ADMINISTRATIVE TRIBUNAL OF THE INTERNATIONAL MONETARY FUND

JUDGMENT No. 2020-1

Mr. "QQ", Applicant v. International Monetary Fund, Respondent (Motion to Dismiss in Part)

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INTRODUCTION

1. On October 5, 2020, the Administrative Tribunal of the International Monetary Fund, composed for this case, pursuant to Article VII, Section 4 of the Tribunal's Statute, of Judge Catherine M. O'Regan, President, and Judges Andrés Rigo Sureda and Edith Brown Weiss, met to adjudge Respondent's Motion to Dismiss in Part the Application brought against the International Monetary Fund by Mr. "QQ", a staff member of the Fund. Applicant represented himself in the proceedings. Respondent was represented by Ms. Diana Benoit and Mr. Mark Racic, both Senior Counsels in the IMF Legal Department.

2. In light of the COVID-19 pandemic, consequent restrictions on travel, and the Fund's work-from-home directive, the Tribunal decided to hold its session by electronic means, in accordance with recently amended Article XI of the Statute, which provides:

> The Tribunal shall ordinarily hold its sessions at the Fund's headquarters. The Tribunal may decide to hold a session at another location or by electronic means, taking into account the need for fairness and efficiency in the conduct of proceedings. The Tribunal shall fix the dates of its sessions in accordance with its Rules of Procedure. [1]

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[1] Article XI was amended by IMF Board of Governors' Resolution No. 75-2, with effect from July 14, 2020. The Commentary on amended Article XI states:

> While in-person sessions at the Fund's headquarters are the norm, there may be circumstances where such a session is impracticable or not suited to the case. Accordingly, the Tribunal may decide in such cases to hold a session at another location or by electronic means, having regard to efficiency, timeliness, and ensuring that both parties have the opportunity to participate in full and fair proceedings. The Tribunal will determine the frequency and scheduling of these sessions in accordance with its rules. This provision applies to all aspects of the Tribunal's work during a session, including oral hearings, deliberations and decision-making. The provision also enables the Tribunal to conduct hybrid sessions involving both in-person and electronic attendance. Depending on the nature of the work to be conducted, the Tribunal may, consistent with its Rules of Procedure, set additional rules to enable the efficient organization of hearings to be conducted by electronic means.

(continued)

The session was held by videoconference coordinated by the Tribunal's Registry.

3. In his Application, Applicant challenges two decisions of the Fund: (i) not to promote him from Grade A11 to Grade A12 in 2016; and (ii) to credit only partially his earlier contractual employment in a different Fund department in setting his starting Grade at A11 when he was first appointed to the staff of the Fund in 2013. Applicant contends that both decisions were improperly motivated by discrimination on the basis of his nationality. With respect to the 2016 non-promotion decision, Applicant submits that his Department marginalized him and discriminatorily failed to assign work that would showcase his competencies and support his career development. He also asserts that the Department's promotion process was not governed by written guidance to prevent abuse of discretion. With respect to the 2013 decision to set his starting Grade at A11, Applicant alleges that the Fund discriminatorily misclassified his job responsibilities in deciding to afford only 50 percent credit for his three years of contractual work experience and treated him differently from other economists who also had worked in specialized career streams. Applicant additionally contends that the Grievance Committee's recommendation in his case was affected by the crediting of false testimony while excluding relevant, material evidence, and that its consideration of his case was marked by insensitivity to cultural and linguistic differences.

4. Applicant seeks as relief: (a) rescission of the decision to credit only partially his contractual work experience in setting his starting Grade at A11 in 2013; (b) granting Applicant a Grade A12 from 2013 and compensation for the associated salary loss; (c) rescission of the non-promotion decision of 2016; (d) granting Applicant a Grade A13 from 2016 and compensation for the associated salary loss; (e) 6 years' salary as moral and intangible damages to "compensate for the Fund's discriminatory act and all the associated harms"; and (f) legal fees and costs "if any," which the Tribunal may award, in accordance with Article XIV, Section 4 of the Statute, if it concludes that the Application is well-founded in whole or in part.

5. Citing Rule XII (Summary Dismissal) of the Tribunal's Rules of Procedure, the Fund has responded to the Application with a Motion to Dismiss in Part, seeking summary dismissal of that part of the Application challenging the decision to assign Applicant a starting Grade of A11 when he joined the Fund as a staff member in 2013. With respect to that claim, the Fund contends that Applicant has not met the requirement of Article V of the Statute that all channels of administrative review must be exhausted before an Application is filed with the Tribunal.

6. Consistent with the procedures applicable to the filing of a motion for summary dismissal pursuant to Rule XII, the Tribunal has suspended the period for answering the Application on the merits until it considers the issues raised by the filing of the Motion to Dismiss in Part. Those issues are, first, whether the Motion to Dismiss in Part is admissible, and, second, if the Motion

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Report of the Executive Board to the Board of Governors on an Amendment to Article XI of the Statute of the Administrative Tribunal of the International Monetary Fund, EBAP/20/44, p. 5.

is admissible, whether it shall be granted. The present Judgment is confined to the resolution of those questions.

PROCEDURE

7. On August 29, 2019, Applicant filed an Application with the Administrative Tribunal. The Application was transmitted to Respondent on September 3, 2019. On September 4, 2019, pursuant to Rule IV, para. (f), the Registrar circulated within the Fund a notice summarizing the issues raised in the Application.

8. On October 2, 2019, Respondent filed a Motion to Dismiss in Part, citing Rule XII[2] of the Tribunal's Rules of Procedure. On October 15, 2019, the Tribunal requested that the Fund submit its Views on the Admissibility of its Motion to Dismiss in Part, in light of the Tribunal's decision in *Ms. "PP", Applicant v. International Monetary Fund, Respondent (Applicant's*

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[2] Rule XII provides:

Summary Dismissal

1. Pursuant to Article X, Section 2(d) of the Statute, the Tribunal may, on its own initiative or upon a motion by the Fund, decide summarily to dismiss the application if it is clearly inadmissible.

2. The Fund may file such a motion within thirty days of its receipt of the application. The filing of the motion shall suspend the period of time for answering the application until the motion is acted on by the Tribunal.

3. The complete text of any document referred to in the motion shall be attached in accordance with the rules established for the answer in Rule VIII. The requirements of Rule VIII, Paragraphs 2 and 3, shall apply to the motion. If these requirements have not been met, Rule VII, Paragraph 6 shall apply *mutatis mutandis* to the motion.

4. Upon ascertaining that the motion meets the formal requirements of this Rule, the Registrar shall transmit a copy to the Applicant.

5. The Applicant may file with the Registrar an objection to the motion within thirty days from the date on which the motion is received by him.

