FROM LIBERATION TO LIMBO

A Report on the Impact of Immigration Security Inadmissibility Provisions on the Eritrean Communities in Canada, and Recommendations for Reform, submitted to the Ministers of Citizenship and Immigration and Public Safety

Canadian Council for Refugees, Eritrean Canadian Community Centre of Metropolitan Toronto (ECCC), Hidmona-Eritrean Human Rights Group In Manitoba, Holy Trinity Eritrean Orthodox Church in Toronto, Meftih Eritrea Community Newspaper, Qalna Eritrean Human Rights Group-Toronto

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EXECUTIVE SUMMARY

Introduction

This report addresses the application of security inadmissibility provisions in Canada's immigration legislation to Eritrean nationals.

Many Eritreans are found inadmissible to Canada for the sole reason of having supported Eritrea's liberation from Ethiopia.

The inadmissibility findings lead to threats of forced returns to persecution in Eritrea, families torn apart, and refugees both inside and outside Canada living in long-term limbo.

Historical and political background

Eritrea was illegally annexed by Ethiopian Emperor Haile Selassie in 1962. The regimes of both Haile Selassie and his successor Mengistu Haile Mariam were characterized by gross violations of citizens' human rights. Ethiopia's indiscriminate use of brutal violence against civilians provoked a thirty year struggle for Eritrean independence.

The Eritrean liberation movement, while engaging in armed struggle against the Ethiopian military, was largely preoccupied with the protection of civilians and enjoyed broad popular support.

When Eritrea won formal independence in 1993, Canada was among the first countries to recognize the sovereign Eritrean state. By implication, it endorsed the legitimacy of the liberation movement.

Since independence, the ruling party has suppressed democratic opposition and committed grave human rights abuses on a massive scale. As a result, significant numbers of citizens have been forced to flee as refugees and all those forcibly returned to Eritrea face a serious risk of gross human rights violations.

Immigration provisions relating to security inadmissibility

Under the *Immigration and Refugee Protection Act*, a person is inadmissible on security grounds if they engage in various acts of terrorism or subversion, or are or were a member of an organization that has engaged in such acts. There is no requirement that the person have been directly involved in the acts in question, or even have known that such acts were committed by the organization he or she was a member of.

This definition of security inadmissibility casts a very broad net. However, according to the Act, people who are caught by this definition but who represent no kind of security threat can be exempted through ministerial relief. Under this provision, the Minister of Public Safety, who must personally decide each case, exempts otherwise inadmissible persons if they can demonstrate that their presence in Canada would not be detrimental to the national interest.

The inadmissibility provisions apply both to persons within Canada and those overseas applying to enter Canada.

Consequences of security issues being raised

Even the raising of potential security inadmissibility usually entails long delays in processing. If the person is actually found inadmissible, there are still more serious consequences:

- A person in Canada may be ineligible to make a refugee claim and therefore be inadequately protected from forced return to Eritrea, where they may face persecution.

- A person who has already been recognized as a refugee in Canada will likely be in a kind of legal limbo, without permanent status. Persons in this situation cannot reunite with family members and face discrimination in access to education and employment. In addition, most refugees in this situation report that the insecurity of their status and the uncertainty of the wait have grave psychological impacts.

- A person outside Canada may be condemned to a precarious existence as a refugee in a country where they have few rights and no security. They may even be at risk of forced return to persecution in Eritrea.

The application of the inadmissibility proceedings to Eritreans

Eritreans who supported the liberation movement are often found inadmissible on the ground that they were a member of an organization that engaged in terrorism or in the subversion by force of a government (i.e. ousting the Ethiopian government). A memo by the Canada Border Services Agency makes it clear that that mere membership in an organization of the liberation struggle may make an Eritrean inadmissible.

It is perverse for Eritreans to be found inadmissible to Canada for belonging to a movement whose use of armed struggle is sanctioned under international law. The liberation struggle was a legitimate struggle for self-determination and against oppression. International law recognizes a people's right to self-determination and the right to use armed struggle against repressive regimes.

It is also perverse to label the liberation movement "terrorist", given the emphasis placed by the struggle on the protection of civilians and the humane treatment of captured enemy soldiers. Many of the alleged acts of terrorism cited by the Canadian government are wrongly characterized as "terrorist" or based on unreliable or biased sources.

With regard to such incidents as may have occurred where civilians were targeted, it would be more appropriate to characterize such incidents as breaches of international humanitarian law, than as terrorist acts.

Far from being "terrorist", the liberation movement took on various humanitarian and social roles, especially in areas under its control. This means that many Eritreans involved played an entirely non-military, humanitarian role. Eritreans who participated in the struggle typically continue to see it as a noble and entirely legitimate struggle.

The ministerial relief provision is not being used, as it properly should, to exempt those who have no personal responsibility for acts of violence.

A preliminary barrier is lack of information about the provision. Even those who are aware of the exemption process and have experienced counsel to help them have little chance of success. Recommendations to the Minister have in recent years been consistently against granting an exemption regardless of whether there is any evidence to suggest that a person's presence in Canada could be detrimental to the national interest. Successive Ministers of Public Safety have either delayed rendering decisions on exemption requests – often for years – or have simply adopted the negative recommendations of CBSA. As a result, the exemption provision has proven a meaningless, illusory remedy.

Recommendations

1. **Use discretion not to initiate inadmissibility proceedings:** The government should adopt a policy of restraint and discretion in assessing the admissibility of Eritreans who may have supported the liberation movement. Officers should not initiate proceedings, or if initiated, discretion should be exercised *not* to refer the matter for an admissibility hearing.

2. **Grant ministerial relief:** The Minister of Public Safety should grant ministerial relief, in a timely manner, to all applicants who are formally inadmissible on security grounds, but for whom there is no basis for believing that it would be detrimental to Canada's national interest for them to enter or remain in Canada.

   For Eritreans in particular, it is recommended that the Minister adopt a general policy in favour of granting exemptions to Eritreans who have been found inadmissible solely on the basis of their support for the liberation movement.

3. **Waive inadmissibility through humanitarian and compassionate consideration:** In the alternative, the Minister of Citizenship and Immigration should grant waivers of inadmissibility, using his humanitarian and compassionate discretion, to persons found inadmissible on security grounds solely on the basis of their membership in an organization involved in the liberation movement.

4. **Amend the law:** The *Immigration and Refugee Protection Act* should be amended so that the security inadmissibility provisions (s. 34) apply more narrowly only to those who deserve to be excluded from Canada, based on their personal and deliberate acts.

Conclusion

The increasing use of inadmissibility and exclusion proceedings against Eritreans has caused deep distress. The consequences of inadmissibility findings are particularly severe in the Eritrean context given the human rights crisis that prevails in that country. Adding to the injury is the deep sense of injustice, since the individuals caught up in the admissibility process pose no threat to Canada or any other country. On the contrary, most are people of integrity who have personally demonstrated their commitment to the ideals of liberty, democracy, dignity and human rights. Most are also at significant risk of persecution if returned to Eritrea.

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INTRODUCTION

A significant number of Eritreans, many of them refugees, are being found inadmissible to Canada on security grounds, simply because, many years ago, they participated in the movement to liberate Eritrea. The inadmissibility findings lead to threats of forced return to persecution in Eritrea, families torn apart, and refugees inside and outside Canada living in long-term limbo.

This report examines how Eritreans come to be classified as inadmissible on security grounds, the impacts of being found inadmissible and why the law and its application to Eritreans are unfair.

> S.A. and her youngest son have been separated from the rest of their family for over a decade. S.A. was accepted as a refugee in Canada in 2000. She applied for reunification with her husband, O.A., and other children, who are living precariously as refugees in Egypt. O.A. was found inadmissible to Canada on the grounds that he worked as a teacher for the Eritrean Liberation Front. S.A. has sorely missed the support of her husband as she struggles with serious health problems, including kidney failure. Her youngest son has foregone furthering his education so that he can send money to support his father and siblings, who do not have the right to work in Egypt.

