IN THE IMMIGRATION APPEAL TRIBUNAL

Ethiopia – recent tension in border (CG)

Heard at:	Field House
Heard on:	20th January 2004
Date typed:	24th February 2004 DA (Ethnicity - Eritrean - Country Conditions) Ethiopia CG[2004] UKIAT 00046
Date promulgated:	16th March 2004

Before:

MS D K GILL (CHAIRMAN)
THE RT HON. COUNTESS OF MAR

Between:

Appellant

And

The Secretary of State for the Home Department Respondent

DETERMINATION AND REASONS

Representation:

For the Appellant:	Mr. W. McCarthy, of Counsel, instructed by Ziadies Solicitors.
For the Respondent:	Mrs. A. Holmes, Senior Home Office Presenting Officer.

1.1 The Appellant (a national of Ethiopia) has appealed, with leave, against the determination of Mr. A M Baker, an Adjudicator, who (following a hearing on 11th June 2003 at Bradford) dismissed her appeal on asylum and human rights grounds against the Respondent's decision of 22nd October 2001 to give directions for her removal as an illegal entrant.

1.2 The Presenting Officer who appeared before the Adjudicator withdrew the certificates with regard to the Appellant's asylum and human rights claims.

1.3 We are reporting this decision because we consider the recent tension in the border between Ethiopia and Eritrea and whether, in the light of this increased tension, there is a real risk of persons of Eritrean ethnicity being interned and deported to Eritrea (see paragraphs 30 to 33 below).

2. Basis of claim: The Appellant experienced problems in Ethiopia because of her father's ethnicity. In June 1999, she was arrested in Addis Ababa by the Ethiopian security forces, pursuant to the government's policy of deporting all ethnic Eritreans back to Eritrea. Her father and brother had been arrested 3 weeks earlier. She was detained for almost 2 years, during which time she was forced to work in slave-like conditions within military wash-houses and kitchens. However, after being moved to a new location at Gondar, she escaped with 2 others and took refuge in the nearby

house of a family friend who then contacted her mother to provide funding for an agent to be engaged to enable her (the Appellant) to leave Ethiopia. In July 2001, the Appellant left Ethiopia via Sudan en route to the United Kingdom. She has never been a member of any political organisation. Before the Adjudicator, she did not pursue her original claim of being currently stateless (paragraph 13 of the Determination).

3. The Adjudicator's Determination: The Adjudicator considered that there were several aspects of the Appellant's account which were contradictory or incredible. He noted as follows:

(a) he did not consider it credible that the Appellant was never threatened with deportation nor that any steps were taken leading to deportation, notwithstanding the fact that the cessation agreement ending deportations took place halfway through her allegedly lengthy period of detention.

(b) he considered that the Appellant's claim as to the reason for her final movement to the camp at Gondar (i.e. that it was because of a government decree forbidding the release of young persons who would be liable to join the Eritrean militia against the interests of Ethiopia) "rather odd" because the Appellant had "no past military/political affiliation/involvement/training" and since her group which had been so transported were all females;

(c) he also considered it "equally odd" that, within a few hours only of her arrival at Gondar, and despite her having already formed the view that Major Mohammed in charge of the camp treated the women very well, she had been able to assess the security arrangements so as to permit her escape due to the guard's dinner break on the very first evening of her being there.

(d) he found it wholly incredible that, despite the fact that her only visit in the past to this area had been some 20 years previously as a mere 9 year old girl and the fact that she was in the middle of a forest at night and did not know his address, she was able to find the family friend of her mother and seek refuge with him along with her co-escapees.

(e) the Adjudicator noted that, although the work required of the Appellant was arduous, she was never subjected to mistreatment or violence, save for once having her thumb trapped in a door when her cleaning of a uniform was deemed not to be up to standard. He did not consider that this was consistent with a period of 2 years' detention without charge or deportation in the context of the simultaneous political developments in the region.

Accordingly, the Adjudicator found that:

> *..... if [the Appellant] was indeed initially detained at all, it was certainly not for the length of time, or in the manner claimed and that she most certainly did not eventually escape in the manner described.*

The Adjudicator was not persuaded that there was a real risk of the Appellant's detention in Ethiopia in the future. He then stated: "As such, allied to the lack of credibility in the Appellant", the appeal must fail.

4.1 The issues before us are:

Issue 1: Whether the Adjudicator had made adequate findings of fact.

