

**DECISION RECORD**

**RRT CASE NUMBER:** 0905227

**DIAC REFERENCE(S):** ABD2006/88811 ABD2008/233084  
CLF2009/41352

**COUNTRY OF REFERENCE:** Ethiopia

**TRIBUNAL MEMBER:** Mary Urquhart

**DATE:** 8 September 2009

**PLACE OF DECISION:** Melbourne

**DECISION:** The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

**STATEMENT OF DECISION AND REASONS**

**APPLICATION FOR REVIEW**

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Ethiopia arrived in Australia [in] February 2009 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] April 2009. The delegate decided to refuse to grant the visa [in] June 2009 and notified the applicant of the decision and her review rights by letter dated [in] June 2009.

3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal [in] July 2009 for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

## **RELEVANT LAW**

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

### **Definition of 'refugee'**

9. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve "serious harm" to the applicant (s.91R(1)(b)), and systematic and

discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.

14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.
18. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

## **CLAIMS AND EVIDENCE**

19. The Tribunal has before it the Department’s file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate’s decision, and other material available to it from a range of sources.

20. The applicant appeared before the Tribunal [in] August 2009 and [in] August 2009 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Amharic and English languages.
21. The applicant was represented in relation to the review by her registered migration agent.
22. The protection visa application was accompanied by the following, statutory declaration dated [in] April 2009 setting out the applicant's background and protection claims as follows:

*"I am a 54 year old Ethiopian national of the Oromo ethnic group and a Muslim. I am a member of the Ethiopian opposition party, Kinijit (also known as the Unity for Democracy and Justice Party, "UDJ"). I am making this Statutory Declaration in support of my application for a Protection Visa because I fear that if I am forced to return to Ethiopia I will be persecuted because of my political activities and beliefs. I have been resident in Saudi Arabia for the past 22 years, working as a maid. During this time I have suffered continual physical and sexual abuse at the hands of my employers. I fear that if I am forced to return to Saudi Arabia I will continue to be subjected to this treatment because I am a foreigner and a single woman.*

*I was born in [year] in Addis Ababa in Ethiopia. I grew up in Addis Ababa with my father, [name], and mother, [name], and my five younger brothers, [Person 1], [Person 2], [Person 3], [Person 4] and [Person 5] and two younger sisters, [Person 6] and [Person 7]. My father was a business man and my mother was at home looking after my siblings and me. Growing up in Ethiopia at this time, life was peaceful.*

*Two of my brothers, [Person 1] and [Person 2], died when they were very young. I am not sure how they died.*

*I studied for about six years at [school] I cannot remember how old I was when I was studying or the year that I started. It was a long time ago.*

*In about 1980 or 1981 my parents arranged for me to be married. I married [name]. After we married I went to live with him and his family.*

*On [date] we had a daughter, [Child A].*

*In about 1983 or 1984 my husband and I divorced. This was mainly because there were many disagreements between me and him and my parents in law. I went back to live with my father and mother and [Child A] came with me.*

*In about 1986 or 1987 I decided I needed to change my life and make a new start. I spoke with my father and through his business contacts he helped me to find employment in Saudi Arabia. [Child A] went to live with her father. I moved to Saudi Arabia to work.*

*I arrived in Saudi Arabia and was met at the airport and taken to my employer's home. I was to work as a maid. The name of my first employer in Saudi Arabia was [Employer 1]. [Employer 1] was a very wealthy man, he was married, and when I started my employment he had five children. Over the course of my employment he and his wife had four more children. I lived with [Employer 1] and his family in Jeddah. I worked as their maid, cleaner*

*and cook. I was responsible for all the cleaning, cooking and maintenance in the house. I was also responsible for caring for the children, dressing them, and making sure they were ready for school in the morning. I was never able to rest or take a break. I did not have a set bedtime, I could only sleep once I had completed all the housework and cooking. Usually I was only able to sleep for four hours at night. I was supposed to be paid 1000 rials each month. However, I did not always receive my pay.*

*The work was not what I had expected. In addition to the non-stop work I had to do, I was physically and verbally abused by [Employer 1], his wife and their children. Often [Employer 1's] wife would encourage the children to abuse me and hit me. I did not have a room of my own, I slept in the hallway or on the floor of the children's room.*

*About two or three months after I began working for [Employer 1], he forced me to have sex with him. He warned me that I should not tell anyone or he will report me to the police for adultery or I would be forced to leave Saudi Arabia. In Saudi Arabia the penalty for adultery is death.*

*The first time this happened I was very scared and sad. I thought about going home to Ethiopia. I was confused and did not know what to do. I was all alone in a foreign country with no one to talk to. [Employer 1] continued to force me to have sex with him whenever his wife was not around. Shortly after [Employer 1] started raping me I discovered I was pregnant. I was devastated. Sometime after I told [Employer 1] and he told me to have an abortion. I did not know where to go to have an abortion and by this time I was already a few months pregnant and it was too late.*

*I decided to return to Ethiopia to have my baby. Before I left Saudi Arabia I arranged for a new employer with the assistance of [Employer 1's] wife. I knew I could not continue to work for [Employer 1]. I did not tell his wife why I was leaving.*

*It was about 1988 or 1989. I did not tell my family about my return to Ethiopia. I could not tell them about what had happened to me, I did not want to bring shame on my family. I stayed at the house of one of my friends. I gave birth to a daughter and called her [Child B].. I gave her my father's name, rather than the name of her father. I stayed with [Child B] at my friend's house for about three or four months. I then had to return to Saudi Arabia. I left [Child B] with my friend. I had already been sending money to my family and to [Child A] and now I had another daughter to support. I felt I had no choice but to return to Saudi Arabia and continue working.*

*Over the coming years I regularly visited Ethiopia. Probably about once every year. Each time I travelled back to Ethiopia I would visit [Child B] [Child B] has grown up knowing that I am her mother. I always felt incredibly sad that I was not caring for her and watching her grow up. I felt very depressed about the way my life had turned out. I had two small daughters and I was not able to care for either of them or watch them grow. I have never told my daughter [Child A] that she has a sister. I could not bear to at the time, and it is so painful to talk about now.*

*It was about 1990 when I returned to Saudi Arabia. I hoped that my life would be different because I would be working for a different employer. After I arrived back in Saudi Arabia I visited [Employer B's] house. I wanted to tell him about [Child B] and hoped that he might*

*take pity on me and give me some support. When I arrived at his house I found the family had moved.*

*My new employer was called [Employer 2]. Once again he was a very wealthy married man, he had seven children.*

*The work I was required to do was the same as it had been for [Employer 1]. I was a slave. I received a small allowance, about 1000 rials each month. But they did not always pay me.*

*Once again, shortly after I began working for [Employer 2] he began forcing me to have sex with him. This happened constantly, he took every opportunity when his wife was not around. [Employer 2] threatened me, just as [Employer 1] had. This terrified me. In Saudi Arabia people were often sentenced to death when they had been convicted of adultery. I had no one I could turn to for help or support. I felt trapped. I had to continue to work to support my daughters.*

*I became pregnant again. I did not want to have another child in this way. This time, because I had been in Saudi Arabia longer I had a few acquaintances, I asked for their help. I arranged to have an abortion. I asked my employer if I could have a day off work and he agreed. I did not tell him I was pregnant. I felt I had no choice but to do this. I was incredibly sad and depressed.*

*Life continued on the same. I continued to work, like a slave for [Employer 2] and his family. All the time suffering constant physical, sexual and verbal abuse. About a year after my first abortion I was pregnant again because of [Employer 2's] rape. I had no option but to have another abortion. Sometime after this I became pregnant again and had another abortion. I felt empty, that my life was worthless. I was trapped in this world with no escape. I worked for [Employer 2] for about five years.*

*In about 1995 I left my employment with [Employer 2]. Over the course of the next nine or ten years I worked for various different employers in Jeddah. I do not remember their names. Each time I began working at a new house I had hope that things would be different. I did not think each family would be the same. But they were. I suffered terribly. The work I was forced to undertake was back breaking. I was barely able to sleep and I had little or no free time. I was not always paid my salary. I had to continue working to support my daughters.*

*During this time I continued to suffer constant sexual abuse at the hands of my male employers, and this time, from their teenage sons also. I was nothing to them. I felt as though I had no value as a human being.*

