

0803718 [2008] RRTA 550 (21 August 2008)

DECISION RECORD

RRT CASE NUMBER: 0803718

COUNTRY OF REFERENCE: Ethiopia

TRIBUNAL MEMBER: Paul Fisher

DATE DECISION SIGNED: 21 August 2008

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, applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa.. The delegate decided to refuse to grant the visa and notified the applicant of the decision and her review rights by letter.
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 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 Parts 785 and 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.

Background

20. The applicant is a national of Ethiopia of Amharic ethnicity. She arrived in Australia and applied for a protection visa.
21. Her protection visa application states that she left Ethiopia due to political persecution she faced from the government authorities. She had been detained because of the suspicion the authorities had that she was a member and supporter of the Coalition for Unity and Democracy Party (CUDP). When she was released during her detention she was forced to sign a document that she would risk her life if she was caught again involved in activities against the government. Her husband was also detained as a result of which he lost his life.
22. The applicant served as the treasurer of an 'eder' which is a traditional local community organisation whose purpose is to 'serve the members during their sorrows and happiness'. When the Ministry of Social Affairs decreed that eders disclose details of their finances, the community objected, and these objections were voiced by the applicant at a meeting with the local government or Kebele officials which she attended along with other office bearers of the eder. The Kebele officials were very angry and deemed the committee members to be anti-government.
23. The applicant has learned that the other office bearers of the eder were subsequently detained by the Ethiopian authorities, and fears that she will also be detained or harmed if she returns to Ethiopia. She doesn't think the authorities will protect her if she goes back; on the contrary, she fears that they will throw her in jail as this is what can happen to people who have been serving on the eder and spoken up for the people.
24. The protection visa application indicates that the applicant departed Ethiopia legally, but was only able to obtain a passport with the help of person 1.
25. In a statutory declaration submitted with her visa application, the applicant sets out her protection claims in more detail.
26. The applicant subsequently obtained legal representation, and a further statutory declaration in support of her claims, was submitted to the Department that day. It incorporated virtually all of the content of the first declaration but also expanded on it. It states as follows:

1. I am a citizen Ethiopia. I made a statutory declaration in support of my protection visa application. I made this statutory declaration and completed my protection visa application forms without the assistance of a lawyer and without an interpreter. After lodging my application for a protection visa I was referred to a lawyer for advice. My lawyer has assisted me to provide this more detailed statutory declaration, with the assistance of an interpreter.
2. I was born in province A, in the capital city B in Ethiopia My father and my mother are of Amhara ethnicity. My father was in employment. I have siblings. *[information deleted: s.431]*.
3. I did all my schooling in city B. *[information deleted: s.431]*.
4. After finishing school, I started university in city C but I withdrew. I then returned to province A and city B and looked for and obtained work. *[information deleted: s.431]*.
5. I worked in town D for a few years. I met my husband in town D. We were married in city B. *[Information deleted:s.431]*
6. After our marriage my husband and I returned'-to province A and city B I was transferred to city C on a promotion. A few months after I arrived in city C, my husband also got a transfer and he joined me there. I stayed in city C until leaving Ethiopia . *[Information deleted:s.431]*
7. I also studied at university in city C.
8. My husband and I have always been opposed to the ruling regime in Ethiopia (the Ethiopian People's Revolutionary Democratic Front or "EPRDF"). The EPRDF is corrupt and favours only those who support the party. The party is not democratic and uses intimidation and force and bribes to achieve its objectives. The party officials and members are also very racist towards those ethnic groups not supportive of the party. Most of the people in the EPRDF party are people of Tigray ethnicity. The EPRDF party is opposed to people of Amhara ethnicity. When the EPRDF party came to power the party started removing Amhara people and other ethnic groups from government and replacing them with Tigray people.
9. Although I was against the EPRDF regime I did not join the opposition straight away. I joined for the reasons explained further on in this statutory declaration. However my husband became active before me. *[Information deleted:s431]*
10. In 2004 opposition to the EPRDF became stronger. A national election was scheduled for May 2005. In 2004 many opposition groups in Ethiopia started to engage in talks, to form a political coalition against the ruling EPRDF. By the end of 2004 an agreement was reached and the Coalition for Unity and Democracy ("CUD") was formed. The CUD included many different ethnic groups and many different political organisations.
11. My husband was involved as a key organiser for the CUD. My husband was a high profile member and was considered an important party figure by CUD members. He was responsible for logistical matters such as organising meetings and distributing banners at rallies.
12. I went to some meetings organised by my husband and helped him at home. I never attended any public rallies however. In our culture, married women with a family to care for would not take the risk of going to a political demonstration.
13. The political situation intensified before the election. People started to make political statements publicly against the government. There was a lot of corruption

and intimidation during the campaign and the election. The election was sabotaged by the government, who fixed the results and claimed victory, despite the general feeling of the people that the CUD had won the election. After the election, the government began to oppress the CUD as they realised that many people in Ethiopia were supporting the party. More than 3000 people were arrested and detained during one demonstration. Many others who had been involved in opposition activity were also arrested. The government went after them one by one, arresting them at their houses and places of work.

14. My husband was taken from his work in city C by government security forces. He was detained in prison, without any charge or trial. He was later released, after becoming extremely sick. *[Information deleted:s431]* He died shortly after he was released.

15. Shortly after my husband's arrest, while I was having a meal there was a knock on the door. When I answered the door, some security force officers stormed into the house and told me that I was under arrest. They had guns. They threatened me not to make any noise and hit me with the gun so that I fell to the floor. While one of them was guarding me, the others searched the house. After the security officers had searched the house they took me to the police station. After we got to the police station, the security force people handed me over to some government police guards, who conducted a body search, took my details and put me in a cell.

16. The police guards escorted me back to the office where my details had been taken. There was an officer sitting behind a desk. He told me that they had information about all my husband's political activities and he asked me to tell him everything I knew about my husband. He also told me the EPRDF had discovered that I was a member of the CUD and asked me to confess everything about my involvement with the opposition. The allegations made me sure that my arrest had something to do with my husband's political activities with the CUD and my own activities.

17. Although I was supportive of the CUD I was actually not a member at this stage and didn't know in great detail what my husband's involvement was. I told the officer that I had no idea what he was talking about. I didn't admit anything, not even my husband's membership of the party. When I said I had no idea what he was talking about, the officer came around his desk and hit me with his pistol butt. I fell to the ground. Then the guards started to kick me while I was lying on the floor. Finally, they sent me back to my cell.

