

Human Rights Protection Under the Eac Treaty: Jurisdictional and Compliance Challenges

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Abstract

This Article examines the enforceability of the East African Community (EAC) Treaty in protecting human rights, with particular focus on its alignment with international human rights standards. Although the Treaty incorporates fundamental principles such as democracy the rule of law, accountability and the recognition of human rights, its enforcement framework remains weak and largely aspirational. The study investigates whether the EAC's legal and institutional mechanisms adequately protect human rights compared to international treaties such as the International Covenant on Civil and Political Rights, ICESCR and the UDHR. The study adopts doctrinal legal methodology, relying on primary sources such as the EAC Treaty, relevant international conventions and case law of EACJ. Secondary sources including books, journal articles and policy reports are also used. However; comparative legal analysis is applied by examining regional courts such as the ECOWAS Court of Justice and the European Court of Justice, which provide more robust enforcement mechanisms. Findings reveal that while the EAC Treaty acknowledges universally accepted human rights standards, the EACJ lacks explicit human rights jurisdiction and has no effective enforcement or sanctioning mechanisms. Partner States' reluctance to extend jurisdiction, weak compliance with EACJ judgments and the absence of clear domestication procedures significantly undermines enforceability. In contrast the ECOWAS Court permits direct individual access and has developed binding human rights jurisprudence offering valuable lessons for the EAC. The study concludes that the EAC Treaty's human rights framework remains largely symbolic without enforceability. Based on these findings the study recommends a comprehensive reform of the EAC Treaty to expand the EACJ's jurisdiction to include human rights. It also proposes the creation of a robust enforcement mechanism to ensure that the Court's judgments are binding and respected at the national level. These reforms would enhance the EACJ's credibility and solidify its role as a guardian of the rule of law and human rights in the East African Community.

Key Words: Human Rights, human rights protection, East African Community.

1.0 INTRODUCTION

Human rights are fundamental protections inherent to all human beings, guaranteeing dignity and protection against abuse by the state or other actors. They are universally recognized through instruments such as the universal declaration of human rights and binding treaties such as the international covenant on civil and political rights. While international mechanisms set minimum standards, regional systems complement them by addressing context-specific realities. These rights include the right to life and liberty freedom from slavery and torture, freedom of opinion and expression, the right to work and education and

many more. Over the years, a wide range of international and regional systems have been built to defend these rights and hold governments accountable when they are violated.¹

The East African Community (herein after EAC), composed of eight Partner States integrates human rights into its foundational principles. The treaty emphasizes democracy, the rule of law, good governance and the recognition of human rights. However; these provision are not explicitly enforceable, also the EACJ created under the treaty interprets and applies its provisions but lacks direct jurisdiction over human rights matters unless they relate to Treaty violation.²

¹R. Manglik, "Human rights evolution, concepts and concerns" Edugorilla publication, 2024, pp5-8

² A.O. Nsengiyumwa, "Taking stock of developments between the united nations and regional human rights

Although the East African Community Treaty and its protocols thereto is not human rights instrument as such, they provide the normative basis for the promotion and protection of human rights in the East African region. The ratification of the international human rights treaties by the EAC Partner States is fairly impressive. All of the EAC Partner States have at least ratified the Core international human rights treaties for the promotion and protection of human rights in the regional level and international level.³

Furthermore, international human rights standards are universally recognized provisions found in binding and recommendatory international Acts, as well as principles of international law. These standards provide the fundamental rights of individuals, protecting them from illegal and unjustified actions by state or other persons that violate or restrict their rights. They also guide states in regulating and ensuring the rights of their citizens. These rights are considered inherent and inalienable belonging to every individual simply by virtue of being human.⁴

The rise of regional integrations initiatives has provided an essential supplementary layer of defense in human rights protection by offering unique opportunities to complement national and international efforts in safeguarding human rights. These regional bodies have established their own human rights charters, treaties, courts and monitoring mechanisms, tailored to the specific context and challenges of their member states. This help to localize international human rights norms and standards, reflecting the particular human rights concerns of the region. Additionally, they foster a culture of human rights within the region promote peer review and accountability and provide avenues for redress that might not be readily available at the national level.⁵

In Africa for example the African Union has created its own human rights court and charter. Meanwhile in East Africa the East African Community (EAC) has incorporated human rights into its broader goals of regional integration.⁶ EAC Treaty explicitly emphasizes the principles of good governance democracy the rule of law and respect for human rights.⁷ However the effectiveness of this regional intergovernmental organization in truly protecting human rights hinges on their internal enforceability mechanisms and, critically their alignment with universally accepted international human rights standards. Thus, this study evaluates the enforceability of the EAC Treaty's human rights provisions and their alignment with international standards. However it explores institutional weaknesses state compliance and comparative lessons from other regional courts.

