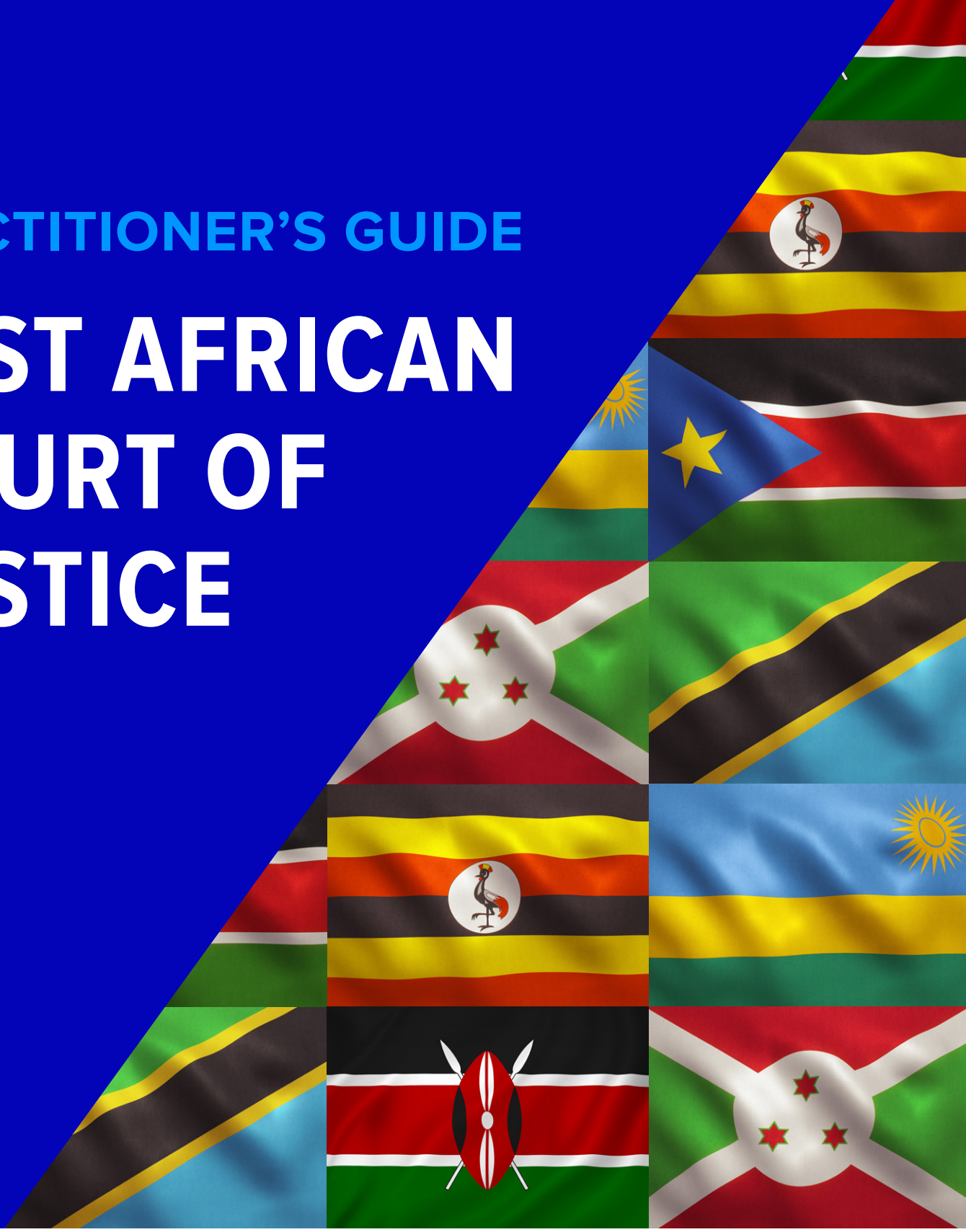
PRACTITIONER'S GUIDE

EAST AFRICAN COURT OF JUSTICE



ROBERT F. KENNEDY HUMAN RIGHTS

Pan African Lawyers Union

PRACTITIONERS' GUIDE TO THE EAST AFRICAN COURT OF JUSTICE

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About

PAN AFRICAN LAWYERS UNION

The Pan African Lawyers Union (PALU) is a continental membership forum for lawyers and lawyers' associations founded to reflect the aspirations and concerns of the African people and to promote and defend their shared interests. Its membership comprises of the continent's over five regional lawyers' associations (RLAs), over 54 national lawyers' associations (NLAs) and over 1,000 individual lawyers spread across Africa and in the Diaspora, working together to advance the law and the legal profession, rule of law, good governance, human and peoples' rights and socio-economic development of the African continent.

Our Vision: A united, just and prosperous Africa built on the rule of law and good governance.

Our Mission: To advance the law and the legal profession, rule of law, good governance, human and peoples' rights and socio-economic development of the African continent.

ROBERT F. KENNEDY HUMAN RIGHTS

Robert F. Kennedy Human Rights is a non-partisan, not-for-profit organization that has worked to realize Robert F. Kennedy's dream of a more just and peaceful world since 1968. In partnership with local activists, we advocate for key human rights issues, pursuing strategic litigation at home and around the world. And to ensure change that lasts, we foster a social-good approach to business and investment and educate millions of students about human rights and social justice.

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FOREWORDS

"MEN WITHOUT HOPE, RESIGNED TO DESPAIR AND OPPRESSION, DO NOT MAKE REVOLUTIONS. IT IS WHEN EXPECTATION REPLACES SUBMISSION, WHEN DESPAIR IS TOUCHED WITH THE AWARENESS OF POSSIBILITY, THAT THE FORCES OF HUMAN DESIRE AND THE PASSION OF JUSTICE ARE UNLOOSED."

–Robert F. Kennedy

Democracy depends on *Civic Space* – the troika of freedoms of expression, peaceful assembly and association which together enable citizens to shape the policies that affect their lives. Crackdowns on dissent, detention of journalists and human rights defenders, violent dispersal of protests, media censorship and other repressive acts – acts of repression which have escalated across the globe, inhibit the rights to these freedoms.

The East African Court of Justice is a crucial forum available for everyday citizens to hold their governments accountable and fight such systematic oppression. The Court provides quick, direct access to those seeking redress for violations of the Treaty for the Establishment of the East African Community. The Treaty notably includes a requirement that member States must adhere to "universally acceptable principles of good governance, democracy, the rule of law, observance of human rights and social justice."

Too often, those whose rights have been violated are excluded from the redress, simply because of a lack of experience litigating there. Created for local and international litigants as well as journalists, academics and anyone with interest in the Court, this guide seeks to unpack the Court and its Rules of Procedure in a common-sense way, offering practical guidance from experienced litigators and practitioners in the region.

It is our great hope at Robert F. Kennedy Human Rights, as well as that of our partners at the Pan African Lawyers Union, that the East Africa Court of Justice will be used as a resource in the efforts to promote and protect civic space in the region, and be further engaged as a crucial tool in turning the tide in fighting authoritarian regimes across the region.

Kerry Kennedy
President, Robert F. Kennedy Human Rights

The promotion of the ideals of the just rule of law, democracy, good governance, human and peoples' rights and socio-economic development – and the development of jurisprudence to buttress all these – depends heavily on the actors in our systems of courts, at national, regional, continental and global levels. There is a key role for judicial officers, registry staff and those that assist them to undertake their solemn powers and obligations of adjudication. But there is also a crucial role for the court users, i.e. litigants and the lawyers or legal or civil society institutions that assist or represent them. The depth, contextual appreciation, technical knowledge and efficiency of these court users, particularly lawyers, is essential; their proficiency in understanding and invoking a court's jurisdiction, procedures and jurisprudence is pivotal to trigger the judicial process to produce tangible results that positively affect individuals, communities, countries and the larger international community. The court users are the ones that can ensure that the courts discharge their duties towards providing judicial guidance on issues important to society, enhancing their jurisprudence and ultimately be the beacon of justice in society.

The East African Court of Justice (EACJ) was formally inaugurated on 30th November 2001. From its first Judgment, on 10th October 2006 (in relation to its inaugural case, filed on 7th December 2005) to the date of penning this Foreword, the EACJ has delivered at least 171 Judgments at its First Instance Division, 48 Judgments at its Appellate Division, and at least 31 Taxation Rulings. It has, of course, issued several more orders, including provisional orders. PALU has had the privilege of litigating over 30 cases at the Court. Our sister organisation, the East Africa Law Society (EALS), has litigated almost a similar number. Many of the others were litigated by members of EALS and PALU. We have witnessed the evolution of the Court, the steady rise in its cases and the impact of its landmark decisions within the Partner States of the East African Community (EAC), and, indeed, beyond it to the rest of Africa and the world. Indeed observers, scholars and practitioners of international courts and tribunals currently view the developments at this Court alongside the other leading international courts and tribunals of the world.

Despite the noticeable rise of numbers and diversity of cases, too many lawyers and citizens across East Africa still do not know of the existence of the Court at all, do not appreciate its importance or impact, or do not know how to access it or fully utilise its procedures or possibilities. As part of efforts to empower more litigants to benefit from the Court, and enable more lawyers to perform their legal representation professionally and diligently, PALU and Robert F. Kennedy Human Rights (RFK) have collaborated to develop this Manual. We hope that it will increase confidence and understanding in approaching the Court, provide an easy guide to navigating through it, and thus increase usage of the Court and impact of its Decisions. This is especially with regard to the Court's jurisdiction relating to the just rule of law, democracy, good governance, human and peoples' rights, socio-economic development, regional integration, continental unity and global peace.

The Manual provides practical examples that will go a long way in guiding Court Users by providing relevant materials on the law, procedure and best practices of adjudication of cases at the Court. It is based on the latest Rules of Procedure of the Court, adopted in 2019 and in force since early 2020.

I sincerely congratulate and heartily thank our colleagues in the staff teams of PALU and RFK who have developed this Manual. I also appreciate RFK for our partnership over the years. I welcome all current and prospective litigants and others who read this Manual, and hope that it is of value to them.

Don Deya
Chief Executive Officer, Pan African Lawyers Union (PALU)
Arusha, Tanzania

WHO IS THIS GUIDE FOR?

This guide is written for local and international litigants who wish to bring cases or "References" before the East African Court of Justice (EACJ), as well as journalists, academics, and anyone with an interest in the Court. Written by two organizations with years of experience litigating before international, regional and sub-regional mechanisms both on the African continent and in other parts of the world, the guide aims to accompany the EACJ's 2019 Rules of Procedure and its Practical Guide, where the Court details its own processes and practices. The guide walks readers through the steps in bringing a case or "Reference" before the EACJ and offers practical tips and guidance from experienced practitioners and seasoned litigators before the Court. This guide focuses on cases brought by resident persons to determine the legality of acts, regulations, directives, decisions or actions of Partner States or institutions of the Community.

Where relevant, the specific Rules of Procedure (for, e.g. "Rule 1") and Articles of the Treaty for the Establishment of the East African Community (e.g. "Article 1") are included for reference.

**Disclaimer*: *The views presented in this Practitioners' Guide are based on the authors' understanding and interpretation of the Treaty for the establishment of the EAC and the EACJ's Rules of Procedure and do not in any way represent the views of the EACJ.*

GLOSSARY[1]

Affidavit: A written statement of facts made under oath for use as evidence in Court.

Affidavit of Service: An affidavit that confirms the delivery of a set or series of legal documents relating to a case by one party to another.

Amicus Curiae: A Latin expression meaning "friend of the court," refers to a person who is not a party to a case but assists the court by providing information, legal arguments or analysis to help determine the merits of the case.

Application: A request by a party to the Court seeking specific actions or reliefs from the Court.

Applicant: A person (human or legal) that files a reference or an application before the court. An applicant can also be called a claimant

Burden Of Proof: A party's duty to prove a disputed fact by adducing evidence and arguments.

Community: Refers to the East African Community, comprising the countries of Burundi, Kenya, Rwanda, South Sudan, Tanzania and Uganda.

Council of Ministers: The Council of Ministers is the policy organ of the Community. It is composed of the Minister responsible for EAC affairs in each Partner State, the Attorney General of each Partner State, and other Ministers as determined by each Partner State.

Documents: Refers broadly to all pleadings, applications, affidavits, motions and other papers related to a case before the Court.

Ex-parte: A Latin expression meaning "from a side" refers to any action done or made by the Court at the instance and for the benefit of one party only, and without notice to the adverse party.

In chambers or *in camera:* Refers to court proceedings that are held privately usually in the judge's chambers or in the courtroom but without persons who are not parties to the reference.

Injunctions: Refers to court orders directing a person to do or to cease doing a specific action. Injunctions could be interim (in force for a specific period or until a specific event occurs); interlocutory (in force until the determination of a pending case) or permanent.

Interlocutory: Means "provisional until the determination of a pending case" and is used to describe applications made while a case is pending or orders of the Court which remain in force until the determination of the pending case.

Intervener: a Partner State, the Secretary General or a resident of a Partner State not a party to the case before the Court that is permitted by the Court to advocate or oppose the arguments of a party to the case.

Joinder: A joinder occurs when new parties are introduced to a case. Also, a joinder refers to merging different cases before the same court into a single case.

Joinder of issues: Refers to the acceptance of a disputed point (of law or fact) as the basis for advancing a case to the oral proceedings. Issues are joined when all parties have filed their pleadings and the Court identifies issues

1 Definitions are taken from Black's Law Dictionary, with minor adaptations and from the Rules of Procedure of the EACJ.

on which the parties agree and disagree. Issues raised by one party and not disputed by the other party are considered accepted.

Locus Standi: A Latin expression that means "place of standing" and refers to the right to bring a legal action before a court or other judicial forum. This is also referred to as standing.

Notice of motion: An application filed by a party in a case seeking itemized remedies or requesting specific action from the Court. A Notice of Motion must be served on all parties to the case.

Notification: A formal communication from the EACJ Registrar to a party in a case requesting the party to file a reply to the document filed. The Registrar signs and sends the notification. The party that filed the original document is expected to serve it on the other party.

