Human rights adjudication under EACJ come a long way and was not easy. Initially the Partner States contested that the recourse to Art 6 and 7 as a legal basis to deal with human rights cases. The courts practice has however developed and lessened the negative perception.

The evolution goes back to the creation of the Treaty for the establishment of EAC where the public were invited to participate in the treaty making process. The debate was whether to create the EACJ as an appellate Court with human rights jurisdiction or not. Whereas the public and the NGOs were for a stronger court that will include human rights jurisdiction, the Partner States were reluctant to entrust EACJ with full authority on human rights which they considered to be sensitive matters. The negotiations resulted in limitations of the EACJ Jurisdiction and postponement of human rights jurisdiction to a later date.

In the process of negotiating it was agreed to include a provision to the African Charter on humans and people’s rights that resulted in Art 6(d) and 7(2). The acceptance to include the reference to the African Charter reinforced the jurisdiction of EACJ to deal with human rights matters though indirectly. The decision to invite the public to participate in the Treaty making process was one of its kind in Africa that’s why the EAC Treaty is referred to as a “People centered and market driven document”. The provision of Art.6(d) and 7(2) became the basis of human rights related case law in EACJ.

First ever pioneer case on human rights allegations at EACJ was Katabazi Vs Ag Uganda where the government of Uganda was sued for violating Art. 6(d) and 7(d) of the Treaty. The Respondent AG Uganda raised an objection that the applicants case was a human rights case and the Court had no jurisdiction. The applicant had not however claimed a violation of his human rights but claimed a violation of the Treaty. It was held that the mere reference to human rights violation did not preclude the Court from exercising its jurisdiction in interpreting the Treaty and Uganda was therefore in breach of the fundamental principles of the Treaty. Whereas the principle of the rule of law is not in itself a human rights issue , it is the condition precedent for the protection of human rights. EACJ will therefore deal with acts of human rights violations where those violations are also a violation of the Treaty. Therefore where Art 6 and 7 are invoked, the court will not declare a human rights violation but will claim jurisdiction to interpret the Treaty the end results being the same.
This has been called “the court engaging in excessive judicial activism or legislating from the bench.” The Court, the proper wording of the claim and innovative advocacy opened a floodgate of human rights cases. The Katabazi case opened the gate for human rights cases indirectly using Art. 6 and 7 of the Treaty. Many other cases later followed that decision eg Plaxeda Rugumba Vs Ag Rwanda, Independent Medical legal Unit Vs Ag KLenya, Samuel Muhochi Vs Ag Uganda just to mention a few.

EACJ developed the Katabazi approach of interpreting Art.6(d) and 7(2) but that indirect approach was also made necessary by a combination of factors including the absence of a Bill of Rights containing classic human rights, absence of an explicit human rights jurisdiction and delays in extending the jurisdiction of EACJ to include human rights. Thus via the convoluted route, the principle of good governance and the rule of law as enshrined in Art. 6(d) and 7(2), human rights matters became part of EACJ law. EACJ infact will maintain its not a human rights court but will decide human rights cases disguised as violations of Art.6 and 7 of the Treaty. In the case of Samuel Muhochi the court sresses that the obligations under Art.6(d) are solemn and serious governance obligations which it can entertain. It can also be called legal diplomacy when a court decides human rights matters but masked under the rule of law via Art.6 of the Treaty.

In the Democratic Party of Uganda Vs Ag Uganda, the Court interpreted the African Charter and held it had jurisdiction to interpret the African charter in the context of the Treaty. The idea was to determine the Partner Stares adherence to observance of and or compliance with the Treaty provisions as well as provisions of any other international instrument incorporated in the Treaty as in Art.6(d) and 7(2).

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