



World Bank Administrative Tribunal

2019

Decision No. 607

**Godwill K. Tange,
Applicant**

v.

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

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

**Godwill K. Tange,
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 Mónica Pinto (President), Andrew Burgess (Vice-President), Mahnoush H. Arsanjani (Vice-President), Abdul G. Koroma, Marielle Cohen-Branche, and Janice Bellace.
2. The Application was received on 19 September 2018. The Applicant was represented by Ryan E. Griffin and Marie Chopra of James & Hoffman, P.C. The Bank was represented by Ingo Burghardt, Chief Counsel (Institutional Administration), Legal Vice Presidency.
3. The Applicant challenges (i) the decision not to relocate him to Abidjan, Côte d’Ivoire, which resulted in his being denied a contract extension for a total of three years and additional compensation and benefits corresponding to the relocation, and (ii) the nonrenewal of his appointment.

FACTUAL BACKGROUND

4. In February 2014, the Applicant joined the Bank on a two-year term appointment as a Senior Economist, Level GG, based in Lomé, Togo. The Applicant “played a central role in both the Bank’s ongoing policy dialogue with the government of Togo and in all economic monitoring and analytical aspects of the Bank’s work.”
5. According to the Applicant, in mid-2015, his Supervisor, who was a Practice Manager, the Country Director for Togo and Côte d’Ivoire (Country Director) at the time, and his Program Leader proposed to expand the Applicant’s portfolio to cover both Togo and Côte d’Ivoire and to relocate him from Lomé to Abidjan.

6. In late 2015, the Bank advertised Job #152552 for a Senior Economist, Level GG, based in Abidjan and working on Côte d'Ivoire and Togo, for a three-year term appointment. The Applicant's Supervisor was listed as the supervisor for the position, i.e., she was also the Hiring Manager. The Applicant applied and was interviewed for the position.

7. In December 2015, the Applicant gave up his house in Lomé and sent his family back to their home country of Cameroon because he did not expect to remain in Togo beyond the expiration of his current contract in February 2016, as the Togo country economist position would be covered from Abidjan.

8. By email dated 23 January 2016, the Hiring Manager informed the Applicant that "the joint recommendation [from her and the new Country Director] is that [the Applicant] should be offered the job [i.e., the Abidjan-based Senior Economist position]." However, due to the business need to have the Applicant "on the ground" in Togo, the Hiring Manager proposed the following:

- [F]or the next 6 months you continue as Sr economist for Togo based [i]n Lome to support the business need, during this period you will work more on CIV [Côte d'Ivoire] to familiarize yourself with the program.

- In six months if the business needs in Togo goes down for example there is no DPO [Development Policy Operations] then you can move to Abidjan.

- If the need is still present and acute in 6 month[s] you may stay there another 6 months [w]hich will allow to finalize all the tasks at which time you will move to Abidjan.

- Throughout this period I will work with you and the CMU [Country Management Unit] to define a mixed work program.

I propose to extend your contract for another two years and when you move to Abidjan will adjust it.

9. By email dated 26 January 2016, the Applicant acknowledged the proposal and stated:

[T]he only problem I have is related to the localization plus issue of my contract, which as you know has been a serious issue for me in the past two years. I am just wondering whether it will be solved in case I were to sign the upcoming contract?

[...]

The bottom line of it is that if my proposal of a localization contract is solved, then I agree with your proposal. All I have to do now is to wait for the next steps and the additional arrangements which you are going to make for me to familiarize myself with the Cote d'Ivoire program.

10. Localization Plus is a package of mobility benefits provided to “staff directly recruited or permanently transferred to locally recruited positions in a duty station other than their home country.” When the Applicant was hired in 2014 for the position in Togo, although he was eligible for the Localization Plus benefit, he did not receive it due to budget constraints at the time.

11. The payment of the Localization Plus benefit to the Applicant was the subject of an email exchange between the Hiring Manager and Human Resources (HR) on 26 January 2016. A Senior HR Business Partner wrote that the Applicant should “be given the new indefinite benefits (was Localization Plus) so we do not have the same issue as last time.” The Hiring Manager sought guidance as to whether she should let the Applicant’s existing contract expire and create a new contract with the Localization Plus benefit or renew his existing contract. An HR Business Partner indicated that the Applicant “can only get the new global mobility if he moves to Abidjan, not if he stays in Lome.” She proposed the following two options “to enable [the Applicant] to get the benefits”:

1. Offer him the job in Abidjan a temporary assignment (minimum 1 year up to 3 on the former Cross Country Assignments), while he continues to work on Togo, with frequent travel-long stays in [T]ogo
2. [P]rovide him an annual SSP [Scarce Skills Premium] in Togo, during the 1 year transition period before he moves to Abidjan[.]

12. The Hiring Manager responded by email on the same day that “the business need is to have someone on the ground in Togo not [C]ote d'Ivoire and [the Applicant] agrees with it. I would not send [the Applicant] to CIV as of now and go on mission to Togo as there is a pending crisis. So the option we are looking [at] is how to get him to Togo with the Localization plus benefits. I would rather not give him a[n] SSP.”

13. By email dated 27 January 2016 to the Hiring Manager, the HR Business Partner indicated that she did “not see any other way than the SSP until [the Applicant] is transferred to Abidjan in a year. A year of SSP may well cover for benefits.”

14. By email dated 2 February 2016, the Hiring Manager informed the Applicant “that we are still working with HR on the options for the benefits” and advised him that his contract would be extended in the system “to avoid that the systems shut down on you because of the end of your contract.” Thus, the Applicant’s contract was extended for another two years, until 16 February 2018.

15. By email dated 16 February 2016 to a Program Manager in Compensation and Benefits, the Senior HR Business Partner explored the possibility of paying the Applicant an SSP and asked: “What amount would [the Applicant] be eligible to receive based on the selection to a position which was advertised but will remain in Togo for at least 1 year before moving to Cote d’Ivoire?”

16. By email dated 17 March 2016 to the Country Director, the Hiring Manager stated that “the only way to provide [the Applicant with an] additional benefit is [to] increase his salary through a scarce skills premium, this will compensate his not moving to CIV [...] this is reasonable to keep him right now in Togo.”

17. By email dated 18 March 2016, an HR Analyst asked the Hiring Manager for the status of the Abidjan-based Senior Economist position. The Hiring Manager responded by email on the same date that they had selected “our current economist on Togo who wanted to leave due to low compensation. However the business need to keep him in Togo became compelling after the selection and we offered him to stay in Togo for a year and see what happens. He accepted conditional on increasing his compensation. We are in the process of offering him a scarce skills premium. So I would assume that we need to cancel this vacancy.”

18. On 18 March 2016, Job #152552 for the Abidjan-based Senior Economist position was cancelled. According to the Bank, once a vacancy is cancelled, the recruitment system sends an automatic email of the cancellation to all applicants.

19. By email dated 18 March 2016, the Supervisor, who had been the Hiring Manager, informed the Applicant that, “if there is no work in Togo after 1 year and there is a business need for a position in Cote d’Ivoire, then we can send you there – but there are no promises since positions are based on business need and budget availability.”

20. The Applicant responded to the Supervisor’s email on the same day, thanking her for the clarification and stating “I now have a better understanding of the whole issue. However, I will refrain from having high expectation[s].”

21. By email dated 19 March 2016, the Supervisor informed the Applicant that “in as much as we cannot make promises both [the Country Director] and I are committed to what we told you which is budget and business needs permitting to have you covering Togo and CIV and if the business is not significant in Togo to increase the CIV part and possibly move you there.”

22. The Applicant responded by email on the same date, stating that he understood the situation in Togo and the need to help the Togolese authorities. He thanked the Supervisor for her “effort to help in my career development.”

23. On 4 April 2016, the Supervisor authorized a Scarce Skills Premium to be paid to the Applicant effective 15 April 2016.

24. Throughout 2016, the Applicant worked in Togo, but expanded his work program to Côte d’Ivoire, including, for example, representing the Bank in July 2016 in discussions with the government of Côte d’Ivoire.

