



World Bank Administrative Tribunal

2021

Decision No. 649

**FW and FX,
Applicants**

v.

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

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

**FW and FX,
Applicants**

v.

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

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

2. The Applications were received on 28 April 2020. The Applicants were represented by Jeffrey Bartos of Guerrieri, Bartos & Roma, P.C. The Bank was represented by David Sullivan, Deputy General Counsel and Nora Muller, Senior Counsel (Institutional Administration), Legal Vice Presidency. The Applicants' requests for consolidation of their respective Applications were granted on 16 June 2020 pursuant to Rule 27(1) of the Rules of the Tribunal. The Applicants' requests for anonymity were granted on 3 May 2021. Oral proceedings were held on 3 May 2021.

3. In their respective Applications, the Applicants contend that (i) they were subjected to sexual harassment in violation of Bank policies; (ii) the Bank failed to provide adequate protections for the Applicants and other staff members; and (iii) the Ethics and Business Conduct Department (EBC) investigation was flawed.

FACTUAL BACKGROUND

4. The First Applicant joined the Bank in September 2009, at the age of twenty-two, as a Junior Professional Associate (JPA). According to the First Applicant, this was her "very first job" and she "moved across continents" to work for the World Bank Group (WBG). Under the terms of the JPA program, a JPA position is a two-year, non-renewable term appointment, after which JPAs may not apply to other positions in the WBG for a two-year period. The First Applicant's

JPA appointment concluded in July 2011. The First Applicant is currently employed by the International Monetary Fund (IMF) as an economist.

5. The Second Applicant joined the Bank in August 2011, when she was approximately twenty-four years old, initially as a Short-Term Consultant. In the same month, the Second Applicant was offered, and accepted, a two-year non-renewable appointment as a JPA in the same unit as the First Applicant. The Second Applicant left the Bank in August 2013 at the completion of the JPA term appointment. Subsequently, she rejoined the Bank in September 2017 as an economist in the Bank's Young Professionals Program; she currently holds this position.

6. During the First Applicant's period of employment as a JPA, Mr. C was a practice sector manager and, in that role, the First Applicant's direct manager. Subsequently, Mr. C was promoted to sector director. During the Second Applicant's period of employment as a JPA, Mr. C was the Second Applicant's director.

7. On 17 July 2018, EBC conducted an interview with the Second Applicant who alleged that Mr. C sexually harassed her and other female staff members. EBC conducted thirty interviews during its investigation into what it described as an "unusually broad scope of [...] allegations from several different women." Both Applicants were among those interviewed by EBC in its investigation of Mr. C, and both Applicants alleged that Mr. C engaged in repeated, unwanted, inappropriate behavior of a sexual nature.

The First Applicant's allegations against Mr. C

8. According to the First Applicant, Mr. C began sexually harassing her "within weeks" of her joining his unit as a JPA.

9. The First Applicant states that, after three months of working for Mr. C, she sought assistance from an Ombudsman, who, according to the First Applicant, was aware of Mr. C's behavior already. The First Applicant did not at that time pursue an investigation into her

allegations of sexual harassment by Mr. C but agreed to provide her name “on the record” in case other women stepped forward with an investigation and sought witnesses.

10. The First Applicant informed EBC investigators that, at some point soon after she spoke to the Ombudsman, Mr. C stopped by her office and said something to the effect of “I know you reported me.” The First Applicant stated that she responded by acting as if she had no idea what Mr. C was talking about. A former colleague of the First Applicant also recalled this interaction during his interview with EBC investigators.

11. According to the First Applicant, the Ombudsman she spoke with advised her to keep a record of Mr. C’s behavior. Thereafter, in December 2009, the First Applicant began contemporaneously documenting some of her conversations and interactions with Mr. C in time-stamped drafts in her email account.

12. In one such conversation, documented by the First Applicant, Mr. C asked the First Applicant what she looked for in a romantic partner to which he checked off the attributes he matched with, whether her parents would “approve” if he travelled to Sweden with the First Applicant for the holidays, and whether the First Applicant would tell her friends that he was a “dirty old man” who was hitting on her.

13. In addition to documenting some of her conversations with Mr. C, the First Applicant states that she also discussed her discomfort regarding Mr. C with colleagues, who shared in her discomfort, provided strategic advice, and “confirmed that his inappropriate behavior was well known.”

14. The First Applicant told EBC that on one occasion Mr. C commented that he liked it when she bent over, then proceeded to drop an item and ask her to pick it up for him, a request which the First Applicant refused.

15. The First Applicant informed EBC that Mr. C repeatedly invited her out to drinks and dinner outside of WBG premises “on a weekly basis and repeatedly in some conversations” over

the two-year period she was employed as a JPA, despite the fact that she consistently declined to meet him outside of Bank premises.

16. According to the First Applicant, Mr. C frequently offered to drive her home and on one occasion invited her to his house to try “wine that cost several hundred dollars.”

17. The First Applicant stated to EBC investigators that she “never accepted any personal [or social] invitations [from Mr. C]” and felt that these declinations “should [have been] enough of a hint [to Mr. C]” that his invitations were unwelcome, stating also:

I never ever ever expressed any interest in [Mr. C] (and honestly just the thought of that is repulsive). Note that I was 22 when I started working as a JPA and I had a boyfriend and I had zero interest in a disgusting sleezy man around the age of 50. I never accepted any of his endless invitations to go out nor to his place nor rides home nor even coffee or lunch outside the Bank. The harassment took place on a daily basis, and more intensely a few times a week, there was no way he could mistake all of my rejections (over the course of two years) for interest from my side on any level.

18. The First Applicant informed EBC that, during a conversation about a then-upcoming unit retreat in Annapolis, Maryland, Mr. C asked the First Applicant whether she had ever been to Annapolis and that, when the First Applicant responded “no,” Mr. C stated, “Let’s go there now. I will take you there now and we stay in a hotel.” According to the First Applicant, she declined the proposition by telling him she had work to do and would never go to a hotel with him.

19. According to the First Applicant, Mr. C tried to kiss her on the lips on multiple occasions. She noted that the attempts began early on in her tenure and stated: “[H]is strategy was kind of – he’d say: Can I have a goodbye kiss? And then I would say no, no and then [he would] say: just an innocent kiss, just on the cheek, [and] then I’d be like no and then [he would] say: if you give me a kiss then I’ll leave, I promise.” She further stated at one point that, in order “to get him to get out,” she went to give him a kiss on the cheek and he turned his face and tried to kiss her on the mouth.

The Second Applicant's allegations against Mr. C

20. During her interview with EBC investigators, the Second Applicant stated that, although she did not report to Mr. C at work, nor were they friends, Mr. C would nevertheless stop into her office “at least two days a week on average” over a period of two years to ask “uncomfortable” personal questions about her dating life and comment on her physical appearance.

21. The Second Applicant stated in an interview with EBC that, during interactions with Mr. C, his eyes would look her up and down “in a way that [was] not very professional.”

22. The Second Applicant discussed her discomfort regarding Mr. C with colleagues, and states she was informed by colleagues that Mr. C's behavior was well known. She recalled to EBC investigators that she would try to avoid Mr. C by going to other colleagues' offices when she heard him approaching.

23. EBC interviewed the Second Applicant's colleagues, who provided their observations that (i) the Second Applicant was one of the “girls” that Mr. C had “an eye on”; (ii) Mr. C's inappropriate behavior toward the Second Applicant spanned the duration of her two years as a JPA; (iii) the Second Applicant regularly confided to colleagues about her discomfort toward interacting with Mr. C; and (iv) the Second Applicant would go to other offices to avoid being alone with Mr. C.

24. In June 2017, the Second Applicant reported that Mr. C sexually harassed her to the Co-Chair of the WBG Working Group on Sexual Harassment (Co-Chair).

25. The Second Applicant described to EBC investigators her anxiety about avoiding interactions with Mr. C, noted that her young age and the power disparity between her and Mr. C made it difficult to vocalize her discomfort to him, and expressed her belief that reporting Mr. C's “well known” behavior would be futile based on her understanding that previous efforts in reporting Mr. C's behavior had no beneficial effect and that instead Mr. C had been promoted to a director-level position.

Other witnesses and complainants

26. EBC investigators interviewed others regarding their observations pertaining to Mr. C.

27. In an interview with EBC investigators, the Co-Chair of the WBG Working Group on Sexual Harassment recalled facilitating a general discussion on issues relating to sexual harassment in the WBG. The Co-Chair described the discussion as follows:

I was there for a normal mission, and I did what I usually do, which is to have, to meet with staff interested in talking about sexual harassment, of the working group and a survey and all these different things, the different initiatives. It was a very informal meeting in a kind of common area that they have. And I would say maybe 30, 40 people showed up. And I started talking about sexual harassment, and the point I was making is that there is a lot of initiatives going on, and there is clear determination by and commitment by senior management to address sexual harassment. But it's a complicated issue and it will take a while to happen. It's not going to happen overnight that we will have the perfect system and so on and so forth, but in the meantime, there is a lot we can do as staff, as colleagues, as bystander interventions and these kinds of things.

And I was aware, of course, that [Mr. C] was coming [in as a director in the region] in January, or was meant to come in January. But what I was emphasizing was you can do a lot, make sure we have a respectable workplace environment.

And then one of the colleagues got up and said, "Look, let's be honest here. We all know who we are talking about. Our next country director is going to come. He is a well-known sexual harasser. Many of us worked with him when he was in [...], and it was common knowledge he was doing that."

My jaw dropped. I didn't know what to do. And with [that] the flood gates opened. And people started talking about that and about their experience and about the fact that this was something that was very uncomfortable and worrisome.

28. The Co-Chair also informed EBC investigators that another staff member, not either of the Applicants, disclosed to the Co-Chair that she had been sexually harassed by Mr. C. The Co-Chair further informed EBC investigators that another staff member informed her that Mr. C was very interested in a colleague and kept going into the colleague's office and making inappropriate comments and asking her repeatedly to go out with him. That staff member further described to the Co-Chair a sort of system in which colleagues would keep an eye on whether Mr. C was in this

woman's office and had an agreement to "pop into" her office to request her assistance and interrupt Mr. C's visit with her.

29. A woman recounting her time as a Team Assistant in Mr. C's unit was tearful as she described to EBC investigators how Mr. C leered at her breasts, frequently extended unwelcome invitations, and questioned her about her dating life. She stated that she was twenty-five years old at that time and it "was the only time [she] ever experienced that in [her] life [...] and she didn't know what to do." She also stated that a male colleague would stay late in the office in an effort to protect her and other female colleagues if they were staying late.

30. A consultant described her interactions with Mr. C, stating that he would be "looking at you from head to toe, this kind of behavior was definitely not respectful and something you would not expect from a World Bank staff and he was the only person behaving like this so this was also something abnormal in a sense."

31. Another woman, a Research Economist who did not work in Mr. C's unit, told EBC investigators that, in her limited interactions with Mr. C, he would make comments like "[she] didn't look like the typical economist and he was referring to the fact that [she] was wearing high heels or [her] dress or [her] appearance"; and she noted a specific instance in which Mr. C "walked by [her] office and [...] looked at [her] and was like stand up, I would like to see what you're wearing and turn around." She also described that Mr. C was repeatedly "asking [her] out" and, based on Mr. C's "leering, the content, the body language [...] and her] feeling [that] the interaction [...] was not professional," she did not believe he had an interest in having a professional relationship.

32. According to the Research Economist, after she had declined several offers for coffee, lunch, and a mentoring relationship, eventually Mr. C sent her an email inviting her out to lunch in response to what he said was "a comment from one of [her] senior colleagues at the [Chief Economist Office] who indicated to [him] his perception that [she] could benefit from receiving mentoring from experienced Bank staff outside of [her] office." The Research Economist finally agreed to meet Mr. C for lunch on 5 June 2009, believing the lunch would take place on Bank

premises, only to find out that Mr. C had made reservations at a restaurant outside of the Bank. The Research Economist described the lunch as follows:

[Mr. C] was trying to drink or make me drink from his glass and then grabbing my glass. So, it's almost like it was an interaction that was too familiar. I think he ordered some ceviche. I didn't and then he wanted me to taste it and he wanted to feed me and I'm like no [...].

