

International Institute for Justice and Development



**International Conference on the State of
Affairs of Africa (ICSAA)**

October 26th, 27th, and 28th of 2006

**STRENGTHENING DEMOCRATIC INSTITUTIONS THROUGH
THE AFRICAN UNION: AGENDA FOR STABILITY AND
DEVELOPMENT IN AFRICA**

**Kwame Frimpong
Department of Law
University of Botswana**

1. Introduction

Over the years, Africa's role within the international arena has constantly been negative. Historically, as result of many factors, Africa did not have the opportunity to assert itself. Post independence has equally not benefited the continent in any meaningful way. The general perception is to dismiss the continent as a lost case. Different groups, organisations and individuals have adopted different approaches in trying to address the seemingly intractable problems of the continent and yet still we do not seem to be making any progress.

We cannot run away from the fact that undemocratic governments have largely contributed to the many conflicts bedeviling many countries and regions on the African continent, with the ripple effects reaching far and beyond the borders of the affected countries and the regions in question. Of late, it has become fashionable to focus solely on democracy and good governance as the panacea for solving Africa's perennial problems. While democracy *per se* can contribute to the solution, the paper argues that we need more than mere cosmetic democracy to deal with the problems on the continent. It requires a concerted effort on behalf of all member states and all the peoples of the continent to come to a new realisation that Africa come of age and is ready to free itself from all the negative factors. This is the concept of the African Renaissance.

In this paper, the author challenges the status quo and argues for the intervention of the African Union through the compulsory and firm application of the African Peer Review Mechanism (APRM) and the New Partnership for Africa's Development (NEPAD). This is to ensure that all participating countries on the continent adhere strictly to the mandates of the Constitution of the African Union, African Peer Review Mechanism (APRM) and the New Partnership for Africa's Development (NEPAD).

The author holds the view that the choice of voluntariness by member states in the application of the APRM does not help in addressing the core cause of the problem facing the continent. It is not gainsaying that whatever takes place in one country ultimately has repercussions in others on the continent, Under those circumstances, it is no longer an internal problem for any country to try to hide behind the concept of “internal affairs”.

2. Africa We Knew - The Glorious Past

The fact that Africa has over the centuries been plagued by different kinds of problems cannot be disputed. Among the difficult experiences are the slave trade, colonialism, post-independence dictatorial rule, armed and ethnic conflicts, and mismanagement of the economy and natural resources. In the same way, the fact that Africa has had proud historical past is also not in dispute. Some writers such as Wilks (1970), Boahen (1986), and Ayittey (1991) have documented the various great kingdoms of the past, some of them generating into empires. Among these are the Asante, Dahomey, Kongo, Sokoto, and Zulu, just to name a few. Our concern therefore is that, in our search for solutions to our endemic problems, we should not glorify our past, but rather look for the most basic and useful policies and practices that can be identified from our historical past and utilised for the benefit of the peoples of this wonderful continent. We cannot and should not attempt to go back to the past solely for sentimental considerations, since practically that is not only impossible, but also for the fact that such an exercise will have no real benefit for the people on the continent. It is in this context that we should focus our attention on our search for a new direction in solving our problems.

One issue that is deeply rooted in the traditions of all African countries is the kinship system. As Ayittey (supra.) points out, in Africa, unlike the West, "... many studies have shown that kinship is the articulating principle of social organization as a whole, and the basis of social integration". Bell (1987) supports this view:

Kinship relations were the main relations of production. They were also the juro-political and ritual relations. In addition, they governed the way in which societies organized and used the resources of the environment, notably the land, and spatial interaction between members (in Ayittey, *ibid.*).

Flowing from the kinship system is the communal nature of the African peoples, the concern for one another. The practical nature of this was found in our land tenure system. This was expressed in the case of *Tijani v. Secretary of Southern Nigeria*:

The next fact, which it is important to bear in mind in order to understand the native law is that the notion of individual ownership, is foreign to native ideas. Land belongs to the community, the village or the family, never to the individual (1921).

The *mafisa* system that is practised in the southern African region is one of those practices, customs or traditions in Africa that identify with the needs of the less fortunate members of the community. Colonial and imperial rule, however, destroyed most of the customs, traditions and practices. There is no doubt that a strong correlation exists between landlessness and poverty on the continent. With colonial rule came the plantation system and the exploitation of the peoples

of the continent. Land grabbing by a few privileged individuals is now the order of the day in nearly all the African countries.

All these new developments are inconsistent with the Africa we knew, which prided itself about its commitment to communal system of kingship relationship. Any lasting solution to African problems should be rooted in policies that are human centred and seek to address the needs of the peoples of the continent. Most of the post-independent policies have been focused on the selfish interest of the few elitists in power. This travesty of justice should be reversed.

3. Nature of African Governments

Colonial rule did not develop or nurture democracy for the African continent. Post independence has neither developed viable democratic institutions. While we concede that democracy is a western institution, it cannot be disputed that the goals are appropriate for the citizenry and are therefore of universal application. Any politician or academic who claims that there is something known as African brand of democracy does therefore not persuade me. Most often than not, those who make such assertions are merely trying to hide behind dictatorial rule (Frimpong, 1999a). Democracy in different environments may have some variations in terms of practical application, but cannot fail to focus on the interest of the citizens it seeks to govern and protect.

With the possible exception of a few countries, most African governments since independence have been characterised by:

2.1 Lack of genuine democratic rule

The continent has witnessed so many instances of one party rule, either *de jure* or *de facto*, military dictatorship, pseudo-democratic rule, a claim of divine right to rule – where leaders stay in power indefinitely, and the domination of the elite in government

2.2 Absence of free and fair elections

There are serious misconceptions regarding what constitutes free and fair elections. There is therefore an urgent need to define what constitutes free and fair elections. The current state of affairs does not augur well for the development of democracy on the continent.