1.2 Background of the study

The East African Community (EAC) has evolved through several phases. Initial cooperative ties between Kenya, Uganda and Tanganyika (now Tanzania) began in the early 20th century, leading to the establishment of the EAC as an intergovernmental organization in 1967 aimed at fostering economic cooperation and integration across East Africa.⁸

However, the initial EAC dissolved in 1977 due to differing political and economic policies. Subsequently the member states signed a mediation agreement in 1984 to divide assets and liabilities and agreed to explore future cooperation. This led to the establishment of permanent tripartite commission for East African cooperation in 1993 with full operations starting in 1996.⁹

mechanisms: presentation on the east African court of justice'' 2019 pp 1-6

³A.O. Nsengiyumwa, ''*Taking stock of developments between the united nations and regional human rights mechanisms: presentation on the east African court of justice*'', 2019 pp 1-6

⁴ A.R. Chowdhury & J. H. Bhuiyan, ''*An introduction to international human rights law*'' Brill Njih off, 2010 pp3-15

⁵ D.H.Shelton & P.G.Carozza, ''*Regional protection of human rights*'', Oxford university press,2013 pp 1-110

⁶ M.Bareg, ''*Understanding the EAC Integration Process*'', Cambridge University press, 2014 pp 20-25

⁷ H. O. Ogendo, ''*The Challenges of Regional Human Rights Protection in Africa*'', 2003 pp 11

⁸E. Ugrashebuja, ''*East African Community law: Institutional, substantive and comparative EU aspects*'', Brill Nijhoff,2017 pp14

⁹R.E .Mshomba, ''*Economic integration in Africa: The East African Community perspective*'', Cambridge university press, 2019.

The Treaty for the establishment of EAC was signed in 1999 and entered into force in 2000 with the objective of widening and deepening cooperation among partner states in various fields including adherence to good governance rule of law accountability and human rights.¹⁰ Since its revival, the EAC has expanded to include Rwanda and Burundi (2007) South Sudan(2016), the Democratic Republic of Congo (2022) and Somalia (2024) demonstrating its commitment to regional integration.¹¹

Upon the entry into force of the Treaty for establishment of the EAC the East African court of Justice(herein after EACJ) was established by the Treaty as one of the organs of the EAC charged with interpreting and enforcing the treaty as well as tasked with resolving disputes involving the EAC and its members. It is a supranational court of justice whose major responsibility is to ensure adherence to law in the interpretation and application of and compliance with the provision of the Treaty including adherence to the principle of good governance democracy as well as recognizing and protect human rights.¹²

The EACJ replaced East African Court of Appeals that was closed after the dissolution of the EAC in 1977. However when the community was revived in 1999 the Treaty for establishment of EAC established different kind of regional court functioning as international court with different composition and jurisdiction unlike the previous court which handled only appeals from national courts.¹³

Furthermore, while the East African Court of Justice (EACJ) has jurisdiction over the interpretation and application of the Treaty it has limited scope to address individual human right cases unless tied directly to treaty violation. For instance in the situation of Democratic Republic of Congo the conflict drew regional involvement leading the East African Community (EAC) to deploy the EAC Regional Force (EACRF) to

stabilize the situation. In June 23, Human Rights Watch documented widespread human rights abuses by M23, including extrajudicial executions sexual violence and other war crimes with allegations of Rwandan complicity. Therefore, from this situation it is clear that despite of having the EAC Treaty with guiding principles in the protection and promotion of human rights in the region, but yet the treaty lacks enforcement mechanism at the regional level to protect and promote human and people's rights.¹⁴

These ongoing violations raise significant concerns about the effectiveness and enforceability of EAC treaties in safeguarding human rights. Furthermore, they raise questions about the practical implementation of human rights standards compared to international norms, such as those established by the United Nations.

1.3 Statement of the Problem

The EAC Treaty recognizes human rights, democracy, the rule of law and good governance as fundamental principles under Articles 6(d) and 7(2).¹⁵ These provisions suggest that the Community is committed to protecting rights as part of regional integration. However, unlike other regional systems such as the European Union and the Economic Community of West African States the EAC lack strong and direct enforcement mechanisms for human rights violations at the East African level. The Treaty primarily focuses on economic integration and lacks clearly defined enforcement procedures for those member states who fail to adhere with the principles stated in the treaty's provision, to implement and comply with the regional court's decision to their national courts as well as the treaty do not provide for the time frame within which a judicial decision is to be enforced.

