



## Chapter 4

### **Journey to the unknown: An analytical discourse on the feasibility of a supranational African Union**

Two roads diverged in a wood, and I –  
I took the one less travelled by,  
And that has made all the difference

Robert Frost (The road not taken)<sup>507</sup>

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<sup>507</sup> Available at <http://www.bartleby.com/119/1.html> (Accessed 20 June 2009)

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#### 4.5 Summary

### 4.1 Introduction

Unlike its predecessor, the OAU, the AU was designed as a vehicle for the attainment of closer continental integration. The institutional architecture of the union coupled with its ambitious developmental strategies evinces a determination to transcend the realms of national politics. It also represents an attempt to place Africa in the mainstream of global *realpolitik*.

This chapter, therefore, intends to move beyond the theory by investigating the practicalities of transforming the AU into a supranational entity. In doing so, this chapter begins with a theoretical analysis of the phenomenon of international organisations and how it fits into a global administrative framework. This is followed by an exposition of the AU, which includes the circumstances surrounding its creation, its Constitutive Act and presents arguments analysing whether the word 'supranational' aptly defines it. The chapter concludes with an analysis of some of the key ingredients necessary for the organisational transformation of the AU.

### 4.2 Conceptualising international organisation

Although the concept of international organisation dates back to ancient times, contemporary international organisations have their roots in the nineteenth century.<sup>508</sup> In response to a changing global environment vis-à-vis political and economic concerns, contemporary political systems devised the concept of

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<sup>508</sup> See e.g. Sands P & Klein P, *Bowett's law of international institution*. London: Sweet & Maxwell (2001) 1-4; see also Abi-Saab G, 'The concept of international organisations: A synthesis', in Abi-Saab G (ed), *The concept of international organisation*. Paris: UNESCO (1981) 9-11; see also Gerbet P, 'Rise and development of international organisation: A synthesis', in Abi Saab (1981) 28-49.

creating organisations within the community.<sup>509</sup> In a world shaped and defined by multiple states, with different capacities and concerns, international organisations have been designed not only to regulate interstate action and cooperation but to also address issues which have ‘attained a dimension stretching far beyond national boundaries’.<sup>510</sup>

Operating in a state-centric global environment, international organisations are expected to fulfil such transnational functions within the ambit or framework of their stated objectives. These objectives are generally based on a prior agreement amongst interested states. This has been described as ‘functional finality’ of international organisations.<sup>511</sup> Simply put, ‘functional finality’ denotes the circumscribed latitude of international organisations vis-à-vis matters that fall outside the scope of their duties.<sup>512</sup> Over the years, the concept of international organisation has evolved especially with the emergence of institutions that have redefined the basic premise of international institutions (e.g. the EU).

#### **4.2.1 Definition of international organisations**

In order to provide a conceptual framework for the understanding of this phenomenon, it is important that one defines the concept and purpose of international organisations. Although the said concept could be defined based on diverse perspectives, common denominators run through these definitions.

Abi-Saab makes a distinction between the political and legal definitions of this concept.<sup>513</sup> At the core of the legal definition of an international organisation is the concept of legal personality. The attribution of legal personality to an international organisation entails that such an organisation is a subject of

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<sup>509</sup> See e.g. Abi-Saab (1981) 10, see also Claude I, *Swords into plowshares: The problems and progress of international organisations*. New York: New York (1971) 22.

<sup>510</sup> Schermers & Blokker (1995) 1.

<sup>511</sup> Ibid, 16-19.

<sup>512</sup> Ibid, 17.

<sup>513</sup> Abi-Saab (1981) 11-12.

international law and is also capable of possessing international rights and duties.<sup>514</sup> The *Reparation for Injuries* case remains the *locus classicus* on international legal personality, although it dates from 1949. In this case, the International Court of Justice (ICJ) had to consider whether or not the UN had the capacity to bring an international claim against a state. After considering the UN Charter, the court concluded that the attribution of certain functions, rights and duties to the organisation is an indication of international legal personality.<sup>515</sup>

Legal personality thus enables international organisations to make decisions that are not necessarily identical with the will of its member states, conclude treaties and also has international responsibility.<sup>516</sup> As a consequence, the ICJ stressed that possession of international legal personality is not an indication of statehood; rather it only implies the possession of international rights and obligations.<sup>517</sup> Since the legal personality of international organisations is determined by member states, as reflected in its constitutive instrument, legal experts are thus of the view that international organisations are secondary actors or minor adjuncts in the international system.<sup>518</sup>

The political definition on the other hand, points to the fact that apart from the legal component, international organisations are ‘... transnational entities which take shape beyond frontiers and governments’.<sup>519</sup> Put basically, they obtain a life independent of their creators (member states). The increasing supranational powers of the EU over the years have lent credence to the views of political theorists vis-à-vis the conceptual framework of international organisations. In as much as the powers of the EU are determined by the political willingness of

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<sup>514</sup> Sands & Klein (2001) 473.

<sup>515</sup> ICJ Reports (1949) 179.

<sup>516</sup> Abi-Saab (1981) 12-13, see also Sands & Klein (2001) 470-476.

<sup>517</sup> ICJ Reports (1949) 178.

<sup>518</sup> Abi-Saab (1981) 12.

<sup>519</sup> Ibid.

member states, it has nevertheless evolved into an organisation that exists alongside its member states albeit in relation to its areas of competence.

From a legal point of view, Virally defines an international organisation as

an association of states, established by agreement among its members and possessing permanent system or set of organs, whose task it is to pursue objectives of common interests by means of cooperation among its members.<sup>520</sup>

As with Abi-Saab's classification, the above definition also highlights the components of an international organisation: the central role of states in their existence and their (relative) autonomous powers. As such, both the legal and political conceptualisations of international organisations are interrelated and should thus guide any study on the development or strengthening of international/regional institutions.

#### **4.2.2 Categorisation of international organisations**

There are several classifications of international organisations. Classification could be made based on functions, permanence, scope and the composition of international organisations.<sup>521</sup> However, for the purpose of this chapter, the basis of classification will be the competence (or purpose) of such an organisation. As highlighted above, the constitutive act of international organisations stipulates the powers of such organisation. Where there has been no express stipulation, the powers of such organisation may be deduced from the functions accorded to the organisation.<sup>522</sup> Virally<sup>523</sup> thus makes a distinction between an organisation whose function is cooperation and an organisation

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<sup>520</sup> Virally M, *Definition and classification of international organisations: A legal approach*, in Abi Saab (1981) 51.

<sup>521</sup> Ibid, 56-58; see also e.g. Amerasinghe C, *Principles of the institutional laws of international organisations*. Cambridge: Cambridge University Press (2005) 9.

<sup>522</sup> See e.g. I.C.J. Rep. (1949) 179.

<sup>523</sup> Virally (1981) 54.

whose function is integration. Amerasinghe simply refers to this as a ‘distinction between supranational organisations and those that are not supranational’.<sup>524</sup>

Organisations whose functions are aimed at cooperation (or non-supranationalism) operate within the framework of a state-centric international politics. Their autonomy is largely circumscribed, and is only entrusted with the task of discharging functions which are sometimes beyond domestic approach and solutions.<sup>525</sup> On the other hand, an organisation whose function is aimed at integration (supranationalism) is exclusively, above member states, responsible for regulating allotted transnational activities.<sup>526</sup> The corollary of this is the exercise of binding powers and the possession of certain attributes often associated with nation states. It should, however, be noted that it is possible for an organisation whose function is cooperation to evolve into an organisation whose function is integration.<sup>527</sup>

One must, however, avoid the pitfalls of rigid classification. For example, based on the structural framework of the UN, it could easily be classified as an organisation with the function of cooperation. This is not necessarily misplaced. However, when one looks at the function of one of its primary organs, the Security Council, which has the powers to make binding decisions in relation to matters of peace and security, one, is faced with the difficulty of classification in practice. Another example is the EU, which is an archetypical interplay between cooperation and integration (or between intergovernmentalism and supranationalism).

The existence of international organisations, in spite of a state-centric defined international system, reflects the complex dynamics of global *realpolitik*. On one hand, we are faced with an organisation that owes its existence and survival to

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<sup>524</sup> Amerasinghe (2005) 9.

<sup>525</sup> See e.g. Virally (1981) 54.

<sup>526</sup> Ibid.

<sup>527</sup> Haas observes that cooperation precedes integration and may not necessarily lead to formal integration between states; it is rather a phase in the process of integration. See Haas (1970) 610.

national powers. When challenged, states are quick to point out the subsidiary roles of international organisations, thereby underlining the supremacy of their sovereignty. On the other hand, these state-created entities possess certain powers which markedly resemble sovereign powers and basically operate at par with nation states. In spite of this, nation states remain a major force in international relations. This reality thus begs the question of how international organisation will continue to fit into a global political structure. Could international organisations arguably one day replace nation states? Would international organisations continue to attend to transnational problems? Or would international organisations simply fizzle out after solving the various transnational issues, which form the basis of their existence?

There is no single answer to the complex configuration of the global administrative system. A realistic view is that international organisations will continue to exist, attending to transnational needs on a supranational levels and also consolidate their competence to prevent (or minimise) hegemonic threats and level the playing field.

Explaining the reasons why international organisations cannot totally replace nation states, Hoffman identifies three core points: national consciousness, national situation and nationalism.<sup>528</sup> National consciousness is described as ‘a sense of cohesion and distinctiveness which sets one off from the other group’.<sup>529</sup> National situation is a combination of objective data (social structure, political system and geography) and subjective factors (values, prejudices and opinions).<sup>530</sup> Nationalism is ‘an ideology – the doctrine or ideology that gives to the nation in world affairs absolute value and top priority’.<sup>531</sup> Zurn also highlights two factors responsible for the primacy of nation states, especially when it comes to auto-compliance. The first is that the state has a monopoly of force,

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<sup>528</sup> See Hoffmann in Spiegel & Cantori (1970) 77-79.

<sup>529</sup> Ibid, 77.

<sup>530</sup> Ibid, 77-78.

<sup>531</sup> Ibid, 78-79.

and as such could compel obedience and conformity to its rules and standards.<sup>532</sup> The second relates to the citizens' psychological attachment to a particular nation state (national identity).<sup>533</sup>

Therefore, the contestation between nation states and international organisation will remain part of the global governance framework albeit skilful methods of balancing this continue to evolve.<sup>534</sup>

### 4.3 The African Union: A roadmap to continental integration

The continued inability of the OAU to respond to intra-African conflicts, curtail the deluge of gross human rights violations and address contemporary challenges facing the continent prompted a radical revamp of the organisation needed for the continent to move forward. More importantly, the view was held that the organisation had completed its primary functions namely eradicating colonialism, ending *Apartheid* and establishing the independence of African states.<sup>535</sup>

In order to address these inadequacies, there were suggestions including:

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<sup>532</sup> Zurn M, 'Law and compliance at different levels' in Joerges C & Zurn M (eds), *Law and governance in postnational Europe: Compliance beyond the nation-state*. Cambridge: Cambridge University Press (2005) 5.

<sup>533</sup> Ibid.

<sup>534</sup> As discussed in chapter 2, mechanisms such as subsidiarity, attribution of powers, proportionality and flexibility have been adopted to maintain a balance between national interests and powers of international organisations. Other mechanisms such as principles of direct effect, supremacy and pre-emption will be discussed below. These theories are essential features of federalism, a constitutional arrangement that bequeaths some degree of autonomy to its constituent parts. International law scholars refer to the use of constitutional law terminologies and principles in the international arena as 'the constitutionalisation of international law'. See Werner (2007) 22; Cottier & Hertig (2003) 271-272; Weiler J, 'The transformation of Europe'. *The Yale Law Journal*. 100/8 (1991) 2413-2419.

<sup>535</sup> Packer C & Rukare D, 'The new African Union and its Constitutive Act'. *The American Journal of International Law*. 96 (2002) 366. Akonnor, however, is of the view that some African territories are still under foreign occupation. They include Chagos Islands and St. Helena Island (United Kingdom); Canary Islands and Ceuta/Melilla (Spain); La Reunion and Mayotte (France); and the Azores and the Madeiras (Portugal). See Akonnor (2007) 193.



- The establishment of a political military planning unit tasked with peacekeeping and conflict resolution<sup>536</sup>
- resuscitating the long-dormant Commission for Mediation, Conciliation and Arbitration<sup>537</sup> and
- giving more powers to the OAU secretary-general.<sup>538</sup>

However, none of these reforms were implemented. Instead, African leaders decided to replace the OAU in its entirety with a new organisation – the African Union. One could thus expand Kennes' thesis by stating that the creation of the AU is a continuation of the second wave of integration in Africa.<sup>539</sup>

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<sup>536</sup> Wiseman H, 'The OAU: Peacekeeping and conflict resolution' in El-Ayouty Y & Zartman I (ed), *The OAU after twenty years* New York: Praeger (1984) 147.

<sup>537</sup> See Packer (2002) 368.

<sup>538</sup> See El-Ayouty (1994) 184.

<sup>539</sup> Kennes divided African integration drive into two waves:

the first took place during the post-independence period; i.e. the 1960s and the early 1970s, with an extension of Southern Africa to around 1980. The second wave is quite recent; its start might be put around the time of the signing of the Abuja Treaty on the signing of the African Economic Treaty.

See Kennes in Bach (1999) 27. Also, Adedeji classify African integration into five phases:

- The first phase, in the early 20<sup>th</sup> century, was the historic struggle for Pan-Africanism led by African leaders and Africans in the Diaspora. In parallel, colonial administrators established colonial federation in west, central and eastern Africa.
- The 1960s represented a second phase, in which numerous intersectoral and multilateral organisations were set up mostly at sub-regional level.
- The third stage was the period between 1975-1983, during which a number of breakthroughs led to the establishment of sub-regional entities.
- The fourth stage was in the 1980s and 1990s during which notable documents such as the Lagos Plan of Action (LPA) and the Abuja Treaty were adopted.
- The creation of the AU represents the fifth stage.

See Economic Commission for Africa, *Third African Development Forum (ADF III): Defining priorities for regional integration* (2002) 9. Available at <http://www.uneca.org/adfIII/docs/ADF2001%20Concept%20Paper.PDF> (Accessed 21 July 2009). (Hereinafter referred to as ADF III 2002)



#### Box 4.1 : Timelines for African integration

Timeline:

- 1963** Formation of the OAU
- 1980** Lagos Plan of Action and the Final Act of Lagos
- 1981** African Charter on Human and Peoples' Rights
- 1990** Abuja Treaty establishing the African Economic Community (AEC)
- 1991** Kampala Conference on Security, Stability, Development and Cooperation in Africa  
(CSSDCA)
- 1998** Protocol to the African Charter on Human and Peoples' Rights on the Establishment of  
an African Court on Human and Peoples' Rights
- 1999** Sirte Declaration
- 2000** OAU Declaration on Unconstitutional Change of Government  
Constitutive Act of the AU
- 2002** NEPAD
- 2003** AU Convention on Preventing and Combating Corruption  
Memorandum of Understanding on the APRM  
Protocol to the African Charter on the Rights of Women in Africa
- 2004** Inauguration of the Pan-African Parliament
- 2006** Inauguration of the African Court on Human and Peoples' Rights
- 2007** African Charter on Democracy, Elections and Governance (ACDEG)  
Grand Debate on Union Government (Accra Declaration)
- 2009** Protocol on the Statute of the African Court of Justice and Human Rights  
Decision to transform the AU Commission to AU Authority

Source: Reconstructed from Wanyeki L, 'Africa Unite! ...' *Open Space* Vol. 2/2 (2008) 102

#### 4.3.1 The creation of the AU

At the thirty-fifth ordinary session of the OAU Assembly held in Algiers, the Libyan leader, Muammar Ghadaffi, proposed to convene an extra-ordinary summit to be held in Sirte, Libya in September 1999, in order to:

[d]iscuss ways and means of making the OAU effective so as to keep pace with the political and economic developments taking place in the world and the preparation required of Africa within the context of globalisation so as to preserve its social, economic and political potentials<sup>540</sup>

Quite a number of reasons have been advanced for Ghadaffi's leading role in the quest for African unity. One of the major reasons include Ghadaffi's tactical shift to Sub-Sahara African affairs after his abortive attempt at establishing an Arab union.<sup>541</sup> Others point to Ghadaffi's gratitude to Africa for the OAU's collective support throughout Libya's dispute with the United States of America and the United Kingdom over the Lockerbie affair.<sup>542</sup> While Ghadaffi's commitment to the African unity project remains commendable, it ironically highlights an important issue: the relevance of democratic principles to the African process of integration, especially considering his abhorrence of democratic values.<sup>543</sup>

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<sup>540</sup> Decision AHG/Dec.140 (XXXV).