Party: A person who takes part in a legal proceeding. The names of parties in a Reference appear on all court pleadings.

Partner State: Each of the States that is part of the East African Community.

Pleading: A formal document in which a party in a case sets forth its facts and legal arguments or in which a party responds to the pleadings of other parties.

Reference or Statement of Reference: The originating pleading (document) filed by the Applicant in a case before the EACJ

Registry: refers to the administrative office of the EACJ responsible for accepting, keeping custody of and serving all court documents.

Registrar: is the head of the Registry.

Reply: Refers to a pleading filed by the Applicant in response to the Respondent's Response or Statement of Defence.

Response: Refers to the pleading filed by the respondent in response to a Reference. It is also called a Statement of Defence.

Respondent: Refers to the party against whom the case is filed in the First Instance Division and against whom the appeal is filed in the Appellate Division. The adverse party to the Applicant or the Appellant.

Scheduling Conference: A meeting between the parties and the court to determine several issues before the hearing, including setting a date for the hearing. This occurs in both the First Instance and Appellate Divisions.

Stay of Execution: An order of the court to temporarily suspend the implementation of the court's judgment or interlocutory order until the case or an appeal is decided. The court grants a stay of execution in response to an order by a party to the case.

Summit: Refers to the Summit of the Heads of State and Government of the Partner States. It is the political organ of the East African Community.

I. INTRODUCTION TO THE EACJ

What is the East African Community (EAC)?

The East African Community (hereinafter "EAC" or "the Community") comprises six Partner States: Burundi, Kenya, Rwanda, South Sudan, the United Republic of Tanzania, and Uganda.[2] It was established to develop policies and practices aimed at "widening and deepening co-operation among the Partner States in political, economic, social and cultural fields, research and technology, defence, security and legal and judicial affairs for their mutual benefit,"[3] through the creation of a Customs Union, a Common Market, a Monetary Union and ultimately a Political Federation.[4] One of the fundamental principles of the Community is "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 peoples rights in accordance with the provisions of the African Charter on Human and Peoples' Rights,"[5] which is particularly relevant to the focus of the guide, the East African Court of Justice (hereinafter "EACJ" or "the Court").

Leaders of the Partner States, typically heads of state or government, give general directions and leadership to the development and achievement of Community objectives through an EAC political organ known as the **Summit.**[6] Every year, a Summit is held to set the key priorities at the highest regional level and discuss business submitted to it by the **Council of Ministers**[7], the policy organ of the EAC comprised of the Attorney General and Ministers from each Partner State.

What is the East African Court of Justice (EACJ)?

The EACJ is the judicial organ of the EAC. The Court was established in 2001 by the Treaty for the Establishment of the EAC (hereinafter "the Treaty")[8] to ensure adherence to law in the interpretation, application of, and compliance with the Treaty which encompasses a vast array of matters relating to trade, rule of law, regional security, creating an enabling environment for civil society, the role of women in the Community, the free movement of persons and the environment and natural resources, among other issues.

The EACJ is a **two-chamber Court** made up of the **First instance Division** and the **Appellate Division**. The Court also has the power to issue **Interim Orders** as well as **Advisory Opinions** on questions of law arising from the Treaty, which falls under the Appellate Division of the Court (Rule 125).

2 The Treaty entered into force on 7 July 2000 and was amended on December 14, 2006 and August 20, 2007. The Republic of Rwanda and the Republic of Burundi acceded to the EAC Treaty on 18 June 2007 and became full Members of the Community effective 1 July 2007. The Republic of South Sudan acceded to the Treaty on 15 April 2016 and became a full Member on 15 August 2016.

3 Article 5(1) of the Treaty.

4 The EAC Customs Union Protocol entered into force on 1 January 2005; the EAC Common Market Protocol entered into force on 1 July 2010. The East African Monetary Union Protocol entered into force on 1 July 2014.

5 Treaty for the Establishment of the East African Community, Article 6(d), "Fundamental Principles of the Community."

6 *See* Chapter 4 of the Treaty; the EAC website, Available at https://www.eac.int/overview-of-eac.

7 *See* Chapter 5 of the Treaty.

8 *See* Article 23 of the Treaty.

Where is the Court located?

The current seat of the Court is in Arusha, Tanzania. Trials before the Court take place there, unless the Judges decide to hold the sessions of the Court elsewhere, which, to date, has been a rare occurrence.

Who are the EACJ judges?

Judges are individuals from the Partner States who comply with the requirements to be a judge or be jurists of recognized competence in their own country, and are of proven integrity, impartiality and independence. (Article 24). They serve for 7 years and their terms are staggered, with a third of the Court renewed at the same time. EACJ judges must retire at 70 years old.

Two judges of the First Instance Division are designated the **Principal Judge** and **Deputy Principal Judge** and two judges at the Appellate Division are designated the **President** and **Vice President** of the Court. The Judges who are designated these responsibilities in each division cannot be nationals of the same Partner State. (Article 24.)

How are the Court's judges selected?

Judges are selected by **the Summit,** the governing body of the Community composed of the Heads of State or Government of the Partner States, on the recommendation of the Partner States. A Partner State may not recommend more than 2 judges at the First Instance Division or 1 judge at the Appellate Division. As established in the Treaty, the First Instance Division may have a maximum of ten judges and the Appellate Division may have a maximum of five. (Articles 24 and 25).

What are the benefits of litigating before the EACJ?

The Court's rules on standing allow a broad range of people to file cases before the courts. Natural and legal persons, residents of Partner States – including non citizens – can file cases before the Court. There is no requirement that the person who brings the case have a direct connection to it. Unlike with the African Court and Commission on Human and Peoples' Rights, as well as other regional and international mechanisms, there is no requirement to exhaust local remedies. Similarly, in contrast to the African Court where State parties are required to make a separate declaration in order to grant direct access to individuals and NGOs to file cases against them, there is no requirement for Partner States to specifically accept the Court's jurisdiction for the Court to hear cases filed by individuals or civil society organizations.

Decisions of the EACJ on the interpretation and application of the Treaty have precedence over decisions of national courts on similar matters.[9] Additionally, the creation of the Appellate Division of the Court gives litigants at least two instances at a favorable decision, which, in turn, provides a longer advocacy window. The location of the Court within the East African region incentivizes cooperation among Partner States and lessens the litigation costs associated with travel for all parties involved, including lawyers and witnesses.

9 Article 33.2 of the Treaty.

Does the EACJ have human rights jurisdiction?

The Treaty provides that "the Court shall have such other original, appellate, *human rights* and other jurisdiction as will be determined by the Council at a suitable subsequent date" (Article 27(2)) (emphasis added). As of June 2021, the Court's jurisdiction to hear human rights cases has not been explicitly established by the Council.

However, while acknowledging that it has no express jurisdiction to hear human rights cases, the Court has relied on the Treaty's fundamental and operational principles, which include the promotion and protection of human rights and the rule of law, to justify its ability to hear cases that allege violations of human rights. The Court has delivered judgements on freedom of expression, freedom of movement, detention, and torture, among other typical human rights issues. In the landmark case ***James Katabazi and 21 others v. the S.G. of the EAC* and Another** the Court stated its position clearly: "[w]hile the Court will not assume jurisdiction to adjudicate on human rights disputes, it will not abdicate from exercising its jurisdiction of interpretation under article 27(1) merely because the reference includes allegations of human rights violation."[10]

10 EACJ, *James Katabazi and 21 others v. Secretary General of the East African Community and Another,* Ref. No. 1 of 2007, pg. 16. (November 1, 2007), pg. 16.

II. LITIGATING BEFORE THE EACJ

Structure

What is the structure of the EACJ?

The Court's Judges are divided between the Court's two divisions: the **First Instance Division** and the **Appellate Division**. A central **Registry** with an office for each division serves both divisions of the Court.

What is the role of the First Instance Division?

The First Instance Division has the right to hear any matter before the Court in accordance with the Treaty. In certain circumstances, decisions of the First Instance Division may be reviewed by the First Instance itself or otherwise directly appealed to the Appellate Division of the Court.

What is the role of the Appellate Division?

The Appellate Division may hear an appeal on any judgment or order from the First Instance Division on three grounds: points of law, lack of jurisdiction, or procedural irregularity. Decisions of the Appellate Division are final and cannot be appealed.

What is the role of the Registry?

The Registry is the front office of the Court and is responsible for receiving and acceptance of documents, maintenance of records related to cases in the Court and also effecting service as provided in the Court's Rules of Procedure. **The Registrar**, the head of the Registry**,** is a judicial officer responsible for the day-to-day administration of the operation of the Court and overseeing the staff of the Court. The main Registry is located at the seat of the Court in Arusha where each division has a Registry office manned by two Court Clerks.

The Court has established **Sub-Registries** in the capital cities of the Partner States to "bring justice closer to the people"[11] and reduce travel costs for litigants. Each sub-registry has a court clerk employed by the EACJ who handles matters for both decisions who receives and files cases brought to the Court. These cases are immediately transmitted to the main registry via the electronic case management system.[12]

11 EACJ, About the Registry. Available at: https://www.eacj.org/?page_id=107.
12 Ibid.

What rules govern the operation of the Court?

The work of the Court is governed by its Rules of Procedure.[13] The Rules of Procedure were last amended in 2019. In November 2020, the Court published an accompanying manual, "A Practical Guide to the Law and Practice of the East African Court of Justice."[14]

WHAT FORMALITIES SHOULD BE OBSERVED WHEN APPEARING BEFORE THE COURT?

- The Court expects counsel to be formally dressed and to always use a robe for Court sessions.
- The common practice before the Court is for the most senior Counsel present to introduce the other Counsel. Although when the Attorney General is present, he takes precedence.
- Counsel should draw the attention of the bench, stand and ask for permission to speak on either a point of objection or to clarify on an issue.

WHAT ARE THE TITLES OF THE PEOPLE INVOLVED AT A HEARING?

- For the Judge(s): My Lord(s)/Your Lordship(s), My Lady, Your Ladyship
- For Registrars: Your Worship
- For the Attorney General of a Partner State: Learned Attorney [General]
- For the Solicitor General of a Partner State: Learned Solicitor [General]
- For the Advocates, including Counsel to the Community: Learned Counsel
- For the person bringing a claim: The Applicant or Claimant
- For the person disputing a claim: The Respondent or Defendant

What is the Court's official language?

The official language of the Court is English.

Are proceedings before the Court public?

Generally, the proceedings of the Court, including the pronouncement of the Court's decision, are open to the public. The Court may order the proceedings to be held *in camera* (in chambers) and out of public view on its own or upon the application of any party if there is "sufficient reason" (Rule 70(1)). These procedures, though recorded, are not made public.

13 Note that the Court also has rules governing Arbitration, Guidelines on Preliminary Rulings, Guidelines for Witnesses, and a Protocol on Video Conference Procedure.

14 EACJ, Court Manual: A Practical Guide to the Law and Practice of the East African Court of Justice (hereinafter "Court Manual") (2020). Available at: https://www.eacj.org/?page_id=9116:

Do I need a lawyer to bring a case before the Court?

No. Every party to a dispute or reference before the Court *may* be represented by an advocate entitled to appear before a Superior Court of any of the Partner States, but it is not required. (Article 37). While having a lawyer is not required, it is advisable due to the complexity of the Court's norms and procedures.

A lawyer appearing on behalf of a party must file a practicing certificate or document showing that they are qualified to appear before a superior court in the Partner State, and must appear before the Court in their national professional attire. (Rule 19(7)).

Can I have an agent represent me before the Court?

Yes. A party may appoint an agent to act for them or to act on their behalf for service and other proceedings before the Court. An agent must hold power of attorney authorizing that person to make or do such appearances, applications or acts on behalf of the party and must file a notice of appointment with the Court. (Rule 19).

Is there a fee to present a case before the Court?

No, filing a case before the Court is free of charge.[15]

Does the Court use e-filing and other technology?

Yes. The Court specifically encourages the use of technology to expedite proceedings, including an e-filing system for filing and service of documents electronically; digital display devices; real-time transcript devices; video and/or audio conferencing; and any other technology approved by the Court. (Rule 132).

The Court also makes audio and visual recordings of its sessions, which are made available to lawyers and litigants on demand to the Registrar. The EACJ is also able to livestream cases on the Internet and on their website.[16]

To supplement these provisions on use of e-filing and technology, the Court has also issued extra guidelines to be followed by the parties.[17]

What is the CMRS (case management and recording system)?

The Court launched a Case Management System and Recording System ("CMRS")[18] which digitizes its processes related to filing of cases.[19] The system facilitates **e-filing** so parties may file cases electronically without traveling to the main Registry in Arusha, has security protocols to guard against external and internal security threats, and integrates case management, records management and audio and video recording capabilities.[20] Litigants may also e-file from any of the Court's sub-registries.

15 The Court eliminated the payment of filing fees in 2012.

16 EACJ, *Court/ E-Court, Information Communication Technology Services.* Available at: https://www.eacj.org/?page_id=6020.

17 *See, e.g.* EACJ, Witness Protocol for Video Conference Proceedings. Available at: https://www.eacj.org//wp-content/uploads/2020/04/GUIDELINES-FOR-WITNESSES-IN-VIDEO-CONFERENCE-PROCEEDINGS-OF-EACJ.pdf.

18 CMRS may be accessed via https://cms.eacj.org/.

19 EACJ, *Court/ E-Court, Information Communication Technology Services.*

20 EACJ, Court Manual, pg. 37.

May documents be served via email or other electronic communication?

Yes, if the parties agree. Parties may agree to use technology for purposes of information exchange and at trial, including serving documents electronically through email, instant messaging applications and any other widely used electronic communication service. (Rule 133.)

Parties may also, on request, consent to receiving copies of Court documents electronically. The Court may deliver its decisions electronically through email, instant messaging applications, and/or any other widely used electronic communication service.

In preparing a case for trial the parties are specifically encouraged to exchange electronic versions of documents such as pleadings and statements. (Rule 133.)

