

1201020 [2012] RRTA 676 (30 July 2012)

DECISION RECORD

RRT CASE NUMBER:	1201020
DIAC REFERENCE(S):	CLF2011/163993
COUNTRY OF REFERENCE:	Ethiopia
TRIBUNAL MEMBER:	Brook Hely
DATE:	30 July 2012
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.

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 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, applied to the Department of Immigration for the visa on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] September 2011.
3. The delegate refused to grant the visa [in] December 2011, and the applicant applied to the Tribunal for review of that decision.

RELEVANT LAW

4. 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. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person to whom 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), or on other 'complementary protection' grounds, or is a member of the same family unit as a person to whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

Refugee criterion

5. Section 36(2)(a) 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 Refugees Convention.
6. 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.
7. 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, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51.

8. 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.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. 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.
11. 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.
12. 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.
13. 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 being persecuted 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.
14. 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. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

15. 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.

Complementary protection criterion

16. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
17. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
18. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

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.

Application to the Department

20. [In] September 2011, the applicant lodged with the Department the application under review. As part of that application, he provided a brief statutory declaration setting his persecution claims. The decision record of the delegate provides a convenient summary of those claims, as follows:

The applicant's claims and supporting documentation are at folios 13, 14 & 74 of file number CLF2011/163993 and may be summarised as follows:

- He is a well known musician in the Tigranian community who [produced music] for a living. Since 1980 he was a team leader of a musical group which was at the forefront of battle and was to play music to remedy the pain and suffering of the fighters who had fallen in battle. He was invited to [play music] prior to the split of the Tigray People's Revolutionary Party (TPLF).
- He fled the country because he fears harm due to his involvement with the Arena Tigray for Democracy and Sovereignty Party (ARENA) who are against the current

government in power in Ethiopia. Since the fall of the TPLF party all key members were removed from power, arrested, detained, tortured and even killed.

- He fears that if he were to return to Ethiopia the authorities would not protect him as they have no power against the government. He fears that he will be killed because the authorities had previously detained him for ten months for his active involvement against the government. His popularity as a [Ethiopian musician] will only increase his risk of targeting.

The applicant attended interview on [date] November 2011, however, he advised that he did not understand the Amharic language interpreter and the interview was terminated. The applicant was interviewed on [date] December 2011 with the assistance of a Tigrinian language interpreter where he provided the following additional claims:

- He has been involved in propaganda since he was young, for approximately 20 — 30 years, around the time of the Derg. He was involved in the TPLE for a long time and fought as a guerrilla fighter, he knew the Prime Minister and everyone there, but after victory, the government didn't go on the right track so he changed to the opposition. In 2000 he joined the Arena Tigray for Democracy and Sovereignty Party (ARENA).
- He has been accused of selling political secrets; he was jailed from May 2009 — February 2010 and released on bail with the condition that he did not participate in any political events.

21. [In] December 2011, a delegate of the Minister refused the application.

Application to the Tribunal

22. [In] January 2012, the applicant applied to the Tribunal for review of the delegate's decision. As part of that application, the applicant's agent provided a detailed written submission in support of the application, setting out the applicant's claims under both the refugee and complementary protection tests. The submission further claimed that the applicant's brother had recently been killed, which had intensified the applicant's fears of returning to Ethiopia.
23. The submission also attached a [evidentiary details deleted: s.431(2)], as well as number of sources of country information relating to the repression of the ARENA party, as well as psychological barriers affecting the credibility of refugee applicants.

Tribunal hearing

24. The applicant appeared before the Tribunal [in] May 2012 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Tigrinya and English languages. The applicant was represented in relation to the review by his registered Migration agent, who also appeared at the hearing.

Personal background

25. The applicant gave evidence that he was born in Tigray Province in [year deleted: s.431(2)] (Gregorian calendar) and he lived there for about [number deleted: s.431(2)] years before moving to Addis Ababa. He then remained living in Addis Ababa for about [number deleted: s.431(2)] years, although with regular travel back and forth to Tigray. He also [travelled] as part of his role as a musician to [countries deleted: s.431(2)]. [Travel details deleted: s.431(2)].

26. The applicant confirmed that he has been in a de-facto, marriage-like relationship to a partner of 12 years and they have a [age deleted: s.431(2)] year old child. His partner and child are currently living in Addis Ababa. When asked about his other family, the applicant gave evidence that his parents are retired and living in Tigray. He also has 2 [siblings] living in Tigray and 1 brother who recently passed away.

Former involvement with the TPLF

27. When asked about his claims relating to his former role as the team leader of a musical group on the battlegrounds, called '[Group B]', the applicant gave evidence that he always wanted to play music as a child. When he joined the TPLF in 1972 (Ethiopian) he was trained as a fighter but then assigned to a music group to perform music. He continued performing music with this group called [Group B] (which is part of the TPLF) until the end of the war, when the TPLF came to power. He was the leader of this [group] and he noted that the [supporting evidence provided by the applicant showed this]. When asked how long he was in this band, the applicant said [number of years deleted: s.431(2)] years. When asked why he stopped, he said that the TPLF took control of Addis Ababa but later there was a split within the TPLF and he left to join one of the groups that split away. When asked what he was doing with the TPLF prior to this split, the applicant gave evidence that, after the [number deleted: s.431(2)] years with [Group B] in the field, he then did another 8 years with this same musical group after the TPLF came to power. When asked, he confirmed that he worked for 19 years with this musical group in total.
28. When asked when the TPLF took power, the applicant said that they entered Addis Ababa and controlled the whole government in 1983 (Ethiopian). When asked, the applicant confirmed that he remained working for the TPLF until 1991 or 1992 (Ethiopian). When asked why he left then, the applicant said that this was when the TPLF split in two and he became a member of the other group, ARENA.

Involvement with ARENA

29. The Tribunal asked the applicant why he joined ARENA. The applicant said that there were lots of misunderstandings between the leaders after they came to power and he felt that the group that split away was on the right track. The Tribunal noted that his response was very general and it asked him to be more specific as to his reasons for switching his allegiance to this group. The applicant said that when the TPLF came to power, they split the party in two. The group he supported said that they wanted to bring peace, democracy and justice to the people, whereas the group in power were corrupt and exploiting their power for personal gain. He also felt that the fighters from the field were not given the right to talk or express their views and when he saw all these things happening he decided to side with ARENA. The Tribunal asked if there was anything else separating these 2 groups. The applicant said that the aim of the ARENA party was for peace, justice and democracy and he felt that the TPLF in power had become corrupt and were even eliminating each other. When asked about any major policy differences between the 2 groups, the applicant said that there were political misunderstandings between them and for 2-3 months there were discussions about every group trying to take as much as they could from the fighters. The Tribunal noted again its concern that his evidence was very vague and general on these matters and it asked the applicant to explain the main policy differences between these 2 groups. The applicant then said that the main misunderstanding was to do with Eritrea, with ARENA party criticising the leaders for separating Eritrea from Ethiopia because this left Ethiopia without access to a port. When asked about ARENA's position regarding Eritrea, the applicant said that they

wished to have peaceful negotiations with Eritrea so that Ethiopia could gain an outlet to the sea.

