



# The Bench

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## Recognizing the Tribunal’s 40-year Milestone

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As the World Bank Administrative Tribunal enters its fifth decade, it celebrates the imprint it has left on international administrative law, gender equity, and workplace diversity and inclusion.

“The designers of the Administrative Tribunal were visionaries. And now, as we move forward from our 40<sup>th</sup> year of work, we are witnesses to the extraordinary results of their wisdom, a legacy that continues,” said Administrative Tribunal President Andrew Burgess.

Since its first decision in *de Merode et al v. International Bank for Reconstruction and Development*, which addressed the salary and tax formula for D.C.-based staff, the Tribunal has rendered judgments or orders in 704 cases. Its rulings have crossed a spectrum of employment issues—from due process and protections for contract employees to performance reviews—while making the World Bank Group a better place to work.

“The Administrative Tribunal has advanced workplace diversity and inclusion through both its example and its decisions,” Judge Burgess said, pointing especially to the Tribunal’s opinions focused on gender equity.

For example, sexual harassment underpinned *CK v. IBRD* while pay discrimination and gender was the focus of *EL v. The World Bank Group*. In *Bernstein v. IBRD*, the Tribunal ruled that absences from work due to pregnancy and childbirth did not interrupt a woman’s work contract, seniority, or status.

Beyond its opinions, the Tribunal itself serves as a model for workplace inclusion. In 2017, Monica Pinto became the Tribunal’s first female president. On the current Tribunal, five of the seven judges are women. And regional diversity is advanced by having each judge on the Tribunal come from a different member state of the Bank.

Judge Burgess also praised the decision by the Tribunal’s creators to entrench its independence. The Tribunal establishes its own rules, manages its own budget, and is transparent in its activities. Its filing eligibility is clear, its deadlines are specific, and its decisions—which are final and binding—are public.

The World Bank Group had 5,000 employees when the Tribunal was established in 1980. Today it has more than 18,000 active full-time staff. Despite that growth and the passage of four decades, the Tribunal remains distinguished by its resilience and relevance.

Judge Burgess said the Tribunal has lived up to its role as “a body that could look across cultures and countries, that would be able weather changes over time, and that would make the World Bank a rewarding place to work for professionals committed to improving opportunity for people around the globe.”

“The Administrative Tribunal has advanced workplace diversity and inclusion through both its example and its decisions.”

— Andrew Burgess, Tribunal President



The Tribunal’s composition under its first female president – October 2019. From left to right: Judges Janice Bellace, Seward Cooper, Mónica Pinto, Lynn Charbonneau, Mahnoush Arsanjani, Andrew Burgess, Marielle Cohen-Branche.

# A Tribute to the Legal Minds Who Built the Tribunal



*Zakir Hafez,  
Executive Secretary*

The Administrative Tribunal had planned to celebrate its 40<sup>th</sup> anniversary, but the global COVID-19 pandemic forced the cancellation of a forum to mark the milestone. The Tribunal is proud of its achievements, including:

The Tribunal has updated and amended its [Rules](#).

The Tribunal's website was redesigned and updated. A key enhancement is the Advanced Search page, which added filters, search connectors, color coding, and moveable previews—among other new features—to expedite users' research of Tribunal judgments.

For the first time, the Tribunal adopted a [Code of Judicial Conduct](#).

Since its founding 40 years ago, the Administrative Tribunal has distinguished itself in developing comprehensive jurisprudence while providing World Bank Group staff a trusted mechanism for addressing workplace grievances. The Tribunal's reputation is fed by its fierce independence, the transparency of its rules and proceedings, and the detail with which its decisions are explained.

The independent decision-making body has also been shaped by decades of exceptional judges from around the world.

To create the Administrative Tribunal, then-World Bank President Robert McNamara brought together respected legal minds with cross-cultural experience, expertise in labor law, and deep knowledge of general principles of law. That culture of excellence established in 1980 has continued to draw extraordinary talent to the Tribunal.

