

1986

MENDARO V. THE WORLD BANK

Megha Bhouraska

Follow this and additional works at: https://digitalcommons.nyls.edu/journal_of_international_and_comparative_law



Part of the [Administrative Law Commons](#), and the [Jurisdiction Commons](#)

Recommended Citation

Bhouraska, Megha (1986) "MENDARO V. THE WORLD BANK," *NYLS Journal of International and Comparative Law*. Vol. 7 : No. 2 , Article 6.

Available at: https://digitalcommons.nyls.edu/journal_of_international_and_comparative_law/vol7/iss2/6

This Notes and Comments is brought to you for free and open access by DigitalCommons@NYLS. It has been accepted for inclusion in NYLS Journal of International and Comparative Law by an authorized editor of DigitalCommons@NYLS.

SEXUAL HARASSMENT—EMPLOYEE'S RIGHT TO FREEDOM FROM SEXUAL HARASSMENT—*Mendaro v. The World Bank* — The case of *Mendaro v. The World Bank*¹ raises the question whether the World Bank,² through the use of its Administrative Tribunal,³ provides adequate le-

1. 717 F.2d 610 (D.C. Cir. 1983).

2. See generally Articles of Agreement of the International Bank for Reconstruction and Development, *opened for signature* 1945 60 Stat. 1440, T.I.A.S. No. 1502, 2 U.N.T.S. 134 [hereinafter Articles of Agreement].

The International Bank for Reconstruction and Development is commonly referred to as the World Bank. The World Bank is an international financial institution whose purposes include: assisting the development of its member nations' territories, promoting and supplementing private foreign investment, and promoting long-range balanced growth in international trade. *Id.* art. I (i)-(iii).

In order to meet these objectives, the World Bank has the power to make direct loans to its members, *id.* art. III § 4; participate in and guarantee loans placed through private investment channels, *id.* art. IV § 1; issue, guarantee, and acquire its own securities; and invest in and guarantee other securities, *id.* art. IV § 8.

To be a member of the World Bank, nations must participate in the International Monetary Fund and pay a specified amount of capital. *Id.* art. III § 1.

Since the Bank's creation at the 1944 United Nations Monetary and Financial Conference at Bretton Woods, New Hampshire, more than 140 nations have joined as members. Brief for the Respondent at 2, *Mendaro v. The World Bank*. Congress has authorized the United States to participate in the World Bank since 1945. See International Monetary Fund and Bank for Reconstruction and Development, 22 U.S.C.S. § 286 (1976)(acceptance of membership by United States in International Monetary Fund).

A board of governors heads the World Bank. The board is composed of one governor and one alternate appointed by each member. Articles of Agreement, see *supra* note 2. The operations of the World Bank are controlled by twelve executive directors. These twelve directors meet under the chairmanship of a president selected by the executive directors. *Id.* art. V § 5. The President is the chief operating officer of the Bank. *Id.*

The administrative staff consists of approximately 6,000 employees, including citizens from 110 countries. The majority of the employees work in the Bank's headquarters in Washington, D.C., while the other employees work in the Bank's offices and resident missions located in thirty-six countries. Brief for Applicant at 2, *Mendaro v. The World Bank*, World Bank Administrative Tribunal.

3. Statute of the Administrative Tribunal of the International Bank for Reconstruction and Development International Development Association and International Finance Corporation, art. I-XVII reprinted in 1 STATUTES AND RULES OF PROCEDURE OF INTERNATIONAL ADMINISTRATIVE TRIBUNALS 46 (Rev. ed. Dec. 1983) (Published lby the Executive Secretary, World Bank Administrative Tribunal). [hereinafter Administrative Tribunal Statute] The Tribunal was created in 1980 to provide legal recourse for employee grievances within the three organizations mentioned above. The Tribunal is composed of seven members of different nationalities (Uruguayana, Egyptian, French, American, Indian, British and Nigerian). In deciding which sources of law the Tribunal will look to in assessing the rights and remedies of employees in grievance actions, the Tribunal set forth certain principles to be followed in future cases:

The Tribunal, which is an international tribunal, considers that its task is to

gal recourse for its employees. Under the Administrative Tribunal's Statute,⁴ the nature of claims and remedies available to staff members of the World Bank appear to be very limited.⁵ Likewise, the case law interpreting the statute, did not expand or broaden the Administrative Tribunal's jurisdiction.⁶ The case law, however, left open the possibility of a wider interpretation.⁷ The issue in this case was whether the Tribunal will assert broader jurisdiction over this complaint or will it interpret it statute narrowly, thereby leaving complainant without legal redress.⁸

The *Mendaro* case is significant because it represents a suit which does not conform to the literal interpretation of the Administrative Tribunal's jurisdiction. When the Tribunal decides whether or not to accept jurisdiction over the *Mendaro* case,⁹ the Tribunal will either have to broaden its jurisdiction, or deny Ms. Mendaro the only forum available to her in bringing a suit against the World Bank.¹⁰ In either instance, whether the Tribunal broadly construes its Statute or continues its narrow construction, the Tribunal will be faced with the task of elaborating upon the limits of its jurisdiction. The *Mendaro* case offers

decide internal disputes between the Bank and its staff within the organized legal system of the World Bank and that it must apply the internal law of the Bank as the law governing the conditions of employment.

de Merode v. The World Bank, World Bank Administrative Tribunal Reports, Decision No. 1, para. 27 (1981).

4. Administrative Tribunal Statute, *see supra* note 3.

5. *Id.* art II § 1. This section of the Tribunal's Statute confers authority on the Tribunal to only hear employee grievances relating to the non-observance of a contract of employment. The Administrative Tribunal Statute does not mention non-contract related employee grievances.

6. Similarly, the case law up until now has covered strictly contract related issues. For example, issues such as wage disputes and contract terminations. Civil rights cases have yet to appear. *See generally* C.F. AMERASINGHE, CASE LAW OF THE WORLD BANK ADMINISTRATIVE TRIBUNAL (1983).

7. *See, e.g.*, de Merode v. The World Bank, World Bank Administrative Tribunal Reports, Decision No. 1, 8-9 (1981) (defining a contract of employment as only one of the elements which collectively establish the ensemble of conditions of employment operative between the Bank and its staff members).

8. It is generally established that under international law, international organizations (such as the World Bank), are immune from suit in national courts. *See* International Organizations Immunities Act, 22 U.S.C. § 288a(b) (1976). Therefore, an employee of the Organization may not take his or her complaint against the Organization to national courts. Only the Organization, itself, may resolve its internal disputes.

9. The Tribunal has yet to decide whether or not to accept jurisdiction of Mendaro's case. The Tribunal expects to decide this by the Spring of 1985.

10. As an employee of the World Bank, Mendaro cannot sue the Bank in the United States courts because international organizations are immune to suits in national courts. *See supra* note 8.

the Tribunal an opportunity to demonstrate that the possibilities of broader jurisdiction alluded to in the Administrative Tribunal Statute¹¹ and the case law¹² do in fact exist and may be asserted if and when necessary.

The implications are great when an administrative tribunal of an International organization denies jurisdiction over a case brought by a staff member, because the complainant has no other means of seeking legal redress.¹³ Under international law, it has generally been established that in most circumstances International Organizations are immune from suit in national courts.¹⁴ For example, in cases such as *Mendaro*¹⁵ and *Broadbent v. Organization of American States*,¹⁶ the courts have relied on The International Organizations Immunities Act to hold that the World Bank and the Organization of American States were immune to suits involving staff-related grievances in the United States courts.¹⁷ Therefore, an employee of an international organization may not take his or her complaint against the organization to the national courts.

Because International Organizations are immune to suits involving

11. Article II, section 2 of the Administrative Tribunal Statute mentions "exceptional circumstances" under which the Tribunal may have jurisdiction. See Administrative Tribunal Statute, *supra* note 3, art II § 2.

12. See, e.g., *Kavoukas and Parham v. International Bank for Reconstruction and Development*, World Bank Administrative Tribunal Reports, Decision No. 3 (1981) (suit on the denial of a salary increase, in which the Tribunal denied that plaintiff's circumstances amounted to "exceptional circumstances," yet the Tribunal affirmed the possibility of such an exception under the Administrative Tribunal Statute.)

