A CRITIQUE OF THE EAST AFRICAN COURT OF JUSTICE AS A HUMAN RIGHTS COURT

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INTRODUCTION

It is difficult to give a comprehensive review on the stature of the East African Court of Justice (EACJ), given that it is yet to function as a human rights court. The Zero Draft Protocol to operationalise its extended jurisdiction (the Draft Protocol) is still under debate. Further difficulty lies in envisioning what the final version will encompass, and how far it will go in addressing the shortcomings already apparent. The logical option then appears to be to focus on the structure as provided for in the Treaty and how the Draft Protocol should improve on it. The contextual background in which the East African Community (the Community) seeks to introduce the Protocol is also a relevant consideration. Alongside these, I have considered EACJ’s operations, as and when it is ready to adjudicate on human rights issues. Finally, there is a conclusion. However, a short history on the establishment of the EACJ is necessary before delving into these elements.

THE ESTABLISHMENT OF THE EACJ

A. Historical Background

The three East African Nations of Uganda, Kenya and Tanzania (the Partner States), revived the Community in a different form through the enactment, on 30 November 1999, of the East African Community Treaty (the Treaty). It came into force on 7 July 2000. Among considerations that motivated them to do so was the determination “to

* This contribution is based on a paper presented by Judge Bossa in October 2006, at a conference organized by Kituo cha Katiba on Human Rights Institutions in Eastern Africa.

1 The first East African Community set up by the defunct Treaty for East African Corporation of 1967 and based on the provision of common services collapsed in 1977.
strengthen their economic, social, cultural, political, technological and other ties for their fast and balanced and sustainable development”.

They were also convinced that “co-operation at the regional levels in all fields of human endeavor will raise the standards of living of African peoples, maintain and enhance the economic stability, foster close and peaceful relations among African states and accelerate the successive stages in the realization of the proposed African Economic Community and Political Union”.

The Treaty provides for Fundamental Principles that shall govern the achievement of the objectives of the Community. They include, among others, good governance, including adherence to the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, gender equality, as well as the recognition, promotion and protection of human and people’s rights in accordance with the provisions of the African Charter on Human and Peoples’ Rights (ACHPR). As for principles that shall govern the practical achievement of those objectives, the Partner States undertook to abide by the principles of good governance, including adherence to the principles of democracy, the rule of law, social justice and the maintenance of universally accepted standards on human rights.

While the Treaty does not spell out human rights specifically, references made to equality, gender equality, freedom, democracy, fundamental freedoms, the rule of law, and maintenance of universally accepted standards on human rights amply demonstrate that the Partner States consider human rights important in the process of the Community integration.

**B. Political federation as the ultimate goal**

The ultimate goal for the Community is to attain political integration through stages, beginning with a Customs Union, then free movement of people and goods (Common Market), then Monetary Union, and ultimately Political Union. East Africans appear to share the same ideals as their leaders, and perhaps more so. Indeed, from their findings from a workshop with stakeholders, the Committee on fast-tracking

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3 See Preamble to the Treaty of 1999.
4 See Article 6 of the Treaty.
5 See Article 7 of the Treaty.
6 See Preamble to the Treaty.