

Racial Discrimination at the World Bank:

**A review of the treatment of black employees
in recruitment, retention and justice decisions**

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RACIAL DISCRIMINATION AT THE WORLD BANK: A REVIEW OF THE TREATMENT OF BLACK EMPLOYEES IN RECRUITMENT, RETENTION AND JUSTICE DECISIONS

EXECUTIVE SUMMARY

Thirty years ago, *The Washington Post* published an article by William Raspberry about the predicament of black employees at the World Bank.¹ The story reported that black employees were underrepresented in the higher levels of the Bank. Moreover, black staff members believed that decisions regarding promotion were often discriminatory, according to Raspberry. Since that time, the Bank has conducted numerous studies that confirmed the incidence of race-based discrimination within the institution. Most recently, interviews conducted by the Government Accountability Project (GAP) with well-informed sources revealed that, in 2008, only four black Americans held professional positions among a headquarters staff of over 3,500 professionals (more than 1,000 of whom are US nationals). This figure represents a significant proportional decline even from the abysmal levels reported by Raspberry thirty years ago.

Quantitative data compiled for an internal review in 2003 provides corroborating contextual statistics. According to that study, black World Bank employees were 36.3% less likely to hold a managerial grade relative to equally qualified employees who were not black. In addition, over the course of the past year, GAP received multiple disclosures concerning the World Bank's treatment of black employees, especially black Americans. In response to these concerns, GAP conducted an investigation into the Bank's approach to internal racial discrimination. The resulting report includes in its scope two relevant sources of information about the issue: 1) the Bank's studies of diversity and bias, and 2) the jurisprudence of the World Bank Administrative Tribunal (WBAT) in discrimination cases.

Overall, GAP's review found that the World Bank has adopted high-visibility measures to raise awareness about the issue. The Bank has convened task forces, launched a Racial Equality program, created an Office of Diversity Programs, announced a zero tolerance policy for racial discrimination, approved diversity targets, and adopted an anti-harassment policy. However, procedures to enforce a prohibition of racial discrimination have yet to be implemented, and meaningful measures to improve retention of black staff members are lacking. Although the Bank has set racial diversity targets in each department, it fails to scrutinize and improve the recruitment and promotion decisions of departments that do not meet them. There is an anti-discrimination policy at the Bank, but the rules of the Administrative Tribunal do not permit the World Bank Staff Association to file complaints contesting policies that appear to have a racially discriminatory impact.

¹ In this paper, we will use the term 'black' to refer to World Bank employees of black African or American heritage and 'white' to refer to Caucasians of any regional origin. The Bank employs many white and black Africans and Americans; using terms that refer only to regional or national origin obscures the issue of racial discrimination.

And the World Bank has a “zero tolerance” policy for racial discrimination, but maintains an onerous standard of proof in the formal appeals system for those who claim to have suffered from biased decision-making.

Because the World Bank is not subject to national laws, discriminatory conduct by Bank personnel can only be challenged within the institution’s justice system. However, a 1999 United States General Accounting Office (GAO) report found that the Bank’s internal grievance process was ineffective at addressing bias complaints. The report made a series of recommendations for improving the system’s ability to address discrimination. While the US GAO volunteered suggestions for addressing the problem, it deferred to the Bank’s own Review Committee for the formulation of practical recommendations and the implementation of corrective measures. Ten years later, it appears that the most important recommendation of the Bank’s Review Committee regarding discrimination has not been adopted.

As part of our study, GAP reviewed the Bank’s Tribunal decisions since 1996 in racial discrimination disputes. Our review found that the Tribunal failed to find discrimination in any of the 21 racial discrimination cases that it reviewed over the past 12 years. Given the fact that a series of studies have found systemic discrimination within the institution, and that the Bank’s own data reveal the racial differentials cited earlier, this record at the Tribunal is disturbing. Moreover, although the number of cases reviewed was not large enough to draw general conclusions, it appears that staff members and job applicants of black African heritage who allege racial discrimination are unlikely to receive the compensation or vindication they seek before the Tribunal. In contrast, complainants of other races who allege racial discrimination, retaliators or Applicants claiming reverse discrimination have better prospects for compensation awards.

GAP has also concluded that the appeals process to which the victims of discrimination within the Bank must submit imposes a significant burden of proof, which departs from the standard that has evolved in the U.S. and Europe. At the Tribunal, the burden of proof rests solely on the complainant throughout the proceeding. In contrast to many national judicial proceedings, the Bank itself is never required to present evidence in support of its position and substantiate that it had a legitimate and non-discriminatory reason for the contested action taken. Even in cases where the Bank does present a justification, the Tribunal does not afford a complainant the opportunity to refute it and demonstrate that it is pretextual. As a result, it is difficult for a complainant alleging racial discrimination to prevail. If the World Bank is serious about prohibiting racial discrimination, it must address deficits in its Conflict Resolution System.²

GAP’s study, which unfortunately is constrained by a lack of access to many internal documents, suggests that the Bank should:

² Currently the World Bank is in the process of adopting reforms of the internal Conflict Resolution System. A recent draft of the proposed reforms, however, does not include provisions that might reasonably be expected to address the problems raised in this paper effectively.

1. Commission an independent review of the Administrative Tribunal's jurisprudence regarding racial discrimination cases. This study should examine:
 - a. The Tribunal's past decisions regarding allegations of discrimination brought by black employees;
 - b. The effect that modern standards of proof in discrimination cases would have had on the resolution of these disputes;
 - c. The appropriate sanctions for discriminatory conduct; and
 - d. Proactive measures that could be implemented at the Tribunal to reverse policies and procedures that do not effectively constrain racial bias in recruitment, promotion and retention.
2. Adopt the recommendations that the Bank's Grievance Process Review Committee made in 1998 for bias and harassment cases. These include:
 - a. Allowing the Applicant in a discrimination case to bypass informal mechanisms and go directly to the Appeals Committee if they so choose; and
 - b. Amending the Appeals Committee rules so that an employee can bring a discrimination case in which no specific adverse management decision has been cited.
3. Amend the rules of the Appeals Committee and the Administrative Tribunal to expressly allow the Staff Association to bring discrimination complainants on behalf of a group that challenges discriminatory policies or a hostile work environment. A specific adverse management decision should not be required in order to file these complaints.
4. Amend the rules of the Appeals Committee and the Tribunal so that a shifting burden of proof is applied in discrimination complaints.
5. Track the recruitment and retention in professional grades of all black employees, especially black Americans, adding specific focus and emphasis on the process of promotion.
6. Establish an intensive recruitment effort at Howard University and other Historically Black Colleges and Universities in the United States.
7. Comply with the 1998 Team for Racial Equality's recommendation to review "procedures for determining grades and salary at the entry, time in grade and grade at retirement for black staff compared with staff members of other races, leading to recommendations for consistent and fair treatment of staff in comparable situations."

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“[R]ace-based discrimination is present in our institution, and the problem of discrimination, where it exists, is evidenced in management’s hiring and promotion decisions, attitudes and behaviors. The discrimination, especially against black African staff and other staff of African origin, translates into a denial of opportunity and inequitable treatment on the basis of the color of their skin.

This problem is serious indeed. It lowers the effectiveness and productivity of Bank Group staff. It undermines staff morale and performance. It seriously impairs our credibility and image as a leading global institution. It prevents us from tapping fully the best of all the global resources available to us, undermining our competitiveness. Furthermore, any form of racial or cultural discrimination within the Bank’s staff is inconsistent with our proclaimed mandate to play a leading role in fostering social and economic development in the global society, particularly in partnership with poorer nations.”

Team for Racial Equality
The World Bank
1998

I. Introduction

As the premier international development institution, the World Bank lends more than \$20 billion each year to countries in Africa, Asia, Europe, Latin America and the Caribbean. Effective lending and development assistance, especially on such a scale, depends on an accurate understanding of the challenges faced by people in different cultures, as program and policy solutions must be tailored to present circumstances and existing possibilities. As a result, the Bank strives for a diverse work force. Its 2007 Annual Report reads, “Staff diversity is one of the Bank's greatest strengths. It enriches the Bank's talent base, reflects its global membership, and brings a wider range of perspectives to bear on the organization's poverty reduction work.”ⁱ

This commitment is reflected in the diverse nationalities of Bank employees, who represent 166 countries. Sixty-two percent of the institution's 8,600 employees are nationals of poorer (Part II) countries and 17 percent are nationals of Sub-Saharan African and Caribbean countries. Sub-Saharan African and Caribbean nationals represent 11 percent of management and senior technical positions and hold six of 28 officer positions at the Bank.ⁱⁱ

The Bank claims that this commitment to diversity goes beyond hiring practices. According to its website, “We do not just recognize our diversity; through inclusion, we mobilize it. We are working to create an inclusive and respectful work environment where we demonstrate that we fully value the contributions of all staff.”ⁱⁱⁱ

Given this expressed commitment to diversity and a ‘zero tolerance’ policy for racial discrimination, it is surprising to find that the World Bank has repeatedly been accused of racial discrimination in recruitment, promotion and retention over the years. Thirty years ago, William Raspberry reported in a *Washington Post* article that few blacks were employed at the Bank and that little opportunity for upward mobility existed for those who did work there. The article said that the Bank employed “60-odd black African professionals on a professional staff of more than 2,400; three black Americans out of 619 American professionals employed at the bank; zero black division chiefs out of 160 scattered throughout the bank.” The figures prompted Randall Robinson, the former executive director of Transafrica, to remark in that article:

The consequence of this is that Africans in particular, and blacks in general, have no say in the World Bank management policies affecting their countries. One is led inescapably to the conclusion that because the World Bank has avoided thus far the close scrutiny with which our domestic institutions are evaluated, the bank has exempted itself from any meaningful compliance with generally accepted fair employment standards.^{iv}

In the intervening years, the Bank has taken steps to address this problem. It has conducted diversity studies, created an Office of Diversity Programs and set racial diversity targets and agreements for each unit.^v Despite these advances, however, there continues to be a breach between the Bank's rhetoric on diversity and its practices.

Over the past nine months, the Government Accountability Project (GAP) has obtained information suggesting that the World Bank has failed to recruit and retain black-Americans and black Africans effectively in recent years. According to two sources, black Americans are particularly underrepresented at the Bank: in 2008 anecdotal information revealed that four black Americans held professional positions among a staff of over 3,500 professionals, a proportional decline in representation even from the abysmal levels reported by Raspberry thirty years ago. Moreover, Bank data show that professional black staff members working on Bank operations are disproportionately confined to positions in the Africa Region. Because the Bank does not regularly collect data on racial identity, to a large extent such patterns are invisible. The Bank collects demographic information by passport, but this categorization conceals the fact that, in many cases, Africans holding high ranking positions at the World Bank are white, and U.S. nationals holding low-ranking positions at the Bank are black.

In the past few years, the Bank's recruitment and promotion practices have largely escaped public notice. Because the organization is shielded from U.S. affirmative action and equal opportunity statutes, as well as from the requirements of similar legislation designed to promote inclusion in the countries where it operates, the Bank is subjected to little public scrutiny and rarely held to account on these issues.

Like other international institutions that are not subject to national laws, the World Bank responds to an internal judicial system. The ability of the system to address racial inequities and grievances adequately, however, has been questioned. Most notably, a 1999 United States General Accounting Office (GAO)³ report found that the Bank's internal grievance process was ineffective at addressing bias complaints.^{vi} Similarly, a 2003 Bank commissioned report found that the organization was not doing enough to repair policies, procedures and systems that have failed to constrain racial bias. Although the Bank claims that its justice system is now better equipped to deal with discrimination cases,^{vii} it appears that few meaningful measures have been implemented and many employees remain concerned about the ability of the Bank's grievance system to review fairly cases involving racial bias.

As a consequence, GAP has prepared a review of the steps taken by the World Bank to address problems of discrimination, including at the Administrative Tribunal. This report reviews actions taken in response to earlier studies that identified discrimination as a problem, as well as Tribunal decisions in racial discrimination disputes. Our purpose is to identify the extent to which the Bank is addressing allegations of racial bias and harassment.

This report is not meant to be an exhaustive study, given GAP's limited access to internal Bank documents and information. Rather, the study is meant to generate a broader, Bank-wide discussion of inequities based on race and nationality. It is also meant to highlight the need for reform in the formal internal judicial processes if the Bank is going to address its own systemic racial biases adequately.

³ This office has been renamed the U.S. Government Accountability Office.

II. Previous Studies on Racial Diversity at the Bank

A. Initial Studies

Before examining the current state of racial diversity at the Bank, it is useful to consider the history of this issue and how the Bank has responded to past critiques. Prior to 1996, the Bank conducted several studies on racial diversity and discrimination.⁴ A 1979 study found that Africans in the Bank “strongly perceive that of all the minority groups in the Bank, they are the ‘most discriminated against.’”^{viii} Similarly, a 1992 study by the Staff Association’s African Issues Working Group found that “Sub-Saharan African staff receive less favorable treatment than is the norm in the Bank.” The study also found that there was a low level of recruitment of Sub-Saharan Africans and that they tend to be recruited at lower grades, have more restrictive assignments and have a slower rate of promotion.^{ix}

B. Dewey Ballantine Report

In 1996 the World Bank hired the law firm Dewey Ballantine to study possible discrimination “against African staff members in hiring, compensation, career development, and promotion trends” within the Controller’s Vice Presidential Unit (CTR). This exercise was prompted by discriminatory comments made by a senior CTR manager during a meeting and reported by various attendees. Dewey-Ballantine “examine[d] documents, interview[ed] staff on a voluntary and confidential basis, and prepare[d] a final report and recommendations. In addition, DB was asked to provide separate confidential addenda directly to the VP-CTR... and to the then-Vice President of HRS, identifying particular situations in which CTR staff may have received disparate treatment.”^x

Although GAP has been unable to obtain a copy of this report, a variety of secondary sources quote it directly. One Administrative Tribunal decision states that the study “does indeed conclude that there has been a measure of systemic discrimination among classes of staff members within the Bank.”^{xi} Similarly, a 1998 Bank memo states that the study found “probable instances of favoritism in promotion decisions, a work environment that was perceived by black staff to be hostile and prejudiced, and discrepancies between the hiring and promotion of black and non-black candidates.”^{xii} According to secondary sources, the study also found that most of the discrepancies “could not be explained on the basis of objective criteria related to qualifications or performance differentials identified in available records. Rather, discrepancies were attributed by the audit team and managers to the effectiveness of ‘old-boy’ networks that resulted in ‘favoritism’ in management decisions. The resulting discrepancies extended beyond those affecting SSA (Sub-Saharan African) staff in particular to staff of African origin with black skin in general.”^{xiii}

⁴ Bank representatives would not release copies of these reports. However, GAP was able to obtain summaries of the reports’ conclusions through other channels.