What do we see as a common pattern on the African continent? A military person comes to power. He controls everything, the guns, and the media, determines who is in charge of the body he establishes to conduct elections, the police, the judiciary, etc., and later turns around to organise elections on his own terms. He subsequently claims to have won the elections and therefore allegedly transforms himself as a democratic leader. This, not only smacks of hypocrisy and mocks at democracy, but is also both an insult to and a betrayal of the whole concept of democracy. Those, especially from the international community, who declare such elections as free and fair, must re-assess their role in the declaration of election results. One need not be a political scientist to see the fallacy of such free and fair elections.

The danger rests on the notion that free and fair elections take place only during the day(s) of voting. However, that is erroneous. As Frimpong (1998, 1999a), has argued, elections are a process, culminating in the voting, which takes place at a later stage. All the stages must have elements of free and fairness. The determination of free and fair elections based on the voting day is itself unfair and entrenches dictatorial rule in Africa.

2.3 Politics of Political Vindictiveness

Those who do not support the ruling party are seen as the enemies of the government and are hunted and destroyed like vermin. Viable opposition is therefore an exception rather than a rule. It is important for African leaders to recognise the important role played by the opposition. The opposition should not be seen as an enemy to the ruling party, but is there to assist and ensure that the government is accountable and live up to its promises to the people.

2.4 Absence of Judicial Independence

In many African countries, the judiciary virtually becomes part or an arm of the executive. Their Independence is therefore compromised. However, one needs a predictable legal environment for true democracy and the defence of fundamental rights to function and flourish.

2.5 Absence of Rule of Law

Governments act with absolute impunity and lack of respect for the rule of law. They do so simply because they see themselves as not accountable to anyone. The normal checks and balances advocated by earlier proponents of the democratic institutions do not exist. The governments are both the executive and the judiciary. However, the operation of the rule of law is essential for both the government and governed. "The rule of law is...an essential factor for the effective functioning of the society and the economy" (OECD, 1995).). "If the rule of law is respected in a country the popular notion of separation of powers is put into practice" (Frimpong, 1998). This in turn provides the nation with "a predictable legal environment, with an objective, reliable and independent judiciary" (OECD *ibid.*).

2.6 Weak Media

At the Southern African Universities Social Science Conference (SAUSSC) meeting in Lusaka in 1997, we came out with this resolution concerning the media in Africa:

The media in Africa is controlled either directly or indirectly by the state and therefore lacks the necessary freedom and independence to discharge its responsibility for the development of and sustenance of democratic governance (Frimpong & Jacques, 1999).

There has been the tendency for African governments to overreact to the publication of any news that they consider unpleasant. The media in the process becomes the enemy of the government. The need for the media to be independent and operate in absolute freedom is an essential element for any true democracy. Press freedom, however, should be exercised sensibly and objectively. It does not call for sensationalism and unwarranted attacks on the personal lives of individuals. It calls for maturity in assessing what is newsworthy. However, the government should not be the arbiter of what is publishable or not. That will amount to censorship, which should not be entertained, as it is inimical to the practice of democracy. The courts, if prepared to exercise their true function in society, should handle that. The yardstick should be the interest of the nation. A newspaper should put political, personal interests and other considerations aside in determining what to publish.

The practice of governments rushing members of the media before the courts with lawsuits and prosecutions is, however, not the answer. Just as the presence of the opposition is good for the development and practice of democracy, the media plays a vital role in the nurturing of democracy. It

is not surprising that it is now referred to as the fourth arm of the government.

2.7 Contribution of the Educated Elite

I hold the view that there have been many instances that the intellectual community has failed African continent by aligning themselves with dictatorial regimes. The Southern African Universities Social Science Conference (SAUSSC) at its meeting in Lusaka in 1997 turned its attention to this very issue. It adopted a Resolution, which strongly condemned this practice:

the intellectual community in Africa has not sufficiently addressed itself to the social, economic and political problems on the continent through appropriate research and dissemination of scientifically informed conclusions and recommendations and has on a number of occasions compromised its role in society by identifying itself for selfish interest with the undemocratic governments (Frimpong and Jacques, *supra*).

More often than not, the dictators on the continent have thrived with the connivance of the educated elite. The members of the legal profession who are expected to defend the defenceless are the ones who draft their constitutions and proclamations for them. We find a number of Professors leaving the universities to work under military dictators.

2.8 Contribution of the International Community

The international community is noted for double standards when it comes to the defence of democracy on the continent. It is not clear whether they

are truly supporting democracy or not. While Abacha was challenged, Mugabe is hunted others in similar situations were or are allowed to remain in power. The most glaring example is Museveni in Uganda. It seems their support or criticism depends on their own economic and social interests. Mobutu of former Zaire offers a classic example. His dictatorial and corrupt practices destroyed his country. This was known throughout the world, nevertheless the West continued to support him in power. In general, the international community has been known to prop-up dictatorial governments in Africa. However, if the leader falls foul to the policies of the Western governments, then such a leader is constantly attacked. The barrage of criticisms against Mugabe of Zimbabwe is another example of the double standards employed by the West. There are many such dictators on the continent who have been in power for about the same period as Mugabe, but they are not only tolerated, but also pampered with red carpets and state visits.

The double standards by the international community tend to send the wrong message to the countries involved. The dictators are encouraged to tighten their grip on power. It can also have serious consequences for democratic movements in the affected countries. In some of the countries, the world has been inundated with the so-called success stories of the regimes (Frimpong, 1997a) and this has meant that the opposition is seen as the opponents of this so-called success story. They become the bad guys. In the process, viable opposition, which can nurture true democracy, is destroyed.

