

Responsibility of the East African Community to Safeguard Physical Integrity and Freedom of the Citizens of its Member States

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A. Abstract

This paper looks at the responsibility that the East African Community (EAC) has in safeguarding the right of physical integrity and freedom among the citizens of the Community's Partner States. It examines the extent in which the EAC has discharged that responsibility and what needs to be in response to any existing shortcomings. The first part of this work is the conceptual framework where the key concepts have been defined and explained. Those concepts are the right to bodily integrity and freedom. The next part is on the legal and institutional framework of the East African Community which deals with protection of the right of physical integrity and freedom. After that part, I have presented a number of incidents of violation of the right of physical integrity and freedom within the EAC region in order to use them as the basis for examining the performance of the EAC's responsibility referred to herein.

The main findings of this work are that EAC has an enormous responsibility to safeguard the right to physical integrity and freedom within its jurisdiction; and that so far, the EAC has underperformed that task. Most of what has been done is more of strategizing, planning and expression of commitments while very little work has been done on the ground. As a result, many citizens of EAC Partner States continue to suffer gross violations of their right of physical integrity as well as their freedoms both from governmental and non-governmental actors. In view of that, the paper has urged the EAC and its Partner States to be more proactive in discharging that significant responsibility.

B. Introduction

Physical integrity and freedom constitute part of indispensable needs of any human being and they fall under the broader field of human rights and fundamental freedoms. When those two aspects are compromised unjustifiably, an individual's life will be seriously jeopardized. Physical integrity is a right of a human being to be free from interference which her/his body against her/his consent. Freedom refers to the quality or state of being free

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such as the absence of necessity, coercion, or constraint in choice or action, liberation from slavery or restraint or from the power of another. Every human being is entitled to full legal protection from any unconsented interference with their body. Similarly, every person is entitled to live a life that is free from all kinds of unjustified inhibitions.

The two entitlements are usually protected at domestic, regional and international levels. In East Africa, one of the regional bodies which is mandated with the task of providing that protection is the East African Community (EAC). The EAC is a regional intergovernmental organization comprised of seven (7) countries namely the Democratic Republic of the Congo, the Republics of Burundi, Kenya, Rwanda, South Sudan, Uganda, and the United Republic of Tanzania. The organization, in collaboration with its Partner States, the international community and other stakeholders, has a responsibility of safeguarding the right to physical integrity and freedom of the citizens of those countries.

This paper examines how the East African Community (EAC) has been performing that obligation. In doing that examination, the paper has focused on the legal and institutional frameworks of the EAC and selected factual events from the EAC Partner states. Emphasis has been given to more recent events to make this work as relevant as possible. Materials that have been consulted as sources of data include legal instruments, case laws, reports, papers, articles, and website materials. The main objective is to demonstrate the progress that has been made so far by the EAC in performing that obligation and to identify any shortcomings in existence with a view to propose remedial measures.

It should be noted that this paper does not cover the types of freedoms under the Common Market Protocol of the East African Community. Instead, the freedom which forms part of the focal point of this work is the one that relates to the basic political liberties required in a democracy.

Finally, the paper will recommend necessary legal and institutional reforms that are required for bolstering the EAC's capacity in safeguarding physical integrity and freedom of the East African citizens.

C. Conceptual framework

The right to bodily integrity has been defined as the right not to have one's body touched or interfered with without one's consent.¹ That right is embedded in the overarching right to life which every human being is entitled to. The right to life dictates that all human beings are entitled to rights of 'bodily integrity and autonomy, the right to have one's own body whole and intact and, on reaching an age of understanding, to take decisions about one's own body'.² By virtue of that right, all human beings must be free from any forms of physical assaults, suffering, medical or other testing, inoculation and forced eugenic or

1 *Jonathan Herring and Jesse Wall*, The Nature and Significance of the Right to Bodily Integrity, in: *The Cambridge Law Journal* 76, no. 3 (November 2017): 3, <https://doi.org/10.1017/S0008197317000605>, accessed on 09/06/2022.

2 *Herring and Wall*, note 1, p. 3..

social sterilization, as well as harsh or humiliating treatment or punishment.³ That right will be fully enjoyed if the state discharges its positive duty to protect its people, keeping them safe from interference by others.⁴

The second very important concept in this paper is freedom. That word has been widely defined by various authoritative sources. According to the Meriam-Webster online dictionary, freedom refers to the quality of being free such as ‘the absence of necessity, coercion, or constraint in choice or action, liberation from slavery or restraint or from the power of another’.⁵ The term also includes the state of being politically independent, exempt from arbitrariness and a civil liberty.⁶ Such liberty must go hand in hand with an individual’s ‘capacity to exercise choice or free will, ease or facility of movement, right of enjoying all of the privileges of membership or citizenship, and; a right or the power to engage in certain actions without control or interference’.⁷

D. Legal and institutional framework

The EAC has in place a legal and institutional machinery that deals with human rights and fundamental freedoms in general. That machinery automatically also covers the right of physical integrity and freedom. Below is a brief discussion of that machinery;

The first operational principle of the EAC holds that the EAC integration process is people-centred⁸ meaning, among other things, the needs of the citizens and residents of EAC Partner States are given maximum priority. Such needs include human rights and freedoms. Observance of human rights is one of the matters to be taken into account by the Partner States in considering the application by a foreign country to become a member of, be associated with, or participate in any of the activities of the Community.⁹ The fundamental principles of the EAC include promotion and protection of human and people’s rights in accordance with the provisions of the African Charter on Human and Peoples’ Rights.¹⁰ In addition, Partner states have undertaken to abide by the maintenance of universally accepted standards of human rights.¹¹ The latter standards are governed by various international human rights instruments such as the Universal Declaration of

3 *Herring and Wall*, note 1, p. 3..

4 *Herring and Wall*, note 1, p. 3..

