

**UNITED NATIONS
OFFICE OF THE UNDER-SECRETARY-GENERAL
FOR MANAGEMENT**



**LESSONS LEARNED FROM THE JURISPRUDENCE OF THE
SYSTEM OF ADMINISTRATION OF JUSTICE:**

A GUIDE FOR MANAGERS

Performance Management and Development

**VOLUME #4
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Performance management – A key managerial responsibility

1. The fourth volume of the Lessons Learned Guide, prepared by the Management Evaluation Unit (MEU), focuses on performance management and development issues that have been reviewed by the United Nations Appeals Tribunal (UNAT), the United Nations Dispute Tribunal (UNDT) and the MEU. The Guide will also draw on the experience of the Office of the Ombudsman and Mediation Services (OMS) in dealing with disputes between staff members and managers that involve performance management and development issues.
2. It should be made clear that the cases discussed in this Guide were determined based on their own particular facts and circumstances and it therefore does not necessarily follow that other cases, even those with similar fact patterns, will have the same outcome. This is especially true with respect to the determination of liability and compensation.
3. Through the case-law of the UNDT and UNAT, managers and others have learned a number of important lessons in performance management, *inter alia*:
 - Failure to follow timelines and procedures has led to awards of compensation.
 - The staff members' work plan should be agreed upon or otherwise be finalized in a timely manner.
 - The performance evaluation should be conclusive and consistent.
 - Managers must proceed with the performance evaluation steps even if a staff member is uncooperative.
 - Managers must properly follow the rules and procedures in addressing performance shortcomings and unsatisfactory performance, and should proactively assist staff members by taking remedial measures.
 - Staff members have a right to a rebuttal process and managers should act upon requests for a rebuttal in a timely manner.

The Performance Management Mechanism – a Brief Overview

1. ST/AI/2010/5 sets out the details of the Organization's mechanism for the evaluation and development of staff members' performance.
2. The stated purpose of the mechanism is "to improve the delivery of programmes by optimizing performance at all levels."¹
3. Section 2.2 of the ST/AI/2010/5 describes the function of the Performance Management and Development System in promoting "communication between staff members and supervisors on the goals and key results to be achieved and the success criteria by which individual performance will be assessed. The System will also promote continuous learning, recognize successful performance and address performance shortcomings".
4. Normally, the performance cycle runs from 1 April of each year until 31 March of the following year, though the performance period may be shorter or longer than the 12-month cycle.²
5. The need to ensure timeliness of completion of performance management and development obligations is crucial, and supervisors are required to complete the performance evaluations for which they are responsible before leaving the Organization.³
6. Section 4 sets out the responsibilities of staff members, including the duty to complete each part of the process for which they are responsible in a timely manner. Where the staff member fails to fulfill her/his responsibilities, an accountability mechanism has been built into the policy whereby such failure must be recorded in the staff member's own performance evaluation.
7. The responsibilities of the First Reporting Officer (FRO) include the development of the work plan with the staff member, conducting the midpoint review and end of cycle evaluation, developing and monitoring a performance improvement plan, if necessary, and providing support to the staff member on professional development. Importantly, the FRO also has the responsibility to ensure that the performance evaluation is completed in accordance with the prescribed procedures.⁴

¹ ST/AI/2010/5, section 2.1.

² ST/AI/2010/5, section 3.

³ *Ibid*, section 3.4.

⁴ *Ibid*, section 5.

8. The Second Reporting Officer's (SRO) responsibilities include supervision of the FRO's execution of his duties, including holding the FRO accountable for timeliness of completion of the procedures. S/he is also responsible for resolving disagreements between the FRO and the staff member on performance management and development issues.⁵
9. It is important to note that non-compliance with their performance management and development responsibilities and functions shall be recorded in the performance evaluations of the FRO and SRO and it shall also be reflected in their overall rating, as appropriate.⁶

⁵ *Ibid*, section 5.3.

⁶ *Ibid*, section 5.5.