This report is divided into several parts. **First**, we outline the historical and political background of the Eritrean liberation movement. The historical context in which Eritreans sought independence from Ethiopia is crucial to assessing the nature of the liberation movement and the organizations that engaged in the struggle. **Second**, we review the Canadian legislation applicable to Eritreans both within and outside Canada who confront admissibility and/or exclusion proceedings. **Third**, we illustrate the impact and consequences of such proceedings on the concerned individuals and their families, and the Eritrean community at large. **Fourth**, we outline how admissibility proceedings have been brought against Eritreans and explain why it is perverse that such proceedings are being applied to render Eritreans inadmissible to Canada for mere membership in the liberation movement. **Fifth,** we make recommendations for change, suggesting that ministerial discretion in respect of regular liberation movement supporters ought to be exercised favourably and that inadmissibility provisions should be re-drafted to bring them into compliance with international law. **Finally**, we provide profiles of various Eritreans who have needlessly been caught up in admissibility proceedings that are of no benefit to the Canadian national interest.

PART I: HISTORICAL AND POLITICAL BACKGROUND

From colonialism to independence

Located in the Horn of Africa, Eritrea borders Ethiopia, Sudan and Djibouti. First colonized by Italy in 1890, Eritrea fell under interim British colonial administration following Italy's defeat in World War II. In 1950, the United Nations voted to end British colonialism in Eritrea resolving, despite Eritrea's pleas for independence, to federate Eritrea with Ethiopia under "the sovereignty of the Ethiopian crown." Eritrea's federated status ended in 1962 when Ethiopian Emperor Haile Selassie illegally annexed the country, turning Eritrea into Ethiopia's fourteenth province. Eritrea was governed by Ethiopia for the next thirty years, first under the regime of Haile Selassie and then, following Haile Selassie's overthrow in 1974, by the Marxist military government of Mengistu Haile Mariam. Eritrea finally won *de facto* independence in 1991, and was recognized *de jure* as a fully sovereign state by the United Nations in 1993.

Ethiopian rule

The regimes of both Haile Selassie and Mengistu Haile Mariam were characterized by the indiscriminate use of violence against civilians, including the deliberate bombing of civilian targets, and the killing and maiming of tens of thousands of citizens. These gross violations occurred consistently over 30 years. Following its annexation by Ethiopia, Eritrea was thus governed by Ethiopian regimes "addicted to the use of terror" as a weapon of war.[1] Reflecting this fact, the Mengistu regime has been designated by Canada for immigration purposes as a government that engaged in terrorism, systematic or gross human rights violations, genocide, war crimes or crimes against humanity.[2]

The Liberation Movement

Ethiopia's indiscriminate use of brutal violence against civilians provoked a thirty year struggle for Eritrean independence.

The main actors in the Eritrean liberation movement

The Eritrean liberation movement was highly complex and involved numerous organizations and splinter groups with evolving allegiances and collaborations, and with very different structures. The major organizations were the Eritrean Liberation Front (the ELF) and the Eritrean People's Liberation Front (the EPLF).

The ELF was the first to take up the struggle for freedom in 1960. By 1961 the ELF had determined that neither appeasement nor passive resistance would be effective in the face of the brutality of Haile Selassie's regime, and that the only way for Eritreans to rid themselves of alien domination by a brutal regime was through military confrontation. In 1977 then Ethiopian President Mengistu called for a "total people's war" against the Eritrean secessionists, resulting

[1] Alexander De Waal, *Evil Days, 30 Years of War and Famine in Africa*, Africa Watch Report, 1991 at page 74.

[2] Under s. 35(1)(b) of the *Immigration and Refugee Protection Act*. See http://www.cbsa-asfc.gc.ca/security-securite/wc-cg/wc-cg2006-eng.html#app4

in the escalation of brutal violence against the civilian population.[3] This served only to confirm the view that the violence from Ethiopia required a military response.

Meanwhile, a major rift had occurred in the 1960s within the ELF when Isaias Afewerki, currently the president of Eritrea, defected from the ELF to form a separate liberation organization which, in 1977, became the EPLF. Like the ELF, the EPLF was of the view that, in the face of the massacres of Eritrean civilians by Ethiopian forces, the Ethiopian army had to be challenged militarily.

The rift between the ELF and the EPLF worsened and in 1980 erupted in civil war. The ELF was ultimately driven out of Eritrea into the Sudan, leaving the EPLF to go on to defeat the Mengistu regime through armed struggle and to achieve independence for Eritreans in 1993.[4]

The ELF meanwhile had splintered into several factions.[5] Since then, there has been a continuous formation and re-formation of alliances and divisions among various Eritrean liberation movements.

The liberation movement's dependence on civilian protection

In the early part of the struggle, the Eritrean liberation movement was vastly outnumbered in both numerical and military hardware terms by the superior Ethiopian army. Nevertheless the liberation movement ultimately prevailed because of broad popular support.

The vast majority of Eritreans supported the struggle because of the gross human rights abuses committed by the Ethiopian regime, and the liberation movement's contrasting policy of protecting and respecting civilians caught up in the cross-fire.

Those who flocked to join the struggle played many and differing roles in the liberation movement. Some worked in the political field, others in the battlefield, others in strictly humanitarian capacities: running medical clinics for the wounded, helping to move citizens to safe areas, conducting literacy campaigns, promoting women's equality, raising money for the movement, or simply providing meals to the fighters when they passed through their villages.

Despite the goals and overall policies of the liberation movement, some Eritrean leaders and fighters may have been responsible for acts that violated international norms at some points during the thirty years of conflict. Breaches of international humanitarian law unfortunately occur in many wars, and to some extent, this happened in the Eritrean liberation struggle. However, such events that occurred were incidental to a much larger and justified movement in defence of the civilian population.

[3] Alexander De Waal, *Evil Days, 30 Years of War and Famine in Africa*, supra note 1, page 113.

[4] Eritrea was effectively liberated from 1991. Its independence was established in law following the 1993 popular referendum.

[5] One was the Eritrean Liberation Front – Revolutionary Council (ELF-RC).

Eritrea's acceptance as a sovereign state

In 1993 a UN-monitored referendum on the territory's political status resulted in an overwhelming vote for sovereignty (98.5%) and Eritrea was declared independent. Eritrea's bid for recognition was met with a "reservoir of goodwill and support from the international community," which included Canadian participation.[6] Indeed, Canada moved quickly to recognize the fledgling Eritrean state by opening a consulate in Eritrea and engaging in preferred-country bilateral trade agreements. In short, Canada and the global community recognized in 1993 the legitimacy of the Eritrean liberation movement.[7]

Post-independence Eritrea

When the EPLF assumed power in Eritrea, it was met with a groundswell of support from Eritreans eager to build and re-build their war torn country. Promised democracy, justice and the rule of law, Eritreans volunteered in large numbers to assist with the government's re-development program.

Seventeen years later these dreams of democracy, justice and the rule of law lie in tatters, as the government of Eritrea has betrayed the ideals of the thousands of Eritreans who sacrificed their lives to secure a better life for future generations.

Since the EPLF came into power, no political organization apart from the ruling party – renamed the People's Front for Democracy and Justice (PFDJ) in 1994 – has been permitted to function openly in Eritrea. Thousands of political prisoners are detained in prisons and underground cells, there is no freedom of religion, youth of military service age are required to serve indefinitely without pay in the national service, there is no independent civil society and all media outlets have been shut down. Dissent of any kind is ruthlessly suppressed and torture of detainees is systematically practised, as is indefinite solitary confinement, starvation rations, and hard labour for those detained. Human rights violations of this kind occur on a massive scale in today's Eritrea.

In response to these developments, many of the organizations of the Eritrean liberation movement have been active in opposition to the PFDJ, and its members are therefore subject to persecution in Eritrea. In early 2010, a number of groups joined together to form the Eritrean People's Democratic Party (EPDP), committed to removing the present dictatorial regime in Eritrea through nonviolent and democratic struggle.

As a result of the widespread human rights abuses, large and growing numbers of citizens have been forced to flee as refugees. Many are in refugee camps, principally in Ethiopia and Sudan. Others live precarious lives without legal protections in the region. Due to this insecurity, some

[6] See *United Nations and the Independence of Eritrea*, Blue Book Series, Vol. X11, United Nations Department of Public Information, 1996, at page 85.

