

PRESIDENT

REPUBLIC OF SOUTH AFRICA

November 6, 2002

The Right Honourable Jean Chretien,
Prime Minister,
Ottawa,
Canada.

Dear Prime Minister

Thank you for your letter dated November 1, 2002, which I received when I arrived in Abuja, Nigeria during the last weekend, in which you raised various questions about Africa's peer-review process. I would like to apologise for the delay in my response. Unfortunately, I had to proceed from Nigeria directly to Cambodia.

It seems clear to me that some misunderstanding has arisen about what the governments and peoples of Africa are doing to achieve peace, democracy, development and prosperity. I trust you will pardon me if I explain these efforts at some length, to avoid unnecessary conflict and confusion in future.

But first, I would like to reiterate our sincere appreciation of the critical role you have played and continue to play to help us achieve the objectives of NEPAD. We continue to rely on your support, involvement and understanding as we pursue our purposes.

We are also deeply appreciative of the support of the G-8 as reflected in its Africa Action Plan, which we consider to be expressive of the partnership that Africa seeks to enter into with the developed world.

Necessarily, both sides, Africa and the G-8, will have to continue to engage in a common endeavour to define the meaning of partnership, so that we do, indeed, achieve a real and meaningful partnership.

It is for this reason that I both appreciate the trouble you took to communicate your concerns about our peer review process and have prepared this communication to you.

I would like to confirm that we stand by everything we have said with regard to NEPAD, on the basis of which the G-8 resolved to extend its invaluable support to this epoch-making process. This includes the peer-review mechanism.

The Nepad perspective constitutes a commitment we have made to ourselves as Africans. As we have explained before, our own experience has informed us that we must make a determined and sustained effort to overcome the seemingly intractable problems that have negatively affected Africa and its peoples for some time.

This includes ensuring that all of us as Africans honour the undertaking we have freely entered into. As you know, these include good governance in all its elements, including the political, economic and social.

We remain firmly committed to discharge this obligation, in our own interest. This resolve emanates from the determination we have made that good governance, in all its elements, is a fundamental condition for the achievement of the goals of NEPAD.

We wish to realise these goals not because we seek to improve our relations with the rest of the world as a first objective, critically important as this is, but to end political and economic mismanagement on our continent, and the consequential violent conflicts, instability, denial of democracy and human rights, deepening poverty and global marginalisation.

Any suggestion that we have abandoned this objective or weakened in our resolve to progress towards its realisation, is entirely false and without foundation. Such a negative development would mean that we have chosen to “shoot ourselves in the foot”, which we will not do.

I would like you to understand this, confirming your own conviction that I know you share with us, that as Africans, like any other people in the world, we have the capacity to determine what is in our own best interest, the determination to promote this interest to the best of our ability, and the resolve honestly to confront any tendency that is inimical to the advancement of these interests.

Good governance on our continent, comprehensively understood, is of fundamental interest to the peoples of Africa. As part of our commitment to achieve good governance, comprehensively understood, we will do everything we can, to defeat any tendency on our continent that is hostile to our realisation of this goal.

We have to pursue this objective, which stands at the core of the African Peer-Review mechanism, within the context of a specific African institutional framework. That framework includes the all-important African Union (AU).

The AU is the primary organisation that unites the people of Africa. NEPAD is its socio-economic development programme. Accordingly, NEPAD is not an organisation separate from and independent of the AU. It has been authorised by the AU in all its elements, including the peer-review mechanism.

I would like to believe that we have explained all this throughout the period of our interaction with the G8, and that this has been understood and accepted.

Indeed, there is no way in which there can be a NEPAD independent of and outside the AU, in as much there can be no socio-economic development programme covering the member states of the AU independent of and outside the AU.

The AU is governed by several instruments.

One of these is Constitutive Act; which has been approved by the democratically elected African parliaments, including our own.

Others are the various Conventions, such as those on Human and People's Rights and Terrorism, of all which have been ratified or are in the process of ratification by our various parliaments.

Yet other instruments are contained in a number of Protocols that provide for the establishment of various institutions such as the Commission on Human and People's rights, the Pan-African Parliament, the Peace and Security Council, and the African Court of Justice. Once more, these Protocols have to be approved by our parliaments.