Can a trial be conducted electronically?

Yes, in appropriate cases the Court may conduct trials electronically. (Rule 65(3)). In such cases, the Court may order that any hearing be conducted in whole or in part by means of a telephone, conference call, video conferencing or any other form of electronic communication.

Filing and Serving Documents

Does the Court have specific requirements for documents?

Yes. The EACJ has specific rules about the structure and format of documents to be presented to the Court that must be complied with in full or the documents risk being rejected by the Registrar (Rule 11). The Rules contain model forms that may be used as templates and a list of these templates is included in the Resource section.

Pleadings, documents lodged by or on behalf of a party relating to a matter before the Court that sets forth or responds to allegations, claims, denials or defences, are the main documents filed by litigants in both Divisions of the Court and have additional requirements.

ALL DOCUMENTS FILED WITH THE EACJ MUST:

- Be in the official language of the Court or translated from another language and accompanied by a certificate of translation;
- Be on paper of durable quality;
- Have consecutively-numbered pages;
- Be bound in book form;
- Have dates, sums, and figures expressed in figures and not words; (e.g 10/11/2020, rather than 10 November 2020); and
- be filed within the timelines specified by the Rules.

IN ADDITION, ALL PLEADINGS AND DOCUMENTS ANNEXED TO THEM FILED WITH THE EACJ MUST:

- Have every tenth line on each page indicated on the right hand side;
- Be divided into paragraphs with the paragraphs numbered consecutively;
- Have each allegation in a separate paragraph, as appropriate; and
- Indicate the service address of the party making the document and be signed by that party or by the party's advocate or representative.

How many copies of each document should be filed?

The Rules provide that generally documents have to be presented with **8** additional copies,which practitioners recommend following on all occasions.

How does the Court calculate time for deadlines?

The Court also has specific rules for the calculation of time periods and deadlines. (Rule 3(1)).

- If a period is to be calculated from the moment of an event or an action, time starts counting from the day following the day on which the event or action occurred. **The day of the event or action does not count as a part of the period;**
- Periods include official holidays,[21] Saturdays and Sundays;
- Periods are not suspended during the Court vacations; and
- if a period ends on a Saturday, Sunday or an official holiday, it is to be extended until the end of the first working day that follows.

The Court also has a general power to extend time limits "for sufficient reason" (Rule 5), which the Court has wide deference to interpret. However, the Rules do not authorize the Court to extend any period of time set by the Treaty.[22]

HOURS FOR LODGING DOCUMENTS

In-Person
8:30 am–5:30 pm
Monday–Friday except
National Days & Official Holidays

Electronic Filing
12:00 am–11:59 pm

21 The 2019 EACJ Rules of Procedure specify that official holidays include the national days of the Partner States as well as New Year's Day, Idd el Fitr, Idd el Haj, Good Friday, Easter Monday, Labour Day, Christmas, Boxing Day and the EAC day.

22 In the case *Att'y Gen. of Uganda & Other v. Omar Awadh & 6 Others,* Appeal No. 2 of 2012, at 15 (Apr. 15, 2013) the Court declined to extend the two-month timeline set by Article 30(2) of the Treaty for commencement of proceedings before the EACJ.

What happens if a document is filed out of time?

If a document is filed out of time, the Registry will not reject it, but will mark the document as lodged out of time (Rule 13). Parties may apply to the Court under Rule 4 (inherent powers of the Court) and Rule 5 (extension of time) to accept the document despite it being filed out of time.

How do parties gain access to the case record?

Parties to a case have the right to inspect the registers, documents, record of proceedings, and any expert's report at the Registry (Rule 10). Copies may be obtained at a cost. Typically, any given document is available within 24 hours of being presented to the Court.

May non-parties gain access to the case record?

Only parties to a matter before the Court have the automatic right to access the case record. Non-parties must show they have an interest in the particular case to be able to access these documents. (Rule 10). This could be a broad interest, for example, an interest based on applying to intervene as an *amicus curiae* or for academic purposes. To gain access to a case record, a request in writing should be made to the Registrar explaining the interest in gaining access to the document.

What is the Court's notification and service process?

The Court also has very specific rules regarding notification and service of documents. Parties file documents directly with the Registrar of the Court who will issue a **Notification** that is to be served on the other party along with a copy of the filed document. The notification issued by the Court is valid for 3 months from the date of issue. Service may be done in person or electronically. (Rules 29-30.)

PRO TIP:
THE SERVICE PERIOD FOR THE INITIAL DOCUMENTS IS 45 DAYS AT THE FIRST INSTANCE DIVISION AND 14 DAYS AT THE APPELLATE DIVISION.

What are the rules for in-person service?

When done in person, service of the document is made by handing over the original of the document (Rule 16). The receiving party should sign a copy of the document to acknowledge service. The person serving the document must swear an **affidavit of service** stating the time of service, the manner in which the document was served and the name and address of the person (if any) who identified the person served and witnessed the service (Rule 17). The address for service needs to include (Rule 34):

a. the full names of the parties and their advocates, if any; and

b. the description of the place of residence of the parties including the street name, e-mail address, fax number, telephone number and post office box.

What are the rules for electronic service?

Electronic service may be done by email, using the addresses provided by the parties with a copy to the Court, or by using other means approved by the Court (Rules 16(8) and 133). When service is done by email, a delivery status report shall be deemed as proof of service. (Rule 16(9)). If done by other electronic means, an Affidavit of Service explaining the mode of service is required.

Are there designated individuals for service of a government or institution?

Yes. The Rules specify the particular individual who should be served depending on the institution to be notified. It also clarifies the designated individuals for service when the Respondent is a government, a company, the EAC itself, a person in prison, or members of the armed forces (Rule 16).

Admissibility

Which cases are admissible before the Court?

Admissibility refers to the mandate of a court to review a particular case. The EACJ considers the following factors:

- Who can present a case to the court: **standing**.
- What issues can be brought before the court: **jurisdiction**.
- How long a person has to present a case to the court: **time limit.**

Who has standing to bring cases before the EACJ?

The EACJ provides direct access to the Court to a broad range of actors, depending on what issues they seek to bring before or "refer" to the Court. Under the provisions of the Treaty, a case may be brought by:

- **Natural and Legal Persons:** Any person *resident in a Partner State* including human persons[23] and legal persons such as non governmental organizations (Art. 30); **This guide focuses on these cases.**
- **Partner States:** The EACJ can adjudicate cases referred to it by Partner States (Art. 28);
- **Secretary General:** The Secretary General of the EAC may refer to the EACJ a case concerning a Member State's contravention of the Treaty (Art. 29);
- **The Community and its Employees:** The EACJ can handle matters of dispute between the Community and its employees (Art. 31);
- **Parties to a contract executed by the Community** or its institutions and having an arbitration clause conferring jurisdiction on the Court (Art. 32).

23 The Court has been clear that this access is meant, "to ensure that East Africans for whose benefit the Community was established participate in protecting the integrity of the Treaty." *See East African Law Society v Attorney General of Kenya and others,* Reference No. 3 of 2007, August 31, 2008), at pg. 14. However, Article 30 of the Treaty does not allow individuals to challenge acts of the EAC organs.

Who is considered a "resident" for purposes of bringing a case?

The term "resident" refers to persons "living" or "staying" in a Partner State of EAC and it is not limited to citizens of those States.[24] An Applicant must be a resident at the time of filing the case to have standing before the Court but it does not have to be in your Partner State of citizenship.[25] There is no requirement that the person who brings the case must have a direct connection to it.[26]

What issues does the Court have jurisdiction to resolve?

Jurisdiction refers to the subject matters over which the Court has legal authority to administer a ruling. Article 27 of the Treaty provides the Court with general authority over the interpretation and application of the Treaty and with the power to review how Partner States and the Community's institutions have applied the Treaty.[27] The Treaty specifies that the Court shall also have jurisdiction over:

- disputes involving a Partner State's failure to fulfill its Treaty obligations (Art. 28);
- disputes involving a Partner State's infringement of Treaty provisions (Art. 28);
- determination of the legality of acts, regulations, directives, decisions or actions of Partner States or institutions of the Community (Art. 30);
- disputes between the Community and its employees that arise out of the terms and conditions of employment of employees of the Community or the application and interpretation of the staff rules and regulations of the Community (Art. 31);
- cases regarding commercial disputes if an arbitration clause in a contract has established the court to have this jurisdiction[28] (Art. 32);
- proceedings initiated by the Secretary General for preliminary observations from a concerned State and referring previously the matter to the Council of Ministers;[29]
- requests made by the Partner States' national courts for preliminary rulings on the interpretation of the Treaty (Art. 34);
- requests to issue Advisory Opinions on Treaty questions affecting the Community (Art. 36).[30]

24 EACJ, *Manariyo Desire v. The Attorney General of the Republic of Burundi,* Ref. 8 of 2015. Appellate Division, Appeal No. 1 of 2017 (Nov, 28, 2018), para. 40-41.

25 *Id.*at 34; EACJ Manual, pg. 50.

26 Article 30 of the Treaty. In the case *Prof. Peter Anyang' Nyong'o & 10 Others v. Att'y Gen. of Kenya & 2 Others,* Ref. No. 1 of 2006, para. 16 (Mar. 30, 2007), the Court declined to hold that personal injury was a basis for standing before the EACJ.

27 However, the Court has no authority to interpret the rights and powers expressly conceded by the Treaty to organs of any member countries of the Community.

28 The Court may be established as an arbitration court, in a contract where the Community or any of its institutions are party or by private parties

29 More than ten years since its inauguration, the EACJ, despite having national courts as its sub-registries, only received its first and, as yet, only preliminary reference in 2015. In this situation, the case may only be referred to the Court if the intervention of the Council has failed to resolve the issue. This is seldom used.

30 The EAC Council of Ministers has so far requested two advisory opinions.

The relationship between the subject matter of cases the Court may hear and who has standing to bring them is summarized in the table below.

SUBJECT MATTER	WHO MAY REFER SUCH A CASE TO THE EACJ?
Disputes involving a Partner State's failure to fulfill its Treaty obligations. (Art. 28)	Partner States (Art. 28); the Secretary General (Art. 29)
Disputes involving a Partner State's infringement of Treaty provisions. (Art. 28)	Partner States (Art. 28); Secretary General (Art.29) :
Determination of the legality of Acts, regulations, directives, decisions or actions of partner States or institutions of the Community. (Art. 30)31	Any person resident in a Partner State including human persons and legal persons such as non governmental organizations. (Art. 30)
Disputes between the Community and its employees that arise out of the terms and conditions of employment of employees of the Community or the application and interpretation of the staff rules and regulations of the Community. (Art. 31)	Employees of the Community. (Art. 31)
Cases regarding commercial disputes if an arbitration clause in a contract has established the court to have this jurisdiction. (Art. 32)	Private parties, the Community or any of its institutions when The Court is established as an arbitration court in a contract. (Art. 32)
Request made by the Partner States' national court for preliminary rulings on the interpretation of the Treaty. (Art. 34)	Partner States' national courts. (Art. 34)
Request for an Advisory Opinion on Treaty questions affecting the Community. (Art. 36)	The Summit, The Council or a Partner State. (Art. 36)

31 As mentioned in "Who is this Guide for?" this guide focuses on cases brought by resident persons to determine the legality of acts, regulations, directives, decisions or actions of Partner States or institutions of the Community.

Is there a time limit on when cases can be presented to the EACJ?

Yes. Article 30 (2) of the Treaty provides that a case must be presented to the Court within **two months** of the decision or action complained of. The EACJ notes that this time limit is a "preliminary but formidable hurdle."[32]

When does time begin to run?

In interpreting the time limit, the EACJ looks to both prongs of Article 30(2), recognizing that the two-month clock begins to run either: 1) at the moment the action complained of initially occurs, or 2) when it is demonstrated that the complainant first learns of the action.

If the case involves a judicial decision, the Court has considered that the two months start to count from the moment of the notification, and not from the date of the decision.[33] Otherwise, the Court strictly applies the two-month requirement, and the second option applies only where the first *cannot* – e.g. "where the claimant does not know the exact date of the action complained of."[34]

Before the 2006–07 EAC Treaty amendments, there was no time limit within which natural or legal persons could file cases before the EACJ.

This changed with the introduction of Article 30.2, which provides a two month window within which natural and legal persons should file cases before the Court.

IN THE CASE *PLAXEDA RUGUMBA V. THE S.G. OF THE E.A.C. AND ANOTHER*,[35] the Court found it was not possible with any degree of certainty to determine when time began to run as there was no possibility of knowing when the person became aware of the action complained of. The Applicant in *Plaxeda* alleged that the arbitrary detention of her brother violated the principles of the Treaty. Her brother was arrested and detained on 20 August 2010, she filed the Reference on 08 November 2010, and the detention was ongoing until 28 January 2011. The Appellate Division found that even though the Reference was filed more than two months after the action complained of, the case was not time-barred. As there was "sufficient evidence on record" that the Government of Rwanda were "largely to blame for withholding [the] information" regarding the brother's arrest and detention, the "onus" was on the government to establish the time at which the Applicant was told or otherwise made aware of the detention.36 As it was **"not possible with any degree of certainty to determine"** when time began to run or when the Applicant had knowledge of the action, the case was not time-barred.

32 EACJ, *A.G. of the Republic of Uganda v. Omar Awadh and 6 Others*, Appeal No. 2 of 2012, (April 15, 2013), para. 44.
33 EACJ, *Manariyo Desire v. Att'y Gen. of Burundi,* Ref. No. 8 of 2015, (Dec. 2, 2016), para. 20.
34 EACJ, *A.G. of the Republic of Uganda v. Omar Awadh and 6 Others,* Appeal No. 2 of 2012, (April 15, 2013), paras. 33-34.
35 EACJ, *Plaxeda Rugumba v. the S.G. of the E.A.C. and Another,* Appeal No. 1 of 2012 (June 12, 2012).
36 Ibid at para. 39.

