

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO. 70495/97

AT WELLINGTON

Before: L Tremewan (Chairperson)
G J X McCoy (Member)

Counsel for Appellant: Ms V Vassiliadis
(Ian McCulloch & Co)

Representative for NZIS: No Appearance

Date of Hearing: 19 November 1997

Date of Decision: 19 December 1997

DECISION

This is an appeal against the decision of the Refugee Status Branch (RSB) of the New Zealand Immigration Service, declining the grant of refugee status to the appellant, an Ethiopian national of Amhara descent.

BACKGROUND

The appellant is a 33 year-old married man, born in Addis Ababa, Ethiopia. His wife, whom he meet in New Zealand, is also an Ethiopian. She is a New Zealand permanent resident, having been granted refugee status under the Government's quota system. As yet they have no children.

The appellant arrived in New Zealand on 13 March 1996. He filed an application claiming refugee status on 20 March 1996, under cover of a letter from the 'Refugee and Migrant Service' (RMS). This covering letter explained that the RMS would be 'assisting' the appellant with his claim and that all correspondence pertaining to the application should be sent to their office.

As it turns out, the appellant shifted from his Auckland address (as recorded in his application) to a Wellington address. He evidently advised the RMS of this fact and awaited advice of his RSB interview date.

However, on 20 January 1997, the RSB sent the appellant a notice of his interview hearing, addressed to the previous residential address which had been detailed in the appellant's actual refugee status application. No letter was sent to the RMS, as has been requested.

The appellant apparently did not receive the notice of hearing and did not attend any interview. A decision declining his application was subsequently released by the RSB, on 26 March 1997. This decision was primarily based on the premise that the appellant had failed in his duty to prove his claim.

The appellant then later happened to make some enquiries, from Wellington, as to the progress of his case. It was discovered that his application had been dealt with. He was just within time to file an appeal. It is from the RSB decline decision, then, that this appeal is based.

Before dealing with the matter, the Authority wishes to take this opportunity to express its grave concern that vital correspondence relating to the appellant's RSB interview was not sent to the address to which the RSB had been specifically requested to send the notice of hearing. The net result of this is that the appellant has effectively been denied the opportunity to have his matter comprehensively dealt with at the first instance. Furthermore, this Authority has been denied the resource of the interview report when assessing the appellant's credibility on appeal. In this case, for reasons which will become apparent, we have not ultimately had any concerns in terms of our credibility findings, and doubt whether our decision would have been any different. This is not, however, the point.

It is further noted that there appears to be little doubt that the case officer dealing with this file at the RSB level received the letter from the RMS, which had directed that all correspondence be sent to their office. Firstly, we have a copy of the letter on our appeal file (at page 4), that document having been received from the RSB itself. Secondly, the letter was actually attached to the appeal application for refugee status. Thirdly, the letter is marked with the 'received' date stamp which the RSB office uses when correspondence is received.

THE APPELLANT'S CASE

The appellant was one of nine children. His father died six years ago. His mother and eight siblings continue to live in Ethiopia. The appellant has a seven year-old son who is being raised by the appellant's mother as one of her own. That child forms no part of this application.

The appellant attended school from the age of about five to around 17 or 18 years of age. After completing his education, he obtained work as an unqualified teacher's aide for some months. When about 19 years old, the appellant travelled some 400kms to 500kms east to D (relatively near the Somalian border), to stay with some cousins. He was able to secure some better work there, working casually for a building authority. After some months, he returned to Addis Ababa.

At his father's urging, the appellant began studying Italian in the hope that this might lead to some more permanent work opportunities. He completed most of the three-year course. During this time, the appellant also played club soccer, for which he was able to earn enough income to maintain him during his studies.

The appellant then also attended some night school classes in order to complete his matriculation. Although the appellant passed his examinations, his marks were not sufficient for him to gain entrance to university.

