



GOVERNMENT
ACCOUNTABILITY
PROJECT

Whistleblowing at International Financial Institutions

**An Assessment of the Effectiveness
of the Regional Development
Banks' Whistleblower Policies**

September 2019

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Index of Acronyms

ADB – Asian Development Bank

AfDB – African Development Bank

IPG – Integrity Principles and Guidelines

OAI – Office of Anticorruption and Integrity

IDB – Inter-American Development Bank

OII – Office of Institutional Integrity

IACD – Integrity and Anti-Corruption Department

IsDB – Islamic Development Bank

GIO – Group Integrity Office

IOC – Integrity and Oversight Committee

IRC – Integrity Review Committee

WB – World Bank

Introduction

This report will examine the progress of the African Development Bank, Asian Development, Inter-American Development Bank, Islamic Development Bank, and the World Bank in implementing their whistleblower policies. Government Accountability Project published our recommended best practices for international whistleblower policies in 2016 as a guideline; however, this report does not seek to address the standards of the international development banks' whistleblower policies although some discussion is included for background. Monitoring and analyzing the implementation of policies is important to determine if whistleblower claims are being resolved fairly. Moreover, this report seeks to answer the research question: *are the policies working as intended?*

Whistleblowers play a key role in stopping waste, fraud, abuse, illegality, and gross mismanagement by disclosing evidence of wrongdoing. Without their protection, international corruption would be unchecked. Whistleblowers are frequently retaliated against by their employers when they report misconduct. In response to scandals of wasted development funds, the international banks developed policies to help protect whistleblowers. This report seeks to scrutinize how the protections are working in reality by looking at the following indicators: (1) the total number of cases; (2) the total number of decisions and the number of decisions with a confirmed whistleblowing element; (3) the details of the cases including type, holding, and form of relief. These indicators help ascertain the extent that reporting channels are being used, claims are being timely investigated and resolved, and the employer's decision-makers render verdicts that are objective, unbiased, and reasonable in providing adequate relief to those who suffered from retaliation under their whistleblower policy.

There are four mandatory criteria in U.S. law that are prerequisites for U.S. financial support of international banks:

- (1) best practices for legal burdens of proof;
- (2) public freedom of expression;
- (3) access to independent adjudicative bodies, including external arbitration; and
- (4) relief that eliminates the effects of retaliation so that whistleblowers who win their cases are made whole.

These criteria can be found in Sec. 1505 (a)(11) of the 2006 Foreign Operations, Export Financing and Related Programs Appropriations Act, which became Public Law 109-102 on November 14, 2005.

If banks do not perform internal assessments with consistent frequency, application, and transparency, it becomes difficult to monitor their progress and address concerns. The implications of unaccountable banks are far-reaching as not only are public funds for development wasted, but also, for those entities funded by the U.S., the appropriations law cannot be enforced nor U.S. interests protected.

African Development Bank

Overview

The African Development Bank (AfDB) Whistleblowing and Complaints Handling Policy protects the subject matter of free speech rights with no loopholes including illegality, gross waste, mismanagement, abuse of authority, substantial and specific danger to public health or safety and any other activity that undermines the institutional mission to its stakeholders, as well as any other information that assists in honoring those duties (Whistleblowing and Complaints Handling Policy, section 1.03). The policy also protects all citizens with disclosures relevant to the public service mission (AfDB Whistleblowing and Complaints Handling policy, sections 5.1 & 6.2). The AfDB also provides best practice confidentiality protection (see sections 6.1 & 6.9.4). Of the policies assessed in this evaluation, the AfDB is the only bank that allows punitive action against persons who engage in retaliation. It is unclear if this covers punitive damages for the whistleblower or only pertains to punishing the individual wrongdoer.

The AfDB's policy states that the final report will be made publicly available after the whistleblower has an opportunity to accept or reject the conclusions and recommendations, and that the Auditor General must publicly report on retaliation cases and investigative activities (sections 6.9.3 & 6.9.5). However, the AfDB has not published any such report on their website. I suggest that the AfDB work towards compliance with this provision. I also suggest that the AfDB add a provision that shields whistleblower speech from gag orders.

Evaluation

The AfDB's Integrity and Anti-corruption Department has only reported one case with a confirmed whistleblowing element since 2009. No date for that case was provided in the 2009 report. The AfDB's Integrity and Anti-corruption Department (IACD) has not issued any annual report since 2014. There were inconsistent reporting methods across the AfDB's IACD's annual reports. The Director of the department would not answer her phone, does not have a functioning voicemail, and has not responded to multiple email requests for information. Through the Bank's Disclosures and Access to Information request process, I was connected to a manager in the department but never received any information in response to my two requests. There is no choice but to conclude that the AfDB is non-transparent, which makes effective public monitoring of their whistleblower policy impossible. However, it is still possible to scrutinize the effectiveness of the department using some of the information that was made public. The department's first report spans from 2007-2010.

2007-2010

AfDB Cases, 2007-2010

Cases 2007-2010	2007	2008	2009	2010
Cases carried over	0	17	27	22
New complaints	27	31	13	38
Total case load	27	48	40	60
Completed preliminary inquiries and internal referrals	3	17	13	17
Completed full investigations	7	4	5	18
Total number of cases closed	10	21	18	35
Cases carried forward	17	27	22	25

AfDB Cases by Allegation Type, 2007-2010

Nature of allegations 2009-2010:	Allegations by site 2007-2010	Allegations by Project Sector 2009-2010
Fraud: 35% of cases Staff Misconduct: 21% of cases Corruption: 14% of cases Collusion: 10% of cases Coercion: 6% of cases Other: 14% of cases	Bank HQ and Field Offices: 45% Projects: 55%	Agriculture: 38% Energy and Power: 17% Infrastructure: 13% Education and health: 12% Private Sector 8% WATSAN: 8% Governance: 4%

Based on the data provided, it is clear that although cases of fraud, misconduct, corruption, collusion, coercion and “other” allegations are being reported they are not being promptly investigated and closed. This significance is apparent in examining the programs impacted by the disclosures – the allegations span the AfDB’s agriculture, energy and power, infrastructure, education and health, private sector, water and sanitation, and governance programs. Concerningly, there are no indicators provided to show the number of favorable findings for people who made disclosures. These indicators would all impact whistleblowers.

Below is the one whistleblower case mentioned in the AfDB's 2009-2010 Integrity and Anti-Corruption Progress Report. No date for the following case was provided in the AfDB's report and no other example of whistleblower cases were mentioned.

AfDB case concerning whistleblowing:

An employee of the local project management unit of a Bank-funded project filed a complaint alleging that he had been unfairly dismissed shortly after reporting fraud to Bank staff. After a preliminary review of the complaint, IACD requested that the project management unit reinstate the whistleblower as an interim measure. The unit's management, however, claimed that it was not aware that the employee was a whistleblower, and that he had been terminated for failing to disclose that he had been dismissed by his previous employer for misconduct.

IACD conducted a field investigation, reviewing relevant documents and correspondence and conducting interviews. The investigation was conducted in cooperation with local law enforcement authorities, which provided extensive logistical assistance. IACD concluded that, although the evidence provided by the whistleblower lacked credibility, his termination was flawed and likely to be connected to his complaint. As a result, IACD recommended that the whistleblower resigns but that he be granted financial compensation.