Issue 2: Whether the Adjudicator's assessment of the risk on return was safe. In the grounds of application, it is that the Adjudicator had failed to consider the risk on account of the Appellant's Eritrean ethnicity.

4.2 With regard to Issue 2, the grounds of application refer to various documents. Since Mr. McCarthy relied on the grounds of application, it is appropriate for us to refer to the documents mentioned in the grounds of application. They are:

(a) the UNCHR's letter of December 2002, which refers to "*instances where ... Ethiopians with Eritrean links have faced serious risks from the Ethiopian authorities*". Examples of such risks include arbitrary deprivation of their Ethiopian nationality, summary expulsion to Eritrea and internment as enemy nationals. UNHCR's general understanding is that, although the situation has improved, the threat of deportation remains.

(b) the Human Rights Watch Report for 2003 (page 28 of the Appellant's bundle) which states: "*As of October 2002, the Ethiopian Government continued to hold about 1,300 Eritrean POWs despite its pledge to release them..."* At the hearing, the Adjudicator had indicated that the term "Prisoner of War" (POW) would not cover the Appellant even if her story was believed. It is asserted in the grounds of application that this is wrong by definition, because the Appellant was a prisoner for reasons only of her ethnicity combined by her place of residence during a time of war and by sole reason of the nature of that war.

(c) the UNHCR's letter dated 4th June 2001 (page 10 of the Appellant's bundle, final sub-paragraph of paragraph 3), which states that "*the practice of deportation from both countries persists despite the signing by both States of the Cessation of Hostilities Agreement of 18th June 2000, and the Comprehensive Peace Agreement of 12th December 2000".*

(d) a January 2003 report (page 19 of the Appellant's bundle, final paragraph), which states that: "*despite all the international assistance, since the war's end, they still have no resolution ..... many now have no nationality*";

(e) the Human Rights World Watch Report 2002 (page 35 of the Appellant's bundle, final paragraph), which states that, even post cease-fire, Eritreans were forcibly expelled from Ethiopia.

(f) the Human Rights Watch Report for 2003 (page 44 of the Appellant's bundle, penultimate paragraph) which states that the issue of nationality of those expelled during the war has been "largely overlooked". The same report also refers to arbitrary deprivation of nationality in the case of Ethiopian citizens of Eritrean origin (page 94 of the Appellant's bundle).

(g) the USSD Report for 2003 (page 126 of the Appellant's bundle, penultimate paragraph) which states: "*The law requires citizens and residents to obtain an exit visa before departing the country. Eritreans and Ethiopians of Eritrean origin were able to obtain exit visas but often were not permitted to return to the country*". The same report also states (page 129 of the Appellant's bundle, penultimate paragraph) that "*Ethiopians of Eritrean origin were not permitted to vote*".

Accordingly, the grounds of application assert that the Adjudicator was wrong to state that there was no sufficient evidence of a recent nature showing a future risk to

the Appellant. In any event, it is asserted in the grounds that the real question was returnability on the hearing at, and not at some notional future date.

4.3 The grounds of application assert that the risks to the Appellant upon return would be:

(i) internment or detention by reasons of her ethnicity;
(ii) not being permitted to enter Ethiopia and Eritrea due to her lack of nationality and/or the stance of the authorities;
(iii) lack of a right to vote.

5.1 At the commencement of the hearing before us, we asked Mr. McCarthy to address us on the focus of his submissions – namely, whether he was asserting that the Adjudicator had made inadequate findings of fact or had erred in his assessment of credibility or whether he was saying that the Adjudicator had erred in his assessment of the risk on return. Mr. McCarthy informed us that this was essentially a matter for the Tribunal. However, if the Appellant's accounts of her historical experiences n Ethiopia were taken at their highest, then the Appellant fears a real risk of persecution on return to Ethiopia on account of:

(a) her Eritrean ethnicity;
(b) the fact that the peace process seems to have disintegrated;
(c) that, accordingly, she is at risk of being interned or of being deported from Ethiopia to Eritrea.