30. The Tribunal asked the applicant about his involvement with ARENA. The applicant said that it related to his profession as a [musician], as he [performs] and can agitate people to support the party. He said that his main role was to agitate people to support ARENA. When asked how he did that, the applicant gave evidence that he had regular meetings with [a senior official] of ARENA, [Mr A], about how to best agitate the people through [music]. When asked about his time commitment to these activities, the applicant said that he met with [Mr A] every month or two. However, after his (the applicant's) release from prison, [Mr A] warned him to not meet him so often for safety reasons, because the government was spying on them.
31. When asked for how many years he was involved with ARENA, the applicant said it was [number deleted: s.431(2)] years. When asked what else he was doing aside from meeting with [Mr A], the applicant said that he was assigned to [perform music]. When asked how often he held performances for ARENA, the applicant said that he could not say specifically, but whenever they had a program or meeting with people and wanted to gather people, he was given this assignment. When asked to approximate the number of such performances in a given year, the applicant said that it varied and was sometimes 3 – 4 in one year, but sometimes 5 – 6. When asked how many performances he did during the entire [number deleted: s.431(2)] year period, the applicant said that he was not able to say. The Tribunal noted its concern that he appeared to be avoiding the question, at which point the applicant said it might be 20 – 30 times, although this varied depending on whether there was an election being held.

Past problems in Ethiopia prior to arrest

32. The Tribunal asked the applicant about his problems in Ethiopia due to his involvement with ARENA. The applicant could not recall exactly when his problems started, although he noted that after the 1997 (Ethiopian) election, problems became worse and later on he was arrested.
33. The Tribunal asked the applicant specifically about any problems or harm that he experienced prior to his arrest. The applicant said that there was a lot of intimidation and he didn't feel safe walking around or performing music. He said that he would be accused of various things and was sometimes followed by the security agents of the government, which all made him feel unsafe and he felt that they were going to kill or arrest him. When asked when this started, the applicant said that they knew the people in government because they used to be on the same side and whenever you talked they wanted to hear what you were talking about and would want to know where you were going and who you were meeting with. When asked why he felt that they were going to kill or arrest him, the applicant noted again that the two groups were previously together so he knows these people and is aware of others who have been killed.

Arrest and imprisonment

34. The Tribunal asked the applicant about the time when he was arrested. The applicant gave evidence that he was arrested on [Date 1] 2001 (Ethiopian) at home after he had [performed] for ARENA in Addis Ababa. He was the only one arrested because he was the one who organised the [event]. The Tribunal noted that it might seem unusual that he was the only person arrested if this was a [event] for ARENA and attended by ARENA supporters. The

applicant said that he was arrested because he was the coordinator. When asked where he was taken, the applicant said that he was taken to Kaliti Prison. He confirmed that he was taken directly to the prison and was never taken to a police station or before a court. He was also never charged with anything, but during his interrogations and torture they made accusations about him organizing [events] for ARENA and he was told not to do this.

35. The Tribunal put to the applicant that he had claimed in his application form that he was imprisoned on [Date 2] 2008. The applicant reiterated that he was imprisoned on [Date 1] 2001 (Ethiopian); he surmised that the date in the application was the Gregorian calendar equivalent. The Tribunal put to the applicant that [Date 2] 2008 (Gregorian) does not equate with [Date 1] 2001 (Ethiopian). The applicant noted again that it was perhaps a mistranslation, but he was certain that he was arrested on [Date 1] 2001 (Ethiopian). The Tribunal put to the applicant that [Date 1] 2001 (Ethiopian) converts to [a certain date in] 2009 (Gregorian), yet it appeared from his entertainment visa that he informed the Department that he travelled to [Country A] in 2009. The applicant disputed that he travelled to [Country A] in 2009 and said that there was perhaps some confusion as to the months. He confirmed that his arrest happened about 3 – 4 months after his travel to [Country A], which he said was in around November.
36. The Tribunal asked the applicant for details in relation to Kaliti Prison. The applicant gave evidence that it was located in Addis Ababa on the outskirts of the city on the road towards Debreset and Nazret. He described it as a huge compound. In the part of the compound where he was held there was a volleyball field; although he was not familiar with the facilities in other parts of the prison. He noted that the whole compound was surrounded by the Military. When asked about the number of cells in the prison, the applicant said that he could only see 3 cells in the area where he was held, with each cell holding about 30 people. When asked about women in the prison, the applicant confirmed that there were women but not in his cell. When asked about prisoner facilities aside from a volleyball field, the applicant said that there were facilities for female prisoners to sew and make handicrafts, although there were no facilities for the men. When asked, the applicant confirmed that there were no prisoner facilities for the men aside from the volleyball court.
37. The Tribunal referred the applicant to a report into Ethiopian prisons conducted by a Special Rapporteur on Prisons in March 2004. The Tribunal noted its concern that his description of Kaliti Prison did not appear to be consistent with the description provided in that report, which made no mention of a volleyball court and described other prisoner facilities that he had not mentioned. The applicant reiterated that there were no prisoner facilities where he was. The Tribunal noted that, according to this report, the prison included a computer training centre and metal workshop. The applicant responded that he does not have details but maybe there was, as he saw on the television that they say that there are schools and workshops but he never saw this. When asked how he was able to secure his release from prison, the applicant said that a relative paid some bribes to the commander responsible for his arrest.

Period following release from prison

38. When asked about the period following his release from prison, the applicant gave evidence that he stayed home for 2 weeks because he was so stressed. When asked about further involvement with ARENA, the applicant said that he went to their office but his activities were very limited because he was so scared. When asked why he was going to the office, the applicant said that he was still a supporter and he believes in their program. When asked how often he went to their office, the applicant responded that he went when convenient, every

month or two months. He said that [Mr A] was advising them to take care of themselves and he was aware of another friend who was killed.

39. When asked about the location of this ARENA office, the applicant gave evidence that it was located in an area called [name deleted: s.431(2)], within the Woreda of Kerkos. Despite the Tribunal reframing its question a number of times, the applicant was unable to be more specific as to the actual location of the ARENA office, aside from noting that it was near a ring road. When asked whether he had any other involvement with the ARENA aside from going to these meetings at the office, the applicant said no. When asked if he did anymore music work for ARENA, the applicant said no; he was too scared after his time in prison. When asked, the applicant confirmed that he did not experience any other problems prior to coming to Australia.
40. The Tribunal put to the applicant that the delegate had rejected as implausible that the authorities would wait until 2001 (Ethiopian) to arrest him if he was such a prominent and outspoken ARENA supporter. The applicant gave evidence that the problems for the opposition came after the 1997 (Ethiopian) elections. The Tribunal noted that he was not arrested until 2001 (Ethiopian), yet he had claimed to have been [performing] for ARENA for many years. The Tribunal noted again that the delegate had rejected as implausible that he was not arrested or seriously harmed until 2001 if he was such a prominent ARENA supporter. The applicant noted again that the problems for the opposition started after the 1997 election, because the opposition became stronger so the government started arresting and torturing people.

Application for Australian visa and departure from Ethiopia

41. When asked about his application for an Australian visa, the applicant gave evidence that he was invited by a Tigray community group to perform and he was initially not intending to apply for protection. However, after coming here, he saw how peaceful and democratic things were and decided to stay to avoid his suffering back home. However, he noted that he is very homesick and has a wife and child, as well as the rest of his family, who are still suffering at home. He noted that people have been calling his wife in the middle of the night saying that her husband is dead.
42. When asked about the documents he provided as part of his Australian visa application, the applicant confirmed that he provided his finger prints and was given a certificate. The Tribunal asked how he was able to obtain this certificate if he had been jailed for 10 months, particularly if this was of a political nature for his opposition against the government. The applicant gave evidence that he had a friend who was a police officer who helped him obtain this certificate. The applicant said that this person was maybe also an ARENA supporter, but he was not sure. When asked how he knew him, the applicant said that they were fighters together. The Tribunal noted its surprise that he would not be aware if this person was an ARENA supporter. The applicant said that he is suspicious about this and maybe he is a member of ARENA, because he has seen him sometimes with [Mr A]. When asked how he actually obtained this certificate, the applicant said that this police officer cooperated with him and accompanied him to the station to give his finger prints. He bypassed the normal queue and was given the certificate.
43. The Tribunal put to the applicant that it might seem unusual that his passport was issued in 2010, so soon after his release from prison, which might seem that he was not a person of

adverse interest to the authorities. The applicant responded that, in Ethiopia, if you pay the money you can get what you like.