5 Merriam-Webster online dictionary, accessed on 09/06/2022.

6 Freedom Law and Legal Definition | USLegal, Inc., accessed on 09/06/2022.

7 Freedom Law and Legal Definition | USLegal, Inc., note 6.

8 The Treaty for the Establishment of the East African Community: Signed on 30th November, 1999: Entered into Force on 7th July, 2000 (Amended on 14th December, 2006 and 20th August, 2007), EAC Publication 1 (Arusha, Tanzania: East African Community Secretariat, 2007), Art. 7(1)..

9 Treaty for the Establishment of the East African Community, note 8, Art. 3(3(b))..

10 Treaty for the Establishment of the East African Community, note 8, Art. 6(d)..

11 Treaty for the Establishment of the East African Community, note 8, Art. 7(2)..

Human Rights, International Covenant on Economic, Social and Cultural Rights (ICESCR), International Covenant on Civil and Political Rights (ICCPR) and The Convention on the Rights of the Child (CRC).

The right of physical integrity is mentioned in the African Charter of Human and Peoples' Rights. Article 4 of the Charter provides that every human being shall be entitled to respect for his life and the integrity of his person. The said article emphasizes that no one may be arbitrarily deprived of this right. Similarly, protection to the right to physical integrity can be found in the Universal Declaration of Human Rights, Articles 1 and 3; International Covenant on Economic, Social and Cultural Rights, Preamble; International Covenant on Civil and Political Rights (ICCPR), Preamble and Article 9 (1); and The Convention on the Rights of the Child (CRC), Article 19.

Fundamental freedoms are protected under various international and regional instruments such as the Universal Declaration of Human Rights in Articles 2, 13, 18, 19, 20, 28; the African Charter of Human and Peoples' Rights in Articles 1, 2, 6, 8, 12 and 22; the ICCPR in Articles 5, 12, 18, 19 and 22; the ICESCR in Articles 5, 6 and 13; and CRC in Articles 13, 14, 15, 29 and 40.

Apart from the legal instruments, the EAC's responsibility examined herein is also reflected in the EAC's strategies. In the 6th EAC Development Strategy 2021/2022 – 2025/2026, priority interventions include establishment a framework for promotion of human rights at the regional level.¹² Another priority is on strengthening oversight for the Community in promoting, defending and protecting human rights.¹³ The EAC also aspires to ensure that the jurisdiction of the EAC is extended to human rights matters.¹⁴

Regarding the institutional framework, the EAC has in place a number of organs which are mandated to safeguard human rights and fundamental freedoms at different levels. The organs, as established under Article 9 of the Treaty, include the Summit, The Council of Ministers, The Coordinating Committee, Sectoral Committees, The East African Court of Justice, The East African Legislative Assembly and The Secretariat. Each organ has a role to play in safeguarding the right to physical integrity and fundamental freedoms by ensuring existence of effective and fully operational systems that enable individuals to fully enjoy those entitlements and to obtain appropriate redress upon any arbitrary infringement thereof. However, as demonstrated later below, some organs are still not discharging their mandate well.

Further to that, the Treaty states that the EACJ shall have human rights jurisdiction as will be determined by the Council at a suitable subsequent date.¹⁵ Unfortunately, the Court has been in existence for 21 years now but still that jurisdiction has not been conferred to it. As a result, the Court has been assuming that jurisdiction through other indirect but

12 The East African Community, 6th EAC Development Strategy 2021/2022 – 2025/2026, p. 92.

13 The East African Community, 6th EAC Development Strategy, p. 123.

14 The East African Community, 6th EAC Development Strategy, p. 125.

15 Treaty for the Establishment of the East African Community, note 8, Article 27(2).

innovative avenues. The Court has been doing so by using the Treaty's fundamental and operational principles to deal with human rights violations.¹⁶ In *James Katabazi v Secretary General of EAC*,¹⁷ despite knowing clearly that it does not have a human rights jurisdiction, the Court held that it may still determine complaints filed before it if they fall within the purview Article 27(1).¹⁸ The said provision deals with establishment of the jurisdiction of the court. The Court emphasized that its role of interpreting the Treaty extends also to the duty to uphold the rule of law within the region.¹⁹ The Court's boldness in safeguarding human rights was also witnessed in *Attorney General of Kenya v. Independent Medical Legal Unit*.²⁰ In that decision the Court affirmed the decision in *Katabazi* that it will continue to entertain disputes involving human rights regardless of lack of direct jurisdiction over those disputes.²¹

Despite the Court's commendable record in upholding human rights within the EAC, there is one critical obstacle which continues to be a stumbling block against dispensation of justice by the Court. That obstacle is the two months' time limit to file a dispute before the EACJ as stipulated under Article 30 (2) of the EAC Treaty. That time limit is too short and unrealistic. The Article provides that proceedings shall be, instituted within two months of the enactment, publication, directive, decision, or action complained of, or in the absence thereof, of the day in which it came to the knowledge of the complainant, as the case may be. The two months period is too short for a victim of violation of violation of human rights to file a claim timeously before the Court. As a result, a big number of those victims fail to obtain redress under the EAC regime.

D. Selected factual events

Infringement of the right to physical integrity and freedom continues to be a common phenomenon in the EAC sub-region. Numerous violations are witnessed each year hence indicating vividly that the EAC still has a big task to do. Below are some selected factual events from EAC Partner States in proof of those violations.

16 *Geoffrey W. M. Kiryabwire*, The Role of the East African Court of Justice in the East African Integration Process, available at Papers | East African Court of Justice (eacj.org), accessed on 09/06/2022, p. 10.

17 EACJ First Instance Division, Ref no 1 of 2007.

18 *Emmanuel Elau*, 2019, Human Rights in the East African Community, <https://dx.doi.org/10.2139/ssrn.3426050>, accessed on 13/08/2022, p. 8.

19 *Emmanuel Elau*, Human Rights in the East African Community, note 18.

20 Appeal no 1 of 2011.

21 *Emmanuel Elau*, Human Rights in the East African Community, note 18.