Once the report was completed, a summary of the findings was given to all CTR managers. The Bank then implemented an action plan, which included ongoing sensitivity training for all employees.^{xiv}

C. The Team for Racial Equality

In 1998, a Team for Racial Equality comprised of Bank staff members sent a memo to then Bank President James Wolfensohn that detailed the results of its comprehensive review on racial equality and a proposed action plan. The study found that “black staff are painfully aware that they are denied opportunities because, behind closed doors, subtle unverifiable doubts are cast on their capacity – based not on their documented competencies and accomplishments but rather on the subjective opinions of individual managers and staff.”^{xv} The study cited startling statistics, including:

- “Out of 1,250 staff at level 25 and above, representing 20 percent of regular staff, there are currently about 43 Sub-Saharan African staff (SSA), five Caribbean blacks, and two black Americans. Thus, black staff represent about 4 percent of senior staff at level 25 and above.”
- “The figures are particularly striking for black women: Only seven black women are at grades 25 and above, representing 0.6 percent of total staff at that level. Only one black woman is above level 26.”
- “Fifty percent of black staff at level 22 and above are located in the Africa Region.”
- “One black is a member of a sector board, and no blacks are represented on the councils.”^{xvi}

According to this study, black staff were concentrated disproportionately in the secretarial grades. Whereas 32% of all employees were in these grades, 46.7% of black SSA staff and 75% of black American staff were in them.^{xvii}

The Team for Racial Equality also found that some black staff members believed their careers had been affected by discrimination, but that many were reluctant to file formal racial discrimination complaints through the existing grievance mechanisms, including the Appeals Board. The Team recommended that the Bank establish a “different mechanism for investigating and recommending dispositions for resolving specific allegations of racial discrimination and improving existing procedures.”^{xviii}

The memo included quotes from black employees whom the team had interviewed. According to these interviewees:

⁵ The International Monetary Fund (IMF) had previously created a similar, temporary outside review panel that examined the individual cases of employees and contractors who may have been subject to discrimination.

It is almost impossible for black staff to rotate. The excuse ‘we do not know how the client will react to a black, and we can’t take the risk’ is the justification that I hear frequently. But I doubt very much that this is what the client thinks; rather this is the preconception of the individual manager, and the client is a convenient excuse...

It seems that getting to level 24 is O.K. for a black person, but unless you make it to level 25, you have no chance of becoming a manager. Getting to level 25 is when the subtle biases and agreements behind closed doors (which may not even be related to your record) come into play...

I never really felt that I had experienced racism until I got hit in the face by the glass ceiling at the World Bank. When I was being recommended for promotion, my career was almost ruined by agreements made about me behind closed doors, which I was not even supposed to know about. I went through hell fighting the unfairness and trying to set things right – such a waste of energy.^{xix}

To address these problems, the Team made a series of recommendations. Some of these, such as a suggestion to appoint a senior advisor on racial equality, were subsequently implemented. Others, however, were not. For example, the Bank never acted on the recommendation that “accurate and complete databases should be developed as indispensable management tools for monitoring the status and progress of black staff.”⁶ It also appears that the Bank did not increase the number of black staff substantially through “proactive career development and staff rotation policies and programs designed to foster career growth of black staff, (c) facilitating the appointment of the existing pool of black consultants to more stable positions, and (d) enhanced opportunities for career progression of black staff at levels 11-18.” Nor does it appear that the Bank conducted the recommended review of the “procedures for determining grades and salary at the entry, time in grade and grade at retirement for black staff compared with non-black staff, leading to recommendations for consistent and fair treatment of staff in comparable situations.”^{xx}

In 1998, the Bank also launched a Racial Equality program, presumably in response to this study.⁷ As part of this effort, the Bank appointed a senior advisor on racial equality, implemented a zero tolerance policy for racial discrimination, established a Junior Professionals program for Sub-Saharan African and Caribbean staff members and created diversity agreements with the Vice-Presidents and President.^{xxi} In 2000, the Bank appointed its first black female managing director. In that year, the Bank also implemented an anti-harassment policy. In 2001 a Director of Diversity was appointed, and in 2002 a Diversity & Inclusion Advisory Group was created.^{xxii} According to the

⁶ In 2004 the director of the World Bank Group Office of Diversity Programs testified that “we don’t capture ‘black’ in our official statistics any more than we capture ‘non-black.’ So you’ve got a situation where there is a degree to which our official forms are not entirely in synch with some of our official objectives...” (The World Bank – Appeals Committee Appeal No. 1318, 251-252).

⁷ According to the Director of the Office of Diversity Programs, the World Bank is the only member institution of the UN system to have a racial equality program.

Bank's Director of Diversity Programs, however, these agreements "put diversity on [the] radar screen," but there was "no accountability for results."^{xxiii}

In 2001, the Bank also released a report entitled "Building a Positive Work Environment: Working with Respect in the World Bank Group." The paper set out the Bank's definition of discrimination:

Discrimination is the unjustifiable differentiation between individuals or groups within staff. Discrimination can be based on one or more characteristics which include – but are not limited to – race, caste, color, culture, ethnic background, religion, age, gender, disability, marital status, political views or sexual orientation. Discrimination can include:

- harassment in the form of epithets, slurs, cultural or ethnic jokes, negative stereotyping or stigmatization, innuendoes, threats and intimidation;
- denial of equal access to employment or career-development opportunities;
- decisions made on a basis other than professional qualification or merit that affect the career of a staff member, such as salary and grade setting, assignments or re-assignments, performance evaluations, merit increases, promotions, rewards or recognition;
- creating or allowing a hostile or offensive work environment which interferes with an individual's work performance or otherwise adversely affects employment or career opportunities.

These behaviors constitute discrimination whether they are expressed overtly or covertly toward an individual or group, or are contained in materials that are circulated or displayed in the workplace. The Bank Group has committed to eradicating all forms of discrimination with particular emphasis on racial discrimination.^{xxiv}

D. Enhancing Inclusion at the World Bank Group: Diagnosis & Solutions Report

In 2001 the Bank created the Office of Diversity Programs in the Department of Human Resources (HR). The Office was to provide strategic advice to senior management on building a commitment to diversity and inclusion and in mainstreaming these issues at the Bank. As part of this process, the Office commissioned a diagnostic study of the staff, which was released in 2003. The study noted that systemic barriers to inclusion remained, although some progress had been made since the comprehensive study conducted five years earlier.⁸ In an introduction to the report, the director of the office wrote:

⁸ For example, the Bank substantially increased its representation of black employees in both the GF through GG (key professional) grades and the GH through GK (managerial level) grades from 1996 through 2002.

The central message – strikingly similar to that suggested by a number of prior studies – is that, for the bearers of our diversity, inclusion at the Bank is mediated through, and compromised by, systemic barriers such as misapplied policies, stereotyping, subtle in-group bias, habits and perceptions. One consistent recommendation across this and the previous studies calls for a shift from ‘fixing’ staff to fixing the conditions of their employment.^{xxv}

The report’s authors concluded that the Bank’s traditional diversity efforts, such as attempts to increase the employment rates of underrepresented demographic groups, were not enough. They went on to quantify the salary differentials between ‘in-groups’ and ‘out-groups’ at the Bank, concluding that: “the root cause of such differences in career outcomes are anti-inclusion social and psychological processes inadequately constrained by a workplace’s organizational culture and HR management practices.”^{xxvi}

Such bias was evident in the employment profile documented by the study. The reviewers found that in 2002, of 1,317 Americans who held professional level positions at Bank headquarters, only 2.7% were black Americans and 0.5% were black employees originally from borrowing (Part II) countries.^{9 xxvii} This figure compared to an overall U.S. black population of 13%, according to U.S. Census Bureau 2002 figures,^{xxviii} and to a black population of approximately 60% in 2000 in Washington D.C., where the Bank Group headquarters is located.^{xxix} Additionally, only 7.3% of the Bank’s overall GF+ staff was black, regardless of nationality.^{xxx} The report concluded that:

Compared to equally qualified persons of any other race, being black is associated with a 3.2% lower annual salary, a 36.3% reduction in the odds of being in grade GH+ [managerial grades], and a 6.5% reduction in the odds of changing VPUs (Vice Presidential Units)... These findings are consistent in two ways with the hypothesis that the Bank Group’s barriers to inclusion are systemic. First, they show parallel inequities in employment outcomes for multiple demographic groups and multiple outcomes. Second, they show that these inequities have persisted or recurred for demographic groups for which the Bank Group has made explicit group-specific efforts to eliminate inequities.^{xxxi}

The report also examined the disproportionate employment of black staff members in the Africa VPU, and raised the possibility that they were confined to that unit despite their desire to work elsewhere in the Bank. According to the report:

Black members of the GF+ staff [professional grades] in 2002 were working in the Africa VPU at a higher rate than members of other racial groups – even for persons holding the same passport. Section B of the table demonstrates that black staff in the Africa VPU were less likely to move to another region over a 5-year period than non-blacks working in Africa or blacks working in any other region. These findings, by themselves, do not identify the causes of these differences. However, they confirm the presence of substantial differences in career paths for staff members of different races.^{xxxii}

⁹ In June 2002, 28% of the individuals holding GF+ positions were from the U.S. (Egan et. al., p. 27).

The authors concluded that one cause of this discrepancy could be “stereotypes about the interests and skills of black employees.”^{xxxiii}

The investigators also found that a significant number of Bank employees believed that Human Resources decisions often lacked transparency and were capricious. Interviewees reported that employment decisions were made almost entirely by direct supervisors and that “...[P]ower was being wielded discretionarily by individual managers largely unconstrained by mandates for consistent treatment among staff, by independent judgments by other persons, or by processes for review or appeal.”^{xxxiv} Arbitrary application of policies was particularly prevalent in salary and performance evaluations.^{xxxv}

As a document illustrating the impact of discrimination at the Bank, the ‘Enhancing Inclusion’ report is comprehensive. The report contains an appendix that examines what 16 previous Bank Group studies had found regarding race. This appendix includes the results of a 2001 study in which staff of Sub-Saharan African origin were interviewed. According to this study, black staff perceived that:

- Stereotypes and discrimination were ‘entrenched’ and affected a career as early as the recruitment process.
- The Bank ignores historically black educational institutions in the U.S. and recruits less African Americans than other blacks.
- Entry-level grades were lower for black staff members than comparable staff with equal qualifications.
- Once they are in the Bank, it is difficult for black employees to secure reassignments to different appointments, especially developmental assignments.
- Black employees were not supported by managers or HR if they tried to leave the Africa department.
- They spent more time at each grade than non-black staff.
- They were denied promotions that their performance merited.
- They were often held to an unrealistic standard on performance evaluations, given certain labels that lowered their performance reviews and exposed to demotion if they challenged an evaluation.
- Black employees sometimes left the Bank because they thought they had been discriminated against in a promotion decision.^{xxxvi}

According to black employees, the HR Department was aware that they suffered discrimination, but did little to prevent or mitigate it. On the contrary, a number of respondents informed interviewers that HR personnel had told them to leave the Bank if they did not like the way they were being treated. Because black staff members were underrepresented in middle and upper management at the Bank, few had the authority to challenge potentially discriminatory personnel actions regarding rotations, assignments and promotions. Underrepresentation at the higher echelons of the Bank also resulted in a perceived lack of mentors for blacks and lack of support for addressing racial disparities.

The Enhancing Inclusion Appendix includes findings of note from earlier Bank reports that examined racial diversity. One study had concluded that black employees have lower average salaries than other Bank employees. A 1999 staff survey revealed that 21% of respondents had experienced racial bias or prejudice at the Bank within the previous two years. The same survey showed that only 10% of the staff members who had been subjected to racial bias or prejudice sought help.^{xxxvii}

III. Racial Diversity Strategies at the World Bank

A. Inclusion Strategy

In her preface to the 2003 report, the Director of Diversity Programs agreed with the report's authors and concluded that the Bank should adopt an a new strategy to address the need to enhance diversity. Prior to this time, the Bank set demographic and numerical targets to diversify employment, but the report revealed that this approach did not address systemic barriers or eradicate bias in such areas as compensation and advancement.

In response, the Bank created Diversity and Inclusion Leadership Awards and Diversity Compacts with all VP Management Teams.^{xxxviii} The role of Respectful Work Advisors was created to "...provide peer-level resources for staff who experience harassment, discrimination, or other negative workplace behaviors." The Bank also began to celebrate the International Day for Elimination of Racial Discrimination and tries to increase diversity in the Bank's internal procurement by working with businesses owned by minorities.^{xxxix} But, according to the Director of Diversity Programs at the World Bank Group, as of October 2006, "accountability still isn't where it needs to be" and the Bank continued to "work on systems, behaviors [and] attitudes" regarding diversity.^{xl}

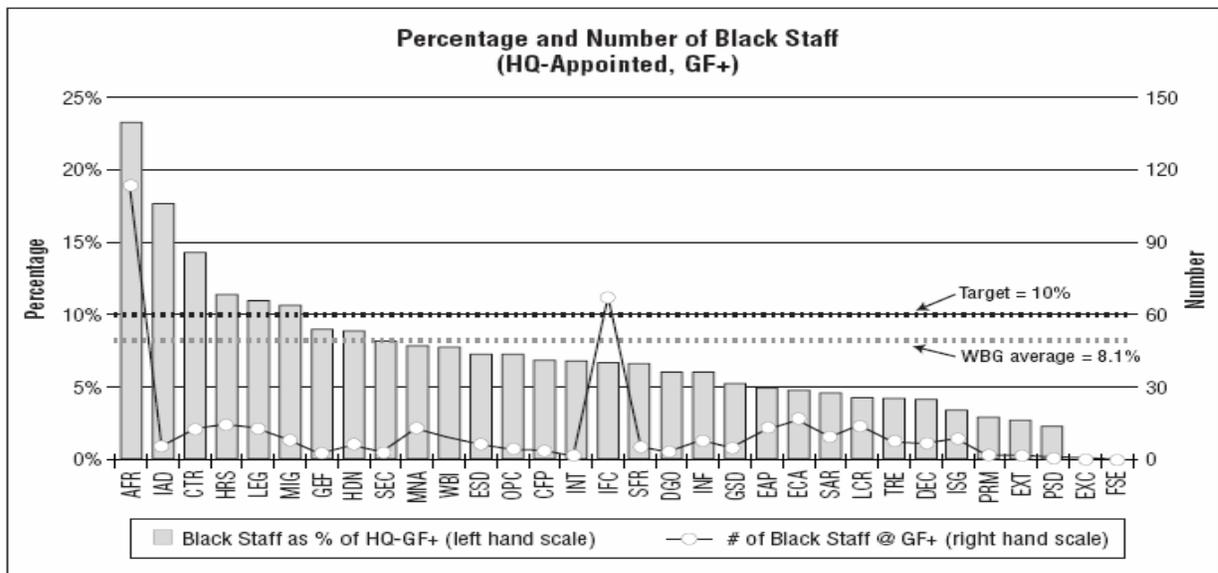
B. Diversity Targets

As of March 2005 the Bank had not met its diversity targets in most departments.¹⁰ The Diversity Office charts below show the percentage and number of black staff within each

¹⁰ These are the most current Bank diversity graphs that GAP could obtain. During an interview, however, the Director of the Bank's Office of Diversity Programs stated that the Bank's black staff as a percentage of HQ-Appointed GF+ staff now averages 9.1% and that 22% of black employees in headquarters are in the Africa region. If the Africa region is removed from the average, then the Bank's average of black employees at headquarters in the professional levels is currently 8.8%.

department in 2005 as well as the WBG average (8.1%) and target (10%). Most departments were well under both the average and the target. Only six units of 30 met the target for black staff employed at the professional level, and of the units that met the target, only the Africa Region was an Operations Unit, the type of unit generally preferred by staff members over support units.