Does the EACJ recognize the principle of a continuing violation?

No. Despite rulings by the First Instance Division initially permitting cases to proceed on the principle of continuing violation, the Appellate Division has continuously overruled this interpretation. The EACJ has specified: "there is no enabling provision in the Treaty to disregard the time limit set by Article 30(2). Moreover, that Article [30(2)] does not recognize any continuing breach or violation of the Treaty outside the two months after a relevant action comes to the knowledge of the Claimant; nor is there any power to extend that time limit."[37]

Do local remedies have to be exhausted before approaching the EACJ?

No. Under the Treaty, there is no requirement to exhaust domestic remedies as a condition before bringing an application to the Court. This is based on the principle of enhancing a "people-centred and market driven co-operation" as enshrined in Article 7(1) of the EAC Treaty.[38] In ***Plaxeda Rugumba v. the S.G. of the E.A.C. and Another***, the Court rejected Rwanda's argument that the claimant had not exhausted domestic remedies as the case was pending before a lawful court in Rwanda and therefore was not properly before the Court, stating "[u]nlike other legal regimes in this field, the EAC Treaty provides no requirement for exhaustion of local remedies as a condition for accessing the East African Court of Justice.[39]

The requirement of exhaustion of local remedies is relevant to the relationship between an international/regional Court and a State. Under international law, the doctrine of exhaustion of local remedies is founded on the principle that States should have the opportunity to redress an alleged wrong within the framework of its own domestic legal system before the international responsibility can be called into question at the international or regional level

Local remedies refer to the ordinary remedies of common law existing in jurisdictions and normally accessible to persons seeking justice.

Can a case on the same facts be concurrently heard by the EACJ and national courts?

Yes. Litigants may file a case before the EACJ that is currently before national courts and alleges violations of the Treaty. A national court may also refer a matter to the EACJ when faced with a question regarding an interpretation of the Treaty and the EACJ may make preliminary rulings to ensure consistency in interpreting the Treaty. (See discussion of **preliminary rulings** below).

37 EACJ, *A.G. of the Republic of Kenya v. Independent Medical Legal Unit,* Appeal No. 1 of 2011 (July 2, 2010), p. 17. The Court explains that this is due to the objective of "legal certainty." See also EACJ, Omar Awadh and 6 Others v. the A.G. of the Republic of Uganda, Appeal No. 2 of 2012 (February 17, 2012), para. 48. (noting that "the purpose of this amended provision of the Treaty was to secure and uphold the principle of legal certainty; which requires a complainant to lodge a Reference in the East African Court of Justice within the relatively brief time of only two months. Nowhere does the Treaty provide for any 'exception' to the two month period. Therein lies the critical difference between the EAC Treaty (which governs trade matters as the objective of cooperation between Partner States) on the one hand; and, on the other hand, Human Rights Conventions and Treaties which provide 'exceptions' (for continuing violations) on the grounds that securing the fundamental rights of the citizens is of paramount essence.").

38 EACJ, *East African Law Society and 4 Others v A.G.of Kenya and 3 Others,* Ref. No. 3 of 2007, (August 31, 2008), pg. 11.

39 EACJ, *Plaxeda Rugumba v. the S.G. of the E.A.C. and Another,* Appeal No. 1 of 2012 (June 12, 2012), para. 39.

Applications and Interim Orders

What is an Application?

An Application is a request by a Party to the Court seeking specific actions or relief from the Court and can be made in either the First Instance or Appellate Divisions[40]; the process is the same. Applications in either division should be made by filing a **Notice of Motion** stating the grounds for the Application (Rule 52). Parties who will be affected by the Application must be notified of the Application and served with the Application at least **14 days** before the hearing.

Every formal Application made to the Court should be supported by one or more affidavits stating the facts. Additional affidavits may be presented with the consent of the other party (Rule 95 (2)) and parties may present affidavits in reply at least 7 days before the hearing, (Rule 23). Applications may also be made informally during the course of a hearing and also by letter to the Court if the Applicant has the consent of all the parties.

The Court will set the Application for hearing and follow the procedure laid out for oral proceedings in the First Instance Division section below. Applications may also be decided by a single judge in both the First Instance Division (Rule 69) and the Appellate Division (Rule 113). Examples include:

- application extension of time prescribed by the Rules or by the Court;
- applications for an order of substituted service;
- applications for examining a serving officer; and
- applications for leave to amend pleadings or the Record of Appeal.

What is an interim order?

The Court's ruling on an Application may result in an interim order asking a Party to do, continue or stop doing an act pending the final decision in a case. The Court has the power to issue any orders or directions it deems necessary or desirable, and they have the weight and effect of a decision of the Court. (Article 39.)

As noted above, parties who will be affected by Applications for interim orders must be notified. However, the Court can decide to make an *ex parte* ruling, if it considers that "proceeding in the ordinary way would or might entail irreparable injustice."(Rule 52(2)). In such cases, the Court will set a hearing between both parties within 30 days of the *ex parte* ruling (Rules 52(3) and 84(2)).

If there is "sufficient reason" the Court may vary or set aside its own interim order or upon application of any party if the interim order was requested by a party. (Rule (84(1)). The Rules provide that any person who disobeys or breaches any term of an interim order will be considered in contempt of the Court (Rule 84 (5)).

40 Rule 83 of the 2019 Rules of Procedure specifies that whenever application may be made either to the First Instance Division or to the Appellate Division, it shall in the first instance be made to the First Instance Division unless specific rules provide otherwise.

TEMPORARY OR INTERLOCUTORY INJUNCTION

The Court's power to issue a certain type of interim order, the **temporary or interlocutory injunction**, has been used as a precautionary or protective measure to preserve legal situations that will come before it and protect certain rights. The Court looks to three factors in deciding whether to grant a temporary injunction:

- whether the applicant shows a prima facie case in the underlying Reference with a probability of success;
- whether the Applicant might otherwise suffer irreparable injury, which would not be adequately compensated by an award of damages; and
- if the Court is in doubt, it will decide an application on the balance of convenience.

For example, in the case ***Prof. Peter Anyang' Nyong'o and Others vs. A.G. of Kenya and Others*** the EACJ granted interim orders restraining the Clerk of the EALA and the Secretary-General of the EAC from recognizing the election of the 9 Kenyan nominees until the Court could decide the legality of the election on the merits.[41] In the case of ***Francis Ngaruko vs. the A.G. of Burundi***, the Court granted an ex parte interim order restraining Burundi from taking any action to revoke, cancel or otherwise dispose of the Applicant's interest in the residential property that was the subject of the national case being challenged before the EACJ until the EACJ's hearing and determination of the Application.

41 EACJ, *Prof. Anyang' Nyong'o and others v. Attorney General of Kenya and 10 others,* Ref. Nr. 1 of 2006. Interim Orders, (November 27, 2006), para. 10.

PRO TIP:

WHAT ARE THE PROCEDURAL STEPS INVOLVED IN BRINGING A CASE BEFORE THE EACJ?

Both the First Instance and Appellate Division of the Court follow a similar process for receiving and hearing cases. In the initial **written proceedings**, the parties exchange documents, which are called **pleadings** in the First Instance. After the close of the written stage, the Court holds a scheduling conference to determine the issues to be heard during **oral proceedings**. At or after the hearing on the case, the Court delivers its judgment. Each division allows for the review of a decision in specific circumstances, and certain First Instance Division decisions are directly appealable to the Appellate Division.

The Rules for Applications (or motions) and preparation and service of documents are common to both Divisions of the Court.

First Instance Division

What are the steps involved in the written proceedings at the First Instance Division?

STEP 1: The Applicant files and serves the **Statement of Reference** on the Respondent. (Rule 25).

STEP 2: Respondent has 45 days to file and serve its **Response** to the Applicant's Reference. (Rule 32).

STEP 3: Applicant **may** file and serve a **Reply** to the Respondent's Response within 45 days. (Rule 32).

STEP 4: Pleadings close either 14 days after the service of the Reply or, if no Reply is served, 15 days after Service of the Response.

WRITTEN PROCEEDINGS

What should be included in each of these documents?

The Court's Rules of Procedure indicate what should be included in each specific pleading and what should be common to all pleadings.

NAME OF PLEADING	WHAT IT INCLUDES
Statement of Reference the initial written statement "referring" or presenting a question of legality related to interpretation of the Treaty to the Court. The Reference is entered at the First Instance Division by the party who is called the **Applicant** against the **Respondent**, generally the Partner State concerned.[42] (Rule 25).	• the names, designations, addresses and residences of the Applicant and the Respondent; • the subject-matter of the matter being referred and a summary of the points of law on which it is based; • where appropriate, the nature of any evidence to be offered in support of the party's matter being referred; and • the types of relief being sought by the Applicant. The Reference must be accompanied by an Affidavit when it seeks to challenge the legality of an Act, regulation, directive, decision or action,
Response to Reference the Respondent's response to the contents of the Applicant's Reference. (Rule 32).	• the name and address of the Respondent; • concise statement of facts and law relied on; • the nature of evidence in support where appropriate; and • the reliefs sought by the respondent.
Reply to the Response The Applicant's Response to the Defendant's Response. (Rule 32(2)).	A Reply should not repeat the Applicant's contentions in their initial Reference, but it should bring out the issues that divide the parties.

42 When an EAC employee presents a case against the Community, the initial document filed is called a Statement of Claim. In this Guide we will focus on the rules regarding Statements of Reference. The rules regarding Statement of Claim are similar, but not reflected in this section.

NAME OF PLEADING	WHAT IT INCLUDES
ALL Pleadings (Rules 35, 36 and 45.)	• A concise statement of material facts upon which the party's claim or defence is based not the evidence by which those facts are to be proved; • the necessary particulars of any claim, defence or other matter pleaded; • particulars of any misrepresentation, fraud, negligence, breach of trust, wilful default or undue influence on which the party pleading relies; • where a party pleading alleges any condition of the mind of any person, such as disorder or disability of mind, malice, fraudulent intention or other condition of the mind except knowledge, particulars of the facts on which the party relies; • Every matter which is alleged to make the pleading of the opposite party not maintainable; • Every matter, which, if not specifically pleaded, would take the opposite party by surprise; • Every matter that raises issues of fact not arising out of the preceding pleading; • any matter which has arisen at any time, whether before or since the filing of the reference; and • must be signed by the party and his or her advocate, if any. **It is NOT necessary to:** • make arguments regarding facts that are presumed by law to be true; • prove a fact when the other party has the burden of proof, unless the other party denies those facts

What are preliminary objections and when can they be presented?

Preliminary objections are points of law that can be raised before the Court with the objective of stopping the case from proceeding and they can also be raised by parties in their Pleadings. If the Court rules in favor of a preliminary objection, it has the potential of ending the process of the case. A preliminary objection should be filed in writing and served on other parties up to 7 days before the Scheduling Conference, though the Rules also allow the Court to consider preliminary objections raised outside of this timeframe. (Rule 39).

A preliminary objection should refer to a pure point of law.

An objection on a point of law, is a defensive pleading by which the defendant admits the fact alleged by the plaintiff but objects that they do not make out a legal claim.

It must be something that does not require one to delve into evidence.

What supporting documents should be included with pleadings?

Certified copies of any documents referred to in any pleading should be attached and a list of documents submitted with the pleading. (Rule 37).

What are the rules governing admissions and denials of facts in pleadings?

Any allegation of fact made by a party in a pleading shall be deemed to be admitted (accepted as true) by the opposite party, unless it is specifically denied by the opposing party in the pleading. The denial of a fact must be specific to that fact; general denials are insufficient (Rule 41). Facts alleged by a party that are not denied by the other party will be considered admitted, and do not need to be proven throughout the remaining course of the litigation.

Can a pleading be amended?

Yes. Any party can decide to change or amend a previous pleading, in order to clarify the real controversy between the parties or to correct any defect or error in any pleading at any time before the close of pleadings without leave of the Court. (Rule 48).

To amend a pleading, the original document may be changed, either by adding or striking words or figures. Alternatively, a new version of the document can be filed and served. When striking content, the changes should be done in red, allowing for the original wording to be legible, while additional content should also be in red with underline (Rule 49).

What does it mean when the Court strikes out a pleading?

At the request of the other party, the Court can strike all or part of a pleading and remove those facts from the Court's consideration, if it considers that it may prejudice or delay the fair trial of the case; or it is considered scandalous, frivolous or vexatious; or it is considered an abuse of the process of the Court (Rule 47).

When is the close of pleadings?

The close of written proceedings, known as the "close of pleadings" occurs 14 days after service of the

Applicant's reply to the Response, or, if no Reply is served, 15 days after service of the Response. (Rule 43). After this date has passed, no pleadings may be filed, except with leave from the Court (Rule 44).

What is a joinder of issues?

If there is no Reply from the Applicant to a Respondent's Response, at the close of pleadings there is a joinder of issues to the Response, where the Applicant denies every material or allegation of fact made by the Respondent except what is expressly stated to be admitted. (Rule 42).

Can further documents be filed after the close of pleadings?

The party desiring to produce a document after closure of pleadings shall deposit, at the Registry, the original or a certified copy of the document and is responsible for serving a copy to the other party and must file a return of service in the Registry. (Rule 44). The Registry will not produce a Notification.

If the other party does not lodge an objection to the production of the document within seven (7) days of service, they will be held to have given their consent to the filing of the document. In the event of an objection, the Court may, after hearing the parties, authorize production of the document if it considers production necessary. If a new document is introduced into the process of the case in this manner, the other party shall have an opportunity of commenting upon it and of submitting documents in support of its comments.

When does the Court allow amendments to pleadings after the close of pleadings?

The Court may grant leave to amend a pleading after the close of pleadings, if it thinks it is just so to do. (Rule 51). The Rules specify the following grounds:

- where the amendment is to correct the name of a party even if it has the effect of substituting a new party, if the Court is satisfied that the mistake sought to be corrected was a genuine mistake;
- where the amendment is to alter the capacity in which the party is or is made party to the proceedings, if the altered capacity is one which that party could have been or been made party at the institution of the proceedings; or
- where the amendment adds or substitutes a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed by the party seeking leave in the same case.

