

0807462 [2009] RRTA 266 (9 February 2009)

DECISION RECORD

RRT CASE NUMBER: 0807462

DIAC REFERENCE(S): CLF2007/96328

COUNTRY OF REFERENCE: Ethiopia

TRIBUNAL MEMBER: Nicole Burns

DATE: 9 February 2009

PLACE OF DECISION: Melbourne

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Ethiopia, arrived in Australia and applied to the Department of Immigration and Citizenship for a Protection (Class XA). The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights.
3. The applicant sought review of the delegate's decision and the Tribunal, differently constituted, affirmed the delegate's decision. The applicant sought review of the Tribunal's decision by the Federal Magistrates Court and the Court set aside the decision and remitted the matter to the Tribunal to be determined according to law.
4. 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.
5. The matter is now before the Tribunal pursuant to the order of the Federal Court.

RELEVANT LAW

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

Definition of 'refugee'

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

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.
18. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.
20. According to his protection visa application the applicant was born in City A, Ethiopia. His religion is Orthodox Christian. His ethnicity is Oromo. He came to Australia to study. Prior to coming to Australia he owned a business in City A. Some of his family live in Ethiopia. He also has siblings in other parts of the world.
21. It is stated that the applicant fears harm from the authorities if he returns to Ethiopia because of his political profile, his Oromo ethnicity and his family's background. He claims that he has suffered serious harm in the past for these reasons and was detained on several occasions, for reasons including his involvement in student demonstrations at a major University and as part of the government's mass arrest of suspected opposition Coalition for Unity and Democracy (CUD) supporters following the elections. He claims that the authorities are unable to protect him because they are the perpetrators of the harm he fears.
22. The delegate refused to grant the applicant a visa because she did not accept that the applicant has a genuine fear of harm and that there is a real chance of persecution occurring. The applicant sought a review of this decision and appeared before a differently constituted Tribunal. The applicant's psychologists' report and City A's University enrolment record were submitted to the Tribunal at the time.
23. The Tribunal affirmed the delegate's decision. The applicant appealed the Tribunal's decision in the Federal Magistrate's Court and it was remitted to the Tribunal for reconsideration.
24. Prior to the hearing before this Tribunal the applicant's representative submitted another report from a psychologist about the applicant's mental well-being which raised concerns about his capacity to appear before the Tribunal. Consequently the Tribunal put in place strategies to minimise the applicant's stress during the hearing, such as listening to the tapes of when the applicant appeared before the first Tribunal in order to identify the issues and minimise the time the applicant would have to appear before the second Tribunal. The applicant was also given the opportunity to respond to any issues via post-hearing submissions.

The Tribunal hearing

25. The applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Amharic (Ethiopian) and English languages. The applicant was represented in relation to the review by his registered migration agent. The representative attended the Tribunal hearing.
26. The applicant said he came to Australia to study science. He left Ethiopia because of the persecution he had suffered in the past by the government, which he described as follows.
27. The applicant said he was arrested in the early 2000s because he participated in student demonstrations at City A's University largely aimed to remove the police presence on campus. He was a participant in the demonstrations, not a leader. He was arrested a couple of weeks after the demonstrations when he reported to the police. He heard that police were searching for him because they suspected he supported opposition political groups. When asked, the applicant said a large number of students (including many of his friends) were arrested at this time. He said he was detained and tortured during this time. The authorities suspected him of being involved with the opposition groups because he had discussed political issues with friends at university. When asked, the applicant said he was not involved with any political parties at the time, only student politics.
28. The applicant was released after the situation had calmed down. However the police refused to provide him with a police clearance and therefore he was unable to re-enrol at the university when it re-opened. This was the case for all students arrested after the demonstrations.
29. The applicant started a business in City A in the early 2000s. He said he had no problems running this business until he closed it in the mid-2000s in solidarity with the Coalition for Unity and Democracy (CUD)'s protest against the government's rigging of the election results. The Tribunal asked the applicant a number of questions about the CUD - i.e. the main parties who constitute the coalition, its leader – which he was able to answer. He started contributing money to the CUD in the lead up to the elections, believing it was a democratic environment. He also observed debates between the government and CUD, as part of a large audience of both pro-opposition and pro-government supporters. He was not involved in any other way.
30. The applicant was asked if he was worried about supporting the CUD given his arrest and detention following his involvement with student politics, he replied that at the time it looked like Ethiopia was embracing democratic freedom: for example the ruling party gave the opposition access to the government media apparatus to broadcast their views. At the elections in May the CUD won a large number of seats and it was announced that they won the election. However the government also announced that they had won, which resulted in mass demonstrations. The CUD wanted to protest non-violently and therefore encouraged businesses and administrative service providers in City A to strike. The applicant said that is why he did not open his shop for a period of time in the mid-2000s. Most of the other shops were closed