<sup>541</sup> See generally, Hugo G, *Mission impossible? Colonel Ghadaffi's quest for unity*, Available at [http://www.issafrica.org/index.php?link\\_id=4698&link\\_type=12&slink\\_type=12&tmpl\\_id=3](http://www.issafrica.org/index.php?link_id=4698&link_type=12&slink_type=12&tmpl_id=3) (Accessed 11 July 2007). At the Sirte Summit, Ghadaffi intoned, 'I wasted over 30 years advocating for ARAB unity in vain. I gave up and now I came to Africa. If you are going to similarly fail me, I would have no choice but to go to the Mediterranean!' Cited in Dagash I, *The OAU: Reality or fiction?* (2006) 105.

<sup>542</sup> See Huliaras A, 'Qadhafi's comeback: Libya and sub-Saharan African in the 1990s'. *African Affairs*. 100 (2001) 10-13. See also Maluwa T, Reimagining African unity: Some preliminary reflections on the Constitutive Act of the African Union. *African Yearbook of International Law*. 9 (2001) 9 .

<sup>543</sup> Muammar Ghaddafi is on record to have pronounced multi-party democracy as the root cause of instability and conflicts in Africa. See e.g. <http://news.bbc.co.uk/2/hi/africa/7883178.stm> (Accessed 14 October 2009).

Ghaddafi's not too impressive democratic credentials place a moral burden on his quest for a united Africa.<sup>544</sup> The African integration process is a sensitive task which requires more than charisma but, most importantly, a genuine commitment to a pan-African democratic rebirth.

At the Sirte summit, Libya capitalised on the fact that there was no working document for consideration, by circulating its own draft document titled a 'draft Sirte Declaration'.<sup>545</sup> The draft Treaty called for the establishment of an 'African Union' with organs such as the African Congress; the Summit Council; the Executive Council; the General Secretariat; the Specialised Executive Committees; the Supreme African Court; and the African Monetary Fund.<sup>546</sup> On the other hand, the OAU General Secretariat had prepared a draft treaty which was totally different from the Libyan document.<sup>547</sup>

A ministerial group was tasked with preparing a compromise document.<sup>548</sup> Following an extensive discussion and debate among the heads of state, the Sirte Declaration was adopted. The preamble reads:

Having discussed frankly and extensively on how to proceed with the strengthening of the unity of our continent and its peoples...we decided to establish an African Union, in conformity with the ultimate objectives of the Charter of our continental Organisation and the provisions of the Treaty establishing the African Economic Treaty<sup>549</sup>

Since this declaration did not specify the form or shape the new AU was to take, it was left to a team of legal experts to decide on the following questions:<sup>550</sup>

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<sup>544</sup> See e.g. Fagbayibo B, 'Ghaddafi's vision of African unity'. *The Nigerian Tribune*, 11 March 2009.

Available at <http://www.tribune.com.ng/11032009/opinion2.html> (Accessed 11 March 2009).

<sup>545</sup> Maluwa (2001) 17.

<sup>546</sup> Ibid.

<sup>547</sup> Ibid.

<sup>548</sup> Ibid.

<sup>549</sup> Decision EAHG/Draft/Decl. (IV).

<sup>550</sup> Maluwa (2001) 20

- whether the new organisation should exist alongside the OAU and the African Economic Community (AEC)
- if the new organisation could be merged with the OAU and the AEC
- the replacement of the OAU while keeping the AEC intact
- whether the institutional architecture of the new organisation should be modelled on the EU

With regard to the relationship between the OAU and the new organisation, three views emerged:<sup>551</sup>

- that the AU should be a strong institution that should transcend the existing institutional framework
- that the proposed AU should be a part of the continental organisations in which the OAU provides the framework and the African Economic Community (AEC) and the union become pillars and
- the need to amend the OAU Charter with a view to establish a new institutional framework

After much deliberation and debate, the team of experts could not agree on the relationship between the OAU and the new organisation. A draft legal text establishing the AU was, however, adopted by the experts and later submitted to the Tripoli ministerial meeting, which was held between 31 May and 2 June 2000.<sup>552</sup> Through the interventions of the presidents of Mali and Ghana, the ministerial meeting was able to settle the critical questions surrounding the nature and shape of the proposed organisation.<sup>553</sup> It was concluded that the OAU would evolve into the AU.<sup>554</sup> The Constitutive Act was subsequently

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<sup>551</sup> Genge M, Kornegey F & Rule S, 'Formation of the African Union, African Economic Community and the Pan-African Parliament', *African Institute Research Paper* (2000) 3-4. Available at <http://unpan1.un.org/intradoc/groups/public/documents/IDEP/UNPAN003885.pdf> (Accessed 20 August 2008).

<sup>552</sup> Maluwa (2001) 20

<sup>553</sup> Genge et al (2000) 4-5

<sup>554</sup> Ibid.

adopted by the Assembly on July 11, 2000. By March 2001, all the member states of the OAU had acceded to the Constitutive Act.<sup>555</sup>

**Table 4.1: Comparative table of the OAU and the AU**

OAU	AU
<b>Single source of authority:</b> The Assembly of Heads of State and Government	<b>Many sources of authority:</b> the Assembly of the union, the Judiciary (Court of Justice) and Parliament (PAP)
<b>Primacy of national sovereignty:</b> Non-interference in internal affairs.	Respect for national authority but rights to intervention in grave circumstances and suspension of regimes coming to power by unconstitutional means.
No provisions on the possibility of future common sovereignty.	Provisions allowing for monitoring of compliance with decisions in the context of the CSSDCA.
<b>Basic objective:</b> Collective struggle for the liberation of African countries from colonialism and defence of national sovereignty.	<b>Basic objective:</b> To enable Africa to meet the challenges of the 21 <sup>st</sup> century and strengthen the continent's position within the global economy and the international community.
The OAU is distinct from the African Economic Community (Abuja Treaty).	Integration of the African Economic Treaty (AEC) and its regional integration programme into the AU.
<b>The OAU Secretariat:</b> Headed by a Secretary-General, who initially had no powers to take initiatives.	<b>The AU Commission</b> is the executive arm of the Union, with specific powers in terms of initiatives.
Secretary General and Assistant Secretaries General elected.	Members of the Commission elected and endowed with fully recognised political power.
Purely intergovernmental approach	Community and intergovernmental approach possible.  Guardian of Treaties.

Source: Adapted from the African Union, *Strategic plan of the African Union Commission, Volume 1*. Addis Ababa: African Union Commission (2004) 23-24. Available at <http://www.africanunion.org/AU%20summit%202004/VOLUM%201%20-%20STRATEGIC%20PLAN%20OF%20THE%20COMMISSION%20-%20last%20version-%E2%80%A6.pdf>. (Accessed 20 June 2007).

<sup>555</sup> Packer & Rukare (2002) 365

What this table highlights is not so much the difference between intergovernmentalism and supranationalism as it is the potential of the AU to transform into a supranational entity. The powers of the AU institutions, the possibility of monitoring compliance and the integration of the AEC Treaty into AU structures, are all references to such potential.

#### **4.3.2 The Constitutive Act (CA): A balancing act**

As Olowu rightly observes, the Constitutive Act is '[a] mere roadmap to the required regional understanding for future continent-wide cooperation and integration in Africa'.<sup>556</sup> In response to global realities, the CA symbolises a necessary and ambitious plan to help solve continental problems and also to fast track the process of integration. In this regard, the CA provides for democratic ideals and institutions charged with steering Africa towards the 'promised land' of continental integration. In the same breadth, the CA builds on the socio-political realities on the continent by incorporating mechanisms aimed at preserving the hegemonic influence of autocratic regimes on the continent. It is this contradictory (perhaps balancing) act that continues to frustrate or limit the organisation from living up to its espoused ideals. Below is an exposition of the content of the CA.

##### *a) Democratic principles*

Articles 3 and 4 of the CA deal, respectively, with the objectives and principles, which mirror the objectives found in Article II of the OAU Charter except for the new added objectives which include – the promotion of good governance; the promotion and protection of human rights; the promotion of peace, security and

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<sup>556</sup> Olowu D, 'Regional integration, development and the African Union agenda: Challenges, gaps and opportunities'. *Transnational International Law and Comparative Problems*. 13 (2003) 222-3; see also Maluwa T, 'The Constitutive Act of the African Union and institutional building in postcolonial Africa'. *Leiden Journal of International law*. 16 (2003) 168; Udombana also opined that the AU Treaty ...is not a global programme of action. It only defined a general framework that is aimed at taking up the challenges facing the continent'. See Udombana (2002) 218. Thomashausen, on the other hand, view that the AU rests on the two pillars of good governance and the institutional goal of the creation of a Union Government. See Thomashausen A, *Union government for Africa*. Paper presented at the Symposium on the Prospect of an African Union Government as Crucial to the Integration Process in Africa. (Burgers Park Hotel, Pretoria, 29 June 2007). (On file with the author).

stability on the continent; promotion of democratic principles and institutions; the promotion of sustainable development at the economic, social and cultural levels; the establishment of the necessary conditions for the continent to play its rightful role in the global economy and in international negotiations; and the coordination and harmonisation of policies between the various African RECs. All of these objectives reflect the understanding and the need to tackle the contemporary challenges facing the continent.

Article 4(h) provides a caveat to the principle of non-interference by stipulating the right of the Union to intervene in Member States under the following conditions: war crimes, genocide and crime against humanity and, through a 2003 amendment, a serious threat to legitimate order. The inclusion of this provision is justified by the need to prevent a recurrence of the Rwandan genocide and a need to put a stop to the incessant conflicts ravaging the continent. Other provisions include the right of Member States to request for intervention from the Union in order to restore peace and security. Intervention by the Union, however, requires a decision by the Union's Assembly of Heads of State and government.<sup>557</sup>

In a marked departure from the OAU Charter, article 30 of the Constitutive Act provides for the prohibition from the participation in the activities of the organisation where the government of a member state has come to power through unconstitutional means.<sup>558</sup> This provision, read together with the

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<sup>557</sup> Packer & Rukare argue that this provision raises the risk of inaction on the part of the heads of state mainly due to the fact that it could also be evoked in order to interfere in the event of conflict in their own countries. They are also of the view that governments could request intervention in order to retain power and suppress popular rebellion. See Packer (2002) 373.

<sup>558</sup> In accordance with this provision, the AU in 2002 barred Madagascar from attending the inauguration of the organisation after a decision that the transfer of power to Marc Ravalomanana was unconstitutional. The organisation again in 2009 suspended Madagascar as a result of the unconstitutional ascendance to power of the opposition leader, Andry Rajoelina. This was after Marc Ravalomanana was pressured to step down and handed over power to the military, which in turn transferred power to Rajoelina. In 2005, the AU suspended Mauritania from all organisational activities after a military coup. Furthermore, it also suspended Togo and imposed travel and economic sanction on its officials as a result of the unconstitutional change of leadership in February 2005. In December 2008, the AU also suspended Guinea after a military coup.



objectives to promote human rights, social justice, gender equality and good governance, once again buttress the idea that these elements are essential ingredients, not only for the development of the continent but also for a solid and viable integration process. It is pertinent that an organisation responsible for overseeing continental integration process is bestowed with adequate powers and resources indispensable for the discharge of its functions. The Constitutive Act also provides for the imposition of sanctions on Member States which fail to comply with the decisions and policies of the AU.<sup>559</sup>

*b) Conservatory principle*<sup>560</sup>

As mentioned previously, the Constitutive Act builds on the socio-political realities of the continent by putting in place measures aimed at preserving the *status quo* either through maintaining colonial boundaries or the protection of African leaders.

Article 4(b) reasserted the *uti possidetis* principle by stating the respect of borders existing on the achievement of independence. Article 4 re-affirms the four of the seven principles stipulated in Article III of the OAU Charter. They are – sovereign equality; non-interference in the internal affairs of member states; peaceful settlement of disputes; and the condemnation of political assassination and subversive activities. The 2003 amendment to article 4(h), which provides for intervention in order to prevent serious threat to serious legitimate order, should be understood as a measure of protecting and preserving all regimes, regardless of their nature. This reasoning stems from two positions. Firstly, the AU Constitutive Act did not define the term ‘legitimate order’.<sup>561</sup> Secondly, the

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<sup>559</sup> Art. 23(2) of AU CA. It further provides for the imposition of sanctions on members that defaults in the payments of its contribution.

<sup>560</sup> Conservatory principle is a politico-legal term used to describe mechanisms aimed at balancing the interests of member states and international organisation. In essence, this allows member states, in spite of granting powers to organisations, exercise authority over matters which extensively borders on national interest. See Dashwood et al (2000)151. However, in the context of this chapter, conservatory principles denote the preservation of the *status quo*, especially the preservation of state and its political elites.

<sup>561</sup> It could also be argued that other AU instruments, especially the ACDEG, in article 23 (1-5), defines actions which are not ‘legitimate order’ to include the following:

premature ratification of questionable elections across the continent, without any serious investigation into the substance of the process, points to a tacit acknowledgment of impunity. This also applies to the principles of non-interference and condemnation of subversive activities. As altruistic as these provisions appear, the fact remains that the political leadership in some African countries lacks legitimacy. To guarantee the preservation of such regimes, without addressing the question of legitimacy, smacks of contradiction and an avenue for inaction.

*c) Institutional structure*

Article 5 spells out the internal institutional architecture of the African Union. It is composed of – the Assembly of the Union; the Executive Council; the Pan-African Parliament; the Court of Justice; the Commission; the Permanent Representative Committee; the Specialised Technical Committees; the Economic, Social and Cultural Council; and the financial institutions (consisting of the African Central Bank, the African Monetary Fund and the African Investment Bank). Other notable bodies which are not listed here include the Peace and Security Council (PSC), the New Partnership for Africa’s Development (NEPAD) and the African Peer Review Mechanism (APRM).

The Assembly of the Union is the supreme governing body of the Union. It is composed of fifty-three heads of state and government. The Assembly meets once a year in an ordinary session with the possibility of extraordinary sessions

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- Any putsch against a democratically elected government
  - Any intervention by mercenary to replace a democratically elected government
  - Any replacement of a democratically elected government by rebels
  - Any refusal by an incumbent government to relinquish power to the winning party or candidate
  - Any amendment or revision of the constitution or legal instruments, which is an infringement on the principle of democratic change of government

It however remains to be seen how the AU, either through its administrative or judicial organs, would interpret or apply this provision. Reading the above-outlined provisions together with article 4(h) of the AU CA, the ACJ&HR may one day be faced with making a radical decision on the legality, or lack thereof, of an incumbent regime.

called by a two-thirds majority. Decision and resolutions are by two-thirds majority while questions of procedure require only a simple majority.

The Executive Council is made up of ministers designated by the member states (mainly ministers of foreign affairs). It meets twice in a year with the possibility of extraordinary sessions. It coordinates and takes decisions on common policies such as foreign trade, transport, agriculture and communication.

The Pan-African Parliament is the legislative body of the African Union. It presently has advisory and consultative powers which will last for the first five years of its existence – it was inaugurated in March 2004 – after which it will start exercising full legislative powers (this is fully discussed in the next chapter). The parliament is composed of 265 representatives elected by the legislature of the 53 AU states rather than being directly elected in their own capacity.

The Court of Justice is to be merged with the African Court on Human and Peoples' Rights and will be known as the African Court of Justice and Human Rights (ACJ&HR).<sup>562</sup> It will be made up of two sections: a General Affairs Section composed of eight judges and a Human Rights Section composed of eight judges.<sup>563</sup> The Court shall be responsible for the interpretation and application of the AU Constitutive Act, any questions on international law, other Union treaties and all subsidiary legal instruments adopted by the AU and the OAU.<sup>564</sup> The Court is yet to be operational.

