

AN APPRAISAL OF THE JURISPRUDENCE BEHIND JURISDICTION AND ADMISSIBILITY CRITERIA OF THE EAST AFRICAN COURT OF JUSTICE VIS A VIS LESSONS FROM UNITED NATIONS SYSTEM, THE EUROPEAN UNION AND THE AFRICAN HUMAN RIGHTS SYSTEM

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ABSTRACT

For an International Court to entertain and decide on merits of a dispute, it must have jurisdiction over the claim which must also be admissible. Jurisdiction and Admissibility are two phenomenon (phenomena) that form the basis for preliminary objection in international courts.ⁱ The two concepts are correlated; still, the distinction between them is very important and forms part of customary international law.ⁱⁱ It is worthy for the community to have provisions on both jurisdiction and admissibility very well-articulated in their constitutive treaties, lack of which brings about procedural irregularities.

This paper seeks to address jurisdiction and admissibility criteria of The East African Court of Justice, (hereinafter referred to as the EACJ). The Court derives its jurisdiction from Articles 27 and 30 of the Treaty.ⁱⁱⁱ Looking at these provisions before they were amended, it could be noted that, framers never wanted a Court with inherent and expansive mandate that is equal to the High Courts of the Partner States.^{iv} That it had limited jurisdiction, with its powers mainly limited to the interpretation and application of the Treaty.^v On admissibility criteria, the Treaty is silent as to the requirement surrounding the exhaustion of local remedies before filing of references. From the practical orientation, the Court has been disregarding the requirement of exhaustion of local remedies but has a two months rule as an admissibility criteria as articulated under the Articles of the treaty. This paper will further draw the reference from the jurisprudence laid down by other international courts on jurisdiction and admissibility criteria as far as customary international law demands and then point out as to what ought to be done

by the EACJ as a reflection of the international customary practice surrounding international regional adjudicative institutions in which the latter is covered.

INTRODUCTION

Jurisdiction entails the power or competence of the court to determine the case. Issues over jurisdiction must be dealt with at the beginning of and forms a separate stage of the proceedings.^{vi} This was observed by the International Court of Justice in the dispute between **Nicaragua and Honduras**.^{vii} The court had to consider a number of issues of jurisdiction and admissibility before deciding that its competence had been established under Article 31 of the Pact of Bagota. Similarly, in the dispute between **United Kingdom V. Iceland**^{viii} (Fisheries jurisdiction case), the Court had to establish its competence by examining and rejecting various arguments concerning the validity and the scope of the Treaty before deciding the main dispute.^{ix}

Whereas, in international law, admissibility refers to “the character that an application, a pleading or evidence must present to be examined by the authority it is submitted to.”^x Admissibility is a requirement laid down by Public International Law or by treaty. It concerns the fact as to whether the court is the appropriate forum to exercise its jurisdiction. It concerns with the material and formal defects.^{xi} While jurisdiction is a structural feature, the actual decision regarding as to whether the case is admissible is part of the judicial process. That is to state, if the reason would be that the claim should not be heard at all or at least not yet, the issue is ordinarily one of admissibility and the Court’s decision is final and conclusive.^{xii}

The International Court of Justice holds the importance of admissibility, in the dispute between **Iran v. United States of America**^{xiii}, the Court stated that, objection to admissibility normally takes the form of an assertion that, even if the court has jurisdiction and the fact stated by the applicant are assumed to be correct, nevertheless, there are reasons why the Court should not proceed to an examination of merits. In principle the following issues consequently lead to the inadmissibility of the claim in question, namely; mootness of the dispute, delay of submitting the dispute, the lack of indispensable third parties to the proceedings, the parties to not have a standing or legal interest in the dispute and failure to exhaust local remedies.^{xiv}

JURISDICTION OF THE EAST AFRICAN COURT OF JUSTICE

The EACJ initially has jurisdiction over the interpretation and application of the Treaty establishing the EAC, and shall have such other original, appellate, human rights and other jurisdictions as will be determined by the Council at a suitable subsequent date.^{xv}