*In about 1997 my father in Ethiopia passed away. This left me as the only breadwinner in my family. My other siblings were not employed, or too young to work. I had to continue to work to support my mother and younger siblings.*

*In about 1998 my mother also passed away. As the eldest child I now had full responsibility for my younger siblings.*

*In 1998 [Child A]'s father sponsored her to come to Australia. He had been living in Australia for about five years. I agreed that [Child A] could travel to Australia to live with her father because I thought she would have the opportunity for a better life in Australia.*

*In about 1998 or 1999 I began to support my siblings' in their political activities with the opposition political parties. As stated above I regularly travelled back to Ethiopia to see my family and [Child B] The opposition parties promoted free speech and democracy in Ethiopia. The opposition also promoted "one Ethiopia", this meant that there should not be division between people because of their ethnic group. Their ideals appealed to me. The government of Ethiopia was corrupt and people were not free. I felt strongly that the Ethiopian people should be able to express themselves and to have the right to choose their government without intimidation or violence. As I regularly travelled back to Ethiopia to see my family I became more and more involved with the opposition parties. Initially I provided financial assistance to the party. However I soon began to assist with the writing and distribution of pamphlets. I attended political meetings and rallies. My siblings were living in a house that I had purchased and they would prepare pamphlets in the house and meet with other opposition supporters.*

*In about 2004 I began working for [Employer 3] in Saudi Arabia I can remember his name because I gave my daughter [Child A] his business card when she was arranging for my visa to come to Australia. He was the last employer I had in Saudi Arabia. In spite of my hopes that working for [Employer 3] would be different. It was not. Life continued to be the same. [Employer 3] would regularly rape me when his wife was not around. He and his wife had five children, four boys and one girl. The eldest two boys, who were about 18 and 19, would also rape me. Just as my previous employers had done, they threatened me, they said that if I told anyone about their treatment of me they would have me deported or they would tell the police I had committed adultery. I had to continue working to support my family, so I stayed silent.*

*In 2005 elections were held in Ethiopia. Shortly before the elections were held some of the opposition parities in Ethiopia came together and formed the Coalition for Unity and Democracy ("CUD"). My brothers protested in support of the CUD and against the government of Ethiopia. While attending one protest two of my brothers, [Person 3] and [Person 4], were arrested.*

*In 2006 my daughter [Child A] arranged for me to visit her in Australia I was able to obtain a Sponsored Family Visitor visa so that I could visit her and help her with her children. I had not seen her since she left Ethiopia in 1998.*

*On [date] December 2006 I arrived in Australia. I stayed with [Child A] and her family. While I was in Australia I was distracted and worried about my brothers who were still in detention in Ethiopia Although we knew they were alive, I was sure they were suffering terribly in jail in Ethiopia. I did not tell [Child A] what my life was like in Saudi Arabia. She had two young children. Her second child had been born only 20 days before I arrived in Australia. I felt very shameful about what had happened and I felt I could not tell her.*

*On [date] May 2007 I departed Australia I did not stay for the full duration of my visa because I was incredibly worried about my brothers in jail in Ethiopia. I returned to Saudi Arabia after I had been in Australia and went back to my employer.*

*In September 2007 Ethiopia celebrated the Millennium. In the Ethiopian calendar this was the year 2000. The ruling party, the Ethiopian People's Revolutionary Democratic Front ("EPRDF"), allowed the release of political prisoners as a good will gesture for the*

*Millennium. My brothers [Person 3] and [Person 4] were released. I spoke to them on the telephone after they were released and they told me they had been tortured while imprisoned. They sounded different, they were not the same lively brothers I had known. I felt very sad.*

*In about 2007 or 2008 the CUD split into two parties, the CUD and the UDJ (also known as Kinijit). My siblings and I followed the UDJ and I became member. Birtukan Mideksa, who was the deputy leader of the CUD, became the leader of the UDJ. Mideksa appealed to me as a leader. She was a strong woman and had always fought for democracy, human rights and free speech in Ethiopia.*

*In about November 2008 I travelled to Ethiopia. This was the first time I had seen my family since my brothers [Person 3] and [Person 4] had been released from prison. They showed me the scars on their bodies from the torture they had to withstand. Their imprisonment and the treatment they had received made them more determined than ever to fight against the government of Ethiopia and to continue struggling for democracy and free speech. I supported them in every way. I felt very angry towards the government for treating my brothers' this way.*

*In December 2008 I attended a rally in support of the UDJ (Kinijit) and the CUD with my siblings. The government troops descended on the rally and many people were killed, injured and detained. My brother [Person 3] was shot and killed by the government troops right in front of me. I was arrested along with my other brothers [Person 4]. I do not know what happened to my other brother [Person 5], or my sisters [Person 6] and [Person 7] In the chaos we became separated.*

*I was held in detention until about [date] or [date] January 2009. I was very sick in prison, I have diabetes and I was suffering a lot. The conditions were disgusting and we were treated very badly. Because I was so sick I managed to arrange to bribe one of the officials so that I could escape from the prison. I believe I was only able to do this because I was very sick and an older woman.*

*The day I was released I returned to my house. No one was home. I did not know where my brother and sisters had fled to. I have not been able to contact them since this time. I travelled immediately to the airport and left for Saudi Arabia. I was scared and distressed. I had to get out of Ethiopia. The only place I could go at this time was back to Saudi Arabia. I paid bribes at the airport so that I could leave Ethiopia.*

*When I arrived back in Saudi Arabia I spoke with my daughter [Child A] She had lodged an application for a Sponsored Family Visitor visa for me in the middle of 2008. The visa had been granted while I was in Ethiopia and she arranged for me to travel to Australia.*

*On [date] February 2009 I arrived in Melbourne, Australia to be with my daughter [Child A] I was still very distressed and felt traumatised by what I had experienced and the death of my brother [Person 3] [Person 3] had been married and had one child. His wife has now been left a widow and his child without a father. I was relieved to be in Australia, because I knew that while I was with my daughter I would be safe. I knew that while I stayed in Australia I could not be harmed by my Saudi employers and I would not be at risk of arrest by the Ethiopian government.*

*I told [Child A] about the arrest in Ethiopia and what had happened to [Person 3]. I also told her about what my life had been like in Saudi Arabia and the rape and abuse I had suffered over the past 22 years. I did not tell her about [Child B]. I still feel sad and ashamed about this and I do not know how to tell [Child A].*

*I can never return to Ethiopia. My life is at risk. If I am forced to return to Ethiopia I will be arrested again. There is no freedom in Ethiopia and if you are a supporter of the opposition you will never be safe. My family and I are well known as supporters of the UDJ (Kinijit) and we are not safe. I am also fearful that if I return to Ethiopia and it is discovered that I had a daughter my family will disown me. I do not think I will be able to handle the rejection and the shame. I fear I will not be accepted by my family and by society because of this.*

*I cannot return to Saudi Arabia. I cannot live permanently in Saudi Arabia as a non-Arab. My only option is to be sponsored by an employer. I have suffered 22 years of sexual, physical and verbal abuse in Saudi Arabia. As a woman and as a foreigner I have no rights in Saudi Arabia and no one to protect me.*

*My only hope for a safe, secure life, free from violence and slavery is to remain in Australia. It is for the reasons outlined above that I fear return to Ethiopia, and to Saudi Arabia, and that I have no option to live in any other country. It is for these reasons that I am now seeking protection in Australia.*

23. [In] May 2009 the applicant submitted a further statutory declaration in which she sought to clarify her statement. She declared that she is a supporter of Kinijit (aka the unity for democracy and Justice Party “UDJ”) contrary to her earlier declaration of 1 April 2009 where she had said she was a member of Kinijit. She claimed to be “an extremely active, strong supporter of Kinijit”.
24. The applicant was interviewed [in] June 2009 and gave the following information:

She has two sisters and two brothers in Ethiopia, whose whereabouts are unknown. She last had contact with her daughter, [Child B], during her last visit to Ethiopia. [Child B] is now 20 years of age and is engaged to be married. She is registered as [Child B]'s mother but does not have her birth certificate in Australia.