It is clear from this chart that, within the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA), black staff are largely confined to the Africa Region (AFR: far left hand bar). Notably, the President's office (EXC) and the Financial Sector Vice Presidency (FSE) employed no professional black staff members when this chart was prepared:



Source: Diversity Office

Numbers of Black Staff by Unit (GF+, HQ Appointment)	
UNIT	No. of Staff
AFR – Africa Region	114
IAD – Internal Auditing Department	5
CTR – Controllers	14
HRS – Human Resources Vice Presidency	15
LEG – Legal	13
MIGA – Multilateral Investment Guarantee Agency	8
GEF – Global Environment Facility	3
HDN – Human Development Network	7
SEC – Corporate Secretariat	3
MNA – Middle East & North Africa Region	14
WBI – World Bank Institute	10
ESD – Environmentally & Socially Sustainable Development	7
OPC – Operations Policy & Country Services	5
CFP – Concessional Finance & Global Partnerships	4
INT – Dept. of Institutional Integrity	2
IFC – International Finance Corporation	68
SFR – Strategy, Finance & Risk Management	5
DGO – Director-General, Operations Evaluation	3
INF – Infrastructure Network	8
GSD – General Services Department	5
EAP – East Asia & Pacific Region	13
ECA – Europe & Central Asia Region	17
SAR – South Asia Region	10
LCR – Latin America & Caribbean Region	15
TRE – Treasurer’s	7
DEC – Development Economics & Chief Economist V.P.	7
ISG – Information Solutions Group	9
PRM – Poverty Reduction & Economic Mgmt. Network	2
EXT – External Affairs, Communications, U.N. Affairs	2
PSD – Private Sector Development	1
EXC – Office of the President	0
FSE – Financial Sector Vice Presidency	0

Source: Diversity Office as of March '05

It should be noted that the mandate of the Bank’s Office of Diversity Program does not extend to positions lower than the GF level and thus targets are not tracked for those employees. According to the Director of the Bank’s Office of Diversity Programs, employees below the GF level tend to be women from Part II countries.^{xli}

C. Recruitment and Retention

A source at the World Bank informed GAP that one explanation for the relative absence of black Americans at the professional level in the institution is a lack of recruiting at the Historically Black Colleges and Universities (HBCU) in the United States. This statement echoed a finding cited earlier in the 2001 study: interviewers discussing race-related matters with black staff members found that they “[P]erceive that WBG

recruitment strategy ignores historically black educational institutions in the US and the prominent institutions in the UK and Africa in which blacks can be found.”^{xlii} ¹¹

When World Bank professional employees are recruited, hiring occurs in one of two ways: through an individualized hiring process or through the Young Professionals (YP) Program^{xliii}. The 2003 “Enhancing Inclusion at the World Bank Group” report did indeed find that the Bank’s recruitment of blacks for the YP program had increased. From 2000-02, 10.8% of the recruited Young Professionals were black, as compared to 7.1% in 1994-96. This marked progress, as participation in this program is often seen as a key factor in promotions within the institution.^{xliv}

The Bank also has a Junior Professionals Program for Afro-Descendants (JPAD). To be eligible for this program, applicants must be “Afro-descendant i.e. Sub-Saharan African descent” and meet other eligibility criteria. Applicants who are accepted into this program receive a two-year contract with the Bank that is non-renewable; once the contract expires candidates may compete for an open-ended appointment.¹² ^{xlv}

A key point to emphasize in this regard is that although the Bank has made progress in recruiting black professionals (though not necessarily black American professionals), it appears that the institution has been less successful in promoting and retaining them. A 2003 study found that racial/ethnic minorities in the YP program who begin on equal terms as non-minorities tended to advance more slowly within the Bank than non-minorities.^{xlvi} Black employees also tend to leave non-Africa operational Vice Presidential Units at a higher rate; only 36.7% of black professional staff members stayed in the same operational VPU (excluding Africa) from 1998 through 2002, versus 64.5% of non-black employees. Further, HR found that “staff from Part II countries separate disproportionately” from the Bank.^{xlvii} Statistics also suggest that black staff may be more subject to redundancy decisions and mutually-agreed separations. For example, according to FY02 Second Quarter statistics from the Bank’s Office of Diversity Programs, 5 of 34 Sub-Saharan Africa and Caribbean Region (SSA/CR) nationals at the GF+ levels were declared redundant or given a mutually-agreed separation. This represented a 14.7% redundancy or mutually-agreed separation rate for SSA/CR employees, which was twice as high as would be expected given that this group only represented 7.1% of GF+ staff at that time.^{xlviii}

Overall, the studies examining recruitment and retention uniformly show that SSA, Caribbean and black American staff members are disadvantaged, relative to other staff, when they pursue careers at the World Bank. Moreover, these studies show that both staff and management are aware of the problem. While management has taken steps to address it, figures from the 2003 study, together with quantitative and anecdotal evidence presented later, suggest that the Bank’s approach to equality in employment has not been

¹¹ As of 2001, 21.5 percent of all U.S. bachelor’s degrees, 11.0 percent of all master’s degrees and 10.7 percent of all doctor’s degrees awarded to black graduates were from HBCUs (Provasnik et. al., 4).

¹² No evaluation of the program is publicly available. A note on the Bank’s website states that “The JPPAD online application system is temporarily unavailable.” According to the Office of Diversity Programs, there are approximately 12 participants in this program in any given year.

especially effective. It appears that black Americans, in particular, are excluded from professional employment at the World Bank and that, rather than improving, their situation has actually deteriorated in the past ten years.

1. The Problem of Retention

At the symbolic level, actions taken to address racial discrimination by the Office of Diversity Programs can best be described as efforts to raise awareness about this institutional challenge. In a real sense, however, the 2003 report, which was to provide guidance on improving diversity, recommended more substantive steps. The authors recognized that black staff members were not treated as equals with other groups in terms of promotion and compensation. To act effectively on the report's findings would require the Bank to address retention issues: management should examine implicit biases that truncate black staff members' careers at the Bank and correct them.

Instead, the overall approach taken by HR and the Office of Diversity Programs continues to focus on meeting diversity targets, primarily through recruitment. The Office does not attend to the problem of retention of black staff by addressing discrepancies, particularly in promotion. This is understandable, as institutionally, it is less conflictive to prioritize the work this way. After all, recruitment does not necessarily call management's administrative decisions for black staff members into question after the fact. Strengthened efforts to retain talented staff members who happen to be black and who are systematically denied the promotions they expected, the training they needed or the transfer they sought would require more authority and more confrontation than the Office of Diversity Programs is prepared to assume. A strong commitment to the retention of black staff members would place the Office of Diversity Programs in a potentially confrontational stance with respect to management, in general, or with respect to specific managers whose administrative style seems to be discriminatory.

For whatever reason, the Office of Diversity Programs has, in fact, eschewed a connection with channels for addressing employment-related grievances at the Bank. According to the Office Director, diversity programs should be viewed in a positive light, and linking the Office to the Conflict Resolution System, where a minority staff member would take a complaint of discrimination or harassment, would detract from her approach.^{xlix}

2. The Absence of Black American Professionals

While the World Bank is an intergovernmental institution that cannot focus on the specific national concerns of governments in its personnel policies, the fact remains that an unusually large percentage of its staff members are US nationals because of the location of headquarters. In that context, the lack of professional black American staff members is striking. The Office of Diversity Programs would neither confirm nor deny the deficit of black Americans in the professional grades at the Bank, but the record is troubling. In 2008, ten years after the Review Committee drew attention to the paucity of professional black staff members, a consultant was hired for one year and directed, in

part, to forge better relationships with the presidents of Historically Black Colleges and Universities (HBCUs) in the US. According to the Director, the Office of Diversity Programs is working with the HBCUs to help them create programs that would equip students to be competent for World Bank work and to be more competitive at the Bank.

This particular approach betrays a number of underlying difficulties. Most importantly, it suggests that the Diversity Office itself does not see the existing social science programs at the HBCUs as adequate in preparing students for professional placement at the World Bank. A view like this coming from an institution located less than five miles from Howard University, the flagship of the HBCUs, is striking, and it portends long-term problems for black staff members who are actually recruited by the World Bank.¹³ Recruiting the best and brightest of HBCU graduates and then subjecting them to a discriminatory work environment because promotion differentials among racial groups persist may further damage the Bank's reputation. The ideal U.S. applicant described by the Director of Diversity Programs is an articulate Ph.D. in macroeconomics from an elite university, able to speak multiple languages, with five years of experience in international development, a history of living abroad and working in teams, and an interest in other cultures.¹ Surely, recruiting black Americans with these credentials and then placing them in an environment that denies them an opportunity to advance is self-defeating for both the institution and the employees. Moreover, in the small world of high level academic administrators, word about a large but discriminatory employer circulates quickly.

In the end, the Director of the Office of Diversity Programs seemed to feel that the dearth of professional black Americans at the Bank was due, for the most part, to a lack of qualified candidates. The Bank, she said, had to negotiate with policymakers in client countries, an elite group, which Bank staffers had to confront capably. The most talented potential black-American job candidates were more attracted to Wall Street, where salaries and advancement are higher and faster than they are at the Bank. As a consequence, her job is to develop more innovative programs to attract minority applicants, such as the Celebration of Diversity month, initiated by her Office and mainstreamed to the Bank as a whole.ⁱⁱ

In part, however, black American professionals may be underrepresented at the Bank because, unlike their colleagues from Sub-Saharan Africa and the Caribbean, they can leave when they confront a discriminatory work environment without concern about visa issues. If this is the case, then a specific emphasis on implementing measures to improve the retention of black American staff members is warranted.

The findings of years of diagnostic studies at the World Bank show that retention is, in fact, a serious issue. Experience in other settings also shows that until consistent scrutiny and meaningful penalties attach to discriminatory conduct, little will change. As a result, one of the most important tools available to an institution seeking to eliminate a hostile work environment for minorities is the judicial system. While an institution cannot, in the short term, change a cultural predisposition to discriminate, it can prohibit actions

¹³ Howard University graduates more on-campus African-American Ph.D.s than any other university in the world.

based on bigoted attitudes by making such behavior costly to the actor. At the Bank, then, the first place to look for a meaningful shift toward fairness for racial minorities would be the Administrative Tribunal, as the Bank’s judicial system should begin to reflect and enforce new institutional commitments to inclusion.

IV. The Adjudicative Process at the World Bank Administrative Tribunal and Racial Discrimination

A. The World Bank’s Conflict Resolution System

International financial institutions are domiciled in host countries around the world, but are not subject to national law and are wholly self-governed. Within that context employment practices and employee rights are subject only to the established internal policies of the organization and the scrutiny of voting member states. Bank employees who claim to have suffered discrimination have recourse only to the Bank’s internal grievance system. This system includes informal avenues of redress – such as an ombudsman and racial and gender equality advisors – as well as a formal Conflict Resolution System (CRS) consisting of an Appeals Committee and Administrative Tribunal. The Appeals Committee is a peer-reviewed arbitration process that hears employee challenges to administrative decisions such as compensation, redundancy and performance evaluations.^{lii} The World Bank Administrative Tribunal (WBAT) usually reviews cases that have been heard by the Appeals Committee, though it will occasionally hear cases that have not gone before a Committee. The Tribunal consists of seven judges from different Bank member states. Its decisions are final and binding.¹⁴

In 1998 the Bank conducted a review of its process for resolving staff grievances, after receiving numerous complaints about its system from employees.^{liii} Bank senior management appointed an internal Grievance Process Review Committee^{liv} – consisting of representatives from the International Bank for Reconstruction and Development (IBRD), the International Development Association (IDA), the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), as well as the chair of the Staff Association – that evaluated the system and recommended improvements.^{lv} In 1999, the evaluation office of the U.S. Congress, then called the General Accounting Office (GAO), issued a report entitled the “World Bank Status of Grievance Process Reform.”^{lvi} The GAO considered the draft recommendations of the Bank’s Review Committee and conducted its own interviews with Bank employees.

According to the GAO report, the Grievance Process Review Committee concluded that one of the shortcomings of the Bank’s CRS was its “...relative ineffectiveness in addressing complaints of bias and harassment.”^{lvii} In addition, the Committee reported that the system had “...limitations on redress for staff who are found to have been treated unfairly,” and lacked “...effective measures for holding managers accountable for their

¹⁴ While Tribunal decisions are binding, Bank management may opt to provide compensation to a vindicated complainant rather than executing a specific form of restitution ordered by the Tribunal, such as reinstatement.

actions toward subordinates.” The Committee also “...noted that employees often saw the system as neither fair nor credible and that this lack of confidence often deterred employees from attempting to use the system to resolve problems.”