5.2 In response to our enquiry as to whether the Appellant was asserting that the Ethiopian authorities would not regard her as an Ethiopian national, Mr. McCarthy submitted that, following the Tribunal's Determination in [2003] UKIAT 00016 L (Ethiopia), it is a moot point whether the Appellant is stateless, because, if she is stateless, she would have to show that she has a well-founded fear of persecution in the place of her former habitual residence. When we asked whether he was relying on the assertion in the grounds that the Appellant would be unable to enter Ethiopia, Mr. McCarthy informed is that he was, because the objective evidence shows that persons of Eritrean ethnic origin would be sent from Ethiopia to Eritrea. However, when we asked whether he was saying that, if there was a real risk that the Appellant would be sent to Eritrea from Ethiopia, we would also have to consider whether the Appellant has a well-founded fear of persecution in Eritrea, Mr. McCarthy submitted that we did not need to consider that aspect.

6. Mrs. Holmes informed us that, if the Appellant is unable to enter Ethiopia, then the Secretary of State would not seek to return her to Ethiopia. Both parties agreed that, from the Tribunal's Determination in [2003] UKIAT 00016 L, it was clear that, if the Appellant is unable to enter Ethiopia, then:

(a) her asylum claim had to be determined on the hypothetical assumption that she would be able to enter Ethiopia. This follows from the Court of Appeal's judgement in Saad, Diriye and Osorio [2001] EWCA Civ 2008, [2002] INLR 34;

(b) however, her human rights claim could not succeed, because of the Tribunal's observations at paragraphs 63 of the Determination in [2003] UKIAT 00016L. In essence, this is because, if she is unable to enter Ethiopia, then, given the policy of the Home Office not to return persons who will not be re-admitted, it cannot be said that removal is imminent.

7. We then asked the parties to address us on whether it was possible for the Tribunal to determine the appeal, without prejudice to either side, by taking the Appellant's claims about her historical experiences in Ethiopia at their highest. Mrs. Holmes was of the view that it was important for the Appellant's credibility to be assessed and clear findings of fact to be made. This is because, if the Appellant was not detained in the past for two years, then she had no reason for fearing return to Ethiopia. Mr. McCarthy submitted that, if the Appellant was detained previously and had escaped, then she may well be identified on return to Ethiopia.

8. After considering the submissions, we informed the parties that we were willing to proceed to hear submissions on the risk on return, by taking the Appellant's accounts of her alleged experiences in Ethiopia at their highest, provided that this could be done without prejudice to either side. Since the Appellant's accounts would be taken at their highest, she would not be prejudiced. However, if we decided, after hearing submissions on the risk on return on this basis, that the outcome of the appeal would depend on an assessment of credibility, then we would remit the appeal for a fresh hearing, so that clear findings of fact could be made – in particular, as to whether the Appellant had been detained for 2 years. The parties were content to proceed on this basis.

9. Mr. McCarthy relied on this grounds of application. He also relied on the documents at pages 144 to 149 of the Appellant's Tribunal bundle. The fact that the Ethiopian authorities would not re-admit the Appellant shows the attitude of the Ethiopian authorities towards persons of Eritrean origin. Following the Tribunal's Determination in [2003] UKIAT 00016L, we have to assess the Appellant's asylum claim on the hypothetical assumption that she gains entry. If she gains entry to Ethiopia, then we have to consider the stance which the Ethiopian authorities would have against her by refusing entry. It is also relevant to consider the recent documentary evidence about the relations between the Ethiopia and Eritrea – for example, page 146 of the Appellant's Tribunal bundle refers to the breakdown of the peace process. The town of Badme was the original catalyst for the border war. The status of this border town has become important again. The United Nations has postponed indefinitely the demarcation of the disputed border. The word "breakdown" used in relation to the peace process on page 146 is important. The document at page 148 dated 17th September 2003 shows that the peace process has hit problems again, with Eritrea digging its heels in and demanding its rights. The advent of the peace process is the event which originally marked an "upturn" to the returnability issue. The situation now is that, at the minimum, the seeds of unrest have been sown. There is therefore a risk of the maltreatment of persons of Eritrean origin by the Ethiopian authorities. The documents referred to in the grounds of application show that, even after the last peace process, Ethiopia was reluctant to release POWs. The UNHCR's letter of June 2001 referred to in the grounds is not inconsistent with the present objective situation as evidenced by pages 144 to 149 of the Appellant's Tribunal bundle. Page 146 refers to an armed violent conflict along the border. This document states that this sort of incident happens periodically. The UNHCR's letter of December 2002 referred to in the grounds of application referred to "instances where Ethiopians with Eritrean links faced serious risks". This was in spite of the peace process then. The objective documents show that there were problems even after peace process had started previously. Even though the objective evidence at present only indicates that the seeds of a breakdown in the peace process have been sown, there is a real risk that the Appellant would be viewed by the Ethiopian authorities as an enemy national. The fact that she had been interned previously, taken together with the present objective situation, shows that there is a real risk of internment again. If we were persuaded that there was a real risk of internment again, then her asylum claim

should succeed, in Mr. McCarthy's submission, because internment would, in his submission, amount to persecution. She may also be deprived of her nationality.

