A met “ALL of the criteria.” (Emphasis in original.)

33. On 27 May 2020, the Global Director sent an email to the Regional Directors with the Regional Safeguard Coordinator assignments and sought agreement from the Regional Directors for the selection of the candidates.

34. On 28 May 2020, the Global Director received agreement from the Regional Directors regarding the selection of candidates for the Regional Safeguard Coordinator positions. The record indicates that the selection process under Requisition No. 5537 was completed, with five candidates for Regional Safeguard Coordinator positions selected under this requisition.

Requisition No. 7260

35. On 8 May 2020, Requisition No. 7260 was posted for Lead Social Development/Social Risk Management Specialists at Grade Level GH, with a closing date of 22 May 2020. The post was an international recruitment for two positions – “AFR and LCR” – with the location listed as “Dakar, Senegal/Washington, DC.” As included in the advertisement:

Each region has a full work program supporting operational teams in the application and implementation of social safeguards policies as well as the ESF. AFR and LCR, each are seeking a lead safeguards/social risk management specialist to fill the role of the regional social safeguard coordinator. Depending on the region, the position may be based in Washington, DC or in the respective regions.

The Social Practice [G]roup is looking to recruit a batch of regional safeguards coordinators to perform [...] duties within the respective regions[.]

36. The “Selection Criteria” for Requisition No. 7260 included the following:

- Advanced degree in a relevant social science (anthropology, sociology, political economy, social development, economics, etc.) with a substantive professional experience (a minimum of 12 years in the case of a PhD or 15 years in the case of a Master’s degree) working on social risk management and sustainability or other social development areas (community-driven development, citizen engagement/empowerment, fragility and conflict, etc).

[...]

- Excellent oral and writing skills in English and French/Spanish [are] required.

37. The hiring manager for Requisition No. 7260 was the Global Director.
38. On 8 May 2020, the Applicant emailed the Global Director, stating, “I wanted to let you know that I was very excited to see the Dakar-based RSC position posted today. I intend to apply.” On 10 May 2020, the Global Director responded, “Glad to hear that!”
39. On 19 May 2020, the Applicant applied for the two positions under Requisition No. 7260.
40. On 27 May 2020, a Senior HR Assistant informed the Global Director via email that Requisition No. 7260 had been closed with five applications.
41. On 29 May 2020, the Global Director responded to the Senior HR Assistant regarding Requisition No. 7260, stating, “[W]e have decided not to proceed with this position. I would be most grateful if you could inform the candidates who applied that the position has been cancelled.”
42. On 9 June 2020, HR indicated to the Global Director via email that Requisition No. 7260 had been canceled and that all five of the applicants had been informed accordingly. The Applicant was among those so informed. According to the Global Director, Requisition No. 7260 was “a backup,” and was canceled because both the West Africa and the Latin America and the Caribbean positions had been filled under Requisition No. 5537 and, as a result, Requisition No. 7260 “was no longer needed.” The record does not indicate, nor does the Bank assert, that Requisition No. 7260 ever indicated to prospective candidates that it was a “backup” requisition.
43. On 18 June 2020, the Applicant emailed the Global Director sharing “concerns” regarding Requisition No. 7260. On 19 June 2020, the Global Director responded to the Applicant’s email, stating:

We advertised a batch recruitment for RSCs in January [Requisition No. 5537] as we had expected openings in AFR E [East Africa], EAP, ECA and LAC. The process took a while to advance given the number of applicants that needed to be shortlisted and interviewed and have reference checks, with regional director concurrence. During this process, it became clear that the West Africa position would open as the current RSC applied and was deemed suitable for another region.

Given the impending competitive rotation for the incumbent for AFR W [West Africa] and existing batch process, HR granted authority to replace the West Africa vacancy through the batch recruitment process. In addition, a target sourcing was done to find a candidate suitable for the LAC RSC position in terms of experience with complex IP [Indigenous Peoples] cases as well as language skills (fluency in Spanish and Portuguese) as there was no suitable candidate left in the batch recruitment that met the needs for LAC.

The entire process for selecting the 5 new RSCs respected all hiring guidelines [...] The candidate who has been selected for the West Africa position applied for the position in the original job announcement and went through the full process as described above.

As this process was ongoing, OPCS [Operations Policy and Country Services] was going through a parallel process to hire ESSAs [Environmental and Social Standards Advisors]. Given the concerns of the PMs that there was a risk that some of the selected candidates would be offered and accept ESSA positions, and not wanting to further delay the selection of RSCs, I advertised for two new RSCs for West Africa (based in Dakar) and LAC. However, when all the candidates accepted our offers, this vacancy [Requisition No. 7260] was no longer needed and subsequently closed.

Peer Review Services

44. On 6 October 2020, the Applicant filed a Request for Review with Peer Review Services (PRS). As the “Disputed Employment Matter(s)” the Applicant stated:

The process for awarding the positions of [Requisition No.] 7260 was arbitrary, unjustified, and characterized by an abuse of managerial discretion. I applied for a requisition that was “cancelled” 19 days after the closing date of the posting. The two positions that comprised this requisition (Dakar and DC) were not in fact “cancelled” at all but simply and immediately given (without fair notice or competition) to two individuals. This was not a merit-based decision. This case is NOT about non-selection but about being denied an equal and fair opportunity to even compete for a promotion to H – for a position I was undeniably qualified for. [Emphasis in original.]

45. On 20 May 2021, PRS issued the “Peer Review Panel’s Report in Request for Review No. 531.” The Panel recommended that the Applicant’s Request for Review be dismissed in its entirety and that her requests for relief be denied. The PRS Panel’s Report stated:

The Panel concluded that the WBG acted consistently with [the Applicant's] contract of employment and terms of appointment regarding the Recruitment Process in [Requisition No.] 7260. Specifically, the Panel found that the Recruitment Process in [Requisition No.] 7260 had a reasonable and observable basis, and that management followed a fair and proper process. The Panel found that management acted in good faith in making the decision to cancel the Recruitment Process in [Requisition No.] 7260.

46. On 3 June 2021, the Vice President, Sustainable Development accepted the PRS Panel's recommendation, and the Applicant was notified accordingly on 18 June 2021.

