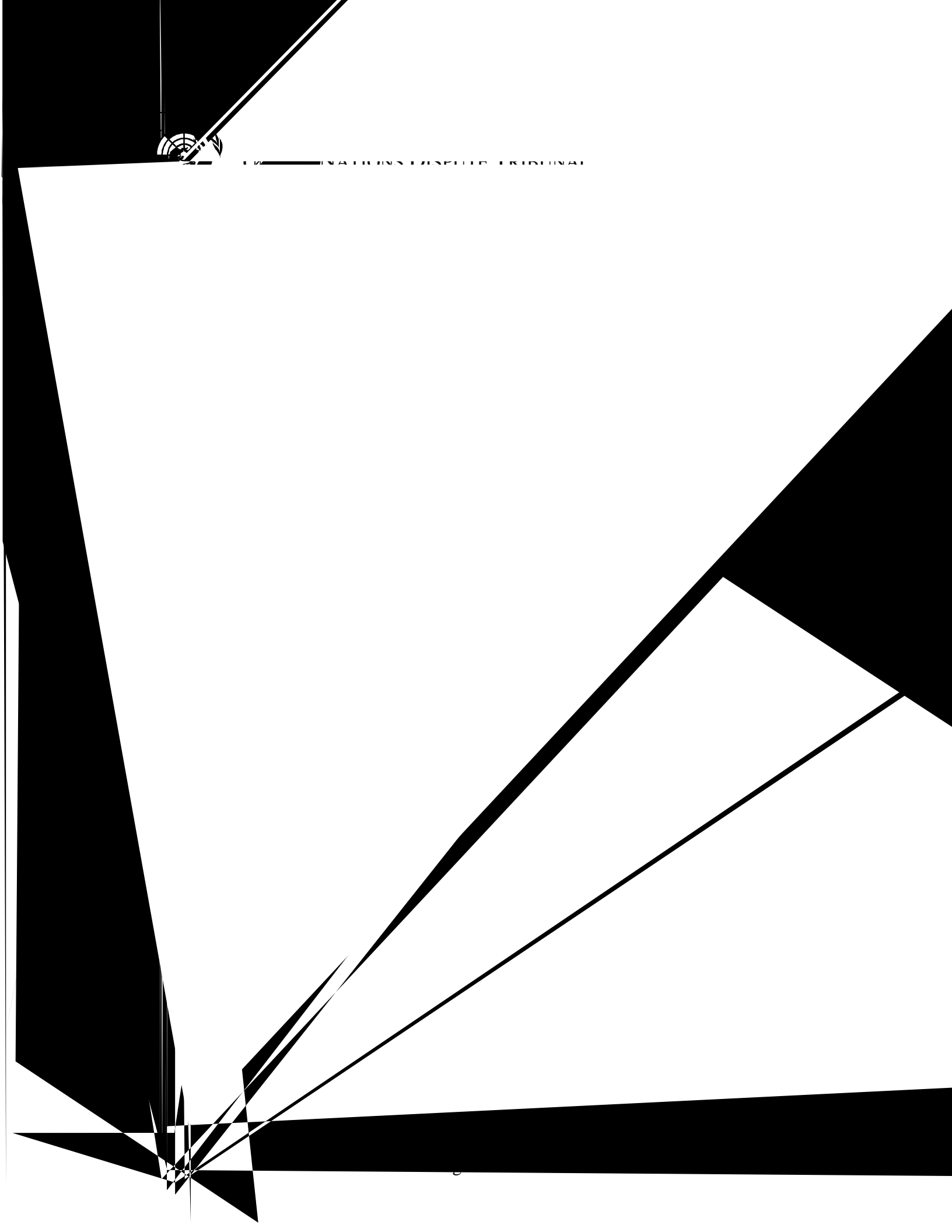




LE MINISTRE DES AFFAIRES ÉTRANGÈRES



## **INTRODUCTION AND PROCEDURAL HISTORY**

1. The Applicant is a staff member of the

requested a rebuttal on the same day.<sup>3</sup> He also emailed the Executive Secretary of the ECA to protest the outcome of his 2013-2014 e-PAS.<sup>4</sup>

8. By memorandum dated 2 June 2014, the ECA Chief Human Resources Services Section (C/HRSS) provided the Applicant with a list of rebuttal panel members and requested that he select three individuals, one from each of the three categories provided.<sup>5</sup>

9. The Applicant sent his list of rebuttal panel members (Ms. KB, Mr. AG and Mr. DS) to the C/HRSS on 6 June 2014.<sup>6</sup>