*The Jurisprudence***LESSON 1: FAILURE TO FOLLOW TIMELINES AND PROCEDURES HAS LED TO AWARDS OF COMPENSATION**

10. The Tribunals have consistently held that delays by the Administration may violate staff members' rights and may result in the award of compensation.
11. In the case of *Amit*⁷, the UNDT found that the failure to follow the procedures for performance evaluation was a breach of the staff member's due process rights. The UNDT awarded compensation to the staff member of three months' net base salary for this violation.⁸
12. In *Simmons*, the UNAT significantly increased the amount of compensation that had been awarded to the staff member by the UNDT, from USD 500 to three months' net base salary, noting that the staff member had not received the general work unit plan for three months.⁹ In another case, the UNAT considerably increased the amount of compensation awarded from USD 3,000 to three months' net base salary, taking into account a "pattern of delays" by the Administration in completing the staff member's e-PAS.¹⁰
13. In *El Khatib*¹¹, the UNAT noted that:

"[d]elays in completing annual performance reports [...] are neither minor nor insignificant".
14. Responsibility for the timely and successful completion of the performance evaluation always rests with managers. In *Simmons*¹², the UNAT overturned the UNDT judgment in which the UNDT had taken into consideration the non-cooperation of the staff member in completing the work plan, therefore placing "undue weight on the [staff member's] omissions and/or actions".
15. The possible consequence of lack of timely compliance includes the award of compensation, reversal of administrative decisions (e.g. non-renewal, reassignment) and accountability measures for the responsible managers. Moreover, the failure of timely compliance could harm staff members' career development and prospects.

⁷ *Amit*, UNDT/2011/164, para. 37.

⁸ *Ibid*, para. 43.

⁹ *Simmons*, 2012-UNAT-221, para. 38.

¹⁰ *Simmons*, 2012-UNAT-222, para. 20.

¹¹ *El Khatib*, 2011-UNAT-142, para. 33.

¹² *Simmons*, 2012-UNAT-221, para. 3.

LESSON 2: A STAFF MEMBER'S INDIVIDUAL WORK PLAN SHOULD BE AGREED UPON OR OTHERWISE BE FINALIZED IN A TIMELY MANNER

16. The general work plan for the office should be promptly provided to the staff member to allow her/him to prepare her/his individual work plan. The individual work plan should be established in line with the provisions of section 6 of the ST/AI/2010/5 and should not contain unreasonable or unachievable goals. It should be prepared and finalized by the staff member following a discussion with the FRO.¹³ The UNAT has awarded compensation for a failure to agree on an individual work plan in a timely manner.¹⁴
17. If the manager and staff member cannot agree on an individual work plan, staff member should explain her/his concerns, and the manager should document the objections of the staff member. While effort should be made to take account of the staff member's reasonable concerns, the manager makes the final decision on the individual plan as s/he bears ultimate responsibility for conducting the performance evaluation and the programmatic output of her/his area of responsibility. In that regard, the SRO should resolve disagreements between staff members and their FROs in the implementation of the performance management and development system.

LESSON 3: THE PERFORMANCE EVALUATION SHOULD BE CONCLUSIVE AND CONSISTENT

18. Managers are encouraged to produce performance evaluations that reflect their honest assessment of the staff member's performance, regardless of the likelihood of challenge or rebuttal. The UNAT has held that a negative comment in a satisfactory appraisal is not an appealable administrative decision insofar as it does not have direct legal consequences for a staff member's terms of appointment.¹⁵
19. There are some situations where the manager is not satisfied with one aspect of the staff member's performance, but is nevertheless satisfied with the overall performance. It is permissible for managers to record this aspect of the staff member's performance, since section 9 of the ST/AI/2010/5 allows a rating of successfully meets performance expectations "where the staff member has fully achieved the defined success criteria and/or performance expectations for *the majority* of the goals/key outputs during the performance cycle".¹⁶

¹³ *Gehr*, UNDT/2011/178, para. 54.

¹⁴ *Simmons*, 2012-UNAT-221.