The present Application

47. On 1 October 2021, the Applicant filed this Application with the Tribunal.

48. In her Application, the Applicant states that she is contesting

[t]he Bank's decision to award the Latin America and [the] Caribbean and West Africa Social Safeguard Coordinator positions to which [the Applicant] applied to candidates who did not apply for those positions without giving any consideration to [the Applicant's] candidacy.

49. In her Application, the Applicant states that she requests "[a]ppointment to a mutually agreeable GH level position with salary adjustment retroactive to the actions complained of herein or, alternatively, appropriate compensation in lieu thereof." Further, the Applicant states that she seeks "an additional amount deemed just and reasonable by the Tribunal to remedy the damages to [the Applicant's] career and the loss of potential income and benefits resulting from the Bank's unjust decision to deprive her of the opportunity to compete for a level GH position." The Applicant claims legal fees and costs in the amount of \$26,837.50.

50. On 16 November 2021, the Bank filed its preliminary objections challenging the Application as inadmissible before the Tribunal.

51. In *GS (Preliminary Objection)*, Decision No. 672 [2022], the Tribunal upheld the Bank's preliminary objections with respect to Requisition No. 5537 and dismissed all other preliminary

objections. Specifically, the Tribunal found that “the Bank must answer the Application on merits with respect to all claims related to Requisition No. 7260, including those claims concerning any Bank actions under Requisition No. 5537 which significantly impacted Requisition No. 7260 and affected the Applicant’s rights thereunder.” *Id.*, para. 87.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Applicant’s Contention No. 1

The Bank unfairly denied the Applicant the opportunity to compete for the two open positions advertised in Requisition No. 7260

Regional Safeguard Coordinator for West Africa

52. The Applicant contends that she was denied a fair opportunity to compete for the Requisition No. 7260 West Africa position “for which she was highly qualified and timely applied,” and submits that her application for the West Africa position “was never even considered.” The Applicant submits that this “vacancy was publicly advertised for the first and only time on May 8, 2020, under Requisition [No.] 7260.” The Applicant submits that the West Africa position was not included in the Requisition No. 5537 batch recruitment precisely because this position only became vacant as a result of the Requisition No. 5537 selection process. She asserts that management “opted to fill the vacancy by awarding it on a noncompetitive basis to a candidate who did not even apply to Requisition [No.] 7260, but who had instead applied to the earlier Requisition [No.] 5537 that did not include the West Africa position.”

53. The Applicant submits that the West Africa vacancy was still open at the time she applied, and her application was pending when management conducted the selection process and made the hiring decision. She submits that the failure to consider her candidacy under these circumstances was unfair regardless of which requisition was used to fill the position.

54. While the Applicant states that she “is not challenging [the] credentials of the candidate who was selected for the West Africa position,” she contends that management “sidestepped the competitive process entirely” by

select[ing] a favored candidate from the earlier requisition and deem[ing] her selected to the later-announced West Africa position without ever comparing her to [the Applicant] or any other candidates who actually applied for that vacancy.

55. The Applicant disputes that Requisition No. 5537 “included the West Africa position when it was advertised,” and contends that, even if it did, the Bank “cannot simply ignore the fact that management *did* eventually publicly advertise this vacancy on May 8 under Requisition [No.] 7260” (emphasis in original). To the Applicant, “once management does decide to publicly advertise the newly added vacancy, it becomes obligated to at least consider qualified candidates who timely apply.” She submits that the failure to do so “constitutes unfair treatment of staff members like [the Applicant] who timely apply while the position remains open.”

Regional Safeguard Coordinator for Latin America and the Caribbean

56. The Applicant submits that she was denied the opportunity to compete for the Latin America and the Caribbean position announced in Requisition No. 7260 despite the fact that she applied contemporaneously with the target-sourced candidate who was ultimately selected. The Applicant contends that management “invited a single, handpicked candidate” to apply for the Latin America and the Caribbean position “via the long-closed Requisition [No.] 5537,” and did so at the same time it was actively recruiting candidates for this position and inviting those candidates to apply via the open Requisition No. 7260.

57. The Applicant submits that the Latin America and the Caribbean position was publicly advertised for the second time on 8 May 2020 under Requisition No. 7260, which was the same day the target-sourced candidate applied under Requisition No. 5537. The Applicant avers that management “quickly shepherded this handpicked candidate through an abbreviated shortlisting process and Practice Board and Regional Director approval,” and did so “without ever even looking at [the Applicant’s] contemporaneously solicited [...] and contemporaneously submitted

application.” The Applicant stresses that this vacancy was still open at the time she timely applied and that her application was pending while management conducted the selection process.

58. In the Applicant’s view, “merely labelling the later requisition as a ‘backup’ cannot justify manipulating the earlier requisition to ensure that the position is filled before any candidates identified through the contemporaneous ‘backup’ process are ever considered.” The Applicant asserts that “management’s so-called ‘target-sourcing’ of a candidate for Requisition [No.] 5537 undercut any possibility of Requisition [No.] 7260 legitimately serving as a ‘backup’ for the earlier requisition.” The Applicant submits that “a real ‘backup’ process” would seek “additional candidates through an open vacancy posting and then actually [consider] such candidates [...] in a competitive manner.” The Applicant cites *ET*, Decision No. 592 [2018], para. 125, and submits that “it appears that management did in fact have ‘a particular candidate in mind’ given that it apparently extended only a single target-sourced invitation to apply to the closed Requisition [No.] 5537.”

59. The Applicant contends that the use of target-sourcing in the instant case “robbed [her] of a fair opportunity to compete and thus resulted in a selection process that fell far short of the ‘objectivity, transparency, rigor, diversity, and fairness’ that was required.” She states that “[m]anagement unfairly awarded the Latin America position to a candidate without social development experience whom it invited to apply to a long-closed requisition.” She further cites *ET* [2018], para. 128, and submits that, “[t]o the extent the target-sourced candidate was selected despite not having the requisite experience, such a decision would reflect a ‘change in selection criteria during an ongoing selection process without informing the candidates,’” in contravention of the required “principles of objectivity, transparency, rigor, diversity, and fairness.”