I. Tanzania

On September 7, 2017, Tundu Lisu, the former outspoken Member of Parliament representing the Singida East constituency on CHADEMA's²² was seriously wounded when gunmen sprayed several rounds of ammunition on his car in Dodoma, Tanzania as he was arriving at his house from the Parliament.²³ To be precise, about 38 bullets were sprayed on the car that he was in and 16 of them hit him, half of them remaining in his body.²⁴ According to him, one bullet will remain in his body because it is too dangerous to remove it.²⁵ That merciless incident subjected the country into a dark moment in as far as human rights and fundamental freedoms were concerned. Regardless of who engineered the shooting, it amounted to a gross violation of Tundu Lisu's right to physical integrity and various types of freedoms such as freedom from torture, freedom of expression, freedom of association *et cetera*.

In 2018, a statute known as the *Electronic and Postal Communications (Online Content Regulations)* for the purpose of vesting the Tanzania Communications Regulatory Authority (TCRA) with extensive discretionary powers to, among others, control digital media.²⁶ In January, the High Court in Mtwara quashed an application by the civil society organizations Legal and Human Rights Centre (LHRC), trustees of the Media Council of Tanzania, and the Tanzania Human Rights Defenders Coalition, challenging the regulations.²⁷

Violations that took place in 2019 included cracking down on media, civil society groups and individuals critical of the government.²⁸ In February, 2019 the Ministry of Information, Culture, Arts and Sports suspended The Citizen newspaper for a week on allegations of violating the Media Services Act, accusing the newspaper of publishing two biased articles.²⁹ One article was about United States lawmaker Bob Menendez raising concerns about deterioration of respect for civil liberties in the country while the other article was on the decline of the Tanzanian currency against the US dollar.³⁰ On April 25, 2019, Wairagala Wakabi, the director of the Ugandan-based Collaboration on International ICT Policy in East and Southern Africa (CIPESA) was detained and deported while on the

22 The major opposition party in Tanzania.

23 The Citizen, 2017, Lissu Attack Overshadows TZ Politics, available at Lissu attack overshadows TZ politics | The Citizen, accessed on 20/05/2022.

24 The Citizen, 2018, It was a Political Assassination Attempt, Lissu Tells Journalists, available at It was a political assassination attempt, Lissu tells journalists | The Citizen, accessed on 20/05/2022.

25 The Citizen, 2018, It was a Political Assassination Attempt, Lissu Tells Journalists, note 24.

26 Human Rights Watch, World Report 2020, Events of 2019, World Report 2020 | Human Rights Watch (hrw.org), accessed on 10/07/2022, pp. 553–55.

27 Human Rights Watch, World Report 2020, note 26, p. 555..

28 Human Rights Watch, World Report 2020, note 26, p. 553..

29 Human Rights Watch, World Report 2020, note 26, p. 553..

30 Human Rights Watch, World Report 2020, note 26, p. 553..

way to receiving a human rights award.³¹ In March, 2019 the East African Court of Justice held that the *Media Services Act of 2016* violated protocols of the EAC treaty and urged the Tanzanian government to amend the law so as to align it with the Treaty.³² Following this, the government expressed willingness to have a dialogue with media sector stakeholders on media laws but had not amended the law.³³

The government also continued to restrict the freedom of the opposition parties to conduct their activities.³⁴ In January, 2019 the Parliament passed amendments to the 2002 *Political Parties Act*, which granted far-reaching mandate to the Registrar of Political Parties to exercise a tight control over political parties such as demanding information from the parties, suspending individual members of political parties, and imposing a mandatory requirement for institutions or individuals to get approval from the Registrar to conduct civic education, or face criminal sanctions including imprisonment or fines.³⁵ Although the current President pledged to remove existing restrictions on the media on April 6, 2021, authorities continued the Magufuli administration's crackdown on the media.³⁶ The media and human rights groups reported that on April 12, police arrested journalists Dickson Billikwija and Christopher James, detaining them for three hours within the premises of Temeke municipal government on the orders of the Temeke district executive director.³⁷

Historically, the government monitored the population through a neighborhood-level CCM cell structure, but the advancement of science and technology has triggered the government to be more strategic. In recent years, the government has increasingly policed personal expression on social media.³⁸ Under laws including the 2015 *Cybercrimes Act* and the 2018 *Electronic and Postal Communications (Online Content) Regulations*, social media users have been prosecuted for offenses such as insulting the president.³⁹ Vague prohibitions on communication that “causes annoyance” or “leads to public disorder” have confused users as to what constitutes a violation, and empowered authorities to suppress unfavorable speech at their discretion.⁴⁰ The 2018 regulations also require internet cafés to install surveillance cameras.⁴¹

31 Human Rights Watch, World Report 2020, note 26, p. 553..

32 Human Rights Watch, World Report 2020, note 26, p. 555..

33 Human Rights Watch, World Report 2020, note 26, p. 555..

34 Human Rights Watch, World Report 2020, note 26, p. 555..

35 Human Rights Watch, World Report 2020, note 26, p. 555..

36 Human Rights Watch, World Report 2022, Events of 2021, World Report 2022 | Human Rights Watch (hrw.org), p. 648..

37 Human Rights Watch, World Report 2022, note 36, p. 648.

38 Freedom House, 2020, Freedom in the World 2020, available at Tanzania: Freedom in the World 2020 Country Report | Freedom House, accessed on 03/08/2022.