Nevertheless, in the practice of the International Court of Justice, the word jurisdiction is used as a unitary concept to denote three essential elements which enable the Court to operate. These are jurisdiction *ratione materiae*^{xvi}, jurisdiction *ratione personae*^{xvii} and jurisdiction *ratione temporis*^{xviii} and jurisdiction *ratione temporis* focuses on the temporal parameters of the dispute before the Court, such as time bar or limitation. We, as an international court on our own right, take inspiration from the International Court of Justice's conceptualization of jurisdiction and shall adopt it for our analysis hereinafter^{xxix}

Jurisdiction

This Honourable Court, through practice has acknowledged jurisdiction as the most fundamental aspect that every court is faced with in any matter before it. The Appellate Division of this Honorable Court had this observation as far as the question of jurisdiction is concerned. This was further enunciated in the case of **Alcon International Limited vs Standard Chartered Bank Uganda & 2 Others**^{xx} cited with approval the case of **Attorney-General of the United Republic of Tanzania s African Network for Animal welfare**^{xxi} on the question of jurisdiction where the Court observed that;

“Jurisdiction is a most, if not the most, fundamental issue that a Court faces in any trial (sic). It is the very foundation upon which the judicial edifice is constructed; the fountain from which springs the flow of the judicial process. Without jurisdiction, a Court cannot take even the proverbial first step in its judicial journey to hear and dispose of the case.”

With the recent amendments, the Court's jurisdiction was extended to have such original, appellate, human rights and other jurisdictions that will be determined by the Council of Ministers at a suitable subsequent date.^{xxii} This means, for the Court to exercise this extended jurisdiction, Partner States need to conclude a protocol. The Treaty, Protocols and any

Community law are the core generators of the work of the Court, and the Court can entertain any dispute arising out of these instruments.^{xxiii} As of today, the protocol is as a draft, has never been in operation and therefore the Court cannot determine applications, for alleged violations that falls under this extended jurisdiction. Conversely, the Court has been entertaining a number of references that allege violation of human rights while observing that, although it lacks direct jurisdiction over human rights disputes under Article 27(2) of the EAC Treaty, this does not prevent it from exercising jurisdiction over disputes under other issues including rule of law. This has been stated in several cases including the case of **James Katabazi and 21 Others vs the Secretary General of the East African Community and Another**^{xxiv} and the case of **Attorney General of Kenya vs Independent Medical Legal Unit**.^{xxv} where it was generally observed that preventing the court from entertaining human rights violation in its intent and content does not form a good practice of international law.

It is acknowledged that the provisions on observance of democracy and rule of law as articulates in the treaty^{xxvi} are important but not the sanctity of the Treaty in the same sense of the constitutional doctrine of basic structure.^{xxvii} All other articles of the Treaty aim at achieving the wider and deeper corporation among partner states as stipulated under the Treaty.^{xxviii} These provisions should be viewed in this spirit and that all provisions under the Treaty complement each other and need to be interpreted and applied harmoniously. Therefore, they do not on that stipulated reason give the court the extended jurisdiction it enjoys under them and to be specific jurisdiction on protection of human rights under Articles 6(d) and 7(2) of the Treaty.^{xxix} Furthermore, the Treaty^{xxx} makes reference to the African Charter on Human and Peoples' Rights, that itself and those stipulated above the legal base from which the Court lacks jurisdiction to determine the matter so concerned

- Adjudication of Human Rights Matters in the EACJ

The EACJ derives its jurisdiction from Articles 23 and 27 of the EAC Treaty. Article 23 (1) of the Treaty empowers EACJ to ensure the adherence of application and interpretation of the Treaty. Article 27(1) of the EAC Treaty is in line with Article 23 while Article 27(2) extends the Court's jurisdiction to other original, appellate, human rights and other jurisdiction as will be determined by the Council of Ministers at a suitable subsequent date. This means, for the Court to exercise this extended jurisdiction, Partner States need to conclude a protocol. The Treaty, Protocols and Community law are the core generators of the work of the Court, and the Court can entertain any dispute arising out of these instruments.^{xxxi}

The Zero Draft to operationalize the extended jurisdiction of the EACJ was published by the EAC Secretariat in May 2005. In this Draft Protocol, the powers of the Court were extended so as to confer the Court jurisdiction in human rights matters and to hear and determine appeals from Partner States' Courts.^{xxxii} On 8th July, 2005, the draft Protocol was adopted by the Sectoral Council and then subjected to public consultations in 2006-2007. The progress for extension protocol was affected in 2007 following accession to the EAC Treaty by Republics of Rwanda and Burundi and becoming new Partner States to the EAC. This necessitated an extension of time for consultations on the draft protocol in the new Partner States. In 2009, the Secretariat was directed by the Sectoral Council to undertake further consultation on the Draft Protocol taking into account emerging issues and developments.

