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*AFRICAN JOURNAL OF CRIMINOLOGY & JUSTICE STUDIES:
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**TRANSITION FROM LEGAL ALIEN TO PERMANENT
RESIDENT**

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The debate around illegal immigration in America could benefit from a comparative analysis with Europe and I believe that Europe has a lot to learn from America. I do not know any (European) country in which hundreds of thousands of illegal immigrants and their supporters would troop out to demonstrate against restrictive immigration legislation and yet not a single person was arrested, detained or deported. American immigration policy is far from perfect but the rest of the world has a lot to learn from the US in this respect. In this essay, I will compare Germany with the US and show how much better the US policy is in comparison.

I first visited Germany in 1994 as one of dozens of young sociologists from around the world who were invited to the World Congress of Sociology in Bielefeld. There were people from China, Poland, Israel, Nigeria, Argentina, The Netherlands, Belgium, Japan, Russia, The United States, Mexico, and Bulgaria. We were housed in a building in the village of Oerlinhausen where Max Weber lived with his wife Marian and we interacted with each other through passionate debates on seminar presentations, trips to parts of Germany and trips to as far away as The Netherlands. We made lasting friends there and some of us are still in touch today.

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Two years later, I visited the United States for the first time to participate in another academic conference and the difference between the two countries left a lasting impression on me. For starters, my visa was a single entry visa for Germany and it was approved through the travel agents without any need for me to visit the embassy. On the other hand, the US gave me a multiple entry visa for five years but only after turning down the travel agency application and asking me to attend for a personal interview. Although I made a family friend in Germany who invited me to his home to meet his lovely family and even asked me to sleep over so that he could drive me to the train station on the morning of my departure, I never felt that Germany was a place for me to stay. On the other hand, I felt a certain affinity with America the minute I arrived, I almost felt certain that I would live in America especially because many of my classmates lived in America already and I made contact with them on arrival. This difference was probably reinforced by discussions that I had with professional colleagues in the two countries: In Germany the discussion revolved around what sort of research projects I would be engaged in when I returned to my home country, Nigeria, even though it was clear that I was living in the United Kingdom at the time. The discussion with colleagues in America was amazing, to put it lightly; their questions were more about when I would move to America to work and not when I was going home, wherever that was.

When I finally moved to America to take up a job in 1999 on a J1 temporary visa, one of the first questions I was asked was whether I would consider becoming an American citizen. I answered the question by saying how much I admired Americans for even asking that question. In the UK where I lived previously, I

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occasionally got phone messages recorded on my answering machine, telling me to go back to Brazil or wherever I came from. Even well meaning individuals would occasionally ask me when I was going back home. It is an honor to find some Americans encouraging me to seek to become a citizen of their country. Of course, it did not take long before some individual Americans would jokingly ask me to go home or envy me the fact that if politicians ruined the country, I had another country to return to. To the latter, I would respond that if America was ruined, the world would go down with it and so there would be no safe haven to flee to. It appears that Americans are suspicious of those 'aliens' who wish to remain in America legally without applying for American citizenship and every child born in America automatically became American whereas Germany and the rest of Europe would be suspicious of any foreigner who wished to become a citizen even if the person was born in Germany. Some African Americans have also expressed surprise that a black man would choose to come and live in America where black people had been disrespected ever since Plymouth Rock landed on their ancestors (as Malcolm X put it) who were brought to America against their wills. To them I answer that I came to America to fraternize with my long lost brothers, sisters, cousins, uncles and aunts.

America is far from being perfect but I believe that Germany could benefit from the American experience in immigration as Germany goes through the transition from a country without anything properly known as immigration policies (they only had a foreigner's law or *Auslandergesetz*) to a country that now has an official immigration policy. For a long time, the US recognized

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itself as a country of immigration while Germany was in denial, recognizing itself only as a country united by the myth of German blood and ancestral culture (Moore, 2000). America deliberately pursues diversity as a source of greatness while Germany pursued the elusive goal of purity to its peril. The American approach works better because the whole world is becoming globalized to the extent that any attempt at authentic nationalism usually spells trouble. For instance, Rwanda and Somalia are the only countries in Africa where a single language is spoken but that historically manufactured homogeneity probably contributed to their ruin. Germany is perhaps the only country in Europe where a single language is officially spoken and everyone knows where that frenzied search for impossible insularity led the country in the Nazi era. So President Bush must be cautioned to avoid pushing for a single language policy in America, although some may joke that he does need to study English himself.