Specifically, the Committee recommended that the Bank improve its “...capacity for addressing bias and harassment.” According to the report:

[T]he Review Committee noted that confidence in the system was particularly low among female employees and employees of African origin. For example, recent surveys found that only 1 in 10 female employees experiencing unwelcome sexual attention sought help from the resources the Bank had established for handling such problems and that fewer than 40 percent of employees regarded the Bank as serious about dealing with nationality discrimination.^{lviii}

The GAO report noted that the rules of the Appeals Committee limited the ability of employees to make allegations of bias or harassment. According to Committee rules, staff members are obliged to challenge specific managerial decisions, such as redundancy or compensation decisions, in order to have their cases reviewed. However, employees rarely have evidence that a specific decision was made because of racial bias. As the GAO report said, “Experts in this area note that workers alleging bias or harassment often base their complaints on more general allegations that their superiors have maintained a hostile work environment.”^{lix}

In response to this shortcoming, the Grievance Process Review Committee recommended that the Appeals Committee’s rules be amended so that cases could be accepted in which no “specific adverse management decision has been cited.”^{lx} The Grievance Committee also recommended that the criteria for these decisions be set out in the Bank’s revised harassment policy and code of conduct. It is not clear if the recommended changes were made.

In a letter dated April 13, 1999, then Bank President James D. Wolfensohn responded to the GAO report and stated that the Bank was in the process of reforming its grievance system. In that letter, Wolfensohn stated that “substantial resources are being invested to build capacity within the system to deal with sexual harassment and discrimination in an effective manner.”^{lxi}

Since the Wolfensohn letter, nearly ten years have elapsed. In response to continuing complaints of racial bias, GAP has sought to examine whether or not the Bank’s grievance system has become more sensitive to the issue of racial discrimination and the difficulties of ‘proving’ that bias was an operative factor in a specific administrative decision. GAP also sought to learn more about the adjudicative process at the World Bank Administrative Tribunal with respect to allegations of racial discrimination.

B. The Administrative Tribunal

In 1980, the World Bank established the Administrative Tribunal to serve as an independent decision maker in employment related disputes. In the past 29 years the Bank amended the Statute and Regulations that establish the Tribunal's authority, operations and the scope on three separate occasions, in June 1998, July 2001 and January 2002.^{lxii}

One of the most important changes relevant to this report addresses the tenure of judges. Effective July 31, 2001, Article IV, paragraph 3 of the Statute was amended to provide for a limited term of three years for judges, rather than open-ended appointments. Under Article IV, paragraph 1, the World Bank also added language stating qualifications of eligibility for Tribunal judges, in addition to disqualifying current and former Bank staff for service on the Tribunal. In addition, Tribunal judges were barred from seeking later employment with the Bank.

A second relevant change amends the amount of damages and the Tribunal's ability to grant specific performance or rescission of a decision under Article XII of the Statute. The amended Statute does not cap damages in lieu of specific performance or rescission that may be awarded to an Applicant. It should be noted that both of these amendments occurred shortly after the circulation of a series of reports damaging to the reputation of the World Bank. These reports detailed the negative perceptions held by employees about internal Bank operations and described discriminatory practices in recruiting, retaining and promoting black African and African Americans.

1. Sources of Legal Precedent and Reference of Legal Authority

a. Primary Law Sources

Internal staff rules, the employment contract, previous decisions at the Tribunal, and the Tribunal statute and regulations are primary law sources at the World Bank.

The Tribunal looks first at the Staff Rules applicable to the case, as well as at the applicant's contract of employment. The Tribunal next looks at its previous judgments, which serve as precedents, and occasionally also at the judgments of the Tribunal's counterparts at other international organizations, such as the U.N. Administrative Tribunal or the International Labour Organization Administrative Tribunal.

As primary law sources, the Statute and Rules of the Tribunal have a particular impact on the decisions and rulings regarding racial discrimination at the Bank.

One relevant rule that the Tribunal may consider in a discrimination case is Staff Rule 8.01, which was revised in June, 2008. This rule states that "harassment or wrongful discrimination, including but not limited to harassment or wrongful discrimination on the basis of age, race, color, sex, sexual orientation or national

origin,” is misconduct.^{lxiii} Also, according to the Respectful Workplace Advisors’ Terms of Reference, “the Bank recognizes the right of every staff member to be treated with dignity and respect, to work in an atmosphere free of harassment and intimidation, and to expect that complaints of being treated disrespectfully will be taken seriously and dealt with promptly.”^{lxiv} In addition, the Bank’s Eradicating Harassment policy defines harassment as “unwelcome verbal or physical behavior that unreasonably interferes with work or creates an intimidating, hostile or offensive work environment.” The policy states that harassment can:

- *include comments (oral, written), gestures or physical actions;*
- *be a single incident or a repeated, continuous pattern of behavior;*
- *demean, belittle or cause personal humiliation or embarrassment;*
- *be directed at a particular person or a number of people;*
- *be initiated by a colleague, a supervisor or someone outside the organization;*
- *take place at work or during social functions related to the job;*
- *be linked to bias when a group of people is singled out for negative attention.*

The rule states that harassment may include the following behaviors:

- *public or private tirades by a supervisor or colleague;*
- *severe or repeated insults related to a person’s personal or professional competence;*
- *threatening or insulting comments, whether oral or written, including those made through all types of electronic media;*
- *deliberate desecration of religious and/or national symbols;*
- *racial epithets, slurs, and malicious, negative stereotyping expressed toward an individual or a group directly or indirectly (e.g., circulated via e-mail, written on walls);*
- *malicious and false complaints of misconduct against other employees.*^{lxv}

Under Chapter VII, Rule 25, the Tribunal recognizes that the Staff Association may be an entity with an interest in the outcome of an appeal, and it therefore permits the association to file a brief in support of an appellant as a friend-of-the-court. The rules are markedly silent, however, about whether or not the Staff Association can represent its members in pleading a hostile work environment or a pattern of discrimination. Nor do the rules state that the Staff Association has the standing to claim that a policy or selection criterion for a category of positions is discriminatory by establishing a pattern of the disparate outcomes produced for racial groups. Assigning the Staff Association this enhanced status as a proxy appellant before the Tribunal would allow the Bank to address the problem of a hostile work environment for racial minorities, where such an environment exists, without requiring that a specific individual demonstrate the discriminatory impact of a direct and adverse administrative decision.

In brief, the limitation of appeals to individual cases, or consolidated individual cases, confines possible claims of discrimination to specific and direct administrative actions that violate the terms of employment of individual staff members. This limitation leaves Afro-descendant employees in a paradoxical situation: while they are able to demonstrate that a statistical profile unfavorable to their prospects at the Bank exists, no one can establish that he or she was specifically harmed by it. As a result, the Bank has not been obliged to provide relief. This was one of the shortcomings that the Grievance Process Review Committee thought should be addressed. In 1998, the Review Committee recommended that the Appeals Committee's rules be reformed so that it could accept cases in which no "specific adverse management decision has been cited."^{lxvi}

b. Persuasive Law

Persuasive Law also plays an important role at the Bank's Administrative Tribunal because the judges will look to outside organizations of similar stature from time to time when deciding on issues. The decisions of like organizations in the assessment and granting of costs in cases that had been dismissed on the merits seemed especially relevant to Tribunal decisions. The decision of *Agodo et. al., v. IBRD, IFC (May 05, 1989)* clarified the scope of decision for the Tribunal in assessing costs for the jurisdictional phase and established the practice at the Tribunal. The case implicated the applicability of the International Court of Justice by stating that:

In so acting the Tribunal has followed a dictum of the International Court of Justice in its advisory opinion of July 12, 1973, concerning the review of Judgment No. 158 of the United Nations Administrative Tribunal.^{lxvii}

C. Discrimination Jurisprudence in the United States and Europe

Before reviewing the discrimination jurisprudence of the WBAT, it is useful to examine the evolution of related jurisprudence in other settings. Because this paper emphasizes discrimination against black Americans at the World Bank, this section will focus on U.S. jurisprudence. Some attention will also be devoted to European law, as a comparison.

Both the United States and the European Union hold that racism can exist in two forms: the manner in which an employer treats an employee can be discriminatory, and – even without discriminatory intent – a business practice can be shown to have a discriminatory effect. However, the EU's Racial Equality Directive goes further in terms of remedy in each setting and requires Member Countries to implement proactive policies that will diminish the disadvantages faced by members of affected groups.

1. United States

Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 1981 prohibit most employers from discriminating in their employment practices for reasons based on race, color,

religion, sex or national origin. However, the United States Congress provides no definition of discrimination and leaves the job of defining the term to the courts.^{lxxviii} The Supreme Court has defined two basic theories of discrimination: disparate treatment and disparate impact.^{lxxix}

Disparate treatment is the most common way of showing a Title VII violation. In disparate treatment cases the employer treats some classes of employees less favorably. Proof of a discriminatory motive is critical in proving disparate treatment, but the courts recognize that discriminatory motive can be proven either directly or through circumstantial evidence, and that “circumstantial evidence is not only sufficient, but may also be more certain, satisfying and persuasive than direct evidence.”^{lxxx} Whether or not an employer is motivated by intentional discrimination is an issue that in most cases should be left to the fact finder, which is the jury or – if it is a bench trial – a judge.^{lxxxi}

In the U.S., the initial burden of proof lies with the plaintiff. Once the plaintiff establishes a prima facie case of discrimination, the burden of production then shifts to the employer, who must articulate a legitimate, nondiscriminatory reason for the action. As soon as the employer makes the showing, the presumption of discrimination drops out of the case, and the burden of persuasion then shifts back to the plaintiff to show that the employer’s reason is pretextual and that the employer’s decision was motivated by discriminatory intentions.^{lxxxii}

This three tier shift of burden of proof was established in *McDonnell Douglas Corp. v. Green* (1973).^{lxxxiii} In this case, the plaintiff alleged that discrimination played a part in the decision not to rehire him after he was laid off. The US Supreme Court held that, although the company offered a legitimate reason for not rehiring the employee, he was entitled to a trial to determine if the company’s rationale was a pretext because he had established a prima facie case.^{lxxxiv}

In *Furnco Construction v. Waters* (1978) the US Court elaborated that *McDonnell* was simply an orderly way in which to examine discrimination cases. The prima facie case of discrimination raises an inference of discrimination if the employer has no legitimate explanation for its employment decisions. Once the defendant shows a reason other than discrimination for the employment action, the plaintiff must show that the employer’s reasons are false and that discrimination was the real reason for the action.^{lxxxv} This case refined the nature of the evidence necessary to refute a prima facie case of discrimination, establishing that the plaintiff must refute the defendant’s evidence with a demonstration that the evidence or argument was false.

More recently, the Supreme Court has reaffirmed that a jury can infer the existence of discriminatory motive, even absent affirmative (or direct) evidence of discrimination, so long as there is persuasive evidence that the employer’s explanation for the employment action was not the true reason. That is, combined with the elements of a prima facie case, evidence of “pretext” permits (but does not compel) a jury to infer that discriminatory purpose was the true reason for the employment decision.^{lxxxvi}

Courts have also found that discrimination can infect an employment decision, even without malicious intent, such as where an employer relies on gender or race based stereotyping.^{lxxvii} The court, in *Thomas v. Eastman Kodak Co.* (1999), found that stereotyping is also probative of discrimination for race. The court in *Thomas* found that the plaintiff's claim that she was laid off based on racially biased performance reviews was a legitimate standard for reviewing a case under Title VII.

Many courts have found that racial epithets alone may be insufficient to carry a plaintiff's burden of proving discrimination, unless the comments relate directly to the employment action at issue (i.e. constitute direct evidence of discrimination). Lower courts vary on the extent to which these comments constitute discrimination.^{lxxviii} In *EEOC v. Alton Packaging Corp.* (1990) the court found that a general manager's comments that "if it was his company, he wouldn't hire any black people" and the production manager's declaration that "you people can't do a thing right" constituted direct evidence of racism.^{lxxix} However, "stray remarks" about race or gender may not be enough to prove discrimination, as the plaintiff must show that race or gender influenced the employer's decision. These remarks can serve as evidence, but may not be enough by themselves to prove discrimination.^{lxxx}

Disparate impact is the less-used manner to bring a case of discrimination under Title VII. To prove disparate impact, the plaintiff must show that while the employment practices may be neutral in their treatment of different groups and not racially motivated, in practice they affect one group more harshly and the practice cannot be justified as a business necessity. The plaintiff must establish a prima facie case by identifying the practice and showing the disparate impact. The burden then shifts to the employer to show that the practice is job-related or required by business necessity. A plaintiff can still win if s/he can show that there is a less-discriminatory practice that would achieve the same goals.^{lxxxi}

2. Europe

The European Union has passed a variety of initiatives and directives aimed at prohibiting discrimination and requiring Member Countries to take positive action to eradicate discrimination. The Racial Equality Directive 2000/43/EC mirrors much of the language of the U.S.'s Title VII. After being passed unanimously by the member states, every nation was required to codify the Directive in domestic laws. The Racial Equality Directive prevents direct or indirect discrimination. Direct discrimination parallels disparate treatment and requires proof that an individual has been treated "less favorably" than another in a comparable situation. There need not be a specific "comparable" situation, but the individual must show that s/he was treated in a racially discriminatory manner.^{lxxxii}

Like the disparate impact standard of the U.S., to show indirect discrimination, a plaintiff can rely on statistics. For example, a policy may seem racially neutral, but if it disproportionately disadvantages a protected class of people, and is not a business necessity, it would be considered indirect discrimination. For example, if a building

manager required custodians to have a high school diploma but could not show that such a qualification was a practical necessity to do the job advertised, while an applicant without a degree who belonged to protected class was refused employment, the applicant could charge that the requirement had a discriminatory impact. Under the EU standard, the same balance is placed on the plaintiff as U.S. plaintiffs bringing disparate impact claims: a plaintiff must show a discriminatory effect resulting from the business practice and then the employer must show that it is a business necessity. If the employer meets this standard, then the plaintiff must show there are alternative, less discriminatory procedures to meet the business necessity.^{lxxxiii}

The Directive establishes the official burden of proof in racial discrimination cases. According to Article 8 of the Directive:

1. Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, *it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.*
2. Paragraph 1 shall not prevent Member States from introducing rules of evidence which are more favourable to plaintiffs. *(emphasis added)*^{lxxxiv}

Thus, once the Applicant has presented facts that suggest discrimination, the respondent must prove that s/he did not discriminate.