May a party withdraw a Reference?

Yes. At any time before the opening of oral proceedings, an Applicant can decide to discontinue a Reference against any or all of the Respondents, regarding all or part of the Reference (Rule 61). Withdrawal of a Reference can also be done after the opening of oral proceedings with the authorization of the Court or with written consent of all parties.

To effectuate the withdrawal, the Applicant has to submit a notice to the Registry and serve a copy to all the Respondents. The parties may enter a written agreement as to the terms of the discontinuance or, if such agreement is not reached, the Court will determine any costs of the filings that need to be met by any party.

THE SCHEDULING CONFERENCE

What is the Scheduling Conference?

Before commencement of the oral proceedings, the First Instance Division requires that a scheduling conference be held (Rule 63). The goal of the scheduling conference is to determine the material propositions of fact or law where the parties disagree. This Conference must occur within 14 days of the close of pleadings or at a time to be determined by the Principal Judge. The conferences are public.

An important decision could be made at the Scheduling Conference: if appropriate, the Court will determine the date to start the hearing of the case.

The conference seeks to ascertain:

a. points of agreement and disagreement between the parties;
b. the possibility of mediation, conciliation or any other form of settlement;
c. whether evidence is to be oral or by affidavit and the time limit within which such affidavits are to be filed and served;
d. whether legal arguments shall be written, oral, or both;
e. consolidation of references, claims and/or applications;
f. the estimated length of the hearing; and
g. any other matter as the Court deems necessary.

After reviewing the pleadings and possibly further examining the parties, the Court will frame the issues of the case to be decided. More issues may be added or struck out as the Court deems relevant to determine the matter in controversy. These changes can be made at any time before judgment (Rule 63 (5)). If the matter is to be heard at hearing, the Court will set the date of the hearing.

How should parties prepare for the Scheduling Conference?

Parties should “as much as possible” exchange any documents to be used at the scheduling conference in advance and file and serve the documents as appropriate. If the parties agree on all points, they may enter a joint memorandum of issues that should be filed by the date of the scheduling conference. Otherwise each party may present their own memorandum of issues (Rule 63(3)).

Is a hearing mandatory in all cases?

No. At the Scheduling Conference, the Court may decide that the case will not proceed to a hearing (Rule 63 (7)). If there is no need to present evidence and the parties opt to only submit legal arguments in writing, the Court will set a date within which the parties should file their legal arguments and for them to appear before a bench of three or five judges to deal with any other matter the Court thinks is necessary.

What happens if the case has the potential to be settled?

If the case has good prospects for settlement, the Court will direct the case to mediation or other form of settlement. The Court has established specific rules and guidelines for settlement of cases. (Rule 64). If the parties settle the case, the Court shall record the settlement order. If the mediation leads to a partial settlement, the remaining issues will proceed to trial.

When will the hearing take place?

Where possible, the Court will set the date and place for the hearing within 6 months of the close of pleadings. (Rule 65.) The Court will take into account:

- the need to hold the hearing without unnecessary delay;
- special circumstances, including the urgency of the case or other cases on the list;
- the parties' views and convenience, and the convenience of their advocates and witnesses; and
- the need to administer substantive justice without undue regard to technicalities.

After the Court has fixed a date and time for oral proceedings, the Registry will issue a notice of hearing and will notify all the parties involved (Rule 65 (5)).

Can the Court decide to hold the oral proceedings by telephone, virtually, or via other forms of communication?

Yes. Rule 65 allows for the Court to decide to conduct all or part of any hearing by telephone, conference call, video conferencing or any other form of electronic communication. The Court may give directions to facilitate holding the hearing by electronic or digital means of communication, or for storage or retrieval of information, or any other technology it considers appropriate. Under Rule 73 (3) a party may also present its legal arguments in writing.

ORAL PROCEEDINGS

Which party goes first in a hearing on a Reference or Application?

The person who first presented the case will have the **right to begin.** (Rule 72(1)). However, the Respondent will have the right to begin if he or she has admitted to the facts of the case, but argues that because of the law or due to additional facts that were not presented by the original claim, the person is not entitled to any part of the relief he or she seeks. Rule 71 (2) provides that where there are several issues, and there is a dispute as to which party is to begin, the Court will give the right to begin to the party with the greater burden of proof.

Will the Judges ask questions during a hearing?

Yes, it is the Court's practice to ask the lawyers, experts, and witnesses questions, if the Judges feel that they need clarification or further explanation of certain issues or situations and they may ask at any time.

WITNESSES

May parties bring witnesses before the Court?

Yes. Parties may apply to the Court to summon witnesses or any persons, including experts, required either to give evidence or to produce documents. (Rule 66(1)). The Court will issue a witness summons that will specify the time and place of attendance, and whether the witness is required to give evidence, produce a document or both. (Rule 66(2)). The party will then serve the summons on the witness. The Court may ask the witness to write down what they intend to say, known as a witness statement, and to make it available to all the parties involved in the case. Before the hearing, the Court will advise the person when and how to do this.

PRACTICE REGARDING TESTIMONIES:

Practice regarding testimonies:

Witnesses are introduced by their Counsel and once they take the stand they are guided in taking the oath by the Court Clerk. Depending on their religion they will use the prescribed Holy book for that religion as they take their oath.

If there is an Affidavit on record the witness is introduced by his counsel and he adapts his affidavit or witness statement (this replaces the need to have examination in chief). Then the opposing counsel cross-examines them and then their Counsel can re-examine them and if the bench has no further questions the witness is stood down.

Does the Court also have power to independently summon witnesses?

Yes. The Court may on its own motion summon any person to give evidence or to produce any document if it considers that such evidence or document is essential for the just determination of any matter before it. Rule 65 (4) provides that where a person summoned to give evidence or produce a document fails to appear or refuses to give evidence or to produce the document the Court may in its discretion impose a pecuniary penalty not exceeding USD $2,000.

Who pays for the costs of witnesses?

The party that requests to summon a witness is in charge of paying the costs of the appearance (Rule 67). The Court may decide to summon a person as an expert witness, and it may decide to pay remuneration both for the time spent working on the case and the time spent giving evidence. In such cases the Court will cover the costs of the expert. (Rule 67(3)).

A commission is a warrant from a Court that empowers the person named to execute official acts. In this context taking the necessary testimony.

Do all witnesses have to appear in person at the hearing?

No. Rule 68 sets out a number of situations in which witnesses and experts may testify outside the hearing. The parties can request, or the Court may decide, that the examination of certain witnesses or experts can be done by a "commission" or letter of request. The Rules provide this possibility for:

- any person residing within the jurisdiction of the Court that cannot attend a hearing for health reasons;
- any person residing outside the jurisdiction;
- any person that is not in the jurisdiction at the time that testimony is set; and
- any civil or military member of the government or civil servant of the Community, if appearance before the Court could affect public service.

When a party requests a commission, they have to justify that the testimony is necessary for the Court to issue the request. The testimonies performed by commission are to be sent to the Court and will be part of the case record. Similar to the cost of the appearance of witnesses before the Court, any expenses related to commissions are to be paid by the party that requests such testimonies.

May a witness testify in a language other than English?

Yes, a witness who does not understand the language of the Court may give testimony in his or her language with interpretation by a person that speaks both languages. The Rules do not require a professional interpreter, but a person who the Court is satisfied is conversant in both languages. The interpreter will have to be sworn in before the Court. (Rule 75(5)).

What happens if a party fails to appear at a hearing for a Reference or Application?

If some or all the Parties to a case fail to appear at a hearing, the Court may decide to dismiss the Reference or Application (Rule 71). The Court may also decide to adjourn the hearing for a later date, if sufficient cause is provided. The Rules contemplate a few additional possibilities:

- if neither party shows up to the hearing, the Court may dismiss all claims;
- if the Applicant does not appear, but the Respondent appears, the Reference or Application may be dismissed; and
- If the Respondent does not appear, but the Applicant appears, the hearing may proceed without the Respondent; and
- If a hearing is adjourned and one of the parties does not show up on the day the hearing has been rescheduled, the Court may dismiss the Reference (Rule 76(2)).

If the Court dismisses a Reference or Application for failure to appear, can it be restored?

Yes, if the Court finds sufficient cause for missing the hearing. The Court may restore the Reference at the request of the affected party if the Court finds there is sufficient cause underlying the party missing the hearing. The request to restore the Reference must be done within 30 days of the Court's decision or its notification to the affected party. If the Court made an *ex-parte* decision as a result of a party's failure to appear and the Reference is later reinstated, the Court will set aside the decision. However, if an application for restoration of the Reference is unsuccessful, the Reference cannot be re-filed as a case before the Court (Rule 71 (5)).

May parties request an adjournment?

Yes. The Court may adjourn hearings if it finds it necessary to do so, and the reasons for the adjournment must be recorded. (Rule 76 (1)). Typically an adjournment is requested when counsel has been notified too late and did not have sufficient time to respond, or is indisposed, or a witness is unavailable. As noted previously, if a hearing is adjourned and one of the parties does not show up on the day the hearing has been rescheduled, the Court may dismiss the Reference or Application.

What happens if a party fails to produce evidence or witnesses in the time established by the Court?

If a party has been granted additional time but still fails to produce evidence or ensure the attendance of its witness, or perform any other act necessary to the progress of the case, the Court may proceed to decide on the Application or Reference (Rule 76 (3)).

Can supporting documents be introduced during a hearing?

Yes. If a party wants to support any argument with any judgment in a decided case or a quote from any book or publication, it should present a list with the corresponding citations, titles, authors and editions of those books to the Registrar 7 days prior to the hearing. The list should be presented to the Registrar with 8 copies and it should be sent to all the other parties. Additionally that party has to annex electronic copies of the items listed. A supplementary list may be produced, when necessary, at the time of the hearing. (Rule 77).

Can the parties make final written submissions?

Yes, this is the normal practice before the Court. The option and timeline to submit final written submissions will be decided at the scheduling conference.

DECISIONS AT THE FIRST INSTANCE

How many judges constitute quorum at the First Instance Division?

The quorum of the First Instance Division can be 3 or 5 judges, which must include either the Principal Judge or the Deputy Principal Judge. The Court may also decide that a case is to be heard by a full bench, when the matter of a case is considered to be of public importance or due to the complexity in the law applicable. The Principal Judge can make this decision or it can be decided by the Court at the request of any party. (Rule 69). Certain interlocutory applications may be heard by a single judge and parties have the ability to apply to have the decision varied, discharged or reversed by a full panel. (Rule 69 (3)).

How soon after a hearing will the Court make a decision?

At the end of a hearing, the Court may either deliver judgment at once, or within 60 days. In the latter case, the deliberations of the Court will be held *in camera* and are strictly confidential (Rule 78).

The Court may deliver only its decision and leave reasons for the judgment to be given on a later date. This could happen if there is insufficient time for a comprehensive reasoned judgment due to urgent need for an injunction or Court decision. In this case, the Registrar will notify the parties of the date for the Court to deliver the reasons for the judgment. Deferring the reasoning of the decision, however, is not the practice of the Court.

IN CHAMBERS

or *in camera,* in this context means that the deliberations will happen in private, without public present.

Does the Court's decision have to be unanimous?

No. Cases are decided by majority verdict and any judge may deliver a dissenting opinion. The judgment of the Court has to be signed by all Judges who participated in the decision, except those with a dissenting opinion, (Rule 79 (3)), and the judgment has to be sealed with the seal of the Court and deposited in the Registry (Rule 79 (7). The Registrar can provide the parties with certified copies of the judgment.

What can I expect from the judgment?

Article 35 of the Treaty provides that the Court has to decide every issue presented to it in one majority judgment. Decisions of the Court are issued in an order. The order is dated with the date the decision was delivered; contains particulars of the case (the names of the judges participating in it, the parties, their lawyers/agents, the facts, the issues for determination, etc.) and specifies clearly the decisions reached, the reasons for the decision and the relief granted (Rules 79 and 80).

RULE 79 (5) THE JUDGMENT OF THE COURT SHALL CONTAIN:

a. the date on which it is read;
b. the names of the judges participating in it;
c. the names of the parties;
d. the names of the advocates and agents of the parties;
e. a concise statement of the facts;
f. the points for determination;
g. the decision arrived at;
h. the reasons for such decision; and
i. the operative part of the judgment, including the decision as to costs

Are judgments of the Court delivered publicly?

Generally, yes. Rule 79 provides for judgments to be delivered in open court. Article 35 of the Treaty provides that the Court must deliver a reasoned judgment in public session, unless the Court considers special circumstances that require the judgment to be delivered to the parties in private. Neither the Treaty nor the Rules provide more guidance on what those circumstances may be.

Can the Judgment be reviewed?

Yes. Article 35 of the Treaty provides the ability to request that the Court review a judgment for the following reasons, mirroring the Court's prior decision in the case of ***Christopher Mtikila v. The A.G. of The United Republic of Tanzania & Another***: [43]

1. if there is discovery of a fact that would have had a decisive influence on the judgment which could not, with reasonable diligence, have been discovered by that party before the judgment was made,
2. on account of some mistake, fraud or error on the face of the record, or
3. because an injustice has been done.

This review process also exists at the Appellate Division and is distinct from the appeals process.

In 2013, the Appellate Division denied an application for review despite recognizing its authority to hear such an application, explaining its stringent policy that "[r]eview of a judgment will not be considered except where a glaring omission or a patent mistake or like grave error has crept into that judgment through judicial fallibility." See Independent Medical Unit v. Attorney General of Kenya and others, Application No. 2 of 2012, Judgment, March 1, 2013,

What is the procedure for seeking review of a Judgment?

To seek review of the decision, a **Request for Review** must be presented to the Court without unreasonable delay (Rule 83). The party requesting the review must prove the grounds upon which review is sought to the Court's satisfaction. If the Court grants the review, it can decide to re-hear the case or make any other order that it considers fit.[44] The judgment after the review is final subject to the parties' right of appeal.