10. By way of further clarification, Mr. McCarthy confirmed that he did not rely on the assertion in the grounds of application that the Appellant is at risk of persecution on account of her inability to enter Ethiopia. He confirmed, in response to an enquiry from the bench, that the Appellant was not asserting that she would not be able to obtain a residence permit in Ethiopia. Her case is put on the basis that she would face internment, if returned to Ethiopia. He confirmed that the issue was not whether the Appellant was a POW when she was previously interned, but that the fact that she had been previously interned increases the risk of internment now, given the current objective evidence. He was not asserting that the Appellant would now be seen as someone who had previously been held as a POW.

11. Mrs. Holmes referred us to the CIPU report, paragraphs 6.105, 6.107, 6.08 and 6.111. The UNHCR letter dated December 2002 referred to in the grounds of application (and set out at page 8 of the Appellant's Tribunal bundle) refers to "instances" and "serious risks". This is not helpful because there is no indication of how many people were affected. The objective documents referred in the grounds of application refer to deprivation of nationality and deportations but the Appellant was not deported or deprived of her nationality when she was previously held. The grounds of application refer to Ethiopians of Eritrean origin not being permitted to vote. This is taken from the USSD Report for 2002, at page 129 of the Appellant's Tribunal bundle. Mrs. Holmes asked us to note that this only states: "*Reportedly Ethiopians of Eritrean origin were not allowed to register to vote*". The word "reportedly" indicates that the author of the report is not sure whether this is true or not. With regard to the evidence about the border clashes at pages 144 to 149 of the Appellant's Tribunal bundle, there was no evidence as to how these border clashes impact upon the wider population, especially those of Eritrean origin living in Ethiopia. Mrs. Holmes submitted that the fact that the Appellant was previously interned does not mean that she would be at real risk of internment now. The objective situation at the time of her internment was much more serious than it can be said to be now. Furthermore, when she was moved to Gondar, her own evidence indicates that security was not tight. There were no gates and the fences were low (paragraph 16 of the Claimant's statement at page V of the Appellant's Tribunal bundle refers). This suggests that the Ethiopian authorities were not bothered about whether the internees remained or not. Furthermore, according to paragraph 15 of the same statement, the major of the camp had informed the Appellant that the Ethiopian authorities had changed their policy towards deportation and were no longer sending young people to Eritrea and that that was the reason why the Appellant and the others had been held at the camp for such a long time. In Mrs. Holmes' submission, the security at Gondar was "laughably poor".

12. In closing, Mr. McCarthy relied on his earlier submissions.

13. We reserved our determination.

14. We have decided to dismiss this appeal, for reasons which we now give.

15. With regard to issue 1, we agree with the parties that, although the Adjudicator made adverse comments about the credibility of core aspects of the Appellant's accounts, he did not make a clear finding of fact as to the Appellant's claimed detention. This is evident from that part of the Determination which we have quoted at paragraph 3 above. We therefore cannot be sure that his assessment of the risk on return is safe.

Furthermore, we agree with Mr. McCarthy that the Adjudicator did not consider whether the Appellant is at risk on return on account of her ethnicity.

16. Although the Adjudicator has not made adequate and clear findings of fact, we do not consider it necessary to remit the appeal for a fresh hearing. This is because, having heard submissions on the risk on return and considered the evidence before us, we have decided that we are able to determine the appeal without prejudice to either party by taking the Appellant's accounts of her experiences in Ethiopia at their highest. This means that we assess the risk on return on the basis that the Appellant was previously held in detention by way of internment pending deportation by the Ethiopian authorities for a period of almost 2 years. Her account is that she escaped from that detention, although it is also relevant to bear in mind that, according to her account, security was very lax at the camp from which she escaped. It cannot be said that the Appellant was ever held as a POW. She was simply held in internment, pending deportation to Eritrea. We also reiterate that Mr. McCarthy made it clear that we did not need to concern ourselves with whether, if the Appellant is expelled from Ethiopia to Eritrea, she would be at real risk of persecution in Eritrea.