44. The Tribunal asked the applicant about any difficulties he experienced departing Ethiopia. The applicant responded that he was assisted by this police officer who had lots of authority and was able to appoint someone for him at the airport to help him through. The Tribunal noted the relevant country information set out in the decision record of the delegate regarding the difficulties for someone to obtain a passport and depart Ethiopia at Bole airport simply through paying bribes. The applicant responded that if you have enough money and know people in government, anything is possible in Ethiopia.

Problems for his wife

45. When asked about the situation in Ethiopia since coming to Australia, the applicant said that he has had little communication with people in Ethiopia. He rarely contacts his wife, although was informed that she was arrested. He was also informed that his brother has passed away, although he is not sure if this is due to normal or suspicious circumstances.
46. When asked about the arrest of his wife, the applicant gave evidence that it was around November 2011 (Gregorian) and she was arrested for 11 – 14 days, during which her brother took custody of their children. When asked why his wife was arrested, the applicant said that he did not know, but it was maybe related to him. He said that in Ethiopia anyone can arrest you just to intimidate you or to get money from you. The Tribunal noted that it might seem unusual that nothing happened to him for about 2 ½ years between his release from prison and his coming to Australia, yet then his wife was arrested shortly after he left the country. The applicant said that he does not know why they did that, although sometimes they called her at night. When asked when this calling at night started, the applicant said this was around November or December 2011 (Gregorian).

Recent death of his brother

47. When asked about the death of his brother, the applicant gave evidence that his brother died shortly after his wife's release from prison, although he did not find out until 3 months later. When asked, the applicant confirmed that his brother was living in Tigray. When asked why he believed that his brother's death was related to him, the applicant said that he talked to his brother's [age deleted: s.431(2)] year old son and asked about the cause of death. The son said it looked like his father had been killed by someone but the applicant does not know. The Tribunal noted that this was very cryptic and it asked for further details as to why he or his brother's son believed the death to be suspicious. The applicant said that, in Ethiopia, if they tell you that someone died accidentally, this is suspicious. The Tribunal noted its surprise that he had not obtained any other information as to why the death was considered as suspicious. The applicant said that he talked to his brother's son and this is what he was told. The applicant added that he did not talk to his parents because he does not know if they are dead or alive.
48. The Tribunal noted its surprise that he had not called his parents to see if they are okay if he is worried about whether they are dead or alive. The applicant confirmed that he did not. The Tribunal flagged its difficulty accepting as plausible that he has not made calls to his parents or anyone else he knows to check on their welfare. The applicant said that he contacted his sister and brother's son but he didn't ask his parents because they are old and lived in the country. The applicant noted again that he feels that his brother's death is related to him. The

Tribunal noted that he had said earlier that he does not know if his parents are alive. The applicant said that they are very old. He claimed that he never said that they are dead, but they are 'old enough'.

Internal relocation

49. The Tribunal asked the applicant if there was any reason why it would not be safe for him to relocate within Ethiopia to avoid his feared persecution. The applicant gave evidence that he is very worried about the death of his brother and the cause of this death. He is afraid that this death might be related to him or his presence in Australia. There would be nowhere for him to live in Ethiopia and he would die like his brother.
50. When asked if there was any other reason why it would not be reasonable or practicable for him to relocate within Ethiopia, the applicant said that there was no place in Ethiopia where the government was not present.

Future fears

51. When asked what he feared might happen to him if he were to return to Ethiopia, the applicant said that death is waiting. He added that, after the death of his brother, he is no longer afraid of death and if his application is rejected he would go back to face his fate.
52. When asked why he believed that people would want to kill him in Ethiopia, the applicant said that he has been in Australia for almost 9 months and everyone in the Ethiopian community knows that he is here and seeking asylum. He said that news has already spread because he is a [musician] and now death is waiting for him. When asked why people in Ethiopia would know that he applied for asylum in Australia, the applicant said that there are lots of people here who know him because he is a popular musician.
53. The Tribunal put to the applicant that it may have difficulty accepting that the government was still interested in him given that it has now been over 3 years since he was actively [performing] with ARENA. The applicant said that he was still doing work for ARENA underground, just not openly. When asked what he was doing, the applicant said that he was calling them by telephone at night. When asked who he was calling, the applicant said that he was calling the leaders like [Mr A]. When asked why he was calling him, the applicant said that it was his party and he did not stop working with them, albeit not openly.
54. The Tribunal put to the applicant that it might seem unusual that he never sought asylum whilst traveling to various countries in Europe and North America. The applicant said that, at that time things were okay and he was not scared until after he was arrested. The Tribunal noted that he had earlier given evidence that, even before his arrest, he was being followed and intimidated and he was fearful that he would be killed. The applicant agreed, although said he was more scared after the arrest.
55. The Tribunal referred the applicant to his claims relating to persecution as a failed asylum seeker. The Tribunal put to the applicant that the delegate had considered it implausible that it would be known that he was applying for protection in Australia given that, aside from his period in jail, he otherwise did not come to the attention of the authorities throughout the period when he was a [performer] in support of ARENA. The applicant responded that, if he goes back to Ethiopia, he would not stand with his hands folded. He would be forced to

choose between the opposition and the government, because it is not possible in Ethiopia to abstain from taking sides.

Evidence of ARENA music and performances

56. The Tribunal referred the applicant to the DVD of [events] which was provided to the Tribunal. The applicant gave evidence that most of the footage related to his time when he was in the field, as well as some footage from after his time in the field. He confirmed that the material related to his time with [Group B], as well as after [Group B]. When asked if it included [events] relating to ARENA, the applicant said that there was one [where he is in uniform]. When asked how it relates to ARENA, the applicant said that it is an ARENA [event]. The Tribunal asked the applicant to clarify that this meant that the DVD included a performance from an ARENA concert. The applicant confirmed that this was correct, although there was nothing visible to show that this was for ARENA.
57. The Tribunal flagged its difficulty accepting that at [an event] for ARENA there would be nothing visual to link the [event] to ARENA. The applicant said that he copied this [evidence]. He said that, in Ethiopia, when you do a [event] for the party they do not give you a copy of the footage. When asked if he had any evidence of the music or performances that he did for ARENA, the applicant said again that he was never given any copies as it was too dangerous.
58. The Tribunal flagged its difficulty accepting that he was [performing] for ARENA for such a long period and was unable to provide any evidence of this, yet he had evidence of his performances for the TPLF. The applicant noted again that it was difficult to get a copy because the party did not give him copies for his own safety. However, he said that he would ask the leadership and perhaps they would give him a copy.
59. The Tribunal explained to the applicant that, if there was something on the DVD that provided a link between him and ARENA, the Tribunal would need specific details as to where this [evidence] was located on the DVD and an explanation as to how any link was demonstrated in the footage. The Tribunal emphasised that this explanation and guidance should be provided in as much detail as possible, including with relevant time codes for the part of the footage. The applicant and his agent agreed to do so.