America is one of the most diverse countries on earth but the policy makers believe in even greater diversity rather than less. Consequently, they have something called the Diversity Visa Lottery through which about 50,000 aliens are randomly selected by the computer to immigrate to the US annually from countries that are less represented among the current US population. In addition, the US leaves the door open for skilled professionals from around the world to move to the country and become legal residents. After five years of living legally in America, you automatically qualify to apply for citizenship otherwise, you will continue renewing your green card every five years. I only received my green card in 2005 after waiting for five years and after going through the H1B visa and then being out of status when

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I applied for the Green Card in 2002. That meant that I could only travel abroad with an Advance Parole from the Department of Homeland Security until my permanent residence was approved.

Germany could certainly use such an official immigration policy instead of continuing with the practice in fortress Europe where immigration law is an Orwellian double speak for anti-immigration measures. Germany should lead the European Union members by openly acknowledging the fact that the policy of preventing immigration is doomed to failure because immigrants will do what immigrants will have to do to immigrate whether you like it or not. You might as well acknowledge the fact that

Despite these restrictions...immigration overall has increased. In 1987, for example, a total number of 591,765 people entered West Germany. But, of these, 119,429 (20%) were Germans from all parts of the world and 158,352 (26.8%) were ethnic Germans from Eastern Europe; a further 105,771 (17.8%) were from EC countries and 65,507 (11%) came from Africa or Asia; the remainder were from north and south America, Australia and New Zealand (Rathzel, 1991: 35).

So why not adopt a diversity immigration visa policy, grant citizenship by birth and allow exceptionally qualified foreigners to take up residence in your country like America? Thousands of qualified immigrants can be selected from around the world to come and settle in Germany the way the US does and after some time, they should be invited to apply for citizenship if they so wish. Trying to prevent people from immigrating is a bit like the angel in

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the bible trying to prevent Jacob from crossing the river to join his family. As Roland Barthes (1987) illustrated, the angel was doomed to lose the wrestling match because Jacob was a determined immigrant and finally it was the angel that sued for peace by begging Jacob to let go of him and Jacob insisted that he should bless him first (see Agozino, 1997; 2000).

Following the fall of the Berlin Wall and the reunification of Germany under the constitution of the Federal Republic or West Germany, some writers announced the end of history and proclaimed the victory of Western liberalism as the only viable moral system in advanced industrialized societies. A few critics reminded us that the end of history had been proclaimed in the past but that history has a habit of throwing up new tricks every time we think that it is the end. In Appendix II to his book, *Between Facts and Norms*, Habermas (1997) contributes to the critique of the idea of *poshistoire* by identifying three historical movements that would continue to surprise the contemporary era by throwing the relationship between citizenship and national identity into a flux. A good practice that Germany could learn from is the way the US has historically dealt with the third historical movement identified by Habermas, the problem of 'The tremendous tide of immigration from the poor regions of the East and South, with which Europe will be increasingly confronted in the coming years' (Habermas, 1997: 491-92).