13. See International Organizations Immunities Act, 22 U.S.C. § 288a(b) (1976).

14. The primary source of national law on the immunity of international organizations is the International Organizations Immunities Act, which confers judicial status and immunities upon those international organizations in which the United States participates pursuant to a treaty or congressional act, and which have been designated by the President as being entitled to enjoy the provisions of the Act. Section 288a(b) of the Act defines the privilege accorded to qualified international organizations:

International organizations, their property and their assets, wherever located, and by whomsoever held, shall enjoy the same immunity from suit and every form of judicial process as is enjoyed by foreign governments, except to the extent that such organizations may expressly waive their immunity for the purpose of any proceedings or by the terms of any contact.

International Organizations Immunities Act, 22 U.S.C. § 288a(b) (1976).

15. 717 F.2d at 613-14.

16. 628 F.2d 27 (D.C.Cir. 1980). The court upheld the immunity of the Organization of American States from a suit brought by employees alleging breach of their employment contracts.

17. See generally International Organizations Immunities Act, 22 U.S.C. § 288 (1976).

staff-related grievances in national courts,¹⁸ a basic need for establishing internal procedures for resolving disputes has long been recognized. As early as 1949, the International Court of Justice referring to the United Nations, declared that "the power to establish a tribunal, to do justice as between the organization and the staff members was essential to insure the efficient working of the Secretariat and to give effect to the paramount consideration of securing the highest standards of efficiency, competence and integrity."¹⁹ In view of this recognized immunity, international organizations have acknowledged that in order to give their staff members an opportunity to have their day in court, the creation of administrative tribunals is necessary.²⁰

There have also been policy considerations in establishing administrative tribunals.²¹ If international organizations did not offer internal legal mechanisms to their employees for resolving staff grievances, national courts might assert jurisdiction, thereby interfering with the efficiency of the organizations. Not only would national interference affect the efficiency of the international organizations, but also such interference would result in conflicting decisions because each nation would attempt to assert its own laws.²²

Realizing the need for internal legal mechanisms for its staff members, the World Bank established its Administrative Tribunal in 1980.²³ The scope of the Tribunal's jurisdiction, however, and the ability of the Tribunal to exert power necessary to satisfy the needs of the World Bank employees are still questions that have not been answered.

There are two procedural avenues in appealing to the Tribunal for a review of a dispute. First, the normal administrative procedures must be followed.²⁴ After this, if still dissatisfied, an employee may either

18. *Id.*

19. C.F. AMERASINGHE, STATUTES AND RULES OF PROCEDURE OF INTERNATIONAL ADMINISTRATIVE TRIBUNALS, at (ii) (1983).

20. *Id.* at (iii).

21. The United States, among other nations, has recognized that international organizations must be free to perform their functions unhindered by member nations. The policy considerations are based on the unique nature of the international civil service. International officials should be given sufficient freedom (within the mandate granted by the member states) to perform their duties free from the peculiarities of national politics; and attempts by the courts of one nation to adjudicate the personal claims of international civil servants would entangle those courts in the internal administration of those organizations. *See generally Mendaro*, 717 F.2d 610.

22. *Id.*

23. *See supra* note 19, at 44.

24. Personnel Manual Statement No. 8.01, The World Bank, (1983). If a staff member disagrees with a decision taken in his department affecting his terms of appointment or conditions of service in the Bank, he must promptly but no later than ninety days after being notified of the decision:

appeal to the Appeals Committee²⁵ and then to the Tribunal, or he or she may avoid the Appeals Committee and appeal directly to the Tribunal.²⁶ To circumvent the Appeals Committee and appeal to the Tribunal directly after the normal administrative procedures, the consent of the President of the World Bank is required.²⁷

When Ms. Mendaro's complaint arose, the Tribunal was not yet in existence.²⁸ Susana Mendaro, an Argentine citizen, was hired as a researcher by the World Bank on September 6, 1977.²⁹ Ms. Mendaro

(i) first raise the issue with his immediate supervisor; (ii) if dissatisfied with the outcome of (i) or if no response has been received within twenty-one days, bring the matter to the attention of his next-in-line supervisor within forty-five days; and (iii) if dissatisfied with the outcome of (ii) or if no response has been received within twenty-one days, raise the issue in writing with his Department Director within forty-five days, who shall respond within twenty-one days in writing.

Id.

