

**THE PROSPECTS AND CHALLENGES OF AN
AFRICAN UNION GOVERNMENT: A LEGAL,
POLITICAL AND INSTITUTIONAL
PERSPECTIVE**

**A THESIS SUBMITTED TO THE SCHOOL OF
GRADUATE STUDIES
ADDIS ABABA UNIVERSITY (AAU)**

**IN PARTIAL FULFILLMENT OF THE
REQUIREMENTS FOR THE DEGREE OF MASTER
OF LAWS (LLM)**

**BY
ADEWALE EDOHO IYANDA**



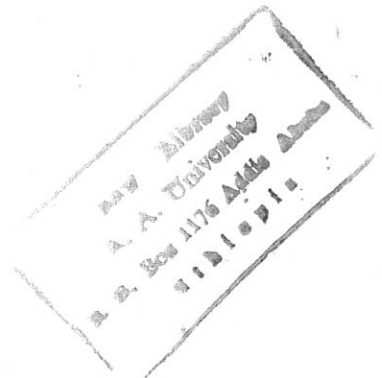
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DEDICATION

TO THE ALMIGHTY GOD

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This position paper would not have been possible without the invaluable contribution of various persons. First and foremost I would like to acknowledge my Parents, Ambassador and Mrs. L.K. Iyanda, whom without their moral and financial support and sound advice would have greatly diminished the value of this work.

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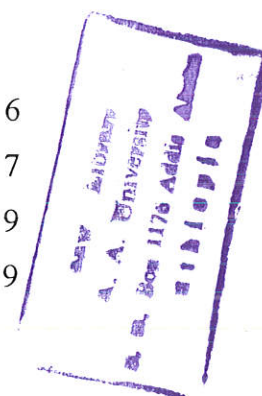
LIST OF ACRONYMS

ACT	The Constitutive Act of the African Union
ACHPR	African Commission on Human and Peoples' Rights
ACJHR	African Court of justice and Human Rights
AEC	African Economic Community
APRM	African Peer Review Mechanism
AU	The African Union
AUG	African Union Government
CSSDCA	Conference on Security, Stability and Development Cooperation in Africa
Commission	The Secretariat of the African Union
ECOSOC	The Economic, social and Cultural Council
FIs	Financial Institutions
HSGIC	Heads of State and Government Implementation Committee
MDGs	Millennium development Goals
Member State	A Member State of the African Union
NEPAD	New Partnership for Africa's Development
OAU	Organization of the African Unity
PAP	The Pan- African Parliament
Parliament	The Pan- African Parliament
Protocol	The Protocol to the Treaty establishing the African Economic Community
RECs	Regional Economic Communities
RPB	Regional Parliamentary Bodies
SAP	Structural Adjustment Program
STC	Specialized Technical Committee
UG	Union Government
UNCTAD	United Nations Conference on Trade and Development



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PREFACE

Africa¹ has consistently influenced the world community since the very origin of humankind. Africans participated in the growth and development of knowledge, the arts, and spirituality. The Pan-African movement was essentially anchored in this historical legacy and the imperative necessity of the continent and its Diaspora to regain its dignity after centuries of slavery followed by colonial rule.

The Pan -African movement, which was spearheaded mainly by the African Diaspora, was based on three main pillars, namely:

- (i) Shared historical and cultural values
- (ii) Collective self - reliance and self-sufficiency
- (iii) Political freedom.

The interaction between the movement and African researchers and political leaders had greatly influenced the struggle for independence in Africa, of which the search for unity and collective action was part and parcel. Since becoming politically independent, African countries have made efforts to individually address the economic and social challenges they all face with limited success. This has been partly the result of various impediments, including in particular lack of good governance and an overall unfavourable international economic order. In order to improve their development performance, African leaders are increasingly convinced that they must act collectively.

As an expression of the will to act collectively on issues of common interest, the Organisation of African Unity (OAU) was established on May 25 1963, as a result of a compromise between supporters of a full political integration and those preferring a loose cooperation organization. With an initial membership of 35 countries, the OAU remained

¹ Africa in this research refers to the whole continent, from North to South, from East to West without distinction as to race, language and religion.

the only continental organization until its replacement by the African Union in 2002². The OAU made important contributions, mainly through its Liberation Committee, to the freedom fight of countries that were still under colonial rule and to the struggle against apartheid in South Africa and the minority rule in former Rhodesia. Its membership, which includes all regions of the continent, amounted to 53 countries in 1994.³

Africa's search for a collective development strategy and integration schemes, documented in the Lagos Plan of Action (LPA), as well as in the Final Act of Lagos (FAL) and the Abuja Treaty establishing an African Economic Community (AEC), was also an initiative of the OAU supported by the Economic Commission for Africa (ECA). Both the FAL and the Abuja Treaty specifically stressed the role of Regional Economic Communities (RECs) in the establishment of the AEC in six stages over a period of 34 years, from the entry into force of the Treaty. The Treaty also made provision for the establishment of continental institutions including a Pan African Parliament (PAP), an Economic, Social and Cultural Council (ECOSOCC) and an African Central Bank (ACB).

Regarding the integration process, the Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA) was established in May 1991. The CSSDCA, advocated for a holistic approach to African development by stressing the inter-linkage between peace, security, good governance and the improvement of economic and social conditions. Also, the principle of popular participation, including the role of women, increasingly gained prominence, with the adoption, in 1990, of the African Charter for Popular Participation in Development and Transformation. Thus all factors that potentially concur to collective and self-sustained development of the continent were clearly spelt out in the early 1990s.

² The decision to establish an African Union was taken at the fourth Extraordinary Session of the Assembly of the OAU in Sirte on the 9th of September 1999. i.e. 9.9.99

³ There are also 53 Member States of the Africa Union with the exception of Morocco who pulled out in response to the recognition of SAR by the African Union



In spite of the progress made, particularly in the establishment of RECs in the regions where they did not exist in 1991, the timeframe for the implementation of the Abuja Treaty was found to be too short. This was for several reasons, particularly lack of political will, lack of awareness among large segments of the African people, and overdependence on external assistance. At the same time, tremendous progress was being made in other world regional economic and trading blocs. Against this background, African countries resolved to move towards political union by establishing, in 2002, the African Union (AU) to replace the OAU. The AU was meant to *inter alia*

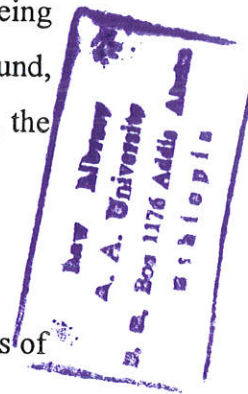
- (i) Accelerate the implementation process of the Abuja Treaty; and
- (ii) Strengthen the RECs and speed up the establishment of the continental institutions of the AEC.

Furthermore, African Heads of State and Government also adopted the New African Initiative (NAI)⁴, which subsequently became the New Partnership for Africa's Development (NEPAD). The main purpose of NEPAD is to place African countries, both individually and collectively, on a path of sustained economic growth and sustainable development at the same time, and transform them into competitive participants in world economic, monetary and political affairs. In launching, almost simultaneously, the African Union and NEPAD, African Heads of State and Government wanted to ensure that the latter would be an essential implementation tool of the former. Thus, as in the early 1990s, Africa was prepared to enter the new millennium with renewed determination for collective action.

Today, there is a growing recognition among African countries of the need to provide the African Union with stronger continental machinery in order to work on agreed strategic areas of focus yet to be identified. To that end, the Assembly of the AU set up two ad hoc committees of Heads of State and Government⁵ which concluded that the "necessity for eventual Union Government is not in doubt". The Union Government must be a "Union

⁴ By Declaration AHG/Decl.1 (XXXVII) of the Lusaka Summit

⁵ Committee of Seven Heads of State Chaired by Former President Olusegun Obasanjo and Committee of seven headed by President Museveni of Uganda



of the African people and not merely a Union of states and governments". It must have "identifiable goals" and be based on a set of clearly identifiable shared values and commonality of interest...and on the principle of strict adherence"⁶.

The Heads of State and Government also noted that "the formation of a Union Government must be "based on a multi-layered approach" whereby after basic internal contradictions at the national level are reviewed and resolved...the next logical step "must be to identify and clearly assign specific roles to states, sub-regional entities and the continental political framework". The approach must also be based on the principle of "gradual incrementalism". Finally," the RECs must be made more effective as the building blocks for the continental framework (and) a clear decision must be made on rationalizing the sub-regional economic communities so that investments are made to build synergies between the RECs and the Union Government".

Based on the above, this research work has been conducted in order to amongst others:

- (i) Elaborate further on the necessity for an African Union Government, based on shared values and common interests of African countries and peoples;
- (ii) Propose strategic areas of focus;
- (iii) Examine the implications of an African Union Government at continental, regional and national levels, in terms of institutions, and programmes where applicable, taking into consideration the present situation; and
- (iv) Suggest a ROADMAP for the establishment of a Union Government. It is supplemented by detailed information concerning the historical context of the research, continental organs, the RECs and on the financial Institutions.

The study further provides a concise and general framework for establishing a Union Government. Such framework includes a review of the shared values and common interests of African countries and people. It suggests strategic areas of focus that have been identified in which the Union Government may, progressively, have full or partial responsibility. Thereafter, an assessment is made of the institutional and programmatic

⁶ Ibid

implications, first at the continental level, then at the level of the RECs, and finally at national level. Also, a brief review is made of the possible financing mechanism for the Union Government.

In the final chapter of this research work, a tentative Roadmap is proposed taking into account the existing realities on the ground as well as the benchmarks set in the Abuja Treaty on the AEC. The Roadmap seeks, first, to establish and then consolidate processes and structures that will be vital in the short and medium term, at various levels (continental, regional and national), so as to give the UG the tools and means that are required to achieve the irreversible conclusion of full political integration that, finally, leads to the full political and economic integration of the continent.

CHAPTER ONE
THE FRAMEWORK OF THE RESEARCH

1.1 LITERATURE REVIEW

There is no doubt that the practical application of the research would be of immense value not only to the jurisprudence of the legal issues contained herein but also to the various Member States of the African Union as they attempt to build a continental union of African States in order to face up to the challenges of Globalisation. The study would also be of immense value to those in the academic profession as well as researchers and students alike who are interested in the integration process of the African continent.

The Research deals with conceptual issues regarding the type of union and emphasizes the need to be more explicit in defining the nature of the envisaged Union Government. It highlights the challenges of integration such as the structural, institutional and legal convergences and divergences of the Organs of the proposed Union, and the context in which Africa finds itself globally. It then underscores the importance of Africa's integration as the only safeguard against the danger of a new detrimental scramble for Africa's resources and neo-colonialism. From a historical perspective, the Research tries to provide a synopsis of the gradual transformation of the continent from a mere Pan-Africanist movement to a model integration mechanism aimed at achieving full socio-economic and political integration.

Further, the Research demonstrates the contribution of Pan-Africanist solidarity to combating colonialism and the prospects of a Union Government as envisaged by some of the founding father of the OAU. This provided the basis for later developments that culminated in the political liberation of the African continent. Based on reflections on the various components of the *Study on an African Union Government: Towards the United States of Africa* (the Banjul Report), the Research highlights critical implications of the proposals as they relate to issues of the values, strategic focus areas, and institutional and programmatic implications for the UG. It also raises some important issues not dealt with

in the report that is considered critical for the proposed UG. Among these are the consideration for the name of the Union and clarification of the character of the UG. Further, the Report considers the imperatives for an effective UG and elaborates on some of the critical global issues and concerns that it should respond to.

The Research concludes by recommending that the process of creating a Union Government be built upon past successes, that it fast tracks the building blocks for such a Union, and accelerates the implementation of all measures that would facilitate the creation of the Government. The movement towards the Union Government of Africa reflects the resilience and determination of the African peoples to achieve real unity, to speed up development, strengthen progressive democratic governance throughout the continent and to improve Africa's position in the world. This is a true expression of the emerging African Renaissance. As an organ that represents all African peoples, including the interests of all peoples of African descent, the PAP should play a leading role in the process leading up to the Union Government. In doing this, the PAP should be mandated to work in close cooperation with other organs of the AU, the RECs, RBPs and National Parliaments. To realize its role in this process, the PAP⁷ needs to function optimally. Specifically, this will require fast tracking and the enhancement of its capacity to ensure that it evolves into a legislative body. In this regard, the participation of the peoples of Africa is of critical importance.

Finally, the move towards an African Union Government can only be realized through the demonstration of strong political will and leadership within the African continent.

