

Human Rights Decisions of the East African Court of Justice

JUNE 2013

SUMMARIES OF DECISIONS by the East African Court of Justice which relate to its jurisdiction over the rule of law or otherwise impact on human rights. Produced by lawyers at the Open Society Justice Initiative in order to bring the decisions of global human rights tribunals to the widest possible audience.

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Judgments

James Katabazi v. Secretary General of the EAC

20 November 2007, EACJ First Instance Division, Ref. No. 1 of 2007

Violation of the Rule of law (Article 6(d)), No violation in the Secretary General's duties (Article 29)

The fourteen applicants were detained on treason charges in 2004. On 16 November 2006, the High Court granted them bail. However, the Court building was immediately surrounded by security personnel who prevented the applicants from leaving and took them into custody. On 24 November 2006, the applicants- were convicted by a General Court Martial on additional charges of unlawful possession of firearms and terrorism. Despite the fact that the Ugandan Constitutional Court ruled that the security personnel's interference was unconstitutional, the Ugandan government allowed the applicants to remain in jail. The applicants complained to the EACJ that the Ugandan government and the EAC were violating the rule of law, thus violating the EAC Treaty. The applicants argued the invasion of the High Court premises by armed men to prevent the enforcement of the Court's decision granting bail, and their re-arrest and incarceration constitute an infringement of the Treaty, and that the Secretary General of the East African Community was required to have investigated this violation.

The Court held that while it does not have jurisdiction over human rights violations per se, it may still consider cases if they fall under one of the provisions of Article 27(1), which sets out the jurisdiction of the Court, even if it also includes a human rights violation. One role of the Court is to interpret the Treaty (Article 27(1)), which includes "respect for the rule of law" (Article 6(d)). The Court stated that the overriding consideration of the rule of law is that both the rulers and the governed are equally subject to the same law of the land. It was the role of the Ugandan judiciary to check the executive and protect the rule of law, and the intervention of the armed security agents thus violated the principle of the rule of law under the EAC Treaty. The Court also held that although the Secretary General of the EAC can investigate into human rights violations, he is not expected to conduct an investigation under Article 29(1) when he has no knowledge of the matter. The Court did stress, however, that once the Secretary General became aware of the situation as a result of the application being filed, he should have registered with the Ugandan government concern over the incompatibility of this with the EAC.

Link to [full judgment](#) (PDF)

Independent Medico Legal Unit v. Attorney General of Kenya

Ruling on Jurisdiction: Independent Medico Legal Unit v. Attorney General of Kenya

29 June 2011, EACJ First Instance Division, Ref. No. 3 of 2010

Rule of Law (Article 6(d)), Time Limitation (Article 30(2))

Between 2006 and 2008, over 3,000 Kenyan residents of the Mt. Elgon District were forcibly disappeared, tortured and executed by Kenyan governmental authorities. The applicants alleged that the Kenyan government's failure to take measures to prevent, investigate or punish those

responsible violated several International Human Rights Conventions, the Kenyan Constitution as well as the EAC Treaty.

The First Instance Division held that it had jurisdiction to hear the case. It established jurisdiction under its power to interpret the EAC Treaty, upholding *Katabazi* and referring to Article 6(d), which covers the rule of law, accountability and promotion and protection of human rights. It also held the application not to be time barred, despite the requirement in Article 30(2) of the Treaty that applications be filed within two months of becoming aware of the decision or action complained of, because the government's failure to provide a remedy was one part of a chain of violations which continued until the applicant initiated its application.

Link to [full judgment](#) (PDF)

Judgment on Appeal against Jurisdiction: *Attorney General of Kenya v. Independent Medical Legal Unit*

15 March 2012, EACJ Appellate Division, Appeal No. 1 of 2011

Appeal Granted: Violation of State Responsibility (Article 6(d)), Inadmissible due to time limitation (Article 30(2))

The Attorney General appealed against the First Instance Court's decision, which had upheld the Court's jurisdiction to consider claims that the Kenyan government had failed to investigate atrocities allegedly committed by its security forces between 2006 and 2008. The Attorney General of Kenya argued that the interpretations of jurisdiction and the time limitation under the Treaty were incorrect.

