

Federal Court



Cour fédérale

Date: 20250130

Docket: IMM-7394-23

Citation: 2025 FC 191

Toronto, Ontario, January 30, 2025

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

LAWAYESH TEWEDIE NEGATIE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The Applicant, Lawayesh Tewedie Negatie, was a member of the Ethiopian House of Peoples' Representatives (MP) from October 2015 until March 2019. She was elected as a representative of the governing party at the time. In March 2019, she fled Ethiopia and made her way to Canada where she claimed refugee status. The merits of her refugee claim, her claim of persecution, have not been decided.

[2] The Refugee Protection Division (“RPD”) and the Refugee Appeal Division (“RAD”) both found that Ms. Negatie was excluded from obtaining refugee protection under Article 1F(a) of the *United Nations Convention Relating to the Status of Refugees*, 28 July 1951, 189 UNTS 137 [*Refugee Convention*] and section 98 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] because of her work as an MP during the time the government was committing crimes against humanity in the Oromia region between 2015 and 2017. In particular, the RAD found that Ms. Negatie’s vote in favour of declaring a state of emergency in October 2016, in the context of a widespread and systematic attack on Oromo protesters, made her complicit in the Ethiopian government’s crimes against humanity.

[3] On judicial review, Ms. Negatie has raised a number of challenges to the RAD’s exclusion decision. She has not raised any procedural concerns. The parties agree, as do I, that I am to review the substance of the RAD’s exclusion decision on a reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 16).

[4] After carefully reviewing the RAD’s thorough decision, I find Ms. Negatie has not raised any sufficiently serious shortcoming that renders it unreasonable. I am therefore dismissing the judicial review.

II. Background and Procedural History

[5] Ms. Negatie is a citizen of Ethiopia. She was elected as a representative of the Amhara National Democratic Movement (“ANDM”), a constituent party of the Ethiopian People’s

Revolutionary Democratic Front (“EPRDF”), in October 2015. The 2015 elections were criticized as not being free or fair, with the EPRDF and its allies winning every seat in the House of Peoples’ Representatives. The EPRDF was still the governing party during the key period at issue in this judicial review (2015-2017). Ms. Negatie served as an MP until March 2019 when she fled the country.

[6] The focus of the exclusion decision was on the EPRDF-led government’s actions against Oromo protesters and perceived political dissidents in the 2015-2017 period. The RAD found that during this period, the government launched a widespread and systematic attack against protestors in the Oromia region, arbitrarily arresting, detaining, torturing, and killing people in response to protests in the region.

[7] The RAD found the state of emergency proclamation, which Ms. Negatie voted in favour of in October 2016, resulted in the militarization of the country’s response to the protests, mass arbitrary arrests and detentions without procedural protections, that included use of torture against detainees and further restrictions on documenting and reporting what was happening in the region. The RAD concluded that Ms. Negatie was complicit in crimes against humanity by voting for the state of emergency that facilitated and furthered the security forces’ use of torture against detainees.

[8] The RPD held hearings over three days in 2021 and 2022 and issued its decision excluding Ms. Negatie on September 1, 2022. The RAD did not accept a number of the RPD’s credibility assessments and found some portions of its complicity analysis to be confusing. The

RAD did, however, confirm the RPD's finding that there are serious reasons for considering that Ms. Negatie voluntarily made a significant and knowing contribution to torture, a crime against humanity, committed by the EPRDF-led government. On May 25, 2023, the RAD issued its decision excluding Ms. Negatie from refugee protection under the combined effect of section 98 of the *IRPA* and Article 1F(a) of the *Refugee Convention*.

III. Analysis

A. *Legal framework and Challenge to the RAD's Core Findings*

[9] Article 1F(a) of the *Refugee Convention* states:

The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that: he has committed a crime against peace, war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes.

[10] There is no allegation that Ms. Negatie directly committed a crime against humanity.

This case is about evaluating Ms. Negatie's complicity in assisting the furtherance of the government's crime against humanity.

