

NOTES AND COMMENTS

Approaches to Discrimination Claims: A Comparison of the Administrative Tribunals of the Asian Development Bank and the Inter-American Development Bank Group

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Abstract

This article examines the approaches taken by the Asian Development Bank Administrative Tribunal and the Administrative Tribunal of the Inter-American Development Bank Group in deciding discrimination claims. The article reviews the basic features of each tribunal before examining their jurisprudence on equality of treatment and issues of information disclosure in discrimination cases. Decisions to date have addressed claims of disparate treatment relating to various aspects of remuneration and benefits as well as allegations of arbitrary treatment *vis-à-vis* others similarly situated. A few cases have involved allegations of discrimination on the basis of sex/gender, one of several protected grounds in equality law. The number of judicial dissents in discrimination cases suggests that the tribunals have encountered some difficulty in handling them. The article points to a gradual but still incomplete approximation of the decisions of such tribunals to contemporary developments in discrimination law, and suggests a possible way forward.

Keywords: Human Rights; International Organizations; Other Areas of International Law

Anniversaries offer opportunities for reflection. In 2021, the Asian Development Bank Administrative Tribunal (ADBAT) and the Administrative Tribunal of the Inter-American Development Bank Group (IDBAT) celebrated decennial anniversaries (the IDBAT was established in 1981 and the ADBAT in 1991). The two tribunals invite comparison, since they are of similar age: they are creations of a regional development bank that adopted statutes governing them, and have adopted their own rules and a code of ethics and conduct. They offer international civil servants (and some others) an avenue for the final and binding resolution of employment-related disputes; otherwise, the organizations' immunities from national jurisdiction would leave these individuals without access to justice. Both tribunals have in recent years improved the information available on the dispute resolution process.¹ The authoritative source, of course, remains the decisions rendered

¹ Most recently, see (for example) the Administrative Tribunal of the Inter-American Development Bank Group (IDBAT), "Taking Stock of its Four Decades of Jurisprudence" (November 2021), online: IDB <<https://idb-docs.iadb.org/wsdocs/getdocument.aspx?docnum=EZSHARE-2100739692-270>>, and Asian Development Bank Administrative Tribunal (ADBAT), "Reflections on 30 Years of the Asian Development Bank Administrative

by the ADBAT and the IDBAT. On occasion, the tribunals have referred to each other's decisions.²

At first glance, the two tribunals also appear to have issued a comparable number of decisions (by 31 December 2021, 125 for the ADBAT and 112 cases for the IDBAT). A closer look at the data for the IDBAT, however, shows that 24 of its cases involved withdrawals and/or recorded settlements (obviously without details published).³ In contrast to the ADBAT, which has held an oral hearing on only a few occasions, the IDBAT has done so in 96 per cent of the cases, mostly for oral argument, but sometimes for hearing witnesses.⁴

Both courts have been called upon to address claims of discrimination on various grounds. This article, while noting differences in relation to access to the tribunal and the rules on remedies, finds that the two tribunals have faced similar challenges in handling discrimination cases. It suggests a way in which such cases might be addressed more easily in future.

I. A General Principle

Each of the development banks under consideration here have adopted internal policies aimed at promoting equality of opportunity, adapted as needed over time. The law of the international civil service, also referred to as international administrative law, has long held that equality of treatment or non-discrimination⁵ is a general principle of a fundamental nature.⁶ A rule that “employment decisions based on invidious discrimination, either toward the individual or the class to which he or she belongs, are unlawful and will be overturned” constitutes a “substantive rule” developed by international administrative tribunals.⁷ Moreover, “the principle of non-discrimination is a source of law hierarchically higher than the [internal] norm [of an organization]”.⁸ Thus international administrative

Tribunal” (December 2021), online: ADB <<https://www.adb.org/publications/reflections-30-years-adb-administrative-tribunal>>.

² See, for example, *Agusti, Vena and Verdejo-Sancho et al. v. IDB*, Judgment of 31 August 2015, [2015] IDBAT Case No. 80 at 4, citing *Amora v. ADB*, Judgment of 6 January 1997, [1997] ADBAT Decision No. 24; and *Mesch and Siy (No. 4)*, Judgment of 7 August 1997, [1997] ADBAT Decision No. 35, in which the dissenting opinion (at para. 48) distinguished *de Andrade v. IDB*, Judgment of 4 April 1986, [1986] IDBAT Case No. 8. Note: citations are to pages in IDBAT judgments and to paragraphs in ADBAT decisions, according to their respective usage.

³ IDBAT, *supra* note 1 at 20.

⁴ IDBAT, “Oral Hearings in the Procedures and Practices of the Inter-American Development Bank Group Administrative Tribunal” (August 2021), online: IDB <<https://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=EZSHARE-2100739692-268>>.

⁵ As Germond notes, non-discrimination and equality of treatment may be seen in the law of the international civil service as two sides of the same coin: Laurent GERMOND, *Les principes généraux selon le Tribunal administratif de l'O.I.T.* (Paris: Éditions Pedone, 2009) at 99–100, 103.

⁶ C. F. AMERASINGHE, *Principles of the Institutional Law of International Organizations*, 2nd ed. (Cambridge: Cambridge University Press, 2005) at 293 and 297; Yaraslau KRYVOI, “The Law Applied by International Administrative Tribunals: From Autonomy to Hierarchy” (2015) 47 *George Washington International Law Review* 267 at 271. On general principles of law as a source, see as part of this volume, AGO Shin-ichi, “A Few Thoughts about the Concepts of International Administrative Tribunals and International Administrative Law”.

⁷ Robert A. GORMAN, “The Development of International Employment Law: My Experiences on International Administrative Tribunals at the World Bank and the Asian Development Bank” in Nassib G. ZIADÉ, ed., *Problems of International Administrative Law: On the Occasion of the Twentieth Anniversary of the World Bank Administrative Tribunal* (Leiden: Martinus Nijhoff, 2008), 201 at 216, citing, inter alia, *Alexander v. ADB*, Judgment of 5 August 1998, [1998] ADBAT Decision No. 40.