25. By email dated 1 July 2016 to his Supervisor, the Applicant summarized his meeting with the Country Director who told him that “we were not going to have any budget support in Togo this year and that things were booming in Cote d’Ivoire. [The Country Director] also added that it is preferable that [the Applicant] come to Cote d’Ivoire.” The Applicant reminded the Supervisor of her joint commitment with the Country Director that, “if there is no activity in Togo and things

are moving on well in Cote d'Ivoire, and there is enough budget, then [the Applicant] could move to Cote d'Ivoire.”

26. In response to the Supervisor forwarding the Applicant's email to the Country Director for his comments, the Country Director emailed the Supervisor on 1 July 2016, clarifying that he had told the Applicant

that if nothing continues to happen in Togo it may make more sense that we consider finally getting him to come to Cote d'Ivoire [...].

[A] lot is happening here in CIV and under the circumstances with no budget support to happen in Togo in the next fiscal year it would make business sense to consider him coming [to Côte d'Ivoire...]. So I see option as (i) [the Applicant] moves [to Côte d'Ivoire] and we recruit a local economist for Togo or (ii) we recruit the young economist [...] and [the Applicant] stays in Togo for the next 12 months to work on the CPF [Country Partnership Framework] and if the DPO kicks off next [y]ear he works on that and he can move to CIV thereafter as a rew[a]rd if he proves quality on the CPF an[d] DPO.

The Supervisor replied by email to the Country Director that she was “open to both options.”

27. In the Applicant's Fiscal Year 2016 (FY16) Staff Annual Review, his Supervisor noted that the Applicant “was a key asset to the bank engagement in Togo” and wrote: “In order to support [the Applicant's] operational skills he had been a core member [o]f the Cote d'Ivoire DPO and has performed well preparing him for the future.” The Supervisor also quoted positive evaluations from the Applicant's feedback providers. The Reviewing Official wrote: “The management team acknowledged [the Applicant's] very positive contributions and looks forward to his continued professional development.” The Applicant received a performance rating of 3, which means “fully satisfactory,” in FY16.

28. In the FY16 Talent Review, the Applicant was rated “Box 5 – Good Contributor.”

29. On 6 September 2016, a new Supervisor was designated for the Applicant. At the same time, the Applicant moved his family back from Cameroon to Togo. According to the Applicant, his new Supervisor informed him that there was an ongoing need for the Applicant to remain in

Togo, but the Applicant denies that his new Supervisor ever informed him that he would no longer be relocated to Abidjan.

30. According to the Bank, on 21 September 2016, the Supervisor informed the Applicant that the Applicant would stay in Lomé and would not move to Abidjan.

31. In March 2017, the Applicant and his Supervisor had a Mid-Year Conversation.

32. On 3 April 2017, the Supervisor entered his comments from the Mid-Year Conversation into the system. He wrote:

I emphasized the need for [the Applicant] to: (1) improve his writing skills; (2) improve his skills as a task manager; (3) improve his analytical skills. Part of this can be achieved through paying greater attention to detail and minimizing the urge to rush the preparation of tasks. It is also important that [the Applicant] strives to spend no more than 20 percent of his time to support CMU [Country Management Unit] functions within the country office.

33. In April 2017, the Practice Management Team conducted a Talent Review and concluded that the “Applicant was not a good fit for the Country Economist position in Togo because of the mismatch between his skill set and the business needs of the unit.” The Applicant was rated “Poor Fit (3).”

34. On 27 June 2017, the Supervisor renewed the Applicant’s Scarce Skills Premium retroactive to 15 April 2017.

35. On 5 July 2017, the Applicant had a year-end performance evaluation meeting with his Supervisor. The Supervisor completed the Applicant’s Fiscal Year 2017 (FY17) Staff Annual Review. He recognized the following positive aspects of the Applicant’s work:

[The Applicant] played a useful role during the transition of TTLs [Task Team Leaders] as well as in maintaining the policy dialogue with the authorities on a regular basis and providing written inputs. [...] [The Applicant] has a good relationship with the government counterpart and a sound understanding of political economy of Togo. His contributions as an integrator in supporting other GP [Global

Practice] teams is well noted and his support to the CMU similarly appreciated [...]. ACS [Administrative and Client Support] colleagues also acknowledge his role as a mentor. Colleagues emphasize a range of good interpersonal skills, including being a good listener, a team player, good responsiveness, and his enthusiasm.

36. However, the Supervisor also noted the following:

The preparation of the ICR [Implementation Completion and Results Report] took longer than expected and [the Applicant] received substantial support from the senior country economist to deliver the task. Similarly, the work on the macro section of the CPF required support from several MFM [Macroeconomics and Fiscal Management] colleagues. Participation in the Cote d'Ivoire DPO offered a good on-the-job learning experience for [the Applicant], which [the Applicant] could potentially have made better use of. [...] Areas of development include: further deepening macro-fiscal and analytical skills, communication skills (written and oral) and improving task management skills.

37. In response, the Applicant stated:

[T]here was no ICR mission to Togo (I did the ICR mission alone). I also produced the first draft before soliciting support from other colleagues, which I think was something normal to do, especially when we belie[v]e in team work.

Second, on the Country Partnership Framework, I find it difficult to understand the insistence on the fact that many economists participated in writing the macroeconomic section. My involvement in the CPF (according to the agreement I had with my previous manager) was by far broader and not limited to the macroeconomic section. I think I should receive more credit for my contributions in helping to realize the Togo CPF.

[...] I think my macroeconomic contribution to Togo, in FY17, should have come up more clearly. [...]

Finally, on improving my communications (written and oral) skills, it is important to remember that Togo is a French speaking country, and all the discussions are done in French.

38. The Applicant received a performance rating of 3, which means “fully satisfactory,” in FY17.

39. In July 2017, the Practice Management Team held a Management Review Meeting and endorsed the Supervisor’s recommendation not to renew the Applicant’s appointment.

40. On 4 August 2017, the Supervisor informed the Applicant by telephone that his appointment would not be extended. According to the Applicant, he was told the nonrenewal was due to performance issues.

41. By email to the Applicant on the same day, the Supervisor confirmed that the Applicant's contract would not be extended, without any written explanation.

42. By memorandum dated 21 August 2017, the Supervisor gave the Applicant six months' written notice of the end of his term appointment.

43. In September 2017, the Applicant sought clarification from the Supervisor regarding the specific performance issues that had led to the nonrenewal decision. The Applicant claims that the Supervisor denied that the decision was due to the Applicant's performance and, instead, justified the nonrenewal on the basis that the Applicant was not a good fit for the role.

44. On 26 October 2017, the Applicant submitted Request for Review No. 404 to the Peer Review Services (PRS), challenging the nonrenewal decision, the failure to relocate him to Abidjan, and the failure to pay him the Localization Plus benefit.

45. On 16 January 2018, the Supervisor filed the Manager's Response with PRS. He justified the nonrenewal of the Applicant's "contract on the basis that his skill set is not a good fit for the position as Senior Economist given the business needs. This recommendation was endorsed by the Macro-Fiscal Global Practice Management Team (PMT) on July 24, 2017." The Supervisor explained that the business need was for "strong macroeconomists, with excellent task management skills, who can communicate effectively orally and in writing, and prepare independent macro-fiscal analysis of high quality. [The Applicant's] technical skills fell short in all these areas."

46. The Applicant's appointment ended on 17 February 2018.

47. In a memorandum dated 6 March 2018, the Acting Executive Secretary of PRS advised that the PRS Panel had ruled on the admissibility of the Applicant's claims. First, it concluded that the Applicant's nonrenewal claim was timely because he had filed his request for review within 120 days of 4 August 2017, the date on which he received notice of the nonrenewal. Second, regarding management's failure to relocate the Applicant to Abidjan, the PRS Panel reserved its decision about the timeliness of the claim until the hearing. Third, the PRS Panel dismissed the claim for the Localization Plus benefit as being out of time because it had regard to the Applicant's letter of appointment signed on 20 January 2014 and renewed in February 2016, which did not grant the Localization Plus benefit to the Applicant.