On what grounds may a decision of the First Instance Division be appealed?

Separate and apart from the review of the case before the First Instance Division for new facts, mistake, fraud, error on the record and injustice, see above, a judgment or order of the First Instance Decision may be appealed to the Appellate Division under three grounds (Rule 86):

1. Point of law;
2. Lack of jurisdiction; or
3. Procedural irregularity.

43 EACJ, *Christopher Mtikila v. The Attorney General of The United Republic of Tanzania & Another,* Ref. No. 2 of 2007. First Instance Division, Decision on review of the ruling (June 22, 2007).

44 To date, the First Instance Division has considered only two reviews and neither was granted: *Paul John Mhozya v. The Attorney General of the United Republic of Tanzania,* Ref. No. 2 of 2016. First Instance Division, Decision on review of the ruling, (December 6, 2019)and *Christopher Mtikila v. The Attorney General of The United Republic of Tanzania & Another,* Ref. No. 2 of 2007. First Instance Division, Decision on review of the ruling (June 22, 2007).

What are the potential results of an appeal to the Appellate Division?

The Appellate Division of the Court can decide to confirm, reverse or vary the judgment of the First Instance Division. The Appellate Division may also send the procedure back to the First Instance Division, with the directions that it considers appropriate or order a new trial where it is clear that a miscarriage of justice has occurred. The Court can also make any incidental or consequential orders, including orders as to costs (Rule 120).

Will an appeal stop the implementation of a Court's First Instance decision or order?

When an appeal is presented, this will not automatically stop the execution of the judgment at the First Instance that is being appealed (Rule 87 (1)) as the appeal will not stay (or stop) the procedure or the execution of the order. The Court, however, may decide to "stay" the procedure or the order, if it considers that there is sufficient cause to do so.

How do parties request a stay of the execution of a Court?

A request to stay the execution of any Court order or decision at the First Instance Division may be presented at any time before the expiration of the time to appeal (30 days after the final order or decision being appealed), and may be presented before an appeal. The request should provide "sufficient cause" for the stay of execution and must be presented by filing a Notice of Motion, with a supporting affidavit giving evidence to support the Court's requirements for the stay, which include (Rule 87):

- that substantial loss may result to the party applying for stay of execution unless the order is made;
- that the application has been made without unreasonable delay; and
- that the Applicant has provided securities[45] that she can comply with the order or decree, that may ultimately be binding for her.

The Court can also decide to make an *ex-parte* decision on a stay of execution pending a hearing on the application. (Rule 87 (4)).

The Appellate Division

How long does a party have to appeal a First Instance Division decision?

Parties have 30 days from the date of the decision against which it is desired to appeal. (Rule 88(2)).

What is the process to appeal a First Instance decision?

As in the First Instance Division, the Appellate Division involves written proceedings followed by a scheduling conference and then oral proceedings.

45 When an appeal is presented, the appellant is required to deposit USD 500, as security in case she loses the appeal (Rule 96.)

WRITTEN PROCEEDINGS

What are the steps in the written proceedings at the Appellate Division?

STEP 1: The appealing party (the Appellant) files the **Notice of Appeal** within **30 days** of the order or decision being appealed. (Rule 88). The Notice of Appeal must be served on all persons affected by the appeal within **14 days**. (Rule 89).

STEP 2: The **Respondent** upon receipt of the Notice of Appeal, has **14 days** to provide an address for notifications and serve the notice of such address to the Appellant and every person named in the notice of appeal (Rule 90). The Appellee may also apply to the Court to strike out the notice or the appeal **at any time.**

STEP 3: The Appellant files a **Memorandum of Appeal** and a **Record of Appeal** within **30 days** after filing the **Notice of Appeal**. They must be served on the other parties within **7 days**.

STEP 4: The Appellee may file a **Notice of Cross Appeal or Notice of Grounds for Affirming the Judgment** within **30 days** of being served with the Memorandum of Appeal and Record of Appeal. They can also file a **supplementary record of appeal** at any time before the Scheduling Conference.

What documents are presented at the Appellate Division?

PARTY PRESENTING	DOCUMENT	CONTENTS
Appellant	Notice of Appeal	• Intent to appeal against the whole or part of the decision and where it is intended to appeal against only part of the decision, the part complained of. • The address for service of the Appellant and the names and addresses of all persons intended to be served with copies of the notice
	Memorandum of Appeal	• Document with a concise explanation of the grounds of the objections to the decision or order that is being appealed and the order that is requested from the Appellate Division of the Court
	Record of Appeal	• All the documents supporting the memorandum of appeal in the order specified by the Court.

PARTY PRESENTING	DOCUMENT	CONTENTS
Both or Either Party	Supplementary Record of Appeal	• Documents to ensure the record of appeal reflects that party's understanding of the appeal.
Respondent	Notice of Cross Appeal	• Document arguing that the decision of the First Instance Division or any part of it should be varied or reversed regardless of the appeal, or on appeal, specifying the grounds of this argument and the nature of the order they propose to ask the Court to make.
	Notice of Ground for Affirming Decision	• Document arguing that the decision of the First Instance Division must be confirmed either with additional or different arguments of those used by that Division, specifying the grounds for the argument.
ALL	**ALL**	• All documents must be presented with 8 copies and should include names and service addresses for every person that needs to be notified. • **Note that the same rules for service apply to both the First Instance and Appellate Divisions.**

What should the Notice of Appeal include?

The **Notice of Appeal** should specify whether the appeal refers to all of the First Instance decision, or, if it refers to only some parts of the decision, which parts are being appealed. It should also include an address for notifications of the Appellant and the names and addresses of all the people that should be notified of the appeal (Rule 34). It is not necessary to include a copy of the order or decision being appealed.

The Notice of Appeal must be filed in duplicate with the Registrar of the Appellate Division, using the provided template (*see* Resource section) and the form must be signed by or on behalf of the Appellant. It must be served on all persons the appealing party deems to be affected by the appeal within **14 days**. (Rule 89.)

What does the Respondent to the appeal have to do?

The person who is served a notice of appeal, the **Respondent**, must within 14 days provide an address for notifications and serve the notice of such address to the Appellant and every person named in the notice of appeal within **14 days** of being served with the Notice of Appeal (Rule 90). The Respondent's

providing and filing this address does not constitute an admission regarding the appeal or a waiver of any irregularity on the filing (Rule 90 (3)).

Additionally, the Respondent may, at any time, apply to the Court to strike out the notice or the appeal, on the ground that there are no reasons to appeal or that some essential step in the proceedings has not been taken or has not been taken within the prescribed time (Rule 91).

When are written arguments in favor of the appeal presented?

The Appellant has 30 days after filing the Notice of Appeal to present a **memorandum of appeal** and a **record of appeal.** 8 copies of each must be filed, together with US $500 as security for the cost of the appeal (Rule 96) unless the party sues as a pauper or is exempted (Rule 131).

Can the time period to file a memorandum and record of appeal be extended?

Yes, the 30-day period may be extended if copies of the decision or order to be appealed were requested in writing. The 30-day period will not begin to run until the Registrar provides the requested documents (Rule 96 (2) and (4)).

What should the memorandum of appeal contain?

The **memorandum of appeal** should provide a concise explanation of the grounds of the objections to the decision or order that is being appealed and the order that is requested from the Appellate Division of the Court (Rule 97). The Rules specify that the document should have distinct headings and that the objections should be numbered consecutively. The memorandum of appeal should follow the format of Form C, provided in the Annex to the Rules, and should follow the rules of all documents filed before the Court.

What does the record of appeal contain?

The **record of appeal** contains all the documents supporting the memorandum of appeal (Rule 98). It should contain:

- an index of all the documents in the record, indicating the pages on which they are located;
- a statement with the address for service of the Appellant and the Respondent. If the Respondent has not provided an address, the last known address with proof of service of the notice of the appeal;
- The pleadings, excluding documents or parts of documents that are not relevant to the appeal;
  - The affidavits and any documents read and put in evidence at the hearing, with the correspondent certified translation if pertinent, excluding documents or parts of documents that are not relevant to the appeal;
  - The judgment or ruling;
  - The decree or order;
  - The notice of appeal;

- The record of proceedings;
- Any other document that may be relevant for the proper determination of the appeal, including any interlocutory proceedings.

Note that:

- Documents should be bound in the order in which they are specified in the list above (Rule 98 (1)) and
- put in order by date, and if they have no date, they should be organized by the date the document is believed to have been made. They do not have to be organized by the date they were entered into evidence.
- An affidavit filed in support of a notice of motion has to be bound following the notice.
- Each copy of the record of an appeal has to be certified by the Appellant or the person that is entitled to appear on his behalf.

Copies must be served to all the Respondents that have provided an address for notifications within 7 days (Rules 99(1) and 90). The Court may require the notification of any other party in the procedure (Rule 99 (2)).

What happens if the appeal is not ultimately presented?

If a person has presented a notice of appeal, but fails to present the memorandum of appeal the Court will consider that the appeal was withdrawn and the person who presented the notice of appeal may be liable to pay any expenses that any party incurred due to the notice of the appeal (Rule 92). The other party has the possibility to institute a notice of appeal even if the original Appellant does not present his appeal, within 14 days of the expiration of the time the original Appellant would have had to present the appeal (Rule 92 (b)).

What if the appeal is presented late?

Parties may request that the Court extend the time for presentation of an appeal, but must first file a Notice of Appeal with the Registrar that will be stamped “lodged out of time.” (Rule 93).

Can the Appellant amend the appeal?

Yes, any time before the Scheduling Conference, the Court may allow the amendment of the appeal and it will decide in what terms and within what time limit (Rule 100). The Appellant may also at any time before the Scheduling Conference, lodge 8 copies of a supplementary record of appeal, to correct any defect on the original record or to comply with the Court’s requirements regarding the record of appeal, and must be prepared in the same manner as the memorandum and record of appeal. (Rule 101 (3, 4 & 5)).

What documents may the Respondent present at the Appellate Division?

The Respondent may present a **Notice of Cross Appeal** stating that the decision of the First Instance Division or any part of it should be varied or reversed regardless of the appeal, or in the event of the appeal and should specify the grounds of this contention and the nature of the order they propose to ask

the Court to make. (Rule 102). This must be filed and served 30 days after service of the memorandum and record of appeal and be served on the other parties affected by the cross-appeal within 7 days. (Rule 104.)

Alternatively, the Respondent may also file a **Notice of ground for affirming decision**, if she considers that the decision of the First Instance Division must be confirmed either with additional or different arguments of those used by that Division, specifying the grounds of the contention. This must be filed and served 30 days after service of the memorandum and record of appeal and be served on the other parties affected by the cross-appeal within **7 days**. (Rule 104.)

The Respondent may also file at any time before the Scheduling conference a **Supplementary record of appeal** if she considers that the record of appeal is insufficient or defective for the purpose of their case. In such a case, the Respondent should add any further documents or any additional parts of documents, considered necessary for the correct determination of the appeal (Rule 101 (1)).

May the Appellant withdraw an appeal?

At any time before the hearing an Appellant may present to the Registry a notice that she does not want to continue with the appeal. This notice must be served to the other parties within 7 days (Rule 105). If all the parties to the appeal agree with the withdrawal and they notify the Court accordingly, the Registry will proceed to mark the appeal as withdrawn (Rule 105 (3)). If any of the parties do not agree to withdraw, the appeal will stand (Rule 105 (4)).

If a cross-appeal was lodged, the Respondent may also withdraw their application within 14 days of the service of the notice of withdrawal (Rule 106).

Can The Respondent raise preliminary objections on the Appeal?

Yes. The Respondent may raise preliminary objections to the Appeal with 7 days written notice to the other parties, meaning that preliminary objections can be raised up until 7 days before the Scheduling Conference (Rule 109). The preliminary objections have to be served on the other party in line with the general rules for notifications. As in the First Instance Division, the Court may consider a preliminary objection raised outside of this timeline.

SCHEDULING CONFERENCE ON APPEAL

What happens at the scheduling conference for cases at the Appellate Division?

Similar to the First Instance Division, the Appellate Division will hold a Scheduling Conference to determine:

a. points of agreement and disagreement between the Parties;
b. whether legal arguments shall be written or oral, or both;
c. the estimated length of the hearing;
d. consolidation of appeals; and
e. any other matters as the Court may deem necessary.

Parties should, as far as possible, exchange documents in advance and each party may opt to present its own memorandum of issues if the parties cannot agree on all or some of the listed matters. If all parties opt to present their legal arguments in writing, the Court will fix a time limit to present written arguments (Rule 110 (5)). Otherwise, the Court will determine the date of the hearing for the appeal (Rule 110 (4)).

What is the process to present the arguments in writing after the scheduling conference?

If a party has decided not to present their argument at the hearing, she must submit a **written statement**, with her arguments in support or opposition to the appeal or the cross-appeal, as the case may be (Rule 111 (1)). The Appellant has 14 days from lodging her memorandum of appeal to present her written statement, and the Respondent has 30 days to do the same from the date the memorandum and record of appeal were served (Rule 111(2)). An Appellant who filed a written statement and was then served with a notice of cross-appeal can file a supplementary statement of her arguments in opposition to it. Each party has **7 days** to serve the other parties.

Note that if a party has decided to present written arguments, she **cannot** make oral arguments at the hearing, unless the Court decides otherwise (Rule 111 (4)).

Will the Court notify the hearing of the appeal?

Yes. The Registrar of the Court will notify the parties to an appeal hearing at least 14 days before the date of the hearing, unless the parties consented to the dates (Rule 112). A notice of hearing under this rule should be done according to **the template provided by the Rules** (*see* Resource section).

ORAL PROCEEDINGS

Are the appellate hearings public?

Yes. Appeals are heard in open court, with the public allowed access, Court's space permitting and as long as people conduct themselves with decorum before the Court (Rule 115 (1)). The presiding judge may, in the interests of justice, decide that the public or any particular person or category of persons be excluded or removed from the Court (Rule 115 (2)). The Court can also decide, depending on special circumstances of the case, to hear proceedings *in camera*, Rule 65 (4) & (5) (Rule 115(3)).