The Racial Equality Directive also establishes the minimum sanctions for racial discrimination. According to Article 15 of the Directive: “Member States shall lay down the rules on sanctions applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are applied. The sanctions, which may comprise the payment of compensation to the victim, must be effective, proportionate and dissuasive.” Sanctions vary from country to country and often involve some form of financial compensation, such as compensation for loss, damages for injury or exemplary damages. In some countries, such as Belgium, discrimination is criminal and can result in fines or imprisonment, as well as civil damages, reinstatement with back-pay, remuneration and the publication of the judgment.^{lxxxv}

D. Overview of WBAT Decisions in Racial Discrimination Cases

Annex III contains an analysis of World Bank Administrative Tribunal (WBAT) cases from 1996 through July 2008 that involved a racial discrimination complaint.¹⁵ This period was chosen because in 1996 the Bank commissioned one of its first major racial discrimination studies into possible discrimination against African staff members. The

¹⁵ Only decisions that were publicly available as of August 26, 2008, were reviewed. Annex II explains the methodology that was used in this review.

time period shows a pattern in the frequency, allegations and rulings in racial discrimination cases at the WBAT.

In total, over a twelve year period, Applicants in 21 cases alleged some form of racial discrimination.¹⁶ In light of the findings of repeated studies that systemic barriers to inclusion affect the careers of racial minorities at the Bank, the relatively low number of cases is striking. It is worth noting that, according to the 2003 World Bank report on inclusion, “research suggests [that] individuals are likely to underestimate the likelihood that they have been disadvantaged by bias.”^{lxxxvi} Numerous psychological studies have confirmed this. According to Karen Ruggiero, assistant professor of psychology at Harvard University, “research has shown that minority group members often deny or minimize their personal experience with discrimination, although they readily acknowledge the discrimination that is directed at their group as a whole.”^{lxxxvii} Although the exact reason for this is not known, one study found that minority group members may: “deny their personal experience with discrimination in order to avoid pinpointing a particular villain who might subsequently retaliate against them.” Other studies have suggested that this underestimation is a form of psychological self-defense.^{lxxxviii}

Therefore, additional World Bank employees may have been subject to racial discrimination without realizing it. Other employees may have feared retaliation for coming forward with allegations of racial discrimination and thus opted not to pursue a case. Additionally, numerous discrimination cases may have been resolved in the earlier stages of the Bank’s internal grievance system, either through the informal mechanisms or the Appeals Committee. This review only examines cases that reached the highest level: the Administrative Tribunal.

Forms of Discrimination: Although the majority of the discrimination claims that reached the Tribunal related to redundancy or hiring decisions, other forms of discrimination were also alleged, including discriminatory performance evaluations; unfair denial of a regular/permanent position; lack of career development opportunities, and exposure to a hostile work environment.

Although the specific complaint in the cases reviewed involved discrimination against an individual, many of the Applicants claimed that racial discrimination was pervasive in the workplace. Complaints regarding an environment that was discriminatory included that:

- White staff members were given preferential treatment in one unit;
- A disproportionate number of Africans had been declared redundant in a specific department;
- Africans and African-American employees were underrepresented at higher levels in one department; and
- Africans were underrepresented throughout the Bank.

¹⁶ Two cases involved the same applicant. In addition to these 21 cases, there were two cases involving racial discrimination that were brought by an alleged retaliator, and one case of ‘reverse’ discrimination, in which the applicant claimed that white men were discriminated against.

Departments and Units with Discrimination Claims: Allegations of discrimination were not confined to a limited number of units or departments in the Bank. Almost every Applicant alleged discrimination in a different unit. In all, complaints of discrimination originated in eighteen different units and departments.

Number of Cases: The number of discrimination cases brought by people of black African descent and heard by the WBAT appears to have gradually increased over the past 12 years, peaking in 2003 and 2007. In both these years, the Tribunal reviewed three racial discrimination cases, two of which were brought by black Applicants. The Tribunal, however, has not yet posted a racial discrimination case in 2008.¹⁷

Compensation: According to GAP’s review of World Bank Administrative Tribunal racial discrimination decisions since 1996, *the Tribunal never ruled that an Applicant was discriminated against based on race.* Compensation was awarded based on procedural irregularities only. Although the Tribunal would admonish the Bank in various instances, it would often make a point of saying that it did not find racial discrimination.

The table below shows the forms of compensation that the Tribunal awarded in racial discrimination cases:

Ruling	Total number of cases	A. Cases with a black Applicant	B. Cases in which the Applicant’s race was not identified	C. Cases with an Applicant who is not black (Middle Eastern or Asian)
Dismissed without costs ¹⁸	13	6	6	1
Awarded costs only	1	0	1	0
Awarded costs and some form of compensation (such as salary, taxes, pension, injury)	4	2	2	0
Reinstated ¹⁹	2	0	0	2
Damages but no costs	1	0	1	0
Total	21	8	10	3

Six out of 8 of the racial discrimination cases in which the Applicant was known to be black were dismissed without costs and 2 out of 8 were awarded costs and some form of compensation, such as salary, taxes, damages or pension. In the ten cases in which the Applicant’s race was not identified, 6 out of 10 Applicants had their cases dismissed without cost, 2 were awarded costs and some form of compensation, one was awarded costs only and one was awarded damages but no costs. In cases in which the Applicant

¹⁷ As of March 5, 2009, the Tribunal had only posted 2008 decisions from its March and July sessions.

¹⁸ This includes two inadmissible cases.

¹⁹ One of these cases (248) resulted in costs as well. In the other (227), the Applicant was not awarded costs.

was definitely not black, 1 out of 3 were dismissed without costs, and 2 resulted in reinstatement, with or without costs.

We noted that two cases were brought by the alleged retaliator, as well as one in which reverse discrimination was claimed. No case brought by an alleged retaliator or a white person claiming racial discrimination was dismissed without costs or compensation. Two of these cases resulted in costs and some form of compensation. The other resulted in costs only (\$20,000). Thus, alleged retaliators and people claiming reverse discrimination were more likely to be vindicated and compensated (at least in some form) than people who alleged conventional racial discrimination.

Although the number of cases reviewed here is not large enough to allow general conclusions, it nonetheless appears that staff members and job applicants of African heritage who allege racial discrimination are unlikely to receive the compensation or vindication they seek before the Tribunal. In contrast, complainants of non-African descent who allege racial discrimination, retaliators or people claiming reverse discrimination seem to have more reason to expect that they will be compensated.

E. Tribunal Decisions

Annex III contains an overview of the World Bank Administrative Tribunal racial discrimination cases since 1996. The section below highlights particularly important decisions from that chart.

It is worth noting at the outset that according to a 2001 Bank publication:

Staff must have reasonable grounds before making a complaint of harassment, discrimination or other inappropriate behaviors. While unwelcome behaviors are seen from the perspective of the person on the receiving end, the standard for judging whether a behavior is inappropriate is not purely subjective. The Bank Group employs a standard based on a test of reasonableness. Formal judgment on whether conduct constitutes inappropriate behavior will be based on an assessment of the facts and circumstances in which it occurs and *the particular sensitivities required in the World Bank Group multicultural environment. Situations which initially may appear to constitute harassment, discrimination, etc., ultimately may not be corroborated as such.*" (emphasis added)^{lxxxix}

This statement implies that undefined "particular sensitivities" could potentially trump the rights of employees to allege discrimination or harassment. Although this statement was meant to apply to all formal complaints, not just those that reach the Administrative Tribunal, it appears that the Tribunal uses a similar standard, as it has ruled in several instances that the Applicant was not discriminated against, despite significant evidence to the contrary.

1. *Carter v. IBRD, Decision No. 175 (November 18, 1997)*

In this case, the Bank set a precedent regarding racial discrimination and fixed-term contracts. According to this decision:

Even when the circumstances of the case do not warrant any right to a renewal of a fixed-term contract, the Bank's decision not to renew the contract at the expiration of its predetermined term, however discretionary, is not absolute and may not be exercised in an arbitrary manner. According to the principle laid down in de Merode, "[d]iscretionary power is not absolute power. The Bank would abuse its discretion, for instance, if it were to base its decision not to renew a fixed-term contract at its expiration, discretionary as such a decision may be, on considerations unrelated to the functioning of the institution, such as racial discrimination.^{xc}

In theory this precedent grants protection against non-renewal decisions based on race. However, although this precedent has been cited numerous times by the Tribunal, it appears that an Applicant alleging racial discrimination has yet to prevail using it.

2. *Riddell v. IBRD Decision No. 255 (December 4, 2001)*

In this case, the Tribunal stated on the record its concerns about unfair, discriminatory practices, while simultaneously dismissing the Applicant's claims about such practices.

The Applicant in this case spoke out during a Bank forum about the underrepresentation of African and African-American employees in higher-level positions in the Loan Department (LOA). She claimed that subsequent decisions not to shortlist her for several positions that she applied for and to award her a below average merit increase were done in retaliation for having spoken at this forum. The Tribunal ruled that there was no clear evidence of bias or retaliation in these decisions. However, the Tribunal also said that:

The Applicant repeatedly refers in her pleadings, as she did at the hearing before the Appeals Committee, to unfair employment practices in LOA over a long period of time. The new Director of LOA acknowledged in her testimony before the Appeals Committee that there were problems in the hiring practices in LOA during the time of the Applicant's employment there and that efforts had been made to change such practices. The Tribunal finds this acknowledgment disturbing. Although the Tribunal did not find evidence of abuse of discretion or retaliation in the two complaints contested by the Applicant, the possibility that unfair hiring practices could have affected the careers of staff members in the department is a cause for concern which ought to be investigated. The Appeals Committee recommended that an investigation into such practices be made, that wrongdoers be held accountable and that corrective action be taken to redress harms inflicted upon former and current staff members, including the Applicant. It is not evident from the record, whether such an investigation ever took place.^{xc}

It is worth noting that the Tribunal did not order the Bank to comply with the Appeals Committee's recommendation. Unlike U.S. courts, the Tribunal does not have the power to order specific damages – such as ordering the Bank to post a policy publicly or conduct a report – for a group. It also lacks enforcement power. The Tribunal or Appeals Committee can order that the Bank take an action, but ultimate enforcement lies with management, although an Applicant can appeal to the Tribunal if a decision is not implemented.

The decision taken in this case, as well as in others discussed below, illustrates that the Tribunal applies a higher standard than the one that has evolved in the US and the EU for establishing that discrimination was a factor in an adverse employment decision. The Tribunal's standard raises the bar of proof considerably for complainants who allege discrimination, diminishing their chances of prevailing. At the Tribunal, the burden of proof rests on the complainant throughout the proceeding and never passes to the institution. At no point does the institution have to establish that it had a legitimate and *non-discriminatory* reason for the action taken, despite the difficulty experienced by complainants in 'proving' discrimination. This difficulty, it should be noted, has been recognized and addressed in both the United States and the EU for many years.

The burden shifting framework evolved in US and EU law in recognition of the fact that employers rarely discriminate overtly. Most realize that such practices are illegal and, if operating on discriminatory criteria, they invoke a pretextual reason to obscure a discriminatory motive. In the burden shifting framework, then, fairness obliges the institution to present evidence to establish that its decision was legitimate and that it was not a pretext, once the complainant has established a *prima facie* case of discrimination.

In the Riddell case, the Tribunal acknowledged that the complainant worked in a discriminatory environment, but, given the onerous burden of proof imposed upon the Applicant, required her to provide direct evidence that the department's motive was discriminatory. Predictably, she could not meet the standard of proof to the Tribunal's satisfaction and her appeal for redress failed.

[3. *Njovens v. IBRD, Decision No#294 \(May 20, 2003\)*](#)

The Applicant in this case alleged that the decision to declare his position with the Department of Institutional Integrity (INT) redundant was “based on the fact that he was the only senior-level staff of African descent in the Ethics Office, and that the decision was inspired by the intention to discriminate against him...”^{xci} In the Applicant's view, this decision was not based on the interests of efficient administration, but rather was taken with the intention of terminating him because, among other reasons, of racial discrimination based on his sub-Saharan origin.”^{xciii} Because INT is responsible for investigating staff misconduct – such as racial discrimination – Mr. Njovens' claim calls into question INT's own ability to conduct impartial investigations into racial discrimination allegations impartially.

The Applicant joined the Bank in 1991 as a Consultant and began working in 2000 as a program coordinator at the Office of Business Ethics and Integrity – which was subsequently incorporated into INT in April 2001. This was an Open-Ended position, but subject to a two-year probationary period. On October 23, 2001, he was informed that his position would be declared redundant. On October 24, 2001, a reorganization of INT was announced in which the Ethics Office functions were to be separated from the investigative functions.

The Applicant makes numerous assertions, including that the new Director of INT previously tried to discriminate against him by pressuring his supervisor to lower the performance ratings she had given him and terminate him. The Applicant claimed that when his supervisor refused to do this, the Director of INT decided to resort to termination by redundancy. The Applicant alleges that this abuse of discretion is substantiated by the fact that his job duties were not distributed among staff members after he left. Instead, they were assigned to a temporary research analyst. Also, after the Applicant was declared redundant, a job description was issued which incorporated his previous job functions.

The Bank contested these allegations by claiming that the Applicant's job duties were only assigned to a temporary staff member for a short period. In June 2002, these job duties were reassigned to a new manager who had some similar duties, but also other responsibilities.

With regard to racial discrimination, the WBAT stated that “just as the Tribunal is prepared to be firm on any question of racial discrimination supported by the evidence, so too it is prepared to dismiss outright any unfounded allegation in this context.”^{xciv} In response to the Applicant's attempts to introduce the Dewey Ballantine report to substantiate his claim of discrimination based on race, the WBAT stated that:

That report does indeed conclude that there has been a measure of systemic discrimination among classes of staff members within the Bank. But it is necessary for an applicant to introduce facts supporting a claim of individualized wrongdoing which amount to a violation of his or her own terms of employment. (*Nunberg*, Decision No. 245 [2001], para. 43-44.) The Tribunal's careful review of the record does not disclose any evidence that the decisions affecting the Applicant were in any way tainted by illicit motivation. The allegation is accordingly dismissed.^{xcv}

The Tribunal justified this decision in part by stating that although the new positions incorporated the Applicant's job duties, these positions also included other job duties.

The WBAT did find, however, that the Bank failed to meet its obligation regarding a performance evaluation of the Applicant and also failed to give advance warning to the Applicant of his redundancy. Mr. Njovens was awarded six months net salary and costs in the amount of \$10,000 for these due process failures.