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<sup>562</sup> See the Protocol on the Statute of African Court of Justice and Human Rights, art. 2. [Hereinafter referred to as ACJ&HR Protocol]. Prior to this merger, the African Court on Human and Peoples' Rights had a separate Protocol, which entered into force in 2004. At the AU Summit in Khartoum in January 2006, the eleven judges of the court were elected and it was decided that the seat of the Court will be in Tanzania. See Beyani C, 'Recent developments in the African human rights system 2004 – 2006'. *Human Rights Law Review*. 7/3 (2007) 583-584.

<sup>563</sup> ACJ&HR Protocol, art. 16.

<sup>564</sup> *Ibid*, art. 28.

The AU Commission functions as the executive arm or secretariat of the AU.<sup>565</sup> It implements AU policies. The Commission is headed by a Chairperson and ten commissioners dealing with different policy areas.

The Permanent Representatives Committee consists of nominated permanent representatives of member states. It serves as the secretariat of the Executive Council by preparing the work of the Executive Council.<sup>566</sup>

The Specialised Technical Committee prepares the background work on common policy projects falling within their competence. These include rural economy and agriculture, science and technology, energy, education, environment, health, transport, trade and natural resources.

The Economic, Social and Cultural Council (ECOSOCC) is an advisory organ composed of Civil Society Organisations (CSOs) on the continent. It is aimed at ensuring the participation of the peoples of Africa in the AU process.<sup>567</sup>

The Union shall have three financial institutions: the African Central Bank, the African Monetary Fund and the African Investment Bank. Like the ACJ&HR, these institutions are yet to be operational.

#### **4.3.3 A supranational African Union?**

Based on the provisions of the CA outlined above, the next enquiry is whether or not the AU is a supranational organisation. If not, the next question is whether it has been designed, based on its objectives, to evolve into a

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<sup>565</sup> At the 12<sup>th</sup> AU Summit in Addis Ababa, held from 1 – 3 February 2009, the Assembly decided to grant more powers to the Commission by transforming it into the AU Authority. AU/Dec.206 (XI).

<sup>566</sup> Art. 21 of the AU CA.

<sup>567</sup> The actualisation of this ideal continue to be hampered by factors such as lack of awareness, limited funding, ambiguous election process to the body and the fact that the body only has an advisory status. See *Towards a people-driven African Union: Current obstacles and new opportunities*. AfriMAP, AFRODAD & Oxfam (2007) 6. Available at [http://www.soros.org/resources/articles\\_publications/publications/people\\_20070124](http://www.soros.org/resources/articles_publications/publications/people_20070124) (Accessed 24 February 2008)

supranational organisation. In order to answer these questions, the necessary departure point is to measure the AU, in its present state, against some of the characteristics of supranationalism.

As indicated elsewhere, supranationalism entails the existence of an organisation that operates above the framework of nation states. While international relations is essentially state-centric, the concept of supranationalism seeks to craft the ideology of resolving common and related problems through neutral and technocratic institutions. Weiler identifies two features of supranationalism as decisional and normative supranationalism.<sup>568</sup> He notes that it is the combination of these two features that distinguishes a supranational organisation from other intergovernmental organisations.<sup>569</sup> According to Pescatore, there are three criteria of supranationalism.<sup>570</sup>

- the recognition of common values and interests
- creation of an effective power and
- the autonomy of these powers

He further observes that:

[e]ven where common interests and common values are recognised, the second element of supranationality, recognition of common authority is lacking. Nothing more, then, has been achieved than what is called international cooperation.<sup>571</sup>

The corollary of this is the existence of an insulated decision making body which takes binding decisions and also responsible for the supervision and implementation of such decisions.<sup>572</sup> Taking into account the primacy of nation states in global *realpolitik*, the architecture of supranationalism includes states

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<sup>568</sup> Weiler (1981) 271.

<sup>569</sup> Ibid, 305.

<sup>570</sup> See Pescatore (1974) 50-51.

<sup>571</sup> Ibid, 51-52

<sup>572</sup> See e.g. Lenaerts & Van Nuffel (1999) 16-22.

as privileged players in the integration process.<sup>573</sup> Since Weiler's classification neatly captures all of these ingredients highlighted, it will provide the basis for assessing the supranational status, or lack thereof, of the AU.

According to Weiler, normative supranationalism entails 'the relationships and hierarchy which exists between the EC policies and legal measures on one hand, and competing policies and legal measures of member states on the other'.<sup>574</sup> This definition denotes the existence of three situations:

- Firstly, whether in respect of common interests and competence, the policies and laws of such organisation has direct effect in member states<sup>575</sup>
- Secondly, whether the laws of the organisation are superior to the laws of the member states<sup>576</sup>
- And lastly, whether member states are pre-empted from enacting contradictory legislations<sup>577</sup>

All of these features are embodied in the institutional machinery of the EU.<sup>578</sup> In respect of business laws, one could also assert that these features are present

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<sup>573</sup> Weiler (1999) 273.

<sup>574</sup> Weiler (1981) 271.

<sup>575</sup> The doctrine of direct effect is described as 'a provision which is clear and unconditional and bestows a legal right on a natural or legal person, exercisable against another natural person, or against the authorities of a member state'. Dashwood et al (2000) 158-159.

<sup>576</sup> The doctrine of supremacy is defined as 'the capacity of that norm of Community law to overrule inconsistent norms of national law in domestic law proceedings'. See De Witt B, 'Direct effect, supremacy, and the nature of the legal order', in Craig P & De Burca G (ed), *The evolution of EU law*. Oxford: Oxford University Press (1999) 152.

<sup>577</sup> In *Commission v Council*, the European Court of Justice (ECJ) highlighted the principle of pre-emption by ruling that

each time the Community, with a view to implementing a common policy envisaged by the Treaty, adopts provisions laying down common rules, whatever form these may take, the Member States no longer have the right, acting individually or even collectively, to undertake obligations with third countries which affect those rules. As and when such common rules come into being, the Community alone is in a position to assume and carry out contractual obligation towards third countries affecting the whole sphere of application of the Community legal system.

See (Case 22/70) [1971] ECR 263, paras. 17-18.

in the OHADA system.<sup>579</sup> The AU system, however, lacks any of these measures.

Although the transfer of sovereignty to the AU has been limited, a careful reading of the AU Constitutive Act suggests that the architects of the organisation intended to create a supranational entity.<sup>580</sup> The intention to confer supranational powers on the institutions of the AU can be gleaned from the preamble of the Constitutive Act which reads thus:

We, heads of States and Government of the member states... [are] 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.

Although the phrase 'necessary powers and resources' seems vague, circumstances surrounding the creation of the AU<sup>581</sup> and efforts aimed at clothing these common institutions with more powers indicate that willingness to operate beyond intergovernmentalism. An example of this is the February 2009 decision of the Assembly to grant more powers to the AU Commission by transforming it into an AU Authority.<sup>582</sup>

These common institutions, referred to in the preamble, are listed in article 5. In a clear departure from the OAU era, these institutions have been established to

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<sup>578</sup> As discussed in the preceding, the supremacy of EU laws over national laws and the direct effect of its laws in the territory of member states make the EU a supranational authority. See e.g. Weiler (1991) 2403-2483; Weiler (1981) 267-306

<sup>579</sup> Art. 10 of the OHADA Treaty stipulate that the OHADA Uniform Acts are directly applicable in the territories of the member states. Art. 9 provide that the Acts shall have direct effect 30 days after their publication in the OHADA official journal.

<sup>580</sup> According to Hay, 'Supranationalism ... does not depend on express stipulation, but follows from powers and functions actually accorded to an organisation'. See Hay (1966) 30.

<sup>581</sup> As explained above, the AU was created against the background of the realisation that the OAU was ineffectual in addressing continental problems and more importantly, continental integration. In spite of the disappointments with the operation of the AU, which will be discussed below, the AU is designed to address the apparent shortcomings of its predecessor. Thus in terms of its form, the AU may pass the supranational test but in terms of substance, it falls short.

<sup>582</sup> AU/Dec.206 (XI).

address - at a supranational level - specific challenges ranging from security, human rights, globalisation, socio-economic development, political and democratic governance.

A closer look at the functions of these institutions reveals an intention on the part of the drafters of the CA to confer some degree of supranationalism on these institutions. The Assembly, in article 9 of the Constitutive Act, has the powers to determine common policies, monitor implementation of these policies and ensure compliance by member states.<sup>583</sup> It also has the power to impose sanctions on member states that fail to comply with these common policies.<sup>584</sup> The function of the Executive Council is to coordinate and take decisions on policies ranging from foreign trade, immigration matters, transport and communication, education, health and agriculture.<sup>585</sup>

The proposed ACJ&HR will have jurisdiction over matters relating to the interpretation of the Constitutive Act, disputes between states, acts and functions of the organs of the AU.<sup>586</sup> The General Section and the Human Rights Section may constitute itself into one or more special chambers, and the judgment given by either of the Chambers will be considered as rendered by the Court.<sup>587</sup> The judgment of the Court is final and the decision is binding on the parties.<sup>588</sup>

Another allusion to supranationalism is the AU's right to intervention. Unlike its predecessor, the OAU Charter, the Constitutive Act circumscribes the provision on sovereignty and territorial integrity of member states<sup>589</sup> by stipulating in

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<sup>583</sup> As Olivier & Olivier point out, the CA is silent on the legal status of AU decisions. There is no clear indication as to the binding nature or direct effect of such decisions in member states. See Oliver & Olivier (2004) 362. This is one of the features that define the intergovernmental nature of the AU.

<sup>584</sup> AU CA, art. 23(2).

<sup>585</sup> Ibid, art. 13.

<sup>586</sup> Art. 28 of the ACJ&HR Protocol.

<sup>587</sup> Ibid, art. 19 (1) & (2).

<sup>588</sup> Ibid, art 46(1) & (2).

<sup>589</sup> AU CA art. 3 (b).



article 4(h) the right of the AU, as against that of member states,<sup>590</sup> to intervene under the following conditions: war crimes, genocide, crime against humanity and, through a 2003 amendment, a serious threat to legitimate order.

While it could be argued that the AU as an institution had in some instances, notably through the normative provisions in its Constitutive Act, intervened in the internal affairs of member states,<sup>591</sup> the fact remains that the designated purveyors of normative supranationalism are yet to take shape.<sup>592</sup> In illustration, the PAP still exercises consultative and advisory powers (it is expected to start exercising full legislative powers five years after its inauguration)<sup>593</sup> and the members are not directly elected by citizens of the member states.<sup>594</sup> The parliament's full legislative powers are to be defined by the Assembly.<sup>595</sup> At the moment, the PAP still exercises advisory powers. With no implementation date of the ACJ&HR in sight, coupled with the deferral of the exercise of full legislative powers by the PAP, one can only speculate on how these important institutions will exercise supranational powers.

Decisional supranationalism, according to Weiler, 'relates to the institutional framework and decision-making processes by which Community policies and measures are, in the first place, initiated, debated and formulated, then promulgated and finally executed'.<sup>596</sup> This definition sketches the matrix of the

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<sup>590</sup> While art.4 (g) provides that any member state may not interfere in the internal affairs of another, it does not expressly prevent the AU as institution from intervening.

<sup>591</sup> These include the decision to bar Madagascar from attending the inauguration of the AU in 2002, suspension of Togo in 2005, mandating Senegal to put in place appropriate legal mechanism for the trial of Hissan Habre and the deployment of troops to hot spots such as Darfur, Somalia and Burundi.

<sup>592</sup> Decision-making powers are firmly placed in the hands of organs which are entirely composed of representatives of national governments. The Assembly is composed of Heads of States while the Executive Council is composed of the Ministers of Foreign Affairs or designated Ministers of member states.

<sup>593</sup> See Protocol to the Treaty Establishing the African Economic Community relating to the Pan-African Parliament 2001, art. 2(3). The PAP was inaugurated in March 2004.

<sup>594</sup> PAP, in accordance with art. 4(2), is presently composed of five nominees each from member states which add up to 265 members. See [http://www.pan-african-parliament.org/AboutPAP\\_Overview.aspx](http://www.pan-african-parliament.org/AboutPAP_Overview.aspx) (Accessed 10 October 2007). It remains to be seen how the AU would handle the direct elections of PAP members considering the fact that the continent is plagued by the high incidence of massive electoral fraud.

<sup>595</sup> See PAP Protocol, art 11.

<sup>596</sup> Weiler (1981) 271.

decision making process in supranational organisations. As explained above, supranationalism entails the autonomy of intergovernmental institutions vis-à-vis the decision making process. This autonomous power is better explained by the existence of the majority voting system.<sup>597</sup> The majority voting system ensures that as long as the voting requirement is satisfied, member states are bound by a decision whether or not they support such a decision.

It appears that while the AU has little or no measure of normative supranationalism, there exists an element of decisional supranationalism. In terms of article 7 of the Constitutive Act, the Assembly can ratify decisions by 'consensus or failing which, by a two thirds majority of the member states of the Union, apart from procedural matters which require a simple majority'. The decision-making process in the Executive Council is the same as the Assembly's.

As mentioned above, the supranational status of an international organisation is determined by the existence of both decisional and normative supranationalism within the institutional framework. Based on the absence of normative supranationalism within the institutional framework of the AU, it can only be classified as an intergovernmental organisation, although it has the potential of evolving into a supranational organisation.

In chapter 2, the benefits of regional integration are discussed. Supranationalism, as pointed out above, represents an advanced form of cooperation among states. It requires the surrendering of substantial portion of state sovereignty to neutral, transnational institutions. Such institutions are then empowered to act parallel to and/or above member states in respect of matters which fall within their jurisdiction. Therefore, what can Africa benefit from establishing supranational institutions? It should be noted from the outset that supranationalism is by no means the singular antidote to Africa's problems.

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<sup>597</sup> Ibid, 281.

Rather supranationalism, in the context of this thesis, is seen as a catalyst for entrenching democratic norms and values on the continent. The absence of democratic practises at the national level is one of the major impediments to development. It is, therefore, essential that a supranational framework for ensuring the uniform adherence to democratic values is put in place. Bequeathing such institutions with the requisite powers of monitoring and ensuring compliance is pertinent. The next chapter considers the possibility of monitoring and compliance. However, below is a discussion of some of the critical ingredients necessary for the organisational transformation or the 'supranationalisation', of the AU.<sup>598</sup>

#### **4.4 The feasibility of a supranational African Union**

The path towards supranationalism is lined with numerous (legal, political and economic) landmines. For several decades, the continent has been besieged by a multiplicity of self-destructing tendencies ranging from senseless civil wars, the depletion of power structures and institutions, unsustainable development strategies and a dearth of committed leadership. The woeful conditions at the national levels continue to deplete or in some cases, makes a mockery of attempts to achieve regional integration objectives. The laudable vision of a 'united Africa' has thus been reduced to a utopian hope or 'organised hypocrisy' as a result of some of the inherent contradictions displayed by its major proponents.<sup>599</sup> African leaders aspire to attain the impressive status of the EU without necessarily being ready to subscribe to the ingredients that have made the EU a success story.