Subsequently, in the late 1980s, the appellant successfully obtained a position as a purchaser for the Ministry of State Farms Coffee and Tea Developments. The project where the appellant was stationed was at A, Walaga province, on a coffee plantation nursery. He was one of a team of approximately five managerial personnel. Labourers were also employed on the plantation. He held his position for several years. His sudden departure from the area was, however, due to a serious incident which took place after the government fell in 1991 and the Ethiopian People's Revolutionary Democratic Front (EPRDF) took power.

One evening, on a date in about 1993, the appellant was in his hostel room after the generators had been turned off for the night. He had his own small light on in his room. Suddenly, armed men rushed into the hostel and began dragging some people out of their rooms, including the appellant and, as it emerged, a friend of his. Both men were Amhara. There was much confusion and it took some time for the appellant to work out what was actually happening. The appellant was

taken to a room which had once been used as the plantation's office. It was between one and a half to three metres long. The appellant and the others were forced into the office. In the darkness it was difficult to make everything out, but the appellant realised that all of the others in the room were Amhara. That night the room was filled with more Amhara. Many of them were known to the appellant. Some, unlike the appellant, were business owners and another was an hotelier. There were women and men, though during the night the women were later taken off somewhere else.

Those responsible for the attack were Tigrayan People's Liberation Front (TPLF) rebels. They were regarded as being 'part of the government'. They were identifiable to the appellant, *inter alia*, by their dress. This comprised military-style khaki uniforms (with shortened legs and sleeves in a rough style), and their weapons, which included firearms and grenades.

The appellant and the other captives believed that something grave was in store for them, because of the treatment meted out by the TPLF personnel. For example, at one point during the night, one of the guards ordered that no-one in the room was to talk to any other person. However, later, an older man (J) recognised a younger man who was being brought into the room and made an acknowledging remark to him. He was then dragged to the doorway of the room by the guards. He had his arms pulled tightly up behind his back, tied, and was then savagely beaten. He was then pushed back into the room. The appellant believed that J would die, due to the noises he was making and the nature of the beating. Those in the room were told not to untie J's hands although, after the door closed, they did loosen the ties. There was a atmosphere of fear and distress amongst those in the room.

The following morning, the group was ordered out and onto an open truck. They were taken through to the local village where they were told they could try to quickly arrange to have some small belongings brought to them as they would "not be coming back". The appellant was, as a single man in the area with few possessions anyway, not so concerned about gathering possessions. He particularly recalled, however, one elderly woman who was one of those from the area. She was distressed at being forced out and could only arrange to have brought to her a small sum of money from her home.

The appellant did not know what would happen but thought that it was possible the captors intended to kill the group. He had heard, prior to this incident, of Amhara being killed or “disappearing”. He had not, however, ever known whether or not this was true. For himself, he had not felt anything special about being Amharic and could not contemplate tribal hostilities at such a level.

The group were subsequently driven to a new location about an hour away, where they were again held in cramped conditions. For the first 10 days or so, the appellant was often brought out and interrogated by his captors. Mainly the appellant was accused of supporting the All-Amhara People’s Organisation (AAPO) and giving it large sums of money (which the appellant recalled was ludicrous in light of the modest income he had been receiving anyway). These sessions usually occurred during the night. They were very frightening. Other than this interrogation, the appellant was usually just held in the confined room. He recalled one particular occasion when he asked a guard for some clean water and was hit with the guard’s rifle butt. This caused great tenderness to his upper chest but no actual injury.

After the first 10 days or so, however, the appellant’s most senior “boss” in charge of his plantation had apparently been notified of the disappearance of the Amharic workers from the project and had made his way to where they were being held. Although it took one more week for him to actually effect a release of his workers, through negotiation, the appellant’s conditions noticeably improved during that final week. After that, the plantation workers were released.

The appellant did not ever hear what happened to the rest of those held, save one elderly woman, a Mrs B, whom they heard was killed by the rebels.

After his release, the appellant returned to Addis Ababa, as he could not have safely returned to his previous posting in Walaga province.

