
From: Mary Robinson <Mary.Robinson@tcd.ie>
Sent: Monday, July 27, 2020 11:57 AM
To: Niale KABA
Cc: NMEHIELLE, VINCENT O.; hbjallow@gmail.com; Leonard McCarthy; Nial Fennelly; Mary Robinson
Subject: Fwd: AfDB Panel Report
Attachments: AfDB Panel Report 27 July 2020.pdf

Dear Chairperson,

I am pleased to send you the attached unanimous Report of the Panel, consisting of Justice Hassan B Jallow, Leonard F McCarthy & myself, which I had the honour to chair.

We worked well together, and had virtual meetings by zoom on six occasions this month:

Thurs 9th, Mon 13th, Thurs 16th, Tues 21st & twice on Sat 25th to complete our draft.

Because the Bureau had facilitated a collaborator for our work, retired Irish Supreme Court Judge Nial Fennelly, we did not require the support services kindly offered by SG Nmehielle, and were able to carry out our work completely independently.

It is our hope that the Report will carry every Governor along in resolving this matter, and preserving the integrity of the Bank Group and its governance mechanisms.

With our best wishes, Mary

Report of Panel of High-Level Independent Experts Reviewing Report of Ethics Committee of African Development Bank and Response of President Thereto

Introduction

On 4 June 2020 the Chairperson of the Bureau of the Board of Governors of the African Development Bank Group issued a communiqué stating that it had agreed to authorize an Independent Review of the Report of the Ethics Committee of the Board of Directors dated 26 April 2020 relative to allegations made against the President of the Bank Group.

On 1 July 2020, the Chairperson announced the selection of a High-Level Panel of Independent Experts to conduct that Review. The members are: Mrs Mary Robinson, Chair, Justice Hassan B Jallow and Mr Leonard F McCarthy.

The task of the Panel is to conduct an assessment or review of the Report dated 26 April 2020 of the Ethics Committee of the Board of Directors regarding allegations against the President of the Bank that the Committee received from anonymous whistle-blowers on 19 January 2020, how the Committee considered those allegations and its findings as well the submissions made by the President of the Bank in response to those allegations.

The African Development Bank was established by an Agreement signed on 4 August 1963, which entered into force on 10 September 1964. It was thereafter amended on a number of occasions, as its membership was expanded. It is here described, with the African Development Fund, as “the Bank.” The purpose of the Bank is to *“contribute to the sustainable economic development and social progress of the regional members individually and jointly.”* Pursuant to Article 29 (1) of the Agreement., the powers of the Bank are vested in the Board of Governors. The Board shall have the sole power to elect, suspend or remove the President from office. Dr. Akinwumi A. Adesina is the President and Chairman of the Board of Directors of the Bank. One of the functions of the Bank (and by extension the Board of Governors), is to *“undertake such other activities and provide such other services as may advance its purpose.”* The Bureau of the Board of Governors has, as an ancillary power that of selecting a panel to undertake an independent review, as in the present matter. The decision of the Bureau of the Board of 4 June 2020 is, as stated, *“in the interest of the Bank Group to find a solution that would carry every Governor along in resolving the matter, as well as to preserve the integrity of the Bank Group and its governance mechanisms.”*

The Panel's Consideration of the Report

The Panel proposes to divide its Report as follows:

Firstly, it will review all aspects of the handling by the Ethics Committee of the complaints submitted to it by the whistle blowers, to include the manner in which it described its obligations, its assessment of the complaints and its adoption of its Report. This part will include a detailed case-by-case review of the Ethics Committee's decisions on the individual complaints.

Secondly, in the interests of due process, the Panel will consider the submissions made by the President to the Ethics Committee.

The Panel's Consideration of the Work of the Committee

I. Codes of Conduct

- a) The Code of Conduct for Executive Directors was adopted by the Board of Directors of the Bank on 25 April 2001. It has been amended on a number of subsequent occasions. It did not, as originally adopted, apply to the President.

- b) The task of Enforcement of the Code, was conferred by Article 18 of the Code on the Ethics Committee which was given "general responsibility for determining all questions relating to the Code of Conduct and for enforcing the standards set forth in the Code of Conduct."

- c) Particular responsibility was assigned to the General Counsel of the Bank, who was to "serve in an advisory capacity as counsel to the Committee," to "serve as Secretary of the Committee, and [to] keep summary records of the meetings of the Committee and a full record of the recommendations of the Committee." (Article 18 of the Code)

- d) By Resolution B/BG/2008/11 of 14 May 2008 ("the Resolution") the provisions of the Code of Conduct for Executive Directors of the Bank were made applicable to the President (see Article 1).

II. Whistle Blowing and Complaints Handling Policy

This policy was adopted in January 2007 “in furtherance of the Bank Group’s desire to strengthen the Bank’s system of integrity and the fight against corruption and related offences.”

- a) A Whistle-Blower is defined (paragraph 5) as “any person or party who conveys or is proven to be about to convey a concern, allegation or any information indicating that Fraud, Corruption or any other Misconduct is occurring or has occurred in the Bank or in a Bank Project; with knowledge or good faith belief that the concern, allegation or information is true.”

- b) The Ethics Committee is not assigned any express role in respect of the Policy. However, Section 2.2 states that: “The Auditor General is designated as the advocate for whistle-blowers and is authorized to implement this Policy. The Anti-Corruption and Fraud Investigation Division (PIAC) in the Office of the Auditor-General shall be responsible for undertaking investigations under this Policy.” As the whistle-blowers point out, the responsibility for investigation of Fraud and Staff Misconduct has been transferred from the Auditor General to PIAC. In the events that have happened, the functions of the Auditor General and of PIAC have been assimilated, in the case of complaints involving the President, to the Ethics Committee.

- c) Complaints may be made anonymously. However, Section 4.2 provides:

“Allegations and concerns expressed anonymously shall be considered at the discretion of the Auditor General. In the exercise of such discretion, the factors to be considered by the Auditor General shall include, without limitation, the seriousness of the allegation, its credibility, and the extent to which the allegation can be confirmed or corroborated by attributable sources.”