The nagging question remains: How can Africa build a formidable institution capable of vigorously pursuing and attaining integration objectives? Or to put it

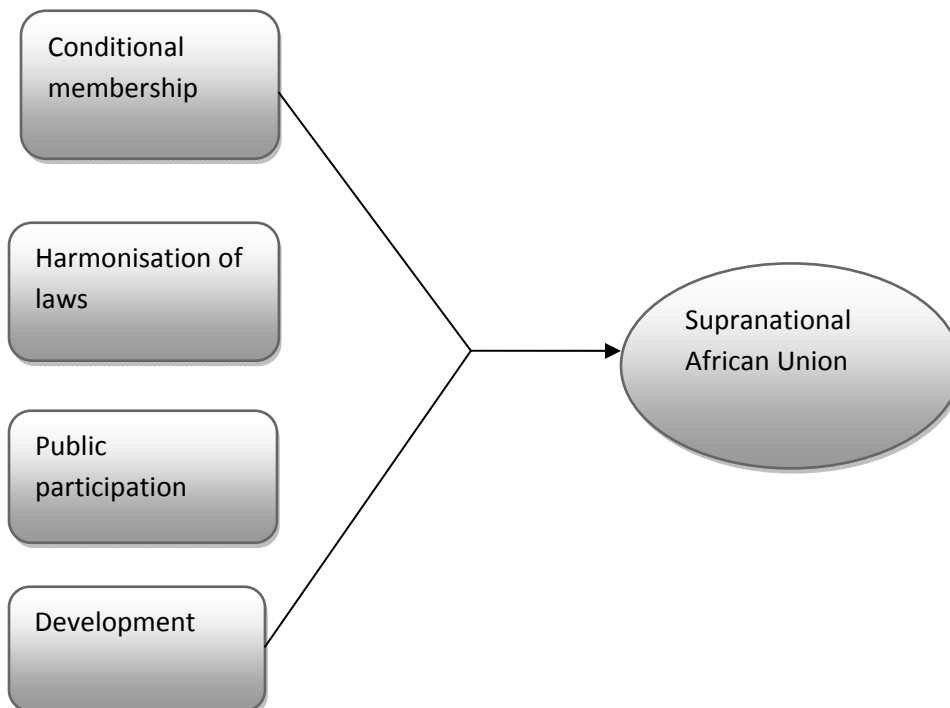
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<sup>598</sup> The next chapter looks at how these core ingredients fit into the institutional structure of a future supranational AU.

<sup>599</sup> As indicated earlier, Muammar Ghaddafi, one of the foremost proponent of African unity, is hardly an exemplar of democratic ideals and values. He has been in power for 40 years, running a one-man show in Libya. Another example is Kwame Nkrumah, who is regarded as one of the founding fathers of the political unification ideology, who also ruled Ghana with an iron fist.

simply, how can the AU be transformed into a supranational entity? This section will consider some of the politico-legal measures indispensable for the attainment of such objective. These measures derive from an attempt to establish the nexus between democratic ideals and the operationalisation of a supranational entity.

**Diagram 4.1: Ingredients of Afro-supranationalism**



Source: Own construction

#### **4.4.1 Membership**

As highlighted earlier, states remain the dominant players in the international system. International organisations come into existence based on the political consent of states. States are thus free to either join or relinquish their membership of international organisations. International organisations are expected to operate based on the whims of member states. On the other hand, the membership criteria of an organisation determine the philosophy cum

direction of the organisation. While the membership of the EU is open to all European states, new member states are expected to fulfil three basic conditions, as specified by the Copenhagen criteria.<sup>600</sup> They are the following:

- Political criteria - This includes the availability of stable institutions guaranteeing democracy, rule of law, human rights and respect for the protection of minorities;
- Economic criteria - A functioning market economy and the capacity to cope with competitive pressure and market forces within the Union;
- Institutional criteria - The ability to take on the obligations of membership, including the support for the aims of the Union. They must have a public administration capable of applying and managing EU laws in practice.

These three elements pointedly affirm the basis of the EU. Through these three criteria, the EU has been successful in promoting the entrenchment of the ethos of democracy across its member states. The organisation also offers institutional (financial and administrative) support to new members so that they could fulfil the above-stipulated obligations.

One would have expected that since the AU is modelled after the EU (see table 4.2 below), the architects of the AU would stipulate certain conditions for membership of the organisation. However, this was not the position. Ignoring the failures and visionless posture of its predecessor, the AU based the sole criteria for membership on geography and race.<sup>601</sup> In a contradictory tone, the Constitutive Act espouses the ideals of democracy, rule of law and human rights.<sup>602</sup> Little wonder why the organisation is seen in some quarters as nothing

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<sup>600</sup> See e.g. Folsom R, *European Union law in a nutshell*. St. Paul MN: West Group (1999) 21-22; see also [http://europa.eu/scadplus/glossary/accession\\_criteria\\_copenhagen\\_en.htm](http://europa.eu/scadplus/glossary/accession_criteria_copenhagen_en.htm) (Accessed 20 August 2008).

<sup>601</sup> In a statement pointing to the insignificance of joining the old OAU (this could also be said about the AU), the Eritrean president, Issaias Afewerki, opined: 'we are joining the OAU not because of your achievement, but because you are our African brothers'. Cited in Akonnor (2007) 197.

<sup>602</sup> See e.g. arts 4 & 30 of the AU CA.

more than ‘an old wine in a new bottle’.<sup>603</sup> Ayittey’s indictment of the AU is worth quoting in full:

The AU is a hopeless and feckless organisation, it waits until an African country implodes and then launches urgent appeals for international aid. A den of unrepentant despots, the AU cannot even define democracy let alone respect its own African Charter of Human and Peoples’ Rights. Afflicted with intellectual astigmatism, it can see with eagle-eye clarity the colonial injustices perpetrated against Africans by Europeans; but it is hopelessly blind to the equally heinous injustices African leaders perpetrate against their own people.<sup>604</sup>

Unconditional membership has not only entrenched the impunity that reigned during the OAU era, it also serves as an indication of the emptiness of the cherished goal of a united Africa. By using the oft-vaunted and amorphous concept of ‘African brotherhood’ as a determinant for membership, the AU has exposed the paucity of a cohesive ideological framework for African integration. The commitment to a united Africa does not lie in the ability to write books on African unity, organise ‘talk-shops’ on the need for integration or to make unification a ‘lifelong dream’ (a *lá* Nkrumah); rather it denotes the existence of a culture of uniformity in terms of democratic practice, and the respect of the rights of individual, all within the framework of the values and practices of African society. As the Togolese president, Faure Gnassingbe, rightly puts it:

I’m wondering if we can ever get a political union when we have very different political systems at the moment... [I]t is difficult because you have some countries adopting a democratic system and others not doing so, how could we have political unity? ... [W]e must set standard of governance which we should respect and observe ... [I]f we want to have a political union, I think we should synchronise our political systems first.<sup>605</sup>

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<sup>603</sup> See e.g. Akonnor (2007) 191-209.

<sup>604</sup> Ayittey G, ‘Leading from behind’. *BBC Focus on Africa* (October – December 2008) 34.

<sup>605</sup> Cited in *New African Magazine* (March 2010) 20-21.

A glance at the list of African presidents who have entrenched themselves in power further puts a big question mark on the seriousness of continental integration.<sup>606</sup> This thus begs the following questions: What then is the best way to approach the issue of unconditional membership? Should the AU be dissolved so that a new organisation founded on the ethos of democratic values and norms can emerge? Or rather, should the AU be retained while member states commit and surrender themselves to strict enforcement and compliance mechanisms?

Before answering these questions, one must be mindful of the realities on the ground. The first reality is that any call for the dismantling of the current AU is nothing more than wishful thinking.<sup>607</sup> The majority of member states are satisfied with the *status quo* – the nominal significance of the organisation. The other reality, which stems from the first, is that the AU is an intergovernmental organisation with no real powers to forge the desired ideological rebirth. In spite of these challenges, there is a prospect for the development of a process capable of regulating the membership structure of the AU. The APRM is a prime example of such process. Before dealing with the way in which the APRM could be used as a legal and political tool for regulating AU membership, it is important to present an overview of the process and its impact thus far.

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<sup>606</sup> For example, the now late Omar Bongo of Gabon was in power from 1967-2009; Muammar Ghadaffi of Libya (1969); Obiang Nguema Mbasango of Equatorial Guinea (1979); Robert Mugabe of Zimbabwe (1980); Hosni Mubarak of Egypt (1981); Paul Biya of Cameroon (1982) and Yoweri Museveni of Uganda (1986). See e.g. *New African Magazine*. (June 2008) 8.

<sup>607</sup> Albright aptly captured the three global realities: ‘... totalitarian governments are alive and well; their neighbours are reluctant to press them to change; and the notion of national sovereignty as sacred is gaining ground, helped in no small part by the disastrous results of the American invasion of Iraq.’ Albright M, *The end of intervention*. Available at [http://www.nytimes.com/2008/06/11/opinion/11albright.html?\\_r=1&th&emc=th&oref=slogin](http://www.nytimes.com/2008/06/11/opinion/11albright.html?_r=1&th&emc=th&oref=slogin) (Accessed 11 June 2008).

**Table 4.2: Comparison between the EU and the AU**

The European Union	The African Union
<p><b>Membership:</b></p> <ul style="list-style-type: none"> <li>• The EU is made up of 27 members.</li> <li>• The need for continental peace and security after the devastating Second World War and economic reconstruction of Europe were the major motivation behind the formation of the EU.</li> <li>• Membership is not automatic; it is based on the adherence to the principles of democracy, durable institutions at the national level and free market economy.</li> </ul>	<p><b>Membership:</b></p> <ul style="list-style-type: none"> <li>• The AU is composed of 53 members.</li> <li>• The inadequacy of the OAU to address contemporary global challenges and the need to fast-track continental integration led to the creation of the AU.</li> <li>• Membership is open to all African states.<sup>608</sup></li> </ul>
<p><b>Institutional structure:</b></p> <ul style="list-style-type: none"> <li>• <b>The European Council</b> is composed of presidents and prime ministers of EU states</li> <li>• <b>The Council of European Union</b> (Council) is the primary decision making organ of the EU. It is made up ministers from member states.</li> <li>• <b>The European Parliament</b> is composed of members elected directly by EU citizens. Representation is based on the population of each member state. It</li> </ul>	<p><b>Institutional structure:</b></p> <ul style="list-style-type: none"> <li>• <b>The Assembly of Heads of States and Government</b> is the supreme decision making organ of the AU</li> <li>• <b>The Executive Council</b> is composed of foreign ministers or designated ministers from member states.</li> <li>• <b>The Pan-African Parliament</b> is the advisory and consultative</li> </ul>

<sup>608</sup> Wanyeki views that the decision to include Africans in the Diaspora in the activities of the AU is an indication that associate membership may be extended to non-African states. Wanyeki (2008) 103. Recent calls by African presidents such as Ghaddafi and Wade about the inclusion of Caribbean states as members of the AU should also be understood within this context. See e.g. ‘Ghaddafi wants Caribbean in Africa’. Available at <http://news.bbc.co.uk/2/hi/africa/7883178.stm> (Accessed 20 February 2010); see also ‘African Union to consider “land for Haitians” plan’ Available at <http://www.reuters.com/article/idUSTRE60U0IV20100131> (Accessed 20 February 2010).





<p>shares legislative powers with the Council.</p> <ul style="list-style-type: none"> <li>• <b>The European Commission</b> is the executive arm of the Union. It is responsible for initiating legislation. It is composed of a president and 27 commissioners.</li> <li>• <b>The Court of Justice</b> is the judicial organ of the EU.</li> <li>• <b>The financial institutions:</b> European Central Bank and European Investment Bank</li> <li>• <b>The Economic and Social Committee</b></li> <li>• <b>The Committee of Permanent Representative</b> (COREPER) is made up of ambassadors of member states of the EU.</li> </ul>	<p>legislative arm of the AU. It is expected to exercise full legislative powers in the future. Each member state has five representatives.</p> <ul style="list-style-type: none"> <li>• <b>The AU Commission</b> is the executive arm of the AU. It is headed by a Chairperson and ten commissioners.</li> <li>• <b>The African Court of Justice and Human Rights</b> (ACJ&amp;HR) is the judicial organ of the AU. It is yet to take off.</li> <li>• <b>The financial institutions:</b> African Central Bank, African Monetary Fund and African Investment Bank</li> <li>• <b>The Economic, Social and Cultural Council; the Specialised Technical Committees.</b></li> <li>• <b>The Permanent Representative Committee</b> (PRC) is composed of permanent representatives of member states to the union.</li> </ul>
<p><b>Decision-making process:</b></p>	<p><b>Decision-making process:</b></p>

<ul style="list-style-type: none"> <li>• The Council and European Parliament share decision making powers.</li> <li>• Decisions are reached, depending on the matter, either through consensus or the Qualified Majority Voting (QMV) system.</li> <li>• The QMV is a weighted voting system which gives each member state of the EU a certain number of votes based on its size and population.</li> </ul>	<ul style="list-style-type: none"> <li>• The Assembly is the primary decision-making body, with the Executive Council been responsible for the implementation of such decisions</li> <li>• Decisions, in both the Assembly and Executive Council, are taken either through consensus or two-thirds majority</li> </ul>
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Source: Reconstructed from Olivier & Olivier (2004) 359

#### 4.4.1.1 The APRM: An Overview

Born out of the need to reverse the recurrent governance deficit in Africa, the APRM has been described as ‘the most ambitious piece of innovation to have come out of Africa since decolonisation.’<sup>609</sup> For several decades, governance issues in Africa have been at the fore. It is undeniable that most of the ills plaguing the continent have their roots in the unbridled and excessive use of powers by the executive. The sheer magnitude of Africa’s problems thus required a pragmatic, home-grown corrective mechanism. It is against this background, and also to give maximum effect to the principles NEPAD, that African leaders decided, in 2002, to invent a peer review mechanism, modelled on both donor-prescribed criteria and a broad-based methodology.<sup>610</sup>

At an organisational level, the APRM is made up of the Committee of Participating Heads of State and Government (APR Forum) which constitutes the APRM’s highest decision making body. It meets about twice a year, often on

<sup>609</sup> Hansungule M, *The role of APRM in strengthening governance in Africa: Opportunities and constraints in implementation*. Prepared for the Office of the United Nations Special Adviser on Africa (2007) 2. Available at <http://www.un.org/africa/osaa/reports/overview%20APRM%20paper%20Dec%202007.pdf> (Accessed 20 June 2008); see also e.g. Herbert R & Gruzd S, *The African peer review mechanism: Lessons from the pioneers*. Johannesburg: South African Institute of International Affairs (SAIIA). (2008) 4

<sup>610</sup> See e.g. Herbert & Gruzd (2008) 7-8.

the margins of AU Summits, to discuss APRM Country Review Reports of countries that have completed the exercise.

The APR Panel of Eminent Persons (APR Panel) is made up of seven distinguished Africans, appointed to five year terms.<sup>611</sup> It exercises oversight over the APRM process. Each of the Panel members is responsible for overseeing designated country review process.

The APR Secretariat is the engine room of the APRM process. It is responsible for preparing the background research report on the countries to be reviewed. It is also charged with the responsibility of providing logistic and administrative support for country missions.

The pragmatic nature of the APRM process is evident in the provision which stipulates that the process is voluntary.<sup>612</sup> This is understandable considering that African states have a zealous respect for their sovereignty. At the same time, it offers a pragmatic method of entrenching good governance without necessarily alienating member states hostile to a new order of governance reforms. While membership is automatically based on the membership of the AU, acceding states are obligated to 'clearly define a time-bound Programme of Action for implementing the Declaration on Democracy, Political, Economic, and Corporate Governance including periodic reviews'.<sup>613</sup> The base document

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<sup>611</sup> They include the current Chairperson, Prof Adebayo Adedeji (Nigeria), Ambassador Bethuel Kiplagat (Kenya), Mr Mohammed Babes (Algeria), Dr Graça Machel (Mozambique), Dr Dorothy Njuema (Cameroon), Mrs Marie-Angelique Savané (Senegal) and Dr Chris Stals (South Africa). At its January 2009 meeting, the Forum retained Prof. Adedeji as the Chairperson for a period of one year while Mrs Domitila Mukantaganzwa (Rwanda) was appointed to the Panel. Dr Stals, Mrs Savane, Ambassador Kiplagat, Dr Njuema have all completed their terms of office. Available at <http://www.aprm-international.org/> (Accessed 20 November 2009).

<sup>612</sup> AHG/235/XXXV111, Annex 11, para 1. As at May 2008, 29 countries have acceded to APRM: Algeria, Angola, Benin, Burkina Faso, Cameroon, Djibouti, Egypt, Ethiopia, Gabon, Ghana, Kenya, Lesotho, Malawi, Mali, Mauritania, Mauritius, Mozambique, Nigeria, Republic of Congo, Rwanda, Sao Tome and the Principe, Senegal, Sierra Leone, South Africa, Sudan, Uganda, Tanzania, Togo and Zambia. <http://www.uneca.org/aprm/CountriesStatus.asp> (Accessed 30 March 2009).