She advised that she was generally able to spend 1 to 2 months in Ethiopia when she visited. The longer periods of time were when her employers were on holiday. She advised that her residence in Saudi Arabia is dependent on her employment. She has a 2 year visa to work there which has one more year to go before it expires. Her resident status card is retained by her employer. She advised that she continues to face sexual abuse by her employers in Saudi Arabia.

She stated that she is not a member of any political party but is a supporter of the Kinijit. She stated that prior to the demonstration in December her political activities had involved collecting money for the party by telephoning people she knew during her visits to Ethiopia to elicit donations. She also paid for the house in which her siblings live where they produce printed material for the party. She stated that she distributed pamphlets during the December demonstration but had not previously distributed pamphlets.

In relation to the demonstration she stated that it took place between the Palace and Collobe. She does not recall the day or the date but states it was 3 days after the arrest of the party's leader, Birtukan Mideksa. She states that it was a large demonstration and that they were marching to where Mideksa was imprisoned in Farancai La Gacion. She stated that it was broken up by the government and many people were arrested, killed or wounded. She and her brother were captured and taken to prison, some 5-6 hours drive away. Another brother was killed and she does not know what became of her sisters. She stated that in prison they were held under very crowded conditions and were raped and tortured. She stated that she was held for approximately 1 week until her aunt's husband arranged for her release which he was able to do through payment of a bribe and because she was ill with diabetes and did not have her medication. She stated that the prison guard who took the bribe put her in a vehicle and drove her back to Addis Ababa. She stated that her aunt's husband also arranged to bribe an airport official to enable her to leave the country.

25. The applicant was advised by the delegate that no information was available regarding a demonstration in December 2008 in Addis Ababa. She was also advised that the nature of the political activities she had detailed at interview, combined with her short visits to Ethiopia over the last 22 years, did not suggest she would have come to the attention of the government in Ethiopia. The applicant undertook to provide internet evidence of the demonstration.
26. The delegate received a further submission from the applicant's representative [in] June 2009 which outlines the treatment of active political opponents of the government and details a legal march held in April 2009 to protest Ms Mideksa's detention. No evidence was submitted of any demonstration in December 2008.
27. The delegate in essence accepted that the applicant is a supporter of the Ethiopian opposition party, Kinijit led by Birtukan Mideksa. The applicant advised at interview and in a supplementary statutory declaration that she is not a party member and that her political activities prior to the claimed December 2008 demonstrations amounted to telephoning people she knew when she was visiting Ethiopia to elicit donations for the party. The delegate formed the view that this is not open political activism and would not bring the applicant to the attention of the government in Ethiopia.
28. The delegate noted that the applicant was employed in Saudi Arabia for the last 22 years and only spent short periods of time in Ethiopia. The delegate formed a view that the limited stays in Ethiopia would limit not only the applicant's political activities but also the political profile she is likely to have in Ethiopia. The delegate did not accept that any political activity on the part of her siblings would impute her with a similar political profile given the very short periods of time she has spent in Ethiopia in the last 22 years.
29. In relation to the applicant's claims regarding her daughter [Child B], the delegate noted that [Child B] is now 20 years of age and still living with the applicant's friend who raised her. The applicant stated at interview that she will not disclose [Child B]'s existence to any of her family in Ethiopia. As this is the case, there is no reason to believe that her family in Ethiopia will come to know of [Child B]. In the event that this should happen, the applicant has [Child B] and her friend in Ethiopia, in addition to material resources such as the home she has been able to buy. The delegate formed the view that even in these circumstances the applicant would not be without support in Ethiopia.

30. The delegate noted that having examined the applicant's personal circumstances and her supporting statement and information provided at interview, as well as the country information listed in Part 5 of this decision record, the delegate was not satisfied as to the applicant's credibility. The delegate did not consider it plausible that the applicant has a real chance of facing persecutory treatment as a result of her claims should she return to Ethiopia now or within the reasonably foreseeable future. It was the delegate's view that the applicant can safely return to Ethiopia should she decide not to continue working in Saudi Arabia where she claims to have been sexually abused.
31. The delegate noted that the applicant was given time to submit evidence of a claimed demonstration in December 2008 during which she claims she was arrested. The delegate formed a view that a large illegal public demonstration in Addis Ababa such as that claimed by the applicant would be reported by organisations such as Amnesty International. The delegate did not therefore accept the applicant's claims that she was arrested during such demonstration, tortured, raped, mistreated in detention and released upon payment of a bribe. The delegate did not accept that the applicant has an anti government profile and found that this cast doubts on her credibility.
32. The delegate concluded that the applicant is not a person to whom Australia has protection obligations. The application was refused [in] June 2009.

### **Review Application**

33. At the commencement of the review hearing the applicant's representative told the Tribunal that the applicant had divulged particular events of her past to her daughter [Child A]. Her daughter was now aware of her half sister [Child B], born as the result of the sexual abuse perpetrated on the applicant.
34. The review applicant stated her name and gave her date of birth as [date deleted: s.431(2)]. She said she was born in Addis Ababa. She produced her passport issued at Jeddah Ethiopia Consulate [in] March 2002. She has been domiciled in Saudi Arabia. The review applicant confirmed that she was from the Oromo ethnic group and was a Muslim
35. The applicant told the Tribunal that she was divorced with two daughters; one daughter, [Child A], born [year] and a second daughter, [Child B] who lives in Ethiopia. It was her evidence that her daughter [Child A] now lives in Australia with her son-in-law and three grandchildren. As well, her daughter has half sisters and half brothers that belong to her father's family. The applicant told the Tribunal that her former husband had remarried and lives in Australia.
36. The applicant states she has two sisters and two brothers' still living in Ethiopia. The applicant had six years of schooling when she was young, made up of two schools – the first a school known as [education provider deleted: s.431(2)].
37. It was the applicant's evidence that she was last in Ethiopia eight months ago and that she stayed for two months. She had gone there from Saudi. She told the Tribunal that she arrived in Australia [in] February 2009. She had visited Australia some two and a half years earlier when her daughter, [Child A], had her second child.

38. The Tribunal asked the review applicant why she had not applied for a Protection Visa when she was in Australia two and a half years ago. She replied she had not done so because she “had her own problems and didn’t ask anything from anyone”. She said she was here to look after the wellbeing of her daughter; not to deal with her own difficulty.
39. The Tribunal asked the review applicant if she had had any assistance with the preparation of her application. She replied that a man had helped her. She couldn’t remember his name. She said she got him through her daughter or her daughter’s family and that she hadn’t told her daughter about all that was contained in her application and so she had spoken to this man who had helped her. She said the material contained in the application was true.
40. The review applicant agreed there was one material change to her application and that she had put in a supporting statutory declaration in relation to the change. She had initially said that she was a member of the Kinijit Political Party, but now claimed to be only a supporter of that political party. The applicant said when she spoke to the man who helped her with her application the content contained in it was all her words.
41. The applicant told the Tribunal that she used to go to Ethiopia every year and did so until the last time she was there when she attended a political protest and, as a consequence, was jailed. The Tribunal asked the review applicant if the protest was her reason for travelling back to Ethiopia at that time. She said no, but when she was there the protest was held and she went out to it. It was her evidence that the protest was against the imprisonment of Birtukan Mideksa.
42. The Tribunal asked the review applicant when the protest was held. She said it was held after Birtukan Mideksa was jailed. She said this was [in] May. The review applicant appeared confused about some of these dates, which may have been the result of mixing the Ethiopian calendar with the western calendar. She said that the protest was some eight months ago.
43. The Tribunal asked her when her brothers became members of the Kinijit. She replied a while ago. Then she said 1995. She then said the western calendars were different. She believed her brothers were released in 1997 from prison. She told the Tribunal that she didn’t have a good memory because of her diabetes. She repeated that, according to the Ethiopian calendar, the protest was “on the [date deleted: s.431(2)] day of the fifth month, which is May” and then said that in real time it was about seven months ago. The Tribunal mentioned that this would mean that it was in January or December in real time. The review applicant then said her brothers were released from prison in the year 2000 according to the Ethiopian calendar. She said they had been in jail for two years. She could not remember when they went into jail and, again, she said she had a problem remembering things. She was asked how long after her brothers’ release did she attend the rally. She replied it was a while. She then said it was about two and a half years after their release.
44. The Tribunal asked the review applicant where the rally was held, and she said it was held in Farancai La Gacion. She said that this was a suburb. She said the people gathered in the Collobe, which was a compound located at the council building. She said as soon as they arrived, straight away the shooting started and it was really horrible. She said she lost one brother, [Person 3]. She said he was killed.