On 22nd January, 2009, the Sectoral Council, in its 6th meeting resolved that jurisdiction of the Court should be expanded in relation to dynamics brought about the Customs Union and Common Market Protocol. However, the extension didn't include Appellate jurisdiction as this would encroach on constitutional provisions on Court hierarchies in the Partner States and neither included human rights jurisdiction as the Partner States were already parties to the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights. In view of this, the Secretariat revised the draft Protocol as per the resolutions of the Sectoral Council. Hence, the discussion on extending the jurisdiction of the EACJ to include human rights and appellate powers ceased to be the agenda since the Sectoral Council decision of 22nd January, 2009 at its 6th meeting.

As for today, the protocol as a draft, has never been in operation, and therefore the Court does have extended jurisdiction including human rights jurisdiction. Conversely, the Court has been entertaining several references that allege a violation of human rights while observing that, although it lacks direct jurisdiction over human rights disputes under Article 27(2) of the EAC Treaty, the court is not prevented from exercising jurisdiction over disputes under other issues including rule of law. This has been stated in several cases including *James Katabazi and 21 Others v the Secretary General of the East African Community and Another*^{xxxiii} and *Attorney General of Kenya v Independent Medical Legal Unit*^{xxxiv} a it has been already communicated before. This is not a good practice under international law much as the objective behind the establishment of the court is concerned.

Admissibility

Admissibility requirements under the EAC Treaty are that, references are to be filed before the East African Court of Justice (EACJ) within two months of the alleged violation (the two months rule).^{xxxv} The Treaty is silent as to the requirement on the exhaustion of local remedies before filing of references. From the practice, the Court has been disregarding the requirement of exhaustion of local remedies.

Looking at the first requirement, which involves the “two months rule”, the Court itself affirms and insists that, it would not be flexible on this requirement as stated in the case of **The Attorney General of the Republic of Uganda & Another vs Omar Awadh and 6 Others**,^{xxxvi} where it was observed that, “*the starting date of an act complained of under Article 30(2) is not the day the act ends, but the day it is first effected*”. This was reaffirmed in the case of **Rashid Salim Adiy & 39,999 Others vs The Attorney General of the Revolutionary Government of Zanzibar and 2 Others**^{xxxvii}. It is also necessary to note that there is no provision in the EAC Treaty that recognizes the concept of continuing violations. This was observed in the case of **Attorney General of the Republic of Kenya vs Independent Medical Legal Unit**.^{xxxviii}

Furthermore, the two months rule is computed from the date of commencement of an alleged violation. In the case of **African Network for Animal Welfare (ANAW) vs The Attorney General of the United Republic of Tanzania**,^{xxxix} the road construction had not commenced at the time of filing the reference, however time was computed from the day the decision to build a road across Serengeti in the United Republic of Tanzania was made by the Government.

On exhaustion of local remedies, the Court held that, this jurisdiction is not voluntary and that once an applicant can show an alleged violation of the EAC Treaty, the EACJ must exercise jurisdiction.^{xl} The Court needed to note the difference between jurisdiction and admissibility of a claim as it was already stated. The Court in its decision was supported of having no requirement of exhaustion of local remedies as against customary international law. The requirement of exhaustion of local remedy as a matter of admissibility of a claim has also been articulated under Article 44 of the Articles on the Responsibility of States for Internationally Wrongful Acts^{xli}. Which among other things states that the responsibility of a state may not be invoked if the claim is one to which the rule of exhaustion of local remedies applies and any available and effective local remedy has not been exhausted.^{xlii}

The International Court of Justice has also acknowledged this procedural requirement in **Switzerland vs. United States of America** (Interhandel Case).^{xliii} Moreover this requirement has more value in international human rights courts and in international human rights treaties^{xliiv}. The rationale behind exhaustion of local remedies principle in international human rights law is to ensure that before proceedings are brought before an international body, the state concerned must have had the opportunity to remedy matters through its own local system. This prevents the international body to act as a ‘a court of first instance’ rather than a body of last resort.