The Appeals Chamber stated that the First Instance Division had failed to adequately address the question of jurisdiction. The Appeals Chamber affirmed the decision in *Katabazi*, on which the First Instance Division had relied, in that the lack of direct jurisdiction over human rights disputes under Article 27(2) will not prevent the Court from exercising jurisdiction over disputes under some other basis (including the rule of law, under Article 6(d)) just because they involve a human rights issue. However, the Appeals Chamber found that the First Instance Division had failed to examine or explain how this cause of action fell within one of its jurisdictional bases, particularly Kenya's infringement of State responsibility towards its citizens under Articles 5, 6, and 7. Although the First Instance Division had cited *Katabaz*, it had failed to explain or demonstrate which other basis for jurisdiction was satisfied in this case. In addition, the Appeals Chamber held that the IMLU knew about the government's failure to investigate at least one and a half years before the application was filed, and that the two month time limit to file applications under Article 30(2) had run from that time. The Chamber stated that it will not recognize continuing breaches or continuing violations as exceptions to Article 30(2), because there is no provision to provide for them within the Treaty, overruling the First Instance Division's holding on this point. The case was therefore struck out as it had been filed outside the time limit in Article 30(2).

Link to [full judgment](#) (PDF)

Judgment on Application for Review: *Independent Medico Legal Unit v. Attorney General of Kenya*

1 March 2012, EACJ Appellate Division, Appeal No. 2 of 2012

Review not granted: Inadmissible due to time limitation (Article 30(2)), Inadmissible for review (Article 35(3)), Appellate Jurisdiction (Article 35A)

The IMLU sought review of the Appellate Division's decision, which held that the two-month time limit to file applications had run under Article 30(2), and that continuing violations were not recognized as exceptions to Article 30(2) because there was no enabling provision in the EAC Treaty. The applicants sought review under Article 35(3) of the EAC Treaty, complaining that there were mistakes of law that resulted in an injustice against the Mt. Elgon community. They argued that the Appellate Division's assessment should have been limited to law, procedure, and jurisdiction pursuant to Article 35A of the Treaty, and claimed that the EACJ failed to consider a police report the applicants submitted, denying the Mt. Elgon community a fair hearing and amounting to an injustice under Article 35(3). No new facts were presented in their submission for a review of the decision, and the applicant listed numerous other grounds seeking to overturn the Court's findings.

The Court first held that the Appellate Division may exercise original jurisdiction pursuant to Articles 32, 34, and 36, as the First Instance Division does. The EAC Treaty allows the Court to review both First Instance and Appellate judgments. However, the power to review decisions required the discovery of new facts or evidence; a manifest error in the judgment; or the judgment giving rise to a miscarriage of justice. In this case, the Court considered that it had thoroughly examined the police report in the previous decision, and afforded due process to both parties, holding that no injustice was caused by its prior ruling. It already considered all of the applicant's facts and arguments in its prior decision, and held that the applicant was in fact calling for an appeal of the decision, as opposed to a review. After an examination of the applicant's complaints, the Court also dismissed the rest of the applicant's grounds for review, holding that while those grounds may be sufficient for a further appeal, they are not valid under the conditions for review under Article 35(3). Because there is no appellate review for Appellate Division judgments, and the applicants failed to show manifest error, a new factual discovery, or a miscarriage of justice as required by Article 35(3), the Court denied the application for review.

Link to [full judgment](#) (PDF)

Honorable Sitenda Sibalú v. Secretary General of the EAC, Attorney General of Uganda, Honorable Sam Njumba, and the Electoral Commission of Uganda

30 June 2011, EACJ First Instance Division, Ref. No. 1 of 2010

Violation of Secretary General's Duties (Article 29), the Rule of Law (Article 6(d) and 7(2)), and Implementation of the EAC Treaty (Article 8(1)(c))

The applicant first filed a petition in the High Court of Uganda against the Election Commission and lost. He appealed to the Ugandan Court of Appeals and the Supreme Court, which also dismissed his claims. At the time, all of the respondents were in the process of drafting a protocol to extend appellate jurisdiction to the EACJ, though they had yet to conclude the process. The applicant argued that he had the right of appeal to the EACJ under Article 27 of the EAC Treaty because the EACJ had an appellate jurisdiction. He also argued that the respondents' delay in implementing the appellate jurisdiction was an abdication of their responsibilities under the

Treaty, and that their actions also violated Articles 6 (fundamental principles), 7(2) (good governance), and 8(1)(c) (Treaty implementation) .