⁸ Giuseppe BARBARGALLO, “Closing Remarks by Judge Giuseppe Barbargallo” in Dražen PETROVIĆ, ed., *90 Years of Contribution of the Administrative Tribunal of the International Labour Organization to the Creation of International Civil Service Law* (Geneva: ILO Publication, 2017), 193 at 194.

tribunals have “the authority to strike down and fashion appropriate remedies for any such [discriminatory] conduct”.⁹ Conceptual growth in the analysis of discrimination claims has occurred at both international and national levels over the past several decades.¹⁰ Furthermore, international human rights instruments – while not directly binding on the organization – may be cited in support of a decision on discrimination issues,¹¹ and some commentators have urged greater reliance on such sources.¹² These observations set a backdrop for a look at the approaches taken to such claims by the ADBAT and the IDBAT.

II. Basic Features of the Adbat and the Idbat

A. Access to the tribunals

Before examining the jurisprudence of the ADBAT and IDBAT on discrimination, one needs to review a few basic features of these tribunals. Under its statute, the ADBAT may hear and pass judgment upon any application by which an individual staff member of the bank, who holds or has held a regular or fixed-term appointment of two years or more, and who alleges non-observance of the contract of employment or terms of appointment.¹³ The statute of the IDBAT also extends to such persons, while containing a more encompassing, but somewhat circular, definition of an “employee”. This term is defined as “any current or former person appointed by the Bank or Corporation in accordance with its employment practices to render services as an employee, and who receives regular remuneration from [it] (including consultants)”.¹⁴ With this explicit inclusion of consultants, the IDBAT is thus open to a wider range of complainants without a threshold of a minimum duration of contract. The jurisdiction of the two tribunals extends to pensioners of the respective institution.

Both tribunals have adopted and revised their own rules of procedure.¹⁵ Under the statute and rules of each, an applicant must exhaust avenues for internal review of administrative decisions (these differ somewhat for the ADB and the IDB). Time limits, both for the internal review and for lodging an application with the respective tribunal, also need to be

⁹ Gorman, *supra* note 7 at 213.

¹⁰ See for example Anne BAYEFKY, “The Principle of Equality or Non-Discrimination in International Law” in Stephanie FARRIOR, ed., *Equality and Non-Discrimination under International Law*, Vol. II (London: Routledge, 2015), 71; Hugh COLLINS and Tarunabh KHAITAN, eds., *Foundations of Indirect Discrimination Law* (London: Bloomsbury, 2018); Laura CARLSON, *Comparative Discrimination Law: Historical and Theoretical Frameworks* (Leiden: Brill, 2017); and materials of the Berkeley Center on Comparative Equality and Discrimination Law, accessible at: Berkeley Law, “Berkeley Center on Comparative Equality and Anti-Discrimination Law”, online: Berkeley Law <<https://www.law.berkeley.edu/research/berkeley-center-on-comparative-equality-anti-discrimination-law/>>.

¹¹ Amerasinghe, *supra* note 6 at 293. The majority opinion in *Mesch and Siy (No. 4)*, *supra* note 2 at para. 20, provides an example by citing the International Covenant on Economic, Social and Cultural Rights.

¹² Kryvoi, *supra* note 6; Gregor NOVAK and August REINISCH, “Issues of Effectiveness and Legitimacy Desirable Standards for the Design of Administrative Tribunals from the Perspective of Domestic Courts” in Olufemi ELIAS, ed., *The Development and Effectiveness of International Administrative Law: On the Occasion of the Thirtieth Anniversary of the World Bank Administrative Tribunal*, Queen Mary Studies in International Law, Vol. 8 (Leiden: Martinus Nijhoff, 2012), 271 at 275.

¹³ Asian Development Bank, “Statute of the Administrative Tribunal of the Asian Development Bank”, online: ADB <<https://www.adb.org/sites/default/files/institutional-document/33394/adb-tribunal-statute.pdf>> [ADBAT Statute] at Article II(1) and (2).

¹⁴ Inter-American Development bank, “Statute of the Administrative Tribunal of the Inter-American Development Bank Group”, online: IDB <<https://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=39458925>> [IDBAT Statute] at Article II(1).

¹⁵ The respective Rules of Procedure are available at: ADBAT, “Rules of Procedure of the Administrative Tribunal of the Asian Development Bank”, online: ADB <<https://www.adb.org/sites/default/files/institutional-document/33395/administrative-tribunal-rules.pdf>> and IDBAT, “Rules of Procedure of the Administrative Tribunal” (19 June 2020), online: IDB <<https://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=EZSHARE-2100739692-251>>.

observed. The IDBAT allows 120 days from exhaustion of all remedies available to the bank, while an application to the ADBAT must be filed within 90 days thereof.¹⁶ Normal bars to the tribunal's jurisdiction, such as a failure to exhaust internal remedies or to respect time limits, will apply in cases of alleged discrimination, as in any other.¹⁷ Neither the ADBAT nor the IDBAT accept class actions, but both have examined collective claims submitted by a group of individual applicants and may decide to join their claims.

B. Subject Matter Jurisdiction, Sources of Law, and Scope of Review

Under Articles II and VI of the IDBAT Statute, the tribunal is empowered to decide on alleged non-observance of the contract of employment and the terms and conditions of employment, including the agreement that establishes the bank or the corporation, and the rules and regulations and personnel and administrative policies in force at the pertinent time. Similar wording appears in Article II(1) of the ADBAT Statute. Both tribunals have, in addition, referred to general principles such as that of equality, as well as to decisions of international administrative tribunals dealing with comparable situations. The ADBAT, in its inaugural judgment, *Lindsey v. Asian Development Bank*, laid down the "principal rules of law within the framework of which the facts must be considered" in any case before it.¹⁸

The law of the international civil service applies stricter scrutiny to administrative actions involving what are found to be "fundamental and essential" conditions of employment (also referred to as "acquired rights") than it does for what are seen as discretionary decisions of management (such as contract renewals, performance reviews, and promotions). In the ADBAT, the latter are still subject to review, but only in circumstances where the challenged management decision is arbitrary, discriminatory, improperly motivated, adopted without due process, or involves an abuse of power or discretion.¹⁹ The IDBAT has taken a similar approach:²⁰

The work of the Tribunal ... can by no means take the place of management in its decisions[;] it is our function to review whether the administrative actions match [their] normative parameters and, therefore, to guarantee the rights and interests of the staff measured against irregular decisions vitiated by illegality.

The phrase "arbitrary, discriminatory or improperly motivated" is often repeated in applications lodged with the ADBAT. But pleadings do not necessarily reflect the distinct elements in this phrase. International administrative tribunals often rely considerably on fact-finding done at "the steps below",²¹ although they also engage in examination of additional documents and, particularly in the case of the IDBAT, witness testimony. Either way, disclosure of information for comparative purposes has particular importance in the context of discrimination claims, as explored below.