39 Freedom House, 2020, Freedom in the World 2020, note 38.

40 Freedom House, 2020, Freedom in the World 2020, note 38.

41 Freedom House, 2020, Freedom in the World 2020, note 38.

Interestingly, a few months ago, Jonas Afumwisye who was the regional manager of the Tanzania Railways Corporation, Dar es Salaam was fired from that position for, among others, opposing, on social media, the introduction of Mobile money transaction levies (famously known as *tozo*).⁴² Commenting on TRC's decision, some stakeholders have said that it is not fair to fire an employee for giving his opinion on things that other Tanzanians are talking about just like him.⁴³

The President of the Confederation of Trade Unions (TUCTA), Tumaini Nyamhokya said they oppose the dismissal of the worker because it is his right to express his opinion.⁴⁴

In 2016 the government imposed a blanket ban of all political activities⁴⁵ in a move that obviously seems to be calculated to weaken the opposition and trample on civil liberties such as freedoms of association and expression. The ban has been selectively applied against the opposition and several opposition politicians have since been arrested and prosecuted on trumped-up charges.⁴⁶ For example, the leader of the biggest opposition party, Freeman Mbowe, was arrested in July 2021 and charged with terrorism⁴⁷ He was released about 8 months later by way of *nolle prosequi* and that happened after pressure and fierce denunciation both locally and internationally calling for his release. His supporters even created a slogan saying "*Mbowe siyo gaidi*" which means Mbowe is not a terrorist. Further to that, the blanket ban on political activities was lifted in January, 2023⁴⁸ although its negative impact in the country will continue to be felt for many years to come.

The injustice against people with albinism in Tanzania is a notable scenario on infringement of the right to physical integrity of members of that group. Tanzania records one the highest number of children born with Albinism around the globe, putting the state at the centre of the fight for the rights of people with Albinism.⁴⁹ In other countries the rate of albinism is 1 in every 20,000 births, while the data in Tanzania is inadequate, the rate seems

42 The Citizen, 2022, <https://www.thecitizen.co.tz/tanzania/news/national/trc-sacks-officer-for-opposing-transaction-levies-on-social-media-3923648>, accessed on 24/08/2022.

43 The Citizen, 2022, note 42.

44 The Citizen, 2022, note 42.

45 IFEX, 2019, Censorship in Tanzania: Repressive Laws Continue to Silence Dissent, available at Censorship in Tanzania: Repressive laws continue to silence dissent – IFEX, accessed on 22/06/2022.

46 IFEX, 2019, Censorship in Tanzania: Repressive Laws Continue to Silence Dissent, note 45.

47 The East African, 2021, Tanzanian opposition party leader Freeman Mbowe charged with terrorism – The East African, accessed on 25/05/2022.

48 Amnesty International, 2023, Tanzania: President Hassan lifts the Blanket Ban on Political Assemblies, available at Tanzania: President Hassan lifts the blanket ban on political assemblies – Amnesty International, accessed on 07/01/2023.

49 GHR TV World News, 2021, The Fight for Survival – The Plight of People with Albinism in Tanzania, The Fight for Survival – The Plight of People with Albinism in Tanzania – Human Rights News (ghrtv.org), accessed on 10/08/2022.

close to 1 in 2,000; this is likely because of the genetic link.⁵⁰ In a country of 59 million people, this means about 30,000 Tanzanians have albinism.⁵¹

Some traditional belief systems, such as witchcraft and superstitions, pose a grave danger to people with Albinism.⁵² People committed to mysticism trust that obtaining the body part of a person with Albinism, or sacrificing them, will bring great luck.⁵³ This belief system fuels a lucrative black market, spearheaded by witchdoctors, who promise to deliver power to those who bring them the body, or body parts, of a person with Albinism.⁵⁴ In return for sacrificing an individual with Albinism, the person will receive charms and potions to help them acquire wealth, cure illness or bring good luck.⁵⁵ In addition, many also maintain that engaging in sexual relations with a woman with Albinism can cure HIV.⁵⁶ NGO Under The Same Sun (UTSS) has documented 76 killings of albinos, one abduction and 21 grave violations.⁵⁷ Seventy-two people have survived attacks but all of them, the organisation reported, "are deeply traumatised and some severely mutilated".⁵⁸

II. *The Democratic Republic of Congo*

The year 2021 witnessed alarming infringements of the right of physical integrity and fundamental freedoms. Such acts included attacks on civilians by armed groups and government forces, with some 905 people killed between May and October across Ituri and North Kivu.⁵⁹ The Allied Democratic Forces (ADF), an Islamist armed group led by Ugandans, has been allegedly responsible for more than half the killings.⁶⁰ The authorities often cracked down on dissenting voices, including human rights and democracy activists, journalists, and peaceful protesters.⁶¹ Tensions escalated in the capital, Kinshasa, with the establishment of a controversial new electoral commission, due to alleged political interference, and debates over a proposed new law, known as the "Congolité Bill," that would ban Congolese citizens with a parent of foreign origin from higher office.⁶² Supporters of

50 Peacemakers for Albinism and Community, Albinism in Tanzania | Peacemakers for Albinism and Community (albinism-tz.org).

51 Peacemakers for Albinism and Community, note 50.

52 GHR TV World News, 2021, note 49.

53 GHR TV World News, 2021, note 49.

54 GHR TV World News, 2021, note 49.

55 GHR TV World News, 2021, note 49.

56 GHR TV World News, 2021, note 49.

57 *Elsa Buchanan*, 2017, Tanzania's 'Ghost People': Putting an end to Albino Persecution, Tanzania's 'ghost people': Putting an end to albino persecution (ibtimes.co.uk), accessed on 08/08/2022.

58 *Elsa Buchanan*, 2017, Tanzania's 'Ghost People': Putting an end to Albino Persecution, note, 57.

