EAST AFRICAN COMMUNITY

REPORT

2ND ANNUAL EAST AFRICAN COURT OF JUSTICE JUDICIAL CONFERENCE

TRANSFORMING ACCESS TO JUSTICE IN THE EAST AFRICAN COMMUNITY

26 - 28 OCTOBER, 2022

MESTIL HOTEL

KAMPALA, UGANDA

ACRONYMS

ADR:	Alternative Dispute Resolution
AFCHPR:	African Court on Human and People's Rights
AG:	Attorney General
CBOs:	Community Based Organisations
CSOs:	Civil Society Organisations
EAC:	East African Community
EACJ:	East African Court of Justice
EALS:	East Africa Law Society
ECCMIS:	Electronic Court Case Management Information System
ESCRs:	Economic, Social and Cultural Rights
EU:	European Union
FIDA:	International Federation of Women Lawyers
GIZ:	Deutsche Gesellschaft für Internationale Zusammenarbeit
ICT:	Information Communications Technology
JLOS:	Justice, Law and Order Sector
KAS:	Konrad Adenauer Stiftung
NTBs:	Non – Tariff Barriers
SEATINI:	Southern and Eastern Africa Trade Information and Negotiations Institute
UNHCR:	United Nations High Commissioner for Human Rights

Table of Contents

1. INTRODUCTION

The East African Court of Justice (EACJ) was established under Article 9 of the Treaty for the Establishment of the East African Community (EAC Treaty) as the judicial arm of the East African Community. The Court's main obligation is to ensure adherence to the rule of law in the interpretation and application of, and compliance with the EAC Treaty. In recognition of its role in fast tracking the EAC integration agenda, the EACJ's work is anchored on respect for the rule of law and maintenance of universally accepted standards of human rights as stipulated in Articles 6 (d) and 7 (2) of the EAC Treaty. As a regional court, the EACJ also recognises the role of national judiciaries as assigned by the Treaty to cooperate in judicial and legal matters with a view to harmonizing judicial and legal systems"[1] in the EAC region.

However, the partial understanding of laws and their evolving nature, and lack of appropriate tools to implement them as well as inadequate understanding of emerging technological issues, limit the administration of rights and responsibilities enshrined in laws; thus requiring key interventions.

It is against this background that the EACJ convened the 2nd Annual East African Court of Justice Judicial Conference under the theme, *"Transforming Access to justice in the East African Community*." This event was convened with the overall objective of stimulating high-level conversations and discussions on emerging legal and judicial issues affecting the Courts and Court users, and providing a platform for information sharing among judges and other judicial officers, legal practitioners and other Court users in the EAC region. This was intended to strengthen the capacities of judges, other judicial officers and lawyers in responding to various challenges that people face while seeking justice on various matters; as well as to offer the opportunity for participants to identify emerging areas of interest for national judiciaries.

Various participants from the EAC Partner States and beyond attended this 3-day event including; Chief Justices, Ministers of Justice, Attorneys General, Ministers in charge of EAC Affairs, Judges from regional and national courts, Heads of EAC Organs and Institutions, Members of Parliament, legal practitioners, members of the academia, members of the diplomatic corps, representatives of civil society organisations, Development Partners representatives of the private sector and the media.

The conference was characterized by a series of informative and interactive sessions led and moderated by select justices and senior legal professionals with insights from select panelists. This was in a bid to foster collaboration between national courts and the EACJ; increase knowledge and understanding among judicial officers and legal practitioners on their roles in enhancing access to justice; the role of the Internet as an enabler of freedom of expression; the critical role of Courts in effecting social and political change, as well as on professional and ethical issues at the intersection of relations between Judges and Lawyers.

The event was officially opened by the Rt. Hon. Rebecca Alitwala Kadaga, 1st Deputy Prime Minister of Uganda and Minister of East African Community Affairs.

[1] Article 126 of the EAC Treaty

DAY 1 OF THE CONFERENCE (26TH OCTOBER 2022)

2. SESSION 1: OPENING CEREMONY

2.1. Welcome Remarks by H.W. Christine Mutimura – Deputy Registrar of the East African Court of Justice

The Conference commenced at 10:00 am on 26th October 2022 with the singing of the Uganda and East African Community Anthems; followed by welcome remarks by H.W. Christine Mutimura, the Deputy Registrar of the EACJ. In her remarks, H.W. Mutimura acknowledged the presence of the Justices, Representatives of Government, Diplomatic corps, development partners and other delegates from Partner States present; thanking them for honouring the invitation to be part of the conference. She thanked the Republic of Uganda for hosting this year's conference and warmly welcomed the delegates to the Pearl of Africa.

She briefed the delegates on the objectives of the conference and adjustments to the programme, and noted that although the EACJ is steadily growing, there are some prevailing challenges in the region such as partial understanding of laws and their evolving nature, the absence of appropriate tools to implement them as well as lack of knowledge of emerging technological issues, which limit the administration of rights and responsibilities as enshrined in laws; thus requiring intervention. She added that the conference was convened to offer a platform for high level discussions on these issues and thereafter invited the following speakers to make their remarks.

2.2. Remarks by Ms. Joyce Abalo Kimaro, Senior Advisor – EAC - GIZ Programme[2]

Ms. Abalo commenced her remarks observing all the protocols and expressed her gratitude to the Republic of Uganda for hosting the conference and the EACJ Secretariat Team, the Judges and various development partners under the stewardship of His Lordship Nestor Kayobera and H.W Mutimura for convening this dialogue; noting that the event would not have been a success without their tremendous effort and contributions.

She recognized and appreciated the important role played by the private sector, civil society organisations represented by the East African Business Council and the national associations and societies in the transformation of access to justice, promotion of good governance and rule of law in East Africa; and emphasized that access to justice is a multi-sectoral dimension which requires inclusive participation of all stakeholders. She applauded the EACJ's initiative to involve various stakeholders in this event, and expressed GIZ's appreciation of the EAC Partner States' efforts in strengthening the engagement of key stakeholders in the integration process. Ms. Abalo alluded to the EAC-GIZ programme's support to the EAC to a market-driven and people-centred integration in a number of areas including but not limited to; trade, digital education, value addition, health and natural resources management as well as mainstreaming gender engagement in regional trade and employment, thereby deepening the socio-economic integration of the EAC Partner States.

[2] Representing the EAC-GIZ Programme Cluster Coordinator Mrs. Godje Bialluch

She therefore urged the participants to bring forth key recommendations relating to the conference theme, to aid the integration process and ended her remarks reiterating the need to involve all stakeholders on an individual and institutional level, in promoting good governance and access to justice in different aspects of socio-economic development; so as to achieve an inclusive, peaceful, and prosperous East African Region.

2.3. Remarks from Hon. Justice Alfonse Chigamoy Owiny – Dollo - Chief Justice of the Republic of Uganda

His Lordship Justice Owinyi-Dollo's remarks were delivered by the Hon. Justice Geoffrey Kiryabwire - Judge of the Court of Appeal in Uganda, who also welcomed the delegates to Uganda.

In his remarks, the Hon. Chief Justice acknowledged and welcomed, the 1st Deputy Prime Minister and Minister of East African Affairs in Uganda, the Chief Justices from the Partner States as well as the Chief Justice of Somalia who was in attendance, the Justices and Judges from the Regional Courts and from the EACJ, the Chairperson of the EAC Council of Ministers, the Hon. Ministers and the other distinguished delegates in their respective capacities.

He thanked the EACJ under the leadership of His Lordship Justice Nestor Kayobera's for organizing this important conference in Uganda; especially at a time when the EAC has received new members from diverse legal jurisdictions. He acknowledged the steps taken by the summit in promoting regional unity and revamping the EAC and expressed gratitude that the EACJ was revived and the judiciaries of the EAC States are able to meet and share their experiences and best practices, for better justice delivery in the EAC Region.

He observed that this conference would pave a way for EAC stakeholders to mutually share the legal space in spite of their diversity; so as to abide by the Treaty obligations. He mentioned that the conference theme is in line with Uganda's transformation agenda for the Judiciary in Uganda; adding that it is redirecting its efforts toward enhancing access to justice services across the country. To this end, the Judiciary has among other things, launched the Electronic Court Case Management Information System; the benefits of which could be seen judging from the experiences during the Covid-19 pandemic and the subsequent lockdown which emphasized the importance of technology in delivery of justice.

Justice Owinyi-Dollo welcomed the decision of the EACJ to handle its November court sessions in Uganda this year and pledged the support of the Uganda Judiciary; as these sessions will not only bring justice services nearer to our people, but inevitably equip legal practitioners and judicial officers with contemporary jurisprudence in EAC Affairs.

In closing, he observed that the existing borders in the EAC region are superficial creations imposed by colonialists for administrative and selfish reasons, and that increased interactions among EAC citizens in search for markets, security, education, jobs, food, relations, and other life essentials have made the need for the EAC an indispensable reality. Inevitably, these human relations give rise to cross-border

disputes which call for our careful consideration as a community, and the power and position of the EACJ is therefore pivotal to the success of these efforts.

2.4. Remarks by Hon. Lady Justice Imani Daud Aboud – President of the ACHPR

Her Lordship Justice Imani Aboud expressed her appreciation for the invitation extended to the African Court on Human and People's Rights (AFCHPR) to participate at this conference which provided an opportunity to not only share but showcase the very plausible work that the African Court has done on the Continent in the protection of human rights in general and promoting access to justice in particular, since it became operational in 2006. She noted that the AFCHPR and the EACJ are sister institutions which share the noble task of administering justice to the public. She reported that in 2019 the two courts signed a memorandum of understanding to strengthen their relationship and explore better ways to enhance promotion and protection of human rights, access to justice, respect for the rule of law and advance good governance in the region and the Continent as a whole.

She added that access to justice has been described as the most fundamental of rights, without which, other rights, be they rights to property, rights under contract, public law rights or human rights are chimerical. She observed that access to justice is not just a right in itself but the key enabler in making other rights a reality and that it is incumbent on all to ensure that access to justice is a reality. Alluding to the theme of the conference, she stated that transformation is an ongoing process and so, a number of challenges still stand in the way of the legal profession and judiciary in the region to ensure effective access to justice to the public. She highlighted factors such as high cost of legal services, uneven geographical distribution of lawyers, lack of information about the availability of legal services, limited effectiveness of the States' legal aid scheme, failure by lawyers to provide community services, partial understanding of laws, lack of appropriate tools to implement them, lack of knowledge of emerging technological issues among judges, judicial officers and court users, as being major impediments to access to justice.

Justice Aboud emphasized the need for provision of legal aid to indigent court users, as a justice system is irrelevant if there are barriers, and added that all efforts of the court should be geared towards ensuring access to justice as a key tenant of rule of law. She recommended the use of street law clinics and legal aid booths among other methods to facilitate this and invited lawyers in the region to enroll in the African Court's legal aid scheme. She shared some landmark cases adjudicated by the AFCHPR that have made significant advances in the protection of human rights in general and the promotion of access to justice in particular, on the Continent; all of which can be accessed at the Court's website.

She concluded her remarks, noting that access by litigants is key to the discharge of the court's mandate; adding that Courts must therefore strive to ensure that they enroll qualified lawyers and facilitate access to courts, make capacity development a permanent feature of courts, so as to keep the Judges, staff, court users and legal practitioners, regularly updated with knowledge of the law and practice before the Court. She called on lawyers to register and be placed on the African court rooster to provide legal aid for indigent litigants.

2.5. Remarks by Hon. Amb. Ezechel Nibigira – Chairperson of the EAC Council of Ministers

H.E. Hon. Nibigira expressed his appreciation to the Government of the Republic of Uganda for agreeing to host the 2nd Annual EACJ Judicial Conference, and for supporting the EACJ to make this event a reality.

He congratulated the EACJ and commended its initiative of holding Annual Judicial Conferences at the end of each year; which enables the Court to reflect on its operations, successes and challenges as well as to brainstorm on the way forward to deliver on its mandate in accordance with the EAC Treaty.

He further commended the EACJ for bringing its services closer to East Africans through its annual rotational court sessions in the EAC Partner States; noting that these sessions increase the Court visibility as majority of East Africans are still not aware of its existence and jurisdiction.