1.2 PROBLEMS TO BE STUDIED

The main objectives of this study are to: -

- (i) Elaborate further on the necessity for African Union Government, based on shared values and common interests of African countries and peoples

⁷ Report of the Pan African Parliament's position on the Union Government (2004) at pg 45

(ii) Propose strategic areas of focus for the proposed Union Government

(iii) Examine the implications of an African Union Government at continental, regional and national levels, in terms of institutions, and programmes where applicable, taking into consideration the present situation as well as the legal ramifications thereof;

(iv) Suggest a probable roadmap for the establishment of a Union Government.⁸

While encouraged and inspired by the enthusiasm and positive spirit that accompanied the ratification of the Constitutive Act (the constituting instrument of the African Union), the imperative today is to consolidate the gains made towards the aspirations of African renaissance and regeneration. Therefore in the course of the research, the legal imperatives of this study would be to determine:

- a. Whether the existing Constitutive Act (then treaty of the OAU) should be revised or a new one signed;
- b. Whether the proposed government is a successor arrangement to the AU, and what should happen to the AU and its current institutions;
- c. Whether the AU institutions are suited for the proposed Union, and if so, how to reposition them towards the attainment of the objectives of the Union; and
- d. How to clarify the mandates of the various institutions of the Union and the structural relationships among them.

⁸ The proposed road map will invariably try to re-emphasize the benchmarks already set in the Abuja Treaty on the African Economic Community

1.3 RESEARCH METHODOLOGY AND SOURCES OF DATA

The methodology to be adopted in this research work would be the use of analytical, documentary and empirical legal research, which would then be followed by reflections and recommendations. By gleaning through a certain number of instantly accessible documents and reports and by empirically observing current facts related to the subject, the researcher would collectively reflect on the issues and try to formulate recommendations within the framework of the Grand Debate on the Union Government.

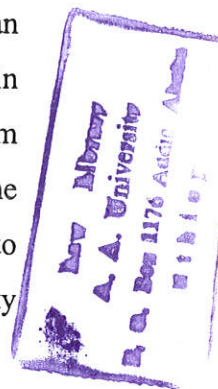
The research will be conducted by analysing the relevant African Union Decisions and declarations on the Union Government project, relevant international instruments, internet sources as well as other material sources.

In the course of the research relevant persons would be interviewed in order to ascertain the desirability of a Union government and what form it should take. In this regard interviews will be conducted with African Union staff members, diplomats from African Union member states, the various civil society organisations under the auspices of ECOSOC of the African Union will also be interviewed in order to have a broader perspective of the prospects of a UG.

1.4 SCOPE AND LIMITATIONS OF THE STUDY

There were some practical problems with regard to the process of collecting and accessing data. The concerned officials whether from the African Union Commission or from Member States of the African Union were not always available as scheduled by the researcher (interviewer) and the interviewee. This proved particularly challenging because of the cost constraints of having to travel across the city only to be informed that the meeting had been rescheduled until a later date, without taking into cognisance the other prior pre-arranged engagements and obligations of the researcher.

Another constraint that was encountered during the course of this research work was the lack of financial resources to enable the researcher to travel and obtain information from the various secretariats of the Regional Economic Communities (e.g. ECOWAS, COMESA, SADC etc) and the various organs of the African Union (e.g. Pan African Parliament, African Commission on Human and Peoples' Rights etc) in order to obtain relevant information on the integration process and on the desirability of a particular form of a Unity Government. While it was possible to obtain position papers by some of the African Union Organs (e.g. the PAP and ECOSOCC), it was clearly unattainable to obtain the same from the other AU organs including the RECs and certain Civil Society Organisations not based in Addis Ababa.



The researcher was also confined to interviewing diplomats of African States through their Embassies in Addis Ababa, even though they are not be in the best position to give a clear and technical view of their governments, since the process is currently ongoing and in order not to pre-empt the response of their principals. However, every opportunity was utilized during the just concluded AU Summit in Addis Ababa in order to try and obtain relevant documentation on the position of governments of Member States on the UG agenda.⁹

This research work basically covered a wide spectrum of the African continent¹⁰ taking into account the views and opinions of all segments of the society. In this regard, Interviews and consultations shall be done at the African Union Headquarters, Embassies of Member States, Civil Society Organisations, Ethiopian Government and Governmental agencies, the Media, and concerned individuals etc.

This research is broad based as it affects all independent states of Africa and as such the scope of the research in geographical terms would be the whole of the African Continent

⁹ For instance a draft constitution of a United States of Africa proposed by the Libyan Leader Col. Muammar Ghadaffi as well as several other propositions and proposals by the Libyan government were obtained during consultative sessions of the Assembly

¹⁰ This implies that all sectoral facets pertaining to the UG will be covered particularly with regard to the legal, political and institutional ramifications on the subject

while taking into cognisance the inputs and contributions of foreign partners who have a stake in the successful amalgamation of the African continent.

The research also tried to dwell on almost every facet of the various thematic areas of convergence between Member States that have significant implications on the areas of competence that will be divided amongst the various regional spheres of the continent such as Defence, Education, Women and gender, Foreign Affairs etc. This is of particular importance to interested parties at the continental, sub-regional and national levels in order to ascertain what competences will remain within the purview of that particular bloc.¹⁰

¹⁰ The competences would be divided at the Continental level or the African Union, Sub-regional level or the RECs and National level representing the current Member States of the AU

CHAPTER TWO

HISTORICAL BACKGROUND

2.1 THE QUEST FOR AFRICAN UNITY

African countries, in their quest for unity, economic and social development under the banner of the OAU, have taken various initiatives and made substantial progress in many areas which paved the way for the establishment of the AU. Noteworthy among these are:

- Lagos Plan of Action (LPA) and the Final Act of Lagos (FAL)¹¹; incorporating programmes and strategies for self-reliant development and cooperation among African countries.
- The African Charter on Human and People's Rights¹² and the Grand Bay Declaration and Plan of Action on Human rights: two instruments adopted by the OAU to promote Human and People's Rights in the Continent. The Human Rights Charter consequently led to the establishment of the African Human Rights Commission located in Banjul, The Gambia.
- Africa's Priority Programme for Economic recovery (APPER) - 1985: an emergency programme designed to address the development crisis of the 1980s, in the wake of protracted drought and famine that had engulfed the continent and the crippling effect of Africa's external indebtedness.
- OAU Declaration on the Political and Socio-Economic Situation in Africa and the Fundamental Changes taking place in the World (1990): which underscored Africa's resolve to seize the initiative, to determine its destiny and to address the challenges to peace, democracy and security.

¹¹ Adopted under the aegis of the Lagos Conference which was held in Nigeria in October of 1980

¹² Adopted in Nairobi in 1981

- The Charter on Popular Participation adopted in 1990: a testimony to the renewed determination of the OAU to endeavour to place the African citizen at the centre of development and decision-making.
- The Treaty establishing the African Economic Community (AEC) - 1991: commonly known as the Abuja Treaty, it seeks to create the AEC through six stages culminating in an African Common Market using the Regional Economic Communities (RECs) as building blocks. The Treaty has been in operation since 1994.
- The Mechanism for Conflict Prevention, Management and Resolution (1993)¹³: a practical expression of the determination of the African leadership to find solutions to conflicts, promote peace, security and stability in Africa.
- Cairo Agenda for Action (1995): a programme for relaunching Africa's political, economic and social development.
- African Common Position on Africa's External Debt Crisis (1997): a strategy for addressing the Continent's External Debt Crisis.
- The Algiers decision on Unconstitutional Changes of Government (1999) and the Lome Declaration on the framework for an OAU Response to Unconstitutional Changes (2000).
- The 2000 Solemn Declaration on the Conference on Security, Stability, Development and Cooperation: establishes the fundamental principles for the promotion of Democracy and Good Governance in the Continent.
- Responses to other challenges: Africa has initiated collective action through the OAU in the protection of environment, in fighting international terrorism, in combating the scourge of the HIV/AIDS pandemic, malaria and tuberculosis or dealing with humanitarian issues such as refugees and displaced persons, landmines, small and light weapons among others.

¹³ This has now been transformed and adopted under the AU as the Peace and Security Council with the same operational and functional capabilities

- The Constitutive Act of the African Union: adopted in 2000 at the Lome Summit (Togo), entered into force in 2001.
- The New Partnership for Africa's Development (NEPAD) : adopted as a Programme of the AU at the Lusaka Summit (2001).

Right at the dawn of independence it was realized that Africa's salvation and prosperity lies in the unity of her people and societies. Indeed, it was principally due to unity that we were able to win political independence for the whole Continent and to bring to an end the system of apartheid in South Africa. It enabled the African people to overcome the constraints emanating from the prevailing poverty and the underdeveloped nature of basic infrastructure. Indeed, unity remained a shared organizing principle among the diversity of leaders and governments during the past four decades. Whether civilian or military, republican or monarchical, democratic or autocratic, none of them, at any point expressed reservation or divergence on the principle of Continental cooperation and integration. All of them, without exception have demonstrated increased determination and vociferous public declarations on the issue of regional cooperation and integration even before the subject gained currency in the global development discourse.¹⁴

The commitment to unity and integration was not simply a rhetorical disposition on the part of the African leadership and the-people. Indeed, the very creation of the Organization of African Unity in 1963 and the determination to maintain and consolidate its activities is a clear demonstration of the resolve to realize, in a concrete way, that 'faith in unity'. It can be recalled the profound exchanges among the leaders on the strategic approach to realizing this vision. There were leaders and their nations who were even prepared to postpone their independence if it could facilitate the forging of closer integration with their neighbours.

¹⁴ (2003) Study on formal integration of the New Partnership For Africa's Development (NEPAD) into the African Union (AU) structures and processes", at pg 24, adopted June 2003

Much of the first two decades of independence were devoted to the process of nation building and institutional development and, more prominently, to the fight against colonialism and apartheid. By the 1980s the challenge of addressing the issue of Continental socio-economic transformation was becoming more urgent. This was reinforced by the economic decline experienced from the late 1970s and the realization of the non-viability of externally dependent strategies of development. It is within this context that African leaders enunciated the Lagos Plan of Action in 1980 that elaborated on a path for economic integration in the continent by using Regional Economic Communities as the building blocks. This overall framework was subsequently embedded into the Abuja Treaty on the establishment of the African Economic Community that was signed in June 1991.¹⁵

African States have adopted the Abuja Treaty and the Treaties of the Regional Economic Communities, as blueprints for achieving sustainable and rapid development through regional integration. In doing so, we have come to realize that the economic power of nations has become by far the most dominant factor in the relevance and importance of countries in the emerging global order. This is why even the major world powers are continuously striving to widen and strengthen the base of their economic strength, through a conscious effort to expand their economic space and market size.¹⁶

In the case of Africa, a continent which has been marginalized for too long a time in the world economy, integration is no longer a matter of convenience, but an indispensable strategy for survival and development. The pace of globalisation, coupled with the sweeping wave of economic liberalization, and with the imbalances in the distribution of the benefits in favour of the strong economies, has increased the urgency for all our countries to join hands to expand, fortify, solidify and integrate their economic space, to serve as a platform for take off and effective integration into the global economy. Regional integration therefore at the very least constitutes Africa's response to

¹⁵ Report on the Rationalization of the Regional Economic Communities

¹⁶ "Africa and the Challenges of the Changing World Order: Desirability of a Union Government" Conclusions and Recommendations of the Conference on the "Desirability of a Union Government". November 2005, Abuja, Nigeria

globalisation, and an instrument to reverse the trend towards marginalization of the Continent. It cannot be disputed that some advances have been made in the quest to foster closer integration in the continent.¹⁷ However, as we approached the end of the 1990s, the obstacles confronting our endeavour were quite immense. Our Continent was being threatened increasingly into marginalization by its failure to cope with the demands of globalization. It was becoming evident that even stronger economies, with their advanced technological base, were finding it necessary to consolidate their level of economic integration¹⁸ as a means of gaining from the opportunities of this historic phenomenon.

Within the continent, the people of Africa were confronted with multiple setbacks of incessant conflicts with the attendant consequences of deaths, disruption, instability, and considerable destruction; they were also suffering from the trauma of the HIV-AIDS pandemic and other killer diseases, and experiencing frequent natural disasters. It has realized that the magnitude of the external and internal challenges could be handled only by collectively consolidating our unity. The status quo and the nascent structures of integration could not sustain this impending threat. Thus, on 9 September 1999, the fourth Extraordinary Assembly of Heads of State and Government of the OAU meeting was conveyed in Sirte, the Libyan Arab Jamahiriya by which the Sirte Declaration was proclaimed. Through this historic commitment, African leaders agreed to establish an African Union, in conformity with the ultimate objectives of the OAU Charter and the provisions of the Treaty Establishing the African Economic Community. In addition, the Heads of State and Government decided to accelerate the process of implementing the Treaty Establishing the African Economic Community, through shortening the implementation periods, and establishing all the institutions provided for in the Abuja Treaty, including the creation of the Pan- African Parliament.

In Lome, Togo, on 11 July 2000, the OAU Assembly of Heads of State and Government adopted the Constitutive Act of the African Union. As of today, all Member States have

¹⁷ E.g. the establishment of the OAU as well as the RECs, with the ultimate objective of regional, political and/or economic integration.