31. In order to stem the protests the government began to arrest a large number of people. The applicant said he was arrested at his home at night, a short time after he had closed his shop, by police following the orders of the ruling EPRDF. His family was hiding at the time. The applicant was asked if the police were looking for him because they knew he had closed his shop or because they were rounding up many young men in his area. He replied that the government wanted to weaken all opposition by targeting low-level *kebele* members. They arrested many people from his *kebele* because it was known as a CUD strong-hold. The applicant was imprisoned with no specific charge or reason. His relative helped secure his release through bribing prison officials (once he had located where he was). Some others were released at that time, but many remained. Some opposition members are still detained.
32. The applicant said currently the opposition is split between those who advocate a continued pro-democracy approach (who are largely located within Ethiopia) and those who believe that justice cannot come through democratic means (who are largely located outside Ethiopia). The Tribunal noted some country information indicates that the situation has improved and calmed down, even though some opposition members are still detained. In response the applicant said that even at the present time he has heard of opposition party members (and those suspected of being party supporters or members) being arrested. The ruling government is also passing legislation to restrict NGO activities. For these reasons the current government is not 'for' democracy. For these reasons the applicant fears returning to Ethiopia.
33. The applicant was asked what he did in Ethiopia when he was released from prison, to when he came to Australia. He said he did some work for his relative's business because the situation was not conducive to re-open his shop. The applicant was asked if he had any problems with the police or anyone else during this period. He said that government-hired cadres from his *kebele* made him participate in community-level activities discrediting the opposition, such as speaking out against the opposition at public meetings.
34. The applicant was asked if he wants to become a student again if he returned to Ethiopia. He replied that he does not know because he never thinks of returning.
35. The Tribunal asked the applicant to elaborate on his claim in his application that he was arrested in City B. The applicant said whilst he was in City B, visiting his sick relative, student demonstrations took place at the local college and a number of people were arrested because of perceived links to the Oromo Liberation Front (OLF). He was also arrested at his relative's house. His relative was not arrested because he was at work at the time. The Tribunal noted that he had said he visited because his relative was sick. The applicant replied that by the time he arrived his relative had started to get better. The applicant was asked why the police arrested him at his relative's house when the demonstrations had taken place at the university. He said that after the demonstrations the police arrested a number of people in that area. When he told the police he had come from City A, they assumed he supported the OLF. When asked, the applicant said that his family members have never had anything to do with the OLF. The police released the applicant after a certain period of time, with his relative's assistance. The Tribunal asked the applicant how this was possible. He said his relative was well-known in that area. The applicant returned to City A and has had no more trouble from the police with regard to his ethnicity or suspected links with the OLF. The applicant

was asked if the police arrested many people during this time (like a 'round-up'). He said that was the case.