[O]ne of the reasons I agreed to go to lunch is because he had mentioned that he heard rumors about me and he wanted to share with me these rumors. So, I tried to bring back the conversation, aside from this interaction to, so what were the rumors, what were the issues. [...] At first, he didn't want to kind of have that conversation and then he fessed up essentially that that was just an excuse to go to lunch and to entice me or make me curious about having a conversation.

[Mr. C] continued making reference to the fact that I have the great potential, I have the right look, I clearly am smart and a bunch of other stuff. He said that I just need the right people to network to almost build the social capital at the Bank [...].

33. The Research Economist stated that Mr. C then made several inappropriate comments and asked several inappropriate questions. She specifically reported that during lunch Mr. C (i) asked her about her boyfriend and “then [made] an innuendo that if he was younger [than her] then he had to fulfill [her in] different ways”; (ii) asked her in substance what she was afraid someone might reveal about her in the newspaper headlines; (iii) made reference to having an orgy with six different animals; and (iv) “asked her directly whether [she] ever had cheated or had an affair with a married man.”

34. The Research Economist stated that she responded to Mr. C's comments and questions by “literally staring at the plate,” “literally frozen [...] in complete shock,” and that she believed it was clear “in [her] body language and [her] way of answering that [she] was not a comfortable person...that she was [...] not even engaging [...] and] was trying to end the conversation.”

35. Following the lunch, the Research Economist reported the experience to a Chief Economist who was acting on behalf of the Research Economist's Supervisor who was on leave. She also reported Mr. C's behavior to her Supervisor when he returned from leave. The Chief Economist and Supervisor informed EBC investigators that the Research Economist had reported Mr. C's

“inappropriate advances,” and they described the Research Economist as “shocked,” “distraught,” “worried,” and “nervous.” The Research Economist further contacted an Ombudsman and sought advice in addressing the matter.

36. On 19 June 2009, following the conversations with her superiors and the Ombudsman, the Research Economist sent Mr. C the following email:

Dear [Mr. C],

For sake of honesty and respect, I have to address a rather uncomfortable topic. You may have noticed during and since our lunch at the beginning of June I withdrew from conversations. I have to be candid and admit that the lunch was rather unsettling for me. Some of the attitudes, gestures and the explicit topics of conversation and the private nature of some of the references caught me off guard and I found the[m] inappropriate for a lunch. I was taken aback/off guard and disorientated by that lunch and rather confused, and I sought [my Supervisor’s] advice as well as the ombudsman’s guidance - both on a strictly confidential basis, however they are both aware that I would be sending this email.

You might resent this but given my “being relatively new to the bank”, I had no idea whom to ask for guidance, nor did I know how to handle the situation. I do not want to be confrontational or come across as threatening. It is my preference not to escalate the tensions and awkwardness, but I would like to simply look ahead, and these reasons led me to write you the present email. At this point, I do not think it is productive to revisit or analyze what has been said and how it was meant. I would simply like to move forward. To avoid possible future misunderstandings or uncomfortable circumstances, we should avoid topics of an explicit and private nature.

It is my priority to preserve the spirit of collegiality that is a hallmark of the working environment in [...] and of our offices, in particular. I hope you will be able to discern the good intentions underlying this email and my desire to appear as honest, frank, and respectful as possible in an effort not to damage the collegial and professional relationship.

37. Mr. C responded to the Research Economist with the following email:

I note your request to not discuss personal issues – which I will be pleased to accommodate. That said and in the same spirit of honesty and respect you invoked in the attached, I must react to your email.

First, your email is a total surprise because there has been no earlier indication of your concern and because, contrary to your assumption, I have not noted that you “withdrew from conversation.” In fact, there could be no reasonable expectation that I could/should have noted your alleged withdrawal from conversation as the majority of our few and seldom interactions are random, in the presence of other colleagues, and limited to casual conversation.

As you will recall, I mentioned to you that the idea of the lunch originated from a comment from one of your senior colleagues at the [...] who indicated to me his perceptions that you could benefit from receiving mentoring from experienced Bank staff outside your office. In addition, please note that I am [my unit’s] Diversity and Inclusion Coordinator. As such, I am required to identify talented female economists who could potentially become [...] recruits.

I am also rather disturbed by your email. You could have easily considered issuing a verbal indication of your request. Instead, you chose to contact your manager and the Bank’s ombudsman (and conceivably other Bank colleagues) – which is hardly a reasonable first instance in trying to address the alleged matter.

Regrettably, your actions could be construed as threatening in view of their potential negative implications on my reputation, relationship with my family and career in the Bank.

Accordingly, I would like to kindly request that you please refrain from making further remarks about these issue[s] to prevent further injury and damage, to my person. Like you, I do not want to be confrontational or come across as threatening. It is also my preference not to escalate the issue and to maintain a collegial and professional relationship. Nonetheless, I would also find it legitimate to pursue the options afforded by the Bank’s conflict resolution mechanisms to protect my integrity – as I am sure you will understand – should the actions of/comments by any colleague be unjustifiabl[y] injurious.

In closing, I would like to assure you that it has never been my intention to make you feel uncomfortable and that I will endeavor in avoiding by all reasonable means any and all circumstances which could make you feel uncomfortable. While I am deeply sorry you have misinterpreted my actions, I bear no resentment towards you.

38. A male colleague who worked at different times with both Applicants and Mr. C informed EBC investigators that he raised concerns with Mr. C about his behavior toward the female JPAs. The male colleague stated that on two occasions he “relay[ed] the message that some of those [...] comments or approaches were not [...] welcome” but that “[Mr. C] brush[ed] it off” and Mr. C’s comments and inappropriate behavior continued. The male colleague further stated that he told Mr. C once or twice in words to the effect of “[h]ey boss [...] watch it with [those] comments”

and “you shouldn’t say that” with the aim to “relay the message that some of those [...] comments or approaches were not [...] welcome.”

Mr. C’s response to the EBC investigation

39. On 18 December 2018, EBC provided Mr. C with a Notice of Alleged Misconduct, which informed him that

[EBC] is currently investigating allegations that you may have committed misconduct under the World Bank Group (“WBG”) rules and policies by allegedly engaging in unprofessional conduct with and/or sexually harassing female staff members [...] at various times during 2009–2014.
[...]

If the allegations made against you are substantiated, your actions may constitute misconduct under applicable Bank Group rules and policies, including, but not limited to the provisions of:

- i. Staff Rule 3.00, paragraph 6.01(b): Reckless failure to identify, or failure to observe, generally applicable norms of prudent professional conduct;
- ii. Staff Rule 3.00, paragraph 6.01(c): Acts or omissions in conflict with the general obligations of staff members set forth in Principle 3 of the Principles of Staff Employment including the requirements that staff avoid situations and activities that might reflect adversely on the Organizations (Principle 3.1) and conduct themselves at all times in a manner befitting their status as employees of an international organization (Principle 3.1(c)); and
- iii. Staff Rule 3.00, paragraph 6.01(e): Harassment; contributing to a hostile work environment (*see also* World Bank Group Guidance – Anti-Harassment: Catalog No. HRD 10.03-GUID.101); or wrongful discrimination.

40. On the same day, EBC investigators interviewed Mr. C regarding the allegations.

41. In response to the First Applicant’s allegations, Mr. C stated that he did not remember asking her out for dinner or drinks but that it was possible he had asked her if she had eaten dinner or offered to get her dinner. He stated that he would periodically offer staff members rides home, not just the First Applicant and not just women. He denied inviting the First Applicant to his house

to try wine, initially claiming it was the First Applicant, not he, who suggested going out for wine; but later he changed his statement, stating the First Applicant had just mentioned she was learning to enjoy red wine. Mr. C further denied inviting the First Applicant to a hotel in Annapolis. He also denied kissing the First Applicant except for on the cheek, which he explained is a customary greeting in his culture. He denied making any sexual advances toward the First Applicant.

42. In response to the Second Applicant's allegations, Mr. C denied that he did or said anything to the Second Applicant that a reasonable person would find inappropriate.

43. Mr. C noted to EBC investigators that he had won a Diversity and Inclusion award for, in his own words, "protecting and promoting female workers." He provided his 360° Behavioral Feedback Report, which contained comments such as the following:

[Mr. C] is very keen on diversity and inclusion. He really changed the staff composition of [his unit] in the last two years. [...]

[Mr. C] recruited 14 female economists/economic analysts from 10 different countries [and] played a pivotal role in promoting diversity in the unit. [...]

I have seen [Mr. C] mentoring and supporting the staff under his supervision in their career development. People seeks [*sic*] for his advice and he's always willing to interview YPs [Young Professionals], and students interested in working at the Bank. [...]

Under [Mr. C's] guidance [his unit] has become one of the most diverse teams in the Bank in terms of race and gender. His team included many female economists/economic analysts; and many staffs come from various different countries and regions.

44. Mr. C stated he also "maintained a personal program of mentoring female African economists."

45. Mr. C identified nineteen witnesses; however, EBC determined that the proposed witnesses either had already been interviewed or were relevant to certain rumors about Mr. C's behavior, but unrelated to the specific behaviors at issue in the investigation. EBC noted that not one of Mr. C's

suggested witnesses was identified by him as a former JPA during the period covered by the EBC Final Report.

Findings in EBC's Final Report

46. In its Final Report, EBC indicated that its exclusion of certain potential witnesses to be interviewed was based on “(i) the stated relevance of the witnesses; (ii) the level of existing evidence and corroboration; (iii) the duration of EBC’s review and investigation; and (iv) the stated impact (i.e., stress) that the investigation was having on [Mr. C].”

47. With respect to the First Applicant’s allegations, EBC found that Mr. C “made repeated social invitations to [the First Applicant] for drinks (i.e., invited her out for wine) and dinner and invited her to a hotel in Annapolis, Maryland.” EBC found that, based on the frequency of the invitations and the fact that the First Applicant always declined, the “repeated social/personal invitations were unwelcome and [Mr. C] should have understood they were unwelcome on that basis.” EBC further found that, based on the context and nature of Mr. C’s behavior toward the First Applicant, the repeated unwelcome social invitations to dinner, drinks, and a hotel were sexual in nature.

48. EBC found that Mr. C may have “attempted to kiss [the First Applicant] in an unwelcome manner at least once” and that “the attempted kisses on the lips were unwelcome, sexual in nature and [Mr. C] was on notice that his attempted kisses were unwelcome.”

49. Based on the First Applicant’s contemporaneous notes documenting conversations with Mr. C, and corroborating circumstantial factors including texts and emails from Mr. C, EBC found that Mr. C made “unwelcome sexual advances to [the First Applicant]” and that “he knew or should have known based on [the First Applicant’s] responses that they were unwelcome.”

50. Based on the First Applicant’s notes and statements from six witnesses, EBC “concluded that [Mr. C] likely confronted [the First Applicant] about her complaint” regarding his behavior

toward her, “though [Mr. C] denied being made aware of this fact and that his behavior was problematic.”

51. Based on the Second Applicant’s statements, emails, and corroborating testimony from multiple colleagues and the Co-Chair, EBC concluded that Mr. C

engaged in unwelcome behavior of a sexual nature vis a vis [the Second Applicant]. Specifically, EBC found that [Mr. C’s] compliments on her physical appearance, combined with inquiries about her personal relationships, while they may have been well-intended and common in his culture, were unwelcome by [the Second Applicant] and of a sexual nature.

52. EBC further noted that, given the Second Applicant’s statements of how she felt and the steps she took to avoid Mr. C, Mr. C’s behavior may have created a hostile work environment for the Second Applicant.