III. The Complaints

The facts regarding the presentation of the complaints are as follows:

- a) On 19 January 2020 the Ethics Committee received a document purporting to be signed by “A Group of Concerned Staff Members of the AFDB.” (hereinafter called the “whistle-blowers”). It claimed to relate to “serious and repeated breaches of the Code of Conduct by the President.”
- b) The covering letter claimed that it was being transmitted both “in accordance to [sic] the Whistle-Blowing and Complaints Handling Policy of the African Development Bank” and to Resolution B/BG/2008/11 mentioned at paragraph 2.d above. Thus the whistle-blowers expressly accepted the jurisdiction of the Ethics Committee to deal with the complaints. As stated at Chapter IV (b) above, the two procedures have been effectively assimilated.
- c) The covering letter also emphasised the wish of the whistle-blowers, who were not named, to protect their anonymity;
- d) The Complaints were, therefore, transmitted to:
- The Ethics Committee;
 - The Director of the Integrity and Anti-Corruption Department (PIAC);
 - The Chairpersons of the Audit and Finance Committee.
 - The accompanying document contained sixteen individual complaints of alleged breaches by the President of the Bank of the “Code of Ethics.” These complaints were variously described as amounting to **“unethical conduct, impediment to efficiency, political activity, private gain, impediment to efficiency, preferential treatment, adversely affecting confidence in the integrity of the Bank.”**
 - A number of the sixteen instances contained allegations of fact. In no case was any supporting evidence, documentary or otherwise, presented in support.

IV. Resolution B/BG/2008/11

This Resolution is fundamental to the entire procedure. It is the legal basis through which the Code of Conduct is made applicable to the President of the Bank. It is also the legal provision pursuant to which the Ethics Committee handled the complaints.

- a. The following are the key relevant provisions:

Article 2 is headed “**Procedures for Lodging a Complaint before the Ethics Committee.**” It provides:

“Any complaint or allegation relating to the violation by the President of the provisions of the Code of Conduct shall be submitted in writing to the Ethics Committee provided for in Article 18 of the said Code of Conduct either in person, through the Chairperson of the Audit and Finance Committee (AUF) of the Boards of Directors, or through the Auditor General of the Bank.”

Article 3 is headed: “**Preliminary Review and Transmittal of a Complaint by the Ethics Committee.**”

It provides:

“The Ethics Committee shall conduct a preliminary examination of the complaint or allegation to determine whether it is based on apparently solid justifications with a view to submitting it to the Chairperson of the Bureau of the Board of Governors under the following conditions:

- If the preliminary examination of the complaint or allegation shows that it is frivolous or not based on any objective and solid facts it shall be dismissed;
- If the preliminary examination of the complaint or allegation reveals facts that are capable of establishing violations of the Code of Conduct, the complaint or allegation shall be submitted to the Chairperson of the Bureau of the Board of Governors for further examination.”

- b. Thus, the first obligation of the Ethics Committee, upon receiving a complaint pursuant to the Resolution, is to conduct a preliminary examination of the complaint or complaints. The Ethics Committee does not, itself proceed beyond the stage of preliminary examination. Any further examination or investigation can take place only if the complaint is referred to the Chairperson of the Bureau of the Board of Governors.

- c. The Resolution mandates a strict distinction between a preliminary examination and an investigation.

V. Procedures of the Ethics Committee

- a) Following the receipt of the complaints the Board of Directors of the Bank Group, as disclosed to the Ethics Committee at its meeting on 27 February, held a closed session and decided to refer the complaints to the Ethics Committee. The complaints had, in fact, already been transmitted to the Committee.

- b) The Ethics Committee, at an informal meeting on 5 February 2020, in the absence of the General Counsel, decided to ask the whistle blowers to provide additional information relating to the allegations contained in their complaint. The Committee thus wrote to the whistle-blowers on 6 February and asked them, in order to permit it to conduct a “preliminary examination of the complaint or allegation to determine whether it is based on apparently solid justifications” as required “to submit to the ECBD, evidence which you may have to substantiate the allegations.”

- c) The whistle-blowers replied on 7 February, stating: “This (sic) has never been our intention to provide evidence of our allegations....” They gave two reasons for declining to provide evidence. Firstly, they said that “most of them,” presumably meaning evidence in support of the allegations “would expose [their] identity.” Secondly, they added that they feared that “the validity of such evidence would ultimately be contested because obtained illegally.” The Panel does not find these explanations to be persuasive. They also maintained that it was

the “responsibility of the Ethics Committee to gather the evidence if it so wishes.” Thus, the whistle-blowers declined, with one exception, to provide evidence in support of any of the complaints sent by them to the Ethics Committee on 19 January 2020. On 13 February they provided two computer links to photographs apparently intended to show that there was friendship between the President and the person mentioned in complaint number 6, dating back some 35 years.

- d) On 7 February, the Chairperson of the Ethics Committee provided the President of the Bank with a copy of the complaints received by the Committee on 19 January. This was done in the interest of Due Process, although Article 7 of the Resolution requires due-process procedures to be accorded to the President only in the case of an investigation and not in the case of a preliminary examination pursuant to Article 3.
- e) The Ethics Committee proceeded to conduct the examination of the complaints as required by Resolution B/BG/2008/11 of 14 May 2008. The Committee held a series of meetings on 27 February, 12 March, 26 March, 2 April and 9 April 2020 with a view to performing its function of conducting a preliminary examination of the sixteen allegations contained in the complaint.
- f) The meetings of the Committee were attended by the General Counsel. Article 2(8) of its Terms of Reference provides:

“The General Counsel, or if absent, a formally designated representative, shall serve in an advisory capacity as counsel to the Committee. In addition, the General Counsel shall serve as Secretary to the Committee and in such capacity, shall keep summary records of the meetings of the Committee and a full record of the recommendations of the Committee. The General Counsel shall not, however, be, in either capacity, a member of the Committee.”

The General Counsel provided advice to the Committee verbally and provided a written Legal Note on 16 March. The Committee insisted, however, that the role of the General Counsel’s Office was advisory and that decisions would be taken by the Committee itself.

g) The following are key points from the advice provided by the General Counsel:

- the actions of the Committee were to be governed by the provisions of Resolution No. B/BG/2008/11, which provides, at Article 3, that the Committee is required to “*conduct a preliminary examination of the complaint or allegation to determine whether it is based on apparently solid justifications.*”
- The General Counsel advised the Committee on 26 March and the Committee accepted that the whistle-blowers’ complaints were formally admissible since they were made against an elected officer. Thus, they fell within the Committee’s mandate. Substantive admissibility could be determined only following a point-by-point examination of the individual allegations,
- The General Counsel advised, in various terms, that a “preliminary examination is an initial assessment of the facts and circumstances submitted to the Committee in order to determine whether on their face they reveal information on which a reasonable person would come to the conclusion as to whether those facts and circumstances warrant further inquiry based on probable cause or not.” He added that it is “an examination of the facts to determine if they are credible on the face of them (prima facie) or if they are frivolous.” He concluded that a preliminary examination is ... “an ex ante review of the complaint or allegation to screen out frivolous or vexatious allegations.”
- At certain points, the General Counsel said that the “burden of proof” (an expression not used in the Resolution) was on any person who alleges a series of facts, a proposition which was accepted by the Ethics Committee in its report, in the sense that it believed that the complaints needed to have some basis in fact.