The Bank’s Response

The Bank’s decision to close Requisition No. 7260 had a reasonable and observable basis

60. The Bank submits that “the matter at issue for decision is the *cancellation* of [R]equisition [N]o. 7260,” and the Bank avers that it did not abuse its discretion in canceling this requisition. (Emphasis in original.) According to the Bank, Requisition No. 7260 was closed without

considering any of the candidates from that particular pool because the positions in question had been filled from the pool of candidates under Requisition No. 5537. The Bank contends that this constitutes a reasonable and observable business rationale for the cancelation of Requisition No. 7260.

61. More specifically, the Bank submits that the record shows that the purpose of Requisition No. 7260 was to provide “a backup pool of candidates” should management not be able to fill the West Africa and Latin America and the Caribbean positions under Requisition No. 5537. In the Bank’s view, this is the “observable basis” for canceling Requisition No. 7260. Further, the Bank asserts that this action “was also reasonable.” To the Bank, “[c]reating a ‘backup’ pool of candidates can be considered unreasonable only where the hiring without regard to the candidates of the backup pool leads to a hiring which does not achieve the standards set by the Bank’s policies and procedures and Tribunal case-law.”

62. Further, in the Bank’s view, in *GS (Preliminary Objection)* [2022] “the Tribunal clearly distinguished between two separate recruitment processes of [R]equisition [N]o. 5537 and [R]equisition [N]o. 7260.” To the Bank, “[t]here is no indication on the record that [R]equisition [N]o. 5537, without the addition of the candidate pool under [R]equisition [N]o. 7260, was uncompetitive.” The Bank highlights “the separate nature” of the two requisitions, and asserts that it “therefore did not eliminate competition by not joining the pools.”

63. With respect to the West Africa position, the Bank avers that the batch recruitment under Requisition No. 5537 “was an open and broad recruitment for several regions and included a position for West Africa.” The Bank highlights that the “vacancy posting itself merely noted [...] ‘[Africa] AFR,’” and further stresses that the Global Director informed staff via email as follows: “**We have at least two vacancies that are open so we are not yet specifying the specific regions that are hiring at this point**” (emphasis added by the Bank). The Bank submits that, “[s]hortly after the end of the application period, management received approval from HR to fill the Africa West position under [R]equisition [N]o. 5537.” The Bank contends that the record shows that this position was added to Requisition No. 5537 on 18 February 2020.

64. Further, the Bank submits that, consistent with Tribunal precedent, it “treated those staff who were similarly situated in the same manner” in that staff who applied for Requisition No. 5537 were considered for the West Africa position and none of the staff who had applied for Requisition No. 7260 were considered for the West Africa position. The Bank underscores that the candidate ultimately selected for the West Africa position had applied to the Requisition No. 5537 batch recruitment on 7 January 2020 “and was considered to meet the selection requirements both in the first suggested batch recruitment allocation [...] as well as at the final suggestion for position allocation under the batch recruitment of [R]equisition [N]o. 5537.”

65. With respect to the Latin America and the Caribbean position, the Bank submits that target-sourcing “is a recognized HR practice” which was not “prohibited in this case.” The Bank submits that “the Tribunal has long approved the practice without attaching any specific conditions regarding the reasons for target sourcing.” The Bank asserts that the Latin America and the Caribbean position under Requisition No. 5537 was not closed when the target-sourced candidate was added to Requisition No. 5537 or when the position was awarded to this candidate under Requisition No. 5537.

66. Further, the Bank submits that “management had no particular candidate in mind when continuing the search to fill the positions under [R]equisition [N]o. 5537” and, citing *GO*, Decision No. 668 [2022], para. 58, contends that the target-sourcing in the present case met the required “principles of objectivity, transparency, rigor, and diversity.” To the Bank, the record establishes that “management completed a thorough review of the target sourced candidate against the recruitment criteria,” and the Bank submits that this review “was documented by the selection committee in contemporaneous recruitment materials including a due diligence report, a comparison chart of candidates, and an interview report.”

67. The Bank also submits that it “considered a number of candidates for target sourcing,” and avers that “there is no indication that management chose the route of target sourcing to eliminate anyone from the competition.” The Bank submits that the target-sourced candidate was invited to apply on 7 May 2020 and therefore before Requisition No. 7260 was published on 8 May 2020 and also before the Applicant applied to Requisition No. 7260 on 19 May 2020. Moreover, the

Bank stresses that the target-sourced candidate “was measured against the same criteria and underwent the same recruitment process as all other candidates under [R]equisition [N]o. 5537 and therefore completed a full competition for the position.” The Bank contends that Requisition No. 5537 involved “the complex allocation of staff across regions under intense time pressures” and therefore, pursuant to *GO* [2022], “appropriate circumstances” existed to justify target-sourcing.

The Applicant’s Contention No. 2

There was an overall lack of transparency and objectivity in the recruitment processes, and the Bank’s “target-sourcing” practices and its use of “backup” requisitioning are not supported by written policies or procedures accessible to staff members

68. With respect to the Bank’s use of target-sourcing and backup requisitions, the Applicant contends that she was denied an opportunity to be considered for positions for which she was “highly qualified” and “timely applied” due to the Bank’s use of “opaque and seemingly standardless practices that appear ripe for abuse.” She asserts that “[t]he absence of any published standards to guide the use of these practices undermines the Bank’s supposedly competitive selection process – and critically, staff members’ confidence in the outcomes of that process.”

69. The Applicant submits that there was no indication in Requisition No. 7260 that it was a “backup,” and she asserts that this violates the principle of transparency. The Applicant states that the Bank “concedes [...] that it lacks even a single written policy, procedure, or guidance document” regarding “backup” requisitioning. She contends that, even if the Bank had such a policy, it would be arbitrary for the Bank to apply it in the instant case where a vacancy is being publicly advertised for the first time.

70. Further, the Applicant submits that there do not seem to be “any rules regarding whether a target-sourced candidate recruited while a vacancy was open and still accepting applications should be inserted into the original candidate pool or into the ‘backup’ pool.” In the Applicant’s view, the Bank placed the target-sourced candidate in “the long-closed” Requisition No. 5537 pool

“beyond the scope of any competition from [the Applicant] or anyone else.” She submits that “the Bank has no meaningful controls relating to target-sourcing.”