- The Principle of Complementarity and Admissibility Criteria of Exhaustion of Local Remedies

The principle of complementarity is based on a compromise between respect for the principle of state sovereignty and respect for the principle of universal jurisdiction. This principle is a means of attributing primacy of jurisdiction to national courts.

For the purposes of achieving the EAC objectives, the Treaty recognizes the importance of the principle of complementarity under Article 7(1) (g). It further acknowledges the significant role of national courts of Partner States in the East African integration process.^{xliv} The EAC Treaty under Article 33 (1) provides that unless otherwise, disputes to which the EAC is a party to shall not on that ground alone be excluded from national courts’ jurisdiction, and that when the national courts are faced with a matter of interpretation and application of the Treaty, they may request the EACJ for a preliminary ruling. Although the principle of complementarity is well embodied in the EAC Treaty, the EACJ is reluctant to adhere to this principle by rejecting the admissibility criteria of exhaustion of local remedies before instituting the matter before it.

The requirement of exhaustion of local remedies therefore has a significant value in international customary law and specifically in human rights courts and in international human rights treaties as stated before^{xlvi} The International Court of Justice has also acknowledged this requirement in *Switzerland v United States of America (Interhandel Case)*.^{xlvii} Also, the International Criminal Court (ICC) recognizes the importance of exhaustion of local remedies. The Rome Statute of the International Criminal Court provides that the ICC will be complementary to national jurisdiction.^{xlviii}

The United Nations, human rights Instruments,^{xlix} recognize the principle of exhaustion of local remedies. The Independent Committee of Experts established to oversee State Parties’

implementation of the core human rights instruments are authorized to receive and determine complaints after the complainant have first attempted to seek redress in domestic courts. Also, exhaustion of local remedies is one of the admissibility requirements of a complaint in the African Human Rights System, that is, the African Court on Human and Peoples' Rights, the African Commission on Human and Peoples' Rights and the Committee of Experts on the Rights and Welfare of the Child.¹

The EACJ does not recognize the principle of exhaustion of local remedies as portrayed in a discussion above despite its universality in other related international instruments. This legal shortage is justified by the decision in the case of *Democratic Party v the Secretary-General of the East African Community and 4 Others*,^{li} where the Court observed that its jurisdiction is not voluntary and that once an applicant can show an alleged violation of the EAC Treaty, the EACJ must exercise jurisdiction.^{lii} The Court in its decision therefore supports of having no requirement prior recourse to exhaustion of local remedies is against international customary law and inconsistent with the provisions of the EAC Treaty the legal ideal that is held in the principle of complementarity and jurisdiction of national courts.^{liii} Further, since the Court draws inspiration from ICJ and makes reference to the provisions of the African Charter on Human and Peoples' Rights, as it was observed in *Democratic Republic Party v The Secretary-General of the East African Community and 4 Others*,^{liv} the Court ought also to draw inspiration as far as the provisions of the same on exhaustion of local remedies are concerned.

JURISPRUDENCE DEVELOPED BY OTHER INTERNATIONAL COURTS

As one of international organ vested with dispensation of justice at the regional level, the EACJ has a lot to learn from other similar institutions for the effective achievement of its objectives and the EAC objective as well. It is through this observation it is recommended that, the EACJ has to learn on how to accommodate and subsequently address the procedural limits in order that there is a compliance to those procedures surrounding its prior access by the individuals from the East African member states without usurping the courts' jurisdiction within the EAC member states. A good lesson on how to address and stick with the procedural requirements may be earned from other related institutions especial the ICJ; The European Court of Human

Rights and other related African human rights system as they are presented for a detailed discussion below;