Eduardo Jiménez de Aréchaga from Uruguay joined the Tribunal as its first President following a distinguished career that included work with the United Nations. He also served as President of the International Court of Justice in The Hague.

A longstanding pillar of the Tribunal is the balancing effect that comes from having members who are national or international judges and those who are practitioners, academicians, or subject-matter scholars. That tradition is evident in the current composition of the Tribunal, which is led by President Andrew Burgess, a national and international judge who served as Justice of Appeal in the Court of Appeal of Barbados and President of the Inter-American Development Bank Administrative Tribunal. He currently is a Justice at the Caribbean Court of Justice.

The Tribunal's two Vice Presidents also bring impressive expertise. Judge Mahnoush Arsanjani has broad experience in international organizations after having served for more than 30 years at the UN while Judge Marielle Cohen-Branche, a former judge on French Cour de Cassation, also has private sector expertise. Other judges on the current Tribunal have backgrounds in academia, private legal practice, and national and international courts.

Diversity and inclusiveness are an entrenched goal of the Tribunal, and that commitment has helped attract judges with trailblazing credentials. Judge Mónica Pinto from Argentina, the first female dean of the law school at the University of Buenos Aires, was the first woman to serve as Tribunal President.

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Five of the seven judges on the current Tribunal are women. This is something to celebrate given that there were no women among the first group of judges in 1980. Judge Pinto has credited the presence of women for deepening the Tribunal’s understanding of an ever-changing workplace. In her view, cases addressing pay equity, sexual harassment, maternity leave, and discrimination, in particular, have benefited from an inclusive court.

The conditions and requirements for service on the Tribunal are strict, and the appointments are made through a transparent process that involves the World Bank Board of Executive Directors, the Bank management, and the Staff Association. The President of the Bank establishes a four-member Advisory Committee that includes the Bank’s General Counsel as Chair, a representative of the Staff Association, an outside expert, and a staff member appointed by the President of the Bank. The Staff Association’s involvement advances the credibility of the selection process.

Based on the recommendation of the Advisory Committee, the President of the Bank submits a list of candidates to the Board of Executive Directors for its formal appointment. To assure the independence of the judges, no one who has served at the World Bank Group as a staff member is eligible to sit on the Tribunal and judges cannot be employed by the Bank Group following their service on the Tribunal.

The Tribunal is not a policymaking body. The judges’ role—to provide judicial review in invidious cases—was explicitly noted in President McNamara’s 1980 memo to the Executive Directors seeking approval of the Tribunal:

“... the Bank Group has now over 5000 staff members. These staff members are subject to administrative decisions concerning a variety of matters involving their duties, careers, salaries and benefits or pension rights. In an organization of this size, it is not unusual that a staff member may feel that a decision taken might violate rights, as derived from his terms of appointment, or as laid down in Bank regulations. On the other hand, those who take administrative decisions may in some cases encroach on the rights of a staff member, either by inadvertence or by error of judgment. This can happen even in the best national administration and obviously can happen within the Bank as well. At present, there is no provision allowing staff members to seek a judicial review in such cases.”

The judges since 1980 have been performing this solemn duty of judicial review with a high degree of integrity and dedication in rendering impartial justice. Over the years, I have had the honor of working with many of the Tribunal’s distinguished judges, among them Florentino Feliciano of the Philippines, Francisco Orrego Vicuña of Chile, Jan Paulsson of France, and Stephen Schwebel of the United States.

I also had the pleasure to work with Judge Robert Gorman of the United States. He was appointed before the Tribunal had term limits and served close to 27 years—the longest tenure of any judge—giving him a frontline view of the Tribunal’s evolution. He has described his colleagues as “brilliant legal minds” who were able to reach consensus in their rulings notwithstanding their diverse backgrounds.

It is with appreciation that I recognize the commitment of the judges who have built the Tribunal, an institution of which we remain deeply proud.

## Upcoming Tribunal Session

The Tribunal’s next session will begin on May 31, 2021. Decisions will be posted on the Judgments and Orders tab of the Tribunal’s [website](#).

