

EAST AFRICAN COURT OF JUSTICE

STRATEGIC PLAN

2010 – 2015

April, 2010

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ACRONYMS/ABBREVIATIONS

EACJ	-	East African Court of Justice
EAC	-	East African Community
EALA	-	East African Legislative Assembly
CASSOA	-	Civil Aviation Safety and Security Oversight Agency
HIV/AIDS	-	Human Immuno Deficiency Virus/Acquired Immune Deficiency Syndrome
EAMJA	-	East African Magistrates' and Judges' Association
CMJA	-	Commonwealth Magistrates' and Judges' Association

PREAMBLE

This Strategic Plan for the East African Court of Justice is being developed at a time when the East African Community has signed the Protocol on the Establishment of the East African Community Common Market and is about to ratify the same. The Common Market is the second stage of the East African Community integration process after the Customs Union, already in operation. The third stage will be the Monetary Union and ultimately the Political Federation culminating in the full integration of the Region.

While the overall objective of the EAC Common Market is to widen and deepen cooperation among Partner States in the economic and social fields for the benefit of the peoples of East Africa, the central theme of the specific objectives of the Common Market is economic growth and development. The provisions of the Protocol, namely, the free movement of goods; the free movement of persons; the free movement of labour; the free movement of services; the free movement of capital and the right of establishment and residence are all aimed at increasing trade and enhancing economic growth and development for the mutual benefit of all East Africans.

There has been remarkable progress and achievements in some areas of cooperation. For instance in the legal sector some work has gone into putting in place policies aimed at harmonizing and approximating the Partner States municipal laws. Some progress can also be seen in the trade and investment areas. The East African Legislative Assembly has enacted some Community Legislation, thereby contributing towards the Community Jurisprudence. Various activities aimed at sensitizing stakeholders on the EAC programmes, projects and activities have been undertaken by different Organs of EAC, especially the Secretariat and to some extent EALA.

On the part of the Court, some achievements have been made. The Court, like the other Organs of the Community, is established under the Treaty and has been in existence since November 2001 when it was inaugurated. It has since contributed, in its unique way, to the EAC Integration process by settling disputes, some of them touching on the core of the integration process. As a result, it has guided integration process as mandated by the Treaty and also contributed to the building of the regional jurisprudence. However, the Court operates under very difficult circumstances. Although it boasts of two divisions, it still operates on *ad hoc* basis and there is no full time leadership presence in Arusha where the Court is currently seated. It faces other crippling challenges, for instance, limited jurisdiction; lean staff; budgetary constraints; undetermined terms and conditions of service for Judges; lack of capacity to carry out its mandate as per the Treaty and lack of the recognition of the fact that the Court, as a dispute resolution organ, is at the core of the integration process.

It is against this background that the Court has seen the need to develop its Strategic Plan to address the existing and emerging challenges and to chart its way to the emerging EAC future. No society worth its salt can ignore a dispute resolution body if it wants to prosper.

The Court aims to have its integral role in the EAC integration process recognized and appreciated. For the EAC to enjoy increased trade and enhance its economic development, it is crucial to have a functional and trusted dispute resolution organ with dispute resolution mechanisms in place in order to build investor confidence and assure East African Citizens that there is an organ that is capable of guiding the integration process according to law, thereby leading to enjoyment of the fruits of integration by all.

The President, EACJ

The Court Registrar, EACJ

EXECUTIVE SUMMARY

The EACJ was inaugurated in November, 2001 as the judicial arm of the EAC. Since its inception, the Court has made commendable progress in realizing its mandate. It has contributed to the EAC integration process by settling disputes. In this way, it has guided the integration process and contributed to the development of regional jurisprudence.

Despite its accomplishments, the Court faces many challenges in carrying out its work. It still operates on an ad-hoc basis. Staffing is lean and the Court has limited internal capacity to carry out its mandate.

The volume of work facing the Court is increasing. The continued deepening and widening of EAC integration means more economic, financial, commercial, social, labour and political transactions. Most of these will require the involvement of the Court.

It is important that the Court confront the challenges facing it and develop adequate internal capacity to deliver on its mandate. The Court needs to raise its visibility so that it is recognized and appreciated for the work it is doing. With this in mind, the Court developed this strategic plan (2010-2015).

The strategic plan charts the way forward for EACJ over the next five years. This has been done by articulating the vision, mission, core values, critical issues, objectives and strategies for the Court.

Vision: A world class Court dispensing quality justice for a united prosperous Community.

Mission: To contribute to the enjoyment of the benefits of Regional Integration by ensuring adherence to justice, rule of law and fundamental rights and freedoms through the interpretation and application of and compliance with the East African Law.