6. The complete text of any document referred to in the objection shall be attached in accordance with the rules established for the reply in Rule IX. The requirements of Rule VII, Paragraph 4, shall apply to the objection to the motion.

7. Upon ascertaining that the objection meets the formal requirements of this Rule, the Registrar shall transmit a copy to the Fund.

8. There shall be no further pleadings in respect of a motion for summary dismissal unless the President so requests.

Request for Provisional Relief and Respondent's Motion to Dismiss in Part), IMFAT Order No. 2019-1 (October 10, 2019), paras. 48-50.

9. On October 30, 2019, the Fund filed its Views on the Admissibility of its Motion to Dismiss in Part, which was transmitted to Applicant for his response. On December 17, 2019, Applicant submitted his Response to the Fund's Motion to Dismiss in Part and its Admissibility. The exchange of pleadings on the Motion was then deemed to be complete.

A. Applicant's request for anonymity

10. Applicant has requested anonymity, which the Tribunal may grant where "good cause has been shown for protecting the privacy of an individual." (Rules of Procedure, Rule XXII.) Applicant advances a range of arguments in support of his request. These include that: (a) the Application involves discussion of Applicant's Annual Performance Reports (APRs) and the assessment of his job performance relative to others' in the context of promotion decisions; (b) the Application alleges misconduct by managers, including discriminatory treatment; and (c) Applicant "could be easily subject to further discrimination or marginalization" following publication of his name, that the Fund's anti-retaliation policies are ineffective, and that if the Tribunal were not to grant Applicant anonymity it might deter other potential applicants from vindicating their rights before the Tribunal.

11. Respondent opposes Applicant's anonymity request. The Fund maintains that Applicant has not met his burden of showing "good cause" for not publishing his name in the Judgment, maintaining that the case does not involve "matters of personal privacy such as health or family relations," citing *Ms. N. Sachdev, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2012-1 (March 6, 2012), para. 9. Nor, asserts the Fund, does Applicant's case rely for "key evidence" on confidential performance assessments, citing *Mr. "HH", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2013-4 (October 9, 2013), para. 43. The Fund submits that "[w]hile Applicant's performance record was one of several factors taken into account in deciding upon promotion, it was not the key factor"; the record of the case does not include detailed testimony about the content of Applicant's performance reviews; and "there is no reason to expect that such information would be a necessary part of the Tribunal's judgment."

12. Having considered the arguments of the parties, the Tribunal finds two reasons to conclude that Applicant has shown "good cause" not to disclose his name in this Judgment. The first is that the same factors that support affording anonymity to applicants who challenge APR and non-conversion decisions, that is, protecting candor in the assessment of professional competencies, also support granting anonymity in this case in which Applicant challenges his non-promotion to a higher grade level. In this regard, the Tribunal observes that Respondent's argument in favor of sustaining the challenged non-promotion decision relies on managers' comparative assessments of Applicant's suitability for career advancement vis-à-vis that of other staff members, assessments that will necessarily draw upon views about meeting professional

competencies.[3] *See Ms. "NN", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2017-2 (December 11, 2017), para. 29 (although annual performance assessment not at issue, managers' perception of applicant's performance was key factual element underpinning issues of the case where applicant challenged failure to afford a pre-screening interview for vacancy to which she applied). Second, Applicant alleges discriminatory treatment by his Department managers and the Human Resources Department (HRD) on the basis of his nationality. These are serious allegations that have yet to be tested by the Tribunal. The effect of granting anonymity to Applicant is that not only will his identity be protected but that of other staff members involved in the matters under consideration will also be protected. *Ms. "GG", Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2013-3 (October 8, 2013), para. 13; *Ms. "AA", Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2006-5 (November 27, 2006), para. 15.

13. Having concluded that these reasons provide ample grounds to grant Applicant's request, the Tribunal need not consider his additional arguments in support of anonymity. At the same time, the Tribunal confirms that a "bare assertion that adverse employment consequences may result from publication of an applicant's name does not, of itself, form a basis for granting a request for anonymity." *Ms. K. Abu Ghazaleh, Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2015-2 (November 11, 2015), para. 13. Equally, the Tribunal reaffirms that the Fund's robust enforcement of the anti-retaliation provisions of its internal law remains essential to the integrity of the dispute resolution process. *Ms. "GG" (No. 2), Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2015-3 (December 29, 2015), para. 428.

B. Applicant's requests for production of documents

14. In his Application, Applicant has made requests for production of documents, pursuant to Rule XVII. In the view of the Tribunal, Applicant's document requests are not pertinent to its consideration of the Motion to Dismiss in Part and Applicant has not so argued. Nor has the Fund answered these requests, given the suspension of the pleadings on the merits. The Tribunal accordingly takes no decision at this stage of the proceedings on Applicant's requests for production of documents.

C. Oral proceedings

15. Article XII of the Tribunal's Statute provides that the Tribunal shall ". . . decide in each case whether oral proceedings are warranted." Rule XIII, para. 1, of the Rules of Procedure provides that such proceedings shall be held ". . . if . . . the Tribunal deems such proceedings

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[3] In its Post-Hearing Brief to the Grievance Committee, pp. 9-10, the Fund made plain the significance of "performance" to the assessment of Applicant's suitability for promotion: "Ultimately, after assessing his performance relative to his grade, and comparing that performance against the other candidates in the Grade A-11 to A-13 cohort, the members of the Departmental promotion roundtable determined that Grievant would not be promoted in the July 2016 promotion round."

useful." Neither party has requested that the Tribunal hold oral proceedings in relation to the Motion to Dismiss in Part. In the absence of such a request, the Tribunal decided that oral proceedings would not be held in respect of the Motion, as they were not deemed useful to its disposition.

FACTUAL BACKGROUND RELEVANT TO THE MOTION TO DISMISS IN PART

16. The key facts relevant to the Tribunal's consideration of the Motion to Dismiss in Part are summarized below. (A fuller rendering of the facts of the case will be provided in the Judgment on the merits, following the completion of the exchange of pleadings and closure of the record.)

17. Applicant was first employed by the Fund in 2010 as a contractual employee, at a "shadow grade" of A11. In 2013, Applicant was appointed as a staff member of the Fund on a three-year fixed-term appointment at Grade A11. Applicant's staff appointment was in a different department, and it carried a different job title than he had held during his contractual employment.

18. In February 2016, Applicant was advised that his fixed-term staff appointment would be converted to an open-ended staff appointment, with effect from August 2016. Additionally, in spring 2016, Applicant's section chief nominated him to be considered for promotion from Grade A11 to Grade A12 in the upcoming promotion round of July 2016. The outcome of the Department's promotion roundtable process, however, was that Applicant was not among those promoted in 2016.