It is surprising that Habermas did not specifically examine the US policy options as one of the options available to Germany since his book is a comparative study of how US and German laws attempt to resolve the tensions between facts and values. But this is

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understandable given that the appendix was written earlier (1990) than the book and the reader was probably expected to make the links between it and the thesis in the later book. Also surprising is the fact that although the problem identified by Habermas was the problem of immigration, his preferred solution was narrowly focused on how it lends 'the problem of asylum a new significance and urgency' (492). I doubt if the US would seek to solve the problem of immigration primarily through asylum policies rather than through deliberate immigration policies. Instead of turning to America for guidance on this problem, Habermas turned to the Jacobins whose Revolutionary Constitution of 1793, under Article 4, granted every foreigner who lived in France for one year, not just the right to remain but 'The Status of Citizen'. The contradiction of this supposedly universal fraternity, equality and liberty by the maltreatment of the leader of the Black Jacobins of the San Domingo revolution, Toussaint, who was tricked to Paris under the pretense of a diplomatic negotiation only to be thrown into jail where he was tortured to death (James, 1980) in the same way that the American Founding fathers proclaimed that all men were created equal while holding people of African descent in slavery, was not addressed by Habermas. The recent uprisings throughout France by young children of immigrants serves to caution the French that their pretension to color-blindness is just that, a pretension.

Instead, Habermas took a philosophical approach to the problem by noting how 'frighteningly accurate' the prophecy of Hannah Arendt that 'stateless' people and those displaced by conflicts would characterize the 20th century. Again, his preferred solution was to call on Europe to fulfill its historical responsibility by

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improving 'conditions in the poorer regions of southern and eastern Europe or it would be flooded by asylum seekers and immigrants' (508). He pointed out that some experts were debating whether the economy could absorb the costs of the integration of the immigrants into a prosperous Europe but that the main issue for discussion was how the 'indigenous populations perceive the social and economic problems posed by immigration' (508). He highlighted the xenophobic propaganda that immigrants have a corrupting influence on the culture, making the 'relatively deprived classes' to view themselves as endangered and giving rise to social conflicts in which the immigrants become targets of violent gangs.

The first contradiction recognized by Habermas was that the Western democracies already granted *de facto* recognition to the rights and privileges of immigrants while a *de jure* recognition was lacking. There was hardly anything that citizens had access to that was denied to immigrants except that they were not citizens and so they lacked the right to vote or to play soccer for the national team. This was challenged in the Federal Constitutional Court and although the decision of the court was that immigrants did not have the right to vote, the court noted that the idea of democracy implies that the rights of citizenship should be congruent with all those who are permanently subject to a democratic political authority. In other words, if immigrants live in a democracy, fulfilling all the obligations of citizenship, there should be no moral argument for their permanent marginalization as guest workers or aliens. This led Habermas to ask if the European Union of today could reasonably aspire to the liberal immigration policy of the Jacobins but I believe that the US offers a more practical model for the Europe of today.

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Habermas attempted to answer his question by looking at moral theory, especially the idea of special obligations which people owe members of their family and their fellow citizens and wondered if such special obligations should be extended to asylum seekers and immigrants. He considered the utilitarian solution which recognizes the mutual benefits of having productive immigrants who would be an asset to the economy but he rejected such utilitarianism because it is potentially discriminatory to the disabled and to children or the aged who would be liabilities rather than assets but who would deserve special obligations derived from a democratic state. In rejecting utilitarianism, Habermas turned to the American moral philosopher, John Rawls, to see if his concept of a 'veil of ignorance' could help to solve the dissonance between the values of democracy and the facts of immigration. According to this view which assumes that people are ignorant of their state of origin at birth:

Behind the 'veil of ignorance' in considering possible restrictions on freedom, one adopts the perspective of the one who would be most disadvantaged by the restriction, in this case the perspective of the alien who wants to immigrate. In the original position, then, one would insist that the right to migrate be included in the system of basic liberties for the same reason that one would insist that the right to religious freedom be included: it might prove essential to one's plan of life (quoted in Habermas, 1997: 512)

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America does not quite fit this model of the veil of ignorance given the strong identification of Americans with White Anglo Saxon Protestant ancestry while ignorance is tolerated in the form of lack of appreciation for the plight of the Native Americans who were subjected to genocide to build the 'land of the free' and the continuing refusal to come to terms with hundreds of years of enslavement of millions of Africans whose sweat, blood and tears built up what is America today. In America, the veil of ignorance serves to sustain disadvantages instead of encouraging people to see things from the point of view of the disadvantaged. Perhaps, in my opinion, this is an area where America should borrow a practical idea from Germany by paying reparations to people of African descent for the crimes of slavery the way Germany pays reparations to Jews. Germany could emphasize this lesson better by paying reparations to the Herero of Namibia who were almost wiped out by the genocidal policies of the German empire.