- h) PIAC: The Committee determined on 12 March that it would invite the Director of the Integrity and Anti-Corruption Department of the Bank (PIAC) and the Auditor General to its subsequent meetings with the object of discovering which of the allegations by the whistle-blowers were under investigation by PIAC or the Auditor General:
- i. The Director of PIAC attended meetings of the Ethics Committee and engaged in detailed discussions. However, it emerged that PIAC could play little if any role in the deliberations of the Committee with regard to the whistle-blower's complaints.
 - ii. The Director explained that, while the Committee's mandate focuses on elected officers, the mandate and jurisdiction of PIAC cover only employees and contractors. The investigation of elected officers is beyond its mandate. In the event that PIAC encountered a matter concerning an elected officer, it would, however, be bound to report it to the Ethics Committee.
 - iii. PIAC has received and has looked at the complaints of the whistle-blowers. Its general view is that it is not within PIAC's mandate to investigate them. It noted that one allegation (number 8) mentioned alleged sexual harassment of one staff member (not the President) by another, which, for that reason, would fall within PIAC's mandate. The Director said that there was no substance in the allegation.
 - iv. Moreover, the General Counsel advised that, once an investigation is undertaken by one organ of the Bank, it would constitute double jeopardy, if another organ of the Bank were to investigate the same matter. Furthermore, all PIAC's reports are confidential and cannot be provided to the Ethics Committee.
 - v. The Director was asked to consider each of the sixteen complaints of the whistle-blowers. In the great majority of cases, there was no investigation of the

complaint by PIAC. Insofar as there were issues concerning some of the areas of Bank activity under some form of inquiry by PIAC, none of them related to an elected officer and, thus not to the President.

- i) **The Auditor General.** The Committee also invited the Auditor General to attend its meetings with a view to finding out which, if any, of the whistle-blowers' complaints had been audited by his office. As already noted, the Auditor General had formerly been authorised to implement the Whistle-Blowing and Complaints Handling Policy. However, the Auditor General had not received the whistle-blowers complaints, which had been sent to PIAC, until they were supplied to him by the Committee. The Auditor General informed the Committee that his office does not conduct investigations. It looks at processes and robustness of controls. If, in the course of an audit a whistle-blower makes a complaint relating to controls, it is examined as part of the audit, but if it relates to alleged misconduct which need investigation, the Auditor General refers it to PIAC. If a complaint concerns an elected officer, the Auditor General will refer it to the Ethics Committee.

- j) **The President:** On 8th April the Committee received a memorandum and supporting documents from the President in response to the complaints which had been furnished to him.

VI. Consideration of Complaints by Ethics Committee

It is important to recall that the Ethics Committee received the detailed written and oral advice of the General Counsel and that it engaged in detail with both PIAC and with the Auditor General. It is equally important to note that the consideration of the complaints of the whistle-blowers was, pursuant to the Resolution, a function of the Ethics Committee.

Bearing in mind that it had already determined the formal admissibility of the complaints at its meeting on 26 March the Committee proceeded on 2 April to address their substantive admissibility. It employed an excel template submitted to the Committee members by the Vice Chairperson of the

Committee. The General Counsel advised that the Committee should look at the allegations and the surrounding circumstances and determine whether, in their view they looked credible.

Each member of the Committee presented his or her analysis of each of the sixteen allegations. Following their deliberations, they reached a consensus that fourteen of the allegations were unfounded and without merit and should be dismissed.

The Committee decided to continue its deliberations at its next meeting on 9 April in relation to complaint number 4, which concerned alleged mismanagement of an agricultural programme and complaint number 10 concerning awards received by the President and potential costs borne by the Bank for such awards.

On 9 April the Committee firstly considered how they should treat the memorandum and supporting documents received from the President on 8 April. It heard the advice of the General Counsel, which was to the effect that the Committee was currently undertaking a preliminary examination and that this implied that the President was not required to appear before it to adduce any evidence since such a prerogative was within the purview of the Bureau of the Board of Governors.

The General Counsel added that, because of the amount of time that it had taken for the Committee to conduct its preliminary review, and the fact that the allegations have been made public, the President had felt compelled to provide a response. The General Counsel advised the Committee that the material received provided a second side to the story, and it was within the purview of the Committee either to consider it or to transmit it to the Bureau of the Board of Governors as received along with its report to the Chairperson of the Bureau.

Having taken due note of the advice of the General Counsel, the Committee determined that given that its mandate was limited to conducting a preliminary examination, it was not in a position to go through the documents received from the President as it does not have the mandate to reflect upon them. It decided to finalize its report to the Bureau of the Board of Governors and to append the documents received by the Committee from the President.

The Committee then conducted a preliminary examination of the two outstanding allegations, numbers 4 and 10. It decided unanimously that both allegations were unsubstantiated and that they should be dismissed. In relation to each of these cases, it decided as follows:

The TAAT was validly approved by the Board of Directors. Although its discussions with PIAC revealed that there was an ongoing investigation, potentially raising concerns relating to staff, no elected officer, including the President, had been shown to be implicated in any wrongdoing;

The allegation suggesting that awards received by the President and associated costs allegedly borne by the Bank were unsubstantiated and lacked support of any solid facts or information to back them up.

The General Counsel, as was his duty, prepared the Report of the Ethics Committee.

VII. Panel's Review of the Report of the Ethics Committee

The first and principal function of this Panel is to review the Report of the Ethics Committee. This requires the Panel to conduct an independent and objective review of how the Ethics Committee handled the complaints received by it on 19 January 2020 and ultimately reported on them. The following summarises the steps taken by the Ethics Committee in the performance of its duty.

The Duty of the Committee: From the outset, the Committee had to identify for itself the precise duty imposed on it by the Code of Conduct of the Bank. For this purpose, it had available to it the assistance and advice of the General Counsel. Next it had to adopt procedures to enable it to identify and collate any available evidence relevant to the complaints. It then had to consider and discuss that evidence and reach conclusions about the extent, if any, to which the complaints were borne out by the evidence. Finally, with the assistance of the General Counsel, it had to reduce those conclusions to the form of a Report, comprising the result of a preliminary examination of the complaints pursuant to Article 3 of the Resolution.

- a. **The Ethics Committee:** Under Article 18 of the Code of Conduct, as stated at Chapter III b above, the Ethics Committee, which is a Committee of the Board of Directors has “general responsibility for determining all questions relating to the Code of Conduct and for enforcing the standards set forth in the Code of Conduct.”
- b. The Revised Terms of Reference of the Ethics Committee adopted on 25 April 2001 provides for the composition and procedures of the Ethics Committee. Its members are Executive Directors of the Bank.

- c. Originally, the Code of Conduct applied to the Executive Directors of the Bank and other named officials but not to the President of the Bank.

