



**World Bank Administrative Tribunal**

**2021**

**Decision No. 647**

**Parminder Brar,  
Applicant**

**v.**

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

**(Preliminary Objection)**

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

**Parminder Brar,  
Applicant**

v.

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

1. This judgment is rendered by a panel of the Tribunal, established in accordance with Article V(2) of the Tribunal's Statute, and composed of Judges Andrew Burgess (President), Marielle Cohen-Branche (Vice-President), and Ann Power-Forde.

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

3. The Applicant challenges 12 different decisions made by the Bank covering the period from December 2017 through May 2018 in connection with the end of his term appointment as Country Manager (CM) of Sierra Leone and non-shortlisting and non-feedback decisions for four different CM positions.

4. On 16 February 2021, the Bank submitted preliminary objections challenging the admissibility of some of the Applicant's claims on the grounds of untimeliness and failure to exhaust internal remedies. This judgment addresses the Bank's preliminary objections.

**FACTUAL BACKGROUND**

5. The Applicant is a Lead Governance Specialist, Grade Level GH, based in Nigeria, and a former CM for Sierra Leone. He joined the World Bank Group (WBG) in January 2003 in its Operations Policy and Country Services (OPCS) division as Lead Financial Management Specialist and moved to the Africa Region (AFR) in 2006.

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

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

*End of Sierra Leone Country Manager Term Appointment*

8. In late 2017 and early 2018, towards the end of his tenure as Sierra Leone CM, the Applicant applied for four CM positions in Nepal, the Republic of Yemen, Mongolia, and the Lao People's Democratic Republic (Lao PDR).

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

10. On 11 January 2018, the Applicant contacted the Country Director by email regarding his transition plans for the weeks leading up to the end of his appointment in late March 2018. In the correspondence, he touched on several topics, including his desire to stay on as Sierra Leone CM, as well as his transition plans, stating:

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

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

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

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

I met with [the AFRVP] today and he asked me about a possible short extension of your appointment to the end of FY18 [Fiscal Year 2018], i.e. June 2018. He will look into this and let me know. In the meantime, could you also let me know if this is feasible – coming so late in the midst of your transition plans.

12. On 12 January 2018, the Applicant was informed that he was shortlisted for the Mongolia CM position and would be interviewed during the week of 22 January 2018.

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

14. According to the Applicant, he stated in his speech:

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

15. On 20 January 2018, four days after the Applicant's speech, the Applicant states that a diaspora online opposition publication based in the United Kingdom, the *Sierra Leone Telegraph*, published a slanderous article accusing him of acquiring unexplained wealth through his work in Sierra Leone, and of personally receiving some of the funds donated for the disaster by the Bank in exchange for his campaigning for the current President. The Applicant states that the article also

had racist undertones as it accused the Applicant, an Indian national, of facilitating corrupt deals for the Indian community in Sierra Leone.

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

17. The following day, 21 January 2018, the Country Director contacted the Africa External Communications and Partnership (AFREC) unit for guidance. In one exchange, with the Applicant in copy, the Country Director wrote:

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

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

18. In its correspondence, AFREC advised:

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

19. Later that day, the Country Director wrote to the Applicant, stating, “Further to our discussion earlier today, [the AFRVP] has indicated that he will not extend your term beyond March 2018.”

20. On 22 January 2018, the Applicant was informed by the Country Director that the transition arrangements would come into effect from 10 February 2018.