53. Based on its review of the facts, EBC found that Mr. C’s behavior toward the Applicants and other complainants “was part of a pattern of inappropriate and unwelcome behavior of a sexual nature, which [Mr. C] directed towards young female lower level staff with limited tenure and/or experience in the WBG.” More specifically, EBC stated:

Based on its review of the facts of this case, EBC determined that Mr. [C] during the period between 2008–2013: (i) regularly leered at; (ii) made repeated unwelcome compliments and comments about physical appearance; (iii) made repeated unwelcome sexual innuendos; (iv) made unwelcome sexual advances; (v) made repeated unwelcome comments and inquiries about personal relationships; and/or (vi) made repeated unwelcome social invitations (*e.g.*, repeated requests for coffee, drinks and/or lunch or dinner) toward [the Applicants and two other complainants]. EBC further concluded that his behavior was unwelcome behavior, of a sexual nature, which made [the Applicants and two other complainants] uncomfortable to such a degree that it may have created a hostile work environment.

54. EBC further found that the nature of Mr. C’s behavior toward the Applicants and two other complainants “may have also been a reckless failure to observe generally applicable norms of prudent professional conduct” and that, “[b]ased on the nature of Mr. [C’s] behavior, he may have

also failed to conduct himself in a manner befitting his status as an employee of an international organization.”

55. In the Final Report, EBC noted that “several witnesses expressed a fear of retaliation and/or reluctance to cooperate in EBC’s review/investigation.” EBC dedicated a section of the Final Report to include a summary of the concerns that witnesses expressed regarding the potential for retaliation in light of Mr. C’s seniority and the notion that he is well-regarded by those holding high-level positions in the WBG.

56. In the section of the Final Report entitled *Mitigating Factors*, EBC included, among others, the following mitigating factors:

- Mr. C cooperated with the investigation.
- The First Applicant stated that, as time went by, she “became semi-immune [...] so [Mr. C’s behavior] wouldn’t bother [her] as much except for wasting [her time].”
- The fact that, although “at least one manager was aware of a specific instance of [Mr. C’s] inappropriate behavior towards female staff [...] EBC did not find evidence to support that management addressed [Mr. C’s] behavior towards women with [Mr. C].”
- The fact that, “[a]lthough [Mr. C] denies engaging in any unprofessional conduct and/or sexually harassing [the First Applicant], [the Second Applicant,] and [other complainants], he states that he is ‘deeply sorry if [he] may have inadvertently offended any of these colleagues.’”
- Mr. C’s Diversity and Inclusion Leadership Award in 2010.

57. On 26 July 2019, EBC sent its Final Report to the Human Resources Development Vice President (HRDVP or, sometimes interchangeably, HRVP).

The HRDVP’s decision

58. By letter dated 28 October 2019, the HRDVP informed Mr. C of his determination that “there is sufficient evidence to support a finding [Mr. C] engaged in misconduct” as defined under the following paragraphs of Staff Rule 3.00:

Paragraph 6.01(b) - Reckless failure to identify, or failure to observe, generally applicable norms of prudent professional conduct; and/or

Paragraph 6.01(c) - Acts or omissions in conflict with the general obligations of staff members set forth in Principle 3.1(c) of the Principles of Staff Employment, including the requirements that staff avoid situations and activities that might reflect adversely on the Bank Group (Principle 3.1) and conduct themselves at all times in a manner befitting their status as employees of an international organization (Principle 3.1(c)).

59. In this letter, the HRDVP noted:

The EBC record shows that you repeatedly made unwelcome social invitations, periodically asked the female colleagues about their personal relationships, and commented on their physical appearance. The record further demonstrates you made unwelcome sexual advances and sexual innuendoes, and/or leered at [the Applicants] and/or [other complainants]. In totality, the EBC record indicates that, from 2008 to 2013, you engaged in a pattern of unwelcome inappropriate behavior of a sexual nature described in the Final Report.

I note your contention that you did not know and could not reasonably have known your behaviors toward the complainants were unwelcome. True, there were no overt requests to stop. The complainants, however, stated that they felt some level of discomfort and concern with addressing your behavior with you given your position, title, authority and fear of retaliation. In fact, you yourself acknowledged to EBC it would be difficult and/or unlikely [for] a GE level staff or below (who was hoping to have a career at the WBG) to directly approach you about how the interactions made them uncomfortable. The fact that the complainants did not verbally object to your inappropriate unwelcome conduct does not excuse your behavior.

To decide on the proportionality of the disciplinary measures to be imposed, and in accordance with Staff Rule 3.00, paragraph 10.09, I considered such factors as the seriousness of the matter, the interests of the Bank Group, any extenuating circumstances, the situation of the staff member, and the frequency of the conduct for which disciplinary measures may be imposed.

I note you have no prior adverse disciplinary findings in twenty-five years of service to the WBG. I also observe you have a stellar professional record, and you fully cooperated with EBC's investigation and apologized for "inadvertently" offending your colleagues. I further note you received a Diversity & Inclusion Award in 2010 for "...highlighting inclusion and respect for females."

Notwithstanding, I find the allegations against you are very serious, especially considering your role as a WBG Director, where you are expected to behave in a

manner commensurate with a high level of responsibility. As a WBG Director, you owe a greater duty of care to ensure a safe working environment for your staff. Managers have a primary responsibility in establishing the tone for a healthy working environment which includes avoiding even the appearance of improper conduct. Your inappropriate behavior over the course of time gives rise to serious concerns with respect to the standards of conduct which are expected of staff. I find your conduct very disturbing and completely unacceptable.

60. The disciplinary measures imposed on Mr. C were (i) demotion to a “GH non-managerial position with appropriate title change (date to be determined), in the best interests of the WBG”; (ii) ineligibility for promotion for three years; (iii) ineligibility for salary increases for a three-year period; and (iv) written censure in the form of the HRDVP’s letter to remain on Mr. C’s personnel record.

61. After receiving the HRDVP’s decision letter, Mr. C resigned from the Bank’s employment effective 30 November 2019. In November 2019, Mr. C was named Finance Minister of a member country of the World Bank. In that role, he was professionally tied to both the World Bank and the IMF.

62. In the spring of 2020, Mr. C stepped down from his role as Finance Minister of the member country.

Security restrictions imposed

63. On 12 January 2021, the Manager, Human Resources Development Corporate Operations (HRDCO) sent a letter to Mr. C notifying him that, in response to security concerns of “two persons [...] who were targets of [his] conduct as set out in the EBC’s Final Report,” the Manager, HRDCO decided to place (i) a conditional premises access flag and (ii) a no rehire flag on Mr. C’s employee identification number in the WBG Human Resources (HR) systems, “effective immediately, for the next three years or as per further notice.” Mr. C was also informed in this letter that the access restriction was communicated to the IMF security team per standard practice. The Manager, HRDCO acknowledged in his letter that he has no authority to add further sanctions “with respect

to the EBC matter” and clarified that the conditional access restriction and no rehire flag are security restrictions, not disciplinary measures.

The present Applications and remedies sought

64. On 28 April 2020, the Applicants filed their Applications with the Tribunal.

65. On 26 October 2020, the Tribunal extended the deadline for the filing of pleadings in consideration of the parties’ exploration of settlement of this case.

66. On 1 December 2020, the Bank informed the Tribunal that the parties were unable to resolve the issues through settlement discussions.

67. In their respective Applications, neither Applicant seeks compensation; rather, the Applicants seek review of the EBC investigation and the HRDVP’s decision and for the Tribunal to find that Mr. C’s behavior amounts to sexual harassment.

68. To the Applicants, the disciplinary measures imposed by the Bank do not adequately protect them, and in this respect they request the following disciplinary measures be imposed on Mr. C: “loss of future employment and contractual opportunities within the Bank, a restriction on access by [Mr. C] to Bank premises, controls on his interaction with Bank employees, and such additional protection as may be deemed appropriate by this Tribunal.” The Applicants also request that the IMF be informed of the case summary, findings of misconduct, and sanctions imposed against Mr. C, to ensure adequate protection for IMF staff members.

69. Last, the Applicants request legal fees and costs in the amount of \$64,838.00.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Applicants' Contention No. 1

The Applicants have standing, the Tribunal is empowered to order the remedies requested, and the Bank's belated protective actions are inadequate

70. The Applicants contend that (i) they have the requisite standing, because they challenge multiple instances of “non-observance” of their terms of employment; (ii) the Tribunal has the authority to grant the relief requested; and (iii) the belated security restrictions imposed on Mr. C are inadequate measures of protection.

The Applicants have standing because they are challenging the non-observance of their terms of appointment

71. The Applicants reject the Bank's contention that, if misconduct of any kind is found following an investigation, complainants have no standing to contest the HRDVP's decision. To the Applicants, irrespective of the HRDVP's finding of misconduct, complainants may still have legitimate grievances pertaining to the non-observance of their terms of employment. Here, the Applicants contend that, despite the HRDVP's finding that misconduct occurred, the Applicants have standing to challenge the non-observance of their terms of employment, namely the right to a workplace free of sexual harassment, the right to a fair and impartial investigation of their complaints, and the right to appropriate protections for their ongoing safety.

72. The Applicants maintain that, while there is no obligation for the Bank to always adopt the course of action urged by a complainant, this does not mean that complainants never have standing to challenge the Bank's decision. To the contrary, the Applicants maintain that, in line with Tribunal precedent, staff members may seek review of conduct that is arbitrary or lacking in due process. To the Applicants, this review extends to both the accuser and the accused in a misconduct investigation.

The requested remedies are within the Tribunal's authority

73. The Applicants reject the Bank's contention that the Tribunal may not award the requested remedies because of due process concerns for Mr. C.

74. The Applicants explain that, pursuant to Article XII of the Tribunal's Statute, the Tribunal is empowered to order "the specific performance of the obligation invoked." The obligation the Applicants state they are invoking is the obligation set out in Principle 2.1(b) of the Principles of Staff Employment, which states that the Bank shall make all reasonable efforts to ensure the appropriate protections and safety of staff members in the performance of their duties.

75. The Applicants contend that they were denied their right to appropriate protections and their right to a workplace free from sexual harassment when the HRDVP failed to bar Mr. C from future employment or limit his access to WBG premises.

76. To the Applicants, the specific performance they have requested in their Applications, namely for the Tribunal to (i) find that Mr. C's behavior amounts to sexual harassment and (ii) impose sanctions on Mr. C barring him from WBG premises and future employment with the WBG, directly addresses the obligation invoked and is therefore within the Tribunal's authority to grant.

The Bank's belated protective actions are inadequate

77. The Applicants acknowledge that the Bank has taken additional steps since the filing of their Applications, but they respectfully submit that these belated efforts "taken as a result of these proceedings" should not allow the Bank to evade the Tribunal's review.

78. In the Applicants' view, the Bank "has hardly done all that it should do" and further action by the Tribunal is therefore essential. The Applicants maintain that the Bank's security restrictions are temporary, undefined, inadequate, and not binding. In this respect, the Applicants point out that (i) nothing prevents the Bank from changing course on the security restrictions; (ii) the

parameters for permitting Mr. C access to WBG premises are undefined and left to the Bank's discretion; (iii) the security restrictions do not provide the IMF Managing Director and IMF HR Director with the case summary, findings, and sanctions imposed on Mr. C in order for the IMF to take adequate steps to protect the First Applicant; and (iv) the security restrictions are not binding on the Bank like a Tribunal decision would be.

79. In the Applicants' view, a finding of sexual harassment in this case is necessary to establish clear precedent to guide the culture and conduct of Bank management and staff members. To the Applicants, maintaining the HRDVP's finding and inadequate sanctions, despite a clear abuse of discretion, would enable the incorrect finding and insufficient sanction to stand as precedent for future misconduct findings and sanctions.

The Bank's Response

The Applicants lack standing to file a claim with the Tribunal because misconduct was found, and the remedy sought cannot be granted by this Tribunal without violating Mr. C's due process rights

80. The Bank contends that the Tribunal cannot revise the HRDVP's disciplinary decision because (i) the Applicants lack standing to appeal the HRDVP's decision and (ii) the requested remedies may not be awarded by the Tribunal because awarding the requested remedies would impermissibly violate Mr. C's due process rights.

