

# DECISION OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS ON REQUEST FOR REVIEW OF MERITS DECISION

## Communication 341/2007 - Equality Now and Ethiopian Women Lawyers Association (EWLA) v. Federal Republic of Ethiopia

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### Summary of facts

1. On 16 May 2007, the Secretariat of the African Commission on Human and Peoples' Rights (the Secretariat) received a Complaint from Equality Now and Ethiopian Women Lawyers Association (EWLA)<sup>1</sup> on behalf of Woineshet Zebene Negash (the Victim), against the Federal Republic of Ethiopia (the Respondent State).
2. The Complaint alleged the rape and abduction of the Victim who was 13 years old at the time, by Aberew Jemma Negussie ("Aberew") and four accomplices. The abduction was reported to the police who rescued her and arrested Aberew.
3. Aberew was later freed on bail, after which he once again abducted the Victim and hid her in his brother's house. She was held there for a month and was forced to sign a marriage contract. A month later, she escaped and ran to a police station. On 22 July 2003, Aberew was sentenced to 10 years imprisonment without parole and his four accomplices were each convicted of abduction and sentenced to 8 years imprisonment, by the Guna Woreda Court.
4. Aberew and his accomplices lodged an appeal, and on 4 December 2003, the High Court of the Arsi Zone, sitting on appeal quashed the decision of the lower court on the basis that the "evidence suggests that the act was consensual", and released the five men from prison. Furthermore, instead of supporting the Victim's case, the Zonal Prosecutor recommended that the verdict of the lower court be reversed and stated that he had no objection if the defendants were set free.
5. Upon a further appeal made by the Victim against the ruling of the High Court, the Oromia Supreme Court held that there were not sufficient grounds to reconsider the case and dismissed the appeal.
6. A final appeal was made to the Cassation Bench of the Federal Supreme Court and on 12 January 2006, it was dismissed on the basis that it had no jurisdiction to hear the case because no error of law had been committed.
7. The African Commission on Human and Peoples' Rights (the Commission) became seized of the Communication at its 41<sup>st</sup> Ordinary Session, held from 16 - 30 May 2007, in Accra, Ghana.

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<sup>1</sup> Both Complainants at the initial stage of the Communication

8. Submissions on Admissibility were received from the Parties on 10 October 2007 and 29 October 2007 respectively from the Complainants and the Respondent State.
9. On 10 May 2008, during the 43<sup>rd</sup> Ordinary Session of the Commission, the Complainants informed the Secretariat that the Respondent State was seeking an amicable settlement of the matter; and on 13 May 2008, during the said Session, both the Complainants and the Respondent State met in the presence of the Secretariat to discuss the terms of the amicable settlement.
10. A meeting of the Parties and the Victim was convened by the Rapporteur for the Communication on 17 and 18 November 2008, during the 44<sup>th</sup> Ordinary Session of the Commission, and the Parties were requested to provide an update regarding the amicable settlement. The meeting agreed that the Respondent State would provide an update about the situation of the case.
11. On 23 January 2009, the Secretariat requested for an update on the amicable settlement process, and on 28 January 2009, the Secretariat received a correspondence from the Complainants, addressed to the Respondent State, stating that contrary to the submission by the Respondent State to the Commission that the *“amicable settlement [was] progressing in a satisfactory manner”*, there was a lack of progress in reaching an amicable settlement. The Complainants also indicated that they had never received any formal written response from the Government addressing the conditions that were expected to be met in an amicable settlement, and called upon the Respondent State to complete addressing the terms of settlement and provide written confirmation of this, backed by documentary evidence, by 1 April 2009.
12. Between 1 April 2009 and 21 April 2009, the Secretariat received correspondences exchanged by both Parties, indicating that the Parties held a meeting regarding the amicable settlement on 9 April 2009, and that the Complainants were not satisfied that the Respondent State had taken any concrete steps towards meeting the terms of the amicable settlement.
13. On 13 November 2009, the Complainants provided an update to the Secretariat regarding the steps taken by the Respondent State in meeting the terms of the amicable settlement, indicating that these efforts did not sufficiently meet their requests and that a settlement had not been finalized despite their frequent written communications to and meetings with the Respondent State. The Complainants therefore requested the Commission to use its good offices to facilitate and finalize an amicable settlement during the 46<sup>th</sup> Ordinary Session of the Commission.
14. On 17 and 18 November 2009, on the margins of the 46<sup>th</sup> Ordinary Session of the Commission, a meeting of the Parties was facilitated by the Commissioner Rapporteur for the Communication, following which: (i), the Complainants elaborated the key issues for consideration by the Commissioner Rapporteur, to

charter an amicable settlement in the matter; and (ii) the Respondent State agreed to respond to the terms of settlement by May 2010.

