

0808466 [2009] RRTA 250 (10 March 2009)

DECISION RECORD

RRT CASE NUMBER: 0808466

COUNTRY OF REFERENCE: Ethiopia

TRIBUNAL MEMBER: Nicole Burns

DATE: 10 March 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) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and her review rights by letter.
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in 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 her protection visa application the applicant was born in Ethiopia in the 1980s. Her religion is Orthodox Christian. Her ethnicity is Gurage. She has a child, born in early 2000s, who lives with her parent in Addis Ababa and is not included with her application. She has several siblings who live in Ethiopia. She came to Australia in the early 2000s, on a valid visa.
21. In a statutory declaration provided with her application the applicant said she fears she will be harmed on return to Ethiopia because of her association with the Oromo Liberation Front (OLF). She claims that the authorities have arrested her Relative 1, and two of his/her friends, who she knew through working at her Relative 1's business. She claims she was imprisoned in Ethiopia in early 2000s for a few months. She 'escaped' Ethiopia by working as a domestic for a family in Country A since early 2000s. She also claims to fear harm on account of her religion as an Orthodox Christian as well as her membership of a particular social group of 'women in Ethiopia' and membership of a family with suspected involvement with the OLF.
22. The delegate refused to grant the applicant a visa because she was not satisfied that the applicant's fear of persecution was well-founded.
23. The applicant applied for a review of the delegate's decision. Prior to the Tribunal hearing the applicant's representative provided a written submission in which she addresses the delegate's concerns. She argued that the applicant's fear of persecution is genuine and well-founded and is for reasons of her political opinion (imputed political involvement with the OLF), compounded by her social group (young Ethiopian women) and her religion (Christian). Additionally she submitted that the applicant is part of a social group that is membership of a family suspected to be involved in supporting the OLF.

The Tribunal hearing

24. The applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal also received oral evidence from the applicant's parent via the phone in Ethiopia. The Tribunal hearing was conducted with the assistance of an interpreter in the Amharic (Ethiopian) and English languages.
25. The applicant was represented in relation to the review and her representative attended the hearing.
26. The applicant said she was born in Addis Ababa, Ethiopia. She has several siblings, but has not kept in touch with them. After her other parent died in the late 1990s she went to live

with her Relative 1 and Relative 2 in City D because her remaining parent could not afford to look after all of her children. The applicant lived in City D until the early 2000s. She became pregnant in the early 2000s to a school friend and moved back to live with her parent a few months before the birth of her child. Her child still lives with her parent in Addis Ababa. As does one of the applicant's siblings.

27. After high school the applicant worked in her Relative 1's store in City D, helping to distribute food products throughout Ethiopia. She resumed work there a few months after she gave birth. Shortly thereafter she started working in a new store her Relative 1 opened in a suburb (City E) in Addis Ababa, as well as the City D store. She was responsible for quality control, recording the loading and unloading of items, and money management. She also helped her Relative 1 export vegetable products to Country A and City F. The applicant said a well-connected client of her Relative 1's, a woman helped them establish their export business. Her Relative 2 did not help out with the business because they was suffering from cancer at the time. Her Relative 1 and Relative 2 did not have any children.
28. The applicant said she did not receive a salary for working in her Relative 1's store, however if she needed money for something her Relative 1 would give it to her.
29. The Tribunal asked the applicant to explain how she was brought to the attention of the Ethiopian authorities as claimed in her application. She said her Relative 1, who is of Oromo ethnicity, was suspected by the authorities of supporting the OLF. The applicant was asked if her Relative 1 was politically active. She said she has her suspicions because they would often visit the Oromo tribe – i.e. people who live in the Oromo region – when she was working at his/her stores. However they never talked to her about politics. Her Relative 1 also used to take a lot of money from their workplace whenever they visited the Oromo region.
30. The applicant said in early 2000s she was having dinner at her parent's house in Addis Ababa with her parent and siblings when a few police officers came asking for her (they had earlier visited her Relative 1's house but he/she was away). The police hit the applicant on the face then forced her to go to the police station. On the way they repeatedly hit her with a stick. They questioned her about her Relative 1's whereabouts and did not believe her when she said that she did not know. They also asked her about her Relative 1's involvement with the OLF. The applicant was kept in a cell with several women for the next few months. She was not permitted visitors. She was constantly interrogated about her Relative 1's whereabouts during this time. She was released after a few months because she had not provided any useful information. On release she was forced to sign a paper agreeing not to be involved with the OLF and that her life would be affected if she knew the whereabouts of her Relative 1.
31. The applicant went to her parent's house on release from prison. She was afraid to re-open the stores, but had to financially. Both of the stores – in City D and Addis Ababa – had been closed whilst she was in prison. There was some limited business still taking place, but without the applicant and her Relative 1 to control it.
32. The applicant said before she was imprisoned her Relative 1 had told her over the phone to call a friend of his/hers – Person R – if she had any difficulties or problems. When the applicant contacted Person R after she was released from prison he asked her to give him some money (held by her Relative 2) to send to her Relative 1. He did not tell her where her Relative 1 was. She said when she visited her Relative 1 she said she had also been abused