[7] In contrast to its approval for Eritrean independence, the United Nations in the same year rejected a similar bid for recognition made by the military government of Haiti on the grounds that power had been seized "illegally." The difference in response strongly suggests that the international community accepted the legitimacy of the Eritrean liberation struggle.

try to escape to Europe. However, they risk being caught, detained and possibly deported back to Eritrea, as happened in 2008 to Eritrean refugees returned from Israel to Egypt, and then from Egypt to Eritrea.[8]

The current situation in Eritrea is so bad that the UNHCR, Amnesty International and Human Rights Watch oppose the forced return of any rejected refugee claimants to Eritrea. These recommendations are based on the serious risk of gross human rights violations faced by all those forcibly returned to Eritrea.[9]

PART II: LEGISLATIVE OVERVIEW

Immigration provisions relating to security inadmissibility

Under the *Immigration and Refugee Protection Act* (IRPA), a person is inadmissible on security grounds for:

> 34 (1) (*a*) engaging in an act of espionage or an act of subversion against a democratic government, institution or process as they are understood in Canada;
>
> (*b*) engaging in or instigating the subversion by force of any government;
>
> (*c*) engaging in terrorism;
>
> (*d*) being a danger to the security of Canada;
>
> (*e*) engaging in acts of violence that would or might endanger the lives or safety of persons in Canada; or
>
> (*f*) being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (*a*), (*b*) or (*c*).[10]

It is not necessary for any of the above to be proven in order for a person to be captured by this definition: it is enough that there are "reasonable grounds to believe" the allegations, pursuant to s.33 of IRPA.

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[8] Human Rights Watch, *Service for Life: State Repression and Indefinite Conscription in Eritrea*, Part 3: The Experience of Eritrean Refugees, April 2009, http://www.hrw.org/en/reports/2009/04/15/service-life-0.

[9] UNHCR, *Eligibility Guidelines for assessing the international protection needs of asylum-seekers from Eritrea*, April 2009, http://www.unhcr.org/refworld/docid/49de06122.html, Amnesty International, *Egypt: Deadly journeys through the desert*, MDE 12/015/2008, 20 August 2008, http://www.amnesty.org/en/library/info/MDE12/015/2008/en, Human Rights Watch, *Service for Life*, supra footnote 8.

[10] The full text of section 34 of the *Immigration and Refugee Protection Act* can be found in the Appendix, page 33.

There is no requirement for direct knowing or personal involvement in any of the listed activities; mere membership in an organization that there are reasonable grounds to believe engages or has engaged in any of the impugned acts is enough to make a person inadmissible.

The definition also covers past membership. There is no requirement that the person knew that the organization engaged in the impugned acts, or even that the person was a member of the organization at the time the impugned acts were committed. In the case of inadmissibility for terrorism, a person was recently found inadmissible even though his involvement with an organization ended years before the organization ever engaged in alleged terrorism. In another case someone was found inadmissible, based on membership in a terrorist organization, even though the organization had ceased and publicly denounced all alleged terrorism long before he joined. These provisions apply equally to those who were involved solely in humanitarian activities as to those involved in military activities.

The provision relating to the subversion by force of a government applies to *any* government, irrespective of whether the government sought to be subverted is a dictatorship or a democracy, and irrespective of efforts made by the subverting organization to comply with international laws of armed conflict.

National interest determinations (Ministerial relief)

The definition of security inadmissibility in the law includes a provision that exempts otherwise inadmissible persons if they can demonstrate that their presence in Canada would not be detrimental to the national interest (IRPA s. 34 (2)). The law on security inadmissibility has been designed to throw a very wide net that catches many people, with the exemption intended to release those who represent no kind of security threat. Indeed, Canadian courts have determined that this exemption provision is a necessary "escape valve" that can remedy the injustice that would otherwise be done by the breadth of the inadmissibility provision.[11]

Decisions on exemptions are made by the Minister of Public Safety, who must personally decide each case. Although the Minister could – and in the interests of fairness should – issue exemptions on his own initiative, in practice individuals affected need to apply for an exemption.

Security Review Process

Refugees seeking protection from within Canada

Refugees who arrive in Canada and make a refugee claim must provide personal information that is used for security checks (e.g. addresses for the past 10 years, places they have travelled to, employment history, organizations that they have been associated with). This information is transferred to the Canadian Security Intelligence Service (CSIS) for their review.

If CSIS has any concerns based on the information, they will generally conduct one or more interviews with the person. Once CSIS has completed its review, it transmits its findings to

[11] Suresh v. Canada (Minister of Citizenship and Immigration), 2002 SCC 1, [2002] 1 S.C.R. 3, §110.

CBSA National Headquarters, who review the case and make their own comments.[12] An immigration officer is then formally responsible for making a decision about security inadmissibility.

Referral to the Immigration Division

Where an immigration officer believes that a person is inadmissible on security grounds, the officer *may* prepare a report for the Minister (IRPA, s. 44). Another official then decides whether the report is well founded and whether to refer the matter for adjudication to the Immigration Division of the Immigration and Refugee Board. If it goes to the Immigration Division, the only question for the member to decide is whether the person meets the definition of inadmissibility in the legislation. Because the definition is so broad and the law gives no discretion to the Immigration Division, once a person is referred to the Division, the outcome is, more often than not, a foregone conclusion.

No referral to the Immigration Division

In many cases, the immigration officer does not refer a recognized refugee to the Immigration Division but simply holds the permanent residence decision in abeyance. There is no requirement in law or policy that inadmissibility questions be decided within a particular period of time and some applicants wait years with little or no information as to what is occurring with their cases. Such refugees find themselves in long-term limbo: they are protected from removal but they are denied the security of status that comes with permanent residence, as well as the rights and benefits that are reserved for permanent residents and citizens, notably family reunification.

Refugees applying for resettlement or family reunification from abroad

In the case of refugees overseas applying for resettlement to Canada, or individuals applying for family reunification in Canada, the immigration officer will only forward to CSIS information on applicants who meet certain criteria or profiles. CSIS may then arrange an interview with the applicant and will transmit its report to CBSA for comment. The ultimate decision is made by the visa officer.

The fact that there are few CSIS Security Liaison Officers located outside Canada means that the CSIS review process is often very slow. Moreover, visa officers who are charged with making the ultimate decisions are all too often ill informed about the political realities which form a critical backdrop to the determination of security issues. While this can be an issue with in-Canada decisions as well, the problem is exacerbated overseas due to the lack of access to counsel in overseas applications as well as inadequate training.

[12] CSIS provides one of three reports: No Reportable Trace (in essence, approval); Inadmissible; or No Decision (i.e. leaving the determination to CBSA or CIC).

PART III: CONSEQUENCES OF SECURITY ISSUES BEING RAISED

When security issues are raised, there may be a number of serious consequences. These consequences vary according to whether the person affected is in Canada or outside of Canada, and if in Canada, according to whether they are already recognized as refugees or are claimants awaiting refugee determination.

It is important to note that even where no formal security inadmissibility allegations are made, the mere raising of potential security issues in relation to a person frequently causes long delays, with serious consequences for the person, and often for family members.

Impact of inadmissibility determinations inside Canada

a) Before a person has had their refugee claim determined

If an inadmissibility finding is made *before* a refugee claimant in Canada has had their refugee claim considered, the claimant becomes ineligible to make a refugee claim. Instead, the only protection against refoulement lies with a limited risk assessment, called a Pre-Removal Risk Assessment (PRRA). In the PRRA, applicants do not have a right to a hearing before an independent tribunal (as refugee claimants do) and their claim is not considered in relation to the refugee definition, but only with respect to much narrower grounds of a probable risk of death, torture or cruel and unusual treatment or punishment. PRRA applications are decided by immigration officers, usually on the basis only of written submissions, without even an interview and with no right to counsel. If the PRRA is refused, the person can be removed almost immediately.

The following case illustrates some of the potential impacts of being found inadmissible. Although H.K. was not found inadmissible on security grounds, his situation was in many ways similar to that of the people who are the focus of this report.

H.K. was born in a small village in Southern Eritrea in 1969. He joined the EPLF as a youth in 1988 to fight for Eritrean independence, and was incorporated into the Eritrean military once independence was achieved. Later he tried to leave the army, but was punished for even asking. Eventually, he managed to desert, and fled to Canada, which he had heard was a country that upheld human rights.

On arrival, H.K. was quickly referred for an admissibility hearing and consideration of his refugee claim was suspended in the meantime.

H.K. was welcomed and supported by the Eritrean community in Halifax. As soon as he received his work permit, he secured a stable job and was a hard worker and an outstanding employee. He attended English classes regularly and was keen to learn the language. One of H.K.'s great life goals was to continue his education, something he had never been able to do through all the years of forced conscription in Eritrea.

In January 2010, H.K. received a decision from the Immigration and Refugee Board stating that he was inadmissible "on grounds of violating human and international rights, for committing not directly but as an accomplice an act outside of Canada that constitutes an offence referred to in Section 4 to 7 of the *Crimes against Humanity and War Crimes Act*."