17. At the hearing before us, Mr. McCarthy's position with regard to two matters was somewhat different from the position taken in the grounds of application. This is the reason why we have set out at length the contents of the grounds of application and the submissions made before us. Firstly, Mr. McCarthy did not advance the notion which appears to have been advanced in the grounds that the Appellant had been held previously as a POW. As paragraph 10 of our Determination records, he informed us that he was not asserting that the Appellant would now be seen as someone who had previously been held as a POW.

18. Secondly, we remark that Mr. McCarthy's position as to whether the Appellant was basing her claim to be at real risk of persecution on return on account of her inability to enter Ethiopia shifted during the course of the hearing before us. When we first enquired about his position in relation to this (paragraph 5.2 of our Determination refers), he informed us that he *was* relying on the Claimant's inability to enter Ethiopia because, in his submission, the objective evidence shows that persons of Eritrean ethnic origin would be sent by the Ethiopian authorities to Eritrea. At this stage, Mr. McCarthy's submission was that the Appellant's inability to enter Ethiopia is relevant to determining her asylum claim because:

    (a) paragraph 62 of the Tribunal's Determination in [2003] UKIAT 00016L (Ethiopia) (applying the principles in Saad, Diriye and Osorio) means that we must hypothetically assume that she does in fact enter Ethiopia and assess the risk on return after such entry;

    (b) in assessing the risk on return after entry, we must consider the stance which the Ethiopian authorities might have towards her, having refused her entry – i.e. whether the stance the Ethiopian authorities would take against her (having refused her entry) is reasonably likely to mean that she would be interned. The fact that she had previously been interned for nearly 2 years was also relevant in this regard.

    However, when we later sought to clarify the position further with him (see the first sentence of paragraph 10 above), he confirmed that he did not rely on the assertion in the grounds of application that the Appellant is at risk of persecution on account of her inability to enter Ethiopia. This appears to run counter to his earlier submissions.

19. We err on the side of caution and consider Mr. McCarthy's submissions as set out in paragraph 9 above and paragraph 18 (a) and (b) above.

20. In our experience, the claim that a person would not be admitted is usually made in cases where the receiving state has refused to re-admit individuals or where the Secretary of State is experiencing practical difficulties (such as securing the necessary travel documents) in arranging removal. The Secretary of State's argument before the Tribunal in [2003] UKIAT 00016 L was that, in such cases, if the claimant is refused entry, this would not lead to the claimant being persecuted because, in such event, the claimant would simply be returned to the United Kingdom. The Tribunal considered that this was incompatible with the judgement of the Court of Appeal in Saad, Diriye and Osorio and that, even if there are practical obstacles to removal, the appeal on asylum grounds nevertheless requires substantive consideration on the hypothetical basis of whether – if returned – a claimant would face a real risk of persecution.

21. In the instant appeal, we are asked to go one step further – i.e. consider what stance the Ethiopia authorities would have towards the Appellant if, having been refused entry, she hypothetically gains entry. We are asked to consider whether the Ethiopian authorities would have an adverse stance against her, having refused her entry and bearing in mind her previous internment. The situation which we are asked to consider is not reasonably likely to arise. Firstly, if the Appellant would not gain entry, the Secretary of State would not remove her. Secondly, even if the Secretary of State does remove her, she would either gain entry or she would not. If she does not gain entry, she would simply be returned to the United Kingdom. Accordingly, the hypothetical assumption we are asked to consider (of her having gained entry and the Ethiopian authorities having an adverse stance against her on account of refusing her entry) is not reasonably likely to occur. We see nothing in the Tribunal's Determination in [2003] UKIAT 00016L or Saad, Diriye and Osorio which requires us to determine this appeal on this basis. It should be noted that the Tribunal in [2003] UKIAT 00016L was careful to say that, even if there are practical obstacles to removal, the appeal on asylum grounds nevertheless requires substantive consideration on the hypothetical basis of whether – if returned – a claimant would face a real risk of persecution. The hypothetical assumption referred to in that Determination was to the claimant being returned by the Secretary of State, and not to the claimant gaining entry after refusal.

22. We therefore consider the risk on return on the basis of the Appellant's own background and the general situation in Ethiopia.