The Court held that Article 27 does not confer appellate jurisdiction on the EACJ over the decision of the Ugandan Supreme Court, and that the article was intended strictly for appealing a decision within the EACJ from the first instance division. However, the Attorney General's delay in implementing the draft protocol illustrated an agenda to slow down the process of extending appellate jurisdiction envisaged by Article 27(2). This frustrated the applicant's expectations of Treaty implementation and resulted in a violation of Article 8(1)(c) of the Treaty. The Court also held that the Secretary General did not fulfill his Article 29 obligations to facilitate the Ugandan government's implementation of the protocol, and that holding endless consultations and meetings on the draft protocol was insufficient since it did not produce any tangible results. The Court stressed the importance of individual citizens holding their elected officials accountable for the manner in which they exercise their duties. Justice demands that an individual has opportunity to access his regional court to redress State abuse, and that the applicant has a right to question the respondents' delay in concluding a protocol on the EACJ's appellate jurisdiction. The Court consequently found that delay also contravened the principles of good governance under Article 6.

Link to [full judgment](#) (PDF)

Mary Ariviza and Okotch Mondoh v. Attorney General of Kenya and Secretary General of the East African Community

30 November 2011, EACJ First Instance Division, Ref. No. 7 of 2010

No violation of the Rule of law (Article 6(d)), No violation of the peaceful resolution of disputes (Article 6(c)), No violation of Due Process

On 19 August 2010, the applicants, a polling agent and an accredited observer, filed a petition with the Interim Independent Constitutional Dispute Resolution Court (IICDRC), the body with jurisdiction to determine matters arising out of the review of the Kenyan Constitution. They alleged that there were serious flaws in the draft Constitution and in the referendum, which had been held on 4 August 2010. On 24 August 2010, they filed a petition for interim relief asking the IICDRC to suspend the announcement of the referendum's results until the first petition was determined. On 26 August 2010, the IICDRC found that the first complaint had no valid claim and published a certificate of the referendum's results, despite the fact that it had not ruled on the applicants' request for interim relief. The applicants were unable to appeal to the High Court because it held the matter to be outside its jurisdiction under the new Constitution. They subsequently appealed to the EACJ under Article 30(1) of the Treaty, which allows the Court to hear cases pertaining to illegal regulations or decisions. They asserted that the IICDRC's presentation of the draft Constitution to the referendum was a violation of due process and the rule of law under the EAC Treaty. They also argued that the IIDRC violated Article 6(c), which established the principal of peaceful resolutions of disputes, by finding that there was no valid petition, and that the publication of the referendum results breached rule of law under Article 6(d) of the Treaty.

The Court affirmed that "due process" is a component of the "rule of law", and defined it as the "following of laid down laws and procedures". However, in this case the applicants had not demonstrated that due process had been violated as the evidence did not show that Kenyan voters

were confused or that the Kenyan public was unaware of the draft Constitution. The Court held the IICDRC decision to be a valid judicial decision, and refrained from evaluating the merits of that decision under Article 30(1) because such an evaluation was outside the realm of Article 30(1). The Court also found that there was no violation of Article 6(c), on the peaceful resolution of disputes, because the petition had been heard and determined by the IICDRC, and stressed that an evaluation of the decision's accuracy would be outside of the Court's competence under that Article as well. Lastly, IIDRC published the referendum results pursuant to its mandate; accordingly, this did not violate the rule of law.

Link to [full judgment](#) (PDF)

Omar Awadh and Six Others v. Attorney General of Kenya, Attorney General of Uganda, and Secretary General of the EAC

Decision on Jurisdiction: *Omar Awadh and Six Others v. Attorney General of Kenya, Attorney General of Uganda, and Secretary General of the EAC*

1 November 2011, EACJ First Instance Division, App. No. 4 of 2011

Admissible under time limitation (Article 30(2))

The applicants allege that they were arrested in Kenya, illegally detained, and transferred without any formal extradition process to Uganda, where they were arraigned on terrorism charges and remain until the present, tortured by authorities. The applicants argue that their arrest, transfer and detention constitute violations of the Treaty. The respondents raised a preliminary objection because over two months had passed since the kidnappings had occurred between 22 July and 17 September 2010, arguing that this violated the time limitation under Article 30(2) of the Treaty.