H.K. was in total shock and couldn't speak as the decision was translated to him.

An application for judicial review was filed at the Federal Court in February 2010 on the basis that the IRB erred by failing to adequately assess the defense of duress.

Meanwhile CBSA called H.K. in to discuss deportation proceedings. The evening before, H.K. met with his lawyer: he was calm but didn't understand how he could be considered a "war criminal" and couldn't grasp how the Canadian government could be deporting him to his death.

The next morning a note was found in his room saying: "I can't do this anymore. You'll find my body but not me."

H.K. had written in his refugee claim: "If I am sent back to Eritrea, as a military deserter, I would face detention with no chance of a trial, torture or death. It is for these reasons that I am asking for the protection of the Canadian government"

H.K. was found dead, hanging from a tree, on Thursday, February 18.

b) For recognized refugees

If, on the other hand, the inadmissible person has already been recognized as a refugee, the person will likely not be removed because Canada is prohibited under international law, in accordance with the principle of non-refoulement, from returning refugees to the country where they fear persecution.[13] The person may remain in Canada, but in a kind of legal limbo, without permanent status.

Principal impacts of lack of permanent resident status

Without permanent residence, people in need of protection cannot benefit from family reunification and they face discrimination in access to education and employment. In addition, most refugees in this situation report that the insecurity of their status and the uncertainty of the wait have grave psychological impacts.

No family reunification

[13] Persons recognized as refugees can be removed from Canada in certain circumstances if they are not only inadmissible but also deemed by the Minister to represent a danger to the public or to national security.

Family reunification, including reunification with spouses and children, is tied to permanent residence. Refugees cannot bring their spouse or children who are outside Canada until they become permanent residents. It is also of course impossible for them to reunite with other family members through family class sponsorship.

Delays in family reunification have many serious consequences. Refugees who left spouses and dependent children behind, sometimes in situations of great danger or in a refugee camp in the first country of refuge, often have difficulties communicating with them. When communication does occur, the family members left behind often do not understand why the reunification process is so lengthy (there are frequently reports of stress in the husband-wife relationship as some spouses cannot believe the process is so long and think that they have been abandoned). Moreover, in the long term, disruption of family unity can destroy the family connection and make family reunification impossible.

Refugees separated from their families often suffer from depression. Family separation increases post-traumatic stress disorders often experienced by refugees.

Worries about the family left behind make it even harder for refugees to find meaningful employment. Family separation also increases the financial problems faced by refugees as they frequently have to send money abroad to assist the family left behind.

The stress caused by family separation and the absence of family support make it very difficult for refugees to integrate into a society that is new to them.

Discrimination in access to work

Refugees without permanent residence do not have equal opportunities in terms of employment. Their social insurance number (beginning with a 9) marks them as persons without permanent status. This can cause difficulties since employers view them as temporary and undependable. Non-residents may not be promoted because the employer recognizes the temporary nature of the work authorization. Moreover, such persons are not eligible for many professional training programs. Some professions and forms of employment are restricted to Canadian citizens and permanent residents.

Discrimination in access to financial services

Without permanent residence, people in need of protection are generally refused bank loans, a serious obstacle to anyone hoping to start a business. People without permanent status are also frequently refused a credit card.

Discouragement from participation in political and community activities

Refugees in limbo because of security issues may feel that they must avoid certain people or activities, especially political or community activities, since they might be interpreted by the Canadian government as suspect. Given the broad interpretation of the term “membership,” many refugees feel that they cannot participate in any local community activities for fear that it will further delay their applications for permanent residence.

Psychological stress of living in limbo

All of the factors listed above increase the general sense of insecurity caused by the lack of permanent status. Refugees in this situation often report suffering intense psychological stress. This stress is frequently evident to those around them and may cause or contribute to such problems as depression and family breakdown. Because of the sensitivity of security issues, affected refugees are generally extremely reluctant to discuss their problems with others and may therefore be very isolated. They must also bear the frustration and stress of not being able to do anything positive to solve the problem.

> An Eritrean refugee affected by the security inadmissibility provisions described the impact of being denied permanent residence as follows:
>
> It has been 11 years since I have seen my family. Because of my status I cannot sponsor family members, cannot go to school, cannot take career-upgrading courses, cannot invest and borrow money from banks. Here are highlights of the obstacles I have faced to date.
>
> In 2008, I approached banks for a mortgage loan to buy a house. My daughter and I had total savings of $85,000. Still the banks refused saying that I am not eligible for a loan as I am not a permanent resident […]
>
> My status has also greatly affected my daughter's status. She has been in Canada with me on work permit since October 2007. She has no permission to go to school.
>
> My status also resulted in job insecurity. In 2007, I was offered a job at a food processing company but after five hours of training I was called to the office and was told that because my work permit expires in five days they cannot hire me. Recently, I was suspended from work just because my work permit expired before the renewed one arrived. I had applied seventy-five days earlier but the renewed permit was received by me only eighty-five days later. I had to stop working for ten days. It is very painful. There is no certainty in my life. I do not know what would happen tomorrow. It is the worst situation of my life.
>
> Most importantly, because of my status my family remains disrupted. My wife and two children who are still in an Ethiopian refugee camp in dire conditions are stuck there due to my status. If it were not for the delay in the processing of my application for permanent residence, I could have sponsored them under the family class. My youngest son, who was five years old when I left Eritrea is now 16 years old. When he was eight years old he sent me a letter that broke my heart. In his February 2002 letter he said "Daddy, I missed you terribly! I need you now. What is the use if we meet one day when I am a grown-up man and you are an old man with a cane in his hand."

> I am 60 years old now with no hope of reuniting my family. I feel and see myself as an innocent person in death row for a crime [I] never committed [...]. Family is the cornerstone of life. Without family life is meaningless and very stressful. That is why I asked and wrote more than three letters to Immigration Canada to reconsider my case but with no outcome so far.

Impacts for refugees abroad applying for resettlement

Delays in processing can have very serious security consequences for refugees applying for resettlement. In many refugee camps, personal security is frequently threatened. The incidence of physical attacks and rape is high. Other refugees living outside camps must also survive in situations of great insecurity, often including an inability to work legally, arrest and extortion from local police authorities and denial of education to children. Some face the threat of *refoulement* (forced return to Eritrea in violation of international law).

Resettlement is offered to refugees as a durable solution to their problems. For some it is the only viable solution, because other solutions (voluntary repatriation and local integration) are not available to them. What is at stake for refugees denied resettlement by Canada may therefore be their only chance for a permanent home where their basic human rights are respected.

> "After the interview I hoped and convinced myself by telling myself if I got the chance of being resettled in Canada, then at least I'll be free of worries. I'll live far from my country where I'll not live with the fear of deportation …" SZT, an Eritrean refugee in Sudan, rejected on the basis of his membership in the ELF.

PART IV: THE APPLICATION OF THE INADMISSIBILITY PROCEEDINGS TO ERITREANS

How the inadmissibility proceedings are being used to exclude Eritreans

Eritreans who supported the liberation movement have typically been found inadmissible to Canada on the grounds that they were a member of an organization that either:

i) engaged in the subversion by force of a government (i.e. ousted the Ethiopian government) (IRPA s. 34 (1) (b)); or

ii) engaged in terrorism (IRPA s. 34 (1) (c).

Inadmissibility proceedings have also sometimes been brought against Eritreans who supported the liberation movement on the grounds that they were a member of an

organization which engaged in an act of espionage or an act of subversion against a democratic government,[14] despite the fact that the regimes against which the Eritrean liberation movements fought were anything but democratic.

In some cases Eritreans are found inadmissible on the ground that their participation in the liberation struggle meant that they themselves engaged in subversion by force of Ethiopia, but this report focuses on individuals accused solely of membership in one of the organizations of the liberation struggle.

The government is not always specific about the grounds for finding an Eritrean inadmissible. For example, in the following case, the government made reference to any one of three paragraphs:

> I have come to the conclusion that you are inadmissible to Canada based on 34(1)(f) "being a member of an organization (Eritrean Liberation Front) that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b) or (c)."[15]

In the case of another man, recognized as a refugee in Canada and applying for permanent residence, the focus is clearly on the allegation of subversion by force:

> Information available suggests that your application for permanent residence may have to be refused as it appears you may be inadmissible to Canada pursuant to s. 34 (1) (f) of the Immigration and Refugee Protection Act.
>
> Therefore we are requesting that you attend an interview at our office (Oshawa CIC) on Wednesday, 24 October 2007 at 10:30 am.
>
> The purpose of this interview will be to discuss our concerns and to provide you with the opportunity to respond. The information that we have indicates that you were a member of the Eritrean Liberation Front – Revolutionary Council, a group that is known to have engaged in an armed uprising against a government. Please note that under Canadian immigration legislation it is your responsibility to demonstrate that you are not a member of an inadmissible class.