¹⁵ *Ngokeng*, 2014-UNAT-460, paras. 31-32: "The FRO's comment on Mr. Ngokeng's output – a comment made in a satisfactory appraisal - was not a final administrative decision. It did not detract from the overall satisfactory performance appraisal and had no direct legal consequences for Mr. Ngokeng's terms of appointment. We find that the UNDT erred in law in finding that Mr. Ngokeng's satisfactory appraisal constituted an appealable administrative decision." *See also Staedtler*, 2015-UNAT-546, para. 38.

¹⁶ ST/AI/2010/5, section 9.6 (Emphasis added.)

20. However, managers should not give a satisfactory rating if the majority of the goals/key outputs have not been met while providing negative comments detailing the unsatisfactory performance. Section 5.4 of the ST/AI/2010/5 provides that the SROs are tasked with ensuring that there is “consistency between the competency and core values ratings, the comments and the overall rating of individual staff members for a given performance cycle.”
21. Where there is a manifest inconsistency between the overall rating, on the one hand, and the overall comments or ratings and/or comments on individual competencies, on the other, challenges of administrative decisions based on such performance evaluation are more likely to be successful. In cases where the MEU found such manifest inconsistencies, the MEU has recommended that the performance evaluation be redone to reflect an overall rating that is consistent with the individual ratings and comments, so that the performance evaluation document is internally consistent and coherent.

LESSON 4: MANAGERS MUST PROCEED WITH THE PERFORMANCE EVALUATION EVEN IF A STAFF MEMBER IS UNCOOPERATIVE

22. Supervisors may have to deal with staff members who are uncooperative or non-compliant with respect to their performance evaluation roles and responsibilities, such as where a staff member refuses to sign off on a work plan, does not attend scheduled meetings for the midpoint review, or fails to sign off on the final evaluation. In some cases, the supervisor may feel frustrated, since the staff member’s failure to cooperate may compromise the supervisor’s ability to complete the evaluation and thereby fulfill her/his responsibilities under the legal framework.
23. The UNDT and the UNAT have recognized that staff members may be responsible for delays in complying with the performance evaluation process.¹⁷ In the case of uncooperative staff members, the UNDT has indicated, however, that managers should nonetheless proceed with the review of the staff member’s performance, stating as follows:¹⁸

“Faced with an uncooperative staff member, the Organization need not sit helplessly on the sidelines, but is required to write an accurate e-PAS, whether or not the e-PAS is favourable to the staff member. If such an e-PAS ultimately has adverse ramifications on the staff member’s career, including whether or not the staff member is retained within the Organization, then such is the function of the e-PAS system.”

Supervisors must clearly record the failure or refusal of an uncooperative staff member to advance or complete the e-PAS or e-performance document. To deal with uncooperative

¹⁷ Gehr, UNDT/2013/135, para 46, confirmed in Gehr, 2014-UNAT-479.

¹⁸ Simmons, UNDT/2011/084, para. 67.

staff members, ST/AI/2010/5 provides for supervisors to conduct a performance evaluation “off line,” that is, outside the electronic application.¹⁹

24. The UNAT has provided parameters to assess the fairness of “off-line” performance evaluations. In *Rees*,²⁰ the UNAT held that the conduct of a performance evaluation outside the electronic application is permissible insofar as it is “based on the evidence that, at the very least, the staff member had been given extensive notice of any performance concerns and the opportunity to provide written comments on these concerns.” As the UNAT found that the Administration had not undertaken these steps in *Rees*, it concluded that the conduct of the staff member’s performance evaluation outside the electronic application was unlawful.²¹ Without due process and a properly documented record of a performance evaluation conducted outside the electronic application, it will be difficult for managers to meet their burden of proving that their evaluation of the staff members’ performance was nevertheless objective, fair and well based.²²

25. Finally, even where the performance evaluation is conducted “off-line,” the staff member may still rebut it through the rebuttal procedure. In *Gehr*,²³ the UNAT held that,

“[t]his Tribunal recognises the fundamental right of an employee to be heard in the context of a performance evaluation process. Irrespective of whether the appraisal is conducted inside or outside of [the performance management framework], an employee has a fundamental right to put his/her case, in response to an employer’s assessment of his/her performance.”