The International Court of Justice

The International Court of Justice is one of the main organs of the United Nations. It is the principal judicial organ of the United Nations.^{lv} The contentious jurisdiction of the Court is based on the consent of the parties to a dispute. The Court has played a significant role in human rights. However, its role arises in the general context of International Law or other specific human rights treaties.^{lvi} Therefore the Court's jurisdiction on human rights is based on the following;

1. Presence of compromisory jurisdiction by one particular human rights treaty,
2. 2) when state does not make reservations to clauses of the jurisdiction in the specific human rights treaties,
3. 3) When UN member States accepts compulsory jurisdiction under Article 36 of the International Court of Justice Statute, 1946^{lvii}. However, it can only entertain a human rights complaint as a matter of referral because most of the specific human rights treaties have a human rights complaint mechanism that requires exhaustion of local remedies.^{lviii}

United Nations Human Rights System

Promotion and protection of human rights is one of the purposes and guiding principles of the United Nations (UN).^{lix} In ensuring promotion and protection of human rights by UN member states, the UN has developed a human rights system composed of human rights instruments and bodies that oversee the implementation of the treaties. The bodies include those created under the United Nations Charter of 1945 and the International Human Rights Treaties.

The Human Rights Council is the primary UN Charter-based body responsible for monitoring and evaluating conditions of human rights in the countries worldwide.^{lx} It has a system with special procedures,^{lxi} expert advice^{lxii} and complaint procedures.^{lxiii} The complaint procedure addresses consistent patterns of gross violations of all human rights and fundamental freedoms in the world.^{lxiv} It determines communications submitted by individuals, groups and Non-Governmental Organizations NGOs that allege violations of human rights. One of the criteria for admissibility of a complaint under this procedure is the exhaustion of local remedies.^{lxv} This

requirement upholds the principles of subsidiarity and complementarity between the domestic system and the international system.

The second arm of the system is the treaty-based bodies. There are nine core United Nations human rights treaties.^{lxvi} Ten Treaty bodies also commonly referred to as independent committees of experts have been established to monitor State Parties' implementation of these treaties.^{lxvii} Eight of these bodies are empowered to receive and decide individual complaints.

All the human rights complaint mechanisms established under the core international human rights treaties observe the exhaustion of local remedies requirement.^{lxviii} However, there are exceptions to the exhaustion of local remedies requirement. The complainant will be excused from exhausting local remedies if the remedies are unduly prolonged, unavailable and ineffective and.^{lxix}

The European Union

Union of states, where members have set up common institutions to which they delegate some of their sovereignty so that decisions on specific matters of interest can be made democratically at European level. It represents a coming together of twenty seven different European countries.^{lxx} The European court of Human rights and the European Court of justice are regional judicial organs of the Union in the alike manner of the EACJ as a regional judicial organ of the EAC. It is evident that the EAC has drawn lessons from EU therefore worthy looking at the jurisdiction and admissibility criterion of the two courts.

- European Court of Human Rights

The court has jurisdiction to entertain claims from individuals and states in regard to violations of Human Rights. It is not a must that claims must come from a citizen of a state party; however the alleged violation must be committed by a state party.^{lxxi} The court needs to determine first if the application being lodged meets its admissibility criteria.

The admissibility criteria of the court are; Exhaustion of local remedies, four months application deadline, the complaint must be against a state party to the European convention on Human Rights and that the applicant has suffered a significant disadvantage.

African Human and Peoples' Rights System

One of the objectives of the African Union is promoting and protecting human and peoples' rights.^{lxxii} For the achievement of this objective, the African Union has developed a human

rights system composed of human rights treaties and mechanisms that oversee the compliance of these treaties. Several treaties have been adopted by the member states that provide for human and peoples' rights including the African Charter on Human and Peoples' Rights, 1981, (the Banjul Charter);^{lxxiii} The Banjul Charter has incorporated both, civil and political rights and economic, social and cultural rights. It also provides for individuals and peoples' rights or groups rights.