H.E. Hon. Nibigira mentioned that the EAC Partner States recognize that adherence to law is fundamental to achieving the objectives of the East African Community and that the Court has judicial independence to discharge its duty. He however registered the concern among Partner States regarding the extension of court's competencies whereby the court seems to overtake individual national court powers; being the ultimate and final step of jurisdiction. He said this may jeopardize State sovereignty and urged that this matter be revisited at each level of leadership of the community, to ensure that the EACJ is really contributing to enhancing the integration agenda and respect of individual Partner States' sovereignty and independence. He added that the EACJ needs the political will and support that will allow it to efficiently and effectively operate.

He concluded his remarks by pledging continued support to the EACJ in fulfilling its mandate, and added that the conference would offset conversations that bring solutions to various challenges the EACJ faces.

2.6. Remarks by Hon. Justice Nestor Kayobera - Judge President of the EACJ

Prior to delivering his remarks, Justice Kayobera invited the Hon. Chief Justice of the Republic of Somalia – His Lordship Justice Bashe Yusuf Ahmed to briefly greet the delegates. The latter expressed his gratitude for having been invited to the conference and further expressed the desire and need for Somalia to be added to the EAC.

Justice Kayobera then acknowledged and thanked the Almighty God for enabling travel mercies to all the delegates, the different funding and development partners for supporting the organization of the conference and the EACJ staff for organizing the conference. He expressed his appreciation to the EAC Partner States for the good will in implementing the decisions of the EACJ and proudly highlighted the successes of the Court; evidenced by the increase in the number of cases it has handled over the years. He informed the delegates that the EACJ remained fully operational during the Covid-19 pandemic; relying on technology to deliver its services.

He expressed his appreciation to H.E. Yoweri Kaguta Museveni for agreeing to host the 2nd Annual EACJ Judicial Conference and thanked the Government of Uganda for its tremendous support and collaboration in making this event happen, and for the

hospitality accorded to all foreign delegates attending the conference. He thanked the Government for agreeing to host the Court's November 2022 sessions which would be held at the Commercial Court of the Republic of Uganda; adding that this was a reflection of the good will of the Partner States to enable East Africans to know and enjoy the fruits of Justice in the integration process.

He further mentioned that although the EACJ was experiencing challenges with regard to execution of its duties, it has registered success in enriching its jurisprudence, and therefore thanked the different partners for the role they have played in upholding the rule of law and access to justice.

2.7. Official Opening Remarks by the Rt. Hon. Rebecca Alitwala Kadaga – 1st Deputy Prime minister and Minister of East African Community Affairs

Rt. Hon. Kadaga commenced her remarks by warmly welcoming the delegates and thanking them for the honour of visiting the Republic of Uganda, and further expressed her gratitude to the leadership and management of the EACJ for organizing the conference and bringing it to fruition.

She acknowledged the Partner States' efforts in advancing the EAC regional integration agenda, and congratulated the people from the Republic of Kenya for successfully conducting their presidential and parliamentary elections and the Supreme Court Kenya for expeditiously and effectively handling the election petition in record time.

Hon. Kadaga observed that the membership of the EAC block has grown in leaps and bounds with the recent admission of the Democratic Republic of Congo; bringing the EAC to an aggregate population of approximately 300 million persons and added that this calls for heightened and structured cooperation as members of the Community. With the widened jurisdiction, Hon. Kadaga opined that the EAC will have a meeting of the civil law and common law systems, and should urgently find ways of co-existing and working together within these systems by improving the structures of collaboration among the Partner States.

She expressed her pleasure that the jurisdiction of the EACJ has been extended to include arbitration of issues of the Customs Union and the Common Market Protocol which are central to the lives of the people of the EAC and expressed hope that there will be increased activity by the Court in this respect.

She underscored the need to prioritize efforts of standardization-- indicating that there are still challenges in this respect and therefore Partner States have the obligation to enhance cooperation in legal and judicial matters through harmonization of legal trainings and certification, standardization of judgments of courts and publication of law reports for jurisprudential purposes. She commended the EACJ for passing judgments that have impacted human rights jurisprudence within the region and beyond as well as strengthening the EAC. She further mentioned that the cases that the EACJ planned to address during its sessions in Uganda will be of great interest to the people of East Africa and pledged Uganda's commitment to support the EACJ and the wider EAC integration agenda. She informed the delegates that Uganda was scheduled to officially commence classes in Kiswahili; among other things, to foster the EAC integration process.

She concluded her remarks by declaring the conference officially open and wished the delegates fruitful deliberations.

The delegates were thereafter ushered into a photograph session.

3. SESSION 2: KEYNOTE LECTURE: SHAPING EAST AFRICA THROUGH ADVANCING ACCESS TO JUSTICE - DR. BUSINGYE KABUMBA

The keynote address was delivered by Dr. Busingye Kabumba, a senior lecturer at the School of Law at Makerere University under the theme, *"Shaping East Africa through advancing access to justice."* The session was moderated by the Hon. Rtd. Justice James M. Ogoola.

Using the title, *"Not Yet Uhuru: Legal Decolonization and Access to Justice in the East African Community"* Dr. Kabumba made the following key points in his address.

Legal decolonization is key to ensure that access to justice is achieved. The task at hand is emancipation of our systems which requires reshaping regional and national practices to respond to the African setting – Dr. Busingye Kabumba

- The achievement of access to justice is an important goal of any judicial system and therefore it is important to discuss how is it should be actualized in East Africa.
- The concept of "Access" is determined by a number of factors or components including: i) Geographic; ii) Physical; iii) Economic; iv) Informational; v) Language; vi) Socio-cultural; vii) Psychological; and viii) Time.
- The EACJ was applauded for establishing court registries in Partner States, as this advances geographical access, and faulted for the limited timeframe of 2 months within which to bring claims to the Court.
- The concept of Justice in Africa is still "tainted" with colonial practices that do not fit quite well or resonate with the African setting and thus impede justice in certain respects. The *sub judice* rule and plea bargaining concepts were highlighted as such practices.
- Legal decolonization is key to ensure that access to justice is achieved. The task at hand is emancipation of our systems which requires reshaping regional and national practices to respond to the African setting.
- The effort towards legal decolonization would require comprehensive self-examination on the part of the courts which should be guided by the appreciation of the popular basis of judicial power.

Plenary Session

3.1. Responses to the Keynote Lecture

Below are the key comments and issues from the audience regarding the keynote lecture:

- If the award of costs by courts is an impediment to access to justice, what proposal exists to address this?
- To what extent is the concept of plea bargaining an impediment to access to justice?

- Is decolonization possible? Would this involve a revolution or evolution of our court processes to fit our context?
- Is the EACJ equipped with working tools to interpret the EAC Treaty?
- In terms of interpretation of the EAC Treaty, the EACJ is faced with the challenge that it does not have the benefit of the working documents that informed the development of the Treaty.
- The EACJ urgently needs protocols dealing with human rights and rule of law, short of which, the judges will be handicapped as they cannot deal with Treaty issues as they would with the municipal context.
- Regarding the jurisdiction of the EACJ, under international law, the obligations that a Partner State can have or the jurisdiction that a particular international court can have is by way of what has been created by the Constitutive Act as a matter of principle, and not a creation of judges. Their decisions must be in accordance with the aim and purpose of this Act.
- Access to court is a very important principle. However judges have to take into account the limitations which are enshrined in the Constitutive Act. Those who apply the principles of international law should abide by its principles and then try to interpret the Constitutive Act in a way that allows access to justice.
- Looking at the jurisprudence of the EACJ, is it foreseeable that East Africans can take on their Partner States on ESCRs pursuant to Article 72?

In response to the above issues, the keynote speaker submitted as follows:

1. Plea bargain has a taint of duress and undue influence to it. Courts should thus adopt a human rights approach towards certain and such principles. Community service orders, reconciliation and other restorative approaches should be employed to avoid prison congestion which brings about the plea bargain option.
2. Although costs follow the event, the event should not be expensive. For instance, if the Court registries and regional branches are closer, the cost of financing one's lawyer to travel all the way to Arusha would not arise. Lawyers are also duty bound to advise their clients about the costs involved in any given case, so as to devise ways that are not deterrent and therefore limiting access to justice. Additionally, there is need for judicial activism when handling cases. Judges' hands are not tied and they should always look for room to do the right thing.
3. The issue of direct applicability of regional law can be problematic and questions about jurisdiction are bound to arise at a point where the regional court's decision has a bearing on certain accrued rights of the people in a given Partner State. Where fundamental constitutional values are implicated, there might be need to review the regional Court's decisions or laws because of the implications they may have on the basic rights of individuals of a given Partner State. However, the shadow of 1977 and that of the Mike Campbell case will always hang over the EACJ, where even though the Court asserted the rights of the individual, not only was the decision refused but the court disbanded. The question then arises as to whose court it is. Unfortunately, at the moment, the reality is that it is not yet a court for the citizens of East Africa but that of the Heads of State.
4. Evolution would be the most appropriate approach to decolonization of our legal systems.

5. Even with international law, there is scope for innovation. Under international and municipal law, the hands of judges are not tied. There is always a way to arrive at a befitting solution.
6. There is scope for East Africans to invoke ESCRs within the EAC legal framework and when they do, it is hoped that the courts will do the right thing.

The session was concluded on the understanding that reshaping access to justice in East Africa is a massive job but doable. The goal is to deepen and widen regional integration and there are a number of tools available to achieve this such as political, economic, social, investment, trade, banking and professional etc... However, there is just one tool available to the courts and the legal profession which is the judicial tool. Additionally, it was recommended that EAC lawyers who are familiar with the workings of the EACJ and the EAC Treaty obligations should exercise their right to establishment as professionals to freely move across the EAC region to offer services to those who need them.

It was also recommended that the EAC should intensify the opportunity for national courts (at source) to hear issues about the EAC Treaty, its interpretation and application. This will bring justice to the nations and save people from the burden of moving all the way to Arusha to have their matters adjudicated upon. The EACJ should also continue circuiting and setting up registries in Partner States to bring services closer to the people and a budget is crucial to enable the Court to achieve this.

Overall, there is need to retool, reshape, realign and repackage the geography and law of East Africa, the jurisprudence of our Courts and the tools we use to widen and deepen the integration effort.

4. SESSION 7: MODERNISATION OF COURTS: SHARED EXPERIENCES ON THE DIGITISATION OF COURTS

This session began with a paper presentation by Mr. Paul Mukibi titled *Modernization of Courts: Shared Experiences on the Digitisation of Courts*; followed by a panel discussion by the following panelists: Hon. Lady Justice Jackie Kamau of the High Court of Kenya, Hon. Justice Geoffrey Kiryabwire - Judge of the Court of Appeal in Uganda and Hon. Justice Harrison Mutabazi – Judge of the High Court of Rwanda. The session was moderated by Mr. Davit Mkrtchyan.

4.1. Presentation by Mr. Paul Mukibi

In his presentation, Mr. Mukibi made the following key points:

- There are about five other regional economic communities (RECs) in Africa which have embraced digitization in their respective courts and therefore it is not peculiar to the EAC region.
- Digital technology has transformed the operation of public service institutions in several countries and regions and the Judiciary is no exception. He highlighted the use of the Electronic Court Case Management Information System (ECCMIS) which was adopted by the Judiciary in Uganda, as well as in Kenya, Tanzania and Rwanda; although the nomenclature used is different in each country.

- Digitization of court processes aims to improve the efficiency of judicial systems based on the standardization of procedures, generation, storage of quality information, and faster access to information. Additional benefits include; increase in the level of transparency, the improvement of the level of information security, and integration of human capital, financial and material resources.
- Digitization simplifies court processes by allowing for smooth filing of pleadings, electronic court appearances by litigants especially for those in remote locations, tracking progress of cases and timely dispensation of justice. It also addresses various challenges experienced by those seeking and administering justice.
- The influence of ICT has changed the traditional perception of the sources of law. The legal information processed through ICT tools has, for example, emerged as the digital source of law, which becomes more important compared to the traditional sources. ICT also offers unmatched possibilities for indexing and referencing legal information, and legal research, as well as support and automation of the processes. This could produce novel rules and principles, which may be relied on as subsidiary sources of law.
- Partner States should ensure data protection of their digitized content, and should enact or improve their data protection laws to facilitate this.
- With the recent global and regional pandemics, digitization of the courts is crucial and cannot be avoided if access to justice is to be achieved and maintained.
- The ability of IT officers in judicial institutions to embrace the digital transformation of African, regional and sub-regional court processes depends on the strategies pursued in their organization's geographical region.
- There is need to harmonize existing laws with digitization to avoid, conflict and confusion among court users during court processes.
- Although digitization is not void of challenges i.e. policy, standardization, organisational, infrastructure, utility and economic restraints, and IT illiteracy among others, these should not impede its incorporation as it enables improvement of productivity, streamlined case flow, reduction of case processing time, and better quality-- which are all essential to ensuring access to justice.