- d. **The Resolution:** Resolution No B/BG/2008/11 of 14 May 2008 (“the Resolution”), as stated at Chapter III d above, provided that “the provisions of the Code of Conduct for Executive Directors of the African Development Bank and the African Development Fund (the “Code of Conduct”) [should] apply to the President.” Article 2 of the Resolution lays down the procedures for lodging a complaint before the Ethics Committee.

- e. **Complaints:** Any complaint relating to an alleged violation of the Code of Conduct by the President must, as provided by Article 2 of the Resolution, be submitted in writing to the Ethics Committee. The complaint may be submitted either in person or, in the alternative through the Chairperson of the Audit and Finance Committee or through the Auditor General.

- f. Preliminary Examination Article 3 of the Resolution lays down a special procedure whereby the Ethics Committee is required to conduct “a preliminary examination of the complaint or allegation to determine whether it is based on apparently solid justifications with a view to submitting it to the Chairperson of the Bureau of the Board of Governors...” The preliminary examination is an essential precondition to any substantive investigation of a complaint against the President under the Resolution. Only where a preliminary examination “reveals facts that are cable of violations of the Code of Conduct,..” may the complaint or allegation be submitted to the Chairperson of the Board of Governors for further examination. (Article 3, second indent). This is further emphasised by Article 4 of the Resolution, which provides that “the Chairperson of the Bureau of the Board of Governors, in consultation with other members of the said Bureau, shall have sole competence to finally determine whether or not there exists a reasonable basis for pursuing a complaint or an allegation in relation to the violation by the President of any provision of the Code of Conduct.”

- g. **General Counsel:** As recounted earlier, the Committee received both written and oral advice from the General Counsel. Particularly regarding the meaning of a preliminary examination and the interpretation of the Resolution, including references to the standard or burden of proof which lay on the complainants or whistle-blowers.
- h. **PIAC and Auditor General.** The Committee invited the attendance of both PIAC and the Auditor General at its meetings and discussed the extent, extremely limited in each case, to which they had investigated any of the sixteen complaints.
- i. **Burden of Proof.** Both the General Counsel and the Committee itself occasionally suggested that a “burden of proof” lay on the complainants or whistle-blowers. However, that term is not used in the Resolution. Rather Article 3 of the Resolution requires the Committee, when conducting its preliminary examination to “determine whether [a complaint] “is based on apparently solid justifications...” Article 3 further requires that a complaint be dismissed where “it is frivolous or not based on any objective and solid facts.” It is clear that these two expressions are intended to have the same meaning. They perform the same function, i.e., to assist the Committee in conducting its preliminary examination. The General Counsel and the Committee occasionally used the expression, “burden of proof,” intending it to guide the Committee in conducting the preliminary examination envisaged by Article 3.
- j. Consistently with this the Committee, when ruling on individual complaints, used various expressions all connoting deficiency of evidence. Most commonly, it described complaints as “unsubstantiated.” It also spoke of lack of “credible evidence” or of “solid facts or information.” These and other expressions conveyed the Committee’s view that there was either no, or no sufficient, evidence to support a complaint. This approach was entirely consistent with the Committee’s function in conducting the preliminary examination.
- k. The proceedings of the Ethics Committee are recorded in the Minutes of five lengthy meetings held on 27 February, 12 March, 27 March and 2 and 9 April 2020. The Minutes show that the Committee engaged in detailed analysis and debate on each of the sixteen complaints. It used an excel template provided to it by its Vice Chairperson to assist in a point-by-point examination. Firstly, it reached a consensus at its meeting on 2 April that

fourteen of the complaints were unfounded and should be dismissed. On 9 April, it considered the remaining two complaints and reached the conclusion that each of them was unsubstantiated and should also be dismissed.

- I. Having followed the procedures outline here, the Committee, with the assistance of its General Counsel reduced the results of its deliberations to writing and, on 26 April 2020, presented it to the Chairperson of the Board of Governors of the Bank Group.

VIII. Review of Individual Complaints

The Panel has, in Chapters I to VII reported on the general issues and principles relating to the conduct by the Ethics Committee of its function pursuant to the Resolution of receiving, considering and reporting on the complaints made to it by the whistle-blowers and, in particular, reporting on its preliminary examination of the complaints received by it on 19 January 2020. The Panel now proceeds to consider separately the decisions of the Committee on each of the sixteen individual complaints.

The Panel, in reporting on individual cases, has adopted a policy of preserving, so far as possible, the anonymity of individual persons named in the complaints. Those persons, in many, indeed most cases, were not the object of the complaints. The Complainants themselves carefully guarded their own anonymity. More importantly, in circumstances where the Ethics Committee did not uphold any of the complaints, it would be unfair to name individuals and would run the risk of exposing innocent persons to unfair exposure and potential reputational damage.

The Panel would add that it does not necessarily follow from the dismissal of a complaint that there are not matters worthy of investigation. This has prompted the Panel to make comments in some cases. These do not detract from the Panel's conclusion that the complaints, which were all made against the President were correctly dismissed at the stage of preliminary examination.

Allegation Number One

Non –Respect of Internal Rules and Regulations in recruitment- The Complainants charged the President of the Bank with “playing a very active role in the recruitment of all managerial positions, acting as the de facto HR Manager..... he is known to have excluded top rated candidates from shortlists and to have cancelled shortlists drawn up by independent recruitment panels”.

The complainants declined to provide any evidence in support of this allegation.

The ECBD concluded that the allegation was unfounded and should be dismissed on the grounds that the staff rules bestow authority on the President in respect of all staff, give him the power of appointment and promotion of staff and that all structures of the Bank on appointments and promotions are advisory to the President. This position of the ECBD appears to be based on an opinion of the General Legal Counsel of the Bank quoted by the complainants to wit:

“the President is better placed than any ad hoc interview panel to know which prospective candidate for employment by the Bank would be best suited in assisting him/her in delivering that vision (which he has been elected to deliver) he/she can recruit the person concerned without passing through an interview panel or any other formal process”.

The Panel concurs with the finding/conclusion of the ECBD that this allegation is unfounded and should be dismissed, though not principally for the reason given by the ECBD. The Panel finds that the allegations are general: they lack specificity and are not supported by any information or evidence. Hence do not satisfy the threshold of credibility and substantiation required by the Resolution and should be dismissed.

The Panel is however concerned at the apparent position of both the General Legal Counsel and the ECBD in the matter of recruitment and promotion of staff. The Bank has rules and regulations governing recruitment, promotion and management of staff which should be respected especially by the President of the institution to maintain public trust and confidence in the institution. Undoubtedly, as the head of the institution the President will often rightly enjoy wide discretion to be exercised properly and fairly, in such matters. The Panel reiterates that no evidence of actual departure by the President from such standards has been presented by the complainants.

Allegation Number Two

Appointment of a named staff member. – The petitioners allege that this staff member was appointed to the Bank despite having been dismissed from the National Pension Commission of Nigeria following allegations of improper conduct and that the President of the Bank must have been aware of these circumstances.