Additionally; the EACJ as the judicial organ of the Community, has jurisdiction to interpret and apply the Treaty but lacks explicit human rights

¹⁰ Ministry of East African Community Affairs report on History of the East African Community(EAC), retrieved from <https://meaca.go.ug> (last accessed 13.04.2025)

¹¹E. Shikoli & E. Mwita, '*Enforcement of judgments and rulings issued by the East African Court of Justice: Analyzing the applicable law and its effectiveness*', Kenya law review, 9(2025) 1 pp 1-10

¹² Treaty for Establishment of East African Community, adopted in 1999, entry into force 2000, Article9

¹³Ibid

¹⁴Treaty for Establishment of East African Community, adopted in 1999, entry into force 2000, Article9

¹⁵TreatyfortheEstablishmentofEastAfricanCommunityofAd opted1999,entryintoforce2000,amendedin2006and2007,Articles 6(d)&7(2)

jurisdiction under Article 27(2). The proposed protocol to extend such jurisdiction has not been adopted, leaving the Court in a position of interpretive improvisation.¹⁶

As a result, litigants seeking remedies for human rights violations face serious limitations. Although the Court has creatively interpreted Treaty principles to entertain rights-based claims such as in *Katabazi v Secretary General of the EAC* the absence of an explicit mandate has left its authority uncertain.¹⁷ Even when judgments are issued, enforcement is weak. For instance, in *East African Law Society v Attorney General of Burundi & Another*, the Court ruled against Burundi's move to restrict parliamentary participation, yet the judgment was never implemented.¹⁸

Further, the Treaty's provisions on human rights are often framed as guiding principles rather than binding rights for individuals within the EAC leading to the questions about their enforceability compared to international treaties such as the ICCPR, ICESCR, and UDHR which emphasize enforceability and effective remedies as well as impose binding obligations to member states. Hence, this study seeks to investigate the limitations in the EAC's enforcement framework and explore strategies to enhance the protection of human rights within its system.

2.1 LEGAL AND INSTITUTIONAL FRAMEWORK FOR HUMAN RIGHTS PROTECTION UNDER THE EAC TREATY

The East African Community (EAC) is founded on principles of good governance, democracy and the rule of law, including adherence to universally accepted standards of human rights protection. This paper critically examines the legal and institutional architecture established by the EAC Treaty to uphold these principles. It moves beyond a simple description of existing legal instruments to offer a robust and comparative assessment of their practical effectiveness and enforceability within the regional bloc.

EAC Partner States are bound by powerful and judicially robust international and regional obligations including the ICCPR, ICESCR,

CEDAW, ICERD and the African Charter on Human and Peoples' Rights (ACHPR). These treaties establish clear, immediate obligations, provide individual complaint mechanisms (such as the Human Rights Committee, the CEDAW Committee and the African Court) and require state parties to provide effective domestic remedies and transparency. These continental and global standards thus provide a critical yardstick against which the EAC system must be measured. In contrast, the EAC's regional framework relies on aspirational language found in Articles 6 and 7 of the Treaty, without the backing of a dedicated human rights protocol. This study places particular focus on the specific Treaty provisions, the limited human rights jurisdiction of the East African Court of Justice (EACJ) and the persistent challenges of compliance faced by member states.

While the EAC Treaty articulates crucial human rights principles, the absence of robust enforcement mechanisms, such as a direct individual petition right for standalone human rights violations at the regional level, renders these commitments largely aspirational. This critical procedural deficiency undermines the EAC's ability to provide an accessible and effective regional remedy, ultimately falling short of the accountability and enforceability standards established by the international and continental regimes to which its members are already committed.

2.1.1 International and Regional Obligations of EAC Partner States

All EAC Partner States are bound by several international human rights instruments. These include the ICCPR, ICESCR, the Convention on the Elimination of Discrimination against Women and the African Charter on Human and Peoples' Rights. These treaties create binding obligations to respect, protect and fulfill human rights.

2.1.2 International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights is an international legal instrument adopted

¹⁶ Treaty for establishment of the EAC, Article 27(2)

¹⁷ *Katabazi & others v Secretary General of the EAC and Attorney General of Uganda*, Ref No. 1 of 2007 (EACJ)

¹⁸ *East Africa Law Society v Attorney general of Burundi and Another*(Reference 1 of 2014)[2015]EACJ 92(First Instance Division)

in 1966 and entered into force in 1976 it commits state parties to respect the civil and political rights of individuals.¹⁹ The ICCPR also covers the political participation, equality before the law, non-discrimination and freedom from torture and other cruel, inhuman or degrading treatment. It establishes clear, immediately applicable obligations for states to ensure these rights for all individuals within their territory and subject to their jurisdiction. The Covenant compels governments to take administrative judicial and legislative measures in order to protect the rights enshrined in the covenant and to provide an effective remedy.²⁰

Article 2(1) and (2) requires states to respect and ensure rights and to adopt legislative or other measures to give effect to the Covenant. However; Article 2(3) requires states to provide an effective remedy for violations, even if committed by state officials and to ensure remedies are enforced by competent authorities.²¹ Also Article 40 provides that, States must submit reports to the Human Rights Committee on measures taken to give effect to the Covenant.²² Therefore; this shows that ICCPR obliges states to integrate Covenant rights into domestic law and provide remedies and oversight is through reporting and individual complaints.