25. Personnel Manual Statement No. 8.03, The World Bank, (1983):

A staff member shall not appeal a decision to the Appeals Committee without first having had the decision reviewed through normal administrative channels as set out in Personnel Manual Statement 8.01.

The Appeals Committee will consider and advise the President or the Vice-President, PA on appeals by staff members against:

(a) any formal disciplinary action based on misconduct, e.g., formal reprimands; or

(b) any administrative decision allegedly in breach of terms of appointment or conditions of service. This may include decisions related to the application of a staff benefit, performance evaluation, professional growth promotion,

In considering an appeal of a decision made in the exercise of discretion, the Appeals Committee shall only consider whether the decision constitutes an abuse of discretion based upon arbitrary, capricious, or irrelevant grounds.

No staff member shall be prevented from presenting an appeal, nor shall any reprisal be taken against a staff member by reason of making an appeal.

The Appeals Committee shall consist of twelve members, who shall be current staff members, as follows:

(a) a chairman and three alternate chairmen, appointed by the Vice-President, PA in consultation with the Staff Association of the World Bank;

(b) four members appointed by the Vice-President, PA; and

(c) four members appointed by the Staff Association of the World Bank.

An appeal must be submitted to the Appeals Committee within 30 days after receiving a decision from the highest level of the administrative channel.

Id.

26. Administrative Tribunal Statute, *supra* note 3, art. II § 2(i).

27. *Id.*

28. Brief for Applicant at 12, *Mendaro v. International Bank for Reconstruction and Development*, World Bank Administrative Tribunal (1984).

29. *Id.*

claimed that during her term of employment from 1977 to 1979, she was the victim of sexual harassment and discrimination by other Bank employees.³⁰ She alleged that her supervisors refused to provide her with the same number of assignments as her co-workers, and at times thwarted her efforts to complete those assignments she had been given.³¹

Mendaro claimed that one of her supervisors permitted other male employees to make unwanted verbal and physical advances toward her.³² Mendaro further contended that the Bank refused to promote her to the position of consultant, although she allegedly performed some of the duties of consultants.³³ Mendaro claimed that she complained to the Bank through the "normal administrative channels,"³⁴ but she felt that these problems had not been investigated or remedied effectively.³⁵ Some time after these complaints, Mendaro was informed that her appointment with the Bank would expire on June 30, 1979.³⁶

After Mendaro's termination, she filed a complaint with the Equal Opportunity Commission alleging discrimination and retaliatory termination on the basis of sex, in violation of Title VII of the Civil Rights Act of 1964.³⁷ The Commission, however, dismissed the charges for lack of jurisdiction over an international organization such as the World Bank.³⁸ Mendaro then filed a suit against the World Bank in the United States District Court for the District of Columbia.³⁹

The District Court similarly dismissed the action for lack of jurisdiction.⁴⁰ When Mendaro appealed to the United States Court of Appeals for the District of Columbia, the Court of Appeals affirmed the District Court's dismissal upon the same ground.⁴¹ Mendaro then

30. *Id.* at 11-12.

31. *Mendaro*, 717 F.2d at 612.

32. *Id.*

33. Brief for Applicant at 8-9. *Mendaro v. International Bank for Reconstruction and Development*, World Bank Administrative Tribunal (1984).

34. *Id.* at 9. (Mendaro verbally raised her grievances with her immediate supervisor, and then, in writing, with the Acting Director of Urban Projects. She also met with the Argentine Executive Director of the Board of Directors, and then with the Vice-President of Administration. All of these officials stated that she had no claim upon which the World Bank could grant any relief.

35. *Id.*

36. *Id.* at 14.

37. Civil Rights Act of 1964, 42 U.S.C. § 2000e(1)-(17) (1982).

38. Brief for Appellee at A-8, *Mendaro v. The World Bank*, World Bank Administrative Tribunal (198_). See letter from Leroy D. Clark, General Counsel of the Equal Employment Opportunity Commission to Cynthia A. Lewis (July 29, 1980).

39. *Mendaro v. The World Bank*, No. 80-01204, Slip op. (D.C. 1982).