The Applicants lack standing

81. The Bank contends that, because the Applicants are not the subject of the HRDVP's disciplinary decision, they lack standing to seek the relief sought, namely a new finding that Mr. C engaged in sexual harassment, as well as a disciplinary sanction that they deem proportionate to his misconduct. To the Bank, the Applicants are seeking a remedy that is not supported by the framework of Staff Rule 3.00, as interpreted by the Tribunal.

82. In this respect, the Bank quotes *DJ (Preliminary Objection)*, Decision No. 536 [2016], para. 42, which states, “If no misconduct is found then the complaining party may petition the Tribunal challenging EBC’s actions as well as the HRVP’s decision.” In interpreting this quote, the Bank accepts that an unsatisfied complainant may challenge the actions of EBC and the HRDVP’s decision before the Tribunal if no misconduct is found, but the Bank contends that, so long as misconduct of any nature is found by the HRDVP, a complainant may not petition the Tribunal challenging the HRDVP’s decision.

83. Here, according to the Bank, because the HRDVP found that Mr. C committed misconduct and imposed disciplinary measures, the Applicants are not owed a duty by the Bank to resolve their allegations in the manner of their choosing.

84. In the Bank’s view, the Applicants cannot seek the imposition of specific disciplinary measures or a finding of sexual harassment. The Bank maintains that any relief granted to the Applicants should be limited to compensation where their rights under the Principles of Staff Employment have not been sufficiently safeguarded. In this respect, the Bank points out that the Applicants seek no such compensation so the Applications should be dismissed.

Granting the requested relief would violate Mr. C’s due process rights

85. The Bank contends that granting the relief sought by the Applicants would amount to new sanctions imposed on Mr. C without affording him due process protections ordinarily afforded to subjects of an investigation in the course of an HRDVP decision. The Bank points out that Mr. C is not a party to these proceedings, is not aware of these proceedings, and therefore does not have the ability to respond to the Applicants’ request for a retroactive finding of sexual harassment or the imposition of additional disciplinary measures against him.

86. The Bank points out that the Tribunal has previously rescinded employment actions where due process was not afforded to the staff member. The Bank contends that the Tribunal should decide here that the relief asked for may not be granted.

87. The Bank further asserts that the Applicants' requests for specific performance have been addressed to the extent possible through the security restrictions it imposed on Mr. C following the exchange of pleadings in this case.

88. To support this assertion, the Bank indicates it has, in response to the concerns raised by the Applicants, written to Mr. C to inform him of the following security restrictions imposed on him: (i) placement of a conditional access restriction in the WBG HR system for "the next three years or as per further notice"; (ii) placement of a no rehire flag in the WBG HR system for "the next three years or as per further notice"; and (iii) notice to the IMF's security office regarding the WBG's decision to restrict Mr. C's access to WBG premises.

The Applicants' Contention No. 2

The Bank failed in its obligation to provide a workplace free from sexual harassment and/or a hostile work environment

89. The Applicants contend that the Bank has failed in its obligation to provide a safe working environment because the HRDVP (i) erred by not finding that Mr. C's behaviors amount to sexual harassment and/or a hostile work environment and (ii) imposed sanctions on Mr. C that were significantly disproportionate to the offense and did not adequately protect the Applicants, as required under the Principles of Staff Employment.

The HRDVP erred in his decision because the record clearly establishes that Mr. C's behavior amounts to sexual harassment and/or a hostile work environment

90. The Applicants contend that the HRDVP erred by not finding that Mr. C committed misconduct under Staff Rule 3.00, paragraph 6.01(e) "Harassment; contributing to a hostile work environment," or under the Bank's *Living Our Values: Code of Conduct*, which defines sexual harassment as "any unwelcome sexual advance, request for sexual favor or other verbal, non-verbal or physical conduct of a sexual nature that interferes with work, is made a condition of employment, or creates an intimidating, hostile or offensive environment."

91. According to the Applicants, the core facts, undisputed by the Bank and contained in EBC's Final Report, demonstrate that both Applicants were sexually harassed when Mr. C engaged in unwelcome conduct of a sexual nature that interfered with their work and created an intimidating, hostile, and/or offensive environment.

92. Specifically, the Applicants summarize certain occurrences arising during the First Applicant's employment as a JPA, namely that Mr. C:

- Singled out [the First Applicant]; directed unwanted attention towards her; and stayed in her office longer than he did other female JPAs. [...]
- Made both [the First Applicant] and her officemate feel extremely uncomfortable; intensified his harassment of [the First Applicant] when her officemate was not present; frequently asked [the First Applicant] to dinner or to go home with him; boasted about his wine collection; and attempted to entice her into visiting his home. [...]
- Waited until her officemate left and offered [the First Applicant] rides home; asked what [the First Applicant] looked for in a man; and attempted to kiss her. [...]
- Approached [the First Applicant] and stated that he knew she had reported him and admonished her for "ratting him out." [...]
- Suggested that they meet for coffee where he asked if [the First Applicant] was aware of his reputation for being a "bad guy"; asked whether he could accompany her home for the holidays; questioned if she had a boyfriend; inquired what she looked for in a man; insinuated that they engage in a relationship; claimed that he had multiple wives and was looking for two more; stated that [the First Applicant's] eyes caused him to tell her personal stories about himself; and asked if she would tell her friends that he was a "dirty old man." [...]
- Suggested they spend the night together. [...]
- Commented on [the First Applicant] when she bent over to pick up an item from the floor, dropped another item on the floor, and asked her to pick it up while he watched. [...]
- Tried to kiss [the First Applicant] on the lips in an unwelcome manner.

93. The Applicants further note occurrences similarly arising during the Second Applicant's employment as a JPA, namely that Mr. C:

- Paid unwanted attention to her, which made her extremely uncomfortable. [...]
- Went out of his way to seek out [the Second Applicant]; initiated personal non-work related matters; and stated that she was beautiful and had all of the attributes that a woman should have. [...]
- Repeatedly asked [the Second Applicant] if she had a boyfriend; inquired whether she would have lunch with him alone; stated that a woman as beautiful as her should be in a relationship; and stared at her body. [...]
- Offered to take her home, which she declined.

94. The Applicants note that EBC found sufficient evidence to indicate that Mr. C "repeatedly engaged in unwelcome behavior of a sexual nature" and concluded that, based on the impact Mr. C's behavior had on the complainants, Mr. C's behavior may have created a hostile work environment. The Applicants also note that the HRDVP stated:

The EBC record shows that [Mr. C] repeatedly made unwelcome social invitations, periodically asked the female colleagues about their personal relationships, and commented on their physical appearance. The record further demonstrates [he] made unwelcome sexual advances and sexual innuendoes, and/or leered at [the Applicants and others]. In totality, the EBC record indicates that, from 2008 to 2013, [Mr. C] engaged in a pattern of unwelcome inappropriate behavior of a sexual nature described in the Final Report.

95. The Applicants call attention to the fact that the Bank does not dispute any of the above-mentioned facts, and they contend that the undisputed facts meet the Bank's definition of sexual harassment and a hostile work environment, thereby showing that the HRDVP abused his discretion by not finding that Mr. C's conduct constitutes sexual harassment and/or a hostile work environment.

The Bank has failed in its obligation to protect the Applicants as well as other staff members

96. To the Applicants, regardless of whether Mr. C's behaviors should have been found to be sexual harassment or something else, the HRDVP "failed to provide adequate protections against [Mr. C's] proven misconduct."

97. The Applicants contend that simply providing procedures to challenge harassment, regardless of the outcome, is insufficient to discharge the Bank of its obligation to its staff members to ensure a safe working environment. The Applicants maintain that the outcome of the procedure is relevant to the Bank's obligation.

98. In this respect, the Applicants contend that the sanctions imposed on Mr. C – namely (i) a grade level demotion; (ii) ineligibility for promotion for three years; (iii) ineligibility for salary increases for a three-year period; and (iv) the HRDVP's written censure to remain on Mr. C's personnel record – do little, if anything, to actually protect staff members from Mr. C's disturbing and unacceptable behavior.

99. The Applicants point out that, despite the HRDVP's acknowledgment that Mr. C (i) made unwelcome sexual advances and sexual innuendos, (ii) leered at female colleagues, and (iii) overall engaged in a pattern of unwelcome inappropriate behavior of a sexual nature over the course of several years while employed in a managerial position, the HRDVP notably imposed no sanction that would ensure survivors would not again encounter him in the workplace.

The Bank's Response

The Bank fulfilled its obligations toward the Applicants

100. The Bank "admits that it would have been reasonable to conclude that the uncontested actions of [Mr. C] could have supported a finding of sexual harassment."

101. Nevertheless, the Bank contends it fulfilled its obligation to make all reasonable efforts to ensure appropriate protection for the Applicants in the performance of their duties based on (i) the

established procedures in place that allow staff to report allegations of sexual harassment; (ii) the HRDVP's disciplinary measures imposed on Mr. C; and (iii) additional measures it has taken to "protect against the possibility that [the] Applicants or any other staff member could become the target of future actions by [Mr. C]."

102. First, the Bank maintains that at all material times the Bank had established procedures in place that allow staff members to report allegations of sexual harassment to EBC for investigation. The Bank states that EBC's telephone helpline is staffed twenty-four hours per day, seven days per week, and that EBC's website has a page dedicated to preventing and addressing sexual harassment at the Bank, with links to various resources. To the Bank, the availability of an EBC investigation supports the contention that the Bank made all reasonable efforts to ensure appropriate protection for the Applicants because, "at all relevant times, it had procedures in place to adequately protect the Applicants."

103. Next, the Bank contends that it made all reasonable efforts to ensure appropriate protections for the Applicants because, following a thorough investigation conducted by EBC, the HRDVP took Mr. C's misconduct very seriously and sanctioned him in a manner that was reasonable and proportionate to his offense. According to the Bank, "[i]n making [Mr. C] ineligible for promotion or salary increase for three years, [the] HRDVP ensured that [Mr. C] would understand the gravity of his misconduct and would be deterred from engaging in future misconduct."

104. Last, to support its contention that it made all reasonable efforts to ensure appropriate protection for the Applicants, the Bank states that, in light of the concerns raised in the Applicants' pleadings regarding their protection and safety, it has imposed a ban on Mr. C's future employment by the WBG and a prohibition of his access to WBG premises subject to exceptions that may be granted by the Bank in exceptional circumstances. The Bank further states that it shared this imposed access restriction with the IMF but maintains that it is for the IMF to decide whether to put in place a similar restriction with respect to its premises and hiring practices.

105. In response to the Applicants' requested relief for the Bank to inform the IMF of the HRDVP's misconduct decision and the disciplinary measures imposed on Mr. C, the Bank maintains that it is bound by confidentiality not to disclose this information. The Bank maintains that, now that the time for Mr. C to appeal the HRDVP's disciplinary decision to the Tribunal has expired, the Bank may disclose the confidential information to a public international organization only if that organization has requested the information, demonstrated a legitimate need to know such information, and agreed to treat the information in a confidential manner. The Bank therefore claims that, for reasons of confidentiality, it would be impermissible for it to disclose the misconduct decision and disciplinary measures imposed on Mr. C to the IMF as requested by the Applicants.

106. The Bank claims it has therefore undertaken all reasonable efforts to ensure appropriate protection for the Applicants and contends that the Applicants' requested remedy falls outside of its obligation.

The Applicants' Contention No. 3

The EBC investigation was flawed

107. The Applicants contend that the EBC investigation was unfair and incomplete, because EBC chose not to interview "several key witnesses" whose contact information was furnished by the First Applicant, and because the EBC Final Report inappropriately characterized some facts as mitigating factors.

108. According to the First Applicant, EBC "chose not to interview several additional witnesses [she] identified and urged EBC to interview, including additional victims of [Mr. C's] persistent sexual harassment."

109. Although EBC conducted 30 interviews with a total 27 different witnesses, the Applicants contend that, based on Mr. C's lengthy tenure at the Bank and "the magnitude at which his conduct was ignored," more witnesses should have been interviewed. To the Applicants, EBC failed to fulfill its mandate of ensuring fair and impartial investigations in this regard.