18. The following night I was taken out of the cell for interrogation. I was interrogated by the same officer who had interrogated me the night before. He asked me the same questions again and again. He asked me to confess my membership of the CUD and my husband's membership of the CUD. He asked me for a list of names of CUD members. He also asked me to identify contacts of my relative. All I knew about him was that he was a supporter of the CUD. I didn't know about the details of his involvement with the CUD. I think the reason the officer was asking me about my relative was that someone else might have informed on my relative.

19. Every time I told him that I had no knowledge of what he was asking me I was beaten and kicked. Finally, he grabbed me by the hair, pointed a pistol at my head and told me that I would pay the price for this. Because I did not tell them what they wanted to hear, I was beaten. I was physically and verbally abused and humiliated.

20. I was then returned to the same cell, at the police station. I was kept in this cell for many weeks. The cell was very small and often crowded. There was no place to sleep. There was a small toilet outside but we had to wait for a long time to be allowed to go. As a result, the cell was filthy with human waste and many people

had gastric problems and became very sick. There was no medical treatment available. Family members were not allowed to visit us.

21. We were not allowed to bathe and given only a very small amount to eat and drink (bread and water only). We were constantly thirsty and hungry.

22. During my detention I realised that most of us in the cell were either CUDP members or supporters.

23. Many weeks later, I was released. I was forced to sign a document stating that I understood that if I was involved in any further political activity my life would be at risk.

24. After my release from prison, I started visiting my husband, who was still being detained by the government. *[Information deleted:s.431]*. He was held with many other men. When I visited, he was brought out to a visiting area. We were not allowed to be close to each other and we had to shout to hear one another.

25. During my time in prison, I made friends with person 1 and person 2. , While we were in prison together, person 1 and person 2 informed me that they were members of the CUDP.

26. Person 1 and I were released on the same day and person 2 was released a few days later. After our release, the three of us started to regularly catch up for coffee. It was at this time that I decided to join the CUDP. I joined because of the injustice I had witnessed and suffered in the cells, because of my husband's arrest by the government, because of my anger at the way the government rigged the election and because of what person 1 and person 2 told me about the work of the CUDP.

27. Person 1 ran her own business in city C. In our meetings together, I learnt that she had wide contacts with well known business people. I also learnt that she was an activist for the CUDP. *[Information delete: s.431]* Person 1 was able to help me to be reinstated in my job after my release. *[Information deleted:s.431]*

28. Person 1, Person 3, myself and two other colleagues from my work formed a cell. Person 1 was the head of the cell. The main focus of the cell was to raise funds for the CUDP.

29. Because the government harassed and imprisoned CUDP members and persecuted them in many other ways we had to operate covertly.

30. We raised funds by opening small businesses and using the proceeds for the CUDP. We contributed money from our wages to the CUDP. All of us except person 1 contributed the same amount per month. We then used these funds to establish small businesses for the CUDP. We employed people who were not CUDP members and were unaware that the businesses were run for political fund raising purpose and these people were also not under suspicion from the government. The profits from the businesses were kept for the CUDP.

31. For over a year I continued to assist the CUDP 'n this way. We kept a low profile because of the risks of persecution by the government facing opposition supporters. We met in secret places where we would not be detected and in different places on each meeting.

32. Both person 1 and I lived in X administrative council in Kebele Y in city C. I joined the management committee of the neighbourhood community organisation, known as an "eder". I had been a member of this "eder" for many years before this. The management committee had five members. I and person 1 were elected as office bearers. Our local community "eder" was called Z and it had many members, each contributing a membership fee and then an amount per month after that. Traditionally an "eder" will collect membership fees from members of the local

community, who join the "eder" voluntarily. Typically, the main responsibilities of an "eder" are to organise and fund community events such as funerals and weddings. Our "eder" had guidelines about payment of monies by the members and how these monies were to be used. The money was kept in a bank account for the "eder". "Eders" are voluntary community organisations which assist community members. They are not political.

33. There was a memo sent by the Ministry of Social Affairs, asking all the "eders" to declare their assets and capital to the respective kebele officials. Our "eder" management committee was invited to attend a meeting with the kebele officials. I, person 1 and another office bearer of the management committee, person 4 were the ones who attended the meeting. After the memo regarding the requirement for "eders" to declare their assets was read by the kebele chairperson, I suggested that our "eder" was a local community organisation established with the good will of community members. I said it was not a government organisation and we were therefore not obliged to declare our finances to the kebele officials. The kebele officials became very angry and started to scream at me. They went to the extent of saying that this was an anti-government attitude. Then the president of the kebele said something to indicate that there would soon be a decision whereby all eders would be required to pay to the government a certain percentage of the money contributed to the "eder" by its members.

34. Person 1 and person 4 and I were very concerned about this. Our management committee discussed the issue and decided to call a meeting of all the "eder" members. In late August we called a general meeting to inform the "eder" members of the situation so we could decide what to do. It was a meeting of the general assembly (ie all the members) of the "eder". At the general assembly meeting the majority of the members agreed to disclose nothing about our finances to the officials.

35. Then person 1 was arrested. I believe person 1 was arrested merely because she was the one who sent the letters to members of the "eder" to attend our general meeting. After I had been unable to locate person 1, I had rung her home and her child answered the telephone. Her child told me that she had been arrested. I then asked person 3 to find out more about the situation and he told me that person 1 had been arrested because of her role in sending out letters to organise the general meeting of our "eder". Because I had been working in the same cell as person 1 and was on the same "eder" management committee as her and had helped organise the meeting of all our members, I was very frightened. Person 3 advised me to go into hiding. He was not so worried for his own safety at this time as he was not in our "eder" and had not been involved in organising the meeting.

36. I took leave from my job and went into hiding. *[Information deleted:s431]*

37. After I went into hiding, government security forces came to my house to ask questions about my whereabouts. The officials stated they wanted me for questioning. During a telephone call, my family told me about the authorities looking at me.

38. During my time in hiding, I stopped contacting people in the "eder" committee. I also stopped contacting people from the CUD, except person 3. I stayed in contact with him and he gave me information about the situation in the area. When I told him that the authorities had been asking my family about my whereabouts he advised me to stay in hiding.

39. I had lodged an application for a visa to Australia before all the problems related to my involvement with my "eder" had started. My sibling sent me all the visa application documents and as soon as I received these I made an application for

an Ethiopian passport. Person 1 helped me obtain the passport through her contacts. She told me to approach a particular man in the passports office and he prioritised my application. Once I obtained my passport I sent a copy of my passport and all the other documents required together with the visa application forms to my sibling in Australia. The visa application was granted in Australia.