In other cases, the accusation is rather that the liberation movement engaged in terrorism:

> Mr. H is inadmissible [...] on security grounds for being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph 34 (1)(c) namely engaging in terrorism [...]

[14] IRPA s. 34 (1)(a).

[15] Refusal made in July 2006, quoted in a letter written to the applicant by a CIC officer in July 2009. The July 2006 decision had been overturned by the Federal Court in December 2007.

> Mr. H was a member of the EPLF when it was involved in numerous violent conflicts. The EPLF is known for its war against Ethiopia and its government, as well as within Eritrea. The EPLF had a goal of taking full control over Eritrea and Ethiopia. They held numerous attacks that resulted in thousands of civilians foreigners, Ethiopian Government Officials and Troops seriously wounded or dead. The many attacks also consisted of kidnappings or any of the above that would also end in violence and in death. They were also responsible for thefts of military equipment to use in their organization.

Interestingly, in May 2009 the office of the Minister of Citizenship and Immigration denied that allegations of terrorism are ever made, while repeating the allegation of subversion by force:

> At no point has Canada suggested that the Eritrean Liberation Front (ELF) or the Eritrean People's Liberation Front (ELPF) [sic] are terrorist entities. Nor does Canada question the sovereignty of Eritrea, as confirmed by a United Nations monitored referendum in April 1993. […]
>
> The ELF and EPLF are groups that in the past engaged in the subversion of a government by force. The *Immigration and Refugee Protection Act* (IRPA), which sets out the reasons why individuals may not be admissible to Canada, states in Section 34 that engaging in or instigating the subversion by force of any government constitutes grounds for refusing an application. Any person who has committed or was complicit in such an act will have their application refused, whether or not they are a member of any particular organization.
>
> All resettlement applications to Canada are reviewed on a case by case basis. Eritreans who were or are members of the ELF or the EPLF may or may not be accepted as refugees, depending on their particular circumstances.[16]

In fact, contrary to the claim that applications are reviewed on a case-by-case basis with reference to the individual's own actions, a January 2007 memo on the ELF by the Canada Border Services Agency makes it clear that that mere membership in the organization may be enough to make a person based on allegations of either subversion or terrorism:

> **Conclusion**: ELF members who were involved with the group during their 30 year struggle against Ethiopian government forces and/or their civil war against Eritrean splinter factions such as the EPLF are a concern for being linked to actions which may be deemed as terrorism and/or subversion.[17]

[16] Letter to the Eritrean Community Association of Ottawa, S. Duncan, Ministerial Enquiries Division, Citizenship and Immigration Canada, 7 May 2009, in response to a letter to Minister of Citizenship and Immigration, Jason Kenney.

[17] Counter-Terrorism, National Security Division, Intelligence Directorate, CBSA, Eritrean Liberation Front (ELF), January 2007.

> Mr. A. is a foreign national who is inadmissible to Canada pursuant to paragraph 34(1)(f) of *IRPA* for his membership in the Eritrean Liberation Front (ELF), an organization known to have engaged in acts of subversion and terrorism.[18]

Concerns with application of inadmissibility provisions

Perversity of rendering Eritreans inadmissible to Canada for belonging to a movement whose use of armed struggle is sanctioned under international law.

To render Eritreans inadmissible to Canada because they belonged to a movement that engaged in "subversion by force of a government" is to ignore the fundamental nature of the Eritrean liberation struggle as one for self-determination and against oppression.

In the wake of colonization, many former European colonies took advantage of the internationally recognized right to self-determination and took control of their political future through publicly held plebiscites. Unlike former European colonies, the people of Eritrea were denied their right to self-determination when the UN Security Council decided to join Eritrea with Ethiopia in a controversial federal arrangement with little regard to the free will of the people. Geopolitical interests of the time were given precedence over the right of the people of Eritrea to determine their own future. A few years later, the Eritrean people's right to self-determination was again denied when the UN-endorsed federal arrangement was unilaterally abrogated by the Ethiopian government, and Eritrea was simply annexed as Ethiopia's 14th province. The Ethiopian government, under both Haile Selassie and Mengistu, went on to commit gross human rights abuses against Eritrean civilians. The liberation struggle was thus not simply about securing the independence of Eritrea, but also about protecting Eritrean citizens from universally condemned, violent and tyrannical regimes. As such, Eritreans' right to achieve self- determination and liberation through armed struggle is one that is recognized in international law.

> "The ELF was a liberation movement serving, fighting, to liberate its own people. It was a logical by-product of the oppression, atrocities and genocide of the Ethiopian colonial government of Haile Selassie and Mengistu." SZT, an Eritrean refugee found inadmissible to Canada on the basis of his membership in the ELF.

Self-determination, armed struggle and international law

The right to self-determination is recognized under international law. The *United Nations Charter* affirms the rights of people to self-determination, as does Article 1 of both the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights.* In fact, the existence of the right of a people to self-determination is now so widely recognized in international conventions that the principle has

[18] Canada Border Services Agency, Briefing Note for the Minister, undated, sent to applicant October 2007.

acquired a status beyond "convention" and is now considered a general principle of international law.[19]

Under international law, the right to self-determination is *generally* to be exercised by peoples inside their existing countries, without interfering with or changing the territorial integrity of those countries.[20]

However, as the Supreme Court of Canada recognized in the groundbreaking case *Reference re Secession of Quebec*, there is, under international law, a clear right to secession where a people are subject to alien subjugation, domination or exploitation. This is because subjugation, domination and exploitation constitute a denial of the fundamental human rights of the subjugated peoples.[21]

The right to use armed struggle against repressive regimes is also internationally recognized. The use of force is understood to be legitimate when it is a response to oppressive violence, as in the case of the armed overthrow of the genocidal Rwandan government in 1994 by the Rwandan Patriotic Front, or the armed struggle of the African National Congress fighting, with the approval of the international community, for liberation for black South Africans from the Apartheid regime.

If all use of armed struggle makes one guilty of subversion, then we must find inadmissible to Canada on security grounds Nelson Mandela and all members of the African National Congress, Afghans who fought to overthrow the Taliban regime when it formed the government and the heroes of American independence who fought against the British.

Perverse to label the liberation movements as terrorist

The Eritrean liberation struggle gave strong emphasis to the protection of civilians and the humane treatment of captured enemy soldiers by highly disciplined rebel forces. Identifying the Eritrean liberation organizations as groups that engaged in terrorism is perverse, because the protection of civilians was the undisputed raison d'être of the struggle.

The labelling of the liberation movements as "terrorist" by the Canadian government frequently arises out of an unfortunate mischaracterization by Canadian officials of legitimate acts of war as illegitimate acts of terrorism.

Thus, allegations of terrorism are frequently brought on the grounds that the Eritrean liberation movement "engaged in acts of sabotage against buildings and bridges", "ambushed transport", "destroyed railway networks" and "used grenades and automatic weapons", and because "thousands of civilians were killed or injured" in the course of the 30 year liberation struggle.

[19] A. Cassesse, *Self Determination of Peoples: A Legal Reappraisal* (1995) at pages 171-72, as cited by the Supreme Court of Canada in *Reference re Secession of Quebec* [1998] 2. S.C.R. 217.

[20] Supreme Court of Canada, *Reference Re: Secession of Quebec*, *supra.*

[21] *Ibid.*

However, the blowing up of bridges, in the absence of evidence that there were civilians on the bridge and that the civilians were the primary target of the attacks, is an act of war, not an act of terrorism. The "ambush of transport" in the absence of evidence that civilian as opposed to military transport was the primary target of attack is an act of war, not an act of terrorism. The use of "grenades and automatic weapons" in war is similarly not an act of terrorism, unless those weapons are intentionally turned on civilians. Finally, the death of civilians in war, while always tragic, cannot be considered a terrorist offence unless there is evidence that the intention was to cause death or serious bodily harm to a civilian.[22]

The labelling of the liberation movements as "terrorist" also arises out of a reliance on dubious sources. For example, in some cases the government has relied on the Terrorism Knowledge Base (TKB), a now defunct website that listed alleged terrorist incidents, without details, without disclosing sources and without any claims to have verified the facts. Another source relied on by the government in some cases is the University of Maryland-based Global Terrorism Database (GTD). The GTD uses such a broad definition of terrorism that any act of war against a government would count as terrorism, whether or not civilians were targeted. This makes their list of alleged "terrorist acts" committed by Eritrean groups unhelpful for identifying "terrorist acts" as understood under Canadian law.