Alarming, the only illustration of a qualifying whistleblower disclosure stated that the whistleblower "lacked credibility" without any further description and states in contradiction that "his termination was flawed and *likely to be connected to his complaint*" [emphasis added]. If the AfDB found that there was a substantial likelihood that a whistleblower was retaliated against for making a disclosure, it should matter that he had a reasonable belief there was fraud and it would have been helpful to understand more fully on what grounds his evidence lacked credibility and how that was weighted. Asking the whistleblower to resign following his disclosure and retaliatory termination appears to be a violation of the whistleblower's rights. If the AfDB followed the IDB and World Bank's footsteps and posted appropriately redacted versions of their decisions then it would be possible to monitor its effectiveness.

2011-2012

During this reporting period the AfDB's examples of allegations, their findings, and the results, mention corrective action but fails to address what happens to the person making the disclosure. There is no indication if the reporting persons experience retaliation, if they were anonymous, or if the AfDB rewarded them. Numbers of reporting persons is consistent during this period, with a continuing lag in investigating and closing the cases. No Whistleblower cases were mentioned.

AfDB IACD Complaints, 2012

IACD Complaints - 2012	
# of cases in 2011:	27
# of cases in 2012:	38
# of cases closed 2011-2012:	31
# of cases carried over:	19 and 49 cases

For summaries of IACD’s findings in 2012 cases, see the appendix.

2013

Case information was scant in this report.

AfDB IACD Complaints, 2013

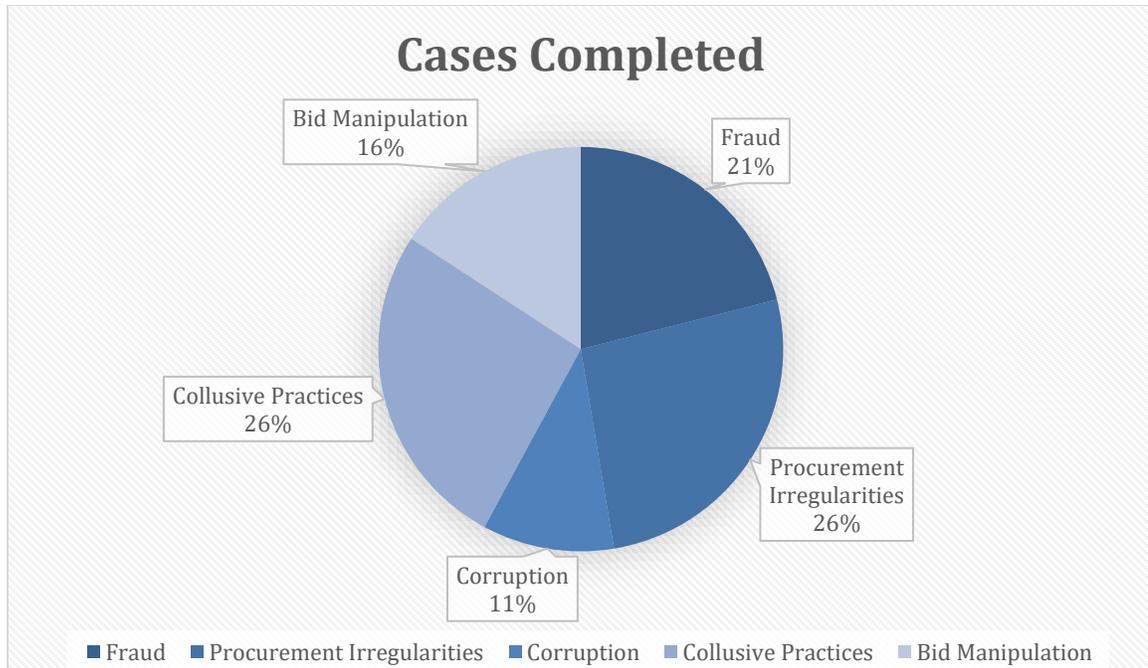
IACD Complaints - 2013	
# of cases:	81
# of investigations completed:	12
# of ongoing cases:	40
Cases carried over to 2014:	11

2014

During this reporting period, the bank changed their reporting methodology. They broke down the complaints by type of allegation. One can infer from the allegation types that whistleblowers’ disclosures were among the complaints, but the report does not reveal any specific information about whistleblowing or retaliation.

AfDB Integrity and Anti-Corruption Complaints, 2014

IACD Complaints - 2014	
# of complaints received	76
# of investigations opened	31
# of Investigations completed and closed	19
# of Entities Debarred	9
# of entities cross-debarred	98
# of companies undergoing integrity compliance programs	3
Cases involving negotiated settlement agreements	2



After 2014, the AfDB stopped publishing the Department’s annual reports and instead included data in the AfDB’s institution-wide annual report.

2015

The AfDB reported that the Office of the Ombudsman, which handles reports from abuse of authority to concerns with career development, handled a total of 64 cases in 2015, 28 percent of which were closed within four weeks, 33 percent were related to career development and job security. The lack of detail in the report makes it difficult to know how many abuse of authority cases were whistleblower disclosures and if any of those whistleblowers suffered retaliation. During this period, the trend of the IACD shows a large number of complaints, with a very small number of cases referred to the Sanctions Commissioner. No data is available to show what resulted from their referral to the Sanctions Commissioner.

AfDB IACD Complaints, 2015

IACD Complaints - 2015	
# of complaints received	66
# of investigations opened	38
# of cases closed	19
# of sanctionable practice findings	4
# of negotiated settlement agreements	3 (\$13.6 million in fines which will be used exclusively for the IACA programs)

2016

The AfDB annual report for 2016 states that the Office of the Ombudsman received 110 cases, out of which 99 were handled and closed within an average of four weeks. It states that career development and job security concerns were common complaints and nothing is mentioned about mismanagement or fraud. Like previous years, little to nothing of consequence is mentioned about the Administrative Tribunal and Staff Appeals Committee, or the Sanctions Appeals Board. The AfDB gives little insight into the effectiveness of the resolution of whistleblower claims.

AfDB IACD Complaints, 2016

IACD - 2016	
# of allegations sanction able practices:	86
# of cases set aside for preliminary screening for credibility, verifiability, and materiality as not meriting investigation:	Not mentioned
# of cases that went to investigation:	41
# of investigations completed and closed:	21
# of findings of sanctionable practices to the sanctions commissioner for determination:	3
# of cases of staff misconduct:	30
# of staff misconduct investigations completed:	26 out of 30
# of staff misconduct cases referred to other recourse mechanisms within the Bank:	Not mentioned
# of staff misconduct cases unsubstantiated:	Not mentioned
# of staff misconduct cases referred to management for appropriate action:	26

2017

The AfDB separates sanctionable practices from staff misconduct cases. According to Section 4 of the Sanctions Procedures of the Bank Group, sanctionable practices include “a corrupt practice, fraudulent practice, collusive practice, coercive practice and obstructive practice, carried out in connection with a Bank Group-financed or administered Project or an investigation, audit or sanctions proceeding.” While no data is available on whistleblower cases, those who make disclosures of this nature are typically defined as whistleblowers.

During this reporting year, the Office of the Ombudsman received 73 cases, and 99 percent were closed within four weeks. Of those cases, 32 percent were abuse of power disclosures.