There are three mechanisms within the African Union that monitor implementation of human rights as enshrined in the Banjul Charter and other human rights instruments adopted by the African Union. These are the African Commission on Human and Peoples' Rights,^{lxxiv} The African Court on Human and Peoples' Rights^{lxxv} and Committee of Experts on the Rights and Welfare of the Child.^{lxxvi}

The Commission is mandated to promote and protect human rights under the Banjul Charter^{lxxvii}. In contrast, the African Court on Human and Peoples' Rights is vested with powers to protect human and peoples' rights through interpretation and application of the Banjul Charter, the Protocol establishing the Court and any other human rights instruments ratified by the States concerned. Again, the Committee of Experts on the Rights and Welfare of the Child is authorized to promote and protect the rights and welfare of the child.^{lxxviii} These mechanisms determine complaints from individuals, NGOs and the Member States. The common requirement for the exercise of jurisdiction by these mechanisms is the exhaustion of local remedies.^{lxxix}

CONCLUSION

It is therefore very crucial to state that, International courts and other forums dealing with justice provisions including The East African Court of Justice have a well-defined jurisdiction on the matters likely to be admitted before them for entertainment. These provide the procedures to be taken while instituting the matter, the *locus standi* as well as duration as the crucial legal factors to be taken into a consideration while instituting the matter in the entire forum to ensure that justice is met. Likewise, a cause of action must as well be stated to define the nature of the dispute to ensure that the entire court is moved to proceed entertaining the issue at hand depending on the reasons for its establishment and these should as well be found within the legal frameworks of the entire instrument establishing the entire court.

ENDNOTES

- ⁱDouglas Z, The International Law of Investment Claims CUP Rule 15
- ⁱⁱ KAUR, S (2020) Distinction between Jurisdiction and Admissibility in International investment law, Uppsala Universitet, Master's Thesis
- ⁱⁱⁱ The Treaty establishing the East African Community, 1999
- ^{iv} GATHII, J. (2014) *Mission Creep or A Search for Relevance: The East African Court of Justice's Human Rights Strategy*, 24 Duke Journal Of Comparative & International Law. P. 249
- ^v RUHANGISA, J.E (2011) *Procedures and Functions of the East African Court of Justice* In GASTORN, K et al (eds) *Processes of Legal Integration in East African Community*, Dar es Salaam University Press. P 148- 149
- ^{vi} MERRILLS, J.G (2017) *International Dispute Settlement*, Cambridge University Press, 6th Edition p.127
- ^{vii} *Border and Transborder Armed Actions, Jurisdiction and Admissibility, Judgement.* (1988) ICJ
- ^{viii} *Fisheries Jurisdiction (United Kingdom V. Iceland) Jurisdiction of the Court, Judgement* (1973) ICJ
- ^{ix} *Supra*
- ^x NDIAYE, T.M (2018) *Admissibility before the International Courts and Tribunals Journal of Law and Judicial System* Volume 1, Issue 2,PP 21-48
- ^{xi} KAUR, S (2020) Distinction between Jurisdiction and Admissibility in International investment law, Uppsala Universitet, Master's Thesis
- ^{xii} PAULSON, J (2010) *Jurisdiction and Admissibility, Global Reflection on International Law, Commerce and Dispute Resolution*, University of Miami Legal Studies Research Paper No 30. ICC Publishing, p.167
- ^{xiii} (2003) *Merits Judgement*, ICJ Reports 161 Par 6.
- ^{xiv} KAUR fn 11
- ^{xv} Article 27 of the Treaty The Partner States shall conclude a protocol to operationalize the extended jurisdiction
- ^{xvi} In a context of jurisdiction this would mean a jurisdiction rule surrounding the subject matter prone to the determination by a tribunal concerned. So one of the predetermining factors as to whether a tribunal has its jurisdiction in a case submitted before it is the nature of the subject matter upon which a dispute is submitted.
- ^{xvii} In the same context of jurisdiction this would be described as a rule determining the jurisdiction of a tribunal basing on the proper party or person under a particular dispute submitted before the same tribunal
- ^{xviii} This would also be described as a guiding rule on the time much as the cause of action vis-à-vis the time in which it is enforced is concerned. The important question surrounding this rule would be as to whether or not a dispute has been instituted before a tribunal within legal time framework
- ^{xix} *Alcon International Limited vs Standard Chartered Bank Uganda & 2 Others, Appeal No. 3 of 2013 (EACJ at page 15 paragraph 58) Rashid Adily & 39,999 others vs the Attorney General of the United Republic of Tanzania & 2 Others, Reference No 9 of 2016 (EACJ at page 8 paragraph 19)*
- ^{xx} *Appeal No. 3 of 2013 (EACJ)*
- ^{xxi} [Appeal No.3 of 2011] at page 13 paragraph 47
- ^{xxii} Article 27(2) of the EAC Treaty
- ^{xxiii} Justice Nsekela, H.R, President of the EACJ, Overview of the EACJ, A Paper Presented During the Sensitization Workshop on the Role of the EACJ in the EAC Integration, Imperial Royale Hotel, Kampala, Uganda, 1st – 2nd November, 2011.
- ^{xxiv}Reference No. 1 of 2002, EACJ
- ^{xxv} Attorney General of Kenya vs Independent Medical Legal Unit, Appeal No. 1 of 2011, EACJ Appellate Division
- ^{xxvi} Articles 6(d) and 7(2) of the EAC Treaty
- ^{xxvii} GASTORN, K (2016) *Essays in African Community Law* p.60
- ^{xxviii} Article 5(1) of the Treaty
- ^{xxix} GASTORN Above
- ^{xxx} Article 6(d) of the EAC Treaty and paragraphs 22(c) and (d) and 43 of the Reference No. 39 of 2020
- ^{xxxi}Justice Nsekela, H.R, President of the EACJ, Overview of the EACJ, A Paper Presented During the Sensitization Workshop on the Role of the EACJ in the EAC Integration, Imperial Royale Hotel, Kampala, Uganda, 1st – 2nd November, 2011.
- ^{xxxii} Mei A. P, fn 13
- ^{xxxiii}Reference No. 1 of 2002, EACJ