The conclusion of Habermas is that the views of communitarians are more persuasive because they call for immigration to be regulated by making sure that immigrants are integrated into the cultural community of the society and not simply by integrating them into the economy as guest workers. According to him, 'the European states should agree on a liberal immigration policy. They must not circle their wagons and use a chauvinism of affluence as a cover against the onrush of immigrants and asylum seekers'. He went beyond this to announce that a world citizenship is already taking shape, that democratic constitutions should be aware of this and adapt to it even while protecting their rights to cultural self-determination.

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I know that recent violent events like the attack against America on 9/11, the killing of the film maker, Van Gogh, in Amsterdam, the Madrid train bombings, the uprisings in France and the London train and bus bombings have provided ammunition to those who wish to cut back immigration and roll back multicultural policies. However, there is evidence that the vast majority of immigrants are not less patriotic than home-grown citizens, the majority of violent criminals are citizens and not immigrants and no fortress will ever succeed in stopping immigrants who are pushed or pulled by forces beyond their control. Perhaps Germany will win the Football World Cup again if skilled players from around the world are allowed to immigrate and become citizens of that country. That might be one reason why the US dominate most sporting events and win more Nobel Prizes than most. Yet the warning by Habermas is relevant here because focusing exclusively on the mutual benefits of immigration could be misleading because a poor unskilled immigrant today could become the parent of a successful citizen tomorrow. Victor Hugo illustrated this with the Hunchback of Notre Dame whose Gypsy mother was arrested by immigration officials and he was taken away to be imprisoned in the bell tower but when the officials attempted to install a dictatorship, it was the hunchback that helped to save the republic.

Oezcan (2004) reports on the transition of German immigration policy following a government commissioned report and subsequent legislation that passed both houses of parliament only for the conservative opposition party to successfully litigate against the new law. This gave rise to new negotiations before a new law was finally enacted and took effect from January 2005. It is left to be seen how the new law would be implemented especially given

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that the former opposition party was later part of the ruling alliance with its leader as the Prime Minister. Oezcan concludes by synthesizing the utilitarian and communitarian schools of thought that Habermas highlighted in the appendix to his book discussed above:

It remains to be seen if the new immigration law will help attract highly qualified migrants to Germany - one of the main goals of the legislation from the beginning. Many analysts are skeptical about what it will accomplish in this regard, since the point system that was widely touted as the best way of reaching this goal has been eliminated. However, the true test of a new approach would not only be how well an immigration law helps Germany meet its need for workers, but also how successfully it eases the handling of domestic concerns about integration and national identity (Oezcan, 2004).

In America, the alleged 'domestic concerns' take the form of those who call themselves 'Minuteman' who formed a vigilante group to police the boarder with Mexico and report illegal immigrants to the law-enforcement agents. The fact that government officials have not come out openly to embrace the vigilantism of the Minuteman, despite the assertion by one governor that they were doing a great job, is an indication that the official policy is still pro-immigration to a large extent. In fact, the Southern Poverty Law Center took a similar vigilante group, Ranch Rescue, to court over assaults on two El Salvador illegal immigrants and won huge settlements including the deeds to the ranch in which they were tortured and border patrol officials reportedly thanked the Center lawyers for

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making their job easier by helping to check the vigilantes (SPLC, 2005). Of course illegal immigrants and asylum detainees continue to suffer in America as in European countries but America has the distinction of using the idea that Habermas called 'liberal immigration policies' to defuse the tension to some extent.