2.1.3 International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights was adopted by the United Nations General Assembly Resolution 2200A (XXI) on 16 December 1966 and entry into force 1976.²³ Article 2(1) provides that, States must take steps to the maximum of their available resources, to progressively realize the rights and ensure non-discrimination in exercising Covenant rights.²⁴ However; Article 11 and 12 recognize rights to

adequate living standards, health, education requiring legislative and policy measures. And its Optional Protocol provides for individual complaints before the Committee on Economic, Social and Cultural Rights.²⁵

While the ICESCR acknowledges that, full realization of these rights may be subject to resource availability and achieved progressively, it also imposes minimum core obligations that states must fulfill immediately, such as enacting anti-discrimination provisions and establishing enforceable rights with judicial remedies within national legal systems.

By becoming state parties to these international treaties States voluntarily assume obligations under international law to respect, protect and fulfill human rights. The obligation to protect mandates states to safeguard individuals and groups against human right abuses including those perpetrated by non-state actors.²⁶ So under this instrument obligations are progressive but legally binding, because the act of reporting to CESCR and complaint mechanisms ensures accountability which the EAC Treaty fails to provide effectively.

2.1.4 African Charter on Human and Peoples' Rights

The African Charter on Human and People's Rights was concluded in 1981 and entered into force in 1986, as an international human rights instrument that is intended to promote and protect human rights and basic freedom in the African continent. The ACHPR is distinctive for its explicit recognition of not only civil and political rights, such as freedom from discrimination, equality, right to life, dignity and freedom from torture but also a strong emphasis on economic,

¹⁹J. Sarah & M. Castan, "The international covenant on civil and political rights: cases, materials and commentary, OUP Oxford, 2013

²⁰ International covenant on civil and political rights, Adopted 1966, Entry into force 1976

²¹ Ibid, Article 2

²² International covenant on civil and political rights, Adopted 1966, Entry into force 1976, Article 40

²³L. Anthony. "International covenant on economic, social and cultural rights(ICESCR)", In Encyclopedia of

international relations and Global politics, Rutledge, 2005, 114-120

²⁴The International Covenant on Economic, Social and Cultural Rights, Adopted 1966, Entry into force 1976, Article 2

²⁵ Ibid

²⁶ The International Covenant on Economic, Social and Cultural Rights, Adopted 1966, Entry into force 1976, Article 2

social and cultural rights including the right to work, health and education.²⁷

The charter mandates member states to respect and protect individual rights, ensuring participation in governance process, also the Charter advocates transparency and accountability, essential for combating corruption and fostering trust in public institutions. Article 1 articulates that, States must undertake all effort to recognize the rights and adopt legislative or other measures to give them effect.²⁸ Also Articles 30 to 59 establish the African Commission on Human and Peoples' Rights, empowered to receive complaints from individuals and NGOs as well as the protocol establishing the African Court on Human and Peoples' Rights, Strengthens enforcement by allowing binding judgments.²⁹ Article 62 obliges the State Parties to submit reports every two years on measures taken.³⁰ The act of having dual mechanism such as African Commission termed as quasi-judicial body and African Court as judicial with binding judgments emphasizes the enforcement measures.

2.1.5 Convention on the Elimination of All Forms of Discrimination against Women

The CEDAW convention was adopted in 1979 by the United Nations General Assembly and entry into force in 1981, is often described as an international bill of rights for women.³¹ It defines what constitutes discrimination against women and sets up an Agenda for national action to end such discrimination.

States that ratify the Convention are legally obliged to eliminate all forms of discrimination against women in all areas of life. It ensures women's full development and advancement so that they can exercise and enjoy their human rights and fundamental freedoms in the same way as men. It also allows the CEDAW Committee to

scrutinize their efforts to implement the treaty by reporting to the body at regular intervals, it enhances enforceability on human rights protection specifically on Article 2 by providing that, States must embody gender equality in national constitutions and adopt legislative measures prohibiting discrimination.³² However; Article 5 requires modification of cultural or social practices that perpetuate discrimination and States must submit reports to the CEDAW Committee on progress.³³ Therefore the Legislative reform, reporting and allowing individual complaint and inquiry procedure before CEDAW Committee emphasizes enforcement.