¹⁸ Which for example led to the establishment of the European Economic Community (EEC), which transformed into the European Union (EU).

signed and ratified the Act. The Lome Summit also took a decision on the convening of a Meeting of African Parliamentarians in order to consider the Protocol on the establishment of the Pan- African Parliament.

By all indications, the African Union is first and foremost, an expression of the determination to elevate the framework of a Continental integration. The agreement that was reached in Sirte and later Lome, after a frank and rigorous exchange of views among African leaders demonstrated a desire to come up with an even stronger instrument that can enable the African people and their Governments overcome the challenges confronting them.

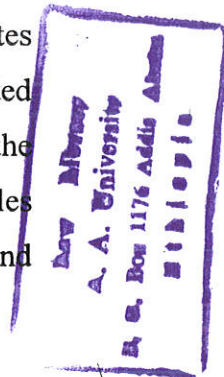
The African Union was structured to overcome the institutional limitation of OAU as it has historically evolved with a stronger orientation to pursuing the political agenda, and the African Economic Community with a stronger disposition to the economic agenda. By fusing and streamlining the two institutions and in the process developing a coherently integrated agenda, the African Union became a stronger body. The strength of the African Union is enhanced by its institutional structure, which endows it with a number of statutory bodies for policy-making, consultations and operations that are built into it. In addition to the Assembly and Executive Council, it has a Pan- African Parliament; a Court of Justice; a Commission¹⁹; a Permanent Representatives Committee; Specialized Technical Committees; an Economic, Social and Cultural Council; and Financial Institutions.

2.2 INSTITUTIONAL EVOLUTION

The OAU took the form of an inter-governmental organisation, comprising of a number of organs and institutions mandated to address a range of political, economic, technical, social and cultural concerns and challenges on the continent. These institutions developed policies and strategies to facilitate the implementation of programmes and projects that aimed at the consolidation and promotion of African unity and integration. In addition,

¹⁹ The Commission of the African Union replaced the Secretariat of the OAU

several Regional Economic Communities were established which complemented the efforts of the OAU in facilitating continental integration. Together, these institutions provided a platform for the development of regional blue prints and policies amongst them the Lagos Plan of Action of 1980 and the Abuja Treaty of 1991. However, the implementation of the policies and recommended measures were constrained by the prevailing political situations on the continent and globally, as well as limited mandates of the institutions to deal with the attendant challenges, effectively. Furthermore, limited capacity, including financial and human resources, exerted major constraints on the OAU. These constraints notwithstanding, African leaders, intellectuals and peoples continued to search for more viable strategies to promote the agenda for unity and integration.



Informed by past experiences and acknowledging the politico-economic realities on the African continent and internationally, Africa made a strategic shift. This shift took the form of the transformation from the OAU to the AU, signifying continued commitment by Africa to consolidate the agenda of African unity and solidarity. To this end, the Sirte Declaration of 1999 and the subsequent adoption in 2000, of the *Constitutive Act of the African Union* and its speedy ratification, provided a new impetus. Since the creation of the African Union, the desire to address the challenges confronting the continent has manifested in itself through the intensification of the debate on how to consolidate Africa's integration.

The transformation of the OAU into the AU in 2002 demonstrated the persistence of the spirit of pan-Africanism, which historically animated the struggle for freedom, human security and self-determination in Africa and the Diaspora.²⁰ The establishment of the AU is recognition that greater solidarity and collaboration are critical to addressing the domestic and global challenges confronting the continent in the 21st century. Issues

²⁰ K M Mathews, "Renaissance of Pan-Africanism: The African Union and the New Pan-Africanists", paper presented at the Centre for Conflict Resolution (CCR) policy seminar, Building an African Union (AU) for the 21st Century: Relations with Regional Economic Communities (RECs), the New Partnership for Africa's Development (NEPAD) and Civil Society, Cape Town, South Africa, 20-22 August 2005. See also Kwame Nkrumah, *Africa Must Unite*, (London: Panaf, 1963); and Ali Mazrui, *Towards A Pan Africana*, (London: Weidenfeld and Nicholson, 1967).

related to human security, enduring conflicts and the complex humanitarian situations currently afflicting the African continent are currently challenging this solidarity. The true expression of Pan-Africanism will be achieved only when African governments build and sustain collective security by promoting democratic governance and economically viable societies. The “new Pan-Africanism” has heightened the obligations of states to protect civilians from autocratic and undemocratic governments, with a particular emphasis on preventing, managing and resolving conflicts. This new paradigm is a departure from the practices of the OAU between 1963 and 2002. The OAU operated within a rigid state-centric paradigm of non-intervention in the internal affairs of its members. In contrast, the AU’s deployment of peacekeepers in conflict situations in Burundi and Sudan’s Darfur region reflect an increasing concern for human security principles. Nevertheless, strong and consistent political will is required to maintain the momentum to address present and future crises effectively. The notions of “sovereignty as responsibility” and “the responsibility to protect”²¹ must therefore become firmly entrenched in post-Cold War Africa’s international relations.²²

The African Union is the sum total of its 53 members and 800 million citizens, as well as the institutions, which have been created to achieve its objectives. The AU Commission, under the leadership of the First and outgoing Chairperson, Mali’s Alpha Oumar Konaré, is the implementing branch of the organisation.²³ The commission implements the programmes and decisions of the African Assembly of heads of state and the Council of ministers. The body comprises ten (10) commissioners responsible for a range of social, economic and political issues.

²¹ See *The Responsibility to Protect*, Report of the International Commission on Intervention and State Sovereignty, (Ottawa: International Development Research Council, 2001). See also, Francis Deng et al., *Sovereignty as Responsibility: Conflict Management in Africa*, (Washington, DC: The Brookings Institution, 1996).

²² Centre for Conflict Resolution, *A More Secure Continent: African Perspectives on the UN High-Level Panel Report, A More Secure World: Our Shared Responsibility*, Seminar Report, Cape Town, South Africa, 23 and 24 April 2005. (Available at: <http://ccrweb.ccr.uct.ac.za>)

²³ Analytical Report of the Brainstorming Meeting of the Commission of the African Union and Eminent Personalities on Building an African Union for the 21st Century, held from 25-28 October 2003, in Addis Ababa, Ethiopia. CCR AU Dec Draft 3 12/5/05 9:31 AM Page 17

At various fora²⁴ the progress made by the commission and other AU organs and institutions in advancing the ambitious goals of the continental organisation have been discussed. These meetings have also tried to assess some of the major challenges of implementing the AU's programmes and initiatives.

2.3 PROSPECTS AND CHALLENGES FOR AFRICAN UNITY

Several issues come to mind in assessing the prospects for achieving the objectives of an ideal African Union/Union Government. In the first place, and as stated earlier, African countries simply do not have a choice within the existing global system except to come together. The artificially balkanised nations that exist today are not viable entities in today's world, economically and even politically. As separate entities, their market potential is limited, their productive capacity is constrained and they are inflicted with numerous political stresses. The only alternative is to cooperate and integrate.

The integration option is reinforced by the fact that it is currently in the global agenda. The consolidation of such institutions as the European Union, the North Atlantic Free Trade Area (NAFTA), or the Association of South East Asian Nations (ASEAN), to name only a few, is a demonstration of the recognition by even the most powerful countries that the challenges of globalisation can only be overcome by working closely together. The proliferation of giant mergers among international private companies further confirms the inevitability of this trend which Africa is not in a position to avert. Furthermore, there is a new global culture that fosters closer integration, particularly for weak economic and political systems such as those which exist in Africa. The phenomenon of globalisation itself, which requires a high speed of performance, which operates across boundaries, and which has altered systems of production, distribution and consumption has instigated new roles and new capacities of the state. The existing formation of individual state structures in Africa, cannot cope with the dynamic(s) of globalisation.

²⁴ The Cape Town seminar

Liberalization and democratisation are also part of this new global culture, which in the economic realm necessitate an increased opening up across boundaries. The obliteration of barriers of exchange and predominance of market forces promote economies of scale and encourage integration. Similarly, the consolidation of democratic political systems fosters inclusiveness and even solidarity across boundaries. The Continental experience of cooperation in various spheres also offers brighter prospects for closer integration. Contrary to some concerns, the quest for integration in Africa did not just start recently. There has been an experience of cooperative endeavours, both politically and economically that spans close to half a century. OAU/AU is more than 45 years today and its Member States have accumulated a lot of positive experience on unity and solidarity. Decades of experience is also attributed to the Regional Economic Communities, many of which are today exhibiting robustness and dynamism and have proved beyond doubt that they can viably serve as building blocks for Continental integration.

The most profound dimension in the prospects for Continental integration is that the role of the people is given due attention in establishing the African Union. The Sirte Declaration unambiguously stipulates that as we enter the 21st century, and cognizant of the challenges that will confront our continent and peoples, we emphasize the imperative need and a high sense of urgency to rekindle the aspirations of our peoples for stronger unity, solidarity and cohesion in a larger community of peoples transcending cultural, ideological, ethnic and national differences."²⁵ To this end, the Declaration pronounced the establishment a Pan- African Parliament " to provide a common platform for our peoples and their grass-root organizations to be more involved in discussions and decision-making on the problems and challenges facing our continent"

Thus, the involvement of the African people in this enterprise will engender a stronger dynamism in realizing these objectives. Indeed, this element is further reinforced by the

²⁵ Ndungane, Njongonkulu, "A CALL TO LEADERSHIP: The role of Africans in the Development Agenda". Harold Wolpe Memorial Lecture (30 November 2006), Howard College Campus, University of KwaZulu-Natal

fact that African leaders have demonstrated a genuine commitment for realizing the vision of the Founding Fathers. Their frank and rigorous discussions in Sirte and Lome and the enthusiasm that followed the signing of the Constitutive Act indicated bright prospects for Continental integration to be attained.

While the prospects for establishing the UG may appear obvious, it could be naïve to under-estimate the obstacles and enormous challenges that lie ahead. The most obvious, and often talked about, is the scourge of conflicts. This has been “an Achilles” heel for the Continent. Conflicts bleed our people and traumatize our societies. They have resulted in considerable loss of life and untold suffering. They create bitterness and hatred among the people. They have forced the people to vote with their feet thus rendering them as refugees or internally displaced. They have generated the phenomenon of child soldiers' with its severe implications, not least of which is to deprive these children of their right to be children. In some cases it degenerates to the level of sectarianism and xenophobia whereby primordial elements such as ethnicity, religion and region become a basis for hostility, or African people considered to be “the others” are discriminated against and sometimes even assaulted.²⁶

Conflicts, in general, have undermined many of the achievements the Continent has made since independence, impaired the potential for growth and development, and undermined the opportunity for integration. Every effort has to be deployed in eradicating this scourge. At the same time, it has to be recognized that cooperation and integration is the most effective means of preventing, containing and resolving conflicts. Another challenge that has to be surmounted relates to poverty and the weak economic base of our countries. Many of the initiatives are handicapped because of lack of resources and sufficient capacities. Often times we are constrained to overcome the initial costs of integration that would allow us to reap the long-term benefits. By remaining preoccupied with basic issues of subsistence we are disabled in terms of launching into innovative and advanced processes that could facilitate the integration processes. Thus, Africa's

²⁶ The Rwandan crisis and the genocide that took place is a case in point. The Darfur crisis is also a case study in this regard.

absorption of the new information and communication technology is poor, infrastructure is lacking, productivity is low, and the productive base tends to be homogenous. All these, however, can be overcome, with determination and concerted efforts.

To some extent, it is the poverty factor that is sometimes taken advantage of by the powerful actors in the global system to further fragment us and undermine the integration efforts. For example, it is not uncommon for rich international partners to promote trading arrangements that separate one region or country from the other. The fact that we desperately need the preferential treatment or the support from these partners sometimes compels us to succumb to such divisive measures. There is also the challenge of sustaining the momentum of the integration process. The Sirte and Lome processes represent an opportunity in which positive forces for reinvigorating the historical desire for continental integration prevailed. The Sirte Declaration was essentially a compromise between those who felt the need to expedite the process and move towards fuller integration and those who were somewhat cautious and preferred to move more gradually. It is this compromise that needs to be sustained, a compromise that takes us beyond the hurdles of initiation. In this respect, the Constitutive Act of the African Union is a reflection of that middle, ground and the necessity to maintain the momentum. At the moment, it may not be the most perfect instrument, but it retains a usefulness in assisting the launching process. It still needs refinements and additions, which is a challenge, which will have to be overcome in the near future.²⁷

²⁷ Report Of The Chairperson On The Strengthening Of The Commission Dpc.Ex.Cl/328 (X). Tenth Session Of The Executive Council, January 2007, Addis Ababa, Ethiopia

CHAPTER THREE

FRAMEWORK OF AN AFRICAN UNION GOVERNMENT

In proposing an analytical framework for the Union Government, it is recommended that the UG will merely be a political transitory arrangement towards the United States of Africa. As such, it should consist of a more focused Assembly, and an Executive Council backed by an effective Permanent Representatives Committee, and result-oriented Specialized Technical Committees as may be required. In addition, the UG would have a Commission with an Executive authority on matters totally or partially delegated by Members States. Most importantly, it would be supported by more effective parliamentary and judicial systems, as well as efficient continental financial institutions and an adequate participatory framework for non-state actors.

