

Administrative Instruction – Instruction administrative

Ref. ICC/AI/2019/003

Date: 22 February 2019

Performance Appraisal System

The Registrar, with the consent of the President and the Prosecutor, pursuant to sections 3.2 and 3.3 of Presidential Directive ICC/PRES/D/G/2003/001 (*“Procedures for the Promulgation of Administrative Issuances”*) and for the purpose of implementing Staff Regulation 1.3(a) and Staff Rules 101.9(a) and 104.17, hereby promulgates the following:

Section 1

Scope of Application

- 1.1 The present Administrative Instruction shall apply to all staff members of the Court holding a fixed-term appointment or short-term appointment that exceeds six months.

Section 2

Purpose

- 2.1 The purpose of this Administrative Instruction is to establish the terms of the Court’s performance appraisal system.
- 2.2 The performance appraisal system is meant to ensure the effectiveness of the Court by optimizing performance at all levels and contributing to a positive work environment and staff well-being, which will be achieved by:
 - (a) Promoting a culture of high performance, professional development and learning;

- (b) Empowering managers and holding them responsible and accountable for managing and providing development to their staff;
 - (c) Encouraging a high level of staff participation in the planning, delivery and evaluation of work;
 - (d) Recognizing satisfactory performance and addressing underperformance in a fair and objective manner; and
 - (e) Creating an environment where continuous and constructive feedback is the norm.
- 2.3 The performance appraisal process consists of (i) setting a probationary period, where applicable, as per procedures outlined in the Administrative Instruction ICC/AI/2013/004 (*"Probationary Period and Performance Appraisal"*); (ii) setting individual performance plans, pursuant to section 5; (iii) monitoring progress; (iv) providing continuous and constructive feedback; and (v) conducting end-of-year performance appraisal evaluations.
- 2.4 The performance appraisal system is supported by an electronic performance appraisal form.

Section 3 Performance Appraisal Cycle

- 3.1 Without prejudice to section 3.2, the Court's performance appraisal cycle shall normally be twelve (12) months, beginning on 1 March of each year and finishing at the end of February the following year. The Registrar, in consultation with the Prosecutor, and before the beginning of a new cycle, may nevertheless determine a different duration of the Court's performance appraisal cycle, in writing and on the basis of exceptional circumstances.
- 3.2 A staff member's performance appraisal cycle may be shorter or longer than twelve (12) months, normally not shorter than six (6) months or longer than eighteen (18) months in the following cases:

- (a) Initial appointment, which includes selection to another post with different functions; or
- (b) Extended authorized absence.

3.3 All formalities with regard to the performance appraisal of a staff member must be conducted by the immediate supervisor and the reviewer prior to that staff member leaving the Court or being assigned to work in another post with different functions or to work in another office, division, section, unit or Organ. In case of a change in the immediate supervisor or reviewer, due to either of them leaving the Court or being assigned to work in another post, they shall provide their input with regard to the performance appraisal of the staff members prior to them leaving. In case of non-compliance, separation procedures and processing of final entitlements of immediate supervisors and/or reviewers may be delayed until the evaluations for which they are responsible are completed.

Section 4 Roles and Responsibilities

4.1 All staff members shall fulfill their responsibility under the performance appraisal system. To this end, staff members, immediate supervisors and reviewers¹ are required to ensure that all relevant steps and initiatives are taken to perform their respective role in the conduct of a performance appraisal as described in the present Administrative Instruction.

Staff Members

4.2 Staff members shall be responsible for:

- (a) Understanding the larger organizational goals and the strategic objectives of the Court, their Organ, division, or section, as appropriate;

¹ In certain situations, due to the organizational structure of the Court, a staff member may only have an immediate supervisor. In such case, the immediate supervisor will assume any necessary responsibilities of the reviewer.

- (b) Soliciting clarification on individual performance expectations and seeking and providing feedback to the immediate supervisor;
- (c) Participating in discussions and performance conversations with the immediate supervisor to facilitate the development and finalization of the individual performance objectives and maintaining discussions during the appraisal period; and
- (d) Taking steps to complete each stage of the process for which they are responsible, without unnecessary delay.

4.3 Staff members are additionally encouraged to participate in discussions and performance conversations with peers, where applicable.