26. Pursuant to the aforementioned jurisprudence, a staff member’s refusal to cooperate with a performance evaluation process will not excuse a manager’s failure to fulfill his or her responsibilities under the performance management system.

LESSON 5: MANAGERS MUST PROPERLY FOLLOW THE RULES AND PROCEDURES IN ADDRESSING PERFORMANCE SHORTCOMINGS AND UNSATISFACTORY PERFORMANCE, AND SHOULD PROACTIVELY ASSIST STAFF MEMBERS BY TAKING REMEDIAL MEASURES.

27. The rules and procedures to be followed by managers in identifying and addressing performance shortcomings and unsatisfactory performance are set forth in section 10 of ST/AI/2010/5. Section 10.1 provides that the FRO should continually evaluate performance

¹⁹ *Gabriel-Van Dongen*, UNDT/2011/197, para. 71; *Riquelme*, UNDT/2010/107, para. 24. In these cases, the UNDT has confirmed that supervisors may take action, in good faith, to complete the performance evaluation outside the electronic application.

²⁰ *Rees*, 2012-UNAT-266, paras. 65-69.

²¹ *Ibid.*

²² *Tadonki*, UNDT/2013/032, paras. 221-260. In *Tadonki*, the UNAT ruled that the Administration “bears the burden of proof that an evaluation reached after an irregular procedure is nonetheless objective, fair and well based.”

²³ *Gehr*, 2012-UNAT-253, paras. 10, 59 and 62.

during the performance cycle. In this regard, the FRO should raise issues periodically and maintain proper records (e.g., e-mails or other written communications) of the discussions concerning performance issues. When a performance shortcoming is identified during the performance cycle, the FRO, in consultation with the SRO, “should proactively assist the staff member to remedy the shortcoming(s).”²⁴

28. Pursuant to section 10.1, remedial measures may include, for instance, coaching and supervision by the FRO, additional training, a plan for performance improvement, and counselling. Staff members may also be given assignments within the same department/office that are more suitable to their skills. Where the performance shortcoming has not been rectified and the staff member is given the overall rating of “partially meets performance expectations” at the end of the performance cycle, the FRO is statutorily required to prepare a written Performance Improvement Plan (PIP), in consultation with the staff member concerned and the SRO, pursuant to section 10.2. Such PIP may cover a maximum period of six months. There is no requirement that a FRO wait until the end of the performance evaluation period to implement the PIP
29. If the performance shortcoming is not rectified following remedial measures undertaken pursuant to section 10 of ST/AI/2010/5, a number of administrative decisions may be taken. Such administrative decisions may include the withholding of a within-grade salary increment pursuant to section 16.4, the non-renewal of an appointment, or the termination of an appointment for unsatisfactory performance, as indicated above. Where the staff member is given an overall rating of “does not meet performance expectations,” his or her appointment may be lawfully terminated, but only if the remedial measures have included a Performance Improvement Plan initiated not less than three months before the end of the performance cycle.²⁵
30. The UNAT has emphasized the importance for managers to properly follow the process set forth in ST/AI/2010/5 in identifying and addressing performance shortcomings or unsatisfactory performance and in documenting any remedial measures, as further examined below.²⁶ When managers take an administrative decision based on a staff member’s performance shortcomings or unsatisfactory performance, the conduct of the performance evaluation might be subject to review. If the conduct of the performance evaluation is insufficiently documented and/or is found to be inconsistent with the relevant rules and procedures, the administrative decision based thereon might be considered unlawful.
31. In *Ahmed*,²⁷ the UNAT found that the Administration had properly followed the rules and procedures governing performance evaluation in determining that the staff member’s performance was not satisfactory. Accordingly, the UNAT upheld the non-renewal of the

²⁴ Section 10.1 of ST/AI/2010/5.

²⁵ Section 10.4 of ST/AI/2010/5.

²⁶ See, for instance, *Ahmed*, 2011-UNAT-153; *Rees*, 2012-UNAT-266; and *Tadonki*, 2014-UNAT-400, as further examined below.