15. Between 22 April 2010 and 24 August 2010, the Complainants informed the Commission that they had failed to reach an amicable settlement with the Respondent State, and therefore requested the Commission to advise them on the next course-of-action, as well as to re-open the matter on Admissibility.
16. On 7 September 2011, the Victim informed the Secretariat that she no longer wished to be represented by EWLA, and henceforth she was represented by Equality Now only.
17. During the 50<sup>th</sup> Ordinary Session of the Commission which was held from 24 October to 7 November 2011, the Respondent State gave correspondence to the Secretariat and the Complainants indicating that: the Respondent State was constructing a house for the Victim which would be handed over to her by 27 October 2011; the Victim had left the job which the Respondent State had offered her; and the Respondent State had initiated a case to take disciplinary measures against the prosecutors who committed fault in the trial process of the case.
18. On 5 October 2012, the Complainant of the Victim (Equality Now) requested the Commission to proceed to determine the Admissibility of the Communication. On 15 November 2012, the Secretariat informed the Respondent State of the request from the Complainant that the matter should proceed to Admissibility.
19. The Commission proceeded to determine the Admissibility of the Communication on the basis that the State did not honour its undertakings on amicable settlement, and at its 15<sup>th</sup> Extra-Ordinary Session, which held from 7 to 14 March 2014, in Banjul, The Gambia, the Commission considered the Admissibility of the Communication and declared the same admissible.
20. By letter of 25 June 2014, EWLA (the former co-Representative of the Victim) sent a correspondence to the Secretariat informing the Commission that the Respondent State and EWLA settled the matter amicably and requested that the case be closed on that basis. EWLA specifically indicated that the Victim was employed at a Government Institution as promised by the Respondent State and that the Victim was currently abroad after her request for Leave of absence from her job.
21. EWLA also informed the Commission that the Respondent State through the Oromiya Regional State had provided a Title Deed in the Victim's name for ownership of the house which had been constructed as promised to the Victim. EWLA stated that its Representatives were witnesses to the Title Deed and the house and they were given a copy of the Title Deed under the Victim's name. While confirming that the house was completed, they stated that the house could not be handed to the Victim in *absentia*, and that her Father refused to take the house on her behalf on account that he did not have Power of Attorney to do so.

22. In addition, EWLA stated that disciplinary measures had been taken against the Prosecutor who was the root cause of the jeopardy against the Victim; and that the Respondent State also took disciplinary measures against the Judge of the High Court of the Arsi Zone, who quashed the decision of the lower court and released the five men. EWLA concluded that the Respondent State had taken commendable measures and had performed per its agreement under the amicable settlement, and that they were satisfied with the measures taken by the Government under the circumstances.
23. On 15 May 2014 and 6 August 2014 the Secretariat received submissions on the Merits of the Communication from the Complainant (Equality Now) and the Respondent State respectively.
24. On 10 October 2014, the Secretariat received a letter from the Victim, reiterating her representation before the Commission by Equality Now.
25. The Commission adopted a decision on the Merits of the Communication in favour of the Victim, during its 57<sup>th</sup> Ordinary Session held from 4 to 18 November 2015 in Banjul, The Gambia; the Parties were notified on 23 November 2015, and the text of the decision transmitted on 4 March 2016.

#### **Summary of the Application for Review from the Respondent State**

26. On 22 June 2016, the Secretariat received a motion for review of the Commission's Merits decision for the referenced Communication from the Respondent State.
27. In its submissions for review, the Respondent State asserted that it was dissatisfied with the Merits decision of the African Commission on the Communication, in particular the decision recommending the payment of compensation to the Victim while the Respondent State had already made all the necessary efforts to redress the issue brought before the Commission regarding the Victim through an amicable settlement.
28. The Respondent State submitted that, the Government approached the Victim and EWLA with an offer for amicable settlement and discussed the terms on numerous occasions. Eventually, an agreement was reached to purchase an Apartment for the Victim in Adama City. Subsequently, the Ministry of Foreign Affairs coordinated all of the actors involved to ensure implementation of the amicable settlement. Although the house was built and a Title Deed prepared for the Victim, she left the country before receiving the Title Deed.
29. The Respondent State submitted that the Ministry of Foreign Affairs approached EWLA to ensure that the Victim appointed a Representative to receive the Apartment on her behalf, following which EWLA communicated with the Victim's Father regarding the matter, which did not yield any results.