19. In August 2016, when the conversion of his fixed-term staff appointment to an open-ended staff appointment became effective, Applicant emailed HRD officials to inquire how his Grade of A11 had been set at the time of his appointment to the staff in 2013: "Thanks for offering the change in appointment status. I have one question related to the 2013 fixed-term [appointment]: how you rated me at A11 in 2013 when taking into account my prior working experience? I got my PhD degree . . . and worked for the Fund as contractual for 3 year[s]." (Email from Applicant to HRD officials, August 4, 2016.) On August 15, 2016, an HR Officer responded as follows: "In 2013 you were hired at grade A11 on the basis of a completed PhD and one and [one-]half years of professional relevant experience. Your previous experience in [another Fund department] as [former job title] was counted as 50%, as your position did not reflect the full scope of work and activities of a full-fledged economist." (Email from HR Officer to Applicant, August 15, 2016.) Applicant replied: "Thanks for your explanation, but I cannot agree with you," and sought a meeting with HRD to discuss the matter. (Email from Applicant to HR Officer, August 17, 2016.)

20. A few days later, Applicant inquired of a higher-ranking HRD official: "I passed the panel interview of middle career in 2013 after three-year working at [former department]. I could not understand why my grade was rated as A11 when joining [current department]? After talking with [HR officer], I feel I cannot agree on the explanation. My 3-year working experience at [former unit] involved providing guidance to area economists instead of offering assistance as

RA. Could you formally re-examine my case?" (Email from Applicant to HRD official, August 23, 2016.)

21. The record shows that, following these exchanges with HRD, Applicant's dissatisfaction with his 2013 starting grade became the subject of Mediation between Applicant and the Fund. The dispute, however, remained unresolved thereafter. Applicant refers in his pleadings to the Mediation process as having taken place in September and October 2016. In the Grievance Committee proceedings (*see* below), an HRD official confirmed having participated in Mediation on the issue of Applicant's 2013 starting grade. (Tr. I, 240-244.) Applicant, for his part, stated in the Grievance Committee: "[A]t the end of the two meetings I asked you who do you do similar work just like the administrative review give me a formal report, I never got a response." (Tr. I, 244.)

CHANNELS OF ADMINISTRATIVE REVIEW

22. The issue presented by the Motion to Dismiss in Part is whether the Tribunal shall summarily dismiss that part of the Application challenging the decision to assign Applicant a starting Grade of A11 when he joined the Fund as a staff member in 2013. With respect to that claim, the Fund submits that Applicant has not met the requirement of Article V, Section 1, of the Statute, which provides: "When the Fund has established channels of administrative review for the settlement of disputes, an application may be filed with the Tribunal only after the applicant has exhausted all available channels of administrative review." The review process that preceded the filing of the Application is recounted below.

A. Applicant's Request for Administrative Review and HRD Director's Response

23. On December 8, 2016, Applicant submitted a Request for Administrative Review to the HRD Director, seeking review of his Department's 2016 non-promotion decision. (Email from Applicant to HRD Director, "Request an administrative review under GAO 11.03 on [Department's] decision," December 8, 2016.) In that Request, Applicant alleged that the "decision neither reflects correctly what I have done at [my Department] for the years of 2013-2016 nor takes into account what I had done at [my former Department] for the years of 2010-2013." Applicant sought "an immediate correction on this decision and approval of the promotion." He additionally stated that "all the work prior to my joining [my current Department] [was] completely ignored . . . . Since June 2010, I have worked in the [F]und for six years with my Econ PhD degree as A11 economist. Could you please tell me how many [F]und A11-economists employees have been working for 6 years without promotion since the establishment of the IMF?"

24. On February 21, 2017, the HRD Director responded to Applicant's Request for Administrative Review of the "decision of [your Department] not to nominate you for promotion in 2016." (Administrative Review Decision, February 21, 2017.) The HRD Director noted Applicant's arguments that the decision "does not correctly take into account your experience and achievements in [your current Department] and 'completely ignore[s]' your experience in [your former Department]." The HRD Director stated that in 2016 the number of A11-A15 Economists recommended for promotion in Applicant's Department had exceeded the number of

promotions budgeted for the Department. The HRD Director found that the Department's promotion roundtable had determined that "other candidates more fully met the criteria for a career-progression promotion" and that "this was the basis on which the decision was made" not to promote Applicant in 2016. The HRD Director concluded that the challenged decision "complied with relevant policies and procedures and was reached on reasonable grounds." Accordingly, there was "no basis on which it should be rescinded."

25. As for Applicant's assertion that the decision not to promote him in 2016 "took insufficient account of [his] experience in [his former Department]," the HRD Director responded that "neither years of Fund experience nor time in grade were factors in the discussion at the Roundtable." Although "experience" is a criterion for promotion, said the HRD Director, the "Promotion Policy is clear that this is not a measure of number of years of service" but rather a "measure of mastery of the full range of tasks expected in the current grade, as well as independent work and tasks associated with the higher grade level."

B. Grievance Committee proceedings

(1) Applicant's Grievance

26. Following the denial of his Request for Administrative Review, Applicant filed a Grievance with the Fund's Grievance Committee on April 19, 2017. In the Grievance, Applicant challenged his Department's "abuse of discretion and IMF's institutional discrimination regarding staff promotion practice and policy." Applicant alleged that the Department's "senior management improperly refused to offer [Applicant] a promotion in May 2016 and HRD baselessly discounted [his] 3-year working experience and refused to provide promotion in August 2013." Applicant requested that "[his Department] and HRD immediately reverse their wrong decisions and grant [him] the promotion retrospectively." With respect to his challenge to the 2013 starting grade decision, Applicant asserted that, in connection with his appointment to the staff in 2013, "HRD only gave partial credit to [Applicant's] 3-year work experience and refused to promote [him] to A12." Applicant cited the nature of his job responsibilities during the period of his contractual service. Applicant submitted that "decid[ing] to give partial credit to [that] work . . . . [was] a complete[ly] unacceptable mistake on which I request a correction."

(2) Grievance Committee pre-hearing conference

27. On August 4, 2017, the Grievance Committee held a pre-hearing conference. As recounted in its later Report and Recommendation, the Grievance Committee ruled at the pre-hearing conference that ". . . a claim contesting actions taken in 2013 was not receivable, but that Grievant would be permitted to introduce evidence relating to his entire time working for the IMF (including with [his former Department]) to the extent it would be relevant to his claim of discrimination." (Grievance Committee Report and Recommendation, pp. 6-7.)