²⁷ *Ahmed*, 2011-UNAT-153, para. 49.

staff member's appointment, concluding that the staff member's "adverse performance appraisals constituted a proper basis for the non-renewal of his appointment."

32. However, the UNAT rescinded non-renewal or reassignment decisions that were based on the staff members' unsatisfactory performance on the ground that the Administration had not properly followed the rules and procedures governing staff members' performance evaluation. In these cases, the UNAT also granted compensation *in lieu* of rescission, awarded moral damages and, in one case, referred the responsible managers to the Secretary-General to enforce accountability.²⁸
33. For instance, in *Rees*,²⁹ the staff member's performance was found to be the "principal reason for the decision to reassign her," but it was also determined that no performance evaluation had been conducted in that case. The UNAT held that the Administration "was required to provide a performance-related justification for its decision" and that this "could have been properly done with the PAS." Although the staff member had not initiated the electronic performance evaluation in that case, the UNAT held that the Administration "did not meet the standard." Specifically, it was found that the staff member had not been given a chance to discuss appropriately the alleged shortcomings so that she could take steps to rectify the situation. It was also determined that she had not been formally assessed against her work plan. It was further found that she had not been given a formal opportunity to comment on or to seek a rebuttal of the opinions that had been reached about her performance.
34. In *Tadonki*,³⁰ the UNAT affirmed the UNDT's judgment that the non-renewal of a staff member was unlawful because the performance evaluations procedures were not followed. Although the Administration submitted documentary evidence of unsatisfactory performance, the absence of remedial action to address those concerns was found to have rendered the non-renewal decision unlawful.³¹
35. The UNDT has also suspended implementation of administrative decisions such as non-renewal and reassignment because the procedural requirements for the staff member's performance evaluation appeared not to have been met.³²

²⁸ *Dzintars*, 2011-UNAT-176, paras. 24-31 (compensation in the amount of the two months' net base salary); *Fradin de Bellabre*, UNDT/2011/080, paras. 20-30, upheld by the UNAT in 2012-UNAT-214, para. 34 (rescission of the non-renewal decision or, in the alternative, compensation *in lieu* of rescission in the amount of two months' net base salary, compensation for moral damages in the amount of 1 month's net base salary); *Rees*, 2012-UNAT-266, para. 71 (rescission of the reassignment decision and award of compensation for moral damages in the amount of six months' net base salary, but decision not to renew appointment upheld on grounds not related to the staff member's performance evaluation), *Tadonki*, 2014-UNAT-400, paras. 55, 56 (award of compensation for moral damages in the amount of USD 10,000 and referral of the Humanitarian Coordinator, the USG for Humanitarian Affairs and the Deputy Head of OCHA to the Secretary-General for accountability purposes).

²⁹ *Rees*, 2012-UNAT-266, paras. 65-69.

³⁰ *Tadonki*, UNDT/2013/032, paras. 221-260.

³¹ *Tadonki*, 2014-UNAT-400, paras. 55-56.

³² *Dalgamouni*, Order No. 137 (NBI/2014); *Kelapile*, Order No. 243 (NBI/2015) /Corr. 1.

36. The midpoint review discussion should reflect the concerns of the manager and, if deemed necessary, a PIP must be carefully designed and implemented, in consultation with the staff member and the SRO. Managers should be conscientious in conducting the midpoint review of the work plan and performance. This includes a midpoint discussion with the staff member of which the manager should maintain a record.³³
37. Managers should also be reminded that the appointment of a staff member should be renewed for the duration necessary to complete the PIP and/or the rebuttal process in cases where unsatisfactory performance is the basis for the decision of non-renewal, pursuant to sections 4.11 and 4.12 of ST/AI/2013/1, *Administration of Fixed-term Appointments*.³⁴ Similar provisions are set forth in ST/AI/2010/5.³⁵

LESSON 6: STAFF MEMBERS HAVE A RIGHT TO A REBUTTAL PROCESS, AND MANAGERS SHOULD ACT UPON REQUESTS FOR A REBUTTAL IN A TIMELY MANNER.