40. At the time I sent the visa application documents to my sibling, I was hoping only to come to Australia for a visit. I was active politically for the CUD at this time and I had already been arrested, so I was fearful of the government. However, I took care of my safety by keeping a low profile as stated above and I did not believe I was at risk of arrest. *[Information deleted: s.431]*. When my visa was actually granted, my fear had increased because of the arrest of person 1 and my involvement in opposing the Kebele official's attempts to make our "eder" declare its finances. I knew I had to leave Ethiopia for a while for my safety. *[Information deleted: s.431]*.

41. The visa was issued. After the visa was granted my manager, person 3 wrote a certificate to confirm that I had a leave of absence from my job. This certificate was issued to avoid suspicion by the authorities at the airport that I was escaping from Ethiopia. *[Information deleted: s.431]*.

42. *[Information deleted: s.431]*.

43. After I got my visa, person 3 made my flight arrangements. He got my ticket, with the date of my departure and gave me instructions about when to leave. *[Information deleted: s.431]*.

44. Since I have been in Australia I have contacted my family by telephone. I have also spoken regularly with my sibling in Ethiopia. *[Information deleted: s.431]* My sibling told me that person 4 (office bearer of the "eder") had gone into prison and my manager person 3 had gone into hiding. When I found out about this I decided not to return to Ethiopia because since discovering this I believe that the danger to me has now increased even further and I will not be safe if I return. In my Form 866 question 44 it states that both my colleagues from the "eder" are in detention and question 41 states that the office bearers of the "eder" are in detention. This is a reference to person 1 (an office bearer of the "eder") and person 4 (an office bearer of the eder). As is clear from my statutory declaration, I knew about person 1's arrest before I left Ethiopia but only found out about person 4's arrest and person 3 going into hiding once I was in Australia.

45. I fear that if I return to Ethiopia I will again be detained by the authorities as the other members of my eder, and members of my CUD cell have been. I do not feel I would be safe in Ethiopia and I don't believe the government would protect me.

46.. *[Information deleted: s.431]*. I am only claiming protection here in Australia because I have a real fear for my safety in Ethiopia. It is very clear to me that if I return I will be in very serious danger. I fear I will be killed. I believe I face the risk of execution.

27. The applicant was initially interviewed by an officer of the Department. *[Information deleted: s.431]*.

28. At the second departmental interview, the applicant gave detailed evidence about the role her late husband had played in the CUD from the time of its establishment. The applicant indicated that she had played a low key supporting role in the background but became a member later on.

29. The applicant's representative provided lengthy post-interview written submissions to the Department by, summarising the applicant's claims, responding to various concerns which were raised at the departmental interview, referring to country information said to support the applicant's claims at least in general terms, and citing legal authorities said to support the proposition that those claims bring the applicant within the scope of the Convention.

Primary Decision

30. The delegate appeared satisfied about the applicant's evidence with respect to her political activities, indicating in her decision that there was *no reason to doubt that the applicant is a member of the CUD*. The delegate also considered the applicant's claim with respect to her husband's arrest to be *consistent with country information which refers to large scale detention and arrests after the elections in the mid 2000s. In the climate that existed at the time [the delegate also acknowledged] as plausible that the applicant may have also been detained and questioned to elicit additional information about the activities of her husband.*
31. However, the delegate did not accept that the applicant had been of interest to or at risk from the authorities since the mid 2000s. With respect to her involvement in the CUD, the delegate relied on country information indicative of an easing of the crackdown by the Ethiopian authorities on CUD leaders and members.
32. The delegate also did not accept that the applicant's involvement in the eder would have led to her being imputed with an anti-government political opinion. The delegate considered that "should the authorities have wanted to impute a political opinion on those involved with this or any other eder operating in Ethiopia, there was opportunity to do so at any time if it was seen to be making a political stand by assisting families of CUD (or other opposition) members. Given this, it is not clear why the authorities would only act against the eder as a result of refusing to disclose finances. As a governing authority it would be assumed that they were in a position to step in and seek or obtain this information with or without the consent of members."
33. The delegate also relied on the fact that the applicant was apparently able to depart Ethiopia unhindered. The delegate was of the view 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 forces interests in detaining a person, that individual's bio-data would likely be disseminated to the eleven border crossings, as well as to the two international points of departure managed by immigration authorities (CX161651). The delegate concluded that the applicant's ability to depart at the time and in the manner she claims indicates that she was of interest to the authorities of Ethiopia. She noted that the applicant had claimed that person 4 was detained following her departure but on the other hand person 1 was detained while the applicant was still in the country. The group must therefore have been under suspicion or investigation at that time. The applicant had also claimed that following person 1's detention the security forces had come to her own house asking her whereabouts. The delegate concluded from this that if the authorities were looking for her for the reasons claimed, they had a course of action available to them to prevent her from leaving the country. As person 1 was claimed to have been detained before the applicant departed the authorities had plenty of time to put procedures in place to

prevent her from leaving Ethiopia. As this evidently not occurred, the delegate concluded that there was no adverse interest in the applicant.

34. The delegate also dealt with an alternative argument which had been advanced on behalf of the applicant, namely that as a single woman without the protection of a male, she was at risk of persecution in Ethiopia on account of her membership of a particular social group. The delegate did not accept this to be the case, in light of the applicant's individual circumstances.

Review Application

35. The Tribunal received an Application for the review of the delegate's decision.
36. Having carefully considered the evidence before it, including the record of the primary interview and the country information available to it, the Tribunal considers that it should decide the review in the applicant's favour on the basis of material before it pursuant to Section 360(2)(a).

Country Information

37. Country information referred to in the submissions made on behalf of the applicant shows that waves of repression of the CUD and its supporters followed the May 2005 elections. For example, the UK Home Office Country Information Report for Ethiopia issued in January 2008 includes the following:

3.21 After provisional results indicated that the EPRDF had won a majority of the seats violence erupted in the capital, Addis Ababa. The BBC, in an article dated 6 June 2005, reported that: Hundreds of Ethiopian students had been arrested in the capital, Addis Ababa, after staging protests over last month's elections. Baton-wielding police stormed the two university campuses which the students had occupied. They had accused the ruling EPRDF party of fraud."

3.22 The USSD report for 2006 notes that:

"Following the election, opposition parties accused the NEB of being an instrument of the ruling party and of failing to act when informed of electoral irregularities, including ballot stuffing, vote count fraud, bribery, killings, beatings, and widespread intimidation and harassment by ruling party supporters during the national elections."