[11] The Supreme Court of Canada in *Ezokola v Canada (Citizenship and Immigration)*, 2013 SCC 40 [*Ezokola*] set out a contribution-based test for finding complicity and explicitly rejected the "guilt by association/passive acquiescence approach" (*Ezokola* at paras 30, 81-82). The Supreme Court explained that in order to establish that there are serious reasons for considering a claimant has been complicit in furthering the commission of a crime against

humanity, the claimant must have *voluntarily* and *knowingly* made a *significant* contribution to a crime against humanity (*Ezokola* at para 84).

[12] The RAD set out that “between 2015 and 2017, the EPRDF-led government committed torture as part of a widespread or systemic attack directed against a civilian population, with knowledge of the attack.” The RAD explained that these crimes amounted to a crime against humanity:

There is no doubt that torture occurred against detainees in Ethiopia between 2015 and 2017, but it is the context under which it occurred that elevates it to a crime against humanity. Torture, being a proscribed act, was frequently committed by Ethiopian security forces as part of a widespread of [sic] systematic attack against protesters and perceived political dissidents between 2015-2017. This attack involved a course of conduct involving the multiple commission of acts of torture against protesters, pursuant to or in furtherance of a state or organizational policy to commit such an attacks. The Ethiopian government was not only aware that the torture was occurring, but it sanctioned its occurrence, knowing it to be part of the attack.

[13] The determinative issue before the RAD was whether there are serious reasons for considering that by voting in favour of the state of emergency proclamation (that required two thirds of the votes of the House of Representatives to pass), in the context of a widespread and systematic attack by the EPRDF-led government on the Oromo people where torture against detainees was occurring,), Ms. Negatie *knowingly* and *voluntarily* made a *significant* contribution to crimes against humanity.

[14] Ms. Negatie argues that while there was evidence that torture occurred in the context of the government response to the Oromo protests, there was insufficient evidence before the RAD

that torture occurred during the state of emergency period. She also argues that on each of the three elements to make out a complicity finding set out in *Ezokola* — knowledge, voluntariness, and significant contribution — the RAD made unreasonable findings. I do not agree. I find the RAD’s evaluation of the evidence of torture to be reasonable. I also find that the Applicant has not established a sufficiently serious shortcoming in the reasoning on any of the elements of the complicity test.

B. *Evidence of Torture During the State of Emergency Period*

[15] Ms. Negatie asked this Court to consider the security forces’ attacks on the Oromo people in the Oromia region during two periods: pre-state of emergency (2015-October 2016) and the state of emergency period (October 2016-August 2017). She argues that since the RAD finds her culpable conduct to consist of voting in favour of the state of emergency, it is critical that there be evidence of torture occurring during the state of emergency period. While she acknowledges the evidence of torture against protestors in the period preceding the state of emergency, she argues that the evidence before the RAD does not confirm torture was used during the state of emergency period (October 2016 –August 2017). I am not persuaded.

[16] There are certainly more detailed accounts of torture occurring against protestors during the period just prior to the state of emergency (for example: Human Rights Watch’s lengthy report, “Such a Brutal Crackdown: Killings and Arrests in Response to the Ethiopia’s Oromo Protests”, dated June 15, 2016). This is not surprising given that following international condemnation of the 2014-2016 attacks on protestors, the government passed a cybercrimes law

in June 2016 that placed restrictions on individual's' online activities. There were also further restrictions on communications after the state of emergency proclamation passed.

[17] However, there is no basis to find that the RAD's determination that the security forces tortured detainees in the 2015-2017 period, including after the state of emergency was declared in October 2016, was unreasonable. The RAD's finding on this point is consistent with the evidence before it.

[18] Ms. Negatie argues that this evidence references the entire period from 2015-2017, without specifically indicating that torture was occurring in the state of emergency period. I do not agree.

[19] The RAD specifically addressed both time periods in its reasons. While some of the evidence references 2015-2017, there was also evidence that specifically addressed the state of emergency period. The Australian DFAT Country Information Report, DFAT Country Information Report Ethiopia dated August 12, 2020, ("DFAT Report") before the RAD noted that detainees arrested during the state of emergency period reported being tortured.