30. The Respondent State further submitted that, for reasons which are not yet clear and to the dismay of the Government, the Complainant – Equality Now- requested the Commission to proceed with consideration of the Communication after which the Commission determined the Communication admissible.
31. The Respondent State averred that when it made its submissions on the Merits of the Communication, it also attached the letter from EWLA relating to the amicable settlement reached with the Victim and her legal representative (EWLA). Furthermore, the State indicated that the Government of Ethiopia also took disciplinary measures against the zonal prosecutor and removed the judge at the Arsi High Court that abdicated its duty and caused the undue acquittal of the perpetrators of the crimes against the Victim.
32. According to the Respondent State, the Commission should have closed the Communication when EWLA notified the Commission about the amicable settlement reached by virtue of Rule 109 (6) of the Rules of Procedure of the Commission, and that the Commission erred by adopting a decision on the Merits with the knowledge that an amicable settlement had been reached on the matter.
33. On the above basis, the Respondent State requested revision of the Commission’s decision on the Merits as per Rule 111 (2)(c) of the Rules of Procedure of the Commission which allows the Commission to revise its decision in order to ensure justice and fairness and promote respect of human rights.

#### **Summary of Complainant’s submissions on Review**

34. On 12 July 2019, the Complainant made observations on the Respondent State’s motion for review.
35. The Complainant states that in September 2011, the Victim relieved EWLA from their duty to represent her and retained Equality Now as her only representative in this Communication.
36. The Complainant further states that failure to reach an amicable settlement between the Parties prompted the Commission to move to the Merits stage and its subsequent decision which the Respondent State now sought to review.
37. The Complainant opposes the motion to review the Commission’s decision as set out in the observations herein.
  - i. The Respondent State claims that an amicable settlement was reached, whereas there was no such settlement which resulted to the Complainant requesting the Commission to proceed on the Admissibility of the Communication, and subsequently the Merits.
  - ii. The Victim who was feeling intimidated fled Ethiopia and was awarded asylum in another country. Therefore, according to the Complainant, the Commission did not err to proceed to the Merits stage as there was no proof of an amicable settlement.

- iii. In its motion to review, the Respondent State did not provide any supporting document to prove that it met the proposed terms of the amicable settlement. It is erroneous for the Respondent State to construe the Commission's decision as setting aside an amicable settlement when the decision was clearly based on the Merits submissions, in the absence of proof of an amicable settlement.
  - iv. In particular, the Respondent State again failed to provide proof that the title deed for the house for the Victim was supplied and deeded appropriately; failed to provide documentary proof that disciplinary action, including the removal mentioned in the motion to review, was taken against the judge who overturned the lower court decision, despite the Complainant's repeated requests to the Respondent State for formal documentation to this effect; and failed to provide proof of adequate compensation to the Victim.
38. The Complainant submits further that no additional compensation had been referred to by the Respondent State that would adequately fund the Victim's education and training leading to a viable livelihood.
39. The Complainant also submits that the Commission's Rules of Procedure provide clear guidelines on the recognition of an amicable settlement. Rule 109 (5) provides that, once the Commission receives notification from Parties of an amicable settlement, it proceeds to ensure that the amicable settlement complies with the rights and freedoms under the African Charter; that the Victim consented to and is satisfied with the terms of the settlement; and that the amicable settlement includes an undertaking by Parties to the Communication to implement its terms.
40. The Complainant submits that following the satisfaction of the above requirements, Rule 109 (6) then requires the Commission to prepare a report containing a brief statement of facts, explanation of the settlement reached, the Commission's recommendations of the steps to be taken by Parties to ensure the maintenance of the settlement, and the Commission's steps to monitor the Parties' compliance with the terms of the amicable settlement. The Complainant avers that none of these requirements were fulfilled and therefore an amicable settlement, as claimed by the Respondent State, cannot be said to have existed.
41. The Complainant refutes the Respondent State's assertion that "*the Commission has always ordered payment of damages based on the domestic legal regime of the respective state.*" According to the Complainant, this statement is inaccurate because neither the African Charter nor the Commission's Rules of Procedure prevent the Commission from issuing damages in respect to instances of violations under the African Charter.
42. The Complainant avers that the Respondent State's motion to review is premised upon Rule 111 (2) (c) of the Rules of Procedure, under which the Commission may review its decision if it is satisfied that there is a "*compelling reason or situation that*

*the Commission may deem appropriate or relevant to justify review of a Communication, with a view to ensure fairness, justice and respect for human and peoples' rights."* The Complainant submits that the Respondent State has not provided any further or compelling reason or situation to warrant a review of the Communication, and therefore, the Respondent State's motion to review does not meet the criteria required for the Commission to review its decision.