The Court held detention to be not a single occurrence but a continuing situation of a deprivation of liberty. They found that the purpose of the time limitation in Article 30(2) was not to deny East Africans the right to challenge continuing treaty infringements just because the violation had begun over two months prior. An unlawful arrest continues to be an unlawful act on each succeeding day until it is stopped. Thus, the applicants were not time barred from bringing their claim to the Court.

Link to [full ruling](#) (PDF)

Appeal Judgment on Jurisdiction: *Attorney General of Uganda and Attorney General of Kenya v. Omar Awadh and Six Others*

15 April 2013, EACJ Appellate Division, Appeal No. 2 of 2012

Appeal granted: case inadmissible due to time limitation (Article 30(2))

The Kenyan and Ugandan governments appealed the decision that the applicants were not time barred from bringing their claim as an unlawful arrest continues to be an unlawful act on each succeeding day of detention until it is stopped. The appellants relied on the Appeal Judgment in *Attorney General of Kenya v. IMLU*, where the Appellate Division rejected the concept of continuing violations on the grounds of legal certainty.

The Court first held that Article 30(2) prevents a party from bringing a case more than two months after the party has knowledge of the complained action. The applicants in this case had knowledge of their detention when it began, as evidenced by their filings in national courts after their arrests. As a result, the Court concluded that respondents' unlawful detention claim was time barred, distinguishing it from the detention in *Attorney General of Rwanda v. Plaxeda Rugumba* on the grounds that the applicant in that case never had knowledge of the detention of her brother. The Court also concluded that the strict application of Article 30(2) was necessary for the purposes of legal certainty, which would ensure efficiency and efficacy in the EACJ. The Court stated that it is for courts of law to decide whether or not detention is unlawful, and that the detention's legality does not depend on whether the respondents' arrest and transfer to Uganda was legal or not. The First Instance Division erred in its ruling because the illegality of the arrest and transfer should have been decided by courts, and this could not be done by the EACJ because these claims were time barred. The Court also re-iterated its holding in *Katabazi*, stating mere allegations of human rights violations will not deter the Court from exercising jurisdiction under Article 27(1) of the Treaty. However, this did not prevent it from upholding its previous decision in *Attorney General of Kenya v. IMLU*, stressing that the EAC Treaty creates no exception for continuing violations, differentiating the EAC Treaty from other human rights conventions, whose sole purposes are to guarantee that human rights are protected. The purpose of Article 30(2) was to uphold the principle of legal certainty and the treaty infringements alleged was a matter that lied outside the realm of criminal and human rights law. The application was thus struck on the grounds that it was filed outside the time limit.

Link to [full judgment](#) (PDF)

Plaxeda Rugumba v. Secretary General of the EAC and Attorney General of Rwanda

First Instance Judgment: *Plaxeda Rugumba v. Secretary General of the EAC and Attorney General of Rwanda*

1 December 2011, EACJ First Instance Division, Reference No. 8 of 2010

Arbitrary Detention: Violation of Good Governance and Rule of Law (Article 6(d)), Article 7(2)), Admissible under time limitation (Article 30(2)), No failure to exhaust local remedies

The applicant, the sister of Lieutenant Colonel Seveline Rugigana Ngabo, complained that the Rwandan government committed human rights violations when her brother was arrested and detained without trial. He was in custody without justification from 20 August 2010 to 28 January 2011, and no information on Lieutenant Ngabo, or any details concerning his detention, was given to his family. He had not been formally charged in court and his wife could not file for his release because her efforts in doing so has led to harassment, forcing her to go into hiding. The applicant argued that the arrest and detention of her brother without trial and Rwandan authorities failure to investigate constitute breaches of the Community's good governance and human rights principles under Articles 6(d) and 7(2).