Even in Addis Ababa, while awaiting a new posting with the Ministry, the appellant noticed a different climate towards Amhara in the city. For example, the appellant and another Amharic friend were in a bar when a Tigrayan man, whom the appellant had personally known, came in, in Tigrayan rebel clothing. He was armed and ended up confronting another Amharic in the bar, whom he then fatally shot in the chest. After the shooting, however, the Tigrayan presented his firearm at the appellant and his friend and told them to leave, which they did. The

appellant found it shocking that a person that he had earlier known on a social basis would then be “with the government”, armed and dressed as a rebel and targeting those, including the appellant himself, of Amharic tribal descent.

The appellant was then transferred from Addis Ababa to the Sidamo province in the south of Ethiopia by the Ministry of Tea and Coffee development. This had been arranged because it was not possible for the appellant to return to Walaga province, given the racial hostilities there. As it turned out, it suited the Ministry to transfer the appellant to Sidamo province since Amharic was, at that time, the major language used in that area of the south, whereas there had been an increasing trend in the Walaga province for Orominga to be spoken, a language which the appellant could not speak.

In the Sidamo province, the appellant was appointed to a new position within the Ministry as a cashier/payroll clerk. Things settled down for a period work-wise, although the appellant felt a deep-seated resentment over the way he had been mistreated in the earlier incident in Walaga province, and as well, a great concern about the governing powers.

After the government had fallen in 1991 and the EPRDF had come to power, initially, according to the appellant, there was some internal and external support for the government because its policy suggested that democracy would be brought to Ethiopia. The appellant now believes that the EPRDF has been the worst government in Ethiopia’s history. He believes that the Amharas have been a major target of the government and that thousands have been killed because of this. There were, however, meetings of protest against the government organised by some opponents. The appellant attended a meeting, and as well, one large demonstration in Addis Ababa, in around 1993, organised by the AAPO which had been formed in the previous year. The demonstration was to voice opposition to the racial targeting of people on the grounds of their tribal background, and also to promote the rights of the Amhara. The appellant travelled all the way from Sidamo province, along with others, to take part. The protest became bigger and bigger as it moved on, with members of the public joining in. However, government soldiers, masked and carrying weapons, ended up dispersing the crowd and, after a short time, the demonstration was finished. The appellant was not injured or arrested during this protest.

During this period, meetings were being called to 'discuss' the government's new constitution. It had, in fact, already been approved but needed to be "taken to the people". The appellant's evidence was that everyone was required to attend these meetings and it was expected that one would not say too much but rather agree with what had been outlined and applaud loudly. At the large meeting which the appellant attended in Sidamo, along with about 1,000 people, concerns were raised by some of those present. These concerns particularly related to the situation with Eritrea. The appellant raised some matters himself in this regard and, when those around him began encouraging him with cheers and applause, he became "a bit emotional" and went on to make some controversial statements.

On the way home after the meeting, some people the appellant knew told him they thought he had gone too far and said too much. He agreed he had, in the event, said more than he had intended to. He had, however, felt angry about the way the meeting was conducted and about the matters raised. At the same time, he knew the risks of being too outspoken, since a man he knew from work had 'disappeared' after being politically outspoken.

The following morning while the appellant was walking to work, he was approached by two men in a car. He was required to get into their vehicle. He was subsequently taken to a government office and ordered to wait outside. After 20 minutes or so, the appellant was told there "been a mistake". He was then driven to his work. He believed there had been no mistake but rather the act was one of subtle intimidation. Once at his work, he was met by his boss who told him that all 'signing' documents would now need to be signed by the other payroll cashier staff and so documents transferring over these signing rights needed to be immediately executed. Although it was not precisely spelled out, the appellant realised he had lost his position at work. His employer appeared unhappy, as if acting under obligation.

The appellant's foremost concern about losing his position was the consequent loss of protection. Just as his previous boss had been able to effect his release from detention when in the Walaga province, if he had no position in Sidamo province, then he had no protection of a like kind there, especially since he had made bold statements at the public meeting. The appellant decided to make immediate arrangements to return to Addis Ababa, to his family. The appellant arranged with a friend who owned a motor cycle to give him a lift to the next town, Y, some 40 kilometres away. From here, the appellant intended to catch a bus

which would take him in the right direction. He made a booking for the next day and that evening stayed in a cheap hostel.