36. The applicant said he is afraid that the authorities will arrest and torture him if he returns to Ethiopia. The authorities are highly suspicious of diaspora opposition members agitating for change. He said the CUD have many party members in Europe and America and one group in the United States do not believe that peace can come through democratic means
37. The applicant's representative said the main issues raised by the first Tribunal related to the credibility of the applicant and whether there was a real chance of future persecution. She reiterated that the applicant's evidence throughout has been that he has participated and supported the CUD in the mid-2000s, but was not a leader or a high-profile member. She argued that, despite most of the opposition leaders being released in relation to the mass arrests in the mid-2000s, the situation has not changed because; the EPRDF remain in power and are intent on repressing any dissent; they have proposed a new bill which looks at restricting NGO activities; the government is still arresting those with suspected links to the OLF; and in the lead-up to the elections in 2010 there is potential for a similar situation and crackdown on political dissent. Looking toward the future the representative argued that the applicant has a political background, including being questioned, detained and tortured; his ethnicity increases his profile; and he cannot express his political views if he returns because of fear based on what has happened in the past, country information indicates that the government does arbitrarily arrest people suspected of holding opposition political opinions; he has been involved in pushing for democracy in the past and wants to in the future; and therefore the risk is there, even if small.
38. Following the hearing, the Tribunal received a submission from the applicant's representative in which she reiterated and expanded upon her arguments at the hearing as follows: the applicant has a well-founded fear of persecution due to his political opinion, imputed political opinion, race and membership of a social group; he has suffered past harm as a result of his political opinion and race; his experiences of persecution are substantiated by psychological reports; the applicant's history of harassment by the authorities indicates that he has a profile which would put him at risk; the situation in Ethiopia remains repressive despite the resolution of the cases related to the 2005 elections; the Ethiopian government engages in systematic repression against perceived political opponents (particularly Oromo people accused of involvement with the OLF or CUD); elections are due in 2010 and there is a real chance the applicant will find himself in the same position as 2005; if the applicant returned he would be forced to live discreetly to avoid future harm; and any further questioning by the authorities would precipitate serious psychological harm.

Country information

39. In assessing the applicant's claims against the Convention grounds, the Tribunal has considered information from a range of external sources regarding the situation in Ethiopia.

Demonstrations at City A University: 2001

40. According to a US Department of State report , the demonstrations began on a day in the early 2000s ‘against the university policies, notably demands for a student council, student newspaper and the removal of police from campus’. It was reported that whilst the government agreed to the first two of these demands, they did not agree to the third, and threatened with arrest those students who did not return to classes. Police stormed the university campus on a day during semester and a number of students were beaten, and hospitalised. Street demonstrations occurred the next day during which non-students became involved resulting in a riot with the burning of cars, breaking of windows and looting. The police responded with extreme force, using live ammunition and many people, mostly students, were killed and hundreds injured. The University re-opened some weeks later. (US Department of State, ‘Ethiopia: demonstrations in City A’ [Date specified]).

May 2005 elections & post-election violence

41. The US Department of State *Country Report on Human Rights Practices for 2007* in Ethiopia describes the elections in May 2005 as follows:

According to domestic and international observers, the May 2005 national elections, in which the EPRDF coalition won 372 of 547 seats, generally reflected the will of the people. Opposition parties made an unexpectedly strong showing, increasing their parliamentary representation from 12 to 172 seats.

Irregularities, including intimidation of voters and election observers, marred polling in many areas. The government and EPRDF also announced the "final" election results before the NEB released them. Observers reported killings, disappearances, voter intimidation and harassment, and unlawful detentions of opposition party supporters, particularly in the Amhara, Oromiya, and Southern Nations, Nationalities, and Peoples regions. The Carter Center expressed concern over reports of improper vote counting and tabulation, stating that its observer teams had "found evidence that ballot boxes have been moved improperly, were improperly secured, or that party agents were barred from polling stations or were not allowed to observe the entire count." It also reported "election day and post election intimidation and harassment."

42. The same report goes on to describe what happened after the elections:

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.

...Beginning during the late 2000s, violent antigovernment protests allegedly organized by the opposition were held in City A, 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 for up to three months 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 mayor-elect Dr. Berhanu Nega, on charges of treason and genocide, among others (see section 1.e.).