59 Human Rights Watch, World Report, note 36, p. 197.

60 Human Rights Watch, World Report, note 36, p. 197.

61 Human Rights Watch, World Report, note 36, p. 197.

62 Human Rights Watch, World Report, note 36, p. 197.

Tshisekedi's Union for Democracy and Social Progress (UDPS) party physically attacked Catholic churches and priests for their role in pushing for a more independent electoral commission president.⁶³ Journalists, activists, whistle-blowers, and critics of government policies were intimidated and threatened, beaten, arrested, and in some cases prosecuted by the authorities and security forces.⁶⁴

In February, 2021 authorities arrested three members of the citizens' movement commonly known as *Jicho ya Raiya* (*the people's eye*) in North Kivu's Masisi territory, after they criticized the mismanagement of local health structures.⁶⁵ In late February, 2021 it was revealed that authorities had sentenced whistle-blowers Gradi Koko and Navy Malela to death *in absentia* in September 2020.⁶⁶ The two former bank employees exposed alleged illegal financial practices and money laundering.⁶⁷ In July, exiled anti-corruption whistle-blower Jean-Jacques Lumumba faced threats and intimidation in Europe and Kinshasa.⁶⁸ Authorities also banned demonstrations, while security forces used excessive force to break them up.⁶⁹ In April, police killed five people and wounded at least eight others during peaceful protests in Goma, Butembo, and Beni territory.⁷⁰ Following the protests, security forces and violent mobs in Nyiragongo territory, North Kivu, killed at least 10 people and injured at least 50 others.⁷¹

On April 29, dozens of students calling for peace were violently accosted and rounded up by police forces in Beni.⁷² Tshisekedi later apologized to all the children involved, but only after he appointed the police commander in charge of the round-up, François Kabeya, as mayor of Goma.⁷³

III. Uganda

In 2021, Uganda experienced a significant worsening of the human rights atmosphere.⁷⁴ The year began with re-election of President Yoweri Museveni in a general election that was replete with pervasive abuses.⁷⁵ They abuses included arbitrary arrests and beating of the opposition supporters and journalists, killing of protesters and disruption of opposition

63 Human Rights Watch, World Report, note 36, p. 197.

64 Human Rights Watch, World Report, note 36, p. 198.

65 Human Rights Watch, World Report, note 36, p. 198.

66 Human Rights Watch, World Report, note 36, p. 198.

67 Human Rights Watch, World Report, note 36, p. 198.

68 Human Rights Watch, World Report, note 36, p. 198.

69 Human Rights Watch, World Report, note 36, p. 198.

70 Human Rights Watch, World Report, note 36, p. 198.

71 Human Rights Watch, World Report, note 36, p. 199.

72 Human Rights Watch, World Report, note 36, p. 199.

73 Human Rights Watch, World Report, note 36, p. 199.

74 Human Rights Watch, World Report, note 36, p. 680.

75 Human Rights Watch, World Report, note 36, p. 680.

rallies by security forces.⁷⁶ A few days prior to the elections, internet was shut down for five days and access to popular social media platforms such as Twitter and YouTube was restricted for a month.⁷⁷ The government violated the right to freedom of movement, freedom of assembly, freedom of association and freedom of expression mainly against leaders of the opposition political parties, their followers and journalists.⁷⁸ Two days before the January 14, 2021, elections, internet service providers were ordered to block access to social media services.⁷⁹ The next day, the government shut down internet access across the country for five days.⁸⁰ The authorities restored partial access to social media websites, excluding Facebook, in February.⁸¹ During election campaigns, the authorities restricted media coverage of opposition party candidates, in some instances beating and shooting at journalists with rubber bullets.⁸²

In February 2021, military police beat at least 10 journalists covering opposition presidential candidate, Robert Kyagulanyi, as he delivered a petition to the United Nations Office of the High Commissioner for Human Rights in Kampala over the abuses against his supporters.⁸³ The next day, the army announced that a military court had sentenced seven members of the military police to two months detention in a military facility but provided no details on its investigations or the military trial.⁸⁴

Security forces conducted a spate of abductions and arrests of opposition supporters, government critics, and other people for allegedly participating in protests over the November 18, 2020 arrest of Kyagulanyi in Luuka, Eastern Uganda.⁸⁵ On March 4, 2021, Internal Affairs Minister Jeje Odongo presented a list to parliament of 177 people in military detention who had been arrested between November 18, 2020, and February 8, 2021, allegedly for participating in the protests as well as for being in “possession of military stores,” and “meetings planning post-election violence.”⁸⁶ On March 8, in a public letter to the media, President Yoweri Museveni said that 50 people were being held by the Special Forces Command, a unit of the Ugandan army, for “treasonable acts of elements of the opposition.”⁸⁷ In May 2021, police detained 24-year-old law student Michael Muhima for a tweet parodying the police spokesperson, charged him with “offensive communication,”

76 Human Rights Watch, World Report, note 36, p. 680.

77 Human Rights Watch, World Report, note 36, p. 680.

78 Human Rights Watch, World Report, note 36, p. 680.

79 Human Rights Watch, World Report, note 36, p. 680.

80 Human Rights Watch, World Report, note 36, p. 680.

81 Human Rights Watch, World Report, note 36, p. 680.

82 Human Rights Watch, World Report, note 26, p. 680.

83 Human Rights Watch, World Report, note 26, p. 680.

84 Human Rights Watch, World Report, note 26, p. 680.

85 Human Rights Watch, World Report, note 26, p. 681.

86 Human Rights Watch, World Report, note 26, p. 681.

87 Human Rights Watch, World Report, note 26, p. 681.

and denied him access to lawyers or family for five days before he was released on bail.⁸⁸ The government in June cancelled a social media tax requiring users of WhatsApp, Twitter, and Facebook, among other sites, to pay a daily fee of 200 Ugandan Shillings (US\$0.05) that had been in force since 2018, and replaced it with a general 12 per cent tax on the purchase of internet data, further restricting access to many Ugandans.⁸⁹

In the lead-up to Uganda's January 2021 elections, security forces beat and arrested scores of opposition supporters and journalists, killed dozens, and disrupted opposition rallies.⁹⁰ Presidential candidates, Patrick Amuriat, of the Forum for Democratic Change and, Robert Kyagulanyi of the National Unity Platform were among those arrested.⁹¹ On January 9, 2021 security officials surrounded Kyagulanyi's home and prevented people from entering or exiting for days, including the United States Ambassador to Uganda, Natalie E. Brown.⁹² Media reported that soldiers beat Francis Zaake, an opposition member of parliament, when he attempted to visit Kyagulanyi.⁹³ On January 18, security forces blocked access to Kyagulanyi's party's head office in Kampala, allegedly to "counter any plans to violent demonstrations and mass riots."⁹⁴