Core Values:

- Independence
- Integrity
- Impartiality
- Respect for diversity

Critical issues facing the Court:

- i. The Court not being able to optimally discharge its mandate in the integration process
- ii. Risk of marginalizing the status of the Court

- iii. Risk of denying the East African citizens the right to access the services of an effective regional court
- iv. Risk of fragmenting Community jurisprudence

Key objectives of the Court:

- To implement all the relevant provisions of the Treaty [especially Articles 27 (2) and 140 (4)] including conclusion of necessary Protocols.
- To rationalise the design of the Court under the Treaty (review/amend).
- To proactively influence a positive shift in mindset of EAC Policy Organs and other Stakeholders concerning the role and place of the Court.
- To make the Court visible and indispensable in matters related to the discharge of its mandate.
- To enhance Capacity of the Court

Overall strategy of the Court

This will revolve around:

- Raising visibility of the Court
- Seeking extended jurisdiction of the Court
- Enhancing the human and material capacity of the Court to deliver on its mandate

CHAPTER ONE: INTRODUCTION

1.1 EAST AFRICAN COMMUNITY

The East African Community (EAC) is a regional intergovernmental organization comprising the Governments of Burundi, Kenya, Rwanda, Tanzania and Uganda with the main aim of spearheading the East African economic, social, cultural and political integration. Kenya, Tanzania and Uganda have enjoyed a long history of cooperation under successive regional integration arrangements including having had a customs union between Kenya and Uganda in 1917, which the then Tanganyika later joined in 1927; the East African High Commission (1948-1961); the East African Common Services Organization (1961-1967); and the East African Community (1967-1977).

Following the dissolution of the first East African Community in 1977, the Partner States negotiated a Mediation Agreement for the division of assets and liabilities, which they signed in 1984. However, as one of the provisions of the Mediation Agreement, the three Partner States agreed to explore areas of future cooperation and to make concrete arrangements for such cooperation.

Subsequent meetings of the three Heads of State led to the signing of the Agreement for the Establishment of the Permanent Tripartite Commission for East African Cooperation on 30th December 1993. The East African Heads of State at their second Summit in Arusha, on 29th April 1997, directed the Permanent Tripartite Commission to start the process of upgrading the Agreement establishing the Permanent Tripartite Commission for East African Cooperation into a Treaty to deepen and widen regional cooperation.

The Treaty-making process, which involved negotiations among the Partner States as well as wide participation of the public, was successfully concluded within three years of the Summit directive. The Treaty for the Establishment of the East African Community was thus signed on 30th November, 1999 and came into force on 7th July, 2000 following its ratification by all the Partner States. On 1st June, 2007 the Republics of Burundi and Rwanda signed the Treaties of accession into the East African Community, formally becoming full members of the EAC. The Treaty sets out a bold vision for the eventual unification of the East Africa Community Partner States and outlines a comprehensive system of cooperation among the Partner States in various social, economic, legal, defence, political and international areas. The Treaty provides for four levels of integration with the entry point being the Customs Union, the second stage being the Common Market, then the Monetary Union and eventually a Political Federation.

1.1.1 Vision and Mission

The vision of the EAC is, **“to create a prosperous, competitive, secure, stable and politically united East Africa.”**

Its mission is, **“to widen and deepen economic, political, social and cultural integration in order to improve the quality of life of the people of East Africa through competitiveness, value added production, trade and investment.”**

1.1.2 Aims and Objectives

The objectives of the Community are to develop policies and programmes aimed at widening and deepening co-operation among the Partner States in political, economic, social and cultural fields, research and technology, defence, security and legal and judicial affairs, for their mutual benefit. To this extent the EAC Partners States established a Customs Union in 2005 and are working towards the establishment of a Common Market by 2010, subsequently a Monetary Union by 2012 and ultimately a Political Federation

With a combined population of 126.6 million people, 1.82 million square kilometres of surface area (including water surface) and a combined GDP of \$73 billion, as per the EAC Facts and Figures Report of 2009, the enlargement of the Community bears great strategic and geographical significance and prospects of a renewed and reinvigorated East African Community.

1.1.3 Organs and Institutions of the Community

The Community operates through several organs and institutions established under Article 9 of the Treaty. The **East African Court of Justice** is one of them.

Other organs of the Community are as follows:

The Summit: This comprises heads of government of Partner States. It gives general direction towards realization of the goals and objectives of the Community.

The Council of Ministers: This is the policy making organ of the Community. It is made up of Ministers responsible for East African Affairs/Regional Co-operation from the Partner States and such other Ministers as each Partner State may determine.

The Co-ordination Committee: This consists of Permanent Secretaries responsible for East African affairs in each Partner State and such other

Permanent Secretaries of the Partner States as each Partner State may determine. The Co-ordination Committee recommends to the Council the establishment, composition and functions of these Committees as may be necessary for the achievement of the objectives of the Treaty.

Sectoral Committees: These are responsible for the implementation of programmes within their sectors

The East African Legislative Assembly: This is the legislative organ of the Community mandated to enact laws, debate and approve Community budget, consider annual reports on activities of the Community, annual audits and perform oversight function of the Community.

The Secretariat: This is the executive arm of the Community. It comprises the following offices in the service of the Community: Secretary General, the Deputy Secretaries General, Council to the Community and such other offices as may be deemed necessary by the Council.