Association with [Mr A]

60. When asked by the Tribunal, the applicant confirmed that he was known to [Mr A] has been the organiser the whole time. When asked how many times he had interactions with [Mr A], the applicant noted that they knew each other well and had known each other from their time in the field even before the TPLF came to power. When asked when he last spoke with [Mr A], the applicant gave evidence that, when he was processing his application for his Australian visa, he called [Mr A] and told him that he was well. When asked if he had [Mr A]'s telephone number, the applicant confirmed that he did, although this was in Ethiopia and he no longer has the number. When asked if he was able to contact [Mr A] from Australia to ask for written confirmation of his claims, the applicant said that he would try to find his contact number from Ethiopia. The Tribunal asked the applicant why he could not get in contact with [Mr A] through the ARENA party. The applicant said that [Mr A] is the top leader and does not even answer his own telephone. The Tribunal noted that the ARENA party has contact details, including telephone and email, and it asked the applicant why he

was not able to make contact with [Mr A] through these contact details for the party. The applicant responded that he would try to do so.

Familiarity with ARENA

61. The Tribunal then asked the applicant a number of questions in relation to his familiarity with the ARENA party. The applicant gave evidence that the party was formed in 1993 (Ethiopian) by Gebreu Asrat, who was the Chairperson, and Aregash Adane, who was the Deputy. When asked what Gebreu Asrat was doing prior to the establishment of the ARENA party, the applicant said that when the EPRD was formed, he was the head of Tigray state.
62. When asked if the ARENA party had a flag or symbol, the applicant said no. When asked again if it had any form of recognizable symbol, logo or anything, the applicant again said no. The Tribunal noted that, according to its website, it appears to have a particular flag. The applicant said that this was maybe like what they had in the field. When asked to describe it, the applicant said that there was red and also a yellow star. The Tribunal noted its concern that his evidence on this was very vague and it asked the applicant to either draw or describe this flag in more detail. The applicant said again that it is yellow and red. The Tribunal noted its concern that he was unable to be more specific about this given his claims of being involved with the party for so long. The applicant said that it was not a legal flag. The Tribunal noted that it was nevertheless surprised that he was not more familiar with it. The applicant said that they were not very well organised and Aregash was no longer with them. When asked why Aregash left the party, the applicant said that it was because of her age. It was also because of greed for power amongst the party and internal divisions. When asked when Aregash left the party, the applicant said that he was not sure. When asked if he had any idea when she left, the applicant said that he does not know, but he knows that she is no longer with them. He confirmed that she is still alive.
63. When asked who is currently second-in-charge of the party, the applicant said that it changes, although it currently is a person named Daniel. The applicant could not recall his surname. When asked who was second-in-charge when he was involved with the party, the applicant said that it was Aregash. The Tribunal noted that, if Aregash was second-in-charge when he was involved with the party, it might seem unusual that he could not provide any estimate as to when she left the party. The applicant noted again that he could not recall.
64. The Tribunal asked the applicant about the first election that the ARENA party was involved in. The applicant said that it was the 1997 (Ethiopian) election. When asked about the outcome of that election, the applicant said that all the opposition parties came together under the name of Kenjet, which was an opposition party alliance. When asked if this coalition participated in the 1997 (Ethiopian) election, the applicant said yes. He also confirmed that the ARENA party was one of the parties forming that alliance. When asked if they won any seats in the election, the applicant said that they won in lots of places and in Addis Ababa, but the government forced the people to re-elect them. When asked again if they actually won any seats in the Parliament, the applicant then said no, because when they were asked to participate in a further election they refused. When asked about the most recent election in Ethiopia, the applicant said that it was held 2 years ago in May 2002 (Ethiopian).
65. The Tribunal put to the applicant that, according to the country information it had read, the ARENA party was not formed until after the 1997 (Ethiopian) elections. The applicant responded that it was not legally recognised by the government until after this election, but it was still a party before; although it was not yet recognised by the government. The Tribunal

asked how it could have participated in the 1997 (Ethiopian) election if it was not yet recognised at that time. The applicant responded that they participated in this election even though they were not recognised because they made a coalition with other parties.

66. The Tribunal asked the applicant about the opposition alliance that includes ARENA. The applicant said that there have been a number of parties which have changed, but the current alliance is called 'Medrek'. When asked about other parties forming part of this Medrek coalition, the applicant said that there was one group called Hebrat and one called Orominia but the applicant was unsure if they were still with the alliance. He added that there was another group called Andenet. When asked about other groups, the applicant said that these were the main ones and he could not recall any others. The Tribunal noted its concern that he was not able to name any other parties that formed an opposition alliance with the ARENA party that he was involved with. The applicant said that the alliance was not permanent. The Tribunal put to the applicant that, even so, it might seem unusual that he was unable to name any other parties forming part of this alliance. The applicant referred again to Hebrat and Andenet, but could not recall any others.
67. When asked about his local ARENA candidate, the applicant said that there were no ARENA candidates in Addis Ababa, only in Tigray. When asked how many seats were won by Medrek in the last election, the applicant said one. The Tribunal put to the applicant that it had read reports about the murder of a high profile ARENA candidate. The applicant responded that this was Aregawi Gebreyohannes, who was killed 2 years ago.

Complementary protection

68. After explaining to the applicant the definition of complementary protection, the applicant confirmed that there were no other claims or comments he wished to make in relation to this alternate limb of the visa and there was nothing further he wished to add in his evidence.

Agent's oral submission

69. Following the above evidence, the applicant's agent made a brief submission in which she noted that a friend of the applicant had helped him with the application form to the Department, which might explain the incorrect date being used for the applicant's arrest. The agent submitted that the applicant's wife has been threatened and imprisoned, which indicates that the applicant is still at risk. She noted that country information indicates that the government denies basic rights which might affect his capacity to subsist because of his involvement with ARENA. Also, the death of the applicant's brother is suspicious and is probably related to the applicant and his involvement with ARENA. She noted that the applicant has been psychologically upset by this news of his brother's death and has been referred for a psychological assessment. The Tribunal agreed to allow until [a certain date in] July 2012 to enable this psychological assessment to be conducted, as well as to enable the applicant to procure evidence from Ethiopia of his involvement with ARENA.

Post-hearing correspondence

Further supporting documents

70. [In] June 2012, the applicant provided to the Tribunal a letter from ARENA Party, dated [June] 2012, confirming the applicant's membership of the party and his past involvement in

actively promoting the party to voters. He also provided a copy of his ARENA Party membership card.

DFAT inquiries

71. Following the hearing, the Tribunal sought advice from the Department of Foreign Affairs and Trade (DFAT) as to whether Kaliti prison had a volleyball court at the time of the applicant's imprisonment. [In] June 2012, DFAT provided the following advice:

Post confirms that Kaliti prison does have sporting facilities for prisoners including a volleyball court which was in operation at the time of the imprisonment of the applicant.

72. [In] June 2012, the Tribunal requested DFAT to make inquiries with the ARENA party to verify the applicant's ARENA Party membership card and letter of support. [In] July 2012, DFAT provided the following advice:

[Mr A], [an official] of ARENA, has verified the letter and membership card attached to RRT Country Information Request – ETH40602.