(3) Document produced in Grievance Committee discovery process

28. On September 30, 2017, following the pre-hearing conference and as part of the Grievance Committee discovery process, the Fund produced to Applicant a document showing

the calculation of his 2013 starting grade. That document confirmed that Applicant was given 50 percent credit for the three years he had worked as a contractual employee from 2010-2013, in which he served in another Fund department and in another job title. ([Department]'s Entry Grade and Salary Recommendation (July 2013).)

(4) Grievance Committee hearing

29. On May 2 and 8, 2018, the Grievance Committee held its evidentiary hearing, in which five witnesses testified, including managers and former managers in Applicant's Department and an HRD official.

30. At the start of the evidentiary hearing, the matter of identifying the issues of the case arose again. Applicant again raised the issue of his challenge to the 2013 starting grade. As summarized in the Grievance Committee's Report and Recommendation: "The Committee advised Grievant that it continued to believe that the claim regarding his hiring in 2013 was not receivable, but that the Committee would reconsider this position after it reviewed all of the testimonial and documentary evidence produced at the hearing." (Grievance Committee Report and Recommendation, p. 7.)

31. At the hearing, the Fund called as a witness an HRD official who, on direct testimony, testified to the method of setting Applicant's Grade level at A11 when he was appointed to the staff in 2013, including that his contractual work experience had been credited at 50 percent to reflect his job responsibilities in that role. (Tr. I, 221-226.) When Applicant sought to cross-examine the HRD official on these same points, asking the official, for example, how the prior experience of others had been credited, the Grievance Committee ruled that Applicant could not "expand" his Grievance into the question whether "acts taken by HRD in 2013 were discriminatory" and that the Committee was "hearing this for the first time today." (Tr. I, 235.)

(5) Parties' post-hearing submissions to the Grievance Committee

32. Following the evidentiary hearing, the Grievance Committee invited the parties to file, in addition to their regular post-hearing briefs, further post-hearing submissions on the admissibility of Applicant's challenge to the 2013 starting grade decision. "To ensure that the Committee has as complete a record as possible on this jurisdictional issue," it requested that both parties "identify any additional witnesses and/or documents that can describe the information provided to [Applicant] relating to his initial grade level when hired by [his current Department], including information explaining why he received an A11, rather than A12." (Quoted in Grievance Committee Report and Recommendation, p. 7.) These post-hearing Grievance Committee submissions, which are part of the record before the Tribunal, present arguments similar to those that the parties now assert before the Tribunal.

(6) Grievance Committee's Report and Recommendation

33. On April 23, 2019, the Grievance Committee issued its Report and Recommendation, recommending that Applicant's challenge to the 2016 non-promotion decision be denied on its merits.

34. As to the admissibility of Applicant's challenge to the 2013 starting grade decision, the Grievance Committee stated that, following the filing of the post-hearing submissions, it "believes it now has a complete record upon which to base a decision on this jurisdictional question." (Grievance Committee Report and Recommendation, p. 17.) The Grievance Committee concluded that Applicant had not raised a timely complaint with respect to the decision to set his 2013 starting grade at Grade A11. (*Id.*, p. 19.)

35. The Grievance Committee nonetheless went on to conclude that "even if [it] were to address the merits of Grievant's argument that HRD improperly gave him only 50% credit for his [former Department] work, the argument would fail." (*Id.*, p. 19.) The Committee cited the HRD official's testimony, as well as elements of Applicant's APRs in his former Department, as supporting the conclusion that his contractual work did not merit full credit in designating his Grade level in 2013. The Grievance Committee concluded: "The Committee does not find a basis for rejecting the Fund's discretionary decision to give Grievant 50% credit for his work with [his former Department]. The APRs also undermine Grievant's argument that he was completely unaware of the reasons for receiving a grade A11 when hired by [his current Department]." (*Id.*, p. 20.)

C. Conclusion of review procedures

36. On May 29, 2019, Fund Management notified Applicant that it had accepted the Grievance Committee's recommendation that his Grievance be denied.

37. On August 29, 2019, Applicant filed his Application with the Administrative Tribunal.

SUMMARY OF PARTIES' PRINCIPAL CONTENTIONS

38. The parties' principal arguments as presented by Applicant in (a) his Application and (b) his Response to the Fund's Motion to Dismiss in Part and its Admissibility, and by Respondent in (a) its Motion to Dismiss in Part and (b) its Views on the Admissibility of the Motion, may be summarized as follows.

A. Applicant's contentions on the merits of the Application

1. In setting Applicant's starting grade at A11 at the time of his appointment to the staff in 2013, HRD discriminatorily misclassified Applicant's job responsibilities in his former Department when it decided to afford him only 50 percent credit for his three years of contractual work experience. Applicant's work in his former department was the same as that performed by individuals classified as Economists elsewhere in the Fund.

2. The evidence would show that Applicant experienced disparate treatment, including that HRD gave Applicant only partial credit for his prior Fund work experience while granting full credit to others in specialized career streams. Evidence of Applicant's actual work responsibilities during his contractual

employment would substantiate his claim that the partial crediting of his experience was discriminatory.

3. The Fund did not comply with its own rules regarding setting of the starting grade. Instead, the Fund applied its policies in a selective way, using the rules to conceal discriminatory practices.

4. Applicant's Department marginalized him and discriminatorily failed to provide him with assignments to showcase his competencies, causing him to lose the chance for promotion from Grade A11 to Grade A12 in 2016. Mismanagement by Applicant's supervisors impaired his career development.

5. The reason Applicant was treated differently from others was because of his nationality. In Applicant's Department, there were no staff members of his nationality at Grade A15 or above to participate in the 2016 promotion discussions.

6. The Department's promotion roundtable practices were not governed by written policies to prevent abuse of discretion.

7. The Grievance Committee credited false testimony while excluding relevant, material evidence. Its consideration of Applicant's case was also marked by linguistic and cultural insensitivity.

8. Applicant seeks as relief:

    a. rescission of the decision to credit only partially his contractual work experience in setting his starting Grade at A11 in 2013;
    b. granting Applicant a Grade A12 from 2013 and compensation for the associated salary loss;
    c. rescission of the non-promotion decision of 2016;
    d. granting Applicant a Grade A13 from 2016 and compensation for the associated salary loss;
    e. 6 years' salary as moral and intangible damages to "compensate for the Fund's discriminatory act and all the associated harms"; and
    f. legal fees and costs "if any," which the Tribunal may award, in accordance with Article XIV, Section 4 of the Statute.

B. Respondent's contentions on the Motion to Dismiss in Part

(1) Respondent's contentions on the admissibility of the Motion

1. For the Tribunal to admit and decide the Motion to Dismiss in Part before the Fund is required to submit its Answer on the merits would serve the interests of fairness and efficiency.