48. On 4 May 2018, the PRS Panel issued its report in Request for Review No. 404. The PRS Panel concluded that it did not have jurisdiction to consider the claim regarding relocation because it was "untimely." The PRS Panel concluded that the nonrenewal decision was due to the Applicant's poor performance and that the Applicant's performance "was below the expected level because of shortfalls in certain technical skills." However, the PRS Panel found "that management did not follow a proper process in managing [the Applicant's] unsatisfactory performance" because the Applicant "was not provided with the opportunity to improve his performance and clear communication to enable him to understand the consequences of failing to improve his performance." The PRS Panel recommended compensation in the amount of three months' net salary.

49. On 15 May 2018, the Acting Vice President for Equitable Growth, Finance and Institutions did not accept the PRS Panel's recommendation, stating that it was outside the scope of the PRS Panel's review to find that "management did not follow a proper process in managing [the Applicant's] performance" and that this claim had not been part of the Applicant's request for review.

50. In his Application of 19 September 2018, the Applicant challenges (i) the decision not to relocate him to Abidjan, which resulted in his being denied a contract extension for a total of three years and additional compensation and benefits corresponding to the relocation, and (ii) the nonrenewal of his appointment.

51. The Applicant seeks “[r]eappointment to a comparable, mutually-agreeable position at level GG or higher for a term of at least two years or, two years’ compensation in lieu thereof at the level GG salary midpoint for Cote d’Ivoire.” In addition, the Applicant seeks “[a]n amount equal to the difference between the level GG salary midpoints in Cote d’Ivoire and Togo for a period of two years as compensation for the salary increase [the Applicant] was denied as a result of remaining in Togo” for two years, “[a]n amount equal to one year[’]s salary at the level GG midpoint for Cote d’Ivoire as compensation for [the Applicant’s] contract being extended for only two years instead of three,” “[a]n amount equal to the value of the Localization Plus benefits package for the period between February 2016 and February 2019 as compensation for the benefits [the Applicant] would have received had he been relocated in February 2016” and had his contract been extended for three years, compensation “for the costs of maintaining separate households for [the Applicant] and his family [...] for much of 2016” due to uncertainty about the Applicant’s relocation to Abidjan, compensation for the damages to the Applicant’s career and professional reputation, and legal fees and costs in the amount of \$25,886.50.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

The Applicant’s Contention No. 1

The Bank breached its promise to relocate the Applicant and denied him the pay, benefits, and contract extension corresponding to that relocation

52. The Applicant claims that the Hiring Manager, who was also the Applicant’s Supervisor at the time, had promised him the Abidjan-based position, that she had authority or at the very least apparent authority to do so, and that the Applicant relied on her promise in good faith. The Applicant claims that this promise was set out in the Hiring Manager’s email of 23 January 2016 and confirmed by her subsequent actions, which were consistent with that email. He further claims that the Hiring Manager had the apparent authority to make this promise since she was the supervisor listed in the job posting and had the authority to offer the position to the selected candidate. Finally, the Applicant states that he relied on that promise by working under the proposed terms, namely, remaining in Lomé, undertaking a work program for Togo and Côte d’Ivoire, and completing the necessary Togo-related projects.

53. According to the Applicant, the promise consisted of appointment to the Abidjan-based Senior Economist position, relocation to Abidjan after six or twelve months in Lomé, and a contract extension for a total term of three years, consistent with the Senior Economist job posting. The Applicant asserts that the timing of his relocation was contingent on the Bank's business needs in Togo, but that the relocation itself was a certainty.

54. The Applicant argues that the Bank "cannot just unilaterally revoke its express promise of a job offer nearly two months after [the Applicant] accepted," as the Hiring Manager tried to do in her email of 18 March 2016 to the Applicant.

55. In response to the Bank's argument that the Applicant agreed not to have "high expectation[s]" when the Hiring Manager told him that "there are no promises," the Applicant explains that "he was simply conveying his (ultimately well-founded) pessimism about the relocation happening quickly."

56. The Applicant contends that Job #152552, the Senior Economist position, was cancelled because he had been selected, and denies that the cancellation meant that the position could not have been offered to him.

57. The Applicant asserts that the promise was breached since he "never fully took on the senior economist role with respect to Cote d'Ivoire, was never relocated to Abidjan, and never received an additional contract extension beyond the stopgap two years."

58. As a result of the breach, the Applicant claims that he suffered damages. The Applicant submits the failure to extend his contract for a total of three years enabled his new Supervisor to end the Applicant's employment after two years. Second, the Applicant notes that he was substantially underpaid for two years of work, while based in Togo, because he was paid according to the Togo office salary scale rather than the salary scale of the Côte d'Ivoire office, which was approximately fifty percent higher. Third, the Applicant submits that he was denied the Localization Plus benefit, which he would have received by relocating to Abidjan. Finally, the Applicant calculates that he incurred significant costs of returning his family to Lomé, after they

had moved away in anticipation of his relocation to Abidjan, and of maintaining two separate households for the period that they were separated. He argues that he relied, to his detriment, on the promise that he would be relocated from Lomé to Abidjan.

The Bank's Response

There was no legally valid promise of relocation

59. The Bank states that “the exploration [to move the Applicant from Togo to Côte d’Ivoire] was intended to support Applicant in developing his career and skills” and notes that the job posting for a Senior Economist position based in Abidjan was advertised without the Localization Plus benefit.

60. With respect to the recruitment for the Senior Economist position, the Bank acknowledges that the Applicant “was identified as the top candidate [...] [but] he could not be offered it because of the sudden pick up of the business need in Togo where Applicant had been [...] for two years and was well placed to keep working there. The business decision was, therefor[e], made to cancel the recruitment for the position in Cote d’Ivoire.”

61. The Bank argues that the Applicant cannot claim the existence of a job offer or compensation for this position because there was no letter of appointment.

62. The Bank characterizes the email of 23 January 2016 from the Hiring Manager as setting out “some proposals for Applicant to consider. The proposal regarding the position in Cote d’Ivoire was conditional on a lot of contingencies. It was not a promise or a concrete offer of a job.”

63. Even if the Hiring Manager’s email of 23 January 2016 were construed as a job offer, the Bank argues that the Applicant’s response on 26 January 2016 “was a counteroffer which repudiated the offer by his manager” rather than an acceptance of the offer.

64. The Bank argues that the Hiring Manager never promised to relocate the Applicant because relocation would be “contingent on a lot of factors (e.g., business needs, budget, skill set).” The

Bank relies, in particular, on the email of 18 March 2016, from the Hiring Manager to the Applicant, where she stated that “there is no promise regarding the position in Abidjan.”

65. The Bank further relies on the new Supervisor’s communication to the Applicant “that there would be no relocation from Lomé to Abidjan and that Applicant would remain engaged with a work program on Togo alone.” According to the Bank, the Applicant did not raise any issue with this decision until the PRS proceedings.

66. The Bank disputes the Applicant’s claim of detrimental reliance. It argues that the “Applicant made his family living arrangement at his own discretion. Respondent is not responsible for the personal or family decisions that Applicant makes.”

The Applicant’s Contention No. 2

The nonrenewal decision was tainted procedurally and substantively

67. The Applicant argues that the nonrenewal decision was taken without due process. He claims that he did not have any warning that his contract would not be renewed. The Applicant notes that he received a performance rating of 3, which means “fully satisfactory,” for every year of service with the Bank and had “largely positive supervisory comments” from his Supervisor in his FY17 Staff Annual Review.

68. The Applicant disputes that identifying areas for improvement in his FY17 Mid-Year Conversation and FY17 Staff Annual Review constitutes notice that his appointment might not be renewed because “there is a fundamental difference between identifying areas for improvement and performance deficiencies.” The Applicant argues that the identified areas for improvement “lacked any specificity in terms of either the particular aspects of [the Applicant’s] work that were supposedly unsatisfactory, the steps he was expected to take to correct those alleged deficiencies, or any timeline for completing any such (unidentified) corrective measures.” Therefore, according to the Applicant, they were not sufficient to put him on notice.