The 2017 report disclosed more detail about the Administrative Tribunal, Staff Appeals Committee, and the Sanctions Appeal Board than the 2016 report; however, none of it was relevant for this assessment.

AfDB IACD Complaints. 2017

IACD Complaints - 2017	
# of allegations sanctionable practices:	78
# of cases set aside for preliminary screening for credibility, verifiability, and materiality as not meriting investigation:	39
# of cases that went to investigation:	39
# of investigations completed and closed:	26
# of findings of sanctionable practices to the sanctions commissioner for determination:	9
# of cases of staff misconduct:	22
# of staff misconduct investigations completed:	12
# of staff misconduct cases referred to other recourse mechanisms within the Bank:	3
# of staff misconduct cases unsubstantiated:	1
# of staff misconduct cases referred to management for appropriate action:	8

African Integrity Fund derived \$55 million at the end of 2017 from fines and penalties imposed on companies found to have engaged in sanctionable practices.

Asian Development Bank

Overview

The Asian Development Bank's (ADB) June 2017 Administrative Order No. 2.10 on Whistleblower and Witness Protection sets forth the ADB's current standards for whistleblower and witness protection. The ADB's whistleblower policy was first instituted in 2009.

Some of the strengths of the ADB's policy are: (1) covering the right to refuse to violate the law (see Administrative Order No. 2.10 section 3.5); (2) protecting all citizens with disclosures relevant to the public service mission (section 8), (3) providing the international gold standard for confidentiality protection (sections 3.2, 5.1, 5.4, and 4.2), and providing an option to request an external investigation and review (section 4.3). Notably, the ADB is the only regional bank in this evaluation that includes in its policy a provision for a formal review process to track the policy's effectiveness. The policy states that it shall have an annual report on the implementation that discloses the number of cases assessed and concluded as well as the number of cases claiming retaliation (section 11).

Some of the striking weaknesses of the policy include: (1) there is no reasonable belief standard included, (2) there is no ban on gag orders that override whistleblower speech¹, (3) there is no ombudsman or affordable services available, (4) no alternative dispute resolution available² and (5) the policy is vague on what remedies are available. One of the key concerns to emerge from my research was the absence of enforcement power for relief following retaliation. Under the current policy, after the Office of Anticorruption and Integrity (OAI) completes its investigation, the report goes to the relevant ADB department for action with a "recommendation" for remedial action. The relevant department then gets to decide what remedial action to take and inform OAI of its decision and then the whistleblower is informed of the final action. (Section 8.8). In effect, this process produces an environment in which there are no enforcement teeth for findings of retaliation. Compliance is a voluntary honor system. Leaving departments to decide what remedial action to take leaves little hope for accountability. The OAI's significance is greatly reduced by this process. Furthermore, not involving the whistleblower's review and merely informing them of the department's decision at the end of the process seems problematic.

Evaluation

Upon request, the OAI provided me directly with data that were previously undisclosed to the public on complaints pertaining to allegations of integrity violations and staff misconduct in ADB-financed, administered or supported activities.

In 2017, the Office of Anticorruption and Integrity (OAI) assessed 10 cases where three ADB staff and seven external parties requested that their identities

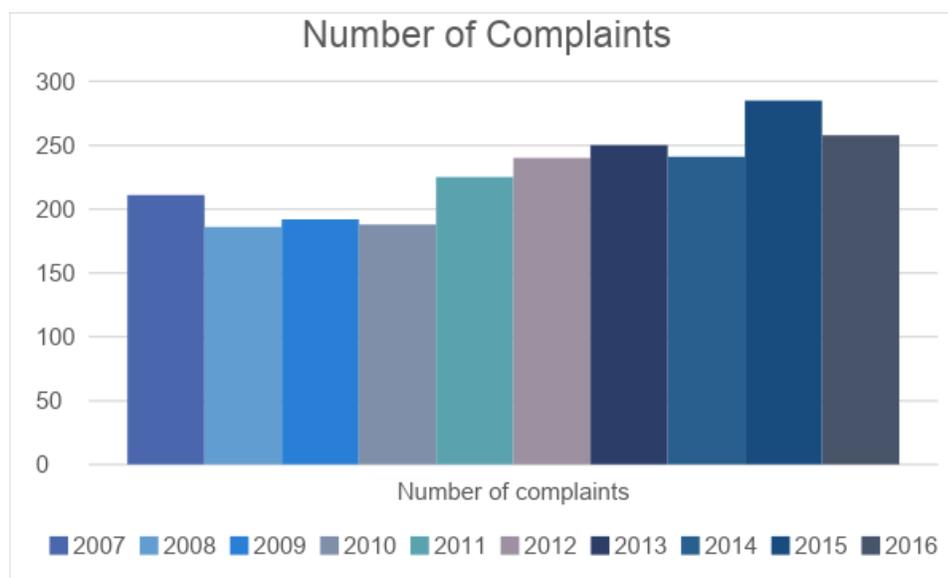
¹ The World Bank policy has this provision but the other banks do not.

² The African Development Bank was the only bank assessed that has this provision.

remain confidential and protected. Of these, one complaint has been concluded without any adverse retaliation reports from the whistleblower. The other nine cases are still being assessed. OAI did not receive any claims of whistleblower retaliation.³

ADB's Integrity Principles and Guidelines (IPG) supplements ADB's Whistleblower and Witness Protection Policy (Administrative Order [AO] 2.10), which is the main ADB policy governing whistleblowers. The IPG states that OAI protects the confidentiality of any nonpublic information associated with an investigation. This extends to all complaints received by the office.

The ADB treats any complainant as whistleblowing, so the numbers reflect all of the cases where there is an individual reporting the incident. The following is an estimate of the number of incidents involving whistleblowers at ADB over the years:



The data shows that there is a trend of increasing use of the policy by reporting persons.

Since the issuance of AO 2.10 in 2009, a total of 53 entities (50 individuals and 3 firms; 26 of which are internal while 27 are external) have claimed protection. In addition, six claimed retaliation.

To date, the ADB found that there has been no substantiated case of retaliation against whistleblowers.

The ADB has recently revised AO 2.10 to harmonize the principles and terms used in other AOs such as in the revised ADB Code of Conduct, and clarify that ADB

³ <https://www.adb.org/sites/default/files/institutional-document/408321/oai-ar2017.pdf>

will pursue reasonable steps to protect staff acting as a witness in staff grievance proceedings and to ensure that they are not subject to retaliation.⁴

Below are details on whistleblower-related cases handled by OAI:

Year	Internal protection	External protection	Whistleblower retaliation	Remarks
2011	5	1	0	
2012	1	1	0	
2013	8	2	3	
2014	3	6	2	
2015	4	8	0	6 closed, 6 open
2016	3	4	1	3 closed (including retaliation), 5 open
2017	2	5		1 closed, 6 open

In 2014, three internal and six external complainants requested their identities to be protected when reporting a complaint to OAI. Inquiries into eight of the complaints were concluded without any adverse retaliation reports from the whistleblowers. The remaining one complaint is still undergoing investigation.⁵ In addition, OAI received two complaints of alleged whistleblower retaliation in 2014. One of these claims did not qualify for whistleblower protection since the complainant had not reported a suspected integrity violation or misconduct to ADB and was determined not to qualify as a whistleblower as defined under AO 2.10. For the second complaint, OAI established that, although the complainant had reported an integrity violation, the alleged retaliatory action pre-dated and was unrelated to the reported integrity violation and therefore did not qualify for whistleblower protection under AO 2.10.