3. Consequences: The State of African Politics and Development

- I. General Mal-administration
- II. Absence of Good Governance
- III. Economic Mismanagement
- IV. No Accountability
- V. Corruption
- VI. Mass Unemployment
- V. Social Services not provided or neglected: education, health services, water, electricity, and housing
- VI. Majority of the population living in abject poverty
- VII. General Instability: At Internal and Regional Levels – Sierra Leone, Liberia, Zaire, Sudan (Darfur Region), Uganda, Burundi, Rwanda, etc.
- VIII. Refugee problems at a large scale - Africa is estimated to have the largest number of refugees in the whole world (Ayittey, supra)

Ayittey (ibid) sums it up in what he describes as **Africa's Deepening Crisis**:

The 1980s have been described as a "Lost Decade" for Africa. Once a region with rich natural resources as well as bountiful stores of optimism and hope, the African continent now teeters perilously on the brink of economic disintegration, political chaos, and institutional and social decay. The continent's unrelentless slide into economic doldrums is now common knowledge.

While we may concede that others have contributed to the African crisis, especially through the debt burden, the substantial cause is the result of unconstitutional governments, dictatorial rule, corruption and general mismanagement by Africans themselves. Our leaders have been practising the politics of catapulting themselves into power through the barrel of the gun, or

entrenching themselves in power for as long as they choose. We witnessed this though Mobutu in Zaire, Rawlings in Ghana, Siad Baare in Somalia, Museveni in Uganda, etc.

Furthermore, the problem can be seen in the types of economics that the East Africans call "*wabenzi*" - "men of Mercedes Benz" or what the Nigerians term "*bazongas*" (raiders of the public treasury) (Aiyithey, *ibid.*). The practice of looting money from the coffers of the nation and stacking them in foreign accounts in Switzerland, New York, London and other Western capitals has bred the continent to a state of total bankruptcy. The revelation that Abacha of Nigeria stole nearly \$1 billion from the nation's coffers is just the tip of the iceberg of what other leaders have done or are still doing.

It is this state of affairs that we must seek to reverse. What role can the African Union play in this? What about the concept of African Renaissance?

An important aspect of the African Renaissance is the recognition that Africans must try to find solutions to their own problems. As Aiyithey (*ibid.*) points out:

...the solutions to the African crisis lie in Africa itself; in its own backyard, so to speak. They do not lie in the corridors of the World Bank or the IMF; nor in the inner sanctum of the Soviet presidium. These solutions entail returning to Africa's own roots and building or improving upon them

We suffer from what one may describe as inferiority complex. We would prefer to seek foreign solution to our problems rather than rely on own expertise. Rarely do we feel comfortable with what we can do ourselves. In addition, in our reliance on foreign ideas we pay a very heavy price.

"By 1989, the total number of expatriate consultants and experts employed by the World Bank alone to work to solve Africa's economic problems had reached a staggering 80,000, costing cash-strapped African governments between \$1 to \$4 billion annually in fees and compensation. This was probably a case of "too many cooks spoil the broth." Less than one-half of one percent of these management consultants were native Africans (Ayittey, *ibid.*).

4. Resurrecting African Renaissance in the Quest for a Solution

African Renaissance is not a new concept. Many pioneers have advanced the idea several years ago. Among them were Africans as well as our brothers and sisters who had been separated from the main continent into other parts of the globe. It is unfortunate that most of them have left the scene. They include great names such as, Azikiwe, Blyden, Du Bois, Gavey, Nassar, Nkrumah, Nyerere, Padmore, Platjie, Sekou Toure, Tubman and Williams. The modern proponents of the idea are not trying to re-invent the wheel. The current breed of leaders supporting the idea, particularly, President Mbeki of South Africa is simply saying that we Africans have come of age and have recognised our failures, problems and difficulties. Let us sit down, take stock of our lives and try to pull ourselves together to tackle some of the problems that seem insoluble. According to President Mbeki (1999a),

....what is new about it today is that the conditions exist for the process to be enhanced, throughout the continent, leading to the transformation of the idea from a dream dreamt by visionaries to practical programme of action for revolutionaries.

The need for a new approach to doing things differently on the continent finds support in the introduction of the New Partnership for Africa's Development (NEPAD):

The new partnership for Africa's Development calls for the reversal of this abnormal situation by changing the relationship that underpins it. Africans are appealing neither for the further entrenchment of dependency through aid, nor for marginal concessions.

The desire to look for African solutions to the African problems should not be seen as a movement in the direction of isolationism. In this modern world of interdependence, this is not possible. It merely seeks to limit too much reliance on foreign ideas to solve African problems.

5. African Renaissance Within the Global Community

The pursuit of African Renaissance calls for the efforts of individual African countries and collective actions at regional, continental, as well as global co-operation. There is a lot that individual African countries can do for themselves. However, as the old saying goes, divided we fall, united we stand. Kwame Nkrumah, one of the great sons of Africa and a strong advocate for continental unity stated in the early days of Ghana's independence: "Ghana's independence is meaningless unless it is linked to the total liberation of the continent". Now the total liberation has been achieved with the destruction of apartheid, the last of the vestiges of colonialism and neo-colonialism. However, what has to be recognised is the reality that none of these African countries on its own can succeed in the realisation of the goals of the African Renaissance. Just as the political liberation of one African country is meaningless unless it is linked to the total liberation of the entire continent, the economic and social transformation of one country is meaningless unless the entire continent is also liberated. In other

words, the destinies of the peoples of Africa are linked that "united they stand, divided they fall". As pointed out by President Mbeki:

Each one of our countries is constrained in its ability to achieve peace, stability, sustained development and a better life for the people, except in the context of the accomplishment of these objectives in other sister African countries (1999a).

It should not be forgotten that most of the boundaries in Africa that we inherited were drawn artificially by the colonial masters and separated families and ethnic groups.

Africa therefore needs regional bodies such as the Economic Community of West Africa, (ECOWAS), the Southern African Development Community (SADC), and the East African Community (EAC). Regional organisations can play important role in conflict resolutions and even in assisting other countries in the region in times of need. The recent flooding in the southern African region has demonstrated how countries in the region can come together to assist a member country that is in need. The recent uprising in Lesotho also brought about the intervention of Botswana and South Africa in order to restore peace. One would have thought that a similar effort would have been made much earlier in Angola in order to alleviate the suffering of the citizens of that country. The same could have been done in the Democratic Republic of Congo (DRC) instead of the involvement of individual countries for selfish interests.