69. The Applicant disputes the Bank's claim that the FY17 year-end performance evaluation meeting put the Applicant on notice. He argues that this meeting did not constitute meaningful notice since "it occurred contemporaneously with management making the nonrenewal decision and only a month before [the Supervisor] communicated this decision to [the Applicant]."

70. The Applicant submits that he could not fairly dispute the allegations against him because he was given different reasons for the nonrenewal. According to the Applicant, his Supervisor informed him on 4 August 2017 that the nonrenewal was due to issues with the Applicant's performance. However, the Applicant states that he was subsequently told by his Supervisor that the nonrenewal was "due to a poor fit between [the Applicant's] skills and the needs of the position." The Applicant claims that, during the PRS proceedings, his Supervisor raised performance-related justifications that were never provided to the Applicant when he was informed of the nonrenewal. The Applicant maintains that the "skills" problems identified by the Bank are "in reality all performance-related" since they "relate to [the Applicant's] work on particular assignments."

71. The Applicant contends that the *post hoc* allegations of poor performance are refuted by contemporaneous evidence of his performance. First, he states that he received performance ratings of 3 under three different supervisors, including his Supervisor at the time of the contested decision. Second, the Applicant observes that the deficiencies identified by his Supervisor during the PRS proceedings were not mentioned in his FY17 Staff Annual Review, although other issues and areas for development were set out in the FY17 Staff Annual Review. Third, the Applicant notes that, only months before the nonrenewal decision, his Supervisor approved the payment of a Scarce Skills Premium, which is a "financial 'incentive' meant to secure 'needed skills and talents.'" Finally, the Applicant argues that the criticism of his analytical and writing skills is contradicted by the positive responses to his written work from his Supervisor and other colleagues.

72. The Applicant denies that his "pre-2017 work program lacked analytical rigor or the need for strong communications skills." The Applicant refers to his FY16 Staff Annual Review, where he was praised for his analytical work and communication skills. With respect to FY17, the

Applicant relies on the positive comments from his nine feedback providers with only one feedback provider giving criticism.

The Bank's Response

The nonrenewal decision was not an abuse of discretion

73. The Bank recalls that there is no expectancy of renewal for term appointments.
74. The Bank claims that there are different procedures for nonrenewal and termination. The Bank states that the Applicant “was given more than the requisite 60 days’ notice.”
75. The Bank explains that the Applicant’s appointment was not renewed because of “his skill set,” although the Bank also states that “there were issues with Applicant’s performance of which [his Supervisor] had apprised him.” The Bank’s position is that “the Applicant’s performance issues were attributable to the mismatch with his skills.”
76. The Bank claims that the Applicant was given feedback by his Supervisor during the FY17 year-end performance evaluation meeting and as documented in the FY17 Staff Annual Review and in the Supervisor’s emails of 4 December 2016 and 20, 24, and 28 January 2017. The Bank asserts that the year-end performance evaluation meeting sufficiently “put Applicant on notice about the consequence that was communicated to him on August 4.”
77. The Bank explains that the Applicant’s responsibilities between FY14 and FY16 “were largely confined to macroeconomic monitoring tasks and providing CMU support” and so “it was not possible [...] to assess his technical skills in conducting macroeconomic analysis or in preparing major policy documents because of the limited operational nature of the Togo work program.” According to the Bank, in FY17, the work program in Togo required the Applicant “to carry out some independent tasks involving serious analytical work at the macro level.”

78. In response to the Applicant's observation that he received performance ratings of 3, the Bank argues that "even an outstanding performance does not guarantee the extension of a Term appointment" and that "performance and skill set are 'two sides of the same coin.'"

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

ALLEGED PROMISE OF ABIDJAN-BASED SENIOR ECONOMIST POSITION

79. A promise to a staff member may be made through an unequivocal statement, that is, "a clear and irrefutable commitment or assurance" (*Moss*, Decision No. 328 [2004], para. 45) or may be inferred from "circumstances which lead to the 'unmistakable implication' that a promise was made." *EM*, Decision No. 578 [2018], para. 63.

80. The Applicant alleges that he was promised the Senior Economist position, based in Abidjan, with a three-year term appointment. According to the Applicant, due to the Bank's business needs in Togo, he understood that he would remain in Togo for six to twelve months before moving to Côte d'Ivoire.

81. The parties agree that the Bank advertised Job #152552 for a Senior Economist, based in Abidjan and part of the Macroeconomics and Fiscal Management team working on Côte d'Ivoire and Togo, on a three-year appointment. The parties also agree that the Applicant applied and was interviewed for the position, and his selection was endorsed by the Hiring Manager and the Country Director.

82. The Tribunal notes that the absence of a letter of appointment, which is argued by the Bank, is not determinative in the present case. The question is whether the Applicant was promised the position and, if so, whether the Bank breached the promise.

83. Having reviewed the record, the Tribunal is satisfied that the Hiring Manager's email of 23 January 2016 to the Applicant sets out the substance of the promise to the Applicant. According to this email, "the joint recommendation [of the Hiring Manager and the Country Director] is that

[the Applicant] should be offered the job [i.e., the Abidjan-based Senior Economist position].” The Tribunal is persuaded by the definitive language used by the Hiring Manager regarding the Applicant’s relocation to Abidjan. The Hiring Manager stated that the Applicant would remain in Togo for six to twelve months, “[w]hich [would] allow [the Applicant] to finalize all the tasks at which time [the Applicant] will move to Abidjan.” Similarly, the Hiring Manager wrote that she would extend the Applicant’s “contract for another two years and when [the Applicant] move[s] to Abidjan will adjust it.” The Tribunal interprets the email as indicating to the Applicant that his relocation to Abidjan was a matter of when and not if.

84. The Tribunal finds that, in addition to offering the position to the Applicant, the Hiring Manager also offered him a three-year contract, as advertised in the job posting. The record shows that the two-year extension referred to in the email of 23 January 2016 was made “to avoid that the systems shut down” and was “on the advice of HR.”

85. In *CP*, Decision No. 506 [2015], para. 51, one of the reasons given by the Tribunal for finding an unequivocal and unambiguous promise was the Bank official’s use of the word “will” rather than “may” in her emails to the applicant regarding the two-year duration of a post. In this case, the Tribunal finds that the use of the word “will,” which is the indicative mood, to describe the Applicant’s relocation to Abidjan, reinforces the existence of a promise.

86. The Tribunal finds that, according to the email of 23 January 2016, the timing of the relocation and not the relocation itself was conditional only upon the Bank’s business needs in Togo. The Hiring Manager wrote: “In six months if the business needs in Togo goes down for example there is no DPO then you can move to Abidjan.” The Hiring Manager also allowed for the possibility that the business needs in Togo could extend for another six months, and so she informed the Applicant that “[i]f the need is still present and acute in 6 month[s] you may stay [in Togo] for another 6 months [w]hich will allow to finalize all the tasks at which time you will move to Abidjan.”

87. The existence of an explicit promise is further supported by the Hiring Manager’s email of 18 March 2016 to HR, where she stated that, after selecting the Applicant for the Abidjan-based

Senior Economist position, the “business need to keep him in Togo became compelling after the selection and we offered him to stay in Togo for a year and see what happens. He accepted conditional on increasing his compensation.”

88. The Bank denies that an offer was made to the Applicant “because of the sudden pick up of the business need in Togo [...]” However, this claim is contradicted by the evidence. The record shows that (i) an offer was made in the Hiring Manager’s email of 23 January 2016, (ii) the Hiring Manager admitted in her email of 18 March 2016 to HR that an offer had been made to the Applicant, and (iii) the timing of the relocation to Abidjan, and not the position or relocation *per se*, was made conditional on the Bank’s business needs in Togo.