21. On the same day, the Applicant was interviewed for the Mongolia CM position. According to the Applicant, following that interview “he never received any feedback or formal decision as to its outcome” despite making multiple requests for feedback.
22. In February 2018, the Applicant applied for the Lao PDR CM position.
23. On 6 February 2018, Sierra Leone’s Minister of Finance and Economic Development wrote to the AFRVP in his “capacity as a Governor of the World Bank Group” in support of the Applicant. He addressed the *Sierra Leone Telegraph* article, stating, “This kind of slander is unfortunately not an isolated incident in Sierra Leone especially during an election year.” He also stated that the remarks “by the CM [were] twisted out of context in the article referred to above.”
24. The Minister’s letter praised the Applicant’s work as Sierra Leone CM and advocated for an extension of his appointment, noting that previous CMs “have served between three and five years.” The letter stated that the government was “deeply concerned regarding this slanderous attack,” and added, “If the Bank were to launch an internal investigation into the totally unfounded allegations against the CM – we would welcome that.”
25. On 12 February 2018, the Applicant started his R&R leave. The Applicant then took annual leave until 9 March 2018.
26. On 26 February 2018, the Applicant was informed by HR that he was not shortlisted for the Republic of Yemen CM position. He was informed by HR to contact the Senior HR Specialist if he had any questions.
27. Following the end of the Applicant’s annual leave on 9 March 2018, he took a 10-day administrative leave to prepare for his departure from Sierra Leone and pre-assignment visit to WBG headquarters.
28. On 15 March 2018, the Applicant was informed by HR that he was not shortlisted for the Lao PDR CM position, and he was directed to the Senior HR Specialist for any questions.

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

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

31. On 3 May 2018, the Applicant emailed the Senior HR Specialist asking when HR would inform the shortlisted candidates for the Mongolia CM position of the outcome of the selection process.

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

#### *Peer Review Services*

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

34. The Applicant asserted that WBG practice and procedures in place since 2007 were not followed when he was not "automatically shortlisted" for the CM positions in Nepal, the Republic of Yemen, and Lao PDR. Citing a July 2010 Kiosk Announcement entitled "Increase Support to

Current and Returned FCS [Fragile and Conflict-Affected States] Staff,” the Applicant asserted that there was supposed to be “automatic shortlisting” for the first three positions to which a staff member applied after completing an assignment in an FCS country.

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

36. By way of relief, the Applicant requested

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

37. According to the Applicant, he learned through the PRS process that management apparently had determined in March 2018 that “his performance as a CM in Sierra Leone made shortlisting for CM positions untenable in the spring of 2018,” and also that “he was a poor fit for the CM role,” though he states that he “was never previously made aware of any performance concerns and had actually received excellent performance reviews.”

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

39. On 13 January 2020, PRS issued a document entitled “Panel’s Decisions of Partial Dismissal of the Request for Review and Written Proceedings,” informing the parties that PRS did

not have jurisdiction to review all of the Applicant's claims set forth in his Request for Review No. 428.

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

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

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

41. The PRS Panel dismissed other claims in the Request for Review, including the contested Nepal CM non-shortlisting decision and claims related to the duration of the Applicant's term appointment as Sierra Leone CM, due to untimeliness pursuant to the 120-day filing deadline expressed in Staff Rule 9.03, Section 8 (Time Limitations for Submitting Requests for Review), stating:

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

The Panel will not review any claim relating to the duration of [the Applicant's] Term Appointment as CM for Sierra Leone. The Panel notes that [the Applicant's] claims in his RFR do not pertain to the term of [the Applicant's] appointment as CM for Sierra Leone, nor the duration of his CM term. The Panel notes further that, even if the RFR had sought the review of the terms of [the Applicant's] CM appointment for Sierra Leone, this claim would have been untimely given that the

underlying CM appointment, and subsequent extension decisions, occurred more than 120 calendar days before [the Applicant] filed the RFR.

42. The PRS Panel also dismissed the Applicant’s divestment of duties claim because it was outside the scope of PRS’s review pursuant to Staff Rule 9.03, Section 7 (Review of Disputed Employment Matters), stating:

The Panel determined that [the Applicant’s] alleged “divestment” from “all authority as [CM], Sierra Leone” involves allegations and/or relates to purported facts – including “the publication of a defamatory and slanderous article against [the Applicant] on a website on January 20<sup>th</sup> 2018” – that fall outside PRS’[s] mandate under Staff Rule 9.03. The World Bank Administrative Tribunal (Tribunal) stated in *Sekabaraga v. IBRD*: “[T]here are good grounds for having EBC [the Ethics and Business Conduct Department] undertake a review of allegations of [staff misconduct] before such allegations are considered by PRS or by the Tribunal. EBC is the unit with the primary mandate and the resources to review (...) and review by EBC could make an important contribution to a proper consideration of the often complex factual background.”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Application and preliminary objections*