2. As applications challenging more than one "administrative act" of the Fund are not explicitly contemplated by the Tribunal's Statute or Rules of Procedure, the summary dismissal rule should be applied flexibly in such cases. An applicant's choice to combine challenges to more than one "administrative act" should not preclude the Fund from seeking a decision on the receivability of one of those challenges prior to being required to respond to the merits of the application, especially where the history of prior review of the challenged decisions differs.

3. The same principles that support admitting a motion for summary dismissal of an application in its entirety, that is, so that the parties are not required to expend time and resources on presenting arguments on the merits of an application that does not meet threshold jurisdictional requirements, support the admissibility of a motion to dismiss in part.

4. In this case, the interests of fairness and efficiency are best served by postponing pleadings on the merits of the entire Application until the Tribunal has decided the receivability of the claim that is the subject of the Motion to Dismiss in Part. This is because Applicant's challenge to the 2013 starting grade decision is not a "minor or tangential" aspect of the Application. Rather it is a "major part" of the Application and of the request for relief, and it "involves facts and arguments that overlap with" the challenge to the other principal decision contested in the Application, that is, the 2016 non-promotion decision.

5. The Tribunal should take account of the importance of the legal arguments presented in the Motion when considering its admissibility. In this case, the Fund's legal arguments relating to the exhaustion of administrative review are worthy of the Tribunal's pre-merits consideration.

(2) Respondent's contentions on the merits of the Motion

1. Applicant's challenge to the decision to assign him a starting grade of A11 when he was appointed to the staff in 2013 should be summarily dismissed because he has not met the requirement of Article V of the Statute that all channels of administrative review must be exhausted before bringing a claim before the Tribunal. Applicant's challenge to his 2013 starting grade has "never been reviewed, and the relevant witnesses have not been heard."

2. Applicant has failed to establish any "exceptional circumstances" that would justify setting aside the statutory time limits in this case.

3. Applicant's "discovery rule" argument should fail because he has been aware of all essential elements of his claim since 2013 when he was appointed to the staff at Grade A11.

4. Even if the Tribunal were to accept Applicant's "discovery rule" argument, his challenge to the 2013 decision would be untimely. Applicant learned in August

2016 of the basis for the decision to assign him a Grade of A11 in 2013, but he did not challenge the decision until more than six months later, in his Grievance of April 2017.

5. In addition to being untimely, Applicant's challenge was inappropriately raised for the first time before the Grievance Committee, bypassing the requisite administrative review procedure.

C. Applicant's contentions on the Motion to Dismiss in Part

(1) Applicant's contentions on the admissibility of the Motion

1. For purposes of fairness and efficiency, an application should be considered by the Tribunal in its entirety, rather than being divided into several cases. The Motion to Dismiss in Part should be denied.

(2) Applicant's contentions on the merits of the Motion

1. Applicant's knowledge in 2013 that he was appointed at Grade A11 did not provide him with knowledge of the essential element of his claim. Partial credit for his work in his former department is the underlying reason for the 2013 decision, which reflects the discriminatory practice and thus involves a major element of his claim. Applicant learned about the "misclassification of [his] credentials" in August and September 2016.

2. Applicant first obtained written evidence of the partial crediting of his contractual experience on September 30, 2017, through the discovery process in the Grievance Committee proceedings. That date should be considered the first effective date for Applicant to challenge the 2013 decision.

3. At the time of Applicant's appointment to the staff in 2013, the Fund did not provide any explanation or discussion of his starting grade, and the staff orientation process "intentionally misguided people's attention away from the grade issue." The Fund has an information advantage in the hiring process. Applicant "trusted the Fund's procedures and believed in good faith that the [F]und treated everyone in a fair and uniform way."

4. The Application includes challenges to both the 2016 and 2013 decisions because they are "related and influenced by the same underlying factor." When the two challenges are "considered jointly, they can reinforce each other to better show the underlying discriminatory act of the Fund." The Fund seeks to dismiss part of the Application because it lends credence to the alleged pattern of discriminatory behavior.

CONSIDERATION OF THE ISSUES RAISED BY THE MOTION TO DISMISS IN PART

39. The filing of the Motion to Dismiss in Part raises the following principal question for decision by the Administrative Tribunal: Shall the Tribunal summarily dismiss that part of the Application challenging the decision to assign Applicant a Grade of A11 when he joined the Fund as a staff member in 2013? To answer that question, the Tribunal must decide whether the Motion shall be admitted and, if so, whether it shall be granted.

A. Admissibility of the Motion to Dismiss in Part

(1) The Tribunal's decision in *Ms. "PP"*, Order No. 2019-1

40. The initial question to be considered is whether the Fund's Motion to Dismiss in Part is admissible. This is only the second time that the Tribunal has been asked to dismiss *part of* an application in advance of a full exchange of pleadings on the merits. Prior to the case of *Ms. "PP", Applicant v. International Monetary Fund, Respondent (Applicant's Request for Provisional Relief and Respondent's Motion to Dismiss in Part)*, IMFAT Order No. 2019-1 (October 10, 2019), the Fund had invoked the summary dismissal rule (Rule XII) only to seek dismissal of applications in their entirety.[4]

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[4] The Fund has successfully invoked Rule XII to dismiss summarily applications *in toto* on a range of grounds. *See Mr. "X", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 1994-1 (August 31, 1994) (Article XX, lack of jurisdiction *ratione temporis*); *Ms. "S", Applicant v. International Monetary Fund*, IMFAT Judgment No. 1995-1 (May 5, 1995) (Article XX, lack of jurisdiction *ratione temporis*); *Mr. "A", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 1999-1 (August 12, 1999) (Article II, lack of jurisdiction *ratione personae* and jurisdiction *ratione materiae*); *Ms. "AA", Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2006-5 (November 27, 2006) (Article V, failure to exhaust channels of administrative review); *Mr. "N", Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2007-7 (November 16, 2007) (Article XIII, *res judicata*); *Ms. K. Abu Ghazaleh, Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2015-2 (November 11, 2015) (Article II, lack of jurisdiction *ratione personae* and jurisdiction *ratione materiae*).

The Fund has also unsuccessfully invoked Rule XII in seeking summary dismissal of applications *in toto*. *See Estate of Mr. "D", Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2001-1 (March 30, 2001) (Article V, exhaustion of channels of administrative review); *Baker et al., Applicants v. International Monetary Fund, Respondent (Admissibility of the Applications)*, IMFAT Judgment No. 2005-3 (December 6, 2005) (Article II, "adversely affecting" requirement); *Mr. B. Tosko Bello, Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2012-3 (September 11, 2012) (Article II, jurisdiction *ratione personae*).