4.2. Panel Discussion

a. How Digitisation has Impacted Judicial Procedures in Kenya

Justice Kamau stated that Kenyan courts are now fully electronic with regard to filing of pleadings, publishing cause lists and issuance of judgments. Some courts are operating a hybrid system of both manual and electronic; only resorting to manual mechanisms in case of power outages.

She noted that the Kenyan Civil Procedure Rules have been amended to allow digital filing of cases and highlighted the following benefits that digitization has yielded:

- There is accountability which is quantifiable as the system measures the cases cleared.
- Transparency to parties and court users. For example, if an adjournment is made, parties are able to know who is responsible for the adjournment.
- Efficiency for all court users.

In conclusion, she noted that digitization had eased the work of the Kenya Judiciary tremendously.

b. How do Judicial Officers Prepare for Digital Transformation?

Justice Kiryabwire noted that judicial officers and other court staff need to understand what is happening and where they are headed when opting for digital transformation of their court systems in order to prepare effectively. Essentially, when talking about transformation, a paradigm shift in work processes is happening at two levels- i.e. movement from use of paper to digital resources and movement from manual systems to automated systems. Two broad areas inform this process namely; the life cycle of a case where it enters, is heard and resolved and when it exits the system. The second area is how to deal with support services management and human resources.
He noted that countries need to have a strategic plan in order to get it right with digitization and cited examples such as Uganda's IT Strategic Plan (2016 – 2022) and the EACJ Strategic Plan (2021 – 2025). He added that Partner States should avoid the *copycat* syndrome.

He concluded his submission mentioning that with a plan in place, countries are then able to decide whether to regulate first then go digital or vice versa.

c. How is Digitisation Empowering the Courts in Rwanda?

Justice Mutabazi noted that digitization has greatly empowered the courts in Rwanda. He shared on the judiciary's experience i.e. pre and post digitization; stating that the pre digitization era was characterized by densely populated courtrooms, heavy loads of paper and tiresome perusal of files by the judges.

He observed that although digitization was received with resistance from both the Bench and court users, the daring decision to go digital has created numerous benefits.
The post digitalization era is characterized by better planning and follow-up, reduced tampering with evidence and a drastic drawback of litigants physically present at the court.

In conclusion, he mentioned that digitization has indeed made his work easier as a judicial officer; as it ensures accountability mainly because the system trails use.

d. What Makes Digitisation Efforts in the Judiciary Unique?

Mr. Mukibi opined that the Judiciary serves the interests of justice wherever it is established. It is a body which deals with so many critical issues pertaining to life and death, and access to justice is a unique and very important need which is made easier with digitization.

4.3. Plenary Session

The following comments and key issues emerged from the audience regarding the plenary discussion:

- The Uganda Prisons Service appreciated the use of digital courts during the Covid-19 pandemic as it ensured that justice was dispensed to inmates in spite of the lockdown.
- The Kenya Bar perspective is that as a general rule, all court sessions should be handled online. The exception is with one or two criminal cases for purposes of dealing with witnesses. Kenya is fully digitalized and has a Registrar wholly dedicated to digitization to ensure its smooth roll out and operation.
- Can the use of digitalization in our systems contribute to reduction of prison congestion by reducing the number of remandees in the EAC region prison systems, who constitute the greater percentage of the prison population due to delays in the manual court or justice system among other things?
- How can digitization be sold to people who believe physical presence in court is the only way to access justice?
- Is there need to have an EAC data protection Bill that can then lead to harmonization of the respective data protection laws of Partner States? If so, how can standardization of data protection laws in the EAC be achieved in light of digitization.
- How prepared is the EACJ to handle cases online?
- How can the demeanor of witnesses be determined in a digital hearing?
- How can the integrity of IT systems be ensured to prevent tampering with evidence?
- Is there a relationship between digitization and a reduction in the number of remands?

In response to the above, the panelists submitted as follows:

- To begin with, there is need for a mindset and attitude change among judicial officers and lawyers toward digitization. This must begin with those who administer justice. Thereafter, efforts should be made to continuously sensitize the masses on the fact that digital court sessions are not an infringement on the rights of accused persons and those seeking justice but an enabler of access to justice.
- Court sessions are conducted through audio visual conferencing and therefore it is possible to determine the demeanor of a witness. The EACJ has no plan of conducting purely audio court hearings, and neither should other courts in the region.
- The EAC should begin discussions on standardization of data protection laws as data protection is key in digitization.
- There is evidence to show that digitization reduces prison and cell congestion. With digitization ensuring efficiency in handling of cases despite resource challenges which may impede physical access of prisoners to the courts, this translates to more cases being expeditiously handled by the courts.
- The EACJ is well prepared for digitization and has already handled cases in which prisoners have appeared before it online.

This session was concluded on the understanding that digitization is no doubt, an enabler of access to justice. Even though there are some challenges that it may yield, such as the human rights issues arising with regard to a prisoner's access to counsel in a digital trial, this can be addressed by streamlining the process to address this and other loopholes. Overall, digitization is vital to improving our judicial and other processes within the EAC region and it must not fail.

5. SESSION 3: ACCESS TO JUSTICE AND EQUALITY BEFORE THE LAW: REMOVING BARRIERS AT NATIONAL AND REGIONAL COURTS

This session began with a paper presentation by Mr. Francis Gimara titled, "*Access to Justice and Equality Before the Law: Removing Barriers at National and Regional Courts";* followed by a panel discussion by the following panelists: Ms. Susan Poni Victor from South Sudan, Ms. Lilliane Byarugaba Adriko from Uganda and Mr. Jean Claude Barakamfitiye from Burundi. The session was moderated by the Hon. Justice Kathurima M'Inoti from the Kenya Court of Appeal.

5.1. Presentation by Mr. Francis Gimara - Head of ALP East Africa

Mr. Gimara shared a practitioner's perspective to the session topic; highlighting the following in his submissions.

The terms "access to justice" and "equality before the law" are inextricably linked to each other as they both play the role of ensuring justice which is what really matters.

Access to justice refers to the means by which recourse is made to judicial processes and it has procedural and substantive tenets; the former entailing access to courts (and lawyers, law enforcement agencies, etc.)—which is important in making the justice system more user-friendly, effective and accessible. On the other hand, the substantive tenet looks at the fairness of the legal system as well as the procedures and laws in place i.e. access to just outcomes.

Effective access to justice means all persons must be equal before the law, and equality before the law acts as a powerful driver to access to justice.

The national Constitutions of the EAC Partner States hardly mention "access to justice"; save for the 2010 Constitution of the Republic of Kenya which has a provision on "access to justice for all"; contextualized to reasonableness of fees as not to impede such access.

All Partner States' Constitutions provide for (and guarantee) "equality before the law" and attendant "equal protection of the law". The EAC Treaty is however silent on both phrases and instead embodies the concepts of good governance, rule of law, human rights, and social justice.

The concept of "justice" is based on perceptions of the *rule of law* which is informed by the idea of *equality*. The rule of law enjoins that all individuals or persons are equal before law and, in the context of justice (and access thereto), it requires that everyone should be treated equally.

Mr. Gimara stated that in effect, both national courts and the regional courts are essential actors in the state of access to justice and equal protection before the law in the EAC.

He alluded to the theme of the conference stating that it greatly speaks to this critical issue, adding that what is important to consider are the following: Whether the national citizenry and the East African "residents" access justice and enjoy the equal protection of the law? What barriers exist or are placed in accessing justice and the

law's protection? Whether national courts and EACJ are playing any identifiable role in addressing (and removing) barriers?

He observed that in spite of the constitutional affirmation of "equality before the law" and centrality of "access to justice" and the lofty goals on fostering the rule of law in many States, there are barriers which impede both concepts in national Courts and the EACJ as a regional court. He highlighted the different barriers that impede access to justice to include;

(a) Procedural barriers in form of procedures to be taken in order to access the courts and therefore justice.
(b) Legal standing in accessing justice.
(c) Delays in delivery and dispensation of justice.
(d) Complexity of the legal framework and legal system.

He noted that the nexus between national courts and the EACJ, as a regional court, offers great "access to justice" *opportunities* in respect of Community law—such as but not limited to the *direct* effect of Community law ensuring that EAC residents derive rights from Community law as to entitle them to seek remedies before national courts. He recommended that use of the "case stated" procedure of the EACJ should be encouraged as an *opportunity* to access the regional court on Community law. Mr. Gimara alluded to other efforts which are further elaborated in his paper.

In conclusion, he mentioned that barriers to access to justice (and, in effect, equality before the law)—in the form of procedures and physical accessibility, or other barriers—will continue to subsist in national courts as they do at the EACJ as a regional court. Certain of the human resources-related barriers, such as limited numbers of judges and other officers in national courts and the ad hoc nature of the EACJ, are beyond the control of national and regional courts.

Nevertheless, he stated that the courts can be proactive and innovative by adopting proactive and even judicial activist approaches to court procedures, to enable ease and expansion of access to justice.

He commended the EACJ for often approving amicus curiae applications as this opens up the Court to the public and improves the justice outcome, and urged the courts to take advantage of the opportunities offered by technology to innovate on access to justice and enhance equality before the law.

5.2. Panel Discussion

Ms. Poni and Ms. Adriko both representatives from FIDA South Sudan and FIDA-Uganda respectively pointed out the barriers to access to justice for women, for example the fact that SGBV cases are not prioritized, lack of visibility of courts in remote areas, language barrier and lack of expertise in handling communication for persons with disabilities, absence of legal aid services, slow enforcement of court decisions, gender imbalances in the legal system which affect pursuit of justice by women, geographical barriers limiting those from far off places to access the few court facilities and legal aid service providers, serving many districts, absence of witness protection law, poverty as many women cannot afford the attendant costs of the legal system, lack of a national legal aid framework.

They underscored the fact that the existence of these barriers disproportionately affects women and children; more so those with disabilities. The two panelists recommended mainstreaming gender in the administration of justice, enacting witness protection and legal aid laws and urged actors in the justice system to aim to find an intersect between customary justice practices and the formal justice practices so as to ensure delivery of justice which responds to the needs of the people.

Mr. Barakamfitye mentioned that in the case of Burundi, the greatest barrier to access to justice is language barrier; being that Burundi is a French speaking country and yet the language of the EACJ is English. He added that there are language challenges both for justice seekers and their lawyers and therefore it would be useful to see an integration that is brought down to the grassroots of the community to ensure real inclusion of the most ordinary citizens and the language barrier is an issue.

He added that access to justice is not only about quantity but quality as well and recommended ensuring access in a timely manner and provision of legal aid services in the EACJ to enable access to justice. He added that execution of decisions is also a problem in Burundi and suggested that more thought and innovation should be given this area; and proposed that judges could be given additional powers to ensure enforcement of their decisions.

5.3. Plenary Session

The following key issues emerged from the audience following the plenary discussion:

- Can rules of procedure bar access to justice?
- What happens in a situation where a Partner State appoints a judge who does not speak English to the EACJ?
- How should political interference with the EACJ by the Heads of State be dealt with?
- What is the EACJ doing to ensure its visibility to and therefore its accessibility to the EAC citizens?

In response to the above, the panelists submitted as follows:

- There is need to simplify the rules of procedure both in national courts and the EACJ and to avoid legalese in order to make them more accessible/user-friendly to the people. Reference was made to the Uganda Human Rights Act which allows access to court through simply writing a letter.
- There should be provision of translation services to address language barrier and training for justice actors to enable quality access to and delivery of justice.
- The East Africa Law Society (EALS) should work to provide legal aid services to indigent litigants seeking access to the EACJ.
- All stakeholders should work to ensure the rule of law as it is not only the duty of courts to protect it. A multi-sectoral approach needs to be taken in finding solutions to issues such as political interference and challenges to execution.
- The number of cases filed at the EACJ has been increasing over the years and this is certainly an indication of the people's confidence in the Court, which has developed a consistent philosophy on rule of law and good governance. Additional benefits have been realized by some Partner States simply by being part of the EAC. For instance, there are better efforts to uphold the rule of law and observe the ethos pertaining to it in some jurisdictions. This is attributable

to the standard set at the EAC level when responding to rule of law related issues.