C. Possible Remedies

When the ADBAT or the IDBAT finds an application or complaint to be well founded, the respective statute provides for relief to be granted to the individual. The remedies

¹⁶ ADBAT Statute, *supra* note 13 at Art. II(3) and IDBAT Statute, *supra* note 14 at Art. II(2).

¹⁷ See e.g. *Jareda v. IDB*, Judgment of 18 October 2010, [2010] IDBAT Case No. 71.

¹⁸ *Lindsey v. ADB*, Judgment of 18 December 1992, [1992] ADBAT Decision No. 1 at para. 4.

¹⁹ *Ibid.*, at para. 12.

²⁰ *Castro v. IDB*, Judgment of 11 October 1985, [1985] IDBAT Case No. 7 at 9–11.

²¹ On such internal mechanisms, see Annika TALVIK, ed., *Best Practices in Resolving Employment Disputes in International Organizations* (Geneva: ILO Publication, 2014).

specified in both tribunals' statutes entail rescission of the contested administrative decision or specific performance of the obligation invoked, as well as possible compensation; that is, whether to "make whole" or, as an alternative under specific circumstances,²² award costs. Both the ADBAT and the IDBAT statutes empower them to award "costs", including an amount for attorney's fees.²³

The two statutes diverge somewhat as to possible compensation. In the ADBAT Statute, the level of compensation may not exceed the equivalent of the applicant's prior three years basic salary, but "in exceptional circumstances, when it considers it justified", the tribunal may order the payment of higher compensation, giving a statement of the reasons.²⁴ In 2013, following the Review of the Ethics, Conduct and Grievance Systems of the Inter-American Development Bank, which was conducted two years earlier, the IDBAT statute was amended, to include regard to possible compensation.²⁵ Under Article IX of this statute, in addition to making a provision to "make whole" remedies, the IDBAT may award additional compensation not exceeding:²⁶

the higher of either one year of the Applicant's annual salary or one year of the median salary of the Bank or the Corporation, as applicable. However, in the case of Tribunal findings involving discrimination based on race, gender, sexual orientation, national origin, ethnicity or other protected status, or retaliation against a whistleblower, monetary compensation may be the higher of either twice the Applicant's annual salary or twice the median annual salary of the Bank or Corporation, as applicable.

The possible reference to the median salary enables the IDBAT to raise the possible compensation payable to a lower-paid employee, or to lower it in the case of a higher-paid one. In addition, where the IDBAT:²⁷

determines that discrimination based on race, gender, sexual orientation, national origin, ethnicity or another protected status, or retaliation against a whistleblower, was a contributing factor in the Tribunal's decision, it shall refer the matter to the Ethics Officer for action in accordance with the policies governing that Institution, including policies regarding conflicts of interest and recusal.

Up until now, no reported decision of the IDBAT has referred to this provision and is, so far, unique among international administrative tribunals.

III. Adbat and Idbat Discrimination Cases

A. Discrimination Claims: An Overview

Against this background, we can look at the relevant judgments of the ADBAT and the IDBAT on discrimination issues. The most numerous have challenged differential treatment that involved remuneration (related to policies on reimbursement of national tax or access to certain benefits) or other treatment alleged to be arbitrary when compared to that given to (arguably) similarly situated persons. Another category of claims has

²² ADBAT Statute, *supra* note 13 at Art. X(1) and IDBAT Statute, *supra* note 14 at Art. IX(1).

²³ ADBAT Statute, *supra* note 13 at Art. X(6) and IDBAT Statute, *supra* note 14 at Art. IX(6).

²⁴ ADBAT Statute, *supra* note 13 at Art. X(1).

²⁵ Thanks go to J.S. Scott of the IDB for providing the relevant document under the bank's access to information policy.

²⁶ IDBAT Statute, *supra* note 14 at Art. IX(2).

²⁷ *Ibid.*, at Art. IX(5).

involved allegations of sex/gender discrimination, which is also a protected status or ground. While sexual harassment has come to be seen in international law as a manifestation of gender-based discrimination,²⁸ harassment claims made to international administrative tribunals need not be framed in terms of discrimination, and are thus not incorporated here.²⁹

So far, neither tribunal has issued a judgment based on a finding of discrimination on other grounds by which staff would be protected against discrimination, such as race or religion.³⁰ However, in *Peroustianis v. IDB*,³¹ the IDBAT commented that although bias or prejudice had not been alleged, there had been hints that:³²

because of his cultural background and personality, [the complainant] did not fit very well in to the Bank with its predominantly [L]atin environment. In this regard, the Tribunal has carefully considered whether this contention could be taken to amount to an allegation that Complainant had become the victim of discriminatory practices on account of his ethnicity.

It found this not to be case. In the ADBAT, the tribunal upheld the bank's application of a phased-in reduction of the retirement age from 65 to 60. Neither the majority nor the dissenting opinion mentioned possible age discrimination, and the applicant had not raised the issue.³³

In some cases, applicants have alleged discrimination based on other grounds, but then failed to pursue their claims by not supplying evidence. This is illustrated by *Severino v. IDB*,³⁴ in which the IDBAT nonetheless ruled in favour of the applicant on her principal claim of abuse of authority. In *Jacques Cook et al. v. IDB*,³⁵ the IDBAT referred to "inequities suggested but not concretely argued". In *Yamagishi*, the ADBAT concluded that the applicant had failed to prove that the underlying incidents had actually taken place, or that they resulted in a decision that was based on "discriminatory or other illegitimate criteria".³⁶

B. Remuneration- and Benefits-related Claims

The principle of equal remuneration for work of equal value³⁷ has featured importantly in several cases brought to the ADBAT and the IDBAT. The outcomes have been mixed.

²⁸ Anne TREBILCOCK, "What the New Convention on Violence and Harassment Tells Us About Human Rights and the ILO" in Georges P. POLITAKIS, Tomi KOHIYAMA, and Thomas LIEBY, eds., *ILO100: Law for Social Justice* (Geneva: ILO Publication, 2019), 1031, online: ILO <https://www.ilo.org/wcmsp5/groups/public/---dgreports/---jur/documents/publication/wcms_732217.pdf>.