Needless to say, all the institutions we have mentioned and others provided for in the Constitutive Act of the African Union exist, or will exist, by virtue of laws or legal instruments that have force and effect throughout the continent, in addition to their status as part of municipal law in each of our countries.

The continent has proceeded in this manner to entrench the rule of law to ensure that obligations we enter into as Africans are justiciable, and therefore have greater force than ordinary conference resolutions.

I am certain that you will agree with me that this establishes a firm and necessary base for us to succeed in our effort to end arbitrary rule on our continent and ensure that we construct law-governed societies.

I am equally certain that you will also agree with me that it would be fundamentally wrong and unacceptable for us wilfully to act in defiance of the legal framework I have mentioned, even as we protest adherence to the rule of law.

The African Commission on Human and People's Rights is charged with the responsibility to oversee the Convention that prescribes these rights, those contained in the Constitutive Act of the African Union.

The Peace and Security Council is or will be charged with the task to ensure peace, security and stability on our continent.

The African Court of Justice will be an independent judicial institution, with the responsibility to adjudicate matters relating to the African statutory framework.

The mandate of the Pan-African Parliament includes oversight by our elected representatives over the various statutory instruments I have mentioned, that have been legislated into effect by our parliaments, including the fundamental law of the continent, the Constitutive Act.

There are other bodies I have not mentioned, such as the Committee of African Experts on the Welfare of Rights of the Child, constituted to ensure the observance of the Convention on the Welfare and Rights of the Child.

I mentioned all these institutions to make the central point that they constitute the various elements of the overall African mechanism for the enforcement of the decisions we have taken in the context of the AU.

The Nepad peer-review mechanism is part of this system and can neither be separated from it nor transformed to take over the functions of all other enforcement bodies of the AU, rendering inoperative institutions established through laws or instruments approved by our parliaments, including our own.

Certainly it would be intolerable that we, the current Chairperson of the AU, should consciously engage in any attempt effectively to nullify the existence of the very statutory bodies we are charged to help strengthen or bring into being, and recognised in our own legal system as African statutory bodies.

Contrary to what you may have learnt from media reports, I have never said that political governance should be excluded from the African peer-review process. The NEPAD peer-review system is not the only process available to the continent to ensure the implementation of its decisions.

As I have said, there are or will be legal institutions charged with specific tasks, such as those delegated to the Commission on Human and People's Rights, the Peace and Security Council, and the African Court of Justice.

Accordingly, it would be fundamentally wrong and illegal for NEPAD to ignore these institutions, and thus place itself above African continental law.

What is required is that the NEPAD peer-review system should draw on the inputs on these institutions with regard to the specific matters legally delegated to them.

At the same time, NEPAD has a responsibility to build the necessary peer review capacity it needs to ensure the implementation of the socio-economic programme that constitutes the essence of its agreed purposes.

But exactly because the success of this programme depends on the right political and other conditions, the NEPAD peer-review system will have to take into account and report on these conditions. However, this does not mean that the Nepad peer review system thus becomes the AU peer-review system.

As you may have seen from the decisions of the recent Abuja meeting of the NEPAD Implementation Committee, it is visualised that the Panel of Eminent Persons of the NEPAD peer review mechanism should discharge certain responsibilities with regard to such issues as political governance, pending the completion of various processes by the AU.

The joint responsibility assumed by African leaders which you mention in your letter, for the promotion and protection of democracy and human rights, is contained in its legal and obligatory form in the Constitutive Act and the Convention on Human and People's Rights, among other instruments. NEPAD is obliged to act within the context of these legal provisions.

Accordingly, as you urge, political and economic good governance cannot and will not be decoupled.

At the same time, I trust that I have explained the AU processes that must guarantee the implementation of what you refer to as the review of political governance.

In this regard, I can assure you that none of these bodies specifically charged with this task, including the African Court of Justice, the Peace and Security Council and the Commission on Human and People's Rights, are "essentially political bodies", to quote from your letter.

I would like to take this opportunity to say that in the past, on a rotational basis, the African Commission on Human and People's Rights has been chaired by the Chairperson of the South African Human Rights Commission, an independent, constitutional body.