71. Similarly, with respect to the West Africa position, the Applicant contends that the Bank “shielded this candidate from competition in essentially the same way as its hand-picked Latin America candidate.” The Applicant asserts that the Bank’s decision to fill the West Africa position “via a requisition in which it was not even advertised made it essentially impossible for interested staff members to figure out how to even put themselves under consideration for the position.”

72. The Applicant further contends that the Bank’s “use of target-sourcing directly undermined the objectivity, transparency, rigor, diversity, and fairness of the selection process” in two specific respects. First, the Applicant asserts that the Tribunal has endorsed target-sourcing only in “limited circumstances” which involved increasing the competitiveness of the process. The Applicant submits that, “[c]onversely, it follows that target-sourcing may not be deployed to sidestep the competitive process,” which she contends occurred in the instant case when the Bank chose not to place the target-sourced candidate in the pool of contemporaneously submitted applications.

73. Second, the Applicant contends that, in this case, the target-sourcing eliminated rather than fostered diversity in the candidate pool. She submits that management received a timely application from “a female candidate from a Part 2 country who had not only previously held the Latin America position in an acting capacity, but who received SRIs of ‘5’ for two years in a row while doing so!” The Applicant contends that “she is precisely the type of candidate management should be target-sourcing if this practice were really being used to increase diversity.”

74. Finally, the Applicant avers that the Bank’s decision to ignore the applications it received under Requisition No. 7260 was not consistent with “HR’s Policy on Vacancy Closing” which she submits “provides for automatic closure after 90 days if a candidate has not been selected.” The Applicant asserts that any exception to this 90-day policy for batch recruitments as claimed by the Bank is “demonstrably false.” The Applicant submits that “the effect of continuing to treat Requisition [No.] 5537 as open long after the 90-day deadline had passed, and after Requisition [No.] 7260 had been posted, was to artificially segregate timely applications into two groups – one

that received consideration and the other that did not.” The Applicant asserts that this is inconsistent with the selection process requirements of “objectivity, transparency, rigor, diversity, and fairness.”

The Bank’s Response

The Bank’s decision to close Requisition No. 7260 observed a fair and reasonable procedure

75. The Bank disputes the Applicant’s contentions that its actions in respect of the two positions in question lacked transparency. The Bank avers that, pursuant to Tribunal precedent, “the principle of transparency [is] violated where information disclosure is haphazard and can result in prejudice to staff.” To the Bank, the communication in the instant case was neither. The Bank submits that the Requisition No. 5537 vacancy announcement listed “AFR” as the regional context without specifying further, and that the Global Director’s email noted that the specific regions were not yet specified. To the Bank, “[t]he fact that management initially only had Africa East in mind when posting the vacancy is not relevant,” and the Bank posits that “[m]anagement’s communication clearly conveyed the open ended and flexible character of the vacancy posting.” To the Bank, “no misunderstanding could have been caused that any specific region would or would not be hiring.”

76. The Bank submits that “the omission to communicate that [R]equisition [N]o. 7260 was posted as a mere ‘backup’ cannot be considered to lack transparency.” To the Bank, “[t]he language of the posting cannot be seen as representing a haphazard communication.” Further, the Bank asserts that the language of the Requisition No. 7260 posting “cannot be considered as having potential to prejudice staff’s rights,” and the Bank stresses that a recruitment process can be canceled for various reasons. In the Bank’s view, expecting it to include information regarding the possibility of cancelation in its vacancy postings “would result in a bureaucratic requirement for the Bank to state the obvious.”

77. Additionally, the Bank submits that the process with respect to Requisition No. 7260 was not unfair and that all applicants under this requisition were treated equally. The Bank submits that the record does not indicate any arbitrariness, discrimination, or improper motive.

78. The Bank states that “there is no HR policy or procedure concerning target sourcing.” The Bank further submits that it does not have a policy regarding “backup requisitions” and avers that it “based its actions on its reasonable and observable business rationale while applying a fair and reasonable procedure.” The Bank underscores that its “policy making function falls within the discretion of the Bank and its governing institutions.”

79. The Bank also submits that it “has no policy pursuant to Section III, paragraph 1 Bank Policy: Policy and Procedure Framework [...] on the duration of recruitment processes.” In support, the Bank submits a written statement from an HR Manager dated 17 October 2022 and stating:

I was the HR policy advisor to hiring managers in the Sustainable Development Practice Group (which included the Social Development Global Practice) in addition to being the line manager to [...] the HR Business Partner who participated in this batch recruitment.

[...]

The [Bank] has no formal policy on the duration of recruitment processes.

[...]

Batch recruitments and batch rotations were just taking off when the 90-day time limit was introduced, and these processes were still evolving to be subjected to close monitoring. As it turned out batch recruitments and batch rotations are too complex, considering the number of positions, regions and applicants involved, to be subject to the 90-day time limit.

[...] The hiring manager’s notice of the vacancy posting for [Requisition No.] 5537 in the hiring platform Compass referred to the 90-day time-limit because Compass generates this message automatically irrespective of the type of recruitment.

To the Bank, “in [the] absence of a formal policy on the duration of recruitment, the Human Resources Vice Presidency has a reasonable business rationale to treat batch recruitments differently than single vacancies.”

80. Finally, the Bank asserts with respect to relief that, should the Tribunal find that the Bank’s closure of Requisition No. 7260 violated the Applicant’s right to an opportunity to compete as she contends, relief should be limited to compensation for the violation of a procedural opportunity.

To the Bank, it did not violate the Applicant's contract of employment or terms of appointment by opening a backup requisition in May 2020 for the Latin America and the Caribbean and the West Africa positions, for which the Applicant applied, and then canceling this backup requisition after the positions could be filled through an earlier ongoing batch recruitment process to which the Applicant had not applied.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

81. In her Application, the Applicant states that she is contesting

[t]he Bank's decision to award the Latin America and [the] Caribbean and West Africa Social Safeguard Coordinator positions to which [the Applicant] applied to candidates who did not apply for those positions without giving any consideration to [the Applicant's] candidacy.

The Tribunal considers that the crux of the Applicant's complaint is that she was denied a fair opportunity to compete for two positions for which she timely applied under Requisition No. 7260 because the Bank's recruitment process for filling these positions through another requisition, Requisition No. 5537, was flawed.