3.24 Amnesty International reported on 7 June 2005 that:

"On 6 June, several hundred peaceful student demonstrators were beaten with batons and rifle butts by the police on the two main Addis Ababa University (AAU) campuses. The students had been shouting and chanting protests against the announcement of the provisional results of the 15 May parliamentary elections, which indicated a majority for Prime Minister Meles Zenawi's ruling Ethiopian People's Revolutionary Democratic Front (EPRDF) coalition. Amnesty International considers them to be prisoners of conscience, who were peacefully exercising their opinions. The students were supporting opposition demands for an investigation into alleged voting irregularities, including reported arrests and beatings of opposition candidates, in about 300 of the 547 constituencies. The students defied the Prime Minister's ban on demonstrations for a month after the elections. The detained students are reportedly being held in police camps such as Sendafa police training college, 40 kms north of Addis Ababa."

3.25 After three days of mass arrests and shootings of demonstrators in Addis Ababa, leaving at least 26 dead and over 100 injured, Amnesty International issued an appeal on behalf of over 1,500 students and other demonstrators who were at risk of torture.... Amnesty International feared that several hundred Addis Ababa University students, who were arrested during demonstrations earlier this week, are being held incommunicado without charge, and are being beaten, forced to do harsh exercises, and denied adequate food and medical treatment.” (Amnesty International 9 June 2005)

3.26 Wider demonstrations occurred in Addis Ababa on 8 June, following the student arrests. Security forces killed at least 36 people and arrested thousands of others, mostly linked to the opposition. (EUEOM Report)

3.27 Following the unrest of the May 2005 elections, IRIN news reported on 26 protestors shot dead in the country’s capital as well as the rival parties signed a deal backing a call for a probe into claims of fraud in recent elections. (IRIN News) [7e] The BBC reported on 13 June 2005 that more than 3,000 were arrested in Ethiopia because of the disputed elections. The arrests intensified as protests were violently suppressed. All parties also signed an agreement to undertake a joint probe into complaints of voting irregularities. The National Election Board selected 135 constituencies for investigation. The 26 investigation teams were formed including representatives from political parties, representatives from the National Electoral Board, and international observers. (EUEOM Report)

3.28 According to an Amnesty International report dated 30 September 2005 the Ethiopian authorities began arresting opposition members in mid-September. The report notes that:

“Hundreds of opposition party officials and members were being held incommunicado without charge in order to stop them attending nationwide demonstrations planned for 2 October... There has also been widespread intimidation and harassment of suspected opposition supporters, particularly youths. Amnesty International believed that those arrested may be prisoners of conscience, detained solely on account of their non-violent opinions. The authorities began arresting members of the two opposition coalitions, the Coalition for Unity and Democracy (CUD) and the United Ethiopian Democratic Front (UEDF), in mid-September, following the announcement of the demonstrations planned for 2 October. The CUD said up to 12 of its regional party offices had been shut down and officials detained. The Oromo National Congress (ONC), part of the UEDF coalition, made similar charges. In total, the CUD and the UEDF claim that over 850 people have been detained, mainly in the central Amhara and Oromia regions, and in the south. The government has accused the opposition parties of ‘a violent conspiracy aimed at subverting the constitutional order’, and refused permission for the demonstrations, claiming that the opposition parties were planning violence leading up to the demonstrations planned for 2 October in the capital, Addis Ababa, and other towns.”

3.29 Violence erupted again in the first week of November. According to an Amnesty International report of 11 November 2005: “At least 46 protesters were killed in Addis Ababa and other towns, and at least 4,000 were arrested.” “Detained opposition leaders and editors seized after bloody clashes in Addis Ababa last week will face treason charges, Ethiopian Prime Minister Meles Zenawi said. The Prime Minister declared that the worst of the violence was over, but his government had no intention of bowing to calls from the international community for the release of opposition leaders....’ They are accused of engaging in

insurrection'. He said. 'That is an act of treason under Ethiopian law. They will be charged and will have their day in court.'" (IRIN 10 November 2005)

3.30 The USSD report for 2006 notes that:

"Beginning on November 1, 2005, violent antigovernment protests allegedly organized by the opposition occurred in Addis Ababa, and the government arrested several dozen opposition leaders, as well as members of the independent media and civil society groups, for alleged participation in unlawful activities. Security forces also detained between 30,000 and 50,000 demonstrators without charge. Military intervention led to widespread abuses such as arbitrary detention and killings. Security forces arrested at least 12 of the 20 CUD party executive committee members, including party president Hailu Shawel, vice chairman Bertukan Mideksa, secretary-general Muluneh Eyoel, and Addis Ababa mayor-elect Dr. Berhanu Nega, on charges of treason and genocide, among others."

3.23 The USSD report for 2006 also notes:

"In January international media reported that more than 11,000 persons detained in November 2005 following large-scale antigovernment demonstrations had been released. However, the commission of inquiry into post-election political violence found that over 30,000 individuals had been detained, while other reports placed the number at over 50,000. More than 2,200 of the prisoners were released without charge. An additional 734 persons detained during violence in Addis Ababa were released on January 6. More than 650 prisoners related to the protests were still being held at the Ziway detention camp in January, and the exact number of persons who remained in custody at year's end was not known."

38. However, the same report also includes the following:

4.01 The key political development in 2007 was the release of political prisoners held after the 2005 elections. The released prisoners were previously tried and found guilty in June 2007 (BBC news, 11 June 2007), but pardoned in August 2007. (BBC News, 18 August 2007) Those pardoned in August included 31 members of the CUD alliance; two senior leaders of the CUD were released in July 2007. (BBC News, 18 August 2007)

39. The Human Rights Watch World report for 2007, released in January 2008, and accessed on 21 July 2008 from <http://www.hrw.org/wr2k8/>, includes the following on Ethiopia:

The Ethiopian government's human rights record remains poor, both within the country and in neighboring Somalia, where since early 2007 thousands of Ethiopian troops have been fighting an insurgency alongside the Transitional Federal Government of Somalia.

Government forces committed serious human rights violations, including rape, torture, and village burnings, during a campaign against Ethiopian rebels in eastern Somali Region (Region 5). Abuses also took place in other parts of the country, notably in Oromia State where local officials carried out mass arrests, extra-judicial killings and economic sanctions.

...

In Addis Ababa, the government pardoned and released dozens of opposition leaders and journalists detained since the post-election crackdown in 2005.