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

52. On 25 January 2021, the Applicant submitted this Application to the Tribunal contesting

- The Bank's decision to remove [the Applicant] from active duty during February and March [...] 2018, the day after a highly defamatory article was published against him in an online publication;
- The Bank's lack of due process in rescinding an offer of a three-month extension to [the Applicant] the day after a highly defamatory article was published against him in an online publication;
- The Bank's lack of due process in advising [the Applicant] that he should proceed on Administrative Leave from March 1, 2018[;]
- The Bank's lack of due process in appointing [another staff member] as the substantive Acting [CM] for Sierra Leone from February 20, 2018 until the end of the tenure of [the Applicant][;]
- The Bank's refusal to make a public statement defending [the Applicant] from false media representations;
- The Bank's failure to investigate the allegations made by the media or allow [the Applicant] the opportunity to refute them;
- The Bank's refusal to extend [the Applicant's] [CM] position past April 7, 2018;
- The Bank's decision that [the Applicant] was unsuitable for the CM role and its failure to inform [the Applicant] of this decision;
- The Bank's refusal to shortlist [the Applicant] for the Yemen, Laos, and Nepal [CM] positions;
- The Bank's decision not to select [the Applicant] for the Mongolia [CM] position;
- The Bank's refusal to provide feedback for its decision not to shortlist [the Applicant] for the Yemen, Laos, and Nepal [CM] positions; and
- The Bank's failure to provide feedback for its decision not to select [the Applicant] for the Mongolia [CM] position.

53. The Applicant requests specific performance in the following form:

- i) A public statement from the World Bank, specifically sent to the Sierra Leone Telegraph and to the government of Sierra Leone, stating that the accusations set forth in the 20 January 2018 article are false and that the Applicant never engaged in any improper partisan conduct;

- ii) Proactive action taken by the World Bank to have the article removed from the internet;

54. The Applicant claims as compensation “an amount that the Tribunal deems fair and just” to compensate the Applicant for

[t]he Bank’s failure to extend his appointment as Sierra Leone Country Manager; for his loss of income and benefits as a result of his non-selection to the Mongolia CM position; in addition, [the Applicant] lost the opportunity to be selected for other Country Manager/Country Director positions through non-inclusion in the shortlist, contrary to Bank rules. [The Applicant] also seeks compensation for the harm to his career, his professional reputation, and personal life; and for all other intangible damages and considerable distress caused to [the Applicant] as a result of the contested decisions listed above.

55. The Applicant further claims legal fees and costs in the amount of \$23,112.50.

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

## SUMMARY OF THE CONTENTIONS OF THE PARTIES

### *The Bank’s Contentions*

57. The Bank contends that the Application materially expands the number and breadth of his claims from those timely submitted to PRS, and, therefore, that the Applicant has complied with his obligation to timely exhaust internal remedies only with respect to some, not all, of the claims now raised in his Application. As such, the Bank contends that the Tribunal should confine this proceeding to cover only those claims that were timely submitted to PRS – (i) the divestment of duties claim, (ii) the non-shortlisting claims for the Republic of Yemen and Lao PDR CM

positions, and (iii) the non-feedback claims for the Republic of Yemen, Lao PDR, and Mongolia CM positions – and that it should dismiss all other claims.

58. With reference to the unfavorable media article published by the *Sierra Leone Telegraph* in January 2018, the Bank contends that the only claim which the Applicant timely submitted to PRS is the claim that the Bank breached its duty of fairness to the Applicant, and denied him due process, by “removing him of his duties” as CM following publication of the article (*i.e.*, the divestment of duties claim), notwithstanding that the PRS Panel declined jurisdiction and referred the case to EBC. The Bank asserts that the Applicant’s “other media article claims,” specifically that the Bank breached its duty of fairness to the Applicant, and denied him due process, by (i) “failing to protect [him] from the allegations” and (ii) “refusing” to allow him to “defend himself,” were not timely submitted to PRS and are inadmissible.