82. The Tribunal recalls that in *GS (Preliminary Objection)* [2022] it explained that, "contrary to the Bank's submission that Requisition Nos. 5537 and 7260 were two separate processes, the record convincingly indicates that the processes were very much connected with respect to the two Regional Safeguard Coordinator positions in question." *Id.*, para. 75. Accordingly, the Tribunal held that it has jurisdiction over the Applicant's claims concerning Requisition No. 7260 as well as "jurisdiction over the Applicant's claims concerning any Bank actions under Requisition No. 5537 which significantly impacted Requisition No. 7260 and affected the Applicant's rights thereunder." *Id.*, para. 78.

83. The Tribunal considers that the central issue before it is whether the Applicant was denied a fair opportunity to compete for the positions of Regional Safeguard Coordinator for West Africa and Regional Safeguard Coordinator for Latin America and the Caribbean. In view of the Tribunal's determinations in *GS (Preliminary Objection)* [2022], the Tribunal considers that

resolution of the central issue will include an assessment of the propriety of the recruitment efforts employed by the Bank with respect to the two positions for which the Applicant applied.

WHETHER THE APPLICANT WAS DENIED A FAIR OPPORTUNITY TO COMPETE FOR THE POSITIONS OF
REGIONAL SAFEGUARD COORDINATOR FOR WEST AFRICA AND REGIONAL SAFEGUARD
COORDINATOR FOR LATIN AMERICA AND THE CARIBBEAN

84. Staff Rule 4.01, paragraph 1.01, in place at the relevant time, provides:

The Bank Group’s recruitment policy is to recruit Staff Members of the highest caliber through a competitive selection process based on criteria determined by the needs of the Bank Group and the requirements of the position, paying due regard to the importance of recruiting Staff on a diverse basis.

85. As the Tribunal recently stated in *GO* [2022], para. 55, “[w]hen the Bank advertises a position for a competitive selection process, its main objective is to ‘hire staff of the highest caliber’ based on the criteria outlined in the vacancy notice.” The Tribunal further explained that “[r]ecruitment of staff of the highest caliber is achievable when the Bank follows its applicable rules and procedure in the recruitment process, adheres to applicable HR guidance on recruitment, and conducts the selection process respecting the principles of objectivity, transparency, rigor, and diversity.” *Id.*, para. 58. *See also CP*, Decision No. 506 [2015], para. 64; *BK (No. 2)*, Decision No. 452 [2011], para. 41.

86. The Tribunal has also recognized that selection decisions are discretionary decisions of the Bank. In *Riddell*, Decision No. 255 [2001], para. 23, the Tribunal stated that

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

87. As the Tribunal has consistently held, “[d]ecisions that are arbitrary, discriminatory, improperly motivated, carried out in violation of a fair and reasonable procedure, or lack a reasonable and observable basis, constitute an abuse of discretion, and therefore a violation of a

staff member's contract of employment or terms of appointment." *AK*, Decision No. 408 [2009], para. 41. *See also Desthuis-Francis*, Decision No. 315 [2004], para. 19; *Marshall*, Decision No. 226 [2000], para. 21.

88. It is undisputed that the Applicant timely applied to Requisition No. 7260 in which Regional Safeguard Coordinator positions for West Africa and Latin America and the Caribbean were advertised. It is also undisputed that the Bank canceled this requisition without considering any of the candidates who applied thereunder. The Tribunal observes that the Regional Safeguard Coordinator positions in question were not themselves canceled; rather, the Bank chose to fill the positions which it advertised in Requisition No. 7260 through an earlier requisition, Requisition No. 5537.

89. The Applicant contends that the Bank's cancellation of Requisition No. 7260 without considering her candidacy denied her a fair opportunity to compete for the positions advertised therein for which she was "highly qualified," and that the Bank's overall recruitment process fell short of the applicable principles of "objectivity, transparency, rigor, diversity, and fairness." The Bank responds that it did not abuse its discretion by canceling Requisition No. 7260 because Requisition No. 7260 served only as a "backup" to Requisition No. 5537, a requisition to which the Applicant did not apply. The Bank contends that it did not violate the Applicant's contract of employment or terms of appointment.

90. The Tribunal will consider the Applicant's claims with respect to each of the two Regional Safeguard Coordinator positions in turn.

The failure to consider the Applicant for the Regional Safeguard Coordinator for West Africa position

91. The Applicant asserts that the Regional Safeguard Coordinator for West Africa position was publicly advertised for the only time in Requisition No. 7260, and that her timely application to this posting should have been considered by the Bank. She asserts that management did not consider her application, and instead awarded the West Africa position "on a noncompetitive basis"

to a candidate who did not apply to Requisition No. 7260 but rather to Requisition No. 5537, which did not include the West Africa position.

92. The Bank submits that Requisition No. 5537 included the West Africa position. To the Bank, its decision to fill the West Africa position through Requisition No. 5537 was proper.

93. The Tribunal observes that Requisition No. 5537 was posted on 3 January 2020 with a closing date of 31 January 2020. It advertised for positions in “AFR, EAP, ECA, and LCR.” The Tribunal observes that the Bank itself states that, “[s]hortly after the end of the [Requisition No. 5537] application period, management received approval from HR to fill the Africa West position under [R]equisition [N]o. 5537,” and submits that this position was added to Requisition No. 5537 on 18 February 2020. Further, the Tribunal observes that the Global Director stated in her Manager’s Response to PRS, “We advertised a batch recruitment for RSCs on January 3rd (req5537) [...]. We were recruiting the RSCs for EAP, LAC and East Africa. The locations were indicated as Singapore, Kenya or Washington, DC.”

94. Indeed, the Tribunal notes that the Africa country location as stated in Requisition No. 5537 – Kenya – supports that this requisition advertised for an East Africa rather than West Africa position. Thus, contrary to the Bank’s contention that “no misunderstanding could have been caused that any specific region would or would not be hiring,” the Tribunal considers that the location as listed in Requisition No. 5537 signals an East Africa position, which the record also plainly supports was the recruitment intention of management. Accordingly, the Tribunal concludes that the record demonstrates that Requisition No. 5537, as advertised on 3 January 2020, did not include the West Africa position.