# Judgments Address Breach of Promise, Misconduct, and Access Restrictions, Among Other Issues

The World Bank Administrative Tribunal heard 12 cases in its November 2020 session. Four cases involved preliminary objections, *FS v. IBRD and IDA*, *FR v. IFC*, *ER (No. 3) v. IBRD*, and *Atkinson v. IBRD*. In *FS*, the Bank's preliminary objection was upheld, and the application was dismissed. In *FR* and *ER (No. 3)*, the preliminary objections were dismissed, and the cases will proceed to the merits phase during the Tribunal's next session.

In *Atkinson*, the Tribunal considered both the Bank's preliminary objection to certain of the applicant's claims as well as the applicant's claims on the merits. In this regard, the Tribunal upheld the Bank's preliminary objection to the applicant's discrimination- and harassment-related claims and determined on the merits that there was a reasonable and observable basis for the non-renewal of the applicant's contract. In addition, recognizing the general importance of the issues raised by the applicant, the Tribunal concluded that a contribution to the applicant's legal fees and costs was warranted.

In *FN v. IBRD*, the Tribunal heard a challenge to a non-confirmation decision and held that, while the decision not to confirm the applicant's appointment was not an abuse of discretion, there were serious procedural irregularities and failures in due process which warranted compensation.

In *FP v. IFC*, the Tribunal found that there was a breach of promise when the applicant's contract was not renewed as had been agreed upon with his former manager and director. The Tribunal also determined that the lack of continuity in the handoff of managerial responsibilities to the acting manager resulted in unfair treatment of the applicant in contravention of Principle 2.1 of the Principles of Staff Employment.

The Tribunal dismissed a challenge to a non-renewal decision in *Sahin v. IBRD*, finding that there was a valid mediation agreement which constituted a full and final settlement of the applicant's claims.

In *FM v. IBRD*, while the Tribunal held that the decision to place the applicant on short-term disability was reasonable, it also found that the Bank could have done more to reasonably accommodate the applicant's health restrictions in enabling her return to work and, in failing to do so, did not treat the applicant fairly as required by Principles 2.1 and 9.1 of the Principles of Staff Employment. The Tribunal also found that the decision to extend the applicant's probationary period was reasonable and dismissed the applicant's claim that she was constructively discharged. Finally, the Tribunal concluded that the denial of the applicant's workers' compensation claim could be reasonably sustained but clarified that there are no grounds for distinguishing staff members requesting workers' compensation because of the nature of their recruitment.

The Tribunal heard two cases involving access restrictions. In *FL v. IBRD*, the Tribunal held that the decision to maintain the applicant's access restriction lacked due process and a reasonable and observable basis, finding that the alleged threat made by the applicant was not substantiated. The Tribunal further held that the applicant's performance evaluation lacked a reasonable and observable basis and that the applicant was denied due process in her Annual Review and Opportunity to Improve Unsatisfactory Performance plan. In *FA (No. 2) v. IBRD*, the Tribunal held that the Human Resources Development Corporate Operations Manager reasonably exercised his discretion in denying the applicant access to Bank premises based on the permanent access restriction imposed on the applicant. However, the Tribunal also found that the overall internal handling of the applicant's confidential personnel information was improper and in violation of Staff Rule 2.01 and ordered compensation for the applicant's lost contracts and moral and reputational harm.

The Tribunal also heard two cases challenging findings of misconduct, *FO v. IBRD* and *FQ v. IFC*. In *FO*, the Tribunal upheld both the findings of misconduct and the imposition of disciplinary sanctions. In *FQ*, while the Tribunal upheld the finding of misconduct, it found that the imposition of disciplinary sanctions was barred by the three-year statute of limitation and ordered that the sanctions be rescinded. The Tribunal did not find that compensation was warranted in light of the applicant's significant profits from his misconduct.

The text and summaries of all the Tribunal's judgments and orders may be found [here](#).