It is also alleged that this staff member was appointed as a consultant at the request of the President for a fee considerably higher than the applicable standard and that, in protest, the head of Human Resources resigned.

The complainants declined to provide any evidence to support any of these allegations. The complainants declined to proffer any evidence of the alleged dismissal of the staff member or of the personal involvement of the Bank President in her recruitment as a consultant to the Bank or of any protest or resignation by the head of HR of the Bank. The complaint was unsupported by any evidence. The Committee found the allegation to be unsubstantiated and dismissed them. The conclusion of the Committee is thus reasonable and correct.

Allegation Number Three

Appointment and promotion of a named person – The complaint is that: The staff member is alleged to be the President’s brother-in-law, that at the President’s request, he was appointed a lead expert to the VP Agriculture and promoted Adviser on both occasions without competition, then to a further senior position, while the incumbent was still in place as a result of which two salaries were being paid for the same position by the Bank in violation of the Bank Recruitment Manual.

The complainants once more declined to provide any evidence in support of any of the allegations. The Committee held that the allegation was uncorroborated and should be dismissed. While it focused on an alleged familial relationship between the staff member and the President of the Bank, the existence of the alleged relationship was not supported by any evidence. Furthermore, the complainants themselves state that it is not clear if the alleged familial relationship played any part in the staff member’s recruitment and promotion. Far from supporting their allegations with evidence, the complainants seemed to be transmitting rumours/reports in respect of both the alleged familial relationship and the alleged request of the President for the recruitment of the staff member. This allegation was properly dismissed by the Committee.

Allegation Number Four

Alleged Mismanagement of a named agricultural technology Programme – The complainants allege that a grant of \$40 Million was made by the Bank to a particular named beneficiary “only after the President personally used all of his political weight to defend the transaction and lift” the doubts of

the Board of Directors of the Bank. It is further alleged that this was because the President was a former employee of the beneficiary and that the procurement rules were violated through direct procurement of \$5.46 Million worth of pesticides when the grant contract specifically prohibited such a procurement method.

The complainants declined to provide any evidence in support of the allegations. The Committee was right in dismissing this complaint as there was no evidence of personal responsibility of the President in any wrongdoing in this programme. The Committee was justified in dismissing the allegation.

This suffices to dismiss this complaint. The Panel would add that, at its meeting of 26th March 2020 the PIAC Director disclosed to the Committee that in relation to the Agriculture cases its investigation “has uncovered elements of potential staff misconduct and potential sanctionable practices against certain companies.” However, PIAC had uncovered no evidence linking the subject of the complaints, in particular the President, under consideration to the agriculture cases. If it had, it would have reported the matter to the Committee.

Allegation Number Five

Appointments and promotions of a named person– It is alleged that the named staff member had long lasting professional ties with the President and worked for him when he was the Minister of Agriculture of Nigeria; that the staff member was appointed Director of Cabinet Office of the President in April 2017 without competition at a salary which was increased in breach of staff rules and that in 2018, despite falling into disgrace, this staff member was appointed by the President as a Director in a senior position to perform a function that does not exist in the current organizational chart; that almost no trace of actual work by her can be found and that according to the complainants information the “special duty” she was assigned by the President is to take care of his wife allegedly undergoing treatment in South Africa.

The complainants declined to provide any evidence to support any of these allegations. The Committee decided that the allegation was unsubstantiated and should be dismissed as it lacks credible evidence and was weakened by the inclusion of hearsay in it. The Panel finds this allegation to have been rightly dismissed by the Ethics Committee.

The Panel would add that the inclusion in the complaint of a far-fetched and unsupported allegation that the staff member was engaged in, the care of the President's wife tends to weaken the case and to discredit the process.

Allegation Number Six

Direct Contracting and appointment of a named person. – The complainants allege that the staff member, allegedly a childhood friend of the President was awarded a consultancy contract in 2017 which contract had been flagged by Internal Audit as being potentially subject to a conflict of interest. They suggest that the staff member's close association should have been disclosed during the contracting or recruitment process.

The complainants declined to provide any evidence in support of the allegations other than a photograph of the President in the company of the staff member. The Committee dismissed this allegation as unsubstantiated. They point out that there was a failure by the complainants to report appearances of conflict of interest in the appointments of the consultants as required by the provisions of Presidential Directive No. 02/2012. The Panel is satisfied that the decision of the Ethics Committee was correct. The Panel considers the complaint to be without merit.

Allegation Number Seven

Contracting of a named person – The complaint alleges that a particular individual was appointed as a consultant by the President immediately upon his retirement and was kept in office with an allegedly comfortable monthly fee and that his continued appointment as a consultant is in disregard of the presence of the Deputy Director General in Pretoria.

The Panel concurs with the Committee in dismissing the allegation on the grounds that the alleged facts do not disclose any wrong doing nor are any rules specified by the complainants as having been violated by the President for his role in the award of the contract of consultancy in question.

Allegation Number Eight

Appointment of a named individual- The complaint alleges that this person was found guilty of sexually harassing a colleague during the probation period and that the then Human Resource Director refused to confirm his contract at the end of the probation period because of his alleged

misconduct, that it was the President who requested the confirmation of the individual's contract despite this alleged sexual harassment and that the action of the President in turn contributed to the resignation in 2019 of the HR Director at the time.

The complainants provided no evidence in support of this serious allegation. This allegation, apart from being unsupported by evidence has, as it happens, been shown to be untrue. At the meeting of 26th March 2020 of the Ethics Committee, the Director of the PIAC disclosed that this allegation of sexual harassment had been investigated and found to be totally baseless and unfounded. Its discussions with the former Human Resource Director who had resigned also revealed, according to the minutes of that meeting, that she had absolutely no knowledge of the allegation of sexual harassment and that it was certainly not the reason for her resignation.

The allegations made against the named individual in this respect and also the President are totally false and unfounded, and the Committee was right in dismissing them.

Allegation Number Nine

Preferential Treatment for Nigeria and Nigerians – The complainants allege that under the current President, Nigeria was promoted to almost a fully-fledged Region of the Bank and that furthermore in the massive recruitment drive which followed his appointment, the President gave preferential treatment by recruiting a large and disproportionate number of Nigerians into the Bank.

The complainants declined to provide any evidence beyond their bare allegations. The Committee looked into this allegation and found it to be unsubstantiated and that it should be dismissed. The decision of the Committee was correct.

The Panel would further observe that the Committee found that the whistle-blowers erred in attributing the current country structure of the Bank to be the responsibility of the President. The Board of Directors played its proper statutory role as required by Article 32 of the Agreement establishing the Bank.