95. Notwithstanding that Requisition No. 5537 did not originally include a position for West Africa, the Tribunal observes that the record supports the Bank’s contention that HR advised management that it could fill the West Africa position using Requisition No. 5537. The Bank contends that it proceeded to do so, ultimately selecting a candidate who had applied to Requisition No. 5537 on 7 January 2020. The Tribunal observes, however, that the record does not indicate that this requisition was ever amended to publicly advertise a West Africa position. Rather, the

Tribunal observes that the record shows that, at the same time the Bank filled this position, it was publicly advertising a vacancy for West Africa through Requisition No. 7260 and soliciting applications, which the Bank contends was a “backup.” The Bank submits that it has no policy regarding the use of “backup” requisitions. The Tribunal observes that the record does not show, nor does the Bank assert, that Requisition No. 7260 indicated that it was a “backup.”

96. The Tribunal recalls that Principle 2.1 of the Principles of Staff Employment provides:

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

97. Further, in *Sisler*, Decision No. 491 [2014], para. 87, the Tribunal explained:

The importance of transparency in the relationship between the Bank and its staff cannot be overstated given that the haphazard disclosure of information can result in prejudice to staff. The Bank is required, by virtue of Staff Principle 2.1, to follow proper process in its relations with staff members and such a process includes transparency.

98. The Tribunal finds that the Bank’s failure to expressly indicate in the Requisition No. 7260 vacancy posting that it was a “backup” requisition is inconsistent with the principle of transparency. The record indicates that the relevant managers communicated among themselves regarding the “backup” nature of Requisition No. 7260; for instance, the Tribunal observes that, on 20 May 2020, the Global Director emailed the Regional Director for Latin America and the Caribbean explaining that “as a backup” Requisition No. 7260 was posted in Compass. However, pursuant to Principle 2.1 of the Principles of Staff Employment, the Tribunal considers that a fair and proper process required that the Bank act transparently and communicate to staff members, as prospective candidates, that Requisition No. 7260 was intended to serve as a “backup.” The Bank did not do so.

99. In this respect, the Tribunal notes that, on 8 May 2020, the Applicant emailed the Global Director indicating her intention to apply to Requisition No. 7260. The Global Director responded on 10 May 2020, stating, “Glad to hear that!” The Tribunal considers that the Global Director, as the hiring manager, had an opportunity to offer the Applicant a transparent explanation about the “backup” nature of Requisition No. 7260 but did not do so and could be viewed as implicitly encouraging the Applicant to apply.

100. The Tribunal also considers the Bank’s decision to include the West Africa position under Requisition No. 5537 after the closing date for that requisition to be inconsistent with the principle of transparency. The Tribunal observes that the record supports the Applicant’s contention that the only time the West Africa position was publicly advertised was in Requisition No. 7260. The Tribunal considers that staff members are entitled to a fair opportunity to compete for positions at the Bank. In the instant case, the Tribunal observes that the Bank did not consider the application of a candidate who sought to compete for the West Africa position and accordingly timely applied to Requisition No. 7260, but it did consider, and ultimately selected, a candidate who applied to a requisition that did not advertise the West Africa position. In view of these facts, the Tribunal finds that the Bank acted inconsistently with its obligation of fairness and impartiality toward the Applicant as enshrined in Principle 2.1 of the Principles of Staff Employment and denied the Applicant a fair opportunity to compete for the West Africa position.

The failure to consider the Applicant for the Regional Safeguard Coordinator for Latin America and the Caribbean position

101. The Tribunal observes that the record indicates that the Latin America and the Caribbean position was advertised in both Requisition Nos. 5537 and 7260, with the Bank internally considering but not openly announcing the latter as a “backup.” As discussed above with respect to the West Africa position, the Tribunal has already found that the principle of transparency required the Bank to communicate to prospective candidates that Requisition No. 7260 was a “backup.” The Bank did not do so. Accordingly, the Tribunal finds that, with respect to the Regional Safeguard Coordinator for Latin America and the Caribbean position, the Bank acted

inconsistently with the principle of transparency and thus did not follow a proper process in respect of the Applicant as required by Principle 2.1 of the Principles of Staff Employment.

102. The Tribunal observes that the record establishes that Ms. A was identified via target-sourcing for the Latin America and the Caribbean position. The Applicant asserts that the use of target-sourcing in the instant case “robbed [her] of a fair opportunity to compete and thus resulted in a selection process that fell far short of the ‘objectivity, transparency, rigor, diversity, and fairness’ that was required.” The Bank submits that “there is no HR policy or procedure concerning target sourcing,” and maintains that the target-sourcing was appropriate.

103. In *GO* [2022], para. 98, the Tribunal stated that it

recognizes the Bank’s discretion to add – in appropriate circumstances – a belatedly identified candidate to a list that has been completed. However, the Bank is, nevertheless, obliged to ensure that the process through which it conducts targeted sourcing is a fair one. The Tribunal considers it imperative that a transparent and open competitive process must occur and be seen to occur.

104. Further, in *Iqbal*, Decision No. 485 [2013], para. 45, the Tribunal observed that

the exercise of a hiring manager’s right to augment a shortlist should entail, at a minimum, some contemporaneous communication showing the objective criteria on the basis of which the candidates were included in the final shortlist for interviews, in preference to others.

105. Accordingly, the Tribunal will review the record to determine whether a transparent and open competitive process occurred and was seen to occur with respect to the target-sourcing of Ms. A. The Tribunal will begin by reviewing the statements and communications in the record concerning the target-sourcing process in the instant case.

106. In a written statement dated 3 November 2022 and submitted to the Tribunal, the Global Director stated:

Potential candidates for target sourcing for the LCR RSC position under [R]equisition [N]o. 5537 were identified in discussions between myself, the director of the ESF Implementation Support Unit [...] and the practice manager for

the Latin and Central America Region [...]. There was also an exchange around possible candidates with the chair of the shortlisting committee [...]. With the exception of the emails transmitted to the Tribunal [...] these discussions were held orally.