IV. Kenya

The human rights situation in Kenya has remained a critical with the authorities unwilling to take responsibility for grave abuses such as those which occurred in 2021.⁹⁵ Despite public criticism, the police continued to use excessive force while enforcing coronavirus control measures in 2021. While the government had since eased most of the measures, save for the curfew that was lifted in October, police brutality has persisted.⁹⁶ On August 1, police in Kianjokoma town, Embu County, eastern Kenya, detained two brothers Emmanuel Marura Ndwiga, 19, and Benson Njiru Ndwiga, 22, for violating the 10 p.m. to 4 a.m. curfew.⁹⁷ Relatives found their bodies at a local morgue three days later.⁹⁸ The officers who arrested the duo claimed they fell from the moving police vehicle, but an autopsy found that the head and rib injuries found on the bodies were inconsistent with the alleged fall.⁹⁹ These findings triggered public protests which the police violently suppressed, killing one

88 Human Rights Watch, World Report, note 26, p. 681.

89 Human Rights Watch, World Report, note 26, p. 681.

90 Human Rights Watch, World Report, note 26, p. 682.

91 Human Rights Watch, World Report, note 26, p. 682.

92 Human Rights Watch, World Report, note 26, p. 682.

93 Human Rights Watch, World Report, note 26, p. 682.

94 Human Rights Watch, World Report, note 26, p. 682.

95 Human Rights Watch, World Report, note 36, p. 391.

96 Human Rights Watch, World Report, note 36, p. 392.

97 Human Rights Watch, World Report, note 36, p. 392.

98 Human Rights Watch, World Report, note 36, p. 392.

99 Human Rights Watch, World Report, note 36, p. 392.

person.¹⁰⁰ On August 15, the Director of Public Prosecutions Noordin Haji charged six police officers with the killing of the two brothers.¹⁰¹

IV. Rwanda

YouTube continued to be a contested space for free speech in Rwanda.¹⁰² On February 9, Innocent Bahati, a 31-year-old singer and poet, was reported missing to the Rwanda Investigation Bureau (RIB), two days after he was last seen in Nyanza, Southern Province. His poems, which he recited in videos posted on YouTube, focused on social issues such as growing poverty or criticism of the lockdown and its impact.¹⁰³ Although the RIB spokesperson told the media an investigation into his whereabouts was ongoing, findings were never published and Bahati's whereabouts remain unknown.¹⁰⁴

Online commentators such as Yvonne Idamange and Aimable Karasira also used their videos to discuss the 1994 genocide, crimes committed by the ruling RPF in its aftermath, and the government's commemorations of the killings.¹⁰⁵ On September 30, Idamange, a Tutsi genocide survivor who accused the government of monetizing the genocide and called for a protest, was found guilty of inciting violence and public uprising, denigrating genocide artefacts, and spreading rumours and violent assault, among other charges. Her trial was held behind closed doors and she was handed a 15-year sentence.¹⁰⁶

V. Female Genital Mutilation across the region

Apart from those country-specific events, Female Genital Mutilation (FGM) is another disaster affecting women's right to bodily integrity and freedom in East Africa. FGM causes severe physical and mental damage, sometimes resulting in death. As such, it interferes with a woman's right to physical integrity, privacy, and freedom from violence. A qualitative study conducted in Kenya confirmed existing evidence on the drivers of FGM, which is primarily practiced to control women and girls' sexuality, conform to cultural traditions and social pressure, enhance girls' marriageability and respectability, and promote a sense of identity and belonging.¹⁰⁷ Even where laws are enacted, however, they

100 Human Rights Watch, World Report, note 36, p. 392.

101 Human Rights Watch, World Report, note 36, p. 392.

102 Human Rights Watch, World Report, note 36, p. 564.

103 Human Rights Watch, World Report, note 36, p. 564.

104 Human Rights Watch, World Report, note 36, p. 564.

105 Human Rights Watch, World Report, note 36, p. 564.

106 Human Rights Watch, World Report, note 36, p. 564.

107 UNICEF, 2020, Female Genital Mutilation: Evidence from Uganda, Uganda FGM Analysis Report – FINAL-LORES.pdf (unicef.org), accessed on 14/08/2022.

are mostly inadequate and seldom enforced.¹⁰⁸ Despite the large number of laws that ban FGM, prosecutions are rare, and there is limited information available on prosecutions or the outcomes of any prosecutions made in recent years.¹⁰⁹ A recent report released by Plan International African Union Liaison Office and the African Child Policy Forum (ACPF) in November 2019, shows that some countries, including Kenya and Uganda, have enacted laws prohibiting the practice to varying degrees.¹¹⁰ Unfortunately, the enforcement of these laws varies, and in some cases has resulted in the practice being pushed underground and across borders to avoid prosecution.¹¹¹ For instance, strong legislation in Uganda is undermined by women crossing, or being taken across, the border into Kenya in order to undergo FGM.¹¹²

Progress has been made in recent years in the fight against FGM.¹¹³ For East African Partner States, the practice is declining fast among girls aged 15 to 19 in Kenya.¹¹⁴ Despite this progress, however, the medicalisation of FGM, a change that sees the practice performed by medical professionals, is increasing.¹¹⁵

All those events indicate existence of gross infringement of the right to physical integrity and freedom being committed against the citizens of the EAC. Also, the continued prevalence of those infringements indicates that the EAC is not fully discharging its responsibility of safeguarding the entitlements in question. The existing legal and institutional framework within the EAC is inadequate hence it needs to be strengthened.