The framework of the Union Government would therefore be based on African countries' shared values and common interests, and on strategic focus areas. The rationale of referring to these shared values and common interests is based on the intricate notion that in order for any integration agenda to succeed, irrespective of what form it takes, it is necessary to identify amongst interested State parties values and interests common to all. This will further enhance the collaborative effectiveness of the integration process, as all those who share the same values and interests will find it easy to agree on virtually all-schematic areas of the collaboration. The same principle will also apply to the strategic focus areas in the envisioned UG.

All African countries can claim membership of the Union Government based on the principle of strict adherence to its rules. In addition, countries with certain population make up could be given the status of Associate Members of the Union Government. In that context, relationships with the African Diaspora will be given special attention.

3.1 SHARED VALUES AND COMMON INTERESTS

Shared values and common interests have both structural and psychological elements which ensure collective self-development of the African people under condition of good

governance at continental level and constructive engagement with the rest of the world. They serve as the basis of mutuality and reciprocity in Africa's self-discovery and the strength of a re-invigorated Pan-African institution. These shared values and common interests are contained in such basic documents as the Kampala Document of the CSSDCA, the OAU Declaration on unconstitutional change of government, the Constitutive Act of the African Union and the NEPAD Action Plan.

3.1.1 SHARED VALUES

Shared values are drawn from both African culture and societies, and from articulated commitments of African countries to meet the challenge of coping with historical legacies and current realities. In that connection, it would be important for African countries to be guided by the following values²⁸:

- (a) Adherence to the rule of law
- (b) Popular participation in governance
- (c) Respect for human rights and fundamental freedoms
- (d) Transparency in public policy making

Shared values are also based on cultural commonalities among African countries and people. While African societies are diverse, solidarity, humanness, and protection of the weak are their main characteristics at all levels (within the family, among neighbours, and in the community), as well as pride in common African ancestry. These values are translated into strong kindred ties and communal cohesiveness. Although Africa has, for well known historical reasons, lost some of its self-sustaining characteristics, it is of paramount importance to use the shared values, as a leverage towards closer unity among and joint purpose of action by African countries and people. They should particularly be used at the national, regional and continental levels to devise and implement developmental policies and programmes that are people-centred and well rooted in African traditions. Thus, through a skillful combination of indigenous and modern

²⁸ As contained in the CSSDCA Declaration, issued in Kampala Uganda

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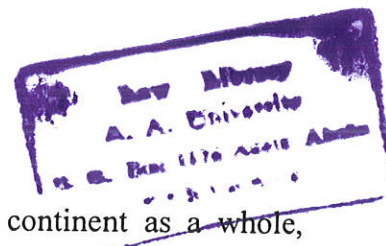
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knowledge systems, African countries could devise well thought-out and creative strategies for the transformation of their social structures, political systems, and economic organizations to the present world environment so that the continent as a whole would successfully “claim the 21st century”.

3.1.2 COMMON INTERESTS



Common interests are derived from the challenges facing the continent as a whole, namely its over-dependence on the external world and the under exploitation of its enormous development potentials at national, regional and continental levels. They are clearly elaborated in such seminal documents as the Lagos Plan of Action, the Cairo Agenda for the economic and social development of Africa, and the NEPAD Action Plan.

The challenge of over-dependence is critical in areas such as agriculture, human development, science and technology, industry, trade and finance. Over several years, food security has become a matter of great concern for many African countries²⁹. Frequent climate-related disasters (drought, deforestation, and desertification), as well as food losses, have led to chronic food shortages in several countries, thus making them dependent on external food supply. Actually, with Africa's several sovereign entities, most of them mini-states, national self-sufficiency in food is not a feasible option for many of them.

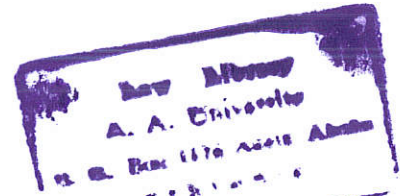
There is also a strong dependence on expatriate technicians and technology; and an attachment to export-led growth strategy, emphasizing the production and export of raw materials and agricultural primary commodities in exchange for manufactured goods, imported from developed countries, mostly former colonial powers, thus jeopardizing the industrial development prospects of these countries.³⁰

²⁹ Cheik Anta Diop, *Black Africa: The Economic and Cultural Basis of a Federal State*, Chicago: Lawrence Hill Books, 1984 at pg 35

³⁰ Christian Aid (2005). The economics of failure. The costs of 'free' trade for poor countries. London at pg 17

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Trade is another example of Africa's overdependence. The terms of trade are increasingly moving against Africa, which has no alternative but to accept declining earnings from a rising volume of exports while simultaneously having to pay more for its imports. Financing Africa's development is also largely dependent on inflows of financial resources from Official Development Assistance (ODA) and mounting external indebtedness, in spite of recent debt relief measures.

Over dependence also occurs in the education and health sectors. The education sector is largely dependent on external assistance for such basic requirements as trained teachers, classrooms, textbooks, scientific equipment, and appropriate curricula. The same applies to the health sector when addressing trans-borders chronic diseases, such as malaria, tuberculosis and Acquired Immune Deficiency Syndrome (AIDS), but also regarding attempts to provide safe drinking water and elementary sanitation facilities.³¹

The challenge of under-exploitation of Africa's development potential is also compelling. In this respect, some studies have shown that because of its geographical position, a United Africa would have the unique potential of producing most types of food and agricultural produce throughout the year, thus putting an end to the chronic cycle of drought-related food shortage in some parts of the continent. Africa being well endowed with natural resources, the concerted exploitation of the energy potential of its ecological zones would not only make many countries less energy dependent, but also enable the industrial processing of the huge mineral resources of the continent.³²

Infrastructural development is also a major challenge. Africa being the second largest continent in terms of size and population, the building of the required transport and communications infrastructures would make it one of the most competitive markets and, potentially, the most attractive in terms of returns on investment. Finally, given the increasing wave of globalisation, and the emergence of strong regional, political, economic and trading blocs in other continents, the challenges of overdependence and

³¹ Ibid

³² Ibid

under-exploitation of its potentials have increased the marginalization of the continent in world affairs. Thus, the goal in pursuing development through a common interest perspective is to bring about human progress in Africa; restore human dignity to the African people and give Africa a voice in the global order; promote progressive African social and political values and defend the African personality. In doing this, there is need to develop the human potentials of Africa and include the people in the development process. It should be realized that what unites Africans far surpasses what divides them as a people. It pays to speak and act with one voice than with many voices. In unity, Africa can realize and achieve a lot. The global system is such that a dismembered and balkanized continent will have weak bargaining strength on all scores. An all-embracing common interest of the African continent is, therefore, "to build its collective capability and capacity to act as a stakeholder and not an outsider in world affairs, and to fully participate in shaping international norms and agenda". This should indeed be an important and over- arching objective of the Union Government.

3.2 STRATGIC AREAS OF FOCUS OF A UNION GOVERNMENT

Strategic areas of focus and their rationale, which are consistent with the objectives of the Strategic Framework of the African Union Commission, are essentially derived from the shared values and common interests. They are aimed, in the short, medium and long run, at making the process of establishing the Union Government irreversible. A number of areas are contained in proposals made at the independence of various African countries in the late 50s and early 60s and, subsequently, in the Lagos Plan of Action, the Abuja Treaty, the Constitutive Act of the African Union, the Kampala Document of CSSDCA, and the NEPAD Action Plan.

Proposals on areas of focus were also made in the course of the meetings of the two Committees of Heads of State and Government³³. Overall, a consensus seems to have

³³ "The Committee of Seven Heads of States Chaired by the President of the Republic of Uganda, on the Proposal of the Great Socialist People's Libyan Arab Jamahiriya; July 2005, Sirte, Libya" and "The Committee of Seven Heads of States, Chaired By President Olusegun Obasanjo of The Federal Republic Of Nigeria, January 2006, Khartoum, Sudan."

emerged on some areas around which a Union Government could, progressively, be operating at continental level. It is understood that in each area, a subject matter to be covered could either be at continental level or concurrently with Union Members. The focus areas indicated below are not in any order of priority. Similarly, the suggested subject matters under each area are merely indicative and illustrative. With the above understanding, the suggested strategic areas of focus should be as follows³⁴:

a. Continental integration:

- Promote cooperation and exchange of experience among the RECs
- Liaise with Ministries in Charge of integration in Union Members States
- Prepare the meetings of the Assembly
- Assist Union Members, as may be required, in building national constituencies for the Union Government and the United States of Africa.

b. Education, Training, Skill Development, Science and Technology:

- Undertake, with the support of the RECs, identification and promotion of potential continental centres of higher learning, primarily with an African focus as well as Higher Technical Training and Research Centres, and encourage their specialization
- Promote the exchange of students and academic staff among universities and research centres of Union Members
- Harmonize curricula at primary and secondary school levels among Union Members
- Organize exchange of experiences among Science and Technology Research Centres of Union Members, with a view to identifying and promoting continental specialized centres
- Promote research on matters of particular relevance to Africa, such as desertification, coastal erosion, infectious diseases and biotechnology

c. Energy:

³⁴ These Strategic Areas of Focus are merely indicative and merely depicts strategic areas as contained in various documents of the OAU/AU.

- Undertake, with the support of the RECs, a consolidated inventory of hydropower resources of Union Members, taking into account their integrated utilization (i.e. electricity, irrigation, navigation, fisheries, etc.)
- Expand, with the support of the RECs, ongoing interconnection of electrical grids in Union Members
- Promote standardization of power supply equipment in Union Members
- Harmonize energy policies and plans among Union Members
- Rehabilitate regional or continental solar energy centres, and promote continental research centres on other renewable energy resources

d. Environment:

- Organize the exchange of experiences, among Union Members, on environmental issues of particular relevance to Africa, (coastal erosion, desertification, deforestation, etc.)
- Prepare and leading continental campaigns against such natural disasters like flooding, land-slide, volcanic eruption, locust invasion, etc.), and mobilizing international assistance
- Promote Africa's position at world gatherings, on matters already agreed upon by the Assembly, with respect to world environment issues (e.g. ozone layer, biodiversity, Kyoto Protocol, etc.)
- Build consensus on emerging issues, as may be required by evolving matters with respect to environment

e. External Relations:

- Promote Africa's views at world gatherings on matters already agreed upon by the Assembly
- Build consensus among Union Members on emerging subjects, as may be required by the evolving world situation
- Establish formal relationships between the Union Government and the African Diaspora
- Establish and/or strengthen Union Government Permanent Representations to other selected countries, international and regional organisations

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f. Food, Agriculture and Water resources:

- Formulate a continental food policy and self-sufficiency programme and encourage food trade among Union Members, with the support of RECs
- Implement the existing strategy for water resources development and management.
- Organize exchange of experiences and information on agricultural production techniques, including water resources development and irrigation schemes, agricultural equipment and inputs
- Make an inventory of agricultural equipment production centres and facilitate the trade of such equipment among Union Members
- Harmonize Agriculture policies among Union Members

g. Gender and Youth:

- Promote gender mainstreaming,
- Promote youth employment,
- Encouraging the participation of the youth in activities of direct relevance to the union Government
- Organize continent-wide campaign against child labour, particularly in military activities

h. Governance and Human Rights:

- Strengthen the existing legal and regulatory systems in all Member States.
- Promote economic and corporate governance
- Promote political governance
- Promote the independence of the African Court for Human rights

i. Health:

- Coordinate the continent-wide fight against major trans-borders diseases (Malaria, HIV-AIDS, Tuberculosis, Cholera, etc.)
- With the support of the RECs, identify and promote specialized medical centres
- Harmonize Health policy among Union Members

- Promote research on tropical diseases

j. Industry and Mineral Resources:

- Implement, with the support of the RECs, identified continental projects in the First United Nations Industrial Decade for Africa with respect to basic industries (i.e. metallurgical industries, mechanical industries, and chemical industries)
- Facilitate, with the support of the RECs, Intra-African trade in basic and intermediary industrial products
- Harmonize industrial policies of Union Members

k. Money and Finance:

- Manage the Finance of the Union
- With the support of RECs, harmonize custom duties and taxes among Union Members
- Organize consultations with Central Banks, the African Development Bank (ADB), and the Private Sector on modalities for setting up An African Investment Bank
- Organise consultations, in collaboration with the African Association of Central Banks (AACB), national and multinational Central Banks, on modalities for achieving a Monetary Union, creating an African Monetary Fund and establishing an African Central Bank
- External borrowing
- Domestic borrowing
- Mobilise support for the return to Africa of flight capital

l. Peace and Security:

- Coordinate the work of the existing Peace and Security Council
- Constitute an African Stand-by Force (ASF), the establishment of which is currently underway.
- Oversee the use of the ASF on the basis of the existing Non-aggression Pact and Common Defence Policy of the Union, as may be decided by the Chief Executive of the

Commission and/or the Assembly; including for the purpose of United Nations Peace Keeping Operations

m. Social affairs and solidarity:

- Promote the establishment of social security systems in member states
- Put in place support systems for the most vulnerable segments of the society
- Encourage continent-wide research on African traditional solidarity

n. Sport and Culture:

- Encourage research on culture and development in the African context
- Strengthen African participation in world sport bodies and events, and promote Union flag
- Implement the African Language Action Plan of 1987
- Organise cultural exchanges among Union Members
- Encourage cultural exchanges with the African Diaspora
- Promote African Culture outside the continent

o. Trade and Custom Union: Free Movement of Persons, Rights of Residence and Establishment:

- Identify existing bottlenecks in RECs on the unification of external (i.e. non African) custom tariffs, with a view to removing them in order to pave the way for increased intra- African trade
- Promote Africa's position at world gatherings, including World Trade Organization (WTO), on matters already agreed upon by the Assembly, with respect to international trade
- External Trade
- Build consensus among Union Members on emerging issues, as may be required by the evolving international economic situation, by liaising with Trade Ministers of Union Members
- Immigration into the Union
- Immigration within the Union

- Rights of Residence and Establishment

p. Infrastructure, ICT and Biotechnology:

- Implement, with the support of the RECs, transcontinental transport and communications projects already identified in the programmes of the two United Nations Transport and Communications Decades for Africa (1978-1988, and 1989-1999 respectively)-UNTACDA, and in the NEPAD Action Plan; including the mobilization of resources from within or outside the Union
- Organize experiences sharing platforms for Union Members on the dissemination of the Use of NICTs as an essential development tool
- Harmonize Transport and Communications Policy of Union Members
- Promote, with the support of the RECs, the creation of continental Air and Maritime transport companies

3.3 LEGAL, INSTITUTIONAL AND PROGRAMMATIC IMPLICATIONS

3.3.1 The Need for Change

The design and functioning of a Union Government as a tool for integration would have far-reaching implications for existing institutions and programmes of the African Union. It would affect their orientation, structures, powers and functions, their inter-linkages and boundaries of activities as well as their respective mandates. The changes would first and foremost impact on all the existing organs of the African Union. These include the Assembly, the Executive Council, the Commission, the Permanent Representatives Committee (PRC), the Pan-African Parliament (PAP), and the Economic, Social and Cultural Council (ECOSOCC). It would also affect institutions currently in gestation such as the Specialized Technical Committees (STCs), the African Courts of Justice and Human Rights. It will, accordingly, require a revision of the Constitutive Act.

The requirements of a Union Government would call for an early establishment and functioning of the pan-African financial institutions. The changes would impact on other

institutions and programmes at regional, national and sub-national levels particularly, the Regional Economic Communities (RECs) and the New Partnership for Africa's Development (NEPAD). The establishment of the Union Government would also require a sustainable financing mechanism.

3.3.2 Implications for the Non-Financial Organs of the Union

Specialized Institutions

Existing specialized technical institutions of the African Union and their activities will be fully integrated into the mainstream of the commission. They include the African Civil Aviation Commission, the African Rehabilitation Institute, the African Telecommunications Union, the Pan-African Institute of Education for Development, the Pan-African Postal Union, the Supreme Council for Sports in Africa and the Union of African Railways³⁴. Adequate financial and personnel resources should be provided for in the budget of the Union government to enhance the capacity of these institutions.

3.3.3 Implications for the Constitutive Act

The Constitutive Act is the basic law of the organization that embraces the constitutive and regulative rules of the organization. All organs and institutions of the Union derive their structure, powers and functions from this enabling law. Currently, the Constitutive Act, shares much in common with the previous OAU Charter as an enabling framework for intergovernmental cooperation. Some organs of the AU play more or less the same role in the AU as did their equivalent in the OAU.

In the framework of a Union Government, the revision of the Constitutive Act should first aim at facilitating the establishment of a "Community Domain" in which Union Members have agreed to delegate, partially or totally authority to a continental body, and the endorsement of these principles by Union Members. The revised Constitutive Act must reflect this common understanding. The revision should also reflect the implications

³⁴ These are specialized agencies of the AU, which are institutionally and financially independent of the AU, but are under the auspices of the organization.

on the organs and institutions. With the exception of the Assembly, the Constitutive Act easily lends itself to adaptation as it gives the Assembly the mandate to, where appropriate, delegate to or modify the powers, structures and functions of the Executive Council, the Specialised Technical Committee and the PAP.

3.3.4 Implications for The New Partnership for Africa's Development (NEPAD)

African leaders in their decisions and pronouncements have consistently maintained that NEPAD is the socio-economic programme of the AU. However, the relationship between NEPAD and other AU organs and instruments has persistently been characterized by ambiguity and uncertainty, and NEPAD operates as an institution rather than a programme, with its own structures, including the Heads of State and Government Implementation Committee (HSGIC). The overall impression is that of coexistence rather than integration. This led the HSGIC in the Abuja meeting in November 2002 to clarify the situation as follows:

(a) Although NEPAD Secretariat could, through the African Union, seek copyright and trademark protection for NEPAD's name and logo, this would not necessarily confer parallel legal status on NEPAD, since it is not a separate organization from the African Union.

(b) The relationship between the AU and the NEPAD Secretariat was to be characterized by closer coordination, cooperation and collaboration. NEPAD Secretariat was to be regarded as an interim arrangement, especially to service the HSIC, pending the completion of the transition processes at the African Union.

(c) Pending the eventual take-over of NEPAD by the African Union structures, African countries and development partners should continue to make financial and other contributions to support the NEPAD Secretariat to enable it to discharge its mandate.

(d) At the appropriate time in the future, NEPAD should be fully integrated into the AU structures and processes.

Consequently, a study was prepared on the "Integration of NEPAD into the African Union Programmes and Processes"³⁵. The conclusions of the Study were further reformulated in a Draft Decision that was submitted to the AU Summit of July 2003 in Maputo, Mozambique and was subsequently adopted as the Maputo Declaration. The Declaration mandated the Heads of State and Government Implementation Committee of NEPAD, supported by the NEPAD Steering Committee and the NEPAD Secretariat, to continue their vital work of ensuring the implementation of NEPAD programmes. Furthermore, it mandated the Chairperson of the Commission of the African Union, in consultation with the Chairperson of the HSGIC, to undertake the following, with such flexibilities as may be required:

- i. establish appropriate linkages between the NEPAD Steering Committee with the relevant organs of the African Union, including the Permanent Representatives Committee and the Executive Council in order to ensure integrated inputs into the work of the HSGIC;
- ii. enter into a temporary host agreement³⁶ with the Government of the Republic of South Africa with a view to providing the NEPAD Secretariat with legal status of an AU office operating outside the African Union Headquarters for a transitional period of three (3) years with effect from July 2003, or until such time as the relevant structures of the African Union are fully operational, whichever comes first
- iii. formalize the working relations between the AU Commission and the NEPAD Secretariat, especially for programme co-ordination and harmonization
- iv. align and harmonize the conditions of service, rules of recruitment and accountability with those of the AU Commission

³⁵ "Study On Formal Integration Of The New Partnership For Africa's Development (Nepad) Into The African Union (Au) Structures And Processes", June 2003

³⁶ A "Host Agreement" is an agreement between the AU and an AU Member State, which regulates the immunities and privileges as well as other operational and legal aspects of an Organ or office of the AU in the territory of a Member State.

v. Develop a sustainable funding mechanism for NEPAD after its complete integration into the AU structures and processes.

The Chairperson of the Commission was also requested, in consultation with the Chairperson of the HSGIC, to appoint the Executive Head of the NEPAD Secretariat during the transitional period of three years during which, the integration process would be completed. In addition, the Chairperson was authorized to encourage voluntary contributions from all Member States of the African Union towards the operational budget of NEPAD and its structures during the transitional period. Despite the above-mentioned decisions of the HSGIC and the mandate given to the Chairperson of the African Union Commission, the status quo remains. In the meantime, NEPAD has developed more or less independently, with marginal reference to the Commission and other AU organs.

Obviously, the Union Government Project imposes the early implementation of the Maputo Decision. NEPAD must be part of the executive competence of the Commission either integrally or as a subsidiary organ. The lines of authority must also run through the Executive Head of the Commission in consultation with the HSGIC. To that effect, NEPAD programme should be aligned with the strategic focus areas, and its content should be derived from what will be delegated by the Commissioners³⁷ responsible for these areas. With this arrangement, NEPAD would become a Specialized institution of the Commission for the execution of projects in the "Community Domain" as may be delegated by the Commissioners concerned.

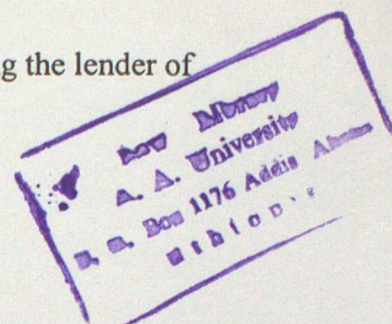
3.3.5 Implications for the Continental Financial Institutions

a) Background and Justification

In all the 53 Member States of the African Union, national or multinational Central Banks conduct monetary policy. Invariably, the stated objective of these central banks has been the achievement of "price stability". To that end, they:

³⁷ This refers to Commissioners as described in Article 20 of the Constitutive Act of the African Union.

- i. issue national or multinational currencies
- ii. act as banker to member states' governments
- iii. act as banker to domestic commercial banks, including being the lender of last resort;
- iv. manage international reserves; and in some cases
- v. supervise and regulate the financial systems.



Unfortunately, available data suggest that the majority of African central banks have difficulties to influence the creation, the allocation and the cost of bank credit by commercial banks. Given that situation, collective efforts should be made to strengthen the conduct of monetary policy at the regional and continental levels. Part of Africa's current efforts to accelerate the creation of an appropriate institutional framework for monetary and financial integration includes the establishment of an African Central Bank.

These efforts are in line with a request by African leaders, which has been a recurrent theme since the creation of the OAU in 1963. The request to establish an African Central Bank with the introduction of a single currency in Africa was reiterated in the Abuja Treaty. The Constitutive Act of the African Union goes further and requests not only the establishment of a continental central bank, but also the establishment of an African Monetary Fund and of an African Investment Bank.³⁷

Since the early 1980s, bank financing of government deficits in Africa has, in most cases, led to a crowding out of the private sector. With limited access to bank credit, private sector activity has remained low in most African countries. The lack of bank credit has also been a limiting factor to the development of rural economic activities and the building of economic and social infrastructures. According to a World Bank Report, with the exception of Botswana, Africa has the majority of countries where "getting bank credit is most difficult" in the world.³⁸ Because of that, credit to the private sector

³⁷ Specifically Article 19 of the Constitutive Act

³⁸ Christian Aid (2005). *The economics of failure. The costs of 'free' trade for poor countries.* London. Also see the Commission for Africa (2005). *Our Common Interest.* London (March)

averages 20% of GDP in Africa, while in the top ten countries (including Botswana) Bank credit is relatively easy to obtain and tops 120% of GDP. The following factors may have contributed to low levels of credit in African countries: First, government-owned development and commercial banks, created after independence are either closed or privatized, following a request by the multilateral organizations, including the Bretton-Woods institutions³⁹.

Second, commercial banks claim that bank credit remains low in Africa mainly because of weak corporate governance and poor regulatory and supervisory structures. In addition, the banks claim that the size of non-performing loans explains also why they do not provide credit to the private sector in African countries. Other factors that limit access to credit in African countries include:

- (i) the underdevelopment of the financial sector;
- (ii) the lack of saving deposits resulting from the large spread between the lending and the deposit interest rates and;
- (iii) capital flight.

Moreover, in most African countries, the non-banking financial institutions such as pension funds and insurance companies have had so far no significant impact on the total supply of financial services. Reflecting all these factors, African financial systems are presently unable to finance long-term projects for the majority of their customers.

b) Ongoing efforts at promoting Policies towards Monetary Integration in Africa

Monetary cooperation arrangements already exist in the West African Economic and Monetary Union (UEMOA), and the Central African Economic and Monetary Community (CEMAC). In addition, the Common Monetary Area (CMA), to which Lesotho, Swaziland and Namibia belong, uses the South African Rand, as common currency for its members. The Common Market for Eastern and Southern Africa

³⁹ i.e. the World Bank, the International Monetary Fund etc

(COMESA) and the Economic Community of West African States (ECOWAS) are also working towards monetary integration. To that end, they have already established macroeconomic "convergence criteria". COMESA has also developed guidelines for the harmonization of procedures in the capital and money markets.