43. The Complainant urges the Commission:

- a. to dismiss the motion to review by the Respondent State and to uphold its decision;
- b. to strongly recommend the Respondent State to implement its decision and report on its implementation;
- c. to adopt and publish guidelines for determining appropriate remedies in communications filed before it.

44. In conclusion, the Complainant takes note of and commends the Government of Ethiopia for the positive legislative and other measures taken towards enacting the revised Criminal Code and the Family Law.

#### **The Commission's analysis on the Motion for Review**

45. Before delving into the crux of the motion for review, it is important to first of all establish whether EWLA, which concluded the purported amicable settlement negotiations with the Respondent State, has standing before the Commission.

46. From the forgoing summary of facts, it is clear that the Victim was initially represented by two Complainants- EWLA and Equality Now. However, On 7 September 2011, the Victim communicated to the Secretariat that she no longer wished to be represented by EWLA, and henceforth she was represented solely by Equality Now. This was reiterated on 10 October 2014.

47. What is the implication of this? Simply, that EWLA no longer had capacity to represent the Victim, and by extension, had no standing before the Commission. Indeed, the Commission, in its merits decision, opined that it had on record the Victim's own correspondence terminating legal representation by EWLA. According to the Commission, from the date of such termination, EWLA had no basis for purporting to represent the Victim in negotiations with the Respondent State. The Complainant indeed stated that *"There had been no further negotiations between the Victim, or Equality Now as her only legal representation, and the Respondent State. As a result, no settlement agreement was reached."*<sup>2</sup>

48. In this regard, any actions taken by EWLA on behalf of the Victim are a nullity, and so is the purported amicable settlement negotiations with the Respondent State and the validity of the letter notifying the Commission on the process.

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<sup>2</sup> Ibid, para 103 of Complainant's reply to the Respondent State's submissions on Merits

49. Having settled the issue of representation, and established that the only current legal representative of the Victim before the Commission is Equality Now, the Commission will now proceed to look at its relevant Rules of Procedure in order to determine the eligibility of the motion for review of the Respondent State.

50. Rule 111 of the Rules of Procedure of the Commission, upon which the motion for review from the Respondent State is premised, sets out the criteria for determining review of merits decisions. It states thus:

*“(1) once the Commission has taken a decision on the merits, it may, on its own initiative or upon the written request of one of the Parties, review the decision.*

*“(2) In determining whether to review its decision on the merits, the Commission shall satisfy itself of the following:*

- a) That the request is based upon the discovery of some facts of such a nature as to be a decisive factor, which fact was not known to the Commission and the party requesting the review, provided that such ignorance was not due to negligence;
- b) That the application for review is made within six months of the discovery of the new facts;
- c) Any compelling reason or situation it may deem appropriate or relevant to justify review, with a view to ensure fairness, justice and respect for human and peoples’ rights.

*(3) No application for review may be made after 3 years from the date of the decision. “*

51. On the basis of the established criteria for determining Review:

- i. The motion for review was initiated by the Respondent State in line with Rule 111 (1);
- ii. Regarding Rule 111(2), the Respondent State contends that the matter was settled amicably through EWLA and therefore the Commission erred by still adopting a decision on Merits and requesting the Respondent State to pay compensation to the Victim which was already done within the framework of the amicable settlement. In fact, this does not amount to a new fact as underlined by the Complainant in terms of Rule 111(2) (a), as it was extensively dealt with by the Commission in the Communication and ruled upon, which eliminates the relevance of Rule 111 (2) (a);
- iii. Linked to the above, the motion for review was sent within six months, even though as already established, the facts cannot be classified as new, in line with Rule 111 (2) (b);
- iv. Finally, regarding Rule 111 (2) (c), the question that immediately comes to mind is whether the Commission finds any compelling



reason or situation that would warrant a revision of the case and that would subsequently impact on the merits of the same.