In the following cases, the Tribunal granted motions for summary dismissal of applications *in toto* on the basis of failure to meet the exhaustion requirement of Article V, without prejudice to the applicant's filing a new application following the conclusion of review procedures: *Ms. C. O'Connor, Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2010-1 (February 8, 2010); and *Ms. "GG", Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No.

(continued)

41. In *Ms. "PP",* Order No. 2019-1, para. 48, the Tribunal observed that neither the Tribunal's Statute nor its Rules of Procedure explicitly contemplate a motion to dismiss *in part*. Article X(2)(d) of the Statute provides that the Tribunal shall adopt Rules of Procedure, including provisions concerning "summary dismissal *of applications* without disposition on the merits." (Emphasis added.) Rule XII, in turn, provides: "Pursuant to Article X, Section 2(d) of the Statute, the Tribunal may, on its own initiative or upon a motion by the Fund, decide summarily to dismiss *the application* if it is clearly inadmissible." (Rule XII(1).) (Emphasis added.) Furthermore, the Tribunal observed in *Ms. "PP"*, Order No. 2019-1, para. 48, that there is nothing in the Commentary[5] on the Statute, p. 33, to suggest that anything other than summary dismissal of an application *in toto* is contemplated.

42. Nonetheless, the Tribunal concluded that Rule XII does not exclude the possibility of filing a motion to dismiss summarily *part of* an application. "[T]here may be circumstances," said the Tribunal, "in which a Motion to Dismiss in [P]art will be admissible." *Id.*, para. 49. The Tribunal decided to admit the motion in the case of *Ms. "PP"*, Order No. 2019-1, given the "unusual context" of an expedited exchange of preliminary pleadings to facilitate the Tribunal's decision on the applicant's request for provisional relief in advance of the disposition of the merits of the application. *Id.*, para. 50. The Tribunal concluded in that case that the motion was admissible "because the Motion's argumentation [was] closely related to one of Respondent's key arguments in favor of denying Applicant's Request for Provisional Relief," that is, that the Tribunal did not have jurisdiction over the applicant's challenge to the decision from which she was seeking the provisional relief. *Id.*

43. Notably, although the Tribunal in *Ms. "PP"*, Order No. 2019-1, decided that the motion to dismiss in part was admissible, it declined to decide the merits of the motion. Instead, the Tribunal dismissed the motion without prejudice to the Fund's raising the same jurisdictional argument in its pleadings on the merits of the application. The Tribunal explained that although the Fund's motion was related to the applicant's request for provisional relief (forming a basis for the motion's admissibility), the Tribunal had not found it necessary to decide the essential issue raised by the Fund's motion in disposing of the applicant's request. In the circumstances, the Tribunal concluded that it would "better serve the interests of justice to decide the issues of the case . . . following a full briefing on the merits of the Application." *Id.*, para. 51. In reaching that conclusion, the Tribunal cautioned that the "Tribunal's summary dismissal jurisprudence counsels against the piecemeal review of related claims," *Id.*, citing *Mr. "LL", Applicant v.*

2013-3 (October 8, 2013). *See also Ms. "Y", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 1998-1 (December 18, 1998), para. 43 ("Given the singular circumstances of this case, in the event that the Grievance Committee, if seized, should decide that it does not have jurisdiction over Applicant's claim, the Administrative Tribunal will reconsider the admissibility of that claim on the basis of the Application now before it.").

[5] The consolidated Commentary on the Statute comprises the Report of the Executive Board to the Board of Governors on the Establishment of an Administrative Tribunal for the International Monetary Fund (1992) and the Report of the Executive Board to the Board of Governors on Amendments to the Statute of the Administrative Tribunal for the International Monetary Fund (2009).

International Monetary Fund, Respondent (Suspension of the Pleadings and Denial of Provisional Relief), IMFAT Order No. 2016-1 (June 28, 2016), paras. 5-6.

44. The Tribunal's decision in *Ms. "PP"*, Order No. 2019-1, that although the motion to dismiss in part was admissible, it would not decide the merits of that motion, suggests that the Tribunal will be reluctant to make a determination that precludes an applicant from pursuing a claim prior to the Tribunal's having the benefit of the pleadings on the merits of the application as a whole and the completion of the record. That reluctance is consistent with the "clearly inadmissible" standard applicable to Rule XII motions.

(2) The "clearly inadmissible" standard of Rule XII

45. Rule XII sets a high bar for the dismissal of an application prior to a full airing of the merits of a case. By the terms of that Rule, only an application that is "clearly inadmissible" (Rule XII(1)) will be summarily dismissed. The legislative history associated with Article X(2)(d) suggests that the drafters of the Statute sought to provide for dismissal at the threshold only of applications that the Tribunal deemed to be clearly irreceivable or devoid of merit. The Commentary on the Statute, note 21, highlights the comparable authority of other international administrative tribunals:

> There is authority in Article 8(3) of the Rules of the ILOAT and in Rule 7(11) of the WBAT, for example, for summary dismissal of cases that are considered to be "clearly irreceivable or devoid of merit." The Rules of Procedure of the tribunal of the Bank for International Settlements authorize summary dismissal of applications that are "manifestly irreceivable in form or manifestly abusive."

46. The Tribunal's jurisprudence likewise recognizes the high bar that Respondent must meet before the Tribunal will exercise its summary dismissal authority. In *Baker et al., Applicants v. International Monetary Fund, Respondent (Admissibility of the Applications)*, IMFAT Judgment No. 2005-3 (December 6, 2005), the Tribunal denied a Rule XII motion in which the Fund had argued that the applicants failed to meet the "adversely affecting" requirement of Article II(1)(a) of the Statute in challenging a regulatory decision. In concluding that a decision to widen the Fund's discretion to adjust the staff compensation system "adversely affected" the applicants, thereby permitting the applications to cross the threshold of admissibility, the Tribunal observed: "That threshold is not steep, because, by the terms of Rule XII of the Rules of Procedure, an application may be summarily dismissed only 'if it is clearly inadmissible.'" *Id.*, para. 20.

47. There are good reasons for the "clearly inadmissible" standard embodied in Rule XII. By setting a high bar for the summary dismissal of applications, the Rule protects applicants against having their right to be heard by the Tribunal being cut off prematurely. At the same time, the Rule provides a mechanism to shorten the proceedings where inadmissibility is clear at the outset, thereby protecting the Tribunal (and the Respondent) from the expenditure of time and resources on matters that have no reasonable ground for advancing beyond the threshold.

48. The "clearly inadmissible" standard balances these competing considerations in a manner that also protects against the risk of the Tribunal's taking an erroneous decision as to admissibility when the pleadings before it have yet to unfold in full. The Rule is designed to facilitate a decision as to admissibility only when the disposition of that question is "clear" to the Tribunal prior to the full exchange of pleadings on the merits.