EAC Institutions: In addition to the Organs enumerated above, the East African Community has the following Institutions: the Lake Victoria Basin Commission; the Civil Aviation Safety and Security Oversight Agency (CASSOA); the Lake Victoria Fisheries Organization; Inter-University Council for East Africa and the East African Development Bank.

1.2 THE EAST AFRICAN COURT OF JUSTICE

The Court is the judicial arm of the Community. It was inaugurated on 30th November 2001, when the first batch of Judges and the Registrar were sworn in. The Judges were six (6) at the time, two Judges from each of the three initial Partner States of East African Community, namely, Kenya, Tanzania and Uganda. They served a staggered term with the first two retiring after serving for five (5) years, the next two retiring after serving for six (6) years and the last two retiring after serving for seven (7) years.

The Court operates on *ad hoc* basis during this transitional period pending its full operationalization. The Judges are appointed by the Summit from among persons recommended by Partner States. They hear cases and attend to administrative matters of the Court.

The Treaty establishing the East African Community was amended resulting into the Court being divided into two divisions; the First Instance Division at the lower level and the Appellate Division to handle appeals from the lower division. The full establishment according to the Treaty is fifteen (15) Judges. However, currently the Court has 10 Judges, two (2) from each Partner State. Five (5) Judges sit in each of the two Divisions. Their retirement is staggered with one third (1/3) retiring after serving for five (5)

years, one third (1/3) retiring after serving for six (6) years and one third (1/3) retiring after serving for seven (7) years. This is assuming the Court has a total complement of fifteen (15) Judges.

The Court is headed by a President who is responsible for the administration and supervision of the Court. He directs the work of the Appellate Division; represents it, regulates the disposition of the matters and presides over sessions in this Division. The Principal Judge directs the work of the First Instance; represents it and regulates the disposition of matters and presides over sessions of this Division. The day to day administration of the Court is done by the Registrar assisted by the Deputy Registrar and Court Administrator with the support of other Court staff.

Jurisdiction of the Court

The Court has jurisdiction over the interpretation and application of the Treaty, provided that the Court's jurisdiction to interpret the Treaty does not include the application of any such interpretation to jurisdiction conferred by the Treaty on organs of Partner States. It has also jurisdiction over disputes between the Community and its employees.

In addition to the above jurisdiction, the Court is mandated to give advisory opinions upon request by the Summit, the Council or a Partner State. It also has arbitral jurisdiction on matters:

- i. arising from an arbitration clause contained in a contract or agreement which confers such jurisdiction to which the Community or any of its institutions is a party; or
- ii. arising from a dispute between the Partner States regarding this Treaty if the dispute is submitted to it under a special agreement between the Partner States concerned; or
- iii. arising from an arbitration clause contained in a commercial contract or agreement in which the parties have conferred jurisdiction on the Court.

The Treaty provides the possibility for the Court to be given "such other original, appellate, human rights and other jurisdiction as will be determined by the Council at a suitable subsequent date." To this end, the Partner States shall conclude a protocol to operationalize the extended jurisdiction.

1.3 LEGAL AND JUDICIAL SYSTEMS IN EAST AFRICA

The legal systems applied within the community are a reflection of past (colonial) affiliations. Some countries adopted the civil law system while others follow common law. In other instances there exists combinations of common law, customary law and Islamic law. The legal and judicial systems in the Partner States are presented here below:

1.3.1 Burundi

Burundi adopted civil law system following the example of Belgians who were the former colonial masters. The State passes laws and Courts play fundamental role in the administration of justice. The independence of the Judiciary is guaranteed by the Constitution, which separates the judiciary, the executive and the legislative body.

The Burundi Court system is divided into ordinary and specialized courts as shown here below:

ORDINARY COURTS

- i. The Supreme Court** - It is the highest judicial body handling original jurisdiction on administrative and penal matters, and appeals. It is divided into administrative chamber, judicial chamber and annulment chamber.
- ii. The Courts of Appeal** - There are three (3) Courts of Appeal. They have Appellate jurisdiction on appeals from Provincial Courts and original jurisdiction on civil and penal matters.
- iii. The Provincial Courts** - There is a Court in each Province with both civil and criminal jurisdiction. It handles appeals from Primary Courts and has original jurisdiction on civil contracts or any other case. These courts are subordinates to the Court of Appeal.
- iv. The Primary Courts** - Each Commune has one. It exercises both criminal and civil jurisdiction. They can pass a sentence of two (2) years under the criminal law jurisdiction and in civil jurisdiction they can impose a fine of one (1) million Burundi Francs.