23. As far as the Appellant's own background is concerned, she was previously interned for almost 2 years and escaped. However, our attention has not been drawn to any objective evidence which indicates that the Ethiopian authorities have records of those who were previously interned against which they would be able to run checks at the point of entry. However, in the event that such records exist and it becomes known to the Ethiopian authorities at the border that the Appellant had been previously interned and escaped, it would also be known that the only reason she was interned was because she was being held pending deportation on account of her ethnic origin. It would be known that she was someone who had no political involvement whatsoever and that she was not someone in whom the Ethiopian authorities had any interest for any reason other than to deport her to Eritrea along with other persons of Eritrean origin and to intern her pending such deportation. Accordingly, we are of the view that, even if the Ethiopian authorities are aware at the time of entry that the Appellant had been previously interned, there is no real risk that, simply on account of her previous internment, she would be interned again

pending deportation. We are of the view that whether she would be interned again would depend on the general attitude of the Ethiopian authorities towards persons of Eritrean origin. The fact that she had been previously interned pending deportation has no bearing on this question. For the reasons we give in paragraphs 24 to 35 below, we have concluded that the objective evidence does not show that there is in general terms a real risk that persons of Eritrean origin would be interned by the Ethiopian authorities or deported to Eritrea.

24. We have noted that the fourth paragraph of Section 2.d of the USSD Report dated March 2003 (page 126 of the Appellant's Tribunal bundle) states that Eritreans and Ethiopians of Eritrean origin were able to obtain exit visas "*but often were not permitted to return to the country*". However, our attention has not been drawn to anything which indicates that those persons of Eritrean origin who have been allowed by the Ethiopian authorities to re-enter Ethiopia were subsequently interned or forcibly expelled to Eritrea or suffered other persecutory ill-treatment at the hands of the Ethiopian authorities simply on account of their ethnic origin.

25. The history of the border war between the two countries is well-documented. It is sufficient for us to refer briefly to the background, although we make it clear that we have considered all of the documents to which our attention has been drawn. In summary, the CIPU Report dated October 2003 states:

Para 4.11 Hostilities between the two countries broke out in May 1998.

Para 4.12 The dispute centred on an area of land in the Badme area.

Para 6.108 Both sides signed the cessation of hostilities agreement in June 2000.

Para 4.20 On 12th December 2000, both countries signed a comprehensive peace agreement ending the border conflict. This provides for a permanent end to hostilities, and also the establishment of two neutral committees – one of which is to delimit and demarcate the boundary.

Para 4.21 On 13th April 2002, the International Tribunal at The Hague announced the long awaited border decision. The determination gave something to both sides and was welcomed by the two governments. However, some confusion remained over which side of the border lies Badme town, the flash-point for the conflict.

This is a factor which has given rise to the recent problems at the border (see paragraph 30 below).

Para 4.22 In early March 2003, the Border Commission reported to the United Nations Security Council that Ethiopia's requests for changes to the border ruling in order to "take better account of human and physical geography" threatened to undermine the peace process as a whole. Despite Ethiopia's claims that it had been promised that demarcations could be refined, later in March the Boundary Commission categorically ruled Badme to be in Eritrean territory, thus rejecting Ethiopia's territorial claim over the town.

26. The evidence concerning deportations of persons of Eritrean origin from Ethiopia is, in summary, as follows:

Para 4.13, CIPU: Large numbers of Ethiopians and Eritreans were expelled from each other's countries in the wake of the border dispute. Each side accused the other of illegal deportations, involving several thousand people, and mistreatment of those remaining.

Para 6.105, CIPU By the end of 2000, as many as 75,000 Ethiopians of Eritrean origin had been compelled to leave Ethiopia, the majority were deported, although a number left voluntarily.

Para 4.14, CIPU The Ethiopian Government agreed to stop deporting Eritreans and Ethiopians of Eritrean origin after it signed the cessation of hostilities agreement with Eritrea in June 2000.

USSD Report (March 2003) The Ethiopian government stopped such deportations after the signing of the June 2000 agreement.

Para 6.108, CIPU Between the signing of the agreement in December 2000 and the end of 2002, the ICRC facilitated the repatriation of approximately 1,388 Eritrean POWs. However, in June 2001, the ICRC refused to assist in the repatriation of a group of over 772 civilians, concerned that they had not expressed their consent.

We note that this is the only reported incident of the ICRC refusing to assist in repatriation because of concerns that the Ethiopian government had not obtained the consent of those being repatriated.