²⁹ The tribunals have nonetheless ruled on harassment claims. See e.g. *Ms. Yamagishi v. ADB*, Judgment of 28 July 2004, [2004] ADBAT Decision No. 65 and *Ms. X v. ADB*, Judgment of 11 January 2006, [2006] ADBAT Decision No. 74, in which the tribunal rejected the claims; and *Mr. Y v. ADB*, Judgment of 2 March 2011, [2011] ADBAT Decision No. 94, where the ADBAT characterized conduct constituting sexual harassment.

³⁰ See for instance the *Discrimination (Employment and Occupation) Convention*, ILO Convention No. 111 (1958), which in Art. 1 lists "race, colour, sex, religion, political opinion, national extraction or social origin" as minimum grounds on which States may not discriminate, within the meaning of that instrument.

³¹ *Peroustianis v. IDB*, Judgment of 19 July 1996, [1996] IDBAT Case No. 42.

³² *Ibid.*, at 20.

³³ *Samuel v. ADB (No. 2)*, Judgment of 13 August 1996, [1996] ADBAT Decision No. 15.

³⁴ *Severino v. IDB*, Judgment of 24 May 2010, [2010] IDBAT Case No. 69 at 31–3.

³⁵ *Jacques Cook et al. v. IDB*, Judgment of 11 October 1985, [1985] IDBAT Case No. 5 at 14.

³⁶ *Yamagishi*, *supra* note 29 at para. 56.

³⁷ For what "remuneration" and "work of equal value" entail, see the *Equal Remuneration Convention*, ILO Convention No. 100 (1951) at Art. 1, and the definition of "discrimination" in Art. 1 of ILO Convention No. 111, *supra* note 30, along with relevant General Surveys and Observations of the ILO Committee of Experts on

1. Claims Involving the Issue of National Income Tax

In earlier cases, the ADBAT faced the issue of levels of staff compensation before and after the calculation of national income tax that was owed by staff of certain nationalities, but not by others. Only the highlights of this complicated matter, which involve four successive cases, can be set out here. The first two cases were *Mesch and Siy v. ADB*³⁸ and *Mesch and Siy v. ADB (No. 2)*.³⁹ In the 1994 decision, the tribunal found a violation of the bank's obligation to provide equal compensation for comparable work, noting that under the circumstances "the failure to consider the incidence of taxation is inconsistent with the principle of 'equal compensation for comparable work'".⁴⁰ However, the practical effect of these rulings in favour of the applicants was short-lived, as the board of directors then changed the policy to preclude tax reimbursement. A staff challenge to this failed; first, on *procedural grounds* (basically), in a unanimous decision, *Mesch and Siy v. ADB (No. 3)*,⁴¹ and then in a later case on the *merits* (by a majority of three to two of the five judges) in *Mesch and Siy (No. 4)*.⁴² The ruling on the merits found that reimbursement of national income tax was not a fundamental and essential condition of employment, and that the board of the bank had the power to unilaterally amend the rule and thus staff members' contracts of employment. The bank could, therefore, continue to use its new rule that the principle of equal pay for equal work applied to pre-tax salaries only.

In the final case in this series, a vigorous dissent pointed out, *inter alia*, that the tribunal had in effect reversed its earlier finding on the discrimination claim. This two-member dissent maintained that inequalities in the net earnings of staff breached "the principle of equal pay for equal work" and that tax reimbursement did indeed constitute a "fundamental and essential" condition of employment, citing various authorities.⁴³ While the three-member majority had found otherwise, its opinion contained language of wider interest to discrimination claims. The majority referred to implied, non-waivable rights such as the right of employees to be paid "a fair wage, one that assures 'equal remuneration for work of equal value'",⁴⁴ but concluded that the obligation to treat employees equally "does not extend to remedying discrepancies created by the conduct of the state of which the employee is a citizen".⁴⁵

The question of tax reimbursement also came before the IDBAT early in its history, in a case that involved home leave and educational allowances for staff members who were United States nationals. The matters raised in *Cook et al. v. IDB*⁴⁶ had been pending in the bank for some time, with an initial resort to conciliation and the involvement of outside expertise. The tribunal eventually dismissed the case brought by multiple staff members because no effort had been made to establish particularized financial harm to each, and the tribunal could not act as a legislator or arbitrator.⁴⁷

the Application of Conventions and Recommendations: International Labour Organization, "Information Resources and Publications on International Labour Standards", online: ILO <<https://www.ilo.org/global/standards/information-resources-and-publications/lang-en/index.htm>>.

³⁸ *Mesch and Siy v. ADB*, Judgment of 8 January 1994, [1994] ADBAT Decision No. 2.

³⁹ *Mesch and Siy v. ADB (No. 2)*, Judgment of 31 March 1995, [1995] ADBAT Decision No. 6.

⁴⁰ *Mesch and Siy v. ADB*, *supra* note 38 at para. 15.

⁴¹ *Mesch and Siy v. ADB (No. 3)*, Judgment of 13 August 1996, [1996] ADBAT Decision No. 18.

⁴² *Mesch and Siy v. ADB (No. 4)*, *supra* note 2.

⁴³ *Ibid.*, Dissenting Opinion of Judge B. Stern and Judge T. Sawada at paras. 6–10.

⁴⁴ *Ibid.*, Majority Opinion at para. 20.

⁴⁵ *Ibid.*, Majority Opinion at para. 30.

⁴⁶ *Jacques Cook et al. v. IDB*, *supra* note 35.

⁴⁷ *Ibid.*, at 14.

2. Claims Relating to Salary Conditions and Access to Benefits

The question of the impact of national legislation on remuneration from the Inter-American Development Bank (IDB) also arose in another context. Local members of staff from three country offices challenged the fact that they were no longer able to deposit part of their salaries, in US dollars, with the Federal Credit Union located in the United States. In this case, *Cressa et al., Ares et al., Canterbury et al. v. IDB*,⁴⁸ were local staff who claimed a breach of the principle of equality of treatment occasioned by the discrimination between them and international staff, who were allowed to use the credit union. The tribunal rejected their claim by a majority of four to three of the seven members. The majority opinion concluded that “there are two different legal regimes” for the two categories of staff.⁴⁹ The ruling held that the bank had not made a substantial adverse change in the essential terms of the employee’s appointment, and the complaints were dismissed.⁵⁰

Two judges dissented on the basis of the protective principles of international and national labour law.⁵¹ Referring to the constitutive agreement between the IDB and its member states, they argued that the bank was under no obligation to follow national law regarding payment of salaries solely in local currency. A third dissenting opinion saw the “substantial adverse changes to salary conditions for local staff in three country offices [as amounting to] de facto discrimination between local staff in different country offices”⁵² rather than between international and local staff. The different approaches taken by the majority and the dissents in this case illustrate the importance of how a discrimination claim is framed.