45. The applicant described how she and her two other brothers, [Person 4] and [Person 5], and her sisters, [Person 6] and [Person 7], had all gone to the protest, but they all became separated and scattered. The Tribunal asked the review applicant if she had seen her brother [Person 3] killed. She said she saw him when she was taken to the car. It was her evidence that she saw him lying on the ground, and he “looked like he had been shot”.
46. The Tribunal put to the applicant that, in her statement, she had said he was shot in front of her. She replied he was shot and laid down where she saw him. The review applicant told the Tribunal that she had gone to the protest because her brothers had suffered in jail.
47. The review applicant said she was taken from the protest into detention and held for about a week. It was her evidence that she was not held with her sisters or with her brothers although she said she saw one brother being taken; however, they were all separated. It was her evidence that whilst in prison she did not see her family. The Tribunal asked her how she could arrange a bribe for her release. She replied that her uncle heard that she was jail, and he did everything for her. She said he paid the money for the bribe that helped to get her released. It was her evidence that the conditions in the prison were harsh; that there was no medicine; no food given to them on time; that she was sick; and that her uncle tried his level best to get her out of that place.
48. The Tribunal asked the review applicant if she was close to her uncle. She said yes, as her father and mother were dead the uncle was very close to her and also to her brothers and sisters. The Tribunal asked her could the uncle not find her brothers and sisters or tell her what happened to them. She said he had not heard anything so far.
49. The Tribunal asked the review applicant where she stayed when she was released from prison. Initially she said her uncle got her ticket and did everything, and she went to Saudi straight away. She then changed her evidence and said she left the next day and that she had returned to her home and stayed there the night.
50. The Tribunal asked her how she was taken to prison, and she said she was taken in a car. She said it was a big car. She said that people were packed into it like goods. She wasn't sure how many people, but she thought about one hundred. The Tribunal asked her if it was a bus, and she said no it was a big police van. She told the Tribunal that when they got to the prison they had no food and that she had been sexually assaulted.
51. The Tribunal asked her if she had been questioned or interrogated. She said no. She was asked how long the journey to the prison was, and she said she had no idea where she was taken but it took four or five hours to get there. The Tribunal asked her how she returned from the prison after the bribe was paid for her release. It was her evidence that one of the guards who she paid money to took her to her uncle in his own work car. She was asked how much money she paid, and she said five thousand in Ethiopian currency.
52. The review applicant said she was sexually assaulted in prison by the guards who did whatever they wished. She said the guards made her work hard, that they hit her, and that she was kept in a very small room with no place to sleep, and that food was pushed under the door. The Tribunal asked her if she was removed from the room when the sexual assault took place. She said yes she was taken to the room next door. She told

the Tribunal this happened twice. The Tribunal put it to her that she did not include this sexual assault in her application for her Protection Visa and asked her why she had not. She replied that there were a lot of things inside her, and she was opening up but did not tell everything.

53. The Tribunal notes that in her interview with the Department [in] June 2009 she stated” that in prison they were held under very crowded conditions and were raped and tortured”.
54. The Tribunal asked her why she thought she was treated like this and why she had been taken to prison. She said all she did was to go to the protest.
55. The Tribunal asked her what she meant by saying she was a supporter of the Kinijit Party and how she became a supporter of the party. She told the Tribunal that her brothers were members, and when she was living in Saudi Arabia she used to support the party financially by sending money to her brothers to give to the party. She was asked how much money she sent. She said that she would gather money from friends she had also told about the Kinijit Party and put their money and hers together. She said on average they would send five thousand or six thousand.
56. The Tribunal asked her if there was anything else she did as a supporter of the Kinijit Party. She said she sometimes used her house in Ethiopia for meetings, but that that was all she did. She was asked if the house was used when she was in Ethiopia or when she was not there. She replied she let them use it when she was not there. She was asked who lived in the house, and she said her brothers and sisters lived in the house, but she paid the money for it. She had bought the house a long time ago – some 15 years she said. She explained that she was the eldest of her siblings.
57. The applicant told the Tribunal that the house was currently empty because her brothers and sisters had not returned or were not back yet. She said she had been asking how they are, but could not find them and she said her uncle asks and she talks to him, but nobody has seen or heard of them since the day of the rally.
58. The Tribunal asked her if she was involved in the distribution of pamphlets for the Kinijit Party. She said no, she wasn’t, and that this must be some sort of a mistake.
59. The review applicant then changed her evidence, somewhat, saying she helped writing out things. She said she would write out whatever they wanted and then what had been written would be distributed as pamphlets. She said she did this once. She once helped write the pamphlet. She said besides that she didn’t have time. She repeated that she had only done this once. The Tribunal asked her when this was, and she said it was when she was last in Ethiopia – the time before the rally. She said the rally was the only political meeting she had ever attended.
60. The Tribunal asked the review applicant how many people were killed at the rally, and she said “a lot” She said she saw so many shot and wounded. The Tribunal asked her why there were no newspaper reports of such a rally. She said the journalists were too scared of the government to report it.
61. The Tribunal asked the applicant about the Kinijit Party and what it stood for. She said it was about freedom, one nation and democracy. All one gathered together. She was

asked who founded it, and she said it had been founded by Birtukan Mideksa. She was asked who the leader of the party is today. She replied Birtukan Mideksa. She said there was nothing else she could say about the party.

62. The Tribunal asked the applicant if she had been questioned about the Kinijit or her political views when she was detained. She said no, she had not been questioned on anything.
63. The Tribunal asked the review applicant why she claimed it was necessary to bribe officials at the airport in order to leave. She said she did this because she thought her name would have been on a list because she had been to the political protest, and she wanted to leave straight away. She said her uncle had organised everything for her. She said people having their name put on lists was what happened in Ethiopia.
64. The Tribunal asked her what she feared would happen if she returned to Ethiopia. She said she might be jailed, and she didn't want to face that again. When asked why she thought she might be jailed, she said because she had paid bribes to leave the country.
65. The Tribunal put to her that the paying of bribes was a standard way of life in Ethiopia, and she agreed that that was so; however, she said that because she had been involved in the protest and because she had let people use her house for political purposes she felt that she might be jailed. The Tribunal put to her that her description of what she had done as a supporter of the Kinijit did not present a high profile. She agreed that she did not have a high profile and that she was merely a supporter, but she was too scared to go back in case it happened again. She did not want to be prosecuted in her own country.
66. The Tribunal notes that the applicant claims she has two sisters and two brothers in Ethiopia, whose whereabouts are unknown. She last had contact with her daughter, [Child B], during her last visit to Ethiopia. [Child B] is now 20 years of age and is engaged to be married.
67. The applicant said she fears political persecution in Ethiopia. She also fears that if her family discover she has a daughter, [Child B], in Ethiopia they will disown her. She will not be accepted by her family or society because of this. The Tribunal notes that at the time of the hearing the applicant had divulged the existence of her daughter [Child B] to her daughter [Child A].
68. The review applicant gave evidence in relation to her time in Saudi Arabia as a domestic worker in a large number of situations over an extensive period of time. She divorced in 1983 or 1984. In 1986 or 1987 she went to Saudi Arabia for work. Her daughter, [Child B], went to live with her father and now lives in Australia.
69. It was the review applicant's evidence that she had spent some 22 years working in Saudi Arabia; that she had worked for a large number of families, three of which she had worked for a lengthy period of time and others where she had started to work and left quickly. She had worked as a domestic worker. The Tribunal asked her if she had used an agency in Ethiopia to obtain work. She said it was not necessary. When she left the first time her father arranged everything for her as he was a merchant. The review applicant described the circumstances of her first employment stating that she was the maid, the cleaner and the cook; responsible for all the maintenance in the

house; caring for children. She was never able to rest or take a break. She did not have any conditions; no set bedtime. She could only sleep once all the work was finished. She had no room of her own, but slept on the floor. She was abused physically and verbally by [Employer 1] – her employer – and his wife and by their children. She said that [Employer 1] forced her to have sex with him and that this happened on a regular basis. It was her evidence that she had a child by him. She returned to Ethiopia for the birth of the child, and when she returned to Saudi Arabia she left her daughter, [Child B], with a friend in Ethiopia. She worked for [Employer 1] for some four years.