In 2013, OAI reviewed 10 cases in which AO 2.10 provisions were invoked to protect concerned ADB staff and external parties who reported an allegation and requested that their identities be protected. The cases were concluded without any adverse retaliation reports from the whistleblower to date. In addition, OAI received three claims of retaliation on whistleblowers. One case was resolved to the whistleblower's satisfaction (resolution included job relocation). The second claim was determined by OAI as unqualified for whistleblower protection since the complainant

⁴ You can find the revised AO 2.10 here:

<https://www.adb.org/sites/default/files/page/149087/ao2-10.pdf>

⁵ This may have since been closed but the ADB has refused to provide an update upon request.

was not a whistleblower as defined under AO 2.10. The third case was closed because OAI determined it was not credible and not reasonably verifiable.

In 2012, OAI reviewed two cases where AO 2.10 provisions were invoked to protect concerned ADB staff and external parties. Those cases were resolved without harm or disclosure of the protected parties.

For those disclosures handled by ADB's HR department, there were 18 staff cases decided by the ADB Administrative Tribunal (AT) from December 2009 to the present.⁶ Of the 18 cases, only 1 case (Decision # 105) had a whistleblower element as described below:

ADB case concerning whistleblowing:

Staff was a former Senior Economist at the Economic and Research Department (ERD) whose fixed term appointment was not renewed when it expired in August 2014.

Staff's application consisted of 5 claims, namely: 1) her transfer out of ERD front office; 2) denial of legal representation in the pre-AT internal procedures phases, 3) non-renewal of her fixed term appointment, 4) her "unsatisfactory" performance rating which she said was a retaliation against her for bringing up grievances, and 5) BPMSD's non-referral to the Office of Anticorruption and Integrity (OAI) of her allegations of integrity violations and retaliation on the part of the former Chief Economist.

Of the 5 claims, only the 5th claim had a whistleblower element. The AT rejected all but the first claim of Staff. On the first claim, AT ruled that applicant was entitled to equitable damages arising from the intangible injury she suffered and awarded her \$35,000 in damages and \$5,000 in legal costs. With respect to the allegations of integrity violations and retaliation (the 5th claim), the AT ruled that BPMSD's non-referral of Staff's allegations to OAI was justified since BPHP found no misconduct committed by the Chief Economist.

⁶ This figure may no longer be accurate. I was unable to get an update from the ADB because my request for information was ignored.

Inter-American Development Bank

Overview

The IDB's anti-corruption framework was first approved in 2001. The latest changes occurred in 2011 and 2015. The Office of Institutional Integrity (OII), the Sanctions Officer and the Sanctions Committee fulfill a fiduciary role that is essential to help the IDB Group achieve its objective of improving lives in Latin America and the Caribbean. The Office of Institutional Integrity is an independent advisory office within the Bank Group that investigates allegations of Prohibited Practices.

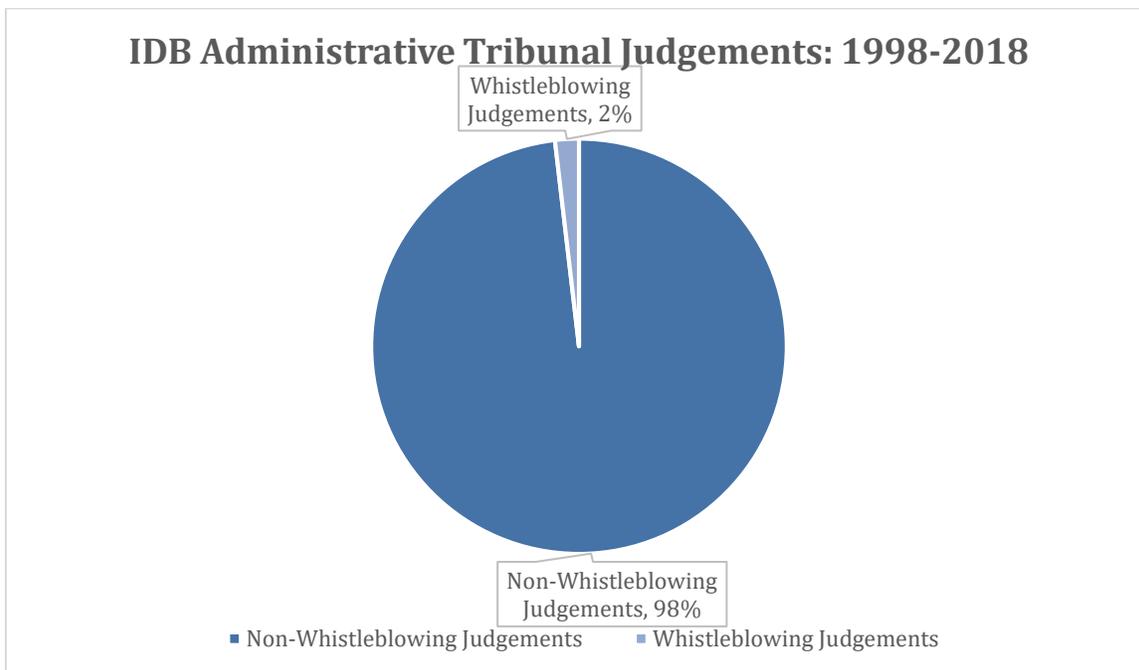
There are several strengths and weaknesses in the policy. For instance, one strength of the policy is that its protection scope is inclusive. Employees who are perceived as whistleblowers, those who assist whistleblowers, and those about to make disclosures are all covered by the policy (IDB Staff Rule No. PE-328, section 2.4.4, 2.6). All categories of whistleblowers are protected, including employees, contractors and consultants (IDB Staff Rule No. PE-328, section 2.1). The policy also protects all citizens with disclosures relevant to the public service mission (IDB Staff Rule No. PE-328, section 2.1 & 2.2). The policy also follows the burden shifting standard whereby after an employee makes a prima facie case of retaliation for whistleblowing the burden of proof shifts to the Bank to show by clear and convincing evidence the same employment action would have been taken absent the whistleblowing (IDB Staff Rule No. PE-328, section 13).

What is missing from this policy may explain its inefficacy as discussed in this report. Firstly, whistleblowers are not empowered under this policy to review and comment on the final draft report to assess whether there has been a good faith resolution, a standard that is included in the African Development Bank's policy. Furthermore, whistleblowers' disclosures that are settled are not posted on the website and are considered confidential, so there is no way to track or monitor these cases. Only the cases before the administrative tribunal are made public. There is practically no mention about the available remedies, including injunctive relief for whistleblowers and witnesses. An associated barrier is that reimbursement for counsel is not mentioned anywhere and there's no fund for legal services. Also of concern is the policy's ambiguity on the statute of limitations. The policy states that reporting to a Bank authority "should be made promptly" once a whistleblower believes that s/he has been the subject of retaliation and there are "time periods for limitations" on "certain claims" that employees should "observe" (IDB Staff Rule No. PE-328, section 9.3 & 9.4). No reasonable claimant would be able to glean from this policy when their retaliation claim could be precluded and it is unclear how the vague statute of limitations is playing itself out in existing cases. There is no review process to track how many whistleblowers use their rights and no process for making changes based on lessons learned built into the policy.