Independent country information

ARENA Party

73. The origins of the ARENA party are unclear. According to *Inter Press Services*, the Arena Tigray party was formed in 2006 by former Tigray People's Liberation Front (TPLF) cadre and guerrilla Yewubmar Asfaw and her husband, both of whom had left the TPLF in 2001, as well as Aregash Adane and others.¹ According to another source in November 2007, however, former President of the Tigray Regional State and TPLF member Gebru Asrat "obtained the legalisation of the Arena Tigray for Democracy and Sovereignty Party", which would only be able to run candidates in the Tigray region.² The latter position is supported by Swiss Peace, who reported that the "Arena Tigray for Democracy and Sovereignty Party (ATDSP) formed by Gebru Asrat, former President of Tigray, and other former TPLF-dissenters who were expelled from the TPLF in 2001, could possibly pose a serious challenge to the absolute hegemony of the TPLF in Tigray".³
74. According to the *Ethiopian Review*, the Arena Tigray for Democracy and Sovereignty party (ARENA) is part of Medrek, Ethiopia's major opposition alliance. Medrek is also comprised of the following opposition groups/parties: Unity for Democracy and Justice (UDJ), Oromo Federal Democratic Movement (OFDM), Ethiopian Democratic Unity Movement (EDUM), Oromo People's Congress (OPC), Somali Democratic Alliance Forces (SDAF) and United Ethiopian Democratic Forces (UEDF).⁴ By contrast, according to the African Elections Database, the Medrek alliance which contested the 2010 House of People's Representatives election included (in addition to those groups/parties just mentioned) the Southern Ethiopia People's Democratic Union (SEPDU) and Unity for Democracy and Justice (ANDENET).

¹ 'Disappointed but not defeated' 2008, *Inter Press Service*, 20 November <http://www.ipsnews.net/news.asp?idnews=44783> – Accessed 21 November 2008 .

² 'Two new regional parties in Ethiopia' 2007, Mahder.com website, 3 November <http://mahder.com/two-new-regional-parties-in-ethiopia.html> – Accessed 17 October 2008 .

³ 'Ethiopia: Trends in Conflict and Cooperation' 2007, Reliefweb website, source: Swiss Peace, November

⁴ 'Opposition alliance MEDREK faces internal crisis ahead of election' 2010, *Ethiopian Review*, 19 April <http://www.ethiopianreview.com/content/27605> – Accessed 15 March 2012

75. In July 2008, the *Sudan Tribune* reported that four opposition parties and two ‘notable personalities’ had joined to form the Forum for Democratic Change in Ethiopia. The forum was reportedly established by the UEDF, the OFDM, the SADF and “the Union of Tigrians for Democracy and Sovereignty known as Arena”. According to the article, Gebru Asrat of the ARENA party reportedly said that “they had no choice but to keep on trying to expand the political space”.⁵
76. According to the *Jimma Times*, ARENA “is similar to the Coalition for Unity and Democracy (CUD) and other opposition parties due to its belief that there is no democracy and equality under the current leadership of EPRDF [Ethiopian People’s Revolutionary Democratic Front] ruling party”. ARENA does not believe that the judiciary is independent, or that there is adequate press freedom in Ethiopia. Some opposition supporters, however, claim that ARENA is not dissimilar to the EPRDF, given the party’s “support for the current ethnic federalism system of EPRDF”.⁶
77. In November 2007, *VOA News* reported that the chairman of the “newly launched Union of Tigrians for Democracy and Sovereignty party, Gebru Asrat expressed regret over his former party’s (TPLF) handling of the Ethio-Eritrean border conflict that claimed the lives of more than one hundred thousand people on both sides”. He claimed that TPLF made mistakes following Eritrea’s independence in 1993, such as the lack of boundary demarcations, the loss of Ethiopian access to a port, and undefined economic and political ties with Eritrea as a state. According to Asrat, his new party “gives the people of Tigray a chance to be directly involved in regional issues in a way that ensures its political, economic, and social interests”.⁷ According to *Addis Fortune*, ARENA had a platform of “sustaining the supposedly lacking real democracy to Ethiopia and protecting the sovereignty of the country. Recovering the Port of Asseb also lies at the top of its agenda” At the time of its foundation, the party claimed to have an estimated membership of 3,000.⁸

Treatment of known or suspected ARENA supporters and activists (and their family members)

78. Limited specific information was located regarding the treatment of known or suspected ARENA supporters, activists, or their family members. However, in March 2010, *Voice of America* reported that an Arena-Tigray candidate, Aregawi Gebreyohannes, was stabbed to death after six intruders entered his home in the early hours of the morning. Gebreyohannes had reportedly been arrested twice, and had complained about intimidation while campaigning. According to the leader of the Arena-Tigray party, Gebru Asrat, such attacks were part of a campaign of intimidation by the Ethiopian People’s Revolutionary Democratic Front (EPRDF), and “politically-motivated violence and intimidation could make it impossible for [opposition coalition] Medrek to compete in the elections”. Another Arena-Tigray candidate was reportedly beaten two days earlier as a result of a “political disagreement”.⁹

⁵ ‘Opposition holds “Forum for Democratic Dialogue in Ethiopia”’ 2008, *Sudan Tribune*, 3 July <http://www.sudantribune.com/Opposition-holds-Forum-for,27725> – Accessed 13 March 2012 .

⁶ ‘War with Eritrea unnecessary to restore Assab, says Tigray Opposition’ 2008, *Jimma Times*, 3 January <http://jimmatimes.com/article.cfm?articleid=17552> – Accessed 13 March 2012 .

⁷ ‘Ethiopia’s Ruling Party dissident Launches Opposition Party’ 2007, *VOA News*, 16 November <http://www.voanews.com/amharic/news/a-53-2007-11-16-voa1-93030524.html> – Accessed 13 March 2012 .

⁸ ‘Former TPLF Members to Establish New Party’ 2007, *EthioGuardian*, source: *Addis Fortune*, 11 July <http://www.ethiopianguardian.com/news.php?extend.976> – Accessed 16 March 2012 .

⁹ ‘Arena Tigray Opposition Candidate Killed’ 2010, Ezega.com website, source: *VOA News*, 2 March <http://www.ezega.com/News/NewsDetails.aspx?Page=news&NewsID=2121> – Accessed 13 March 2012 .

79. According to an April 2009 statement from Arena Tigray for Democracy and Sovereignty, “[t]he ruling party has intensified its harassments and intimidations on the genuine opposition parties throughout the country. Several opposition parties had been airing their concern on the gross abuse of human and political rights perpetrated on their members; though the ruling party dismissed their claims as baseless and mere fabrications”. The statement listed a number of examples of harassment and intimidation with regard to ARENA:
- Following the opening of an ARENA office, Tigrayan People’s Liberation Front (TPLF) cadres called a meeting with civil servants, who were reportedly incited to oppose the ARENA party, the inference being by harassing members and attacking the office;
 - The lock of the ARENA office was broken in an attempted break in, and posters were damaged;
 - The landlord of the ARENA office was reportedly being pressured to breach the lease, despite an agreement with the party to continue renting for an extended period;
 - The volunteer head of the office was subject to attempted bribery to terminate his services, and his parents and relatives were harassed and ordered to pressure him to quit; and
 - Meetings of public and civil servants conducted by TPLF cadres were considered offensive and unconstitutional, and individual members of ARENA were reportedly blackmailed.¹⁰
80. Information was also located regarding the treatment of opposition activists and their families more generally. According to DFAT, “[f]amily members, if considered a threat by the government, may be targeted, detained and harassed. Their movement may be watched and at certain instances restricted”. DFAT noted that this may be in the “form of surveillance, or actual harassment (verbal warnings, physical harassment etc)...[and] is likely to be worse in rural areas, where security personnel have significant control, and monitoring such intrusions is more difficult due to issues of access”. DFAT further noted that after the 2005 elections, “opposition members and their families were targeted and attacked...[and m]any were detained for long periods. After 2005, the government tightened its control over opposition movements and anyone critical of its activities could be a target of harassment”. In addition, “[t]ravel for family members may be strictly controlled, especially if the opposition members/political activists are thought to be prominent”.¹¹
81. In January 2010, the Immigration and Refugee Board of Canada (IRB) reported on the treatment of members of the opposition parties and of their relatives by government authorities between 2008 and 2009. The IRB cited a 2009 Amnesty International report, which claimed that a number of individuals detained in April 2009 due to their alleged involvement in planning an attack on the government “may have been detained solely for their family ties to men who have expressed political opposition to the government”. The

¹⁰ ‘Statement from Arena Tigray for Democracy and Sovereignty Stop Harassments and Intimidations!’ 2009, Tecolahagos.com website, 17 April http://www.tecolahagos.com/statment_of_Arena_state_Tigray.htm – Accessed 13 March 2012 .