E. Ongoing efforts

In addition to the establishment of the legal and institutional frameworks, there are other relevant efforts which deserve to be highlighted in this work. In 2012, the East African Legislative Assembly debated and passed the EAC Human Rights Bill, 2012 paving the way for a new law (Act of the Community) should the EAC Heads of State assent to the same.¹¹⁶ The Bill seeks to give effect to the provisions of the Treaty for EAC on Human

108 African Daily News, 2020, Africa: Female Genital Mutilation and the Laws in Africa, Africa: Female Genital Mutilation And The Laws In Africa (africadailynews.net), accessed on 13/08/2022.

109 African Daily News, 2020, Africa: Female Genital Mutilation And The Laws In Africa, note 108.

110 African Daily News, note 108.

111 African Daily News, note 108.

112 African Daily News, note 108.

113 African Daily News, note 108.

114 African Daily News, note 108.

115 African Daily News, note 108.

116 The East African Legislative Assembly, 2021, Bill on Human Rights is Passed by EALA, available at Bill on Human Rights is Passed by EALA | East African Legislative Assembly, accessed on 15/08/2022.

and Peoples' rights.¹¹⁷ The Bill consolidates the various principles on human and people's rights found in the Charter on Human rights and various conventions and agreements including the African Charter on Human and Peoples' Right as well as the UN Charter on Human and Peoples Rights.¹¹⁸ The Bill further provides an institutional framework for research in the area of human rights and will lead to harmonization of applicable principles and rules across board.¹¹⁹ However, over ten (10) years have lapsed so far but the Bill has not been enacted into law because some Partner States have not assented to it. That inordinate delay is a clear indication that human rights and fundamental freedoms within the EAC are not given enough priority.

Again, in 2016, EALA passed the EAC Prohibition of Female Genital Mutilation Bill (FGM Bill) but up to now it has not been assented to law.¹²⁰ The main purpose of the Bill is to bolster the fight against FGM with the EAC region.¹²¹ It had been observed that the outlawed FGM is practiced by communities living across borders of member states and therefore requires the cooperation and collaboration of the six countries in order to effectively implement the law and eliminate the practice.¹²² The continued procrastination in fully enacting that law to some extent allows the heinous FGM crime to continue hurting more victims especially young innocent and defenceless girls.

In 2016, EALA passed legislation granting Persons with Disabilities with full protection to enjoy their rights as enjoyed by other citizens of the region.¹²³ The object of the East African Community Persons with Disability Bill, 2015 is to provide a comprehensive legal framework for the protection of the rights of Persons with Disabilities in the Community.¹²⁴ Unfortunately, up to now the Bill has not been enacted into a fully operational law.

In the same year, EALA made a resolution urging EAC Partner States to take effective measures to eliminate all forms of discrimination against persons with albinism and to increase education and public awareness in the region.¹²⁵ At the same time, the Assembly

117 The East African Legislative Assembly, 2021, Bill on Human Rights is Passed by EALA, note 116.

118 The East African Legislative Assembly, note 116.

119 The East African Legislative Assembly, note 116.

120 Faith to Action Network, 2019, EAC Heads of State yet to Assent to FGM Bill 2016, available at EAC Heads of State yet to assent to FGM Bill 2016 – Faith to Action Network (faithtoactionnetwork.org), accessed on 08/06/2022.

121 Faith to Action Network, 2019, EAC Heads of State yet to assent to FGM Bill 2016, note 120.

122 Faith to Action Network, note 120.

123 The East African Legislative Assembly, 2016, EALA Passes Bill on PWDs, wants Dignified, Humane Treatment for All, available at EALA Passes Bill on PWDs, wants Dignified, Humane Treatment for All | East African Legislative Assembly, accessed on 14/08/2022.

124 The East African Legislative Assembly, 2016, EALA Passes Bill on PWDs, wants Dignified, Humane Treatment for All, note 123.

125 The East African Community, 2016, Rights and Freedoms of Persons with Albinism should be central, EALA says, available at Rights and Freedoms of Persons with Albinism should be central, EALA says (eac.int), accessed on 10/08/2022.

fervently condemned all forms of discrimination and attacks against persons with albinism, ritual killings and the trafficking in persons of the same in the EAC Partner States.¹²⁶ The Assembly urged Partner States to institute a collaborative partnership with the Civil Society Organisations, the Private Sector or other actors with the view of eliminating stigma against persons with albinism and promoting the rights, dignity and living conditions of those persons in the region.¹²⁷ Lastly, the Assembly emphasized the necessity of collaboration with regional and international organisations in promoting the rights, dignity and living conditions of persons with albinism in the region.¹²⁸

Apart from that, The EAC Council of Ministers established the EAC Forum of National Human Rights Institutions.¹²⁹ As part of its achievements, the Forum conducted an evaluation of the national constitutions and other international instruments with the ultimate aim of standardizing and adopting best practices.¹³⁰

Noticeably, most of what has been done so far is in the formative stage. The impact on the ground is still insignificant that is why incidents of violation of the right to physical integrity and freedom are still rampant. In view of that, the EAC needs to work harder in ensuring that all the beautifully articulated ambitions, strategies, goals *et cetera* are translated into reality to as to eradicate such violations.

F. Key challenges

This paper has identified five (5) major challenges which make the EAC less effective in discharging its responsibility examined herein. Those challenges are as follows:-

I. Delays in the Operationalisation of some Key Legal Instruments

As demonstrated above, there has been an inordinate delay in operationalization of the EAC Human Rights Bill, Persons with Disability Bill and the FGM Bill. Those documents have been waiting an assent of the Heads of State for ten (10) and six (6) years respectively. Even the reasons for such delays are not clear. A prompt enactment of those legal instruments would speed up efforts in curbing the injustice discussed herein.