70. The Tribunal asked her why she stayed working for this man in these circumstances. She replied that because she had left her country to get a better life she felt she had to endure whatever problems came her way, and she knew that if she got another job it would be the same. It wouldn't make a difference. She didn't tell her father how bad things were. She didn't want to annoy or upset him. At this time she explained that her own daughter, [Child A], had already gone to Australia with her ex-husband. She was supporting family in Ethiopia.
71. The Tribunal asked her why she returned to Saudi Arabia and, again, she said because she had to work to pay for the child back in Ethiopia, to support herself and after the death of her father she was the bread winner providing for her younger siblings. Again she said she did not go to an agency but explained the system of permits, which were obtained to allow Ethiopian workers to work in Saudi Arabia for two years. She said the permits expired every two years. She said the workers had to pay money for these permits, and you could renew your permit and continue to work there. She passed from one employer to another employer. The review applicant described her work as that of a slave. In Saudi Arabia she was physically and verbally abused by the various families she worked for and raped by the various husbands of the households. She says she could not report this as the penalty for adultery in Saudi Arabia is death. She was also sexually abused by the sons of the household. She discovered she was pregnant on a number of occasions. She had several abortions while working in Saudi Arabia. She claims the sexual, physical and verbal abuse was to continue despite a number of changes of employer over the years.
72. It was her evidence that she did this work because there was no alternative. She had no options in Ethiopia, and she kept doing the work because of a sense of responsibility and because she had left her country and because she needed to support her child. She earlier stated that in 1997 her father died and her mother and younger siblings relied on her for financial support.
73. The Tribunal asked the review applicant how she would support herself if she were to return to Ethiopia. She replied that there was nothing she could do and that it was worse because she was a divorced woman on her own. She would have to look again for work in Saudi Arabia. She said this would be difficult as well because she was not as fit as she used to be and not as well as she used to be, but she would need to go back to Saudi. She then told the Tribunal that as a result of being in Saudi Arabia she had lost her teeth. She said it would be horrible for her to have to go back there, but that she would have no other option for supporting herself.
74. The applicant fears returning to Ethiopia as this will mean she will need to go again to Saudi Arabia for work. The Tribunal notes that the applicant's residence in Saudi Arabia is dependent on employment. She has a 2 year visa to work there which has one

more year to go before it expires. The applicant's evidence is that she continues to face sexual abuse by her employers in Saudi Arabia.

75. The review applicant's representative submitted that although the review applicant acknowledged she was a supporter of the Kinijit party and did not have a high profile, nevertheless, supporters of political parties were persecuted in Ethiopia. The Tribunal has considered this submission.

*Independent Country of origin information*

76. An article in the Forced Migration Review explains that “[a]ll of the many recruitment agencies that arrange Ethiopian women's employment as domestic workers to the Middle East are non-registered and can be considered traffickers”.
77. Saudi Arabia is one of the top 10 countries of destination for international migrants. Saudis rely heavily on migrant workers in all sectors of the job market. The perception of economic opportunity draws women and girls from East Asia, South Asia, and Africa, looking for domestic work. Domestic workers lack proper legal protections, however, and employment agencies are notorious for giving workers less than accurate descriptions of where they will be placed and what the working conditions will be like once they get there. Often these agencies request large sums of money to transport workers, and often they are at the center of prostitution rings (The Protection Project 2002, ‘A Human Rights Report on Trafficking of Persons, Especially Women and Children: Saudi Arabia’, Child Trafficking website, March, pp. 466-467 [http://www.childtrafficking.com/Docs/protection\\_project\\_2002\\_trafficking\\_saudi\\_arabia.pdf](http://www.childtrafficking.com/Docs/protection_project_2002_trafficking_saudi_arabia.pdf) – Accessed 18 August 2009).
78. Further information about the abusive treatment of domestic workers in countries around the world, including Saudi Arabia, can be found in a 2006 Human Rights Watch report (Human Rights Watch 2006, *Swept Under the Rug: Abuses against Domestic Workers Around the World*, July).
79. In addition, an article dated 5 May 2008 claims that many “Ethiopian women [working] in Middle Eastern countries are facing severe human rights abuses”:

Every year, thousands of Ethiopian women, lured by the promise of lucrative jobs and comfortable lives, are shipped out to Middle Eastern countries but end up being trapped in prison-like conditions.

Lebanon is the most popular destination for Ethiopian domestic workers, followed by Bahrain, Dubai and Saudi Arabia. Estimates indicate that there are over 50,000 Ethiopians working in Lebanon.

Over 100,000 Ethiopian workers are believed to be working in the Arab countries of the Middle East.

According to the Ethiopian Women's Association, Ethiopian women in Middle Eastern countries are facing severe human rights abuses, including being subject to beatings, being denied earned wages, sleep deprivation, rape by employers, having parts of their body seared in boiling oil, being burned with hot irons, and thrown out of high-rise windows. As a result, many are driven to despair and mental illness, with some committing suicide ('Ethiopia bans citizens from seeking work in Lebanon' 2008, *The Daily Star*, 5 May).

80. A 2006 Anti-Slavery International report on the trafficking of women to the Middle East explains that “[t]here are many factors and recruitment processes taking place in conscious labour migration and as a result, a wide range of players are usually involved”, including employment agencies and brokers. It is noted that Ethiopia has developed “a formal procedure for labour migration” which involved the establishment of “registered and state-controlled agencies to assist women migrating abroad for domestic work”. Despite the existence of registered agencies, many women make use of non-registered agents, who have been known “to traffic many women abroad, mainly using false promises and debt bondage”:

The reasons why women use non-registered agents are generally many. They are often told that the services of non-registered agent are cheaper and that the agency can get better paid jobs for them. Another frequently reported reason is that women, particularly in rural areas, are not informed about what the formal procedure are, or they find it too complicated or inaccessible. When they are approached by someone offering a well paid job, they see it as a good way to escape from poverty and send money to their families. Lastly, relatives and friends are often involved in the process, either by putting the woman in contact with the broker or by helping to pay the fees for arranging the job and travel. Trust is an important factor in this, and, in the case of re-paying the debts, so is the sense of duty which recruited women feel towards their loved ones. The following actors are normally involved in recruitment:

Agents and brokers: The agents, brokers and intermediaries are operating in the countries of origin and facilitate the employment, necessary administrative procedures, transport, and communication with counterparts in destination countries. While in many destination countries (and in Ethiopia as a country of origin) the work of agencies is regulated by law, many agencies exist and recruit workers illegally. “There are many agents (in Ethiopia), who are not legal. They would go from house to house, promising that they will get a job for a girl in Yemen or Saudi Arabia.” The major problems reported are related to contracts, debt bondage and misleading information about living and working conditions.

...The agents and brokers were reported to be the major source of fear, both in countries of origin and destination. According to the domestic workers interviewed, the risk of reprisals is high if the worker escapes the employment before she ‘re-pays her debt’. All saw the agents and brokers as very powerful people. Physical violence, intimidation and threats were the major factors outside the household they worked in which kept the women in abusive situations. There was also a big fear of reprisals after being repatriated back to the country of origin.

81. The US Department of State 2009, *Country Reports on Human Rights Practices for 2008 – Ethiopia*, report identifies high unemployment in Ethiopia as a factor driving migration. The report also highlights acute discrimination against women, particularly single women, and the lack of employment opportunities for women in Ethiopia:

Discrimination against women was most acute in rural areas, where 85 percent of the population was located. The law contains discriminatory regulations, such as the recognition of the husband as the legal head of the family and the sole guardian of children over five years old.

...All land belongs to the government. Although women could obtain government leases to land, and the government had an explicit policy to provide equal access for women to land, rural communities rarely enforced this policy. In nearly all regions women did not have access to land, except through marriage. The law states that any property owned before marriage belongs to the spouse that previously owned it, while any property gained during marriage belongs to the husband upon divorce. In

practice, when a husband died, other family members often took the land from his widow. In pastoralist areas where poverty is higher, women do not own property without a male guardian, which increases their marginalization and vulnerability. A widow must marry her brother-in-law or have an adult son in order to keep her deceased husband's land.