The distinction between national and international staff also came before the ADBAT. In *De Armas et al. v. ADB*,⁵³ a group of staff of Filipino nationality sought to obtain four types of staff benefits enjoyed by bank employees in the professional category, who were of other nationalities. The ADBAT found that the discrimination in question (regarding education grants, home leave travel, a force majeure protection programme, and severance pay for staff resettling outside the duty station country) was based not on nationality, but rather on the place of service. It stated that a distinction between benefits for expatriates and staff serving in their own country “does not constitute discrimination if such benefits are reasonably related and proportionate to [the] disadvantages” that expatriates face.⁵⁴ Applying this test, and citing Decision No. 35 on equal remuneration, it directed the bank to make some changes in its practice, while dismissing other claims. The decision also noted that prior to the matter reaching the tribunal, the bank had agreed to extend two other types of benefits (group medical insurance and a salary advance for incoming professional staff) to Filipino and non-Filipino nationals alike.⁵⁵

Another issue giving rise to discrimination claims involved currency adjustments. In *Etienne v. IDB*,⁵⁶ a bank pensioner sought an adjustment of his bank pension in light of the erosion of the value of his local currency. The majority of the IDBAT noted that “the Bank must give equivalent treatment to comparably situated employees”,⁵⁷ but did

⁴⁸ *Cressa et al., Ares et al., Canterbury et al. v. IDB*, Judgments of 24 February 2017, [2017] IDBAT Case Nos. 86, 87, and 89.

⁴⁹ *Ibid.*, at 8.

⁵⁰ *Ibid.*, at 8–9.

⁵¹ *Ibid.*, at 11–2.

⁵² *Ibid.*, at 13.

⁵³ *De Armas et al. v. ADB*, Judgment of 5 August 1998, [1998] ADBAT Decision No. 39.

⁵⁴ *Ibid.*, at para. 33.

⁵⁵ *Ibid.*, at para. 2.

⁵⁶ *Etienne v. IDB*, Judgment of 24 July 2008, [2008] IDBAT Case No. 67.

⁵⁷ *Ibid.*, at 6.

not find unequal treatment in this instance. Dissenting, one tribunal member took the view that the IDB retirement plan's failure to maintain the value of the retiree's income by adjusting for inflation and devaluation constituted a violation of the principle of equal treatment.⁵⁸

More recently, in *Guimarães Altafin et al. v IDB*,⁵⁹ local staff in one of the banks' country offices claimed violation of the principle of equality of treatment in the bank's application of the methodology it used to review the salary scale for local staff in all country offices. The tribunal ruled that the bank was not obliged to meet the criteria for creating a salary structure through a given method, but rather to reach a result. While the method chosen was applied only to this country office, where salaries had decreased, information on comparative salary movements submitted by the bank led the tribunal to find that the complainants had failed to make their prima facie case of discrimination.⁶⁰ In a dissenting opinion, one judge argued that the technical complexity of the facts would have required full clarification; he was of the view that although neither party had put forth conclusive evidence, the complainants had borne their burden of proof.⁶¹

C. Other Claims of Individual Arbitrary Treatment vis-à-vis Treatment Given to Others Similarly Situated

Several other ADBAT and IDBAT cases have entailed challenges based on comparison between the situation of an individual claiming unequal treatment vis-à-vis others who are arguably similarly situated. For instance, in *Schwarzenberg Fonck v. IDB*,⁶² the complainant failed to convince the IDBAT that the treatment of another employee in relation to the same issue was an identical precedent; a factual distinction led the tribunal to conclude that the principle of equality was not violated.

In *Murray v. ADB*,⁶³ the applicant alleged that he had been discriminated against because he had not been treated in the same way as other staff members seeking an extension of their fixed-term contracts. The ADBAT held that "[t]he principle of non-discrimination requires that staff members in 'the same situation in fact and law' be treated equally". However, "[e]quality of treatment is not required when the circumstances of the persons concerned are different".⁶⁴ The tribunal found that to be the case here, denying the claim.

While coming to a different result, the IDBAT took a similar approach in the important decision of *Agusti, Vena and Verdejo-Sancho et al. v. IDB*.⁶⁵ Multiple complainants, "Former Long-Term Consultants" who had become bank staff, alleged violation of the principle of equality and the principle of equal benefits for equal work because their earlier misclassification had precluded them from opting to purchase credits towards a retirement pension. The tribunal relied on the bank's own documents to support its finding that the individuals concerned had been performing staff-like functions while serving under contracts as long-term consultants.⁶⁶ The tribunal ordered that the official start date of each

⁵⁸ *Ibid.*, at 8.

⁵⁹ *Guimarães Altafin et al. v IDB*, Judgment of 21 October 2016, [2016] IDBAT Case No. 88.

⁶⁰ *Ibid.*, at 11.

⁶¹ *Ibid.*, at 14.

⁶² *Schwarzenberg Fonck v. IDB*, Judgment of 14 May 1984, [1984] IDBAT Case No. 2.

⁶³ *Murray v ADB*, Judgment of 23 January 2009, [2009] ADBAT Decision No. 91.

⁶⁴ *Ibid.*, at para. 47.

⁶⁵ *Agusti, Vena and Verdejo-Sancho et al. v. IDB*, Judgment of 31 August 2015, [2015] IDBAT Case No. 80; see also Judgment of 8 December 2015, [2015] IDBAT Case No. 80(Rev) and Judgment of 22 March 2019, [2019] IDBAT Case No. 80B.

⁶⁶ Case No. 80, *ibid.*, at 13.

former long-term consultant was to be adjusted, and that they were to be granted the right to purchase past years of service in the staff retirement plan; alternatively, the bank could compensate each with an amount equal to three years of basic net salary.⁶⁷ In support of its ruling, the IDBAT cited *Amora v. ADB*.⁶⁸

It appears that in cases involving alleged discrimination in the deciding of promotions or the reclassification of posts, the applicants found it difficult to provide sufficient proof to prevail. In *Thompson v. IDB*,⁶⁹ the complainant failed to convince the tribunal that his denial of a promotion had been the result of a pattern and practice of prejudice against him. While the tribunal found that there was evidence to suggest that the complainant “was not always treated by his superiors in a fair or considerate manner”, the evidence did not establish that his non-promotion was the “product of discrimination or of any other improper practice or motive ... it reveals no pattern of unequal treatment, abusive behaviour or collusion against him”.⁷⁰ This conclusion also found support in the tribunal’s own examination and comparison of the performance of the applicant’s co-workers who had received promotions.