110. Furthermore, the Applicants contend that EBC erred in its finding that the First Applicant's statement that she became "semi-immune" to Mr. C's behavior was mitigating with respect to the impact Mr. C's behavior had on her. The Applicants point out that they had to balance maintaining their employment with the Bank while rejecting Mr. C's "relentless and unwanted advances." To the Applicants, using a harassment survivor's manner of coping with her harasser against her is deplorable. The Applicants contend that to include this defense mechanism in the Final Report to be considered by the HRDVP as a mitigating factor is absurd considering the well-documented and severe negative impact Mr. C had on the complainants, including stress, anxiety, hiding in coworkers' offices, and an inability to completely take advantage of career opportunities at the Bank.

The Bank's Response

EBC's investigation was fair, thorough, and impartial

111. The Bank concedes that coping mechanisms adopted by survivors should have no bearing on a determination as to whether a hostile work environment exists.

112. The Bank maintains that EBC assiduously fulfilled its investigative role because its investigation was fair, thorough, and impartial with respect to the Applicants' claims.

113. The Bank maintains that the year-long investigation, thirty interviews conducted, and sixty-six exhibits to the Final Report demonstrate the depth and breadth of the investigation.

114. The Bank contends that EBC properly balanced the competing interests of timeliness, fairness, and finality in selecting the appropriate witnesses to interview and assessing the completeness of its investigation. While the Bank acknowledges that EBC did not interview every possible witness who may have had knowledge of the matters related to the Applicants' claims, the Bank contends that some potential witnesses were appropriately excluded for reasons including but not limited to "(i) the stated relevance of the witnesses; (ii) the level of existing evidence and corroboration; (iii) the duration of EBC's review and investigation; and (iv) the stated impact (i.e.,

stress) that the investigation was having on [Mr. C].” To the Bank, EBC interviewed “a sufficient number of witnesses” to enable a fair and thorough analysis of the Applicants’ claims.

115. The Bank maintains that EBC was thorough and impartial in its selection of witnesses. In this respect, the Bank points out that, while EBC did not interview all of the First Applicant’s suggested witnesses, it did interview all of the witnesses identified by the Second Applicant and did not interview “any of the 19 witnesses identified” by Mr. C.

The Staff Association’s Amicus Curiae Brief

There is clear and convincing evidence that Mr. C’s egregious behavior constitutes sexual harassment, and the Bank did not adequately protect the Applicants or other staff members

116. The Tribunal granted the Staff Association’s request to act as *amicus curiae* and accepted its submission of a brief in support of the Applications.

117. As context for its interest and participation in this case, the Staff Association explains that a key concern among staff members is how exceedingly rare it has been that HR has found that employees have engaged in sexual harassment given the frequency with which staff members say they have encountered it.

118. Given this context, the Staff Association notes the seriousness of the HRDVP’s choice “to exercise his ‘sound discretion’ by concluding that [Mr. C’s] egregious behavior did not constitute ‘sexual harassment.’” In the Staff Association’s view,

it is hard to imagine more resounding evidence of sexual harassment than what was found in this case: five staff members, including the two Applicants, who were new to the Bank and very junior to the accused at the time the claims arose, providing evidence of a five-year pattern of misbehavior by a high-level manager that falls squarely within the definition of sexual harassment (unwelcome sexual advances and innuendoes, leering, unwelcome social invitations and questions about personal relationships and comments on physical appearance). Such conduct squarely falls within the very definition of “sexual harassment” quoted by the [Bank] (“any unwelcome sexual advance, request for sexual favor, or other verbal, nonverbal or physical conduct of a sexual nature that interferes with work, is made a condition of employment, or creates an intimidating, hostile, or offensive work

environment”), and yet the [HRDVP] concludes that [Mr. C’s] behavior did not constitute sexual harassment.

119. According to the Staff Association, the clear and convincing standard of evidence was undoubtedly met in this case. To support this contention, the Staff Association points out that both EBC and the HRDVP indicated that they found numerous witnesses’ accounts of Mr. C’s behavior entirely credible and, notably, found Mr. C’s denials entirely not credible. To the Staff Association, given the “plethora of corroborating evidence supporting the allegations against [Mr. C] and the lack of credibility of his denials, there is every reason to conclude that the evidence against him has met the ‘clear and convincing’ standard.”

120. Next, the Staff Association takes issue with the mitigating factors considered by the HRDVP in his decision letter, namely that Mr. C had no prior disciplinary findings in twenty-five years of service to the Bank, had a stellar professional record, fully cooperated with EBC’s investigation, and apologized. The Staff Association points out that, had the Applicants and other complainants felt comfortable to bring their claims earlier, Mr. C would have disciplinary findings throughout several years of his service with the Bank. It further maintains that a stellar professional record is “hardly a basis for concluding that behavior which would otherwise clearly constitute sexual harassment was something else; moreover, it indicates a bias in disciplinary measures toward employees who are more established and, often, more senior.” In the Staff Association’s view, Mr. C’s statement that he was “deeply sorry if [he] may have inadvertently offended any of these colleagues” is “a classic non-apology apology,” and the HRDVP’s consideration of this apology as a mitigating factor shows a “serious misapprehension of the context of this case.”

121. The Staff Association further rejects the Bank’s argument that, at all relevant times, the Bank had procedures in place to adequately protect the Applicants. In the Staff Association’s view, procedures to adequately protect the Applicants would have included (i) trainings to ensure senior managers such as Mr. C “could not possibly have thought this behavior was acceptable”; (ii) procedures that the Applicants and other survivors were aware of and felt comfortable using notwithstanding disparity in grade and authority between themselves and Mr. C; and (iii) policies and procedures such that “other managers who admitted they were aware of [Mr. C’s] inappropriate behavior might have felt compelled to come forward.”

122. The Staff Association further contends that, in addition to the failure to properly identify Mr. C's behavior as sexual harassment, the HRDVP's decision also took no action to protect the Applicants from Mr. C in the future. In this respect, the Staff Association states that, given Mr. C's failure to recognize the problems with his prior behavior or acknowledge that his past behavior was wrong, "it is highly speculative to assume that such punishment will prevent him from engaging in it in the future." In the Staff Association's view, the sanctions should be based first and foremost on the Bank's obligation to protect staff from Mr. C's behavior, yet "the Bank does not appear to take any responsibility for that harm and does not see any responsibility for remedying that past, or future, harm other than to punish the wrongdoer."

123. In light of what the Staff Association characterizes as the Bank's "deeply flawed understanding" of how to address the issue of sexual harassment, and the Bank's shortcomings in protecting the Applicants, the Staff Association requests that the Tribunal order the Bank to find that Mr. C's conduct constitutes sexual harassment and to "take such action as is necessary to address the Applicants' concerns about possible future contact with [Mr. C], as well as taking any appropriate actions to protect other staff from being subject to such behavior in the future."

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

124. The Tribunal observes that institutions around the world are grappling with the efficacy, accountability, and transparency surrounding policies and practice for the provision of a safe working environment free from sexual harassment; and the WBG is no different. To this end, at the request of the WBG President, EBC

commissioned an external review by independent experts to assess the WBG policies, procedures, and practices relating to sexual harassment and to identify possible improvements. Drawing upon that review and significant contributions from internal stakeholders including the Staff Association, EBC led the formulation of [a] three-year Action Plan [for Preventing and Addressing Sexual Harassment]. This Action Plan has been endorsed by WBG's senior management, staff-led Working Group on Sexual Harassment, Internal Justice Services, among other key internal stakeholders.

Action Plan for Preventing and Addressing Sexual Harassment, pg. 2.

125. Among the changes provided for in the Action Plan for Preventing and Addressing Sexual Harassment was the appointment of an Anti-Harassment Coordinator to ensure that more minor inappropriate sexual behavior is addressed early and that sexual harassment cases are monitored.

126. The Bank states that it has adopted a “people-centered approach to these serious matters” and will be developing guidance on “how best to support the health and psychological wellbeing of staff affected by sexual harassment.” The Bank’s continued efforts in preventing and addressing sexual harassment in the workplace are laudable.

127. The Bank has commended the Applicants’ courage in coming forward with their claims, acknowledging that, in order for the Bank’s new policies and culture to take meaningful effect, staff members must be encouraged to speak up.

128. Nevertheless, the Bank has raised an objection to the Applicants’ standing in this case.

COMPLAINANT STANDING

129. The Bank has raised in its Rejoinder an objection to the Applicants’ standing. As respondent, it is entitled, in principle, to raise whatever issue of defense it considers appropriate in any given claim. An applicant may or may not choose to contest a particular issue raised.

130. However, the Tribunal observes that, in this case, the Bank’s objection on the basis of standing was filed some 259 days after the Applications had been transmitted to the Bank. In this regard, it could have been argued that the Bank has failed to comply with the relevant limitation period for such objection as provided for in Rule 8 of the Tribunal’s Rules. The Applicants, however, have not objected to this delay and thus have not put the timeliness of the objection in issue. Since the Tribunal, in any event, rejects the Bank’s objection to the Applicants’ standing on the merits for the reasons set out hereunder, it considers that it is not necessary to determine the legal effect of the absence of objection by the Applicants.

131. The Bank contends that, because the Applicants are not the subject of the HRDVP's disciplinary decision, they lack standing to seek the relief sought. To the Bank, the Applicants' standing is not supported by the framework of Staff Rule 3.00, as interpreted by the Tribunal.

132. The Applicants contend that complainants to a misconduct investigation may petition the Tribunal to review the investigation and outcome for fairness and a reasonable and observable basis. Furthermore, according to the Applicants, the Tribunal is empowered pursuant to Article XII of the Tribunal's Statute to order "the specific performance of the obligation invoked." The obligation the Applicants state they are invoking is the obligation set out in Principle 2.1(b) of the Principles of Staff Employment, which states that the Bank shall make all reasonable efforts to ensure the appropriate protections and safety for staff members in the performance of their duties.

133. The Tribunal's jurisdiction is set out in Article II of the Tribunal's Statute, which states:

The Tribunal shall hear and pass judgment upon any application by which a member of the staff of the Bank Group alleges non-observance of the contract of employment or terms of appointment of such staff member. The words contract of employment and terms of appointment include all pertinent regulations and rules in force at the time of alleged non-observance including the provisions of the Staff Retirement Plan.

134. Staff Rule 3.00 defines the functions of EBC and stipulates at paragraph 10.12 that the "Staff Member whose conduct is at issue" in a misconduct investigation has "the right to appeal" the resulting decision and disciplinary measures. Staff Rule 3.00 is silent on the right of appeal for complainants alleging misconduct.

135. The Tribunal has accepted jurisdiction over claims brought by complainants petitioning the Tribunal to review the investigation into, and decision regarding, their misconduct allegations.

136. In *Rendall-Speranza*, Decision No. 197 [1998], the applicant claimed that she had been subjected to sexual harassment by her Director "and that the Respondent failed to discharge its obligation to protect her from such harassment [...] through [its] acceptance of the findings and recommendations of an outside investigator, who [...] concluded that sexual harassment had not

taken place, and through the Bank's resulting decision not to impose disciplinary measures against the Director." *Id.*, para. 42. In that case, standing was not raised as an issue and the Tribunal proceeded to address the applicant's claims on the merits.

137. While complainant standing has long been recognized by this Tribunal, the Bank relies on *DJ (Preliminary Objection)*, Decision No. 536 [2016] to indicate that a complainant party may petition the Tribunal, challenging EBC's actions as well as the HRDVP's decision, only if no misconduct is found. The Bank, in this respect points to para. 42 of *DJ (Preliminary Objection)* [2016], which states:

Once an EBC investigation is completed, the HRVP makes the final decision as to whether any misconduct has been committed. If unsatisfied, the complainant, as well as the subject of the investigation, can challenge the actions of EBC and the HRVP's decision before the Tribunal. If misconduct is found, the subject of the investigation often petitions the Tribunal. If no misconduct is found, then the complaining party may petition the Tribunal challenging EBC's actions as well as the HRVP's decision. *See Rendall-Speranza*, Decision No. 197 [1998].