Allegation Number Ten

Awards Received by the President - The complainants here allege that in 2017 and 2019, the President received two major awards, one being the World Food Prize of \$250,000, and the other

being the Sunhak Peace Prize of \$500,000. The complainants state that the Bank supported associated costs of attendance of a large number of people at the award ceremonies.

The complainants do not state clearly whether these were awards made personally to the President or as President of the Bank. They further allege that dozens of people- Bank staff, Directors, family members etc. attended these awards ceremonies at the Bank's cost. They however failed to give any details of those who attended and the cost involved and to confirm that these costs were borne by the Bank itself.

The complainants failed to provide any evidence to support their allegation or, indeed, any evidence of alleged impropriety.

The Panel concurs with the Committee in the dismissal of this complaint. There is no list of people who attended. There is no indication of the cost involved. There is no clarity as to whether those costs were undertaken by the Bank or not by the Bank. The Committee was accordingly right in finding that the allegations uncertain as they are, were not substantiated in any way and should be dismissed.

Allegation Number Eleven

Settlements for Staff Separations- The allegation here is very general that some separation packages were negotiated by the Bank and that they seem to be unnecessarily and unreasonably costly or generous.

Only one specific instance is cited, namely a person who is alleged to have received a severance package of more than \$400,000 just when his contract had been renewed. But even in relation to that specific instance, there are no specific allegations of wrongdoing or impropriety, only questions are raised by the complainants about that particular package. So far as the evidence goes, it would be perfectly consistent with the sums being based on accrued benefits based on years of service.

The complainants seem to be uncertain themselves as to whether it was proper or not proper and raise questions. Whereas, they should actually have been more categorical and provided supporting evidence to establish that it was an improper arrangement. The Panel therefore agrees with the Committee in dismissing this allegation.

In addition to these considerations, the Committee itself has sufficiently explained the circumstances surrounding the departure of the staff member as well as the level of the

severance package that he received and the Panel is satisfied with that and with the decision of the Committee to dismiss the allegation.

Allegation Number Twelve

Resignation of a named staff member – The complainants allege first that this staff member signed two service contracts through direct procurement amounting to \$2.5 Million to the benefit of a Kenya recruitment firm in which he is alleged to have an interest and that he also exceeded his authority in that as a Director he could only sign contracts up to \$100,000 whereas these two contracts amounted to \$2.1 Million.

Furthermore, the complainants allege that the President of the Bank, once he became aware of these improprieties and while the staff member was under investigation, allowed him to resign from the Bank and paid him a substantial separation package.

The complainants declined to provide any evidence in support of the allegation.

With regard to the first allegation, although the Committee did not refer to it in its report, the PIAC Director did inform the Committee at its meeting of 26th March 2020, that that allegation had been the subject of investigation by the PIAC and that the President of the Bank had not been found to be in any way involved with that transaction and that if he had been the matter would have been reported to the Ethics Committee given that he is an elected official. The Panel therefore concurs with the decision of the Committee to dismiss this allegation against the President.

With regard to the second issue, that is the separation of the staff member with the permission of the President and the payment of what is said to be a substantial amount of compensation, the Committee itself came to the conclusion that the President under the Rules of the Bank has no power to refuse to accept a resignation by a staff member even while they are under investigation. So, there was nothing improper with him accepting the resignation.

With regard to the separation package, no supporting evidence was provided by the complainants as to the amount that the staff member received and whether it was proper for him to have received such a package. In any case, the Committee dismissed that allegation and rightly held that not only could the President not prevent resignation of a staff member under investigation but that such a staff member is entitled to all his benefits

under the Rules and these could not be withheld from him. The Panel therefore agrees with the conclusion of the Committee on this particular allegation.

Allegation Number Thirteen

Resignation of a named staff member – This staff member who was the Bank’s representative in one named country was alleged by the complainants to have been found guilty of serious misconduct after an audit investigation.

The complaint is that instead of being sanctioned by the Bank, the staff member was allowed to resign and receive what the complainants called a “golden parachute” as part of an amicable settlement. The complainants have not provided any particulars, and elements of this alleged golden parachute.

The Committee rightly found as in the previous case that where a staff member resigns even under investigation they are entitled to their full benefits.

Furthermore, it should be noted that the PIAC in its report to the Ethics Committee on 26th March 2020, indicated that the conduct of this staff member had been under investigation but that there had been no evidence of any wrong doing by the President in this matter and if the PIAC had found such evidence it would have been reported to the Ethics Committee. The Panel concurs with the finding of the Ethics Committee in this case.

Allegation Number Fourteen

The appointment of a named individual to a senior position in the Bank. The complainants allege that the staff member used his position and fraudulently awarded two contracts to companies for a total amount of more than \$18 Million and that the matter had been investigated, the responsibility of the staff member established but that until now no action has been taken by the Bank against him and that instead in October 2019, he was appointed by the President to a senior position.

The Committee held that this allegation is unsubstantiated and should be dismissed having regard to the briefing it received from PIAC to the effect that the staff member was not found to have been involved in any wrong doing following the outcome of the investigations on the award of the contracts.

Along the same lines, the Board of Directors of the Bank in discussions with the President of the Bank and on the advice of the General Legal Counsel, came to the conclusion that it was not legally justified to punish the staff member because he was following professional advice provided to him by the Procurement Department of the Bank in the award of the contracts. Thus, there was no justification for him to be sanctioned. As a result, therefore, the award of these contracts was no impediment to his appointment to senior positions in the Bank. As a result, the allegation of the complainants in this matter was properly dismissed by the Committee.

Allegation Number Fifteen

Disregard of rules concerning leave of absence of Vice Presidents or travel of management – The complainants allege here that senior management abuse the travel policy without sanction. The complainants claim that they “cannot imagine that the absences of such staff have not been authorized by the President.”

There is no evidence provided by the complainants that the President de facto or de jure has the authority to grant leave of absence for such officers and to refrain from sanctioning them for unauthorized absences. They provided no evidence, other than surmise, that the President in fact knew or authorized. For that reason, the Committee was right in dismissing the allegation against the President.

It is true that the complainants are quite specific. They provide details of two named individuals allegedly taking excessive periods of leave.

While the Panel agrees with the Ethics Committee’s conclusion that the allegation against the President should be dismissed in respect of these absences, the Panel nonetheless is of the view that these alleged abuses of travel policy by senior management particularly those specified by the complainants ought to be looked into to ensure that the Bank’s rules and regulations regarding travel and leave are fully complied with. This does not affect the Panel’s view that the complaint against the President was correctly dismissed.

Allegation Number Sixteen

Political Lobbying of Heads of State- The complainants describe the President as “the unchallenged travel champion of the Bank”. They allege that he uses the opportunities of these travels to meet

with Heads of State and make promises, effectively by-passing Bank management in order to secure support for his re-election to a second term and to stifle competition.