The First Instance Division found that the Rwandan government had breached principles of good governance and rule of law in Article 6(d) and 7(2) of the Treaty, and that these provisions also included jurisdiction to interpret whether the state had promoted or protected human and peoples' rights in accordance with the African Charter (thought without the power to enforce those rights). The First Instance Division also found that his sister's claim was not time barred from the Court,

despite the fact that the arrest occurred on 20 August 2010 and the application was not filed until 8 November 2011, because the Rwandan government's refusal to provide a remedy was one failure in a continuous chain of events until the applicant filed her application. The Court also held that she was not barred for a failure to exhaust all local remedies, because there is no requirement to exhaust local remedies under the EAC Treaty. Furthermore, the remedy she was seeking could not be granted by any court in Rwanda because the EACJ is the only Court with the jurisdiction to hear a claim that alleges a violation of the EAC Treaty.

Link to [judgment](#) (Word Document)

Appeal: *Attorney General of Rwanda v. Plaxeda Rugumba*

June 2012, EACJ Appellate Division, Appeal No. 1 of 2012

Appeal rejected: Admissible under time limitation (Article 30(2)), No failure to exhaust local remedies; Jurisdiction over violations

The Attorney General appealed this ruling, arguing that the EACJ had no jurisdiction to hear the case, that the application was time barred, that the respondent had not exhausted all local remedies available, and that its arrest of the respondent's brother did not amount to a human rights violation because it was done pursuant to Rwandan law.

The Appeals Chamber found that although the EACJ does not yet have jurisdiction to adjudicate disputes concerning human rights per se, Article 6(d) of the EAC Treaty and Article 6 of the African Charter allow the Court to assert jurisdiction over this claim. The fact that Lieutenant Ngabo was held without justification for five months was not in dispute, as the Rwandan government had stipulated that his detention was in accordance with Rwandan national law. However, his incommunicado detention was not transparent, and thus amounted to violations of Articles 6(d) and 7(2) of the Treaty (rule of law, good governance, transparency and human rights). On the issue of the exhaustion of local remedies, the Appeals Chamber considered that this was a rule of customary international law, although it was not contained in the EAC Treaty, and the Court must be careful not to distort the Treaty. Here, given that the Military High Court was the only authority regulating the detention, the Court was unable to see other remedies available for Rwandan authorities to pursue. On the time for submitting the application, it was not clear when the applicant became aware of her brother's detention, and the government was largely responsible for this. The Government failed to show when the Lieutenant's family was notified of his whereabouts, so the benefit of the doubt went to the applicant and it was established that they were never officially notified. Thus, time never began to run and the applicant was not time barred from filing the claim.

Link to [full judgment](#) (PDF)

East African Centre for Trade Policy and Law v. Secretary General of the EAC

9 May 2013, EACJ First Instance Division, Reference No. 9 of 2012

Violation of Objectives (Article 5), Good governance (Article 6), Implementation (Article 8), Amendments (Article 150)

On 14 December 2006 and 20 August 2007, the East African Community Summit amended Article 27(1) and Article 30(3) of the Treaty, respectively. On 3 March 2004, the Partner States concluded a Customs Union Protocol, which established the East African Community Committee on Trade Remedies and vested it with jurisdiction for dispute settlements. Partner States concluded Common Market Protocol on 20 November 2009. The applicant argued that the amendments to the Treaty and the dispute settlement mechanisms deny original jurisdiction to the EACJ from handling disputes arising from the Protocols, and that this was contrary to the Treaty's expectations. The applicant further claimed that the amendments to Articles 27(1) and Article 30(3) infringe Articles 5 (objectives), 6 (principles), 8 (implementation), 23 (role of the Court), 33 (national court jurisdiction) and 126 (legal harmonization) of the Treaty.

The Court first held that the amendments to Articles 27(2) and 30(3) were inconsistent with Articles 5, 6, and 8(1) of Treaty because they created a window for state organs to interpret the Treaty to the exclusion of the EACJ. The Court also stated that the Partner States' delay in concluding a protocol to extend the EACJ's jurisdiction as contemplated by Article 27(2) created a legal vacuum that the amendments did not fill. The Treaty's framers intended the Court's interpretation to be supreme to those of other courts, and there was no evidence that the process the Partner States used in amending Articles 27 and 30 was "people-centered" and in accordance with Article 150 (amendments). As such, the Court strongly recommended that the amendments be revisited at the earliest opportunity. The Court also found that the Treaty does not provide for judicial mechanisms to be set up at the exclusion of the Court, only mechanisms the Council deems necessary to administer the two bodies. They do not out the Court's original jurisdiction of these types of disputes. Further, the mechanisms were set up in direct effectuation of Articles 5(2), 75 and 76. Accordingly, neither the Customs Union nor the Common Market Protocol violate Articles 5 or 8 of the Treaty.