In urban areas, women had fewer employment opportunities than men, and the jobs available did not provide equal pay for equal work. Women's access to gainful employment, credit, and owning and/or managing a business was limited by their low level of education and training, traditional attitudes, and limited access to information (US Department of State 2009, Country Reports on Human Rights Practices for 2008 – Ethiopia, February.)

82. January 2009 Human Rights Watch world report 2009 (country summary Ethiopia) (Released January 2009) <file:///melsrv1/melref/INTERNET\HRW\2009\ethiopia.pdf> states: The Ethiopian government's human rights record remains poor, marked by an ever-hardening intolerance towards meaningful political dissent or independent criticism. Ethiopian military forces have continued to commit war crimes and other serious abuses with impunity in the course of counterinsurgency campaigns in Ethiopia's eastern Somali Region and in neighbouring Somalia. Local-level elections in April 2008 provided a stark illustration of the extent to which the government has successfully crippled organized opposition of any kind—the ruling party and its affiliates won more than 99 percent of all constituencies, and the vast majority of seats were uncontested. In 2008 the government launched a direct assault on civil society by introducing legislation that would criminalize most independent human rights work and subject NGOs to pervasive interference and control.
83. The limited opening of political space that preceded Ethiopia's 2005 elections has been entirely reversed. Government opponents and ordinary citizens alike face repression that discourages and punishes free expression and political activity. Ethiopian government officials regularly subject government critics or perceived opponents to harassment, arrest, and even torture, often reflexively accusing them of membership in "anti-peace" or "anti-people" organisations. Farmers who criticise local leaders face threats of losing vital agricultural inputs such as fertilizer or the selective enforcement of debts owed to the state. The net result is that in most of Ethiopia, and especially in the rural areas where the overwhelming majority of the population lives, there is no organised opposition to the ruling Ethiopian People's Revolutionary Democratic Front (EPRDF).

#### *Political Repression*

84. Amnesty International in its annual report for Ethiopia 28 May 2009- (<http://www.thereport.amnesty.org/en/regions/africa/ethiopia>) reported restrictions on humanitarian assistance to the Somali Region (known as the Ogaden) continued. The government engaged in sporadic armed conflict against the Ogaden National Liberation Front (ONLF) and both forces perpetrated human rights abuses against civilians. Ethiopian troops fighting insurgents in Somalia in support of the Transitional Federal Government (TFG) committed human rights abuses and were reported to have committed war crimes. Security forces arrested members of the Oromo ethnic group in Addis Ababa and in the Oromo Region towards the end of the year. Independent journalists continued to face harassment and arrest. A number of political prisoners were believed to remain in detention and opposition party leader Birtukan Mideksa,

who was pardoned in 2007, was rearrested. A draft law restricting the activities of Ethiopian and international organizations working on human rights was expected to be passed by parliament in 2009. Ethiopia remained one of the world's poorest countries with some 6.4 million people suffering acute food insecurity, including 1.9 million in the Somali Region.

85. CX188329:Ethiopia: Country Information, Australia: Department of Foreign Affairs and Trade (DFAT), 14 15 November, 2007 reported:

The Kinijit (also known as the Coalition for Unity and Democracy or CUD), is the major opposition group, and as such is blamed by the government for any threats to security that occurred after the May 2005 elections. Therefore anyone linked to the party is subjected to some form of harassment.

After the 2005 elections, thousands were arrested for charges considered to be politically motivated while a significant number were reportedly forced into exile. There have been reports of the government and police targeting anyone known to be a CUD supporter much less a member. These attacks were on a larger scale in the rural areas where access is limited and thus where reports of such acts are less likely to surface. There have also been reports of random and unaccounted arrests of CUD members and supporters.

The extent of harassment is so severe that many refrain from showing support in fear of harassment or even detention.

The government has blocked pro-CUD websites from being accessed through the sole local internet service provider. The government-run TV station continually broadcasts propaganda against the Kinijit party and its members, holding party members accountable to acts of terrorism.

Female rights are largely non-existent in Ethiopia. Discrimination is most acute in rural areas, where 85 percent of the population lives. For example, the harmful traditional practice of abduction as a form of marriage already is illegal under the penal code but still is widely practised in many rural areas. Forced sexual relationships often accompany most marriages by abduction, and women often are abused physically during the abduction. Other forms of gender abuses including wife beating and marital rape are pervasive social problems. While women have recourse to the police and the courts, societal norms and limited infrastructure inhibit many women from seeking legal redress, especially in remote areas. Social practices obstruct investigations into rape and the prosecution of the rapist, and many women are not aware of their rights under the law.

Regardless of changes made to the relevant laws, tradition and culture often prevail over civil and criminal law, and in practice women do not enjoy equal status with men. The Government has not yet fully put into place mechanisms for the effective enforcement of these laws.

In urban areas, women have fewer employment opportunities than men do, and the jobs available do not provide equal pay for equal work. Women living alone in urban areas are more likely to be attacked by burglars and harassment (verbal and physical) is very common.

Though it unlikely for rural women to live alone, those who are widowed or are forced to lead solitary lives due to other circumstances; they too are more likely to be subject to harassment.

Advice from the Australian Department of Foreign Affairs and Trade (DFAT) also provides:

The issue of trafficking is one that is only recently getting attention at the government level, given the exponentially rising number of people migrating illegally and being trafficked to foreign countries. The government works through the Ministry of Labour and Social Affairs (MOLSA) in the prevention area but has a lot of work to be done in terms of protecting victims. The Administration for Refugee and Returnee Affairs is a government agency that has the mandate to work in this area, but truly focuses on refugee affairs. Legal mechanisms for victims of trafficking are in their infancy, and discussions with related organisations suggest that a lot needs to be done to afford victims of the required level of legal protection. Offering legal protection remains to be the hardest facet of preventing trafficking because of the legal constraints that prevent victims from successfully bringing legal charges against the traffickers.

Efforts to gradually enhance the capacity of the legal system continue with the help of various international organisations (IOM being at the forefront.) Victims of trafficking are therefore unlikely to get help from the Ethiopian government. As noted briefly above, at the forefront of these anti trafficking movements in Ethiopia is the IOM. IOM works in close collaboration with the government and agencies to increase awareness and to contain trafficking activities. The organisation works with UNICEF and other NGOs that concentrate on tackling trafficking. IOM's protection activities are meant to provide victim assistance to those affected by trafficking to identify whether the three factors defining victims of trafficking are present (recruitment, transport and exploitation). On this front, IOM works closely with various Government of Ethiopia (GoE) agencies (MOLSA, Ministry of Foreign Affairs, and Ethiopian Immigration). Working with local NGOs, IOM's assistance involves provision of food and shelter to victims. This assistance extends to a maximum period of three months (except for rare exceptions). Additionally IOM helps trace and identify victims' families. IOM colleagues explained that this is usually a difficult task as the victims often recall only fragment details, which aren't helpful. IOM uses Ethiopian immigration files as well as neighbouring police authorities to recover relevant information. IOM has helped 80 such victims, which include adults who have participated in the organisation's vocational training programmes. IOM has also provided start up funds in the forms of business grants to those intending to set up their own businesses. Working with local NGOs, IOM's assistance involves provision of food and shelter to victims. This assistance extends to a maximum period of three months (except for rare exceptions). Additionally IOM helps trace and identify victims' families. IOM colleagues explained that this is usually a difficult task as the victims often recall only fragment details, which aren't helpful. IOM uses Ethiopian immigration files as well as neighbouring police authorities to recover relevant information. IOM has helped 80 such victims, which include adults who have participated in the organisation's vocational training programmes. IOM has also provided start up funds in the forms of business grants to those intending to set up their own businesses.

Many workers returning from foreign countries have gone through immense abuse. Many return with mental or physical problems and are not capable of immediately joining their respective families. IOM's psychosocial teams works towards narrowing

down this gap to improve their re- integration process. Ethiopian Patriotic Front (EPF) among others. (Department of Foreign Affairs and Trade 2007, DFAT Report No. 07/82 – CISQUEST9137/8:Ethiopia: Country Information, 14 November 2007.