One of the dangers to us, posed by the assertion that the Nepad peer-review process should displace all related AU legal organs, is that this seeks to encourage us to ignore decisions relating to the AU, that have been adopted by our parliament as law.

Another is that we are being encouraged to hold the AU in contempt, by treating its decisions and institutions as being inimical to "the logical and vision that underlie NEPAD".

In short, we are invited to treat the AU, the parent of NEPAD, as a dangerous irrelevance with regard to its NEPAD offspring, whose connection with the latter may lead to the "unravelling" of our external partners, as you warn.

As you can see, this creates what, to us, is a false dichotomy between NEPAD and the AU, which seeks to oblige us to either abandon or dissolve the AU, and replace it with NEPAD. I am certain this is not the result you seek.

Let me also mention another matter that is of the greatest importance with regard to the NEPAD peer review system.

You will have noticed what we said after the latest Abuja NEPAD Implementation Committee meeting about various matters being obligatory requirements on all member states of the AU. This relates specifically to issues of political governance, as contained, for instance, in the Constitutive Act.

We believe it would be fundamentally wrong and contrary to the rule of law to treat the observance of statutory requirements about political governance as voluntary. I mention this in the context of the voluntary nature of accession to the NEPAD peer-review system.

Derived in part from the OECD peer review system, accession to the NEPAD mechanism, *per se*, was determined to be voluntary, because of the nature and purposes of a socio-economic peer review system.

We are convinced that any decision to undermine or destroy the obligatory nature of the values of good political governance, as contained, for instance, in the Constitutive Act, by subsuming them under the voluntary NEPAD review system, would serve severely to threaten Africa's advance towards good political governance.

Once again, I am certain that you would never intend to bring about such an outcome.

Most certainly, it would be impossible for us to agree to repeal the laws that oblige all member states of the AU to enforce democracy and human rights, in favour of a voluntary system that could then be fully catered for under the voluntary NEPAD peer review system.

The recent Abuja statement called on the AU to move expeditiously to complete its enforcement processes, with the purpose of drawing attention to the fact that the voluntary NEPAD system that could then be fully catered for under the voluntary NEPAD peer review system.

But, as I have said, it had never been the intention to ignore or minimise political governance as a critical element in the assessment of the adherence of each and all our countries to the necessity to achieve good governance, comprehensively understood.

Accordingly, the Panel of Eminent Persons of the NEPAD peer review process will, in the transition, and as proposed by the NEPAD Implementation Committee, use such AU mechanisms as may be operational and any other institutions it may determine, to cover the area of political governance.

In the end, however, the NEPAD peer review process will have to take into account the work done by sister institutions of the AU, such as the African Court of Justice and other relevant organs.

I am certain that the media reports you read, which sought to communicate the idea that I said that good political governance was irrelevant to NEPAD and its peer review system, derived from an unfortunate lack of depth of understanding of what Africa is working to achieve.

This has resulted in a dangerous level of ignorance about the serious work being done in the context of the establishment of the AU. This is in spite of publicly available documents covering, for instance, the decisions of the 2002 Durban Inaugural Summit Meeting of Heads of State and Government of the African Union.

In this regard, it is clear that NEPAD enjoys a higher public profile than the AU. This has led to the unstated understanding among some people that NEPAD has precedence above the AU, whose institutions, apart from NEPAD, are considered by some to be of little consequence to the future of our continent.

However, it is necessary that everybody, including the peoples of Africa, should understand that this conclusion is fundamentally wrong. The AU stands at the pinnacle of our continent's efforts to achieve its renewal, including realisation of the goals contained in NEPAD.

I would like to assure you that as Africans, we are determined to achieve this renewal, which includes good political governance, as spelt out in such documents as the Constitutive Act. We will strive to do this because it is right, and not because we are trying to win favours from the rest of the world.

I hope that as we continue to work together, we will also demonstrate both to our own people and the rest of the world, that we are indeed very serious about the objective of the fundamental transformation of Africa.

Hopefully, practice will help to lay to rest the misconception that collectively as the African continent, we are not capable of acting in our best self-interest.

We cannot and will not pretend that the road to such transformation is an easy one, without twists and turns, inclines and declines. Temporary reverses must therefore be expected.