- The EACJ should empower legal service providers at the grassroots and enable them to disseminate important information about the Court. The Court should also establish registries in all Partner States to ensure access to its services.
- There is need to look into how to navigate the legal pluralism in the EAC and ensure the access to and effective dispensation of justice.

There being no other business, Day 1 proceedings were concluded with brief remarks by H.W. Christine Mutimura who served as the overall session chairperson for Day 1 sessions. She thanked the delegates for the engaging deliberations that had taken place during the course of the day.

DAY 2 OF THE CONFERENCE (27TH OCTOBER 2022)

Day 2 sessions were conducted under the stewardship of H.W. Jameson Karemani who served as the overall session chairperson. H.W. Karemani welcomed the delegates to the Day 2 sessions of the conference, and following brief administrative announcements, ushered the delegates into the first session of the day.

6. SESSION 4: THE ROLE OF NATIONAL AND REGIONAL COURTS IN BRIDGING THE ACCESS TO JUSTICE GAP FOR CROSS BORDER TRADE DISPUTES

This session commenced with a paper presentation by Ms. Brendah Akankunda from the Southern and Eastern Africa Trade Information and Negotiations Institute (SEATINI); followed by a panel discussion featuring; the Hon. Lady Justice Monica Mugenyi, the Hon. Kiryowa Kiwanuka, Mr. John Bosco Kalisa and Hon. Sheila Kawamara and moderated by Hon. Justice Richard Wejuli Wabwire.

Justice Wabwire introduced the topic, observing that at the core of the discussion of the role of the EACJ is advancing the aspirations of the people of the East Africa as expressed in the establishment of the EAC; cardinal of which includes deepening and widening cooperation in economic fields for their mutual benefit. This aspiration is amplified in different protocols of the community under the Treaty and as can be appreciated, any form of legal dispute can be draining for anyone involved. Cross-border disputes come with an amplified array of challenges including; navigating across jurisdictions, instructing and managing lawyers to help resolve disputes and many other issues. And for companies resident and working across borders issues such as tax and trade disputes are constantly alive and can only become more frequent with increase in trade and interactions among the people. He added that the session would look at the remedies available for those involved in cross-border disputes generally; especially trade disputes. Effective trade dispute mechanisms boost confidence in trade and local investments. The disputes end up in national and regional courts and this begs the questions as to whether these courts are properly mandated and resourced to facilitate effective resolution of trade disputes, and what the role of the courts should be in resolution of these disputes.

6.1. Paper Presentation by Ms. Brendah Akankundah – Programme Coordinator – Trade and Investment at SEATINI

In her presentation Ms. Akankunda made the following submissions:

- The expansion of the EAC to seven countries is an expansion of the markets bearing in mind that promoting and facilitating cross-border trade is one of the core objectives of integration.
- There are different challenges that affect trade and these range from administrative, politically induced and socially induced disputes such as border tensions, existence of different trade and tax regimes and the delay in implementation of the Common Market Protocol. These have the negative implications of revenue loss and low trade levels in the region.
- The courts at national and regional level have a duty to facilitate trade and ensure that traders access justice through resolution of disputes, as well as ensuring the predictability and sustainability of trade by offering interpretation of the negotiated principles and agreements and by ensuring that Partner States have mutual agreements to facilitate trade. Safeguarding the economic, social and cultural rights of cross-border traders is also important.
- Barriers such as limited financial and human resources interfere with the EACJ's duty of protecting the rights of traders. She highlighted the EACJ case concerning the closure of the Uganda Rwanda border for which a judgment was delivered after the border had been reopened.
- In order to facilitate access to justice in cross-border disputes, Partner States should take deliberate action or steps toward reforms such as harmonization of tax laws; putting in place a dedicated body to address NTBs and trade disputes; prioritizing the protection of the ESCRs of cross border traders; reviewing the EAC Treaty to make provision for a strong ADR mechanism; committing more resources to the EACJ to increase its financial and human resources; and first tracking the operationalization of the elimination of the NTBs Act.

6.2. Panel Discussion

Mr. John Bosco Kalisa represented the business community. He thanked the EACJ and its partners for organizing this important engagement and for including the voice of the private sector to the discussion. Mr. Kalisa's discussion highlighted the following points:

The EAC Treaty is clear and so is the role of the Court; which is to facilitate a people-centered integration and a market-led integration. Unfortunately, this is not the case in reality, as EAC institutions have not served the purpose of the integration agenda but instead allowed it to be politicized and to serve the purposes of politicians and not the business community (intended for private sector and people-centred development). The EAC's intra-regional trade is at less than 20%, while that of the EU is at 69%, and that of Asia is at 60%; meaning that the latter Communities are trading among themselves. He observed that intra informal trade in the EAC region is higher than intra formal trade because institutions are not functional.

He observed that the EAC is faced with issues such as politically motivated disputes and administrative related issues; adding that there cannot be integration when borders are closed over political conflicts. Trade facilitation agencies have become trade hindrance agencies stationed at borders to benefit politicians and yet the goal should be borderless trade across the EAC. The question then is whether the EACJ has the authority and capacity to enforce the requirements set by the Treaty and to resolve cross-border trade related disputes.

He noted that lack of resources for the EACJ should not be an excuse for failure to protect trader's rights as funding can be got from donors. What is important is having the capacity, competence and the will to act. He posed the question as to whether the EACJ's jurisdiction well defined to address these disputes.

In conclusion he stated that there is need to streamline how these institutions work and facilitate them in terms of resources e.g. staff, logistics, digitalization etc...; adding that there is also need for a paradigm shift where the EAC is viewed as a shared destiny, benefiting all its citizens.

Hon. Sheila Kawamara concurred with Ms. Akankunda and Mr. Kalisa's submissions, noting that the biggest challenge or barrier has been ignoring the masses. She reported that much of the cross-border trade is done by small and medium traders and they are the ones who need to access justice. Barriers like border closures, unfair trade policies and the fact that they are small, affect them most and yet they are unfortunately often ignored. She noted that there is a general lack of understanding of where we are headed as a Community with the integration agenda. She urged Partner States to assume the responsibility to provide financial resources to enable the EACJ to facilitate access to and delivery of justice to small and medium scale cross-border traders and not merely rely on donor funds.

She added that the EACJ must be resourced to adequately deliver on its mandate and there is also need to build confidence among private citizens that they can obtain justice from either national courts or the EACJ when trade disputes arise. It is our governments that should fund and facilitate justice for the EAC citizens.

Given that the trade legal framework is always evolving, there should be continuous training of the human resources that are given to support the EACJ.

The EACJ should not be limited to interpretation of the Treaty but handle additional issues such as human rights and environmental degradation.

Hon. Kiryowa Kiwanuka as the Attorney General of Uganda represented the voice of Government, noting that there is need to understand the purpose of integration which is prosperity for the people, strategic security of the people and fraternity of the people. Prosperity for the people is achieved through trade and wealth creation. He added that essentially, the question should be how the Court is going to facilitate this.

Trade facilitation agencies have become trade hindrance agencies stationed at borders to benefit politicians and yet the goal should be borderless trade across the EAC. -
Mr. John Bosco Kalisa

To achieve this, he noted that there is

need for a mindset change and to do away with the notion of turning integration into a political affair. There cannot be integration without the people. He added that borders, governments, municipal courts and rules of sovereignty exist and cannot be done away with. However, the key questions to focus on should be, whether we need each other and whether these borders allow us to prosper.

He expressed appreciation to the EACJ for doing a great job and opined that as a court of interpretation it serves the purpose of offering policy and legal guidance. It is not a court of enforcement but rather a court of the mind to help the people understand the aspirations of the EAC and the number of cases being filed is a realization by the people that they can go to the court for guidance.

> National courts should be mindful of the concept of international review of the decisions of domestic courts which is an established international law principle and could therefore do themselves a service whenever they are handling disputes; being mindful of the obligations that their States have entered into, to avoid situations where tensions are created when matters are brought to the EACJ. - **Hon. Lady Justice Monica Mugenyi**

Hon. Lady Justice Monica Mugenyi as a Judge of the Court of Appeal in Uganda represented the voice of the courts, noting that it is important to understand international economic obligations and how national courts interface with them. She added that there is need to understand the difference between the small scale traders and the large corporations/traders and this is because the dynamics are different; especially when disputes arise. A case in point is the recent border closures in the EAC region which affected them differently.

She noted that courts have the opportunity to lay ground rules when faced with a dispute and gave an example of the *BAT vs AG Case* whose decision from the EACJ was very well received. She urged the EACJ to always be mindful that in whatever decisions they make, they are laying down legal policy, and Partner States will look to them for guidance.

She recommended that financial and administrative autonomy of the EACJ is very important if the Court is to function effectively. She added that at the EACJ, the ad hoc nature of the judges and the arbitration rules need to be reviewed if commercial justice is to be dispensed.

She further advised the national courts that it is important when looking at their decisions to also look at the international obligations of whatever countries they are operating in. Domestic courts in Partner States must always be aware that they are operating within a framework they voluntarily entered into and that, that framework comes with obligations. The interface between domestic courts and the EACJ is the support function when it comes to Treaty interpretation and application.

She added that the financial constraints which the Court faces call for creation of a donor fund and granting the court financial autonomy to manage its financial resources. Additionally, its ad hoc nature makes the Court handicapped to handle commercial cases which require expediency. It is therefore urgent that this ad hoc nature is addressed in the interest of efficient service delivery.

The EACJ has a unique mandate allowing it to have both litigation and arbitration functions. This is perfect for commercial justice and dispute resolution. There may however be need to revisit the arbitration function to tap into the already established pool of arbitrators in the region; leaving the Court to do the traditional support function.

The other issue for the attention of the national courts is the concept of international review of the decisions of domestic courts which is an established international law principle and therefore they could do themselves a service whenever they are handling disputes and be mindful of the obligations that their States have entered into, to avoid situations where tensions are created when matters are brought to the EACJ. However, once the matters come to the Court, it is important to discuss the parameters on how far this Court can go.

6.3. Plenary Session

The following comments and issues emerged from the plenary discussion:

- What is to be done to ensure the EACJ's sensitivity when reviewing domestic decisions in an instance where it is clear from the matter brought before it that there has been a violation of a right in a Partner State through its judicial organ?
- The EACJ is an international court that is governed by international principles and is not a Court of Appeal in the same hierarchy.
- There is need to be cautious when reviewing decisions from domestic courts to avoid interference with the sovereignty of other countries.
- There are committees established by the Customs Union Protocol which have not only been slack and ineffective in carrying out their functions but set rules which stifle the integration agenda.
- The Court needs to avoid conducting arbitration and instead hire that function, and focus on creating jurisprudence.
- How can issues of cross-border data flow as well as access to information via the internet and understanding of laws by small scale traders who are not digitally savvy or have no access to this type of technology be guaranteed?
- The Court has to enforce rules and cannot be viewed or touted as merely a policy declaration tool.
- How do you reconcile issues of non-trade barriers, small scale traders and the courts? Is there any strategy on the part of CSOs to empower small scale trades to challenge unfair regulations (which infringe on the right to free movement of goods and services) in the national courts? If such a challenge is brought before the courts, would they be receptive to such claims, so as to declare these unfair limitations as contrary to the NTB Act? Shouldn't there be harmonized standards or common legislation about consumer protection, safety standards and ecodesign of products so that such NTBs would not occur?
- The Court must be moved by those who need or seek justice for it to act. Some actors in the business community are not confident enough to bring their matters to court and therefore cannot obtain justice, for fear of offending their governments.
- The Court should increase its visibility and create awareness of its rules and activities especially among the masses, especially the youth.
- Can one country in the region move ahead of another country in trade relations leaving others behind? Will this not amount to a breach of the EAC Treaty?

- Does the EACJ have a mandate to engage in interpretation of a Partner States Constitution?
- Partner States should be mindful of the obligations they have under the Treaties they have ratified and not invoke state sovereignty in the event of breach. The courts should continue to operate within their mandate and engage stakeholders to improve their understanding that the courts' decisions are not tampering with their sovereignty but upholding human rights.
- If the court is empowered to deal with issues of trade disputes there is no need to create a separate court.