¹¹ DIAC Country Information Service 2010, *Country Information Report 10/9 – ETH10033: Political disappearances and departure information*, (sourced from DFAT advice of 19 February 2010), 23 February

report cited a number of examples from a range of sources of the treatment of members of the opposition, including:

- Credible and continuous reports of harassment and threats against political groups,
- Being imprisoned, tortured and killed under the guise of the ‘Global War on Terror’;
- The regular arrest and torture of political opponents, accused of membership in anti-peace or anti-people organisations;
- Frequent and systematic abuse and intimidation by government; and
- Detention for long periods without charge or access to a judge.¹²

Freedom of movement for persons with political profile

82. With regard to the ability of opposition party members to move freely in and out of Ethiopia, the Department of Foreign Affairs and Trade (DFAT) reported in 2010 that while family members of active opposition party members may be targeted by the government, “[t]he primary targets of harassment are most likely to be the active members themselves”. According to DFAT, “[a]ll exits and entries from Ethiopia are recorded in a database, including the name of the immigration officer checking the passport...[d]ata is entered accurately as officers are punished if mistakes are made”. While not specifically related to Bole airport, DFAT reported that “any bribery at the airport would most likely need to involve high ranking security officials due to increasing security at the airport and random cross checks of travellers documents at all areas of the airport” DFAT noted that three active authorities – the Federal Police, the Security Service, and Immigration – are based at airports.¹³
83. In a separate report from May 2009, DFAT noted that “[i]f the courts consider that a person should not leave the country, they issue a letter informing Ethiopian Immigration to that effect. The Immigration office then sends to departure control officers a list of those people who should not be permitted to leave”. DFAT further noted that “Kebele or other identity documents are not ‘routinely’ required at airports” as immigration staff normally cross-check hard and electronic copies of passports.¹⁴
84. According to information provided by DFAT in 2008, “the Ethiopian government has been known to withhold passports of political dissidents and others deemed out of favour”. DFAT sources were unaware “if a bribe can be paid to get around this” DFAT noted that Ethiopia was generally less corrupt than other regional countries, and while bribery could not be ruled

¹² Immigration and Refugee Board of Canada 2010, *ETH103318.FE – Ethiopia: Treatment of members of the opposition parties and of their relatives, particularly those of the Coalition for Unity and Democracy (CUD), by government officials (2008-2009)*, 14 January .

¹³ DIAC Country Information Service 2010, *Country Information Report 10/9 – ETH10033: Political disappearances and departure information*, (sourced from DFAT advice of 19 February 2010), 23 February

¹⁴ DIAC Country Information Service 2009, *Country Information Report 09/41 – RRT Information Request ETH34594: Airport Departure Procedures*, (sourced from DFAT advice of 6 May 2009), 6 May .

out, they were aware of high-profile opposition members obtaining travel documents and departing the country.¹⁵

85. In 2005, DFAT reported that “[a] person wanted by security personnel would likely face problems with Immigration (the passport issuing office and at departure control). Depending on the extent of the security force’s interest in detaining a person, that individual’s biodata would likely be disseminated to the eleven border crossings, as well as to the two international points of departure managed by Immigration authorities”. With regard to bribery, DFAT noted that “Bole International Airport, in particular, has more stringent security as a result of direct flights to the US, UK and Israel. However, it has been noted that the physical layout of boarding areas at Bole does not preclude a passenger boarding a flight without having his/her documents examined at the boarding gate when traffic volumes are high”.¹⁶
86. According to the Immigration and Refugee Board of Canada (IRB), to obtain a passport “a person must normally present an identity card issued by his or her local *kebele*, which serves as proof of address, or in the absence of such an identity card, a letter from the local *kebele*”. If employed, a passport applicant would also provide a letter from his or her employer, while a university student would be required to provide a letter from the university. To receive an exit permit, a valid passport is required.¹⁷

Kaliti prison and arrest, imprisonment and bail procedures in Ethiopia

87. A 2004 report prepared by the Special Rapporteur on Prisons and Conditions of Detention in Africa provides the following description of Kaliti prison:¹⁸

The Kaliti Prison situated some 11 Kilometers from the capital Addis Ababa is also a federal prison with about 479 inmates, the majority of them top military officials of the former regime charged with genocide and crimes against humanity. Some of the prisoners have been in detention for more than 12 years and most have been convicted and sentenced to life imprisonment. In a closed meeting with the Special Rapporteur, they claim they are political prisoners and are being victimised by the new regime. They also claim the majority of those detained across the country are persons opposed to the new regime and range from peasant farmers to top politicians of the Derg regime. They requested the Special Rapporteur to intervene on their behalf to appeal for pardon from the state.

The prison has a total of 11 cells – 10 for the 471 men and 1 for the 8 women detain there. The average age of the prisoners is above 50. The oldest prisoner claims to be about 110 years. He is half blind and walks with the help of others. There is a small clinic in the prison that administers first aid treatment. There is no resident doctor or nurse. There is also a computer training centre and a small metal workshop. There is

¹⁵ Department of Foreign Affairs and Trade 2008, *DFAT Report No. 768 – Ethiopia: RRT Information Request: ETH32591*, 1 February .

¹⁶ DIAC Country Information Service 2006, *Country Information Report 06/52 – Ethiopia: Passport Issue Arrangements*, (sourced from DFAT advice of 15 September 2006), 15 September

¹⁷ Immigration and Refugee Board of Canada 1999, *ETH33212.E – Ethiopia: Procedures for travelling within and leaving Ethiopia; how passports and exit permits are obtained; and whether kebele authorities must be notified*, 16 November .

¹⁸ Special Rapporteur on Prisons and Conditions of Detention in Africa (2004), *Report of the Mission of the Special Rapporteur on Prisons and Conditions of Detention in Africa to the Federal Democratic Republic of Ethiopia, 15 – 29 March 2004*, pp.12-13.

no school for formal education. Since most of the prisoners are over fifty years they may not be interested in classroom activities or metal or woodwork training.

The Special Rapporteur was informed that the Kaliti prison compound is a makeshift structure put together after 1991 when the Mengistu regime was toppled. It is not meant for prison purposes. The prisoners informed the Special Rapporteur that most of the structures have been built by them through their own contributions and assistance from NGOs.