The Tribunal's decision does not provide detail about evidence that would suggest "illicit motivation" or racial discrimination; instead, the decision dismisses the allegation, saying that its "careful review of the record" failed to find discrimination.²⁰ If the Tribunal applied the burden shifting precedent, the burden would have shifted back to the Bank itself to substantiate that INT's decisions were not based on discriminatory criteria.

It is also worth pointing out that, when the Tribunal dismissed the allegations at issue, it did not mention that the respondent department (INT) is responsible for investigating claims of discrimination. The possibility of racial discrimination within INT remains an issue. As the charts in section III B of this report show, as of March 2005 INT had only two black staff members working at the professional level. These employees represented about 7% of the department's employees, whereas the Bank's average was 8.1% and the target was 10%. The profile was noticed and remarked about in the external review of INT conducted by a panel chaired by Paul Volcker in September 2007:

There are only two Asian and one African investigators in INT. Given the large number of cases, both internal and external, that involve nationals from or projects in Asia and Africa, this suggests a significant under-representation that does not sit well with INT's ultimate goal of conducting successful investigations in diverse work environments.^{xcvi}

According to this report, approximately 37% of INT employees are U.S. nationals. INT's website and Annual Report do not show what percentage of these employees are black Americans, if any.

INT – and any unit that may be tasked with internal investigations of racial discrimination in the future²¹ – should be required to comply with the Independent Panel's recommendation that:

Every effort should be made to ensure the widest range of relevant professional skills, linguistic ability, and cultural understanding is reflected within INT, consistent with greater staff continuity. INT should report regularly to any Advisory Oversight Board on its diversity, recruitment, and staff turnover.^{xcvii}

These diversity reports should include not only nationality diversity, but also racial diversity.

²⁰ GAP could not examine the record, as the Applicant's submission to the Tribunal and the Appeals Committee transcript are not publicly available, and we were unable to obtain a copy of them from the Applicant. According to news reports, the Applicant was killed in an automobile accident in July 2003.

²¹ The 2007 Independent Panel Review recommended that internal investigations of staff misconduct not involving allegations of significant fraud or corruption be assigned to an administrative unit(s) other than INT.

4. [Hitch v. IBRD, Decision No#344, \(November 04, 2005\)](#) ²²

Background: In this case the Tribunal found that discriminatory comments regarding race and age were made by subordinates to the final decision maker, but held that the comments did not negatively affect the final hiring outcome. Damages were thus assessed on procedural irregularity issues only.

The Applicant, Ms. Vernetta Hitch, is an African American woman who worked for the Bank from 1984 until June 30, 2004. During her employment she served as an agency temporary, then on the Contract Temporary Assignment Program (CTAP) and finally on term assignments. But despite positive performance evaluations and awards, Ms. Hitch was never offered a permanent position with the Bank in the nearly 20 years that she worked there. As Ms. Hitch testified before the Appeals Committee:

As a U.S. citizen, I am stripped of my civil rights every time I enter the World Bank institution. I have been employed at the World Bank a total of 19-1/2 years, covering a time span of October 1984 through June 30, 2004, and have never been appointed to a regular position. I have always had an excellent work history, including positive performance evaluations plus four spot awards. However, an excellent work history has not prevented Management from using one reason, excuse or another as to why I have been continuously denied promotion to permanent employment. Management continues to send the message that black Americans qualify to have a job but not a career with the institution.^{xcviii}

Ms. Hitch applied for three separate positions in 2003-2004 and was denied all of them, including the contested program assistant position in the Bank's Energy and Water Department (EWD), as well as another position that she was selected for, but was not offered.²³ She alleged racial, gender and age discrimination during the hiring process, but the Tribunal case only discusses the merits of the final position because the two previous instances were settled.

In December 2003, a panel short-listed several candidates, including Ms. Hitch, for interviews. "Mr. P" was subsequently invited to apply for the job, even though the closing date had passed, and the shortlist had already been sent to HR. In January, Mr. P applied for the job and was added to the shortlist. At the end of January, Ms. Hitch learned that interviews for the position had been scheduled. However, she was not contacted for an interview, although she was short-listed. When she inquired about this, she was informed that her omission from the schedule of interviews was an oversight. Subsequently, her interview with the Selection Panel was scheduled.

According to one member of the Selection Panel (Ms. B), after the interviews the panel "had two top candidates. One was Mr. P. and one was Ms. Hitch. But it leaned more

²² GAP interviewed Ms. Hitch about this decision. This summary incorporates parts of our discussion with her.

²³ Ms. Hitch says that she was led to believe that she had not been selected for this position within the timeframe allotted under a MOU that had terminated her employment with the Bank.

toward Ms. Hitch.^{xcix} “... [W]hen we – the panel – got together to write our recommendations for this position, we all agreed – well, three of us agreed on the candidate of choice. There was one staff member who didn’t... [he] just didn’t want Ms. Hitch, and we felt that. I mean, we all felt that in that meeting...”^c

After a certain amount of e-mail traffic among the hiring manager and other participants that the Tribunal later found to be troubling, Mr. D, a senior HR officer, reacted by saying:

I thought I should let you know the background of the African American only for your benefit when you finally get to make the hiring decision. She is about 57 years old and has been in the Bank about 20 years. For 18 years, she has been a temp...

Two ACS positions were advertised for which she was initially told she does not qualify. When we got to be told of this, we investigated and discovered there were no valid grounds to exclude her...

Whatever decision you finally take about the person you want for this position, I want to assure you I will support it. I also believe that in the department, we need young, dynamic staff who are quick starts and have the urge to go an extra mile. However, we have to be fair to the African American....

My only concern with [Mr. T’s] approach is that it is based on inadequate information about the staff member. There seem to be rumors going around about her lack of teamwork skills and lack of this and that, none of which will pass the test if she ever happens to challenge the decision.^{ci}

Decision: The Tribunal decision mentions the 2003 “Racial Equality in the Bank Group” report on diversity and the jurisprudence of establishing a discrimination case at the WBAT:

At the outset, and because a report on ‘Racial Equality in the Bank Group’ is part of the record, the Tribunal would like to emphasize that according to its jurisprudence ‘it is necessary for an applicant to introduce facts supporting a claim of individualized wrongdoing which amount to a violation of his or her own terms of employment.’ (*Njovens*, Decision No. 294 [2003], para. 17, citing *Nunberg*, Decision No. 245 [2001], para. 43-44). Furthermore, the Tribunal reaffirms its jurisprudence that ‘discrimination takes place where staff that are in basically similar situations are treated differently.’^{cii}

In its ruling, the Tribunal stated that it was:

[T]roubled by the statements made in the above-mentioned e-mails of Ms. K and Mr. D. The Tribunal first finds entirely unacceptable the impersonal references to the Applicant as ‘African American’ and to Mr. P as ‘Indian.’... The Tribunal notes that it is the unfortunate stereotyping of this kind that gives rise to claims of racial and age discrimination. Especially undesirable, when comparing candidates

during a selection process, are references made to age and race in a manner which results in singling out or setting apart one person; there, the impression is created that extraneous factors are being taken into account when making important employment recommendations or decisions. This is all the more so in a multinational organization like the World Bank which, under its Principles of Staff Employment, has as its mandate the hiring of high-caliber employees and the fostering of their equal treatment by disallowing unjustifiable differentiation on the basis of age, culture and gender while, at the same time, respecting the need for diversity.^{ciii}

Although the WBAT found that language used in communications with the hiring Director regarding personal attributes of race and age were unacceptable, it held that “there is no evidence that extraneous factors such as age and race were taken into account by the Director in the final selection decision.”^{civ} The Tribunal supported the position that the: “Applicant’s non-selection was based solely on job-related and business-needs considerations.”^{cv}

The Tribunal stated that it would “not substitute its judgment for that of the hiring manager in this respect absent evidence of abuse of discretion, which the Applicant claims existed in this case because the non-selection decision was a product of bias and discrimination.”^{cvi} However, it appears that, despite the Applicant’s claim of abuse of discretion, the Tribunal did not thoroughly consider the judgment of the hiring manager. Although the Tribunal ruled that “it has been established that his decision was based on the Applicants’ respective qualifications and legitimate diversity considerations,” it is not clear how it arrived at this conclusion.^{cvi} It appears that the Tribunal did not require that the employer provide actual evidence that the other candidate was better qualified. Nor does it seem that the Tribunal allowed Ms. Hitch an opportunity to refute the Bank’s claim that this decision had been made for a legitimate business need, although she would have been afforded this opportunity in a US or EU court.

Compensation to the Applicant by the WBAT was awarded for procedural irregularities only. The Tribunal did not rescind the decision to hire the other candidate. The Tribunal decided the Applicant’s injury was equivalent to one year’s net salary and costs.

5. *Yourougou v. IBRD, Decision No# 367 (May 24, 2007)*

The Applicant, who was a Senior Financial Officer in the Banking and Debt Management Division (BCFBD) of the Treasury Vice Presidency (TRE), contested the decision to declare his position redundant after his unit’s budget was cut. The Applicant, who was “54, a Canadian citizen of African heritage, with a PHD in Finance and Banking from New York University,” was given 6 months to find a new position before his employment at the Bank was terminated.^{cvi} He filed a discrimination charge against the Bank a few days before his termination. In this filing, the Applicant:

[P]oints to the fact that one white staff member was promoted, and another was hired, at the time that his position was declared redundant, although it was well known at the time that Africans were underrepresented throughout the Bank. He

contends that the Bank had improperly and erroneously assumed that he was suitable only for work in Africa and points to the fact that management only looked for alternative employment in the Bank's Africa Region when assisting him to find alternative employment and described him to other potential employers as "a Canadian citizen of African heritage."^{cxix}

In response, the Bank asserts that:

As to the contentions relating to the under-representation of Africans, the Bank insists that its commitment to diversity cannot protect any individual person from actions that are rationally taken to meet legitimate business needs and implement budgetary reduction. Whereas Principle 4(a) of the Bank's Principles of Staff Employment requires managers to consider race in the hiring process, the Bank's redundancy rules prohibit such considerations.^{cx}

The Tribunal agreed with the Bank:

As the Tribunal has stated many times...[i]t recognizes the discretionary nature of redundancy decisions and that such decisions are subject to only limited review. The Tribunal will invalidate a redundancy decision only in cases of abuse of discretion or where the decision was arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure.^{cxix}

Further, the Tribunal – which dismissed this case without costs – stated:

The Applicant's claims of abuse of discretion because the Bank discriminated against him based on his racial origins and age have not been established. The Applicant's claim of discrimination on the basis of race is in essence that people from sub-Saharan Africa are under-represented in the Bank, that TRE declared a disproportionate number of Africans redundant between 2003 and 2005, and that despite this, a "white" staff member was promoted and another was hired at the same time he was declared redundant. Furthermore, during the six-month job search, when Bank management was ostensibly assisting him to secure alternative employment, his managers focused only on the Africa region as a likely source. This effectively pigeon-holed him as a black African rather than as an individual with relevant attributes...The Tribunal is not convinced that the selection of the Applicant for redundancy was affected by the fact that his origins are African, or that the reference to his origins during the course of his job search had any, let alone material and adverse, impact on the Applicant's candidacy for any position in the Bank or elsewhere. The Tribunal concludes that the Applicant's allegations of race discrimination lack foundation...^{cxix}

In this decision, the Tribunal validated the Bank's policy of not considering diversity in redundancy decisions. According to WBAT jurisprudence, if a Bank employee is declared redundant and believes that this decision was influenced by racial discrimination, he or she must meet a substantial burden of proof in order to prevail.

Providing information about a systemic pattern of racial discrimination is not enough to meet this standard. To meet this burden, the Applicant must introduce facts supporting a claim of individualized wrongdoing.

In this case, Mr. Yourougou produced evidence of both systemic and individual discrimination.²⁴ Mr. Yourougou demonstrated that at a time when his unit was failing to meet diversity goals by a substantial margin, it declared redundant an unusually high percentage of black employees and hired no new black staff members.

With respect to individualized wrongdoing, Mr. Yourougou claimed that he was more qualified than some non-black senior financial officers (SFOs) who were not declared redundant but who had the same job duties. Further, Mr. Yourougou claimed that his managers used a false justification to declare him redundant, as they said that he worked almost exclusively on IDA countries that the BCFBD was no longer going to train, whereas he claims that he spent only about 25% of his time on IDA countries. He maintained that his managers may have incorrectly assumed that because he was African, he must have worked only on African IDA countries.

Further, a white staff member was hired for an SFO position just before the Applicant was declared redundant. Funds that might have been used to pay for the Applicant's position were spent to hire the new SFO. Moreover, after the redundancy was declared, the department hired three more financial officers. Mr. Yourougou maintained that he should have been offered one of these positions or at the very least informed of them and encouraged to apply. However, none of those positions was suggested or offered to him. Mr. Yourougou also produced evidence that a race-based description of him was written by management during the course of his job search.

Although the Bank contested most of these claims, it appears that it did not challenge the Applicant's assertion that management only assisted him in finding alternative employment in the Africa region and described him to potential employers as being of "African heritage." Mr. Yourougou was interested in working in other regions and had previously conducted missions and supported operation teams in Eastern Europe, Asia, the Middle East and Latin America in both IDA and non-IDA countries. The Applicant also had skills transferable to employment in other regions. Yet, despite these facts, management only attempted to find jobs for him in the Africa region.

In short, it appears that the Bank 'pigeon-holed' and stereotyped the Applicant in a race-based manner, curtailing his chances of finding a suitable position outside the Africa region. Similarly, when the Applicant was employed by the Bank, he was encouraged, despite his Canadian citizenship, education in Europe and the U.S. and experience in

²⁴ Mr. Yourougou maintained that although approximately 70 staff were hired or reassigned in TRE between 2003 and 2005, 3 of African origin were reassigned but not one African was hired. He also showed that one third of the employees who were declared redundant in his department in 2004 were black. According to the data cited in section III B of this report, less than 5% of all professional staff in TRE were black as of March 2005 (approximately 4 months after Mr. Yourougou's employment with the Bank ended). This percentage of black staff is well below the Bank's diversity target of 10%.

other countries: “to focus his work on Africa, including the joint work with MEFMI (Macroeconomic and Financial Management Institute of Eastern and Southern Africa) and the AfDB (African Development Bank). In response to his request for broadening his experience, his managers indicated their preference for his continued work in the same area.”^{cxiii} The Tribunal does not appear to have considered evidence of this practice as discriminatory.