In *Rios v. IDB*,⁷¹ the complainant unsuccessfully challenged the IDB’s refusal to reclassify his post despite an increase in the complexity of his position. The majority of the IDBAT found that this exercise of discretionary power had not been tainted by discrimination or a violation of the principle of equality.⁷² In a dissenting opinion, three of the seven judges pointed to the reclassification of two other comparable positions; they took the view that procedural and substantive provisions in the bank’s rules and policies had not been followed. This was, in their view, “tantamount to repudiation of the universal principles of equality and equity”.⁷³

Sometimes a discriminatory act is part of a wider pattern of behaviour, as illustrated by *Ballock v. IDB*,⁷⁴ in which the tribunal found a dismissal to have been unjustifiable and an abuse of authority.⁷⁵ Part of the background included making the complainant’s continued employment, after she had already worked at the bank for nine years, contingent on passing a language test that had never been imposed on any staff member in that field office. While this discriminatory element paled into insignificance when compared to the degrading treatment found by the tribunal, it again showed the relevance of comparisons with other members of staff in similar situations.

On occasions, claims of discrimination have been lodged against the bank’s response on that point, but not specifically taken up by the tribunal in its judgment. For instance, in *Chong v. IDB*,⁷⁶ the complainant had been dismissed for misconduct involving, inter alia, outside publications that had relied on bank research assistance, and which had appeared in its working papers. The former staff member argued that many colleagues had done the same. The tribunal found important distinctions, however, since he had not sought permission, had the prospect of substantial financial gain, and acted in violation of the bank’s code of ethics and other rules. Although contesting the relevance of a colleague’s conduct in the matter, the bank confirmed that this other person had also been sanctioned. The tribunal itself did not comment on this aspect of the case, other than to say that it found

⁶⁷ *Ibid.*, at 15.

⁶⁸ *Ibid.*, at 4.

⁶⁹ *Thompson v. IDB*, Judgment of 9 May 1990, [1990] IDBAT Case No. 24.

⁷⁰ *Ibid.*, at 8.

⁷¹ *Rios v. IDB*, Judgment of 1 September 2006, [2006] IDBAT Case No. 58.

⁷² *Ibid.*, at 19.

⁷³ *Ibid.*, at 21.

⁷⁴ *Ballock v. IDB*, Judgment of 18 March 2002, [2002] IDBAT Case No. 47a.

⁷⁵ *Ibid.*, at 36.

⁷⁶ *Chong v. IDB*, Judgment of 6 March 2015, [2015] IDBAT Case No. 83.

no irregularities in due process that would vitiate the decision or the sanction imposed on the complainant.⁷⁷

The ADBAT, in *Ms. J v. ADB*,⁷⁸ also noted that “one of the elements of due process is fair and equal treatment, and ... the imposition of a sanction may not be discriminatory” (citing, *inter alia*, *Bristol v. ADB*).⁷⁹ The applicant’s employment had been terminated because of her involvement in a fraudulent scheme. Information supplied by the bank in response to the tribunal’s request indicated that an equally involved staff member had received a lesser penalty. Since the disciplinary action had been taken for the same underlying reasons, the tribunal found that the bank had failed to exercise its disciplinary sanctions without discrimination, and ordered the rescission of the dismissal decision or payment of compensation,⁸⁰ which was set at a low amount that took into account the individual’s own behaviour in the scheme.

D. Claims of Sex/Gender Discrimination (A Protected Ground)

Several cases of alleged sex/gender discrimination have been heard by the ADBAT, and one by the IDBAT, which also addressed related issues in the obiter dicta of two other cases.

In *Ms. A v. ADB*,⁸¹ the ADBAT rejected a claim of gender discrimination. Its comments on the burden of proof are interesting. While recalling that the applicant “normally” has the burden of proof, the tribunal noted that she had a reasonable perception that she was the victim of discrimination, and that the bank should thus show that she was not denied a promotion on the basis of gender.⁸² The tribunal later stated, “[e]ven if she had proved a prima facie case of gender discrimination, the evidence shows that the appointee [a man] had at least equal qualifications”.⁸³ The tribunal had considered information submitted by the applicant regarding others’ promotions over a seven-year period, and the bank’s more granular account of those statistics; it also took into account efforts made by the bank to improve the situation of women there more generally.⁸⁴ The tribunal was not persuaded that the applicant had shown the bank’s action to be “a consequence of systemic gender discrimination”.⁸⁵ It did, however, find that the manager’s attitude had contributed to a strained relationship,⁸⁶ and awarded her US\$5000 in damages, while dismissing the claims.

Earlier, in *Patricia Alexander v. Asian Development Bank*,⁸⁷ the applicant alleged that the bank’s decision not to renew her fixed-term appointment, after four years of service, was based on performance evaluations that were procedurally flawed and “tainted with gender-based discrimination”.⁸⁸ The tribunal noted the strained nature of the interaction between the applicant and her manager,⁸⁹ and further noted that it was not unreasonable for her to have interpreted the manager’s behaviour “as a manifestation of prejudice against her”.⁹⁰ Without substituting its own assessment of an employee’s performance

⁷⁷ *Ibid.*, at 14.

⁷⁸ *Ms. J v. ADB*, Judgment of 2 October 2018, [2018] ADBAT Decision No. 116.

⁷⁹ *Bristol v. ADB*, Judgment of 11 January 2006, [2006] ADBAT Decision No. 75 at para. 47.

⁸⁰ *Ms. J v. ADB*, *supra* note 79 at paras. 95–6.

⁸¹ *Ms. A v. ADB*, Judgment of 23 January 2009, [2009] ADBAT Decision No. 87.

⁸² *Ibid.*, at para. 32.

⁸³ *Ibid.*, at para. 49.

⁸⁴ *Ibid.*, at paras. 23, 28, and 37.

⁸⁵ *Ibid.*, at para. 37.

⁸⁶ *Ibid.*, at para. 50.

⁸⁷ *Patricia Alexander v. ADB*, Judgment of 5 August 1998, [1998] ADBAT Decision No. 40.

⁸⁸ *Ibid.*, at para. 1.

⁸⁹ *Ibid.*, at para. 54.