138. To support its contention that the Applicants lack standing, the Bank specifically relies on the sentence in *DJ (Preliminary Objection)* [2016] that reads, "If no misconduct is found, then the complaining party may petition the Tribunal challenging EBC's actions as well as the HRVP's decision." *Id.* To the Bank, because the HRDVP found that Mr. C committed some form of misconduct, the Applicants, as complaining parties to the investigation, have no standing.

139. While the *DJ (Preliminary Objection)* [2016] judgment provides, by way of general example, that a complaining party to a misconduct investigation may petition the Tribunal when no misconduct is found, the Bank's narrow interpretation that this is the *only* circumstance in which complainants have standing to petition the Tribunal is unsupported by the context of the *DJ (Preliminary Objection)* [2016] judgment and other Tribunal precedent.

140. Although the *DJ (Preliminary Objection)* [2016] judgment does not directly speak to the circumstance of complainant standing when misconduct *is* found, it does provide that, "[i]f unsatisfied, the complainant [...] can challenge the actions of EBC and the HRVP's decision

before the Tribunal.” *Id.* Here, the Applicants are unsatisfied with respect to the EBC investigation and the HRDVP’s decision, despite a misconduct finding.

141. Moreover, this is not the first instance in which a complaining party to a misconduct investigation has petitioned the Tribunal challenging EBC’s actions as well as the HRDVP’s decision following a finding of misconduct.

142. Recently, in *FC*, Decision No. 615 [2019], EBC had found insufficient evidence that the subject of its investigation had engaged in sexual harassment. EBC sent its findings in a report to the HRDVP who determined that the subject committed misconduct and sanctioned the subject with termination but did not find that the subject had engaged in sexual harassment. The applicant, as the complaining party to the investigation, petitioned the Tribunal alleging she was subjected to sexual harassment in violation of Bank policies and challenging the EBC investigation. In that case, the Bank did not contest the applicant’s standing on the basis that the subject committed some form of misconduct. The Tribunal reviewed the case on the merits and determined that there was no basis to set aside EBC’s findings regarding sexual harassment and that it was not an abuse of discretion for the Bank to endorse those findings. The Tribunal upheld the Bank’s finding that there was insufficient evidence of sexual harassment. *Id.*, para. 150.

143. Similarly, in *DK (Merits)*, Decision No. 552 [2017], the HRDVP had found that a Senior Advisor had committed misconduct based on a conflict of interest arising from the Senior Advisor’s participation in what was determined to be a consensual affair with the applicant. The applicant in that case requested EBC to reinvestigate her allegations of sexual harassment and was informed by the EBC Manager: “This disciplinary decision by the HRDVP [against the Senior Advisor] and the underlying EBC investigation may only be reviewed by the World Bank Administrative Tribunal. Consequently, EBC or HRDVP cannot re-investigate your allegations.” *Id.*, para. 91. The applicant thereafter petitioned the Tribunal to review the EBC investigation for lack of fairness and alleged that she was subjected to sexual harassment. The Bank in that case did not contest the applicant’s standing on the basis that the subject committed some form of misconduct.

144. The Tribunal observes, in the present case, the testimony of the current HRDVP in which she identifies two categories of misconduct: (i) misconduct “against the institution,” including misconduct which harms, for example, WBG resources or its reputation, and (ii) misconduct “against the individual,” including misconduct which causes personal harm. She further indicated that sexual harassment falls within the latter category.

145. These distinctions are useful in the analysis of complainant standing. Generally, in the context of misconduct “against the individual,” the complainant is not merely a reporter of misconduct but one who has alleged a personal harm from the conduct reported. As such, any alleged unfair or biased investigation, or unreasonable and unobservable decisions made thereon, if substantiated, might reasonably affect the rights of the complainant.

146. The Tribunal accepts the Bank’s contention that complainants “are not owed a duty to resolve the allegations in the manner of their choosing by finding a specific type of misconduct.” However, to accept that complainants may not challenge a misconduct decision for abuse of discretion so long as some form of misconduct is found is problematic. By way of illustration, one can imagine a case involving a powerful subject of an investigation where the Bank finds some minor misconduct despite a record which provides a compelling case of serious sexual misconduct harming several staff members. The subject would not be motivated to seek review of, or object to, this favorable treatment, and, under the Bank’s position, even in such cases, the harmed staff members would not be allowed to assert their rights before the Tribunal for lack of standing. Such a position would not be sustainable, and it is difficult to fathom how it would be a good policy given the Bank’s commitment to support targets of sexual harassment and “increas[e] fairness and effectiveness of the system of resolution and investigation” as outlined in its Action Plan for Preventing and Addressing Sexual Harassment.

147. In this regard, the Co-Chair of the WBG Working Group on Sexual Harassment stated before the Tribunal during oral proceedings, “I don’t see how you could say that [the Applicants] don’t have standing. [...] [F]or the sake of the institution, I think it’s really important that [the Applicants] have the standing” to come before the Tribunal because it supports the culture the WBG Working Group on Sexual Harassment is trying to achieve.

148. In the present case, despite a misconduct finding, the Applicants assert that the HRDVP failed to address their allegations of sexual harassment, and that the disciplinary measures resulting from the HRDVP's misconduct finding left them unprotected.

149. That the HRDVP found some form of misconduct cannot bar the Tribunal from reviewing the Applicants' contention of abuse of discretion with respect to the decision regarding their allegations of sexual harassment. Of course, complainants in sexual harassment cases or other similar cases cannot dictate the outcome of the investigation or what disciplinary measures ought to be imposed. But the Tribunal cannot accept the position that, so long as some form of misconduct is found, complainants can never seek review of a decision even in cases where an investigation may be seriously defective or the disciplinary decision manifestly unreasonable.

150. In view of the foregoing, the Tribunal finds that a determination of misconduct does not, in and of itself, bar an application to the Tribunal on the part of a complainant in respect of either an EBC investigation or an HRDVP decision, the outcome of which affects adversely the observance of that complainant's contract of employment or terms of appointment. Complainants may have standing to bring a challenge before the Tribunal in such circumstances, provided that they can plausibly allege an adverse impact on their rights that meet the jurisdictional requirements as set out in Article II of the Tribunal's Statute.

151. Because the Applicants have brought their claims within the aforesaid parameters, the Tribunal finds the Applicants have standing and will review their claims.

THE HRDVP'S MISCONDUCT DECISION

152. The Applicants contend that the HRDVP's misconduct decision lacks a reasonable and observable basis because the facts provided to the HRDVP legally amount to sexual harassment.

153. The Tribunal's "general approach to decisions involving the exercise of discretion is that it will not interfere or substitute its own judgment unless the decision constitutes an abuse of

discretion.” *Mpoy-Kamulayi (No. 5)*, Decision No. 463 [2012], para. 29; *Nunberg*, Decision No. 245 [2001], para. 40.

154. As the Tribunal stated in *AK*, Decision No. 408 [2009], para. 41,

Decisions that are arbitrary, discriminatory, improperly motivated, carried out in violation of a fair and reasonable procedure, or lack a reasonable and observable basis, constitute an abuse of discretion, and therefore a violation of a staff member’s contract of employment or terms of appointment.

See also ET, Decision No. 592 [2018], para. 91; *DO*, Decision No. 546 [2016], para. 33; *Desthuis-Francis*, Decision No. 315 [2004], para. 19; *Marshall*, Decision No. 226 [2000], para. 21; *de Raet*, Decision No. 85 [1989], para. 67.

155. The Tribunal has held that the burden of proof in misconduct cases lies with the respondent organization. It has also stipulated on several occasions that “there must be substantial evidence to support the finding of facts which amount to misconduct.” *FQ*, Decision No. 638 [2020], para. 88. *See also FG*, Decision No. 623 [2020], para. 67; *EZ*, Decision No. 601 [2019], para. 69. In other words, the standard of evidence “in disciplinary decisions leading [...] to misconduct and disciplinary sanctions must be higher than a mere balance of probabilities.” *Dambita*, Decision No. 243 [2001], para. 21.

156. The Tribunal has also stated that, “[i]n situations where, because of the nature of the allegation, there might be no direct evidence, the evidence available must be so clear as to generate conviction in the mind of a reasonable person.” *M*, Decision No. 369 [2007], para. 60. Circumstantial evidence, “which satisfies the test set out in *M* is sufficient to establish a charge of misconduct.” *V*, Decision No. 378 [2008], para. 38.

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

158. The Tribunal observes that EBC provided the HRDVP with the specific scope of its investigation and referred the case to the HRDVP for decision on whether the facts, as established by EBC, amounted to misconduct. Among the types of misconduct EBC considered in its

investigation was Staff Rule 3.00, paragraph 6.01(e) relating to harassment and/or contributing to a hostile work environment. EBC further considered in its investigation allegations of sexual harassment, defined in the Final Report as follows:

Sexual harassment is any unwelcome sexual advance, request for sexual favor, or other verbal, nonverbal, or physical conduct of a sexual nature that interferes with work, is made a condition of employment, or creates an intimidating, hostile, or offensive work environment.

159. In its Final Report, EBC determined, based on its review of the facts of the case, that

Mr. [C] during the period between 2008–2013: (i) regularly leered at; (ii) made repeated unwelcome compliments and comments about physical appearance; (iii) made repeated unwelcome sexual innuendos; (iv) made unwelcome sexual advances; (v) made repeated unwelcome comments and inquiries about personal relationships; and/or (vi) made repeated unwelcome social invitations (*e.g.*, repeated requests for coffee, drinks and/or lunch or dinner) toward [the Applicants and two other complainants]. EBC further concluded that his behavior was unwelcome behavior, of a sexual nature, which made [the Applicants and two other complainants] uncomfortable to such a degree that it may have created a hostile work environment.

160. EBC presented its findings for decision by the HRDVP.

161. In his decision letter to Mr. C, the HRDVP stated that the record “demonstrates you made unwelcome sexual advances and sexual innuendoes, and/or leered at [the Applicants and other complainants]” and further “indicates that, from 2008 to 2013, you engaged in a pattern of unwelcome inappropriate behavior of a sexual nature described in the Final Report.”

162. Despite these observations, the HRDVP did not expressly conclude that Mr. C’s conduct constituted harassment under Staff Rule 3.00, paragraph 6.01(e), or that it constituted sexual harassment, as was alleged by the complainants and investigated by EBC.

163. The HRDVP found that Mr. C had committed misconduct under Staff Rule 3.00, paragraph 6.01(b) and/or (c), which included:

Reckless failure to identify, or failure to observe, generally applicable norms of prudent professional conduct; and/or

Acts or omissions in conflict with the general obligations of staff members set forth in Principle 3.1(c) of the Principles of Staff Employment, including the requirements that staff avoid situations and activities that might reflect adversely on the Bank Group (Principle 3.1) and conduct themselves at all times in a manner befitting their status as employees of an international organization.

164. The Tribunal observes that the Notice of Alleged Misconduct refers specifically to allegations of Mr. C “sexually harassing female staff members.” The Tribunal further observes that the misconduct identified to be investigated under the Notice of Alleged Misconduct included misconduct under Staff Rule 3.00, paragraph 6.01(e), which refers to harassment and a hostile work environment. Last, the Tribunal observes that the Final Report referred to the “Applicable Staff Rules” that EBC considered in its investigation and that these included rules and policies relating to sexual harassment and harassment under Staff Rule. 3.00, paragraph 6.01(e). In light of the language used in the Notice of Alleged Misconduct and the EBC Final Report, the Tribunal finds unacceptable the HRDVP’s failure to make any express finding as to whether Mr. C’s behavior amounted to sexual harassment or harassment.

165. Next, the Tribunal will review the HRDVP’s decision to establish whether there was a reasonable and observable basis therefor.

166. In *CK*, Decision No. 498 [2014], the Tribunal examined the finding of sexual harassment by looking at whether “the conduct in question was of a sexual nature” and “whether the [subject] knew, or should have known that it was unwelcome.” *Id.*, para. 83. *See also FC* [2019], para. 138.