Litigators in discrimination cases generally report that they rarely find a ‘smoking gun’ in a racial discrimination dispute. Discriminators are no longer so uninformed about employment regulations and labor law that they openly make derogatory race-based remarks or explain their decisions in racial terms. As the Director of the Bank’s Office of Diversity Programs has testified, “the issue of discrimination is extremely difficult to prove unless you see a pattern, a recurrent pattern, of discrimination.”^{cxiv} Consequently, as the 1999 GAO report stated, “staff experiencing bias or harassment may be unable to point to a specific adverse decision as a basis for seeking redress. Experts in this area note that workers alleging bias or harassment often base their complaints on more general allegations that their superiors have maintained a hostile work environment.”^{cxv} A US or EU court would have likely attached greater importance to evidence that *suggests* racial bias.

To realize its diversity goals, the Bank should make every effort to retain qualified black staff members, such as Mr. Yourougou, and to consider their racial discrimination claims seriously. In this case, the Bank failed to do so, thereby undermining its own diversity targets. As a World Bank Executive Director wrote in a letter of support for Mr. Yourougou:

Even by the standards of the World Bank, Dr. Yourougou’s skills are known to be in short supply... Dr. Yourougou stands as a versatile and resourceful professional, whose skills make him one of only a few African staff with the knowledge and ability to effect the type of diversity we have all sought among the staff of this international institution, bank-wide and particularly within the Treasury. There is no doubt that making him redundant constitutes a real setback to the bank’s overall efforts in that respect, especially when the argument that has been presented to the Board to explain the racial gap is the difficulty in identifying qualified Sub-Saharan candidates.

Here is a staff of sub-Saharan African origin who is being laid off without a shred of evidence of his failure to meet any professional standard. To the contrary, his accomplishments, dedication and professionalism are recognized by his superiors...^{cxvi}

6. [Sengamalay v. IBRD, Decision No#254 \(December 04, 2001\)](#) (*Retaliator case*)

This decision addressed the severance of employment by an Applicant under suspicion of discriminatory conduct. The Applicant, who worked as Division Chief in three Divisions within the Controller’s unit – most notably the Africa Disbursements Division of LOA

(LOAAF) – contends that he was retaliated against because of “unfounded, unverified and anonymous staff complaints.” He claims that these complaints led the Vice President to retaliate against him by reassigning him to a non-supervisory position and declaring him redundant (though this decision was later withdrawn after the Applicant appealed to the Appeals Committee).

In May 1997, Dewey Ballantine submitted an addendum to its discrimination investigation (*see section II B*). According to this addendum, the Applicant was:

[S]aid to be the target of an unusually high number of complaints by persons of African origin. These complaints, summarized at length in the addendum, did not allege racial discrimination but rather other managerial deficiencies on the Applicant’s part, including (in the words of the author of the DB addendum) ‘abusive, discriminatory or otherwise unfair or unprofessional treatment by this manager,’ and in particular favoritism and preferential treatment... Although the DB investigator discussed the staff complaints with the then-current LOA Director and his predecessor, both were unwilling to criticize the Applicant without specific, signed statements from his accusers, and they noted that he was highly regarded by the Africa Region staff for whom his Division provided support services.

The DB investigator wrote that although the Applicant ‘has serious management problems which undermine his ability to effectively lead a racially diverse staff... I cannot conclude that this manager has acted in a racially discriminatory manner against any African or other black employee.’ The DB investigator also concluded that, while it would be inappropriate to ‘sanction’ or ‘discipline’ the Applicant on the basis of the information received, he should be transferred to a non-manual position.^{cxvii}

After the report was released, the Bank initiated sensitivity training for all staff. A facilitator at this training alleged that during this training, numerous criticisms emerged about the Applicant “including favoritism, abuse and discrimination.”^{cxviii}

The Applicant contended “that the DB investigation in 1996-97 had ‘targeted’ him, and that the DB addendum of May 21, 1997 – which was based on allegedly improperly gathered information and was never shared with the Applicant – planted the seed for biased motivation against him on the part of the VP-CTR.”^{cxix} The Tribunal ruled that there was insufficient evidence to support this. However, the Tribunal also concluded that:

The DB addendum was only one part of a larger pattern of troubling actions taken by the Respondent that raise serious issues of due process in connection with the decision to reassign the Applicant... The circumstances surrounding the declaration of redundancy also, in the Tribunal’s judgment, contribute to a troubling pattern that, in its totality, amounts to a denial of due process...^{cxx}

The decision to reassign the Applicant to the non-managerial position of Principal Financial Management Specialist was based upon a series of actions on the part of the Respondent that in their totality constituted a failure of due process and thus a violation of the Applicant's terms of appointment and conditions of employment.^{cxxi}

The Tribunal decided to award the Applicant eighteen months final net salary and \$20,000 in costs for these due process failures. The Tribunal did not reinstate the employee, as he had left the Bank through early retirement and had disclaimed employment with the Bank. In contrast, two black employees who alleged racial discrimination and prevailed on due process failures, Hitch (case 344) and Njovens (case 294), received twelve months net salary and unspecified costs, and 6 months salary and \$10,000 costs, respectively.

V. Conclusion and Recommendations

The World Bank has devoted much attention and energy in the past thirty years to studying racial discrimination within the institution. It has hired external consultants, convened task forces and issued recommendations. While such initiatives are commendable, they are ineffective if the internal justice system fails to vindicate people who have suffered discrimination and to penalize those who discriminate and harass. Without effective enforcement mechanisms, even the most progressive anti-harassment and diversity policies will be largely cosmetic.

Employers in many countries foster diversity and eschew discrimination not only because these actions benefit their organizations,²⁵ but also because they can be legally penalized for failing to do so. The Bank, like many institutions, sees diversity as an asset and as a way to promote its mission.²⁶ Although the Bank recognizes the business case for diversity, however, unlike most companies it cannot be sued in national courts if it discriminates. Instead, discrimination cases are heard in the internal justice system, which is not equipped to resolve them fairly. At the Appeals Committee level, the Bank is both the defendant and the judge; the Committee is not sufficiently independent of

²⁵ In a 2001 Society for Human Resource Management and Fortune Magazine survey of U.S. Fortune 1000 firms, 91% of respondents said that diversity increased their company's competitive edge, 77% said that it improved recruitment of new employees and 52% said that it improved client relations. (Egan et. al., 52)

²⁶ A recent posting on the Bank's website set out the business case for diversity at the institution, which includes:

- Bringing a wider range of knowledge and perspectives to our dialogue with clients and our work towards relevant, sustainable solutions to the challenges of economic development.
- Having teams and country presence which better mirror our client and stakeholder bases, making us more credible, representative and responsive.
- Having managers who are inclusive and can bring out the best of the diversity dividend in their teams, increasing our chances to deliver innovative and responsive high-quality products.
- Reaping our investment in recruiting, developing and retaining the best female and male talent from all over the world. (Job #081515: Sr. Program Officer (Diversity & Inclusion)).

management to be entirely impartial.²⁷ At the Tribunal, an antiquated standard of proof prevents the victims of discriminatory conduct from prevailing.

Initial research suggests that the WBAT may actually allow disparate employment outcomes between blacks and other groups. At the very least, it appears that the Tribunal is hesitant to overturn any Bank employment action that adversely impacts a black staff member. Nor does it seem that the Tribunal is an impartial “fact finder.” The Tribunal has reviewed 21 cases of racial discrimination in the past 12 years, but has failed to find racial discrimination in any one of them. This record stands despite repeated studies that have found discrimination to be a systemic barrier to inclusion within the institution.

While it is not possible to re-argue discrimination cases before the Administrative Tribunal, the breach between the factual findings of quantitative studies, which document discriminatory attitudes and practices, and the outcomes of individual Tribunal cases citing discrimination is conspicuous. It indicates that the appeals process to which the victims of discrimination must submit imposes an unreasonable burden of proof. A review of Tribunal decisions in these cases substantiates this finding: the institution is never called upon to present evidence that it did not discriminate, no matter how compelling the circumstantial evidence that it did.

The persistence of this standard, despite the evolution of jurisprudence in national settings where racial discrimination has been a prioritized issue, is also notable. Despite the studies, the findings and the rhetorical commitment to inclusion, a meaningful change in the legal process that would allow redress – at least in the most serious cases – has, to our knowledge, never been proposed or considered. At present, the Administrative Tribunal continues to accept the Bank’s justification for a possibly discriminatory employment action without requiring evidence of a non-discriminatory motive. Once the Bank presents a justification, the Tribunal does not afford a complainant the opportunity to refute it as pretextual.

GAP recommends that, as part of the reform of its Conflict Resolution System, the World Bank commission an independent review of Tribunal decisions regarding the discrimination allegations brought by black employees and job candidates in the past. This study should examine the effect that modern standards of proof in discrimination cases would have on the resolution of these disputes. It should also consider appropriate sanctions for discriminatory conduct and changes to the statutes and rules of the Tribunal that would allow it to order remedial actions and reverse policies and procedures that do not effectively constrain racial bias. Once this study is completed, the Bank should take swift action to implement its findings and to make necessary reforms.

In addition, there are at least four fundamental changes that should be made through reform of the Conflict Resolution System if the system is to comply with legal best practices. The first would allow grievants in a discrimination case to bypass informal

²⁷ In July, 2009, the Appeals Committee process will be superseded by new Peer Review panels, but changes made to this aspect of the Conflict Resolution System do not address the issues related to discrimination and the internal justice system.

mechanisms and go directly to the Appeals Committee if they so chose – as the Grievance Process Review Committee recommended in 1998. The second – which is also consistent with the Committee’s 1998 recommendations – would amend Appeals Committee and Tribunal rules so that an employee can bring a discrimination case in which no specific adverse management decision is cited. The third would allow the Staff Association to represent its members in pleading a hostile work environment or a pattern of discrimination or in challenging policies or criteria that may be discriminatory. Finally, the Appeals Committee and Tribunal should both adopt a shifting burden of proof framework in discrimination cases.

The recruitment and retention in professional grades of black Americans, specifically, deserves attention. Because the Bank identifies employees by nationality, data do not show how many black Americans are currently employed at the GF+ level. Anecdotal evidence from two reliable sources indicates that only four black Americans are employed at the Bank at the level GF+. This figure represents less than 0.15 percent of the Bank’s professional employees. This issue could and should be addressed effectively and immediately by establishing an intensive recruitment effort at Howard University and other Historically Black Colleges and Universities in the United States.

In addition, the Bank needs to track more closely what happens to black employees – including black Americans – once they enter the Bank. It should comply with the 1998 Team for Racial Equality’s recommendation that it review “procedures for determining grades and salary at the entry, time in grade and grade at retirement for black staff compared with non-black staff, leading to recommendations for consistent and fair treatment of staff in comparable situations.”^{cxxii} Although this should be done in all departments, it is especially important to track this in the Department of Institutional Integrity - and in any other unit that may be tasked with internal investigations of racial discrimination in the future.

Failure to take these steps could negatively impact the Bank. As the authors of the 2003 Bank commissioned study on diversity stated:

Research offers only limited support for the claim that simply improving staff diversity counts automatically will improve workplace efficiency, flexibility, or creativity. In fact, recent studies emphasize that when workforces are diverse but diversity is not actively managed, adverse consequences may arise for individuals, work-teams, and the organization. Without efforts to address systemic barriers to inclusion in the organization’s culture, staff diversity is likely to be a source of continuing friction rather than an asset.^{cxxiii}

Addressing systemic barriers to inclusion is especially important at the World Bank, as its mission is to assist those groups in poor countries who have traditionally been marginalized and underrepresented. As World Bank President Robert Zoellick has said, “It is the vision of the World Bank Group to contribute to an inclusive and sustainable globalization - to overcome poverty, enhance growth with care for the environment, and create individual opportunity and hope.”^{cxxiv} The Bank’s effectiveness in fulfilling this

vision may depend in large measure on sensitivity to racial, ethnic and cultural equality. As one Bank Vice-President observed, “We are not likely to treat our clients better than we treat one another.”^{cxxxv}

As Africa’s leading financier, the World Bank has made Africa its “development priority region” for the third successive year.^{cxxxvi} As the Bank expands its activities in this region, it must consider its own treatment of Afro-descendant employees. If the Bank continues to fall short on recruiting and retaining these employees and in enforcing its promise of “zero tolerance” for any form of discrimination or racial bias, it will inevitably undermine its mission in Africa and throughout the world.

END NOTES

- ⁱ Annual Report 2007: About the Staff of the World Bank.
- ⁱⁱ *Ibid.*
- ⁱⁱⁱ Diversity and Inclusion at the World Bank Group.
- ^{iv} Raspberry.
- ^v Changes in the World Bank Group Over the Last Four Years.
- ^{vi} United States General Accounting Office, 6.
- ^{vii} *Ibid.* 26.
- ^{viii} The Team for Racial Equality, 1.
- ^{ix} *Ibid.*
- ^x *Sengamalay v. IBRD*, para. 10.
- ^{xi} *Njovens v. IBRD*, para. 17.
- ^{xii} The Team for Racial Equality, 1.
- ^{xiii} *Ibid.* 9-10.
- ^{xiv} *Njovens v. IBRD*, para. 13.
- ^{xv} The Team for Racial Equality, 2.
- ^{xvi} *Ibid.* 4.
- ^{xvii} *Ibid.* 10.
- ^{xviii} *Ibid.* 7.
- ^{xix} *Ibid.* 10.
- ^{xx} *Ibid.* 3.
- ^{xxi} Egan, Mary Lou et. al., 8.
- ^{xxii} Cadario and Oyegun, slide 9.
- ^{xxiii} *Ibid.*, slide 10.
- ^{xxiv} Building a Positive Work Environment, 6.
- ^{xxv} Egan et. al, ix.
- ^{xxvi} *Ibid.* 3-4.
- ^{xxvii} *Ibid.* 28.
- ^{xxviii} McKinnon, 1.
- ^{xxix} District of Columbia QuickLinks: Census 2000 Population, Demographic and Housing Information.
- ^{xxx} Egan et. al., 26.
- ^{xxxi} *Ibid.* 40.
- ^{xxxii} *Ibid.* 41.
- ^{xxxiii} *Ibid.* 45.
- ^{xxxiv} *Ibid.* 43.
- ^{xxxv} *Ibid.* 45.
- ^{xxxvi} *Ibid.* Appendix C.
- ^{xxxvii} *Ibid.*
- ^{xxxviii} Cadario and Oyegun, slide 13.
- ^{xxxix} The World Bank Focus on Sustainability 2005/2006.
- ^{xl} Cadario and Oyegun, slide 23.
- ^{xli} The World Bank – Appeals Committee Appeal No. 1318. 244-5.
- ^{xlii} Egan et. al., 61.
- ^{xliiii} Filmer et. al., 2.
- ^{xliiv} Egan et. al., 44.
- ^{xli v} Junior Professionals Program for Afro-Descendants.
- ^{xli vi} Egan et. al, 42.
- ^{xli vii} *Ibid.* 76.
- ^{xli viii} *Ibid.* 77.
- ^{xli x} Oyegun Interview.
- ^l *Ibid.*
- ^{li} *Ibid.*
- ^{lii} Welcome to the Appeals Committee.