Early the following morning, however, the appellant answered a knock on his room door. It was the two men who had picked him up the previous day and taken him to the government offices. One asked him, rhetorically, what he was doing there, while both men started beating the appellant and dragged him out of his room. He was kicked, punched and hit with the butts of the men's rifles.

The appellant was forced down to the roadside and into a vehicle. It had been raining heavily (not uncommon in the coffee plantation regions) and a short while after the vehicle had been driven off at speed, it skidded on the wet road and crashed into a large tree. After a few moments of unconsciousness, the appellant came to, and seeing the other two men were more seriously injured than he was, he ran off from the vehicle. He had an injury to the back of the head but wiped off the blood and managed to climb aboard a bus, which had slowed due to the accident. It was going to Y, where the appellant had spent the previous night. Later the appellant caught the bus for which he had originally been booked.

Eventually, the appellant made his way back to D (in the north east of the country), as he was now too fearful to go to Addis Ababa. He stayed with cousins in D and borrowed money to travel to Djibouti by train. He was able to cross the border without great difficulty. In Djibouti, the appellant lived in very poor conditions until, while trying to arrange to stow away on a ship, he met up with a childhood friend who worked on the ship. That person helped him to stowaway onboard, and the appellant eventually landed in South Africa.

Life in South Africa was risky for the Ethiopians, who were very easy targets of robbery and other street crimes. The appellant obtained work and managed later to obtain false documents including a South African passport so he could leave. It should be noted that he also filed an application for refugee status there, but left before he could be interviewed or even provide proper information in respect of that application. The file before this Authority reveals that enquiries made with the UNHCR (Canberra) have confirmed that the appellant was not granted refugee status in South Africa.

The appellant subsequently left South Africa and arrived in New Zealand on 13 March 1996. He claimed refugee status one week later, under cover of a letter dated 20 March 1996.

The appellant fears that if he returns to Ethiopia he will be imprisoned, mistreated and possibly worse. He believes that there is a risk that he may “disappear”.

The appellant regards himself as a supporter of the AAPO, something which he believes, as an Amharic, is natural. He does not, however, claim to be an ‘active member’ in the organisation. Nevertheless, he considers that the authorities, who effectively expelled him from Walaga province, clearly saw him as having a more significant role within the AAPO than as a simple rank and file supporter. He is unclear what the authorities in Sidamo thought, but clearly they had a view that the appellant’s political opinion was against them. The appellant believes that he will be offered no protection if returned to Ethiopia and that he will be subject to grave risk at the hands of the rebel forces who work for the government. He considers that it would be unsafe for him to return to even Addis Ababa in light of some of his previous experiences there and what he had heard has happened to other Amharians there.

THE ISSUES

The Inclusion Clause in Article 1A(2) of the Refugee Convention relevantly provides that a refugee is a 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.”

In terms of Refugee Appeal No. 70074/96 Re ELLM (17 September 1996), the principal issues are:

1. Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
2. If the answer is yes, is there a Convention reason for that persecution?

Before dealing with the issues which need to be addressed, it is necessary for the Authority to make a finding with respect to the appellant's credibility. The Authority found the appellant a thoroughly credible witness. His demeanour was consistent with a person 'reliving' an actual experience. He was open and gave considerable detail where appropriate. He resisted, we considered, any attempt there might have been for him to embellish his account on numerous occasions, in such a way as to give further credence to his narrative. Any reservations we may have initially had, for example, with respect to the document on file from the AAPO, were dealt with by the appellant in a convincing manner. His evidence was materially consistent with that previously presented, though, of course, he was effectively denied an opportunity to present his account before the RSB. The evidence was also consistent with country information available to the Authority.

In short, we accept the appellant's account.