43. In a recent article in *African Affairs* it is noted that:

The incumbent's national win was ensured essentially through the continuous control of local government structures in the countryside. After the elections, the government used excessive force in their clampdown on urban protests against the controversial election results, killing around 200 and detaining and charging leaders of the main opposition party, civil society organizations, and journalists with serious crimes. Thousands of youths were also picked up from the neighbourhoods of many metropolitan and regional cities and sent to short-term detention camps without being charged. ("The 2008 Ethiopian Local Elections: the Return of Electoral Authoritarianism" Lovise Aalen and Kjetil Tronvoll, *African Affairs*, 108/430, 111-120, 2008)

44. Regarding the status of those imprisoned the UK Home Office Operational Guidance Note on Ethiopia (issued in April 2008) relevantly reports that:

Following the May 2005 elections there were political demonstrations as opposition parties refused to accept the results. Civil disobedience was encouraged and violence ensued. Politically motivated disappearances of tens of thousands of civilian protestors persisted into 2006 and an independent commission of inquiry into the alleged use of force by security forces in June and November 2005 found that security officials held over 30,000 civilians incommunicado for up to three months in detention centres located in remote areas. However, at the end of 2006 all but a few hundred of these prisoners were released. Those who remained in custody faced trial in June 2007. At the end of their trial they were found guilty but were later pardoned in August 2007.

Treatment of opposition supporters and members

45. There are numerous reports of ill-treatment of opposition supporters and members in Ethiopia. For example the US Department of State *Country Report on Human Rights Practices for 2007* states that:

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.

...There were reports of politically motivated disappearances.

...Although the constitution and law prohibit the use of torture and mistreatment, there were numerous credible reports that security officials tortured, beat, or mistreated detainees. Opposition political parties reported frequent and systematic abuse of their supporters by police and regional militias. In, the central police investigation headquarters in a major city, police investigators reportedly commonly used illegal interrogation methods to extract confessions.

For example, in May police arrested and reportedly tortured 37 CUD members suspected of having links with the outlawed Ethiopian Patriotic Front (EPF). Meqcha Mengistu, Anteneh Getnet, and Woldie Dana of the Ethiopian Teachers Association (ETA) were among the 37; the three had been repeatedly arrested beginning in late 2006. The trial of the 37 was ongoing at year's end.

... There were reports that local officials used threats of land redistribution and withholding of food aid and fertilizer to garner support for the ruling coalition. There were many reports of ruling party or government harassment intended to prevent individuals from joining opposition parties or from renting property to them. There were numerous reports of more serious forms of harassment and violence directed against members of opposition parties in many areas of the country, including beatings, arrests, and killings.

46. On 11 April 2008, Human Rights Watch published a report which describes growing government repression, particularly through control at the local (i.e. *kebele* and *woreda*) levels, evidenced during local elections in April 2008 in the Oromia region as follows:

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.

... 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.

...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 to zonal security officials or federal soldiers.

...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.

...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. ('Ethiopia: Repression Sets Stage for Non-Competitive Elections: Opposition Candidates, Voters Silenced Ahead of Local Polls' (Accessed by the Tribunal on 2 February 2009, <http://www.hrw.org/en/news/2008/04/09/ethiopia-repression-sets-stage-non-competitive-elections>)

47. The same report identified increased control at the local level as a means for the government to repress any perceived opposition. It states that:

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.

...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 City A, mass arrests of perceived opposition supporters, and several prominent opposition leaders jailed on charges of treason that were ultimately dropped.

48. This situation is reflected in an article in *African Affairs*, cited above. It states that:

Considering the formative character of the 2005 general elections, where the opposition for the first time challenged the ruling Ethiopian People's Revolutionary Democratic Front (EPRDF), and the dramatic political crackdown in the post-election period, the conduct of the 2008 local elections is important in understanding the status and direction of Ethiopia's overall process of democratization. The constrained political context and government strategies of intimidation and harassment – leading the main opposition parties to withdraw from the local elections – signal the return of electoral authoritarianism in Ethiopia.

...In the April 2008 polls, members of the local *kebele* (neighbourhood) and *woreda* (county) councils were elected essentially without competition between different parties. In a great majority of the constituencies, EPRDF candidates stood unchallenged, as the opposition candidates boycotted, were pressured to withdraw, or had been prevented from registering. The major opposition party from 2005, the Coalition for Unity and Democracy (CUD) did not take part in the elections, although splinter groups tried to field candidates in many areas.