88. In January 2010, a Country of Origin Research and Information (CORI) report cited the then Chairman of the Oromo Liberation Front (OLF), who in 2006 stated that “the Ethiopian government was using ‘concentration’ camps to contain protestors”. According to the OLF Chairman, “there are many high security prisoners (university students and college students) that are in Kaliti, their number is big...[o]ne university student, a fourth year engineering student was beaten and killed in Kaliti prison, yesterday. He was imprisoned for the last 3 years and he was beaten to death by the security forces”.¹⁹
89. A 2006-2007 press release from the Oromo Support Group (OSG) detailed a number of alleged human rights violations in Ethiopia, some of which took place in Kaliti prison. Among the reports were claims of:
- The deaths of 65 inmates of Kaliti prison on 1 November 2005;
 - Insults from armed guards to detainees and visiting family members;
 - Refusal of requests for medical care;
 - Torture, falsification of evidence and witness coercion; and
 - An estimated 243 Oromo political detainees as of June 2007, some of whom had been awaiting trial for up to eight years, seven of whom had been tortured to death, and others who had died from shootings or denial of medical care.²⁰
90. According to the most recent US Department of State (USDOS) *Country Reports on Human Rights Practices for 2010 – Ethiopia* report, in April 2010 “an Italian citizen died after receiving allegedly substandard medical treatment” in Kaliti prison. USDOS further noted that 33 people arrested on charges of “conspiracy to destroy government institutions, the attempted assassination of government officials, and an attempt to incite rebellion in the army” received life imprisonment in Kaliti prison after they were reportedly denied pre-trial access to legal counsel and were mistreated while in detention. Two additional suspects received 10-year sentences, while another five were given the death sentence.²¹
91. In 2009, Amnesty International (AI) reported that “[c]onditions in Kaliti prison and other detention facilities were harsh – overcrowded, unhygienic and lacking adequate medical care. Among those detained in such conditions were long-term political prisoners held without

¹⁹ Country of Origin Research and Information 2010, ‘CORI Country Report: Ethiopia’, UNHCR Refworld website, January, p.31 <http://www.unhcr.org/refworld/pdfid/4b9e03f92.pdf> – Accessed 8 September 2010

²⁰ Oromo Support Group undated, OSG Press Release No. 43, July 2006-2007 <http://www.oromo.org/osg/pr43.htm> – Accessed 7 May 2008 .

²¹ US Department of State 2011, *Country Reports on Human Rights Practices for 2010 – Ethiopia*, 8 April, Sections 1.a, 1.d

charge or trial”.²² In a separate report from January 2009, AI reported that Birtukan Mideksa, leader of the opposition Unity for Democracy and Justice Party, was “arrested on 28 December and has been held without charge since then, in solitary confinement” According to AI, she was “being held in Kaliti prison outside Addis Ababa, in a cell measuring 2m square, which according to former inmates of the prison is often unbearably hot”. Due to her isolation, AI considered her at “risk of torture and other ill-treatment”.²³

92. In 2007, Amnesty International previously reported that three teachers and members of Ethiopian trade union ETA were being detained in Kaliti prison “as prisoners of conscience, detained for participating in lawful ETA trade union activities”. Two of the detained teachers claim that they were “tortured into signing false confessions” about their links with the Ethiopian People’s Patriotic Front (EPPF), an armed opposition group.²⁴
93. According to the US Department of State (USDOS), Ethiopia has “three federal and 120 regional prisons. There are also many unofficial detention centers throughout the country”. The majority of detainees in prisons are thought to be held on pending charges, with some prisoners reporting that they had been “detained for several years without being charged and without trial”. USDOS noted that “[a]lthough the constitution and law prohibit arbitrary arrest and detention, the government frequently ignored these provisions in practice” Authorities reportedly “regularly detained persons without warrants and denied access to counsel and family members”, and despite the constitution and penal code requiring a suspect to appear in a court and be charged within 48 hours, this was generally not respected in practice. USDOS noted that a “functioning bail system was in place but not available in murder, treason, and corruption cases. In most cases authorities set bail between 500 and 10,000 birr (\$30 and \$610), which was too costly for most citizens” With court approval, those suspected of serious offences can be detained for 14 days without charge, and for a further 14 days if the investigation continues. Further, police reportedly did not always comply with court orders to release suspects on bail. There were also consistent and credible reports from opposition party members of frequent detention in police stations “for long periods without charge or access to a judge”.²⁵

Treatment of failed asylum seekers

94. While limited recent information on the treatment of known or suspected failed asylum seekers was located, indications are that the treatment a returnee would receive from authorities would depend on the extent to which the individual would be seen as a threat to the current government.
95. In July 2009, Human Rights Watch (HRW) claimed that Somaliland authorities had forcibly returned Ethiopian asylum-seekers on a number of occasions. HRW reported that “[i]n at least several cases Ethiopia’s government has asked the Somaliland authorities to hand into its custody asylum-seekers who Ethiopian officials believe have ties to insurgent groups in Ethiopia, and the Somaliland authorities have generally complied with such requests”

²² Amnesty International 2009, *Annual Report – Ethiopia*, 28 May

<http://thereport.amnesty.org/en/regions/africa/ethiopia> – Accessed 29 May 2009 .

²³ Amnesty International 2009, ‘UA 2/09: Arbitrary Detention/Torture or other ill-treatment’, 7 January .

²⁴ Amnesty International 2007, ‘Ethiopia: Political repression must stop’, 11 September

<http://web.amnesty.org/library/Index/ENGAFR250132007?open&of=ENG-2AF> – Accessed 12 September 2007 .

²⁵ US Department of State 2011, *Country Reports on Human Rights Practices for 2010 – Ethiopia*, 8 April, Sections 1.c, 1.d .

According to the report, most asylum-seekers entering Somaliland from Ethiopia are ethnic Oromo or Ogadeni clan Somalis, and “suspected ONLF and OLF members returned to Ethiopia face a high probability of arbitrary detention and torture”.²⁶

96. According to information provided by DFAT in 2008, “Ethiopian authorities do pursue opposition leaders within the country and abroad...there have been several cases of political protesters being arrested and detained (and most likely tortured)”. DFAT noted that “it is very difficult to assess what threat the individual in question might face. The key question would be whether or not Ethiopian authorities saw him as a real threat. If so, then he could face serious problems, but if not he might be able to return without incident”.²⁷
97. In June 2008, the *Sudan Tribune* reported that “400 Ethiopians which [sic] were stranded in Eritrea for years returned home this week under the auspices of the international committee of the Red cross (ICRC)”. The Ethiopians were reportedly welcomed by “hundreds of residents and officials of Mekelle town, in the northern Tigray region”. The repatriation was based on “the consent of each individual with cooperation of authorities from both sides”.²⁸ Previously, 623 people were repatriated under similar conditions in March 2008.²⁹
98. According to an October 2007 report by Amnesty International, “Sudanese authorities forcibly returned 15 recognised refugees to Ethiopia, handing them over at the Ethiopia-Sudan border. Their whereabouts are now unknown and Amnesty International believes they are at risk of enforced disappearance, arbitrary and incommunicado detention, torture and unfair trials”. The individuals were reportedly part of a larger group of Ethiopian refugees “arrested in early July 2007 by Sudanese intelligence officers in Khartoum and Blue Nile state” Among those repatriated were believed to be the leader of defunct opposition party, the Ethiopian Democratic Union, and alleged members of the Oromo Liberation Front.³⁰

FINDINGS AND REASONS

Country of nationality

99. The Tribunal accepts that the applicant is a citizen of Ethiopia. It accepts as evidence of this the copy of the applicant’s passport provided to the Department. The Tribunal has assessed the applicant’s claims against Ethiopia as his country of nationality for the purposes of the Convention and his receiving country for the purposes of s.36(2)(aa).

Credibility

100. The Tribunal accepts that ‘applicants for refugee status face particular problems of proof as an applicant may not be able to support his statements by documentary or other proof, and

²⁶ Human Rights Watch 2009, “‘Hostages to Peace’: Threats to Human Rights and Democracy in Somaliland”, 13 July, p.43 <http://www.hrw.org/sites/default/files/reports/somaliland0709web.pdf> – Accessed 15 July 2009 .