<sup>613</sup> AHG/235/XXXV111, Annex 11, para 13.

stipulates four types of review.<sup>614</sup> Each of the review has five complex and time consuming stages. The five stage process is set out below:<sup>615</sup>

- **Stage 1:** At this stage, the APRM Secretariat prepares a background research paper on the country to be reviewed in relation to the four thematic areas: Democracy and Political Governance, Economic Governance and Management, Corporate Governance and Socio-economic Governance.
- **Stage 2:** This is the Country Review Mission. Based on the background research paper, the country review team, led by a panel member visits the country to be reviewed. The team is usually composed of about 15-25 experts and is expected to spend between two to three weeks in the country. During the visit, the team will engage in the widest range of consultations with government officials, political parties, and civil society including the media, academia and trade unions.
- **Stage 3:** After the Country Review Mission, the team is expected to discuss the issues observed during the visit and then prepare a draft Country Review Report. This report is sent back to the government of the country in question for comments. The government cannot amend the report; it can only append its comments to the report.
- **Stage 4:** The Secretariat then submits the final Country Review Report to the APR Forum, Heads of States and Government, for peer review. The time allotted for this process is a modest two hours.
- **Stage 5:** Six months after the discussion by the Forum, the report is tabled before the relevant institutions: the PAP, RECs, African Commission on Human and Peoples' Rights, AU PSC and ECOSOCC.

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<sup>614</sup> The first review is the base review, which will be carried out within eighteen months of a country becoming a member of the APRM process. The second review is a periodic review which takes place every two to four years. Thirdly, a member country can, for its own reasons, ask for a review that is not part of the periodically mandated reviews. And lastly, participating Heads of States and Government, on sensing signs of an impending political and economic crisis in a member country, can call for a review. See Ibid, para 14.

<sup>615</sup> Ibid, para 18-25; see also Herbert & Gruzd (2008) 16-17; NEPAD/APRM/Panel3/guidelines/11-2003/Doc8, paras 21-28.

So far, only ten countries, out of the twenty-nine which have acceded to the APRM document, have successfully completed the five stages review process (base review): Ghana, Rwanda, Kenya, South Africa, Nigeria, Burkina Faso, Uganda, Mali, Mozambique and Algeria.<sup>616</sup> As apparent in the outlined stages, the APRM is designed to be an all-inclusive process. By including the civil society in the process, the APRM presents an alternative and viable platform for discussing national matters, strengthening national institutions and also highlighting the importance of public participation in national matters. From a Kenyan perspective, Akoth points out:

This process and the instruments devised for the APRM research mean that Kenya self assessment yielded, in some respects, the most comprehensive documentation to date of the political, social, cultural and economic situation in Kenya. The APRM process also helped give ordinary Kenyans some voices to their concerns, and the process, coupled with the much contested constitutional review which was under way during the same period, shows that Kenyans want more in how their country is governed.<sup>617</sup>

In order to give the APRM process a national feel, participating countries are expected to establish two main institutions: the National Focal Point and the National Governing Council. The APR focal point should be at ministerial level

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<sup>616</sup> Interestingly, Mauritius - a country adjudged as one of the few democratic nations in Africa and also one of the first four countries which volunteered to be reviewed - has failed to go through the APRM process. Reasons advanced for this range from change of government, funding problems and a self-assuring attitude which an observer describes as 'the government did not feel it had anything to prove'. See Herbert & Gruzd (2008) 243, 249. The APRM process has however resumed in Mauritius. See 'The APRM Newsletter' January 2009, 3. Available at <http://www.aprm-international.org> (Accessed 20 November 2009). [Hereinafter referred to as the APRM Newsletter 2009]. As at July 2009, the following countries have initiated plans to kick-start the APRM process: Ethiopia, Sierra Leone, Cameroon, Lesotho and Zambia. See [http://www.pacweb.org/Documents/APRM-Monitor/APRM\\_Monitor\\_7.pdf](http://www.pacweb.org/Documents/APRM-Monitor/APRM_Monitor_7.pdf) (Accessed 20 November 2009)

<sup>617</sup> Akoth S, *The APRM process in Kenya: A pathway to a new state?* Open Society Initiative for East Africa (OSIEA) and African Governance Monitoring and Advocacy Project (Afrimap), (2007) 2. Available at [http://www.afriMAP.org/english/images/report/APRM\\_Kenya\\_EN.pdf](http://www.afriMAP.org/english/images/report/APRM_Kenya_EN.pdf) (Accessed 8 June, 2008). Kenya is currently busy with the follow-up process. Other countries busy with the progress reports are Algeria, Benin, Ghana and Rwanda. See APRM Newsletter (2009) 2, 4.

or a high-level official reporting directly to the Head of State or Government with the necessary technical committees supporting it.<sup>618</sup>

Another interesting dimension of the APRM process is the composition of the National Governing Council (NGC). The NGC is the body responsible for the implementation of the APRM at the national level by overseeing the production of the Country Self Assessment Report and Programme of Action. Unlike the APR focal point, the composition of the NGC is more broad-based. The Country Guideline stipulates that the council should include representatives of civil society (women, youth, trade unions, peoples with disability and business organisation) and government.

In Ghana, the Governing Council was composed of seven distinguished individuals from the academia, the international diplomatic corps, religious leaders and the civil society.<sup>619</sup> Without detracting from the credibility of the members, the Ghanaian civil society, however, complained that wide consultation did not take place before the members were chosen.<sup>620</sup> In a bid to correct the flaws of the Ghanaian process, the Kenyan Governing Council was an outcome of a democratic process.<sup>621</sup> It was made up of thirty-three members drawn from government, civil society and the private sector.<sup>622</sup> The South African Governing Council had a total of 15 members, with ten members from the civil society and five government ministers.<sup>623</sup> The Rwandan National Commission had fifty members, with more than 60% government representation.<sup>624</sup>

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<sup>618</sup> See NEPAD/APRM/Panel3/guidelines/11-2003/Doc8, para 48.

<sup>619</sup> Herbert & Gruzd (2008) 159.

<sup>620</sup> Bing-Pappoe A, *Ghana and the APRM: A critical assessment*. African Governance Monitoring and Advocacy Project (AfriMAP), (2007) 21. Available at [http://www.afriMAP.org/english/images/reports/AfriMAP\\_APRM\\_Ghana\\_EN.pdf](http://www.afriMAP.org/english/images/reports/AfriMAP_APRM_Ghana_EN.pdf). (Accessed 8 June, 2008).

<sup>621</sup> Akoth (2007) 7-9; see also Herbert & Gruzd (2008) 192-193.

<sup>622</sup> Akoth (2007) 21.

<sup>623</sup> A cabinet minister chaired the Council. See Herbert & Gruzd (2008) 276-277.

<sup>624</sup> *Ibid*, 219.

In spite of the several limitations identified by observers of the APRM, the process has been able to capture the varying contestations at the national levels. More importantly, it clearly presents the perspectives on governance issues in Africa and the ways of tackling them. Although the process is designed to entrench the principles of good governance in participating countries, it also has the potential of being an instrument for regulating the membership of the AU as will be elaborated below.

#### **4.4.1.2 The APRM as a tool for regulating AU membership: A critique**

The APRM process is indeed revolutionary. The fact that more than half of the countries on the continent have acceded to it, is a testament to its legitimacy and importance as a self-correcting instrument.<sup>625</sup> In the countries already reviewed, the APRM has sensitively, yet boldly and critically, dissected relevant issues stagnating national, and to some extent, continental development. National issues such as revenue and fiscal allocation, corruption, constitutional reform, independence of the separate branches of government, and public participation were for the first time handled by a continental body.

In the Ghanaian review report, positive signs such as an open and fair political space, impressive economic growth and transparent handling of the APRM process were highlighted.<sup>626</sup> The report, however, pointed attention to certain concerns like the political manipulation of the judiciary, corruption, poor service delivery, an ill-equipped Electoral Commission, gender imbalance in politics and the low levels of awareness of corporate social responsibility.<sup>627</sup> To emphasise the seriousness of the process, the Ghanaian government has taken steps to incorporate the views of the review report and Programme of Action in its developmental strategies.<sup>628</sup>

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<sup>625</sup> As Ambassador Kiplagat, one of the APRM Panel members, observed, 'The APRM ... is not an instrument for punishment or exclusion, but rather it is a mechanism to identify our strong points, share them and help rectify our weak areas'. Cited in Ibid, 101.

<sup>626</sup> <http://www.uneca.org/aprm/Story101806.asp> (Accessed 20 July 2008).

<sup>627</sup> Ibid.

<sup>628</sup> See e.g. Bing-Pappoe (2007) 16; Herbert & Gruzd (2008) 179

Rwanda was praised for establishing key institutions for the implementation of government's unity and reconciliation programme, the ratification of most international human rights instruments, gender equality in politics and favourable environment for public participation.<sup>629</sup> The bad practices observed in Rwanda include the restriction on political rights, lack of capacity within institutions aimed at promoting good governance and socio-economic development and the compromised independence of the judiciary.<sup>630</sup>

The Kenyan report highlighted the following as some of the best practices in the country:<sup>631</sup> a great degree of political freedom and human rights, a vibrant civil society and media, improved GDP growth, vibrant agricultural export sector and a relatively stable country. Some of the challenges include corruption, elusive national unity, the absence of broad based and inclusive political parties, high incidence of poverty, gender imbalance in government and private sector, and the lack of efficient service delivery.<sup>632</sup>

The South African country review report identified the following best practices: transparent and conducive political environment, a first-world economic and physical infrastructure, strong public financial management, a robust legal system and gender equality in the public sphere.<sup>633</sup> Some of the key challenges are racial division, high crime rate, high incidence of unemployment and poverty, critical shortage of skills, xenophobia and the under-representation of women in the private sector.<sup>634</sup>

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<sup>629</sup> *APRM country review report no 2: Republic of Rwanda*. African Union and the African Peer Review Mechanism (2006) 14-21, 142-9.

<sup>630</sup> *Ibid.*

<sup>631</sup> *APRM country review report no 3: Country review report and programme of action of the Republic of Kenya*. African Union and the African Peer Review Mechanism (2006) xvi-xxvi

<sup>632</sup> *Ibid.*

<sup>633</sup> *South African country review report*, (2007). Available at <http://www.aprm.org.za/docs/SACountryReviewReport5.pdf> (Accessed 12 June 2008).

<sup>634</sup> *Ibid.*



The Mozambique country review commended the government for recording tremendous achievements in sustaining peace after decades of civil war, respect for constitutional rights of the citizens, impressive post-conflict economic growth rate, institutional reforms and the guarantee of multi-party democracy.<sup>635</sup> The high levels of poverty and criminal activities (especially illicit human and drug trafficking), wide-spread corruption, weak institutions, and limited compliance with international and regional instruments.<sup>636</sup>

Having highlighted the foregoing, the next step is to consider the question raised earlier: Whether the APRM could be used as a tool for regulating AU membership.<sup>637</sup> In answering this question, two fundamental issues will be considered. Firstly, the methodology of rationalising the AU and secondly, how the APRM can be strengthened in order to accomplish this task.

#### **a) Conditional membership**

As stated earlier, any call for the dissolution of the current AU is, at the best, imaginary. However, the case for an enabling instrument aimed at strengthening and further developing the enforcement and compliance mechanisms of the AU is well founded. The reality is that not all the members of the AU are prepared to subscribe to a new and more stringent order - an order which places due emphasis on the ethos of constitutional democracy and values. The growing number of ageing 'sit-tight' rulers and electoral manipulation across the continent lends credence to this view. Even among those who have supposedly subscribed to the new order, many only exhibit half-hearted commitment to democratic values. As Ake rightly observes, democracy, to some African leaders 'is largely a strategy for power, not a

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<sup>635</sup> *APRM country review report no 11: Republic of Mozambique*. African Union and the African Peer Review Mechanism (2009). Available at <http://www.aprm-international.org> (Accessed 20 November 2009).

<sup>636</sup> Ibid.

<sup>637</sup> Gumede also suggested entry requirements for joining the AU. See Gumede W, 'African Union needs entrance exam' Available at [http://newsweek.washingtonpost.com/postglobal/william\\_gumede/2007/04/african\\_union\\_needs\\_entrance\\_e.html](http://newsweek.washingtonpost.com/postglobal/william_gumede/2007/04/african_union_needs_entrance_e.html) (Accessed 20 November 2009)

vehicle for popular empowerment'.<sup>638</sup> Thus, the so called democratic revolution of the 1990s only exists more in theory rather than in practice.

The feasible strategy is arguably to create a 'nucleus AU' within the current AU (see Diagram 4.2 below). Before explaining the idea of 'nucleus AU', it is important to highlight a few points. Firstly, it is not suggested that this idea is the sole elixir; rather, it is one of the remedial steps in correcting the institutional defects of the AU. It is thus not an all-or-nothing or elitist approach; instead it aims at strengthening and cultivating shared norms necessary for continental integration. As Kuhn puts it, 'to be accepted as a paradigm, a theory must seem better than its competitors, but it need not, and in fact never does, explain all the facts with which it can be confronted'.<sup>639</sup> Secondly, the proposed approach is developed in such a way that it could one day be incorporated into the structure of the AU.

The consequence of the 'nucleus AU' idea is that the present AU - with its faulty foundation - would still be retained but member states will be required to undergo a compulsory and rigorous test in order to become part of the integration process. A reformed APRM, which will be discussed below, will serve as the test. This does not call for the creation of a parallel continental organisation rather it seeks to create an enabling and nuanced platform for the attainment of continental unity. In politico-legal terms, the 'nucleus AU' is simply an expression of the principle of flexibility or variable geometry. Dashwood et al, described this principle - in relation to the EU - as a:

[d]esignated legal arrangements under which it is recognised that one or more member states may, in principle, remain permanently outside certain activities or practices being pursued within the institutional framework of the Union, either

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<sup>638</sup> Ake (1993) 240.

<sup>639</sup> Kuhn T, 'The structure of scientific revolutions' cited in Huntington (2002) 30.

because they choose to do so or because they do not meet the criteria for participation.<sup>640</sup>

Without detracting from the cardinal and cherished goal of African unity, this principle will allow member states with similar ideals to pursue deeper integration at an appreciable pace.<sup>641</sup> As Akonnor aptly puts it, '[I]t is better to have a united empowered and independent Africa, comprising some African states rather than have a united but weak and dependent Africa, comprising all African states.'<sup>642</sup>

So far, continental integration has failed largely because of the sentimental urge to lump together 'the good, the bad and the ugly'. Often, African leaders have stood silently by the sideline, watching their colleagues engage in ruinous policies and subjugation of their people. The prevalence of impunity is further fuelled by the absence of an effective and coordinated continental response mechanism - strong enough to employ punitive economic, military and political measures against belligerent member states.

Hinging the political and economic development of Africa on the AU in its present configuration is delusional. While some may argue that the idea of 'nucleus AU' is impractical and likely to be frustrated by some powerful countries who are satisfied with the *status quo*, this argument can be countered by the enthusiastic acceptance of the APRM process by certain African countries.

Although it may not be perfect, the APRM is an organic process capable of developing into a viable mechanism. 'Organic' in the sense that it has

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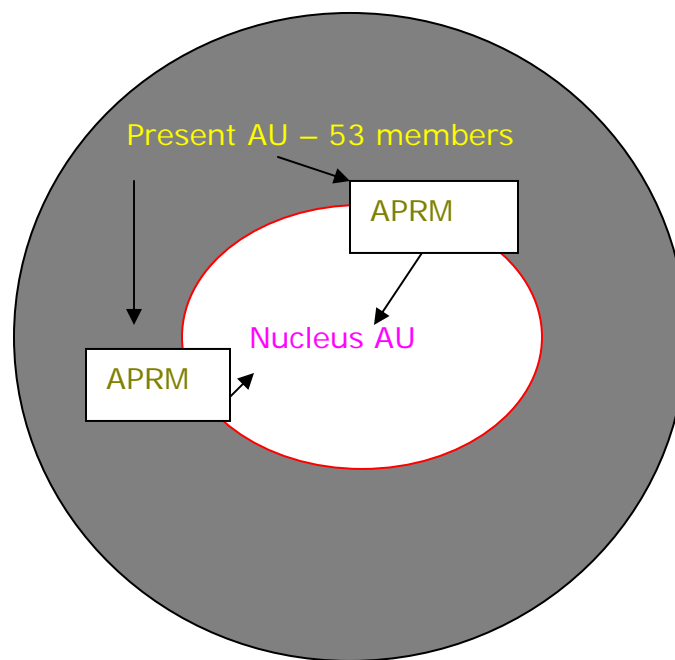
<sup>640</sup> Dashwood A, Wyatt D, Arnall A & Ross M, *European Union law*. London: Sweet & Maxwell (2006) 112; see also Warleigh A, *Flexible integration: Which model for the European Union?* London: Continuum (2002) 1-3.