38. As indicated above, the UNAT held that staff members have a right to challenge an overall rating of “partially meets performance expectations” and “does not meet performance expectations” through the rebuttal process.³⁶ In *Beaudry*³⁷, the UNAT stated that,

“... a staff member can only challenge his or her performance rating. A staff member is not entitled to challenge the core values, core competencies, managerial competencies or comments which support that rating without challenging the rating itself.”

39. Failure to follow the established rebuttal procedures may result in a successful challenge to the non-renewal decision and may expose the Organization to liability.³⁸
40. Where the Administration has decided to take certain action or to implement an administrative decision on the basis of a performance rating of “does not meet” or “partially meets” expectations, and the staff member has initiated the rebuttal process, the Administration should hold in abeyance all administrative decisions related to performance pending the outcome of the rebuttal process.³⁹

³³ See *Staedtler*, UNDT/2014/057, paras. 66 and 67, which was affirmed by the UNAT in *Staedtler*, 2015-UNAT-546.

³⁴ This Administrative Instruction took effect on 22 April 2013.

³⁵ See sections 10.5 and 15.6, respectively.

³⁶ *Gehr*, 2012-UNAT-253, paras. 10, 59 and 62. In *Gehr* the UNAT further opined that:

“The right to have a rebuttal process is not mere procedural courtesy but a substantive right which all employees are entitled to invoke. ... The denial ... to the [staff member] of the right to rebut his performance appraisal, in the view of this Tribunal, offended a basic tenet of justice, namely the principle audi alteram partem.”

³⁷ *Beaudry*, 2010-UNAT-085, para. 27.

³⁸ *Fradin de Bellabre*, UNDT/2011/080, paras. 20-30, upheld in 2012-UNAT-214, para. 34 (rescission of the non-renewal decision or, in the alternative, compensation *in lieu* of rescission in the amount of two months’ net base salary, compensation for moral damages in the amount of 1 month’s net base salary); *Amit*, UNDT/2011/164, paras. 41-44 (award of compensation of three months’ net base salary).

³⁹ *Arigi-Oikelomen*, UNDT/2013/036, paras. 126-128.

The Rebuttal Process

41. Pursuant to section 15 of the ST/AI/2010/5, within 14 days of signing the completed e-performance document, a staff member who disagrees with a rating of “partially meets performance expectations” or “does not meet performance expectations” may initiate the rebuttal process by submitting a rebuttal statement in writing to the Executive Office at HQ or the Chief of Mission Support (“CMS”) or Chief of Administrative Services (“CAS”). Pursuant to Section 8.5 of the ST/AI/2010/5, if an e-PAS is submitted for signature to the staff member and the staff member does not sign, the e-PAS is considered to be signed by the staff member after 14 days of its receipt by the staff member. A staff member who does not sign his/her ePAS shall be so informed and will have 14 days from the date of notification to submit a written rebuttal statement. The Administration then has 14 days to submit a reply statement. A copy of the Administration’s reply statement has to be sent to the staff member.
42. In reviewing the case, the rebuttal panel is required to hear the staff member and his or her supervisor(s) either in person or by telephone.⁴⁰ The rebuttal panel is required to prepare a brief report within 14 days after its review of the case. Such report must set forth the reasons why the original rating should or should not be maintained.⁴¹
43. Although the current ST/AI/2010/5 does not specify a time frame for completion of the overall rebuttal process, it is clear that both the staff member and the Administration are obliged to act in a timely manner and failure to do so on the part of the Administration may be considered a violation of the staff member’s due process rights.

The Establishment of the List of Rebuttal Panel Members

44. Each head of office, department or mission must establish an approved list of rebuttal panel members. Section 14 of the ST/AI/2010/5 provides specific instructions as to the composition of the list.⁴²
45. The Administration is encouraged to ensure that the list of rebuttal panel members is:
 - current;
 - properly established;

⁴⁰ Section 15.3 of ST/AI/2010/5. Note that the ST/AI/2010/5/Corr.1 modified this section so that the rebuttal panel is limited to reviewing the original rating and may not modify the narrative on the performance evaluation.