⁹⁰ *Ibid.*, at para. 59.

for that of the bank, “the tribunal has the power to examine that the bank has exercised its discretion in a non-discriminatory manner”.⁹¹ The tribunal observed that “discrimination is a relative matter, pertaining to the manner in which a staff member’s performance has been assessed by his or her superiors in comparison to the assessment of the performance of other staff members by those same superiors”.⁹² The tribunal also noted that it may intervene “if facts disclose that staff members have been assessed in manifestly and unjustifiably differing ways for performing essentially comparable tasks”.⁹³ On the disputed facts before it, regarding budgets and timelines, the four-member panel of the tribunal was, however, unable to reach such a conclusion.

The applicant also alleged that her outspokenness, independence, and critical mind were held against her due to gender bias. She had dealt with issues relating to “Women in Development” in her work as an economist, and was an outspoken representative of women on bank-related issues focusing on gender.⁹⁴ After noting the bank’s clear policy against gender discrimination, the tribunal stated that proof of discrimination is often difficult, “for it turns upon motives and attitudes which are not always apparent on the surface of behaviour. It is almost uniformly necessary to prove the illicit subjective state of mind by recourse to elements of circumstantial proof.”⁹⁵ (This statement is not in line with contemporary discrimination doctrine, which focuses on effects on the person on the receiving end, rather than the motives of the alleged perpetrator.)

The applicant further claimed that she was a victim of gender stereotyping when not showing “submissiveness or deference to her colleagues”, and that her assertiveness was seen as insubordination.⁹⁶ However, the tribunal found “no evidence that the Manager’s attitude toward, or assessment of the Applicant, however negative, was caused by or even related to the Applicant’s gender”.⁹⁷ Critiques of her work organization and timeliness had been voiced by men and women co-workers alike.⁹⁸ The tribunal reiterated the bank’s policy of “improving the recruitment, retention and work environment for women professionals, which among other things requires the extinguishing of gender stereotypes”, and found that the applicant had failed to prove that the decisions taken had been motivated by gender discrimination.⁹⁹ However, it found that the manager’s style had caused some intangible injury to the applicant, and thus awarded her payment of US\$5000, while denying the claims.¹⁰⁰

In *Andrieu v IDB*,¹⁰¹ the claimant questioned a number of actions that had culminated in termination of her employment in the course of the bank’s reorganization, starting with the earlier choice to promote a male colleague instead of herself. Using a chart to compare when each employee was born, when each had started with the bank, and when they had attained various grades within the bank, the IDBAT concluded that her career “was not adversely affected by sex discrimination”.¹⁰² On other grounds, however, the tribunal awarded her payment of two years of her basic net salary.¹⁰³

⁹¹ *Ibid.*, at para. 63.

⁹² *Ibid.*, at para. 64.

⁹³ *Ibid.*

⁹⁴ *Ibid.*, at para. 80.

⁹⁵ *Ibid.*, at para. 74.

⁹⁶ *Ibid.*, at para. 77.

⁹⁷ *Ibid.*, at para. 81.

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*, at para. 82.

¹⁰⁰ *Ibid.*, at para. 88 and Decision paragraph.

¹⁰¹ *Andrieu v. IDB*, Judgment of 17 November 1995, [1995] IDBAT Case No. 40.

¹⁰² *Ibid.*, at 26.

¹⁰³ *Ibid.*, at 29–30.

Gender-based discrimination may reflect societal roles and related prejudicial ideas, as illustrated in the dicta of two cases brought before the IDBAT. In *Renart v. IDB*,¹⁰⁴ the issue of discrimination on the basis of maternity/child-rearing arose only indirectly. While certain facts were in dispute – Ms. Renart had alleged that her supervisor had instructed her to inform another employee that the latter would not be assigned to a temporary secretarial post – the reason proffered was that having a young child would detract from the secretary’s dedication to the job, and that would make her work less effective. After this message was delivered, the secretary internally challenged the decision as discrimination based on maternity. The supervisor, considering that Ms. Renart had committed “inadmissible indiscretions” in relating their conversation, obtained Ms. Renart’s transfer to another unit several days later. In the challenge to this, and other disciplinary measures against Ms. Renart, the tribunal – without endorsing one version of the facts over another – found that the bank’s action had constituted a “massive overreaction”,¹⁰⁵ and afforded her relief. The tribunal made no comment on the inappropriateness of the underlying message of prejudice towards women employees with young children (an issue that was, admittedly, not directly before it).

Recently, in *Lovo Parrales v. IDB*,¹⁰⁶ the IDBAT ruled in favour of a supervisor who had been dismissed for misconduct. It found, *inter alia*, that the decision to terminate the complainant’s employment was disproportionate to the misconduct proven, and that the bank had used an improper standard of proof. Among the bank’s allegations were that the supervisor had discriminated against an employee when she was pregnant and, later, was later taking nursing breaks. The tribunal found no evidence of this;¹⁰⁷ rather, the supervisor had had “reasonable business motives for taking actions and decisions characterized [by the bank] as discrimination, abuse of authority, and harassment”.¹⁰⁸ (This language is reminiscent of the language national courts use, but then went on to ask whether the legitimate business objective could have been achieved in a non-discriminatory manner.) In its discussion of the issue, the tribunal cited the bank’s rule prohibiting discrimination based on, *inter alia*, gender and disability. Here, the IDBAT found no evidence of discrimination being due to the employee’s pregnancy or of her being a new mother.¹⁰⁹ The tribunal dismissed the bank’s claim by noting only that “pregnancy is not a disability”,¹¹⁰ while not exploring discrimination on the basis of childbearing, which – when proven – can constitute a form of gender discrimination. The decision sends a somewhat mixed message.

IV. Disclosure and Use of Data

As noted, discrimination claims often call upon a tribunal to look into the situation of others who are, arguably, situated similarly to the applicant. This may require disclosure of information that is not within the complainant’s possession. In *Alexander v. ADB*,¹¹¹ the applicant asked the bank to supply statistics on the hiring and promotion of professional staff within her department and division, classified by gender and salary level,¹¹² even though she was challenging the non-renewal of a contract and an underlying performance

¹⁰⁴ *Renart v. IDB*, Judgment of 13 November 1992, [1992] IDBAT Case No. 32.

¹⁰⁵ *Ibid.*, at 8.

¹⁰⁶ *Lovo Parrales v. IDB*, Judgment of 17 December 2021, [2021] IDBAT Case No. 102.