<sup>641</sup> Ibid, 113; see also Kennes (1999) 33.

<sup>642</sup> Akonnor (2007) 197.

established a platform, through ‘soft laws’,<sup>643</sup> for broadening public discourse in African politics which could in turn provide a fertile ground for democratic culture. Out of the 29 states that have acceded to the APRM, there is the likelihood, judging by their democratic credentials and with subtle persuasions, that at least one-third would be ready to proceed with the ‘nucleus AU’ idea. It is expected that the success, through periodic review and effective compliance measures, of this project will not only entrench democratic culture on the continent but will also encourage other nations to join. To reiterate the point made earlier, the idea is not to alienate other African states but to present an alternative *modus operandi* for moving the continent forward.

**Diagram 4.2: The ‘nucleus AU’**



Source: Own construction

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<sup>643</sup> As will be discussed below, the APRM lacks definitive legal status within the AU and on the international plane.

The shaded part of the diagram represents the prevailing configuration of the AU. It shows that this framework will remain unchanged. However, the arrow pointing at the APRM box implies that member states will have to first conform to a compulsory APRM standards before being allowed to be part of the proposed 'nucleus AU'.

### ***b. Transforming the APRM into an institution***

A core component of the proposed 'nucleus AU' is a reformed APRM process. As shown in the figure above, a reformed APRM will serve as the gateway into the nucleus. Two major issues lie at the heart of the case for a reformed APRM: Legal status and methodology.

#### *i) Legal status*

Any discussion on the role of the APRM in regulating AU membership must start with the discussion on one of the fundamental elements of international law – legal personality or status. The conferment of legal status on an organisation, depending on its functions and missions, equips it with the capacity to conclude treaties, incur rights and obligations, and the ability to enforce its own decisions.<sup>644</sup> As with NEPAD, the APRM exists without any definitive legal status.<sup>645</sup> Its constitutive documents<sup>646</sup> are not Treaties and thus

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<sup>644</sup> ICJ Rep (1949) 178-179; see also Sands & Klein (2001) 470-476.

<sup>645</sup> There has been so much controversy surrounding the relationship between the AU and NEPAD. This issue was finally resolved, and subsequently confirmed by the AU Assembly, in April 2008 at a review summit of five heads of state. It was decided that NEPAD will be integrated into AU structure and processes. This will also include the granting of legal personality to the NEPAD secretariat in South Africa. See Assembly/AU/Dec.205 (XI). The Assembly arrived at a similar conclusion in relation to the APRM. See Assembly/AU/Dec. 198 (XI). For further discussion on the dynamics of the incorporation of NEPAD into the AU, see e.g. Rukato H, *Future Africa: Prospects for democracy and development under NEPAD*. New Jersey: Africa World Press (2010) 219-233.

<sup>646</sup> The following jointly constitute the APRM documents:

- Memorandum of Understanding (MOU) on the APRM
- Declaration on Democracy, Political, Economic and Corporate Governance
- APRM Base Document
- APRM Organisation and Processes
- Objectives, Standards, Criteria and Indicators for the APRM
- Outline of the Memorandum of Understanding on Technical Assessments and the Country Review Visit

See NEPAD/APRM/Panel3/guidelines/11-2003/Doc8, para 1.

lack legal teeth.<sup>647</sup> The consequence of this is that participating countries cannot be compelled to comply with the principles and provisions of the APRM. In illustration, where any of the participating states fail to engage in a broad-based consultative process, there is no legal instrument to ensure that these salient provisions are complied with.<sup>648</sup> Although paragraph 24 of the Base Document sketches the possibility of imposing punitive measures against a defaulting participating country, it is at best vaguely written because no specific punitive measures are listed. Furthermore, placing the onus of applying punitive measures on the participating Heads of State and Government is unrealistic considering the entrenched practice of ‘African solidarity’ even in the face of impunity.

While the foregoing is excusable if the APRM is seen in the context of a voluntary process, it remains antithetical to the principles of a ‘nucleus AU’. Because the configuration of a ‘nucleus AU’ presupposes strict and unqualified adherence to democratic values, it is of crucial importance that a sound legal regulative framework be put in place. The legitimacy of the process is dependent on the political will of the participating Heads of State and Government to craft a process of endowing the APRM with legal clout.

A good starting point will be to condense the APRM constitutive documents into a single treaty-like document to be ratified by participating countries. This ‘APRM Treaty’ must explicitly specify, amongst other provisions, the legal consequences of non-compliance,<sup>649</sup> effective enforcement mechanisms, the regulative nature of the Treaty, and the legal personality of the APRM institutions. To address the latter point, the 11<sup>th</sup> Ordinary session of the AU Assembly, held in Egypt from 30 June – 1 July 2008, decided that legal status will be granted to the APRM through its incorporation into the structures and

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<sup>647</sup> Hansungule (2007) 8.

<sup>648</sup> Ibid.

<sup>649</sup> A detailed discussion on compliance is in the next chapter.

processes of the AU.<sup>650</sup> This is a welcome development. However, it remains to be seen how the process will function amidst a culture of rampant erosion of democratic values and good governance deficit.

### *ii) Methodology*

The second point that needs to be addressed is the methodology followed by the APRM. As mentioned earlier, the APRM process is rigorous, time consuming and expensive. Because it provides an avenue for the oft-elusive and much needed public discourse and contestations, experience has shown that this same advantage is ironically partly responsible for the drawn-out nature of the process.<sup>651</sup> Although it was envisaged that the whole process, from the date of inception to the review by Heads of State and Government, should take six – nine months, practice has indicated otherwise. In Ghana, the APRM process took 22 months, Rwanda took 27 months, Kenya took 24 months and the South African process lasted for 28 months.<sup>652</sup>

There is thus a need to strike a balance between the efficiency of the review process and the duration of the process. To put it differently, there is a need to reduce the duration of the process and at same time maintain the overall objective of the process. One of the dangers of a prolonged APRM process is the decimation of the momentum attached to the process, with all parties involved being distracted by urgent national matters.<sup>653</sup> To prevent this, the APRM process must be insulated from the vagaries of national dynamics. As explained earlier, this involves granting the APRM legal status.

The next step is to come up with a strategy document that stipulates a maximum period of twelve months for the APRM process. Without derogating from the overall objective of the APRM, participating countries and the APR

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<sup>650</sup> See Assembly/AU/Dec.198 (XI).

<sup>651</sup> Hansungule (2007) 19.

<sup>652</sup> Herbert & Gruzd (2008) 139.

<sup>653</sup> Ibid, 140.

Secretariat must operate within the specified time limit. This will require that the APR Secretariat is materially equipped not only to handle administrative issues but also to help participating countries to abide by the stated regulations. This would for example entail the setting up of an APRM fund dedicated to complementing the efforts of participating countries.

Another point of concern is the format of the APRM Questionnaire. The Questionnaire is based on the framework outlined in the Objectives, Standards, Criteria and Indicators (OSCI) document.<sup>654</sup> It is aimed at putting the APRM process in perspective by ensuring standardisation and broad based participation.<sup>655</sup> The Questionnaire<sup>656</sup> expands on the OSCI document by providing for 58 questions and 183 indicators, divided into four thematic areas:

- Democracy and good political governance
- Economic governance and management
- Corporate governance
- Socio-economic development

Without deviating from widely acknowledged universal principles, it is important that the Questionnaire is reviewed in order to reflect country peculiarities. The standardisation of the Questionnaire has resulted in a situation where cogent matters affecting individual countries are glossed over. Some of the significant subjects that have been left out in the Questionnaire include humanitarian law issues, criminal justice, the impact of (sub) national government and the implementation of NEPAD programmes.<sup>657</sup> To remedy this, participating countries should be actively involved in the process of drafting the Questionnaire. In a similar vein, a cue should be taken from the South African approach by mandating countries to translate the Questionnaire into local

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<sup>654</sup> NEPAD/HSGIC/03-2003/APRM/Guideline/OSCI

<sup>655</sup> *Country Self-Assessment for the African Peer Review Mechanism*, para 2. Available at <http://www.nepad.org/aprm> (Accessed 20 May, 2008).

<sup>656</sup> *Ibid.*

<sup>657</sup> See Hansungule (2007) 19; Herbert & Gruzd (2008) 47-49.



languages.<sup>658</sup> This will not only promote awareness, it will also enhance a keen sense of ownership.

For the purpose of the ‘nucleus AU’, it is crucial that the Questionnaire is tailored to critically examine the nexus between national institutions and the process of integration. The central question should be whether national institutions have the capacity to promote and implement integration initiatives. As with the EU, mechanisms should be put in place to assist countries in meeting the stipulated targets.

Lastly, there is a need to diminish the role of Heads of State and Government in the APRM process. It is undeniable that the relative success of the process so far is attributable to its voluntary peer review nature, which allows participating Heads of States and Government to share their experiences and thoughts. This is not necessarily a bad thing except for the fact that it could also be the ‘clog in the wheel’ of the process. African leaders are not exactly known for challenging the misdeeds of each other. While the Heads of States and Government retain the role of ceremonial purveyor of the peer review process, efforts should be made to transfer the real powers to an independent body – for example the APR Panel. This will, however, entail that the civil society and the PAP are involved in the nomination of the ‘eminent persons’.<sup>659</sup>

#### **4.4.2 Harmonisation of laws**

While integration is essentially a political process, harmonisation is a legal tool for the coherent and uniform implementation of integration objectives.<sup>660</sup> Thus harmonisation, at the international level, is the legal tool for transforming (political) integration objectives into uniformly applied principles at the national level. The corollary of such exercise is the uniformity in the application of laws

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<sup>658</sup> *South African Country Review Report*. (2007) 44.

<sup>659</sup> Hansungule (2007) 8.

<sup>660</sup> See e.g. Mbaye K ‘Foreword’ in Mator B, Pilkington N, Sellers D & Thouvenot S, *Business Law in Africa: OHADA and the Harmonisation Process*, London: Evershed (2002) xxiv.

and standards, an essential feature of supranationalism. Normative supranationalism, as discussed above, places the laws of supranational institutions at the top of hierarchy of norms. The possibility of this is, however, dependent on the effective harmonisation of policies and norms.

Allot defines harmonisation as ‘the removal of discord, the reconciliation of contradictory elements, between the rules and effects of two legal systems which continue in force as self sufficient bodies of law’.<sup>661</sup> Also, Bassani & Mattei refer to harmonisation as the ‘[C]onvergence of rules only to a limited extent, in order to attain a workable coordination among them’.<sup>662</sup> Harmonisation should, however, not be confused with unification. While harmonisation represents a pragmatic, coordinated approach to regulate specific aspects of the law, unification implies:

The creation of a new, uniform legal system entirely replacing the pre-existing legal systems, which no longer exist, either as self sufficient systems or as bodies of rules incorporated in the larger whole; although the unified law may well draw its rules from any of the component legal systems which it has replaced.<sup>663</sup>

The incorporation of different legal systems under a basic framework is an essential component of harmonisation. The emphasis is thus on finding a common ground for the co-existence of different legal traditions. Without seeking the total unification of laws, harmonisation is a pragmatic concept which only aims to create common standards.<sup>664</sup> The corollary of this is that the common standards takes precedence over national laws and member states are thus prohibited from taking unilateral actions in relation to such

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<sup>661</sup> Allot A, ‘Towards the unification of laws in Africa’. *The International and Comparative Law Quarterly*. 14/2 (1965) 377.

<sup>662</sup> Bassani M & Mattei U, ‘The common core approach to European private law’ Available at <http://www.jus.unitn.it/cardoza/commoncore/Insearch.html> (Accessed 20 December 2008).

<sup>663</sup> Allot (1965) 377.

<sup>664</sup> As Menski asserted, ‘harmonisation as a process of ascertaining the admitted limits of international unification does not necessarily amount to a vision of total uniformity’. See Menski W, *Comparative law in a global context: The legal systems of Asia and Africa*. Cambridge: Cambridge University Press (2006) 39.

standards.<sup>665</sup> The benefits to be derived from this, according to Yakubu, include:<sup>666</sup>

- Practical predictable rules for the determination of the appropriate law to apply in solving practical problems on uniform basis<sup>667</sup>
- Inter-play of legal collaboration and mutual respect between various legal systems<sup>668</sup>
- Co-operation and systemisation of rules of law of various states<sup>669</sup>
- Avoidance of costly, confusing and delay which are necessary incidents of divergent choice of law rules<sup>670</sup>
- Cross-fertilisation of ideas which enriches community laws<sup>671</sup>

In the EU, harmonisation policies are implemented through the use of directives. Directives are binding on member states but member states have a choice of implementation format.<sup>672</sup> The implementation of directives at the national level either requires the enactment of legislation by national parliament or through agreement by reference.<sup>673</sup> Failure by a member state to transpose the directive in a timely manner ignites the 'direct effect' application of the directive within its territory.<sup>674</sup> Another measure which may be used in effecting harmonisation is a 'model law'. According to Madlingozi, 'a model law is a framework...that proposes to member states how they ought to frame their

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<sup>665</sup> See e.g. Weatherill S, *Cases and Materials on EU Law*. Oxford: Oxford University Press (2006) 620.

<sup>666</sup> Yakubu A, *Harmonisation of laws in Africa*. Lagos: Malthouse Press (1999)

<sup>667</sup> Ibid, 29.

<sup>668</sup> Ibid

<sup>669</sup> Ibid, 32

<sup>670</sup> Ibid

<sup>671</sup> Ibid, 33.

<sup>672</sup> Dashwood et al (2006) 164; see also Weatherill (2006) 133.

<sup>673</sup> See Ginsburg T & Cooter R, *Lexmetrics: Why the same laws are longer in some countries than others*. American Law and Economics Association General Meetings, Paper 64 (2004). 5. Available at <http://law.bepress.com/cgi/viewcontent.cgi?article=1080&context=alea> (Accessed 30 April 2008).

<sup>674</sup> What this means is that individuals will be able to derive rights from the directive despite the fact that it is yet to be incorporated. See e.g. Weatherill (2006) 134; Dashwood et al (2006) 165.

legislation in a specific area.<sup>675</sup> Unlike directives, model law is a flexible approach that is sensitive to state sovereignty.<sup>676</sup>

Unlike Europe, continental harmonisation of laws is yet to be actualised in Africa. A major impediment to the realisation of this goal is the fragmentation of legal systems in Africa. As a result of the colonial enterprise, African nations subscribe to different Eurocentric legal traditions – common law, civil law and in some cases hybrid legal systems (e.g. South Africa). Other factors responsible for the diversity of laws in Africa include the existence of various indigenous laws within a particular country and the introduction of the system of federalism, which has resulted in the different application of laws within a particular state.<sup>677</sup> This reality has resulted in a situation where countries find it convenient to harmonise around a shared legal system (e.g. the OHADA, CEMAC and WAEMU) or sub-regional (e.g. SADC and ECOWAS). In this regard, it has been argued that the harmonisation of laws and policies should begin at the REC level. The reasons advanced for this range from the familiarity of RECs with sectors or issues that require urgent attention (subsidiarity), consensus could be easily reached, and the need for a bottom-up approach.<sup>678</sup>

It is against this backdrop that the CA provides that the AU shall be responsible for the coordination of policies of the RECs.<sup>679</sup> Similarly, the PAP is vested with the powers to promote the coordination and harmonisation of policies in Africa.<sup>680</sup> The AU is yet to finalise the protocol which will provide a legal

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<sup>675</sup> Madlingozi T, 'The role of Pan African Parliament and regional parliamentary fora in the harmonisation of laws and policies in Africa'. Paper presented at the Seminar on the Harmonisation of Regional Economic Communities (RECs and RPFs), Kasane, Botswana 12-13 March 2007. 32 (On file with the author).

