





not in a position to protect him. Given his security concerns, he requested to be relocated to a duty station outside Ethiopia.

6. The Administration replied to the applicant's email on 28 September 2007 stating that UNECA had taken the necessary measures to assist him following his arrest and had acted according to the Staff Regulations and Staff Rules. Consequently, his request for relocation to another duty station was denied.

7. By a letter dated 8 October 2007, the applicant informed the Administration as follows:

“...given the gross human right[s] violation[s] in Ethiopia and the experience I have gone through, I am compelled to abandon my whole family and fle[e] to a land I have never been, struggling for survival.”

8. By email dated 1 November 2007, the Administration informed the applicant that his rights as a staff member had not been infringed by UNECA and that “the propriety of [his] arrest and [his] treatment by local authorities” were matters “beyond the purview of the Organization's internal justice system.”

***Administrative Decision and JAB Review***

9. On 14 November 2007, the Chief, Human Resources Services, UNECA Hum

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Administration's refusal to relocate him to another duty station. The respondent filed a Reply on 14 February 2008. On 17 March 2008, the applicant submitted Observations on the respondent's Reply. On 30 April 2008, the respondent submitted Comments on the applicant's Observations.

11. A JAB Panel convened on 21 January 2009 to consider the appeal. The Panel completed its deliberations and adopted its report at that meeting. The Panel unanimously found that the respondent violated the terms of the applicant's appointment "by failing to inquire into the matter to see whether reassignment was

Robert Fairall who was the Officer-In-Charge (OIC) of UNECA Security department at the period material to this case and Mr. Zeleke Ourgie who was head of the UNECA Security investigation team.

*Applicant's Case*

15. The applicant frames his case as follows:

- a. On 15 April 2006, he was arrested, detained and severely beaten by the Ethiopian People's Revolutionary Democratic Front (EPRDF) police on false charges of sexual assault, which charges were later dropped for want of evidence. In the police detention cells, his interrogators repeatedly mentioned

of his plight by UNECA and their treatment of him upon his release, founded a fear of persecution and insecurity

***Respondent's Case***

17. The applicant was arrested following allegations of rape by his house maid.
18. The respondent claims that the safety and security control room logbook shows

he counseled the applicant as to the appropriate course of action and told the applicant that he should take up any issues he had with the Ethiopian authorities.

23. All staff members must observe and respect the national laws of the country they are in and submit to its legal process. There is no special status conferred on staff members in the conduct of their private affairs. Privileges and immunities are conferred to staff members in the interests of the Organization and only attach to United Nations personnel when they are performing official functions in accordance with former staff regulation 1.1(f).

24. A staff member's immunity from legal process is strictly functional. It is linked to their status and functions as officials of the Organization. Under the Convention on the Privileges and Immunities of the United Nations, it is for the Secretary-General, not the staff member concerned, to determine whether words or acts were spoken, written or performed in an official capacity and whether they fall within the scope of the staff member's immunity. Notwithstanding their immunity, United Nations staff members have an obligation to cooperate with the competent national authorities and to respect city, state and federal laws and regulations.

25. The applicant was alleged to have committed a serious criminal offence under Ethiopian criminal law. These allegations had nothing whatsoever to do with the Organization so there was nothing that the Organization should have done other than respond promptly and monitor the situation.

26. The respondent was informed of the applicant's detention on 17 April 2006, contrary to the applicant's claim. There is no evidence to support the applicant's submission that the incident was only reported to UNDSS one year later.

27. The respondent notes that there is a typographical error in paragraph 3 (b) of the administrative review letter sent to the applicant on 28 September 2007, referring to the applicant's detention in April "2007" instead of the correct date of "2006".



28. The applicant has not produced sufficient evidence to support the allegation that his assignment to various duties constituted harassment and that he was placed in danger as a result of applying the policy of disarmament to Ethiopian authorities.

29. The Administration's actions following the applicant's arrest in April 2006 by local authorities were appropriate. The applicant has failed to set out any basis in his Application for the allegation that his security was jeopardised or that he had a right to be relocated from one duty station to another. If the applicant wished to ~~obtain~~ a position

32. Section 3 of ST/AI/299 obliges the designated official for security matters to immediately report the arrest or detention of any United Nations staff member - whether internationally recruited or locally recruited – to the Assistant Secretary-General for General Services in New York by the fastest possible means of communication available. The Executive Secretary of UNECA is the designated official for Ethiopia.

33. Sections 4 and 5 apprise the designated official of his functions in respect of the Ministry of Foreign Affairs in the host country and Headquarters respectively. In respect of the latter, the designated official is provided with a non-exhaustive list of particulars which the Report must include. It is pertinent that both sections are mandatorily required of the designated official.

34. Section 2 of Annex 1 to ST/AI/299 affords the Organization the right to visit, converse with, obtain information, arrange legal counsel for its staff and appear in legal proceedings to defend the interests of the United Nations. I am of the firm view that the word “right” as it is used in the said provision actually goes beyond a right, which may or may not be exercised and in fact imports an obligation.

35. It is important to note that the list in Section 2 of the Annex is of the *minimum initial steps required* of the Organization to safeguard its interests and that of its staff. While the question of access to its staff members is a right of the Organization vis-à-vis the host country, it is equally a responsibility of the Organization vis-à-vis the staff member. In other words, the Organization has an obligation to the said staff or agent and itself, to inquire as to the reasons for the detention and the charge, assist with legal representation and appear in legal proceedings to defend any of its interests affected by the arrest or detention.

36. The annexes must of course be read together with the Administrative Instruction that it is attached to, in that they contain provisions with the dual-purpose of safeguarding the interests of the United Nations and discharging the Organization’s obligations to staff.

37. Whether the Organization, represented in this instance by the security authorities of UNECA, fulfilled its obligations to the applicant and to itself as provided for in its

regulations and rules is among the issues fundamental to this Application. It would appear that these obligations were not fulfilled.

***The Evidence***

38. The applicant described the manner in which he was arrested when he testified to the Tribunal. He told the Tribunal that at about 2.00 p.m. on Saturday, 15 April 2006, he was with his family at home when a group of armed policemen arrived at his residence. They beat him, forced him into their car and took him to the Police Station. There, they handcuffed him to a bench and the beating continued amidst taunts such as “we know who you are, you are a UN security officer, and we will show you.”

39. It is the evidence of the applicant’s first witness, Mr. Abebe, that he was informed of the applicant’s arrest and detention by the applicant’s wife at about midnight on the day of his arrest. The next morning, together with the wife of the applicant, he visited the applicant in custody. He got the telephone number for UNECA security from the applicant and, with the applicant’s wife, called UNECA to report the applicant’s arrest that very morning.

40. In her witness statement, the applicant’s wife stated that she first reported the incident to UNECA Security on the day of the arrest. It is also on record that both she and



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***Reporting to UN Headquarters***

50. The respondent maintains that the incident of the applicant's arrest was reported to the appropriate authorities in New York at the time. The OIC of UNECA Security told the Tribunal that he could not recall the form in which the report was made and that it could have been made either by email or by phone.

51. The respondent tendered the Security Officer's email of 17 April 2006 to the OIC, as evidence of compliance with the reporting requirement. It is not evidence of compliance with Section 5 of ST/AI/299. The respondent's submission on the sufficiency of the email as evidence is both surprising and specious.<sup>3</sup> The email shows only that the Security Officer reported the arrest to the OIC after his visit to the police station. The email from the Security Officer is perhaps more remarkable for what it omitted to say than what it did say.

52. Given the seriousness of the issue, I find it inconceivable that a report might have been made, even by telephone, for which no record was kept or found. As demonstrated by the testimony of the respondent's witnesses, even a phone call reporting the applicant's arrest and detention to UNECA Security was entered in an official log book which was tendered before this Tribunal.

***Reporting to the relevant Ethiopian Authorities***

53. Despite the abusive treatment occasioned to the applicant, the Secretary-General made no representations to the Ethiopian Government through the appropriate channels. In actual fact, to illustrate the disregard of the applicable Staff Regulations and Staff Rules, the respondent presented oral evidence that the applicant was advised by the UNECA Security Officer to file his complaints with the Addis Ababa Police Commission.

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54. The Tribunal is appalled by the contempt and disregard shown by UNECA towards the applicant. How did the respondent expect the applicant to file a complaint to the very police force that he was accusing of cruelty and inhuman treatment, treatment that the respondent in the rTUuD

“[...] it is up to him to assess whether its agents acted within the scope of their functions and, where he so concludes, to protect these agents, including experts on mission, by asserting their immunity. This means that the Secretary-General has the authority and responsibility to inform the government of a member State of his finding and, where appropriate, to request it to act accordingly and, in particular, to request it to bring his finding to the knowledge of the local courts if acts of an agent have given or may give rise to court proceedings. That finding, and its documentary expression, creates a presumption of immunity which can only be set aside for the most compelling reasons and is thus to be given the greatest weight by national courts.”

58. It is the applicant’s case that the police authorities in Ethiopia arrested and brutalized him on a trumped-up charge of rape of his house maid. His claim is that his arrest and the inhuman treatment which followed it when he was in custody for three days, were as a result of his insistence that



application and possible defence and failed to appear in the legal proceedings for the applicant's bail to defend any United Nations' interest that may have been affected by the applicant's arrest and detention. The testimony of the OIC on the role of the UN in respect of "local staff" in such situations, and his candor in saying as much, is unfortunate for the staggering lack of care that it showed.

***The inadequacy of the response to the applicant's plight by his head of department in the light of the United Nations core values and competencies.***

62. The United Nations Organization is one like no other. It is the foremost international Organization commanding the membership of one hundred and ninety-two countries out of a total of one hundred and ninety-four in the world. It is an Organization that sets standards for member countries and regional and sub-regional bodies. The Organization's Secretariat also sets standards for itself involving high performance of its staff and managerial excellence.

63. In *ST/SGB/1999/15-Organizational Competencies for the Future*, the Organization's core values and competencies are listed. Section 6.2(b) of *ST/AI/2002/3-Staff Selection System* (superseded by *ST/AI/2010/3*) on staff selection referred to the said competencies which are further explained in the handbook titled "*United Nations Competencies for the Future*".

64. There is evidence on both sides that the applicant's arrest and detention was reported to UNECA Security. There is also evidence that an Officer, who was also the head of the investigation team in the security department in UNECA, attended the Police Station and visited the applicant. Mr. Ourgie, on the same day, sent a report of the matter to the OIC by email. Apart from a vague claim by the said OIC that he must have reported the matter to New York and that he did not recall the form his report took, nothing more was done on the part of the OIC.

65. It is not in dispute that the OIC did not so much as invite or personally interview the applicant, who at all times material to this application worked under him in the security department, with a view to having first hand information of what had happened.

This attitude of receiving a report about a staff member's ordeal and ignoring both the report and the staff member who is available for the asking is totally unprofessional and does not show mastery of the subject-matter. In other words, it strikes at the Organization's core value of Professionalism.

66. As a staff member of the UN, the core competency of communication is sadly not reflected in the OIC's lack of interest. Managers in the Organization are also expected to exhibit leadership, build trust and exercise good judgment. None of these competencies can be gleaned from the response of this head of department who told the Tribunal that, "I would have no idea why I would have to contact the foreign ministry when there was no foreign national involved in the incident." It is unfortunate that while Mr. Fairall sat on a pedestal, unable to communicate within his own department, neither the interests of the applicant nor those of the Organization were protected on this occasion as envisaged by the UN Charter, ST/AI/299 or ST/SGB/198.

67. I find that the response of the OIC, UNECA Security was utterly inadequate in the circumstances.

68. The weight of the evidence before me, and the candid testimony of the Officer-in-Charge of the Security Services Section of UNECA, obliges me to make the following comment. The OIC very clearly saw a distinction between what was required of the Organization in respect of its national and internationally recruited staff. There is little doubt in my mind that the OIC saw the latter as a class above, and distinct, from the former. It is both unacceptable and appalling that a Senior Official such as the OIC of UNECA Security could be completely ignorant of the applicable procedures in a matter as serious as the security and safety of staff members of the United Nations.

69. I note with grave concern that even in the face of one of his staff being arrested, no effort appears to have been made to educate himself as to the relevant rules and procedures in place for precisely these situations. Obscure situations sometimes arise and present managers and supervisors with challenges not previously countenanced and for which there is neither guidance nor legislation. This was not one of those situations. The



73. As stated already in this judgment, despite the inhuman and degrading treatment meted out to the applicant, the 2d deo is

“[...] a separation initiated by the staff member other than by way of resignation. It is considered a unilateral repudiation of the contract of employment and not a termination initiated by the Secretary-General as defined in article IX of the Staff Regulations and in staff rule 109.1(b) [currently staff regulation 9.3]. The intent to separate may be presumed from the circumstances, in particular from the failure of the staff member to report for duty.”

76. Sections 9 to 12 of ST/AI/400 describe the procedure that must be complied with before a staff member is separated from the Organization on the ground of abandonment of post. Contrary to the requirements of these sections:

- a. The UNECA Administration withheld the applicant’s salary and allowances even before receiving the applicant’s explanation for his absence (see paragraph 9 above);
- b. The UNECA administration did not submit a presentation to the Assistant Secretary-General for Human Resources Management recommending separation for abandonment of post; and
- c. In what amounts to a constructive separation on the grounds of abandonment of post, the applicant was separated from service at the expiry of his fixed-term appointment on 31 December 2008 while waiting for the JAB to deliberate on his appeal which he had filed on 18 December 2007.

77. ST/AI/400 must be read in a manner consonant with the principles in the Staff Regulations, particularly Staff Regulation 1.2(c), which requires the Secretary-General to ensure that “all necessary safety and security arrangements are made for staff carrying out the responsibilities entrusted to them.”

78. Notwithstanding the scant details provided in the applicant’s explanations of his unauthorized absence, the evidence before the Tribunal shows that the applicant was separated without adherence to the stipulated procedure against the background of his previous plea for assistance from the Organization and his subsequent explanation for his absence. For his part, and in my judgment, the applicant acted in accordance with section 11 of ST/AI/400 which required him to inform his supervisors of his absence and its



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f. The UNECA Administration constructively treated the applicant as having abandoned his post even though they did not initiate procedures for doing so in accordance with ST/AI/400.

86. In light of its findings above, the Tribunal **ORDERS**:

a. the respondent to pay the applicant's salary from 14 November 2007, the date it was withheld, to 26 March 2009, the date when the applicant was informed of the Secretary-General's decision to take no further action in respect of his complaint, with interest at 8% per month for the said period;

b. the applicant shall be paid six months' net base salary for the respondent's various due process failures; and

c. rejects all other pleas.

*(Signed)*

Judge Nkemdilim Izuako

Dated this 8<sup>th</sup> day of October 2010

Entered in the Register on this 8<sup>th</sup> day of October 2010

*(Signed)*

Jean-Pelé Fomété, Registrar, UNDT, Nairobi