Immediate Supervisor

- 4.4 An immediate supervisor shall be assigned to each staff member at the beginning of the performance cycle. The immediate supervisor shall be responsible for:
- (a) Developing the performance objectives together with the staff member;
 - (b) Conducting progress monitoring through performance conversations and end-of-year evaluation;
 - (c) Providing ongoing feedback on the overall performance of the staff member throughout the performance cycle, when and as required under this Administrative Instruction;
 - (d) Advising, supporting and coaching the staff member on development plans in line with the objectives and competencies set;
 - (e) Addressing performance shortcomings, if any, and, when required, developing a performance improvement plan, in consultation with the staff member and the reviewer, in the case of underperformance;

- (f) Ensuring the completion of all electronic performance appraisal forms of the staff member in accordance with the prescribed procedures; and
- (g) Ensuring the provision of adequate means and opportunities to a staff member in a fair manner to allow a staff member to fulfill his/her objectives and his/her development plan.

Reviewer

- 4.5 The reviewer, who shall be the immediate supervisor's supervisor or equivalent, shall be responsible for:
- (a) Ensuring that the immediate supervisor understands and applies the performance appraisal system principles and procedures articulated in the present Administrative Instruction;
 - (b) Holding the immediate supervisor accountable for developing, together with the staff member, performance objectives with fair and consistent performance expectations and ensuring linkages between priorities of work units as per each Organ's structure and individual performance plans;
 - (c) Holding the immediate supervisor accountable for the timely appraisal of the staff member's performance;
 - (d) Evaluating the immediate supervisor's ability to manage the performance of his/her supervisees;
 - (e) Resolving disagreements between the staff member and the immediate supervisor or between successive supervisors in the implementation of the performance appraisal system; and
 - (f) Overseeing the establishment and implementation of a performance improvement

plan in case of underperformance, as provided for in section 8 of the present Administrative Instruction.

- 4.6 The reviewer is additionally encouraged to provide ongoing feedback to the immediate supervisor and to the staff member and to participate in performance conversations and end-of-year evaluation, where applicable.
- 4.7 The reviewer also has the broader responsibility of ensuring that the performance appraisal system is consistently and fairly applied across work units by all immediate supervisors who report to him/her. The reviewer shall ensure fairness and consistency throughout the cycle, especially when defining performance objectives. The reviewer ensures consistency between the objectives, competencies and the overall performance of individual staff members for a given performance cycle. A staff member normally has one reviewer at any given time throughout the reporting cycle.

Non-compliance

- 4.8 Non-compliance with the terms of the present Administrative Instruction by a staff member, an immediate supervisor, or a reviewer, shall be recorded as part of his or her performance evaluation. Immediate supervisors' and reviewers' individual performance forms shall include an objective for timely implementation of and compliance with the performance appraisal system.

Heads of Organ and Governance

- 4.9 Heads of Organ are responsible for the implementation of the performance appraisal system process as well as for the communication of organizational objectives and strategic goals. To enhance managerial accountability at all levels, performance appraisal system implementation is included as a key indicator in work plans of work units, as per the Organ's structure, in order to emphasize the importance of senior management leadership in performance management.

- 4.10 Primary responsibility for the timely execution of the performance appraisal system, overall compliance and consistent and fair implementation rests with the Heads of Organ. Heads of Organ shall promote communication between staff members and their supervisors, encourage ongoing feedback and continuous performance conversations, and ensure that any change in the mandate or priorities of the Organ is communicated to the staff.
- 4.11 Heads of Organ shall hold all supervisors accountable for the effective use of the performance appraisal system through all stages of the process and shall provide advice and recommendations where warranted.
- 4.12 Heads of Organ shall collectively:
- (a) provide overall oversight of the performance appraisal system;
 - (b) ensure that a performance-oriented culture is implemented;
 - (c) take strategic decisions on performance management;
 - (d) ensure accountability with, and implementation of, performance management principles; and
 - (e) oversee the communication process on performance management.

Section 5

Organizational Priorities, Work Unit and Individual Performance Plans

- 5.1 Prior to the beginning of the performance cycle, and for the purposes of strengthening accountability in the Court, senior managers shall meet with the Heads of Organ or their respective delegates, and develop work plans of work units as per each Organ's structure. Priorities, strategic goals and budget plans of Heads of Organ are translated into work plans of work units as per each Organ's structure, which form the basis for establishing individual performance plans.

Individual performance plans

- 5.2 Without prejudice to sections 5.3 and 5.4, at the beginning of the performance cycle, supervisors shall meet with the staff members under their direct supervision to ensure that the objectives of the work unit are understood and individual performance plans with defined expectations are prepared within one (1) month of the start of the performance cycle. Supervisors may meet with the staff in their work unit either as a group or individually.
- 5.3 In case of initial appointment, which includes the selection to another post with different functions, the individual performance plan shall be established within the first month of such appointment. If an appointment is subject to a probationary period, in relation to which an individual performance plan is established, the immediate supervisor shall meet with the staff member, within the first month after the probationary period has ended, in order to determine whether to maintain that plan or to make any adjustments, as deemed necessary.
- 5.4 Extended authorized absences shall not constitute a ground for a waiver of the performance appraisal. In such cases, the immediate supervisor and the staff member may adjust, as and when deemed necessary and appropriate, the individual performance plan previously established, if any.
- 5.5 The individual performance-planning stage consists of (a) establishing individual performance objectives; (b) establishing competencies; and (c) formulating job-specific and competency related development plans, as follows:
- (a) Performance objectives: the immediate supervisor, together with the staff member he or she supervises, prepares a draft list comprising a minimum of three (3) and a maximum of six (6) performance objectives, including any sub-objectives. Upon discussion and following the agreement with the immediate supervisor, and if necessary with the reviewer, the final performance objectives are recorded by the staff member in the electronic performance appraisal form. The performance objectives must be SMART: Specific, Measurable, Achievable, Relevant and Timed. The Human Resources Section shall assist staff members and immediate supervisors, if required, by providing the necessary guidance and assistance on the establishment of SMART

performance objectives. When more than one staff member performs the same function, performance objectives may be collectively developed, while allowing for individual variations, where appropriate, provided that fairness and consistency is ensured.

- (b) Competencies: the Court's core competency model, as indicated in the annex to the present Administrative Instruction (Annex I), defines performance standards against which staff shall be evaluated. The competencies and the evaluation of the staff member against such competencies shall be assessed in accordance with SMART performance objectives. The immediate supervisor, together with the staff member, selects a minimum of three (3) relevant core competencies related to the achievement of the performance objectives. Job-specific competencies may be added where applicable.
- (c) Job-specific and competency-related development plans, if needed: the supervisor, together with the staff member, shall prepare a plan which includes job-specific or competency-related aspects for which extra focus and attention may be useful. The plan describes what concrete actions will be undertaken and includes the time and support needed. Development plans shall be assessed in accordance with SMART performance objectives.

5.6 In the case of disagreement, the reviewer shall be consulted and decide on the final individual performance plan.

Section 6

Progress Monitoring and Performance Conversations

6.1 During the performance cycle, the immediate supervisor and the staff member shall hold conversations, formally and informally, and may exchange e-mails or other written communication on the progress of the staff member's performance during the cycle. These oral and/or written communications shall address recognition for good performance and any shortcomings as they become apparent at any time during the cycle. The staff member and the immediate supervisor, together with the reviewer, if necessary, shall also discuss the

progress made to achieve the performance objectives while measuring competencies, addressing shortcomings, if any, and assessing development plans, if needed. Staff members are encouraged to provide and to request feedback as part of their performance conversations.

- 6.2 The immediate supervisor and the staff member shall record at least one (1) and may record up to four (4) conversations in the electronic performance form per cycle. Each performance conversation shall include a face-to-face feedback meeting between the immediate supervisor and staff member; the outcome of which shall be recorded in the electronic performance appraisal form.
- 6.3 In order to continuously develop and improve performance, staff members are encouraged to reflect on individual and team performance, achievements and development goals, solicit and/or provide informal feedback to their peers as well as to their supervisors.

Section 7 End-of-cycle Evaluation

- 7.1 Before the end of the performance appraisal cycle, the immediate supervisor and the staff member shall meet to discuss the overall performance during the cycle.
- 7.2 Following the meeting set out in section 7.1, the immediate supervisor shall, in consultation with the reviewer, (i) grade the individual's performance objectives and competencies in line with the rating scales, as provided in the annex to the present Administration Instruction (Annex II); (ii) assess the progress made in relation to the performance development plan, if any; and (iii) evaluate the staff member's overall performance. The overall performance evaluation shall be made through narratives describing the staff member's individual performance as satisfactory or unsatisfactory, and shall address shortcomings, if any. The staff member shall be provided with the opportunity to include his/her own comments and ask for additional clarification.

- 7.3 To reflect a fuller range of performance, feedback from additional supervisors, such as former supervisors or other supervisors for whom the staff member actually performed work during the same cycle, shall be taken into account by the immediate supervisor, as applicable.
- 7.4 The staff member, the immediate supervisor and the reviewer shall sign the electronic performance appraisal form. The immediate supervisor shall first sign the electronic performance appraisal form and send it to the staff member, who may make his or her comments prior to the form being sent to the reviewer. Within fourteen (14) days of receipt of the reviewer's signature and comments, the staff member shall sign the form and may include additional comments, thus completing the form, unless exceptional circumstances prevent him/her from doing so.
- 7.5 The signature of the staff member constitutes an acknowledgement that the performance appraisal has been conducted. It does not indicate that the staff member is in agreement with the evaluation.
- 7.6 The rebuttal process outlined in Administrative Instruction ICC/AI/2010/002 ("*Performance Appraisal Rebuttals and Procedures*") cannot be initiated unless the staff member has signed off on the finalized electronic performance appraisal form. A staff member who does not sign his or her electronic performance appraisal form shall be informed by the immediate supervisor at the end of the fourteen (14) day period mentioned under section 7.4. In such cases, the period for submission of a rebuttal statement by the staff member shall commence as of the date of notification to the staff member by the immediate supervisor.
- 7.7 The electronic performance appraisal form shall be accessible to the staff member, his or her immediate supervisor, the reviewer and the Human Resources Section.

Section 8 Performance Shortcomings and Underperformance

- 8.1 During the performance cycle, the immediate supervisor shall continually evaluate performance to ensure that the required standards are met.

- 8.2 When a performance shortcoming is identified during the performance appraisal cycle, the immediate supervisor, in consultation with the reviewer if necessary, shall promptly and proactively engage in performance conversations and assist the staff member to remedy the shortcoming(s). Remedial measures may include additional support, counselling, coaching and/or additional training.
- 8.3 The immediate supervisor, in consultation with the reviewer if necessary, shall promptly communicate his or her concerns in writing to the staff member, describing in detail the shortcoming(s) in relation to the specific objective(s) and/or competency(ies) that has/have not been met.
- 8.4 Performance shortcomings with regard to performance objectives and competencies that were not rectified through remedial measures under section 8.2 are considered underperformance. Underperformance includes but is not limited to the following:
- (a) The staff member consistently fails to complete his or her assignments and tasks on time or up to the required standards;
 - (b) The staff member consistently fails to perform satisfactorily even when provided additional support, training and/or time extensions;
 - (c) The staff member's work frequently requires substantive revision or adjustments to meet the standard expected;
 - (d) The staff member consistently displays behavior that is not in alignment with the Court's core values and competencies; or
 - (e) The staff member shows little or no initiative to improve his or her performance.
- 8.5 In case of underperformance, the immediate supervisor, in consultation with the staff member and the reviewer, shall establish a written performance improvement plan detailing all objectives and competencies for improvement and the actions expected to be taken.

- 8.6 A performance improvement plan can be implemented at any point in time and shall cover a period of six (6) months, with the final outcome and assessment being recorded at the end-of-year evaluation, pursuant to section 7.2. The initial period may be extended once in the following cases (i) if agreed by the staff member and the immediate supervisor, for a maximum period of six (6) months; and (ii) in the event of extended authorized absences of the staff member for more than fifteen (15) calendar days, for a maximum period of the length of the extended authorized absence in question.
- 8.7 If underperformance is rectified at the end of the performance improvement plan, the immediate supervisor shall notify, in writing, the staff member and record it in the electronic performance appraisal form at the end-of-year evaluation.
- 8.8 If underperformance is not rectified at the end of the performance improvement plan, the immediate supervisor shall notify the staff member, in writing, and record it in the electronic performance appraisal form at the end-of-year evaluation together with a description of all efforts made and all opportunities given to the staff member. In case underperformance is not rectified, a number of administrative actions may ensue, namely the withholding of a within-grade salary increment, the non-renewal of an appointment, the extension of the appointment for periods shorter than those indicated in section 2 of Administrative Instruction ICC/AI/2013/005 (*"Duration and Extension of Fixed-Term Appointments against Established Posts"*), or the termination of the appointment for unsatisfactory service in accordance with Staff Regulation 9.1(b)(ii).
- 8.9 Should a performance appraisal be reversed as a result of a successful rebuttal process, pursuant to the Administrative Instruction ICC/AI/2010/002 (*"Performance Appraisal Rebuttals and Procedures"*), any administrative action taken in accordance with section 8.8 shall not be maintained.
- 8.10 Should underperformance be the basis for a decision for a non-renewal of the appointment and should the appointment be due to expire before the end of the period covering a performance improvement plan, the appointment shall be renewed for the duration necessary for the completion of the performance improvement plan.

Section 9
Final Provisions

- 9.1 This Administrative Instruction shall enter into force on 1 March 2019.
- 9.2 The scope of application of Administrative Instruction ICC/AI/2010/002 (*“Performance Appraisal Rebuttal and Procedures”*), as provided in section 1.2 therein, is, for all purposes, hereby amended and aligned with that of the present Administrative Instruction under section 1.1.
- 9.3 Administrative Instruction ICC/AI/2013/003 (*“Performance Appraisal System”*) is abolished and superseded by the present Administrative Instruction, except insofar as performance appraisal cycles prior to the one commencing on 1 March 2019 shall be conducted and completed in accordance with ICC/AI/2013/003.



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