<sup>676</sup> Ibid.

<sup>677</sup> Bamodu G, 'Transnational law, unification and harmonisation of international commercial law in Africa'. *Journal of African Law*. 38 (1994) 125-130.

<sup>678</sup> Madlingozi (2007) 28.

<sup>679</sup> See Article 3(1) of the Constitutive Act.

<sup>680</sup> Article 11(7) of the PAP Protocol states that one of the functions of the PAP is 'to promote the coordination and harmonisation of policies, measures, programmes and activities of the Regional Economic Communities and the parliamentary fora of Africa'.

framework for the relationship between it and the RECs.<sup>681</sup> Although the RECs continue to interact with the AU by participating in the meetings of the PRC, Executive Council and the AU Assembly,<sup>682</sup> it is still imperative that a permanent framework is put in place for the convergence of protocols and programmes. This is essential, bearing in mind that some of these RECs have recorded substantial progress which, if properly harnessed and coordinated, could further integration efforts at the continental level.

There are two dominant trends with regard to how to proceed with harmonisation of laws in Africa. A school of thought, largely influenced by globalisation, suggests that Africa should deviate from adopting any of the existing legal systems; instead, legal harmonisation in Africa should reflect a neutral and international law based approach.<sup>683</sup> This approach attempts to strike a balance between the differing legal traditions in order to come up with a system which conforms to contemporary global *realpolitik*.

Another school of thought holds that legal harmonisation should reflect African values and traditions. A continent-wide legal harmonisation must be sensitive to socio-cultural realities - like the high incidence of poverty, illiteracy and a poor legal culture - and thus provide a mechanism for addressing these ills.<sup>684</sup> The urge to conform to global trends should not be an excuse for excluding the socio-legal realities on the ground. By excluding the social norms and values of the common people, the dynamism of the law is diminished and, in turn, the desired consequence(s) become unattainable.

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<sup>681</sup> See the Draft Protocol on the Relationship Between the Regional Economic Communities (RECs) and the AU. EX/CL/158(1X)

<sup>682</sup> See AFRODAD & Oxfam GB (2007) 25.

<sup>683</sup> Fontaine M, 'The draft OHADA uniform act on contracts and the UNIDROIT principles of international commercial contract'. *Uniform Law Review*. 3 (2004) 577; see also Date-Bah S, 'The UNIDROIT principles of international commercial contracts and the harmonisation of the principles of commercial contracts in west and central Africa: Reflections on the OHADA project from the perspectives of a common lawyer from West Africa. *Uniform Law Review*. 2 (2004) 272.

<sup>684</sup> Fontaine (2004) 577-579.

In light of the foregoing, it is essential that while Africa remains part of the global community and will thus benefit from adherence to global rules and principles, it is equally crucial that harmonisation of laws reflect local specificities. As Menski asserts:

Placative advocacy of a return to 'custom' and 'tradition' is too simple as a remedy. But complete denial of a place for custom and tradition within the dynamism of legal reconstruction in African laws is also far too simplistic, since the input of social norms and common people's values into law-making remains a universal phenomenon.<sup>685</sup>

It is, therefore, crucial that the architects of continental harmonisation policies engage in a broad-based consultation process in order to come up with programmes that not only foster development but also embody societal dynamics. In this regard, such laws must factor into consideration the high levels of illiteracy on the continent by making provisions for simplified legal rules, alternative (traditional) dispute resolution mechanisms and culture of the people.<sup>686</sup>

Most importantly, member states must also demonstrate the necessary political will for the realisation of this goal. Practice has shown that at the sub-regional level, some member states display 'below-the-par' commitment to harmonisation policies by delaying to ratify or sign harmonisation protocols and failing to implement harmonisation protocols.<sup>687</sup> To prevent incidents like these, measures like the flexibility of implementation format and the principle of direct effect should be adopted. As indicated above, the principle of direct effect will eliminate the uneven implementation of policies and also ensure that integration proceeds at an appreciable pace.

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<sup>685</sup> Menski (2006) 485.

<sup>686</sup> See e.g. Fontaine (2004) 578-581.

<sup>687</sup> ECA (2004) 48-51.

#### 4.4.3 Public participation

'We are not bringing together states, we are uniting people' – Jean Monnet<sup>688</sup>

The centrality of people to the integration process cannot be understated. If the aim of integration is understood to be the establishment of a trans-frontier community of people, then the need to involve citizens becomes crucial. To achieve this, trans-frontier community of people, member states are expected to establish supranational institutions capable of effectively regulating broad matters ranging from the free movement of persons, protection of fundamental human rights, and socio-economic welfare of citizens. The consequence of this is what Haas explains as the shifting of loyalty of citizens of member states to a new centre – supranational institutions.<sup>689</sup> This 'shifting of loyalty' can, however, only occur if citizens are part of the process of integration. The EU, for example has devised measures - ranging from national referendums on EU policies, direct election of EU parliamentarians and the principle of direct effect - to accentuate the importance of people in the integration process.<sup>690</sup>

However, a signature feature of integration in Africa is the tendency to locate the discussion on African integration within an elitist realm. African integration, like national politics, continues to be treated as an exclusive preserve of African leaders. The dialogue on integration is thus confined to the glittering venues of regional organisation summits and posh secretariats. It is a truism that the success and sustainability of the integration process is dependent on the broad participation of the African populace in the design and implementation of integration initiatives.<sup>691</sup>

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<sup>688</sup> Cited in Fontaine (2006) 43.

<sup>689</sup> Haas (1958) 16; Rosamond (2000) 33.

<sup>690</sup> Fontaine (2006) 40-43.

<sup>691</sup> See e.g. Asante (1997) 174.

The success or progress of African integration should be measured by how it meaningfully impacts on the lives of ordinary Africans and not how it only benefits the elites. The fact that diplomats and top government officials can travel without visas is not a necessary indicator of the success of regional integration. The ‘common man or woman’ on the streets of Kigali, Arusha, Kumasi and Maputo must be given the opportunity to contribute to this debate. Consultation mechanisms such as national referendums, active involvement of civil society, grassroots meetings, enhanced interaction between national socio-political and cultural organisations and trans-frontier youth fora are needed. As suggested by Asante, integration can further be enhanced through its introduction into the academic curricula at African schools.<sup>692</sup> In addition, citizens should directly elect members of PAP by universal suffrage. These measures will go a long way in granting regional institutions greater democratic legitimacy and broad support.

In the same vein, the involvement of the private sector in the integration process is also crucial. Since the economic reforms started in the mid-1980s, the capacity of the private sector in Africa to contribute to economic growth has been strengthened.<sup>693</sup> Unlike national governments, the private sector is not usually bogged down by bureaucratic bottlenecks and political sentiments and this places it in a strategic position to facilitate cross-border investments, infrastructure development and creation of jobs. The corollary of these contributions is an increased market size which also benefits the private sector.

In this regard, the ‘one network’ is a commendable example of private sector initiative which allows people to make cross-border mobile calls at local rates.<sup>694</sup>

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<sup>692</sup> Asante (1997) 175; see also Fagbayibo B, ‘Beyond political rhetoric: Transforming the debate on African integration into an academic discipline in African universities’ in Le Roux A & Mitchell J (eds), *Curriculum issues in higher education: Conference proceedings*. Pretoria: University of South Africa Press (2009) 18-25.

<sup>693</sup> AU & ECA (2006) 86.

<sup>694</sup> These countries are spread across Central, East and West Africa. They include: Burkina Faso, Chad, the Republic of Congo, the Democratic Republic of Congo, Gabon, Kenya, Malawi, Niger, Nigeria, Sudan, Tanzania and Uganda. Available at



This initiative is a big booster to the policy on free movement of persons across African borders. Another example is the Ecobank Transnational Incorporated (ETI), a joint initiative between ECOWAS member states and the private sector, which operates in 18 countries spread across Central and West Africa.<sup>695</sup> In a related development, five countries within the West Africa sub-region, in a bid to ease trade procedures and free movement of persons, have agreed to outsource the management of border non-core functions to the private sector.<sup>696</sup> In order to ensure the meaningful contribution and participation of the private sector, through employment of labour and contribution to regional economy, national governments must remove legal and economic barriers hampering the participation of the private sector.

#### 4.4.4 Development

As highlighted earlier, the functionalist school of thought advocate the creation of technocratic institutions as drivers of transnational or regional development. According to Mitrany, the foremost protagonist of this idea, the feasibility of this approach is dependent on entrusting these institutions with 'autonomous tasks and powers'.<sup>697</sup> In other words, there is a strong nexus between the existence of supranational institutions and development. As Rodrik et al pointedly put it, 'the quality of institutions trumps everything else'.<sup>698</sup> The level of (economic) development witnessed in CEECs after acceding to the various elements of EU supranationalism is a testament to the developmental feature of regionalism nay

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<http://www.zain.com/muse/obj/lang.default/portal.view/content/About%20us/Worldwide%20Presence/Africa-13%20countries> (Accessed 25 November 2008).

<sup>695</sup> Benin, Burkina Faso, Cameroon, Cape Verde, Central Africa, Chad, Cote d'Ivoire, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Sao Tome, Senegal, Sierra Leone and Togo. See <http://www.ecobank.com/english/group/ecobank.aspx?RubID=3&RubID=1&SSRubID=1> (Accessed 30 August 2007).

<sup>696</sup> The five countries are Benin, Cote D'Ivoire, Ghana, Nigeria and Togo. Available at <http://www.thisdayonline.com/nview.php?id=89617> (Accessed 18 September 2007).

<sup>697</sup> Mitrany (1975) 125.

<sup>698</sup> Rodrik D, Subraminian A & Trebbi F, 'Institutions rule: The primacy of institutions over geography and integration in economic development'. *Journal of Economic Growth*. 9 (2004) 135.

supranationalism.<sup>699</sup> In light of the foregoing, two issues stand out. The first highlights the indispensability of strong institutions to regional development and the second indicates the importance of crafting a developmental agenda that fits the peculiar needs of a region. While the EU serves as a useful model, it is crucial that Africa devises a development strategy that suits its environment.<sup>700</sup> It is against this background that this section considers the dynamics of development in Africa.

Summarising the state of development in post-colonial Africa, Ake asserts that ‘the problem is not so much that development has failed as that it was never really on the agenda in the first place’.<sup>701</sup> This statement aptly captures the trajectory of development strategies in Africa, which includes broken promises, half-hearted commitments and the absence of home-grown mechanisms to drive development. There is no gainsaying that the history of post-colonial Africa is replete with ideas and strategies aimed at fostering national and regional development agendas. This, in turn, brought about the involvement of various actors - with competing agendas<sup>702</sup> - in the scripting and implementation of development programmes, chief of which includes the Bretton Woods Institutions (the World Bank and the International Monetary Fund), ECA, the OAU (now AU) and the RECs.

Africa’s permanent spot at the periphery of global economy - largely attributable to factors such as sparse population,<sup>703</sup> fragmented markets, limited infrastructure and large-scale corruption - inspired the quest for sustainable

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<sup>699</sup> As noted in chapter 2, the impact of the elimination of external tariff on the GDP of CEEC was around 4.5%, in addition the volume of trade between other EU members and the CEEC rose from 56% in 1993 to 62% in 1995.

<sup>700</sup> AU & ECA (2006) 33-34; Rodrik et al (2004) 9.

<sup>701</sup> Ake (1996) 1.

<sup>702</sup> Ibid, 21-22.

<sup>703</sup> Only five African countries (Democratic Republic of Congo, Ethiopia, Egypt, Nigeria, and South Africa) have a population of more than 30 million; eight countries have a population of less than 1 million each and 14 countries have a population between 1 and 4 million. See Agubuzu L, ‘Regional Economic Integration: A Development Paradigm for Africa’ in Onimode B et al (eds), *Africa development and governance strategies in the 21<sup>st</sup> century: Looking back to move forward: Essays in honour of Adebayo Adedeji at seventy*. (2004) 205; see also Asante (1997) 29.

models of development. The dominant development ideology on the continent remains regional economic cooperation and integration or what Adedeji described as 'strategy of sub-regional and functional cooperation'.<sup>704</sup> The major proponent of this ideology is the ECA.<sup>705</sup> Through the creation of regional and sub-regional organisations, this ideology presupposes the coordination of development policies which would in turn engender collective self-reliance and robust growth in African economies.<sup>706</sup> This ideology led to the proliferation of RECs across the continent and also found expression in three significant blueprints for continental integration:

- the Lagos Plan of Action for the Economic Development of Africa (1980-2000) and the Final Act of Lagos
- the African Economic Community Treaty (1991)
- the New Partnership for Africa's Development (2001)

#### **4.4.4.1 The politics of self-reliant development**

The common themes that run through the three aforementioned documents are the reduction of Africa's dependency on external funding, strengthening of regional linkages, self reliance and ironically, western funding of developmental strategies.<sup>707</sup> Herein lies the inherent contradiction in Africa's development strategies. On the one hand, the notion of self reliance is trumpeted by the fact that no genuine effort is made to create a favourable environment for self-driven development. On the other hand, with the exception of the NEPAD document, the international community is expected to generously bankroll African development agendas.

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<sup>704</sup> Cited in Asante (1991) 94.

<sup>705</sup> Ibid; see also Asante (1997) 31.

<sup>706</sup> Asante (1997) 31.

<sup>707</sup> See e.g. Cummings R, 'A historical perspective on the Lagos plan of action' in Nyang'oro J & Shaw T (eds), *Beyond structural adjustment in Africa: The political economy of sustainable and democratic development*. New York: Praeger (1992) 39; see also *The New Partnership for Africa's Development* (2001) Available at <http://www.nepad.org/2005/files/home.php> (Accessed 20 February 2008); see also Asante (1997) 92-3.

The notion of self-reliance should be defined within the context of popular participation in developmental programmes. As Ake observes, post independence elite have for a long time manipulated the meaning of this concept to narrowly denote a resistance against foreign domination.<sup>708</sup> Self-reliance means more than this. Being an inward-looking approach, which seeks primarily to change pattern of production and enhance Africa's domestic market, self-reliance places the individual at the core of developmental strategies.<sup>709</sup> According to Cummings, the exclusion of local African institutions, which regulated distribution of benefits and resources in pre-colonial African societies, continue to impede the success of national and continental development strategies.<sup>710</sup>

The fear of any form of opposition to repressive regimes coupled with the attitude of western-oriented development experts<sup>711</sup> has resulted in the neglect of traditional African values of consensus, group-based approach to community challenges. The key to enhancing the self-reliant development lies in the ability to weave developmental goals around cultural values.<sup>712</sup> As Asante rightly points out, developmental strategies 'should aim at improving not only the economic but the social, cultural and environmental welfare of a nation'.<sup>713</sup> It is thus essential that all the segments of the society - women, youth, civil society and rural dwellers - should be involved in this process. Ensuring the active and genuine participation of these sectors requires the existence of constitutional democracy. A democratic environment is a catalyst to a robust, people-driven

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<sup>708</sup> Ake (1996) 140.

<sup>709</sup> Ibid 140-142; see also Asante (1991) 36-55; Onimode B, 'Mobilisation for the implementation of alternative development paradigms in the 21<sup>st</sup> century Africa' in Onimode et al (2004) 21-22.

<sup>710</sup> Cummings in Nyang'oro & Shaw (1992) 39-40; see also Ake (1996) 15-16. In a bid to centralise power, post-independence elite put in place mechanism to either abolish or decimate the influence of the traditional institution of chieftaincy, in spite of the central role this institution plays in the regulation of cultural values and local development. See e.g. Economic Commission for Africa, *Relevance of African traditional institutions of governance*. Addis Ababa: Economic Commission for Africa (2007) 8. Available at <http://www.uneca.org> (Accessed 30 October 2009). [Hereinafter referred to as ECA 2007].