Whether the conduct in question was of a sexual nature

167. Here, with respect to whether the “conduct in question was of a sexual nature,” the HRDVP stated in his decision letter addressed to Mr. C:

The record [...] demonstrates you made unwelcome *sexual advances* and *sexual innuendoes*, and/or leered at [the Applicants and two other complainants]. In totality, the EBC record indicates that, from 2008 to 2013, you engaged in a pattern

of unwelcome *inappropriate behavior of a sexual nature* described in the Final Report. [(Emphasis added.)]

168. It is clear from the language used in the decision letter that the conduct in question was recognized by the HRDVP to have been sexual in nature.

Whether Mr. C knew or should have known that his conduct was unwelcome

169. The Tribunal observes that, in his decision letter, the HRDVP stated that “there were no overt requests to stop” made to Mr. C. This statement was made in consideration of Mr. C’s contention that he “did not know and could not reasonably have known that [his] behaviors toward the complainants were unwelcome.” The Tribunal observes that the HRDVP’s statement is contradicted by the evidence provided in the Final Report pertaining to Mr. C’s knowledge that his behavior was unwelcome.

170. For example, EBC summarized, and included as an exhibit to its Final Report, an email sent from the Research Economist to Mr. C in which she put him on notice that she found his behavior “inappropriate,” requested he “avoid topics of an explicit and private nature,” and informed him that she sought advice from an ombudsman and her supervisors regarding his behavior. That the HRDVP overlooked this overt request for Mr. C to stop his conduct is plain error.

171. EBC further found that Mr. C was put on notice when a male colleague “raised concerns with [Mr. C] about his behavior (*e.g.*, comments) toward the female JPAs” and expressly advised him to stop making such comments. That the HRDVP overlooked this overt request for Mr. C to stop his conduct is another plain error.

172. The Tribunal observes that the Final Report provided additional findings relevant to Mr. C’s knowledge that his behavior was unwelcome and should stop. For example, based on statements from six witnesses and the First Applicant’s contemporaneous notes, EBC concluded that Mr. C was aware of the First Applicant’s complaint regarding his behavior. Additionally, because of the frequency of Mr. C’s social/personal invitations and that these invitations were

consistently declined, EBC found Mr. C “should have understood that they were unwelcome on that basis.”

173. In sum, the facts of the present case indicate that Mr. C’s conduct was sexual in nature and that he knew or should have known that his conduct was unwelcome.

174. The Tribunal observes the statement provided by the Bank in its Rejoinder, in which the Bank “admit[ted] that it would have been reasonable to conclude that the uncontested actions of [Mr. C] could have supported a finding of sexual harassment.”

175. The Tribunal further observes the testimony of the current HRDVP made during the oral proceedings in which she stated, “[H]aving read all the materials around the case, I believe I would have found that sexual harassment took place.”

176. During the oral proceedings, the Applicants’ counsel also submitted that the HRDVP’s “decision [...] is being defended by no one. [The current HRDVP] doesn’t defend it, the Bank’s lawyers don’t defend it [...]. And there is really no voice in the room saying otherwise. [...] The Bank has recognized what [the decision] should be.”

177. The Tribunal notes that, at the conclusion of the proceedings in this case, the parties appear to be in agreement that the HRDVP’s failure to name the misconduct as sexual harassment is undermined by the record and not based on a reasonable and observable basis. The Tribunal further notes the statements by the current HRDVP made during the oral proceedings that she “would conclude that sexual harassment took place” and that “there was clearly a hostile work environment.” Those statements, together with the current HRDVP’s expression that she is “deeply sorry [the Applicants] had this experience,” should provide some form of satisfaction to the Applicants. In view of all of these prevailing circumstances, the Tribunal finds it unnecessary to direct that any further action be taken.

THE HRDVP'S SANCTION DECISION

178. The Applicants contend that (i) the sanction decision amounts to an abuse of discretion and (ii) the Bank has failed to “make all reasonable efforts to ensure appropriate protection and safety for staff members in the performance of their duties” in accordance with Principle 2.1(b) of the Principles of Staff Employment. To the Applicants, the sanctions imposed on Mr. C by the HRDVP did not ensure appropriate protection and safety for the Applicants.

179. In response, the Bank contends that it made all reasonable efforts to ensure appropriate protection and safety for the Applicants by having procedures in place to report misconduct, and because the sanctions imposed on Mr. C by the HRDVP serve as a deterrent for future misconduct.

180. The Tribunal will first consider the scope of its review and the nature of the Bank’s obligations toward the Applicants.

181. In *ET* [2018], the Tribunal reaffirmed that it will not overturn a discretionary decision unless it is demonstrated that the exercise of discretion was “arbitrary, discriminatory, improperly motivated, carried out in violation of a fair and reasonable procedure, or lack[ing] a reasonable and observable basis, constitut[ing] an abuse of discretion, and therefore a violation of a staff member’s contract of employment or terms of appointment.” *Id.*, para. 91, citing *DO* [2016], para. 33. See also *AK* [2009], para. 41; *Desthuis-Francis* [2004], para. 19; *Marshall* [2000], para. 21; *de Raet* [1989], para. 67.

182. In *Rendall-Speranza* [1998], para. 45, the Bank acknowledged its obligation to protect staff members from harassment, stating, “The Bank has, within its discretion, concluded that the appropriate way by which to implement its obligations is to afford certain procedures to its staff members who complain about the harassing behavior of other staff members.” These procedures include mechanisms for reporting and investigating harassing behavior as well as processes for implementing disciplinary measures.

183. The Tribunal observes that the Bank had in place, at the relevant time, a procedure for filing a formal complaint to report harassing behaviors to EBC. Upon the Second Applicant's filing of a formal complaint through this procedure, EBC promptly initiated a year-long investigation into the allegations raised by the Second Applicant and the "unusually broad scope of [...] allegations from several different women" interviewed throughout the investigation. EBC provided the HRDVP with a detailed Final Report including 66 exhibits of evidence it considered, along with a detailed summary of the facts, its findings, and its conclusions.

184. Part of the Bank's procedure that it affords to staff members in fulfillment of its obligation to protect staff members from harassment is the implementation of disciplinary measures. Complainants to an EBC investigation rely on the investigative procedure and misconduct determination for protections.

185. The disciplinary sanctions imposed on Mr. C by the HRDVP were as follows: (i) demotion to a "GH non-managerial position with appropriate title change (date to be determined), in the best interests of the WBG"; (ii) ineligibility for promotion for three years; (iii) ineligibility for salary increases for a three-year period; and (iv) written censure in the form of the HRDVP's letter to remain on Mr. C's personnel record.

186. According to the HRDVP, he considered the following factors in the determination of disciplinary measures: (i) the seriousness of the matter; (ii) any extenuating circumstances; (iii) the situation of the subject; (iv) the interests of the Bank Group; and (v) the frequency of the conduct for which disciplinary measures may be imposed.

187. Regarding these factors, the HRDVP made the following observations:

I note you have no prior adverse disciplinary findings in twenty-five years of service to the WBG. I also observe you have a stellar professional record, and you fully cooperated with EBC's investigation and apologized for "inadvertently" offending your colleagues. I further note you received a Diversity & Inclusion Award in 2010 for "...highlighting inclusion and respect for females."

Notwithstanding, I find the allegations against you are very serious, especially considering your role as a WBG Director, where you are expected to behave in a

manner commensurate with a high level of responsibility. As a WBG Director, you owe a greater duty of care to ensure a safe working environment for your staff. Managers have a primary responsibility in establishing the tone for a healthy working environment which includes avoiding even the appearance of improper conduct. Your inappropriate behavior over the course of time gives rise to serious concerns with respect to the standards of conduct which are expected of staff. I find your conduct very disturbing and completely unacceptable.

188. The Tribunal takes note of the Bank's acknowledgement that it "would have been reasonable to conclude that the uncontested actions of [Mr. C] could have supported a finding of sexual harassment." Such an acknowledgement is both appropriate and just. However, it does not change the fact that the sanctions imposed on Mr. C made no provision for protecting the staff affected by his misconduct or ameliorating the impact such conduct had on their actual working environment. The Tribunal recalls that the notice of the decision and the sanctions serve as the only remedy that complainants receive in response to allegations of misconduct. It considers that, where complainants have been adversely affected by misconduct, regard should also be given to their legitimate interests, particularly the safety of the working environment, in the determination of sanctions.

189. The HRDVP's letter does not establish that any consideration was given to the impact which the listed "mitigating factors" may have had on the Applicants. The Tribunal is troubled by some of the observations made by the HRDVP in this regard.

190. The Tribunal notes that the first mitigating factor considered was the absence of prior disciplinary findings in Mr. C's twenty-five years of service. A reference to a prior impeccable disciplinary record may be a mitigating factor in some circumstances but in this particular case cannot be considered as such. The persistent and insidious unwelcome conduct of Mr. C toward certain fellow employees during at least some of the years in question, as related by the Final Report, indicates that this was not an isolated incident of misconduct. The Final Report further indicates that several complainants and witnesses were apprehensive about testifying against Mr. C because of his seniority and a fear of retaliation. Rather than evidence of prior proper conduct, the absence of a disciplinary record, in light of the evidence produced in the Final Report, is more likely attributable to the fear of consequences perceived by complainants and witnesses. Under the

circumstances of this case, the Tribunal considers that the absence of a prior disciplinary record ought not to have been regarded as a mitigating factor.

191. The Tribunal notes that the second mitigating factor was Mr. C's "stellar professional record." In circumstances of misconduct "against the institution," performance may be a legitimate mitigating factor because the subject's performance for the Bank might mitigate the harm done to the Bank. However, this is not a relevant mitigating factor to consider in instances of misconduct "against the individual." In instances of misconduct "against the individual," the harm is to the person. Therefore, the subject's performance record at the Bank has no impact on the person. It is hardly conducive to the Bank's Action Plan for Preventing and Addressing Sexual Harassment for high-performing individuals who sexually harass others to be sanctioned less harshly. The Tribunal also notes that this type of misconduct causes, in addition to harm to the person, institutional harm by way of diminished workplace productivity and morale, loss of talent through reduced career longevity on the part of affected staff, and damage to an institution's reputation as an employer of choice. An otherwise stellar performance record does not compensate for these types of institutional harm.

192. Next, the Tribunal is troubled by the HRDVP's consideration of Mr. C's apology as a mitigating factor. According to EBC, Mr. C stated that he was "deeply sorry if [he] may have inadvertently offended any of these colleagues," referring to the colleagues who alleged Mr. C sexually harassed them. While a showing of remorse and initiative to apologize to those harmed by a subject's conduct have been considered "relevant to an assessment of proportionality [...] and should serve to mitigate the sanctions imposed" (*see CT*, Decision No. 512 [2015], para. 48), here, Mr. C's apology was not offered to the targets of his conduct, it accepted no accountability, nor did it convey a commitment to not repeat the behavior. The harm caused by Mr. C's conduct was therefore not mitigated by the conditional apology made in this manner.

193. Finally, the Tribunal notes the HRDVP's mention of a Diversity & Inclusion Award for "highlighting inclusion and respect for females." Advancing inclusiveness and respect for some women in the workplace does not excuse or mitigate the sexual harassment of other women in the workplace. Moreover, these behaviors are not necessarily mutually exclusive.

194. Given the unacceptable failure by the HRDVP to make an express finding regarding sexual harassment and the inappropriateness of the factors he considered in mitigation, the Tribunal finds that the decision letter lacks a reasonable basis for the sanctions determined by the HRDVP.

195. The Applicants also contend that the sanctions did not provide them with adequate protections as required by Principle 2.1(b) of the Principles of Staff Employment, which states that the Organizations shall “make all reasonable efforts to ensure appropriate protection and safety for staff members in the performance of their duties.” The Applicants point out that the sanctions did not prevent targets of Mr. C’s conduct from encountering him in the workplace, nor did the sanctions provide any remedial training for Mr. C to learn to conduct himself appropriately in the workplace.

196. According to the Bank, “[i]n making [Mr. C] ineligible for promotion or salary increase for three years, [the] HRDVP ensured that [Mr. C] would understand the gravity of his misconduct and would be deterred from engaging in future misconduct.”

197. The Bank decided, in January 2021, to implement and notify Mr. C of a discretionary access restriction to his entry onto WBG premises and a temporary hiring ban in his personnel file. The Bank states that it also informed the IMF security team of the access restrictions it imposed on Mr. C. While in the Bank’s view these security restrictions do not constitute sanctions, the Tribunal is cognizant that security restrictions are a means by which the Bank may fulfill its obligation to the Applicants to provide a safe work environment.

198. The Tribunal observes that the security restrictions imposed are largely in line with the remedies requested by the Applicants in their Applications, namely that conditions be placed on Mr. C’s access to WBG premises and interaction with WBG and IMF staff members.

199. The Tribunal finds the security restrictions imposed adequately discharge the Bank of its duty to “make all reasonable efforts to ensure appropriate protection and safety” for the Applicants. The Tribunal takes note of the Applicants’ concerns regarding the discretionary nature of the security restrictions and the possibility that the security restrictions may be removed.

THE EBC INVESTIGATION

200. The next issue for the Tribunal to address is the adequacy of EBC's investigation into the Applicants' allegations.

201. The Tribunal recalls that in *Rendall-Speranza* [1998], para. 57, the Tribunal stated:

In order to assess whether the investigation was carried out fairly, it is necessary to appreciate the nature of the investigation and its role within the context of disciplinary proceedings. After a complaint of misconduct is filed, an investigation is to be undertaken in order to develop a factual record on which the Bank might choose to implement disciplinary measures. The investigation is of an administrative, and not an adjudicatory, nature. It is part of the grievance system internal to the Bank. The purpose is to gather information, and to establish and find facts, so that the Bank can decide whether to impose disciplinary measures or to take any other action pursuant to the Staff Rules. The concerns for due process in such a context relate to the development of a fair and full record of facts, and to the conduct of the investigation in a fair and impartial manner. They do not necessarily require conformity to all the technicalities of judicial proceedings.

202. It is EBC's duty, "and the Bank provides it with the appropriate resources for this purpose, to conduct investigations of misconduct diligently and to present accurate findings so that the [HRDVP] can make appropriate determinations based on these findings." *Koudogbo*, Decision No. 246 [2001], para. 54.

203. While the Tribunal does not micromanage investigations, EBC's exercise of discretion must not be made in an arbitrary manner. It is "imperative that due diligence is conducted at all times." *EZ* [2019], para. 112.

204. The Applicants contend that the EBC investigation was unfair because EBC did not interview certain witnesses identified by the First Applicant and inappropriately characterized certain factors as mitigating factors.

205. In the Final Report, EBC provided the following explanation of its selection of witnesses in the case:

During the course of its review and investigation, EBC was provided the names of several potential witnesses from individuals EBC interviewed. EBC did not interview all of the suggested witnesses for various reasons including but not limited to: (i) the stated relevance of the witnesses; (ii) the level of existing evidence and corroboration; (iii) the duration of EBC's review and investigation; and (iv) the stated impact (i.e., stress) that the investigation was having on Mr. [C].

206. The Tribunal observes nothing in the record that would suggest any bias on the part of EBC in its selection of witnesses and finds persuasive that the level of existing evidence and corroboration could have reasonably supported the decision to stop conducting interviews.

207. The parties agree that the First Applicant's testimony describing that she became "semi-immune" to Mr. C's conduct over time should not be used as a mitigating factor in the determination of whether Mr. C's conduct constitutes misconduct. While EBC did include the fact as a mitigating factor with respect to the impact Mr. C's conduct had on the First Applicant, the Tribunal observes EBC's balanced inclusion of several facts which indicated that Mr. C's conduct "made [the First Applicant] uncomfortable to such a degree that it may have created a hostile working environment."

208. The Tribunal reiterates its jurisprudence that it will not micromanage the activities of EBC so long as EBC operates in good faith without infringing individual rights. *See DQ (Merits)*, Decision No. 555 [2017], para. 83.

209. Overall, the Tribunal is satisfied that the transcripts of the thirty interviews conducted, the evidential exhibits, and the summary of the facts presented in the Final Report demonstrate that EBC operated in good faith and conducted a fair investigation into the Applicants' allegations.

REMEDY

210. The Applicants seek, as remedy, for the Tribunal to find that Mr. C's behavior amounts to sexual harassment and to order the Bank to impose the following disciplinary measures on Mr. C: "loss of future employment and contractual opportunities within the Bank, a restriction on access

by [Mr. C] to Bank premises, controls on his interaction with Bank employees, and such additional protection as may be deemed appropriate by this Tribunal.”

211. The Tribunal’s “general approach to decisions involving the exercise of discretion is that it will not interfere or substitute its own judgment unless the decision constitutes an abuse of discretion.” *Mpoy-Kamulayi (No. 5)* [2012], para. 29. In practice, upon finding that a discretionary decision constitutes an abuse of discretion, the Tribunal may remit the decision back to management for a new decision in line with the findings in the judgment.

212. For example, in *FH*, Decision No. 624 [2020], upon finding that a performance rating lacked a reasonable and observable basis, the Tribunal ordered the Bank to rescind the applicant’s performance rating and “assign [...] a new performance rating.” Likewise, in *FG* [2020], after finding that the decision to terminate the applicant’s employment was “significantly disproportionate to the misconduct finding,” the Tribunal rescinded the disciplinary sanctions imposed on the applicant and instructed the Bank that it may “impose any disciplinary measure, or a combination of disciplinary measures contained in Staff Rule 3.00, paragraph 10.06, short of termination.”

213. While the Tribunal is empowered to rescind a decision that is found not to have been based on a reasonable and observable basis, here, rescinding the misconduct decision and remitting it back to the current HRDVP for a new decision in line with the findings in this judgment would be unnecessary. The current HRDVP has already indicated through her testimony that she would find that the undisputed facts legally amount to sexual harassment.

214. Furthermore, as discussed above, the record demonstrates that the Bank has addressed the Applicants’ concerns by imposing security restrictions on Mr. C which restrict his access to WBG premises and prevent his employment with the WBG, and by sharing these security restrictions with the IMF.

215. Nonetheless, it is acknowledged that the security restrictions presently imposed on Mr. C are discretionary and potentially temporary. While the current HRDVP stated with certainty in her

testimony during oral proceedings before the Tribunal that she does not foresee allowing Mr. C on WBG premises for any reason at any time, and “would not do it without notifying [the Applicants,]” she also acknowledged that she cannot speak for her successors. With respect to the durability of the security restrictions, the Deputy General Counsel stated during oral proceedings before the Tribunal that, “for today, there was a full commitment by this institution [...] that we are fully committed to keep these [security restrictions on Mr. C] absolutely in place.” The Bank’s Counsel also stated during oral proceedings, “Mr. [C] [...] is no longer able to apply for employment with [...] the World Bank Group. That is an unconditional restriction in place.”

216. The Applicants have raised genuine concerns regarding the Bank’s prior discretionary decisions with respect to their safety. Noting the discretionary and potentially temporary nature of the protective security restrictions in place, the Tribunal finds that additional procedures are warranted to ensure any discretionary decision made regarding the security restrictions imposed on Mr. C is made with consideration of the impact it may have on the Applicants. In this respect, the Applicants should be given notice and an opportunity to respond before a discretionary decision is reached relating to the security restrictions imposed on Mr. C.

217. The Applicants also request in their Applications that the IMF be informed of the case summary, findings of misconduct, and sanctions imposed against Mr. C, to ensure adequate protection for IMF staff members.

218. Staff Rule 8.01, paragraph 7.01, describes the circumstances under which the WBG may disclose confidential personnel information, including information regarding a staff member’s misconduct and resulting disciplinary measures, to public international organizations. It states as follows:

The Bank Group may disclose Personnel Information, as defined in Staff Rule 2.01, “Confidentiality of Personnel Information,” which may include investigative records about a current or a former staff member’s misconduct, and about the disciplinary measures imposed, [...] to public international organizations under the following circumstances:

- a. a final decision has been made regarding misconduct and disciplinary measures[;]

- b. the staff member has either exhausted the appeals process with the Administrative Tribunal, or the time to file such appeal has expired; and
- c. a governmental body of a member country or a public international organization has requested the information and demonstrated a legitimate need to know such information, and has agreed to treat the information in a confidential manner.

219. While the criteria outlined in sections (a) and (b) have been met in the present case, nothing in the record indicates that the IMF has “requested the information and demonstrated a legitimate need to know such information, and has agreed to treat the information in a confidential manner” as is required in section (c) of the Staff Rule. Based on the plain reading of the Staff Rule, and the criteria set forth therein, the Bank owes a duty to Mr. C not to disclose his confidential personnel information to the IMF unless and until the above criteria have been met. As such, the Tribunal will not order the Bank to provide to the IMF the misconduct finding and sanctions imposed on Mr. C.

220. The Tribunal notes the practice in place between the Bank and the IMF, in recognition of the co-located premises, in which the institutions share security information pertaining to access restrictions.

221. The Bank may wish to explore, on the basis of the Bank’s proximity to IMF headquarters and the frequency with which its respective staff members are present on each other’s premises, the possibility for the two institutions to share, for security purposes, additional information regarding a staff member’s misconduct if, in the Bank’s discretion, the misconduct pertains to staff safety, such as patterns of sexual harassment or incidents of serious personal harm.

222. Last, the Applicants request legal fees and costs in the amount of \$64,838.00. Given the success of their legal claims, this remedy will be granted.

CONCLUDING REMARKS

223. The Applicants showed immense courage by coming forward to report the conduct of a staff member who was situated in a position of power over their careers.

224. The Applicants testified that they endured years of sexual harassment, courageously went on record to recount all they have endured, and were found credible by EBC, only to be faced with the HRDVP's remarkable silence in respect of their allegations of sexual harassment. After bringing their case to the Tribunal, the Bank, in its Answer to their Applications, argued that their allegations of sexual harassment were unfounded. While the Bank rescinded that argument, it thereafter maintained that the Applicants had no standing to challenge the misconduct and sanction decisions despite their continuing impact on them.

225. The institution and its staff are beneficiaries of the Applicants' perseverance. This case has brought visibility to shortcomings in the Bank's approach to accountability for sexual harassment and protection for staff. While the Bank's initial position in the case was inadequate and in direct contravention of the goals and commitments set forth in the Action Plan for Preventing and Addressing Sexual Harassment, the Tribunal welcomes the Bank's changed approach taken in its later pleadings and its recognition during oral proceedings that "the Bank had failed [the Applicants] [...and] missed several opportunities to protect them."

226. The Tribunal recognizes that many employers are grappling with how to devise policies to prevent sexual harassment and respond effectively to address complaints of sexual harassment. The Tribunal observes that the Bank has shown an improved understanding for how its Action Plan for Preventing and Addressing Sexual Harassment can tangibly be put into practice.

227. The Bank is encouraged to continue to reflect on the treatment of subjective elements to a finding of sexual harassment (*e.g.*, whether behavior was known to be unwelcome), the relevancy of certain mitigating factors for purposes of determining disciplinary sanctions, and the importance of labeling misconduct as sexual harassment when the defined elements are present.

DECISION

- (1) The Bank shall take reasonable steps to notify the Applicants, in advance, of the following circumstances: (i) any instance in which Mr. C seeks to access WBG or IMF premises and (ii) any reconsideration of the security restrictions imposed on Mr. C;
- (2) The Bank shall seek, and take into account, the Applicants' views on the above-mentioned circumstances prior to forming a decision regarding the matters identified in section (1) of the decision in this judgment;
- (3) The Bank shall pay the Applicants' legal fees and costs in the amount of \$64,838.00; and
- (4) All other claims are dismissed.

/S/ Andrew Burgess

Andrew Burgess

President

/S/Zakir Hafez

Zakir Hafez

Executive Secretary

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

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