by the police in their efforts to extract information about her husband. The applicant was asked if she was worried about giving money to Person R for her Relative 1, given her experiences with the police. She said she was very worried but at that time she did not believe that her Relative 1 was really connected with the OLF. However, she said her suspicions had started to grow whilst in prison. She also wanted to collect as much of the money and assets as possible and close the business down.

33. The applicant said the police did not arrest anyone else who worked for her Relative 1 because they were casual workers. She was the one who ran the business when her Relative 1 was away; she was therefore high priority.
34. The applicant was asked what happened to her Relative 1. She said she heard from Person S that her Relative 1 had been imprisoned along with Person R and few others, purportedly because they were suspected to be connected to the OLF. Concerned that a similar fate would occur to the applicant, Person S arranged a working visa (and the other logistics) for the applicant to flee to Country A, which she did in early 2000s, several days after she had found out about her Relative 1's arrest. The applicant already had a passport. The applicant was asked why Person S went to so much trouble to help her. She said because it was easy for her, because she knows a lot of people and is 'protected'. Before leaving the applicant stayed in City G with relatives on her father's side, because of her fear that police would find her at her parent's house and arrest her again.
35. In Country A the applicant said she worked for a family as a domestic for several years during early 2000s. The applicant described her years of physical and psychological abuse whilst in Country A working for this family; including rape by her male employer on numerous occasions. The situation was so bad she feared for her life. It was very difficult to leave because she feared that the man who raped her would find her. Also she said it was a common story; many of her friends experienced abuse.
36. The applicant accompanied the family on holidays to several countries during this period.
37. Whilst in Country A the applicant regularly contacted her parent and child (who believe her grandparent is her parent) via the phone. Her parent told her that the police regularly visited her, every few weeks, seeking the applicant's whereabouts. They often beat her. The applicant was asked why, then, did she return to Ethiopia twice whilst living in Country A. The applicant explained that she was forced to return to Ethiopia in early 2000s, working for her employer's sibling's family. She told them that she was afraid to return to Ethiopia, but they ignored her. She stayed in the hotel for a few weeks she was there, feigning sickness. She did not contact anyone, including her parent, at that time. She had no problem leaving. However the applicant said that if your name was not at the airport it did not necessarily mean that you were not a priority as far as the authorities were concerned. Only certain 'politicians' would be on airport lists whilst others are tracked through the *kebele* (neighbourhood) monitoring system.
38. The applicant said she returned a year later to Ethiopia because she was so desperate that she did not care if her life would be taken; she would rather die than continue to suffer abuse in Country A. She said she was mentally and physically sick and depleted. The abuse had worsened after her return from Ethiopia because her employer's sibling had told them that she had refused to leave the hotel and complained. The abuse was so severe that she could not take it anymore. She said her employers knew she was afraid to return to Ethiopia and when they realised this they used that as a weapon. She believed she would die there so

decided that she might as well go back and die in her home country. She therefore told them that her parent was about to die. The applicant said after she spoke to her female employer (and cried at her feet), she convinced her husband to let her go. She also had started to suspect her husband was having a 'relationship' with her, and saw it as a good opportunity to get rid of her.