However, the press remains hobbled and local human rights organizations operate with great difficulty.

40. The United States Department of State 2007 Country Reports on Human Rights Practices released on 11 March 2008 and accessed on 21 July 2008 from <http://www.state.gov/g/drl/rls/hrrpt/2007/100481.htm> includes the following on Ethiopia:

Human rights abuses reported during the year included: limitation on citizens' right to change their government during the most recent elections; unlawful killings, and beating, abuse, and mistreatment of detainees and opposition supporters by security forces; poor prison conditions; arbitrary arrest and detention, particularly of those suspected of sympathizing with or being members of the opposition or insurgent groups; detention of thousands without charge and lengthy pretrial detention; infringement on citizens' privacy rights and frequent refusal to follow the law regarding search warrants; use of excessive force by security services in an internal conflict and counter-insurgency operations; restrictions on freedom of the press; arrest, detention, and harassment of journalists for publishing articles critical of the government; restrictions on freedom of assembly; limitations on freedom of association; violence and societal discrimination against women and abuse of children; female genital mutilation (FGM); exploitation of children for economic and sexual purposes; trafficking in persons; societal discrimination against persons with disabilities and religious and ethnic minorities; and government interference in union activities, including killing and harassment of union leaders...

Security forces committed politically motivated killings during the year. Security forces committed arbitrary killings during the year. For example, on January 16, two police officers beat, shot, and killed Tesfaye Taddese, who was an organizer for the opposition Coalition for Unity and Democracy (CUD) during the 2005 parliamentary elections. An autopsy later revealed that the victim had lost several teeth and one eye from the beating before being shot. The police officers were arrested and an investigation was ongoing at year's end...

During the year the UEDF, CUDP, OFDM, and ONC reported arrests of members and the forced closure of nearly all political party offices throughout the country (see section 1.d.) and intimidation of landlords to force their eviction. There were credible reports that the government used legal means to harass leadership from an influential opposition political party, utilizing government agencies to restrict party control and membership...

The EPRDF, its affiliates, and EPRDF supporters controlled all seats in the 112-member House of Federation, whose members were appointed by regional governments and by the federal government. Membership in the EPRDF conferred advantages upon its members, and the party owned many businesses and awarded jobs and business contracts to loyal supporters.

The largest opposition party in the House of Peoples' Representatives was the CUDP, composed of most of the former CUD coalition members, which held 61 seats.

Registered political parties must receive permission from regional governments to open local offices. Opposition parties, such as the CUDP, UEDF, and OFDM, claimed that the pattern of widespread intimidation and violence directed against members of opposition political parties by local government officials continued throughout the year. Opposition parties and the press reported hundreds of such cases, including killings, beatings, arrests, and property confiscation.

41. On 11 April 2008, Human Rights Watch published a report entitled *Ethiopia: Repression Sets Stage for Non-Competitive Elections: Opposition Candidates, Voters Silenced Ahead of Local Polls*, accessed by the Tribunal on 19 August 2008 from <http://www.hrw.org/english/docs/2008/04/10/ethiop18510.htm>:

The Ethiopian government's repression of registered opposition parties and ordinary voters has largely prevented political competition ahead of local elections that begin on April 13, Human Rights Watch said today. These widespread acts of violence, arbitrary detention and intimidation mirror long-term patterns of abuse designed to suppress political dissent in Ethiopia.

It is too late to salvage these elections, which will simply be a rubber stamp on the EPRDF's near-monopoly on power at the local level, said Georgette Gagnon, Africa director at Human Rights Watch. Still, officials must at least allow the voters to decide how and whether to cast their ballots without intimidation.

Human Rights Watch carried out two weeks of field research during the run-up to the polls and documented systemic patterns of repression and abuse that have rendered the elections meaningless in many areas. That research focused primarily on Oromia, Ethiopia's most populous region and one long troubled by heavy-handed government repression.

The nationwide elections for the kebele (village or neighborhood councils), and wereda (districts made up of several kebeles administrations), are crucially important. It is local officials who are responsible for much of the day-to-day repression that characterizes governance in Ethiopia. Many local officials in Oromia have made a routine practice of justifying their abuses by accusing law-abiding government critics of belonging to the outlawed Oromo Liberation Front (OLF), which is waging a low-level insurrection against the government.

Candidates allied with the ruling Ethiopian People's Revolutionary Democratic Front (EPRDF) will run unopposed in the vast majority of constituencies across Ethiopia. On April 10, one of Ethiopia's two major opposition coalitions, the United Ethiopian Democratic Forces (UEDF), pulled out of the process altogether. UEDF officials complained that intimidation and procedural irregularities limited registration to only 6,000 of the 20,000 candidates they attempted to put forward for various seats. By contrast, state-controlled media reports that the EPRDF will field more than 4 million candidates across the country.

Violence, Arbitrary Detention, and Intimidation

Local ruling party officials have systematically targeted opposition candidates for violence, intimidation, and other human rights abuses since the registration period began three months ago. Particularly in areas with established opposition support, local officials have arbitrarily detained opposition candidates, searched their property without warrant, and in some cases physically assaulted them.

Credible reports collected by Human Rights Watch indicate a pattern of cooperation among officials across all three tiers of local government zone, wereda, and kebele administrations in carrying out these abuses. Victims interviewed by Human Rights Watch across different locations in Oromia recounted a consistent narrative. Some were arbitrarily detained and then interrogated or threatened by wereda administration officials in the presence of zonal officials. Others were arbitrarily detained by wereda police and then transferred to the custody of zonal security officials or federal soldiers.

One 31-year-old school teacher in western Oromia was detained by police and then interrogated by wereda and zonal security officials when he sought to register as an opposition candidate. I was afraid, he told Human Rights Watch. They accused me

of being on OLF member and said I would be shot... They put a gun in my mouth, and then made me swear that I wouldn't go back to the opposition. He was released nine days later, after the deadline for candidate registration had passed. Human Rights Watch interviewed other OPC candidates who had also been detained after trying to register in other constituencies.

Prospective voters who might support the opposition have been similarly targeted by the government. Secondary school students in Oromia's Cheliya wereda, many of whom are of voting age, reported to Human Rights Watch that they have been compelled to provide a letter from representatives of their gott/garee unofficial groupings of households into cells that are used to monitor political speech and intimidate perceived government critics, attesting that they did not belong to any opposition party. Local officials said that unless they produced those letters, they would not be allowed to register to vote. One civil servant in Gedo town was warned by a superior that he would lose his job if he supported the opposition.