<sup>711</sup> According to Ake, there is a blanket conception of rural Africans as being opposed to change and modernisation. The consequence of this is the crafting of a development agenda that does not take into account the cultural context of the people concerned. See Ake (1996) 15-16.

<sup>712</sup> Asante (1991) 68-70.

<sup>713</sup> Ibid, 47-48.

development agenda. Where people have a choice of determining the kind of government they want, they would in turn be empowered to determine the content of developmental programmes and thus grant it legitimacy.<sup>714</sup>

Since the onus of implementing continental development strategies falls on regional organisation, it is of the essence that they are bequeathed with efficient administrative capacity. Steering the course of a self-reliant ideology entails the existence of a vibrant and competent organisational structure. It is ironic that African leaders have in the past trumpeted the need for home-grown development strategy but later jettisoning them for World Bank/IMF development blueprints.<sup>715</sup> Non-commitment to strengthening institutions at national and continental levels recurrently exposes African leaders to manipulation at the hands of foreign patrons.<sup>716</sup> The advent of NEPAD has however signalled a determination - albeit a shaky one - to break from the past traditions (this will be discussed below).

A key obstacle to the realisation of self-reliant development is the unbridled attachment to foreign aid. Foreign aid is construed by some African governments as 'Africa's historical right'.<sup>717</sup> This approach has entrenched a culture of dependency, where external assistance is narrowly construed by both the donor and recipient as charity.<sup>718</sup> On the part of the donor, conditions which exclude cultural realities are tied to aid. For example, a facade of multi-party democracy - which obviously still entrenches the impunity of the past and also extricates the majority of the people from the governing process - is considered

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<sup>714</sup> This has been succinctly described as 'democratic economic development strategy'. See Onimode et al (2004) 245.

<sup>715</sup> Asante (1991) 63; Ake (1996) 21-40; Nyang'oro J, 'The evolving role of African state under Structural adjustment', in Nyang'oro & Shaw (1992) 13-25.

<sup>716</sup> See e.g. Ake (1996) 7.

<sup>717</sup> Asante (1991) 65.

<sup>718</sup> See e.g. Udombana J, 'The third world and the right to development: Agenda for the next millennium', *Human Rights Quarterly*, 22/3 (2000) 782-783.

as sufficient. In other instances, conditions are tied to economic reform policies which totally negate the philosophy of self reliant development.<sup>719</sup>

It is against this background that the NEPAD document came into being. The document advocated for a paradigm shift in the relationship between Africa and the international community.<sup>720</sup> It further states: 'Africans are appealing neither for the further entrenchment of dependency through aid, nor for marginal concession'.<sup>721</sup> Rather, the document seeks to attract foreign direct investment (FDI).<sup>722</sup> Beyond conditional aid, NEPAD advocates mutually agreed performance targets and standards for both donors and recipients of aid.<sup>723</sup> Unlike other development documents before it, NEPAD hinged continental development on the adherence to democratic values and standards.<sup>724</sup> This ideology has found expression in the APRM process, and also forms the basis of the above proposed 'nucleus AU'.

On the issue of resources mobilisation, the document highlights a combination of external and internal sources. The primary source of funding is expected from foreign investment, in addition to this are an increased Overseas Development Assistance (ODA) and debt reduction.<sup>725</sup> The entrenchment of democratic values is expected to create a favourable environment and attraction of private capital flows. In relation to domestic resources mobilisation, African governments are implored to rationalise government expenditure, take steps to increase national savings by firms and households, ensure effective tax

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<sup>719</sup> Kankwenda M, 'Forty years of development illusions: Revisiting development policies and practices in Africa, in Onimode et al (2004) 9.

<sup>720</sup> NEPAD (2001) 2.

<sup>721</sup> Ibid, 1.

<sup>722</sup> To meet Africa's development goals, it is estimated that the continent needs an annual amount of US\$64 billion or an estimated 7% annual economic growth rate. See *ibid*, 37.

<sup>723</sup> Anyemedu K, 'Financing Africa's development: Can aid dependence be avoided?' in Adesina et al (eds) *Africa & development: Challenges in the new millenium: The NEPAD debate*. Dakar: CODESRIA (2005) 266.

<sup>724</sup> NEPAD (2001) 17.

<sup>725</sup> *Ibid*, 37-40.

collection and reverse the flow of capital flight.<sup>726</sup> In response to the NEPAD initiative, the Group of Eight (G8) leaders at the Gleneagles summit pledged to double ODA to Africa to USD25 billion by 2010.<sup>727</sup> This commitment covers wide ranging issues like education, health, peace and security, governance, debt relief and trade.<sup>728</sup> In addition, this ODA is aimed at helping Africa meet its Millennium Development Goals (MDGs).<sup>729</sup> Subsequent summits in St. Petersburg and Heiligendamm reaffirmed these commitments. On the basis of mutual understanding, African leaders agreed on their own part to entrench democratic values, strengthen regional cooperation and increase budgetary allocations to health and education.<sup>730</sup>

However, an assessment of the progress of these commitments paints a not too impressive picture. Collectively, the G8 has only delivered a meagre USD3.035 billion, which amounts to 14% of the pledged commitment.<sup>731</sup> The report singled out Canada, France and Japan as the ‘culprits’ while the United States, United Kingdom, Germany and Italy have all made some progress - albeit much needs to be done - in terms of ODA.<sup>732</sup> Taking a cursory look at performance in terms of sectoral commitments, it is shown that

- the G8 is well on track with cancellation of debts,<sup>733</sup>
- little or no progress in terms of commitment to ‘make trade work for Africa’,<sup>734</sup>
- considerable progress made in terms of commitment to health (HIV/AIDS, tuberculosis, malaria and polio)<sup>735</sup>
- not on track in terms of achieving universal primary education (UPE)<sup>736</sup>

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<sup>726</sup> Ibid 37.

<sup>727</sup> *The Data Report 2008*, 31. Available at <http://www.one.org/report> (Accessed 15 August 2008).

<sup>728</sup> Ibid, 22-28.

<sup>729</sup> Ibid, 30.

<sup>730</sup> Ibid, 140-154.

<sup>731</sup> Ibid, 34.

<sup>732</sup> Ibid.

<sup>733</sup> Ibid, 56-63.

<sup>734</sup> Ibid, 72-73.

<sup>735</sup> Ibid, 74-96.

The conclusion that can be drawn from the above exposition is that the international community is yet to grasp the urgency of redressing underdevelopment in the continent. In spite of the NEPAD blueprint, it seems that the culture of dependency and patronising gestures are still fully intact. This further reinforces the view that the acceptance of NEPAD by the developed world is nothing more than an act of 'political correctness'.<sup>737</sup> It can also be argued that African leaders have not fulfilled their own part of the bargain. For example, little has been done to strengthen regional cooperation by granting regional bodies supranational powers. In addition, the democratisation process continues to be stunted by electoral chicanery and intimidation of the opposition.<sup>738</sup>

#### **4.4.4.2 Boosting domestic resources mobilisation**

Viewed objectively, it can be argued that the primary responsibility of remedying continental woes lies with African states themselves. This is inevitably linked to granting of more powers to regional institutions. Placing too much hope on the international community and their tax payers can only entrench the dependency syndrome. While it is true that Africa cannot solely finance its development agenda, it is equally essential that strong emphasis and genuine commitment is directed towards the creation of a sustainable domestic financing structure. Unlike domestic savings mobilisation, the NEPAD document present a well-detailed and elaborate structure of attracting ODA and private capital flows.<sup>739</sup>

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<sup>736</sup> Ibid, 108.

<sup>737</sup> Taylor I, 'NEPAD and the global political economy: Towards an African century or another false start' in Adesina et al (2005) 68.

<sup>738</sup> As Onyekakeyah notes, '... unenviable happenings across Africa show that ballot coup has replaced military coup d'etat on the continent. Without political stability there can be no economic or social progress. The political instability stagnates progress in all fronts and leaves the people in a state of quandary. See Onyekakeyah L, *Is Africa the sick baby of the world*. The Nigerian Guardian. Available at [http://www.guardiannewsngr.com/editorial\\_opinion/article02//indexn3.html](http://www.guardiannewsngr.com/editorial_opinion/article02//indexn3.html)? (Accessed 08 July 2008).

<sup>739</sup> NEPAD (2001) 37-40; see also Onimode et al (2004) 240; Anyemedu (2005) 256-257.



Although the NEPAD document highlighted the importance of domestic resources mobilisation, more emphasis is placed on external financing. Research, however, indicates that the flow of FDI is not so much premised on factors highlighted in the NEPAD document as it is on geo-political considerations and the presence of natural resources.<sup>740</sup> The emergence of China as a major source of FDI into the continent has also reiterated this sentiment. China's policy of non-interference in domestic affairs has drawn several criticisms especially in relation to Sudan.<sup>741</sup>

According to a 2007 report by the United Nations Conference on Trade and Development (UNCTAD), ten African countries received about 90% or US\$32 billion of the continent's inflow of FDI.<sup>742</sup> The majority of these investments have gone towards oil, gas and mining while other sectors such as transport and communications have also attracted sizeable investment.<sup>743</sup> In addition, the careful management of Mergers and Acquisitions (M&A)<sup>744</sup> deals and privatisation of public enterprises have also attracted FDI.<sup>745</sup> In spite of the sanguinity about FDI, the Report reveals a decline in the total inflow of FDI into Africa from 3.1% in 2005 to 2.7% in 2006.<sup>746</sup>

The above analysis thus highlights the importance of giving serious focus and attention to domestic resources mobilisation. Corruption remains one of the biggest impediments to domestic resources mobilisation. According to the World Bank, about 25% (USD148 billion) of Africa's Gross Domestic Product

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<sup>740</sup> Onimode (2004) 248-250.

<sup>741</sup> See e.g. Aning K & Lecoutre D, 'China's venture in Africa' *African Security Review*. 17/1 (2008) 43-44; see also *Arms, oil and Darfur: The evolution of relations between China and Sudan*. Sudan Issue Brief (2007) Available at [http://hei.unige.ch/sas/files/portal/spotlight/sudan/Sudan\\_pdf/SIB%207%20Arms.pdf](http://hei.unige.ch/sas/files/portal/spotlight/sudan/Sudan_pdf/SIB%207%20Arms.pdf). (Accessed 20 August 2008).

<sup>742</sup> The top ten receivers of FDI are Egypt, Nigeria, Sudan, Tunisia, Morocco, Algeria, Libya, Equatorial Guinea, Chad and Ghana. Available at <http://www.unctad.org/wir> (Accessed 25 August 2008).

[Hereinafter referred to as World Investment Report 2007]

<sup>743</sup> See Ibid.

<sup>744</sup> The 2007 World Investment Report shows that the value of cross border M&A in Africa peaked at an appreciable US\$18 billion in 2006. See Ibid.

<sup>745</sup> Anyemedu (2005) 267.

<sup>746</sup> Compared to Africa, South, East and South East Asia attract 15% of the global share of FDI while Latin America and the Caribbean draw 6%. See World Investment Report 2007.

(GDP) is lost to corruption every year.<sup>747</sup> This shocking revelation requires a pragmatic mechanism of plugging factors engendering corrupt practices. Addressing corruption head on will require concerted efforts at strengthening national institutions charged with fighting corruption. The establishment of anti-corruption agencies is not sufficient; African states must demonstrate the necessary political will by equipping such agencies with effective legal and administrative backing. In addition, there is a need for the reorientation of the societal value system, which will go a long way in granting moral fillip to the fight against corruption.<sup>748</sup> The international community also has a huge role to play in this regard. The repatriation of stolen funds should be given the utmost attention as well as the prosecution of foreign firms engaged in corrupt practices in Africa.<sup>749</sup> Also, African states must adhere to prudent fiscal policies and the pruning of expenditure on flamboyance. As Anyemedu points out, money spent on private jets, official vehicles and foreign trips could be better utilised on priorities such as education, health and poverty alleviation.<sup>750</sup>

The financial impact of conflicts on African economies is depressing. According to a 2007 survey, Africa has, within 1990-2005, lost USD284 billion to conflicts and wars, with the continent's economy shrinking by an average of 15% yearly.<sup>751</sup> Prevention of conflicts on the continent can only boost public domestic savings; it is thus crucial that conflict prevention programmes at continental and sub regional levels are given the requisite impetus to succeed. It is trite that the root cause of most conflicts of the continent is the absence of a democratic order; therefore, the observance of these principles is non-negotiable for the presence of peace and stability.

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<sup>747</sup> Available at

<http://www.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/0,,menuPK/258652>  
(Accessed 25 August 2008).

<sup>748</sup> See e.g. Lawal G, 'Corruption and development in Africa: Challenges for political and economic change', *Humanity and Social Sciences Journal*. 2/1 (2007) 6.

<sup>749</sup> Anyemedu (2005) 272-273.

<sup>750</sup> *Ibid*, 271.

<sup>751</sup> See *Africa's missing billion*, IANSA, Oxfam & Saferworld (2007) 8-9. Available at [http://www.oxfam.org.uk/resources/policy/conflict\\_disasters/downloads/bp107\\_africa\\_missing\\_billions.pdf](http://www.oxfam.org.uk/resources/policy/conflict_disasters/downloads/bp107_africa_missing_billions.pdf)  
(Accessed 12 October 2007).

There is also a need for large scale reforms in the banking sector in order for it to be able to provide much needed finance for small enterprises.<sup>752</sup> Government alone cannot boost domestic savings; the strengthening of the private sector is essential for the existence of a viable public-private partnership geared towards substantial accumulation of domestic savings. In this regard, wealth creation should be the primary focus. Agriculture, a mainstay of African societies, should be given high priority through major investments and provision of requisite infrastructures.<sup>753</sup>

While the above measures will not automatically translate into a radical increment in domestic savings, it at least has the potential of laying a veritable foundation for a well focused and genuine commitment to domestic savings as an alternative to financing African development.

#### **4.4.4.3 Towards an AU driven development agenda**

The foregoing analysis identifies some of the important components of Africa's development agenda. Indeed, development in Africa has, at the best, been marginal. The political contexts within which development strategies are designed remain the biggest stumbling block to its efficacy. It is, therefore, imperative that the development agenda exists within a democratic milieu. The AU has a big role to play in this regard. As argued earlier, the AU in its present configuration is incapable of driving both the democratic and development agenda. A 'nucleus AU', as proposed in the foregoing, will have both the legitimacy and competence to set the tone for a genuine and sustainable development agenda.

The primary responsibility of the AU in ensuring the entrenchment of democratic norms thus locates it within the core of Africa's development agenda. Through

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<sup>752</sup> Katseli L, 'Financing Africa's development'. Fifth International forum on African perspectives (2005) Available at <http://www.oecd.org/dataoecd/24/7/34976384.pdf> (Accessed 25 August 2008)

<sup>753</sup> Ibid, 2; see also Onimode (2004) 244.

its monitoring and disciplinary mechanisms, a supranational AU can stimulate an enabling environment for development. As will be further elaborated upon in the next chapter, the institutional design of a future supranational AU is key in determining how it will play this role. Suffice to note that such an institutional framework should in itself be a product of a process built on utmost adherence to democratic norms and standards.

#### **4.5 Summary**

The trajectory of closer cooperation and integration in Africa has by no means being smooth sailing. The rhetoric on integration is yet to be matched by a well-honed political will and commitment. The shift from the OAU to the AU was expected to bring vibrancy to regionalism and most importantly usher in an era of supranationalism but the reality on the ground proves otherwise. The unbridled attachment to sovereignty and flagrant abuse of democratic principles across the continent continue to hamper the effective functioning of the organisation.

Further, the current configuration of the organisation vis-à-vis unconditional membership stands in contradiction to the much espoused principles of democracy and good governance. It exposes the organisation's lack of ideology. There is thus a need for a paradigm shift in the conception of African integration and how to proceed with it. The AU, as proposed in this chapter, thus requires a democratic rebirth. The ambitious goals of the organisation can only be effectively realized upon the genuine commitment by member states to adhere to democratic principles and granting of requisite over-arching powers to the organisation. A detailed analysis of how these fundamentals can shape the design of a future supranational AU is discussed in the next chapter.