(3) Applying Rule XII in the context of a motion to dismiss in part

49. The question presented by the pending Motion (and in *Ms. "PP"*, Order No. 2019-1, before it) is how the principles underpinning the Tribunal's summary dismissal authority shall apply when Respondent invokes Rule XII in an effort to dismiss summarily only one of multiple claims asserted in an application, rather than the application as a whole. The Fund contends that the same principles that support admitting a motion for summary dismissal of an application, that is, so that the parties are not required to expend time and resources contesting the merits of an application that does not meet threshold requirements, support the admissibility of a motion to dismiss in part. The Fund posits that the Tribunal's Statute and Rules of Procedure refer to summary dismissal of an application, rather than of a claim, because the terms of the Statute envision that only one claim will be raised in an application. The practice before the Tribunal, however, has developed otherwise. Respondent submits that the fact that it may be efficient for an applicant to raise multiple claims in a single application should not prevent the Fund from defending against that application by bringing a Rule XII motion to challenge the admissibility of one of those claims prior to a full briefing on the merits of all of the claims.

50. In the view of the Tribunal, transposing the principles underlying the Tribunal's authority to dismiss summarily an application *in its entirety* to the question whether to dismiss summarily an application *in part* will be fraught. This is so because a motion to dismiss in part will necessarily raise questions for the Tribunal about the relationships between the claim targeted by Respondent's motion and the other claims asserted in the application that would proceed on the merits if the motion were granted. Those relationships may not be readily apparent prior to a full exchange of pleadings and the closure of the record.

51. Because reviewing subsequent pleadings and examining the record as a whole may cast a different light on the question of admissibility than may be apparent at the outset, the risk of an erroneous decision at the threshold will be heightened when Respondent moves to dismiss only part of an application. Likewise, the potential benefit in terms of procedural efficiency of the early dismissal of a nonjusticiable claim will be diminished in a case in which the Tribunal will be required to traverse more than once the facts and arguments of the case, that is, first in the context of the motion to dismiss in part and then again following the full exchange on the merits of the application.

52. For these reasons, the Tribunal decides that it will be the exception and not the rule for it to admit a motion to dismiss summarily part of an application prior to a full exchange on the merits of the application as a whole. In determining whether to admit a motion to dismiss in part, the Tribunal will weigh such factors as efficiency, fairness, and the potential for the Tribunal to dispose reliably of the issue of admissibility, applying the "clearly inadmissible" standard of Rule XII. Only if, weighing these factors, the Tribunal concludes that it will serve the interests of

justice to take a decision on the admissibility of a claim in advance of a full exchange of pleadings on the merits of the application as a whole, will it decide to admit a motion to dismiss in part.

(4) Will it serve the interests of justice to admit the pending Motion to Dismiss in Part?

53. In this case, both parties agree that fairness and efficiency are key considerations in deciding whether to admit the Motion to Dismiss in Part. Likewise, the parties share the view that the claim that Respondent seeks to dismiss by its Motion, that is, Applicant's challenge to the 2013 starting grade decision, is closely intertwined with the other principal claim raised by the Application, that is, the challenge to the 2016 non-promotion decision. The parties differ, however, in their appreciation of how the inter-relatedness of the two claims shall affect the determination of the admissibility of the Motion.

54. In Respondent's estimation, Applicant's challenge to the 2013 starting grade decision is not a "minor or tangential" aspect of the case but rather a "major part" of the Application and of the request for relief, and it "involves facts and arguments that overlap with" the challenge to the 2016 non-promotion decision. That the two claims are "intertwined," submits the Fund, supports a threshold decision by the Tribunal on whether Applicant has met the exhaustion requirement of Article V in respect of his challenge to the 2013 starting grade decision. The Fund notes Applicant's allegation that both challenged decisions represent '"discriminatory acts' of the Fund, reflecting the same institutional bias against staff members of his national origin." Respondent maintains that "[i]f the Fund is ultimately required to present its answer on the merits with respect to both decisions, it will do so with this alleged connection in mind and respond accordingly, in terms of both the facts and the legal arguments." The Fund's Motion apparently is designed to seek a determination at the threshold as to whether both claims remain in play so as to craft its Answer to the Application in a manner that will be responsive—or not—to their inter-relationship.

55. Applicant, for his part, maintains that the inter-relatedness of the two claims supports their being heard together. In Applicant's words: "It appears that the Fund submits the Motion to Dismiss in Part on grounds of the necessity of exhaustion of all the channels [of administrative review]. However, . . . the Fund aims to remove some part of one application because it lends credence to the pattern of behavior which is being alleged here." Applicant maintains that the 2013 and 2016 decisions are "related and influenced by the same underlying factor" and that when the two challenges are "considered jointly, they can reinforce each other to better show the underlying discriminatory act of the Fund." Applicant submits that the Motion to Dismiss in Part should be denied because "[f]or the purposes of fairness and efficiency, one application should be considered by the Tribunal in its entirety instead of being divided into several cases."

56. In the view of the Tribunal, this case aptly illustrates why the principles underlying summary dismissal of an application *in its entirety* will not always be easily transferable to the summary dismissal of an application *in part*. Where, as here, the claim that Respondent seeks to dismiss summarily and another principal claim that it accepts shall go forward, overlap in fact and in law, it will not ordinarily be fair or efficient to admit the motion to dismiss in part. Given that the Tribunal will be required to assess the merits of the claim that goes forward, and given

that that claim is closely connected with the claim the Fund seeks to dismiss by its Motion to Dismiss in Part, the Tribunal will in all likelihood have to consider the facts and perhaps the law related to the connected claim as well. In such circumstances, the potential benefit of a summary procedure in terms of efficiency will be absent. Moreover, after a full exchange of pleadings on the merits, the Tribunal will be better positioned to decide whether the claim the Fund seeks to dismiss summarily is indeed inadmissible. Therefore, where claims are closely intertwined, it will rarely serve either efficiency or fairness to dismiss one of the claims at the outset.

57. Furthermore, in the instant case, the issue of the inter-relatedness of the claims is salient to one of the arguments that Applicant asks the Tribunal to consider in deciding the admissibility of his challenge to the 2013 starting grade decision, that is, that it allegedly forms part of a pattern of discriminatory treatment. Where, as here, facts and arguments pertinent to the admissibility of a claim are intertwined with facts and arguments pertinent to the determination of the merits of the application as a whole, the concerns identified above will be heightened.