52. What is at stake therefore is whether in terms of Rule 109 of the Rules of Procedure of the Commission which caters for the possibility of the Parties settling their dispute amicably, and of which the Respondent State's arguments are hinged on, the Commission can find any reason to defer to the request for review.
53. Specifically, according to Rule 109 (2), "*The amicable settlement procedure shall be initiated, and may only continue, with the consent of the parties*"; and according to Rule 109 (4), "*The Commission may terminate its intervention in the amicable settlement procedure at the request of one or both parties, within a period of six months, renewable once, when an amicable settlement is not reached*".
54. It will be recalled that the amicable settlement was instituted in May 2008, following which meetings were held by the Parties in November 2008, April 2009 and November 2009. After a lengthy process negotiating an amicable settlement, the Commission was informed by the Complainant in 2012 to proceed with determining the matter on Admissibility. It was following that advice that the Commission proceeded to adopt a decision on Admissibility and subsequently, on Merits. As a matter of fact, the State also made submissions on the Merits.
55. It should be highlighted here that there was an inordinate delay of 2 years in settling the matter amicably, as opposed to the 6 months, renewable once period stipulated by Rule 109 (4) of the Rules of Procedure of the Commission. Furthermore, by opting out of the amicable settlement, the Complainant no longer consented to any measures taken thereafter as stipulated by Rule 109 (2) of the Rules, and in this regard, the Commission therefore did not err in law by proceeding on the Admissibility and subsequently, the Merits of the case.
56. Furthermore, Rule 109 (5) of the Rules of Procedure requires *inter alia* that when the Commission receives information from Parties that an amicable settlement has been reached, it shall ensure that that the Victim of the alleged human rights violation or, his/her successors, as the case may be, have consented to the terms of the settlement and are satisfied with the conditions. In the present Communication, the Victim is said to be out of the country; did not receive the Title Deed of the Apartment referenced by the Respondent State, neither did the Victim's Father. The Commission was therefore not persuaded that the Victim was satisfied with the conditions of the settlement in terms of Rule 109 (5), and therefore proceeded to consider the matter on the Merits, as it was not satisfied that the requirements under Rule 109 (5) had been met.
57. Furthermore, the Commission supports the Complainant's observations on the Respondent State's motion for review that the Respondent State had an opportunity during its motion for review to establish the veracity of the amicable settlement claimed. Submission of evidence was also highlighted by the Commission in its

decision on Merits, including the supposed Title Deed and other relevant documentation. This could allow the Commission to effectively consider a revision of the matter. This was not done, and in this regard, compounded with the fact that no new information has been submitted regarding the case as required under Rule 111 (2) (a) of the Commission's Rules of Procedure, the Commission has no basis for reopening the matter for any review as any decision taken thereafter will not impact on the Merits of the case.

58. In addition to the above, in the Commission's analysis on the Merits relating to the purported amicable settlement, in noting the Respondent State's averments that it already compensated the Victim in accordance with the settlement agreement reached through EWLA acting on behalf of the Victim, the Commission highlighted the submissions of the Complainant. The Commission indicated that settlement negotiations terminated in 2012 following lack of commitment from the Respondent State. The Commission noted that, indeed it was on the basis that settlement negotiations had been terminated that the Commission resumed consideration of the Communication on admissibility, and therefore the Commission cannot have regard to the purported settlement agreement.<sup>3</sup>
59. The Commission went further to opine that, even if it had regard to the purported settlement agreement, the Respondent State did not produce any evidence of the measures it purportedly took in compliance with the terms of the alleged settlement agreement. The alleged measures were of the nature that would ordinarily be documented. Moreover, the Commission has on record the Victim's own correspondence terminating legal representation by EWLA. According to the Commission, from the date of such termination, EWLA had no basis for purporting to represent the Victim in negotiations with the Respondent State.<sup>4</sup>
60. The Commission asserted in particular that, the Victim who proceeded on the understanding that the settlement negotiations had been terminated, left the country and therefore the house may not be of much immediate benefit to her. In the circumstances, the Commission considered that if indeed the Respondent State built a house as indicated, the house could be processed to form part of reparations that have practical utility to the Victim.<sup>5</sup>

### **The Decision of the African Commission on Review**

61. In view of the above, the African Commission on Human and Peoples Rights decides that the motion for review be dismissed on the basis that the requirements for the Commission to proceed with review in terms of Rule 111 (2) (c) have not been met, as there are no compelling reasons to review the Communication.

**Adopted by the African Commission on Human and Peoples' Rights at the 27<sup>th</sup> Extra-Ordinary Session from 19 February to 4 March 2020**

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<sup>3</sup> ACHPR Merits decision-*Communication 341/07 – Equality Now v Ethiopia*, para 155

<sup>4</sup> *Ibid* para 156

<sup>5</sup> *Ibid* para 157