Moreover, the GTD itself acknowledges on its website that the research protocols for data collected before 1998, upon which the Canadian government relies in the Eritrean context, are now considered "less than optimal" as a basis for determining whether the alleged act took place. The government also relies upon the Memorial Institution for the Prevention of Terrorism (the MIPT) as a source of its terrorist allegations, but an expert who analyzed incidents referred to by the MIPT found that in some cases the attribution of incidents by the MIPT was flatly wrong, and in others dubious.

In addition, the Government frequently relies upon allegations of terrorism that are made by biased sources. During the conflict the Ethiopian government had an obvious interest in maligning their opponents. The Canadian government frequently relies on information from these sources without regard to source bias. For example, in one recent inadmissibility case the Canadian government relied upon propaganda circulated by the Ethiopian government about an alleged massacre of civilians by the EPLF, despite the fact that reputable organizations such as Africa Rights Watch had expressed scepticism about the veracity of this information, and concern about its use for propagandistic purposes.[23]

> "The information that you collected from internet web sites are not reliable sources because every one writes from his point of view and not the whole truth. It is not a confidential source so that some one can depend on it." O.A., an applicant refused on the basis of membership in the ELF, in a letter to the Canadian government in June 2005 protesting his rejection.

[22] See *Suresh*, supra note 11.

[23] Alexander De Waal, *Evil Days, 30 Years of War and Famine in Africa*, supra note 1.

Having said this, it must also be acknowledged that, in the course of a thirty year war for liberation fought against a brutal dictator, some acts in which civilians were intentionally targeted may have been committed. There was for example one undisputed hijacking of a plane, and there appear to be a small number of incidents involving the kidnapping of foreign personnel by factions of the liberation movements. There was also undoubtedly some internecine fighting between rival armed factions of the liberation movement, although deaths under these circumstances cannot be characterized as acts of "terrorism" as those who take up arms are not civilians as that term is understood in the *Geneva Convention.*

With regard to any such incidents where civilians were targeted, it would be more appropriate to characterize such incidents as breaches of international humanitarian law, than as terrorist acts. In the course of the US-led invasion of Iraq there have been some serious abuses causing loss of life among civilians. Nevertheless one does not accuse the US army on that basis of being a terrorist organization. Nor should one apply such a label to the Eritrean liberation movement, whose fundamental goal was to protect civilians from oppression.

As part of this fundamental goal of protecting civilians, the organizations of the liberation movement took on various humanitarian and social roles, especially in areas under their control. By the mid-1970s, mechanisms had been established to deliver relief assistance, and departments were offering social services, such as healthcare and education. This means that many Eritreans active in the movement were playing an entirely non-military, humanitarian role. Similarly, Eritreans in the diaspora contributed financially on the understanding that their money was going towards humanitarian projects and civilian protection.

Since the protection of civilians was the undisputed raison d'être of the struggle, Eritreans who participated in the struggle typically continue to see it as a noble and entirely legitimate struggle. They may never have heard of the incidents that the Canadian government characterizes as terrorist. This causes misunderstanding when Canadian immigration officials expect applicants to express regret at their participation in the liberation struggle. For example, in one case, CBSA states that the applicant "failed to exhibit any remorse over his membership in the organization and continues to support its goals." From the applicant's point of view, there is no reason for remorse: he believes the organization was pursuing the goal of democratic pluralism within an independent Eritrea.

The application of national interest determinations (Ministerial relief)

Despite the very wide net cast by the language of the Act regarding security inadmissibility on the basis of membership in an organization, the Minister of Citizenship and Immigration and the Minister of Public Safety retain a great deal of power to direct how the provision is applied in the cases of former participants in and supporters of the Eritrean liberation movement. As explained above, they can exempt those whose presence in Canada would not be detrimental to the national interest, through the "ministerial relief" provisions.[24]

However, this provision is not being used, as it properly should, to exempt those who have no personal responsibility for acts of violence.

[24] IRPA s. 34(2).

A preliminary barrier is lack of information about the provision. The Act is silent on how or when applications for exemption are to be made. There is no application form and nothing on the public section of the Citizenship and Immigration Canada website suggesting that the exemption exists and how to go about seeking one. Moreover, since there is no requirement that decision makers inform applicants of their ability to make such applications, unrepresented persons are typically unaware of their right to do so.

Even those who are aware of the exemption process and have experienced counsel to help them have little chance of success. While guidelines have been established to help counter-terrorism officials assess exemption requests fairly and objectively, in practice recommendations to the Minister have in recent years been consistently against granting an exemption regardless of whether there is any evidence to suggest that a person's presence in Canada could be detrimental to the national interest. In many cases, rather than examining whether there is any evidence to suggest any danger to national security, CBSA has simply relied on the inadmissibility finding itself as a reason to also deny an exemption from inadmissibility. Successive Ministers of Public Safety have either delayed rendering decisions on exemption requests – often for years – or have simply adopted the negative recommendations of CBSA. As a result, the exemption provision has proven a meaningless, illusory remedy.

> In 2008, officials recommended that the Minister not exempt O.A., a past member of the ELF. They acknowledged that their recommendation would mean that O.A. would not be able to reunite with his wife and child in Canada, and that he would remain with his other children in Egypt, where they do not have legal status. They did not argue that he was personally involved in any violent activities: he was a teacher at a school affiliated to the ELF and was a member of the Secretariat for the Education Syndicate of the ELF. They stated that he must have known that the ELF "was involved in terrorist activities and violence against the Ethiopian government."

No meaningful account is taken of the impacts for the individuals of refusal by Canada. Because of the widespread human rights abuses occurring in Eritrea, many applicants are refugees and refusal by Canada condemns them to indefinite insecurity (either in Canada or in another country where they have no permanent status). For some, refusal means indefinite separation from family members, who may be Canadian citizens.

Briefing notes prepared for the Minister by the Canada Border Services Agency (essentially their recommendation), tend to simply re-argue the reasons for inadmissibility, and then mention, without giving any weight to the implications.

For example, K.W. was a member of the Eritrean Liberation Front – Revolutionary Council (ELF-RC). He led a group in the diaspora, collecting money and distributing pamphlets and information updates. CBSA acknowledges that there is no information to suggest that K.W. was ever involved in violence. K.W. is applying to enter Canada in order to reunite with his wife and children. Nevertheless, CBSA takes the position that K.W. "has not established that his presence in Canada would not be detrimental to the national interest."

PART V: RECOMMENDATIONS

1. Use discretion not to initiate inadmissibility proceedings

As a starting point, the government should adopt a policy of restraint and discretion in assessing the admissibility of Eritreans who may have supported the independence movement.

In the case of applicants in Canada, immigration officers must decide whether or not to initiate inadmissibility proceedings by writing a report to the Minister on the person (a section 44 report).

Officers should use their discretion not to write the report where there is no evidence of direct, personal and knowing involvement in actual human rights abuses, terrorist acts, war crimes or crimes against humanity.

Where a report is written, and it is referred to a Minister's Delegate, discretion should be exercised *not* to refer the matter for an admissibility hearing. Processing for permanent residence should continue.

It is critical that such discretion be exercised at these early stages. If a case is referred for a hearing, the Immigration and Refugee Board generally will have no option but to determine the person inadmissible, because the legislation is so broad, and it gives no discretion to the Immigration and Refugee Board.

2. Grant ministerial relief

The Minister of Public Safety should grant ministerial relief, in a timely manner, to all applicants who are formally inadmissible on security grounds, but for whom there is no basis for believing that it would be detrimental to Canada's national interest for them to enter or remain in Canada.

For Eritreans in particular, it is recommended that the Minister adopt a general policy in favour of granting exemptions to Eritreans who have been found inadmissible based only on membership in an organization involved in the liberation movement, where there is no evidence of personal and knowing involvement in actual human rights abuses, terrorist acts, war crimes or crimes against humanity.

Such cases should receive expedited processing to bring an end to the problem of long-term legal limbo and to facilitate early family reunification and integration.