- liii United States General Accounting Office, 1
- liv Dean, 98.
- lv Annual Report 1999: Development Effectiveness.
- lvi United States General Accounting Office, 1
- lvii Ibid. 6.
- lviii Ibid. 12.
- lix Ibid.13.
- lx Ibid.
- lxi Ibid. 26.
- lxii The World Bank Administrative Tribunal: Statute and Rules.
- lxiii World Bank Staff Rule 8.01, para. 2.01 (f).
- lxiv Wang, 23.
- lxv Ibid.
- lxvi Ibid. 13.
- lxvii *Agodo et. al. v. IBRD, IFC*, para. 32.
- lxviii *Alexander v. Gardner-Denver*, 415 U.S. 36, 44 (1974).
- lxix *Teamsters v. United States*, 431 U.S. 324, 335 n. 15 (1977).
- lxx *Desert Palace, Inc. v. Costa*, 539 U.S. 90, 100 (2003).
- lxxi *United States Postal Service Board of Governors v. Aiken*, 460 U.S. 711, 715 (1983).
- lxxii *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).
- lxxiii *Belton et. al.*, 69.
- lxxiv *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).
- lxxv *Furnco Construction v. Waters*, 438 U.S. 567 (1978).
- lxxvi *St. Mary’s Honor Center v. Hicks*, 509 U.S. 502 (1993) and *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133 (2000).
- lxxvii *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989).
- lxxviii *Belton et. al.*, 145.
- lxxix *EEOC v. Alton Packaging Corp.* 901 F2d 920 (11th Cir.1990).
- lxxx *Price Waterhouse v. Hopkins*, 490 U. S. 228 (1989).
- lxxxi *Belton et. al.*, 70.
- lxxxii *Slater*, 53.
- lxxxiii *Holzleithner*, 927.
- lxxxiv Council Directive 2000/43/EC, 4.
- lxxxv Progress in Implementing the Racial Equality and the Employment Equality Directives.
- lxxxvi *Egan et. al.* 16.
- lxxxvii *Ruggiero*, 2.
- lxxxviii *Ibid.*
- lxxxix Building a Positive Work Environment, 14.
- xc *Carter v. IBRD*, para. 15.
- xc1 *Riddell v. IBRD*, para. 47.
- xc2 *Njovens v. IBRD*, para. 8.
- xc3 *Ibid.* para. 3.
- xc4 *Ibid.* para. 16.
- xc5 *Ibid.* para. 17.
- xc6 *Volcker et. al.*, p. 38.
- xc7 *Ibid.* p. 39.
- xc8 The World Bank – Appeals Committee Appeal No. 1318, p. 20.
- xc9 *Ibid.* 76.
- c *Ibid.* 73.
- ci *Ibid.*176-178.
- cii *Hitch v. IBRD*, para. 43.
- ciii *Ibid.* para. 52-53.
- civ *Ibid.* para.54.
- cv *Ibid.* para.41.

- cvi **Ibid.**
- cvii **Ibid.** para.54.
- cviii *Youroguo v. IBRD*, para. 30.
- cix **Ibid.** para. 49.
- cx **Ibid.** para. 54.
- cxii **Ibid.** para.61.
- cxii **Ibid.** para. 76.
- cxiii **Ibid.** para. 10.
- cxiv The World Bank – Appeals Committee Appeal No. 1318, 245.
- cxv United States General Accounting Office, 13.
- cxvi **Gomes**, 1-2.
- cxvii *Sengamalay v. IBRD*, para. 11 -12.
- cxviii **Ibid.** para. 13.
- cxix **Ibid.** para. 33.
- cxx **Ibid.** para. 36.
- cxxi **Ibid.** para. 47.
- cxix **Ibid.** 3.
- cxix **Ibid.**
- cxix **Ibid.** ix.
- cxix To Meet Global Challenges, Six Strategic Themes.
- cxix Diversity and Inclusion at the World Bank Group.
- cxix United States General Accounting Office, 6.
- cxix **Ibid.** 26.
- cxix Africa: Overview.

Works Cited

- “Africa: Overview.” World Bank Group 26 September 2008 <<http://go.worldbank.org/AVMHFKFVIO>>.
- “Agodo et. al. v. IBRD, IFC.” 5 May 1989. World Bank Administrative Tribunal. 30 September 2008 <[http://lnweb90.worldbank.org/CRN/WBT/WBTWebSite.nsf/\(resultsweb\)/FBFD74688493C17C852569EE0058B0E2](http://lnweb90.worldbank.org/CRN/WBT/WBTWebSite.nsf/(resultsweb)/FBFD74688493C17C852569EE0058B0E2)>.
- “Annual Report 1999: Development Effectiveness.” 1999. The World Bank Group. 21 August 2008 <<http://www.worldbank.org/html/extpb/annrep99/develop8.htm>>.
- “Annual Report 2007: About the Staff of the World Bank.” 2007. World Bank Group. 28 July 2008 <<http://go.worldbank.org/SOETMAA2M0>>.
- Belton, Robert et. al. Employment Discrimination Law: Cases and Materials on Equality in the Workplace. New York: Thomson West, 2004.
- “Building a Positive Work Environment: Working with Respect in the World Bank Group.” December 2001. World Bank Group. 21 August 2008 <http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2002/05/30/000094946_02051404060376/Rendered/PDF/multi0page.pdf>.
- Cadario, Paul and Julie Oyegun. “The World Bank’s Journey from Diversity to Inclusion.” 23 October 2006. Online PowerPoint. Organizational Development Network. 28 July 2008 <<http://www.odnetwork.org/events/conferences/conf2006/documents/GD-06-1.swf>>.
- “Carter v. IBRD.” 18 November 1997. World Bank Administrative Tribunal. 11 September 2008 <[http://lnweb18.worldbank.org/crn/wbt/wbtwebsite.nsf/\(resultsweb\)/97DFD8F47D2E12D852569ED0072626D](http://lnweb18.worldbank.org/crn/wbt/wbtwebsite.nsf/(resultsweb)/97DFD8F47D2E12D852569ED0072626D)>.
- “Changes in the World Bank Group Over the Last Four Years.” 1999. World Bank Group. 28 July 2008 <<http://www.worldbank.org/html/extdr/spring99/fouryears.htm>>.
- “Council Directive 2000/43/EC of 29 June 2000 Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin.” Official Journal of the European Communities. L 180/22. 19 July 2000. 19 September 2008 <http://ec.europa.eu/employment_social/fundamental_rights/pdf/legisln/2000_43_en.pdf>.
- Dean, Howard. “Due Process: The Rights of World Bank Staff in Misconduct Investigations.” Accountability, Investigation and Due Process in International Organizations. Ed. Chris de Cooker. Leiden: Koninklijke Brill NV, 2005. 97-110.
- “Diversity and Inclusion at the World Bank Group.” World Bank Group. 28 July 2008 <<http://go.worldbank.org/RHDGUEBWF0>>.

- Egan, Mary Lou et. al. Enhancing Inclusion at the World Bank Group: Diagnosis & Solutions. December 2003. World Bank Group. 21 August 2008 <http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2005/03/29/000090341_20050329150640/Rendered/PDF/318730Inclusion01for0official0use0only1.pdf>.
- Filmer, Deon et. al. Testing for Pay and Promotion Bias in an International Organization. January 2003. Development Research Group: World Bank. 25 July 2008 <<http://www.warwick.ac.uk/res2003/papers/Filmer.pdf>>.
- Gomes, Paulo. Letter to Shengman Zhang (Managing Director) Regarding Mr. Yourougou's Redundancy. February 2005.
- "Hitch v. IBRD." 4 November 2005. World Bank Administrative Tribunal. 11 September 2008 <[http://nweb18.worldbank.org/crn/wbt/wbtwebsite.nsf/\(resultsweb\)/C79519E7F8C406A852572270079BE97](http://nweb18.worldbank.org/crn/wbt/wbtwebsite.nsf/(resultsweb)/C79519E7F8C406A852572270079BE97)>.
- Holzleithner, Elisabeth. "Antidiscrimination Law in the European Union: Mainstreaming Equality: Dis/Entangling Grounds of Discrimination." Transnational Law and Contemporary Problems. Vol. 14. 22 March 2005.
- "Job #081515: Sr. Program Officer (Diversity & Inclusion)." 15 July 2008. World Bank Group. 2 September 2008 <<http://extjobs.worldbank.org/external/default/main?pagePK=64273552&piPK=64273556&theSitePK=1058433&JobNo=081515&order=descending&sortBy=job-req-num&location=WAS&menuPK=64262364>>.
- "Junior Professionals Program for Afro-Descendants." The World Bank Group. 2 September 2008 <<http://go.worldbank.org/UX8UHA41Z0>>.
- McKinnon, Jesse. "The Black Population in the United States: March 2002." 2003. U.S. Census Bureau, Current Population Reports, Series P20-541. 4 September 2008 <<http://www.census.gov/prod/2003pubs/p20-541.pdf>>.
- "Njovens v. IBRD." 20 May 2003. World Bank Administrative Tribunal. 22 July 2008 <<http://wbln0018.worldbank.org/crn/wbt/wbtwebsite.nsf/e92424db301952db852569ff006c97b8/dd397cc617acb94d85256d480049062f?OpenDocument&Highlight=0,racial,discrimination>>.
- Oyegun, Julie, director World Bank Group Office of Diversity Programs. Personal interview. 26 September 2008.
- "Progress in Implementing the Racial Equality and the Employment Equality Directives." The European Commission. 19 September 2008 <<http://www.stop-discrimination.info/2833.0.html#1188>>.

Provasnik et. al. Historically Black Colleges and Universities, 1976 to 2001. September 2004. National Center for Education Statistics. U.S. Department of Education. 21 November 2008 <<http://nces.ed.gov/pubs2004/2004062.pdf>>.

Raspberry, William. "Blacks and Whites at the World Bank." Washington Post 8 November 1978: A15.

"Riddell v. IBRD." 4 December 2001. World Bank Administrative Tribunal. 10 September 2008 <[http://inweb18.worldbank.org/crn/wbt/wbtwebsite.nsf/\(resultsweb\)/8DC70436569F891F85256B240048D47B](http://inweb18.worldbank.org/crn/wbt/wbtwebsite.nsf/(resultsweb)/8DC70436569F891F85256B240048D47B)>.

Ruggiero, Karen. "The Personal/Group Discrimination Discrepancy: Extending Allport's Analysis of Targets." Journal of Social Issues. Fall 1999, 18 September 2008 <http://findarticles.com/p/articles/mi_m0341/is_/ai_58549259>.

"Sengamalay v. IBRD." 4 December 2001. World Bank Administrative Tribunal. 22 July 2008 <[http://wbln0018.worldbank.org/crn/wbt/wbtwebsite.nsf/\(resultsweb\)/A51D4BD2B099ADA785256B240048113F](http://wbln0018.worldbank.org/crn/wbt/wbtwebsite.nsf/(resultsweb)/A51D4BD2B099ADA785256B240048113F)>.

Slater, Joseph. "The American Rule that Swallows the Exception." 6 September 2006. *bepress Legal Series*. Working Paper 1696. 11 September 2008 <<http://law.bepress.com/expresso/eps/1696>>.

The Team for Racial Equality. Memo to James D. Wolfensohn, President, World Bank Group. 4 March 1998.

"The World Bank Administrative Tribunal." World Bank Group. 30 September 2008 <<http://inweb90.worldbank.org/crn/wbt/wbtwebsite.nsf>>.

"The World Bank – Appeals Committee Appeal No. 1318." 7 December 2004. Miller Reporting Company, Inc.

"The World Bank Focus on Sustainability 2005/2006: Chapter 6: Our Social Footprint: Our Staff." 2007. World Bank Group. 28 July 2008 <<http://go.worldbank.org/5N92X660A0>>.

"To Meet Global Challenges, Six Strategic Themes." The World Bank Group. 26 September 2008 <<http://go.worldbank.org/56O9ZVPO70>>.

United States Census Bureau. "District of Columbia QuickLinks: Census 2000 Population, Demographic and Housing Information: General Demographic Characteristics." 4 September 2008 <http://factfinder.census.gov/servlet/QTable?_bm=n&_lang=en&qr_name=DEC_2000_SF1_U_DPI&ds_name=DEC_2000_SF1_U&geo_id=04000US11>.

United States General Accounting Office. World Bank Status of Grievance Process Reform. May 1999. 24 July 2008 <<http://www.gao.gov/archive/1999/ns99096.pdf>>.

Volcker, Paul et. al. Independent Panel Review of the World Bank Group Department of Institutional Integrity. 13 September 2007. 15 September 2008 <http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2007/09/19/000020439_20070919120932/Rendered/PDF/409040Volcker1Report1Sept111201PUBLIC1.pdf>.

Wang, Liang. “Office Bullying: A Literature Review.” The World Bank Group. 2 October 2008. <http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2008/01/23/000020953_20080123105511/Rendered/PDF/42206.pdf>.

“Welcome to the Appeals Committee.” 2008. The World Bank Group. 24 July 2008 <<http://go.worldbank.org/IKJGMR7KLO>>.

“World Bank Staff Rule 8.01: Disciplinary Proceedings.” 10 June 2008. Staff Connections-World Bank Intranet. 2 October 2008 <<http://siteresources.worldbank.org/NEWS/Resources/8.02Policy.pdf>>.

“Yourougou v. IBRD.” 24 May 2007. World Bank Administrative Tribunal. 10 September 2008 <[http://Inweb18.worldbank.org/crn/wbt/wbtwebsite.nsf/\(resultsweb\)/E7E58959ACDE7D FE8525730C000E037C](http://Inweb18.worldbank.org/crn/wbt/wbtwebsite.nsf/(resultsweb)/E7E58959ACDE7D FE8525730C000E037C)>.