2.2 Convention on the Elimination of all Forms of Racial Discrimination

The Convention requires State Parties to criminalize and punish acts of racial discrimination, whether based on race, color, origin, nationality or ethnic origin and to pursue a policy of eliminating racial discrimination. Article 2 requires states to eliminate racial discrimination and adopt immediate policies to secure equality.³⁴ Article 6 provides that, States must provide effective protection and remedies against acts of racial discrimination.³⁵ However; Article 9 and 14 requires reporting to the Committee on the elimination of racial discrimination and allows individual complaints.³⁶

However, the EAC Treaty's principles (Arts. 6 & 7) merely mandate the observation of universally accepted standards. This aspirational language is a weak implementation of the clear, immediate and direct legislative obligation found in ICERD. The EAC system fails this standard due to the EACJ's limited human rights jurisdiction. While national courts in EAC states may provide a remedy (as required by ICERD), the regional mechanism for remedy is effectively blocked, undermining the

²⁷The African Charter on human and people's rights, Adopted 1981, Entry into force 1986, Articles 2-24

²⁸ The African Charter on human and people's rights, Adopted 1981, Entry into force 1986,, Article 1

²⁹ Ibid, Article 30-59

³⁰ Ibid, Article 62

³¹ UN Women, Convention on elimination of all forms of discrimination against women (CEDAW), for youth, 2016 available at [https://www.unwomen.org/en/digital-](https://www.unwomen.org/en/digital-library/publications/2016/12/cedaw-for-youth)

[library/publications/2016/12/cedaw-for-youth](https://www.unwomen.org/en/digital-library/publications/2016/12/cedaw-for-youth) (last accessed at 05.JULY.2025)

³²The CEDAW convention adopted in 1979, entry into force in 1981, Article 2

³³ The CEDAW convention adopted in 1979, entry into force in 1981,, Article 5

³⁴ The Convention on the Elimination of all forms of Racial Discrimination adopted 1965, Article 2

³⁵ Ibid, Article 6

³⁶ Ibid, articles 9&14

regional protection standard mandated by the EAC Treaty's principles.

This ICERD provision highlights a critical procedural deficiency in the EAC. The ability for an individual to directly petition CERD (or the African Court on Human and Peoples' Rights) contrasts sharply with the EACJ's lack of an individual petition mechanism for standalone human rights violations, making regional enforceability inaccessible to the victim.

2.2.1 Universal Declaration of Human Rights

Since 1948 the Universal Declaration has acquired a greatly reinforced status not only as, a common standard of achievement for all people's and all nations but also as a statement of principles which all States should observe. It has inspired more than forty State constitutions and examples of legislation quoting or reproducing provisions of the declaration can be found in all continents.³⁷ The declaration is not legally binding, but its provisions such as Articles 8 and 10 emphasize remedies before competent tribunals. Many of its provisions have become customary international law and the basis for ICCPR and ICESCR. Thus, the declaration sets foundational principles and binding force comes through ICCPR or ICESCR.

Thus, at the international and African level, enforceability is built on three pillars that are domestic incorporation of treaty obligations, individual complaints to monitoring bodies such as HRC, CESC, CEDAW, CERD, African Court or Commission and State reporting and peer review mechanisms.

All EAC partner states are signatories to major international and regional human rights treaties, including the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights. While these obligations exist, the mechanisms for enforcing them within the EAC's legal system are weak. For instance; the

African Court on Human and Peoples' Rights, allows for direct individual petitions, a feature that the EACJ lacks, highlighting a significant regional enforcement gap.

However, at the regional level, obligations are weaker. The EAC Treaty mentions human rights in Articles 6(d) and 7(2), but does not provide a dedicated human rights protocol or charter.³⁸ The EACJ may only hear human rights cases if they can be linked to violations of Treaty principles, where this contrasts with the African Court on Human and Peoples' Rights, which allows direct individual petitions where states have ratified the protocol. Thus, the EAC framework thus falls short of international and continental standards in terms of accessibility and enforceability.

2.2.2 Human Rights under the EAC Treaty

The EAC Treaty itself provides a framework for human rights, but its provisions are aspirational rather than legally binding and enforceable.

2.2.3 Fundamental and Operational Principles

Article 6(d) of the Treaty identifies democracy, rule of law, accountability and human rights as fundamental principles of the Community. Additionally; Article 7(2) extends these as operational principles, requiring Partner States to observe universally accepted standards of human rights.³⁹ However, these are guiding principles, not justiciable rights. So this aspirational language is the source of a legal and institutional problem, as it is not backed by a clear mechanism for redress. Therefore; on paper, these provisions reflect alignment with international norms but the problem lies in their formulation since they are principles rather than justiciable rights. Meaning that, the principles only guide state behavior but cannot be directly invoked by individuals unless linked to Treaty breaches. So the lack of explicit human rights jurisdiction creates ambiguity about the enforceability of these provisions.