107. Further, the Tribunal observes that the emails referenced by the Global Director include correspondence on 6 and 7 May 2020 between the Global Director and the ESF Implementation Support Unit Director discussing possible placements of candidates for the Regional Safeguard Coordinator positions. Specifically, on 7 May 2020, the ESF Implementation Support Unit Director sent an email to the Global Director, stating:

We may have another solution, [...]. [A candidate] will not be able to do East Asia – too much of a stretch for him – can explain more when we talk. But it seems we may have strong interest in [Ms. A]. Let's chat today.

108. On 7 May 2020, the Global Director responded, stating:

[T]hanks – spoke with [a candidate] – he is keen to stay. Although would move if asked. [Ms. A] would be great. We have opened the position for one week – can you get her to apply.

109. On 8 May 2020, the HR Business Partner emailed the Practice Board, stating:

[Ms. A] is being proposed for inclusion in this [Requisition No. 5537] shortlist after targeted sourcing for candidates that meet the criteria for the position and the language requirements.

Kindly review and provide your views. If we receive no objections by 7:25PM on May 12, 2020, her inclusion in the shortlist will be deem[ed] cleared. The panel will then proceed with interviewing her for the role.

110. On 10 May 2020, the Practice Manager and Chair of the Shortlisting Committee responded, stating:

Should we see if [a candidate] is interested in LCR? He certainly has the credentials and knows operations more than [Ms. A].

The Global Director responded:

Someone told me that he did not know ESF well enough to be an RSC – but would you be able to check with him informally to see if he is interested?

111. The Tribunal recalls that the Bank states that four candidates, including the Applicant, were considered for target-sourcing but only one, Ms. A, was ultimately provided with this opportunity. The Tribunal considers that there is a lack of contemporaneous documentation as to how precisely this decision to choose Ms. A, and only Ms. A, was made. The communications as reproduced above propose Ms. A for inclusion on the shortlist but fail to document the Bank's reasoning with respect to that decision. The Tribunal considers that this lack of documentation lends support to the Applicant's contention that a proper process was not followed with respect to the target-sourcing.

112. Further, the Tribunal notes that the Bank states that it has no policy on target-sourcing. In the Tribunal's view, the absence of a policy on target-sourcing suggests different standards and processes may be applied by different management teams within the Bank without proper basis. Such a practice increases the likelihood of varying treatment of staff, which may potentially lead to abuses of discretion. Accordingly, the Tribunal considers that the importance of proper documentation is heightened in the absence of formal Bank policy so as to ensure that staff members can be confident that the recruitment process was fair, transparent, and impartial. The Tribunal considers that a lack of documentation may give rise to questions on the part of staff members that the recruitment process was marred by favoritism or other improper bias.

113. The Tribunal next observes that the Bank sought to solicit further applications for the Latin America and the Caribbean position through a new requisition – Requisition No. 7260 – which it posted on 8 May 2020, the same day that the target-sourced candidate applied to Requisition No. 5537. It is the failure to target-source Ms. A under the newly opened Requisition No. 7260 and to consider Ms. A in comparison to the pool of candidates who applied to Requisition No. 7260 that the Applicant contends deprived her of a fair opportunity to compete.

114. The Bank contends that the Latin America and the Caribbean position under Requisition No. 5537 was not closed when Ms. A was added to Requisition No. 5537 or when the position was

awarded to her under Requisition No. 5537, and that Ms. A “completed a full competition” for the Latin America and the Caribbean position.

115. With respect to Ms. A’s candidacy, the Tribunal observes that the factual record includes a Shortlisting Report for Requisition No. 5537 which stated that the candidates were reviewed on the competencies indicated in the terms of references and listed Ms. A among the candidates deemed to meet all the criteria. The record also includes a Comparison of Reference-Checking Results which includes Ms. A, as well as a Due Diligence Report for Ms. A, dated 21 May 2020, and an Interview Report for Ms. A. In this respect, the Tribunal observes that Ms. A was “deemed at the bar” in the Interview Summary Report. However, the Tribunal considers that this review and documentation regarding Ms. A’s merit vis-à-vis the selection criteria do not put the Bank in the clear with respect to the propriety of its target-sourcing in this case.

116. The Tribunal considers that, in addition to the lack of contemporaneous documentation discussed previously, the simultaneous solicitation of additional candidates for the Latin America and the Caribbean position, through Requisition No. 7260, who were never considered calls into question whether a transparent, competitive process occurred for the position. When the Bank posted Requisition No. 7260, it created a reasonable expectation among staff members, including the Applicant, that this vacancy would be filled through an open, competitive, and transparent process in which they would have a fair chance to compete. This was not the reality. The record indicates that, while candidates like the Applicant were applying to Requisition No. 7260, the Bank was processing Ms. A’s candidacy through Requisition No. 5537. The Bank’s approach in this respect is both problematic and improper.

117. The Tribunal considers that a fair, open, and transparent process would have required the Bank to also consider the candidates who applied to Requisition No. 7260. As stated, Requisition No. 7260 was publicly open to applications at the time the target-sourced candidate applied and was considered under Requisition No. 5537, a requisition which stated a closing date of 31 January 2020. Further and significantly, the Bank chose to target-source precisely because it determined that there were no suitable candidates in the Requisition No. 5537 pool. Pursuant to Principle 2.1 of the Principles of Staff Employment, the Bank is required to act with fairness and impartiality at

all times with respect to staff members. The Tribunal finds that the Bank's failure to consider the Requisition No. 7260 candidates falls short of the Bank's obligations under Principle 2.1 of the Principles of Staff Employment. Accordingly, the Tribunal finds that the manner in which the target-sourcing was conducted for the Latin America and the Caribbean position was such as to deprive the Applicant of a fair opportunity to compete.

118. The Tribunal observes that the Bank stresses, and the record supports, that the overall recruitment process for the Regional Safeguard Coordinator positions as took place from January to May 2020 involved "the complex allocation of staff across regions under intense time pressures." The Tribunal considers that, while "appropriate circumstances" may have indeed existed to explain the use of target-sourcing with respect to the position of Regional Safeguard Coordinator for Latin America and the Caribbean (*see GO [2022]*, para. 98), that explanation does not justify the manner in which the target-sourcing was conducted.