10. On 9 June 2014, the C/HRSS transmitted the Applicant's rebuttal statement to his First Reporting Officer (FRO), Mr. AH, for a response.<sup>7</sup> The FRO's response was transmitted to the Applicant on 20 June 2014.<sup>8</sup>

11. On 9 July 2014, the Applicant requested suspension of



problem”. He also alleged the rebuttal panel had failed to follow the procedure because the rebuttal process had not been completed in 28 days.<sup>20</sup>

20. On 19 June 2017, the Applicant wrote to HRSS alleging that it had changed the panel members “for unforeseen reason out of the UN rule”.<sup>21</sup>

21. The Applicant sought management evaluation of the outcome of the rebuttal process on 28 June 2017.

22.

## CONSIDERATIONS

25. Does the application of 31 August 2017 challenge an administrative decision within the meaning of art. 2.1(a) of the UNDT Statute?

26. Art. 2.1(a) of the UNDT Statute provides that:

1. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute, against the Secretary-General as the Chief Administrative Officer of the United Nations:

(a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms “contract” and “terms of appointment” include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance.

27. Section 15.1 of ST/AI/2010/5 (Performance management and development system) states that:

Staff members who disagree with a “partially meets performance

29. The Tribunal recalls the United Nations Appeals Tribunal's (UNAT/the Appeals Tribunal) consistent jurisprudence that for a decision to be challengeable under art. 2.1(a) of the UNDT Statute, it must be final and produce direct legal consequences to the legal order.<sup>25</sup> Conversely, a decision that is final but produces no direct legal consequence for a staff member's terms of appointment or the contract of employment is not receivable by the Tribunal.

30. Thus, the questions before the Tribunal at this stage are twofold. One, was there a final decision and two, if there was a final decision, did it produce any direct legal consequence for the Applicant's terms of appointment or his contract of employment?

***Was there a final decision?***

31. The present case concerns a rebuttal process that was initiated in accordance with section 15.1 of ST/AI/2010/5. On 12 June 2017, the rebuttal panel issued its report recommending that the administration maintain the original overall rating of "partially meets performance expectations" and the Applicant's placement on a PIP. In accordance with section 15.5 of ST/AI/2010/5, the performance rating of "partially meets performance expectations" became binding on the Applicant because of the rebuttal panel's recommendation of 12 June 2017.

32. In light of the foregoing, the Tribunal concludes that there was a final decision.

***Did the final decision produce any direct legal consequence for the Applicant?***

33. Although the Applicant alleges several deficiencies with the rebuttal process, the Tribunal sees no reason to deviate from UNAT's established principle that there must be a legal consequence that is caused directly by the administrative decision to the conditions of service. Such consequences are normally not caused by the evaluation alone.

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<sup>25</sup> Former Administrative Tribunal Judgment No. 1157, *Andronov* (2003); *Andati-Amwayi* 2010-UNAT-058; *Elasoud* UNDT/2010/111 confirmed by Judgment No. 2011-UNAT-173.

34. In this respect, the Applicant submits that he has suffered direct legal consequences because of the outcome of the rebuttal process; specifically, he alleges that his yearly step increment has been affected by the impugned decision. Notwithstanding all the extensive unsolicited documentation that the Applicant submitted as part of his 9 October 2017 rejoinder to the Respondent's reply, he did not place before the Tribunal any tangible evidence, such as his payslips or his personnel action forms, that would demonstrate any adverse change to these conditions of service. Neither would there be any reason to construe a causal link between the evaluation and the yearly step increment.

35. Additionally, while the rebuttal panel recommended the Applicant's placement on a PIP, the Tribunal notes that the Applicant does not complain that he was in fact placed on the PIP. Further, the Tribunal is cognizant of the Appeals Tribunal's holding that the decision to place a staff member on a PIP is not an appealable final administrative decision because pursuant to ST/AI/2010/5, the PIP is merely a preliminary step instituted to address a staff member's shortcomings during a performance cycle. Such a preliminary step is not an administrative decision subject to appeal.<sup>26</sup>

36. Under these circumstances, the Tribunal can only conclude that there is no evidence of any adverse administrative decision stemming from the rebuttal process or the rebuttal report that would affect the applicant's conditions of service and thus fall within the Tribunal's jurisdiction. As such, the application is not receivable.

## **JUDGMENT**

37.



*(Signed)*

Judge Agnieszka Klonowiecka-Milart

Dated this 18<sup>th</sup> day of September 2019

Entered in the Register on this 18<sup>th</sup> day of September 2019

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi