

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO. 2015/93

AT AUCKLAND

Before: A R Mackey (Chairperson)
V Shaw (Member)
T Gutnick (UNHCR)(Member)

Counsel for Appellant: Mr W Rosenberg

Representative for NZIS: No appearance

Date of Hearing: 1 August 1994

Date of Decision: 23 August 1994

DECISION

This is an appeal against the decision of the Refugee Status Section of the New Zealand Immigration Service (RSS) to the decline of an application by the appellant for refugee status. The appellant is an Ethiopian national of Amhara decent.

THE APPELLANT'S CASE

The appellant is a 44 year old man. His wife was killed some years ago by supporters of a group opposed to the appellant. The appellant holds a diploma in teaching which he obtained in 1966, he also holds a diploma in military science obtained in 1970, a diploma in Hotel Management obtained in 1986 and a Bachelor of Arts Degree obtained from the University of Addis Ababa obtained in 1990.

The appellant arrived in New Zealand on 26 May 1993 using a passport issued 2 February 1993. He obtained a visa to travel to New Zealand on the sponsorship of New Zealand friends of his Mr and Mrs B. The appellant applied for refugee status

soon after his arrival in New Zealand and a formal application was completed on 30 July 1993. After attending an interview at RSS on 30 August 1993 the appellant's application was declined in a letter from the RSS dated 7 October 1993. He then appealed to this Authority. He is currently in New Zealand on a valid work permit.

In the appellant's original application during his RSS interview and in his interview before us he referred to a number of Ethiopian organisations or groupings. For purposes of clarification the names and acronyms for these Ethiopian parties are set out below:

Acronyms for Ethiopian parties used in the decision

1.	AAPO	All Amharan People's Organisation	Recently established Amhara organisation to promote Amharan ethnic groups (opposed by current government)
2.	COEDF	Coalition of Ethiopian Democratic Forces	Based in Washington DC. Coalition of forces opposed to the government based offshore.
3.	ELF	Eritrean Liberation Front	The first Eritrean grouping opposed to the DERG not in favour of separation of Eritrea from Ethiopia.
4.	EPLF	Eritrean People's Liberation Front	A break away from ELF in favour of complete Eritrean independence and now allied to TPLF.
5.	EPRP	Ethiopian People's Revolutionary Party	Now a banned organisation supporters favour a democratic process within Ethiopia against the break up or "balkanization" of Ethiopia.

6.	EPRF	Ethiopian People's Revolutionary Front	A predecessor to the EPRP before it became an organised party.
7.	EPRA	Ethiopian People's Revolutionary Army	The military wing of the EPRP which waged war against the DERG.
8.	EPDM	Ethiopian People's Democratic Movement	A group created to promote the TPLF causes amongst Amharas (opposed to AAPO).
9.	EPRDF	Ethiopian People's Revolutionary Democratic Front	The governing party in Ethiopia at this time incorporating EPLF, pro TPLF members of the EPRP, EPDM and other TPLF sponsored groups.
10.	DERG	The name given to the Stalinist Communist group which took over power from former monarchy of Haile Selassie	In power from 1975 to 1991. Leader Mengistu deposed by TPLF and EPRDF in 1991.
11.	FORUM 84	TPLF grouping	Organised to bring opposition to its rule within its camp
12.	OLF	Oromo Liberation Front	Grouping of Oromo peoples formerly incorporated into the TGE but has withdrawn co-operation with TPLF.
13.	OPDM	Oromo People's Democratic Movement	Established to get Oromos to co-operate with TPLF/EDRDF

14.	TGE	Transitional Government of Ethiopia	Established in 1991 by EPRDF. Controlled by TPLF and its supporters.
15.	TPLF	Tigrean People's Liberation Front	The dominating party within the TGE during current accession of Tigreans dominance in Ethiopia.

The appellant states that he has been a member of or imputed to be sympathetic to the organisations listed above as 1, 2, 3, 5, 6 and 7.

The appellant did not use the services of an interpreter. He stated that he had a good understanding of the English used by the Authority and his Counsel. During the time of the hearing the Authority found the appellant fully comprehensible in English and minor problems caused through accents were quickly clarified.

Mr Rosenberg presented very detailed submissions and supporting documentation which summarised the complex background to the Ethiopian political situation over the past 25 years and the appellant's involvement in the various developments which have taken place since the decline and ultimate deposing of the regime of the monarch Haile Selassie until the present time. This involved not only background to the Ethiopian situation but also the vital and inter-woven developments that have taken place in Eritrea.

The essential submission put forward by Mr Rosenberg was that the appellant's case was an extremely complex one and required a very in depth understanding of the political history and developments both in Ethiopia and in Eritrea. He submitted that the RSS had not been able to grasp the full significance of the appellant's position in relation to the developments in Ethiopia and Eritrea. He contended that their studies were somewhat superficial and their decision was based on a negative interpretation of a few passages within the United States Department of State Report for the year 1992. He admitted that since that time additional information had become available and a further Department of State Report for 1993 clarified the position in Ethiopia favourably to the appellant's case.

He pointed out to us that prior to an assessment of the appellant's case it was essential to know that Ethiopia was made up of a number of ethnic groups and

religions. He referred to a break down contained in the publication "New African" of September 1993 which set out the following table:

"Who's, Who in Ethiopia"

Ethnic Groups		Religions	
Amahara	38%	Coptic	45%
Oromo	35%	Moslem	35%
Tigrean	9%	Traditional Beliefs	11%
Gurage	3%	Others	9%
Ometo	3%		
Sidamo	2%		
Tigre	2%		
Afar	2%		
Somali	2%		
Others	4%		

Traditionally the problems of Ethiopia have been the holding together of these diverse ethnic groups. Historically the leading ethnic groups have been the Amharics and the Tigreans. He said that it was also essential to know that Eritrea had been an inalienable part of Ethiopia and had only been split away from the Ethiopian monarchy following the intervention of the Italians in 1890 and later in the 1920s.

Mr Rosenberg argued that the current TGE government in Ethiopia was one based upon Leninist principles that is a group controlling by and through organisations with their roots throughout the whole country. The ideology of TGE was thus enforced either by suppression or through integration of dissent by the establishment of quasi-independent political groupings which together made up a united government.

He said that under such a regime there were only three possibilities available for a person of the appellant's prominence. These were:

1. To passively ignore the political movement.

2. To become an activist against the Government's suppression in which case liquidation of the appellant was the most likely result.
3. To join in one of the quasi-independent groups and thus become a supporter of the TGE forces, subverting to their control.

PERSONAL BACKGROUND

The appellant was born in the Wollo Province of Ethiopia of Amharic background. He said that he had two fathers, a natural father and a stepfather. His natural father, he told us, was a soldier who had been a Major in the Korean war. His stepfather was a major landowner in his area of the country. Both of his fathers came from highly respected leading families in the Wollo/Amhara region of Ethiopia and both of them took a strong role in the appellant's upbringing. He said that his mother also came from a leading Ethiopian family who had linkages to the previous royal family. The appellant agreed that this background could be described as being that of a "Patrician" family in Ethiopian terms. He said that both of his two fathers had been fighters against Mussolini when they were young men. His family had insisted on him being well educated and initially he had trained as a teacher obtaining his diploma in 1966. He said after this he joined the Imperial Bodyguard of the former monarch Haile Selassie. Between 1966 and 1971 he completed a diploma in military studies.

In 1973 the appellant said that he left the Imperial Service and took the very radical step of joining the ELF which he considered could become the ruling party in Ethiopia as the monarchy decayed and collapsed. He explained that for him to join the ELF was totally out of the norm as he was an established member of the Amhara and the ruling class. Thus for him to become a revolutionary "freedom fighter" was clearly an extreme step for him to take. He saw it however, as the best route to a united democratic Ethiopia/Eritrea.

After being involved in the fighting in Eritrea Province for a short period the appellant said that he was posted to the Middle East. During his time away from Ethiopia in 1973 the appellant stayed in the Middle East and in Rome. After returning briefly at the time of the downfall of the monarchy in 1974 the appellant again left Ethiopia when the Derg took power. He said that he then returned to the Middle East (Beirut) and then on to Paris. The appellant said that he went to Paris in order that he could study at the Sorbonne. He remained in Paris for a

period of some four to five months undertaking the pre school language requirements for the Sorbonne. In 1974 he said that he applied for refugee status in France which was granted to him on 9 March 1974. He was then issued with a United Nations travel document. He told us that on the way to Paris he had given a press conference in Beirut where he severely criticised the take over of power in Ethiopia by the DERG. It was on the basis of this recorded interview that he was given refugee status in France.

Before he was able to proceed with his advanced education at the Sorbonne the appellant was called upon by the EPRF and ELF to assist them in taking up the fight for Ethiopian democracy. He said that he then returned to Rome to assist in the organisation of the EPRF and ELF. During the period 1975 to 1976 he undertook training with the PLO for a period of four months and went on to Aden to work in EPRP office. He explained that in 1975 the EPRF had become far more organised and had constituted itself as a full political party. During his time in Aden the appellant said that he had worked with one of the leaders of the EPRP, who was then based in Aden, and who is presently the Chairman of the COEDF based in Washington DC. At that time the activities of the EPRP had been directed against the government of the DERG.

During his time in Aden, in late 1976, the appellant had been sent to a student conference in Sweden. The conference dealt with issues relating to Ethiopia and was primarily attended by Ethiopian students based in Europe. At that time he said the office of the EPLF in Sweden was run by a TW. TW had accused the appellant of being a member of the "Black September" movement. The appellant was arrested while in Sweden because of his imputed involvement with "Black September". He said that it was only after a considerable amount of explanation that he was able to be freed and allowed to go back to Aden. TW, he explained had been purged from the EPRP and joined the EPLF. He also explained the TW was now part of the ruling party in Ethiopia and was President of the region (region 14) which now administers Addis Ababa.

In 1976 the Derg came to an arrangement with the government of Aden and this led to the expulsion of the EPRP from Aden. The appellant said that he was one of the last to leave the EPRP office and assisted in the destruction of all the documentation and evidence held in that office. He said that he then travelled to Eritrea by boat (across the Red Sea). He then travelled through Eritrea and joined the EPRA which was then located in the area south of Eritrea in the northern

province of Tigray. The appellant said that he then became involved as a fighter in the guerilla war that the EPRA was conducting against the DERG. He said that it was at this time the DERG undertook the infamous "Red Terror" a movement in which they killed thousands of innocent people. During the Red Terror the appellant said that the EPRP was virtually eliminated and his new wife, his sister and his brother-in-law were all killed. He explained that the Red Terror movement was directly controlled by the DERG and orchestrated from Moscow. The ELF had worked in conjunction with the DERG in carrying out these activities. The appellant explained to us that many of his former friends who had joined the EPLF had worked in conjunction with the DERG in carrying out these activities.

The appellant explained to us that many of his friends from the EPRP had been captured at the time and later have been forced to join the EPDM as Amhara puppets of the TPLF.

The appellant said that he was able to escape the Red Terror himself and went to the Ethiopian Embassy in Khartoum, Sudan where he was able to obtain temporary refuge. This took place in 1978. After being in Khartoum for a short time, the appellant was encouraged to return to Ethiopia. In return for signing a document in which he said he would co-operate with the DERG government and their supporters, he was given an amnesty.

However when the appellant re-entered Addis Ababa in early 1978 the DERG regime sent him directly to jail and he was tortured and kept in a cell without trial. The amnesty he was given in Khartoum was ignored. Eventually on the basis of a new amnesty he was released but confined to live only in Addis Ababa until 1984, with daily reporting conditions. He was also denied the right to work. He said that in January 1981, he was eventually able to obtain work through the assistance of some old friends, firstly as an administrator at the international airport and then later at the offices of the Ethiopian Hotel and Tourism Commission. In 1983 he said he was promoted to become the administrative manager of a group of hotels under the control of the Tourism Commission. However, in September 1984 he said that he was dismissed because he was then regarded as being unfit for the new tourism policy of socialist Ethiopia. He said he was then without a job for a period of one year until again with the help of old friends he was pardoned and rejoined the Tourism Commission in October 1984.

He said he first became the manager of a medium class hotel and eventually moved up to be the manager of one of the most important hotel in Ethiopia; Ghion Hotel. He said that he remained in this managerial post until September 1990 when he was demoted and placed in a position as a "relief manager". The appellant explained to us that the reason he was demoted was that he had at that time recently completed the thesis for his Bachelor of Arts of Degree in Political Science and International Relations from the Addis Ababa University. He explained to us that his thesis entitled "Return to the Barracks" was strongly critical, not only of the regime in Ethiopia but of a number of dictatorships through the sub-Sahara area. He said that he had obtained co-operation in the preparation of his thesis from a university in the United States and a number of United Nations officers based in Ethiopia at that time. He said that in May 1990 he submitted two copies of his thesis to the University, and at the same time, because of its high sensitivity, copies had been taken by Canadian officials and other foreign friends of his who assisted in circulating copies of the thesis to the United Nations personnel and other friends of Ethiopia based outside the country. The appellant said that he had been advised at that time by a major western power that if he had any problems he would be given protection.

Soon after lodging his thesis in 1990 the appellant was called to the Office of the Commissioner of Ethiopian Tourism and told that they had heard of his thesis and instructed him to destroy all copies. The appellant replied, correctly, that he did not have any copies personally. He said that he was not immediately demoted to a relief manager because it would have caused embarrassment as, in June 1990 he was to receive a merit award from the Organisation of African Unity (OAU) for successfully handling one of their annual conferences at the Ghion Hotel. Shortly after the award ceremony had taken place, the appellant was demoted. The appellant explained that although his thesis was strongly critical of the Ethiopian government, it did not totally suppress academic studies and a very limited amount of academic freedom was always allowed in Addis Ababa. He said that his thesis was "put on reference" and thus could be obtained with permission of the Director and Chief Librarian.

In May 1991 the DERG Administration collapsed. This followed from the collapse of support from the former USSR. After an international conference in relation to Ethiopia took place in London, with the encouragement of the United States State Department, the TPLF and the EPLF were able to take over power in Ethiopia without any opposition. The appellant explained that the USA and the UK had

been prime instigators in the replacement of the DERG and thus, as promoters of the new regime, he considered that it would have been politically unacceptable for these major powers to have immediately criticised or undermined the new regime.

The appellant said that many Ethiopians welcomed the establishment of the TGE and had high hopes that a democratic future would arise from it. He said that he himself was however very worried because he knew most of the leaders of the TPLF and the EPLF from his long history of being involved at the centre of Ethiopian Politics and "freedom" movements. At first he thought the new government could be given a chance and thus he did not flee the country, even though he had been offered the chance of taking up a scholarship in Canada. The appellant said that with the establishment of the EPLF government in Eritrea and the TGE in Ethiopia at approximately the same time (late May 1991) the demolition of the old DERG regime immediately took place. This not only meant the expulsion of previous Derg administrators but also the dismissal of virtually all of the senior public servants and military personnel. The result of this was that many very able people were dismissed and previous workers and soldiers who had done nothing wrong, were then without work, food or shelter.

In June 1991, all of the various political groupings and parties in Ethiopia, including the EPRP, were invited to a conference to try to agree to a future vision of Ethiopia. The appellant stated however that this conference had been organised, and its agenda drafted, by the EPLF and the TPLF and thus everything was agreed in advance of the conference so that it became a charade. At the time of the conference all the EPRP members and ex supporters, including the appellant, were urged to join the new ethnic organisations in support of the new government and to adopt a charter. The appellant stated that senior Amhara representatives however were not invited to this conference and also were not invited to organise themselves on an ethnic basis.

At this time the appellant said that he was approached by senior members of the new administration including former enemies of his such as TW to become the Senior Director of the Tourism Commission. The appellant said that after a number of meetings and a pretence of affection and trust towards the appellant, the position at the Tourism Commission and a number of other senior positions within the new government were offered to the appellant.

He said that three differing groups of supporters of the new government approached him. All of these were headed by very senior members of the new administration. He said that over a period of some two to three months a number of meetings and discussions took place. The appellant said that he tried to be co-operative with these people but he could not agree to join them or to be seen to become an active participant in the new regime.

He said that in June 1992 an election took place and TW became the Chairman of the new region 14 (the Addis Ababa area) and a number of other former friends of the appellants and also former enemies of the appellant then obtained very senior government positions.

During all of this time, the appellant said that he was unable to work but he continued to be paid by the Tourism Commission. He stated that he finally replied to the offer to become the Deputy Commissioner of Tourism. He refused saying that he did not have the experience or ability in a market driven economy to carry out such work. Other positions that were then offered to him included a position to reorganise the police force. The appellant partially agreed to do this but when he started to work in this area found he could not carry out any effective steps. The third offer that was made to him was to create a new political party to replace the EPRP. The appellant said that he took part in a number of discussions relating to this and organised a conference of ex EPRP members in Addis Ababa. Eventually the appellant said that he could not assist in this task as well as he did not see it correct to give support to a group who had not invited the EPRP to join their official conference.

The appellant explained that if he had accepted the position of the Deputy Commissioner of Tourism he would have been required, as an essential part of that acceptance, to have joined the EPDM (a puppet organisation of the TPLF). The appellant said that he could not bring himself in good conscience to undertake this role. He explained that one of the examples of the area where he had given co-operation to the new government leaders had been when he, at their invitation, provided the names of a number of prominent people who he considered could fill positions in the new tourism department. The appellant said that he provided 17 appropriate names on a list set out in order of merit. He explained that these were all people who had clean records and who should have been appointed on merit. From this list the 17th member, who was Tigrean, was actually appointed as the new Commissioner. The 16th who was from Oromo and an OPL member was

appointed as Deputy but only remained for one year. All of the rest were not found suitable as they were all Amharic.

After this lengthy period of frustration with the new government the appellant decided that it would be better for him to leave Ethiopia so he put in train steps to go to the Canadian university where he had been offered a scholarship. The first time he applied for leave from the hotel, management refused. The appellant therefore had to defer his proposed scholarship as he was unable to leave the country.

The appellant then asked the General Manager of the hotel to appoint him as a provincial district as a manager. After considerable discussion and urging by the appellant the General Manger replied stating that the appellant should go to Wollo as a relief manager for two months. Before the appellant was able to leave Addis Ababa, a letter came from the Prime Minister's office stating that the appellant was required to work on an important task at the Prime Minister's office giving names to a specially set up committee. For this reason the decision to send him to Wollo was reversed. The appellant produced a copy of a very effusive letter from the Prime Minister's office explaining that it was necessary for him to remain in Addis Ababa. From that time on the appellant was unable to leave Addis Ababa and was virtually detained in the area of his home and the hotel. He was forced to make himself available even though he could not work.

The appellant said that towards the end of 1991 a number of Amharic people formed the AAPO. The group quickly obtained a wide level of support throughout Ethiopia. The appellant explained that he himself was actually against the principles and objectives of the AAPO as he considered it was an ethnically based organisation and he was opposed to this as he believed strongly in a multi-ethnic, diverse, united Ethiopia. As a result of the establishment of the AAPO, the TGE set up their own opposition group of puppet Amhara leaders. The appellant explained that since that time the leaders of the AAPO have been arrested and the AAPO president after being detained for a lengthy period was finally sentenced to two years jail in July 1994. The appellant also explained that even at a conference of the EPDM (the puppet Amhara organisation) several leading Amhaic figures protested against the TGE and the TPLF and since then a number of these people have also been arrested.

Over time the appellant found the regime becoming more and more repressive and dictatorial. They were seeking to split up the country into a number of small self governed ethnic groups dominated by the TPLF. He said these repressive activities included the massacre of students, the closing of the university, torturing and killing of a number of former supporters of the regime and the firing and suspension of many workers who had been replaced by Tigreans and Eritreans. In particular he noted the expulsion of 42 well-experienced professors from the University of Addis Ababa (the majority of whom were Amharic)

The final straw arose for the appellant when in April 1993, a week before a proposed Eritrean referendum, the appellant was called to the office of DY, a person who had been associated with the appellant over many years, and now a member of the EPRDF and a Foreign Relations Minister. DY instructed the appellant to go to the referendum in Eritrea in support of the government line. The appellant said that he openly tried to explain his refusal to go to Asmara in Eritrea as he considered it was completely beyond his beliefs and conviction and that he was against the referendum in principle. After trying to persuade the appellant, DY closed the discussion stating that "we have been dealing with the wrong person, so we will be forced to correct ourselves soon." The appellant considered this was a strong warning and that he would soon be liquidated or disposed of if he did not act swiftly. He explained that whatever he stated or tried to explain to the members of the TGE and their supporters, he was not regarded as credible in their eyes. He said that they considered he was either a member of the EPRP, the AAPO, or the COEDF, none of which he was actually a member.

Immediately after the referendum took place in Eritrea, the appellant prepared a 21 page document in which he severely criticised the current government and its activities. He said that he mailed copies of this document to eight different publications in Ethiopia and also to the Prime Minister of the TGE, Minister of Internal Affairs, President of State 3, TW (now President of Region 14), DY and to the Head of Ethiopian Television. At this time he said he could no longer stay in Ethiopia and decided to leave the country. He said he was able to obtain a passport in February 1993 and a false exist visa and then on 23 May 1993 was able to leave Ethiopia through the international airport travelling to India and then on to New Zealand.

Since the appellant has been in New Zealand, his sponsors have made contact with various members of his family and have been advised that there has been

continuing interest in the appellant and his family which resulted in the imprisonment of his brother and brother-in-law on 27 May 1993. Also on 10 September 1993, a search of the appellant's home was conducted by the Authorities. The appellant summarised his current position stating that he had a great fear of returning to his "beloved country" while the TPLF/EPLF lead the government that is in power. He considers that if he returns he will be arrested, tortured and killed, because of the following reasons:

1. He left Ethiopia illegally.
2. Because of his political affiliations in the past with the EPRP and the COEDF and also the strong views he has in the manner which he considers Ethiopian politics should be developed.
3. Because of his religion as a Coptic Christian.
4. Because of his nationality and ethnic identity as a member of a leading Amharic family. He stated that although his nationality, ethnic and religious background would not be a problem if he bowed to the demands of the TPLF he could not do so as he was diametrically opposed to their ideas and philosophy. He states that he cannot agree to ethnically based politics in Ethiopia.
5. Since 1991 he stated that he had been kept confined by orders of the Prime Minister's office and therefore, was under conspicuous control by the regime.
6. He said that he had been instructed to prepare himself to attend a meeting at the offices of the President of Region 14 on May 24 1993 and because he had left the country he had not attended. He said that this would be a great blow to the personal esteem of TW and his party. He considers that as a direct result of this his family had been jailed and humiliated for matters that they were not in anyway connected or related to.
7. Because the appellant had declined to go to the Eritrean referendum DY had warned him stating that he was no longer a friend and that they would be forced to correct him.

8. Because the article that he had published just before he had left had now been printed in the Aemiro in August 1993. As a result of this three of the editors of the magazine had been arrested. In a follow up incident to the publication by the appellant another writer (in Germany) had attacked the government in similar terms and as a result of this the Editor and Chief of his magazine had also been jailed.
9. The appellant would never be employed in any form while the TPLF/EPRDF lead the government and are in power.

THE ISSUES

In order to be considered as a refugee it is necessary for the appellant to fall within the definition of a refugee contained in Article 1A(2) in the United Nations Refugee Convention and the Protocol thereto. At Article 1A(2) a refugee is defined as:

"Any person who owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside his country of origin and is unable or owing to such fear, is unwilling to avail himself of the protection of that country."

In this case the Authority identifies the issues before us as:

1. Is the appellant genuinely in fear?
2. If so, is it a fear of persecution?
3. If so, is that fear well-founded?
4. If so, is the persecution the appellant fears based on one or more of the Convention reasons.

ASSESSMENT OF THE APPELLANT'S CASE

The first issue involves examination of the credibility of the appellant and his account to us which he states justifies his fear. After considering all of the copious evidence presented by the appellant and his Counsel and interviewing and

observing the appellant during a full day hearing the Authority reached the conclusion that the appellant's account was consistent and incontrovertible. The Authority could not in any way fault the appellant's claim. In the absence of egregious omissions and exaggerations we were totally satisfied with the appellant's credibility. The Authority did not agree with the conclusions reached by the RSS in relation to the appellant's credibility in respect of his passport and also a number of conclusions drawn by the RSS, based upon their interpretation and assessment of the appellant's activities and actions over the past 25 years. In our view the appellant is a highly intelligent, well-educated Ethiopian patriot with an intensely deep affection and dedication to his country and the desire to see it go forward as a democratic country incorporating all of the ethnic groups and religions within both Ethiopia and Eritrea.

The appellant is clearly descended from the Amharic elite. His sense of patriotism and devotion to his country was evident in everything he presented to us. Because he is in position where he is sincerely opposed to the regime now in power in Ethiopia we consider he has a genuine subjective fear of persecution should he return.

The second issue involves the question of whether what is feared by the appellant amounts to persecution.

The harm that this appellant fears is of imprisonment, torture and death at the hands of the Ethiopian authorities now controlled by the TGE, many of these people are former enemies of his and many of whom now hold extremely senior positions in Ethiopia. We find the harm feared by him is at the level of persecution within the terms of the Convention.

Addressing the third issue of well-foundedness; the Authority considers that this appellant's fear is well-founded and that there is a real chance that he would be persecuted if he were to return to Ethiopia. The Authority considers that there is considerable objective information indicating that opponents of the TGE are at risk of being persecuted in Ethiopia. The most recent United States, Department of State Report for the year 1993, which was not available to the RSS, states:

"In contrast to the Mengistu years, the human rights situation in Ethiopia has improved. The TGE's action did not match, however, its announced respect for human rights. In the face of opposition, it showed increasing intolerance of political dissent. Following the departure of the OLF in 1992, the TGE expelled in 1993 four non-EPRDF Parties from the Council of Representatives. Opposition political parties

made credible allegations that they had been intimidated by the Authorities, for example by having their offices closed and their staff(s) harassed. Further, the TGE circumvented the 1992 press law by invoking the criminal code to harass and intimidate the independent press; interfered with peaceful assembly; detained briefly officials of the Ethiopian Human Rights Counsel (EHRC); and infringed academic freedom with the firing of 42 University Professors."

Under the heading "Disappearances" the report states:

"An Ethiopian Human Rights Organisation alleges that dozens of people arrested when the TGE took power are still unaccounted for. According to the TGE, these arrestees were included amongst the thousands of war prisoners taken by the EPRDF, most of whom were released after rehabilitation."

Under the heading of "Respect for Civil Liberties" the report states:

"The Authorities from region 14 (Addis Ababa) withheld permission for the Amhara People's Organisation (AAPO) to demonstrate in Meskal Square in July on the grounds that such a rally would interfere with traffic and another scheduled demonstration The AAPO rejected as unsatisfactory the alternative sites proposed by regional authorities, including the nearby stadium, and ultimately decided not to hold the demonstration.

In December local authorities in Region 14 issued a permit for an opposition - sponsored gathering called the "Peace and Reconciliation Conference" to meet at the government owned Ghion Hotel in Addis Ababa. About 165 people assembled for the Conference whose conclusions and press conferences presented criticisms of the TGE. Eight Conference attendees or supporters were arrested by TGE officials after arriving at Addis Ababa from abroad. The arrestees were charged with supporting violence against the Ethiopian Government, based on their status as leaders of groups allegedly advocating or participating in political violence. The TGE soon released three arrestees, two of whom had issued personal statements disavowing violence: five arrestees are still detained at the YEAR's end."

"Opposition political groups have encountered many difficulties including fear of government intimidation, in propagating their policies anywhere in Ethiopia, especially in the countryside where 85 percent of the population lives. While much of this fear stems from June 1992 elections, which were marked by irregularities, harassment, intimidation, and political assassination by both government and opposition parties."

The Authority also agrees with the comments made by the appellant that the contents of the Department of State Report may not fairly reflect the real situation in Ethiopia. The Authority agrees that the United States of America and the United Kingdom were supporters of the establishment of the TGE and thus they are only slowly and reluctantly accepting that the government, which they helped to sponsor, has not acted in a democratic manner and is not respecting human rights.

Other publications considered by the Authority to support its objective assessment included:

1. The "Ethiopian Review" of September 1992 which stated that while a Charter had been put in place to guarantee human rights "no machinery was put in place to ensure that a right that was recognised in the Charter would not be taken away in practice."
2. A publication of Ethiopian Human Rights Council of January 1994 in which a list of journalists, who have been detained in prison, is set out. This list includes journalists from the periodical which published the appellant's article which was critical of the government and which he wrote in May 1993 just before leaving Ethiopia.
3. A letter, dated 8 March 1994, from the British High Commissioner, now based in N, which states that he was based in Ethiopia and knew the appellant well. This letter, provided spontaneously, states (inter alia);

"Mr N is from a very respectable Ethiopian family, whom he loves dearly and he also loves his country very much. It was therefore a great wrench when he had to flee for his life. He was an officer in the service of the late Emperor Haile Salaisse. Subsequently he had to live by his wits to survive in the troubled days which followed and still continue; you will have the details. By obtaining, a false passport to escape, after tricking the regime into setting him free thinking he would co-operate and add some respectability to some of their operations, he had dammed himself while the present Government remains in power. I do not know the consequences he faces in a non democratic country where life is so cheap they would obviously be severe. It might not be an exaggeration to suggest deportation to Ethiopia could be a death sentence. You could presumably check on the likely penalties through diplomatic channels and I would strongly recommend you do so prior to even considering deportation. He would certainly not be allowed to go and live in the Wollo Province as the interviewing officer suggested."

4. A quote from the "Guardian Weekly" of 10 July 1994 which states that:

the EPRDF obtained victory in the country's first national elections by securing 484 of the 547 seats in a constitute assembly "that will approve a charter for a decentralised democracy based on voluntary association of ethnic states:

"Despite appeals from aid donors and Ethiopia's friends in the West, the country's main opposition groups boycotted the elections alleging harassment and saying that the EPRDF's ethnic project could result in 'balkanisation'"

5. A report contained in the publication "Africa Confidential" (1 July 1994) which states that:

"Professor AW, Chairman of the AAPO, former Dean, University Medical Faculty, one of those dismissed from the University in April 1993 was on 27 June sentenced to two years jail for incitement against the Government."

In this regard, the Authority notes the imputed political opinions held by the TGE that the appellant is a supporter of the AAPO.

6. A copy of a letter dated 22 January 1994 from the AAPO signed by the President AW (now in jail) addressed to the former President of the United States Jimmy Carter which highlights the situation relating to senior members of the AAPO and the Amharic ethnic group. The letter states:

"For the last one year the onslaught by the TGE on the AAPO has been intensified with all the available means at its disposal; the exclusive abuse of public media, administrative difficulties, pretentious legal charges and using financial means to dismantle the organisation to element all active members of the AAPO for the purpose of disillusion of the AAPO as it stands today. For the purpose of elucidation some of the occurrences are highlighted below:

The Amhara ethnic group, who form the largest ethnic group in the nation have not been given a single seat in the Council of Representatives and the Amhara themselves have never complained.

The country has been divided on ethnically based regions, every such region was made to have a head of that region except for the Amhara region which was given an Eritrean head and key post in the region have been occupied by Tigreyans and Eritreans.

Amharas have been removed from all Government posts and replaced by Eritreans and Tigreyans. When top University teachers, forty three of them, were dismissed without obligations 95% of these were Amharas. The reason that was given for the dismissal of these top academics was said to be to approve the efficiency of the University. The reason for the dismissal for the top Amhara bureaucrats, were said to be to improve the efficiency as per the line of structural adjustment of the world bank in the IMF. But, the true reason is ethnic cleansing.

All attempts to open branches of the AAPO in various towns have been frustrated by various harassment and live threatening actions used by the TGE against anyone who associates with the AAPO.

Any one in the rural area that is found with programmes of AAPO may receive punishments from beatings, imprisonment to death.

AAPO is banned from the use of public media."

Turning to issue 4 we consider that the appellant's fear is based upon his genuine political beliefs, and the political beliefs imputed to him by the current regime in Ethiopia. Not only do they consider him as an individual who is opposed to the regime and who has articulated that in his thesis and the article he published in May 1993, but also they have imputed to him association with the AAPO, COEDF, and the EPRP.

On the issue of possible relocation with Ethiopia addressed by the RSS, we refer to the two-fold test used by the Authority to evaluate the relocation option that is referred to in Refugee Appeal No. 11/91 re S (5 September 1991) and in Professor J Hathaway's The Law of Refugee Status (p 134):

- "1. Can the individual genuinely access domestic protection which is meaningful?
and
2. Is it reasonable in all the circumstances, to expect the individual to relocate?"

In this case both of those questions must be answered in the negative given the credible accounting given by the appellant.

The Authority considers that the assumption made by the RSS that the appellant could possibly relocate to his homeland of Wollo quite simply specious. This appellant is a person with high profile in Ethiopia. The possibility he would be apprehended on arrival at any airport in Ethiopia we consider is a real one and thus there is a real chance he would come to the attention of authorities immediately upon his arrival in Ethiopia. Beyond this, because of the appellant's high profile and that the fact that he comes from one of the most recognised Amhara families in Ethiopia means that there is also a real chance he may be detained and persecuted should he relocate to any part of Ethiopia apart from Addis Ababa. Beyond this members of the appellant's family have been arrested and detained not only in Addis Ababa but also in their home town Wollo while the appellant has been in New Zealand.

The Authority considers that it is totally unrealistic to assume that the appellant could "immerse himself in the Amhara populace, in Wollo region interest in him held by those in the EPRDF in Addis Ababa would fade."

CONCLUSION

By way of summary our conclusions are follows:

1. The appellant holds a genuine subjective fear of persecution.
2. That fear is at a level of persecution within the terms of the Convention.
3. The appellant's fear is well-founded. We consider there is a real chance the appellant could suffer persecution if he returned to Ethiopia. We consider that any consideration of possible relocation of the appellant to other parts of Ethiopia away from Addis Ababa is completely unrealistic in the circumstances.
4. The harm feared by the appellant is for the inter-related Convention reasons of political beliefs imputed to him by the current regime in Ethiopia and the appellant's ethnic or racial background.

For these reasons therefore we find the appellant is a refugee within the meaning of Article 1A(2) of the Convention. The appeal is successful. Refugee status is granted.

.....
Chairman