In response to the above, the panelists submitted as follows:

- There are efforts underway within the EAC seeking harmonization of our policies, practices and customs in a bid to address the unfair NTBs challenges faced by small scale traders.
- It is true that there are committees set up in the Customs Union Protocol. However, their decisions cannot be binding. The Court interpretative function is what is binding. The Treaty is binding upon all parties and a committee cannot stray outside the Treaty and claim to be within the Customs Union Protocol.
- It is important that the Court separates its judicial function from its arbitration role, and focus on creating jurisprudence for the region.
- Once States sign these treaties, they have to cede a bit of their sovereignty to whatever obligations they are signing to and appreciate that they are bound to these obligations.
- The EACJ's mandate is Treaty interpretation but some of the fundamental principles in the Treaty include rule of law. All State organs of the Partner States are bound to abide by the principle of rule of law. Judicial organs are bound to abide by their State Constitutions and this was the issue for determination in the Martha Karua case. Therefore the Court would not be constituting itself into a constitutional court but applying a Partner State's Constitution in order to determine whether there has been a violation of any of its provisions.
- On policy guidance vis a vis enforcement. The enforcement under the EACJ regime is done by the domestic courts and these courts should be made aware of their supportive function in this regard.
- Regarding cross-border trade data flow, the Bank of Uganda and the Ministry of Trade for instance always have a system to collect cross-border trade data and it is shared. There is a desk at every border post (almost 13 posts in the EAC region) to monitor what traders experience and to provide regular and updated information to them in order to assist their functions. A simplified trade regimen has been developed by the East African Business Council (EABC) to ease cross-border trade and has gained enough traction, attracting other free trade areas to approach Uganda to benchmark and adopt it for their respective jurisdictions.
- The Trade Remedy Committee of the Customs Union is not working efficiently and it is a welcome development that the EACJ's jurisdiction has been extended to cover trade disputes.
- There is need to work with the Court on awareness creation and simplification of information about it.
- Judgments must be issued in context with the issues pertaining in the jurisdictions that are the subject before the EACJ.

In conclusion of the session, the judge President of the EACJ was invited to make some closing comments. Hon. Justice Kayobera mentioned that it is imperative to understand the key role of the Court in a political and socio-economic development, which tends to be misunderstood by most key actors. He noted that there is no system that can develop without the active role of the judiciary and called on the Attorney General of Uganda as a member of the Council of Ministers and of the Sectoral Council on Legal and Judicial Affairs to always be mindful that there cannot be prosperity, strategic security and a fraternity in the EAC region without a strong judiciary. He appealed to the AG to defend the Finance and Administration Bill which will allow the EACJ the autonomy to carry out its functions and manage its own resources.

He urged the governments of the Partner States to appreciate the fact that the role of the Court is simply to determine whether their actions are in compliance with the Treaty or not, and this should not jeopardize the Court's safety and stability.

7. SESSION 5: ALTERNATIVE DISPUTE RESOLUTION: REALITIES, DETERRING FACTORS AND SOLUTIONS

The Session began with a paper presentation on the topic by Mr. Aderikson Hezron Njumwa. It was moderated by Ms. Faith Macharia and comprised a panel discussion by select ADR experts namely; Hon. Justice Richard M. Mwongo, Hon. Justice David K. Wangutusi and Ms. Florida Kabasinga.

7.1. Paper Presentation by Mr. Aderickson Hezron Njunwa - Senior Arbitrator at the Tanzania Insurance Ombudsman Service

In his presentation Mr. Njunwa made the following key points:

He noted that conventionally alternative dispute resolution (ADR) has been regarded as alternative ways of dispute resolution; thereby putting it at a lesser status than litigation. However, currently, there is a shift of discussion or definition, regarding it as appropriate ways to resolve disputes outside litigation. This position is highly supported because every dispute has its own features and circumstances, and calls for using the appropriate dispute resolution method to resolve it.

The emphasis is on adopting alternative and appropriate ways instead of litigation so as to avoid the consequences (costs and losses) that come with litigation. ADR methods are defined and categorized depending on the nature and purpose of the engagement i.e. why and how you are engaging in the process outside litigation.

There is apparent increased recognition of ADR as a viable preliminary remedy to conflicts, misunderstandings at all levels nationally, regionally and globally mainly because of the advantages it poses over litigation and the religious backing it has as cited in the Bible and other religious texts.

ADR therefore is perceived to entail concepts such as; a) *"Appropriate"* Dispute Resolution, *"Accelerated"* Dispute Resolution, *"Better"* Dispute Resolution, or IDR, for *"Innovative Dispute Resolution"* and *"Affordable Dispute Resolution".* Additionally, ADR may take different forms depending on the engagement such as Preventive ADR; Facilitative ADR, Advisory ADR, Determinative, Collective ADR and Court-Based ADR.

The fundamental principles guiding its application are voluntariness, confidentiality, self-determination through informed consent, efficiency, flexibility, and neutrality/impartiality.

Critics of ADR have also cited its downsides to include; lack of precedents making it hard to predict outcomes, shielding injustices in society, power imbalance and the possibility of coercion rather than consent, the costs involved, third party funding which may overly influence the process, unpredictability in enforcement and tactical delay.

He highlighted the legal framework governing ADR in the EAC which comprises the EAC Treaty, EACJ Rules of Arbitration, EACJ Rules of Procedure among others and noted that despite the Treaty and the Rules providing for ADR in the Court, it has not been utilized fully and there are various factors that account for this, which include; visibility and accessibility issues, and lack of adequate training. He added that almost all Partner States have ADR included in their Constitutions and ADR legislations, which tend to be scattered and focused on arbitration, and are not streamlined; which is a deterrent factor.

He stated that there are several institutions operating within the EAC which offer ADR and have rules which match international best practices on ADR and "state of the art" facilities.

He highlighted the factors that deter the full utilization of ADR which include; absence of ADR policy framework, absence of streamlined ADR legislations; common but unpopular visibility and accessibility of ADR, lack of synergy in training, lack of competence and poor attitude to ADR among legal practitioners; not to mention lack of in-depth knowledge of sectors generating international disputes that are amenable to ADR such as arbitration, and lack of effective monitoring and evaluation of ADR systems.

Mr. Njunwa stated that ADR requires political will and development of a policy framework ensuring that ADR is an integral part of all policies so as to improve access to justice, providing adequate resources towards development of ADR and creating alternative ADR structures and institutions.

He recommended adoption of ADR Policy in all private Corporations, Streamlining and harmonizing ADR legal frameworks, competence-based training, set up of a monitoring and evaluation framework for ADR (to collect data, analyze, collate and improve it), and joint awareness strategies within and among the institutions to make ADR popular.

7.2. Panel Discussion

Hon. Justice Wangutisi shared a historical perspective on the deterrents of ADR, opining that ADR is not fully utilized because most people have not been trained and cultured to opt for ADR-- right from their home settings. He added that this dates back to the 1800s when those who came supposedly to teach religion and its values were actually looking for markets and sources of raw materials for economic purposes. He alluded to research that has shown that where the judicial system is slow, one cannot harvest what they are looking for. He observed that certainly, the legal system which the colonialists introduced to Africa following her partitioning was not for

Africa's benefit but theirs, as it was inclined more to, how quickly they could have matters relating to their investments resolved. The legal system they introduced and trained Africans on is adversarial which contrasts with the original African way which was mediation. The training since then has been inclined toward the adversarial method which overlooks ADR and the public has been led to believe that unless a matter is presided over by a judge with counsel on either side, justice will not be served. He noted that even those who serve or appear in domestic courts and at the EACJ have the same mindset.

He concurred with the recommendation that there is need for training to change mindsets and facilitate the use of ADR. New scholars must appreciate that litigation has finality to it and that there are other less costly and amiable methods to resolve disputes which enhance access to justice, and confidentiality is key to ensuring harmonious relations.

Hon. Justice Richard Mwongo mentioned that basing on our history, what is required is a paradigm shift and alluded to the practice in Kenya characterized by a paradigm shift that has been occasioned by the adoption of their 2010 Constitution which under Article 159 enjoins the judiciary to promote the principles of ADR in all its work.

He stated that this is forcing a change in the thinking of the people. Prior to the 2010 Constitution, it was perceived that litigation is the most appropriate form of dispute resolution; which it is not. ADR must be seen as the most appropriate way to resolve a matter and that it is least costly and time consuming.

He reported that the Judiciary in Kenya has adopted a policy framework in which there is a whole discussion on how to mainstream traditional dispute resolution mechanisms as part of the judicial process. This is in addition, to the court annexed mediation which has already been adopted. Through Kenya's court annexed mediation, he reported that they have handled approximately 10,000 old cases (commercial and family) since 2017, involving KES 48 Billion of which; those resolved are in the range of approximately KES 12.9 Billion. Cases that have been in court for years have been resolved in less than a day.

He mentioned that for the EACJ, arbitration is a risky venture; even though its statutes make provision for it. This is because of the ability to challenge the decisions for purposes of setting aside on grounds such as corruption and failure to notify etc… Additionally, he posed questions as to what the outcome of the arbitration process would be termed as. Is it a judgment? Does it have the effect and value as a decision of the Court?

In conclusion he noted that ADR is about prioritizing interests and needs rather than emphasizing rights and obligations.

Ms. Florida Kabasinga shared the practitioner's perspective and noted that lawyers are averse to ADR and will frustrate it because of how they are trained. Lawyers are trained to look at the interests of the clients and this is in contrast to what ADR is about. They are taught and wired to be confrontational and ADR does not give them the opportunity to be this way because of the way it is structured. The dilemma is that while there was an original way of dispute resolution, the new system has steadily

changed the mindset of practitioners over decades and just when they are getting really good at the new way, they are being asked to go back to the old way; moreover with intricacies added to it. When handling cases, lawyers should have a good understanding of what ADR is in order to propose it over litigation; which they do not. ADR is viewed as an elitist thing and so lawyers who don't understand ADR will not advise their clients to try it. When lawyers are told about ADR they are told they are going to one tribunal with no recourse to appeal the outcome--which is not a popular position.

She added that lawyers also look out for their own interests and the longer their client's cases go, the more they get paid; as they are able to bill for services at different stages which ADR does not offer or entail. She added that most lawyers come to mediation sessions bent on frustrating the process.

She added that two options arise, that is whether to train and hope for a paradigm shift or legislate and have it practiced by the force of law.
She concluded her remarks noting that it is important to understand the above underlying issues that frustrate use of ADR, so as to rightly address them.

7.3. Plenary Session

The following comments emerged from the plenary session:

- Lawyers have become inhibitors rather than facilitators of dispute settlement; especially with ADR, for purely selfish purposes.
- In order for people to understand and appreciate ADR there is a need for training and public awareness campaigns for the benefit of the State and the masses.
- ADR should be offered as a prominent topic at the law school and other learning institutions.
- There is a growing sense that arbitration is getting more expensive and many are opting for the normal court method.
- Despite the wealth of traditional justice methods in Uganda, why is it that the same have not been documented and adopted at the first instance in dispute resolution?
- Where ADR is done without lawyers involved the process tends to be smooth and conclusive.
- There is need to strengthen the traditional justice mechanisms that advocate for ADR.

In response to the above, the panelists submitted as follows:

- The impatience of lawyers is simply because they want mediation to fail so that they can go to court. And this is further fueled by the fact that they will get paid for the ADR session and when it fails, they can also get paid for representation in court. The best way would be to get rid of the lawyers and deal with the parties directly.
- The escalating costs of arbitration can be addressed by setting fee structures within ADR institutions that are affordable to make dispute resolution accessible.
- Some of the best mediators in the region are lawyers and they will even train others to mediate and in this respect they are facilitators of ADR. However, they

can be a hindrance when they have not had training so as appreciate the workings and benefits of ADR.

- Most of those who attend law school are not driven by the desire to administer justice but to make money and this is one of the reasons why ADR is frustrated.
- There should be synergized training and an integrated curriculum on ADR, its importance and how it facilitates access to justice, to improve the competence and attitude of legal practitioners toward it. Additionally such ADR training is crucial even at the lowest stages of education. Budget allocations should be made toward this cause.
- The posturing of a legal practitioner matters. If one's service is geared at quick disposal of cases to facilitate development as proposed by the integration agenda, that is beneficial but if it is for personal benefit, ADR cannot succeed.