[20] This is also consistent with the RAD's finding that torture was frequently used against perceived dissenters by the security forces prior to 2018. Ms. Negatie does not point to any evidence to suggest that security forces took a different approach during the state of emergency period. In fact, in relation to the significance of her contribution, she argues that the objective evidence confirmed that the state of emergency was "merely a formality, and the criminal

practise of the government existing before the [state of emergency] continued during the [state of emergency]” (Applicant’s Further Memorandum of Argument).

C. *Significant Contribution*

[21] A key issue in complicity cases is determining the degree of an individual’s contribution to international crimes and whether it was “significant”. It is not sufficient to find that there is “some” contribution to the crime or the criminal purpose at issue. The degree of the contribution must be explained. The Supreme Court in *Ezokola* cautioned: “Given that contributions of almost every nature to a group could be characterized as furthering its criminal purpose, the degree of contribution must be carefully assessed” (*Ezokola* at para 88).

[22] The RAD carefully explained the nature of Ms. Negatie’s contribution and how it was significant in facilitating and furthering the commission of crimes against humanity. It set out that a state of emergency proclamation required the approval of two thirds majority of the House of Peoples’ Representatives. The RAD noted that “this placed [Ms. Negatie] among a select group of people who were empowered to reject the government’s heavy-handed and authoritarian response to the protests that were occurring.” The RAD further found:

Despite widespread reports about mass arrests of protestors and their mistreatment, including torture in detention, [Ms. Negatie] voted in favour of a state of emergency proclamation that further militarized the government’s response to the protests and stripped away legal and procedural protections for detainees.

[23] Ms. Negatie raises three concerns with the RAD's evaluation of her degree of contribution. First, she argues that voting for the state of emergency was a legitimate and lawful response to the outbreak of riots in the preceding week in the Oromia and Amhara regions.

[24] As recently explained by Justice Grant, "an individual can be complicit in crimes against humanity in the course of performing legitimate duties" (*Alamri v Canada (Citizenship and Immigration)*, 2024 FC 1333 at para 65; see also *Akene v Canada (Citizenship and Immigration)*, 2024 FC 397 at para 27). The RAD accepted that voting in favour of the state of emergency was a lawful exercise of power. It did not, however, accept that it was a legitimate response in the context of ongoing EPRDF-led government's widespread and systemic attack on protestors. The RAD explains how it comes to this conclusion. It was open to the RAD, based on the evidence before it, to come to this conclusion. Ms. Negatie's arguments on this point ultimately are a request for this Court to reweigh this evidence, which is not my role on judicial review.

[25] Next, Ms. Negatie argues that the state of emergency only formalized activities that were already taking place. In other words, the security forces were already arbitrarily arresting and detaining protestors: the state of emergency only formalized it. The RAD made clear findings about the "serious consequences" that came about because of the state of emergency proclamation, including militarization of the government's administration. The RAD's reasons on setting out the consequences of the state of emergency are extensive and cannot be fully set out here. The RAD explained that "law enforcement organs across the country fell under the control of the Prime Minister's Command Post, which led and enforced the state of emergency measures." The RAD found that this led to "mass arrests and detentions of civilians on arbitrary

grounds, and torture became frequently reported amongst those who were detained.” The RAD further found the Command Post “imposed a blanket ban on protests country-wide as well as broad restrictions on the ability to share material over social media, radio, television, and the internet.” Ms. Negatie has not argued that the RAD misconstrued the evidence I have summarized on these consequences. There is no basis for the Court to interfere with the RAD’s assessment of the consequences of the state of emergency proclamation.

[26] Lastly, Ms. Negatie argues that the RAD made a factual error when it stated a number of times in the decision that she had voted to extend the state of emergency in March 2017 for a further four months. I agree with Ms. Negatie on this point. The RAD’s factual determination is unsupported by the evidence in the record: there is no direct evidence that she voted to extend the state of emergency; nor was Ms. Negatie ever asked if she did so at the RPD hearing. Moreover, there is evidence that directly contradicts that she would have been present for the vote because hospital records indicate that she was in the hospital on the day the vote took place.

[27] Even though I find the RAD erred on this factual determination, in my view, this is not a significant shortcoming in the context of the overall decision. Specifically, this factual error does not impact the RAD’s key finding that the vote to proclaim a state of emergency in October 2016 significantly contributed to furthering the EPRDF’s crimes against humanity. As noted by the Respondent, there was no evidence that crimes against humanity took place in only the last four months, after the extension of the state of emergency. In these circumstances, and considering the entirety of the RAD’s reasons, I find this factual error is a minor misstep and not one that could have impacted any of the RAD’s core findings.