SPECIALIZED COURTS

- i. The Constitutional Court** - deals with constitutional matters

- ii. **The Administrative Courts** - These are two (2) and have jurisdiction over disputes between employer/employee in public sector. They also have administrative authority and jurisdiction on matters of abuse of power, taxes and disciplinary issues. Finally, they have jurisdiction over disputes between public and private sectors concerning matters of contractual nature. They are subordinate to Supreme Court
- iii. **The Anti-Corruption Court** - It has jurisdiction on cases concerning corruption.
- iv. **The Court Martial** - It has criminal jurisdiction against the military personnel on disciplinary and criminal matters. Appeals go to the Supreme Court.
- v. **The First Instance Court Martial** - It has jurisdiction over offenses committed by soldiers and officers under the grade of Major. It is subordinated to the Court Martial.
- vi. **The Industrial Court** - It deals with settling disputes between employers and employees of the private sector. It is subordinate to the Court of Appeal.
- vii. **The Commercial Court** - It deals with disputes of a commercial nature. It is subordinate to the Court of Appeal.

1.3.2 Kenya

Kenya inherited Common Law from Britain which was her coloniser. Kenyan law is derived from the Constitution, Statute and Customary Law. The independence of the Judiciary is guaranteed by the Constitution, with separation of powers between the Executive, the Legislature and the Judiciary.

The judicial system in Kenya is basically as follows:

- i. **The Court of Appeal** – this is the highest Court in the land. It is a superior Court of record exercising appellate jurisdiction over appeals from decisions of the High Court. The Court of Appeal also has both original jurisdiction to punish for contempt of court as well as appellate jurisdiction over appeals against decisions of the High Court in exercise of its original jurisdiction in contempt of court cases.
- ii. **The High Court** – this is a superior court of record with unlimited original jurisdiction in civil and criminal matters and such other jurisdiction and powers as may be conferred on it by the Constitution or any other law. The High Court also hears appeals from subordinate

courts. Jurisdiction to hear and determine matters arising from the on-going constitutional review process is, however reserved for the Interim Independent Dispute Resolution Court.

- iii. **The Subordinate Courts** – these are subordinate to the High Court of Kenya. They exercise such jurisdiction, whether civil or criminal, as may be vested in them and limited by law. The Subordinate Courts in the mainstream of the judicial system are the Magistrates Courts, which exercise both civil and criminal jurisdiction. The bulk of litigation takes place in these courts. They are spread across the country and are divided into District Magistrates’ Courts, Resident Magistrates’ Courts, Senior Resident Magistrates’ Courts, Principal Magistrates’ Courts, Senior Principal Magistrates’ Courts and Chief Magistrates’ Courts, the highest in that category. Appeals go to High Court.
- iv. **The Specialized Courts** – there are other courts and tribunals subordinate to the High Court established over the years tasked to deal with particular types of issues or disputes. The existing well known tribunals are, for example, the Rent Tribunals, and the Court Martial.

1.3.3 Rwanda

Rwanda inherited civil law from her colonial history. From 1999, Rwanda has progressively embraced the English legal system by adopting good Common Law practices and also retaining good civil law practices. The Rwandan Constitution is the supreme law and any law or custom inconsistent with it is null and void to the extent of its inconsistency.

The Superior Council of the Judiciary is the highest organ responsible for the Judiciary. At the top of the judicial structure is the Supreme Court with final jurisdiction. All courts, except Commercial Courts, have criminal and civil jurisdiction.

The Rwanda judicial hierarchy is as follows:

- i. **The Supreme Court** – this is the highest Court in the country. The decisions of the Supreme Court are not subject to appeal save in terms of petitions for the exercise of the prerogative of mercy or revision of judicial decisions. Its decisions are binding on all parties concerned.

- ii. **The High Courts** – there is a High Court with four (4) detached chambers in the countryside. It has a wide range of civil and criminal jurisdiction. There is also a Commercial High Court exercising commercial jurisdiction. There are three (3) Commercial courts under it.
- iii. **The Higher Instance Courts** – these are established across the country with civil and criminal jurisdiction.
- iv. **The Primary Courts** – these courts are established in each district. They are the lowest courts, with civil and criminal jurisdiction.
- v. **The Specialized Courts** – these comprise the **Gacaca** and **Military Courts**. The Gacaca Courts were introduced after the genocide to try the perpetrators. The Military Courts handle offences committed by military personnel irrespective of rank. Appeals from the Military Courts go to the Supreme Court.

1.3.4 Tanzania

The Legal system in mainland Tanzania is a combination of Common law, customary law and Islamic law. In 1985, the Zanzibar courts were made parallel to those of the mainland. Islamic courts handle some civil matters. Cases concerning the Zanzibar constitution are heard only in Zanzibar courts. All matters from the High Court of Zanzibar are appealed to the Court of Appeal of the Republic.

The Tanzanian court hierarchy is as follows:

- i. **The Court of Appeal** – This is the highest court of the land. It has appellate jurisdiction on all matters from High Court and appeals from Zanzibar also go there.
- ii. **The High Court** – This has unlimited civil and criminal jurisdiction over all persons and all matters. It also handles constitutional matters, appeals from the subordinate courts, military matters and revision. It is divided into Commercial, Land, and labour Divisions.
- iii. **The District Courts** – These have original civil and criminal jurisdiction. They also handle appeals from Primary Courts.
- iv. **The Primary Courts** – These exercise both original jurisdictions on customary law and Islamic law matters as well as appellate jurisdiction on appeals from ward tribunals. The magistrates presiding over these courts are assisted by assessors. No legal representation is allowed in these courts.