The African Development Bank (ADB) plays an important role in the financing of important development projects in Africa. Because of that, it is an encouraging example of financial cooperation among African countries. There are also development banks, which are supporting the development efforts of all regional groupings in Africa. Despite the existence of some monetary cooperation arrangements and development-oriented financial institutions in Africa, there is still an important financing gap that must be filled. The creation of the abovementioned continental financial institutions is expected to fill at least part of that gap. The Association of African Central Banks (AACB) has made considerable efforts to accelerate the process of the establishment of the African Central Bank. In that context, a number of technical meetings have been organized to determine the requirements for Africa's full monetary union. It is important to recognize that this is not an easy task as there is empirically, with the exception of the European monetary union, no other example of such a union among politically independent countries.

Borrowing from the European example, the AACB has recommended that the establishment of a continental central bank be preceded by the existence or of well-functioning regional monetary authorities. Furthermore, prior to the achievement of full regional monetary integration, Member States are required to have met a set of macroeconomic "convergence criteria". It is also required that each region creates conditions for the formation of "optimum currency areas" before a continental central bank can be established. In this respect, it should be noted that the conditions for the formation of an "optimum currency area" are achieved when there is total factor mobility between countries. The main convergence criteria spelt out by AACB, as a set of conditions for a successful monetary union in Africa by 2015 or thereafter include:

- (i) Fiscal criteria: outstanding stock of public debt to gross domestic product (GDP) ratio not exceeding 60% and no use of monetary expansion for government deficit financing;
- (ii) Price stability criteria: inflation target of 5% provided GDP growth is over that percentage;
- (iii) Labour market flexibility;
- (iv) Exchange rates criteria: Setting up regional Exchange Rates Mechanisms (ERM) and liberalisation of current and capital accounts before fixing the exchange rates irrevocably; and
- (v) International reserves: Adequate international reserves to cover a minimum number of months of imports.

Nobody can dispute the importance of harmonizing the conduct of macroeconomic policies before achieving full monetary integration. Nonetheless, it is also important to admit that even in Europe, for example, macroeconomic convergence was not achieved before the introduction of the creation of the Euro-zone in 1999.⁴⁰

Furthermore, in the situation prevailing currently in Africa, particularly the lack of factor mobility, it is not realistic to require the different African regions to create the conditions for optimum currency areas in the medium to long-term. Such a requirement might postpone the achievement of Africa's full monetary integration indefinitely. There are convincing arguments for the justification and the acceleration of the establishment of the continental financial institutions.

⁴⁰ See background notes on the establishment of the European Union (EU), *European Union Journal of International Law* (2007) Vol. V at pg 273

First, in the current- world economic and financial order, characterized by the free movement of capital, the conduct of an independent monetary policy by small open economies whose currencies are pegged to a convertible or a basket of convertible currencies at fixed exchange rates, has become totally ineffective.

Second, there are clear indications that, in Africa, the transmission mechanism between monetary policy decisions taken by the national or multinational central banks and the provision and control of bank credit is almost inexistent. This implies that the instruments of monetary policy used by national or multinational African central banks are ineffective.

c) Steps towards the Creation of the African Financial Institutions

(i) African Central Bank (ACB)

The functions of the African Central Bank (ACB) will evolve over time. The ACB will first have limited functions during an initial period of approximately 7-10 years, during which it will be entrusted with the supervision of national and multinational central banks of Union Members. It will also manage a pool of international reserves, assisting countries with balance of payments problems, including those resulting from the sharp increase in the prices of oil products. With respect to the supervision of the national and multinational central banks, the ACB will be involved in the formulation of monetary policy of national and multilateral central banks with a view to accelerating the process of financial sector reform in Union Members. The ACB will work concurrently with national and/or multinational central banks, in the financing of budgetary deficits of the governments. The ACB will encourage a close co-operation among Union Members in the formulation of budgetary and monetary policies so as to contribute to the improvement of overall macroeconomic management.⁴¹

⁴¹ African Union (2006). A Study on an African Union Government. Towards the United States of Africa. Addis Ababa

The ACB will take measures to increase the volume of bank credit in Member States of the Union. To that end, national and multinational central banks will be encouraged to pursue their efforts towards making more effective their financial systems. It will also require that the national and multinational central banks are influenced, through a combination of actions aimed at mobilizing domestic saving, as well as granting and distributing bank credit in the economies.⁴²

The development of capital markets, which is embryonic in various parts of the continent, will also receive special attention. The ACB will assist all the national and multinational central banks in their efforts at maintaining a stable exchange rate between their respective currencies and those of the main trading partners. The objective here will be to increase or maintain the competitiveness of the African economies. For member states to continue to benefit from external finance, the ACB will give a particular priority to the effective management of the external public debt. To this end, the ACB will work concurrently with Union Members for the management of multilateral and private debt. The bilateral debt will continue to be the exclusive responsibility of national and multinational central banks.⁴³

A common pool of international reserves will be put in place by the ACB which will accept deposits from national and multinational central banks representing annually 5% of the coverage of total money supply in foreign exchange. This coverage will increase every year up to 35% of total money supply during the seventh year. The objective will be to maintain it constantly at that level. After the initial period of 7-10 years, the degree of progress achieved in the physical and economic integration of African countries, in particular in factor mobility, will be assessed. Once an African common market has been created and factor mobility fully achieved, the ACB will become a full-fledged central bank responsible for other central banking functions, including that of currency issue.

⁴² Ibid

⁴³ Ibid

The ACB will then issue a single African currency to be called AFRIC⁴⁴. At the same time, however, the ACB will continue to share certain functions with national and multinational central Banks. For example the determination of the needs for liquidity, or more precisely bank credit, will be shared with the national or multinational central banks. Before the introduction of a single currency in Africa and the transfer of other functions to the ACB, a technical assessment would have been undertaken by the African Monetary Fund (AMF) to determine the exchange rates between the various national or multinational currencies and the single African currency.

The capital of the ACB will come from the subscriptions of the African national and multinational central banks, which will be its shareholders. The central banks, which would like to open "Special Accounts" at the ACB, will be authorized to do so. The resources maintained in these Special Accounts will be used to provide financial assistance to member states in emergency situations. For example, countries experiencing short-term balance of payments problems resulting from sudden fluctuations in commodity prices could benefit from such assistance under conditions to be determined.

(ii) The African Monetary Fund (AMF)

The AMF will be created at the same time as the ACB. Its principal function will be to coordinate the payments and settlements of the transactions resulting from commercial exchanges between the national and/or multinational central banks. It will thus act as a multilateral system of swap arrangements between central banks. Thus, debts and claims between Union Members will become debts and claims between them and the AMF. In practice, this will make the AMF a continental "Clearinghouse ". Within the framework of its operations, the AMF will create a "Unit of Account" called the AFRIC, which will be used as a basis for the calculation of the exchange rates at the time of the introduction of an African currency. This will constitute the basis for the convertibility of African currencies against one another. To carry out its activities, the AMF will have a fund consisting of "subscriptions to the capital" by Union Members in national currencies. The

⁴⁴ May be determined by any other denotation as nominated by the Assembly of Heads of State on the recommendation of the recommendation of the Association of Central Banks and under the auspices of the STC responsible for finance.

amount of each country's subscription will be determined on the basis of a formula, which will take into account the GDP, the level of net foreign assets (available international reserves) and the size of the population. Apart from these subscriptions, the AMF will be authorized to receive grants, which will be held in separate accounts. With its resources, the AMF will grant loans to Member States that may have difficulties of payments vis-a-vis other African countries. The conditions for AMF lending operations will be determined in the context of a feasibility study to be conducted prior to the establishment of the AMF.

The AMF will also be responsible for the macroeconomic surveillance (monitoring) and the supervision and regulation of financial institutions operating in member states. As regards the function of macroeconomic surveillance, the AMF will evaluate annually the evolution of all the macroeconomic aggregates of Union Members. The principal objective will be to liberalize the movements of goods, people and capital among all Union Members. The AMF will recommend measures to solve balance of payments problems of member countries, which are not related to their external debt servicing obligations. For the supervision and regulation of the banking system, the AMF will be responsible for the authorization of establishment to African banks as well as to foreign banks desiring to conduct business in Africa. In that context, the AMF will redefine the standards, which should govern the operations of the financial institutions in the continent. During an initial period of about seven years, the AMF will share its supervision function of the banking systems with the existing national or regional institutions. Once the ACB begins to issue a common currency for all African countries, the AMF will become solely responsible for all activities related to macroeconomic surveillance and the supervision and regulation of the financial institutions.

(iii) The African Investment Bank (AIB)

The creation of the AIB is intended to meet, to the extent possible, the existing financial needs of Africa's economic integration process. Its objective would be to make the African private sector more competitive. To that end, it will give priority to the African enterprises, which have a multinational vocation. To accelerate the process of physical

and economic integration of the African economies, the AIB will finance projects which facilitate intra-African trade and, in general, enhance mobility among African countries. In particular, the AIB will finance the multinational projects for the development of transport and communications, energy and other infrastructures. The AIB will also finance private sector projects having a regional or continental impact and aiming at promoting economic integration and the creation of employment at a large scale.⁴⁵

The AIB will provide guarantees to the African private sector if it enters into "joint ventures" with foreign investors. This will hopefully contribute to attracting an increased volume of Foreign Direct Investment (FDI) into Africa. The AIB will also support the modernization of small farming activities by granting credit lines to micro-finance institutions operating in rural areas or to groups of small farmers. To finance its activities, the AIB will have a capital to which all Union Members will voluntarily subscribe. With the participation of the African private sector in its capital, the AIB will have promoted private and public sector partnership. Efforts would be made to mobilize resources from the African Diaspora at the time of the establishment of the AIB. During an initial period of about five years, the AIB will, as much as possible, restrict its capital to shareholders from Africa and the African Diaspora only. After that period, the possibility of allowing foreigners to participate in the capital of the AIB may be examined.

3.3.6. Implications for the Regional Economic Communities

In the 1980s and 1990s, different models of RECs were attempted in the regions, following the adoption of the LPA and the Abuja Treaty. The advent of the African Union gave new energy to this Pan-African quest for continental integration, and, inevitably, as has been the case in the past, the role and contribution of the RECs come under scrutiny. Over the years, the objectives of regional integration came to entail the following elements: the integration of social, institutional and physical infrastructure of member countries; the integration of African markets through, for example, the establishment of free trade areas, custom unions or even a common market; the integration of the production structures of member countries; the opening of borders

⁴⁵ E.g. basic industries projects

among member countries through measures for "free movement of people", the coordination of policies of member countries in areas targeted for integration effort. The instruments, programmes and activities of the RECs, are all aimed, in one way or another, at advancing integration in some or all of these areas, based on the principles of collective self-reliance and self-sustenance which, like the RECs phenomenon, also evolved in the course of the 1970s.

There is currently a number of bodies at sub-regional level that could qualify as RECs, but the AU only recognizes eight as its building blocks: the Economic Community of West African States (ECOWAS), the East African Community (EAC), the Common Market for Eastern and Southern Africa (COMESA), the Southern African Development Community (SADC), Arab Maghreb Union (AMU), the Community of Sahel-Saharan States (CEN-SAD), the Economic Community of Central African States (ECCAS), and the Inter-Governmental Authority on Development (IGAD)⁴⁶. Efforts to establish the RECs in the 1980s based on the Final Act of Lagos were successful as five of such bodies were created in that period. The problem in the 1990s was that instead of rationalizing and harmonizing these bodies, which in some cases were already duplicating one another, the status quo was reinforced and consolidated, resulting in the problem of duplication and overlapping of membership.

On the positive side, however, the 1991 Treaty Establishing the African Economic Community (known as the Abuja Treaty) re-energized the RECs, resulting, among others, in ECOWAS revising substantially its founding statute. The Southern African Development Cooperation Conference (SADCC) refocused from "cooperation" to integration in the form of SADC, the PTA transformed into COMESA, and IGAD emerging from the Inter-Governmental Authority on Drought and Desertification (IGADD) whose primary briefs were the challenges of drought and desertification.

⁴⁶ It should be noted that the membership of these RECs are over-lapping in nature, which has inevitably had a negative effect on the integration process on the continent

PERFORMANCE ASSESSMENT OF THE REC'S

Progress in African integration is mixed across sectors, regional economic communities, and Member States. There have been some strides in trade, communications, harmonization of macroeconomic policy, and transport and communications. Some RECs made significant progress in trade liberalization and facilitation (COMESA); in free movement of people (ECOWAS); in infrastructure (SADC and EAC); and in peace and security (ECOWAS and SADC). Overall, however, there are substantial gaps between the goals and achievements of most RECs, particularly with respect to the degree of intra-community trade, macroeconomic convergence, production, and physical connectivity.