Para 6.111, CIPU Detention and deportation is carried out only in conjunction with the ICRC. The ICRC now participates in all repatriations to Eritrea, and under ICRC auspices, 1,188 POWs and 774 civilians were repatriated to Eritrea during 2002.

USSD Report (March 2003) There were no reports of forced exile during the year 2002. (*penultimate paragraph of Section 1.d, on page 114 of the Appellant's Tribunal bundle*).

Para 6.112, CIPU A total of 153 Ethiopian and 75 Eritrean civilians were repatriated to their respective countries under ICRC auspices in 2 separate operations on 13th and 17th June 2003.

27. In general terms, therefore, we gain the impression that the Ethiopian authorities are not now pursuing a policy of forced expulsions. As we have stated above, the only known instance of the ICRC refusing to co-operate in repatriation by the Ethiopian authorities was in June 2001. There have been no such reports since. We noted that the UNHCR's letter of December 2002 (referred to in the grounds of application) states that there have been

> "instances where ... Ethiopians with Eritrean links have faced serious risks from the Ethiopian authorities" which include "arbitrary deprivation of their Ethiopian nationality, summary expulsion to Eritrea and internment as enemy nationals".

28. However, as no details are supplied, we do not consider that the reference to "instances..... serious risk" shows that the risk of internment and forced expulsion is such as to reach the low standard of a reasonable likelihood. We note that the Human Rights Watch Report for 2003 (referred to in the grounds) refers to the

Ethiopian government continuing to hold about 1,300 Eritrean POWs but we also note that the USSD report states that, on 27th November 2002, the Ethiopian government released more than 1,200 Eritrean POWs and that at the end of 2002, there were no more registered persons from the conflict (fourth paragraph of Section 2.d, on page 126 of the Appellant's Tribunal bundle). We note that the UNHCR letter dated 4th June 2001 (referred to in the grounds) refers to the practice of deportation from both countries persisting despite the signing by both states of the cessation of hostilities agreement in June 2000 and the peace agreement in December 2000. We make two observations in this connection. Firstly, it may be (we are not told) that this relates to the instance in June 2001 when the ICRC refused to co-operate with repatriation. We do not assume that it does. We simply make the point that we are not told; it would have been helpful to have this information. Secondly, that letter was issued in June 2001. The latest information, from the USSD report dated 31st March 2003, is that there were no known reports of forced expulsion in 2002. The Human Rights Watch Report 2002 (referred to in the grounds) refers to Eritreans being forcibly expelled from Ethiopia even post-cease-fire. However, page 35 of the Appellant's Tribunal bundle indicates that this is a reference to the June 2001 forced expulsion in which the ICRC refused to participate. We have already dealt with this above.

29. Accordingly, we have concluded that, during the period from the cessation of hostilities agreement in June 2000 up until the recent increase in tension between the two countries (pages 144 to 149 of the Appellant's Tribunal bundle), the evidence falls far short of showing that there was a real risk of persons of Eritrean origin being interned by the Ethiopian authorities or being deported to Eritrea. We now consider whether the recent increase in tension between the two countries increases the risk to the extent that it can be said that there is now a real risk that persons of Eritrean origin would be interned by the Ethiopian authorities or deported to Eritrea.

30. Pages 144 to 149 of the Appellant's Tribunal bundle indicate that, in about September 2003, Ethiopia rejected the decision of the Boundary Commission that Badme is Eritrean. The indications are that this has led to a war of words between Eritrea and Ethiopia. Eritrea has strongly condemned Ethiopia for its stance and recalled its ambassador (page 144). At about the end of October 2003, the United Nations confirmed the indefinite postponement of the demarcation of the border (page 146). The article at page 146 reports on one incident during which an Eritrean militia patrol inside the demilitarised zone which runs along the border was reported to have been intercepted by a group of Ethiopians who opened fire on them. One Eritrean was killed. The BBC's reporter in Asmara says that this sort of incident "happens periodically". However, he says that what gives this incident extra significance is the increased level of political tension between the two countries at present. This article refers to the "breakdown of the peace process".