40. *Id.*

41. *Mendaro*, 717 F.2d at 613.

brought the case to the Bank's Administrative Tribunal, which has not yet decided whether or not to accept jurisdiction.⁴²

There are two issues involved in determining whether or not the Tribunal has jurisdiction over the Mendaro case. The first issue relates to the nature of Mendaro's complaint, that is, whether the Tribunal has jurisdiction over the subject matter of sexual harassment and discrimination. Article II, section 1 of the Administrative Tribunal Statute⁴³ confers authority on the Tribunal to hear employee's grievances:

The Tribunal shall hear and pass judgment upon any application by which a member of the staff of the Bank Group alleges non-observance of the contract of employment or terms of appointment of such staff member. The words of "contract of employment" and "terms of appointment" include all pertinent regulations and rules in force at the time of alleged non-observance⁴⁴

This section of the statute, however, does not explicitly confer authority to hear sexual discrimination cases. Similarly, there are no cases regarding sexual discrimination and harassment in the Tribunal's case law.⁴⁵ The case law of the Tribunal has noted, however, that although the contractual instrument defining an employee's entry into service with the World Bank constitutes the chief statement of the rights and duties of the Bank vis-à-vis its employees, this instrument is not an exhaustive statement.⁴⁶ "The contract may be the *sine qua non* of the relationship, but it remains no more than one of a number of elements which collectively establish the *ensemble* of conditions of employment operative between the Bank and its staff members."⁴⁷

Thus, in deciding Mendaro's case, the Tribunal will and should declare whether it regards freedom from sexual discrimination and harassment as an implied provision of a contract with the Bank. If sexual discrimination and harassment are viewed as "non-observance"⁴⁸ of

42. The Tribunal expects to decide whether or not to accept jurisdiction over Mendaro's case by the Spring of 1985. See *supra* note 9.

43. Administrative Tribunal Statute, *supra* note 3, art. II § 1.

44. *Id.*

45. See *supra* note 6.

46. Brief for Appellee at A-10, Mendaro v. The World Bank, World Bank Administrative Tribunal (1981). See letter from American Law Division to Olympia Snowe, Congressional Research Service, The Library of Congress (Feb. 21, 1984) (this letter was in response to a request for an analysis of the jurisdiction of the Tribunal to hear cases alleging sex discrimination).

47. See de Merode v. The World Bank, World Bank Administrative Tribunal Reports, Decision No. 1, 9 (1981).

48. *Id.*

the contract, then the Tribunal will have subject matter jurisdiction over Mendaro's complaint. If freedom from sexual discrimination and harassment is not viewed by the Tribunal as an implied provision of an employee contract with the Bank, then Bank employees will have no legal means for enforcing such rights.

The second issue which the Tribunal must resolve in determining jurisdiction over Mendaro's complaint, is whether the Mendaro case is time-barred. Article II, section 2 of the Administrative Tribunal Statute⁴⁹ governs this issue:

No such application shall be admissible, except under the exceptional circumstances as decided by the Tribunal, unless:

(i) the applicant has exhausted all other remedies available within the Bank Group, except if the applicant and the respondent institution have agreed to submit the application directly to the Tribunal; and(ii) the application is filed within ninety days after the latest of the following:

(a) The occurrence of the event giving rise to the application; (b) receipt of notice, after the applicant has exhausted all other remedies available within the Bank Group, that the relief asked for or recommended will not be granted⁵⁰

Mendaro's complaint does not fall within the Statute's time limits, the statute does mention, "exceptional circumstances."⁵¹ It remains for the Tribunal to define the elements that constitute "exceptional circumstances."

Mendaro has a strong argument for acceptance by the Tribunal of her complaint, relying on three articles in the Administrative Tribunal Statute that are relevant in analyzing whether or not the *Mendaro* case poses "exceptional circumstances."

First, article II, section 3 of the statute⁵² defines "staff members" who may seek a remedy from the Tribunal.⁵³ This section states that for purposes of the statute, "the expression 'member of staff' means

49. Administrative Tribunal Statute, *supra* note 3, art. II § 2.

50. *Id.*

51. Mendaro's complaint arose before the Tribunal was created (she was allegedly harassed from 1977 to 1979 and the Tribunal was created in 1980). Furthermore, because the Administrative Tribunal Statute is only retroactive for one year, Mendaro's complaints involving 1977-1978 would not be covered. Mendaro also spent time suing the World Bank in national courts, thereby missing the 90 day limit to apply for the Tribunal's jurisdiction. See generally Brief for Applicant, *Mendaro*, World Bank Administrative Tribunal (1984).