89. The Tribunal finds that the Bank’s argument that the relocation was “contingent on a lot of factors, (e.g. business needs, budget, skill set)” is unavailing. The only one of these factors that is mentioned in the Hiring Manager’s email of 23 January 2016 is “business needs,” but she refers to the “business needs in Togo,” not those in Côte d’Ivoire. The references to the Bank’s business needs in Côte d’Ivoire and “budget availability” appear for the first time in the Hiring Manager’s email of 18 March 2016 to the Applicant, where she attempts to revoke the promise. The Tribunal determines that, in any case, the Bank’s business needs were to inform the timing of the relocation to Abidjan, whether in six or twelve months, but that the Applicant’s relocation to Abidjan was not conditional on them. There is no evidence in the record of any change in the Bank’s business needs in Côte d’Ivoire that compelled the Bank to depart from its promise.

90. Even in July 2016, the timing of the Applicant’s relocation to Abidjan continued to be discussed by management. For example, by email dated 1 July 2016 from the Country Director to the Supervisor, who had been the Hiring Manager, the Country Director informed her of his recent conversation with the Applicant, where he told the Applicant

that if nothing continues to happen in Togo it may make more sense that we consider finally getting him to come to Cote d’Ivoire. [...] [I]t would make business sense to consider him coming here [...]. So I see options as (i) he moves here and we recruit a local economist for Togo or (ii) [...] [the Applicant] stays in Togo for the next 12 months to work on the CPF and if the DPO kicks off next [y]ear he

works on that and he can move to CIV thereafter as a rew[a]rd if he proves quality on the CPF an[d] DPO.

91. The Tribunal finds that the Applicant's email of 26 January 2016 to the Hiring Manager constitutes agreement with the promise. In that email, the Applicant agreed to remain in Togo and "to wait for the next steps and the additional arrangements which you are going to make for me to familiarize myself with the Cote d'Ivoire program." The Hiring Manager understood the Applicant to have accepted the proposal since she informed HR in her email of 18 March 2016 that the Applicant had been selected for the position and that "[h]e accepted."

92. The record suggests that the Applicant made his acceptance conditional upon receiving the Localization Plus benefit since he stated that, "if my proposal of a localization contract is solved, then I agree with your proposal." The Bank claims that the Localization Plus benefit was not part of the benefits advertised with the Abidjan-based Senior Economist position. However, the record shows that the Bank responded to the Applicant's request for increased compensation by offering him a Scarce Skills Premium, which was "in process" as of 18 March 2016. In her email of 17 March 2016 to the Country Director, the Hiring Manager noted that "the only way to provide [the Applicant] additional benefit is to increase his salary through a scarce skills premium, this will compensate his not moving to CIV [...] this is reasonable to keep him right now in Togo." The Tribunal notes that the phrase "keep him right now in Togo" suggests that the Applicant's stay in Togo would not be permanent.

93. Following the Applicant's acceptance of the Hiring Manager's proposal, the Hiring Manager sought guidance from HR. The Tribunal finds that this guidance, reflected in an email exchange between management and HR about the Applicant's compensation, further supports the existence of a promise. The emails presume the Applicant's appointment to the Senior Economist position, on the understanding that he would remain in Togo for up to one year after which he would be relocated to Côte d'Ivoire. For example, in her email of 26 January 2016 to the Senior HR Business Partner, the Hiring Manager asked: "Should I let the old contract expire and then do a new one with localization plus. Should we just renew the old contract?" The questions do not relate to whether the Senior Economist position should be offered to the Applicant, because the offer had already been made. Instead, they relate to which contractual modality to use.

94. The Tribunal finds that the language used by management and HR in this email exchange is consistent with the existence of a promise to the Applicant that he would be relocated to Abidjan after one year in Togo. For example, according to the two options presented to the Hiring Manager by the HR Business Partner on 26 January 2016, the Applicant should either be “offer[ed] [...] the job in Abidjan [...] while he continues to work on Togo with frequent travel-long stays in [T]ogo” or be “provide[d] [...] an annual SSP in Togo, during the 1 year transition period before he moves to Abidjan.” The Tribunal notes that in the second option, which was ultimately selected, the move to Abidjan after one year in Togo was concrete. On 27 January 2016, the HR Business Partner emailed the Hiring Manager stating that payment of the SSP was necessary “until [the Applicant] is transferred to Abidjan in a year.” Finally, the Tribunal notes the email of 16 February 2016 from the Senior HR Business Partner to the Program Manager in Compensation and Benefits, where she asked: “What amount would [the Applicant] be eligible to receive based on the selection to a position which was advertised but will remain in Togo for at least 1 year before moving to Cote d’Ivoire?”

95. These emails also illustrate that, had the Applicant been relocated to Côte d’Ivoire, as promised, he would have received the Localization Plus benefit, subsequently named the Global Mobility Premium. The Senior HR Business Partner was sensitive to the need to pay this benefit to the Applicant. In her email of 26 January 2016 to the HR Business Partner and the Hiring Manager, she encouraged them to “ensure that [the Applicant] will be given the new indefinite benefits (was Localization Plus) so we do not have the same issue as last time.” The only reason why the Applicant did not receive this benefit after the promise in 2016 was because he was in Togo, and the Bank’s rules precluded such payment to a non-national who had been resident for two years in the country.

96. In support of its argument that there was no promise, the Bank relies on the Hiring Manager’s email of 18 March 2016 to the Applicant, where she stated that, “if there is no work in Togo after 1 year and there is a business need for a position in Cote d’Ivoire, then we can send you there but there are no promises since positions are based on business need and budget availability,” and the Applicant’s response that he would “refrain from having high expectation[s].”

97. The Tribunal construes the Hiring Manager's email of 18 March 2016 as a unilateral attempt to revoke the promise to relocate the Applicant to Abidjan within the next six to twelve months. However, unilateral revocation is not possible once there has been acceptance of the offer. In this case, the Applicant accepted the offer on 26 January 2016, and his acceptance was acknowledged in the Hiring Manager's email of 18 March 2016 to HR.

98. The Applicant states that he was informed of an ongoing need for him to remain in Togo, but he denies that he was ever told he would no longer be relocated to Abidjan. For its part, the Bank claims that the Applicant's new Supervisor told the Applicant, on 21 September 2016, that the Applicant would not be relocated to Abidjan. The Bank has not produced any evidence in support of its claim. Nevertheless, it would not be reasonable to interpret such statement from the new Supervisor as negating the existence of the promise, eight months after the Applicant had been told about his selection for the Abidjan-based position. The promise cannot have been unilaterally revoked eight months after the Applicant's acceptance.

99. The Tribunal examines the Applicant's reaction that he would "refrain from having high expectation[s]," in response to the Hiring Manager's email of 18 March 2016. There is no evidence that the Applicant agreed to forgo the relocation to Abidjan or that, in the two months since accepting the job offer, the Applicant changed his mind and wanted to remain in Togo for the rest of his contract. The Tribunal accepts the Applicant's explanation that "he was simply conveying his (ultimately well-founded) pessimism about the relocation happening quickly." The Applicant's dissatisfaction with the situation was also observed by the Country Director in July 2016, where he noted that the Applicant "is clearly not happy with the situation though he maintains a pleasant attitude."

100. The Bank claims that the cancellation of Job #152552 was in response to the change in business needs in Togo, not Côte d'Ivoire. However, this is contradicted by the Hiring Manager's email of 18 March 2016, the same day that she instructed the cancellation. In that email to the Applicant, she referred to the Bank's "business need for a position in Cote d'Ivoire, then we can send you there[.]"

101. The Bank also asserts that the cancellation is further evidence that the Applicant was not offered the position. However, the cancellation was on 18 March 2016, two months after the offer had been made and accepted. Moreover, the Hiring Manager's instruction to cancel the vacancy in her email of 18 March 2016 to HR was in the context of notifying HR of the Applicant's selection. The Hiring Manager wrote that they had selected "our current economist on Togo who wanted to leave due to low compensation. However the business need to keep [the Applicant] in Togo became compelling after the selection and we offered him to stay in Togo for a year and see what happens." The Tribunal is persuaded that this email is further evidence of the Hiring Manager's understanding that the Applicant had been offered the Abidjan-based position and that he would temporarily stay in Togo for one year due to the Bank's business needs in Togo.