Seven of the eight RECs have as their objective the establishment of some form of an economic community⁴⁷. The EAC, by contrast, intends to culminate in a political federation of its three member states (Kenya, Uganda and Tanzania). When it comes to performance, it would seem that ECOWAS, COMESA, SADC and the EAC are the most advanced of the eight, with IGAD, CEN-SAD and ECASS somewhere in the middle, and UMA trailing behind. Not only do the key organs of the four best performing RECs meet regularly; they also have strategic plans in place, and publish their annual reports, which seem to suggest some institutional stability and commitment on their part with respect to their obligations and programmes. As for IGAD, CEN-SAD and ECASS, it would seem that they are just beginning to take institutional shape, with legislative instruments and programmes being put in place to give direction to their work. UMA, by contrast, is still battling to find shape as a REC.

There are some factors which account for these variations in the performances of the eight RECs. They include, among others, political stability in member countries, interstate rivalry, capacity of key institutions in member countries, the degree of openness of society and democratic participation at national level, and common language in some cases (EAC with Swahili for example). Finally, even where there is no common

⁴⁷ With some putting more emphasis on the free trade and common market dimensions of this objective

language, culture or historical experience among the member states, shared values and common interests can and should hold the REC together.

CHAPTER FOUR

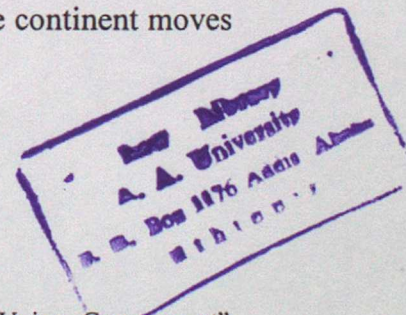
TOWARDS A FUNCTIONING UNION GOVERNMENT

4.1 Challenges

After only five years of transiting from the OAU to the AU and, soon, to the proposed Union Government, it is impossible to ignore the relevance of problems encountered towards a meaningful continental integration under the aegis of the OAU to the effective functioning of the AU/ Union Government. A potential challenge will likely border on how to forge consensus on what form of Union Government we want and how to proceed: a confederacy, a union, a federal or "50%+1" Government system?⁴⁸ An early agreement on this will be important to help fortify the Union against inevitable future problems.

Related to the above will be the issue of political commitment to the ideals of a workable continental Union. Commitment must also be displayed by member states toward honouring their financial obligations to the Union's institutions especially to the Pan-Africa Parliament, which will be indispensable to the cause of representing the peoples voice in the Union, as over dependence on external funding will be counterproductive to the very logic of the Union Government in itself. Again, the extent to which member states be willing to sacrifice some measure of their sovereignty for the common good of the continent will be determined by their level of commitment to the ideals of the Union. Further, we must attempt to explore what options there are to bring non-complying member states to the letter and spirit of the AU Constitutive Act. These are questions that would need to be answered as promptly and as firmly as possible as the continent moves toward the United States of Africa.

⁴⁸ "Africa and the Challenges of the Changing World Order: Desirability of a Union Government" Conclusions and Recommendations of the Conference on the "Desirability of a Union Government". November 2005, Abuja, Nigeria



4.1.1 Decision-making

The Banjul report⁴⁹ proposes the maintenance of the status quo in respect of the powers and functions of the Assembly, i.e., the Assembly remains “the highest decision making organ” of the Union Government. Interpreted in the context of the expected graduation of the PAP from an advisory to a legislative capacity, this proposal could potentially present enormous decision-making challenges. The critical question is: Would the Assembly have the authority to reverse legislative decision(s) already made by the PAP? This question is particularly pertinent considering the expected review of the PAP Protocol, which is expected to facilitate the adding of legislative powers to the PAP. Equal attention should also be given to the implications of the executive functions of the Executive Council for the legislative functions of the PAP.

4.1.2 Political Will

The document on the United States of Africa, published by the African Union (2006) claims: ‘it should be realized that what unites Africans far surpasses what divides them as a people’.⁵⁰ Yet, this did not translate into a political will to overcome their divisions and move toward strengthening African unity. Therefore, what African leaders need first and foremost is the political will to make the tough decisions and the courage and determination to implement them. In reality, the decision to establish the United States of Africa is the latest in a long series of decisions and agreements, most of which were never implemented. Some of the agreements on regional integration are more than 30 years old, but they are still lagging behind for lack of genuine will to implement them. The slow pace of integration and lack of solidarity is a reflection of the unwillingness of many African leaders to place the fundamental interests of the continent above national or even personal interests in order to move decisively toward genuine unity and cooperation.

⁴⁹ Decision Assembly/AU/Dec (123) On The “Study On An African Union Government Towards The United States Of Africa”, July 2006, Banjul, The Gambia

⁵⁰ African Union (2006). A Study on an African Union Government. Towards the United States of Africa. Addis Ababa at pg 18

The lack of political will is better illustrated by the fate of key documents adopted over several decades and that should have strengthened African unity and laid the foundations for the United States of Africa. Think of the Lagos Plan of Action (LPA), adopted in 1980 and which was quickly forgotten in favor of the IMF and World Bank-imposed structural adjustment programs (SAPs). Think of the African Alternative Framework, which was among the first documents to level a devastating critique of SAPs in 1989. Think of the Arusha Charter for Popular Participation in Development and Social Transformation, adopted in 1990 and which contains a blueprint for citizen participation in the design and implementation of public policies within a democratic and participatory decision-making process. Think of the 1991 Abuja Treaty, for the creation of the African Economic Community. This list is not exhaustive. Yet, when some African leaders proposed NEPAD in 2001, it made a scant mention of these documents. Instead, it attempted to rehabilitate failed and discredited neoliberal policies.

The realisation of the aspiration of a Union Government calls for more than material solutions. Given the range of factors that can militate against this critical and historical process Africa needs strong political resolve, will and leadership to realise the objective of a Union Government. A starting point would be the alignment of national programmes and institutions to the AU vision and aspirations as well as the ratification and implementation of all instruments and policies adopted by the continental body. More importantly, compliance with the normative frameworks of the Union Government by Member States is critical.

4.1.3 Financing

The effective operations of all the institutions of the proposed Union Government require a comprehensive financing and resourcing strategy, while, Member States need to demonstrate more political will to commit resources to the Union Government. Their non-payment of OAU/AU dues should not be allowed to characterise the envisaged UG.

Ordinarily, Africans do not understand the rationale or the reason why their leaders run around the world to beg for money to finance projects and programmes of the African

Union whereas rich countries rush to Africa to take away raw materials of all kinds, amongst other things. It is still more difficult for ordinary Africans to understand why they live in such abject poverty, in a continent endowed with a vast natural resource base that the rest of the world has been stashing away for centuries. Any serious strategy to finance the UG must begin by finding answers to Africa's paradoxical equation, especially because the fact that some African states keep to themselves immense natural resource wealth which had been there for millennia before the creation of these States, while other States, poorly endowed by nature, live in perpetual want, appears like injustice in the eyes of a growing number of Africans.⁵¹

As indicated above, it is quite possible to generate vast resources to self-finance the UG from proceeds that States that join the UG will draw their natural resource base. A Pan-Africanisation of 15% of these resources (10% for the UG and 5% for each of the RECs to which the country concerned belongs) has been carefully studied by some segments of African civil society⁵². It is a powerful measure, which can lead to the generation of a lot of money, and offers many other advantages. Its implementation calls for the putting in place, for each natural product in Africa's top- and sub-soil, of Marketing Committees drawing membership from the three political entities concerned, namely, the Member State, the REC and the UG. These three entities will benefit from an international balance of power in favour of Africa that has never before been equaled.

The states concerned will emerge victorious at all levels. For, since the balance of power in negotiations is in Africa's favour and applies to the entire continent, it will lead to gains in negotiations that no State might obtain negotiating alone. In some cases, those gains might be more than the 15% that the State in question had accepted to transfer to the UG and its REC. Also, the sudden emergence of China on Africa's economic scene constitutes one right setting for applying this measure.

⁵¹ African Union (2007) Rev. 1, Interim Standing Committee of the Economic, Social and Cultural Council (ECOSOCC) of the African Union: 'Contribution of ECOSOCC to the Grand Debate on the African Union Government' at pg 13.

⁵² Ibid

Pursuant to the above and in order to further create vast financial resources for self-financing of the UG, it is suggested that a Union Tax be imposed on all insurance policies within Member States as well as a tax on air tickets for travels between Member States and between Africa and the rest of the world.

Judging from the above assertions, it can be conveniently stated that the UG could provide the right setting to mobilize substantial resources to self-finance the union. But for this to happen, Member States should depict stronger political will as apparently money is not what is the most lacking in Africa, but it is the will to generate it and to direct it towards the satisfaction of the continent.

4.2 Prospects and proposals

4.2.1 Background

In 2005, following proposals to create ministerial portfolios in the Union, the AU set up an ad-hoc committee of Heads of State and Government⁵³ to study and make recommendations on creating “a stronger continental machinery” that could help the Union work on “agreed strategic areas of focus.” After carefully examining Africa’s economic and political situations (in consultation with members of the academia, technical experts, representatives of the Diaspora, Civil Society Organizations, executives of the Regional Economic Communities (RECs), and media practitioners from across the continent) the committee concluded that “the necessity for eventual Union Government is not in doubt.”

Consequently, a study to analyze the mechanics of a possible Union Government for the continent was launched in 2006. After reviewing the report of this study at its 8th Ordinary session in Addis Ababa in January 2007⁵⁴, the Assembly of Heads of State and Government decided to dedicate its next ordinary session in Accra, Ghana in July 2007

⁵³ Decision Assembly/AU/Dec.69 (Iv) On The Proposals Of The Great Socialist People’s Libyan Arab Jamahiriya; January 2005, Abuja, Nigeria

⁵⁴ Decision Assembly/AU/Dex.156 (vii) on the Report of the 9th Extraordinary Session of the Executive Council on the Proposal for the Union Government, Held In November 2006 in Addis Ababa, Ethiopia, January 2007

solely to the Grand Debate on the Union Government. Towards that goal, it further tasked the Union's Executive Council to study and come up with appropriate recommendations on the Union Government for deliberations during the July Summit. The purpose of both exercises is to undertake in-depth discussions on the continent's integration agenda "in order to determine where we are, where we are going and when and how to get there." The Union Government, when adopted, is expected to be a transitory political arrangement towards an eventual United States of Africa. It will not in itself constitute the United States of Africa! However, its adoption would have become the single most important stage towards the creation of the United States of Africa.

As a start, the Union Government is expected to focus heavily on strengthening its Regional Economic Communities, the development and restructuring of key AU institutions. Among the proposals expected to be of immense importance to the discourse on the UG, are the granting of legislative powers to the Pan African Parliament, the merger of the African Court of Human and Peoples Rights with the African Court of Justice, among others

4.2.2 African Union Organs

a) The Assembly

The Assembly of the Union "composed of Heads of State and Government or their duly accredited representatives" should retain its present structure. Therefore, it should continue to exercise its current functions as the highest decision-making organ. Under the Union Government, the main responsibility of the Assembly would be to review the state of the Union in the strategic areas of focus. Special sessions may be needed to discuss issues arising from emergency situations.