This session was concluded on the understanding that ADR is a choice, requires an attitude change, and requires awareness creation and continuous training to facilitate its success.

8. SESSION 6: THE INTERNET AS AN ENABLER OF FREEDOM OF EXPRESSION AND PUBLIC DEBATE: IMPLICATIONS FOR THE RULE OF LAW

The session featured a presentation by Prof. Juan Barata Mir followed by a panel discussion by Hon. Neema Lugangira, Mr. Jenerali Ulimwengu and Mr. Evans Ogada who doubled as the moderator for the session.

8.1. Paper Presentation by Prof. Juan Barata Mir

In his presentation, Prof. Barata Mir;

- Offered a legal perspective and described the different elements that need to be taken into account particularly from the international human rights and regional human rights that the international and regional treaties enshrine on how to understand freedom of expression online and how to understand the possible regulation that may arise online.
- Noted that Internet is not a medium per se. It is a technological platform where we receive financial (trade and banking) services, healthcare, education, have private communication and also disseminate and receive ideas, opinions and information. It is an enabler of freedom of expression.
- He added that in our modern digital and democratic societies, the internet has become a basic precondition for the enjoyment and exercise of rights and freedoms including the right to information, freedom of association and expression, freedom to participate in public life and also to offer vital services. The internet has become a basic tool for the individual to live in society. Therefore shutdowns affect a wide array of services, rights and freedoms; and are considered from an international human rights perspective as a disproportionate measure, incompatible with international human rights standards, with an unacceptable impact on the lives of persons; even though they are intended to get rid of bad things taking place.
- He advised that there are other ways that are less intrusive and more proportionate which can be used to get rid of bad things on the internet rather than shutting it down and putting many lives at risk.

- He noted that freedom of expression is applied both on and offline. What can be said online can be said offline and therefore there is no need for a specific legal regime applicable to the online world which is no different from the real world. There is a tendency by certain States to create legislation to address cybercrime, computer use etc..; introducing new crimes, aggravated sanctions to prosecute or persecute individuals, and which from an international human right perspective are unacceptable.
- There is need to take a horizontal view when it comes to media and apply the principle known as technological neutrality. Having a law focusing on online media indicates a lack of understanding of the reality of the internet and will lead to excessive sanctions which infringe on the freedom of expression.
- The role and nature of intermediaries who offer hosting services through which we can enjoy the internet must be understood. They are not platforms but facilitators of content sharing and access. Intermediaries are not liable for the third party content that they post.
- There is no need to create new laws to regulate or prosecute hate speech or harassment or threats. The existing laws in respective jurisdictions are sufficient to address this.
- The challenges experienced when talking about the internet are; jurisdiction or country of origin, platforms and what law to apply.

8.1. Panel Discussion

Hon. Neema Lugangira quoting the UNHCR stated that *the same rights people have offline must be protected online*. She however stated that the freedom of expression holds a positive and negative side to it.

She observed that the internet has become a powerful democratizing force that transforms freedom of expression across all its core rationales and has changed the way we receive, seek and digest information and even impact on that information. She however added that two challenges arise. One is that traditional media has over time merged with digital media making it difficult for communities at peripheral regions to access it and to exercise their freedom of expression and the right to access information; if not empowered to use it.

The second is the overarching challenges of freedom of expression. The internet is a global media which does not follow national boundaries. It is probably the only sector that has developed without the right policy and legislative framework in place which we as Africans must ensure to have in place to avoid online abuse leading to victims self-censoring; thereby denying them the right to express themselves. She warned about the dangers of unchecked online freedom of expression.

Mr. Jenerali Ulimwengu had an alternate view to that of Prof. Barata Mir, stating that the internet does not create the world but rather puts the world in a web. It has and offers both opportunities and dangers and is a very powerful tool. He added that it is imperative to civilize the human being first before he/she accesses the internet or else he will do harm to him/herself and the world. He also advised that to reap the benefits of freedom of expression there is need for a combination of different elements to ensure safety, harmony, and productivity.

8.2. Plenary Session

- Access to internet is detrimental to some users such as prisoners who by the very nature of their circumstances cannot contain the content that they access such as pornography or movies on prison break. This is unsafe to them, other inmates and the prison administration.
- It is perceived by the public that the recent Computer Misuse Act that was passed in Uganda will only serve to stifle expression, curb accountability by duty bearers and those with public responsibility.
- The Act was put in place to control the use of the internet which if left alone will obstruct justice.
- Freedom of Expression is not absolute and is even limited by the international human rights instruments; meaning that it is regulated.
- As much as freedom of expression has limits, it is absolutely crucial for democracy and the sovereignty of the people.
- The crimes legislated in restrictive internet laws are already legislated upon in other municipal law. This is duplication.
- Digitalisation that comes with digital surveillance infringes on human rights.
- With our structural inequalities, who determines what is acceptable or not, in the digital place?
- There is selective use of cyber laws depending on the interests of those invoking them as an instrument of oppression.
- What is the space for regulation of peace and security?

The people have to have their say, but in so doing, some will definitely escape the boundaries of civility and the law. The way forward should be how to recalibrate the benefits of democracy as we try to reconcile with the madness that pervades our society~- Evans Ogada

In response to the above, the panelists submitted as follows:

- Digital transformation will be most useful in facilitating decongestion of prisons.
- Human rights laws also incorporate limits and one of such limits to freedom of expression is national security; of course applying the test of necessity and proportionality.
- Humanity can be cruel and unjust and once a society is tolerated and let to grow into one lacking empathy and solidarity and to become unjust, that same society will come back to bite.
- More African parliamentarians, especially women parliamentarians should be online as they will be better placed to understand its dynamics and formulate appropriate solutions for its effective use and to address today's societal challenges such as child pornography, human trafficking and financial crime, among others.
- The accounts used to harass and abuse other users are usually fake accounts and it is therefore difficult to follow up for accountability.

In conclusion of this session discussions, Mr. Ogada opined that the people have to have their say, but in so doing, some will definitely escape the boundaries of civility and the law. The way forward should be how to recalibrate the benefits of democracy as we try to reconcile with the madness that pervades our society.

9. SESSION 8: JUDICAL RESOURCE LIMITATION AND THE EFFECT ON JUDICIAL EFFICIENCY: WHAT DO COURTS DO?

This session featured a paper presentation by the Hon. Justice John Eudes Keitirima and was moderated by the Hon. Justice Charles Nyachae, with discussions by panelists representing the judiciaries in Uganda, Kenya and Rwanda, as well as the EACJ and the African Court. These included; H.W. Sarah Langa, Hon. Anne Amadi, Hon. Justice Didace Nshimyimana, H.W. Christine Mutimura and Hon. Dr. Robert Eno respectively.

9.1. Paper Presentation by Hon. Justice John Eudes Keitirima – Judge of the High Court of Uganda

In his presentation, Justice Keitirima;

- Noted that financial autonomy for the Judiciary is essential to its independence and effectiveness. If the Judiciary finds itself at the mercy of the Executive and Parliament to allocate money, then true judicial independence may be undermined as the Executives and Parliaments may use their power of control over the budget to undermine judicial independence and ultimately its effectiveness.
- Advised on the need to respect the doctrine of separation of powers and in turn give adequate funding to the judiciary.
- Highlighted the ways in which lack of financial autonomy affects the effectiveness of the Judiciary and noted that issues such as limited human resource, loss of public confidence and failure to enforce its mandate are perennial.
- Noted that economic development and transformation cannot be achieved if citizens and investors have no confidence in the justice system and its ability to uphold the rule of law. The rule of law regulates economic activity, defines and affirms rights and obligations.
- Recommended that Chief justices and Heads of Courts should meet the heads of the Executives and Legislature to negotiate their budgets and make a justification for their budgets and should ensure that they are given a self-accounting status.

9.2. Panel Discussion

The panelists shared experiences from the courts in their respective jurisdictions and how financial resource limitation has affected delivery of justice.

The Ugandan Experience

H.W. Sarah Langa shared that she joined the judiciary seventeen years ago and added that the judiciary today is different from what it was then. She mentioned that although the subject of judicial financing has been discussed for way too long, stakeholders in the judiciary will not tire to speak about it until a solution is arrived at.

She noted however that there has been an increase in the budget allocation to, the Judiciary occasioned by enactment of the Administration of Judiciary Act in 2020 which had been pending for 20 years. This enactment followed a moving decision on

judicial independence and financial autonomy delivered by the Hon. Justice Cheborion Barishaki in *Constitutional Petition no. 52 of 2017* brought by the Uganda Law Society against the Attorney General in 2017. This budget allocation however remains way below the requisite allocation to enable it to operate effectively.

With the enactment of the Act, there have been a number of gains and for the first time the provisions of Article 155 of the Act came to life the Chief Justice was able to present the Judiciary's budget to the President and present its vision and plans; garnering a double increase in its allocation at the time. Since then there have been some milestones like new recruitments and construction of new courts. Challenges still exist such as case backlog, insufficient human resources and infrastructure. A bottom-up approach to informing the budget has also been adopted and so court officers from the lowest level are involved.

In conclusion, she stated that although the Judiciary has not yet got to where it would like to be financially, the enactment of the Act is a step in the right direction. She added that it is time to change strategy from merely viewing the judiciary as a consumer and seeking judicial independence to speaking to the value of cases where the Judiciary is seen as a contributor to economic development.

The EACJ Experience

H.W. Christine Mutirima thanked the presenter for highlighting that there is in fact a close link between judicial independence and judicial efficiency. She stated that the EACJ's challenges in terms of financial independence are similar to those experienced by national courts. She mentioned that the Secretary General is the accounting officer for the Community and is entrusted with management of the Court's financial resources. The EAC's financial rules and regulations allow him to delegate these powers to the Registrar of the Court with respect to budgeting, budget execution and expenditure.

She mentioned that the court receives only 8% of total contributions made by Partner States to the EAC budget and that the Secretariat undertakes the budgeting. In the course of budgeting, the Court is involved. However, the approval of activities goes through the Finance and Administration Committee of the Council of Ministers; made up of ministers from Partner States. The EACJ is not represented on this Committee and it is difficult to get those there to appreciate the Court's role and why its activities need to be funded. She mentioned that training for instance, is given a very slim budget allocation by the Committee and yet it is critical that the judges receive continuous training to improve service delivery to the Community. She advised that it would be useful to have some representation on this Committee, to make a good case for the Judiciary. Additionally, she mentioned the Court is viewed more as a consumer and not as a contributor to the integration agenda and this is a bottle neck to its financial independence.

She added that the ad hoc nature of the EACJ greatly affects its work and how it is perceived. Although the Court has been in existence for nearly 21 years and its workload has increased, it is yet to be granted permanency. Additionally, the Heads of State are yet to assent to the Administration of the EACJ Bill which has been on the table six years since it was passed by the East African Legislative Assembly. The Court is also not able to directly engage in resource mobilization because the Treaty prescribes that this is to be done through the EAC Secretariat which is limiting.

She therefore recommended increased visibility of the Court, its mandate and decisions so that citizens are able to understand its role and significance. She further recommended amendment of the EAC Treaty to allow for the Court's financial independence.

In conclusion, she mentioned that as long as some Partner States do not adhere to their Treaty commitments in terms of contributing to the EAC integration efforts, the Court will still be under resourced even if it is granted financial independence.

The Kenyan Experience

H.W. Anna Amadi commenced her remarks by confirming the numbers cited by Justice Keitirima regarding the underfunding levels of the Kenya Judiciary i.e. 0.6% of the national budget. She stated that the Kenyan experience is quite similar to that of other judiciaries in the region; adding that the Kenya Judiciary operates on this meager allocation which is intended to cater to the 889 judicial officers and 133 court stations across the 47 counties, and yet 350 Parliamentarians operating in Nairobi alone, work with double the budget allocated to the Judiciary.

She reported that the judiciary has been subjected to arbitrary budget cuts in the middle of the financial year based on what is happening on the Bench at time; citing among others, the infamous 2017 revisit that nullified the presidential election following which the judiciary received only KES 50 Million on their development vote.

She stated that the Kenya judiciary recognizes the need for accountability and has constantly engaged the agencies that hold the purse strings i.e. the different parliamentary committees namely the Justice and Legal Affairs Committee and the Budget and Appropriations Committee; among others, where they have sought to emphasize the correlation between a well-resourced judiciary and the achievement of the agenda of the national government; demonstrating that a well-funded judiciary should be able to contribute toward the ease of doing business and investor confidence.