- ^{xxxiv} *Attorney General of Kenya v Independent Medical Legal Unit*, Appeal No. 1 of 2011, EACJ Appellate Division
- ^{xxxv} Article 30(2)
- ^{xxxvi} Appeal No. 2 of 2012, Appellate Jurisdiction, EACJ
- ^{xxxvii} Reference No. 9 of 2016, EACJ, First Instance Division
- ^{xxxviii} Appeal No. 1 of 2011, EACJ Appellate Division.
- ^{xxxix} Reference No. 9 of 2010, EACJ, First Instance Division
- ^{xl} *Democratic Party vs the Secretary General of the East African Community and 4 Others*, Reference No. 2 of 2012, First Instance Division, EACJ
- ^{xli} 2001, United Nations General Assembly Resolution 56/83 of 2001
- ^{xlii} Article 44(1)
- ^{xliii} *Interhandel (Switzerland V. United States of America)* Preliminary Objection, Judgement ICJ Rep.P 6, 28
- ^{xliv} One of the cardinal principles on admissibility of a complaint under Article 56(6) of the African Charter on Human and Peoples' Rights, 1981 is exhaustion of local remedies.
- ^{xlv} Mei A. P, *The East African Community: The Bumpy Road to Supranationalism, Some Reflections on the Judgments of the Court of Justice of East African Community in Anyang' Nyong'o and others and East African Law Society and others*, available at <http://ssm.com/abstract=1392709>, accessed on 13th December, 2020.
- ^{xlvi} One of the cardinal principles on admissibility of a complaint under Article 56(6) of the African Charter on Human and Peoples' Rights, 1981 is exhaustion of local remedies.
- ^{xlvii} *Interhandel (Switzerland V. United States of America)* Preliminary Objection, Judgement ICJ Rep.P 6, 28. Also the requirement of exhaustion of local remedy as a matter of admissibility of a claim has also been articulated under Article 44 of the Articles on the Responsibility of States for International Wrongful Acts^{xlvii}.
- ^{xlviii} Article 1 of the Rome Statute
- ^{xlix} See for example Article 5(2) (b) of the First Optional Protocol to the International Covenant on Civil and Political Rights, 1966; Article 3(1) of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, 1966; Article 14(7) of the International Convention on the Elimination of All forms of Racial Discrimination, 1965; Article 4(1) of the Optional Protocol to the Convention on Elimination of All Forms of Discrimination Against Women, 1999 and Article 22(5) of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.
- ^l Article 56(6) of the African Charter on Human and Peoples' Rights
- ^{li} Reference No. 2 of 2012, First Instance Division, EACJ
- ^{lii} *Democratic Party v the Secretary General of the East African Community and 4 Others*, Reference No. 2 of 2012, First Instance Division, EACJ
- ^{liii} Article 7(1) (d) and 33 of the EAC Treaty
- ^{liv} Appeal No. of 2014, EACJ, Appellate Division
- ^{lv} Articles 7 and 92 of the UN Charter, 1945
- ^{lvi} Ghandhi S, (2011) *Human Rights and the International Court of Justice: The Ahmadou Sadio Diallo Case*, *Human Rights Law Review*, available at <http://hrlr.oxfordjournals.org/>
- ^{lvii} Zuberi G, *Enforcing Human Rights through International Court of Justice: Between Idealism and Realism*, available at <https://ssrn.com/abstract>, (accessed on 19th December, 2020)
- ^{lviii} *Switzerland v United States of America (Interhandel Case)*, Preliminary Objection, Judgement ICJ Rep.P 6, 28
- ^{lix} Article 1 (3) and 2 of the United Nations Charter, 1945
- ^{lx} The Human Rights Council is a subsidiary organ of the UN General Assembly created under Article 22 of the UN Charter
- ^{lxi} Special Procedures are mechanisms established to address either specific country situations or thematic issues in all parts of the world. Special Procedures are either an individual - a special rapporteur or independent expert- or a working group.
- ^{lxii} *Ibid*
- ^{lxiii} United Nations Human Rights Council, "Human Rights Council Complaint Procedure", available at <https://www.ohchr.org/EN/HRBodies/HRC/ComplaintProcedure/Pages/HRCComplaintProcedureIndex.aspx> (accessed 19th December, 2020).
- ^{lxiv} UN Human Rights Council, (fn 31)
- ^{lxv} UN Human Rights Council, (fn 31)
- ^{lxvi} These include International Covenant on Civil and Political Rights, 1966; International Covenant on Economic, Social and Cultural Rights, 1966; International Convention on the Elimination of All forms of Racial Discrimination, 1965; Convention on Elimination of All Forms of Discrimination Against Women, 1999 and Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.