...The opposition's ability to mobilize the voters and gain support in the 2005 national polls came as a rude awakening for the ruling EPRDF. The incumbent party had not expected that the liberalization would entail any real challenge to its position, but had calculated that instead it could keep control in its hands at the same time as profiting from an enhanced democratic image. So the EPRDF's losses in urban areas and among the youth taught the

party a lesson: strong measures had to be taken to ensure that its weak performance in the 2005 polls would never happen again. The EPRDF spent its time efficiently, and increased the number of party members from 760,000 in 2005 to 4 million in 2008.

...Another method to maintain control was to introduce a reform to enhance 'participatory democracy' by drastically increasing the number of candidates for the *kebele* and *woreda* councils. ...The *kebele* and *woreda* structures remain the key institutions for controlling local communities and are the main service providers.

49. The same report indicates that, given this repressive environment, there is little hope for 'democratic' elections in 2010:

Considering the events in the country since the highly contested and disputed 2005 elections in the light of the conduct of the 2008 local elections, it seems clear that the status and direction of Ethiopia's overall process of democratization is dismal. Ethiopia expert and senior researcher with the Africa Division of Human Rights Watch, Chris Albin-Lackey, views the local elections as 'a stark illustration of just how far Ethiopia's political space has been closed off since the limited opening that preceded the 2005 polls'. In terms of democracy, the country has turned the clock back more than 15 years; the polarized and oppressive political context seen today resembles the situation after the break-up of the transitional government in 1992 and the pull-out of the opposition from the local elections at the time.

Treatment of members of the Oromo community

50. The US Department of State *Country Report on Human Rights Practices for 2007* states:

There were more than 80 ethnic groups living in the country, of which the Oromo, at 40 percent of the population, was the largest. Although many groups influenced the political and cultural life of the country, Amharas and Tigrayans from the northern highlands played a dominant role. The federal system drew boundaries roughly along major ethnic group lines, and regional states had much greater control over their affairs than previously. Most political parties remained primarily ethnically based.

...The military remained an ethnically diverse organization; however, Tigrayans increasingly dominated the senior officer corps. During the May 2005 elections and subsequent demonstrations, there were many reports of Tigrayan or Gambellan troops being used in urban centers where the opposition was strong and where officials did not consider Amhara members of the armed forces sufficiently reliable.

51. Human Rights Watch's 2007 report on Ethiopia notes that:

In Oromia, Ethiopia's most populous state, government authorities have used the fact of a long-standing insurgency by the Oromo Liberation Front (OLF) to imprison, harass, and physically abuse critics, including school children. Victims are informally accused of supporting the OLF, an outlawed rebel group, but supporters of the Oromo National Congress (ONC) and the Oromo Federalist Democratic Movement (OFDM), registered opposition political parties, suffer similar treatment. In early January, more than thirty students were arrested and at least one, a tenth-grader, died as a result of police beatings in Dembi Dollo, western Oromia. Other students were severely injured and hospitalized. Also in January, local police and militia members in Ghimbi shot two high school students dead, one as he and others were walking peacefully along, the other as he covered the body of the first with his own in order to protect him from further harm. In March security officials allegedly executed 19 men and a 14-year-old girl near Mieso in northeastern Oromia. Starting in August, federal

and state security forces arrested well over 200 people in western Oromia, including three members of the executive committee of the Nekemte chapter of the Ethiopian Human Rights Council and OFDM members, on suspicion of links to the OLF. Some, including the EHRCO officials, were released under court order after the police failed to provide evidence against them but most were still detained as of early November. At least 25 were being held in defiance of court orders to release them.

52. In their risk assessment regarding people of Oromo ethnicity ‘Minorities at Risk’ state:

Until a truly open political system is allowed in Ethiopia, the future condition of the Oromo remains questionable. With the continued insurgency in the south, even Oromo unaffiliated with militant and violent organizations are still targeted and subject to governmental abuse and detention. Further complicating a viable projection of Oromo participation in Ethiopian politics are the disparate claims that various Oromian groups hold, ranging from full political independence to greater regional autonomy to greater participation at the central state level. When and if rebellious activities conclude will likely indicate whether the Oromo can carve out a political niche adequate to their many distinct members. The fact that the Ethiopian regime has completed preparations to annul the official use of Oromo language in over 375 cities and towns of Oromia is one of the many indicators of the level of repression the Oromo people face.