126 The East African Community, 2016, Rights and Freedoms of Persons with Albinism should be Central, note 125.

127 The East African Community, 2016, Rights and Freedoms of Persons with Albinism should be Central, note 125.

128 The East African Community, 2016, Rights and Freedoms of Persons with Albinism should be Central, note 125.

129 The East African Community, 2017, EAC Development Strategy (2016/17 – 2020/21), p. 38.

130 The East African Community, 2017, EAC Development Strategy, note 129.

II. EACJ's Lack of the Human Rights Jurisdiction

The delay in the extension of the Court's jurisdiction to cover human rights issues is utterly inconsistent with the objectives and principles of good governance, rule of law and universally accepted human rights standards as enshrined in the Treaty.¹³¹ In addition, the EACJ is still an *ad hoc* court which does not sit throughout the year and has no permanent court house of its own.¹³² Partner States should urgently see to the EACJ's complete institutionalisation for it to be more effective.¹³³ The Court needs to have full human rights jurisdiction so as to be able to fully enforce the right of physical integrity and fundamental freedoms within the EAC.

III. Disregard of Obligations by Partner States

According to Japhet Biegon, the regional advocacy co-ordinator at Amnesty International, the majority of EAC partner states have traditionally shown disregard for regional human-rights obligations, the bodies and mechanisms mandated to monitor compliance with these obligations.¹³⁴ A good example is the East African countries' omission to comply with their reporting obligations.¹³⁵ That conduct reflects their 'general reluctance, even refusal, to interact with the regional human-rights bodies'.¹³⁶

IV. The Problem of Limitation of Time

The time limit to file a complaint before the EACJ is not enough for the victims of violations of right to physical integrity or freedom to seek legal assistance or even to prepare for instituting proceedings before the Court. The time limit does not consider individuals who reside in remote areas who must travel long costly journeys to access legal services. In addition, the time limit does not accommodate victims who fail to institute their complaints due to physical or mental disabilities caused by infringement of their rights.

V. Little Priority to Human Rights and Fundamental Freedoms

Matters of human rights and fundamental freedom are not given enough priority under the EAC integration process. That observation is confirmed by, among others, the inordinate

131 The East African Community, 2017, EAC Development Strategy, note 129, p. 49.

132 *Geoffrey W. M. Kiryabwire*, The Role of the East African Court of Justice in the East African Integration Process, note 16, p. 11.

133 *Geoffrey W. M. Kiryabwire*, The Role of the East African Court of Justice in the East African Integration Process, note 16, p. 12.

134 The East African, 2019, EAC States behind on Human Rights Reports, available at EAC states behind on human-rights reports – The East African, accessed on 12/08/2022.

135 The East African, 2019, EAC States behind on Human Rights Reports, note 134.

136 The East African, 2019, EAC States behind on Human Rights Reports, note 134.

delays in assenting to human rights legal instruments and conferring the human rights jurisdiction to the EACJ. Even the official website of the EAC does not contain any recent reports on EAC's efforts to safeguard human rights in the region. Absence of those reports suggests that very little is being done to safeguard human rights and fundamental freedoms hence giving more room of violations to take place. It is a total fallacy to claim that the EAC integration process is people-centred while the rights and freedoms of those people are not adequately prioritized.

G. What should be done

The coming of the DRC as the new EAC member means that the EAC's responsibility of safeguarding physical integrity and freedom has significantly increased in terms of population size and geographical coverage. As a result, more efforts are needed in discharging that responsibility.

The Heads of State should speed up the operationalization of the Human Rights Bill, FGM Bill and any other relevant legal instruments. The coming into force of those laws and effective enforcement thereof will greatly increase protection to the people of the EAC. The EAC should be granted the human rights jurisdiction so that it may perform its duties effectively. Partner States should show greater commitment and seriousness to their human rights obligations. The time limit to institute proceedings before the EACJ should be increased to enough days such as at least three calendar years.

Alternatively, the EAC should borrow a leaf from domestic laws of partner states such as Tanzania or from the African Court of Human and Peoples' rights. In Tanzania, there is no Time limit to file a human rights case as it was recently held by the High Court of the United Republic of Tanzania in *Ezekiah Tom Olouch v. Chama cha Walimu Tanzania and Others*.¹³⁷ Similarly, the African Court on Human and Peoples' rights also does not have a specific time limit for instituting proceedings before the Court. Applications are supposed to be within a reasonable time from the date local remedies were exhausted or from the date set by the Court as being the commencement of the time limit within which it shall be seized with the matter.¹³⁸ Under those circumstances, individuals would be able to freely access the EACJ for redress.

Not only that but also, the provisions on time limit under the EAC Treaty should also provide for an extension of time and exclusion of time in which the victim is prevented from instituting a complaint before the EACJ for justifiable grounds such as disability.

The EAC should accord enough priority to human rights and fundamental freedoms because they are key in the survival of the Community. With specific regard to the question of albinism, commonly held misconceptions are notoriously slow to change; still, through

137 *Miscellaneous Civil Application Number 6 of 2022, High Court of Tanzania, Main Registry, Dar es Salaam (Unreported)*.

138 Rule 50(2(f)) of Rules of Court of the African Court on Human and Peoples' Rights, 2020.

education, awareness-raising, and advocacy, one can hope for gradual reduction of misinformation surrounding people with Albinism.¹³⁹ In light of the ritual killings, ensuring the physical safety of people with Albinism is of the utmost importance.¹⁴⁰ At the same time, providing adequate health care, social and economic opportunities are just as necessary to take us one step closer to granting Human Rights to all.¹⁴¹

H. Conclusion

This work has demonstrated the enormous responsibility that the EAC has in safeguarding the right of physical integrity among the citizens of the EAC Partner States. The work has also established that the EAC so far has underperformed that obligation. Therefore, the EAC is called upon to work harder in fulfilling the obligation because the EAC cannot flourish in the desired manner if entitlements to physical integrity and freedom of the people are not fully protected and enjoyed. Moreover, for the Community to be truly people-centred, the rights and freedoms of the EAC citizens ought to be well safeguarded and prioritised.

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139 GHR TV World News, 2021, note 49.

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