^{lxvii}United Nations Human Rights, Office of the High Commissioner, “Human Rights Bodies”, available at <https://www.ohchr.org/en/hrbodies/Pages/HumanRightsBodies.aspx> (accessed on 18th December, 2020). Nine of these bodies oversee implementation of the core international human rights treaties while the tenth treaty body known as the Subcommittee on Prevention of Torture is established under the Optional Protocol to the Convention against Torture whose function is to monitor places of detention in States parties to the Optional Protocol.

^{lxviii} See fn 17.

^{lxix}International Justice Resource Center, “Exhaustion of Domestic Remedies in the United Nations System” available at <https://ijrcenter.org/wp-content/uploads/2018/04/8.-Exhaustion-of-Domestic-Remedies-UN-Treaty-Bodies.pdf> (accessed on 18th December, 2020).

^{lxx} <http://europe.unc.edu/toolkits/chapter-3/what-is-the-European-Union> – Accessed on 21/04/22

^{lxxi} <http://ijrcenter.org/european-court-of-human-rights> - Accessed on 21/04/2022

^{lxxii} Article 3(h) of the Constitutive Act of the African Union, 2000

^{lxxiii} Other treaties include the protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, 2003, (the Maputo Protocol); Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Persons with Disabilities, 2018 and the African Charter on the Rights and Welfare of the Child, 1990.

^{lxxiv} The Commission is established under 30 of the African Charter on Human and Peoples’ Rights

^{lxxv} The African Court is established under Article 1 of the Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of the African Court on Human and Peoples’ Rights, 1998.

^{lxxvi} The Committee is established under Article 32 of the Charter

^{lxxvii} Article 45(1) and (2) of the Banjul Charter.

^{lxxviii} Article 32 of the Charter

^{lxxix} Article 56(6) of the Banjul Charter