Evaluation

Perhaps the most striking finding of this overview is how few cases with a whistleblowing element have had a hearing in front of the IDB Administrative

Tribunal. Between 1998 and 2018, just 2 out of 108 judgements (less than 2%) have involved whistleblowing.⁷



However, in both decisions with a whistleblowing element (Case Nos. 77 and 73), the Tribunal found in favor of the Applicants concerning at least part of their claim. In Case No. 77, Government Accountability Project attorneys That Guyer and Stephani Ayers were the whistleblower’s legal representatives. The IDB was ordered to pay the Applicant the hardship allowance she would have been entitled to had she not been removed from Haiti. Other remedies were rejected, such as reinstatement, reputational damages, and her request not to have any references to the case in her personnel file. Two of the Tribunal judges indicated they would have awarded additional compensatory damages. In Case No. 73, the Tribunal awarded the Applicant \$300,000. That award is significantly more than damages observed at the World Bank – discussed later in this report. The Tribunal held the Applicant was entitled to compensation even though the treatment she received did not amount to retaliation in the “classic sense” (i.e. punishment). Instead, the Tribunal found that

⁷ However, the judgment is either unavailable online or the parties have settled/withdrawn their claims in twenty of the cases. Therefore, it is unknown whether any of these twenty cases contained a whistleblowing element. The relevant cases are: 95, 94, 93, 92, 90, 89, 87, 86, 85, 84, 81, 79, 78, 76, 75, 68, 64, 62, 61, 53

IDB's failure to ensure the Applicant would find equal work within IDB was an "equivalent wrong."

IDB cases concerning whistleblowing:

Mariela Antiga Bovio v Inter-American Development Bank (IDB), 2014, Case No. 77 (19 December 2014) When Ms. Bovio, Finance Specialist in Haiti Country Office, disclosed financial and contracting irregularities regarding Bank funds in Haiti including monthly payments to ghost companies and consultants, her managers attacked her character, transferred her off the island, changed her duties, and caused her to lose benefits. In a split judgment, she was awarded hardship allowance she would have received had she remained in Haiti until the date of expiration of her original contract, and all other claims for compensation were rejected.

Ada Piazzè v Inter-American Development Bank (IDB), 2011, Case No. 73 (21 July 2011) Piazzè, Subordinate to General Coordinator of the Inter-American Initiative of Ethics and Social Capital, disclosed ethical violations committed by General Coordinator of Initiative. Piazzè was awarded compensation of \$300,000 even though IDB did not engage in reprisals in the "classic sense", i.e. punishment; however, IDB's failure to provide AP with equal work was an "equivalent wrong".

Also worth noting, the IDB Group's Sanctions Committee has sanctioned over 1,000 firms and individuals since 2007 for violations of their anti-corruption policies. These findings were made through an administrative process. This may relate in some way to whistleblowing disclosures brought to the IDB and one could infer that there were significantly more whistleblower cases than the two made publicly available on their website.

Islamic Development Bank

Overview

The Islamic Development Bank (IsDB)'s whistleblower policy only covers disclosures related to corrupt and fraudulent practices (I[s]DB Group Whistleblower and Witness Protection Policy December 2011G, section 1). Similar to the “reasonable belief” standard the IsDB has a “honest belief” standard (I[s]DB Group Whistleblower and Witness Protection Policy December 2011G, section 3.1). The policy is not as inclusive as the other banks in the sense that it does not provide retaliation protection for those perceived as whistleblowers, or those about to make a disclosure. It is inclusive insofar as it does cover external parties and staff, consultants, contractors, government officials, executive agency officials, and implementations units (I[s]DB Group Whistleblower and Witness Protection Policy December 2011G, section 3.1). The policy protects direct or indirect, and any form of detrimental action by management, as well as threatened, attempted, and recommended actions (I[s]DB Group Whistleblower and Witness Protection Policy December 2011G, section 3.3 and 4). A concern with the existing policy is that the definition of a “detrimental action” under the policy remains unclear. The examples of retaliation included are wrongful termination, harassment, discriminatory treatment, assignment of work outside the corresponding job description, inappropriate performance appraisals or salary adjustments, or withholding of entitlements. Interestingly, the IsDB excludes unsatisfactory probation reports, performance evaluations, discriminatory work assignments, equal employment opportunities, sexual harassment or any other personal grievance (I[s]DB Group Whistleblower and Witness Protection Policy December 2011G, section 4).

As with the Inter-American Development Bank, there is an ambiguous reference to a statute of limitations in the IsDB's policy whereby the policy states reports of whistleblower retaliation “should be made promptly,” leaving would-be whistleblowers without a clear idea of when a claim could be precluded (I[s]DB Group Whistleblower and Witness Protection Policy December 2011G, section 7.5). Also of concern is the IsDB's vague qualification that protection of non-employees is “discretion of the I[s]DB group” (section 6.6) which could be interpreted by a tribunal as an out clause.

Notably, the IsDB's policy provides for interim relief insofar as it states “reasonable steps” should be taken to “prevent retaliation or stop a detrimental effect” (sections 6 & 6.3).

The IsDB's whistleblower policy, like the Inter-American Development Bank's policy, does not provide any stipulation for credible corrective action process for the whistleblower to review and comment on the draft report resolving the alleged misconduct and assessing whether there has been a good faith resolution. Also, the

final report is not made a matter of public record on the bank’s website. Although the policy does not provide any review process for tracking how many whistleblowers use their rights, and does not provide a process for making changes based on lessons learned in their policy, the website says: “If a sanction is imposed on a Party, information concerning the identity and decisions of the [Integrity Oversight Committee] and [Integrity Review Committee] regarding a Party and the sanctions imposed *shall be publicly disclosed* [emphasis added]. The Group Integrity Office (GIO) will publish said information on the IsDB Group website.”⁸ Alarmingly, the IsDB GIO has not complied with this requirement.

Evaluation

The IsDB has refused to answer all requests for access to information over the last two months. Furthermore, no information regarding the resolution of whistleblower claims is made publicly available on their website as mentioned above. The total lack of transparency and accountability is concerning. This report recommends that the IDB take immediate steps, after removing confidential information and protecting identifying information, to publish information on their website and to report regularly on how their anti-corruption program is performing.

The Group Integrity Office (GIO), which does not publish its findings, completes investigations and submits them to the Integrity and Oversight Committee (IOC). The IOC then determines whether or not to impose a sanction on a party for corrupt and fraudulent practices. Those findings are also not published anywhere. The IsDB Group’s website states that it may decide that another international financial institution or legal regulatory body’s determination violates ethical standards, rules, or laws, and may debar a party concurrent with the institution or regulatory body. Those findings are not published anywhere. The Integrity Review Committee (IRC) serves as the IsDB’s appeal board. When the IRC reaches a final decision, it submits it to the Executive Directors representing the borrower of the concerned country of the party for sanction.

The IsDB has gone as far as creating a relatively good whistleblower policy, one that in some cases provides more protection than other regional international banks. There are clear processes in place for handling claims, yet the efficacy of the policy remains unknown. In order to be credible, I suggest that the IsDB works towards amending their policy to ensure that the bank is regularly checking its effectiveness and making updates to it when necessary.