³⁷ T. Brown, 'Universal declaration of human rights: Promoting the declarations principles 75 years on', 2023 retrieved from <https://lordslibrary.parliament.uk/universal-declaration-of-human-rights-promoting-the-declarations-principles-75-years-on/> (last accessed at 05.07.2025)

³⁸ T. Brown, 'Universal declaration of human rights: Promoting the declarations principles 75 years on', 2023 retrieved from <https://lordslibrary.parliament.uk/universal-declaration-of-human-rights-promoting-the-declarations-principles-75-years-on/> (last accessed at 05.07.2025)

[declaration-of-human-rights-promoting-the-declarations-principles-75-years-on/](https://lordslibrary.parliament.uk/universal-declaration-of-human-rights-promoting-the-declarations-principles-75-years-on/) (last accessed at 05.07.2025)

³⁹ T. Brown, 'Universal declaration of human rights: Promoting the declarations principles 75 years on', 2023 retrieved from <https://lordslibrary.parliament.uk/universal-declaration-of-human-rights-promoting-the-declarations-principles-75-years-on/> (last accessed at 05.07.2025)

2.3 Progressive Provisions and Future Integration

Article 123(6) envisages that deeper integration particularly towards political federation, may incorporate stronger human rights mechanisms.⁴⁰ While this creates a normative opening, the absence of a clear roadmap or binding institutional reforms makes it more of a political aspiration than a legal guarantee.

The Treaty hints at a more robust future, provision such as Article 123(6), which speaks to a future political federation, suggest recognition that integration may eventually require stronger human rights frameworks. However, this remains a progressive, long-term goal with no clear roadmap or institutional design to get there.

2.4 Jurisdiction of the EACJ

2.4.1 General Jurisdiction

The EACJ, established under Article 9 of the Treaty, is mandated to interpret and apply the Treaty.⁴¹ Its jurisdiction is limited to Treaty-related matters, which excludes direct adjudication of human rights violations unless they can be framed as Treaty breaches. The Court's primary function of interpreting and applying the Treaty and not to be a human rights court is a critical distinction. Therefore; the Court's explicit human rights jurisdiction is conditional, awaiting a protocol that partner states have not yet concluded

2.4.2 Landmark Jurisprudence

Despite its limited mandate, the EACJ has demonstrated judicial creativity. In land mark case such as *Katabazi & Others v. Secretary General of the EAC case*, the Court asserted jurisdiction over the unlawful detention of prisoners in Uganda, reasoning that the detention violated the rule of law, a fundamental Treaty principle.⁴² This case demonstrated judicial creativity by using natural law reasoning to expand the Treaty's scope.

However; in *Democratic Party v. Secretary General of the EAC case*, the Court declined to assume explicit human rights jurisdiction emphasizing that a protocol was required to extend its mandate.⁴³ This reflected the positivist limitation that rights remain unenforceable unless expressly granted. In contrast; the *Burundi's election cases*, the Court heard petitions challenging electoral irregularities, but states largely ignored its rulings.⁴⁴ These cases highlight the Court's limited authority when confronted with entrenched political resistance.

2.5 Institutional Limitations of the EACJ

The Court is institutionally limited by the lack of a human rights protocol and the absence of a clear legal framework that allows direct petitions from individuals for human rights violations. This forces litigants to creatively frame their cases as violations of other treaty provisions, which is not an effective long-term solution.⁴⁵ Also there is no sanction mechanism for non-compliance, leaving judgments unenforced. However; due to the limited resources and funding undermine the Court's independence and efficiency.

2.5.1 Compliance and Enforcement Challenges

The most significant gap in the EAC's human rights framework is the weakness of its compliance and enforcement mechanisms and this is due to the follows;

2.5.2 State Sovereignty and Political Will

The greatest obstacle to enforceability is the reluctance of Partner States to cede sovereignty. Human rights are politically sensitive and governments often resist regional scrutiny, for example, Tanzania has been criticized for ignoring EACJ rulings related to political freedoms while Burundi disregarded judgments during its 2015 crisis. Therefore all these illustrate how political will overrides legal commitments.⁴⁶

⁴⁰ Treaty for establishment of East African Community Adopted 1999, entry into force 2000, Article 123

⁴¹ Ibid, Article 9

⁴² *Katabazi & others v Secretary General of the EAC and Attorney General of Uganda*, Ref No. 1 of 2007 (EACJ)

⁴³ *Democratic Party v. Secretary General of the East African community & 4 others*, Appeal No.1 of 2014

⁴⁴ *Burundi Journalists Union v Attorney General of Burundi*, Ref No. 7 of 2013 (EACJ)

⁴⁵ Ibid

⁴⁶ F. Viljoen, '*International Human Rights Law in Africa*', (2nd edn) Oxford university press, 2012, pp150

2.5.3 Absence of Domestication Mechanisms

EACJ judgments are not self-executing within national legal systems. Unlike the EU, where EU law enjoys supremacy, the EAC has no equivalent doctrine.⁴⁷ Partner States must voluntarily domesticate judgments, but most lack clear legislative frameworks to do so. where this results in paper judgments since they are legally binding but practically ineffective.⁴⁸

2.5.4 Lack of Sanctions for non-compliance

The EAC Treaty has no punitive measures for non-compliance with judgments the treaty provides no clear sanctions for non-compliance unlike the EU's infringement procedure or financial penalties and the EAC relies on political goodwill, which is often absent.⁴⁹ This remains a big problem because, without consequences states can ignore rulings without cost.