59. The Bank rejects the assertion that the other media article claims are admissible on the basis that, according to the Applicant, (i) they are “two sides of the same coin,” and thus were in substance already submitted to PRS as part and parcel of the divestment of duties claim, and (ii) they were submitted directly to PRS because documents attached to both the Bank’s and the Applicant’s submissions to PRS were relevant to such claims. To the first point, the Bank contends that the divestment of duties claim is separate and distinct from the other media article claims because the two sets of claims involve different alleged actions (or inactions) on the part of the Bank and different alleged breaches of the Applicant’s terms of appointment. Accordingly, the Bank asserts that, for the other media article claims to be admissible, the Applicant must have independently submitted those claims to PRS in his Request for Review, and he did not. With regard to the second point, the Bank contends that the fact that a PRS submission attaches documents that may be relevant to a particular disputed employment matter does not, of itself, suffice to submit that matter to PRS if the matter is not otherwise addressed in the Request for Review form.

60. The Bank contends that the Applicant appears to concede, or at least to not contest, that the non-shortlisting claim for the Nepal CM position and the Applicant’s non-selection claim for the Mongolia CM position are not admissible before the Tribunal because these claims were (i)

previously dismissed as untimely by the PRS Panel and (ii) previously never raised before PRS, respectively.

### *The Applicant's Response*

61. The Applicant contends that the other media article claims, whereby the Bank breached its duty of fairness to him, and denied him due process, by (i) “failing to protect [him] from the allegations” and (ii) “refusing” to allow him to “defend himself,” are admissible on two grounds. First, he asserts that the other media article claims were, in substance, submitted to PRS as “part and parcel” of the divestment of duties claim. The Applicant asserts that the Bank’s actions were “two sides of the same coin,” because, by “punishing” the Applicant, the Bank chose not to defend him, and, “had the [the Bank] instead chosen to defend [the Applicant], it surely would not have also punished him, given the utter incompatibility of the two decisions.” Thus, the Applicant asserts that these decisions were “inextricably linked” and must be considered “part and parcel” of the divestment of duties claim. Second, the Applicant asserts that the other media article claims were, in any event, submitted directly to PRS because documents relevant to those claims were attached to his Request for Review and the Bank’s Response to PRS.

62. The Applicant contends that, although his Application did challenge the Nepal CM non-shortlisting claim, he later conceded, in his response to the Bank’s preliminary objections, that the claim was untimely. The Applicant contends, however, that he has “conceded only the untimeliness of the Nepal non-shortlisting claim, but he has not abandoned the Nepal non-feedback claim.” Thus, the Applicant asserts that the Tribunal has jurisdiction over the Nepal CM non-feedback claim. The Applicant also asserts that his Application “never” challenged the Mongolia CM non-selection claim “because there was no decision to challenge – [the Bank] *never* told [the Applicant] that he was not selected for the Mongolia Country Manager role.” (Emphasis in original.) Therefore, he challenges only the Bank’s failure to provide feedback on his Mongolia CM application.

## THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

## SCOPE OF THE TRIBUNAL'S REVIEW

63. Article II(2) of the Tribunal's Statute provides:

No such application shall be admissible, except under exceptional circumstances as decided by the Tribunal, unless:

- (i) the applicant has exhausted all other remedies within the Bank Group, except if the applicant and the respondent institution have agreed to submit the application directly to the Tribunal; and
- (ii) the application is filed within one hundred and twenty days after the latest of the following:
  - (a) the occurrence of the event giving rise to the application;
  - (b) receipt of notice, after the applicant has exhausted all other remedies available within the Bank Group, that the relief asked for or recommended will not be granted; or
  - (c) receipt of notice that the relief asked for or recommended will be granted, if such relief shall not have been granted within thirty days after receipt of such notice.