52. Administrative Tribunal Statute, *supra* note 3, art. II § 3.

53. *Id.*

any current or former member of the staff of the Bank Group, any person who is entitled to claim upon a right of a member of the staff as a personal representative or by reason of the staff member's death, and any person designated or otherwise entitled to receive a payment under any provision of the Staff Retirement Plan."⁵⁴

There is no explicit or implicit language in Article II, section 3, which would indicate that individuals with research or consultant appointments would be considered "staff members" and thus have the right to appear before the Tribunal. Ms. Mendaro was a researcher performing consultant duties at the World Bank.⁵⁵ In 1979, when she had exhausted the World Bank's normal administrative channels,⁵⁶ the Administrative Tribunal Statute was merely on paper; the Tribunal had not yet heard any cases. Furthermore, the Chairperson of the World Bank Staff Association,⁵⁷ in July, 1979, told Mendaro that the World Bank employee grievance procedures were unavailable to her because she was merely a researcher and not a Bank staff member.⁵⁸ For this reason and on the basis of external legal advice,⁵⁹ Mendaro took the complaint to the United States courts. Four years later in 1983, however, a memorandum was circulated within the Bank redefining "staff members" to include fixed-term employees.

The second relevant article in analyzing Mendaro's "exceptional circumstances" is article II, section 1 of the Administrative Tribunal Statute.⁶⁰ Article II, section 1 of the statute confers on the Tribunal authority to "hear and pass judgment upon any application by which a member of the staff of the Bank Group alleges non-observance of the contract of employment or terms of appointment of such staff member."⁶¹ The statute does not explicitly confer jurisdiction to the Tribunal to hear cases involving sexual harassment and discrimination. Given that there was no case law interpreting article II, section 1 when

54. *Id.*

55. Brief for Applicant at 13, *Mendaro*, World Bank Administrative Tribunal (1984).

56. *See supra* note 35.

57. *See supra* note 6.

58. Brief for Applicant at 7 *Mendaro*, World Bank Administrative Tribunal (1984). The Chairperson of the Staff Association of the World Bank informed Mendaro in 1979 that Administrative remedies would not be open to her because she was a researcher; and, therefore, World Bank policies prohibited her from pursuing grievance procedures. *Id.*

59. Brief for Applicant at 11, *Mendaro*, World Bank Administrative Tribunal (1984). Mendaro allegedly relied on the advice of attorneys who urged her in 1979 and 1980 to seek a remedy in the United States federal courts. *Id.*

60. Administrative Tribunal Statute, *supra* note 3, art. II § 1.

61. *Id.*

Mendaro's complaint arose,⁶² and that she received contradictory opinions from Bank officials,⁶³ Mendaro took the complaint to the national courts.

The third article of the statute that is relevant in analyzing the "exceptional circumstances" of Mendaro's case is article XVII.⁶⁴ Article XVII states that "notwithstanding Article II, paragraph 2 of the present Statute, the Tribunal shall be competent to hear any application concerning a cause of complaint which arose subsequent to January 1, 1979, provided, however, that the application is filed within 90 days after the entry into force of the present Statute."⁶⁵ The Administrative Tribunal Statute does not explicitly authorize the Tribunal to hear grievances such as Mendaro's, which dated from September, 1977 through 1979. Therefore, it appeared to Mendaro that the authority of the Tribunal, retroactive to January, 1979, might be construed not to cover the entire period included in her complaint.⁶⁶ Again, based on the language of the statute and the fact that the Tribunal had not yet heard any cases, Mendaro took her complaint to the United States courts.⁶⁷

After Mendaro pursued a remedy in the United States federal courts for three years, the United States Court of Appeals for the District of Columbia, on September 27, 1983, held that the World Bank was immune to civil rights suits and that the Tribunal was the exclusive forum available to Mendaro.⁶⁸ In response to this decision, Mendaro promptly filed an application before the Tribunal on December 27, 1983. This application was filed within ninety days of receiving notice from the United States Court of Appeals.⁶⁹

In light of the fact that the statute⁷⁰ and case law⁷¹ do mention "exceptional circumstances" in which the time limits will not be nar-

62. *Supra* note 19 (resolution to pass Administrative Tribunal (1984). Statute in 1980).