2.5.5 Comparative Insights

The use of national courts and national institutions to enforce judgments from regional courts such as the EACJ is the potential effective means to secure compliance and enhance the effectiveness of international adjudication.⁵⁰ This strategy provides a means of linking national courts together with other national institutions with the community's legal systems. Enforcement of judgments through national courts sets the stage for the development of various approaches, laws and mechanisms to supplement it. Hence, regional economic communities require their partner states to mandatorily enforce judgments issued by the community's judicial body.⁵¹

Through comparative analysis the researcher found that, other regional economic communities, such as ECOWAS, COMESA, SADC and the European Union, have more effective enforcement frameworks.

2.6 The Economic Community of West Africa

ECOWAS is a fifteen member group of West African states formed in 1975 to promote economic integration of member states. This scope of co-operation expanded in succession with the need to respond to issues in the member states which also created an entry point for human rights into the agenda of ECOWAS.⁵² Its founding Treaty did not contain any references to human rights; however, protocols adopted under the Treaty incorporated different rights in their scope, culminating in the 1991 ECOWAS Declaration of Political Principles which expressed, amongst others, a determination by member states to respect fundamental human rights as embodied in the African Charter.⁵³

In 1993 the Treaty of ECOWAS was amended to recognize promotion and protection of human and peoples' rights in accordance with the African Charter as a fundamental principle of ECOWAS.⁵⁴

The move towards rights consciousness was therefore a combination of necessity and changing international dynamics.⁵⁵ The community established the ECOWAS Community Court of Justice as the judicial arm under Article 6 (1) (e) and the principal legal organ of ECOWAS. Also the Protocol to operationalize the ECOWAS Court was adopted respectively to give the Court competence to determine cases of violation of human rights occurring in any of the member states.⁵⁶ The ECOWAS Court has since, admitted and determined several cases on human rights.⁵⁷ While the EAC Treaty grants the member states the discretion to enforce the judgments rendered by the EACJ by use of their Civil Procedure Rules enforcement of judgments rendered by the ECOWAS Court of Justice is mandatory among member states.⁵⁸

⁴⁷ Treaty on the functioning of European union, Article 260

⁴⁸ Treaty for establishment of EAC, Article 38

⁴⁹ Ibid

⁵⁰ S. Charnovitz, "The enforcement of WTO judgments", 34 YALE J. INT'L. (2009), 121 available at <http://digitalcommons.law.yale.edu/yjil/vol34/iss2/14> (last accessed 28th July 2025)

⁵¹ Ibid

⁵² Ebobrah, 2008, p. 7.

⁵³ ECOWAS Protocol, Adopted 1991 (as amended 2005), Art 24

⁵⁴ Treaty of ECOWAS

⁵⁵ N.Nwogu, "Regional integration as instrument of human rights: Re-conceptualizing ECOWAS", Journal of human rights, 6(2007)3 p349

⁵⁶ L. N.Murungi & J.Gallinetti, "The role of sub-regional courts in the African human rights system", Sur international journal of human rights, 7(2010)13 p122

⁵⁷ Ibid

⁵⁸ Ibid

However, all ECOWAS member states are required to take all necessary measures to ensure the execution of the Court's judgments. The mandatory nature of compliance is provided for under Article 24 of the 1991 Protocol.⁵⁹ The Member states are also required to determine the competent national authority for purposes of enforcing the judgment and the states must inform the Community Court of the extent and progress of these initiatives to ensure that Community Law is applied equally in the region. Therefore; due to the mandatory nature of compliance with community law, there is basically no room for failure to comply with judgments rendered by the Court.

In contrast, the Treaty encompasses provisions on sanctions that may be applied against member states that fail to fulfill its obligations under Article 77.⁶⁰ These sanctions include the suspension of new community loans or assistance to subject member states, suspension of support of ongoing project or assistance programs, exclusion from presenting candidates for positions within the community and suspension of voting rights and participating in community activities.

In the case of ECOWAS there are in place specific rules that ensure compliance of community laws including the imposition of obligations on states to enforce judgments of its Court, in which the EACJ is ambiguous and have failed to be particular on that aspect of enforcement of judgments leaving it at the whims of member states unlike the ECOWAS.

2.7 European Union Court of Justice

European system it has been argued to be the most successful system of international law for the protection of human rights. In 1996, Buergethal and Shelton found that the decisions of the European Court are routinely complied with by the European governments; as a matter of fact the system has been so effective.⁶¹ The decisions of the European court of Human rights enjoy considerable normative power, with the member

states almost always respecting the rulings of the Court.⁶² Under European Union many States have taken very specific actions to rectify their laws as a result of decisions of the ECtHR also the enforcement has been less of a problem in Europe as European nations regard the decisions of the Court as self-executing; that is decision of the Court automatically become party of domestic law.