64. Staff Rule 9.03, paragraph 7.02, states:

A Staff Member seeking review of a disputed employment matter is required to submit the matter first to Peer Review Services prior to appealing to the World Bank Administrative Tribunal, unless the matter comes under one of the exceptions listed in paragraphs 7.03 or 7.04 of this Rule.

65. Throughout its jurisprudence, the Tribunal has underscored the importance of the requirement of exhaustion of internal remedies, which "ensures that the management of the Bank shall be afforded an opportunity to redress any alleged violation by its own action." *Ampah (Preliminary Objection)*, Decision No. 522 [2015], para. 55. Furthermore, the Tribunal has stressed in numerous decisions that a failure to observe time limits for the submission of an internal complaint or appeal is regarded as a failure to comply with the statutory requirement of exhaustion

of internal remedies. See *Alrayes (Preliminary Objection)*, Decision No. 520 [2015], para. 55; *Islam*, Decision No. 280 [2002], para. 7; *Peprah*, Decision No. 275 [2002], para. 24; *Sharpson*, Decision No. 251 [2001], paras. 25–26; *Setia*, Decision No. 134 [1993], para. 23; *de Jong*, Decision No. 89 [1990], para. 33.

66. The Tribunal notes that in his Request for Review submitted on 18 May 2018, under “Disputed Employment Matters,” the Applicant expressly requested a review of “two issues,” stating:

There are two issues that I am respectfully requesting to be reviewed:

1. To review the decision made by Management during the course of one day – [21 January 2018] – (which happened to be a Sunday) to divest me of all authority as Country Manager, Sierra Leone following the publication of a defamatory and slanderous article against me on a website on [20 January 2018]. The article is at Annex “A.” I contend that this was done in haste, without consideration of my track record in Sierra Leone and without following due process prescribed in the Staff Rules. Management not only divested me of authority but also proceeded to appoint a Program leader in Ghana as the “substantive” Country Manager in Sierra Leone even before the end of my term. This caused “shock” within the Country Team, disruption to the Development Partner Group (DPG) of which I was Co-Chair, caused serious concern from the side of the Government and caused emotional and mental stress to me besides damaging my person and professional reputation within the country and within the Bank.
2. To review the decisions of OPCS and HR to not comply with standard Bank practices – to shortlist me for CM positions following the end of my assignment in Sierra Leone. HR has confirmed that current Bank processes are such that automatic shortlisting happens for the first three positions applied for on completion of an assignment in a FCV country. In my case I was shortlisted and interviewed for CM Mongolia on [22 January 2018], but was not shortlisted for CM positions in Nepal, Yemen and Laos. The automatic processes did not work in my case. The concerned HR person has neither acknowledged nor responded to multiple [emails] sent to her since December 2017 – giving me the impression that I have been blacklisted for reasons that are not clear to me.

67. The Tribunal notes that the Applicant now makes complaint in respect of 12 matters (set out above at paragraph 52) in his Application, challenging various decisions made by the Bank covering the period from December 2017 to May 2018.

68. The Tribunal observes that the Applicant's 12 claims may be classified under three broad categories:

- Claims arising in respect of the published article;
- Claims arising in respect of the applications for Country Manager; and
- Remaining miscellaneous claims.

69. The Tribunal will assess the claims made under each category to determine whether, prior to filing his Application, the Applicant fulfilled his obligation to timely exhaust internal remedies in respect of each claim.

#### CLAIMS ARISING IN RESPECT OF THE PUBLISHED ARTICLE

70. The Tribunal will now examine the three claims relating to the published article in order to determine whether the Applicant timely exhausted internal remedies with regard to each claim.

71. In his Application dated 25 January 2021, the Applicant makes three claims in respect of the Bank's actions following the publication of the impugned article in the *Sierra Leone Telegraph*. These claims relate to

- The Bank's decision to remove [the Applicant] from active duty during February and March [...] 2018, the day after a highly defamatory article was published against him in an online publication;
- The Bank's refusal to make a public statement defending [the Applicant] from false media representations; [and]
- The Bank's failure to investigate the allegations made by the media or allow [the Applicant] the opportunity to refute them[.]