In turning to the first issue to be addressed, namely whether there is a real chance of the appellant being persecuted if he returned to Ethiopia, we note that this Authority has previously accepted that some Amhara can face a real risk of persecution in Ethiopia. In this regard we refer to Refugee Appeal No 2015/93 (23 August 1994) and Refugee Appeal No 1714/93 (25 July 1996). It appears that country information, set out below, shows that there is still a cause for concern on the part of Amhara, particularly those thought to be supportive of, or active within, the AAPO in Ethiopia. It is noted that there has been no evidence of any real or substantial change, on the part of the Ethiopian government, since the previous decisions were released by this Authority.

In Human Rights Watch World Report 1997 'Ethiopia' at p28 is recorded the following:

"... Opposition groups such as AAPO were the object of closures of the regional offices, harassment, detention, and suspicious killings of activists, and lack of meaningful access to the state-controlled broadcasting media. While the government allowed some civic groups to operate without interference, its regulatory agencies restricted the freedom of other associations. Some non-governmental organisation (NGOs), with a mandate to promote human rights education and monitoring and civic education, faced obstacles in their attempts to register with the Ministry of Justice and the Police action - including arrest without warrant - that harassed and intimidated their personnel."

The Amnesty International Report 1997: Ethiopia, stated:

“... Hundreds of critics and opponents of the government were arrested, including prisoners of conscience. Some were brought to trial and sentenced to prison terms, but most political trials had not been completed by the end of the year. Most political prisoners were detained without charge or trial. ... There were further reports of torture of government opponents and “disappearances” and extra-judicial executions by the security forces, particularly in areas of armed conflict. ... Judicial reorganisation, involving extensive dismissals of federal and regional court judges, seriously undermined the legal right to political prisoners. Ethiopia was one of only two African states not to have ratified the African Charter on Human Peoples’ Rights.

Dozens of journalists were arrested in Addis Ababa, the capital, and held for investigation, in some cases for several months, before being charged and trialed or granted bail. ... Hundreds of suspected government opponents arrested in previously years continued to be detained. Trials of some, who were possible prisoners of conscience, proceeded slowly and were not completed by the end of the year. The trial of Professor Asrat Woldeyes, Chairman of the All-Amhara People’s Organisation, and 31 others, for conspiracy to carry out armed rebellion had not concluded by the end of the year. ... There were further reports of “disappearances” of government opponents abducted by gunmen believed to be members of the security forces. ... No investigations were known to have taken place into allegations of torture, “disappearance” or extra-judicial execution.”

Ethiopia featured, under the ‘Human Rights Violations World Wide’ detailed in Amnesty International Annual Reports for 1997, in respect of the following breaches:

“Disappearances; where people have disappeared and remain under account for after disappearing in previous years; as having prisoners of conscience; as having people in detention without charge or trial.”

The following are a series of extracts received by Internet from the UNHCR Centre for Documentation and Research (country information request) on 25 June 1997. Where appropriate, the particular dates when the UNHCR Centre for Documentation and Research sourced the information are shown. In response to an information request on the subject “Ethiopia: Information on whether members and leaders of the All Amhara People’s Organisation (AAPO) are being sought by the government and on the government’s attitude towards the organisation”, came the following:-

“... A source stated that members of the AAPO Central Committee have been jailed without charge even though the government has permitted the AAPO to register as a political organisation ... that rank and file members of AAPO are harassed by the authorities, and that it can be difficult for members to admit to belonging to the AAPO. “They can be picked up by security forces in the middle of the night; obtaining membership of the AAPO can land you in jail”. The source also stated that the government treats the AAPO as its “Number 1 enemy”, although the organisation only advocates respect for human rights, the rule of law and the united Ethiopia with one government for all Ethiopians.”