⁴¹ Section 15.4 of ST/AI/2010/5.

⁴² Section 14 of ST/AI/2010/5 provides that the rebuttal panel is to be formed by three groups of staff members from the department/office/mission concerned, in equal numbers: (i) rebuttal panel members designated by the head of the department/office/mission; (ii) rebuttal panel members designated by the staff representatives of the department/office/mission in accordance with local practice; and (iii) rebuttal panel chairpersons selected by the head of the department/office/mission after consultation with the staff representatives of that department/office/mission.

- reviewed periodically;
- regularly updated and,
- in place well in advance of any rebuttal, to ensure the staff members' ability to promptly select rebuttal panel members at any given time.

The Effect of a Successful Rebuttal

46. Where a staff member has successfully rebutted a rating of “partially meets” or “does not meet,” and the rebuttal panel has upgraded the rating to “successfully meets” performance expectations, the Administration is obliged to accept the panel’s decision and must act accordingly with respect to that particular performance period. This may mean, for instance, that the decision not to renew the staff member’s appointment on the sole basis of unsatisfactory performance would have to be retracted.

Judicial Review of the Rebuttal Process

47. Section 15.7 of ST/AI/2010/5 provides that the “rating resulting from an evaluation that has not been rebutted is final and may not be appealed.” However, section 15.7 provides, further, that “administrative decisions that stem from any final performance appraisal and that affect the conditions of service of a staff member may be resolved by way of informal or formal justice mechanisms.”
48. In *Gehr*, the UNAT concluded that staff members who contest the conduct of a rebuttal process are not exempt from the mandatory first step of requesting a management evaluation.⁴³

OVERALL LESSONS AND OUTLOOK

49. The performance management and development mechanism in the Organization is an important managerial tool that provides the framework by which staff members’ performance can be measured, developed and enhanced. It is an important internal procedural mechanism that should be carefully followed so that the highest standards of efficiency, competence and integrity set in Article 101 of the Charter can be met.
50. The Organization is currently considering improvements of the performance management system which is anticipated to be issued as a new administrative instruction. The Career Support and Performance Management Section (CSPMS) in the Office of Human Resources Management conducts a half-day training on Performance Management. All managers are required to take the training.

51. Managers may contact CSPMS staff as well as the MEU regarding questions on performance management. The Office of the Ombudsman is an additional resource for managers seeking to resolve performance management and other personnel issues.

[X]

The Performance Evaluation process – step by step⁴⁴

<i>Process</i>	<i>ST/AI/2010/5</i>	<i>Responsible official and actions</i>
Designation of FRO and SRO	Section 5	First and second reporting officers are designated based on the office structure and reporting lines. The SRO is the FRO's supervisor, or equivalent (e.g., officer-in-charge). All staff members must have a FRO and SRO.
Staff Member Responsibilities	Section 4	Understanding the larger organizational goals. Seeking clarification on the work plan. Participating in discussions with the first reporting officer. Complete each stage of the process for which they are responsible without delay.
FRO Responsibilities	Section 5.1	Developing the work plan with the staff member. Conducting the mid-point review and final evaluation. Providing ongoing feedback to the staff member throughout the performance cycle. Advising, supporting and coaching the staff member on professional development and on her/his personal development plan. Developing a performance improvement plan in consultation with the staff member in the case of performance shortcomings or underperformance. Ensuring that all e-Performance documents of supervisees are completed correctly and on time.
Additional Supervisors	Section 5.2 and Section 3.3	Up to two additional supervisors can be designated when a staff member works for more than one supervisor for: (a) more than 25 per cent of her/his time or (b) assignments of at least 30 working days FRO must agree to the arrangement, which is put in place: (a) at the work-planning stage or (b) at the beginning of the additional assignment. If a FRO leaves during the cycle s/he becomes an additional supervisor for the staff member for that cycle.
Development of the Work Plan	Section 6	At the beginning of the performance cycle, the FRO meets with team and/or individuals on unit and individual goals, which are aligned with the section/departamental work plans. On this basis, staff members draft their individual work plans. Staff member and FROs discuss the draft work plan and staff member revises the work plan, if necessary. Staff member submits work plan to FRO who approves it. Staff member inserts the work plan to ePerformance.
Ongoing feedback	Section 4.1(c), 7.1 and 10.1	Staff and FROs should engage in on-going feedback throughout the process. FROs must monitor the work of their supervisees and provide feedback on a timely basis. Staff members are expected to provide feedback to their supervisors on situations which may affect the