72. For ease of reference, the Tribunal will refer to the first claim as the "divestment of duties claim" and to the second and third claims as the "other media article claims."

#### *Divestment of duties claim*

73. The record shows that the Applicant explicitly raised the divestment of duties claim in his Request for Review to PRS on 18 May 2018. It also establishes that, on 13 January 2020, PRS

issued a document entitled “Panel’s Decisions of Partial Dismissal of the Request for Review and Written Proceedings,” dismissing the divestment of duties claim made by the Applicant.

74. The Tribunal observes that the PRS Panel provided the following rationale for its decision to dismiss this claim:

The panel determined that [the Applicant’s] alleged “divestment” from “all authority as [CM], Sierra Leone” involves allegations and/or relates to purported facts – including “the publication of a defamatory and slanderous article against [the Applicant] on a website on January 20<sup>th</sup> 2018” – that fall outside PRS’[s] mandate under Staff Rule 9.03. The World Bank Administrative Tribunal (Tribunal) stated in *Sekabaraga v. IBRD*: “[T]here are good grounds for having EBC undertake a review of allegations of [staff misconduct] before such allegations are considered by PRS or by the Tribunal. EBC is the unit with the primary mandate and the resources to review (...) and review by EBC could make an important contribution to a proper consideration of the often complex factual background.”

75. The Tribunal further notes that the PRS Panel directed the Applicant to the possibility of pursuing his divestment of duties claim with EBC, stating, “Accordingly, [the Applicant] may wish to avail himself of EBC regarding the alleged ‘divestment’ from ‘all authority as [CM], Sierra Leone.’”

76. The record shows that the Applicant engaged EBC on 31 March 2020 regarding his divestment of duties claim. However, EBC closed the case on 24 June 2020 following a preliminary inquiry into the matter. The record further shows that, following a request made by the Applicant, EBC agreed to speak with him in July 2020 in order to obtain additional information that he wished to provide. On 25 August 2020, EBC provided notice to the Applicant via email that it “[would] not be reopening its review of the allegations brought forward [...] on 31 March 2020.”

77. On 15 December 2020, the Applicant requested an extension of time within which to file his Application to the Tribunal. This was granted by the Tribunal on the same day, eight days before the expiry of the 120-day deadline which ran from the date he received the above notice from EBC. The Tribunal gave the Applicant an extension until 25 January 2021. The record shows

that the Applicant filed his Application, which included his divestment of duties claim, on 25 January 2021.

78. The Tribunal observes that, with respect to the Applicant’s divestment of duties claim, the Bank, in its preliminary objections, states:

With respect to the [media article claims], the only claim that the Applicant timely submitted to PRS is the claim that the [Bank] breached its duty of fairness to the Applicant, and denied him due process, by “removing him of his duties” as Country Manager following publication of the [media article]. [...] While this claim was framed differently in the Applicant’s PRS Request for Review – as a “Divestment of Duties Claim” – the [Bank] acknowledges that the underlying substance of the claim was timely articulated in the Applicant’s Request for Review, notwithstanding that PRS ultimately declined jurisdiction and referred the issue to EBC. [...] As such, the [Bank] does not object to the admissibility of this particular claim before the Tribunal.

79. In view of the foregoing, the Tribunal is satisfied that the Applicant has timely exhausted internal remedies in relation to the divestment of duties claim. This claim is, therefore, admissible.

*Other media article claims*

80. With respect to the other media article claims, the Bank states in its preliminary objections:

The Applicant’s remaining claims concerning the Media Article, however, were not timely submitted to PRS. This includes, without limitation, the claims that the [Bank] breached its duty of fairness to the Applicant, and denied him due process, by “failing to protect [him] from the allegations” in the Media Article, and by “refusing” to allow him to “defend himself” from those allegations. It is clear from the PRS record, in particular from the Applicant’s Request for Review, that the Applicant did not raise complaints of this kind before PRS at all. [...] As a result, the Applicant has failed to exhaust internal remedies with respect to those claims and they are not admissible for the Tribunal in this proceeding.