⁸ <https://www.isdb.org/who-we-are/integrity/idb-group-sanctions-system>

World Bank

Overview

In 2008, the World Bank (WB) adopted what is now “Staff Rule 8.02: Protections and Procedures for Reporting Misconduct (Whistleblowing).”⁹ The WB protects freedom of expression rights with no loopholes (Staff Rule 8.02 Section 4.02). It also protects the subject matter of free speech rights with no loopholes including illegality, gross waste, mismanagement, abuse of authority, substantial and specific danger to public health or safety and any other activity that undermines the institutional mission to its stakeholders, as well as any other information that assists in honoring those duties (8.02, section 1.03 & 2.02). All forms of retaliation are prohibited, including retaliation against someone who reported, was about to report, or who is believed to have engaged in protected activity (8.02 section 2.04). Unlike the other banks, the WB policy contains a provision for protecting whistleblowers who refuse to violate the law (Rule 8.02 Section 2.07). It also gives whistleblowers more favorable availability of external review, affordable or more expeditious options such as seeking alternative dispute resolution, and advice from the Ombudsman, Internal Justice Services or the WB Group Staff Association (8.02 section 2.03, 2.09, 3.01, & 3.04). Interim relief such as temporary reassignments or placement on administrative leave is available. One could infer that the language indicating the interim protections as necessary to “safeguard the interests” of such staff member would provide physical protection for whistleblowers who risk their physical security in reporting misconduct (8.02 section 2.05).

Like the Islamic and Inter-American Development Banks, the World Bank has a vague statute of limitations. Their policy states staff members should report misconduct “as soon as possible” (8.02 section 2.01c). As with the other banks, the WB failed to provide in its policy a stipulation for an annual report or other review process to track how many whistleblowers use their rights and a process for making changes based on lessons learned. Although having a formal review process to track the policy would elevate the effectiveness of this policy, it is worth noting that the WB Administrative Tribunal provided the greatest amount of transparency compared to the other banks I assessed for this report.

Evaluation

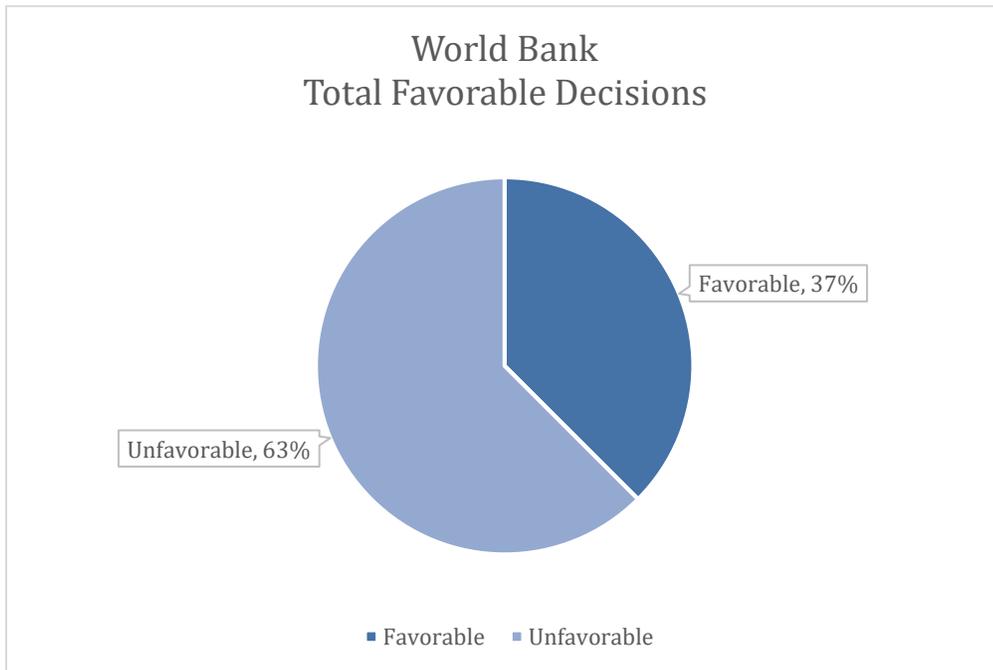
Perhaps most significantly, this overview shows how few cases with a whistleblowing element have been heard by the Administrative Tribunal in recent years. Of 114 judgments handed down in the years 2014-2018, eight involved whistleblowing (7% of cases).

However, the Tribunal found in favor of the Applicants and awarded numerous forms of relief in three, or 37%, of the whistleblowing cases. In Decision No. 550, the Tribunal ordered the Bank to rescind its decision to impose disciplinary sanctions; remove all references to “misconduct” from his personnel files; provide full back

⁹ Staff Rule 8.02 was issued on March 30, 2018.

payment of the 5% salary reduction; and pay three months' salary as compensation. Decision No. 567 provided more simplified relief, the Tribunal ordered the Bank to pay the Applicant \$25,000 as well as \$22,000 payment for the Applicant's legal fees and costs. In Decision No. 578, the Bank was ordered to pay the Applicant 180 days' compensation net of taxes at her last STC rate and \$30,000 for the Bank's failure to properly respond to the Tribunal's order for documentation.

Overall, relief for whistleblowers was consistently modest. I recommend assessing the effectiveness of these remedies in making the whistleblowers whole and the effect on deterring retaliation. Decision No. 550 from year 2016 referenced a 2015 survey that found only 41% of over 10,000 Bank Group staff surveyed felt that they could report misconduct without fear of reprisal.



For analysis of WB cases concerning whistleblowing, see the appendix.

Conclusion

After assessing the banks, it is clear that there are two differing but similar problems. One is that banks whose policies provide a formal review process for tracking the use of the policy and making changes based on lessons learned are not following those provisions. The second is that the banks who do not have any provision for a review process are failing to do so in some respects. Another common weakness in all of the policies is that no provisions exist for essential support services to implement the policies, such as whistleblowers' rights trainings for employees, employers, judges, or legal assistance funds. The weaknesses in policies and practices may be the reason that not enough data is available for a complete evaluation of the resolution of whistleblower cases. It is clear to me that the critical next steps would be for whistleblower accountability groups to put pressure on the banks to make more information publicly available for the public to engage in proper monitoring.

Appendix

Summary of Allegations, IACD Complaints, 2012

Summary of Allegations	IACD's Findings	Results
External Parties		
Allegations of fraud and corruption due to political interference with a Bank Group Financed project.	IACD investigations established that the project funds had not been misappropriated, although top management of the company managing the Bank project was politically associated with members of the ruling political party	The Bank enhanced its oversight role to ensure the goals of the project were achieved effectively and to continue ring-fencing Bank funds.
Allegations of a fraudulently recruited consultant who also misrepresented own CV with connivance of a senior Bank staff (Individual X)	IACD's investigations established that Individual X who was a senior Bank staff used his position at the Bank to unduly recruit consultants, Firm A and Firm B, to perform highly specialized functions. The Bank Group's Presidential Directive on the procedures for the procurement and use of consulting services, was also breached through collusion between individual X and recruited firms in order to inflate rates. The two firms misrepresented their resumes, forged documents and colluded with the Bank staff to make, alter, and amend Bank contracts.	The staff member was dismissed and the Bank Group discontinued the contractual relationship with Firms A and B and imposed sanctions.
Bank Staff		