## FINDINGS AND REASONS

86. In both her Protection Visa application and her review application, the applicant described herself as a national of Ethiopia. She arrived in Australia on an Ethiopian passport issued at Jeddah Ethiopia Consulate [in] March 2002. There being no evidence to the contrary the Tribunal finds the applicant to be a national of Ethiopia and has assessed her claims against Ethiopia as her country of nationality. The Tribunal is satisfied that she is outside the country of her nationality.
87. The applicant states that she still has a work visa in Saudi Arabia with one year before it expires. Whilst this may on the face of it imply that the applicant has a legal right to enter a third country (Saudi Arabia), independent country information, in particular a report referred to above, “A Human Rights Report on Trafficking of Persons, Especially Women and Children: Saudi Arabia”, Child Trafficking website, March, pp. 466-467  
[http://www.childtrafficking.com/Docs/protection\\_project\\_2002\\_trafficking\\_saudi\\_arabia.pdf](http://www.childtrafficking.com/Docs/protection_project_2002_trafficking_saudi_arabia.pdf) – Accessed 18 August 2009, which states that domestic workers lack proper legal protections, supports a finding that the applicant could not avail herself of any protection in that third country Furthermore her permit to enter Saudi Arabia is a work permit dependent upon sponsorship by an employer. The right she has to enter is entirely dependent on her employer and as well is limited in time. For these reasons the Tribunal finds that the applicant does not have effective protection in a safe third country.
88. In order to be a refugee under the Convention, it is necessary for the applicant to be outside her country of nationality and to hold a well-founded fear of persecution for reasons of at least one of the five grounds enumerated in the Convention namely religion, race, nationality, membership of a particular social group, and political opinion.
89. In reaching its determination in this application the Tribunal must consider whether or not the applicant has a well-founded fear of persecution for a Convention related reason.
90. The applicant's claims may be summarised as claims of serious abuse and mistreatment experienced by her as a domestic worker in Saudi Arabia over a lengthy period of time. She claims that as an Ethiopian worker in Saudi Arabia she has been subject to physical and sexual abuse at the hands of her employers. She fears to return to Ethiopia as it would mean facing severe human rights abuses as a single woman in Ethiopia. She fears being forced to return to work in Saudi Arabia.
91. The applicant further claims that she is a strong supporter of the Ethiopian opposition party, Kinijit, also known as the Unity for Democracy and Justice Party. She fears persecution in Ethiopia on the basis of her political opinion or imputed political opinion, because of the political activities of her family that is, membership of a particular social group.

92. The applicant says that she worked in Saudi Arabia as a maid for the past 22 years where she has been subject to physical and sexual abuse at the hands of her employers.
93. In relation to her political profile, the applicant claims that in 2005, shortly before elections were held in Ethiopia, some parties in opposition to the government combined. She claims that two of her brothers who were members of the Kinijit party protested in support of the opposition parties and were arrested and imprisoned for some two and a half years. The applicant told the Tribunal they were released in 2007 because of an amnesty celebrating the Ethiopian millennium, 2007 being 2000 in the Ethiopian calendar.
94. The applicant claimed that in about 1998 or 1999 she began to support her siblings in their political activities with the opposition parties. She claims at the time she would travel back and forth to Ethiopia to see her family and her daughter [Child B]. In her statutory declaration she states that initially she provided financial assistance to the party. However she said she soon began to assist with the writing and distribution of pamphlets. She states she attended political meetings and rallies. She states her siblings were living in a house that she had purchased and they would prepare pamphlets in the house and meet with other opposition supporters. At the hearing she gave different accounts in relation to this evidence.
95. At the hearing when asked by the Tribunal if she was involved in the distribution of pamphlets for the Kinijit Party. She said no, she wasn't, and that this must be some sort of a mistake. She then changed her evidence saying she had only written things for pamphlets on one occasion and that was for the one rally she attended. She said she did not have time to do more than this. The review applicant then said she would write out whatever "they" wanted and then what had been written would be distributed as pamphlets. She said she did this once. She repeated that she had only done this once. The Tribunal asked her when this was, and she said it was when she was last in Ethiopia – the time before the rally. She said the rally was the only political meeting she had ever attended.
96. The applicant had originally claimed to be a member of the Kinijit party however she later changed this claim stating that she was a strong supporter of it. At the hearing the applicant told the Tribunal she had attended one protest rally only and that was the one at which she had been arrested. She said she went to the rally because her brothers and sisters were attending and because she was enraged by the sufferings her brothers had endured in prison some two and a half years earlier For the reasons set out above and on the applicant's own evidence the Tribunal has found that the applicant is not a member of the Kinijit party.
97. The applicant claimed that she was detained whilst attending a protest rally in support of the Kinijit party and its leader. The applicant was unable to say exactly when the protest rally took place other than it was not long after Birtukan Mideksa (leader of the CUD) had been arrested. She was able to tell the Tribunal that some 100 people from the rally and been arrested and transported in a big police van to a prison some four or five hours away. She did not know where the prison was. She was confused between the Ethiopian calendar and what she referred to as the "Western" calendar. For example she said 2007 in the western calendar is 2000 in the Ethiopian calendar. However she said it was some 7 or 8 months ago. The applicant also stressed her bad memory,

resulting from her illnesses and ill-treatment and the Tribunal has taken this into account.

98. The Tribunal notes the delegate's decision contained in the Department file reveals that the applicant was advised that no information was available regarding a demonstration such as that claimed by her, in December 2008 in Addis Ababa. The applicant undertook to provide internet evidence of the demonstration. The delegate received a further submission from the applicant's representative [in] June 2009 which outlines the treatment of active political opponents of the government and details a legal march held in April 2009 to protest Ms Mideksa's detention. However, the Tribunal notes no evidence was submitted of any demonstration in December 2008
99. The Tribunal has found that the applicant was not arrested, interrogated or detained by the authorities as claimed. The Tribunal finds insufficient evidence to support the claim as the evidence was vague, contained inconsistencies with earlier accounts and was extremely limited as far as detail goes
100. The Tribunal finds that the applicant was not arrested and interrogated by the authorities as claimed in her original application. The Tribunal makes this finding based on the applicant's own evidence at the hearing where she said she was not interrogated or questioned by the authorities at all.
101. The Tribunal has found that the applicant was not arrested, interrogated or detained by the authorities as claimed. It follows that the Tribunal finds the applicant was not sexually abused as claimed during her claimed incarceration.
102. The Tribunal finds that any involvement in political activities or events by the applicant on her own evidence is limited in the extreme, to attendance at one rally for which there is no independent evidence, writing a pamphlet once for the one rally (referred to in this paragraph) she attended and sending money via her brothers to the Kinijit party.
103. The Tribunal notes country information which refers to the treatment of supporters of the opposition parties, in particular a report of the Department of Foreign Affairs and Trade (DFAT), 14 15 November, 2007, set out above which states that anyone linked to the Kinijit party is subjected to some form of harassment. The Tribunal finds that the political activities claimed to have been undertaken by the applicant combined with her infrequent (once a year) visits to Ethiopia over some twenty two years, does not support a finding that the applicant is linked to the Kinijit, a supporter of the Kinijit or that she would have a profile such as to come to the attention of the government in Ethiopia.
104. The Tribunal rejects that members of the applicant's family have been members of the Kinijit party. The Tribunal finds the applicant's account of her activities and involvement and that of any of her family lacks credibility. The Tribunal therefore finds no evidence of any political activity on the part of her siblings or other family members that would impute the applicant with a similar profile particularly as on her own evidence the applicant has spent very little time in Ethiopia over an extensive working life in Saudi Arabia.
105. The Tribunal finds the applicant's evidence on all aspects surrounding her attendance at the rally and detention, including her evidence of transportation to prison, transportation from prison by a guard who allegedly took a bribe and drove her the four

or more hour trip back to her uncles vague and implausible and makes this finding on the basis that there is no independent country of origin evidence that such a rally took place at the time the applicant claims it did. In making this finding the Tribunal has had regard to the applicant's representative's submission that not all such events are reported.