The African Union adopted a similar policy recently (AU, 2004) to make it possible for Africans to settle down and to seek employment throughout the continent without the need for a visa or work permit. Such a policy would make the African economy more competitive and with the help of the highly skilled African Diaspora, the brain drain that is stagnating technological development on the continent could be reversed. Such a policy would be the foundation for African citizenship and eventually lead to the reconstitution of Africa into one republic with the African Diaspora having the option to hold dual citizenship and with room for immigrants from other parts of the world. This will avoid putting patriotic Africans in the dilemma that W.E.B. Du Bois found himself when he had to give up his American citizenship in order to accept the Ghanaian citizenship perhaps because Ghana did not have a policy of dual citizenship at that time. In this sense, Africa would be more like the USA with 54 states in the new republic instead of having 54 unviable countries as is presently constituted.

At the same time, America should recognize the enormous sacrifices that people of African descent made to the building of the New World and grant us visa-free rights to come and go as we please the way America has granted such to less deserving Europeans. As I prepare to leave America to take up a

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professorship in Sociology in the Caribbean, some friends have questioned my sanity in risking my prized green card but I reassure them that I will try to keep my green card current through regular returns to God's own country. However, by requiring me to return every six months, America may be making it difficult for me to maintain my permanent residence status unlike the United Kingdom which requires that I return every two years in order to maintain my right to enter or to remain permanently. This is one area of reform that Congress should consider, when the law says permanent residence, it should mean exactly that – even if you leave temporarily, you should still have the right to return and continue your *permanent* residence in the same way that citizenship rights do not expire due to residence abroad.

With that groveling praise for Uncla Santa (my term for Uncle Sam to recognize that, as a Professor in a state government university, I see my regular paychecks as regular Christmas presents from Santa for being a good boy, an idea that I got from Hal Pepinsky at the Denver Annual Meeting of the American Society of Criminology where he caused laughter by proudly identifying himself as an agent of the state), let me introduce our readers to the essays contained in this issue of our journal. The essays indirectly support my argument that industrialized countries have lessons to learn from people who are routinely prevented from immigrating due to stereotypes.

This issue opens with a formidable contribution from Godpower Okereke on the epidemic of domestic violence against women in Africa. The author does not suggest that Africans are more prone to domestic violence than other people but directly suggests that

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the violence against women is exacerbated by patriarchal religious fundamentalisms that have since intruded into Africa. In his recommendations of what must be done, it is evident that he prioritizes the famed African tradition of restorative justice which the rest of the world is gradually learning even when they do not give credit to Africa for originating such alternatives.

This is followed by Okafo who presents a fascinating account of the vibrancy of traditional African judicial processes that could teach the rest of the world one lesson or two. The argument of the author is that it is a mistake to rely only on Western jurisprudence around the world when Igbo traditional jurisprudence, for instance, could help the world to resolve many disputes more effectively. Indirectly, this might be suggesting that the epidemic of domestic violence that Okereke highlighted in this issue could be better dealt with through the non-violent traditions of Africa that were applied during much of the Abolitionist Movement, the Nationalist Movement for independence from colonialism in Africa, by Gandhi for the independence of India after he learned the philosophy from the Zulu in South Africa, by the Civil Rights Movement in America and more recently by Madiba Mandela in the Truth and Reconciliation Commission for South Africa. This lesson is already being applied by advocates of Criminology as Peacemaking (and Lovemaking, as I argued in our maiden issue) through the advocacy for mediation and restorative justice rather than focusing on war-making, hate-mongering and punitive justice the way Western jurisprudence insists.

The third essay, by Dianne William, focuses on disparities in access to mental health care services. The author does not delve

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into the controversy over whether people of African descent are disproportionately diagnosed with mental health problems or whether they are more prone to mental illness. Instead, the author dwells on what is done after patients have been diagnosed with mental illness. She concludes that it is due to racial stereotypes and prejudice among mental health specialists that people of African descent suffer inadequate access to mental health services. She recommended a greater awareness of cultural diversity and multiculturalism to help mental health physicians to better respond to the needs of people of African descent. Indirectly, the author is recommending that the official response to Africans who are suspected of having mental problems should reflect African tolerance for personality hybridity and diversity the way Africans tend to do. For instance, if an African claims to see ghosts and to hear voices, our response is not to bang the person up in an asylum and drug him/her senseless. Instead, we say to the person, what do the ghosts say we should do to heal the world? That is perhaps why people of African descent have invented so many different musical genres that other people initially see as signs of madness until they recognize that there is a method in our creative madness, especially when the despised new style becomes a commercial success.