39. The applicant stayed in Ethiopia for many weeks, at her Relative 3 's house (on her deceased parent's side), some kilometres out of Addis Ababa. She did not stay with her parent because of the regular police visits. She visited her parent at her house once, taking the risk. However the police continued to visit her parent and abuse her whilst the applicant was in Ethiopia; which is why she returned again to Country A.
40. The applicant said she did not visit her Relative 2 in Ethiopia because he/she had already died. She believes that her Relative 1 and Person R are still in prison. Her parent told her also that Person S was in prison; she is not sure why.
41. The applicant returned to working for the same family in Country A because she had no other option. She ran away from them whilst accompanying them on a visit to Australia. She left their hotel room in City H with no money or passport. She had a photocopy of her passport, which the family had left out in the open. She was crying on the street and some Ethiopian women found her.
42. The applicant said she is afraid if she returns to Ethiopia she will be imprisoned and tortured. She has heard that the consequences can be severe for anyone suspected of being connected to any opposition given the current political situation in Ethiopia.
43. The applicant's parent also gave evidence via the phone from Ethiopia. She confirmed that the applicant is wanted by the Ethiopian authorities because she ran her Relative 1's businesses and her Relative 1 is suspected of being involved with the OLF. She said her child had been arrested and detained in the past, but she found it difficult to talk about. She said she is suffering because the police regularly come looking for her child. They also take money from her. Sometimes they visit several times a week. She said they do not have any boundaries now; it is worse than before. She said she saw her child in Ethiopia and saw a lot of pressure on her face. She told her to return to Country A however, in order to survive.
44. The applicant submitted a translated copy of her ID card (which her parent had sent) at the hearing.

Country Information

45. 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.

Treatment of members of the Oromo community

46. 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 Addis Ababa and other urban centers where the opposition was strong and where officials did not consider Amhara members of the armed forces sufficiently reliable.

47. 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.

48. 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)

49. In the UK Home Office's Operational Guidance Note on Ethiopia (issued April 2008) it is stated that:

3.6.3 Since 1992, when the OLF was outlawed by the Ethiopian Government, thousands of alleged OLF members of sympathisers have been arrested by the state authorities. The Oromiya State Minister for Capacity Building, who fled the country in May 2002, has denounced the state Government for indiscriminately accusing the Oromo people of supporting the OLF. Many of those arrested are in pre trial detention some of whom are teachers and students from the Oromiya region accused of involvement in OLF activities or arrested after student unrest broke out in Oromiya in 2004.

Treatment of opposition supporters and members

50. 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 Makelawi, the central police investigation headquarters in Addis Ababa, 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.

51. 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>)

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

53. 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 Addis Ababa and a few other 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.

54. 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.

State corruption

55. 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

56. Based on a copy of her passport and ID card on file, the Tribunal finds that the applicant is an Ethiopian citizen.
57. The Tribunal found the applicant to be a credible witness at the hearing. The Tribunal found her explanations about why she returned to Ethiopia twice whilst resident in Country A, after she had purportedly fled the country for fear of her life, plausible. Her evidence was consistent with her written claims and also with country information available.
58. The Tribunal accepts that the applicant is an Orthodox Christian of Gurage ethnicity from Ethiopia. The Tribunal accepts that she worked in her Relative 1's businesses in City D and Addis Ababa from early 2000s until she left Ethiopia a year later. The Tribunal accepts that the applicant was arrested and detained for a few months in Addis Ababa in early 2000s

because of her Relative 1's suspected connection with the OLF. The Tribunal accepts that she was tortured and in fear of her life during this time. The Tribunal accepts that the applicant's Relative 1 was arrested and detained because of purported links to the OLF. The Tribunal accepts that the applicant's parent has been regularly harassed by police in their search for the applicant since she left Ethiopia.