Link to [full judgment](#) (PDF)

Samuel Mukira Mohochi v. Attorney-General of Uganda

17 May 2013, EACJ First Instance Division, Reference No. 5 of 2011

Violations of Good Governance (Articles 6(d) and 7(2)), Freedom of movement (Article 104 of Treaty, Article 7 of Common Market Protocol)

The applicant, a member of the International Commission of Jurists Kenya chapter, travelled to Uganda from Kenya on 13 April 2011 where he was scheduled to meet the Chief Justice of Uganda. After he arrived to Entebbe International Airport, the applicant was not allowed beyond the Immigration checkpoint. The applicant was served with a "Notice to return or Convey Prohibited Immigrant" addressed to the manager of Kenyan Airways; detained by the Ugandan authorities pursuant to the notice; and put on a flight back to Nairobi. Ugandan immigration authorities did not inform him why he was denied entry or why he had been declared a prohibited immigrant. They argued that Kenyan Airways detained the applicant and thus they had no duty to inform the applicant why he was prohibited and detained. They also failed to notify Kenya that they were limiting a Kenyan's ability to move freely. The applicant alleged that Uganda's actions, and Section 52 of the Ugandan National Citizenship and Immigration Control Act (which set out the reasons for declaring one a prohibited immigrant), violated its obligations under Article 6(d) and 7(2) of the Treaty, his fundamental rights and freedoms under the African Charter, as well as freedom of movement under Article 104 of the Treaty and Article 7 of the Protocol.

The Court re-iterated its holding in *Awadh* that there are no human rights provisions in the Treaty, but rather Treaty provisions governing cooperation between partner states, and found the allegations of African Charter violations to be outside the province of the EAC Treaty and the Court's jurisdiction. However, it does have jurisdiction over breaches of the State's obligations under Articles 6(d), 7(2) and 104 of the Treaty and Article 7 of the Protocol, and these alleged infringements establish a legal foundation for jurisdiction under Article 27(1). The Court stressed that the obligations in Article 6(d) are serious government obligations of immediate and consistent conduct.

Uganda's sovereign right to deny entry to persons was qualified by the Common Market Protocol and the Treaty, both of which became directly enforceable in Uganda and supreme to provisions of domestic law that conflicted with them. The Ugandan authorities' refusal to give the applicant reasons for denying him entry, afford him a fair opportunity to be heard or take what he had to say into consideration, denied him due process. This was a violation of the rule of law, along with Articles 104 of the Treaty and 7(1) of the Protocol. The authorities were obliged to determine and disclose reasons for denying entry, and they must have evidence to link the applicant with the ground for denial. Because Uganda could not show that he fitted into any of the 12 categories of prohibited immigrant, he was not a prohibited immigrant and his detention based on the illegal notice amounted to a deprivation of liberty, infringement of the freedom of movement as guaranteed by the Common Market Protocol and an undermining of one's dignity.

The Court also upheld the applicant's discrimination claim, as the Ugandan authorities failed to explain why he was singled out and treated differently than the other members of the delegation, violating the rule of law, accountability, transparency and human rights listed in the African Charter under Articles 6(d) and 7(2) of the Treaty, as well as Article 7(2) of the Protocol.

Additionally, when a citizen of a partner state is illegally detained, it serves as a threat to integration. The burden was on Uganda to prove that it notified Kenya of its limitation to the free movement of persons as Article 7(6) of the Common Market Protocol requires. The Court also found that Ugandan authorities had the duty to prove in Court that the applicant constituted a threat to regional security. Uganda failed to meet both of these obligations, leading the Court to conclude that violated the free movement principle under Article 104 of the Treaty and Article 7(6) of the Common Market Protocol.

Link to [full judgment](#) (PDF)

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