63. Brief for applicant at 9, *Mendaro*, World Bank Administrative Tribunal (1984). Letter from V. Roy Southworth, Assistant to the President, stating that Mendaro had a strong claim to jurisdiction by the Tribunal, and a letter from C. F. Amerasinghe, Executive Secretary of the Tribunal, saying that Mendaro was unlikely to obtain the Tribunal's jurisdiction.

64. Administrative Tribunal Statute, *supra* note 3, art. XVII.

65. *Id.*

66. Brief for Applicant at 12, *Mendaro*, World Bank Administrative Tribunal (1984).

67. *Mendaro*, No. 80-01204, slip op. (D.C. 1980).

68. *Mendaro*, 717 F.2d at 614.

69. Brief for Applicant at 12, *Mendaro*, World Bank Administrative Tribunal (1984).

70. Administrative Tribunal Statute, *supra* note 3, art. II § 2.

71. See, e.g., *Kavoukas and Parham*, World Bank Administrative Tribunal Reports, Decision No. 3 (1981).

rowly construed,⁷² the issue is whether *Mendaro* constitutes such a case. Although there is no case within the Tribunal's history which has defined the scope of the phrase "exceptional circumstances,"⁷³ the Tribunal may recognize such circumstances in the *Mendaro* case, and therefore accept jurisdiction.

In a case such as *Mendaro's*, in which her complaint arose before the Tribunal existed,⁷⁴ in which the statutes appeared to bar her complaint,⁷⁵ in which no case law existed to help interpret the statute,⁷⁶ in which Bank officials offered contradictory opinions,⁷⁷ in which the United States courts had not yet declared the World Bank immune to staff-related grievances in national courts,⁷⁸ and in which *Mendaro* promptly filed her complaint with the Tribunal after the federal courts' decision, it is difficult to imagine the Tribunal deciding that the *Mendaro* circumstances were ordinary."

Although it is the decision of the Tribunal to define its jurisdiction,⁷⁹ the Tribunal owes a duty to the Bank's employees to offer internal means for legal recourse. This is particularly necessary when there are no means outside.⁸⁰ That is not to say that complaints of any nature must be heard or that time regulations may be ignored, but rather that the exceptions written in the Administrative Tribunal Statute⁸¹ and alluded to in the case law⁸² must be clearly defined and elaborated upon so as not to strip staff members of their rights merely because they fail to understand the law. The *Mendaro* suit represents an opportunity for the Tribunal to elaborate on the meaning of its Statute and further broaden the parameters of its jurisdiction.

The Tribunal should either accept jurisdiction over *Mendaro's* case, or clearly elaborate on the rights and duties implied in a contract with the World Bank, and on the burden of proof which the employee must meet to come under the umbrella of the Tribunal's jurisdiction.

72. Administrative Tribunal Statute, *supra* note 3, art. II § 2.

73. *Id.*

74. *Id.* art. I-XVII.

75. *Id.*

76. *See supra* note 64.

77. Brief for Applicant at 9, *Mendaro*, World Bank Administrative Tribunal (1984).

78. *Mendaro* 717 F.2d at 614.

79. *Id.* art. III (in the event of a dispute as to whether the Tribunal had competence, the matter shall be settled by the Tribunal). *See de Merode* World Bank Administrative Tribunal Reports, Decision No. 1, 7-8 (1981).

80. *See supra* note 8.

81. Administrative Tribunal Statute, *supra* note 3, art. II § 2.

82. *See, e.g., de Merode v. The World Bank*, Case Law of the World Bank Administrative Tribunal, Decision No. 1, 8-9 (1981); *Kavoukas and Parham* World Bank Administrative Tribunal Reports, Decision No. 3 (1981).

The nature of Mendaro's complaint involves an important right (freedom from sexual harassment and discrimination). Staff members must be assured that this right is protected in a contract with the World Bank. Furthermore, because there are no other forums available to Bank employees, the Tribunal should guarantee legal recourse when these rights are violated. Given the implications of the *Mendaro* case for other employees as well as the "exceptional circumstances" of her particular case, the Tribunal would be committing a great injustice if it denied jurisdiction.

Megha Bhouraskar