1.3.5 Uganda

Uganda inherited the English Common Law System. The applicable laws in Uganda are statutory law, common law (including treaty law), and customary law. The Constitution is the supreme law and any law or custom that is inconsistent with it is null and void to the extent of the inconsistency.

The hierarchy of the courts is as follows:

- i. The Supreme Court** - This is the highest and final Court of Appeal in Uganda. It hears appeals from the Court of Appeal and the Constitutional Court. It has original jurisdiction in Presidential Election Petitions.
- ii. The Court of Appeal** – This is an Appellate Court. It hears appeals from the High Court. It also sits as the Constitutional Court.
- iii. The High Court** - This Court has unlimited jurisdiction in both civil and criminal matters. It also hears appeals from Chief Magistrates Courts as well as from some specialised tribunals, for instance, the Tax Appeals Tribunal and the Human Rights Commission.
- iv. The Magistrates Courts (Chief Magistrates, Grade 1 and II)** - These handle the bulk of cases (both civil and criminal countrywide)
- v. Other Specialised Courts** – These include the Industrial Court, Local Council Courts and Military Courts Martial.

1.4 The Methodology of the Strategic Plan

This strategic plan sets out the direction the Court will take in the next five (5) years. It explicitly spells out the vision, mission, objectives and strategies over this period.

The strategic plan was developed by the Judges and staff of the Court. Under the guidance of a facilitator, they comprehensively deliberated on the issues and challenges facing the Court as well as the way forward. The plan was developed in a highly participatory process involving syndicate as well as plenary sessions. Each step in the strategic planning process was discussed in depth at syndicate level and consensus built at plenary.

CHAPTER TWO: EXTERNAL ENVIRONMENTAL OUTLOOK

The East African Court of Justice operates within an external environment described here below.

2.1 Politics

- i. The East African Community (EAC) Partner States are committed to forging closer political, economic and social ties. This means closer integration and higher interaction within the community.
- ii. There has been an upsurge in advocacy for good governance, human rights and democracy. Generally, there is entrenched multi-party politics.
- iii. There is a relatively free press in operation in the Partner States.

2.2 The Economy

- i. There has been consistent economic growth within the community.
- ii. Dependence on agriculture is still high. This is likely to remain so throughout this plan period.
- iii. Poverty levels within the Community remain high.
- iv. The combined population of the Community 126.6 million people according to EAC Facts and Figures Report 2009. This translates to high demand for products and services. This represents untapped business potential.

2.3 Social Factors

- i. Population within the community is 126.6 million people and still rising. The dependency ratio is high as most citizens are youths.
- ii. There is prevalence of chronic diseases, for instance, malaria, tuberculosis and HIV/AIDS.
- iii. Citizens of the Partner States are more enlightened and more knowledgeable about their rights. They are more assertive and demanding.

2.4 Technology

- i. There has been general global technological advancement in all areas. This has brought about new ways of doing business.
- ii. EAC countries are mainly technology importers.

2.5 Ecology

- i. Environmental protection has been of high priority in the EAC Partner States. This is in an effort to halt environmental degradation and achieve sustainable development.

2.6 Legal Issues

- i. As East Africans have become more enlightened and assertive, they are demanding good governance, accountability and transparency, justice and rule of law.
- ii. Improved corporate governance is a priority issue in all EAC Partner States.

2.7 Strategic Plan Assumptions

Arising from trends in the external environment are various opportunities and challenges that have to be exploited or confronted respectively. In addition, the environment influences the assumptions underlying a strategic plan. The following are some of the key assumptions underlying the current plan.

- i. Integration will continue to deepen and widen.
- ii. Volume of economic, financial, commercial, social, administrative, labour and political transactions will have an increasing trend.
- iii. Sensitization of and awareness, by East Africans and others, of the mandate of the Court will cover the whole Region.
- iv. Disputes inevitably will occur and be brought to Court for resolution.
- v. The EAC will prefer a consistent and uniform dispute resolution approach.
- vi. The EAC Organs and Institutions, Partner States, Bar Associations, National Courts, etc. will want to benefit from a growing body of Community jurisprudence.

- vii. The body of Community Law comprising of the Treaty, protocols, EALA Acts, Agreements, International Conventions and Protocols, whose interpretation and application are within the jurisdiction and mandate of EACJ will continue to grow and will form the legal basis for an increasing volume of intra-EAC interaction in all sectors.
- viii. The EAC Organs, Institutions, Partner States and citizens recognize the role of EACJ, are willing to support it to grow and become a strong Regional Court comparable to or better than similar Regional Courts and that they want to take pride in the quality of its work, integrity and impartiality and will trust, respect and abide by its decisions.