81. In response, the Applicant asserts that the other media article claims were “part and parcel” of the divestment of duties claim. These other claims, he contends, were submitted directly to PRS because documents relevant to those claims were attached both to the Applicant’s Request for Review to PRS and to the Bank’s Response to PRS.

82. In the Tribunal's view, the mere fact that documents potentially relevant to the other media article claims were appended to the divestment of duties claim before PRS is insufficient to establish that such other distinct claims, in themselves, have been made before PRS. Moreover, the divestment of duties claim concerns allegations against the Bank that are different from allegations now made against the Bank concerning a failure to protect and a refusal to defend the Applicant. It is also clear from the plain language of the Applicant's Request for Review that the Applicant did not expressly raise the other media article claims. Furthermore, the record shows that the other media article claims were not considered as heads of claims under the "Issues for Review" section of PRS's "Panel's Decisions of Partial Dismissal of the Request for Review and Written Proceedings," issued on 13 January 2020.

83. In view of the foregoing, the Tribunal finds that the Applicant did not timely exhaust internal remedies with respect to the other media article claims. These claims are, therefore, inadmissible.

#### CLAIMS ARISING IN RESPECT OF CM APPLICATIONS

84. The Tribunal will now examine the Applicant's claims arising from his applications for the position of Country Manager. These claims are

- The Bank's refusal to shortlist [the Applicant] for the Yemen, Laos, and Nepal [CM] positions;
- The Bank's decision not to select [the Applicant] for the Mongolia [CM] position;
- The Bank's refusal to provide feedback for its decision not to shortlist [the Applicant] for the Yemen, Laos, and Nepal [CM] positions; and
- The Bank's failure to provide feedback for its decision not to select [the Applicant] for the Mongolia [CM] position.

85. As a preliminary matter, the Tribunal notes that the Applicant concedes the untimeliness of his Nepal CM non-shortlisting claim in his pleadings.

86. The record shows that the PRS Panel dismissed the Applicant's Nepal CM non-shortlisting claim as "untimely" in its "Panel's Decisions of Partial Dismissal of the Request for Review and Written Proceedings," issued on 13 January 2020. Specifically, the PRS Panel noted:

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

87. The Tribunal observes that, although the Applicant concedes that the Nepal non-shortlisting claim was untimely, he nevertheless maintains the admissibility of his "Nepal non-feedback claim."

88. The Tribunal observes that the Applicant requested feedback from HR on the Nepal CM non-shortlisting decision on 19 December 2017, the same day he was informed of the fact that he had not been shortlisted for that position. The record further shows that the Applicant submitted his Nepal CM non-feedback claim to PRS on the same day that he submitted his Nepal non-shortlisting claim, that is, on 18 May 2018, "on or around 150 calendar days" after he first requested feedback. The Tribunal is, therefore, satisfied that the Applicant's claim about the Bank's failure to provide feedback on the Nepal CM position is also inadmissible because that claim was submitted to PRS out of time along with his untimely Nepal CM non-shortlisting claim.

89. In relation to his non-selection claim for CM (Mongolia), the Applicant states that "his Application never challenged the Mongolia non-selection claim" because the Bank never officially informed him that he had not been selected and so "there was no decision to challenge." However, the Applicant also clarifies that,

[i]n short, with respect to [the Applicant's] Country Manager applications, [he] challenges only: the non-shortlisting decisions for the Laos and Yemen roles, and the non-feedback decisions for the Nepal, Laos, Yemen, and Mongolia roles.

90. With respect to the Applicant's CM application claims, the Tribunal notes that the Bank states:

[T]he only admissible claims are: (a) the Shortlisting Claims for each of the Yemen and Laos Country Manager positions, and (b) the Feedback Claims for each of the Yemen, Laos[,] and Mongolia Country Manager positions. [...] The [Bank] acknowledges that each of those claims was timely submitted to PRS in the Applicant's Request for Review and is, therefore, admissible before the Tribunal in this proceeding.