²⁷ Department of Foreign Affairs and Trade 2008, *DFAT Report No. 768 – Ethiopia: RRT Information Request: ETH32591*, 1 February .

²⁸ ‘Red Cross repatriates 400 Ethiopians from Eritrea’ 2008, *Sudan Tribune*, 13 June <http://www.sudantribune.com/spip.php?article27521> – Accessed 18 June 2008 .

²⁹ ‘635 people repatriated’ 2008, *Reuters*, 17 March <http://www.alertnet.org/thenews/fromthefield/220224/ac86f052509b8ad74639ef387fbaa725.htm> – Accessed 19 March 2008 .

³⁰ Amnesty International 2007, ‘UA 280/07: Forcible return/fear of torture or ill-treatment/incommunicado detention/prisoner of conscience’, 31 October http://www.amnesty.org/en/alfresco_asset/9187ebe6-a2b0-11dc-8d74-6f45f39984e5/afr250242007en.html – Accessed 18 January 2008 .

cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule.’ The Tribunal also accepts that ‘if the applicant's account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt. (The United Nations High Commissioner for Refugees' *Handbook on Procedures and Criteria for Determining Refugee Status*, Geneva, 1992 at para 196). However, the Handbook also states (at para 203):

The benefit of the doubt should, however, only be given when all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's general credibility. The applicant's statements must be coherent and plausible, and must not run counter to generally known facts.

101. When assessing claims made by applicants the Tribunal needs to make findings of fact in relation to those claims. This usually involves an assessment of the credibility of the applicants. When doing so it is important to bear in mind the difficulties often faced by asylum seekers. The benefit of the doubt should be given to asylum seekers who are generally credible but unable to substantiate all of their claims.
102. The Tribunal must bear in mind that if it makes an adverse finding in relation to a material claim made by the applicant but is unable to make that finding with confidence it must proceed to assess the claim on the basis that it might possibly be true (see *MIMA v Rajalingam* (1999) 93 FCR 220).
103. However, the Tribunal is not required to accept uncritically any or all of the allegations made by an applicant. Further, the Tribunal is not required to have rebutting evidence available to it before it can find that a particular factual assertion by an applicant has not been made out. (see *Randhawa v MILGEA* (1994) 52 FCR 437 at 451 per Beaumont J; *Selvadurai v MIEA & Anor* (1994) 34 ALD 347 at 348 per Heerey J and *Kopalapillai v MIMA* (1998) 86 FCR 547.)
104. In the present case, DFAT has confirmed the authenticity of the applicant's ARENA Party membership card and support letter. It is also a matter of significance that this confirmation was provided by [an official of ARENA], which lends additional weight to the applicant's claims relating to his personal association with [Mr A]. DFAT has also confirmed that Kaliti prison did have a volleyball court at the time of the applicant's imprisonment. The Tribunal has placed significant weight on the DFAT advice in this matter in corroborating key aspects of the applicant's claims.
105. The Tribunal also found the applicant to be a generally credible witness at the hearing. He presented his evidence in a clear and straight-forward manner. The Tribunal traversed the history of his claims in detail at the hearing, during which the applicant's evidence remained generally consistent and compelling. Having reviewed the recording of his Department interview, the Tribunal also notes that his claims have remained generally consistent throughout the processing of his application by the Department and the Tribunal. The Tribunal also observes that, despite some areas of weakness, the applicant generally displayed a spontaneous and detailed familiarity with the ARENA party, consistent with his claims, including when questioned about the origins of the party, electoral performance as well as the assassination of an ARENA candidate in 2010.

Assessment of the applicant's claims

106. In light of its positive credibility assessment, the Tribunal accepts his claims of past problems in Ethiopia, as detailed in his statutory declaration to the Department and oral evidence at the

Tribunal hearing. In particular, the Tribunal accepts that the applicant was an active supporter of the ARENA party since shortly after its formation and that his main form of active support was to [arrange musical performances] in support of the party. The Tribunal accepts that this led to him being arrested and imprisoned in 2001 (Ethiopian) for reason of his political opinion and activities. The Tribunal accepts that, after his release, he maintained a low-profile engagement with the party, but was no longer actively involved due to his fears arising from his period of imprisonment and the caution he received from [Mr A] to keep a low profile. The Tribunal is also prepared to accept that, since his departure from Ethiopia, the applicant's wife has been threatened and imprisoned for up to 14 days in approximately December 2011. The Tribunal also accepts that the applicant's brother has recently died. However, in light of the vagueness of the applicant's evidence as to how this death was suspicious or potentially linked to himself, the Tribunal does not accept that there is a connection between this death and the applicant's association with ARENA party.

107. The Tribunal acknowledges that there is only limited country information in relation to the mistreatment of ARENA supporters and activists. However, country information confirms that ARENA forms part of the main opposition alliance in Ethiopia. Country information also confirms that persons considered a threat to the government may be targeted, detained and harassed, and that prominent members and supporters of opposition parties have often been intimidated and harassed by government forces, including through imprisonment, torture and even death.
108. The Tribunal appreciates that past events are merely a guide when making predictions of future harm and that the presence or absence of serious harm in the past does not necessarily mean that a person faces a real chance of serious harm in the reasonably foreseeable future. However, in light of the Tribunal's acceptance of the above history of past problems for the applicant and his wife as set out by the applicant in his evidence, combined with relevant country information regarding treatment by the authorities of known or suspected members of opposition parties, the Tribunal accepts that the applicant's return to Ethiopia in the reasonably foreseeable future would give rise to a chance of serious harm that is not remote or fanciful and, accordingly, amounts to a real chance.
109. With respect to the additional requirements of s.91R(1), the Tribunal accepts that the essential and significant reason for the persecution feared by the applicant is his actual or imputed political opinion and, accordingly, the requirements of s 91R(1)(a) are met. Having regard to the non-exhaustive list in s 91R(2) of the type and level of harm that will constitute 'serious harm' for the purposes of s 91R(1)(b), the Tribunal accepts that the persecution feared by the applicant involves serious harm, including significant physical harassment or ill-treatment and a threat to his life or liberty. It follows that the requirements of s 91R(1)(b) are also met. In relation to the requirements of s 91R(1)(c), the Tribunal is satisfied that the persecution would involve conduct which is systematic in the sense of being deliberate and premeditated (see *VSAI v MIMIA* [2004] FCA 1602) and discriminatory in the sense that it would be directed at the applicant for reason of his political opinion. It follows that the requirements of s 91R(1) are met in this case.
110. Given that the agent of the feared persecution is the Ethiopian authorities, the Tribunal further finds that neither state protection nor internal relocation would be available to the applicant in this case. The Tribunal acknowledges that the applicant could arguably avoid his feared persecution by avoiding any involvement in politics and maintaining a low profile. However, the Tribunal accepts that, to the extent that the applicant may seek to live discreetly by shunning any involvement in politics, he would be doing so due to the threat of serious

harm, as a means of avoiding the very persecution he fears and, accordingly, these circumstances would continue to constitute persecution for the purposes of the Convention: *Appellant S395 of 2002 v Minister for Immigration and Multicultural Affairs* (2003) 216 CLR 473.

111. Having regard to the above, the Tribunal accepts that the applicant has a well-founded fear of persecution for a Convention reason (political opinion) if he were to return to Ethiopia now or in the reasonably foreseeable future.

Safe third country

112. There is no evidence before the Tribunal that the applicant has a right to enter and reside in any third country for the purposes of s 36(3) of the Act and, accordingly, the Tribunal finds that he does not have any such right.

CONCLUSIONS

113. 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).

DECISION

114. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act.