<p>A staff member with one of the Bank Group's field offices was accused of embezzling Bank funds meant for office operations.</p>	<p>IACD's investigations established that the subject had embezzled the funds given to him by another field office staff who had consistently deposited sums after official missions. There were no receipts issued. The subject had also forged signatures of two acting Resident Representatives to enable withdrawal of large amounts of foreign currency from the Bank Group's own local bank foreign exchange account. Upon withdrawal, the subject would subsequently exchange the amounts in the unregulated ("black") market and deposit the proceeds in another of the Bank's local currency denominated account, and keep the margin. IACD found that inadequacies in book keeping at the field office heightened the risk for such fraudulent activity.</p>	<p>IACD submitted a report to Bank Group's President leading to the dismissal of the staff without benefits. One of the acting Resident Representative's was recalled. Internal controls at the office were improved with the segregation of the functions of finance and administration. Improvements were made to Bank's induction program for Resident Representatives by incorporating aspects of financial oversight.</p>
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<p>Allegations that project staff embezzled project funds by incurring ineligible expenses</p>	<p>IACD's investigations revealed that during a three year period, a Project Coordinator' colluded with the Project Accountant to defraud the project of vast amounts of funds through the following illegal dealings:</p> <ul style="list-style-type: none"> • The officers borrowed large amounts of funds from unknown sources on behalf of the project without Bank authority under the pretext that the sum would be used for project expenses and that it would be paid back when the Bank disbursed funds to the project. • The officers were involved in suspected money laundering malpractices. • The officers defrauded project funds by making double payments to a supplier and thereafter connived with the supplier and shared the overpayment. • In an attempted theft, the officers made huge cash withdraws of project funds without supporting documents. No explanation was furnished to the Bank as the reasons for the illegal transactions and the need for such volumes of cash transfers through the project accounts. 	<p>With IACD's support, the Bank referred the matter to the local law enforcement authorities. Both the Project Coordinator and Project Accountant were charged with criminal offences.</p>
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World Bank cases concerning whistleblowing

Citation: 586 ER v. IBRD (Preliminary Objection), Decision No. 586 [2018]
Whistleblowing: Yes
Favorable Decision: No
Details: The Applicant challenged the Office of Ethics and Business Conduct’s (EBC) decision to close its investigation into the budgeting matters raised by the Applicant. The Applicant also sought classification as a whistleblower under Staff Rule 8.02. The Bank filed a preliminary objection, arguing that the Applicant’s claims related to budgeting practices, which do not form part of the Applicant’s contract of employment or terms of appointment and therefore fail to fall within the jurisdiction of the Tribunal. The Applicant brought what he perceived to be budget-related anomalies to the attention of EBC. According to the Applicant, EBC indicated the Bank’s Internal Audit Department (IAD) as the appropriate venue to report budget-related anomalies. IAD performed an audit and issued a report finding neither a breach of Bank policies nor “any attempt to circumvent institutional governance arrangements.” The report did note some documentation lapses and recommended improvements to provide for a more robust documentation trail in the tracking of budget decisions. The Vice President of the Applicant’s unit formed a working group to monitor the practices of the unit and address any of the Applicant’s remaining concerns. This working group became part of the Applicant’s work program. The Vice President of the Applicant’s unit awarded “Bravo Points” to the Applicant for his “appreciation for [the Applicant’s] work on the IAD audit,” stating it was very “professionally done.”
Decision: The Tribunal noted that the Applicant had not identified any adverse consequences actually suffered by him. It further noted that the Applicant’s concerns regarding budget anomalies were addressed through an IAD audit, and new practices were implemented to improve the budget record process as a result of the audit conducted at the Applicant’s insistence, and that these facts do not relate to an allegation of non-observance of the Applicant’s contract of employment or terms of appointment. Application dismissed.

Citation: 580 EO v. IFC, Decision No. 580 [2018]
Whistleblowing: Yes
Favorable Decision: No

Details: The Applicant challenged: (i) his Fiscal Year 2016 (FY2016) Annual Review, (ii) his FY2016 performance rating of 2, (iii) the Opportunity to Improve plan (OTI), (iv) the recommended termination of his appointment in accordance with Staff Rule 7.01, Section 11, and (v) the nonextension of his term appointment. The Applicant states that he spoke out about problems and concerns in his unit and volunteered to be one of the staff members aggregating anonymous comments and criticisms from other staff, some of which were highly critical of his managers' leadership. He submits that "Ms. [A's] and Mr. [B's] apparent vendetta against [him] followed directly on the heels of his vocal involvement in the [...] restructuring process."

Decision: In this case, the record shows that the Applicant was one of several staff members who had volunteered to aggregate anonymous comments and criticisms from other staff about the management of the unit and had participated in an engagement survey. The IFC argues that there is no evidence that the survey was sent to Ms. A and that the comments in the survey were 38 anonymous. The Tribunal finds that the Applicant has not made a prima facie case that he was the subject of retaliation.

Citation: 578 EM v. IBRD, Decision No. 578 [2018]

Whistleblowing: Yes

Favorable Decision: Yes

Details: The Applicant alleged that the Bank breached its promise to resolve her "permatemp" situation, abused its discretion in failing to renew her short-term consultant (STC) contract, failed to communicate with her clearly regarding the removal of her work program, and failed to treat her fairly as required by the Principles of Staff Employment. The Applicant also alleged retaliation against the Bank for her use of the Bank's Conflict Resolution System.

Decision: Although there was insufficient evidence on the record to substantiate an allegation of retaliation for use of the conflict resolution system, the Tribunal held that the Bank failed to present a reasonable and observable basis for its decisions.

Remedy: The Bank was ordered to pay the Applicant 180 days' compensation net of taxes at her last STC rate and \$30,000 for the Bank's failure to properly respond to the Tribunal's order for documentation. The Tribunal found that the Bank did not meet its obligation to respond properly to the Tribunal's order for the production of relevant documents in the Bank's exclusive possession.

Citation: 572 EJ v. IBRD, Decision No. 572 [2017]

Whistleblowing: Yes

Favorable Decision: No

Details: The Applicant challenged the following decisions before the Tribunal: (i) his non-selection for the position of ICT (Global Informatics and Communication Technologies Department) Practice Manager in the Transport and ICT Global Practice (GTIDR); (ii) his 2015 Overall Performance Evaluation (OPE); and (iii) his 2015 performance rating. Regarding his non-selection, the Applicant claimed that he was discriminated against based on his gender and excluded from the shortlist even though he was eminently qualified for it. He also claimed retaliatory motives behind his non-selection and questioned the objectivity, transparency and rigor of the selection process. The Applicant claims that the Bank retaliated against him for having reported potential misconduct to the Ombudsman and EBC regarding: i) abusive behavior by his supervisor; and ii) a possible conflict of interest associated with Bank projects and the appointment of a GG-level Specialist. The Applicant contends that all his reporting activities occurred prior to the selection process for the ICT Practice Manager position. The Applicant first reported his supervisor's abusive behavior to the GTIDR Director in June 2014 and the possible conflict of interest to the Ombudsman and EBC in late 2014. The Applicant contends that the Senior Director knew of the Applicant's protected activities and retaliated against the Applicant by excluding him from the selection process.