She noted that the Judiciary has offered recommendations on innovative ways to enhance its budget, for instance the proposal to retain the interest on deposits paid by litigants. It has negotiated with its banks to increase the interest on these deposits; which is then remitted to the Consolidation Fund with the hope of enhancing the budget allocation to the judiciary. She added that the Kenya Parliament has supported the Judiciary to develop a framework through which it can obtain this interest. She mentioned that these engagements have brought about positive outcomes; which the judiciary is constantly negotiating to improve upon.

H.W. Amadi reported that the Judiciary has over the years dutifully released the State of the Judiciary and Administration of Justice Report which has never been considered and discussed by Parliament and the Senate.

She noted that the diminished view of the needs of the Judiciary requires a mindset change from viewing it as a mere consumer and stated that several publications have been developed showing the correlation between poverty and lack of access to justice; which shows that the judiciary aids development.

At the public level, the Judiciary has in the past had public hearings under the Justice, Law and Order Reform Sector and suffered undercuts when the largest percentage of the money obtained from joint auctions for instance would be retained by the Ministry of Interior and Coordination of National Government; leaving just 10% to be shared among the other JLOS institutions. Subsequently, the Judiciary removed itself from the JLOS membership and has since sent its budget requests directly to Parliament and had public hearings for the budget of the Judiciary on its own which have registered much success.

Through collaborative approaches, the judiciary has been able to make savings on its funding and the establishment of the judiciary fund for instance, has brought some autonomy and enabled the running of activities more smoothly and at the end of the year, the Judiciary retains these funds rather than returning them to the Treasury.

The Rwanda Experience

Hon. Justice Didace Nshyimiyimana shared the Rwandan experience on what court can do and has done. He stated that various strategies have been adopted and continuously adjusted through enactment of new laws and adoption of mechanisms to allow for effective operation of the courts and overcome the issue of judicial resource limitation. This has entailed introduction of single judge courts at all levels except the Supreme Court, contracting available judges and registrars to serve on short term contracts and with their consent, moving them to different courts to assist heavily burdened courts in justice delivery, creation of specialized court chambers to ensure efficiency and compulsory court annexed mediation conducted by judges and registrars. The specialization of court Judges is often considered a major performance factor in terms of administration of justice.

He added that Rwanda has also prioritized digital transformation and monitoring judicial officers and courts for efficiency in dispensation of justice. Rather than focus on limitation of resources the judiciary has instead applied itself in the above ways to achieve the most important goal of administering justice.

The Experience of the African Court

H.W. Dr. Robert Eno endorsed Justice Keitirima's presentation even though it leaned more to the experience of domestic judiciaries; adding that most of the issues he highlighted can be replicated at regional and continental level, because resource limitations affect the activities of the African Court as well in terms of limiting its activities such as recruitment and reforms to ensure better service delivery. He reported that 90% of the Court's funding is obtained from Member States accessed contributions and about 9-10% is from development partners whom the Court relates with.

He advised that the courts need to find innovative ways of generating resources, for instance charging a fee for law reports and publications just as the African Court does, establishing a trust fund and investments, among others.

He observed that the independence of the Judiciary cannot be exercised in the abstract because it is part and parcel with other key stakeholders such as the Executive and the Legislature and must explore ways to work with these stakeholders to get the resources it needs. He added the African Court prepares reports and shares

them to the States. It is the governments of the Member States which contribute funding and set up registries and it is these stakeholders who must be engaged to appreciate the role of the Court in order to appreciate its work and be its allies.

He underscored the need to harness the use of technology to save funds and mentioned that during the Covid-19 pandemic the Court through use of the electronic management system was able to make an annual saving of *USD 68,000* on just stationery and yet more judgments were delivered.

9.3. Plenary Session

The following key issues and comments emerged from the plenary session:

- The EACJ should equip the Secretariat by recruiting skilled human resources in the area of budgeting.
- There should be a collective voice in budget presentation so that all the justice stakeholders are well facilitated.
- The judiciary should consider engaging the highest stakeholders in the Partner States such as the Partner State Presidents to avoid the bottlenecks at lower levels.
- The EACJ sits only 4 times a year? Is it an issue of resource limitation and what is the court doing about it?
- The courts should also highlight their problems and challenges and start engagements well in advance.

In response to the above, the panelists submitted as follows:

- The resources that the judiciary will get will depend on the political climate in each given Partner State. Whether this is sustainable is a matter that needs to be interrogated.
- The judiciaries go through all the processes proposed by the audience but to little or piecemeal avail. It has engaged stakeholders at all levels even in the highest office but little is done to address its needs and concerns. The issue is who is the ultimate determiner of what goes to the Courts? Can the objectivity of this determiner be expected and relied upon? It is clear that the judiciary in most countries has no equal bargaining power with the other Arms of Government. If this other arm is to function with equal status what should be done to guarantee this? There should be a deliberate policy to strengthen the weakest link.
- Even when these resources are given, it should be left to the leadership of the institution to determine how these resources should be utilized.
- At national level, the judiciary should conduct studies and reviews of the court policy in order to overcome the issue of judicial resource limitation and publicize them.
- The ad hoc nature of the EACJ dictates that the Court holds only four sittings so that the judges are able to attend to their other duties in their respective Partner States.
- Not all hope is lost and that is why the Court is holding engagements such as this judicial conference to generate a better appreciation of the relevance of the Court and the challenges it faces. There is indeed need to engage but who to engage matters.
- The way the Council of Ministers works is that there a number of Committees the EACJ is somehow arm-twisted to report to before getting to the Council,

which act as bottlenecks. With increased lobbying by the Court's leadership and respective Ministers of East African Community Affairs, some progress could be achieved.

- Another challenge that the Court faces is with decision making at EAC level where issues are brought before the Council and are not addressed for years. The frequent change of the members of the Council also poses a challenge because one Minister will be positive but the next year a new Minister will come with a different disposition.
- Engage the various Committees individually well in advance before the matters reach the decision makers.
- Collaborative effort. Even as we raise concerns about underfunding of the judiciary, we must recognize that there are other stakeholders who work in collaboration with it, which, if also not adequately funded will create an imbalance; thereby affecting the entire chain.
- As the saying goes, "seasons come and seasons go". The judiciaries have to awaken to the fact that the current season requires strategy to get better funding and once the funding is obtained, they should show value for it without compromising their independence.

This session concluded Day 2 of the conference.

DAY 3 OF THE CONFERENCE (28TH OCTOBER 2022)

Day 3 of the conference was conducted under the stewardship of H.W. Christine Mutimura as the overall session chairperson. She congratulated the delegates for making it to the third and final day of the conference and without further ado declared the sessions open.

10. SESSION 9: DOCUMENTARY FEATURE

This session featured a documentary titled *"Journey to justice";* which was produced by Konrad Adenauer Stiftung (KAS) Rule of Law Program for Sub-Saharan Africa in conjunction with Kenyatta University Law School. This documentary introduced delegates to the quest for justice by the two villages of Turkana and Lamu both in Kenya which came up to oppose government projects that threatened the livelihood of their marginalized communities. The communities were able to successfully challenge the government projects in court.

Speaking about the documentary, Mr. Benjamin Agage from the KAS Rule of Law Program for Sub-Saharan Africa informed delegates that the documentary is intended to encourage and empower citizens to be actively involved in pursuit of their rights.

He noted that the two cases showcased in the documentary had a great impact on Kenyan jurisprudence as they showed that access to justice is not only for the privileged or big companies, but for all.

11. SESSION 10: JUDICIAL IMPACT: THE ROLE OF COURTS IN EFFECTING SOCIAL AND POLITICAL CHANGE

This session began with a paper presentation by Professor Tomasz Milej; following which was a panel discussion by the following panelists: Hon. Justice Yohane Masara, Hon. Justice Jean Bosco Butasi. Ms Fatma Karume and Mr. Reech Malual; moderated by Hon. Lady Justice Anita Mugeni.

11.1. Paper Presentation by Prof. Tomasz Milej

In his presentation, Prof. Milej:

- Opposed the outdated misconception that the courts' role is limited to the application of law and noted that courts can do much more.
- Noted that courts can be allies of marginalized communities and that they are decision makers, political actors and have a social role to play.
- Added that Courts can step in when politics fails and open blocked channels of political change upsetting a political design that is ensuring that some groups stay in power while keeping others out of power.
- Mentioned that courts can empower minorities who only have a voice theoretically; thereby giving a voice to the voiceless.
- The court must always navigate the strategic space it has for a proactive judicial approach.
- That there is need to improve access to justice for marginalized and vulnerable communities, by way of increased public interest litigation thereby removing the orthodox common law concept of locus standi.
- Commended the EACJ for its efforts to broaden access to it, ensuring that East Africans for whose benefit the Community was established do participate in protecting the integrity of the Treaty.
- Underscored the need to offer pro bono assistance to the local communities through pro bono advocacy, clinical legal education and providing research assistance to CBOs and CSOs (especially thorough field studies backed by legal expertise).
- Stated that there can be inner morality of court proceedings which allow for the voiceless and marginalized to confront State power on equal footing before an independent court.
- Noted that it is not only about winning. He made reference to "Journey to Justice" documentary which demonstrates that even starting a case may have a positive impact on a disadvantaged community through mobilization and organized advocacy. He added that as discussed in *The Performance of Africa's International Courts: Using Litigation for Political, Legal and Social Change*, regional international courts (such as the EACJ) are viewed as institutions giving individuals, civil society and opposition parties, an opportunity to be heard, to air grievances, to expose the misdeeds of governments, to have their victimhood identified and documented, to mobilize support for the promotion and defence of political freedom, to have certain norms of behaviour recognized, to have values and interests validated, to educate the public, to challenge the government on a forum it does not control and in so doing, to compel authoritarian governments to be answerable for their conduct.
- Stated that courts can strengthen regional integration through advocacy and gave the example of the documentary "Journey to Justice" which has garnered global advocacy and awareness.
- Further stated that the courts can improve access to justice by dismantling the personified State which often speaks with the voice of the Executive. He noted that the EACJ as a regional intellectual hub and a catalyst for transnational judicial dialogue has power to improve access to justice.
- Posed the question, as to whether we even want courts to become agents of social and political change; and concluded that courts cannot achieve this if lawyers refuse to be agents of social change and are busy stigmatizing those

who are less fortunate and creating social barriers among the masses and between the courts and the public.

11.2. Panel Discussion

Justice Yohane Masara discussed the role of the court and noted that judges are expected to make decisions, interpret the law and apply the law on the subjects presented to them by parties. The decisions they make are binding on the parties before them and in the course of making these decisions some social and political dimensions may occur. He alluded to some cases that affected the political dynamics the EAC Treaty such as that of Calist Mwatela where the court declared a meeting of the Sectoral Committee on Judicial and Legal Affairs invalid on grounds that the meeting had contravened Article 14 of the EAC Treaty and by extension nullifying its decisions; one of which had proposed some changes in the composition of the Council of Ministers.

The second case he alluded to is the Anyang Nyong'o case; the verdict of which led to the second amendment of the Treaty. He added that the EACJ in this context and of course in many other cases has been an agent of change politically with respect to the above cases and socially as this led to so many more cases being file with the Court.

Justice Jean Bosco Butasi shared the experience of the EACJ as a former Principal Judge at the Court. He responded in the affirmative to the question that the presenter had earlier posed on whether politicians need courts. Citing and paraphrasing Thomas Hobbes' assertion that every man is driven first and foremost for his own interests but the courts are there to regulate the appetite of every man. Citing another philosopher, he stated that *"there is justice everywhere but we do not always see it. Discrete, smiling, it is there. At one side, a little behind injustice which makes a big nuisance"*. He added that *"if you thirst for justice you will always thirst but courts are always there"*. He advised courts and judges to always be willing to deliver justice without any pressure, influence and interference of any kind; stating that the rule of law cannot be achieved without an impartial, independent and effective judiciary.

He observed that the EACJ has had a transformative impact on the EAC as a whole and on each Partner State. He cited three land cases in Burundi in which the EACJ decided in favour of the citizens and noted that these cases display the impact of the EACJ at national level. He made reference to Article 44 of the Treaty that provides for EACJ decisions taking precedence over national courts on similar matters. On social change, he cited Appeal No. 1 of 2020 where the Appellate Division ruled in favour of the citizens of Burundi on political change.