58. The Tribunal accordingly concludes that the interests of justice will best be served in this case by deferring a decision on the admissibility of one of Applicant's principal claims until it has the benefit of a full exchange of pleadings on the merits of both claims. Addressing the question posed by the Motion to Dismiss in Part, that is, whether Applicant has met the exhaustion requirement of Article V in respect of his challenge to the 2013 starting grade decision, requires the Tribunal to engage in a thorough examination of the facts of the case in the light of the applicable law. This analysis may include answering such questions as when Applicant may be said to have launched his challenge to the decision he seeks to contest and whether there are "exceptional circumstances" that may excuse a delay. Such questions are most reliably answered after a full review of the record and the parties' arguments on the Application as a whole.

59. This conclusion is consistent with the Tribunal's summary dismissal jurisprudence, which "counsels against the piecemeal review of related claims." *Ms. "PP"*, Order No. 2019-1, para. 51 (dismissing, without prejudice, motion to dismiss in part because it will "better serve the interests of justice to decide the issues of the case, including [the issue raised by the motion], following a full briefing on the merits of the Application"); *Mr. "LL"*, Order No. 2016-1, paras. 5-9 (suspending the pleadings, rather than granting motion for summary dismissal, until "questions concerning the legal relationship" among several issues of the case, i.e., separation for medical reasons, workers' compensation, and pension benefits, have been addressed in the first instance through the various channels of review); *Ms. C. O'Connor, Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2010-1 (February 8, 2010), para. 42 (granting motion for summary dismissal of application raising claim "closely allied" with another claim that remained pending in channels of administrative review, without prejudice to applicant's right to bring a new application raising both claims, following exhaustion of the related claim).

60. The Tribunal's approach in *Ms. "GG", Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2013-3 (October 8, 2013) is instructive. In *Ms. "GG",* Respondent filed a Rule XII motion in which it sought summary dismissal of the application in its entirety. The application had raised multiple claims, and the

Fund's motion invoked a variety of bases for dismissal of each of those claims. *Id.*, para. 26. One claim, alleging a pattern of harassment, retaliation and discrimination in connection with an annual performance review, was still pending in the Grievance Committee. In her pleadings in the Tribunal, Ms. "GG" alleged that '"[h]arassment, retaliation, and discrimination are part of all of the contested decisions before the Tribunal,"' which are '"infected by these improper motives and misconduct."' *Id.*, para. 27. Significantly, the Tribunal in *Ms. "GG"* decided not only to dismiss without prejudice the claim that remained pending in the Grievance Committee (citing *O'Connor*), but also declined to rule on the admissibility of the other claims that the Fund's motion sought summarily to dismiss, reasoning that, based on the applicant's assertions, these too were "closely allied" with the unexhausted claim. *Id.*, paras. 30-31. The Tribunal granted the Fund's motion for summary dismissal without prejudice to the applicant's right to submit a new application re-asserting all of her claims, and without prejudice to Respondent's right to invoke in its pleadings on the merits the various grounds for dismissal it had asserted in its motion. *Id.*, para. 32. Accordingly, the Tribunal in *Ms. "GG"* took a holistic approach to deciding a motion for summary dismissal in the context of allegedly inter-related claims, rather than deciding the admissibility of the individual claims on a piecemeal basis.

61. The subsequent litigation of the case of Ms. "GG" confirms that, in the course of answering an application as a whole, it will remain open to Respondent to challenge the admissibility of individual claims while answering others on the merits. *See Ms. "GG" (No. 2), Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2015-3 (December 29, 2015), para. 169, cited in *Ms. "PP"*, Order No. 2019-1, para. 52. In several cases, the Fund has also taken the approach of raising a threshold defense of inadmissibility while, in the alternative, answering the merits of an application or a claim.[6]

CONCLUSIONS OF THE TRIBUNAL

62. The Tribunal has decided above that it will be the exception and not the rule to admit a motion to dismiss summarily part of an application prior to a full exchange on the merits of the application as a whole. In determining whether to admit a motion to dismiss in part, the Tribunal will weigh such factors as efficiency, fairness, and the potential for the Tribunal to dispose reliably of the issue of admissibility, applying the "clearly inadmissible" standard of Rule XII.

63. Having weighed these factors, the Tribunal decides, for the reasons elaborated above, that it will not serve the interests of justice to take a decision on the admissibility of Applicant's

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[6] *See Ms. "G", Applicant and Ms. "H", Intervenor v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2002-3 (December 18, 2002), para. 39 (challenging admissibility of claims in terms of Article II ("adversely affecting" requirement) and Article XX (jurisdiction *ratione temporis*), while alternatively answering on the merits); *Mr. "R" (No. 2), Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2004-1 (December 10, 2004), para. 23 (challenging admissibility in terms of Article XIII (*res judicata*), while alternatively answering on the merits); *Mr. S. Ding, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2009-1 (March 17, 2009), paras. 21-22 (challenging admissibility in terms of Article XX (jurisdiction *ratione temporis*), while alternatively answering application on the merits); and *Mr. R. Niebuhr, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2013-1 (March 12, 2013), para. 67 (challenging admissibility of claims in terms of Article XX (jurisdiction *ratione temporis*), while alternatively answering on the merits).

challenge to the 2013 starting grade decision in advance of a full exchange of pleadings on the merits of the Application as a whole. This is so because Applicant's two principal claims are intertwined both in fact and in law. Furthermore, the issue of the inter-relatedness of the claims is pertinent to one of the arguments Applicant raises in support of the admissibility of the claim that Respondent seeks to dismiss by its Motion.

64. The Tribunal therefore is not persuaded that this case presents "circumstances in which a Motion to Dismiss in [P]art will be admissible." *Ms. "PP"*, Order No. 2019-1, para. 49. Unlike the "unusual context" presented in *Ms. "PP"*, Order No. 2019-1, para. 50, there is no ground here to depart from the usual rule that a Rule XII motion will seek the summary dismissal of an application in its entirety rather than in part. Accordingly, the Tribunal dismisses the Motion to Dismiss in Part as inadmissible, without prejudice to Respondent's right to raise in its pleadings on the merits its challenge to the admissibility of part of the Application.

DECISION

FOR THESE REASONS

The Administrative Tribunal of the International Monetary Fund unanimously decides that:

1. The Motion to Dismiss in Part is dismissed as inadmissible, without prejudice to Respondent's right to raise in its pleadings on the merits its challenge to the admissibility of part of the Application.

2. The proceedings on the merits shall resume in accordance with the Tribunal's Rules of Procedure. The Fund's Answer shall be due forty-five days from notification of this Judgment.

Catherine M. O'Regan, President

Andrés Rigo Sureda, Judge

Edith Brown Weiss, Judge

/s/
Catherine M. O'Regan, President

/s/
Celia Goldman, Registrar

Washington, D.C.
November 2, 2020