CHAPTER THREE: FUTURE DIRECTION

As an organ of the Community, the Court's vision, mission and core values are presented here below.

3.1 Vision

A world class Court dispensing quality justice for a united prosperous Community.

3.2 Mission

To contribute to the enjoyment of the benefits of Regional Integration by ensuring adherence to justice, rule of law and fundamental rights and freedoms through the interpretation and application of and compliance with the East African Law.

3.3 Core Values

- Independence
- Integrity
- Impartiality
- Respect for diversity

CHAPTER FOUR: STRATEGIC ANALYSIS

A strategic analysis of the Court revealed the following strengths, weaknesses, opportunities and threats.

4.1 Strengths

- Established organ under the Treaty
- Independent organ
- Separation of powers between the organs
- Diverse Legal Systems in the Region
- Participation of Partner States in appointment of Judges
- Court Sessions and other Court activities carried out as planned
- Experienced and skilled Judges
- Competent Staff
- Gender sensitive

4.2 Weaknesses

- *Ad hoc* nature of the Court
- Undetermined terms and conditions of service for Judges
- Lack of security of tenure of Judges
- President and Principal Judge not resident in Arusha
- Judges serving both EACJ and Partner States Judiciaries
- Limited jurisdiction
- Erosion of the jurisdiction of EACJ
- Lack of awareness by national courts of the relationship between National Courts and EACJ
- Difficulties in executing EACJ Judgments and orders
- Understaffed
- Gender imbalance
- Inadequate organizational structure of the Court
- Undetermined Seat of the Court
- Weaknesses in staff appraisal process
- Budgetary constraints
- Inadequate publicity of the Court
- Lack of awareness of the arbitration jurisdiction
- Absence of sub-registries in the Partner States

4.3 Opportunities

- Supportive media
- Available Development Partners
- Collaborative Legal Fraternity (Bar Associations, EAMJA, CMJA)
- Improved interactive Organs and institutions of the Community (EALA, Council, Secretariat)
- Existence of the EAC Treaty
- Good relationship with National Courts
- Existing jurisprudence
- Supportive Partner States
- Cooperative National Parliaments
- Vibrant Universities and similar Institutions

4.4 Threats

- Negative publicity
- Shifting funding priorities of Development Partners
- Risk of compromise due to relationship with legal fraternity (Bar Associations)
- Emergence of parallel dispute resolution mechanisms within the broad jurisdiction of the Court
- Conflicts and contradictions caused by some provisions of the Treaty
- Late remittance of subscriptions by Partner States
- Delayed legislation on Community matters by National Parliaments
- Lack of respect for Court decisions
- Delayed decision making process by Partner States/Council

4.5 Stakeholders Analysis

The Court has several key stakeholders. They have various interests (stakes) in the Court.

The Summit: Budget, litigation, policy, attitude, tenure, appointment, permanent seat, overlapping judicial service, separation of powers.

The Council: Budget, recruitment, litigation, policy, resource mobilization, attitude, community policy, tenure, terms and conditions, separation of power

The Secretariat: Budget, recruitment, litigation, policy, resource mobilization, attitude, separation of powers.

The EALA: Inter organ relationship, Budget, attitude, Community law and policy, court publicity, separation of powers.

National Courts: Jurisprudence, case stated, execution of judgments, service of process, sub-registries, overlapping judicial service, judicial education.

Bar Associations/Law Societies: Litigation, jurisprudence, amicus curiae, judicial education, and court publicity.

Law Faculties/Schools: Litigation, jurisprudence, amicus curiae, judicial education, court publicity.

Development Partners: Resource mobilization, court publicity

Public/Private Sector/Civil Society: Arbitration jurisdiction, court publicity, litigation, resource mobilization, amicus curiae.

International and Regional Courts and Other Institutions: Jurisprudence, training, resource mobilization, court publicity.

Legal and Natural Persons: Jurisprudence, litigation, Court publicity

Partner States: Litigation, budget, jurisprudence, court publicity

EAC Employees: Litigation, terms and conditions of service, jurisprudence

Media: publicity, news, visibility

CHAPTER FIVE: STRATEGIC ISSUES

After conducting a comprehensive strategic analysis for the Court, four (4) strategic issues were identified as follows:

- i. Design of the Court under the Treaty
- ii. Appreciation of the Court
- iii. Visibility of the Court
- iv. Capacity of the Court

5.1 Design of the Court under the Treaty

The jurisdiction of the Court as specified under Article 27 (2) of the Treaty has been limited in its application since its inception. Yet the Treaty provides for operationalization of this jurisdiction. Similarly, Article 140 (4) provides that the Court shall be fully operational when the Council of Ministers so decide. These two issues raise a number of strategic challenges notably the limited jurisdiction and the *ad hoc* nature of the Court as discussed elsewhere in this Strategic Plan. Given the pace of integration, this decision by the Council is overdue.

The consequences of not addressing this issue include:

- i. Ineffectiveness of the Court
- ii. Denying the Region the full benefits of the Court as envisaged by the framers of the Treaty.