In addition, in view of the imposing demand on the Union Government, there may be need to consider allowing a longer tenure for the President of the Assembly for stability and otherwise. The functions of the President of the Assembly will be to promote and facilitate the establishment and consolidation of the Union Government, and to coordinate the work of the Assembly with the Commission. The President of the

Assembly would also be the unique spokesperson of the Union at world or other special summits. In that regard, it would be desirable that the function of President be on a full time basis and could be assigned to a Former Head of State or any distinguished African with necessary background and track record for the job.

b) The Executive Council

Under a Union Government, the Executive Council should prepare decisions on the strategic areas of focus for the Assembly. Thus, the character and nature of the Council would depend on the main thrust of the agenda of the Assembly. The Council will thus have different thematic configurations depending upon the issue under consideration. Consequently, depending on the prevailing circumstances in individual Union Members, the Executive Council would not be composed exclusively of Ministers of Foreign Affairs, the main objective being to ensure an adequate preparation of the meeting of the Assembly around the agreed strategic focus areas.

c) The Specialized Technical Committees (STCs)

Specialized Technical Committee should be established as and when strategic focal areas are dealt with at the level of the Union Government. They will work in close collaboration with the departments of the Commission. They should provide inputs to the Executive Council on their areas of specialisation and should meet at least once a year. They should also, on behalf of the Executive Council, monitor programme development and implementation. It is recommended that the STCs be composed of senior officials with relevant expertise in the areas concerned. Consideration could also be given to different locations of the STCs.

d) The Permanent Representatives Committee (PRC)

According to the provisions of the Constitutive Act⁵⁵, the PRC is “composed of Permanent Representatives to the Union and other plenipotentiaries of member States”, with the responsibility of preparing the work of the Executive Council and acting on the

⁵⁵ Article 55 of the Constitutive Act of the African Union

Executive Council instructions. In practice, however, the PRC has been increasingly involved in additional tasks. This evolution was the result of the infrequency of meetings of the Executive Council and the fact that the STCs were not in place. Under the Union Government arrangement, the PRC would concentrate more on the substantive preparation of the meetings of the Executive Council.

e) The Commission of the African Union

While the legislative and judicial functions of the Union Government are clearly assigned to the PAP and the Courts of Justice and Human Rights respectively, the executive one is shared among the Assembly, the Executive Council and the Commission. Under the Union Government, the Commission will be entrusted with the implementation of decisions, programmes and projects in the Strategic focus areas, which will constitute the "Community Domain". This would represent a clear departure from the prevailing situation, whereby the Commission functions as a Secretariat, contrary to the intended objective when establishing the African Union. There is therefore need, besides its functions, to review the Governance framework of the Commission.⁵⁶

In order to implement the already approved Strategic Framework of the Commission, the sharing of competencies between the Union Government and Member States would be based on the principles of subsidiary and incrementalism. Consequently, the Union Government will concentrate exclusively or concurrently with Union Members on the "Community Domain" and the Commission should accordingly be assigned the executive authority and responsibility to effectively implement the related activities. Within the "Community Domain" a strengthened Commission would function with delineated and reserved or exclusive competencies in areas of continental action, which will form the core of its mandate. The Commission should, therefore, be restructured according to the strategic focus areas, and the office of the Chairperson should be strengthened accordingly. By and large, the Commission should have the following functions:

⁵⁶ Report of the Chairperson of the AU Commission, H.E. Prof. Alpha Oumar Konare, on the Strengthening of the Commission Dpc.Ex.Cl/328 (X). Tenth Session Of the Executive Council, January 2007, Addis Ababa, Ethiopia

- (i) initiate laws by drawing up proposals and draft legislations for the consideration of the Assembly, The Court of Justice and Human Rights, the Executive Council, Pan African Parliament (PAP) and regional or national Parliaments,
- (ii) manage and implement AU policies and programmes,
- (iii) manage and report on AU programmes and budgets,
- (v) promote the strategic objectives of the Union at the continental and international levels and act as a vehicle for the acceleration of social and economic integration in the continent, and
- (vi) monitor and report on the implementation of decisions of the Union Government, and on the state of integration on the continent on a periodic basis

In order to perform these activities effectively, the Commission must strengthen its linkages to other contributors to the integration process, particularly the RECs. Furthermore, the Chairperson⁵⁷, as accounting officer and legal representative of the Union Government for the implementation of the decisions and programmes in the "Community Domain" should have non-renewable fixed term tenure of seven years. This would enable him/her to focus on performance and avoid any possible distraction. Similarly, the Chairperson should be involved in the process of appointing his/her Deputy and the Commissioners⁵⁸, together with the Assembly, in order to lend authority to his/her position and foster cohesion in support of unity of action. In this perspective, for a given higher level position, a regional list of 3 or 4 names should be proposed by the Council to the Assembly, taking into account the rules of geographical representation, gender balance and skills profile, with the Chairperson allowed to participate in the process. For the Union Government to have maximum impact in the Community Domain, the Chairperson should exercise full managerial functions with respect to all high-level personnel.

The new functions of the Commission will require (i) its strengthening, particularly by providing the appropriate skills and adequate resources, (ii) streamlining its relations with

⁵⁷ Herein referred to as the Chairperson of the Commission

⁵⁸ The current practice as contained in the Rules of Procedure of the Assembly and the Executive Council, is that the Deputy Chairperson and the Commissioners are elected without the input of the Chairperson.

other organs, (iii) improving its Governance framework, (iv) strengthening its relations with RECs and Union Members, and (v) establishing appropriate relations with relevant non African countries, institutions or organizations, including granting special status and relationship to states and groups of African descent, as indicated earlier.

f) The Pan-African Parliament (PAP)

The Protocol of the Pan-African Parliament⁵⁹ provides for a review of the protocol five years after its entry into force regarding its operation and effectiveness and the system of representation in the Pan-African Parliament, with a view to ensuring that the objectives and purposes of the protocol, as well as its underlying vision, are being realized and that the protocol meets the evolving needs of the continent. The requirement of a Union Government anticipates this waiting period and the review should be carried out as soon as possible.

Provisions for direct elections to the PAP must thus be put in place and the Protocol must be reviewed to allow for forms of proportional representation. The PAP should have broad powers in exercising democratic oversight over the institutions of the Union Government and share with the Assembly and the Executive Council usual parliamentary functions with respect to the budget of the Union Government. Appropriate mechanisms should be devised for the PAP to liaise closely with Regional and National Parliaments. This will build solidarity and bring the regional and national representatives aboard, especially with respect to vital issues for the continent. In addition, the PAP should also be provided with adequate financial and human resources, including the use of ICTs so as to set up a viable parliamentary mechanism.

g) The Economic, Social and Cultural Council (ECOSOCC)

The status, powers and functions of the Economic, Social and Cultural Council, and its relationship with other organs of the Union, especially the Pan-African parliament would allow for greater participation of the people in the activities of the Union Government. Within this context, ECOSOCC must be a bridge not only between the three levels of the

⁵⁹ Particularly Article 25 of the Protocol establishing the PAP

Union. It must also play its full consultative role in the decision making process of the Union Government. With that role, it would, no doubt, foster a more inclusive, participatory and democratic society. Specifically, the provisions with respect to the advisory function of ECOSOCC must be revised to ensure that the organ is consulted before vital decisions are made. ECOSOCC should guarantee diversity in the memberships of various bodies of this organ. Elections and representation in ECOSOCC should reflect and guarantee the broad diversity of social and economic interests required to support the Union Government.

h) The Peace and Security Council (PSC)

As a continental organ, the PSC should also be provided with adequate resources in the framework of Union Government. The Union Government, as provided for in the Solemn Declaration and a Common African Defense and Security Policy⁶⁰, shall seek to facilitate the current initiatives of the Peace and Security Council (PSC), particularly in the development of an effective holistic Conflict Prevention Mechanism through the establishment of a viable Conflict Early Warning and Early Response System for the whole continent. In this area, the thrust shall also include the harmonization of ongoing national and regional initiatives. In furtherance of this quest for a peaceful and stable Africa, the Assembly of Heads of States preparatory to the emergence of the United States of Africa should approve all pending policy instruments, framework and guidelines that will enhance the operationalization of the PSC Protocol.

i) The African Commission for Human and People's Rights (ACHPR)

The role of ACHPR should be re-affirmed as an organ of the African Union. In that context, the current aspects of complementarities between the Commission and the African Court of Court of Justice and Human Rights should be retained and highlighted. It is further recommended that adequate support to the regular meetings of Commissioners be provided and that their appointment should be based on skills that are commensurate with their continental mandate.

⁶⁰ See also the African Union Non-Aggression and Common Defence Pact

j) The African Courts of Justice and Human and People's Rights

The Union Government requires the immediate establishment and empowerment of a judicial system of the Union. The Union Government will require an effective and independent court system to provide the necessary institutional synergies needed for the institutionalization of democracy, accountability and good governance. To that effect, the envisaged Court of Justice⁶¹ and the Court of Human Rights are essential organs. It is envisaged that Union Members would have access to the Court of Justice, while the African Court of Human Rights would be accessible to individuals.

With respect to the African Court of Human Rights, it should be noted that its efficiency will depend greatly on the effectiveness of the African Commission on Human and Peoples' Rights. The two institutions play a complementary role, with the Commission processing the cases to be tried by the Court, and the Court exercising its authority to issue legally binding judgments. Their complementary nature was firmly reinforced in the protocol that established the Court of Human Rights, particularly in its Articles 4, 5(3) and 6.

It is envisaged that the Court will have appellate jurisdiction over all cases that emanate from within a Member State as long as the issues contained therein fall within the purview of the strategic areas of focus of the UG.

⁶¹ Article 18 of the Constitutive Act

CHAPTER FIVE

OBSERVATIONS, CONCLUSIONS AND RECOMMENDATIONS

5.1 Observations and Conclusions

It is imperative that the evolution of a UG takes into cognisance contemporary global forces and pressures as well as the emerging African frameworks for responding to these. Undoubtedly, the evolvement of the Union Government will impact on, and in turn will be impacted upon by, both internal and external factors. Furthermore, the increasing geo-strategic significance of Africa in the world today requires the continents sustained responses and engagement with the international community, notwithstanding the centrality of foreign policy for a state. This function is critical to helping build and promote consensus on common values, aspirations and interests, and in promoting adherence to common positions and standards developed in areas of common interest.

The successful pursuit of the objectives of the Union Government is dependent on the ability of African to adopt common approaches towards common global challenges. The following are some of the main global factors, forces and pressures that Africa has had to confront and contend with:

- (a) the historic imperative for democratization of institutions of global governance and economic interactions, especially the United Nations and its Security Council, as well as the current asymmetrical world trade regime;
- (b) the scourge of international terrorism and the particular policies of some countries to impose certain types of responses that might run counter to Africa's own home-grown common positions, and international legal regimes that reflect the needs and realities of our continent;
- (c) international agendas, such as the Blair Commission for Africa, that in some respects tended to ignore the fact that the African Union had adopted its own NEPAD that was endorsed by the United Nations General Assembly, amongst other important multilateral institutions;

- (d) global warming and climate change, including the depletion of the ozone layer and the rather tentative responses by the industrialised nations that contribute disproportionately to the causes;
- (e) the continued militarization in and around Africa by world powers, most of them erstwhile colonizers of Africa and its peoples;
- (f) the unconscionable crippling debt burden, especially given the fact that United Nations Conference on Trade and Development (UNCTAD) confirms that African countries have on the whole paid back more than they borrowed;
- (g) the challenge that Morocco's withdrawal from participating in the AU continues to pose for a more complete unity of Africa; and
- (h) the marginal integration of the Diaspora in the Affairs of the AU and the evolving Union Government.

Based on the foundation laid by the OAU and the AU for cooperation of African countries in addressing common concerns and interests, the tradition of evolving common positions and practices in response to the world and international relations is commendable, and needs strengthening within the framework of the Union Government.

5.2 Recommendations

Based on the above considerations, the following recommendations can be made:

On the Conceptual Framework

It is recommended that:

1. the African Union clarifies the type of Union Government envisaged;
2. the Assembly should avoid adopting the name "United States of Africa" because the abbreviation of USA already exists; the name chosen should have strategic significance for the Union;
3. the name Union Government of Africa (UGA) is proposed
4. as a matter of urgency, a depository for all the information generated throughout the AU system be created; and

5. all measures be taken to encourage and promote inclusive participation of the African peoples in the debate and processes towards the creation of a Union Government.

On Judicial instruments

It is recommended that:

- the Assembly should initiate the process to review all AU instruments, especially the Constitutive Act of the African Union and the PAP Protocol, in order to fast track the transition of the PAP to a full legislative body;
- each institution of the Union reviews its mandate and functions in relation to all the other institutions, and makes recommendations on how their powers can be enhanced within the framework of an evolving Union Government of Africa; and
- the alignment of structures, mandates and functions of all AU organs and institutions be undertaken as the basis for the Union Government.

On Institution Building

It is recommended that:

- the AU should fast-track the functioning of all organs that will act as the building blocks for the creation of the Union Government; and
- NEPAD, the APRM, and all other similar specialized institutions be incorporated as Specialized Technical Institutions of the Union Government, with appropriate levels of autonomy, power and resources.

On the Road Map

It is recommended that:

- a realistic timeframe be established to facilitate the evolutionary process of the AU towards the creation of the Union Government, and that it be approved at this Summit;
- the Assembly sets a limit of two years for internal review by each institution of the Union, to draw up concrete strategies and proposals on how their mandates, structures, capacities, resources can be enhanced to align them with the requirements of the evolving Union;

- the ongoing process of rationalization and harmonization of the AU institutions and RECs, as well as their policies, programmes and projects be accelerated and finalized within the shortest possible period; and
- the Assembly mandates a review within the next three years, to assess progress made, identify obstacles to the process, and develop strategies and measures to address them.

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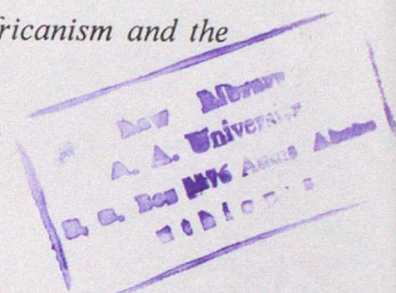
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Declaration

I, the Undersigned, declare that this thesis is my original work and all the sources of materials used for the thesis have been duly acknowledged.

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