The Committee found these allegations unsubstantiated and dismissed them. The Panel however finds these allegations frivolous. It has to be recognized that the President as the elected head of the Bank has to engage in diplomatic outreach. This does not necessarily relate to his own re-election but is necessary in order to secure the widest possible political and diplomatic support for the institution. The allegation was properly dismissed.

The Panel's Conclusions regarding Report of Ethics Committee

The Panel is satisfied that the Ethics Committee considered the complaints received by it on 19 January 2020 in a comprehensive and responsible manner and followed correct procedures. It considered them, both as complaints submitted pursuant to the Resolution and pursuant to paragraph 4 of the Whistle-blowers Policy. It appropriately took the advice of the General Counsel in identifying its duty. It conducted a preliminary examination of the complaints as it was required. It took proper note of the criteria laid down for evaluating complaints and the sufficiency of supporting evidence. It consulted PIAC and the Auditor General. It engaged in discussion and debate of each individual complaint and reached a consensus on the outcome. It applied the correct standard and prepared a report for submission to the Chairperson of the Bureau of the Board of Governors.

The Panel concurs with the Committee in its findings in respect of all the allegations against the President and finds that they were properly considered and dismissed by the Committee.

Panel Review of President's Response to Complaints

- The Terms of Reference of the Panel as laid down by the Bureau of the Board of Governors on 4 June 2020, require it to conduct an assessment or review of the submissions made by the President of the Bank Group in the interest of due process in response to the allegations levelled against him and to have regard to the documents, emails, annexes, and letters supporting his submission. The goal described by the Bureau of the Bank's Board of Governors is to establish the propriety or otherwise of the process undertaken by the Ethics Committee.

- On 8 April 2020, Dr. Adesina, (hereinafter “the President”), having been notified by the Committee of the complaints, submitted a detailed document to the Ethics Committee, contending that the specific facts contained in his submissions demonstrate that the complaints made in the Disclosure by the Unidentified Concerned Staff, did not meet the requirements of the Whistleblowing and Complaints Handling Policy of the Bank and that they were frivolous, and not based on objective and solid facts. Under the Terms of Reference, the Bureau of the Board of Governors directed this submission to the Panel, to assess and address in its Report to the Bureau (in the interest of due process).

- This is, therefore, a review of the submissions of the President, based on what is contained in the papers submitted by him. It is an unusual procedure. It is not a judgement, as the process does not lend itself to the reaching of any conclusions by the Panel. The Panel’s approach is to assess the President’s memorandum on the face of his submissions, bearing in mind that the Ethics Committee did not deem it necessary to review its contents in conducting the preliminary examination of the complaints, as it was required by Article 3 of the Resolution. Our opinion is based on the common sense and prudence of a reasonable person looking at the facts. We have also considered two letters by an attorney on the President’s behalf.

- In essence, the President contends that the complaints are based on bad faith, that they are not informed by a reasonable belief but by ulterior motive, that some were carelessly or illogically made and some plain dishonest, untrue, and vexatious.

- As a preliminary matter, the Panel notes that it appears that the confidentiality of the Bank’s procedures was compromised by virtue of the fact that both the allegations made by the whistle-blowers (the anonymous “Group of concerned Staff Members) in their complaints and the response of the President have found their way into the public domain. This is unfortunate. Under the Whistle Blowing and Complaints Handling Policy of the Bank, public disclosure of fraud, corruption or misconduct is prohibited prior to use of the procedures set out in the policy (see Section 6). It is notable that the whistle-blowers were themselves careful to protect their anonymity. The Ethics Committee carefully maintained the confidentiality of their procedures.

- The Panel has already considered each of the sixteen complaints of the whistle-blowers in detail in the first part of this Report. At this point, it is required to consider the response of the President, which does not require it to engage in a corresponding case-by-case analysis. For ease of reading and interpretation, the Panel groups together complaints which share common elements.

- **Complaint No 1**: The first complaint is a general and sweeping allegation that the President regards human resource matters as his personal fiefdom, inserts himself in shortlisting processes, is actively involved in recruitment and implies that the delays, vacancies and lack of succession planning may be part of a “strategy to reward countries for the support to the President’s re-election”. The President does not directly deal with this allegation. As noted earlier it is not supported by specific examples. The thrust of the President’s response throughout his submission, though, is that he has always acted in accordance with his powers as President of the Bank, in its best interest, that human resource management is conducted in an orderly fashion, employing standard recruitment practice and that some of the decisions complained of are taken under delegated authority.

Article 37 of the Agreement empowers the President as the chief of the staff of the Bank, responsible for the organization of its officers and staff, and requires him/her to secure the highest levels of efficiency, technical competence and integrity, in appointing officers and staff.

- Furthermore, as was determined by the Ethics Committee in its Report, Staff Rule 33.00 confers authority upon the President in respect of all staff. Staff Regulation 6.1 gives him powers of appointment and promotion of staff. The Committee expressly found, correctly, in the view of the Panel that Rule 62.01 on staff appointments and promotions clearly implies that all structures of the Bank on appointment and promotion are advisory to the President.

- **Complaints Numbers 4,9,10 and 16**: We here group together the President’s explanations about non-staff related matters and distinguish them from other claims regarding personnel actions. As regards a decision by Bank management, (which included a Board discussion), to honour a contract under the TAAT program (complaint number 4), and the President’s directives to pay a global supplier who delivered seed-coated technology used in the SADC region to prevent spread and infestation of Fall Army worms, he explained that he acted within the confines of the Bank’s

articles of agreement, in the best interests of the Bank, and that there was nothing irregular about its handling. He did this to ward off a possible civil suit against the Bank for violating contractual obligations, and to protect its reputation, privileges, and immunities. The Panel considers the President's account of his actions to be reasonable.

In respect of complaint number 9, it should fall within the knowledge of the Board of Directors and the Board of Governors who initiated, updated, and approved the Bank's organizational structure when the country office was established. It is alleged that the President promoted Nigeria to a fully-fledged region, giving preferential treatment to its nationals. In response to the allegation that this was done at his behest, the President replies that these decisions were made under his predecessor's watch. He protests that these are frivolous charges, as he could not have violated the Code of Ethics by a Board decision taken before he assumed office. On that basis, he is clearly correct. In respect of complaint number 10, the President goes on to declare that he donated the two cash awards he received for the World Food Prize and the Sunhak Peace prize (for a lifetime of accomplishments) in 2017 and 2019 respectively, to the World Hunger Fighters Foundation, in order to support young African Agribusiness innovators. He explains that these facts were disclosed at the award ceremonies which were held in Iowa and Seoul, which are mentioned in complaint Number 10, as well as to the Bank's Board. He says that the allegation that there was any impropriety smacks of false accusations maliciously made. He concludes by arguing that the attempt to portray the World Food Prize event as being for his personal benefit, is ill-founded and that Bank staff who attended it, went there to launch properly authorized TAAT initiatives. The complainants did not, of course have access to the President's responses. However, their complaints, as advanced, contain nothing to counter these points. In response to the allegation of political lobbying of heads of State, (number 16) ostensibly to support his candidature in his re-election bid shortly after he gave a speech at its meeting, the President says that it implies that he basically bribed and corrupted 16 African Heads of State. He professes that these fanciful and baseless allegations impugn the integrity of those persons. In all the circumstances, the Panel accepts the responses of the President.