59. The applicant has argued, via her representative, that she has a well-founded fear of persecution due to her imputed political opinion (i.e. because her Relative 1 is connected to the OLF, one of the main armed opposition groups), religion (Christian) and membership of a particular social group of 'women in Ethiopia' and of a family with suspected involvement with the OLF. For the reasons set out below, the Tribunal accepts that the applicant has a well-founded fear of persecution due to her imputed political opinion and has therefore found it unnecessary to consider the other reasons.
60. The applicant has also described years of abuse she has suffered at the hands of her employer in Country A. Whilst the Tribunal accepts that this abuse occurred as claimed, because it has found that the applicant faces a real chance of persecution for reasons of her imputed political opinion if she returns to Ethiopia, the Tribunal has found it unnecessary to consider these claims related to the applicant's ill-treatment in a third country.
61. Independent country information, such as the UK Home Office's Operational Guidance Note on Ethiopia cited above, indicated that thousands of OLF members or sympathisers, or those perceived to be OLF members or sympathisers have been arrested and harmed in the past by the authorities. The Tribunal accepts that the applicant was arrested, detained and tortured in early 2000s as claimed. At the hearing the applicant said the police were looking for her Relative 1 whom they suspected had links with the OLF. They arrested her when they could not find her Relative 1 in the hope that she would have information about his whereabouts and also because they suspected that she was also involved with the OLF, given that she was responsible for managing her Relative 1's business, including the money side of things, during his regular visits to the Oromo region. The Tribunal considers her arrest and subsequent detention had a definite 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 the essential and significant reason of her imputed political opinion.
62. Looking to the reasonably foreseeable future, the country information indicates that Oromos generally risk discrimination, harassment and ill-treatment because of their ethnicity alone. The OLF is an outlawed armed opposition group that is known to have carried out organised attacks against the state authorities. 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. Coupled with a state apparatus geared toward acting indiscriminately against perceived opponents, the Tribunal finds that anyone perceived to be linked in some way to the OLF is likely to be at real risk of persecution by the authorities. The Tribunal also accepts, on the

basis of the applicant's and her parent's evidence at the hearing, that her parent has been regularly harassed by police in Addis Ababa regarding the applicant's whereabouts (and to exploit her parent financially). The Tribunal considers that the applicant, who it accepts has previously come to the adverse attention of the authorities because of her suspected involvement with the OLF and arrested and detained on this basis, is vulnerable to being identified by the authorities on return. If so, the Tribunal finds that there is a real chance that she would suffer serious harm in the form of physical mistreatment and/or detention that would amount to persecution if she were to return to Ethiopia now or in the reasonably foreseeable future.

63. The Tribunal is of the view that the applicant's fears about what might happen to her 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 associated with the OLF continue to face arrest in Ethiopia on account of their political affiliation.
64. The Tribunal finds that the applicant has attracted the adverse attention of the Ethiopian authorities in the past – in 2003 - 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 she will experience serious harm capable of amounting to persecution in the reasonably foreseeable future, in the event that she returns to Ethiopia and that the essential and significant reasons for this is the Convention reason of her imputed political opinion.
65. 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 she fears. Nor would she be able to avoid the harm she fears by relocating elsewhere in Ethiopia.
66. Accordingly, the Tribunal considers that the applicant has a well-founded fear of persecution for a Convention reason (i.e. due to her imputed political opinion) in Ethiopia in the reasonably foreseeable future.

CONCLUSIONS

67. 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

68. 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 rwilki