The same local level officials who are directly responsible for much of the day-to-day political repression that occurs in Ethiopia have their jobs at stake in these elections, Gagnon said. As such, their efforts to intimidate ordinary people into returning them to office are especially intense.

Local authorities have also prevented the registration of opposition candidates in many constituencies where the opposition's success in 2005 parliamentary polls appeared to give them a chance at winning. In Fincha in western Oromia, for example, the opposition Oromo People's Congress (OPC) made three attempts to register a candidate for an open parliamentary seat. The seat had been vacated by an OPC candidate who won 81 percent of the vote in 2005 but was later forced into exile after local authorities accused him of being an OLF supporter. The OPC tried to replace him on the ballot with three different candidates but each was prevented from registering. All three candidates were physically threatened by members of the wereda administration and police and one was detained for more than a week when he tried to register.

The opposition Oromo Federalist Democratic Movement (OFDM) has encountered similar problems in western Oromia, with 10 of its 14 candidates resigning in response to pressure from local officials. In February, police in Dembi Dollo arrested 16 OFDM members and accused them of belonging to the OLF. Although a court ordered them all released two weeks later when police could provide no evidence to support their allegations, they were subsequently threatened with physical harm by local officials.

The home and crops of one OFDM member in the same area were burned. He reported this to the police with the aid of OFDM officials but alleged to Human Rights Watch that the police then failed to investigate the incident.

Such repression has been widespread in Oromia. The OPC gave Human Rights Watch the names of more than 300 party members it claims have been detained since November 2007. Investigations carried out by the Ethiopian Human Rights Council (EHRCO), Ethiopia's preeminent human rights monitoring organization, corroborate claims that many opposition supporters in Oromia have been arrested or illegally detained for periods ranging from days to months, often on the basis of alleged links to the OLF.

Procedural and Other Bars to Opposition Participation

In many cases, acts of intimidation have gone hand-in-hand with unjustifiable bureaucratic and procedural bars on free opposition participation in the polls. Some representatives of the NEB responsible for the registration of candidates at the constituency level have worked with local officials to block opposition

registration. In some cases NEB agents have cancelled the registration of opposition candidates either without explanation or based on age and residency criteria despite clear evidence to the contrary. In other instances, NEB representatives provided the names of opposition candidates to local officials and to the police. Police in some of those constituencies then cordoned off access to NEB offices and physically prevented suspected opposition candidates from entering.

Across western Oromia, the country's largest state, local officials have refused to allow candidates of the two main opposition parties there, the OPC and OFDM, to register more than a token share of candidates. In some constituencies, authorities have closed down OPC and OFDM offices and threatened their candidates with arrest if they persisted in competing.

In some cases, local authorities offered bribes to opposition candidates to withdraw. One OFDM candidate interviewed by Human Rights Watch said that local ruling party leaders offered to pay his college tuition and guaranteed him a job in the local administration if he withdrew from the election.

The run-up to these elections illustrates how meaningless the process of voting can be in an environment of intimidation and fear, Gagnon said. The Ethiopian government must publicly commit itself to ending the systemic human rights abuses that have become part of the foundation of its hold on power.

Background

The patterns of repression and procedural manipulation that surround the upcoming polls are motivated in part by the increased importance that control of wereda and kebele administration has taken on since 2001. Financed in part by the World Bank and other donors, the Ethiopian government has decentralized the provision of basic services such as health and education. This has effectively empowered wereda administrators, who are appointed by the elected councils, with greater discretion in the allocation of budget expenditures.

The kebele system in particular is also a central part of the ruling party's elaborate system of surveillance, intimidation, and coercion of ordinary people who are perceived as being unsympathetic to the government. The kebele were originally created by the dictatorship of Mengistu Haile Mariam for precisely this purpose and have been put to the same use by the current government since Mengistu's ouster in 1991. Because of the kebele system's importance in this regard, the EPRDF is particularly loathe to contemplate losing control over them.

A dominant theme in the EPRDF's political discourse on Oromia is the need to combat the activities of the outlawed Oromo Liberation Front (OLF), which has been fighting a low-level insurrection against the government for years with Eritrean backing. Across much of Oromia, local officials have routinely and for many years used unproven allegations of links to the OLF as a pretext to subject law-abiding government critics to arbitrary detention, torture, extrajudicial killing, and other forms of human rights abuse.

Local officials in Oromia have also made extensive use of the kebele system, along with smaller cells called gott and garee, to keep residents under constant surveillance for signs of government criticism. The overwhelming majority of local and regional authorities in Oromia belong to the Oromo People's Democratic Organization (OPDO), which is the regional arm of the EPRDF.

Ethiopia's last elections were parliamentary polls in 2005. The run-up to the elections saw signs of openness in some areas, though in most constituencies the same patterns of repression documented above prevailed. Following the elections,

opposition efforts to contest the results sparked a heavy-handed government crackdown that saw several hundred people gunned down in the streets of Addis Ababa, mass arrests of perceived opposition supporters, and several prominent opposition leaders jailed on charges of treason that were ultimately dropped.

Elections for city councils, kebele councils, and vacated parliamentary seats will be held on Sunday, April 13, 2008. Elections for the wereda councils will follow on April 20. The exercise is a vast one, Ethiopia is made up of 547 weredas, and each of those is broken up into numerous kebeles whose governing councils each seat 300 representatives. The weredas are grouped into zones, whose administrations are not at stake in these elections, and the zones are grouped into nine ethnically-based regions.

Ethiopia's government is highly dependent on donor assistance but donor governments, including the United States and United Kingdom, have largely refused to criticize repression in Ethiopia or to demand improvements in the country's human rights record. The United States in particular views Ethiopia as a key ally in the war on terror, and donor governments in general often express fear that Ethiopia's government will react poorly to human rights-related criticisms. The Ethiopian government has refused to allow any foreign observers to monitor the upcoming elections.