102. The Bank does not dispute the Hiring Manager's authority to extend the job offer to the Applicant. The record shows that the Hiring Manager was identified as the supervisor in Job #152552. The Tribunal is satisfied that the person who made the promise, the Hiring Manager, was "an official with the authority to make a legally valid promise and capable of taking action attributable to the Bank." *EM*, para. 65.

103. It is not disputed that the Applicant was never relocated to Abidjan and that his appointment was for two years instead of three years. The Tribunal, therefore, finds a breach of promise, based on the evidence in the record.

104. The Applicant argues that he relied on the promise, to his detriment, by "securing new housing for himself (after having given up his family's housing there based on his expectation of moving to Abidjan), and leaving his family behind in Cameroon for what he reasonably believed would be a temporary stint in Lomé." The Tribunal is satisfied that the Applicant has proven detrimental reliance.

105. Principle 2.1 of the Principles of Staff Employment states that "[t]he Organizations shall at all times act with fairness and impartiality and shall follow a proper process in their relations with staff members."

106. The Bank placed the Applicant in a vulnerable position by promising him the Abidjan-based position but delaying the relocation until, ultimately, the Applicant's appointment was not renewed and he was never relocated. Even as late as 1 July 2016, management still held out to the Applicant the possibility that the Applicant would move to Côte d'Ivoire. The Tribunal finds that the Bank's treatment of the Applicant in this case did not accord with Principle 2.1 of the Principles of Staff Employment.

NONRENEWAL OF APPOINTMENT

107. Notwithstanding the promise that the Applicant would be appointed to the Abidjan-based Senior Economist position on a three-year term appointment, the Applicant's appointment was renewed for only two years on 2 February 2016. The purpose of this two-year renewal, according to his Supervisor, was "to avoid that the systems shut down on you because of the end of your contract."

108. On 4 August 2017, the Applicant was informed that his contract would not be renewed.

109. The Applicant's Letter of Appointment stated:

Your appointment will terminate at the end of this 2 year period unless it is renewed or a new appointment is made. The World Bank has no obligation to extend the appointment or to offer a new appointment, even if your performance is outstanding, but it may do so if agreed in writing at the time of expiration of the appointment.

110. Staff Rule 7.01, paragraph 4.01 regarding the expiration of a term appointment, provides: "A Staff Member's appointment expires on the completion of an appointment for a definite term, as specified in the Staff Member's letter of appointment, or as otherwise amended."

111. With respect to the renewal or extension of term appointments, the Tribunal, in *Kopliku*, Decision No. 299 [2003], para. 9, stated:

A staff member appointed to serve for a fixed period is not entitled, absent unusual circumstances, to the extension or renewal of that appointment. [...] As the

Tribunal has held before, in *Mr. X*, Decision No. 16 [1984], para. 35: “A fixed-term contract is just what the expression says: it is a contract for a fixed period of time.” [...] Even so, the decision not to extend a Fixed-Term contract, like all decisions by the Bank, must be reached fairly and not in an arbitrary manner.

112. The Bank claims that, “[e]ven though there were issues with Applicant’s performance of which [the Supervisor] had apprised him, the nonrenewal decision was motivated by his skill set.” The Bank relies on the Practice Management Team’s conclusion at the Talent Review in April 2017 that the “Applicant was a poor fit for the Country Economist position in Togo because of the mismatch between Applicant’s skill set and the business needs of the unit.” As well, the Bank cites the Supervisor’s explanation during the PRS proceedings that “[i]n the Macro-Fiscal GP we need strong macroeconomists, with excellent management skills, who can communicate effectively orally and in writing, and prepare independent macro-fiscal analysis of high quality. [The Applicant’s] technical skills fell short in all these areas.”

113. The Bank claims that the Applicant’s position “became much more operationally intensive” and that “[t]he work program in Togo required a strong macroeconomist with excellent task management skills, effective communications skills, and the ability to independently prepare a high quality macro-fiscal analysis.” In contrast, the Applicant denies that his “pre-2017 work program lacked analytical rigor or the need for strong communications skills” and that he “lacked the communications and analytical skills demanded for his FY2017 work program.”

114. The record shows that the Applicant’s communication and analytical skills were employed and praised prior to FY17. According to the FY16 Staff Annual Review, “all colleagues recognize his great team skills, behaviours and technical and client dialogue skills.” The Applicant’s contributions “to the PEMFAR [Public Expenditure Management and Financial Accountability Review] and to an analytical note on pre financing” were recognized, and the Togo Systematic Country Diagnostic was cited as an example of “great collaborative and substantive contribution.” The Applicant was also recognized as “a prompt and effective interlocutor with the Government and other donors.”

115. There is further evidence that the Applicant did not lack communication and analytical skills, although the feedback from his FY17 feedback providers is mixed as to whether those skills could be improved. As strengths, feedback providers commented on the Applicant's "strong engagement and collaborative skills," responsiveness to requests, briefings to management, good relationships with clients, that "[h]is team spirit and communication skills are highly appreciated," and that he "clearly improved his performance this year and also noticeable was that he was more forthcoming in expressing his views." One feedback provider stated that the Applicant had "good client orientation with in-depth knowledge of Togo macroeconomic and structural issues" and another feedback provider credited the Applicant with having "contributed significantly to the macroeconomic analysis during the preparation of the Public Expenditure Review [...] and the Public Financial Management Review [...]."

116. To support its claim that the Applicant lacked certain skills, the Bank relies on the Supervisor's criticisms, as set out in the Applicant's FY17 Staff Annual Review. However, the Applicant's Staff Acknowledgement Comments place these criticisms in context and give a fuller picture. For example, the Applicant was criticized for the delay in preparing the ICR and for needing "substantial support from the senior country economist." For his part, the Applicant stated that he did the ICR mission alone and produced the first draft. Another example of an allegedly problematic deliverable was the Country Partnership Framework, which the Supervisor claimed the Applicant needed support on the macro section. The Applicant responded that his "involvement in the CPF (according to the agreement I had with my previous manager) was by far broader and not limited to the macroeconomic section. I think I should receive more credit for my contributions in helping to realize the Togo CPF." Finally, the Applicant contended that his "macroeconomic contribution to Togo, in FY17 should have come up more clearly."

117. The Supervisor stated during the PRS proceedings:

The MFM Practice Management team decided that it no longer needed the services of [the Applicant] and that it would be best to recruit another staff for the same position. The requirements and job profile of the position in Lomé remain unchanged.

118. The PRS Panel, in its report, stated that the Applicant's

responsibilities as a Senior Economist since he started at the Bank remained unchanged although the scope of his work program may have broadened due to the increased level of operational engagement of the unit when [the Supervisor] became the practice manager. The Panel further noted that there is no evidence in the record to show that there was any change in the strategic direction of the unit that necessitated a different skill set or experience.

119. The Tribunal finds no evidence in the record of a sudden change that necessitated a new skill set for the Applicant's position.

120. The present case is distinguishable from cases where the business needs of the Bank changed, due to a reorganization or new policies, and thus necessitated a different set of skills.

121. The Tribunal finds that the Bank lacked a proper basis to conclude that the Applicant lacked the skills for his position, in the circumstances where the Applicant's performance was rated as "fully satisfactory" and the Supervisor admitted that there was no change in "[t]he requirements and job profile" of the Applicant's position.

122. The record also shows that the Applicant was the recommended candidate for the Senior Economist position, based in Abidjan. The Hiring Manager, who was also the Applicant's Supervisor, accepted this recommendation, and the Applicant's selection was endorsed by the Hiring Manager and the Country Director.

123. According to the job posting for this position, the selection criteria included

a track record of policy dialogue and delivery of high quality lending and analytical and advisory products.