D. *Knowledge of the Contribution*

[28] *Ezokola* explains that in order to be complicit in crimes committed by a government, an individual “must be aware of the government’s crime or criminal purpose and aware that his or her *conduct* will assist in the furtherance of the crime or criminal purpose” (*Ezokola* at para 89) [Emphasis in original]. An individual does not have to “mean to cause the consequence of their conduct” to be found complicit in the furthering of a government’s crimes. The “intent and knowledge” requirement of the legal test for complicity is sufficiently made out if the individual “is aware that it [the consequence of furthering the government’s crimes] will occur in the ordinary course of events” (*Ezokola* at para 90). Here, the RAD found that Ms. Negatie’s culpable conduct was voting in favour of a state of emergency in October 2016. The RAD concluded that it found it “highly unlikely that [Ms. Negatie] was unaware that she was advancing the commission of crimes against humanity by voting in favour of the state of emergency proclamation.”

[29] Ms. Negatie does not raise any sufficiently serious shortcoming with the RAD’s determination or reasoning on this issue. She argues that the RAD’s assumption that she would be aware of the government’s crimes against humanity does not consider the restriction to media access. This argument does not engage with the RAD’s detailed reasoning on this point.

[30] The RAD explains that the EPRDF-led government was explicit in their attack of protestors in the months leading to the state of emergency vote. For example, the RAD referenced that in December 2015, Prime Minister Hailemariam Desalegn stated that his

government would be “merciless” towards the protestors, who were described as “anti-peace forces”. Further, the RAD noted that “a group of United Nations human rights experts also called on authorities to end the ongoing crackdown on peaceful protests by security forces” and that “by mid-2016, Human Rights Watch estimated that over 400 people had been killed, thousands injured and tens of thousands arrested.” The RAD also referenced that weeks before the state of emergency vote, the government “rejected a request from the United Nations High Commissioner of Human Rights to allow international observers to access conflict zones and evaluate the situation.”

[31] The RAD understood that Ms. Negatie was arguing that she was not aware that her vote would further or facilitate the government’s crimes against humanity. Based on the evidence before it, the RAD rejected Ms. Negatie’s assertion, and found that given her position as an MP, “it is more likely than not that she would have been aware of reports about the treatment of individuals who were being detained during the protests.” It was open to the RAD to make this conclusion based on the evidence before it, which the RAD explained in detail.

E. *Voluntariness*

[32] Ms. Negatie challenges the RAD’s negative credibility findings with respect to her voluntariness in running for election as an MP and with respect to her November 2016 kidnapping and attack. It is unnecessary for me to address Ms. Negatie’s arguments on these credibility findings because as acknowledged by Ms. Negatie, she voluntarily voted for the state of emergency in October 2016. Ms. Negatie’s vote in favour of the state of emergency was the central ground on which the RAD found she knowingly made a significant contribution to the

government's crimes against humanity. There is no doubt that Ms. Negatie's vote was voluntary. Ms. Negatie does not suggest she was coerced or restricted in voting for the state of emergency. In fact, Ms. Negatie argues that it was the right thing to do. There is therefore no basis to disturb the RAD's finding that her contribution at issue was voluntary.

F. *Disposition*

[33] Overall, Ms. Negatie has not raised any sufficiently serious shortcoming with the RAD's thorough review of the evidence nor with its determination and detailed reasoning on the three-part contribution-based test for complicity. Accordingly, I dismiss the application for judicial review. Neither party raised a question for certification and I agree none arises.

JUDGMENT IN IMM-7394-23

THIS COURT’S JUDGMENT is that

1. The application for judicial review is dismissed; and
2. No serious question of general importance is certified.

“Lobat Sadrehashemi”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7394-23

STYLE OF CAUSE: LAWAYESH TEWEDIE NEGATIE v THE MINISTER
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PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JULY 15, 2024

JUDGMENT AND REASONS: SADREHASHEMI J.

DATED: JANUARY 30, 2025

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