106. The applicant claimed in her application to the Department that her brother [Person 3] was shot and killed by the government troops "right in front of her at the protest rally". At the hearing it was her evidence, that she saw him lying on the ground, and he "looked like he had been shot". On the basis of the applicant's own evidence at the hearing that he only "looked like he had been shot" and the concerns the Tribunal has that any rally took place as claimed, the Tribunal does not accept that the applicant's brother was shot and killed right in front of her nor that he was killed as claimed.
107. The applicant claims that she has not seen nor heard from any of her siblings since the day of the rally. She told the Tribunal that her uncle had not heard anything of them either. The Tribunal accepts the possibility that the applicant has had no contact with her siblings since leaving Ethiopia and that this may be so for various reasons. However the Tribunal notes the applicant's own evidence that she departed Ethiopia the same day that she was released from prison and that she later changed this version stating she returned to her house, no one was there and she left the next day for Saudi Arabia and then Australia.
108. The applicant fears she can never return to Ethiopia again because her life is at risk. She fears she will be arrested if she were to return. She claims that if a person is a supporter of the opposition parties a person will never be safe. She claims her family are well known as supporters of Kinijit and that her family are not safe.
109. The Tribunal does not accept that the applicant was arrested, interrogated, detained and sexually abused by the authorities as claimed. The Tribunal is satisfied that the applicant has not in the past suffered persecution for reason of imputed political opinion. It has considered whether her future conduct or that of her siblings may cause her to face a real chance of persecution and serious harm in the reasonably foreseeable future. For the reasons set out above and on the applicant's own evidence the Tribunal has found that the applicant is not a member of the Kinijit party. The Tribunal finds that the applicant is not of such profile as to attract the attention of the authorities for the limited activities she claims to have been involved in the past. Further, as the Tribunal finds that the applicant was not involved in any political rally in the past it finds that there is not a real chance that she would be involved in political rallies in the reasonably foreseeable future should she return to Ethiopia.
110. On the basis of the evidence before it, the Tribunal finds that she does not face a real chance of persecution and serious harm in the reasonably foreseeable future if she were to return to Ethiopia for reasons of her political opinion, imputed political opinion or membership of a particular social group being her family.
111. The Tribunal asked the applicant what she fears if she were to return to Ethiopia. She replied she feared she would be jailed and persecuted firstly because she had paid a bribe to leave Ethiopia for Saudi Arabia. The Tribunal put to the applicant that she was a person who frequently travelled to and from Saudi Arabia without problems. Further

the Tribunal notes that the applicant agreed that the paying of bribes was something of a way of life in Ethiopia.

112. The Tribunal has found it does not accept that the applicant was detained at a protest rally and detained in prison, sexually abused and tortured as set out above. For this reason the Tribunal does not accept that the applicant has a real chance of persecution or serious harm arising in the reasonably foreseeable future should she return to Ethiopia arising from her belief that her name may be included on a government list resulting from her attendance at the protest rally and her consequent detention.
113. The Tribunal is satisfied that the applicant has not suffered persecution for reasons of her political opinion or imputed political opinion in the past. It has considered whether her future conduct or that of her siblings may cause her to face a real chance of persecution and serious harm in the reasonably foreseeable future. On the basis of the evidence before it the Tribunal finds that she does not face a real chance of persecution and serious harm in the reasonably foreseeable future if she were to return to Ethiopia for reasons of her political opinion, imputed political opinion or membership of a particular social group, her family.

#### *Particular Social Group*

114. The meaning of the expression "for reasons of ... membership of a particular social group" was considered by the High Court in Applicant A's case and also in Applicant S. In Applicant S Gleeson CJ, Gummow and Kirby JJ gave the following summary of principles for the determination of whether a group falls within the definition of particular social group at [36]:

... "First, the group must be identifiable by a characteristic or attribute common to all members of the group. Secondly, the characteristic or attribute common to all members of the group cannot be the shared fear of persecution. Thirdly, the possession of that characteristic or attribute must distinguish the group from society at large. Borrowing the language of Dawson J in Applicant A, a group that fulfils the first two propositions, but not the third, is merely a "social group" and not a "particular social group". ...

1. It is not sufficient that a person be a member of a particular social group and also have a well-founded fear of persecution. The persecution must be feared for reasons of the person's membership of the particular social group".

115. The applicant claims she fears returning to Ethiopia because her family may discover she has a previously undisclosed daughter, [Child B], in Ethiopia and that they will disown her if they find out. She claims she will not be accepted by her family or society because of this. The evidence before the Tribunal is that [Child B] is now some twenty years of age and still living with the applicant's friend who raised her. The Tribunal notes the applicant's evidence that she gave [Child B] her father's name rather than the name of the man who had fathered her. The applicant claims not to be in touch with her family members in Ethiopia. The Tribunal has considered whether the applicant could be said to belong to a particular social group "women in Ethiopia who have had children out of wedlock" and whether as such she would be persecuted in the reasonably foreseeable future should she return to Ethiopia. The Tribunal notes the applicant said at her interview with the Department that she would not disclose [Child B]'s existence to any of her family in Ethiopia. That being so the Tribunal does not

accept that the applicant would suffer persecution as a member of a particular social group “women who have had children out of wedlock” should she return to Ethiopia in the reasonably foreseeable future.

116. The applicant has claimed that for some 22 years she has worked in Saudi Arabia on permits purchased at her expense, as a maid and that during this time she was subject to appalling treatment which included physical, verbal and sexual abuse. The Tribunal accepts the evidence that the applicant was vulnerable to exploitation and has been exploited as an Ethiopian domestic worker
117. The litany of claims the applicant has made is well supported by country information as set out above for example the law contains discriminatory regulations, such as the recognition of the husband as the legal head of the family and the sole guardian of children over five years old.
118. The Tribunal accepts that a particular social group exists which could be described as “Ethiopian single women”. Country information supports the view that Ethiopian single women are exploited. The Tribunal has considered the independent country information, (set out above), in particular that contained in the US Department of State 2009 Country Reports on Human rights Practices in Ethiopia for 2008 which refers to women and their high unemployment and lack of employment opportunities in Ethiopia. It highlights acute discrimination against women, particularly single woman. The Tribunal notes that in urban areas, women had fewer employment opportunities than men, and the jobs available did not provide equal pay for equal work. Women’s access to gainful employment, credit, and owning and/or managing a business was limited by their low level of education and training, traditional attitudes, and limited access to information.
119. The Tribunal questioned the applicant about her work in the past and her need to engage in it. The applicant spoke of exploitation and in particular about why she stayed working in conditions which she herself described as being “a slave”. The Tribunal accepts her explanations that she felt she had no other choice and that she “was trapped in this world with no escape”. The Tribunal accepts the applicant’s evidence in this regard.
120. The Tribunal has considered the applicant’s likely future conduct should she return to Ethiopia in the reasonably foreseeable future. The evidence of her previous work outside Ethiopia is of relevance to this consideration. The Tribunal has found that she has in past been exploited or suffered serious harm. The applicant has no other means of support other than to work for a living. The Tribunal accepts the applicant’s evidence that if she were returned to Ethiopia she would again be forced to seek work and would then be subject to the Human Rights abuses which exist in Ethiopia as outlined in country information .The Tribunal finds that should the applicant return to Ethiopia she would face a real chance of serious harm and exploitation as a single woman.
121. On the basis of the above, the Tribunal is satisfied that the applicant faces a real chance of persecution and serious harm in the reasonably foreseeable future if she were to return to Ethiopia for reasons of being a member of a particular social group “single women in Ethiopia”. The Tribunal finds this constitutes the essential and significant motivation for the persecution.

122. The country information set out above indicates that the persecution results from Ethiopia's poor Human Rights record, and as such is uncontrollable by the government of Ethiopia. The Tribunal finds that Ethiopia does not have reasonable measures in place to protect the lives of its citizens, including an appropriate criminal law and the provision of a reasonably effective police force and impartial justice system. Therefore the Tribunal finds that the applicant cannot access adequate state protection.
123. The Tribunal has considered whether the applicant could reasonably relocate within Ethiopia and avoid a real chance of persecution. The country information does not indicate that the risk is confined to a region or part of Ethiopia only. Therefore relocation is not a viable option in the present case.
124. The Tribunal is satisfied that the applicant's fear is well-founded. The Tribunal finds that she is a refugee.

## **CONCLUSIONS**

125. The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a) for a protection visa.

## **DECISION**

126. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the <i>Migration Act 1958</i>
--

Sealing Officer's I.D. prrt44