119. The Tribunal recalls that the Bank identified four potential new candidates, including the Applicant, for target-sourcing for the Regional Safeguard Coordinator for Latin America and the Caribbean position under Requisition No. 5537. There is a dearth of contemporaneous documentation of the discussions about these potential new candidates among the Global Director, the ESF Implementation Support Unit Director, the Chair of the Shortlisting Committee, and Regional Management for Latin America and the Caribbean. Such documentation might have shed light on the reasons for the Bank's decision to invite only one of such candidates to apply for the position. Additionally, the Bank has offered no explanation whatsoever of its decision not to extend this opportunity to the Applicant, who met all listed requirements for and had served as acting Regional Safeguard Coordinator for Latin America and the Caribbean. The Tribunal takes note that the Applicant states that she is from a Part II country.

120. Further, with respect to the Bank's target-sourcing in this case, the Tribunal observes that, in her email to the Applicant of 19 June 2020 explaining the recruitment process for the Regional Safeguard Coordinator positions, the Global Director stated that

a target sourcing was done to find a candidate suitable for the LAC RSC position in terms of experience with complex IP cases as well as language skills (fluency in

Spanish and Portuguese) as there was no suitable candidate left in the batch recruitment that met the needs for LAC.

121. The Tribunal observes that the vacancy announcement for Requisition No. 5537 required “[e]xcellent oral and writing skills in English” and further stated, “French or Spanish language skills would be a plus (dependent on the region).” For Requisition No. 7260, the selection criteria required “[e]xcellent oral and writing skills in English and French/Spanish.” Accordingly, the Tribunal observes that the record does not indicate that Portuguese was a required, or even a preferred, language for the position in question. The Tribunal also takes note of the Interview Summary Report which indicates that Ms. A is of Portuguese nationality. The Tribunal considers that these facts lend support to the Applicant’s contention that management may have “impermissibly altered the publicly advertised selection criteria for the LCR position to accommodate the target-sourced candidate.” *See ET* [2018], para. 128.

122. In conclusion, the Tribunal finds that the Bank failed to ensure a transparent and fair process by selectively processing one target-sourced candidate through a brief and non-public re-opening of the closed Requisition No. 5537, while simultaneously processing other applications for the same Regional Safeguard Coordinator position through Requisition No. 7260. The denial to the Applicant of a fair opportunity to compete for the two positions advertised in Requisition No. 7260 was exacerbated by the Bank’s decision not to create and/or retain records of the consideration of potential candidates for target-sourcing or to offer any explanation for the disparate treatment of those potential candidates in the re-opening of Requisition No. 5537. Finally, the justification of the selection of the single target-sourced candidate under Requisition No. 5537 by reference to a previously unstated language requirement, combined with the Applicant’s background, lend themselves to an adverse inference against the Bank. The Tribunal will consider these substantive flaws in the Bank’s recruitment decision in its determination of compensation for the Applicant.

REMEDIES

123. The Tribunal is not satisfied that the principles ensuring a transparent and fair selection process established in its jurisprudence have been observed in this case. The Tribunal is guided by its prior jurisprudence in determining appropriate compensation for the Applicant.

124. In *CK*, Decision No. 498 [2014], para. 101, the Tribunal explained, “In assessing compensation the Tribunal considers the gravity of the irregularity, the impact it has had on an applicant and all other relevant circumstances in the particular case.” Further, pursuant to the Tribunal’s jurisprudence, compensation may be awarded for procedural violations alone and actual proof of career damage is not required. At the same time, pursuant to the Tribunal’s jurisprudence, compensation is likely to be higher if the substantive decision is also found to be flawed. In *DB*, Decision No. 524 [2015], para. 113, the Tribunal explained:

The Tribunal’s practice indicates that the procedural flaws in the present case, in and of themselves, require payment of compensation in an amount significantly higher than was recommended by PRS. Moreover, the Tribunal has concluded that the flaws in the reassignment decision were both procedural and substantive.

125. In *ET* [2018], the applicant challenged his non-selection for certain positions and the Tribunal found that the Bank failed to act transparently and denied the applicant a fair opportunity to compete. The Tribunal stated, “These are serious failures for which additional compensation is merited” (*id.*, para. 150), and ordered the Bank to pay the applicant compensation in the amount of one year’s salary.

126. In *Iqbal* [2013], the Tribunal was “not satisfied that a fair assessment of the candidates had been conducted during the shortlisting, interview and final selection processes, or that the principles ensuring a transparent, sound and fair recruitment process established in its jurisprudence” had been observed. *Id.*, para. 58. The Tribunal ordered the Bank to pay the applicant compensation in the amount of seven months’ salary for the deficiencies in the selection process “even though the possibility exists that the [a]pplicant might not have been selected for the position absent those deficiencies.” *Id.*, para. 59.

127. In *GH*, Decision No. 659 [2021], the applicant challenged the IFC’s decision not to grant his application for voluntary separation. The Tribunal found that the IFC violated its obligations of fairness, impartiality, and transparency with respect to its voluntary separation program and ordered the IFC to pay compensation to the applicant in the amount of six months’ salary for the procedural irregularities in the selection process of the voluntary separation program, less the amount already paid to the applicant resulting from the PRS process.

128. In *GO* [2022], the Tribunal found “serious irregularities in the selection process,” explaining that “[n]ot only was the process followed unfair and improper, but the substantive decision of the [a]pplicant’s non-selection also lacked a reasonable and observable basis” and, further, that “[t]he process lacked transparency for want of contemporaneous documentation.” *Id.*, para. 103. In that case, the Tribunal ordered the Bank to pay compensation to the applicant in the amount of one and a half years’ salary inclusive of the amount already paid by the Bank following the PRS process. *Id.*, para. 110.

129. Based on the foregoing, the Bank shall pay compensation to the Applicant in the amount of one and a half years’ salary net of taxes.

DECISION

- (1) The Bank shall pay the Applicant compensation in the amount of one and a half years’ salary net of taxes;
- (2) The Bank shall pay the Applicant’s legal fees and costs in the amount of \$26,837.50; and
- (3) All other claims are dismissed.

/S/ Mahnoush H. Arsanjani

Mahnoush H. Arsanjani

President

/S/ Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C., 18 November 2022*

* Judge Burgess attended deliberations in these proceedings remotely, by way of audio-video conferencing coordinated by the Office of the Executive Secretary.