It is in this context that we should focus our attention on the role that the African Union (AU) can play. In terms of economic emancipation, the AU can present a united position at global negotiations as at the WTO and environmental conferences. The AU should intensify its efforts in resolving conflicts by peaceful

means. There is no justification whatsoever for African countries to wage war against one another. We do not have the means to cater for the welfare of our peoples and it is irresponsible for us spend the little we have on useless wars. For instance, there is no justification for the border conflict between Ethiopia and Eritrea. It is imperative on us to seek a peaceful resolution of the conflict. The mere fact that we have not succeeded so far is not an excuse to refrain from further peace initiatives.

It is important to stress that we cannot achieve any form of unity whether at regional or continental level if the peoples do not accept one another and are at each other's throats. All forms of xenophobia should be stopped particularly when politicians through irresponsible utterances fan them. Even if not initiated from politicians, people in authority owe a responsibility to issue statements, which condemn any form of xenophobic tendencies.

African governments should avoid the practice of blaming their economic woes on non-nationals. Expulsions of non-nationals as scapegoats for economic mismanagement of the affairs of a nation are misguided.

6. Why Democratic Solution

As we noted earlier, undemocratic systems of government have played a major role in nurturing and fomenting conflicts and instability in Africa. As the late President John F. Kennedy once observed, "those who make peaceful change through the ballot box impossible make violent change possible". Opting democracy is a way of minimising conflicts in Africa.

A democratic system of government ensures that the government in power is accountable to the people and to the laws of the nation. Ultimately, the people exercise the power to make and un-make a government. The notion of checks

and balances, through the separation of powers provides the backbone for transparency and accountability and therefore keeps the government in power under constant check. There must be a meaningful role played by the opposition as well as the press. The net result is that there is a rule of law, transparency and accountability. It is imperative for democratic institutions to be in place if the public and private confidence in the economy is to be enhanced. Where the government exercises absolute power there is the tendency to abuse political and economic power, resulting in the absence of transparency and accountability.

The doctrine of the separation of powers, as proposed by the French philosopher, Montesquieu requires that a government is made up of the legislature, the executive and the judiciary. Within the legislature the opposition must be strong and to be able to put the ruling government on constant check. Botswana offers a good example of the practice of democratic system of still remains one of the few countries in Africa that can boast of the practice of democracy (Amoako, 2000). It has been noted: "Although Botswana was not the first African country to achieve independence, it has been one of the few that has sustained democratic politics during the last 40 years. It has demonstrated the fallacy of much international thinking that held that electoral democracy was only achievable in rich, western Europe and north America" (Maundeni, 2005). Since independence, presidential and parliamentary elections are held on regular basis. Thus, the opportunity exists for the change of government through the ballot.

6.1 Good Governance

Democratic government provides the basis for good governance. The ultimate aim of any democratic government in power is to achieve an optimum level of development; and this can best be enhanced under a system of good governance.

“Good governance is vital for economic development because it complements sound rules and economic policies” (Kahkone, Meagher, & van Bastelaer, 1997). Governance has been defined by the United Nations Development Programme as “the exercise of political, economic and administrative authority in the management of a country’s affairs at all levels. Governance comprises the complex mechanisms, processes and institutions through which citizens and groups articulate their interests, mediate their differences and exercise their legal rights and obligations” (UNDP, 1997). This is consistent with the World Bank definition “to denote the use of political authority and exercise of control in a society in relation to the management of its resources for social and economic development” (OECD, 1995). The legitimacy and transparent nature of the exercise of the governance will determine whether it is good or not.

Through the practice of good governance, the opposition is able to articulate its views, and the citizenry have the freedom to exercise the rights and opportunities necessary for participatory democracy. The transparent nature of the formulation and implementation of policies instil confidence in the population and remove any inhibition, which militates against participation in the development of the nation. Civil Society and the press operate freely without any inhibitions. The cumulative effect is that all these impact positively on every aspect of the nation and the private sector confidence is equally enhanced.

6.2 The Rule of Law

In a democratic system of government, the rule of law is very important for sustaining the democratic process. It is thus a major factor that has the potential to instil both public and private sector confidence in a county’s institutions. “The rule of law is..... an essential factor for the effective functioning of the society and the economy” (OECD, 1995). If the rule of law operates in a country, it creates “a

predictable legal environment, with an objective, reliable and independent judiciary” (Ibid).

6.3 Transparency and Accountability

Africa does not seem to have an enviable record when it comes to law enforcement. If one were to identify the most serious flaw in Africa’s post-independence era, any objective analyst should have no hesitation in identifying lack of accountability and indiscipline resulting from the non-implementation and non-enforcement of laws and decisions as the major cause. It is one thing to have laws on the statute books, and another to implement decisions and the laws. When the laws are there for the sake of being there, they become a scarecrow to the population. This has been the trend in many countries since independence. The developmental failures on the continent can be attributable directly to this phenomenon. Tax invasions, non-payment of customs and exercise duties, corruption, fraudulent business transactions, lack of confidence in the security forces and the judiciary are all interlinked with the popular notion that there is a breakdown of law and order. The crucial question that arises is whether most of the African countries have the capacity to create a predictable legal environment in which investor confidence can be assured to enhance the public and private partnership relationship for the development of the countries. Any objective assessment of the situations reveals that the story is the same in most capitals around the continent.

As has been stressed earlier, the major hindrance to the private sector participation, particularly the foreign investor, in the development of some countries, is the security situation in most of the African countries. Furthermore, the breakdown of law and order and also the lack of public confidence in the whole machinery of administration of justice also militate against investor confidence. For instance, corruption which is seen as a major contributory factor

to under-development in many third world countries (“corruption restricts investment and holds back economic growth” UNDP 1997 viii) thrives substantially in an environment where one can cheat and get away with it.