5.2 Appreciation of the Court

Since the East African Court of Justice was established, the EAC Policy makers and stakeholders seem not to, consciously or unconsciously, appreciate its role and place in the EAC institutional structure. Examples include non submission by Partner States to the Court's arbitral jurisdiction, creation of parallel dispute resolution mechanisms, and non determination of Judges' Terms and Conditions of Service.

Consequences of not addressing this issue include:

- i. The Court not being able to optimally discharge its mandate in the integration process
- ii. Risk of marginalizing the status of the Court

- iii. Risk of denying the East African citizens the right to access the services of an effective regional court
- iv. Risk of fragmenting Community jurisprudence
- v. Risk of undermining investor confidence in the Region

5.3 Visibility of the Court

The Court is not visible enough both physically and functionally. Physically the Court is still in Arusha, and has not yet operated from anywhere else. Functionally, the users and other stakeholders still do not know sufficiently this regional mechanism of dispute resolution. Many of them do not know the jurisdiction and procedures of the Court. Examples include absence of sub-registries in any Partner State, absence of the leadership of the Court from its seat since its inception.

Consequences of not addressing this issue include:

- i. Underutilization of the Court,
- ii. Retarding the integration process.

5.4 Capacity of the Court

Inadequate capacity of the Court is a fundamental challenge that must be addressed in order for the Court to deliver on its mandate. Specifically, concerns surrounding this strategic issue include:

- i. Inadequate organizational structure of the Court
- ii. Inadequate human and financial resources
- iii. Unsatisfactory human resource development

Consequences of not addressing this strategic issue include the following:

- i. The Court may not be able to deliver on its mandate and achieve its objectives.
- ii. Risk of Court users, investors and other stakeholders losing confidence in the Court and in the Region.

CHAPTER SIX: OBJECTIVES

For each of the Court's strategic issues objectives were set and they are here presented.

6.1 Strategic Issue 1: Design of the Court under the Treaty

Objectives

- To implement all the relevant provisions of the Treaty [especially Articles 27 (2) and 140 (4)] including conclusion of necessary Protocols.
- To rationalise the design of the Court under the Treaty (review/amend).

6.2 Strategic Issue 2: Appreciation of the Court

Objective

- To proactively influence a positive shift in mindset of EAC Policy Organs and other Stakeholders concerning the role and place of the Court.

6.3 Strategic Issue 3: Visibility of the Court

Objective

- To make the Court visible and indispensable in matters related to the discharge of its mandate.

6.4 Strategic Issue 4: Capacity of the Court

Objective

- To enhance Capacity of the Court

CHAPTER SEVEN: OVERALL STRATEGY

The overall strategy of the Court in the next five (5) years shall be:

- i. To work towards the establishment of the permanent seat of the Court
- ii. To initiate consultations with the relevant EAC organs and other stakeholders so that the *ad hoc* nature of the Court is reviewed by the Council basing on the integration process,
- iii. To establish/open sub-registries in the Partner States,
- iv. To hold Court Sessions in the Partner States as a matter of policy,
- v. To have the extended jurisdiction of the Court envisaged under Article 27(2) of the Treaty operationalized, and
- vi. To engage with EALA, Council and other Organs and Institutions of the Community to ensure that the trend of creating parallel dispute resolution mechanisms is stopped.

The Court shall also work towards enhancing its human and material capacity so that it can more effectively deliver on its mandate by:

- i. Strengthening performance management
- ii. Undertaking skills development
- iii. Reviewing staff establishment
- iv. Reviewing the resource mobilization strategy

CHAPTER EIGHT: IMPLEMENTATION

The Court shall implement this strategic plan by undertaking the following activities:

8.1 Action Planning

The Court's action plan indicates the actions to be taken, by whom, when and with what expected results.

The Court's five year action plan is presented in Annex 1.

8.2 Annual Work Planning

The Court's annual work plan provides specific details about what will be done during a given year. It is more specific and more detailed than the action plan. In implementing the five-year action plan, the Court will have to develop five (5) annual work plans.

8.3 Budget

The Court will develop an annual budget which will be linked to the strategic plan and the annual work plan.

8.4 Organizational Structure Review

The Court's organizational structure will be reviewed to align it with the strategic plan.

8.5 Communicating the plan

This strategic plan shall be communicated to all the Judges and the Court Staff. Through such communication, the Judges and the staff of the Court will understand what is expected of them.

8.6 Plan Monitoring and Evaluation

The Court will continue to monitor the implementation of this strategic plan. Corrective action will be taken on any deviations from the plan. The implementation progress will be reported at Court's Plenary.

8.7 Conclusion

In order to ensure successful implementation of this strategic plan, the collective effort of all Judges and Staff of the Court will be required.

The President and Registrar of the Court will play a leading role in the implementation efforts. They will have to rally everybody in moving the Court forward. They will need to effectively manage the interface between the Court and its key stakeholders.