An extract, under the subject heading "Ethiopia: Information regarding the treatment of ordinary peoples of the AAPO (*inter alia*)", stated:

"... several thousand suspected government opponents were "detained" during 1994 and there were widespread allegations of torture. Scores of "disappearances" and extra-judicial executions of government opponents were reported.... Specific information on the treatment of AAPO members ... includes ... four trials and three convictions of Professor Asrat Woldeyes and a couple of other AAPO notables and the arrests and ill-treatment of 500 Woldeyes supporters at his trial in September 1994. ... Amnesty commented on the conviction of Woldeyes and four other AAPO members in June 1994; "The five convicted prisoners appear to have been imprisoned on the basis of slender and dubious evidence and without direct proof of the alleged conspiracy" (AI news release 1 July 1994). Of the arrest of the 500 Woldeyes supporters at one of his trials in September 1994, Amnesty commented "Amnesty International considers that all or virtually all of them were or are (in the case of those still held) prisoners of conscience, imprisoned on account of their peaceful opinions." ...

More generally Amnesty has commented that "scores of members of the All Amhara Peoples' Organisation were detained during 1994" (Report 1995 p 129) and "hundreds of (AAPO) supporters were arrested 1994 and early 1995 ... (some) have been detained without charge and some are currently on trial for political offences arrest took place in Addis Ababa and rural areas in the Amhara region". ... On 1 July 1994 Amnesty noted that "the AAPO has reported numerous cases of detentions, disappearances and alleged torture and extra-judicial executions of AAPO supporters and Amharas ... by government troops and pro-government militias in the central Amhara region and other regions where Amharas are a majority" .. (p 2). Its April 1995 report noted that AAPO "supporters have been targeted for arrest" (p21); p9 of this report noted that "detainees and their families are often afraid to talk about human rights violations. There is a general climate of secrecy and intimidation surrounding these issues which make collecting information difficult".... Government pressure on the judiciary where "the presiding high judge replaced one of two fellow judges to achieve a majority vote to deny bail to AAPO detainees".

In Human Rights Watch World Report 1995 it is noted that "The Human Rights situation was far from satisfactory, as arrests and detention of members of opposition political parties and journalists and some killings in disputed circumstances, continue to occur. There were increasing allegations of human rights abuses, often involving intimidation of leaders of members of parties and groups that were competing with the ERDF in the political process. These political opposition parties in groups included the All-Amhara People's Organisation" (p17). The report argues that members of ... "the AAPO were also arrested and detained without trial", "six AAPO members in the Amhara region" were extra-judicially executed and that restrictions were placed on AAPO meetings and organisations" (p 17)."

A response to information for request dated 25 May 1995 under the subject heading "Ethiopia: Information on raids on the Addis Ababa office of the All-Amhara People's Organisation on 4 July and its subsequent shut down for a number of days starting on 9 July 1994", stated:

"...The police searched the headquarters of the All-Amhara People's Organisation in Addis Ababa on 4 and 5 July 1994 ... Its former chairman and other members

were jailed after having been charged. “To this must be added the numerous cases of murder and disappearance of AAPO officers, members and supporters in several parts of Ethiopia”.

From a further report in the series, dated April 1995, “Accountability Past and Present: Human Rights in Transition”, comes the following extract:

“Another opposition party whose supporters have been targeted for arrest is the All-Amhara People’s Organisation (AAPO), hundreds of whose supporters were arrested in 1994 and early 1995. Amnesty International is investigating whether those currently held are prisoners of conscience. Two senior AAPO officers, including the AAPO Chairman, Professor Asrat Woldeyes, are serving prison sentences after convictions for political offences and trials which may have fallen short of international fair trial standards. Other AAPO supporters have been detained without charge or trial and some are currently on trial for political offences. Arrests took place in Addis Ababa and rural areas in the Amhara region.

The AAPO, formed in 1992, is a registered political party and maintains that it opposes the government through solely peaceful means. It advocates the “unity of Ethiopia”, thus opposing Eritria’s independence from Ethiopia, and it seeks to promote and defend the “Amhara nation”. Professor Woldeyes was a well-known medical specialist with his own practice. He is a prominent opponent of the government. He has frequently spoken in public alleging violations of the human rights of the AAPO supporters. He has alleged that the authorities have failed to protect Amhara majorities in the Oromo region from violence by both pro-government OPDO militias and opposition OLF. ...