⁴⁴ This summary only provides a broad outline of the performance evaluation processes. It does not address specific details that may be relevant in individual cases.

<i>Process</i>	<i>ST/AI/2010/5</i>	<i>Responsible official and actions</i>
Personal Development Plan	Section 6.3	delivery of the work; Staff members are primarily responsible for their personal development plans. Supervisors are expected to provide support and coaching and encouragement.
Mid Point review	Section 7	The FRO should conduct a midpoint review six months after the creation of the work plan. The mid-point review is a discussion that covers progress on achievement of the goals/key results, competencies and personal development plan. The mid-point review is an opportunity to justify any updates to the work plan. The conversation is not one-way: staff members can note their progress.
Identifying and addressing shortcomings	Section 10	FROs should address performance shortcomings as they arise and put remedial measures in place. Remedial measures can be counseling, additional training and/or performance improvement plan. Remedial measures may also include the assignment of tasks that are more suitable to the staff members' skills within the same unit.
Performance Improvement Plan		Performance improvement plan is mandatory if rating of "partially meets performance expectations" is given. The staff member and the SRO must be consulted.
End-of-cycle Evaluation	Section 8	Within three months after the end of cycle, the FRO and the staff member must have an end-of-cycle review discussion (can be done by phone if necessary). Staff members may self-evaluate on the progress made on the work plan (goals, competencies and development plan). FROs evaluate the staff member's goal achievement and demonstration of values and competencies (ratings and comments). Feedback from additional supervisors is taken into account. The SRO approves the evaluation (comments are optional) and ensures consistency and fairness in the ratings and comments.
Evaluation mechanism and ratings	Section 8	FROs are required to provide ratings on each of the UN core values, core competencies and managerial competencies chosen. Additionally, an overall rating is required.
Overall ratings	Section 9	Staff who have exceeded, or met performance expectations should be given one of the following two overall ratings: Exceeds performance expectations Successfully meets performance expectations Staff who have not fully met performance expectations should be given one of the following two overall ratings: Partially meets performance expectations Does not meet performance expectations
Monitoring by HOD	Section 11	Salary increments are subject to satisfactory performance. A salary increment may be withheld for unsatisfactory ratings. Heads of departments/offices/missions are ultimately responsible for the proper implementation of the Performance Management and

<i>Process</i>	<i>ST/AI/2010/5</i>	<i>Responsible official and actions</i>
Establishment of rebuttal panels	Section 14	<p>Development System.</p> <p>Senior management devotes annual meeting to performance management.</p> <p>All departments/offices/missions must have a list of rebuttal panel members (a joint staff-management body).</p> <p>The list can include staff members from other offices in the same duty station.</p>
Rebuttal process	Section 15	<p>Staff members who disagree with a "partially meets performance expectations" or "does not meet performance expectations" rating may, within 14 days of signing the completed evaluation request a rebuttal.</p> <p>The rebuttal panel is comprised of members at the same level (or higher) to the FRO.</p> <p>The rebuttal panel must interview the staff member, FRO and SRO and may interview other relevant individuals.</p> <p>The rebuttal panel's decision is final subject to the Secretary-General's discretionary review. Administrative decisions stemming from final ratings may be appealed to the formal or informal justice system.</p>
Timeliness	Sections 4.2 and 5.5	<p>Non-compliance with the performance management process, including timelines, on the part of the staff member, FRO and/or SRO must be recorded in their ePerformance documents.</p>