42. On 23 May 2008, the US Department of State's Bureau of Democracy, Human Rights, and Labor released its 2008 Advancing Freedom and Democracy Reports, accessed by the Tribunal from <http://www.state.gov/g/drl/rls/afdr/2008/104724.htm>. on 19 August 2008. The section on Ethiopia includes the following:

Despite gains in multiparty representation, the government's human rights record remained poor in a larger context of narrowing political space in 2007. Human rights abuses reported in 2007 included the following: unlawful killings; beating, abuse, and mistreatment of detainees and opposition supporters by security forces; poor prison conditions; arbitrary arrest and detention, particularly of those suspected of sympathizing with or being members of the opposition; detention without charge and lengthy pretrial detention; use of excessive force by security services in an internal conflict and counter-insurgency operation; infringement on citizens' privacy rights; restrictions on freedom of the press; arrest, detention, and harassment of journalists for publishing articles critical of

43. On 1 July 2008, Amnesty International and Human Rights Watch issued a public statement entitled *Ethiopia: Government Prepares Assault on Civil Society - Repressive New Legislation Should be Amended or Scrapped*, accessed from <http://www.amnesty.org/en/library/asset/AFR25/006/2008/en/30310ac0-477c-11dd-858d-299ca9428acd/afr250062008eng.html> on 18 August 2008:

Ethiopia's government should immediately abandon plans to impose strict government controls and draconian criminal penalties on non-governmental organizations (NGOs), Human Rights Watch and Amnesty International said today. The two groups called on donor governments, whose behind-the-scenes efforts to see the bill reformed appear to have failed, to speak out publicly against the *de facto* criminalization of most of the human rights, rule of law and peace-building work currently being carried out in Ethiopia.

Ethiopia's federal government claims that its draft Charities and Societies Proclamation (Draft law) is a benign attempt to promote financial transparency among NGOs and enhance their accountability to stakeholders. In fact, the law's key provisions are blunt and heavy-handed mechanisms to control and monitor civil society groups while punishing those whose work displeases the government.

It could also seriously restrict much of the development-related work currently being carried out by some of Ethiopia's key international partners, Human Rights Watch and Amnesty International said.

"Ethiopia's government has already made meaningful public engagement in governance impossible in many areas by persecuting its critics and cracking down on freedom of expression and assembly," said Georgette Gagnon, Africa Director at Human Rights Watch. "The clear intention of this legislation is to consolidate that trend by taking the 'non' out of 'non-governmental' and putting civil society under government control."

The law would apply to every NGO operating in Ethiopia except religious organizations and those foreign NGOs which the government agrees to exempt. Many of the key provisions of the draft law would violate Ethiopia's obligations under international human rights law and fundamental rights guaranteed in its own constitution, including the rights to freedom of association and freedom of expression. Human Rights Watch and Amnesty International have both produced separate detailed analyses of the draft law. Among its most damaging provisions are articles that would:

44. Eder (or iddir), are traditional Ethiopian mutual benevolent societies to which members make financial contributions and which, in turn, meet the cost of funerals, and in some cases, other unexpected events affecting members. Some eders also provide loans. See for example, the section on Ethiopia in the *Countries and their Cultures* website at <http://www.everyculture.com/Cr-Ga/Ethiopia.html>, accessed 21 August 2008:

Traditional associations are the major sources of social welfare. There are many different types of social welfare programs in different parts of the country; these programs have religious, political, familial, or other bases for their formation. Two of the most prevalent are the *iddir* and *debo* systems.

An iddir is an association that provides financial assistance and other forms of aid for people in the same neighborhood or occupation and between friends or kin. This institution became prevalent with the formation of urban society. The main objective of an iddir is to assist families financially during times of stress, such as illness, death, and property losses from fire or theft. Recently, iddirs have been involved in community development, including the construction of schools and roads. The head of a family who belongs to an iddir contributes a certain amount of money every month to benefit individuals in times of emergency.

45. The influence which the Kebele exert over local communities and their organisations such as the idirr can also be seen from the paper *Power, Poverty and Wealth in Rural Ethiopia: Lessons from Four Case Studies*, published on 7 May 2006 by Philippa Bevan and Alula Pankhurst, and accessed by the Tribunal on 21 August 2008 from <http://www.eaecon.org/Papers%20presented%20final/Wed%20Team%20Session/Phillipa%20Bevan%20-%20Power,%20Poverty%20and%20Wealth.htm>

Government-people relations are complex and related to community and country histories. In all our sites we encountered the view that the current government is perceived as "Tigrayan". The government mode is viewed largely as one of domination. Kebele officials have considerable command power including the threat of removing land entitlements, approval of illegal land sales, taxation, the ability to fine and imprison, the power to mobilise people for community work, the signing of permits for people to leave the site, get medical treatment etc, and the registration of organisations such as *iddir* (burial societies). The new structures for

mobilising and controlling people at lower levels have extended the reach of the state.

46. The notion that NGOs such as eders have a political character is not new. A review entitled *Community-based organisations in HIV/AIDS prevention, patient care and control*, by Kloos, Wuhib, Mariam and Lindtjorn, published in the Ethiopian Journal of Health Development Volume 17 (2003) and accessed by the Tribunal from <http://209.85.141.104/search?q=cache:aREvqZVf0I8J:www.cih.uib.no/journals/EJHD/ejhdv17-special-issue/ejhd-v17-special-issue-review-article.pdf+Community-based+organisations+in+HIV/AIDS+prevention,+patient+care+and+control&hl=en&ct=clnk&cd=3&gl=au> on 19 August 2008 notes at pp 13-14 that...

[t]he iddir insurance scheme in particular promises to contribute to providing a more enabling environment. They are characterized by high commitment, participation, constructive dialog and cooperation of members and had been engaged in security, development issues and social issues long before the formation of the *kebele* in the 1970s. Most researchers agree that iddir may function as a springboard for social and political development in Ethiopia. Iddir cuts across ethnic, religious and occupational boundaries and has great potential for the social and political development of the country (107) and as “a potentially effective institutional framework for devising community-based health insurance as an alternative mechanism for health care financing in rural Ethiopia”

FINDINGS AND REASONS

Nationality

47. The applicant claims to be a citizen of Ethiopia She has produced documentary evidence of her background in Ethiopia, and entered Australia on an apparently valid Ethiopian passport. The Tribunal finds on this basis that he is a national of Ethiopia and has assessed her claims against that country.

Assessment of Protection Claims

Basis of Claim

48. The applicant claims to be at risk of serious harm capable of amounting to persecution from the Ethiopian authorities, in the even that she returns to Ethiopia, primarily on the basis of her actual and/or imputed political opinion, and also for reason of her membership of a particular social group based upon her gender.
49. For the reasons set out below, the Tribunal accepts the first claim and has therefore found it unnecessary to deal with the second.