6.3 The Independence of the Judiciary and Predictable Legal Environment

We need independent judiciary to ensure that the rule of law operates and enable the existence of an environment for a predictable legal system. If we consider the dictates of Article 10 of the Universal Declaration of Human Rights, then the independence of the judiciary is critical for the realisation of the objectives behind the Declaration:

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”

6.4 Minimisation of Corruption

The true practice of democratic system of government dictates transparency and accountability in all sectors of government. The existence of democratic institutions minimise the operation of corruption.

7. African Union and the Way Forward

With the coming into existence of the African Union IN 2000, the continent has set itself on the track to achieve democratic system of governance, peace, stability, economic growth and development throughout the African continent. These policies are fully entrenched in the Constitutive Act of the African Union (the AU Constitution) and the New Partnership for Africa’s Development (NEPAD). In addition, three other instruments support the AU’s democratic agenda. These are, (i) the declaration on the framework for AU response to unconstitutional changes of governments, (ii) the declaration governing

democratic elections in Africa, and (iii) the declaration on observing and monitoring elections.

The Preamble to the AU Constitution, among other things states:

CONSCIOUS of the fact that the scourge of conflicts in Africa constitutes a major impediment to the socio-economic development of the continent and of the need to promote peace, security and stability as a prerequisite for the implementation of our development and integration agenda;

DETERMINED to promote and protect human and peoples' rights, consolidate democratic institutions and culture, and to ensure good governance and the rule of law;

FURTHER DETERMINED to take all-necessary measures to strengthen our common institutions and provide them with the necessary powers and resources to enable them discharge their respective mandates effectively;

Under Objectives in Article 3 of the Constitution, we have the following:

- f. Promote peace, security, and stability on the continent;
- g. Promote democratic principles and institutions, popular participation and good governance;

There are similar provisions under the Principles in Article 4:

- m. Respect for democratic principles, human rights, the rule of law and good governance;
- o. Respect for the sanctity of human life, condemnation and rejection of impunity and political assassination, acts of terrorism and subversive activities;

- p. Condemnation and rejection of unconstitutional changes of government.

Furthermore, the fact that Africa has set for itself the goal for political and economic changes is evident in the New Partnership for Africa's Development. The introduction emphatically declares in paragraph 7:

Across the continent, Africans declare that we will no longer allow ourselves to be conditioned by circumstance. We will determine our own destiny and call on the rest of the world to complement our efforts. There are already signs of progress and hope. Democratic regimes that are committed to the protection of human rights, people centred development and market-oriented economics are on the increase. African peoples have begun to demonstrate their refusal to accept poor economic and political leadership. These developments are, however, uneven and inadequate and need to be further expedited.

7.1 Strengthening Democratic Institutions

As has been argued earlier, it is a verified truism that unconstitutional and undemocratic governments most often generate internal and regional conflicts and instability on the continent. They stifle opposition and undermine economic and social development. It is not gainsaying that the continent has witnessed many leaders who have come to power through the barrel of the gun or other illegitimate means and have reigned with excessive brutality, terrorising the citizens for whom they claim to be their liberators. Their stay in power has often generated internal conflict or has contributed to regional instability. We have all witnessed to the senseless killings that took place in Liberia, the Sierra Leone, and Rwanda. It is equally true that the conflict and

resultant wars that took place in the DRC has its genesis in undemocratic regime of the former Zaire. Mobutu, for over 30 years kept himself in power, in the process destroyed all democratic institutions, the political system, the economy, and denied the existence any form of opposition.

It is therefore gratifying to note that the AU Constitution and the New Partnership for Africa's Development, through the African Peer Review Mechanism (APRM), have provisions for addressing this problem. In all these, the emphasis is on democratic governments, the practice of good governance, respect for human rights and the observance of the rule of law.

7.2 Desired Outputs

Among other things, we want Africa

- (a) that is free from unconstitutional, undemocratic governments and any form of dictatorial rule.
- (b) in which participatory democracy is the practice,
- (c) where the citizenry shall have the right to choose their leaders in free and fair elections.
- (d) where the rule of law is respected
- (e) in which the peoples of the continent enjoy freedom of association, freedom of speech and freedom of the media.

- (f) where there will be peace and stability on the continent in which conflicts and wars will be the things of the past
- (g) in which we shall create the right environment for development and prosperity for all the peoples of the continent.

In order to achieve these, we believe the AU, through appropriate institutions and mechanism should be empowered to enforce the adherence and observance of the relevant mandates. The relevant institutions we need to strengthen are discussed under suggestions.

8. Africa and the United Nations (UN).

In these days of globalisation, we do not think that we can make any meaningful progress without addressing some issues of international implications for the African continent. In particular, we need to address the current structure of the Security Council of the United Nations. It has been stressed that the current structure of the United Nations at the Security Council level is not in the best interest of Africa. African members at the Security Council are there on rotational basis and therefore do not exercise veto powers as the permanent members. This calls for the reform of the Security Council. We take know that the reform process is ongoing and hope that the views expressed here will be taken into account. I make the following suggestions for some radical reforms:

8.1 Permanent Seats

The current practice of reserving permanent seats to specific countries should be abolished. Permanent seats, if they are to be retained, should be allocated on regional basis. The world can be grouped into the following regions: Africa, Eastern Asia, Western Asia, Europe, The Americas, comprising North and

South America. Within those regions, a permanent seat should be allocated and then the seat can rotate among the countries in the regions according to their own internal arrangements. This will avoid any situation of some countries becoming hegemony over others. The outcome of this proposal is that in Africa we shall not be saddled with a situation where one country dominates the rest. On this, I find support in the words of President Mbeki (1999a) at the launching of the African Renaissance Institute:

the continental offensive can only be sustained if the active populations of all countries are confident that none of the countries of the continent, regardless of the extent of its contribution to the Renaissance, seeks to impose itself on the rest as a new imperialist power.