He concluded by reporting that the EAC Treaty has been domesticated in Burundi citing Article 19 of the 2018 Burundi Constitution provides that *"the rights and duties proclaimed and granted by the international treaties concerning human rights regularly ratify and constitute an integral part of the Constitution of Burundi"*.

Ms. Fatma Karume a legal expert and international lawyer based in Tanzania noted that courts play an extremely important role in changing society. She made reference to a decision of the Supreme Court of the United States of America, which 100 years ago decided to impose and accept as a legal doctrine, named "separate but equal"; which meant that black and white people were separate but equal and was the case on

all fronts. The Court did this to entrench power in the hands of the majority (white people).

Almost 100 years later, in a case named *Brown vs the Board of Education*, the Court overturned this unjust decision and so began social changes in the USA. The Court decided to apply the law progressively and not entrench power in the majority. She stated that the particular provision of the Constitution of the United States of America which was the subject of the above cases did not change. What changed is the manner in which the judges decided to interpret the Constitution to protect a minority that had been abused for centuries.

Effecting social or political change is not only premised on codified law but the principle of good conscience that the judge might exercise. - **Mr. Reech Malual**

Her message to the judges of the EACJ and the Courts all over the EAC region was that they should be proactive in the manner in which they interpret and apply the law to allow all to access to justice.

Mr. Reech Malual a practicing lawyer from the Republic of South Sudan noted that there is need to recognize the key role the Courts play in securing equality and inherent rights or the demands and aspirations of the people in the EAC region. He added that the courts can have a positive or impact on social and political lives of the people depending on how they choose to rule (partially or impartially) despite the provision of the law. The question of the effectiveness of separation of powers where courts exercise their powers in establishing equality is still eminent.

He reported that his country is still recovering from the effects of the liberation war. As such, many of the people do not have the civility in their blood yet to deal with courts. It therefore takes courage on the part of judges to stand up for what is right. He added that effecting social or political change is not only premised on codified law but the principle of *good conscience* that the judge might exercise. He alluded to the just concluded election petition case in the Republic of Kenya where the judges stood up to effect political change and a matter where a South Sudanese litigant took to the EACJ to challenge the manner in which certain members of Parliament of the East African Legislative Assembly were single handedly picked; thereby triggering elections at the Parliament to address this issue.

Due to time constraints, there was no plenary for this session. The session was concluded with a proposal that Judiciaries should to work as institutions of obligation rather than of privilege as they carry out their interpretation and adjudication roles, and to work toward a positive transformative social and political impact on those that seek their intervention. The moderator also recommended that besides following the law there is also need for judges to follow the principle of good conscience in the dispensation of justice.

12. SESSION 11: LEGAL PROFESSIONALISM: RELATIONS BETWEEN JUDGES AND LAWYERS

This session featured a paper presentation by Mr. Chacha Odera, followed by a panel discussion and was moderated by Hon. Justice Cheborion Barishaki. The panelists for the session were Dr. Fauz Twaib from Tanzania, Ms. Dier Benen Chol from South Sudan and Ms. Pheona Nabasa Wall from Uganda.

12.1. Paper Presentation by Mr. Chacha Odera

In his presentation Mr. Odera made the following submissions:

- The term professionalism has been generally accepted to connote the practice of a learned art in a characteristically methodical, courteous, and ethical manner.
- The relationship between Judges and lawyers is a unique one which has evolved over the years by tradition and has been purposely crafted to achieve a higher goal in the administration of justice and in upholding the rule of law.
- Judges and Lawyers play different, but complementary roles with the common objective of administration of justice. They are two sides of the same coin, and one side cannot do without the other. Both have a paramount duty to conduct themselves with the highest degree of integrity and honesty and to always ensure that the dignity and decorum of the Court is at all times maintained.
- The primary duty of lawyers is to the Court, while the cardinal duty of judges, which is underpinned by the Constitutional oath administered upon them, to discharge their judicial duties without fear or favour.
- Lawyers form the interface between their clients and the Court and by reason of the respected position they occupy in pleading their clients' cases and their role in the mechanism of administration of justice, traditions and rules of engagement have evolved over the years; some of which have been codified as rules and standards of practice.
- He shared a historical perspective of what the relationship between the Bar and the Bench in Kenya (details of which can be found in his paper) has been Noted that the relationship is generally warm though characterized by some frosty moments.
- The relationship between judges and lawyers should be centred, with a constant reminder of their respective high callings as stewards in the administration of justice and upholding the rule of law; recognizing that this objective can only be achieved by enhancing and retaining a decent professional relationship.
- There is need for a harmonized Code and/or Regulations setting out in broad terms the minimum expectations from both the Bench and the Bar as they discharge their respective roles in the administration of justice and in upholding and protecting the rule of law.
- There is need for protection and enforcement of the independence of both the Bench and the Bar.

12.2. Panel Discussion

Dr. Fauz Twaib gave both perspectives of the Bar and Bench; having served on both sides of the coin noting that lawyers and judges all start as lawyers and upon graduation find their respective stations in the administration of justice, and there is therefore a strong connection between them**.**

He noted that once lawyers get to the Bench the difference between them and those at the Bar becomes more pronounced and this has caused tensions in the way they

connect with each other. Although interactions in court exist through the Bar and Bench committees in the judiciary which help ensure that justice is done, the power exercised by Bench in Tanzania is rather excessive.

He reported that it is the Chief Justice who determines whether one can be an advocate, the Bench exercises disciplinary powers over advocates. This has often led to tensions between the Bar and Bench. Advocates are therefore convinced there is need to reduce these powers.

Ms. Pheona Nabasa Wall highlighted that the Bar and Bench come from the same profession with the same goal of ensuring access to justice, there is therefore need to have a unified front as both professions are under threat of abuse.

She noted that there is need for mutual respect and always remembering that respect is earned. She noted that with the advent of social media there has been a decline in respect. She further noted the need to have a worthy Bar and Bench which work with competence, clarity and coherence; always remembering that the client is the centre of the work done i.e. the best interests of the client.

She called on the Bar to always avoid staining the courts especially when things do not go the way they want as ordinary people view the Bench as the throne of justice. Similarly, she called on the Bench to avoid politicizing courts.

Ms. Dier Benen Cho reported that in South Sudan there are laws that govern both professions. She described the relationship between judges and lawyers as fairly good, adding that it is not the best but is manageable. She noted that in her 13 years of practice she has never been treated unfairly by a judge. However, there are some isolated cases were lawyers are thrown out of court by judges.

She highlighted some of the challenges facing the legal profession which have also contributed to straining the relationship between the Bar and the Bench and these include; the lack of a unified Bar, language barrier as some judgments are issued in Arabic, lack of a legal institution to train lawyers on professional ethics and lack of a judicial code of conduct, which in turn means there is no accountability.

12.3. Plenary Session

The following key issues emerged from the plenary session:

- There should be mutual respect between the Bar and Bench; understanding that they are both there for the goal of serving justice.
- Respect for the Bench by the Bar understanding that despite being two sides of the same coin one is the head and the other the tail.
- The self-regulating Bar is not always keen on disciplining its own. It takes the lodging of a complaint for the regulator to come into action.
- Social media has worsened the relationship between the Bar and Bench.
- Some delegates felt that the Bar and Bench are equal and important players in the administration of justice and none should be seen as being above the other.

This session concluded the conference discussions. H.W. Mutimura informed the delegates that a Communiqué on the Conference recommendations and the Conference Report would be uploaded onto the EACJ website. She then asked the delegates to move to the facility set up outdoors for the closing ceremony.

13. SESSION 12: CLOSING CEREMONY

The closing ceremony was officiated by H.E. Yoweri Kaguta Museveni, the President of the Republic of Uganda as chief guest. The session began with the Uganda national and EAC anthems; followed by closing remarks from the following.

13.1. Remarks by Hon. Justice Nester Kayobera, the Judge President of the EACJ

The Judge President thanked the President of the Republic of Uganda for gracing the closing ceremony. He noted that the court's main challenge was limited resources and urged the Council of Ministers to expedite passage of the Bill to grant administrative and financial autonomy to the Court. He appealed for an enhanced budget to ensure the efficient delivery of justice.

13.2. Remarks by Rt. Hon. Rebecca Kadaga, the first Deputy Prime Minister and Minister for EAC Affairs

Hon. Kadaga highlighted the urgent need for Heads of State to find a permanent residence for the regional court as this will allow judges to work on a permanent basis as opposed to the current ad hoc arrangement. She noted that presently, only the President and Registrar of the Court are based at the Court remises in Arusha, with the other judges serving only when needed.

She noted that since its formation 20 years, the court has been based in Arusha, although this was supposed to be a temporary arrangement.

She informed the delegates that the EACJ would be hearing cases within Uganda from November 1 to 30 and will deliver judgments as part of the arrangement to get the court out of Arusha and closer to the people.

Remarks by Hon. Norbert Mao, the Minister of Justice and Constitutional Affairs in Uganda

Hailed the president of Uganda for being one of the advocates of the EAC integration and further noted that the EACJ is one of the pillars on which the integration is premised.

Remarks by Hon. Justice Alfonse Owiny Dollo, the Chief Justice of the Republic of Uganda

Welcomed the President of the Republic of Uganda to the closing ceremony, and thanked the Chief Justices of the other Partner States for having taken off time to be part of the conference. Ho. Justice Owiny Dollo thanked the EACJ for choosing to hold its November sessions in Kampala and pledged the Uganda Judiciary's support to the Court.

Final/Closing Remarks by His Excellency, General Yoweri Kaguta Museveni, the President of the Republic of Uganda

In his closing remarks, H.E. General Yoweri Kaguta Museveni congratulated the delegates upon concluding the conference and noted that integration has the power to solve many of the problems that the EAC region faces once its citizens synchronize their thinking. He therefore called on the EACJ to join in pushing toward realization of full integration of the EAC by fostering economic transformation of the people; arguing that an integrated approach to tackling the region's strategic security and economic woes would make the process faster and that court decisions should focus on this as well.

He noted that universal education is a key pillar that would push the region into social economic transformation; adding that this would enable all children to study free through primary, secondary and technical government schools.

He further noted that as the region further integrates, there should be deliberate efforts to jointly ensure strategic security, which in turn will help foster economic development. He observed that joint efforts have already shown that the region can get rid of problems and highlighted the examples of the Democratic Republic of Congo and the Republic of Somalia; emphasizing that if Africa works together, there is no security problem that cannot be solved.

In closing, he advised that East Africa should quickly solve the issue of fragmentation of agricultural lands to avoid hampering food production in the future.

The President's address marked the end of the 2nd Annual Judicial Conference.

14. CONCLUSION:

In conclusion, the 2nd Annual East African Court of Justice Judicial Conference provided a worthwhile platform for focused discussions among key actors in the legal and judicial space as well as the political and civil society spaces in the EAC Region and continental level. A myriad of issues and topics were explored around transformation of access to justice in the EAC region as aforementioned; offering an opportunity for the delegates to take stock of issues prevailing around a number of focus areas as indicated above. Relevant policy gaps were identified and recommendations made for improvement in national and regional courts in these focus areas to align with the EAC integration agenda through better service delivery and access to justice for EAC citizens.

A set of resolutions was generated which can be accessed in the Communiqué that was generated at the conclusion of the conference and can be accessed on the EACJ Website.

PICTORIAL

Figure 1: Uganda's 1st Deputy Prime Minister and Minister for EAC Affairs, the Rt. Hon Rebecca A. Kadaga being received welcomed by Hon. Justice Geoffrey Kiryabwire at the Conference venue

Figure 2: Uganda's Chief Justice - Hon. Justice Alphonse - Owiny - Dollo addressing delegates at the closing of the Conference

Figure 2: The President of the African Court for Human and People's Rights - Hon. Lady Justice Imani Aboud in attendance

Figure 4: The Conference Delegates listening to the session presentations

Figure 5: Panel Sessions underway

Figure 6: The President of the Republic of Uganda - H.E. Yoweri Kaguta Museveni being welcomed to the Conference Closing Ceremony by the 1st Deputy Prime Minister - Rt. Hon. Rebecca Kadaga & the Minister of Justice & Constitutional Affairs - Hon Nobert Mao

Figure 7 H.E. Gen. Yoweri Kaguta Museveni making his remarks at the closing of the 2nd Annual East African Court of Justice Judicial Conference