How is the appellate hearing conducted?

At the hearing, the Appellant will make her oral highlights first, followed by the Respondent's oral highlights, including arguments related to the cross-appeal, if applicable. The Appellant will have the possibility to respond to the Respondent. The Judges may ask for clarifications or questions during or after the oral presentations.

What arguments can be made at a hearing?

Generally, **the arguments to be presented on appeal are limited to what grounds were specified by the parties in the memorandum of appeal, notice of cross appeal, or notice of ground for affirming decision**. (Rule 116.) Specifically, except with the Court's leave, at the hearing of an appeal:

- a party cannot argue that the decision of the First Instance Division should be reversed or varied on any ground, except on the grounds specified in the memorandum of appeal or in a notice of cross appeal;
- a party cannot support the decision of the Court of the First Instance Division on any ground not relied on by that Court or specified in the notice of ground for affirming decision (under Rule 103);
- a respondent cannot raise any objection to the competence of the appeal which might have been raised by application to strike out the notice of appeal (under Rule 91);
- the Court does not allow appeal or cross appeal on any ground not set forth in the memorandum of appeal or notice of cross appeal, without affording the Respondent, or any person who should have been made Respondent or Appellant, as the case may be, an opportunity of being heard on that ground;
- the arguments contained in any written statement (lodged under Rule 111) will receive the same consideration as if they had been advanced orally at the hearing.

Additionally:

- The Court may dismiss but cannot allow any preliminary objection, application, appeal or cross-appeal without affording the opposing party an opportunity to be heard (Rule 118).
- if a party intends to rely on any published case or to quote from any book, she needs to present to the Registrar a list and copies of cases with their citations and the names, authors and editions of the book or books at least 7 days before the hearing, with 8 copies, and serve it on the other parties. (Rule 114.)

What happens if a party does not appear at an appellate hearing?

If the Appellant does not appear on the day of the hearing, the appeal may be dismissed and any cross-appeal may proceed, unless the Court considers it appropriate to adjourn the hearing. (Rule 117). If the appeal was dismissed, the Appellant may request the Court to restore the appeal if she can show that she was prevented from appearing for sufficient reason.

Similarly, if the Respondent fails to appear, the appeal will proceed in the absence of the Respondent and any cross-appeal may be dismissed, unless the Court considers it appropriate to adjourn the hearing. The Respondent may also request the Court that the Court re-hear the appeal or restore the cross-appeal if she can show that she was prevented by any sufficient reason from appearing. In both cases, the request to rehear the appeal or cross appeal should be presented to the Court within 30 days of the day of the hearing.

A party that presented a written statement (under Rule 111) will be considered as having appeared at the hearing.

APPELLATE DECISIONS

What is the quorum of the Appellate Division?

The quorum in the Appellate Division is three Judges, one of whom must be the President or Vice-President. Upon consideration of the importance of the matter or any particular conflict or other complexities of the applicable law, the President may decide or a party may request the case be heard by a full bench of the Court (Rule 113 (1)). As in the First Instance Division, certain Applications may be heard by a single judge. A party dissatisfied with a decision of a single judge may, for sufficient reasons, apply within 7 days after a decision of the judge to have the order, direction or decision varied, discharged or reversed by a full bench (Rule 113 (3)).

When and how will the Court make its ruling?

The judgment of the Court will be delivered in open court, either on the hearing date or at any subsequent date notified to the parties by the Registrar. (Rule 119.) The judgment may be delivered even in the absence of any of the Judges that composed the Court. Any Judge or the Registrar may read the judgment of any Judge not present.

Can the decision of the Appellate Division be reviewed?

Yes. A party may apply to the Court for the interpretation of the Judgment, ruling or order under the same grounds as the First Instance Division: 1) discovery of a fact that would have had a decisive influence on the judgment which could not, with reasonable diligence, have been discovered by that party before the judgment was made, 2) on account of some mistake, fraud or error on the face of the record, or 3) because an injustice has been done. (Rule 122.)

Costs, Remedies and Enforcement of Judgments

How will the Court allocate costs associated with litigation?

As a matter of practice each party must assume that she will have to pay for her own costs in the litigation. The Court may decide that a party has to assume the other parties' costs[46] (Rule 127) and this decision will be included in the judgment. Taxes are set out in the Third Schedule for the First Instance Division and in the Eighth Schedule for the Appellate Division of the Court's Rules in respect of all matters and services of the Court.

However, the Court's manual provides further guidance on allocation of costs including that "costs in any proceedings follow the event (i.e. the losing party pays the winning party the expenses incurred by the winning party to prosecute or defend the case)".[47] When cost may have been incurred without

46 For example, in the case of *Plaxeda Rugumba v. the S.G. of the E.A.C. and Another* after finding against the Appellant, the Appeals Division ordered that the Appellant bear the Respondent's costs of the appeal and of the Reference in the First Instance Division. *Plaxeda Rugumba v. the S.G. of the E.A.C. and Another,* Appeal No. 1 of 2012 (June 12, 2012), para. 39(6).

47 EACJ, *Court Manual,* pag. 164.

reasonable cause, the Court retains the power to request that the advocate shows cause "why such costs should not be borne by the advocate personally".[48] The court may also order that each party bears its own cost.

What kind of reliefs can the Court grant?

The EAC Treaty provides that the Court may "grant appropriate remedies to ensure adherence to law ands compliance with the Treaty"[49] However, the Treaty does not specifically set out the remedies that the EACJ may grant. Article 80 of the Rules established that a decision of the Court can specify relief granted or other determination of the case including costs. In practice, the Court has granted declaratory and injunctive reliefs. The Court has also recommended specific amendments to legislation to bring it into conformity with the Treaty, awarding compensatory damages and costs to successful applicants.[50]

In many cases, the Court has made declarations of illegality of the impugned acts, and orders as to costs.[51] In the case of the ***African Network for Animal Welfare* v. the *A.G. of the United Republic of Tanzania*** the Court found it has the power to grant a permanent injunction against a sovereign Partner State, stating that as a judicial body, it "must necessarily be clothed with all the attributes, powers, authority and stature ordinarily vested in similar judicial bodies. Such is necessary for the achievement of its fundamental objective, namely: to ensure adherence to the [law]... and compliance with the Treaty."[52] In some cases, the Court has deemed certain reliefs to be beyond its jurisdiction; for example, the Court declined to grant a declaration that an applicant who had been convicted by a national court has the right to enjoy his freedom and an order for immediate release of a the convicted applicant stating that those reliefs are outside the jurisdiction granted by Articles 23, 27, and 30 of the Treaty.[53]

The Court's Manual provides further analysis on reliefs, compensatory damages and costs.[54]

What mechanisms exist to enforce the Court's rulings?

Article 44 of the Treaty and Rule 85 deal with the issue of executing orders of the Court. The Treaty establishes that the decision of the Court to impose pecuniary obligations can be executed using the rules of civil procedure in the Partner State.

In order to execute an Order of the Court, it is necessary to use standard forms available at the Second Schedule. The Registrar must verify the order for execution and the copy of the judgment. Then, the party who was granted the damages may initiate execution proceedings in the Partner State. The Partner State's procedures will determine the concrete steps to get the damages.

48 *Ibid.*

49 Articles 23(1) and 27(1) of the Treaty.

50 *See, e.g.* EACJ, *Benoit Ndorimana v. Attorney General of Burundi,* Ref No. 2 of 2013 (November 28, 2014).

51 *See, e.g.* EACJ, *Sitenda Sebalu v. The Secretary General of the East African Community and others,* Ref. No. 1 of 2010. First Instance Judgement, para. 41.

52 EACJ, *The A.G. of the United Republic of Tanzania v African Network for Animal Welfare,* Appeal No 3 of 2014 (July 19, 2014), para. 53.

53 In the case of *Hilaire Ndayizamba v. A.G. of Burundi and Another,* the Court declined to both declare that the applicant be allowed to enjoy his freedom, and order that he should be released immediately, on the basis that it lacked the jurisdiction to grant such prayers per the EAC Treaty. EACJ, *Hilaire Ndayizamba v A.G. of Burundi and Another,* Ref. No. 3 of 2012 (February 28, 2014), pg. 12-13. *See, also* EACJ, *Venant Masenge v. the A.G. of the Republic of Burundi,* Ref. No. 9 of 2012 (June 18, 2014), pg. 21.

54 EACJ, *Court Manual,* pgs. 120-25.

What assurances are there that judgments will be implemented?

Article 38(3) of the Treaty states that a Partner State or the Council shall take, without delay, the measures required to implement a judgment of the Court.

The Council has the mandate to consider measures that should be taken by Partner States in order to promote the attainment of the objectives of the Community.[55] However, to date, the Council has not taken any measures regarding implementation by the States of the Court's ruling. Additionally, there is little known about compliance with the Court's judgments.[56] Member States have not been sanctioned when they have failed to comply with the EACJ's decisions. It is worth noting, however, that as of 2018 there had only been one complaint of non-compliance with an EACJ judgment.[57]The Court can declare violations of the law, give orders for injunctive relief, and award costs to the successful applicants.[58] The order for costs depends on the nature of the case.

Amicus Curiae & Interveners

Does the EACJ allow interveners?

Yes. A Partner State, the Secretary General, or a resident of a Partner State who is not a party to a case may intervene in a case to support or oppose the arguments of a party to the case (Article 40). An Application to intervene in a case must be by Notice of Motion and must contain a description of the parties, a description of the Reference, the name and address of the intervener, the order in which the intervener seeks to intervene, and a statement of the intervener's interest in the result of the case. The applicant to intervene must serve the Application on each party to the case who then has 14 days to file and serve a response. If the Court grants the Application to intervene, it will set a date for the intervener to submit a statement of intervention and the Registrar will supply the interveners with copies of the pleadings (Rule 59).

PRO TIP:
AN INTERVENER MAY ADVOCATE FOR ONE SIDE OF THE CASE OVER THE OTHER, BUT AN AMICUS CURIAE MUST BE NEUTRAL WITH RESPECT TO THE PARTIES TO THE CASE.

Does the EACJ accept *amicus curiae*?

Yes. At any stage of the proceedings, the Court may, if it considers it desirable for the proper determination of the case, invite or grant leave to a Partner State, organization or person to submit in writing any observation on any issue that the Court deems appropriate. (Rule 60.) If a person or an organization wants to present itself as an *amicus curiae*, she should make a written request to the Court explaining her interest in the specific case. Leave to appear as *amicus curiae* may be granted by the President or Principal Judge (Rule 60(2)).

55 *Cf.* Article 14(3)(f) of the Treaty.

56 Possi A *"An Appraisal of the Functioning and Effectiveness of the East African Court of Justice"* (October 23, 2018). 19. PER / PELJ 2018(21) – DOI. Available at: http://dx.doi.org/10.17159/1727-3781/2018/v21i0a2311.

57 Ibid. at 20.

58 *See, e.g.* EACJ, *Benoit Ndorimana v. Attorney General of Burundi*, Ref No. 2 of 2013 (November 28, 2014).

What is the importance of an *amicus curiae*?

The *amicus curiae* brief is a useful source of information to courts, allowing interested parties who are not litigating to inform the Court of their views and the probable effects the outcome of the case might have outside of the parties to the case. Similar to their use in domestic systems, at the regional and international levels, *amicus curiae* briefs have also been a way to share experiences at local level, other regional or international mechanisms, as well as international standards on the issues at hand.

What factors does the Court consider in accepting an *amicus curiae* brief?

As stated above, a person or entity interested in being considered for admission as *amicus curiae* must demonstrate the nature of her interest in the outcome of the substantive proceedings. The Court has also established guidelines to determine whether to accept an *amicus curiae* brief in a particular case, among them:[59]

- **Neutrality:** arguments must be limited to legal arguments and must be non-partisan and presented without bias or hostility;
- **Novel arguments:** The brief should address point(s) of law not already addressed by the Parties to the suit or by other *amici,* so as to introduce only novel aspects of the legal issue in question that aid the development of the law;
- **Assistance of the arguments:** The submissions intended to be advanced will give such assistance to the Court as would otherwise not have been available;
- **Relevance:** The brief should address relevant matters of law or fact otherwise not before the Court;
- **Expertise** in the field relevant to the matter in dispute; and
- **Consent of the parties** will be considered but is not determinative.

59 See EACJ, Court Manual, pgs. 90-91. The EACJ cited a decision of the Supreme Court of Kenya *Mumo Matemu & Others vs. Kenya Section of the International Commission of Jurists & Anor,* Petition No. 12 od 2013. The decision reads:
- An **amicus** brief should be limited to legal argument;
- The relationship between **amicus curiae**, the principal parties and the direction of **amicus** intervention, ought to be governed by the principle of neutrality, and fidelity to the law;
- An **amicus** brief should address point(s) of law not already addressed by the Parties to the suit or by other **amici**, so as to introduce only novel aspects of the legal issue in question that aid the development of the law;
- Where, in an adversarial proceedings, Parties allege that a proposed amicus curiae is biased, or hostile towards one or more of the parties, or where the Applicant, through previous conduct, appears to be partisan on an issue before the Court, the Court will consider such an objection by allowing the respective Parties to be heard on the issue (See Raila Odinga & Others vs. IEBC & Others; S.C. Petition No. 5 of 2013 – Katiba Institute's Application to appear as amicus);
- The Court will regulate the extent of **amicus** participation in proceedings, to forestall the degeneration of **amicus** role to partisan role;
In appropriate cases and at its discretion the Court may assign questions for **amicus** research and presentation;
- The Applicant ought to be neutral in the dispute, where the dispute is adversarial in nature;
- The Applicant ought to show that the submissions intended to be advanced will give such assistance to the Court as would otherwise not have been available, The Applicant ought to draw the attention of the Court to relevant matters of law or fact which would otherwise not have been taken into account. Therefore, the Applicant ought to show that there is no intention of repeating arguments already made by the Parties. And such new matter as the Applicant seeks to advance, must be based on the data already laid before the Court, and not fresh evidence;
- The Applicant ought to show expertise in the field relevant to the matter in dispute, and in this regard, general expertise in law does not suffice;
- Whereas consent of the Parties, to proposed amicus role, is a factor to be taken into consideration, it is not the determining factor.