[...]

Strong analytical skills in macroeconomic and fiscal management [...].

Ability to adapt macro-economic analytical tools and to interpret macro-economic accounts and developments [...].

Deep technical knowledge and experience in one or more of the following areas: macroeconomics, macroeconomic forecasting, growth analytics, fiscal analysis and management [...].

[...]

Strong oral and written communication skills [...].

The competencies for the position included “[g]eneral [e]conomic [k]nowledge and [a]nalytical [s]kills, [...] [m]acroeconomic skills and country economics experience, [...] [and] [w]ritten and [v]erbal [c]ommunication.”

124. The Bank has not demonstrated that the Applicant lacked certain skills when, a year before, the Applicant had been successful in a competitive recruitment for a post where those very skills were identified in the selection criteria and competencies and the Applicant’s performance had been rated consistently as “fully satisfactory.” The Tribunal finds that there was no reasonable basis for the nonrenewal decision.

DUE PROCESS REGARDING NONRENEWAL DECISION

125. The Applicant argues that his due process rights were not respected because the Bank did not provide him with an honest reason for the nonrenewal of his contract and the Bank did not sufficiently warn him of issues that might affect the renewal of his appointment.

126. For its part, the Bank argues that due process was followed because “[t]here is no evidence that the reason for the non-renewal decision was ‘false, pretextual and fabricated’” and the “Applicant was given more than the requisite 60 days’ notice.” There is no dispute regarding the sufficiency of the notice period in this case.

127. Principle 2.1 of the Principles of Staff Employment provides that the Bank “shall at all times act with fairness and impartiality and shall follow a proper process in [its] relations with staff members.” It also obliges the Bank to “respect the essential rights of staff members that have been and may be identified by the World Bank Administrative Tribunal.”

128. In *CS*, Decision No. 513 [2015], para. 77, the Tribunal stated that

the Bank must give an honest reason for the non-renewal of a Term appointment. This is congruent with the Tribunal's observation in *Skandera*, Decision No. 2 [1981], para. 28, that:

It is in the interest of the Bank that the employment of qualified employees not be terminated on the basis of inadequate facts or ill-founded justifications, and one way to assure this is to furnish the staff member at the time of termination with a specific and true assessment which will provide a fair opportunity to the individual to dispute, and possibly to seek rectification of the decision of the Bank.

129. The Bank disputes the Applicant's reliance on *CS* because it claims that the "Applicant confuses nonrenewal of a Term appointment with the termination of a Term appointment." The Tribunal affirms the requirement to give reasons for the nonrenewal of a term appointment.

130. The Applicant claims that he was given different reasons for the nonrenewal decision on two different occasions by his Supervisor. According to the Applicant, he was informed by his Supervisor on 4 August 2017 that his appointment would not be renewed "due to issues relating to his performance." Yet, in September 2017, when the Applicant asked his Supervisor for more details about specific performance issues that had led to the nonrenewal decision, the Supervisor "denied that the decision was performance-related and instead claimed that [the Applicant] was 'not a good fit' for his role."

131. The Applicant further contends that, during the PRS proceedings, the Supervisor "levied a bevy of performance-related allegations" but "[t]hese allegations, moreover, were themselves entirely new to [the Applicant], since [the Supervisor] never provided any of them to him at the time of the decision."

132. The Tribunal has regard to the evidence of the Country Manager for Togo. During the PRS hearing, she testified that the Supervisor "informed her that the basis for the non-extension decision was negative feedback [the Supervisor] had received regarding [the Applicant's] performance."

133. Neither the email of 4 August 2017 from the Supervisor informing the Applicant of the nonrenewal nor the memorandum dated 21 August 2017, giving the Applicant six months' notice of the end of his term appointment, sets out the reasons for the decision.

134. The Tribunal observes that the PRS "Panel determined that [the Applicant's] performance, as opposed to his skill set, was the reason for the non-extension decision."

135. Based on the record, the Tribunal finds that the Applicant was not given a clear or consistent reason for the nonrenewal of his appointment, whether it was due to his lack of skills or performance issues.

136. The Tribunal has stated that due process "guarantees refer precisely to adequate warning about criticism of performance or any deficiencies that 'might result in an adverse decision being ultimately reached,' and the corresponding opportunity for the staff member to defend himself. (*See, e.g., Samuel-Thambiah*, Decision No. 133 [1993], para. 32.)" *B*, Decision No. 247 [2001], para. 21.

137. In *CS*, para. 101, the Tribunal identified, as an example of the lack of due process, "the [m]anager's failure to alert the [a]pplicant to the possibility that his reluctance to take on certain tasks could be a factor in the renewal of his contract."

138. According to the Bank, the decision not to renew the Applicant's appointment "was motivated by his skill set." Therefore, the Tribunal will examine whether gaps in the Applicant's skill set were pointed out to him by his Supervisor.

139. In response to the Tribunal's order for information as to "when and how the Applicant was informed that he lacked these skills [needed for his position]," the Bank refers to the feedback given by the Supervisor at the FY17 year-end meeting, at the "Mid-Year Conversation," and "on every possible occasion when [the Supervisor] was not satisfied with [the Applicant's] outputs." The Bank also relies on the Supervisor's emails of 4 December 2016 and 20, 24, and 28 January 2017 as evidence of feedback.

140. The Tribunal will examine the emails to see whether they constitute notice of gaps in the Applicant's skill set. The email of 4 December 2016 was part of an exchange between the Applicant and the Supervisor regarding comments on the draft Implementation Completion and Results Report for Togo, which was prepared by the Applicant. The Supervisor set out his suggestions, including for the Applicant to speak with colleagues and government officials, so that the Applicant could "deepen [his] evaluation. Then [the Applicant] can write a much stronger document." This email was very critical of the Applicant's work. But it is the only instance in the record, and the Tribunal questions whether the feedback fairly reflects the Applicant's performance or reflects, possibly, the different expectations of a supervisor who was new to the Applicant.

141. The emails in January 2017 relate to a meeting organized by the Applicant and minutes of that meeting, prepared by the Applicant. The feedback from the Supervisor related to the Applicant's organization of the meeting, preparation of the minutes, and a reminder for the Applicant to "pay close attention to the deadlines." The Tribunal finds that these emails do not constitute feedback that could reasonably have put the Applicant on notice that he lacked communication or macro-fiscal analytical skills, or that his appointment might not be renewed as a consequence.

142. During the FY17 Mid-Year Conversation, the Supervisor informed the Applicant that he needed to "(1) improve his writing skills; (2) improve his skills as a task manager; (3) improve his analytical skills. Part of this can be achieved through paying greater attention to detail and minimizing the urge to rush the preparation of tasks."

143. In the Overall Supervisor Comments in the FY17 Staff Annual Review, the Supervisor recognized the Applicant's accomplishments and identified areas of improvement. The Applicant was commended for having

played a useful role during the transition of TTLs [Task Team Leaders] as well as in maintaining the policy dialogue with the authorities on a regular basis and providing written inputs. [...] [The Applicant] has a good relationship with the government counterpart and a sound understanding of political economy of Togo. His contributions as an integrator in supporting other GP teams is well noted and

his support to the CMU similarly appreciated [...]. ACS colleagues also acknowledge his role as a mentor. Colleagues emphasize a range of good interpersonal skills, including being a good listener, a team player, good responsiveness, and his enthusiasm.

144. On the other hand, the Supervisor noted that “[t]he preparation of the ICR took longer than expected and [the Applicant] received substantial support from the senior country economist to deliver the task. Similarly, the work on the macro section of the CPF required support from several MFM colleagues.” The Supervisor reiterated the same areas for development as those identified during the Mid-Year Conversation, namely, “further deepening macro-fiscal and analytical skills, communications skills (written and oral) and improving task management skills.”

145. The Tribunal interprets the feedback from the Mid-Year Conversation and the Staff Annual Review as informing the Applicant of areas where he needed to improve his skills, rather than identifying skills that the Applicant lacked and needed to acquire.