Therefore; the achievements which the European union court has attained in the protection of human rights is the result of commitment of the European states in compliance with their treaty obligations such as enforcement of the decisions of the court. Hence, for effective human rights protection in EAC, member states which in most of cases are reluctant to comply with their treaty obligations are required to draw lessons from European Union on being committed. However; European Union law supremacy and sanction mechanisms create a culture of compliance since States face financial penalties for defying rulings.

EAC

The EACJ replaced East African Court of Appeals that was closed after the dissolution of the EAC in 1977. However when the community was revived in 1999, the Treaty for establishment of EAC established different kind of regional court functioning as international court with different composition and jurisdiction unlike the previous court which handled only appeals from national courts.⁶³

Upon the entry into force of the Treaty for establishment of the EAC, the East African court of Justice was established by the Treaty as one of the organs of the EAC charged with interpreting and enforcing the treaty, as well as tasked with resolving disputes involving the EAC and its members.⁶⁴ It is a supranational court of justice whose major responsibility is to ensure adherence

⁵⁹ Protocol A/P.1/7/91 on the Community Court of Justice (1991); Supplementary Protocol A/SP.1/01/05 relating to the Protocol on the Community Court of Justice, Article 24

⁶⁰ *Ibid*, Article 77

⁶¹ T. Buergethal & D. Shelton, 'protecting human rights in the Americas', cited in D. Shelton, 'The boundaries of human rights jurisdiction in Europe', *Duke journal of comparative and international law*, 13(2003)p152

⁶² D. Beach, 'Between law and politics: The relationship between the European Court of justice and the European union member state, Copenhagen; " DJQF Publishing, 2001, p144

⁶³ D. Beach, 'Between law and politics: The relationship between the European Court of justice and the European union member state, Copenhagen; " DJQF Publishing, 2001, p144

⁶⁴ *Ibid*, Article 9

to law in the interpretation and application of and compliance with the provision of the Treaty, including adherence to the principle of good governance, democracy, as well as recognizing and protect human rights.

Furthermore, while the East African Court of Justice has jurisdiction over the interpretation and application of the Treaty, it has limited scope to address individual human right cases unless tied directly to treaty violation; it lacks direct human rights jurisdiction, enforcement mechanisms and compliance culture where this weakens its role as a guarantor of rights.

3.0 Conclusion

The EAC Treaty establishes human rights as foundational principles but does not provide robust enforcement mechanisms. However; the EACJ has filled gaps through judicial interpretation, but its lack of explicit jurisdiction, restricted access for individuals and absence of sanctions limit its effectiveness as well as partner states reluctance to cede sovereignty further undermines enforceability. Furthermore, comparative lessons show that stronger systems like ECOWAS and the EU have enhanced enforceability by granting explicit jurisdiction ensuring direct access and creating sanction mechanisms. Unless similar reforms are adopted, the EAC will continue to lag behind leaving its human rights framework largely rhetorical.

4.1 Recommendations

To link the existing enforcement gap and ensure the EAC Treaty genuinely serves as a robust instrument for human rights protection the following strategic recommendations are crucial:

4.1.1 Enactment of a Protocol to Extend EACJ Human Rights Jurisdiction

The EAC Summit must prioritize and immediately adopt the protocol envisaged under Article 27(2) of the EAC Treaty. This protocol is vital for explicitly granting the EACJ clear, unambiguous and direct jurisdiction over human rights violations. This foundational step will empower the Court to adjudicate human rights cases without having to creatively link them to other Treaty

breaches, thereby enhancing access to justice for individuals across the Community.

4.1.2 Institutionalize Robust Enforcement Mechanisms within EAC Structures

Establishing a dedicated EAC Human Rights Implementation Unit is imperative. The unit should be tasked with systematically monitoring member state compliance with EACJ human rights judgments and submitting annual reports to the EAC Council of Ministers. Furthermore, mechanisms must be developed to ensure the direct enforceability of EACJ decisions within national legal systems, moving beyond the current reliance on political will and subjective interpretations.

4.1.3 Harmonization of Domestic Legal Frameworks with EACJ Jurisprudence

To ensure consistency and legal certainty, all Partner States must be required to amend their national constitutions and statutory laws to directly reflect and integrate EACJ's human rights interpretations and decisions. This harmonization process will mitigate the challenges posed by fragmented legal traditions and the dualist approach prevalent in many EAC states, thereby ensuring that regional obligations are effectively domesticated.

4.1.4 Legally Mandated Enforcement Timeframes for Judgments

This provides that a clear Treaty amendments or supplementary protocols that establish explicit timeframes such as 90 to 120 days within which Partner States are legally obligated to enforce EACJ decisions should be made. This measure will eliminate the current legal indeterminacy and uncertainty surrounding compliance, fostering greater accountability and predictability in the implementation process.

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