Those words should apply to the international community as well. There should be the recognition of equality of all nations, big and small, rich and poor, powerful and weak, within the United Nations, as well as within the new Security Council that I am proposing.

8.2 Veto Power

Ideally, we should strive to abolish the veto power within the Security Council. However, if veto power is retained it has to carry this limitation: The General assembly should have overriding power over the veto within the Security Council as is practised within the United States Congress. This will ensure that no one country imposes its will on the rest of the world.

Now that the UN Charter is under review, particularly regarding the representation on the Security council, I urge our African leaders, individually and acting collectively through the AU, to press for these reforms. The current proposal to simply enlarge the Security Council by giving

seats to some selected countries does not only fail to go far enough, but is also reactionary and should be rejected as it seeks to retain the status quo of creating hegemony within the Security Council. The support of the Non-Aligned Movement should also be sought.

9. Enhancing Political and Economic Progress in Africa - Some Suggestions

From the AU Constitution and the NEPAD, there is a serious commitment to eradicate from the continent all forms of unconstitutional, undemocratic and dictatorial governments in order to achieve political, economic and social transformation. While we endorse the measures put in place to address the problem, the question we have to answer is whether the steps taken are capable of achieving the desired results. In this section, we examine those measures and make the relevant suggestions for achieving the intended objectives.

9.1 AU and Unconstitutional Governments

As has been noted earlier, the AU in its Constitution, under both the Objectives and principles has made it clear that unconstitutional systems of government are not welcome on the continent. Article 3(g) seeks to “promote democratic principles and institutions, popular participation and good governance. Article 4 also provides: (m). Respect for democratic principles, human rights rule, the rule of law and good governance. More forcefully, it rejects any form of unconstitutional government from Africa: Condemnation and rejection of unconstitutional changes of governments.

It is however, under the Declaration on the framework for an AU response to unconstitutional changes of government that defines common values and principles for democratic governance on the continent. Among other things, the Declaration seeks to achieve the following:

- i. Adoption of a democratic constitution. Such a constitution should follow procedures that conform to universally acceptable principles of democracy.
- ii. Separation of powers
- iii. Independence of the judiciary and all quasi-tribunals bodies.
- iv. Recognition of the role of the opposition
- v. Organisation of free and regular elections
- vi. Guarantee of freedom of expression
- vii. Guarantee of freedom of press
- viii. Guarantee and promotion of fundamental human rights
- ix. Protection and Guarantee of democratic system of change of government.

Furthermore, the AU Constitution provides in Article 30, under suspension:

Governments, which shall come to power through unconstitutional means, shall not be allowed to participate in the activities of the Union.

This is a very welcome development. However, we believe that this particular sanction has a major flaw. When a government is suspended from the activities of the AU then the citizens of that country are the ones who suffer. The real culprits are therefore, left off the hook. Let us consider a practical situation. Let us assume that in Country "A", "Soldier Ambition" stages a coup and overthrows the constitutionally elected government that the people have through free and fair elections elected into power. If the government led by Soldier Ambition is suspended, who is the victim here? Are we punishing the citizens of Country "A" for the sins of the soldier who has committed a treasonable act against the country?

We need a new approach in terms of the appropriate sanction we should impose under such circumstances. We propose the following:

A. First, we must make sure that only those connected with the unconstitutional means of coming to power are the ones punished. For this reason the

B. Second, we should make sure that they never benefit from their treasonable conduct. We should abolish the current practice of allowing those who came to power by unconstitutional means to remain as members of the AU. Article 30 of the AU Constitution should apply to them as well. It is both immoral and illogical for such leaders to participate in decisions on democracy and good governance to be binding on others. By giving recognition to such leaders, to the extent that they are role players in Africa and on the international scene, we are indirectly encouraging other future coup leaders that the end justifies the means. Furthermore, the AU loses credibility in the international community by allowing such leaders to be members of the Union. If any future adventurists resist the temptation of choosing to come to power by unconstitutional means then we have achieved our goal of promoting the change of government through the ballot box.

C. Third, any sanction that we impose on those individuals should have an element of deterrence against any other future aspirant to come to power by unconstitutional means.

D. Fourth, any form of unconstitutional change of government should be a treasonable offence recognised by member states of the AU and therefore should fall within the domestic jurisdictions of all member states.

Furthermore, as a way of strengthening our position on the issue, we recommend that we either adopt a declaration or amend the AU Constitution to include a provision that reads:

Any person who unlawfully and unconstitutionally overthrows any constitutionally established government, or comes to power by any unconstitutional or unlawful means, commits a treasonable offence that is punishable among all member states during the lifetime of such a person.

We suggest that such a provision should be binding on all member states and incorporated into the constitutions or domestic laws of all member states. It must accordingly be enforced within all member states. This will make it unattractive for any such coup-mongers or military adventurists to find any place of refuge on the continent. We believe that if such a step is taken by the AU, it will gain the support of the international community.

It is my firm belief that the world is ready for such a move, if we consider the House of Lords' decision involving General Pinochet of Chile. Even though this dealt with torture, the general principle that the case establishes can be relied upon to expand the customary international law to the effect that past military leaders can be tried for their treasonable conduct. The trial of Charles Taylor for war crimes should be an eye opener that no one can escape the arm of the law. If we can extend his trial to cover unconstitutional means of coming to power in Africa, I am confident 70% of the problems of our continent would have been solved. We should simply make it unattractive for any misfit of society to impose himself on the people simply because he has access to the gun or any other unlawful means.

At our Southern African Universities Social Science Conference in Lusaka in 1997, we adopted a resolution, saying:

In order to deter any military adventurism on the continent, any person who uses violence or unconstitutional means to overthrow any legitimate civilian government should be debarred from ever holding public office and such a person should be pursued, prosecuted and punished for the treasonable conduct without reference to any statute of limitation (Frimpong & Jacques, *supra*).

The decision to prosecute persons who have come to power unlawfully should apply even to those who are currently in office. We should not set a precedent for some to believe that their coups are being sanctioned.