3. Waive inadmissibility through humanitarian and compassionate consideration

In the alternative, it is recommended that the Minister of Citizenship and Immigration grant waivers of inadmissibility, using his humanitarian and compassionate discretion.[25]

Such waivers should be granted to any person found inadmissible on security grounds based only on membership in an organization involved in the liberation movement, where there is no

[25] IRPA s. 25(1)

evidence of personal and knowing involvement in actual human rights abuses, terrorist acts, war crimes or crimes against humanity.

The waivers should also be applied to the family members, and processing should be expedited so as to end the problem of long-term legal limbo and to facilitate early family reunification and integration. While such a policy would still leave affected persons with the unjust label of "member of a terrorist group," it would at least provide relief from the legal impact of that designation.

4. Amend the law

The *Immigration and Refugee Protection Act* should be amended so that the security inadmissibility provisions (s. 34) apply more narrowly only to those who deserve to be excluded from Canada, based on their personal and deliberate acts.

As currently drafted, the provisions are overly broad, catching people who in no way represent a security risk and who have never engaged in or supported the illegitimate use of violence. Among the people these provisions exclude from Canada are people who participated in necessary struggles against oppression and dictatorship, on behalf of liberty and democracy.

PART VI: PROFILES

S.A. and O.A.

S.A. came to Canada in 2002 with her youngest son, expecting to be able reunite soon after with her husband, O.A., and her other children who were refugees in Sudan. S.A. was quickly recognized as a refugee, but she is still waiting for the rest of her family to join her.

The Canadian visa office in Cairo decided that O.A. is inadmissible to Canada based on his membership in the ELF. O.A. was a teacher in a school for Eritrean refugees in Sudan: to hold this job he needed to be a member of the ELF. O.A. insists that he had absolutely no involvement in any violent activities: on the contrary he states "teaching is my only profession, teach children how to read and write, and to be literate, and encourage them to think by themselves about their future, and how to differentiate between good and bad, and between peace and war, and to be self dependent and be away from violence." He points out that the ELF was a national movement, and most of the Eritrean people were involved in it, "thinking the ELF will save them from the violence which was at that time."

Because of the increasing insecurity of their situation in Sudan, O.A. and his other children moved several years ago to Egypt. There they do not have legal rights to stay or work, or go to school. O.A. survives on informal part-time jobs. He laments: "My children are not going to school, no job to support themselves, have tension about their future, separated from their mother."

Meanwhile in Canada, S.A. suffered kidney failure and is on dialysis. She missed her family most of all when she got the diagnosis – she desperately wanted them with her to support her.

The son with her has not been able to complete his education, because he is working to support his father, brothers and sister.

O.A. has requested ministerial relief and is waiting for a response.

As S.A. says, "we are no further ahead and my family still remains in Cairo. It is becoming a significant health stress for me and my husband too. I continue to strive towards bringing my family out of Cairo to be near me here in Canada. I and my family would be very grateful if you could look into this situation."

As this report was being finalized, S.A. reported that CIC's online service states that "a decision has been made" in the case of her husband, and that someone will contact him. They are waiting to find out what the decision is.

B.N.

B.N. is a married man in his 50s, with six children. The whole family lives in Ontario. His wife and children have all been accepted as refugees, but B.N. has been denied the possibility of refugee status because he has been found inadmissible.

He has never taken part in armed struggle, never held a gun, nor was he ever a prominent member of the independence movement. He left Eritrea in 1976 as a 20 year old and has never returned. While living in Saudi Arabia, where he had no permanent status, he joined the Eritrean Liberation Front. At the time, the ELF was officially recognized in Saudi Arabia as a legitimate governing authority and ELF rather than Ethiopian identity documents were used by Saudi authorities to issue work permits, driver's licences, etc.

B.N.'s participation in the ELF was limited to meeting with other Eritreans over tea, distributing the organization's pamphlets and making extremely modest donations. According to B.N., every Eritrean he met in Saudi Arabia at the time was also a supporter of the ELF.

The Immigration and Refugee Board found B.N. inadmissible because of his membership in the ELF while in Saudi Arabia, even though the Board recognized that there was no evidence to suggest that his role with the ELF was anything more than nominal.

As a result of the inadmissibility finding, B.N's refugee claim was terminated. He is awaiting a decision on an application for Ministerial relief. He is living a life in limbo, fearful that he will be returned to Eritrea where he faces sure persecution, terrified that he will be separated from his beloved family and profoundly unable to understand why he is considered anything of a threat.

At the same time, he continues with his everyday life with admirable grace. He is a valued employee, has volunteered for local community and environmental initiatives and is a dedicated husband and father. B.N. is a peaceful, gentle, highly tolerant and friendly individual. He does not pose, and has never posed, a danger to anyone.

A.T.

A.T. is a 62-year-old Eritrean citizen. She fled from Eritrea to Canada in 2005 and was recognized as a Convention Refugee in March 2006. Her husband and three of their six children remain in Eritrea.

As a farmer, A.T. never considered herself political, but felt she had no choice but to join the liberation movement when Eritrean Liberation Front (ELF) members presented themselves in her village as the defenders and liberators of Eritreans. This, combined with observations of Eritreans being horrifically repressed and slaughtered by Ethiopians, compelled her support.

From about 1967 until about 1982, A.T. supported the ELF. Her role was mainly to assist with the transfer of information between ELF cells regarding food requests. She also helped gather food and small amounts of money for the movement. Sometimes, she would provide meals for members passing through the area. AT became known as "Mama ELF" around her village. However, AT's role was confined to these minor domestic services. A.T. never held any formal position nor had any prominence within the ELF. She never engaged directly or indirectly in any violence. Since 1982 she has not had any involvement with the ELF.

A.T.'s participation in the ELF has caused her and her family much suffering. Their family home was destroyed by Ethiopian bombs three times. Their cattle were slaughtered or stolen by Ethiopian soldiers and their fields were destroyed in the fighting. Her family has lost more than 10 members and the EPLF-controlled army has persecuted her son.

A.T. came to Canada seeking a quiet and peaceful life. She worked at a poultry factory near Windsor, Ontario until a debilitating car accident in May 2009. She has no criminal records anywhere. Until Citizenship and Immigration Canada brought it to her attention, A.T. was unaware of any allegations that the ELF committed terrorist acts. As A.T. has always been opposed to violence against innocent people, she was shocked and deeply disturbed by the allegations against the ELF.

A.T. has been found inadmissible on security grounds. She has applied for Ministerial relief, but has not yet had an answer.

B.K.

B.K. grew up in Eritrea during the War of Independence. His father was arrested and never heard from again, as a result of his political opposition to the Mengistu regime. B.K.'s older brother died while fighting Ethiopian forces in Eritrea.

B.K. himself became a youth member of the EPLF, distributing pamphlets, promoting the EPLF's platform, and encouraging students to demonstrate against the Ethiopian government. When he was 20, B.K. was arrested for his involvement with the EPLF and for his failure to report for military service, which was mandatory in Ethiopia. For seven months he was detained, beaten, and threatened by government officials. He was released in 1987, and fled Ethiopia.

B.K. managed to get to the US, where he made a refugee claim. When Eritrea was liberated and the EPLF came to power, B.K. found he could no longer support the party and instead became a member of the ELF-RC, an opposition party that was critical of the EPLF.

When B.K. was denied asylum in the US, he was afraid of being deported to Eritrea, so he came to Canada and made a refugee claim.

In March 2005, he was determined to be a Convention refugee, in what was clearly a straightforward case as the hearing lasted only thirty minutes. He then applied for permanent residence. He is still waiting.

In March 2008, B.K. received a letter calling him to an interview with CSIS. Around the same time, he read a newspaper article about a fellow Eritrean woman who had been refused permanent residence on the basis of her involvement with the EPLF. Leading up to the interview, he experienced depression and anxiety, and had trouble sleeping as he imagined the same happening to him. He said of this, "you're always living in fear. You haven't owned a gun in your life, and yet people think you're a terrorist. That's not fair."

At the interview, the CSIS officer asked endless questions about his involvement with the Eritrean struggle, his knowledge of the individuals involved, and the different branches of the opposition movement. Many of the questions he did not know the answer to. When asked about his personal involvement with the ELF-RC, B.K. could only answer questions about his brief support for the group during his time in the United States, but not those about the group's past activities or initiatives.

A year after the interview, B.K. received a letter asking for additional medical and criminal background checks, which he has since complied with.