Convention Nexus

50. The applicant has two main claims which are said to invoke the Convention ground of political opinion, namely her association with the CUDP and her eder activities which have brought her into conflict with the local Kebele.
51. The applicant’s political profile is said to derive from a combination of factors, including her own membership of and involvement in the CUD, later the CUDP, her late husband’s involvement in the same group which led to his imprisonment and,

ultimately, his death from the mistreatment and medical neglect he suffered while being held as a political prisoner, and finally from the applicant's involvement in the management committee of an eder which has resisted attempts at government control, leading it is claimed, to the arrest of some office bearers of the committee, and also placing the applicant herself at risk of detention and (other) serious harm.

52. Any risk to the applicant on account of the first claim clearly falls, in the view of the Tribunal, within the scope of the political opinion ground.
53. The second claim may superficially appear not to do so, but the country information concerning the role of the eder, the role of the Kebele, the government policy reflected in the Charities and Societies proclamation, and the underlying reasons for that policy as expounded in the Amnesty report all combine to make it evident to the Tribunal that such activities as the applicant claims to have been involved are readily capable not only of giving rise to an imputed anti-government opinion but also to the imposition of arbitrary and harsh sanctions as a consequence.
54. The Tribunal therefore finds that the applicant's claims bring her within the scope of the Convention ground of political opinion.

Assessment of Claims

55. The country information with respect to the situation of people associated with the CUDP is somewhat equivocal. It is clear that in 2005 there were a number of large and violent crackdowns directed against the predecessor CUD. However, many of those arrested have subsequently been released from detention and/or pardoned for their alleged crimes, in some cases after having agreed to write apologies.
56. On the other hand, the recent United States State Department reports extracted above indicate that Ethiopian authorities continue to harass, arrest, detain and in some cases kill people associated with the opposition parties including the CUDP. The country information in general clearly indicates that in the present situation in Ethiopia little if any criticism of the government is tolerated, and association with an opposition group can still lead to people being subjected to treatment capable of amounting to persecution.
57. The applicant's profile has another facet, as she claims to have been an office bearer of an eder which has refused to cooperate with a government edict concerning the disclosure of its financial affairs. That she might play such a role is supported in the general country information about eders extracted above, including the report from Amnesty International about the purpose and impact of the proposed Charities and Societies law, which would appear to affect organisations such as eders. As the report notes:

...the law's key provisions are blunt and heavy handed mechanisms to control and monitor civil society groups while punishing those whose work displeases the government.

This tends to confirm the applicant's assertion that apparently benign activities on behalf of a local community organisation can indeed be characterised as political by the government authorities in the Ethiopian context, and therefore lends credibility to the

claim that other office bearers in her eder have in fact been arrested for their perceived, anti-government stance.

58. The claimed risk of harm as a result of the committee's conflict with the Kebele officials is also supported by country information such as the Human Rights Watch report extracted above which states that *[i]t is local officials who are responsible for much of the day-to-day repression that characterizes governance in Ethiopia.*
59. As to the applicant's departure from Ethiopia and travel to Australia, the Tribunal notes that the DFAT report CX161651 (Ethiopia: Passport Issue Arrangements, 15 September, 2006) does not exclude the possibility that even if a person were wanted by the security forces he or she could depart that country. The report includes the following:
 - A.1. 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. To obtain a passport, the residential ID (the Kebele card) issued by the lowest level authorities (the Kebeles) is required. That may also be another point of control for the authorities. But this does not preclude instances where such individuals might be able to leave the country without difficulty, possibly using an alternate identity.
 - A.2. Although Ethiopia is generally believed to have less corruption than in neighbouring countries, it is not possible to rule out bribery of authorities at any level, with the Kebele level likely the most vulnerable. Problems at departure points, with their multiple checks, would be more difficult to overcome. 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.
60. The Tribunal notes that the applicant's passport was issued, and her Australian visa application *signed*, before her claimed problems with the Kebele began, and that in any event she claims to have obtained the passport through irregular means with the assistance of person 1, a claim which is not at all inconsistent with the country information. The Tribunal also notes that there is no suggestion that the applicant was officially wanted by the Ethiopian authorities at a national level in the sense, for example, that she was the subject of outstanding charges or that there was a warrant out for her arrest. The Tribunal therefore places little weight on the fact that the applicant was apparently able to depart from Ethiopia unmolested.
61. Overall, the Tribunal found the applicant's account of what has happened to her in the past to be detailed, plausible and consistent with the available country information extracted above, both in respect of her and her late husband's CUDP involvement, and her participation in the eder committee of management.
62. More importantly, the Tribunal is also of the view that the applicant's fears about what might happen to her in the future are also well-founded. The applicant's claims are supported, at least in general terms, by the independent country information which tends to confirm, for example, that people associated with the CUDP continue to face

arrest in Ethiopia on account of their political affiliation, albeit not in the large numbers that they clearly did in the mid 2000s.

63. In light of the fact that the applicant's claims are detailed, internally consistent, and supported to a considerable degree by independent evidence consistent with much country information, the Tribunal accepts the applicant's claims as set out in her protection visa application and reproduced above, and as elaborated upon at the departmental interview.

Real Chance of Serious Harm

64. The Tribunal finds that there is more than a remote chance that the applicant will be arrested upon her return to Ethiopia or in the reasonably foreseeable future thereafter. The Tribunal also accepts in light of numerous references in the country information to the abuse of detainees that in the event the applicant is arrested she will experience serious harm capable of amounting to persecution for the purposes of s.91R of the Act.

Conclusion on Persecution

65. The Tribunal finds that the applicant has attracted the adverse attention of the Ethiopian authorities for the reasons claimed, and that in light of the country information about the human rights situation in Ethiopia, there is more than a remote chance that she will experience serious harm capable of amounting to persecution in the reasonably foreseeable future, in the event that she returns to Ethiopia, and that the essential and significant reasons for this are the Convention reasons of her actual or imputed political opinion.
66. It is evident from the applicant's account, and the Tribunal accepts, that the threat she faces comes from the state itself. State protection is therefore not, in the opinion of the Tribunal, available to the applicant.
67. Accordingly, the Tribunal considers that the applicant has a well-founded fear of persecution for a Convention reason in Ethiopia in the reasonably foreseeable future.

Internal Relocation

68. Given that it is the state apparatus from which the applicant has a well founded fear of persecution, the Tribunal also concludes that the applicant cannot reasonably avoid that risk of persecution by relocating safely elsewhere within Ethiopia.

Safe Third Country

69. There is no evidence before the Tribunal that the applicant has the right to enter and reside in any third country for the purposes of s.36(3) of the Act.

CONCLUSIONS

70. 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) for a protection visa.

DECISION

71. 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 *Migration Act 1958*.

Sealing Officer's I.D. R. Lampugnani