31. Mr. McCarthy submitted that the word "breakdown" in this article is significant. We do not, however, consider that the evidence is that the peace process has "broken down", although we accept that there are problems with the peace process. There is no indication that the two countries have declared that they will no longer abide by the terms of the peace agreement. There is no indication that hostilities have broken out between the two countries. It is presumptuous to suggest that, simply because the article on page 146 uses the word "breakdown", this means that the peace process has indeed broken down. We take into account the fact that this article states (on page 147) that the two countries have warned in recent months of the threat of renewed hostilities breaking out and that tensions have increased. We note, from the article at page 149, that the United Nations Mission to Ethiopia and

Eritrea (Unmee) has 4,200 troops patrolling the buffer zone across the mountains along the Ethiopia-Eritrea border.

32. It is also relevant in our view that the incident mentioned at page 146 happened on or before 3rd November 2003. More that 2 ½ months have elapsed since. The bundle before us does not mention any further incidents. No doubt, if there had been any further incidents, there would have been reports of those incidents in the Appellant's bundle. Furthermore, we note that we have not been shown any objective evidence of the impact on the wider population of Eritrean origin living in Ethiopia of the increased tension. Given the number of international human rights organisations who are reporting on the situation between the two countries and within each of the countries, it is inconceivable that, if the recent increased tension has led to persons of Eritrean origin living in Ethiopia experiencing any problems either from the general population or from the Ethiopian authorities, these would not have been reported and, if reported, that such reports would not have been included in the Appellant's bundle. We draw the inference from the lack of such documentary evidence that the recent increase in tension between the two countries has not given rise to such problems for persons of Eritrean origin living in Ethiopia.

33. Accordingly, on the whole of the evidence before us, we do not accept that there is a real risk of the Appellant being interned by the Ethiopian authorities or being deported by them to Eritrea, on account of the recent increase in tension between the two countries.

34. This just leaves us to consider whether, as a person of Eritrean origin living in Ethiopia, the Appellant would face treatment sufficiently severe as to amount to persecution or Article 3 ill-treatment. We accept that she would face discrimination. In this connection, we noted, for example:

Para 5.13, CIPU: Ethiopia is deeply divided along ethnic lines.

Para 6.70, CIPU: Ethiopia has over 80 ethnic groups, or nationalities. Historically, the Amharas and the Tigrayans from the northern highlands have played major roles in the country's life.

Para 6.107, CIPU: In 2001, approximately 80,000 to 100,000 Eritreans and Ethiopians of Eritrean original resided in the country.

USSD Report March 2003 All Eritreans and Ethiopians of Eritrean origin were registered with the government and held identity cards and 6-month residence permits to gain access to hospitals and other public services.

Para 6.83, CIPU: There continue to be occasional reports of discrimination and exclusion of Eritreans, particularly by kebele level officials. Reports indicate that kebele officials sometimes deny indigent Eritreans access to free medical services.

35. Whilst we have noted paragraph 6.83 of the CIPU report, this only refers to "occasional reports" of discrimination and exclusion. We have noted that the ninth paragraph of section 3 of the USSD report (on page 129 of the Appellant's Tribunal bundle) states: "*Reportedly Ethiopians of Eritrean origin were not allowed to register to vote*". We agree with Mrs. Holmes that the way this is phrased indicates that the source(s) for this information may not be reliable. This is further supported by the fact that this information is not attributed by the USSD report to "credible reports", unlike the information contained in the immediately preceding sentence. On the whole of the

evidence before us, we concluded that the evidence about the situation of persons of Eritrean origin in Ethiopia falls far short of showing that they are a persecuted ethnic group in Ethiopia. Even taking the objective evidence relating to the way in which persons of Eritrean origin are treated in Ethiopia by the Ethiopian authorities cumulatively with the recent increase in tension, we are not persuaded that there is a real risk that persons of Eritrean ethnic origin would face internment or forced deportation to Eritrea.

36. Considering all of the evidence cumulatively, we are satisfied that, if the Appellant is returned to Ethiopia, there is no real risk that she would be interned in Ethiopia or deported by the Ethiopian authorities to Eritrea or suffer persecutory ill-treatment or treatment in breach of her rights under Article 3 whilst living in Ethiopia.

Conclusion:

37. For all of the above reasons, we are satisfied that the Appellant's removal to Ethiopia is not reasonably likely to be in breach of the United Kingdom's obligations under the Refugee Convention or her protected rights under the ECHR. The appeal is therefore dismissed.

Decision

The appeal is DISMISSED.

Ms. D. K. GILL
VICE PRESIDENT

Date: 11th March 2004