...Oromo civilians have also taken to the streets frequently in small-scale protests (PROT99 and PROT00 = 3 with PROT01-03 = 2) to argue for greater political rights and proportionate representation in Ethiopian universities. By virtue of being the largest ethnopolitical group in Ethiopia, the Oromo are perceived as a threat to Tigrean EPRDF power and this has resulted in government repression against the group including the arrest of many group members (REP0103 = 1), the use of torture (REP0500 = 3), a saturation police presence in certain Oromian areas of the country (REP1700 = 3), as well as forced resettlement (REP1203 = 1) and confiscation of property (REP1003 = 1) (www.cidcm.umd.edu/mor/assessment.asp?groupid=53004 Accessed 4th February 2009)

State corruption

53. According to the US State Department’s *Country Reports on Human Rights Practices for 2007* for Ethiopia corruption within the police force remained a serious problem as follows:

The Federal Police Commission reports to the Ministry of Federal Affairs, which in turn is subordinate to the parliament. Local government militias also operated as local security forces largely independent of the police and the military. Corruption remained a problem, particularly among traffic policemen who solicited bribes. Impunity also remained a serious problem. The government rarely publicly disclosed the results of investigations into such types of abuses. The federal police acknowledged that many of its members as well as regional police lacked professionalism.

The government continued its efforts to train police and army recruits in human rights. During the year the government continued to seek assistance from the ICRC, JFA-PFE, and the Ethiopian Human Rights Commission (EHRC) to improve and professionalize its human rights training and curriculum by including more material on the constitution and international human rights treaties and conventions.

...The law provides criminal penalties for official corruption; however, the government did not implement these laws effectively. The World Bank's worldwide governance indicators reflected that corruption was a serious problem.

The Ministry of Justice has primary responsibility for combating corruption. A combination of social pressure, cultural norms, and legal restrictions limited corruption.

...There were no arrests of high-level government officials, although numerous low-level officials were arrested for corruption during the year.

FINDINGS AND REASONS

54. Based on a copy of his passport on file, the Tribunal finds that the applicant is an Ethiopian citizen.
55. The Tribunal found the applicant to be a credible witness at the hearing. His evidence was consistent with the written claims and also with country information available. The Tribunal accepts that the applicant is an Orthodox Christian of Oromo ethnicity from Ethiopia. The Tribunal accepts that he was involved in student demonstrations at a University in City A in the early 2000s, arrested, and detained for several weeks. It also accepts that he was arrested and detained for several months in the mid-2000s, as part of the mass arrests of opposition supporters by the ruling EPDRF, and released after his relative bribed officials. The Tribunal accepts that he was tortured and in fear of his life during this time. The Tribunal accepts that after the applicant was released from prison until he came to Australia to study and that he was under surveillance by his local kebele cadres and made to speak out against the opposition at public forums.
56. The applicant has argued, via his representative, that he has a well-founded fear of persecution due to his political opinion, imputed political opinion, race (i.e. Oromo) and membership of a particular social group (i.e. of 'Oromo students'). For the reasons set out below, the Tribunal accepts that the applicant has a well-founded fear of persecution due to his political opinion and imputed political opinion and has therefore found it unnecessary to deal with the second and third reasons.
57. The Tribunal accepts that the applicant was a low-profile supporter of the CUD. On his own evidence, submitted by his representative at the hearing (and clarification following the hearing before the first Tribunal), he was not a prominent or high-profile CUD member; rather he attended some pre-election debates between the CUD and EPDRF and contributed financially to the party, in the broad hope that there was an opening of political space in Ethiopia for the first time. At the hearing the applicant demonstrated a broad knowledge of the relevant political parties at the time and general pro-democracy themes; consistent with a low-profile CUD supporter.
58. Independent country information indicates that there were mass arrests of people demonstrating against the ruling party's rigging of the May 2005 election results in late 2005 and many were detained for several months or more. The Tribunal accepts that the applicant was arrested, detained and tortured during this period as claimed. At the hearing the applicant admitted that the police were not necessarily looking for him, but wanted to round up many of the young men in his neighbourhood, a CUD strong-hold, in order to weaken CUD's support base. Nonetheless the Tribunal considers that his arrest and subsequent detention had a political flavour and involved the imputation of

an anti-government political opinion to the applicant. The Tribunal therefore finds that the applicant suffered persecution in the past for reasons of his political opinion.