On 20 September 1994, police arrested some 500 people who had gathered at the central high court in Addis Ababa where Professor Asrat Woldeyes was on trial...they were held under military guard. At first they were held in crowded rooms without access to their families, lawyers or medical treatment, contrary to international standards...The detainees had their heads shaved without soap or water. They complained that this was painful, causing bleeding, and was intentionally humiliating. More serious was the fact that a few girls and young men were forced to use razors which had already been used by other prisoners and which were contaminated with their blood, thus potentially exposing them to the risk of Aids. The detainees were forced to do army-type exercises. Some fell ill and only received medical treatment after some delays. They were not allowed to bathe or go outside to a toilet. At first the only nourishment they received was bread and water. After two weeks conditions improved following international protest. ... In mid-October 1994 after more than three weeks in custody, about 250 of the detainees were released without having been charged or tried. The remaining 250 were taken back to Addis Ababa and were brought before a court for the first time. They were charged with holding an illegal demonstration on the basis of their alleged participation in an organised demonstration which did not have advance permission from the authorities. They were also charged with “contempt of court” on the basis of chanting and T-shirt slogans calling for the release of Professor Asrat Woldeyes. They were granted bail but those who could not initially raise bail were forced to remain in custody. No date has been set for their trials. ...

Torture methods reported to have been employed against prisoners by government military or security officers since 1991 include: tying the prisoner with plastic ties around the upper arms pinned together behind the back, leaving the victim tied for several hours or even a few days, causing intense pain swelling and paralysis of the forearms and hands which may be permanent; tying prisoners in other ways or hanging them up by rope then beating them and beatings on the soles of the feet; rape of women; beatings with sticks and guns butts and whipping

with electric cable while the victims are forced into a kneeling or prostrate position; death threats with guns at the head.

An alarming pattern of “disappearances” of suspected government opponents has emerged since 1972. Dozens of people have disappeared after being abducted by armed men who appear to be security officers. Others disappeared from an official place of custody. The disappearances were reported from Addis Ababa and regions where there was armed opposition. The victims’ relatives have been unable to establish their whereabouts in any official place of detention. They are believed to have been taken to secret and unauthorised detention and interrogation centres run by the security or military authorities. If they are alive, they are still being held in secret detention. Amnesty International have received credible first-hand reports from several detainees who disappeared “into such secret interrogation or detention centres and were later released and reappeared”.

Under a subject heading “Ethiopia: Information on the current status and aims of the All-Amhara People’s Organisation (sourced 4 March 1994), it is stated:

“Africa Report notes in its November/December 1993 issue that many Amhara have flocked to the All-Amhara People’s Organisation because they see it as representing their interests. AAPO was also founded with the intent of promoting “unity in Ethiopia”. ... The Washington Post states in its 18 February 1993 issue that there is still pronounced political conflict between the government and Amharas and the government frequently deals harshly with its political opponents. ... Africa Report also states that because of the AAPO’s mass following among Amharas, the government now appears to be pursuing a campaign of systematic harassment against AAPO leaders and activists (November/December 1993 at p 52). ... The BBC reported in its 17 February 1994 summary that AAPO has refused to participate in the drafting of the new Ethiopian constitution. Among other things, the party based its refusal on what it perceived as the constitutional commission’s lack of independence from the EPRDS government. ...”

The United States Department of State Country Reports on Human Rights Practices for 1995/1996: Ethiopia (sourced from the Internet 25 June 1997) states the following:

“... the AAPO... (entering into discussions with TGE/FDRE ... (Transitional Government of Ethiopia - established in 1991 by EPRDF and controlled by TPLF)) interested only in the release of its members jailed on criminal charges ... were unable to reach a consensus and made no plans for future discussions ... AAPO is one of the virulent domestic critics of the TGE. Although it is permitted to function, AAPO appeared at the end of 1994 to be under increasing pressure from the government, and our embassy has recorded that a number of AAPO regional branch offices have gone out of existence. AAPO members who are believed by the TGE/FDRE to be actively supporting violence or insurrection may be arrested and prosecuted. ... There are no credible reports that the TGE/FDRE has stepped up violence against AAPO supporters....”