The Court's strategic plan will be reviewed from time to time. This will ensure the plan remains relevant given the dynamism of the environment.

APPENDIX ONE: IMPLEMENTATION (ACTION) PLAN

Issue 1: Design of the Court under the Treaty

Objective 1: To implement all the relevant provisions of the Treaty especially Articles 27 (2) and 140 (4)] including conclusion of necessary Protocols

Strategy	Action	Timeline	Output/Outcome	Responsibility
Participate in the on-going EAC process for extending the jurisdiction of the Court and for concluding the terms and conditions of service for the Judges	i. Bring up the matter to the attention of Secretary General for onward transmission to, and consideration and decision by relevant organs of the Community	2010-2011	i. Terms and conditions of service for the Judges in place	President, Registrar
	ii. Bring up the matter to the attention of the Inter-organ forum of the Community	2010 -2011	ii. Extended jurisdiction of the Court	President/Registrar

Objective 2: To rationalise the design of the Court under the Treaty (Review/Amend)

Strategy	Action	Timeline	Output/Outcome	Responsibility
Participate in the on-going EAC process of the review and amendment of the Treaty so that apparent conflicts and contradictions affecting the Court are resolved.	i. Appropriate involvement of the Court in the process	2010- 2015	i. Apparent Contradictions and conflicts in the Treaty resolved and Treaty provisions harmonised	President, Registrar
			ii. Court involved in the process	

Issue 2: Appreciation of the Court

Objective 1: Proactively influence a positive shift in mindset of EAC Policy Organs and other Stakeholders towards the role of the Court

Strategy	Action	Timeline	Output/Outcome	Responsibility
Dialogue with EAC Policy Organs on the place and role of the Court in the EAC institutional structure	iii. Involve the of Organs in some EACJ activities at least once a year	2010-2015	i. Number of quality activities, retreats, seminars, meetings and workshops organized	President/Registrar
	ii. Organise retreats, seminars, meetings, and workshops with various stakeholders at least once a year in each Partner States	2010-2015	ii. Number of retreats, seminars, meetings and workshops organized	President/Registrar
	iii. Engage relevant stakeholders against the establishment of parallel dispute resolution mechanisms	2010-2015	iii. Improved perception of the Court iv. Uniform Community Jurisprudence	President/Registrar

Issue 3: Visibility of the Court

Objective 1: To make the Court visible and indispensable in matters related the discharge of its mandate

Strategy	Action	Timeline	Output/Outcome	Responsibility
Raise the profile of the Court	i. Organize an annual EACJ Day	2010-2015	i. Number of EACJ Days held	President/Registrar
	ii. Organize Sensitization workshops	2010-2015	ii. Number of Workshops organized	President/Registrar
	iii. Enhance awareness of the Court	2010-2015	iii. Number of sensitization workshops	President/Registrar
	iv. Organise Court's Meetings and Sessions in various Partner States	2010-2015	iv. Number of Meetings and Sessions held outside the Court's seat	President/Registrar
	v. Establish Sub-registries in Partner States	2010-2012	v. Improved profile and visibility of the Court	President/Registrar
			vi. Sub-registries established	President/Registrar

Issue 4: Capacity of the Court

Objective 1: To enhance capacity of the Court

Strategy	Action/Activity	Timeline	Output/Outcome	Responsibility
Review organizational structure of the Court	<ul style="list-style-type: none"> i. Draft proposal of organizational structure of the Court ii. Submit to EACJ Finance and Administration Committee for consideration and onward transmission to the Court Plenary for adoption iii. Identify activities to be funded 	<ul style="list-style-type: none"> 2010-2011 2010-2011 2010-2011 	<ul style="list-style-type: none"> i. Draft organizational structure ii. Proper placement of staff iii. Streamlined supervision iv. Clear job descriptions and reporting order 	Registrar
Mobilize Resources	<ul style="list-style-type: none"> i. Draft proposals for funding ii. Submit the proposal to development partners 	2010/2015	<ul style="list-style-type: none"> i. Funding draft proposal in place ii. Draft proposal approved and adopted iii. Resources availed iv. Draft proposal adopted 	Registrar

Strategy	Action/Activity	Timeline	Output/Outcome	Responsibility
3. Acquire additional staff	<ul style="list-style-type: none"> i. Identify staffing gaps ii. Draft proposals for additional positions iii. Present proposals to Council for approval iv. Present request for opening up the existing positions v. Engage required staff 	2010 –2015	i. Requisite staff in place	Registrar
4. Carry out skill development	<ul style="list-style-type: none"> i. Carry out training needs assessment iv. Conduct training v. Teambuilding 	2010-2015	<ul style="list-style-type: none"> i. Number of Judges/staff trained ii. Efficiency in service delivery 	Registrar
5. Improve Staff appraisal	<ul style="list-style-type: none"> i. Review the staff appraisal form ii. Organize discussion sessions on the appraisal process 	2010-2015	<ul style="list-style-type: none"> i. Improved staff appraisal form ii. Transparent staff appraisal process 	Registrar