59. Looking to the reasonably foreseeable future, the country information clearly indicates that in the mid 2000s there were a number of large and violent crackdowns directed against the CUD. However, many of those have been released and/or pardoned for their alleged crimes, in many cases after they signed statements. On the other hand country information such as the recent US Department of State's Country Report on Human Rights Practices for 2007 (released in 2008) indicates that the Ethiopian authorities continue to harass arrest, detain and sometimes kill people associated with the opposition parties including the CUD. The Tribunal notes the April 2008 report from Human Rights Watch and the 2008 article in *African Affairs* cited above raise concerns that as challenges to the EPDRF's power has grown, it is becoming increasingly authoritarian and determined to close political space, evidenced by the way they orchestrated their win in the local elections in 2008, exerting control through a local system of surveillance and intimidation (i.e. through the kebele and woreda system). This country information makes it apparent that the EPDRF regard those linked to the opposition (or perceived to be) as the potential enemy and potential target for intimidation and harm. Furthermore the country information indicates that the situation is likely to deteriorate further in the lead up to the 2010 elections; that EPDRF will do anything to prevent a repeat of the 2005 election results. The Tribunal considers that the applicant, a former CUD supporter, who the Tribunal accepts was arrested and detained several times during the 2000s on suspicion of being involved with the opposition in some way, is vulnerable to being identified by the authorities on his return. If so, the Tribunal finds that there is a real chance that he would suffer serious harm in the form of physical mistreatment and/or detention that would amount to persecution if he were to return to Ethiopia now or in the reasonably foreseeable future.
60. The applicant also claims fear of harm because he is of Oromo ethnicity and because he has been arrested in the past on suspicion of his relative being involved with the OLF. The Tribunal has some concerns about the applicant's claims of his arrest whilst visiting his relative in City B. The Tribunal finds it implausible that the authorities would arrest the applicant because they suspected his relative was linked to the OLF on the one hand, yet release him shortly afterward on his relative's request. The Tribunal therefore does not accept this incident occurred as claimed. Nonetheless the Tribunal notes country information which suggests that Oromos generally risk discrimination, harassment and ill-treatment because of their ethnicity alone. Coupled with a state apparatus geared toward acting indiscriminately against perceived opponents, the Tribunal considers the applicant's ethnicity would put him at some heightened risk, but not be the essential and significant reason for the harm feared.
61. The Tribunal is of the view that the applicant's fears about what might happen to him in the future are 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 who associate with the CUD continue to face arrest in Ethiopia on account of their political affiliation, albeit not in the large numbers that they clearly did in 2005.
62. The Tribunal finds that the applicant has attracted the adverse attention of the Ethiopian authorities in the past for the reasons claimed, and in light of the country information about the human rights situation in Ethiopia and shrinking democratic space, the

Tribunal finds there is more than a remote chance that he will experience serious harm capable of amounting to persecution in the reasonably foreseeable future, in the event that he returns to Ethiopia, and that the essential and significant reasons for this are the Convention reasons of his actual or imputed political opinion.

63. As the applicant fears persecution from the government and its authorities, the Tribunal finds that the applicant would not be afforded adequate state protection from the harm he fears. Nor would he be able to avoid the harm he fears by relocating elsewhere in Ethiopia.
64. Accordingly, the Tribunal considers that the applicant has a well-founded fear of persecution for a Convention reason (i.e. due to his political opinion) in Ethiopia in the reasonably foreseeable future.

CONCLUSIONS

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

DECISION

66. 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. Angela Scarano

Date: 18 February 2009