The United States Department of State Country Reports on Human Rights Practices for 1977: Ethiopia states, at p 90:

“The government took a number of steps to improve its human rights practices but serious problems still remain. Security forces sometimes beat or mistreated detainees, and arbitrarily arrested and detained citizens.”

And, at p 93:

“Opposition groups and the Ethiopian Human Rights Council allege that some of the persons detained by the Special Prosecutor’s office, as well as some other detainees, are held for political reasons. The government denies that it holds political prisoners.”

In assessing the present status of the country information concerning a person in the appellant’s position (namely an AAPO supporter of Amharic descent), it would appear that the situation in Ethiopia has not worsened over the past two to three years. On the other hand, neither has it improved. On balance, after considering all the information and the appellant’s case, the Authority concludes that there would be a real chance of the appellant being persecuted if he returned to Ethiopia. In reaching such a conclusion, we note, in particular, the following:

- a) The appellant was expelled from the Walaga region due to his Amharic background. He was held in detention, beaten and interrogated. He was specifically accused of financially supporting the AAPO, though the specific allegations were false. He was only released because of the intervention of his apparently influential employer. It is unknown what happened to the others, although at least one is understood to have been killed.
- b) As a result of the above experiences which the appellant suffered in the Walaga province, he has, we find, developed a loathing of the security forces who serve the government and the government itself. This has intensified because of other incidents which the appellant has experienced (such as witnessing the shooting of Amharian by a Tigrayan rebel) and also because of his experiences in the Sidamo region. The relevance of this is that the appellant appears to have now had a greater awakening of his ‘political’ interest and is far more likely to take a more active role with the AAPO (which is noted as being the strongest critic of the government) and to participate in meetings, marches and other forms of protest. Indeed, he has already done so.
- c) Further, the appellant was, in a sense, expelled from the Sidamo region because of remarks made by him against the government at a large public meeting. Indeed, if the appellant had not escaped, some truly serious harm may have been occasioned to him.

- d) The appellant was too fearful to return to Addis Ababa prior to leaving Ethiopia as he is known there by a number of various people including, for example, the Tigrayan rebel earlier referred to, who ordered him from a hotel there, after shooting another Amhara. While we concede it is conceivable that the appellant could return to Addis Ababa and not face difficulty, we consider this a remote possibility. We have considered that this appellant would be unlikely to live a quiet life if he did, but rather, he would involve himself in matters relating to AAPO politics and because of this, he would be far more likely to be confronted by his opponents. We consider the profile he has (and would project) puts him at the level of a real chance of being persecuted as opposed to a remote chance.
- e) We further note that the appellant left Ethiopia illegally, which may have some added relevance.

Taking into account all of the above factors, we find, cumulatively, that there is a real chance that the appellant, if he returned to Ethiopia would face persecution. We are satisfied that the treatment which he would likely receive would be a serious violation of the appellant's core human rights, on the basis of the country information previously referred to.

CONVENTION GROUND

We now turn to the second of the issues to be addressed, namely whether there is a Convention ground for the appellant to fear persecution.

We find in the affirmative. Firstly, the appellant has a political opinion which is regarded by the authorities as contrary to the governing regime. Indeed, it appears that the opinion which has been imputed to him may have initially been more marked than that which, in fact, existed. However, ironically, as a result of the treatment which the appellant has received, he now has the actual political opinion which was, it seems, earlier imputed to him.

Secondly, the appellant has another, related Convention ground present in his case, namely his racial background (being that of Amharic descent). We find there is, therefore, at least one Convention ground present.

CONCLUSION

In summary, our conclusions are as follows:

1. There is a real chance of the appellant being persecuted if he returned to Ethiopia.
2. There is at least one (possibly two) Convention reason(s) for that persecution, being political opinion and, as well, racial background.

For these reasons, the Authority finds that the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted. The appeal is allowed.

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Chairperson