The review essay by Oriola gives me goose pimples every time I read it. The author focused on my book, *Counter-Colonial Criminology: A Critique of Imperialist Reason*, which was the subject of a panel of reviews in our debut issue, and gave so much generous praise that I pinch myself and ask, 'Is this author talking about my work or what?' I am pleased to know that the work we are all doing collectively is filling gaps in knowledge to help scholars around the world to better be able to deal with theoretical

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difficulties that arise from over-reliance on Eurocentric knowledge systems.

Finally, we offer to you, a review essay on Okafo's challenging book that inspired his essay for this issue. Elechi Oko's review of the book again indicates what the West could learn by humbling itself down to study African civilizations for alternative policies that could be more effective in dealing with social problems. Indirectly, the review is reminding leaders of the world to stop stereotyping Africans as undesirable people given that African culture offers many unique technologies that could help the whole world to become a better place.

Indirectly, all these essays support my argument that it is a mistake to take a xenophobic approach to immigration control or to the validation of knowledge systems. As in all cases of ethnocentrism, exclusionary policies would stunt social development by precluding lessons that could be learned from the excluded. One area where the United States probably borrowed from Africa was in the design of the Federal Constitution, following closely, the republican system of government that is found in many African societies at a time that Europe was dominated by monarchism. America may have paid tribute to this African origin by inserting a picture of the pyramid, with an eye (of a student or spy?) on the top, in the one dollar bill. Another more explicit borrowing from Africa is known as the theory of African Fractals (Eglash, 1999). According to this view, Europeans prefer to keep things straight and simple because it would be easier to control such social systems whereas Africans prefer complexity, messiness and non-linear geometry to enhance human freedom. Initially, Europeans

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saw the African system as primitive and tried to wipe it out but more recently, computer engineers have recognized how useful African Fractals are for faster internet connectivity and I have concluded elsewhere that the African preference for non-violent resolution of conflicts owes to this tendency for Africans to design social relations in fractal patterns rather than in Cartesian grids (Agozino, 2003).

Eglash reminds us that it was an immigrant from Africa, Phillip Emeagwali, who wrote the formula for faster internet connectivity. When he first tried to get attention for his discovery people laughed at him and thought that he must be crazy to claim that he could calculate numbers faster than the existing computers at that time. Today, he is recognized as one of the 'Fathers of the internet.' What if immigration officials had frustrated his attempt to settle in America, perhaps his genius could have been hidden in Nigeria and American dominance over the knowledge economy could have suffered a set-back. Phillip Emeagwali himself credits his Igbo culture with this discovery for it allowed him to depart from the straight-forward bifurcation models in computer engineering and try something that I identified as trifurcation elsewhere (Agozino, 1997). The result was significantly less wastage when his formula was applied to petroleum drilling technology and faster internet connectivity as well.

In conclusion, when CNN repeatedly broadcast a program on 'How to Rob a Bank' which suggested that the majority of fraudsters in Houston were Nigerians, the news channel was indulging in xenophobia that could be costly for America if such propaganda translates into policies to prevent Africans from

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immigrating to America. Nigerians in the diaspora organized a rebuttal to the program and earned themselves an apology from CNN. The African diaspora should maintain a focus on returning to Africa to stem the brain drain and give back more than the financial remittances that have earned them praise from the World Bank and African leaders for sustaining poor African economies with billions of dollars annually, more than the international aid to Africa. For instance, these challenging criminological technologies that Africans are developing should be applied in Africa too through a united republic of all Africans in which the African Diaspora would have the right to dual citizenship.

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