9.2 Constitutional Manipulation – Third Termers.

Strictly speaking, it can be argued that any constitutional change to prolong the rule of any head of state is a matter that is purely within the internal laws of the country in question. However, the reality is that any change of the constitution to lengthen the stay in power of any ruler is done through manipulation, abuse of power and/ or corrupt means. Many countries have done in the past. However, the current trend, if we go by the Nigerian and Zambian examples, many peoples on the continent are rejecting any notion of third term. Any leader who seeks a third term through the constitutional manipulation is simply a dictator who seeks to remain in power for a longer period.

All the third term, if not part of the original constitution should be declared as having no validity anywhere in Africa. A new Article in the Constitution covering this situation should not be recognised anywhere within Africa.

9.3 Towards Free and Fair Elections

The Declaration governing democratic elections in Africa and the Declaration on observing and monitoring elections lay down the framework for what can be termed free and fair elections. Again, the question is whether the declarations are merely symbolic or we are serious in their applications.

We need to ensure that all elections in any member state are observed and certified to be free and fair by a credible body. What has emerged so far does not suggest that we are serious with the desire to rid the continent of dictators who will use all foul means to come to power and prolong their stay in power.

Whenever a section of the community feels that, they have been cheated of their right to participate in the choice of a government that they desire they tend to resort to other means, violent or to otherwise to seek a reversal of the “electoral results”. Again, if we refer to President Kennedy’s oft-quoted statement: “those who make peaceful change through the ballot box impossible make violent change possible”. Evidence of this happened in Cote d’Ivoire, Liberia,

Monitoring and observance of elections to be certain of being free and fair should not be confined to the day of the elections. The whole process should be accepted as not favouring the incumbent. This process calls for the “levelling of the playing field”

Even though the 1994 South African elections cannot be said to have been ideal, I have argued elsewhere (Frimpong, 1999) that there are some important lessons that we can borrow from them:

- (a). The setting up of two Congresses for Democratic South Africa (CODESAS)
- (b). The Signing of the National Peace Accord through the two Congresses
- (c). The setting-up of the Multi-Party Negotiating Forum
- (d). The adoption of an Interim Constitution
- (e). Establishment of Independent Electoral Commission
- (f). Establishment of Independent Media commission
- (g). Establishment of Independent Broadcasting Authority

All these measures were to ensure that no one party or body had undue advantage in the holding of the elections. This is what has been termed "levelling the playing field".

9.3 Effective Use of the African Peer Review Mechanism (APRM)

A very important key instrument of the New Partnership for Africa's Development (NEPAD) is the African Peer Review Mechanism (APRM). Its voluntarism defeats the whole purpose. It is therefore argued that it should be binding on all member states on the continent. We cannot have a section of the continent being subjected to a peer review and another section opting not to be reviewed. This clearly undermines the whole process of democratisation and the road to economic growth and development.

9.4 Towards Sustainable Economic Growth and Development

Under the Democracy and Political Governance Initiative of the NEPAD, it is provided:

- 79. It is generally acknowledged that development is impossible in the absence of true democracy, respect for human rights, peace and good

governance. With the New Partnership for Africa's Development, Africa undertakes to respect the global standards of democracy, the core components of which include political pluralism, allowing for the existence of several political parties and workers' unions, and fair, open and democratic elections periodically organised to enable people to choose their leaders freely.

80. The purpose of the Democracy and Political Governance Initiative is to contribute to strengthening the political and administrative framework of participating countries, in line with the principles of democracy, transparency, accountability, integrity, respect for human rights and promotion of rule of law. It is strengthened by and supports the Economic Governance Initiative, with which it shares key feature. Taken together, these initiatives will contribute to the harnessing the energies of the continent towards development and eradication of poverty.

It is evident that Africa wants to eradicate itself of the terrible image of poverty, conflicts, and political instability. However, as the two quotations above have shown, the goals cannot be achieved without democratic institutions firmly established and practised. We therefore stress that economic development on the African continent will remain an illusion unless we put our acts in order and seriously tackled the root causes of the continent's protracted problems. We address the special case of corruption here.

10. Fighting Corruption

Corruption is seen as one of the major factors inhibiting development in Africa and in all developing countries. As the Director of Transparency International has observed,

“Corruption wastes resources by distorting government policy against interests of the majority and away from its proper goals. It turns the energies and efforts of public officials and citizens towards easy money instead of productive activities. It hampers the growth of competitiveness, frustrates efforts to alleviate poverty and generates apathy and cynicism. The harms caused by corruption, which are as numerous as the shapes corruption take, have destroyed well-intentioned development projects in the South and undermined political and economic transitions in the East”

Every effort should therefore be made to fight corruption on the continent.

First, all countries should establish anti-corruption agencies with the following powers:

- I. Independent from the executive
- II. Having financial independence
- III. Having the power and autonomy to investigate and prosecuting all cases of corruption.
- IV. Should report to Parliament

Second, we should have Regional Anti-Corruption Agencies that will handle appeals from national tribunals within regional blocks - Eastern, Western, Northern and Southern. Decisions of the Regional Bodies should override those at the national level. The Regional bodies should have the power to investigate

corruption within national boundaries where the circumstances indicate that the national body is incapable or unwilling to investigate.

Third, we should have one Anti-Corruption Body for the whole continent. It has to have the mandate to handle corruption cases at the continental level and in any country in Africa. It should have a very broad mandate to investigate corruption cases within national boundaries and regional areas where the corruption seriously threatens the interest of the economic, political and social status of any country or region.

Where international corporations are involved, it becomes more compelling to use either the regional or the continental anti-corruption body to handle such cases. The corruption that gripped Lesotho Highland Water Project would have been a very good example for either the regional or the continental body to handle.