91. The Tribunal observes that the Applicant, in his Request for Review, dated 18 May 2018, raised non-shortlisting claims for the Republic of Yemen and Lao PDR CM positions and non-feedback claims for the Republic of Yemen, Lao PDR, and Mongolia positions. The record shows that the Applicant was informed of the Republic of Yemen and Lao PDR non-shortlisting decisions on 26 February 2018 and 15 March 2018, respectively. The record further shows that the Applicant requested feedback on the Republic of Yemen, Lao PDR, and Mongolia non-shortlisting decisions on 2 May 2018. It is clear to the Tribunal that all of these actions and inactions had occurred within 120 days prior to the Applicant's submission of his Request for Review with PRS.

92. The Tribunal notes that, with regard to the CM claims considered by the PRS Panel and the recommendations thereto, those recommendations were accepted by the Vice President, Western and Central Africa, and that acceptance was communicated to the Applicant on 27 August 2020. The record shows that the Applicant timely submitted those claims to the Tribunal on 25 January 2021, having been granted an extension to file his Application by the Tribunal on 15 December 2020.

93. Based on the foregoing, the Tribunal finds that the Applicant has timely exhausted internal remedies with respect to his non-shortlisting claims for the Republic of Yemen and Lao PDR CM positions and his non-feedback claims for the Republic of Yemen, Lao PDR, and Mongolia CM positions. Accordingly, the Tribunal accepts jurisdiction over these claims.

#### REMAINING MISCELLANEOUS CLAIMS

94. The Tribunal will now examine the remaining miscellaneous claims in the Applicant's Application dated 25 January 2021 to determine whether he has timely exhausted internal remedies with respect to these claims.

95. The Tribunal notes that these remaining claims are

- The Bank’s lack of due process in rescinding an offer of a three-month extension to [the Applicant] the day after a highly defamatory article was published against him in an online publication;
- The Bank’s lack of due process in advising [the Applicant] that he should proceed on Administrative Leave from March 1, 2018[;]
- The Bank’s lack of due process in appointing [another staff member] as the substantive Acting [CM] for Sierra Leone from February 20, 2018 until the end of the tenure of [the Applicant][;]
- The Bank’s refusal to extend [the Applicant’s] [CM] position past April 7, 2018; [and]
- The Bank’s decision that [the Applicant] was unsuitable for the CM role and its failure to inform [the Applicant] of this decision[.]

96. The Tribunal notes that in the “Panel’s Decisions of Partial Dismissal of the Request for Review and Written Proceedings,” issued on 13 January 2020, the Panel dismissed all claims in the Applicant’s Request for Review relating to the duration of the Applicant’s term appointment as Sierra Leone CM. The record shows that the PRS Panel dismissed these claims due to untimeliness pursuant to the 120-day filing deadline expressed in Staff Rule 9.03, Section 8 (Time Limitations for Submitting Requests for Review), stating:

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

97. Aside from the dismissed claims relating to the duration of the Applicant’s Sierra Leone CM term appointment, the Tribunal notes that the other claims listed under this category were not explicitly raised in the Applicant’s Request for Review nor cited under “Issues for Review” in the “Panel’s Decisions of Partial Dismissal of the Request for Review and Written Proceedings.” Accordingly, these claims were not considered by the PRS Panel in its “Panel’s Report in Request for Review No. 428,” issued on 20 August 2020.

98. In these circumstances, the Tribunal finds that the Applicant has failed to timely exhaust internal remedies for the remaining miscellaneous claims in his Application. All claims in this section are, therefore, inadmissible.

99. The Tribunal reserves, until its determination on the merits, the question of legal fees and costs.

#### DECISION

- (1) The Tribunal accepts jurisdiction over the Applicant's (i) divestment of duties claim, (ii) non-shortlisting claims for the Republic of Yemen and Lao PDR CM positions, and (iii) non-feedback claims for the Republic of Yemen, Lao PDR, and Mongolia CM positions; and
- (2) The Tribunal dismisses the Applicant's other claims as inadmissible due to failure to timely exhaust internal remedies.

/S/ Andrew Burgess

Andrew Burgess

President

/S/ Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C., \* 7 June 2021

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