146. The Tribunal finds that there was no notice to the Applicant that he lacked the skills to perform his job. At most, it could be said that the Supervisor identified areas where the Applicant could improve his performance. But there is no evidence that the Applicant was informed that he lacked communication and macroeconomic skills, to the extent that his contract would not be renewed.

147. The Tribunal is troubled by the fact that no notice was given to the Applicant, even though management had concluded, at the Talent Review in April 2017, that the Applicant “was a poor fit for the Country Economist position in Togo.” At no time between this meeting and 4 August 2017, when the Applicant was informed of the nonrenewal, was the Applicant put on notice such that he could defend himself or take steps to remedy any deficiencies.

148. In *DP*, Decision No. 547 [2016], para. 66, the Tribunal stated:

According to the [a]pplicant’s 2013 Talent Review, it was already clear to the Bank that there were such serious issues with the [a]pplicant that her departure was a possibility. The Tribunal is troubled that these concerns were not brought to the [a]pplicant’s attention; instead, she was given a positive 2013 OPE [Overall

Performance Evaluation], arguably misleading her to believe that her performance was satisfactory. In the Tribunal's view, this goes beyond the Bank's failure to give the [a]pplicant sufficient notice that her performance was deficient. The contrast between the [a]pplicant's OPE and the Talent Review reflects poorly on management.

149. In this case, the Applicant received a performance rating of 3, which means "fully satisfactory," for FY17 in September 2017 and yet was deemed a "poor fit" in the FY17 Talent Review, conducted five months before in April 2017. The Bank's apparently serious concerns about the Applicant, especially the possibility of nonrenewal due to an alleged lack of skills, should have been brought to the Applicant's attention. The Tribunal finds that the Bank did not accord the Applicant due process when it decided not to renew his appointment.

REMEDIES

150. The Tribunal finds that the Bank breached its promise to appoint the Applicant to the Abidjan-based Senior Economist position for three years. The Applicant should be placed in the position he would have been in, had the breach not occurred. The Tribunal considers that financial compensation, rather than reinstatement, is the appropriate remedy because the Applicant held a term appointment so there is no certainty that he would have been employed indefinitely with the Bank.

151. In the present case, the consequence of the breach of promise was a shortened contract duration, i.e., two years instead of three, and a financial loss since the salary in Côte d'Ivoire was higher.

152. In *CP*, the Tribunal awarded "one year's salary net of taxes for the breach of promise to extend her appointment." The applicant had an Extended Term Contract for one year, but had been promised a contract of at least two years when she accepted the job. *CP*, para. 51. At the end of her first year, she was told for the first time that her contract would not be extended. *CP*, para. 27.

153. In *Bigman*, Decision No. 209 [1999], the Tribunal awarded 18 months' net salary for the breach of a promise to regularize the applicant's appointment. The applicant held a three-year

fixed-term appointment that was not renewed. The Tribunal found that the promise was conditional on the applicant's satisfactory performance, and his performance was satisfactory, but the Bank did not renew his contract due to new priorities in the region. *Id.*, paras. 16 and 21. The applicant's performance evaluations "were not duly taken into account in reaching the final decision, which was based on considerations different from his performance. The process of reaching a decision was, therefore, vitiated by an abuse of discretion." *Id.*, para. 22. The Tribunal acknowledged that, "[w]hile normally a vitiated decision would be quashed by the Tribunal," the applicant did not request this. *Id.*, para. 23.

154. The breach of promise in this case was further aggravated by the Bank's lack of candor. According to the Applicant, he was never told that he would not be relocated to Abidjan until he was informed in August 2017 that his contract would not be renewed. There is no evidence to support the Bank's statement that the Applicant was informed by his new Supervisor in September 2016 that the Applicant would not be relocated to Abidjan.

155. For the purpose of calculating damages, the Tribunal decides that the breach occurred at the beginning of the Applicant's second year in Togo. According to the Hiring Manager's promise of 23 January 2016, it was envisioned that the Applicant might have to remain in Togo for up to one year, before moving to Abidjan. During that first year, the Applicant was paid a Scarce Skills Premium, in response to his request for additional compensation on 26 January 2016. The payment of the Scarce Skills Premium was intended "to provide [the Applicant] additional benefit [to] increase his salary [...] this will compensate his not moving to CIV [...]."

156. The Applicant's financial damages started to accrue in the second year, when he remained in Togo instead of being relocated to Côte d'Ivoire. It would be reasonable to assume that, since the Applicant was earning close to the midpoint of the Level GG salary in Togo, he would also have earned close to the midpoint of the Level GG salary in Côte d'Ivoire. The midpoint of the Level GG salary in Côte d'Ivoire should be used as the benchmark for compensation purposes. In his second year, the financial loss suffered by the Applicant was the difference between the FY18 GG level salary midpoints in Côte d'Ivoire and Togo.

157. Had the breach not occurred, the Applicant would have had a three-year contract. Therefore, he suffered the loss of a third year of salary, which should be calculated as the FY19 GG level salary midpoint for Côte d'Ivoire.

158. With respect to the Localization Plus benefit, the Applicant received a Scarce Skills Premium in his first two years in Togo, after he had been selected for the Abidjan-based position. The record shows that the payment of the Scarce Skills Premium was intended to increase the Applicant's salary to "compensate his not moving to CIV [...]."

159. The Bank pleads that the Abidjan-based Senior Economist position was advertised "without Localization Plus benefit." In response to the Tribunal's order for documentation supporting this claim, the Bank relies on the job posting and an email dated 5 March 2019 from the Hiring Manager to the Bank's counsel that the job posting shows "that it is local and not local plus[.]" However, there is no reference to "local," "local plus," or any benefits in the job posting.

160. The record shows that the payment of the Scarce Skills Premium was a way to give the Applicant approximately the equivalent of what he would have received as the Localization Plus benefit, had he moved to Côte d'Ivoire. The Tribunal finds that the payment of the Scarce Skills Premium to the Applicant during the two years in Togo was more or less equivalent to paying the Applicant the Localization Plus benefit. The Tribunal finds that, but for the breach of promise, the Applicant would have worked in Côte d'Ivoire for his third year and would have been entitled to the Localization Plus benefit.

161. The Applicant claims the costs of maintaining a household in Cameroon and in Togo because of the "continued uncertainty as to when management would eventually relocate him to Abidjan." The Applicant moved his family back to Cameroon in December 2015, "with the understanding that the Togo country economist role would soon be covered from Abidjan (whether by him or by someone else)." The Applicant maintained his family in Cameroon because he reasonably expected that his stay in Togo would be temporary and that he would move to Abidjan. The Tribunal takes into consideration these expenses, when making its award. They represent additional damages suffered by the Applicant, who was in an uncertain and vulnerable position, as

a result of the Bank's breach of promise and its failure to inform the Applicant that he would not be relocated to Abidjan, until his contract was allowed to expire.

162. Regarding the nonrenewal decision, which was an abuse of discretion and lacked due process, the remedy would normally be compensation equivalent to the remainder of the contract. In this case, the Applicant had one year remaining, assuming a three-year contract, as promised.

DECISION

- (1) The Bank shall pay the Applicant compensation in the amount equivalent to the difference between the FY18 GG level salary midpoint for Côte d'Ivoire and Togo, plus the FY19 GG level salary midpoint for Côte d'Ivoire, plus the Localization Plus benefit for FY19, for the breach of promise;
- (2) The Bank shall pay the Applicant compensation in the amount of \$20,000.00;
- (3) The Bank shall pay the Applicant one year's net salary based on the last salary drawn by the Applicant, for the improper nonrenewal decision;
- (4) The Bank shall pay the Applicant's legal fees and costs in the amount of \$25,886.50;
and
- (5) All other claims are dismissed.

/S/ Mónica Pinto
Mónica Pinto
President

/S/Zakir Hafez
Zakir Hafez
Executive Secretary

At Washington, D.C., 26 April 2019