11. IMPLEMENTATION AND ENFORCEMENT

We have made many and diverse suggestions for the way forward. The next step is to address the issue of implementation, as well as how to enforce them

First, we need to establish a special body within the AU that has the full mandate to oversee all matters dealing with practice and adherence to democracy, free and fair elections, respect and protection of human rights, respect for the rule of law, independence of the judiciary, and the recognition and protection of anti-corruption agencies. In other words, this body should be an umbrella institution with the mandate to ensure that all the ideals, goals, principles and values in the AU Constitution, various Declarations and NEPAD are implemented and enforced. For the sake of brevity, we shall call this institution, 'Implementation and Enforcement Council". It shall be charged with the responsibility of ensuring

compliance with all programmes of action and to recommend any punitive measures, such as suspension and the imposition of any sanction.

Membership should be confined to technocrats selected from different countries, excluding any political leader. However, Heads of State should participate in their election and appointment. They should serve for a maximum period of three years.

12. Conclusion

The substance of the presentations is that Africa has now come of age and the time has come for us to put into practice the ideals of African Renaissance. The ultimate goal of the African Renaissance is the need to follow the wind of change. The wind of change blowing in Africa now, through the African Union and the New Partnership for Africa's Development, is the need to rid the continent of any unconstitutional, undemocratic and dictatorial governments through the establishment of democratic systems of government. It calls for an end to conflicts and all forms of political instability. It demands accountability and transparency operating at all levels of government institutions. It requires rule of law and predictable legal environment within every country. It has to provide freedom, peace, security, and better living conditions for the peoples of the African continent. The peoples of Africa have suffered for far too long, be it under slave trade, colonial rule, neo-colonialist system of government, or a new breed of post-colonial masters, in the form of military dictators or one party-despots or barons.

We are simply saying enough is enough. Africans deserve a better deal and are therefore demanding that their governments should exist for the people and be accountable to the people. Any leader who does not subscribe to these ideals should not be recognised by the AU and the international community. We are

therefore calling on all Africans and the international community to support this clarion call. As Brutus would say,

On such a full sea are we now afloat, and we must take the current when it serves or lose our venture" (Dorsch, 1988).

13. REFERENCES:

Abdul-Raheen, Tajudeen, (1999). Democratisation and Conflicts in Africa. A keynote address at the Development Policy Management Forum (DPMF) *Democracy, Development and Conflict Conference*, Addis Ababa, Ethiopia, 23 - 26 November 1999.

Amodu Tijani v. Secretary of Southern Nigeria [1921] AC 399. Lord Haldane quoted with approval a passage from Renner, *CJ's Report on Land Tenure in West Africa*, 1898.

Ayittey, George, B.N., (1991). *Indigenous African Institutions*. New York: Transnational Publishers, Inc.

Bell, Morag, (1987). *Contemporary Africa*. New York: John Wiley & Sons, Inc.

Boahen, A.A., (1986). *Topics in West African History*. New York: Longman.

British Broadcasting Corporation, BBC, (1999). News of Monday, 13 March 2000.

Constitutive Act of African Union, 2000

Dorsch, T.S., 1988. *Julius Caesar, (The Arden Shakespeare)*. London: Routledge

Eaton, J.W., (1964). *Prisons in Israel: A Study of Policy Innovation*.

Frimpong, K. (1982). "Some Reflections on Ghana's Penitentiary System", *Yearbook of African Law*, 3: 85-103.

Frimpong, K. (1992). "Searching for Alternatives to Imprisonment: An African Experiment", *South African Journal of Criminal Justice*, 5(3): 233-253.

Frimpong, K. (1997a).
"Structural Adjustment and the Myth of its Success in

- Ghana". In Hope, K. R. Snr. (ed.), *Structural Adjustment, Reconstruction and Development in Africa*, Aldershot: Ashgate Publishing Company.
- Frimpong, K. (1997b).
 "Towards an Effective and Humane Prison Service". A Keynote address given at the 3rd Conference of Eastern, Southern and Central African (CESCA) Heads of Correctional Services, held in Gaborone, Botswana, 20-21 February 1997.
- Frimpong, K. (1998).
 "Legal Framework for the Partnership". A paper presented at the 20th African Association for Public Administration and Management (AAPAM) Roundtable Conference, held in Nairobi, Kenya, 30 November to 4 December 1998.
- Frimpong, K., (1999a). "Some Pitfalls in Africa's Quest for Democratic Rule and Good Governance". In Frimpong, K., & Jacques, G. (eds.), *Corruption, Democracy and Good Governance in Africa: Essays on Accountability and Ethical Behaviour*. Gaborone: Lentswe La Lesedi.
- Frimpong, K., (1999b).
 "Forging Partnerships Between African Universities and Civil Society". Paper presented at the International Association of University Presidents (IAUP) Africa Regional Council Conference, Accra, Ghana, 9-11 June 1999.
- Frimpong, K., & Jacques, G. (eds.), (1999). *Corruption, Democracy and Good Governance in Africa: Essays on Accountability and Ethical Behaviour*. Gaborone: Lentswe La Lesedi.
- Kimani, E. 1998. Gender and class in the struggle for democracy. Paper presented at the DPMF Democracy Conference II: Democracy, Civil Society and Governance in Africa, 7-10 December, Addis Ababa, Ethiopia.
- Mafeje, A. 1999. "Democracy, Civil Society and Governance in Africa". In DPMF *Proceedings of the Second Annual Conference on Democracy, Civil Society and Governance in Africa II*, 7-10 December, Addis Ababa, Ethiopia.
- Mbeki, President Thabo, (1999a). *Address of the President of South Africa at the Launch of the African Renaissance Institute*, Pretoria, 11 October 1999.
- Mbeki, President Thabo, (1999b). *Speech of the President of South Africa at the Opening of Parliament: National Assembly*, Cape Town, June 25, 1999.

OECD. 1995. *Participatory Development and Good Governance*. Paris: OECD

The New Partnership for Africa's Development (NEPAD), 2001

Wilks, Ivor, (1975). *Asante in the Nineteenth Century: The Structure and Evolution of a Political Order*. Cambridge: Cambridge University Press.