B.K. started to feel more hopeful that he would hear soon. But at the same time, he still felt fear and anxiety. He is no longer involved with the Eritrean community. He is confused as to why so many Eritreans who are past members of the ELF-RC can live in Canada – and have lived here for decades, yet he is viewed as a threat.

B.K. hoped that once he became a permanent resident, he could sponsor his mother and three siblings so that he can build his own community here in Canada. "I believe in democracy. When I was first given refugee status in Canada, I felt so relieved. But then the misery came."

Finally, in March 2010, B.K. was granted permanent residence.

H.M.T.

H.M.T. is a 34-year-old man who was born and raised in Eritrea. In 2001, H.M.T. fled from Eritrea to South Africa via Sudan to avoid indefinite conscription and possible torture in the Eritrean military.

He settled in Yeoville, a suburb of Johannesburg with a heavy population of immigrants from neighbouring African countries. It was one of the centres of xenophobic violence that spread like wildfire through South Africa in May 2008. For a two week period, mobs rampaged through Yeoville setting alight both property and people. Trapped in his house, unable to leave for fear of being murdered by the marauding mobs, H.M.T. lived in intense terror. In the ensuing violence, 62 people were killed, 670 people were injured, and hundreds of thousands of people were displaced.

H.M.T. should not have been in Yeoville at the time of the riots, and he should not be stranded there now. Sponsored by a refugee organization in Canada in November 2002, H.M.T.'s application for resettlement in Canada was accepted at the first stage in March 2005. However, on 24 October 2007, H.M.T. was informed that he was being denied permanent residence in Canada as he was inadmissible based on his involvement with the Eritrean People's Liberation Front (EPLF) and the Eritrean Liberation Front Revolutionary Council (ELF-RC).

While a child in Eritrea, H.M.T. had attended a school run by the EPLF. Although others were trained in the use of arms, H.M.T. was too young for this and he never played a role in any of the EPLF's liberation battles.

In January 1999, H.M.T. was arrested, imprisoned and severely tortured while trying to evade forced conscription. H.M.T. still bears the scars from this torture today. Six months after he was first incarcerated, H.M.T.'s release was secured via payment of a bribe. H.M.T. immediately fled to neighbouring Sudan.

While he was in the Sudan, H.M.T. was briefly involved with the ELF-RC, now working to oust the EPLF government by democratic means. H.M.T. supports the ELF-RC's democratic goals, but his primary reason for joining the ELF-RC was that, at the time, the ELF-RC enjoyed good relations with the Sudanese government. H.M.T. hoped that if he joined the ELF-RC, the organization might be able to intercede on his behalf should the Sudanese government attempt to deport him to Eritrea, where he would almost certainly be killed.

Because of this sense of insecurity in Sudan, H.M.T. fled to South Africa in July 2001, while he tried to find a more durable solution to his problems.

The March 2007 refusal letter from the Canadian government reads as follows:

> There are reasonable grounds to believe that you are a member of an inadmissible class of persons described in subsection 34 (1) of the Immigration and Refugee Protection Act …

> Specifically, you were a member of the Eritrean Liberation Front (Revolutionary Council). I have reached this conclusion because you stated that you were educated in the EPLF revolutionary school when you were 12 years of age until you were 17 years of age. You stated that you later joined the Eritrean Front Revolutionary Council (ELF-RC) in 2000. Open source research shows that the EPLF was involved in terrorist activities during the time that you were a member of the organization.

H.M.T. had explained in his interview that he had been taken to the EPLF school involuntarily, when he was still a minor. Although H.M.T. had explained clearly in his interview that the EPLF and the ELF-RC are separate and distinct organizations, in her decision the officer confused and conflated the two organizations. Although H.M.T. stated that the ELF-RC had never been involved in terrorism and had provided documentary evidence of this, the officer declined to consider this evidence, instead relying on undisclosed open source information to find to the contrary. Although representatives of the Minister have expressly stated that the ELF-RC is not a terrorist organization, the visa officer found that it was.

The visa officer's decision was successfully challenged in Federal Court, and H.M.T.'s case was returned to the Canadian visa office in Pretoria for a decision in accordance with the law. Given the danger that H.M.T. faced as a foreigner stranded in Yeoville, at a time when virulent xenophobia had exploded into horrific violence, an express oral undertaking was given to H.M.T. that the visa office would make best efforts to deal with his case expeditiously.

Despite these assurances, H.M.T. is still waiting. Repeated requests to the visa post for updates go unanswered. Meanwhile, the ethnic tensions that boiled over into the extreme violence witnessed in Yeoville in May 2008 have not abated, leaving H.M.T. and his wife in an extremely vulnerable situation in South Africa, and their family in Canada frantic with worry.

K.W.

K.W. is 52-year-old peace-loving Eritrean man. He is deeply committed to democracy, human rights, freedom and justice. His wife of 23 years and three children fled to Canada, where they were granted refugee status, and are now Canadian citizens. The family has been trying to reunite in Canada for over a decade, but K.W. has been barred entry on the basis of his past peripheral association with the ELF-RC.

K.W. was a member of the ELF-RC from its inception until 1990, during which time he was living in Jeddah, Saudi Arabia, with his wife and children, and working as a truck driver. K.W. served a very limited role as a local discussion group leader. In this capacity he organized small monthly meetings of mostly newly arrived Eritreans who wanted to hear about and discuss the activities of the ELF-RC in their home country and the independence movement generally. At these meetings K.W. collected dues of 10 riyals for the ELF-RC Red Cross to help Eritreans affected by the conflict. He also transported pamphlets to Sudan on occasion, a service facilitated by his job. However, K.W.'s involvement decreased over the years as a result of his waning interest in the movement, and his increased focus on his work and family. For this reason, his position was eventually taken away from him and he stopped making mandatory membership

donations.

K.W.'s involvement in the ELF-RC was based on his understanding that the organization was committed to a peaceful transition to democratic pluralism in an independent Eritrea. K.W. has always abhorred the use of violence against civilians and has never been personally involved in violence of any kind. He was never aware of, much less a supporter of, any of the alleged terrorist activities by the ELF-RC. To his knowledge, the ELF-RC has never been involved in terrorism.

K.W.'s role in the ELF-RC was minor and extremely limited. He was responsible for 12 members in a city where there were some 3,000 members. He had no responsibility for planning, policy-making or decision-making in any sense. Nor did he have access to sensitive organizational or strategic information about the ELF-RC's operations. He merely acted as conduit for information and donations, never receiving any personal benefit. Since discontinuing his membership two decades ago, K.W. has never rejoined the ELF-RC or any other Eritrean political organization.

Citizenship and Immigration Canada found K.W. inadmissible on security grounds for being an ELF-RC member. In response, K.W. applied for Ministerial relief. The Canada Border Services Agency, however, recommended against a grant of relief. K.W. has been waiting for the Minister to make a decision on the application since August 2008.

K.W. is currently living in an extremely precarious situation in Eritrea as a result of the lengthy delays in processing his case.

CONCLUSION

The increasing use of inadmissibility and exclusion proceedings against Eritreans has caused deep distress, firstly of course to those directly affected, but secondly to the Eritrean community in Canada. The consequences of inadmissibility findings are particularly severe in the Eritrean context given the human rights crisis that prevails in that country. Adding to the injury is the deep sense of injustice, since the individuals caught up in the admissibility process pose no threat to Canada or any other country. On the contrary, most are people of integrity who have personally demonstrated their commitment to the ideals of liberty, democracy, dignity and human rights. Most are also at significant risk of persecution if returned to Eritrea.

For all of the above reasons, we respectfully request that the Government of Canada reconsider its approach to the issues we have raised.

APPENDIX

Security inadmissibility, Immigration and Refugee Protection Act

The relevant section of the *Immigration and Refugee Protection Act* reads:

> Security
>
> 34. (1) A permanent resident or a foreign national is inadmissible on security grounds for
>
> (a) engaging in an act of espionage or an act of subversion against a democratic government, institution or process as they are understood in Canada;
>
> (b) engaging in or instigating the subversion by force of any government;
>
> (c) engaging in terrorism;
>
> (d) being a danger to the security of Canada;
>
> (e) engaging in acts of violence that would or might endanger the lives or safety of persons in Canada; or
>
> (f) being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b) or (c).
>
> Exception
>
> (2) The matters referred to in subsection (1) do not constitute inadmissibility in respect of a permanent resident or a foreign national who satisfies the Minister that their presence in Canada would not be detrimental to the national interest.

S.C. 2001, c. 27, s. 34, in force June 28, 2002 (SI/2002-97).