¹⁰⁷ *Ibid.*, at paras. 122–7.

¹⁰⁸ *Ibid.*, at para. 123.

¹⁰⁹ *Ibid.*, at para. 102–3.

¹¹⁰ *Ibid.*, at para. 102.

¹¹¹ *Patricia Alexander v. ADB*, *supra* note 88.

¹¹² *Ibid.*, at para. 24.

appraisal. Over the bank's objection, the tribunal ordered the disclosure. The *Alexander* decision does not report details of the statistical picture presented; when ruling on the merits, the tribunal treated the statistical information about the number and position of women in the staff as "useful background", but not itself sufficient to prove discrimination against the applicant.¹¹³

The *Alexander* case suggests an interplay of claims of direct and indirect discrimination. In indirect discrimination, an apparently neutral practice puts a member of a protected group at a particular disadvantage when compared with other persons. The respondent is then called upon to show that the provision or practice was objectively justified by a legitimate aim, using the necessary means to achieve it that are appropriate and necessary.¹¹⁴ In some systems, a combination of individual experience and statistical evidence that shows a significant disparity among groups in relation to a prima facie neutral practice can result in the reversal of the burden the proof.¹¹⁵ The ADBAT may have hinted in this direction in *Ms. A v. ADB*, and in a later case, *Claus v. ADB*,¹¹⁶ to which we now turn.

As one of several bases for challenging the non-renewal of a fixed-term appointment, the applicant in *Claus* claimed gender discrimination. The bank argued against reliance on information concerning any staff member other than the applicant. The tribunal noted that the application had set out "specific allegations that might in other circumstances have called for a shift in the burden of proof to the bank to show that objective considerations other than sex had justified its actions".¹¹⁷ However, the applicant had raised this claim only as an afterthought; she had not mentioned it in earlier statements to the bank about her treatment. The tribunal pointed out that in examining allegations of discrimination it may be required to examine the treatment of other staff members "in order to establish whether or not, by appropriate comparison, an applicant has suffered discrimination on a prohibited ground".¹¹⁸ The IDBAT took a similar approach in *Thompson v. IDB*, and in *Andrieu v. IDB*, where it compared the respective complainant's situation to that of other staff.

V. Conclusion

Cases of blatant discrimination (such as a manager using racial, religious, or sexist slurs) may be unlikely to reach a tribunal because the development bank in question would probably have dealt with the matter well beforehand. For the manager, this would be through measures under the institution's staff rules and code of conduct. When the injured party pursues a claim, it may be dealt with by following the steps below, and/or by a settlement between that person and the institution. However, discrimination is often subtler and sometimes structural in nature.

Given the relatively few cases involving the judgments of these two tribunals on discrimination issues, any conclusions are necessarily tentative. All the same, the claims that have reached the two tribunals have posed some challenges for them. Dissenting opinions are not rare in cases involving claims of discrimination. Some uneasiness may also be suggested in instances where a tribunal concluded that the claim was unfounded, but nonetheless awarded some relief to the applicant (as in *Alexander v. ADB* and *Ms. A v. ADB*).

¹¹³ *Ibid.*, at para. 76.

¹¹⁴ See, for instance, the definition of indirect discrimination in Council of the European Union: *Establishing a General Framework for Equal Treatment in Employment and Occupation*, EU Council Directive 2000/78/EC of 27 November 2000 at Article 2(2)(b).

¹¹⁵ Carlson, *supra* note 10.

¹¹⁶ *Claus v. ADB*, Judgment of 4 August 2014, [2014] ADBAT Decision No. 105.

¹¹⁷ *Ibid.*, at para. 61.

¹¹⁸ *Ibid.*, at para. 62.

Perhaps differing perceptions of sufficient evidence of discrimination may also be playing a role.¹¹⁹

Applicants could also present better supported claims through the submission of evidence, rather than simply invoking the word “discrimination”. Where necessary, tribunals can use their own rules to evince documentation relevant to establishing whether or not impermissible discrimination has occurred, and when needed to reframe the appropriate categories used for comparison. And even if a tribunal shifts the burden of proof where the claimant has made out a prima facie case of discrimination, harm to the individual concerned will still need to be shown.

One dilemma for such tribunals in discrimination cases may lie in marrying basic doctrines: first, the principle of non-discrimination or equality of treatment for all, and second, the tribunals’ preoccupation with whether a condition of employment is essential or non-essential, with the resulting wide discretion afforded to what they deem as non-essential. Logically, however, if there is a finding of direct discrimination on a protected ground, whether the condition of employment is essential or not should not matter.

Where indirect discrimination is alleged on a protected ground (sex, race, etc.), the tribunal might proceed by asking whether the prima facie neutral practice in question brought a particular disadvantage for a complainant belonging to the relevant group? If so, can the discrimination/distinction be justified on the basis of a legitimate operational purpose that could not be achieved in a non-discriminatory manner? Whether an essential condition of employment is at stake could well be a relevant factor here, but that characterization would not automatically trump a discrimination claim based on a protected ground. Discriminatory intent by the alleged perpetrator may be relevant in proving a claim; however, it is not required for a finding of either direct or indirect discrimination. What matters is not simply formal equality, but effective equality in practice. This approach dovetails with how international institutions aspire to carry out their missions.

Over twenty years ago, Pangalangan wrote that international administrative tribunals have, while citing the norm of equality, so far “not adopted doctrinal techniques, highly developed in municipal jurisdictions, for applying ‘strict scrutiny’ when the discrimination is based on ‘suspect’ criteria, typically race- or gender-based”.¹²⁰ The more recent decisions in the ADBAT, and the new provisions in Article IX(2) of the IDBAT Statute regarding monetary compensation where discrimination has been found, point to a closer – but not yet full – alignment with overall trends in discrimination law. It is possible that further development will be worth watching.

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¹¹⁹ See, for example, reflections in Dale BAGSHAW, “Resolving Disputes in Asia: What Has Culture Got to Do with It?” in Asian Development Bank, *The Administrative Tribunal of ADB: 20 Years of Operation* (Manila: ADB, 2012), 10.

¹²⁰ Raul C. PANGALANGAN, “Constraints on Judicial Review of Managerial Discretion: Substantive and Procedural” in Nassib G. ZIADÉ, ed., *Problems of International Administrative Law: On the Occasion of the Twentieth Anniversary of the World Bank Administrative Tribunal* (Leiden: Martinus Nijhoff, 2008), 49 at 52.



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