Decision: Concerning the retaliatory motives alleged by the Applicant, the Tribunal found that the Applicant did not substantiate his claim that any or all the Shortlisting Committee (SLC) members knew of his protected activities at the time the shortlisting or the reconsideration of the Applicant's shortlisting took place. The Tribunal concluded that the Applicant did not establish facts sufficient to amount to a prima facie case of retaliation. Finally, the Tribunal concluded that the Applicant's performance rating of 3 was supported by the record, had an observable and reasonable basis and was not tainted by retaliation. Application dismissed.

Citation: 567 EG v. IBRD, Decision No. 567 [2017]

Whistleblowing: Yes

Favorable Decision: Yes

Details: The Applicant, a Short-Term Consultant (STC), challenged: (i) the Bank's breach of promise to grant her a one-year Extended-Term Consultant (ETC) contract; (ii) the non-renewal of the Applicant's STC contract for Fiscal Year (FY) 2016; and (iii) the Bank's refusal to provide her with a letter of reference. With regard to the non-renewal of the Applicant's STC contract, the Applicant claimed that the non-renewal of her STC contract was arbitrary, unfair, in bad faith, and improperly motivated by retaliation. The Applicant disputed the Bank's assertion that the non-renewal was justified by business needs and legitimate budgetary constraints in Operations Policy and Country Services Vice Presidency (OPCS) and asserted that the non-renewal was in retaliation for having spoken with the OPCS Vice President and the Ombudsman.

Decision: Contrary to the Applicant’s assertions, the Tribunal held that the reasons advanced by the Bank not to renew the Applicant’s STC contract for FY16 were supported by the record. Finally, the Applicant’s last claim was that her supervisor’s refusal to provide her with a letter of reference at the end of her STC contract despite having agreed to do so constituted retaliation. The Tribunal observed that the Applicant’s supervisor promised to issue a letter of reference but when she learned that the Applicant had recourse to the Internal Justice System, she conditioned so doing on the conclusion of the Peer Review Services proceedings initiated by the Applicant. The letter was in fact provided a year and a half later. **The Tribunal concluded that this significant delay, and the reason for it, could be construed as a measure of retaliation.**

Remedy: The Bank shall pay the Applicant compensation in the amount of \$25,000.00. The Bank was ordered to contribute \$22,000.00 to the Applicant’s legal fees and costs. **All other claims were dismissed.**

Citation: 566 DO (No. 2) v. IBRD, Decision No. 566 [2017]

Whistleblowing: Yes

Favorable Decision: No

Details: The Applicant challenged the decision to initiate an investigation into his recording of a conversation with the Vice President of his unit, without the latter’s knowledge or consent. According to the Applicant, the investigation was initiated in retaliation for the surreptitious recording he made. The Tribunal recalled the definition of retaliation contained in the Staff Rules and EBC’s brochure entitled “Retaliation: What Staff and Managers Need to Know.” The Tribunal held that the secret recording of another staff member is not a protected activity under the Staff Rules, and evidence that the Applicant’s former Vice President reported the surreptitious recording as suspected misconduct on its own is insufficient to characterize the subsequent investigation as retaliatory. The protected activity which the Applicant engaged in was the use of PRS, part of the Bank’s conflict resolution system. Yet, the Applicant did not draw a nexus between his use of PRS and the Vice President’s complaint against him.

Decision: The Tribunal found that the Applicant had not made a prima facie case of retaliation. The Tribunal nevertheless observed that there may be circumstances justifying such recording, for instance when it is done to prove a misconduct that would not have been revealed otherwise. The responsibility is on the Bank to provide clear policies and guidelines to staff members to avoid inconsistencies in the treatment of this matter. **Decision:** Applicant’s claims were dismissed. The Bank was ordered to pay \$12,500.42 as a contribution to the Applicant’s legal fees and costs.

Citation: 556 DW v. IBRD, Decision No. 556 [2017]

Whistleblowing: Yes

Favorable Decision: No

Details: The Applicant challenged the non-renewal of her contract and the Bank's denial for expiration payment and (i) the Bank failed to investigate the Sector Manager's misconduct; (ii) HR failed to take action with respect to the tension between the Applicant and the Sector Manager; (iii) gender-based unfair treatment that resulted in a hostile work environment; and (iv) ethnic and gender discrimination that purportedly factored into the Bank's non-renewal decision. The record shows that the Applicant reported the incident of 29 January 2014 with the Sector Manager to the Ombuds Services Office and that the Sector Manager was aware of this fact. The Applicant contended that the decision of non-renewal was based on improper and retaliatory motives and did not follow appropriate procedures.

Decision: The Tribunal found that appropriate procedures were duly followed in making the non-renewal decision. The Tribunal concluded that the non-renewal decision had a reasonable and observable basis, was not arbitrary, and that managerial discretion was not abused.

Citation: 550 DR and DS v. IBRD, Decision No. 550 [2016]

Whistleblowing: Yes

Favorable Decision: Yes

Details: The Applicants challenged the decision of the Vice President, Human Resources (HRVP) imposing disciplinary sanctions for disclosing to the Argentine press non-public information about former World Bank Group Executive Director Guido Forcieri's travel plans obtained from the World Bank Group's travel management system. The Applicants claimed protection under the World Bank's Whistleblower Policy contained in Staff Rule 8.02. The Applicants asserted that they reasonably suspected Mr. Forcieri of committing misconduct and reasonably believed that immediately disclosing Mr. Forcieri's travel plans to La Nación was necessary to avoid violations of Argentine law.

Decision: The Tribunal was satisfied that external reporting was necessary to prevent the obstruction of justice, which is a violation of Argentine law. Finally, the Tribunal assessed whether the Applicants met the requirements in Staff Rule 8.02, paragraph 4.02(b). The Applicants contended that they had grounds to believe that it was not possible to report the suspected misconduct pursuant to any of the established internal mechanisms because all such avenues would subject them to retaliation within the institution. The Tribunal took note of: a) the 2015 Staff Engagement Survey, which found **that only 41% of over 10,000 Bank Group staff surveyed felt that they could report misconduct without fear of reprisal**; b) the Applicants own state of mind; and c) the fact that Mr. Forcieri immediately sought to discover the identities of those who released his travel plans. The Tribunal observed that Staff Rule 8.02, paragraph 2.02 is not sufficiently clear as to how staff members can anonymously report misconduct involving Board Officials to the Ethics Committee of the Board. Furthermore, while the Bank Group has strengthened internal mechanisms for protecting those who report suspected misconduct committed by staff members and external parties, it is debatable whether there is sufficient protection for those who report suspected misconduct by those who govern the institution. The effectiveness of the measures available to investigate alleged misconduct by an Executive

Director is also limited. In finding that the Applicants' disclosure of Mr. Forcieri's travel itinerary was a protected activity under the Bank's Whistleblower Policy, the Tribunal emphasized that this finding was based on the peculiar circumstances of this case and the apparent inadequacies of the internal mechanisms to address suspected misconduct by an Executive Director. The Bank Group was encouraged to strengthen its internal mechanisms to adequately investigate these types of allegations of misconduct and protect whistleblowers reporting suspected misconduct.

Remedy: The decision imposing disciplinary sanctions was rescinded. The IFC shall remove from the Applicants' personnel files all records relating to the finding of misconduct. The IFC shall pay the Applicants full back pay for the five percent reduction in their salaries, and three months' net salary as compensation for the imposition of disciplinary measures.