- **Complaints Numbers 2, 3, 5, 6, 7, 8, 11, 12, 13, 14 and 15:** These cover a range of human resource administration breaches, alleged preferential treatment being the most common thread. They contain accusations of questionable and rushed promotions, irregular contracting of consultants, biased confirmation of probationary periods, irregular settlements for staff separations, and disregard of rules regarding senior management travel and leave of absence. The Panel has already considered Number 8 and found it to be entirely lacking in substance. The danger with this

type of accusation is that it later appears to be based on lopsided reasoning. The President says that he performed his role in the ordinary course of duties (i.e. confirming staff appraisals in each case), that he did not know the staff member in question, was entirely unaware of the alleged disqualification, and that the whistle blowers got the chronology wrong. All of this stands uncontradicted. The Complaints appear to be no more than conjecture. There also appears to be little merit in the allegation (7) of impropriety in the President's granting of a waiver for the short-term recruitment of a retired Director-General who led the work, to support him in his capacity as Chairman of the Multi-Lateral Development Banks.

- **Complaint Numbers 2, 3, 5 and 6:** These relate to senior appointments, as (i) the senior director of the Africa Investment Forum, (ii) director of Agriculture; (iii) director of the Cabinet Office; and (iv) the director of Communications. Except for (iii), the President states that all these were global recruitments handled by a renowned HR firm based in London, underpinned by a transparent, competitive process, international advertisement, rigorous shortlisting, an independent panel review, objective interview processes, and effective personnel vetting. The President's role was to give a final stamp of approval. He executed this fairly and equitably, informed by the fact that all these candidates came with excellent credentials and were highly recommended by the sitting interview panels. The President has denied a familial relationship with one candidate as alleged, denied that one was redeployed to take care of his spouse, falsely alleged to be receiving medical treatment in South Africa, and that responsibilities and decisions were attributed to him, that ignored completely the Bank's delegation of authority matrix, and or that were just devoid of truth. In the absence of supporting material, these allegations are simply not substantiated.

- The President says that there is a standing and accepted practice in the Bank that an incoming president can bring along his or her own Chief of Staff. The Panel is unable to pass judgment on this and has to accept that this is what was conveyed to, or understood by the President, during the transition and while he was taking up his duties. Equally, he rejects the insinuation that a friendship per se amounts to a conflict of interest when it comes to recruitment. The second leg of complaint number 6 implies that the President inserted himself in a direct contracting and sole source procurement that has given rise to suspicion on the part of the complainants. He counters however, that the decision in question was that of the relevant Vice-

President. Therefore, the insinuation is based entirely on speculation. An example of his account of events that presently stands uncontested based on the papers is that an audit of the engagement of the relevant communications consultant to steer the Bank's communications plan through the Annual Meetings in India, was conducted by the Auditor General and given a clean bill of health. This, in addition to the fact that the decision was not his, and was resorted to, to avert a crisis.

- **Complaints Numbers 11, 12 and 13:** There appears to be either a disconnect, a misunderstanding, or mischief in the conflicting averments about staff separations. The President contends that anyone is entitled to leave at any time and is entitled to full emoluments. This is an accepted practice under the HR rules and dispute resolution mechanisms of international organizations. As regards count 11 he points to what he regards as the utter illogic of the whistle-blowers for blaming him for not acting on an investigation that was only initiated after the relevant staff member had left the Bank, the outcome of which was only reported to him (the President) 4 months ago, and was in any event found to be without substance. Similarly, he lays the blame for disinformation with the whistle blowers in what is advocated in count 12. He says this was not a case of dismissal of staff and that there was absolutely no improper payment involved. All that happened was that the relevant Vice-President departed with his entitlements (separation benefits) intact. With regard to complaint number 13, the President convincingly states that, while he does not run country offices, he took action to protect the Bank and reverse decisions improperly arrived at. There is no counterargument on record.

- **Complaints Numbers 14 and 15:** The whistle-blowers describe Number 14 as a “perplexing case of impunity.” Complaint Number 15 questions the economic use of resources through unregulated travel and absences by senior staff of the Bank. On Number 14, the President explains why he took up the cudgels and intervened to stop an ongoing ostracization of a man who has long suffered through the vagaries of a flawed investigation, which was probably characterized by malicious intent. While he does not know the staff member in question and holds no brief for him, after a comprehensive review off the files, he engaged with the former head of PIAC and the General Counsel. He was unpersuaded about the merits of the case, an instinct that was borne out by the result in a Sanctions hearing against the company allegedly involved in the collusive scheme. (It is not clear what he means when he says the Bank had to pay a huge penalty.) He felt so strongly that he had twice briefed the Board about the matter, inviting them to come to his office to review the files. Suffice to say that zeal is not equal to dishonesty. As a practical matter, the Bank should

provide strong support around its president to avoid this type of scenario. As regards Number 15, the President explains that he does not monitor or manage time off for staff, as that is done by HR and in the one instance the Health Department. There are private medical reasons that he respects. On the second averment he counters that he does not sign travel authorizations of the directors and managers; and repudiates the version of the whistle-blowers, which, he says, was borne out of malice and was demonstrably false.

Concluding Observations of the Panel on the President's Response

The Panel is mindful of the fact that "absence of evidence is not evidence of absence". At the same time, it appears to us to be an undue burden to expect a holder of high office in an international organization, to prove a negative, in the absence of sufficient grounds. An attorney writing on behalf of the President, also argues quite correctly in our view, that a distinction should be drawn between alleged institutional failure at the Bank and the conduct of the president. We have not attached any value to the Dissociation Note in our deliberations. The President has also as part of his detailed submission enclosed 18 annexes, which he believed might be relevant and necessary to make his case and assert his right to due process.

The Panel explained at the outset that it was dividing its Report into two parts. In the first part, it considered the complaints provided to the Ethics Committee by the whistle-blowers and found that they had been properly considered and dismissed by the Committee. In its second part, it considered, in the interests of due process, the responses of the President. While the Committee was not required to consider and did not, in fact consider, the President's responses, it was in the interests of fairness and of due process that the Panel be required to do so. As it has explained, the Panel has not passed judgment on the President's evidence. It has also borne in mind that the whistle-blowers' complaints were wrongly publicized and that fairness required that the President be heard. It has considered the President's submissions on their face and finds them consistent with his innocence and to be persuasive.