Nevertheless, I hope that we will develop sufficient trust among us to make it unnecessary that any reverse is read as an abandonment of our determination to advance towards the accomplishment of the goals we have openly set and stated, first and foremost to ourselves and for ourselves.

In this regard, as Africans, we are determined to be our own guardians, as well as dependable interlocutors with all our partners. We will demonstrate this in practice.

The matter of trust and confidence in our good faith, our *bona fides*, is essential to the success of the partnership that we seek to build. Central to all this is the adherence to conduct by all participants in the partnership that is based on some essential elements.

One of these is the mutual acceptance of the honesty and *bona fides*, of each partner, as we have just said.

Another is the mutual acceptance of the capacity of each and every partner to think and act rationally.

Yet another is the understanding that each one of the partners has to operate within a set of constraints that inevitably influence what is possible at any particular time, without this being interpreted as representing the abandonment of any agreed strategic and humane objectives.

Yet another essential element is the common understanding that all players have their constituencies, none of which enjoy primacy with regard to the capacity of leaders to act to realise whatever might be the agreed goals.

One other is the common acceptance that the relationship between the rich and the poor is inherently unequal. Africa's centuries-long history of relations with the countries of the North serves psychologically and practically to reinforce this unequal relationship.

Accordingly, when all of us speak of support for the concept and goals of the New Partnership for Africa's Development, this has to signify our conscious determination to repudiate this unequal relationship, regardless of whether we are rich or poor.

This also demands that all of us must both do our best to build a true partnership, and have sufficient understanding and tolerance to provide the necessary space to allow for the evolution of this partnership into a true and mutually beneficial partnership.

Finally, I would also like to suggest that the progression of our relationship towards this partnership should be informed by frank and honest exchanges among all of us.

At the same time, clearly we need to ensure that this does not degenerate into a contest of wills, a public brawl, the promotion of an outcome based on the concept of winners and losers, the victors and the vanquished, and the exploitation of our different capacities to use the public media to promote particular purposes.

It is in this spirit that I have written this letter, accepting that you communicated with me driven by the same considerations. Please accept my apology for its length and the detail of our argument.

Nevertheless, I do hope that this letter goes some way towards assuring you that we are not about to abandon the critically important pursuit of the objective of good political governance and our determination to ensure its achievement.

Again, I would like to say that, as Africans, we shall demonstrate this in practice, which I hope will speak louder than words.

Among other things, what we sceptics need to do, being those you correctly say "would not be greatly disappointed were we to fail to implement (our) shared vision", is to study what our continent is doing, to end the conflicts and wars that have claimed and continue to claim too many African lives, and block Africa's progress towards its renaissance.

To any honest person, interested in a better future for the peoples of Africa, this practice should communicate a more decisive message about Africa's intentions about itself, than some unfortunate and unnecessary controversy about one particular element in the global and historic African advance towards a new definition of itself and its place in the world.

But it may be that we are all victim to the phenomenon described in the Chinese proverb, according to which one dying and falling tree in the forest makes more noise than a million healthy and growing trees. For those in search of drama and negative images, the falling tree is real and significant, while the growing trees have no meaning.

As leaders of our respective peoples, all of whom hope for the birth of a better world for all, we cannot proceed on this basis. I can assure you that many of us in Africa, will not proceed on this basis.

Given the global interest in the controversy that has arisen on the issue of the NEPAD peer review mechanism, I hope you will not object to the conveyance of this communication to other relevant and important parties, as indicated below.

I know that the media reports to which you refer, and others in future, cannot and will not serve as the determining factor governing your involvement in the historic process that must surely lead to the affirmation of the dignity of the peoples of Africa, including those who constitute our Diaspora that is born of our deeply troubled past.

Once more, I would like to assure you of our unqualified appreciation of your principled support, solidarity and friendship, which has contributed enormously to give hope to the millions of African people who have known nothing but despair for countless generations.

I know that it was to ensure that this hope is not disappointed that you wrote your timely letter. We will continue to rely on your support and advice.

Yours sincerely

Thabo Mbeki

cc: The G-8, the EU, the Nordic countries, members of the NEPAD Implementation Committee, the UN Secretary-General and Heads of other Multilateral Organisations.