IV. OTHER POWERS OF THE COURT

Advisory opinions

The Summit, the Council of Ministers or a Partner State may request an Advisory Opinion from the Court "regarding a question of law arising from [the] Treaty which affects the Community." (Article 36.) The process for these entities to request an advisory opinion is described in Rule 125. The power to decide Advisory Opinions falls under the Court's Appellate Division.

To date the Court has issued two Advisory Opinions both requested by the Council of Ministers. In the first, the Court interpreted the principle of variable geometry, determining whether variable geometry could be applied to guide the community's integration process.[60] In the second, the Court addressed the application and interpretation of the words "forfeit" and "withdraw" as they are used, respectively, in Article 67(2) of the Treaty and Rule 96(3) of the Court's Staff Rules and Regulations.[61]

Preliminary Rulings

The preliminary ruling system allows national courts to ensure uniform interpretation and application of Community law throughout the Partner States and promotes cooperation between national courts and the EACJ.

A national court must request that the Court issue a preliminary ruling on 1) the interpretation or application of the Treaty and 2) the validity of regulations, directives, decisions or actions of the EAC if the EACJ's ruling is necessary to allow the national court to issue its own judgment. (Article 34).

Under the preliminary ruling procedure, the Court's role is to give an interpretation of East African Community Law or to rule on its validity, not to apply that Law to the factual situation underlying the main proceedings, which is the role of the National Court. It is not for the Court either to decide issues of fact raised in the main proceedings or to resolve differences of opinion on the interpretation or application of rules of national law.[62]

A reference for preliminary ruling calls for the national proceedings to be stayed until the East African Court of Justice has given its ruling. However, the national court may still order protective measures in the interim.

60 EACJ, *In the Matter of a Request by the Council of Ministers of the EAC for an Adv. Op. Pursuant to Articles 14(4) and 36 of the Treaty,* Advisory Opinion No. 1 of 2008 (April 24, 2009).

61 EACJ, *A Request by the Council of Ministers of the East African Community for an Advisory Opinion Pursuant to Articles 14(4) and 36 of the Treaty and Rule 75(4) of the East African Court of Justice Rules of Procedure 2013,* Advisory Opinion No. 1 of 2015. (November 19, 2015.)

62 EACJ, *Court Manual,* pg. 263.

V. RESOURCES

Resources regarding the EACJ

- EACJ, Court Manual (2020)
- EACJ, Court Users Guide (2013)
- EACJ Rules of Procedure (2019) and (2013).
- EAC Treaty for the Establishment of the East African Community (1999)
- East Africa Law Society, EACJ Advocates Practicing Manual (2020)
- OSJI, Fact Sheet on the East African Court of Justice (2013)
- IJRC, Advocacy before the African Human Rights System: A Manual for Attorneys and Advocates (with a brief section on the EACJ) (2016)
- Media Defence, Litigating at the East African Court of Justice [Part of the "Litigating Digital Rights Cases in Africa" Series] (2020)

Other useful resources

Litigating Torture and Ill-treatment in East Africa. A Manual for Practitioners. November 2018. https://redress.org/wp-content/uploads/2017/12/1611East-Africa-Manual-1.pdf

Template Forms provided by the 2019 Rules of Procedure with page numbers

- Second Schedule, Form 1
  Notification of Institution of Reference/Claim (pg. 77)
- Second Schedule, Form 2
  Affidavit of Service (pg. 78)
- Second Schedule, Form 3
  Affidavit (pg. 80)
- Second Schedule, Form 4
  Substituted Service by Advertisement (pg. 82)
- Second Schedule, Form 5
  Third Party Notice (pg. 83)
- Second Schedule, Form 6
  Notice of Date of Hearing (pg. 85)
- Second Schedule, Form 7
  Summons to Witness (pg. 87)
- Second Schedule, Form 8
  Oath or Affirmation of Witness (pg. 88)
- Second Schedule, Form 9
  Execution of judgments (pg. 89)
- Fourth Schedule, Notice of Motion (pg. 103)
- Seventh Schedule, Form A
  Notice of Motion (pg. 109)
- Seventh Schedule, Form B
  Notice of Appeal (pg. 111)
- Seventh Schedule, Form C
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- Seventh Schedule, Form D
  Notice of Address for Service (pg. 115)
- Seventh Schedule, Form E
  Notice of Cross Appeal (pg. 117)
- Seventh Schedule, Form F
  Notice of Grounds Affirming Decision (pg. 119)
- Seventh Schedule, Form G
  Certification of Taxation of Costs (pg. 122)

List of cases

Alcon International Limited v Standard Chartered Bank of Uganda & 2 Others, Ref. No. 6 of 2010.

- Preliminary Objection, August 24, 2011: https://www.eacj.org/wp-content/uploads/2020/11/Reference-No.-6-of-2010-Ruling-Alcon-International-Limited-Vs-Standard-Chartered-Bank-2-Others.pdf
- First Instance Judgement, September 1, 2013: https://www.eacj.org//wp-content/uploads/2014/03/Reference-No.-6-of-2010-Judgment-Alcon-International-Limited-Vs-The-Standard-Chartered-Bank-of-Uganda-2-Others.pdf

African Network for Animal Welfare v. Attorney General of Tanzania (Serengeti), Ref. No. 9 of 2010.

- Preliminary Objection, April 25, 2013: https://www.eacj.org//wp-content/uploads/2013/04/ANAW-vs-AG-Tanzania1.pdf
- Appeal on Preliminary Objection, The Attorney General of the United Republic of Tanzania v African Network for Animal Welfare, Appeal No 3 of 2011, March 15, 2012: https://www.eacj.org/wp-content/uploads/2020/09/Appeal-No.-3-of-2011-The-Honourable-Attorney-General-of-the-United-Republic-of-Tanzania-Vs-African-Network-for-Animal-Welfare-ANAW.pdf
- First Instance judgement, June 20, 2014: https://www.eacj.org//wp-content/uploads/2014/06/Judgement-Ref.-No.9-of-2010-Final.pdf
- Appeal, The Attorney General of the United Republic of Tanzania v African Network for Animal Welfare, Appellate Division, Appeal No 3 of 2014, July 19, 2014: https://www.eacj.org//wp-content/uploads/2015/08/APPEAL-NO-3-OF-2014-FINAL-31ST-JULY-205-Anwaw.pdf

Angela Amudo v. Secretary General of the East African Community, Claim No. 1 of 2012.

- First Instance Judgement, September 26, 2014: https://www.eacj.org//wp-content/uploads/2014/09/CLAIM-NO-1-OF-2012.pdf
- Appellate Division, Appeal No 4 of 2014, July 30, 2015: https://www.eacj.org/wp-content/uploads/2019/03/CLAIM-NO-1-OF-2012.pdf

Prof. Anyang' Nyong'o and others v. Attorney General of Kenya and 10 others, Ref. Nro. 1 of 2006.

- Interim Orders, November 27, 2006: https://www.eacj.org//wp-content/uploads/2006/11/EACJ_rulling_on_injunction_ref_No1_2006.pdf
- Correction of Judgement orders, January 22, 2007: https://www.eacj.org/?cases=eacj-application-no-2-of-2006
- Interlocutory application, February 6, 2007: https://www.eacj.org//wp-content/uploads/2007/02/EACJ_application_No5_2007.pdf
- First Instance Judgement, March 30, 2007: https://www.eacj.org/wp-content/uploads/2020/11/Reference-No.-1-of-2006-Prof.-Anyang-Nyongo-11-Others-Vs-The-Attorney-General-of-Kenya-Others-1.pdf

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- Preliminary Objections, December 1, 2010: https://www.eacj.org/?cases=mary-ariviza-another-vs-the-attorney-general-of-the-republic-of-kenya-another-2
- Temporary Injunction, February 23, 2011 https://www.eacj.org//wp-content/uploads/2011/02/Application-No-3-of-2010.pdf

Benoit Ndorimana v. Attorney General of Burundi, Ref No. 2 of 2013.

- First Instance Judgement, November 28, 2014: https://www.eacj.org//wp-content/uploads/2014/11/REFERENCE-NO-2-OF-2013-BENOIT-NDORIMANA-28-NOVEMBER-2014.pdf

British American Tobacco (U) Ltd. v. Attorney General of Uganda, Ref No. 7 of 2017

- First Instance Judgement, January 25, 2018: https://www.eacj.org/wp-content/uploads/2020/11/Application-No.-13-of-2017-British-American-Tobacco-U-Ltd-vs-the-Attorney-General-of-the-Republic-of-Uganda.pdf

Christopher Mtikila v. The Attorney General of The United Republic of Tanzania & Another, Ref. No. 2 of 2007.

- First Instance Division, Decision on review of the ruling, June 22, 2007: https://www.eacj.org//wp-content/uploads/2007/06/EACJ_application_No8_2007.pdf

Democratic Party v. Secretary General of the EAC and others, Ref. 2 of 2013.

- Appellate Division, Appeal No. 1 of 2014, July 28, 2015: https://www.eacj.org//wp-content/uploads/2015/08/Democratic-Party-vs-2c-SG-REVISED-Draft-2-FINAL-31-07-2015.pdf

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- First Instance Judgement, May 15, 2015: https://www.eacj.org//wp-content/uploads/2015/05/REFERENCE-NO-1-OF-2014-EAST-AFRICAN-LAW-SOCIETY-ISIDORE-RUFYIKIRI-15-MAY-2015-Final-1.pdf

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- First Instance Judgement, September 1, 2008: https://www.eacj.org/wp-content/uploads/2020/11/Reference-No.-3-of-2007-East-Africa-Law-Society-4-Others-Vs-The-Attorney-General-of-the-Republic-of-Kenya-3-Others.pdf

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- First instance Judgement, February 28, 2014: https://www.eacj.org//wp-content/uploads/2014/03/REF-NO-8-OF-2011-PROF-NYAMOYA.pdf

Grands Lacs Supplier S.A.R.L. & Others v. Attorney General of Burundi, Ref. No. 6 of 2016.

- First Instance Judgment, June 19, 2018: https://www.eacj.org/wp-content/uploads/2020/09/Reference-No.-6-of-2016-Grand-Lacs-Supplier-S.A.R.L-Others-vs-the-Attorney-General-of-the-Republic-of-Burundi.pdf

Hilaire Ndayizamba v Attorney General of Burundi and another, Ref. No. 3 of 2012.

- First Instance Judgment, February 28, 2014: https://www.eacj.org//wp-content/uploads/2014/03/REFERENCE-NO-3-OF-2012-Hilaire-Ndayizamba-28-February-2014.pdf

Independent Medical Unit v. Attorney General of Kenya and others, Ref. No. 3 of 2010.

- Preliminary Objection, FIrst Instance Judgement, June 29, 2011: https://www.eacj.org//wp-content/uploads/2012/11/3-of-20101.pdf
- Preliminary Objection, Appeal, Appeal 1 of 2011, March 15, 2012: https://www.eacj.org//wp-content/uploads/2012/11/appeal-no-1-of-20112.pdf

James Katabazi and 21 others v. Secretary General of the East African Community and another, Ref. No. 1 of 2007.

- First Instance Judgement, November 1, 2007: https://www.eacj.org//wp-content/uploads/2012/11/NO._1_OF_2007.pdf

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- Appellate Division, Appeal 2 of 2015, November 25, 2016 https://www.eacj.org/wp-content/uploads/2019/03/Appeal-No.-2-of-2015-AG-of-United-Republic-of-TZ-vs-Anthony-Calist-Komu.pdf

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- First Instance Judgement, December 2, 2016: https://www.eacj.org//wp-content/uploads/2016/12/Ref.-No.8-of-2015.pdf
- Appellate Division, Appeal No. 1 of 2017 (Majority Judgment): https://www.eacj.org/?cases=appeal-no-1-of-2017-between-manariyo-desire-and-the-attorney-general-of-the-republic-of-burundi
- Appellate Division, Appeal No. 1 of 2017 (Dissenting Judgment): https://www.eacj.org/wp-content/uploads/2020/07/Ref.-No.8-of-2015.pdf

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- Appellate Division, Appeal No. 2 of 2017: https://www.eacj.org/wp-content/uploads/2019/03/Appeal-No.-2-of-2017-Hon.-Dr.-Margaret-Zziwa-vs-The-Secretary-General-of-the-East-African-Community.pdf

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Omar Awadh Omar and others v. Attorney General of Uganda, Ref. No. 4 of 2011.

- Appellate Division, The Attorney General of Uganda v Omar Awadh and others, Appeal No. 2 of 2012, April 15, 2013: https://www.eacj.org//wp-content/uploads/2013/09/AG_Uganda_v_Omar_Awadh_and_6_Others.pdf

Paul John Mhozya v. The Attorney General of the United Republic of Tanzania, Ref. No. 2 of 2016

- First Instance Division, Decision on review of the ruling, December 6, 2019: https://www.eacj.org/?cases=application-no-14-of-2018-application-for-review-arising-from-reference-no-2-of-2016-paul-john-mhozya-vs-the-attorney-general-of-the-united-republic-of-tanzania

Plaxeda Rugumba v. Secretary General of the East African Community and another, Ref. No. 8 of 2010.

- First Instance Judgement, December 1, 2011: http://eacj.huriweb.org/wp-content/uploads/2012/11/Plaxeda-Rugumba-2010-8-judgment-2011.pdf.
- Appellate Division, Appeal No. 1 of 2012, June 21, 2012, The Attorney General of the Republic of Rwanda v. Plaxeda Rugumba: https://www.eacj.org/wp-content/uploads/2020/11/Apeal-No.-1-of-2012-Attorney-General-of-Rwanda-Vs-Plaxeda-Rugumba.pdf

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